

**Join us! In an effort to enhance meetings post COVID-19 emergency orders, the City Council invites you to join and/or participate in a variety of ways: Via computer Zoom meetings (no app is necessary), telephone, email and/or text! See details on page 3.**

**Vestavia Hills  
City Council Agenda  
February 14, 2022  
6:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Steve Dedmon, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. Proclamation – Arbor Week – February 21, 27, 2022
8. City Manager’s Report
9. Councilors’ Reports
10. Approval Of Minutes – January 24, 2022 (Work Session) And January 24, 2022 (Regular Meeting)

**Old Business**

11. Resolution Number 5374 – A Resolution Authorizing The City Manager To Execute All Actions Necessary To Install Resurfacing At The Meadowlawn Park Playground (*public hearing*)
12. Ordinance Number 3081 – An Ordinance Authorizing The Settlement Of Four Tax Appeals (Being Jefferson County Circuit Court Case Numbers 01-Cv-2021-000125, 01-Cv-2021-000126, 01-Cv-2021-000127 And 01 Cv-2021-000128) Seeking Refunds Of The Overpayment Of Business License Taxes Erroneously Paid By Four Insurance Companies In 2017 And 2018; And Authorizing And Directing The Mayor And City Manager To Execute And Deliver The Settlement Agreement And Any And All Documents And Other Actions Necessary To Effectuate Said Settlement Agreement (*public hearing*)

**New Business**

13. Ordinance Number 3084 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Alabama Department Of Transportation For

Access To A Computerized Motorist Information System To Monitor Traffic Conditions  
On Certain Portions Of The State Transportation System

**New Business (Requesting Unanimous Consent)**

**First Reading (No Action To Be Taken At This Meeting)**

14. Ordinance Number 3085 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Second Amendment To The Annexation Agreement With Liberty Park Joint Venture (*public hearing*)
15. Ordinance Number 3086 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver A Development Agreement With Liberty Park Joint Venture LLP For Economic Development In Liberty Park (*public hearing*)
16. Citizens Comments
17. Time Of Adjournment

## **SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS**

**Due to the COVID-19 safety advice given by the ADPH, the City Council work sessions and meetings are available via video-conference and teleconference. If you choose not to attend in person, you may still participate. Following are instructions for three options to participate remotely.**

### **COMPUTER PARTICIPATION (*view/participate in real time*)**

To participate in by videoconference, click <https://us02web.zoom.us/j/5539517181>. When the Zoom.us window opens in your browser, click “Allow” so that the page may open to a waiting room. The host will open the meeting and bring all into the meeting room at that time. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, activate the “Raise Hand” feature and unmute yourself by toggling the mute button. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then you may address the Council.

Using the icons on the Zoom screen, you can:

- Mute/unmute your microphone (far left)
- Turn on/off camera (“Start/Stop Video”)
- View Participants – opens a pop-out screen that includes the “Raise Hand” icon that you may use to raise a virtual hand
- Change your screen name displayed in the participant list and video window
- Toggle between “speaker” and “gallery” views – “Speaker view” shows the active speaker; “Gallery view” tiles all of the meeting participants

### **TELEPHONE PARTICIPATION (*view/participate in real time*)**

To participate by telephone, dial 312.626.6799 and enter the meeting ID: 455 534 3275. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, press \*6 on your phone keypad to unmute yourself. Then state your name and wait for the Mayor to recognize you. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then address the Council.

### **TEXT AND/OR EMAIL (*prior to the meeting or in real time*)**

If you do not wish to join the meeting but would like to ask a question or make a statement regarding an item on the agenda, you may email the City Council directly at [City.Council@vhal.org](mailto:City.Council@vhal.org). You may also text your question/statement to City Council at 205.517.1370. Both of these options are available prior to and during each work session and meeting. Be sure to provide your name and address for the record and your comments will be recited to the City Council as the corresponding item is being addressed. Note: As a matter of record, your name and address are required. If identification is not provided, your comment/question will not be presented.

WHEREAS, the economic and aesthetic welfare of the people of Alabama is largely dependent on the trees and forests of the State; and

WHEREAS, everyone in the City of Vestavia Hills benefits either directly or indirectly from trees and forests; and

WHEREAS, trees provide jobs, products, habitat for wildlife, and recreational opportunities; and

WHEREAS, trees are an invaluable physical and psychological addition to the City, as they provide shade, cool the air, reduce noise levels and glare; and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, the management of trees through planning, planting, maintenance, timely removal and replacement increases their benefit to our City for both present and future generations; and

WHEREAS, the Keep Vestavia Hills Beautiful organization, an affiliate of Keep America Beautiful, has committed to integrate into its purpose promoting, planting and caring for community trees as well as engaging in other activities which ensure that trees are considered in community aesthetics.

NOW, THEREFORE, I, Ashley C. Curry, by virtue of the authority vested in me as Mayor of the City of Vestavia Hills in the State of Alabama, do hereby proclaim the week of February 21 – 27, 2022 as

**ARBOR WEEK**

and encourage all residents to participate in tree planting activities during this week.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Vestavia Hills to be affixed this the 14th day of February 2022.

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Ashley C. Curry  
Mayor

## CITY OF VESTAVIA HILLS

### WORK SESSION

JANUARY 24, 2022

The City Council met in special work session on this date following posting/publication as required by Alabama law. The Mayor called the work session to order and the Clerk checked the roll:

**MEMBERS PRESENT:**

Ashley C. Curry, Mayor  
Rusty Weaver, Mayor Pro-Tem\*  
Kimberly Cook, Councilor  
Paul Head, Councilor

George Pierce, Councilor

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Rebecca Leavings, City Clerk  
Melvin Turner, III, Finance Director  
Brian Davis, Public Services Director  
Dan Rary, Police Chief  
Jason Hardin, Police Captain  
Marvin Green, Fire Chief  
Cinnamon McCulley, Communication Specialist

*\*attended virtually via Zoom*

Mr. Downes announced that Councilor Weaver is attending virtually. Mr. Downes explained that on January 10, 2022, the City announced a series of informational meetings concerning the proposed development of Liberty Park to ensure that the plans of the development are clear as they progress to the Council for decision-making purposes. He stated that this work session is being recorded as will be all subsequent meetings, and will be posted on the city's website for everyone to see. Downes presented the proposed schedule of meetings, which begins tonight. The developer for 700 acres of Liberty Park Joint Venture (LPJV) land, called the Bray, will give an overview of the proposed development. Also presenting are Special Counsel for the City, Whit Colvin, and Special Counsel for the Board of Education, Mark Boardman. Downes stated that this meeting will be to introduce the concept that LPJV has worked on for this proposed development.

Mr. Downes indicated that, tomorrow, the documents and presentations from tonight's work session will be uploaded to the City's website at [www.vhal.org](http://www.vhal.org) under the Economy / Private Development Projects tab. This will be a dedicated webpage that will provide information presented at all Bray public meetings. He indicated that there is also a Vestavia Listens topic that is already open to receive questions, concerns, and comments associated with the project. All of these online resources are accessible at [www.vhal.org](http://www.vhal.org).

Mr. Downes indicated that today is also an information-sharing exercise. In addition, there will be two town hall meetings to follow to receive public input: January 31, 2022 at 6 PM and February 10 at noon, both in the Council Chambers of City Hall. Following those town hall meetings, there will be first reads of the various agreements on February 14, with no action taken. The public hearings will occur on February 28, 2022, the meeting at which the Council will consider these various agreements.

### **THE BRAY AT LIBERTY PARK**

Mr. John Gunderson, President, Daniel Communities, and adviser to LPJV spoke first. He stated that they have been working with City Staff to evolve plans for a development that will meet objectives and goals in keeping with City priorities and to enhance Liberty Park. He showed a map of the Bray area, all of which is already located in the City of Vestavia Hills. He explained that the original vision for this parcel of land was to bring a regional supercenter to be anchored by a regional mall and surrounded by office use. The years played out and this was put on the back burner. The markets changed and the malls gravitated toward other areas. The I459 interchange project was denied by multiple authorities. As Daniel was brought in to manage development of the property, he explained that Publix was already under construction along with a few other smaller commercial facilities. Since then, the plans have evolved to vision of a great lawn, a luxury hotel, restaurants, specialty retail, general business, medical office, and a variety of housing types to meet new market demand. He presented detailed drawings depicting the vision for this mixed-use development.

Drawings depicted a town center to provide a mixed-use urban appearance, but with a “village-feel” in keeping with the aesthetics of Liberty Park. The development includes a luxury multi-family component of 270 units to be located in the town center. Also, provided is senior age-restricted and senior assisted-living residential. He stated that this mixed-use development plan requires new agreements from the city, including public-private economic incentives. He explained the various agreements and the reasons for funding requests to support infrastructure, revenue-sharing support of the infrastructure and incentives. He described the donation of a 15-acre school site in the middle of the development, funding for preparation of the school site, and the dedication to the City of certain existing and future roadways and public spaces including the Bray Great Lawn and trail system.

Mr. Downes stated that as the City Council explored the previous development plan that was presented in a series of stakeholder meetings approximately one year ago, the Council asked Downes to retain Special Counsel to lead the City’s negotiations.

Whit Colvin, attorney representing the City, explained the general advantages to cities of revenue-sharing rather than direct investments in property infrastructure. He explained that the proposed development agreement ensures that the LPJV fulfills the master plan vision before any revenues are shared, and this includes the town center just explained by Mr. Gunderson. Provisions of the agreement to protect the city’s interests include a minimum 102,000 sqft. of commercial space, at least 50% of which must be primarily sales or retail-based. The luxury apartments proposed must be a maximum of 27 three-bedroom units, with the remaining to be one-bedroom

and two-bedroom units. The remainder of multi-family units are restricted to people age 55 and older. There will be walking trails, sidewalks and other public-access amenities provided in this development that will be dedicated to the city. Notably, the agreement includes a 15-acre school site to be donated to the City. The agreement proposes a revenue-sharing economic incentive along with some public reimbursement for infrastructure costs. No property taxes would be shared in these agreements, and all taxes shared only include the City portion, not the school board portion. He explained that, by starting construction with the town center, this means there will be commercial revenues generated early, before the new single-family residential homes are constructed. Agreements include a 50%-sharing of permit fees for the town center (excluding residential), lodging taxes, etc., but no sharing of building material taxes, with a 20-year expiration on all sharing. He stated that the City will, through pay for the spine road construction, connecting to Sicard Hollow Road and this will be divided into two phases at a cost of \$5.5 million per phase. He explained how the funding will be derived on Phase 1 and that the city's Phase 2 payment will not be due until 1) 100% of the hotel shell or, 2) 25,000 sqft. of retail space is tenant-ready. Mr. Colvin also explained briefly the parameters of the proposed annexation agreement.

Mark Boardman, attorney representing the Board of Education, stated that the Board does not take a position on zoning and development decisions as those are under City purview. He provided statistics on the school system's graduation rate, as well as the large number of scholarships and college credits obtained in high school, to emphasize the value the Vestavia Hills school system provides to the community. He stated that this is the Vestavia Hills standard for education, and the school system is committed to continued excellence. He further explained that ad valorem revenue generally pays for the operation of schools, but is not always sufficient to cover construction of schools. He explained the value of a *pro forma* to show projected revenues would be sufficient to cover the costs of constructing and operating any new elementary school in Liberty Park. He mentioned the school system has studied the issue to understand the student impact as well as the projected timing of those impacts. He said the developer projections show a new elementary school would be needed five years sooner than what the current housing allowances would allow. He mentioned other revenue stresses of the school system including a state-mandated 4% pay increase for teachers that is likely coming and will cost the system an additional \$900,000 per year. He explained the school system's budget shortfall (totaling \$3.6 million over 4 years) would make it difficult for the system to construct a new school in the near term. He said there would only be an elementary school needed, because existing higher grade-level schools in our system can comfortably accommodate the increase in students coming from the Bray. He stated the new elementary school might need "a little bit of money" to help with budget shortfalls. He said, "Excellence is here; excellence takes money."

Mrs. Cook asked if this proposed development creates the need for an additional elementary school or whether this need would occur anyway. Boardman stated that residential development, even under the current agreement, would eventually warrant an additional elementary school, but this proposed development might establish the need sooner rather than later.

Mr. Downes stated that the meeting will need to close soon for the regular meeting. He stated that the recording will be placed on the dedicated page along with the draft version of the various agreements on that page and begin to work toward the town hall meetings.

Mrs. Cook reminded that people can ask questions on the Vestavia Hills Listens portal. Mr. Downes stated that there is already a topic posted on Vestavie Hills Listens, and if someone wants a formal answer he or she can ask it through that portal. All comments posted there will be shared with the Council.

There being no further business, the Mayor adjourned the work session at 5:54 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk



**CITY OF VESTAVIA HILLS**

**CITY COUNCIL**

**MINUTES**

**JANUARY 24, 2022**

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order. The City Clerk called the roll with the following:

**MEMBERS PRESENT:**

Mayor Ashley C. Curry  
Rusty Weaver, Mayor Pro-Tem\*  
Kimberly Cook, Councilor  
Paul Head, Councilor  
George Pierce, Councilor

**OTHER OFFICIALS PRESENT:**

Jeff Downes, City Manager  
Rebecca Leavings, City Clerk  
Danny Rary, Police Chief  
Ryan Farrell, Asst. Fire Chief  
Melinda Burnett  
Melvin Turner, Finance Director  
Christopher Brady, City Engineer  
Cinnamon McCulley, Communication Specialist  
*\*present virtually via Zoom or telephone*

Don Richards, a Vestavia Hills Chaplain, led the invocation which was followed by the Pledge of Allegiance.

**APPROVAL OF THE AGENDA**

The Mayor opened the floor for a motion of approval of the agenda as presented.

**MOTION** Motion to approve the agenda as presented was by Mr. Pierce seconded by Mrs. Cook. Roll call vote was, as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

## **ANNOUNCEMENTS, CANDIDATES, GUEST RECOGNITION**

- Mrs. Cook announced that on January 27, 2022, the Birmingham Holocaust Education Center will broadcast an interview with Esther Levy, a second-generation Holocaust survivor family member. Originally, this was scheduled for presentation in the City Council Chamber, but later, the BHEC decided to change it to an all-virtual presentation. She stated that they were disappointed that it will not be held live in Vestavia Hills, but the City is looking forward to the more accessible presentation to the great Birmingham community via Zoom. Those interested should go to the BHEC website to register for a link to attend.
- Mrs. Cook stated that she attended a tree planting on MLK day, at Altadena Valley Park. She explained that this event was planned by the City staff and the Parks and Recreation Board to honor community service for MLK Day and also to celebrate Tu B'Shevat, a Jewish celebration of a "new Year" or "birthday" of trees. The "tree birthday" celebration recognizes the cold that is necessary for the fruit in a tree to form – something our peach farmers in Chilton County know all about. She stated that the gathering included representation from the Altadena Valley Park Master Planning Committee, City Staff, and that she attended representing the Council. It was a cold day, but Mrs. Cook stated it gave her an opportunity to see the Altadena Valley Park potential, and helped her to imagine what it can be someday through the Park Board's master planning efforts.
- Mr. Pierce recognized Gary Jordan, who was in attendance representing the Chamber Board, was also in charge of Viva Vestavia's big come-back last year.
- The Mayor, with a heavy heart, stated that a long-time volunteer of the Men's Garden Club, Mr. Fred Dyess, passed away recently. He stated that Fred always took time to arrange the flowers from the garden gathered from the Shades Crest Road / Highway 31 intersection. His arrangements of these flowers were displayed throughout the City and have been admired by many visitors to City Hall. Mr. Dyess will be missed.
- Jared Hudson, candidate for Sheriff of Jefferson County, introduced himself and asked for support in the upcoming election.
- Mr. Head welcomed Tony Renta and Mitch Bevill to tonight's meeting representing the Altadena Valley Master Planning Committee and the Parks and Recreation Board.

## **PROCLAMATION**

The Mayor presented a Proclamation designating January 27, 2022 as "International Holocaust Remembrance Day." Mr. Downes read the Proclamation and the Mayor and Councilor Cook presented it to Zoe Weil, Program Director for the Birmingham Holocaust Education Center; and Joyce Shevin, Executive Director for the Birmingham Jewish Federation's Jewish Community Relations Council.

Mrs. Cook introduced Ms. Weill and Ms. Shevin.

Ms. Shevin thanked the Mayor and Council for this proclamation. She explained they have worked diligently in the community to share their beliefs and education to end anti-Semitism. She stated that this solemn day marks 80 years since the Holocaust occurred, but she

has found that anti-Semitism still exists all over the world. She stated that this is the primary concern of Jewish people today. The statistics of a 2021 study showed that many Jewish people avoid wearing anything that identifies them as Jewish because it makes them subject to anti-Semitism rhetoric. She stated she comes today with the hope that the people of Vestavia Hills will come together to learn and know that, by doing this recognition, they can help to save a future generation from further hate.

Ms. Weil also thanked City Council for this proclamation and asked everyone to join them on the 27 to mark commemoration of this important day.

### **CITY MANAGER'S REPORT**

- Mr. Downes stated that, at the last meeting, City Engineer Christopher Brady announced the opening of public input concerning the City's stormwater permit requirements. He stated that the public input opened on the City's website and was viewed and shared, but no comments were given. This input portal closes tonight.
- Mr. Downes introduced Tony Renta and Mitch Bevill. Mr. Renta stated that the Altadena Master Planning Committee reacted to the last presentation and public input provided at town hall meetings. The committee revised the master plan in response to some of the concerns and included ideas with how to move forward both short-term and long-term. He stated that they are working to estimate the true cost of Phase 1 features. Mr. Downes stated that the purpose tonight would also be to hear any Council concerns regarding the plan. He added that, last week, the City had conversations with the County Manager of Shelby County who suggested a funding partnership to help make some of this a reality. If the Council is comfortable, City staff can move forward with plans to implement Phase I and continue talks with Shelby County. Mrs. Cook stated she is happy to see the participation of environmental stakeholders which include Cahaba Riverkeeper, Cahaba River Society and others. This is something that the residents want and she is happy to see this coming together. She expressed appreciation for volunteer efforts to create a good master plan. Mr. Pierce stated he was able to attend two of these meeting and understood it was the overall consensus that this is a great space that should be used and developed.

### **COUNCILOR REPORTS**

- Mr. Pierce stated he attended the Chamber's recent retreat. Various committees presented their plans for 2022.
- Mr. Pierce stated that, the other day, he was attending a middle school wrestling match and an injury occurred. He stated he witnessed the VHPD and VHFD assist the victim and reassure the family. He stated our FD and PD are the best and he asked the Chief to relay that information on down to the squads.

**FINANCIAL REPORTS**

Mr. Turner presented the financial reports from month ending December 2021. He read and explained the balances.

**APPROVAL OF MINUTES**

The Mayor stated that the approval of the January 10, 2022 (Work Session) And January 10, 2022 (Regular Meeting) was needed and opened the floor for a motion.

**MOTION** Motion to approve the minutes of the regular meeting of the December 20, 2021 (Work Session) And December 20, 2021 (Regular Meeting) was made by Mr. Head and second was by Mr. Pierce. Roll call vote as follows:

Mrs. Cook – abstain	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

**OLD BUSINESS**

**RESOLUTION NUMBER 5370**

**Resolution Number 5370 – A Resolution Accepting The Dedication Of The Streets In The Altadena Park Subdivision Known As Altadena Park Circle And Altadena Park Lane**

**MOTION** Motion to approve Resolution Number 5370 was by Mr. Pierce and seconded by Mr. Head.

Mr. Downes explained that all inspections have taken place and the streets are ready for dedication.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

**ORDINANCE NUMBER 3079**

**Ordinance Number 3079 – Rezoning – 4565 Pine Tree Circle; Lot 12, Topfield Subdivision; Rezone From Vestavia Hills 1.2 (Planned Neighborhood Mixed Use District)**

**To Vestavia Hills B-1 (Neighborhood Business District) With Limited Uses;  
Seed Corn, LLC & Pine Tree Partners, LLC, Owners**

**MOTION** Motion to approve Ordinance Number 3079 was by Mr. Pierce and seconded by Mrs. Cook.

Mr. Weaver stated that this came before Planning and Zoning for a rezoning to B-1 to allow off-site parking for a salon and is consistent with the plan for mixed use in this area. It was recommended for approval under conditions. He read the conditions which also limited the uses of the property along with construction of any future buildings to be similar to existing businesses.

Mr. Pierce pointed out a typo in the agenda that the address is 4565 Pine Tree Circle, but noted the Ordinance was correct.

There being no one to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

**RESOLUTION NUMBER 5364**

**Resolution Number 5364 – Annexation – 90 Day – 1718 Vestaview Lane; John G. Moss, III,  
Owner (public hearing)**

Mr. Pierce gave the report of the Annexation Committee that found no adverse information.

John “Tripp” Moss was present in regard to this request.

**MOTION** Motion to approve Resolution Number 5364 was by Mrs. Cook and seconded by Mr. Head.

The Mayor opened the floor for a public hearing for both this Resolution 5364 and Ordinance 3050 which represents the overnight annexation of the same property. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

**ORDINANCE NUMBER 3050**

**Ordinance Number 3050 – Annexation – Overnight – 1718 Vestaview Lane; John G. Moss, III, Owner (public hearing)**

**MOTION** Motion to approve Ordinance Number 3050 was by Mrs. Cook and seconded by Mr. Head.

There being no one to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

**NEW BUSINESS**

**RESOLUTION NUMBER 5372**

**Resolution Number 5372 – A Resolution Approving The Refunding Of An Overpayment Of Business License And Sales Taxes**

**MOTION** Motion to approve Resolution Number 5372 was by Mr. Pierce and seconded by Mrs. Cook.

The Mayor explained that this business remitted sales taxes and business license to the City in error.

There being no one to further address the Council, Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

**RESOLUTION NUMBER 5373**

**Resolution Number 5373 – A Resolution Declaring Certain Personal Property As Surplus And Authorizing The City Manager To Sell/Dispose Of Said Property**

**MOTION** Motion to approve Resolution Number 5373 was by Mrs. Cook and seconded by Mr. Pierce.

Mr. Downes explained that these are some old Parks and Recreation furniture, decorations and some old vehicles.

There being no one to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

### **ORDINANCE NUMBER 3080**

**Ordinance Number 3080 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Roy W. Gilbert, III And Wife, Sharon Gilbert (“Owners”) For An Easement At 3175 Pipeline Road For Construction Of A Public Sidewalk On A Portion Of Said Property**

**MOTION** Motion to approve Ordinance Number 3080 was by Mr. Pierce and seconded by Mr. Head.

Mr. Downes explained that this is a part of the sidewalks planned for Cahaba Heights. Mr. Gilbert has graciously allowed this to cross his property to assist it to coming together in a great location to tie this sidewalk project together to connect the Heights Village to the back of the Fig Tree restaurant. Following these and designs, the project should be bid soon.

There being no one to address the Council, the Mayor called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

### **NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)**

The Mayor stated that the following two items require unanimous consent for the immediate consideration and action on each. He opened the floor for a motion:

**MOTION** Motion for unanimous consent for the immediate consideration and action of Ordinance Number 3031-A and Ordinance 3082 was made by Mr. Pierce and seconded by Mrs. Cook. Roll call vote as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

### **ORDINANCE NUMBER 3031-A**

**Ordinance Number 3031-A – An Ordinance Amending Ordinance Number 3031 - An Ordinance To Declare That The Present Condition Of A Portion Of Oakview Lane Is In Such State Of Disrepair That It Endangers The Public Health, Safety And Welfare Of Members Of The General Public; To Declare That The Situation Is An Emergency; To Describe The Nature Of Said Emergency; To Authorize And Direct The Repair Of Oakview Lane Without Advertising For Competitive Bids Pursuant To The Authority Of Title 39-2-2(E), Code Of Alabama, 1975, At A Cost Not To Exceed One Hundred Eighteen Thousand Eight Hundred Fifty-Two Dollars (\$118,852.00); To Authorize And Direct The City Manager And Mayor To Negotiate And To Execute And Deliver A Construction Contract And Any And All Other Documents Necessary To Have The Repair Work Performed And Completed And To Authorize An Additional Replacement/Repair Of Pipe In The Amount Of \$84,726.25**

**MOTION** Motion to approve Ordinance Number 3031-A was by Mr. Pierce and seconded by Mr. Head.

Mr. Brady explained that the Council previously declared an emergency to repair the pipe. As the repair was taking place, crews discovered additional collapsed pipes, requiring the project extension. He stated he believes this additional funding will allow the City to complete the repairs along the roadway and replace the broken pipe with concrete pipe which should be more durable.

The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

### **ORDINANCE NUMBER 3082**

**Ordinance Number 3082 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver An Agreement To The Purchase Software For Consolidated Debt And Lease Management For The City**

**MOTION** Motion to approve Ordinance Number 3082 was by Mrs. Cook and seconded by Mr. Head.

George Sawaya, Asst. Finance Director, explained the purpose and need of this software to help to analyze the consolidated debt and lease in keeping with GATS-B 87 and upcoming Gats-B 96 debt service accounting and reporting.



The Mayor opened the floor for a public hearing. There being no one to address the Council, the Mayor closed the public hearing and called for the question. Roll call vote was as follows:

Mrs. Cook – yes	Mr. Head – yes
Mr. Pierce – yes	Mr. Weaver – yes
Mayor Curry – yes	motion carried.

**FIRST READING (NO ACTION TO BE TAKEN AT THIS MEETING)**

- Resolution Number 5374 – A Resolution Authorizing The City Manager To Execute All Actions Necessary To Install Resurfacing At The Meadowlawn Park Playground (*public hearing*)
- Ordinance Number 3081 – An Ordinance Authorizing The Settlement Of Four Tax Appeals (Being Jefferson County Circuit Court Case Numbers 01-Cv-2021-000125, 01-Cv-2021-000126, 01-Cv-2021-000127 And 01 Cv-2021-000128) Seeking Refunds Of The Overpayment Of Business License Taxes Erroneously Paid By Four Insurance Companies In 2017 And 2018; And Authorizing And Directing The Mayor And City Manager To Execute And Deliver The Settlement Agreement And Any And All Documents And Other Actions Necessary To Effectuate Said Settlement Agreement (*public hearing*)

**CITIZEN COMMENTS**

None.

At 6:55 PM, Mr. Pierce made a motion to adjourn. The meeting adjourned at 6:56 PM.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

## **RESOLUTION NUMBER 5374**

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO INSTALL RESURFACING AT THE MEADOWLAWN PARK**

**WHEREAS**, the Director of Public Services has investigated and located a poured in place surfacing for the City's Meadowlawn Park playground that would be more durable and ease maintenance issues with the surfacing which is detailed in an Interoffice Memorandum marked as Exhibit A, a copy of which is attached to and incorporated into this Resolution Number 5374 as if written fully therein; and

**WHEREAS**, the surfacing replacement can be obtained through a purchasing cooperative as approved by the State of Alabama Office of Public Examiners pursuant to Alabama's cooperative bidding laws; and

**WHEREAS**, a proposal has been obtained from GameTime c/o Struthers Recreation, LLC., to replace said surfacing following the removal of the existing surface by City work crews for a total of \$67,264.00, which is detailed in the attached quote marked as Exhibit B, a copy of which is attached to and incorporated into this Resolution Number 5374 as if written fully therein; and

**WHEREAS**, Alabama Senator Dan Roberts has secured funding in the amount of \$64,000 for this project with \$3,264.00 in funding needed in order to completely fund the project; and

**WHEREAS**, the Mayor and City Council agree that it is in the best public interest to accept said quote and authorize the City Manager to take all actions necessary in order to resurface the areas of Meadowlawn Park as described.

### **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The City Manager is hereby authorized to accept the quote as detailed in Exhibit B and take all actions necessary in order to purchase and install the detailed surface to the Meadowlawn Park; and
2. Funding for the project shall be expensed to the \$64,000.00 donation by Senator Dan Roberts along with \$3,264.00 from the City's Capital Project's Fund; and
3. This Resolution Number 5374 shall become effective immediately upon adoption and approval.

**DONE, ORDERED, ADOPTED and APPROVED** this the 14<sup>th</sup> day of February, 2022.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**Vestavia Hills Public Services  
1032 Montgomery Highway  
Vestavia Hills, AL 35216**

**INTEROFFICE MEMO**

Date: January 18, 2021

TO: Jeff Downes  
City Manager

From: Brian Davis  
Director of Public Services

RE: Meadowlawn playground surfacing

Please see attached quote for poured in place surfacing at Meadowlawn Park for the playground. As you are aware, Senator Roberts gave a donation of \$64,000 toward this project. The quote shows that \$3,350 would be saved if our staff performed the work to remove the current surfacing, for a total cost of \$67,264.

I am requesting an additional \$3,264 to supplement the grant and complete this project. It should go a long way to ease ongoing maintenance issues with the surfacing, as well as make it more aesthetically pleasing.

I have also discussed the bidding process with Becky, and I have attached the contract that was approved through OMNIA partners cooperative purchasing. This contract has been approved by the state of Alabama.

Please let me know if you have any questions.

CC: Rebecca Leavings



c/o Struthers Recreation, LLC.  
 P.O. Box 1178  
 Pelham, AL 35124  
 Phone: 800-221-8869  
 Fax: 205-663-5012

Exhibit B - Resolution No. 5374  
 01/14/2022  
 Quote #101521-01-02

## Vestavia Hills - Meadowlawn Surfacing\_2022

City of Vestavia Hills Parks and Recreation  
 Attn: Brian Davis  
 Meadowlawn Drive  
 Vestavia Hills, AL 35243  
 Phone: 205-978-0100  
 Fax: 205-978-0174  
 bdavis@vhal.org

**Ship to Zip** 35243

Quantity	Part #	Description	Unit Price	Amount
2640	PIPAL	GT-Impax - Square Feet - Poured in Place Rubber Safety Surfacing- 800sf @ 2" Thick for 5'CFH 1840sf @ 3.5" Thick for 8'CFH Includes dumpster and security pricing.	\$20.61	\$54,410.40
1	CONCRETE	Struthers Recreation - Concrete Base and 6" Perimeter Curb	\$20,800.00	\$20,800.00
1	DEMO	Struthers Recreation - Removal of Existing Mulch- May be deducted if performed by others	\$3,350.00	\$3,350.00
			<b>Sub Total</b>	\$78,560.40
			<b>Discount</b>	(\$7,946.40)
			<b>Total</b>	<b>\$70,614.00</b>

**OMNIA Partners Contract #2017001134**

**Purchase Orders must be made out to [GameTime](#) when purchasing through the contract.**

Pricing: Quotes are valid for 30 days from date of quotation. **Pricing may change after 30 days.** If ship to zip code changes, freight may change.

**Payment terms: Credit Cards Accepted - VISA, American Express or MasterCard.**

**If paying by card, a 3.74% plus \$0.15 convenience fee is applied to the total purchase.**

**UNLESS SPECIFICALLY INCLUDED, THIS QUOTATION EXCLUDES ALL EQUIPMENT ASSEMBLY AND INSTALLATION; SAFETY SURFACING; BORDERS AND DRAINAGE PROVISIONS, ALL SITE WORK AND LANDSCAPING; REMOVAL OF EXISTING EQUIPMENT; ACCEPTANCE OF EQUIPMENT AND OFF-LOADING AND STORAGE OF GOODS PRIOR TO INSTALLATION. SIGNED ACCEPTANCE OF THIS QUOTE ASSUMES ACCEPTANCE OF TERMS AND CONDITIONS ON ATTACHED PAGE. TERMS: NET 30 DAYS**

# Vestavia Hills - Meadowlawn Surfacing\_2022

**Acceptance of quotation:**

**SIGNED ACCEPTANCE OF THIS QUOTE ASSUMES ACCEPTANCE OF ALL TERMS AND CONDITIONS IN THIS QUOTE.**

Accepted By (printed): \_\_\_\_\_ Signature: \_\_\_\_\_

P.O. No: \_\_\_\_\_ Purchase Amount: **\$70,614.00**

Date: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Facsimilie: \_\_\_\_\_

**Order Information:**

Bill To: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Tel: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Email for Invoicing: \_\_\_\_\_

Ship To: \_\_\_\_\_ Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Tel: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

FIN# (FEDERAL IDENTIFICATION NUMBER) \_\_\_\_\_

SALES TAX EXEMPTION CERTIFICATE #: \_\_\_\_\_

**COPY OF TAX EXEMPTION CERTIFICATE MUST BE PROVIDED FOR ALL TAX EXEMPT ORDERS**

## Vestavia Hills - Meadowlawn Surfacing\_2022

TERMS AND CONDITIONS OF SALE Required for Complete Order: **Purchase Order or Signed quote**, 50% down and 50% net 30 after delivery or installation with credit approval or 100% payment with order, complete billing & shipping address w/ contact names and phone numbers, and color selections. Contractors provide fully executed bid/performance/payments bonds as applicable. Pricing: f.o.b. factory, firm for 30 days from date of quotation. Acceptance of this Transaction: constitutes entire agreement between buyer and seller. Failure to pay when agreed is basis for legal action to be taken. Buyer agrees to pay all legal costs for collection and reasonable attorney fees, and hereby waives rights of exemption as to personal property under the laws of the state of Alabama or any other state. In connection with this transaction, a finance charge will be imposed on the past due balance at an annual percentage rate of 18%, or 1-1/2% per month. Delivery Schedule: Upon written notification of order (with or without installation services) delivery will be made in appx. 45-60 days. Customer has 10 days after ordering to make request to delay ship date if site will not be ready. All efforts will be made to accommodate requests, but no change is guaranteed. Freight carrier is instructed to call 24 hours in advance to arrange delivery. Returned Goods: Returned goods are subject for a restocking fee of 30% in addition to both the outbound and inbound freight charges. Goods must be packaged to protect against damage in transit in accordance with best commercial practices. Labor and material costs to make returned goods merchantable will be deducted from any credit. Returned goods will not be accepted without an authorization number (RGA) assigned by Struthers Recreation, LLC. To be eligible for credit, returned good must be received at manufacturer within 45 days of issuance of a returned goods authorization number. Unloading: Unless unloading service is contracted, unloading of delivery truck is responsibility of customer. Forklift may be required. If unloading, customer is responsible for accepting and noting any damages or shortages on the freight bill and inspecting/inventorying equipment upon receipt. Customer must notify our office immediately of any discrepancies. Freight carrier is instructed to call your designated contact 24 hours in advance to arrange delivery. **If job site is not prepared and ready for installation when equipment delivers, any pre-existing unloading agreement is voided and customer is responsible for truck unloading and equipment storage.** Additionally Insured: Any entity or person named as additionally insured, add \$150.00 per each occurrence. TERMS AND CONDITIONS IF CONTRACTING INSTALLATION SERVICES Utilities: Customer is responsible for the location and marking of all underground utilities and sprinklers prior to installation. Struthers Recreation, LLC. is not responsible for damages or repairs to any form of underground utility or sprinklers. Equipment Layout: To be as illustrated & accepted on submitted drawings. Any requested changes may result in additional charges. **Site Conditions: Installation quotations are based on a prepared level surface (slope not to exceed 1/2" over 25'), and open truck access to the area. We require a 10' wide path into the site and unloaded equipment to be within 100'. Please notify estimator of site concerns to ensure proper quotation. If installation crew arrives and installation cannot be performed due to unprepared surface or inadequate access, an additional \$1,500.00 will be charged for return trip.** Pier spoils from installation shall be spread at site. Site will be left rough grade. Upcharge of \$65.00 per hour per man plus necessary equipment rental will be added for installation in rock, concrete or existing asphalt. Removal of existing equipment, trees, etc. is by others unless specifically contracted. Machinery Use: Installation requires the use of heavy machinery. All efforts are made to minimize damage to the site. It is recommended that all final landscaping, fencing, sidewalks, etc. be completed after installation of equipment and/or surfacing. Struthers Recreation, LLC. is not responsible for damage to grass or other site features due to normal, necessary equipment use. Please notify estimator to discuss concerns prior to accepting quotation in case revisions are needed. Waste Disposal: Dumpster or approved dumping area must be provided for packaging and other waste during installation. Struthers Recreation, LLC. is not responsible for removing waste from the property unless specifically contracted. Security: Struthers Recreation, LLC. is pleased to supply & install your equipment in a timely, professional manner. Upon completion, the equipment is secured with tape to discourage play and allow concrete to dry for 72 hours. Premature play will cause equipment to become loose in the concrete footings. Customer is responsible for prohibiting access to equipment during this critical drying time. Struthers Recreation, LLC. is not responsible for equipment that becomes loose in the concrete due to premature access or events beyond our control. If purchasing rubber safety surfacing, the 72 hour waiting period also applies. Premature access will leave imprints in rubber surfacing. Customer is responsible for security.

\_\_\_\_\_  
Struthers Recreation, LLC.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CUSTOMER

\_\_\_\_\_  
DATE

# Vestavia Hills - Meadowlawn Surfacing\_2022

## COLOR SELECTIONS

To view the GameTime color chart, click here: <https://www.gametime.com/colors>

Plastic: \_\_\_\_\_ Uprights: \_\_\_\_\_

Accent Metal: \_\_\_\_\_ Decks: \_\_\_\_\_

Rock: \_\_\_\_\_ Shade Fabric: \_\_\_\_\_

HDPE: \_\_\_\_\_

Quote prepared by: Kight Jones



Location:  
401 Adams Avenue, Suite 280  
Montgomery, AL 36104-4338



Mailing Address:  
P.O. Box 302251  
Montgomery, AL 36130-2251  
Telephone (334) 242-9200  
Fax (334) 242-1775  
www.examiners.alabama.gov

**Rachel Laurie Riddle**  
Chief Examiner

January 4, 2022

Alabama Community College System  
Alabama County Commissions  
Alabama Municipalities  
City and County Boards of Education

To Whom It May Concern,

**PUBLIC WORKS NOTICE:** This letter does not authorize the purchase of any goods or services from Omnia related to "public works," as defined in Section 39-2-1(6), *Ala. Code* (2011), except as follows: the contracts for purchasing air conditioning and heating units and systems, which were awarded to Trane (RFP#15-JLP-023), Daikin Applied Americas, Inc. (RFP#20-04), Johnson Controls, Inc. (RFP#20-04), and TDIndustries, Inc. (RFP#20-04) have been approved for use under the provisions of Section 39-2-2(d)(2), *Ala. Code* (2018), as amended by Act No. 2021-282. This approval does **not** authorize installation, labor, or services related thereto, which must be bid in compliance with Title 39.


In accordance with Sections 16-13B-2(a)(13) and 41-16-51(a)(16), *Ala. Code* 1975, as amended by Act No. 2021-485, the Department has reviewed the competitive bidding process used by Omnia Partners Public Sector ("Omnia"), a national purchasing cooperative, for the contracts awarded as of the date of this letter. The Department did not identify any matters that were contrary to proper purchasing procedures or routine governmental procurement practices. Each contract was awarded by various governmental entities pursuant to the competitive bid laws in the state of the awarding authority.

Based on the Department's review, the competitive bid process used by Omnia is approved for use through **December 31, 2022**. This approval authorizes the purchase, lease, or lease/purchase of certain goods or services, other than voice or data wireless communication services, when certain statutory conditions are fulfilled. See Sections 16-13B-2(a)(13) and 41-16-51(a)(16), *Ala. Code* 1975, as amended by Act No. 2021-485. This approval does **not** apply to State Public Four-Year Universities within the State of Alabama.

Prior to utilizing Omnia, each governmental entity must verify that the goods or services to be purchased, leased, or lease/purchased are not at the time available on the state purchasing program or are not available at a price equal to or less than that on the state purchase program. *Id.* Further, any such purchases, leases, or lease/purchases must be made through a participating Alabama vendor holding an Alabama business license if such vendor exist. *Id.*

Should the Department receive notice that Omnia, its awarding authorities, or its awarded vendors are allowing Alabama governmental entities to make unauthorized purchases or other unlawful business transactions, Omnia's competitive bid process approval will subject to immediate revocation by the Department.

If the Department can be of further assistance, please let us know.

Sincerely,  
  
Rachel Laurie Riddle  
CHIEF EXAMINER

RLR/lbm



# GameTime

Playground Solutions

Click to expand menu ▾

U.S. Communities and National IPA, both wholly-owned subsidiaries of OMNIA Partners, have come together as OMNIA Partners, Public Sector. All public sector participants already registered with National IPA or U.S. Communities continue to have access to all contracts, with certain exceptions, in the portfolio and do not need to re-register to use a legacy National IPA, legacy U.S. Communities, or new OMNIA Partners contract. U.S. Communities and National IPA remain separate legal entities and lead agency contracts completed under each brand are effective and available for use through the contract's approved term. In the event we believe re-registration is necessary for any reason, OMNIA Partners will let you know.

## Playground and Outdoor Fitness Equipment, Site Accessories, Surfacing, and Related Products and Services

### City of Charlotte, NC



**Contract Number: 2017001134**

July 1, 2017 through June 30, 2022

Option to renew for two (2) additional two-year periods through June 30, 2026

**Executive Summary**

- [Uniform Guidance](#)
- [Due Diligence](#)

**Master Agreement Documents**

- [GameTime Contract 2017001134](#)
- [Contract Amendment 1](#)
- [Contract Amendment 2](#)
- [Contract Amendment 3](#)
- [Contract Amendment 4](#)
- [Contract Amendment 5](#)
- [Contract Amendment 6](#)
- [Contract Amendment 7](#)
- [Contract Amendment 8](#)
- [Contract Amendment 9](#)
- [Contract Amendment 10](#)

**Solicitation Process**

- [RFP Playground Equipment 269-2017-028](#)
- [RFP 269-2017-028 Addendum 1](#)
- [RFP 269-2017-028 Addendum 2](#)
- [RFP 269-2017-028 Addendum 3](#)
- [RFP 269-2017-028 Postings Document](#)

REQUEST CONTRACT  
INFORMATION

[Click to Download](#)



## Contact Information

**Tyler McCall**

*Senior Manager, Strategic Partnerships*

GameTime/PlayCore

Mobile: (704)776-3193

tyler.mccall@gametime.com

www.gametime.com

[SUPPLIER WEBSITE](#)



### Get in Touch

840 Crescent Centre Drive  
Suite 600  
Franklin, TN 37067  
866-875-3299  
info@omniapartners.com

Sign up to receive email updates from OMNIA Partners, Public Sector

First name**	Last name**
Company name**	Agency Type **
Email**	

By providing email address(es) and/or any other personal information, as defined under applicable law, you represent that you have the authority to provide such information and acknowledge that you are agreeing to OMNIA Partners' use of your information as provided in the Terms of Use and Privacy Notice.

I agree\*



**ORDINANCE NUMBER 3081**

**AN ORDINANCE AUTHORIZING THE SETTLEMENT OF FOUR TAX APPEALS (BEING JEFFERSON COUNTY CIRCUIT COURT CASE NUMBERS 01-CV-2021-000125, 01-CV-2021-000126, 01-CV-2021-000127 AND 01 CV-2021-000128) SEEKING REFUNDS OF THE OVERPAYMENT OF BUSINESS LICENSE TAXES ERRONEOUSLY PAID BY FOUR INSURANCE COMPANIES IN 2017 AND 2018; AND AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER THE SETTLEMENT AGREEMENT AND ANY AND ALL DOCUMENTS AND OTHER ACTIONS NECESSARY TO EFFECTUATE SAID SETTLEMENT AGREEMENT.**

**THIS ORDINANCE NUMBER 3081** is approved, adopted and enacted by the City Council of the City of Vestavia Hills, Alabama on this the 14th day of February, 2022.

**WITNESSETH THESE RECITALS:**

**WHEREAS**, Alabama law at Title 11-51-191(5)(a), *Code of Alabama, 1975*, provides that a taxpayer may file an appeal with the Clerk of the Circuit Court of the County in which the municipality is located seeking a refund for any overpayment of business license tax erroneously by the taxpayer to a municipality; and

**WHEREAS**, four insurance companies filed appeals for such refunds in Jefferson County Circuit Court case numbers 01-CV-2021-000125, 01-CV-2021-000126, 01-CV-2021-000127 and 01 CV-2021-000128; and

**WHEREAS**, the four insurance companies have offered to settle the four said tax appeals upon the basis of the Settlement Agreement attached hereto, marked as Exhibit 1 and incorporated into this Ordinance Number 3081 by reference as though set out fully herein; and

**WHEREAS**, the City Attorney, City Manager and Finance Director have made a written recommendation that the City Council accept the Settlement Agreement and approve and adopt said Ordinance Number 3081; and

**WHEREAS**, a copy of said Recommendation is attached hereto, marked as Exhibit 2 and incorporated into this Ordinance Number 3081 by reference as though set out fully herein; and

**WHEREAS**, the City Council, based upon the recommendations set forth in Exhibit 1 and Exhibit 2 finds and determines that it will be in the best public interest to approve Ordinance Number 3081 and make the refunds and credits as requested by the four insurance companies.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. **RECITALS:** The recitals set forth in the premises above are hereby incorporated into this ordinance by reference as though set out fully herein.

2. **EXHIBITS:** Exhibit 1 and Exhibit 2 described in the premises above are hereby incorporated into this ordinance by reference as though set out fully herein.

3. **AUTHORIZATION:** The Mayor and City Manager are hereby authorized and directed to execute and deliver the Settlement Agreement marked as Exhibit 1 and to execute and deliver any and all other documents and take any and all other actions necessary to implement the Settlement Agreement marked as Exhibit 1.

4. **SEVERABILITY:** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

5. **EFFECTIVE DATE:** This Ordinance Number 3081 shall become effective upon its passage, approval and adoption as required by law.

**ORDAINED, APPROVED, ADOPTED, DONE and ORDERED** on this the 14th day of February, 2022.

Ashley C. Curry  
Mayor

ATTESTED BY

Rebecca Leavings  
City Clerk

**CERTIFICATION OF CITY CLERK**

**STATE OF ALABAMA    )**  
**JEFFERSON COUNTY    )**

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 14th day of February, 2022 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this 14th day of February, 2022.

\_\_\_\_\_  
Rebecca Leavings, City Clerk



## **SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into as of February \_\_\_, 2022 by and among Garrison Property and Casualty Insurance Company, USAA General Indemnity Company, USAA Casualty Insurance Company, United Services Automotive Association, on the one hand, and The City of Vestavia Hills, Alabama (collectively, the “City”), on the other hand.

### **Recitals**

A. For purposes of this Agreement, “Garrison” means Garrison Property and Casualty Insurance Company, and its parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, insurers, predecessors, successors, stockholders, members, assigns and any other person or entity acting or purporting to act on its behalf.

B. For purposes of this Agreement, “GIC” means USAA General Indemnity Company, and its parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, insurers, predecessors, successors, stockholders, members, assigns and any other person or entity acting or purporting to act on its behalf.

C. For purposes of this Agreement, “CIC” means USAA Casualty Insurance Company, and its parents, subsidiaries, affiliates, directors, officers, employees, agents, representatives, insurers, predecessors, successors, stockholders, members, assigns and any other person or entity acting or purporting to act on its behalf.

D. For purposes of this Agreement, “USAA” means United Services Automotive Association, and its subsidiaries, affiliates, directors, officers, employees, agents, representatives, insurers, predecessors, successors, members, assigns and any other person or entity acting or purporting to act on its behalf.

E. For purposes of this Agreement, the “USAA Entities” means Garrison, GIC, CIC and USAA.

F. For purposes of this Agreement, “Vestavia” and “Vestavia Hills” mean the City of Vestavia Hills, Alabama and all employees, agents, personnel, independent contractors, auditors, representatives, agencies, departments, and subdivisions of any of the foregoing.

G. For purposes of this Agreement, “Parties” means the USAA Entities and Vestavia Hills.

H. The USAA Entities brought these appeals pursuant to ALA. CODE § 11-51-191.

I. From 2016 through 2018, Vestavia Hills collected a business license tax from the USAA Entities based upon premiums collected by the USAA Entities from the USAA Entities’ sale to residents within Vestavia Hills of new insurance policies and renewal insurance policies.

J. However, the USAA Entities contend renewal premiums should not have been included, and Vestavia Hills should not have collected, business license tax based upon the Taxpayer's premiums collected from renewal insurance policies.

K. On December 31, 2018, the USAA Entities submitted amended returns to Vestavia Hills as its petitions for refunds of the overpaid business license taxes paid to Vestavia Hills for the 2016, 2017 and 2018 municipal license years attributable to its renewal premiums ("Petitions for Refunds").

L. Vestavia Hills never granted nor denied the Petitions for Refunds. Pursuant to ALA. CODE § 11-51-191(g)(3), Vestavia Hills's failure to grant the full refund within six months of the filing of the Petitions for Refunds is deemed a denial.

M. The USAA Entities brought the appeals (the "Appeals") to recover a refund. Those appeals were docketed as Case Nos. 01-CV-2021-000125, 01-CV-2021-000126, 01-CV-2021-000127, 01-CV-2021-000128.

N. The Parties dispute the amount of the refund to which the USAA Entities are entitled.

**WHEREFORE**, the Parties, recognizing the certainty of further costs and the uncertainty of the results of protracted litigation, wish to completely and finally resolve their disputes and claims against one another in the litigation of the Appeals and have reached a compromise that fully resolves the assessments and the appeals as follows:

### **Agreement**

**1. Resolution of the Appeals.** The Parties desire to reach a full and final resolution of the Appeals.

**2. Payment.** In consideration for the promises and covenants made herein, Vestavia Hills shall pay to the USAA Entities the amount of fifty-nine thousand two hundred thirty-six and 25/100 dollars (\$59,236.25). Vestavia Hills will remit a check made payable to United Services Automotive Association for thirty-four thousand five hundred eighty and 85/100 dollars (\$34,580.85). Vestavia Hills will also provide a credit to the USAA Entities for twenty-four thousand six hundred fifty-five and 40/100 dollars (\$24,655.40). This credit can be used by any of the USAA Entities towards future payments of their business license taxes, and it will not expire. This payment will settle all claims related to the refund sought by the USAA Entities. Upon payment of the sum specified, the USAA Entities hereby release and forever discharge Vestavia Hills from any and all claims related to the Petitions for Refunds sought by the USAA Entities.

**3. Closing of Relevant Tax Years.** In consideration for the promises and covenants made herein, Vestavia Hills agrees that the USAA Entities business license tax obligations for the 2016, 2017 and 2018 tax years shall be deemed satisfied in full and that Vestavia Hills shall not audit or enter any future assessments (or authorize the audit or assessment of) business license taxes owed by the USAA Entities for such years.

4. **Dismissal of the Appeal.** The Parties hereby consent to the dismissal with prejudice of all claims asserted in the Appeals. Within ten (10) days of the payment specified in this Settlement Agreement, the Parties agree to execute jointly a stipulation for dismissal with prejudice (“Stipulation for Dismissal”) of all claims asserted in Appeals. The USAA Entities agree to file the executed Stipulation for Dismissal with the Circuit Court for Jefferson County, Alabama.

5. **Settlement of Disputed Issues.** The Parties agree that this Settlement Agreement represents a settlement and compromise of disputed issues. Accordingly, the Parties stipulate that the act of entering into this Settlement Agreement does not constitute any admission of liability, any other admission against interest, or any concession concerning the merits of any demands previously made by one against the other.

6. **Authority.** Each of the Parties represents and warrants to the other Party that it has full power and authority to enter into, deliver and perform this Settlement Agreement. The individuals executing this Settlement Agreement on behalf of each Party represent and warrant by their signatures that they are duly authorized to execute and deliver this Settlement Agreement and that by executing this Settlement Agreement they bind that Party.

7. **Governing Law.** This Settlement Agreement shall be governed by the laws of the State of Alabama.

8. **Modifications.** This Settlement Agreement contains all of the terms and conditions of and expresses the complete and only understanding between the Parties with respect to the subject matter of this Settlement Agreement. No change or modification of this Settlement Agreement shall be binding on either Party unless it is in writing and is executed by each Party.

9. **Counterparts.** This Settlement Agreement may be executed in several counterparts, each of which shall constitute an original, but together such counterparts shall constitute one and the same instrument.

10. **Further Actions.** The Parties agree to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Settlement Agreement.

(signature page follows)

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the dates written below.

**Garrison Property and Casualty Insurance Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**USAA General Indemnity Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**USAA Casualty Insurance Company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**United Services Automotive Association**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**City of Vestavia Hills, Alabama**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**ORDINANCE NUMBER 3084**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH ALABAMA DEPARTMENT OF TRANSPORTATION FOR ACCESS TO A COMPUTERIZED MOTORIST INFORMATION SYSTEM TO MONITOR TRAFFIC CONDITIONS ON CERTAIN PORTIONS OF THE STATE TRANSPORTATION SYSTEM**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The Mayor and City Manager are hereby authorized to execute and deliver an agreement with the Alabama Department of Transportation (“ALDOT”) in compliance with the rules and regulations of the U.S. Department of Transportation, Federal Highway Administration (“FHWA”); and
2. A copy of said agreement is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3084 as if written fully therein; and
3. This Ordinance Number 3084 shall be effective immediately upon adoption and approval and publishing/posting as required by Alabama law.

**DONE, ORDERED, ADOPTED and APPROVED** this the 14<sup>th</sup> day of February, 2022.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**ALABAMA DEPARTMENT OF TRANSPORTATION  
ALGO VIDEO CAMERA SYSTEM LICENSE AGREEMENT**

This Agreement is made and entered into by and between the **Alabama Department of Transportation**, hereinafter referred to as “ALDOT,” and \_\_\_\_\_ hereinafter referred to as “LICENSEE,” in compliance with the rules and regulations of the U. S. Department of Transportation, Federal Highway Administration, hereinafter referred to as “FHWA”.

WHEREAS, ALDOT operates computerized motorist information systems which monitor traffic conditions on certain portions of the State Transportation System; and

WHEREAS, LICENSEE has requested remote electronic access to the video images created by the System operated in the \_\_\_\_\_ area;

NOW THEREFORE, the Parties agree as follows:

**I. FURNISHING OF VIDEO IMAGES**

ALDOT will provide to LICENSEE the requested “live” video images generated by ALDOT’s ALGO Video cameras used for monitoring traffic conditions in the \_\_\_\_\_ area, as available. The video images are not recorded.

Requester shall provide ALDOT with a fully trained technical contact person who is solely responsible for the operation and maintenance of all activities associated with this Agreement. ALDOT shall have no responsibility to provide any training or supervision of Requestor’s contact person associated with this Agreement other than to allow the contact person to attend all briefings and/or training sessions, if any, provided by ALDOT which relate to the System.

**II. USE OF MATERIAL**

LICENSEE shall not record or archive any video images received from ALDOT.

LICENSEE shall give appropriate on-screen, on-air, online, and in-print attribution to ALDOT for use of the video images.

LICENSEE agrees that it will continuously transmit the logo and/or word mark embedded by ALDOT during the use of ALDOT’s video images, which may be updated or changed by ALDOT from time to time. LICENSEE further agrees that no logos used for advertising purposes or advertising shall be transmitted over or with ALDOT video images. LICENSEE further agrees to abide by any current or future guidelines, policies, practices, directions, rules or regulations of ALDOT pertaining to transmission or broadcast of video images, such as, but not limited to, compliance with occasional requests from ALDOT to make brief mention of highway projects, ALDOT traffic information messages, or highway safety messages.

LICENSEE agrees that it shall not transmit the video images provided by ALDOT to any person, organization or company on LICENSEE’s website or in any other electronic medium for more than fifteen (15) minutes. The LICENSEE may provide a web link on its internet

homepage to ALDOT's AlgoTraffic webpage.

LICENSEE shall not transmit any video image that is focused on vehicle license plates, drivers or other personal identification of individuals involved in any traffic-related incident. In such a case where cameras are focused outside of ALDOT right-of-way, the LICENSEE agrees to not transmit such images, especially of any property or person. Access via video feed will not be provided for events that are not, in the opinion of ALDOT personnel, traffic-related.

### **III. TERM**

The term of this license shall be one year commencing upon execution of this Agreement. This license may be terminated at any time by either party by giving the other party thirty (30) days written notice. This license shall automatically renew for a period of one year following the initial term, and from year to year thereafter, unless written notice to the contrary is given by either party to the other at least thirty (30) days prior to expiration of the original term or any renewal thereof.

In the event of emergency in which ALDOT determines that video images are to be interrupted to protect or promote public health, safety, welfare or mission, or for other good cause at sole discretion of ALDOT, ALDOT may immediately terminate the video images without notice.

If the State of Alabama or the Federal Government enacts rules, regulations or legislation prohibiting ALDOT from offering video images of the System to third parties, this license will terminate automatically without any further obligation on the part of ALDOT to LICENSEE.

If LICENSEE uses video images in any manner contrary to this Agreement, ALDOT may suspend/terminate video images and terminate this license immediately. Licensee may contact ALDOT regarding reinstatement and reapplication for use of the ALGO Video Camera System.

### **IV. OWNERSHIP OF SYSTEMS**

LICENSEE is not granted a license or any copyright, trademark, patent, or other intellectual property right in any material, products, video images, processes, or technologies described or used herein. All rights are expressly reserved to and retained by ALDOT. LICENSEE shall not grant, permit or allow use of ALDOT video images to any third party. ALDOT shall have sole and absolute ownership and control over images, information and content of the System. LICENSEE shall have no control over content, information or images provided by ALDOT.

### **V. RECIPROCITY**

LICENSEE agrees to provide ALDOT with reciprocal access to any other video images, weather data, or other data systems owned/maintained by LICENSEE which may be used for managing traffic conditions in the area to the extent LICENSEE has authority to license the same.

### **VI. NON- ASSIGNABILITY**

This license will inure to the benefit of and be binding upon the respective heirs, legal representatives, and successors of the parties, but is not assignable or transferable by the

LICENSEE without the written consent of ALDOT.

## **VII. LIMITATION OF LIABILITY**

ALDOT does not guarantee the continuity of access, and ALDOT does not warrant the quality of any video image or information provided for by this Agreement. All warranties being expressly disclaimed, neither ALDOT nor any of its service providers, information providers, officials, representatives, employees or agents, in both their official and individual capacities, shall be liable for incidental, consequential, indirect or special damages suffered by LICENSEE or any other party as a result of the operation or malfunction of the System or video images, regardless of whether or not such parties have been advised of the possibility of such damages.

## **VIII. INDEMNIFICATION**

Subject to the limitations of Ala. Code § 11-47-190 (1975) and Ala. Code. § 11-93-2 (1975), where applicable, LICENSEE will indemnify and hold harmless ALDOT and its officials, employees, agents or representatives, in both their official and individual capacities, against any and all damages, losses, judgments, assessments, claims, causes of action, costs and expenses to persons or property arising out of or resulting from receipt or use of video transmissions, and the use or transmission of ALDOT intellectual property by LICENSEE, its principals, officers, employees, agents, successors and/or assigns.

## **IX. GOVERNING LAW**

The validity, construction, interpretation and enforceability of this license are governed by the laws of the State of Alabama. If any of the provisions of this license are held invalid for any reason by a court or agency of competent jurisdiction, the remainder of the terms will remain in full force and effect.

## **X. NON-EXCLUSIVE**

This License Agreement is not an exclusive License Agreement, and ALDOT reserves the right to grant similar License Agreements to any other person, firm, partnership or corporation that it may deem proper.

## **XI. MODIFICATION TO AGREEMENT**

This Agreement may be modified, with thirty (30) days' notice, from time to time at the sole discretion of ALDOT, to maintain compliance with existing or new requirements of the State of Alabama or Federal Government, or for any other reason. LICENSEE hereby agrees to the above modifications without execution of an amendment to this Agreement. Failure of LICENSEE to accept any modification shall constitute automatic termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by those officers and officials duly authorized to execute same. This Agreement is deemed to be dated and effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.



**ATTEST:** \_\_\_\_\_

Signed by: \_\_\_\_\_ Signed by: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_  
(Print / Type) (Print / Type)

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
\_\_\_\_\_, PE  
Region Engineer

\_\_\_\_\_  
Tony W. Harris, Bureau Chief  
Media & Community Relations

\_\_\_\_\_  
Stacey Glass, PE  
State Maintenance Engineer

\_\_\_\_\_  
George Conner, PE  
Deputy Director for Operations

\_\_\_\_\_  
John R. Cooper, Transportation Director

**This Agreement has been reviewed as to form:**

\_\_\_\_\_  
William F. Patty, Chief Counsel  
Alabama Department of Transportation

The within and foregoing Agreement is hereby and approved and signed by the  
Governor on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Kay Ivey  
GOVERNOR, STATE OF ALABAMA

PATRICK H. BOONE  
ATTORNEY AND COUNSELOR AT LAW  
NEW SOUTH FEDERAL SAVINGS BUILDING, SUITE 705  
215 RICHARD ARRINGTON, JR. BOULEVARD NORTH  
BIRMINGHAM, ALABAMA 35203-3720  

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TELEPHONE (205) 324-2018  
FACSIMILE (205) 324-2295

**E-Mail: [patrickboone@bellsouth.net](mailto:patrickboone@bellsouth.net)**

February 3, 2022

By Electronic Mail

Captain Sean Richardson  
Vestavia Hills Police Department  
Vestavia Hills Municipal Center  
1032 Montgomery Highway  
Vestavia Hills, Alabama 35216

In Re: Proposed ALGO Video Camera System License Agreement

Dear Captain Richardson:

On February 2, 2022, you sent to me via electronic mail a proposed contract between Alabama Department of Transportation (“ALDOT”) and the City of Vestavia Hills, Alabama (“City”) for ALGO Video Camera System License Agreement (“Agreement”) with a request that I review the Agreement and provide you with my written legal opinion. The purpose of this letter is to comply with your request.

I approve the Agreement from a legal standpoint without any changes whatsoever. In addition, as City Attorney, I believe that the video images will greatly assist the Vestavia Hills Police Department in promoting the public health, safety and welfare of our citizens and community.

**I. ALABAMA LAW**

1. I am not concerned the indemnification provisions set forth in section VIII on page 3 for the following reasons:

(a) **ALDOT HAS ABSOLUTE IMMUNITY FROM LAWSUITS:** ALDOT, as a state agency, is absolutely immune from suit. *Ex parte Alabama Dep’t of Transp.*, 978 So.2d 718, 721 (Ala.2007) (“ALDOT is a State agency...and, therefore, is absolutely immune from suit.”). Generally, “any exceptions to that immunity extent *only* to suits *naming the proper State official* in his or her representative capacity.” *Ex parte Alabama Dep’t of Transp.*, 978 So.2d 17, 22 (Ala.2007) (*emphasis added*)

February 3, 2022

Page 2

(b) **EMPLOYEES OF THE STATE OF ALABAMA HAVE DISCRETIONARY FUNCTION IMMUNITY:** The Supreme Court of Alabama has ruled that employees of the State of Alabama have discretionary immunity (*Ex parte Cranman*, 792 So.2d 392 (Ala.2000)). This simply means that a state agent shall be immune from civil liability in his or her personal capacity when the conduct made the basis of the claim against the agent is based upon the agent's (1) formulating plans, policies, or designs, or (2) exercising his or her judgment in the administration of the department or agency of government, including, but not limited to, examples such as making administrative adjudications, allocating resources, negotiating contracts, or hiring, firing, transferring, assigning, or supervising personnel; or (3) discharging duties imposed on a department or agency by statute, rule, or regulation, insofar as the statute, rule, or regulation prescribes the manner for performing the duties and the State agent performs the duties in that manner.

2. All contracts must be approved by a resolution or ordinance enacted by the City Council (*Van Antwerp, et al v. Board of Commissioners of City of Mobile, et al*, 217 AL 201, 115 So. 239 (1928); *Town of Boligee v. Greene County Water and Sewer Authority*, 277 So.3d 1166 (2011)). All contracts must be signed by:

- (a) The Mayor (Title 11-43-83, *Code of Alabama, 1975*); and the
- (b) City Manager (Title 11-43-21(7), *Code of Alabama, 1975*).

## II. **MY RECOMMENDATIONS**

I recommend that the matter be placed on the February 14, 2022 agenda to be considered by unanimous consent for immediate consideration as allowed by Title 11-45-2(b), *Code of Alabama, 1975*.

Please call me if you have any questions regarding any of the matters set forth in this legal opinion. In the meantime, congratulations again for great work!

Very truly yours,



Patrick H. Boone  
Vestavia Hills City Attorney

PHB:gp

cc: City Manager Jeffrey D. Downes (by e-mail)  
Police Chief Danny P. Rary (by e-mail)  
City Clerk Rebecca Leavings (by e-mail)

**ORDINANCE NUMBER 3085**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER  
TO EXECUTE AND DELIVER A SECOND AMENDMENT TO THE  
ANNEXATION AGREEMENT WITH LIBERTY PARK JOINT VENTURE**

**WHEREAS**, on September 30, 1992, a certain Annexation Agreement (the “Original Annexation Agreement”) was executed among Liberty Park Joint Venture (“LPJV”), Torchmark Development Corporation, An Alabama corporation (“TDC”) and the City of Vestavia Hills regarding the annexation(s) of acreage developed as the Liberty Park Planned Unit Development (“Liberty Park PUD”); and

**WHEREAS**, on October 29, 1996, a Supplemental Annexation Agreement was executed in connection with an additional 798 +/- acres; and

**WHEREAS**, on February 2, 1998, an Agreement was executed among LPJV, TDC, Drummond Company Inc., (“Drummond”) and the City of Vestavia Hills Board of Education (the “Board”) which set forth certain terms and conditions for a payout by the LPJV pursuant to Section 6 of the Original Annexation Agreement; and

**WHEREAS**, a certain Supplemental and Amendatory Agreement dated March 6, 1998 among the City, LBJV, TDC, Drummond and the Board in which the parties desired to amend certain provisions of the Original Annexation Agreement relating to public school improvements (See Section 1(c), of the Supplemental and Amendatory Agreement dated March 6, 1998) and the Amendatory Agreement fully and completely superseded the provisions of Section 6 of the Original Annexation Agreement (but no others); and

**WHEREAS**, LPJV believes the best use of the remaining undeveloped land of Liberty Park located within the most recent 798 +/- annexation is a mixed use development including retail, commercial, office, hospitality and residential dwelling units with a traditional neighborhood town center to be known as “The Bray at Liberty Park” on approximately 50 +/- acres of the property currently zoned PUD PB (planned business) for proposed uses such as retail, mixed-use residential, office and medical/medical office in lieu of a regional mall which was proposed in the earlier Annexation Agreements; and

**WHEREAS**, LPJV is requesting amendments to the Annexation agreements previously described; and

**WHEREAS**, LPJV has submitted an “Amendment to Annexation Agreements for Liberty Park” (the “Amended Agreement”), a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3085 as if written fully therein; and

**WHEREAS**, the Mayor and City Council feel it is in the best public interest to accept this Amended Agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The Mayor and City Manager are hereby authorized to execute and deliver the Amendment to Annexation Agreements for Liberty Park; and
2. Said agreement shall be signed by the Mayor and City Manager and the City Clerk shall attest said agreement; and
3. A copy of the Amended Agreement shall be submitted to the City Clerk’s office for official record; and
4. This Ordinance Number 3085 shall become effective immediately upon adoption and publication/posting as required by Alabama law.

**DONE, ORDERED, ADOPTED and APPROVED** this the 28<sup>th</sup> day of February, 2022.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, the undersigned City Clerk of the City of Vestavia Hills, Alabama hereby certify that the foregoing Ordinance No. 3085 constitutes a true, correct and complete copy of said Ordinance adopted by the City Council of the City of Vestavia Hills, Alabama on the 28<sup>th</sup>, day of February, 2022, pertaining to the matters set out therein, as same appear in the records of the City.

Under my signature as City Clerk and under seal of the City of Vestavia Hills, this \_\_\_\_ day of \_\_\_\_\_, 2022.

[SEAL]

\_\_\_\_\_  
City Clerk

**AMENDMENT TO ANNEXATION AGREEMENTS FOR LIBERTY PARK**

**THIS AMENDMENT TO ANNEXATION AGREEMENTS FOR LIBERTY PARK** (this “**Amendment**”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021, between and among the **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation (the “**City**”), and **LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership (successor to Liberty Park Joint Venture, an Alabama general partnership) (“**LPJV**”).

**RECITALS**

A. LPJV is the developer of an approximately 3,500 acre master-planned community known as Liberty Park, which is located within the City limits (the “**Development**”). The Development is subject to the following agreements (collectively, the “**Annexation Agreements**”):

1. That certain Annexation Agreement (the “**Original Annexation Agreement**”) dated September 20, 1992 among LPJV, Torchmark Development Corporation, an Alabama corporation (“**TDC**”), and the City in connection with the annexation of approximately 2,500 acres into the municipal City limits. Among other things, the Original Annexation Agreement set forth certain agreements of LPJV and TDC to dedicate up to thirty-five (35) acres located within the Development to the City for municipal facilities and schools. In addition, the Original Annexation Agreement required LPJV, under certain conditions, to pay to the City the sum of up to Fifteen Million and No/100 Dollars (\$15,000,000.00) as required by the City to accommodate the increased student population generated by the addition of the Development to the Vestavia Hills School System, all as set forth in Section 6 of the Original Annexation Agreement.

2. That certain Supplemental Annexation Agreement dated October 29, 1996 among LPJV, TDC, and the City in connection with the annexation of an additional approximately 798 acres into the municipal City limits.

3. That certain Agreement dated February 2, 1998 among LPJV, TDC, Drummond Company, Inc. (“**Drummond**”) and the City of Vestavia Hills Board of

Education (the “**Board**”) which set forth certain terms and conditions for the partial payment of the Fifteen Million and No/100 Dollars (\$15,000,000.00) owed by LPJV pursuant to Section 6 of the Original Annexation Agreement.

4. That certain Supplemental and Amendatory Agreement dated March 6, 1998 among the City, LPJV, TDC, Drummond, and the Board in which the parties desired to amend certain provisions of the Original Annexation Agreement relating to public school improvements “*and – as the public schools are constructed and operated by the Board – to include the Board as party to this Agreement regarding public schools to serve the Development.*” (See Section 1(c), of the Supplemental and Amendatory Agreement dated March 6, 1998). The provisions of the March 6, 1998 Supplemental and Amendatory Agreement fully and completely superseded the provisions of Section 6 of the Original Annexation Agreement (but no others).

5. That certain Agreement dated August 20, 1998 among the City, LPJV, TDC, Drummond and the Board in connection with the issuance of additional warrants by the City for the New School Facilities (as defined in said Agreement) and LPJV’s payment obligations in regards to such warrants. In such Agreement, the City, LPJV, TDC, and the Board each ratified and confirmed each of the prior Annexation Agreements, with the caveat that “*it being understood that since the School Board is not a party to the [Original] Annexation Agreement, it is not appropriate for it to ratify and confirm that instrument.*” (See Section 5, August 20, 1998 Agreement).

B. All of the obligations of LPJV set forth in the Annexation Agreements with respect to the dedication of land to the City for municipal and school purposes have been duly completed. Furthermore, all of the obligations of LPJV set forth in the Annexation Agreements to pay the sum of Fifteen Million Dollars (\$15,000,000) to the City have been satisfied.

C. All obligations contained in the Annexation Agreements relating to matters involving the Board (namely, matters relating to school construction and improvements necessitated by the addition of the Development to the Vestavia Hills School System) have been completed. This Amendment is not related to matters within the legislative powers and authority



of the Board, but instead to matters solely within the legislative power and authority of the City. Therefore, the Board (with its consent and concurrence) is not a party to this Amendment.

D. The Annexation Agreements currently specify a maximum density of 2,336 single family units (the “**Single Family Density Allowance**”) and a maximum density of 890 units for multi-family units (the “**Multi-Family Density Allowance**”), for a total residential density of 3,226 units (the “**Residential Density Allowance**”). The Annexation Agreements further provide that the total number of Multi-Family Rental Units (as hereinafter defined) within the Multi-Family Density Allowance shall not exceed 300. The Colonial Grand at Liberty Park located within the Development is a 300-unit luxury rental apartment community and as such, the number of Multi-Family Rental Units is currently allocated in full.

E. Approximately 300 acres within the Development (the “**PB Land**”) was zoned Planned Business (PB) on or around 1996 in connection with a possible development of a regional shopping center within the Development; however, due to the development of The Summit at the Highway 280/I-459 interchange and other retail shopping centers in close proximity of the Development, the development of a regional shopping center is no longer viable, thus leaving the Development with an overabundance of commercially zoned land. In addition, Enviro Services, LLC, a wholly owned subsidiary of LPJV, no longer requires approximately 130 acres (commonly called the “**Spray Fields**”) for its purposes and such land is now available for additional residential development. In addition to the PB Land and the Spray Fields, there are approximately 435 acres of land zoned for residential use located south of Liberty Parkway (collectively with the PB Land and the Spray Fields, the “**Remaining Undeveloped Land**”).

F. LPJV believes the best use of the Remaining Undeveloped Land is mixed-use development including retail, commercial, office, hospitality, and Residential Dwelling Units (as hereinafter defined). LPJV intends to develop a traditional neighborhood town center to be known as “The Bray at Liberty Park” on approximately 50 acres of the PB Land for proposed uses such as retail, hotel, mixed-use residential, office, and medical/medical office (the “**Town Center**”).

G. Based on the foregoing, LPJV is requesting amendments to the Annexation Agreements. **NOW, THEREFORE**, in consideration of the premises and other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Defined Terms.** In addition to terms previously defined herein, the following terms shall have the following meanings:

**“Age-Restricted Rental Units”** means Multi-Family Rental Units available for rent to individuals 55 years or older in compliance with the Housing for Older Persons Act of 1995.

**“Market-Rate Rental Units”** means Multi-Family Rental Units available for rent to the general public under The Fair Housing Act, 42 U.S.C. 3601 et. seq.

**“Multi-Family Rental Units”** means all multifamily units (including Senior Housing Rental Units) which are offered for rent. Multi-Family Rental Units shall not include individual units held for rent by an individual owner.

**“Residential Dwelling Units”** means all Single-Family Units and Multi-Family Rental Units.

**“Restricted Rental Units”** means Age-Restricted Rental Units and Senior Housing Rental Units.

**“Senior Housing Rental Units”** means rental units within a senior housing community which provide services marketed towards seniors or the elderly in a congregate setting such as independent living, assisted living, memory care, or skilled nursing care.

**“Single Family Units”** means residential dwellings for single family use.

2. **Amendments.** The Annexation Agreements are hereby modified and amended as follows:

(a) The Residential Density Allowance is hereby increased by 644 to a total of 3,870 Residential Dwelling Units.

(b) The Multi-Family Density Allowance shall be decreased to 870, to consist solely of Multi-Family Rental Units. Additional Market-Rate Rental Units will not exceed 270 units with no more than 10% of the total units to contain 3 bedrooms.

(c) It is agreed and understood that the additional Market Rate Rental Units allowed by this Amendment are to be located within the Town Center.

3. **Applicable Laws.** This Amendment is governed by the laws of the State of Alabama.

4. **Counterparts.** This Amendment may be executed in multiple counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

5. **Successors and Assigns.** This Amendment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and/or assigns.

6. **Ratification.** Except as herein specifically modified, the Annexation Agreements are hereby ratified and affirmed and remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have hereunto caused this Amendment to be executed as of the day first above written.

***[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]***

***[SIGNATURE PAGES FOLLOW]***

**CITY OF VESTAVIA HILLS, ALABAMA,**  
an Alabama municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SEAL

Attest: \_\_\_\_\_  
City Clerk

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of the City of Vestavia Hills, Alabama, a municipal corporation under the laws of Alabama, is signed to the foregoing instrument, who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

***[SEE NEXT PAGE FOR ADDITIONAL EXECUTION]***

**LIBERTY PARK JOINT VENTURE, LLP,**  
an Alabama limited liability partnership  
(successor to Liberty Park Joint Venture, an Alabama  
general partnership)

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of Liberty Park Joint Venture, LLP, an Alabama limited liability partnership (successor to Liberty Park Joint Venture, an Alabama general partnership), is signed to the foregoing instrument, who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Draft Copy

**ORDINANCE NUMBER 3086**

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A DEVELOPMENT AGREEMENT WITH LIBERTY PARK JOINT VENTURE LLP FOR ECONOMIC DEVELOPMENT IN LIBERTY PARK**

**WITNESSETH THESE RECITALS**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:**

1. The Mayor and City Manager are hereby authorized to execute and deliver a Development Agreement for Liberty Park; and
2. A copy of said Development Agreement is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3086 as if written fully therein; and
3. Said agreement shall be signed by the Mayor and City Manager and the City Clerk shall attest said agreement; and
4. A copy of the Development Agreement shall be submitted to the City Clerk's office for official record; and
5. This Ordinance Number 3086 shall become effective immediately upon adoption and publication/posting as required by Alabama law.

**DONE, ORDERED, ADOPTED and APPROVED** this the 28<sup>th</sup> day of February, 2022.

Ashley C. Curry  
Mayor

ATTESTED BY:

Rebecca Leavings  
City Clerk

**CERTIFICATION:**

I, the undersigned City Clerk of the City of Vestavia Hills, Alabama hereby certify that the foregoing Ordinance No. 3086 constitutes a true, correct and complete copy of said Ordinance adopted by the City Council of the City of Vestavia Hills, Alabama on the 28<sup>th</sup>, day of February, 2022, pertaining to the matters set out therein, as same appear in the records of the City.

Under my signature as City Clerk and under seal of the City of Vestavia Hills, this \_\_\_\_ day of \_\_\_\_\_, 2022.

[SEAL]

\_\_\_\_\_  
City Clerk



## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this “**Agreement**”) is hereby made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **CITY OF VESTAVIA HILLS, ALABAMA**, a municipal corporation under the laws of the State of Alabama (the “**City**”) and **LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership (the “**Developer**”).

### RECITALS:

**WHEREAS**, the City enthusiastically supports and encourages economic development within the City in order to develop a solid and diverse local economy, to increase employment opportunities in the City, to broaden the City’s tax base, to increase revenues, and to provide necessary and improved services to its citizens, thereby improving the quality of life of its citizens; and

**WHEREAS**, Amendment No. 772 to the Constitution of Alabama (1901) (Section 94.01 of the Recompiled Constitution of Alabama) (as at any time amended or supplemented, or any successor provision of law, the “**Enabling Law**”) authorizes the City to lend its credit to, or grant public funds and things of value in aid of, any business entity for the purpose of promoting the economic development of the City; and

**WHEREAS**, Developer is the developer of Liberty Park, a partially developed master planned community located within the City limits, and the owner of the Remaining Undeveloped Land (as hereinafter defined) within Liberty Park;

**WHEREAS**, Developer desires that the Remaining Undeveloped Land be developed either by Developer or by third party purchasers/operators and is presently planned to include single family residential units and the following development components (each, a “**Development Component**” and collectively, the “**Development Project**”), substantially as shown on the preliminary development plan attached as **Exhibit “A”** (the “**Development Plan**”):

- (i) a full service luxury hotel with not less than 100 rooms, conference spaces, fitness and wellness area, one or more restaurants, pool, retail area and parking (the “**Hotel**”);
- (ii) not less than 102,000 square feet of retail and commercial spaces identified on the Development Plan as “Retail/Commercial,” of which not less than 50,000 square feet of such businesses shall be engaged as retail sales as their primary purpose;
- (iii) a great lawn designed to hold events such as farmer’s markets, holiday markets, and other events and to provide a park/gathering area (the “**Great Lawn**”);

- (iv) a luxury multi-family residential housing community, not to exceed 270 units with no more than 10% of the total units to contain 3 bedrooms;
- (v) an age-restricted (55+) multi-family residential community;
- (vi) a healthcare component that is to be further defined;
- (vii) a senior housing community; and
- (viii) community connectivity improvements for walking, jogging, biking, or other forms of pedestrian traffic throughout Liberty Park (the **“Community Connectivity Improvements”**); and

**WHEREAS**, significant and needed public infrastructure improvements are required within the Remaining Undeveloped Land in order for the Development Project to proceed; and

**WHEREAS**, if constructed (either by Developer or by third party purchasers/operators) the Development Project (i) is anticipated to involve capital investments in excess of Eight Hundred Fifty Million and No/100 Dollars (\$850,000,000.00) and projected revenue to the City over a 25 year term in excess of Two Hundred Thirty Million No/100 Dollars (\$230,000,000.00)<sup>1</sup>, of which One Hundred Twenty Million No/100 Dollars (\$120,000,000.00) of such projected revenue could benefit the Vestavia Hills School Systems; (ii) will promote tourism, local convention, and meeting activity; and (iii) will result in the creation of new jobs and the generation of new sales tax revenue, new lodging tax revenues, increased ad valorem tax revenue, and new permit fees and business license revenue to the City; and

**WHEREAS**, as Developer would not be willing to undertake the Developer’s Work (as hereinafter defined) without this Agreement and, in order to induce Developer to undertake the Developer’s Work and in further consideration of the agreements set forth herein with respect to Developer’s donation of land for the construction of a future elementary school, (A) the City has agreed to provide certain infrastructure and economic incentives to Developer as hereinafter set forth; and (B) the City has agreed to accept dedication of certain public improvements as hereinafter described; and

**WHEREAS**, the City does hereby ascertain, determine, declare and find that the Development Project is in the best interest of the City and will serve a public purpose and further enhance the public benefit and welfare by, among other things: (i) promoting local economic development and stimulating the local economy; (ii) increasing employment opportunities in the City; (iii) increasing the City’s tax base, resulting in additional tax revenues for the City; (iv) promoting the development of new business enterprises and retail businesses in the City; (v) providing infrastructure improvements which are of significant value to the City; and (vi)

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<sup>1</sup> This number includes projected ad valorem tax revenue to the City from the undeveloped land located in the Old Overton sector of Liberty Park, as it is anticipated that the Development Project will spur the demand for executive housing.

providing the City with a site for a future elementary school; all of which will inure to the economic health of the City and constitute important public benefits to City and its citizens; and

**WHEREAS**, the obligations undertaken by the City pursuant hereto will result in direct financial benefits to the City and will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities; and

**WHEREAS**, the City finds that it is necessary, proper, and in the public interest, in accordance with the Enabling Law, that the City should enter into this Agreement as the same will promote the economic development of the City and, accordingly, is for a public purpose and is authorized by, consistent with, and in furtherance of the objectives of the Enabling Law.

## AGREEMENT

**NOW, THEREFORE**, upon and in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Article I DEFINITIONS

1.1 **Defined Terms.** In addition to the terms previously defined herein, the following terms shall have the following meanings:

(a) **“Amendment to Annexation Agreements”** shall have the meaning set forth in Section 5.3 hereof.

(b) **“City Lodgings Tax”** shall mean the Lodgings Tax as defined in and levied by City pursuant to Chapter 16, Article V, Section 16-51 of the Code of Ordinances of the City.

(c) **“City Net Lodgings Tax Proceeds”** for each Project Year shall mean all proceeds and receipts of City Lodgings Tax from the Hotel, but shall not include (a) any proceeds or receipts received by the City (i) from the levy by the City of lodgings taxes not described in the definition of City Lodgings Tax or (ii) from the levy of lodging taxes of any kind, type or nature by taxing authorities other than the City, or (b) any City Lodgings Tax levied for, or committed to, educational purposes or for capital improvements for education.

(d) **“City Net Lodgings Tax Proceeds Commencement Date”** means the date that the certificate of occupancy is issued for the Hotel.

(e) **“City Net Sales Tax Proceeds”** for each Project Year shall mean all proceeds and receipts of City Sales Tax from businesses within the Town Center, but shall not include (a) any proceeds or receipts received by the City (i) from the levy by the City of privilege license or excise taxes not described in the definition of City Sales Tax or (ii) from the levy of privilege license or excise taxes of any kind, type or nature by taxing authorities other than the City, or (iii) from the sale of construction materials used in the construction of the Development

Project or Infrastructure Improvements or (b) any privilege license or excise taxes levied for, or committed to, educational purposes or for capital improvements for education.

(f) **“City Net Sales Tax Proceeds Commencement Date”** means the date that the first certificate of occupancy is issued for a retail business in the Town Center (including any retail business that is located in the Hotel).

(g) **“City Net Tax/Permit Proceeds”** shall mean, collectively, City Net Sales Tax Proceeds, the City Net Lodgings Tax Proceeds, and/or the City Permit Proceeds.

(h) **“City Permit Proceeds”** shall mean collectively all permit fees levied by the City pursuant to Chapter 5, Article III of the Code of Ordinances of the City relating to the initial construction of each and all Development Components located within the Town Center (including tenant buildout following the initial construction of any Development Component within the Town Center containing retail businesses and including building permits for the initial construction of those single-family residential units located within the Town Center). For the sake of clarity, building permits for any single-family residential units located outside of the Town Center will not be included in City Permit Proceeds.

(i) **“City Permit Proceeds Commencement Date”** shall mean the Effective Date.

(j) **“City Sales Tax”** shall mean collectively the privilege, license, and excise taxes levied by the City pursuant to Chapter 16, Article III, Sections 16-26 and 16-27 of the Code of Ordinances of the City.

(k) **“Commencement Date”** means, as applicable, the City Permit Proceeds Commencement Date, the City Net Sales Tax Proceeds Commencement Date, the City Net Lodgings Tax Proceeds Commencement Date, or the Infrastructure Assistance Commencement Date.

(l) **“Dedicated Public Infrastructure”** shall mean, collectively, the Infrastructure Improvements that may be dedicated to the City in accordance with this Agreement, consisting of the New Roadway Improvements, the Existing Roadway Improvements, the Great Lawn, and any other green space, parks, or similar spaces intended for use by the general public that may be constructed within the Town Center.

(m) **“Defaulting Party”** shall have the meaning set forth in Section 7.3 hereof.

(n) **“Developer’s Work”** shall mean construction of the Infrastructure Improvements necessary to provide developed sites or land parcels for sale to third party purchasers/operators of the various Development Components. For the sake of clarity, the Developer’s Work does not include the vertical construction of Development Components which are intended to be constructed by third party purchasers/operators; for example, the Hotel is intended to be developed by a hotel developer/operator; the multi-family communities are intended to be developed by one or more multi-family developers/ operators, etc.

(o) **“Development Project”** shall have the meaning set forth in the Recitals. For the sake of clarity, the term “Development Project” shall not include any business in the Publix anchored retail center, On Tap Sports Cafe, Any Time Fitness, or the Moore Oil gas station, each of which are existing businesses in The Bray area of Liberty Park and no Economic Incentive Payments will be payable from City Net Tax/Permit Proceeds from such businesses.

(p) **“Economic Incentive Payments”** shall mean the following:

(i) fifty percent (50%) of City Net Sales Tax Proceeds actually received by the City during each Project Year, beginning on the City Net Sales Tax Proceeds Commencement Date and ending on and including the twentieth (20th) anniversary thereof; and

(ii) fifty percent (50%) of City Net Lodgings Tax Proceeds actually received by the City during each Project Year, beginning on the City Net Lodgings Tax Proceeds Commencement Date and ending on and including the twentieth (20th) anniversary thereof; and

(iii) fifty percent (50%) of City Permit Proceeds actually received by the City during each Project Year, beginning on the City Permit Proceeds Commencement Date and ending on and including the twentieth (20th) anniversary thereof.

(q) **“Economic Incentive Termination Date”** shall have the meaning set forth in Section 4.3 below.

(r) **“Economic Incentive Warrant A,” “Economic Incentive Warrant B,”** and **“Economic Incentive Warrants”** shall have the meanings ascribed to such terms in Section 4.3 below.

(s) **“Effective Date”** shall have the meaning set forth in Section 7.1 hereof.

(t) **“Elementary School Site”** shall have the meaning set forth in Section 5.1 hereof.

(u) **“Escrow Agent”** shall have the meaning set forth in Section 3.4 below.

(v) **“Existing Roadway Improvements”** shall mean, collectively, the existing roads more particularly described on Exhibit “B” attached hereto (including all improvements within the right-of-ways of the existing roads other than pedestrian ways (sidewalks/multi-use trails)). Pedestrian ways will continue to be maintained by the Developer or the applicable owners’ associations.

(w) **“Force Majeure”** shall mean acts of God; acts of the public enemy; acts of terrorism; acts of any government in either its sovereign or proprietary capacity; acts, omissions or delays of applicable governmental authorities in processing Developer’s required approvals for the Developer’s Work, provided such approval requests are submitted in correct form; fires; floods; hurricanes; epidemics; quarantine restrictions; freight embargoes; strikes;

unusually severe weather (not including normal seasonal inclement weather); or any other circumstances beyond the reasonable control of Developer.

(x) **“Infrastructure Assistance Commencement Date”** shall mean the following: (i) with respect to the Phase I Infrastructure Improvements, the earlier of the date when Developer provides written notice to City that (y) the Hotel shell is 100% complete (meaning the building envelope of the Hotel is finished), or (z) 25,000 square feet of shell retail space within the Town Center is 100% complete and ready for tenant improvements); and (ii) with respect to Phase II Infrastructure Improvements, the date when Developer provides written notice to City that either the Hotel has opened for business or 25,000 square feet of retail space within the Town Center has opened for business.

(y) **“Infrastructure Assistance Payments”** shall have the meaning set forth in Section 3.1 below.

(z) **“Infrastructure Assistance Termination Date”** shall have the meaning set forth in Section 3.3 below.

(aa) **“Infrastructure Assistance Warrants”** shall have the meaning set forth in Section 3.3 below.

(bb) **“Infrastructure Escrow Account”** shall have the meaning set forth in Section 3.4 below.

(cc) **“Infrastructure Improvements”** shall mean the improvements necessary to provide infrastructure to support the Development Project which may include all or a portion of the following: site grading; the extension (in phases) of South Liberty Parkway to Sicard Hollow Road (the **“South Liberty Parkway Extension”**); construction of all interior roads (including curb and gutters and stormwater conveyance systems) and culverts within the Remaining Undeveloped Land (including streetscapes); installation of sidewalks/multi-use trails; installation of the Great Lawn and development of other usable green space; construction of the Sanitary Sewer Improvements; construction of storm water improvements and other utilities; lighting; installation of directional signage and traffic signalization; and construction of the Community Connectivity Improvements, all in accordance with Project Plans (as hereinafter defined) approved by the City under applicable City ordinances and regulations.

(dd) **“Liberty Park Commercial POA”** means the Liberty Park Commercial Development Area Owners’ Association, Inc., an Alabama nonprofit corporation.

(ee) **“New Roadway Improvements”** shall mean, collectively, South Liberty Parkway Extension, all roads within the new residential areas of the Development Project, and all roads within the new commercial areas of the Development Project (in each case, including all improvements within the right-of-ways of the roads other than pedestrian ways (sidewalks/multi-use trails); pedestrian ways will be maintained by the Developer or applicable owners’ associations).

(ff) **“Payment Date”** shall have the meaning set forth in Section 4.2 below.

(gg) “**Project Plans**” shall have the meaning set forth in Section 2.1 below

(hh) “**Project Year**” shall mean the period of twelve (12) successive months following the applicable Commencement Date (or anniversary thereof, as applicable) during the term of this Agreement.

(ii) “**Remaining Undeveloped Land**” shall have the meaning set forth in the Amendment to Annexation Agreements. The Remaining Undeveloped Land is depicted on **Exhibit “C”** attached hereto.

(jj) “**Road Reserve Funds**” shall have the meaning set forth in Section 2.7 below.

(kk) “**Sanitary Sewer Improvements**” means a new regional pump station/outfall sewer/force main to service the Development Project and which is to be owned and maintained by Enviro Services, LLC.

(ll) “**Total City Economic Incentive Commitment**” shall have the meaning set forth in Section 4.1 below.

(mm) “**Total City Infrastructure Commitment**” shall have the meaning set forth in Section 3.1 below.

(nn) “**Town Center**” means the area of the Development Project identified on **Exhibit “A”** and **Exhibit “A-1”** attached hereto as the “Town Center.” For the sake of clarity, City Net Tax/Permit Proceeds shall be calculated only from Development Components located with the Town Center.

(oo) “**Vestlake Communities POA**” means the Vestlake Communities Property Owners’ Association, Inc., an Alabama nonprofit corporation.

(pp) “**Warrants**” shall mean the Infrastructure Assistant Warrants and the Economic Incentive Warrants, collectively.

## Article II

### **DESIGN AND CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS;** **DEDICATION OF DEDICATED PUBLIC INFRASTRUCTURE**

2.1 **Design and Construction Relating to the Infrastructure Improvements.** As part of undertaking the Developer’s Work, Developer shall be responsible for undertaking and completing architectural, engineering, landscaping, lighting, hardscape, and other design work (including preparation of detailed plans, specifications, and drawings related to the Infrastructure Improvements), all of which are subject to any and all required governmental approvals (collectively, the “**Project Plans**”). In connection therewith, Developer shall secure any and all required governmental or regulatory approvals and permits required for the Infrastructure Improvements, including any such separate approvals that may be required by the City, and nothing herein shall be construed as a waiver of such requirements.

2.2 **Commencement of Developer's Work.** Developer anticipates that it will commence the Developer's Work following the Effective Date and receipt of all necessary approvals. Commencement of the Developer's Work shall be deemed to have occurred on the date on which Developer or its contractor mobilizes on the Remaining Undeveloped Land. The obligation of Developer to commence the Developer's Work shall be extended for a reasonable period if Developer's performance is delayed or prevented by Force Majeure. The extent and location of the Community Connectivity Improvements will be determined by Developer following completion of engineering studies.

2.3 **Acknowledgements.** Developer specifically recognizes and agrees that the City's approval of the Development Plan shall not constitute an approval of the conformity of such plan with applicable building codes and other usual regulatory or inspection approvals by the City normal to any construction in the City, which review and approval shall proceed in the normal course. Developer acknowledges and agrees that this Agreement does not constitute an agreement for the exercise of the City's regulatory powers as a municipality. Developer (and any third party purchaser/developer) shall comply with all land use regulations, codes and laws affecting the development of the Remaining Undeveloped Land, and nothing in this Agreement constitutes an exemption or grant of a variance from applicable codes and laws unless otherwise exempted or approved by the City.

2.4 **New Roadway Improvements.** As part of and in conjunction with the construction of the Infrastructure Improvements, Developer will construct the New Roadway Improvements as shall be identified in the Project Plans; provided, however, that South Liberty Parkway will be constructed in phases as part of either the Phase I Infrastructure Improvements or the Phase II Infrastructure Improvements as described herein. It is understood and agreed all of the New Roadway Improvements identified as "Public Roads" in the duly approved Project Plans and any easements or rights-of-way associated therewith are to be constructed as public roads in accordance with City standards and transferred or dedicated to the City upon final completion thereof in accordance with the provisions of Section 2.6 below. As part of the New Roadway Improvements, the drainage system shall be designed, constructed, and installed so that the stormwater conveyance systems located within the right-of-way of such roads or other dedicated easements shall be directed to stormwater management facilities that are, or will be owned, by one of the various property owners associations within Liberty Park, as appropriate; however, such stormwater conveyance systems will be part of the New Roadway Improvements to be dedicated to the City.

2.5 **Construction of the Great Lawn.** As part of and in conjunction with the construction of the Phase I Infrastructure Improvements, Developer will construct the Great Lawn identified in the Project Plans. It is understood and agreed that (i) the Great Lawn and any easements or rights-of-way associated therewith will be transferred or dedicated to the City upon final completion thereof in accordance with the provisions of Section 2.6 below; and (ii) upon such dedication, the City and Developer will enter into a management agreement in form and content acceptable to the parties pursuant to which Developer (or, if elected by Developer, the Liberty Park Master Association, Inc. or other Liberty Park association entity) will be responsible for the maintenance, repair, and proper functioning of the Great Lawn.



2.6 **Dedication of Newly Constructed Public Infrastructure.** Developer may transfer or convey to the City, in accordance with the City's subdivision ordinances, all of its right, title and interest in and to the New Roadway Improvements, the Great Lawn, and any other green space, parks or similar spaces intended for use by the general public within the Town Center.

2.7 **Existing Roadway Improvements.** In further consideration of Developer undertaking the Developer's Work and the benefits that will accrue to the City from the Development Project as described in this Agreement, Developer has requested that the City accept dedication of the Existing Roadway Improvements as public roads in order that, (i) the City, through its Public Service department, will become responsible for maintenance and repair of the Existing Roadway Improvements in perpetuity; and (ii) the Existing Roadways will become subject to jurisdiction of the Vestavia Hills Police Department. Vestlake Communities POA has established a reserve fund for the repair and maintenance of those Existing Roadway Improvements owned by Vestlake Communities POA, the balance of which, as of December 31, 2020, was \$2,660,899.00 and Liberty Park Commercial POA has established a reserve fund for the repair and maintenance of those Existing Roadway Improvements owned by Liberty Park Commercial POA, the balance of which, as of December 31, 2020, was \$10,616.00, for an aggregate amount of \$2,671,515.00 (collectively, the "**Road Reserve Funds**"). As a condition to accepting the Existing Roadway Improvements as public roads, the City requires that the Road Reserve Funds be transferred to the City in order to offset the City's costs of performing any and all work that may be required to bring the Existing Roadway Improvements into compliance with the City's specifications for public roads and the City's costs of maintaining and repairing the Existing Roadway Improvements in perpetuity. Upon the closing of the dedication and acceptance of the Existing Roadway Improvements to the City (which shall be accomplished by a deed of dedication which conveys the Existing Roadway Improvements in their current condition, on an **AS IS WHERE IS** basis (except as to title)), the Road Reserve Funds (in the amount of \$2,671,515.00<sup>2</sup>) will be transferred to the City's public funds for the upgrading, maintenance, and repair of the Existing Roadway Improvements and neither Vestlake Communities POA or Liberty Park Commercial POA will have any further liability for any repair or maintenance costs associated with the Existing Roadways. As a condition to such transfer, Developer will provide an authorizing resolution from the Board of Directors of each of Vestlake Communities POA and Liberty Park Commercial POA authorizing the dedication of the Existing Roadways and the transfer of the Road Reserve Funds to the City as partial consideration for the City's acceptance of the Existing Roadways as public roads. The closing of the dedication and acceptance of the Existing Roadway Improvements and transfer of the Road Reserve Funds will occur within 30 days of Developer's written notice to City that the required approvals have been obtained from the Vestlake Communities POA and Liberty Park Commercial POA.

### **Article III INFRASTRUCTURE ASSISTANCE PAYMENTS**

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<sup>2</sup>Any funds in excess of \$2,671,515.00 will remain with the applicable POA.

3.1 **Infrastructure Assistance Payments.** In further consideration for Developer’s agreement to undertake the Developer’s Work and the other benefits that will accrue to the City and the public from the overall Development Project as set forth herein, provided that Developer has satisfied the conditions for payment as set forth in Section 3.2 below, the City hereby agrees that it will pay a portion of the costs of certain Infrastructure Improvements (as set forth below) by making payments to Developer, as the owner and holder of the Infrastructure Assistance Warrants, as set forth below (collectively, the “**Infrastructure Assistance Payments**”), up to, but not exceeding Eleven Million and 00/100 Dollars (\$11,000,000.00) in the aggregate (the “**Total City Infrastructure Commitment**”), which shall be payable in accordance with the following provisions:

(a) Up to Five Million Five Hundred Thousand 00/100 Dollars (\$5,500,000.00) in the aggregate shall be payable in accordance with the line item budget below for the following improvements (collectively, the “**Phase I Infrastructure Improvements**”):

Great Lawn and any other green space, parks or similar spaces intended for use by the general public that may be constructed within the Town Center	Lesser of (i) actual out-of-pocket costs incurred and paid by Developer and (ii) \$3,000,000.00
Sanitary Sewer Improvements	Lesser of (i) actual out-of-pocket costs incurred and paid by Developer and (ii) \$2,000,000.00
South Liberty Parkway Extension, Phase I (as depicted on <b>Exhibit “C”</b> )	Lesser of (i) actual out-of-pocket costs incurred and paid by Developer and (ii) \$500,000.00
Other Infrastructure Improvements	Any remaining balance of the \$5,500,000.00 of Infrastructure Assistance Payments not paid towards the Great Lawn, Sanitary Sewer Improvements, or South Liberty Parkway Extension, Phase I

(b) Up to Five Million Five Hundred Thousand 00/100 Dollars (\$5,500,000.00) in the aggregate shall be payable in accordance with the line item budget below for the following improvements (collectively, the “**Phase II Infrastructure Improvements**”):

South Liberty Parkway Extension, Phase II (as depicted on <b>Exhibit “C”</b> )	Lesser of (i) actual out-of-pocket costs incurred and paid by Developer and (ii) \$5,000,000.00
Community Connectivity Improvements	Lesser of (i) actual out-of-pocket costs incurred and paid by Developer and (ii) \$500,000.00

Other Infrastructure Improvements	Any remaining balance of the \$5,500,000.00 of Infrastructure Assistance Payments not paid towards the South Liberty Parkway Extension, Phase II or the Community Connectivity Improvements
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Developer covenants and agrees to provide City with a projected completion schedule for each of the line item categories set forth above in order that the City will be able to include such payments in its upcoming fiscal year budgets.

### 3.2 **Timing of and Conditions to Payment.**

(a) Payments of the above Infrastructure Assistance Payments will be made on a quarterly basis as construction progresses for each respective component of the Infrastructure Improvements from and after the Infrastructure Assistance Commencement Date applicable to such component, following delivery by Developer to the City of (i) a draw request setting forth the actual out-of-pocket expenses incurred by Developer in connection with the Developer's Work included in such draw requests (which may include payment for costs incurred by Developer from and after the date this Agreement is approved by City Council and which may include payments made to affiliated entities for work performed on terms substantially similar to those that would be available on an arms-length basis with third parties) and (ii) written certification from Developer or the contractor performing such work certifying that the work has been performed in accordance with the Project Plans.

(b) Notwithstanding the foregoing, in the event that any of the line item categories for the Phase II Infrastructure Warrant have been completed by the Infrastructure Assistance Commencement Date applicable to the Phase II Infrastructure Warrant (thereby entitling the Developer to be paid the full amount of such line item), the City will have the option to pay such line item in quarterly installments over a period of twenty-four (24) months.

(c) City shall make payment to Developer of the applicable Infrastructure Assistance Payment within thirty (30) days after Developer's submission of the foregoing draw request and certification.

### 3.3 **The Infrastructure Assistance Warrants.**

(a) The obligation of the City to pay the Infrastructure Assistance Payments hereunder shall be evidenced by two (2) warrants, one entitled "General Obligation Economic Development Warrant (Liberty Park Project – Phase I Infrastructure Assistance Payments)," in form and content as the form of warrant attached to this Agreement as **Exhibit "D"** and the other entitled "General Obligation Economic Development Warrant (Liberty Park Project – Phase II Infrastructure Assistance Payments)," in form and content as the form of warrant attached to this Agreement as **Exhibit "E"** (collectively, the "**Infrastructure Assistance Warrants**"). The City shall pay to Developer, as owner and holder of the Infrastructure Assistance Warrants, the

Infrastructure Assistance Payments in installments in accordance with the terms hereof and Sections 3.1 and 3.2 hereof.

(b) The Infrastructure Assistance Warrants shall not bear interest, shall be issued in an aggregate principal amount not exceeding the Total City Infrastructure Commitment, shall be dated the date that the same is delivered to Developer, and shall mature on the Infrastructure Assistance Warrants Termination Date.

(c) The Infrastructure Assistance Warrants shall be duly executed, sealed, and attested by the City, and shall be duly registered and transferred as provided therein.

(d) The obligation of the City for the payment of each Infrastructure Assistance Warrant (by paying Infrastructure Assistance Payments) shall commence after the Infrastructure Assistance Commencement Date applicable to such Infrastructure Assistance Warrant.

(e) The maximum amount the City shall pay under the Infrastructure Assistance Warrants shall be limited to and shall not exceed the Total City Infrastructure Commitment (that is Eleven Million and 00/100 Dollars (\$11,000,000.00 in the aggregate)).

(f) The obligation of the City for the payment of the Infrastructure Assistance Warrants:

(i) is a general obligation of the City for which the full faith, credit and taxing power of the City shall be irrevocably pledged; and

(ii) is subject to, in accordance with **Johnson v. Sheffield**, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary, there must first be paid from all funds and revenues of the City the legitimate and necessary governmental expenses of operating the City.

(g) Anything in this Agreement or in the Infrastructure Assistance Warrants to the contrary notwithstanding, the City shall have no obligation to pay Infrastructure Assistance Payments under this Agreement or the Infrastructure Assistance Warrants:

(i) prior to the applicable Infrastructure Assistance Commencement Date; or

(ii) after (A) the date on which the City shall have paid as Infrastructure Assistance Payments an aggregate amount not less than the Total City Infrastructure Commitment, or (B) termination of this Agreement by the City under Section 7.3 (collectively, the "**Infrastructure Assistance Termination Date**").

### 3.4 **Phase I Infrastructure Assistance Payments Escrow.**

(a) In order to provide partial security for the payment of the Phase I Infrastructure Assistant Warrant to Developer, the City agrees to establish an escrow account (the "**Infrastructure Escrow Account**") with a bank that is insured by the FDIC and to select a third party escrow agent acceptable to the Developer (the "**Escrow Agent**"). Within one hundred

eighty (180) days of the Effective Date, the City will deposit not less than Four Million and 00/Dollars (\$4,000,000.00) into the Infrastructure Escrow Account in order to partially secure the City's obligations to pay the Phase I Infrastructure Warrant.

(b) City, Developer, and Escrow Agent will enter into an escrow agreement mutually acceptable to the parties which shall authorize the Escrow Agent to release the sums deposited into said escrow account to Developer upon satisfaction of the conditions for payment of Phase I Warrant Infrastructure Assistance Payments as set forth in Section 3.2 above.

(c) The establishment of the escrow account with Escrow Agent and the deposit of the amounts set forth in this Section 3.4 shall in no event affect the status of either of the Infrastructure Assistance Warrants as general obligation warrants for which the full faith, credit and taxing power of the City shall be irrevocably pledged.

#### **Article IV**

### **ECONOMIC INCENTIVE PAYMENTS**

4.1 **Terms and Conditions.** In addition to the Infrastructure Assistance Payments provided for in Article III of this Agreement and in further consideration for Developer's agreement to undertake the Developer's Work and the development of the various Development Components by Developer or third party purchasers/developers, the City agrees to pay to Developer the Economic Incentive Payments, but in no event shall the aggregate amount of such Economic Incentive Payments exceed Twelve Million and No/100 Dollars (\$12,000,000.00) (the "**Total City Economic Incentive Commitment**").

#### 4.2 **Payment of Economic Incentive Payments.**

(a) Economic Incentive Payments will be payable by the City semi-annually on each July 31 (for the preceding January 1 – June 30) and January 31 (for the preceding July 1 – December 31) (each, a "**Payment Date**"), commencing with the first Payment Date after the applicable Commencement Date set forth below) and continuing thereafter until the Economic Incentive Payments Termination Date, as follows:

(i) On the first Payment Date after the City Permit Proceeds Commencement Date and on each Payment Date thereafter, the City shall pay to Developer the amount (if any) of any Economic Incentive Payments from City Permit Proceeds for such preceding period. Payments of Economic Incentive Payments from City Permit Proceeds will be credited first against Economic Incentive Warrant A and second against Economic Incentive Warrant B.

(ii) On the first Payment Date after the City Net Sales Tax Commencement Date, and on each Payment Date thereafter, the City shall pay to Developer the amount (if any) of the Economic Incentive Payments from City Net Sales Tax Proceeds for such preceding period. Payments of Economic Incentive Payments from City Net Sales Tax Proceeds will be credited first against Economic Incentive Warrant A and second against Economic Incentive Warrant B.

(iii) On the first Payment Date after the City Net Lodging Tax Proceeds Commencement Date, and on each Payment Date thereafter, the City shall pay to Developer the amount (if any) of the Economic Incentive Payments from City Net Lodging Proceeds for such preceding period. Payments of Economic Incentive Payments from City Net Lodging Proceeds will be credited first against Economic Incentive Warrant B and second against Economic Incentive Warrant A.

(b) The City will provide such detail and information to Developer as Developer may reasonably request regarding the City's calculation of Economic Incentive Payments, and will permit any attorneys, accountants or other agents or representatives designated by Developer to visit and inspect any of the accounting systems, books of account, and financial records and properties of the City which pertain to City Net Tax/Permit Proceeds, and the determination of Economic Incentive Payments, all at reasonable business times and upon reasonable notice.

#### 4.3 **The Economic Incentive Warrants.**

(a) The obligation of the City to pay the Economic Incentive Payments hereunder shall be evidenced by two (2) separate warrants as follows (collectively, the "**Economic Incentive Warrants**"):

(i) the City's \$7,000,000.00 warrant entitled "Limited Obligation Economic Incentive Warrant A (Liberty Park Project)," in form and content as the form of warrant attached to this Agreement as **Exhibit "F"** ("**Economic Incentive Warrant A**"); and

(ii) a \$5,000,000.00 warrant entitled "Limited Obligation Economic Incentive Warrant B (Liberty Park Project)," in form and content as the form of warrant attached to this Agreement as **Exhibit "G"** ("**Economic Incentive Warrant B**").

(b) The City shall pay to Developer, as owner and holder of the Economic Incentive Warrants, the Economic Incentive Payments in installments in accordance with the terms hereof for application against the Economic Incentive Warrants in the order and manner set forth in Section 4.2 hereof.

(c) The Economic Incentive Warrants shall not bear interest, shall be issued in the individual principal amounts set forth above, shall not exceed, in the aggregate, the Total City Economic Incentive Commitment, shall be dated the date that the same is delivered to Developer, and shall mature on the applicable Economic Incentive Termination Date (as hereinafter defined).

(d) The Economic Incentive Warrants shall be duly executed, sealed, and attested by the City, and shall be registered by the City as a conditional claim against the applicable warrant fund created therein.

(e) The Economic Incentive Warrants shall be duly registered and transferred as provided therein.

(f) The obligation of the City for the payment of the Economic Incentive Warrants (by paying Economic Incentive Payments) shall commence after the Commencement Date applicable to such Economic Incentive Payments.

(g) The obligation of the City for the payment of the Economic Incentive Warrants:

(i) is a limited obligation of the City payable solely from the City Net Tax/Permit Proceeds; and

(ii) is subject to, in accordance with **Johnson v. Sheffield**, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary, there must first be paid from all funds and revenues of the City the legitimate and necessary governmental expenses of operating the City.

(h) Anything in this Agreement or in either Economic Incentive Warrant to the contrary notwithstanding, the City shall have no obligation to pay Economic Incentive Payments under this Agreement or the Economic Incentive Warrants:

(i) prior to the Commencement Date applicable to such Economic Incentive Payments; or

(ii) after (A) the date on which the City shall have paid as Economic Incentive Payments an aggregate amount not less than the Total City Economic Incentive Commitment, or (B) termination of this Agreement by the City under Section 7.3 (collectively, the "**Economic Incentive Termination Date**").

#### Article V OTHER AGREEMENTS

5.1 **Elementary School Site.** Developer agrees to donate, gift, and convey to the City an approximately 15 acres site identified on **Exhibit "H"** attached hereto (the "**Elementary School Site**") for the construction thereon of a Vestavia Hills public elementary school, on the following terms and conditions:

(a) Developer will construct a rough graded pad site within the Elementary School Site which (i) will contain side slopes that will tie to existing grades to accommodate the estimated footprint shown in the conceptual plan attached hereto as **Exhibit "I"**; (ii) will be at consistent cross-slope(s) to direct surface stormwater runoff; and (iii) will be constructed in connection with Developer construction of the adjacent roads (collectively, the "**Grading Work**"); provided, however, that Developer's liability for the cost of the Grading Work shall be capped at \$500,000.00 (the "**Cap**") and the City will be responsible for all costs in excess of the Cap. Developer shall certify and provide notice to the City when the cost of the Grading Work has reached the Cap. Thereafter, Developer shall submit draw requests with supporting evidence setting forth the actual out-of-pocket expenses incurred by Developer in excess of the Cap in connection with the Grading Work and City shall reimburse Developer for such expenses within thirty (30) days after receipt of such draw request.

Developer's obligations under this paragraph (a) shall not include the construction of any retaining walls necessary to support any improvements to be constructed by the City.

(b) Upon completion of the rough graded pad site, Developer shall have the right to use the Elementary School Site prior to Developer's conveyance of the Elementary School Site to the City as set forth below.

(c) The Elementary School Site will be restricted from any use other than as a Vestavia Hills public elementary school, unless the prior written consent of Developer, which may be granted or refused by Developer in its sole discretion, is first obtained.

(d) Closing of the conveyance of the Elementary School Site to the City will occur within one hundred eighty (180) days following the City's written request to Developer requesting the conveyance, which such request must be accompanied by evidence confirming that the City has fully funded the Phase I Infrastructure Escrow Funds as required by Section 3.4 above; provided, however, that such one hundred eighty (180) day period shall be extended for such period of time as may be necessary for the Developer to complete necessary development work, including the construction of South Liberty Parkway Extension and the Sanitary Sewer Improvements necessary for the Elementary School Site, as well as the construction of the rough graded pad site within the Elementary School Site.

(e) Developer will convey fee simple title to the City at the closing, subject to (i) the restriction set forth in paragraph (a) above, (ii) all easements, restrictions, and covenants of record, and (iii), the agreement that the City and its successors and assigns (as such long as such successor or assign is not a private entity) shall be exempt from any and all property owner assessments established under any of the Liberty Park recorded covenants. However, the City will be responsible for standard fees and assessments payable to Enviro Services, LLC for sewer services to the Elementary School Site. The City shall be responsible for all closing costs associated with the conveyance of the Elementary School Site other than the fees of the closing attorney, which will be split between City and Developer.

5.2 **Entertainment District.** The City covenants and agrees to use its best effort to have the Town Center designated as an Entertainment District in accordance with the provisions of Ala. Code 28-3A-17.1 and the applicable City ordinances with respect to Entertainment Districts.

5.3 **Amendment to Annexation Agreements.** In connection with the implementation of the Development Project, certain amendments to the existing annexation agreements between Developer and the City are required. Contemporaneously herewith and as a condition to this Agreement, Developer and City have entered into that certain Amendment to Annexation Agreements which allow for the Development Project to proceed as reflected on the Development Plan ("**Amendment to Annexation Agreements**").

5.4 **Commercial Assessments.** In consideration of this Agreement, effective as of the Effective Date, (i) all of the existing properties owned by the City, the Vestavia Hills Board of Education, or the Vestavia Parks and Recreation Board which are located in Liberty Park will be exempted from assessments payable to the Liberty Park Commercial POA or any other



property owners association in Liberty Park for so long as such properties remain owned by the Vestavia Hills Board of Education, or the Vestavia Parks and Recreation Board and not a private entity, and (ii) all assessments previously assessed by any such associations against the City, the Vestavia Hills Board of Education, or the Vestavia Parks and Recreation Board but not collected (which have been disputed as lawful charges owed by such entities and therefore not paid), will be waived and released.

5.5 **Development Plan.** The Development Plan shall include a mixed-use component that incorporates both residential and commercial uses in a town center (the “**Town Center**”). The Town Center shall incorporate traditional design principles to encourage walkability and convenience and include the following:

- An organized street and block network which incorporates open spaces, promotes flexibility and adaptability, and allows the Town Center and its public spaces to evolve, change and grow over time.
- Arrangement of streets, sidewalks, public spaces, and walkways connecting to parking facilities and surrounding areas. Elements which reinforce one another and work together to create gathering spaces and sidewalk areas where retail and leisure meet.
- Sidewalks sized for their intended use – wider sidewalks where restaurants and al fresco will be concentrated and narrower sidewalks planned on less intensively used streets.
- Scale that is comfortable for pedestrians with buildings that engage the street through windows, awnings, store signage and lighting. Storefronts shall avoid commonality and banality and allow for differentiation.
- On street parking convenient to retail and commercial buildings.
- Landscaping and hardscaping to enhance streetscapes and public places.

## **Article VI** **REPRESENTATION AND WARRANTIES**

6.1 **Representations and Warranties of Developer.** Developer makes the following representations and warranties:

(a) Developer is a duly organized and existing Alabama limited liability partnership, in good standing in the State of Alabama, and has the legal power to enter into this Agreement.

(b) The execution and delivery of this Agreement on the part of Developer’s undersigned officer have been duly authorized by appropriate limited liability partnership action.

(c) Other than the Amendment to Annexation Agreements, the required approvals of the Vestlake Communities POA and the Liberty Park Commercial POA described

in Section 2.7 above, and the approvals described in Section 2.3 above, there are no approvals, authorizations, consents, or other actions by or filings with any person which are required to be obtained or completed by Developer in connection with the execution and delivery of this Agreement or in connection with any other action required to be taken by Developer hereunder. Developer is not and will not be required to give any notice to or obtain any consent from any person or entity in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated hereby.

(d) The execution and performance of this Agreement by Developer does not: (i) constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which Developer is a party; (ii) contravene, conflict with, or result in a violation of, or give any governmental body or other person the right to challenge any of the transactions contemplated hereby or to exercise any remedy or obtain any relief under any legal requirement or any order to which Developer, or any of the assets owned or used by Developer may be subject; (iii) contravene, conflict with, or result in a violation or breach of any provision of, or give any person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, any contract, agreement, instrument or understanding by which Developer is bound; or (iv) result in the imposition or creation of any lien, security interest, or encumbrance upon or with respect to any of the assets owned or used by Developer.

(e) To the best of Developer's knowledge, Developer is not in default under, or in violation of, any law or regulation or under any order of any court, board, commission or agency whatsoever, the default under or violation of which would have a material adverse effect on Developer's obligations under this Agreement. Developer has received no written notice of any pending or impending civil or criminal investigation, audit, proceeding, action, or litigation or any nature from any federal, state or local board, commission or agency, which would prevent the construction of the Developer's Work.

(f) There are no outstanding judgments, orders, writs, injunctions, or decrees of any government entity, no pending legal proceedings or material threats of legal proceedings, against or affecting Developer before or by any court, board, commission or agency whatsoever which would have a material effect on Developer's performance of its obligations under this Agreement.

(g) Developer has not experienced bankruptcy, insolvency, or any other form of legal relief from claims of creditors.

6.2 **Representations and Warranties of City.** City makes the following representations and warranties:

(a) The City has corporate power and authority to enter into this Agreement, pursuant to the Enabling Law and to carry out its obligations hereunder and by proper corporate action the City has duly authorized the execution, delivery and performance of this Agreement.

(b) The Warrants shall be issued, sold, and delivered upon condition, and purchased by Developer thereof in the reliance that this Agreement is enforceable against the City in accordance with the terms hereof.

(c) The issuance of the Warrants and the application of the proceeds thereof for the purposes set forth in this Agreement will result in direct financial benefits to the City and will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(d) The indebtedness of the City incurred pursuant to the Enabling Law is less than fifty percent (50%) of the assessed value of the taxable property in the City as determined for state taxation purposes for the *fiscal year/calendar year ending* \_\_\_\_\_, 2020.

(e) The City Net Tax Sale Proceeds and City Net Lodgings Tax Proceeds are, as of the date hereof, calculated based upon the following City tax rates, in each case, which are net of and exclude taxes levied for educational purposes or for capital improvements for education:

City Sales Tax: 4%

City Lodgings Tax: 6%

## Article VII GENERAL TERMS

7.1 **Effective Date.** This Agreement shall become effective on the date (the "**Effective Date**") on which a judgment entered by the Circuit Court of Jefferson County, Alabama validating and confirming this Agreement shall have become forever conclusive in accordance with, and as provided in, Section 6-6-755 of the Code of Alabama 1975.

7.2 **Assignment.** Until the Total City Infrastructure Commitment has been paid for the Developer's Work (or Developer has released the City from any further obligation in payment of the City Infrastructure Commitment), Developer may not assign or transfer this Agreement or any interest herein or therein or any part hereof or thereof to another entity other than to a related party without the written consent of the City (which such consent shall not be unreasonably withheld, conditioned, or delayed); provided, (i) that the City acknowledges that Developer may enter into a separate agreement with a Hotel developer to share certain incentive payments if and to the extent paid to Developer, however, the Hotel developer shall not be a party to this Agreement and shall have no claim against the City for any sums due and payable to Developer under this Agreement; and (ii) that Developer may execute a collateral assignment of this Agreement to any lender providing financing for the Developer's Work upon notice to the City but without the City's prior written consent.

### 7.3 **Default and Termination.**

(a) For purposes of this Agreement, an “**Event of Default**” by either Developer or the City (as applicable, the “**Defaulting Party**”) under this Agreement shall be defined as follows:

(i) such Defaulting Party’s breach or violation of any term or condition of this Agreement which is not cured within a cure period set forth herein or, if no cure period is specified, is not cured within thirty (30) days after written notice from the non-defaulting party, provided, however, that if such cure reasonably cannot be completed within such thirty (30) day period, is not cured within such additional period of time as shall be reasonably necessary to complete the cure as long as the Defaulting Party is diligently and in good faith prosecuting said cure to completion;

(ii) any material representation made by a Defaulting Party in this Agreement, or in any certificate, notice, or request made by such Defaulting Party in writing and delivered to the non-defaulting party pursuant to or in connection with this Agreement shall prove to be untrue or incorrect in any material respect as of the date made;

(iii) the entry of a decree or order for relief by a court having jurisdiction concerning such Defaulting Party in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, trustee (or similar official) of such Defaulting Party for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(iv) the commencement by such Defaulting Party of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law;

(v) the consent by such Defaulting Party to the appointment of or taking possession by a receiver, liquidator, trustee (or other similar official) of such Defaulting Party or of any substantial part of such Defaulting Party’s property; or

(vi) the making by such Defaulting Party of any assignment for the benefit of creditors.

(b) Upon the occurrence of an Event of Default by a Defaulting Party which is not cured within the applicable notice and periods set forth herein, the non-defaulting party may, in its discretion, pursue any and all remedies at law or in equity, provided however, that the City shall have no right of specific performance against the Developer under this Agreement. The non-defaulting party shall have the right to recover reasonable attorney’s fees and court costs caused by an Event of Default by a Defaulting Party that is not cured within applicable notice and cure periods set forth herein. Neither the City nor Developer shall in any event be responsible or liable for consequential, speculative, exemplary or punitive damages as a result of an Event of Default that is not cured within applicable notice and cure periods set forth herein.

7.4 **Governing Law.** This Agreement, all rights of the parties hereunder, and all disputes which may arise hereunder shall be subject to and governed in accordance with the laws of the State of Alabama. By executing this Agreement, each party consents to the jurisdiction and venue of the federal or state courts for Jefferson County, Alabama with respect to any matter arising hereunder.

7.5 **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7.6 **Notices.** All communications and notices expressly provided herein shall be sent, by first class mail, postage prepaid, or by a nationally recognized overnight courier for delivery on the following business day, as follows:

If to the City:	City of Vestavia Hills 3162 Vestavia Hills Parkway Vestavia Hills, Alabama 35124 Attn: Mayor's Office
If to Developer:	Liberty Park Joint Venture, LLP 1000 Urban Center Drive, Suite 235 Vestavia Hills, Alabama 35242 Attention: John Bonanno
AND:	Liberty Park Joint Venture, LLP c/o Drummond Company, Inc. Attention: Blake Andrews, Esq. Legal Department 1000 Urban Center Drive, Suite 300 Vestavia Hills, Alabama 35242

or to such other address as the parties shall designate from time to time by written notice.

7.7 **Cost and Expense.** Each party agrees to pay its own costs incurred in connection with the negotiation and preparation of this Agreement. Developer acknowledges that it shall be responsible for all costs of the Developer's Work undertaken by Developer, including but not limited to, the cost of planning, developing and maintaining the Remaining Undeveloped Land (or portions thereof), such as legal, engineering, architectural, construction and environmental services. Developer shall not hold itself out as an agent of the City and shall not make any representation or take any action which shall convey the impression to any contractor, subcontractor, laborer or supplier that the City has any obligation or responsibility for any payment to such contractor, subcontractor, laborer or supplier in connection with the Developer's Work.

7.8 **Section Titles and Headings.** The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

7.9 **Relationship of Parties.** The City and Developer agree that nothing contained in this Agreement, or any act of Developer or of the City, shall be deemed or construed by either of the parties hereto, or by third persons, to create any relationship of third party beneficiary hereof, or of principal and agent, or of a limited or a general partnership or of a joint venture or of any association or relationship between. Notwithstanding any of the provisions of this Agreement, it is agreed that the City have no investment or equity interest in the business of Developer, and shall not be liable for any debts of Developer, nor shall the City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of Developer, nor shall Developer at any time or times use the name or credit of the City in purchasing or attempting to purchase any equipment, supplies or other thing whatsoever.

7.10 **Compliance with Laws.**

(a) Developer shall comply, and shall endeavor by its business practices to cause its officers, agents, and employees to comply, in all material respects, with all applicable federal, state and local statutes, regulations, rules, ordinances and other laws, including, but not limited to, the Americans with Disabilities Act, which are applicable to the Developer's Work.

(b) Developer shall not enter into, execute, or be a party to any covenant, agreement, lease, deed, assignment, conveyance, or any other written instrument applicable to the Developer's Work restricting the use of any improvements on the basis of race, ethnicity, color, religion, sex, national origin, age or handicapped status. Developer shall comply with all federal, state and local laws, in effect from time to time, prohibiting discrimination in employment.

(c) Developer shall obtain all licenses and permits required by law, including, but not limited to, all business licenses and development permits required by the City.

7.11 **Binding Effect.** This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of Developer and its successors and assigns and shall be binding upon and shall inure to the benefit of the City and its successors and assigns.

7.12 **Entire Agreement; Amendment.** This Agreement constitutes one entire and complete agreement, and neither of the parties hereto shall have any rights arising from any separate component of this Agreement without complying in all respects with its duties and obligations under all parts and components hereof. This Agreement constitutes and includes all promises and representations, expressed or implied, made by the City and Developer with respect to the matters set forth herein. No stipulations, agreements or understandings of the parties hereto shall be valid or enforceable unless contained in this Agreement. No oral conditions, warranties or modifications hereto shall be valid between the parties. This Agreement may be amended only by a written instrument executed by both parties.

7.13 **Amendment to Annexation Agreements Controlling.** To the extent of any inconsistency between this Agreement and the Amendment to Annexation Agreements, the Amendment to Annexation Agreements shall be controlling.

[REMAINDER OF PAGE INTENTIONALLY DELETED – SIGNATURE PAGES FOLLOW]

Draft Copy

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed as of the date first above written.

**LIBERTY PARK JOINT VENTURE, LLP,**  
an Alabama limited liability partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

**CITY OF VESTAVIA HILLS, ALABAMA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Ashley Curry, Mayor

Draft Copy



**EXHIBIT "A"**

**Development Plan**



[See Attached]

Draft Copy



**EXHIBIT A: DEVELOPMENT PLAN**



-  Not included in Development Agreement
-  Town Center Detail on Exhibit A-1

**EXHIBIT "A-1"**

**Detail of Town Center**

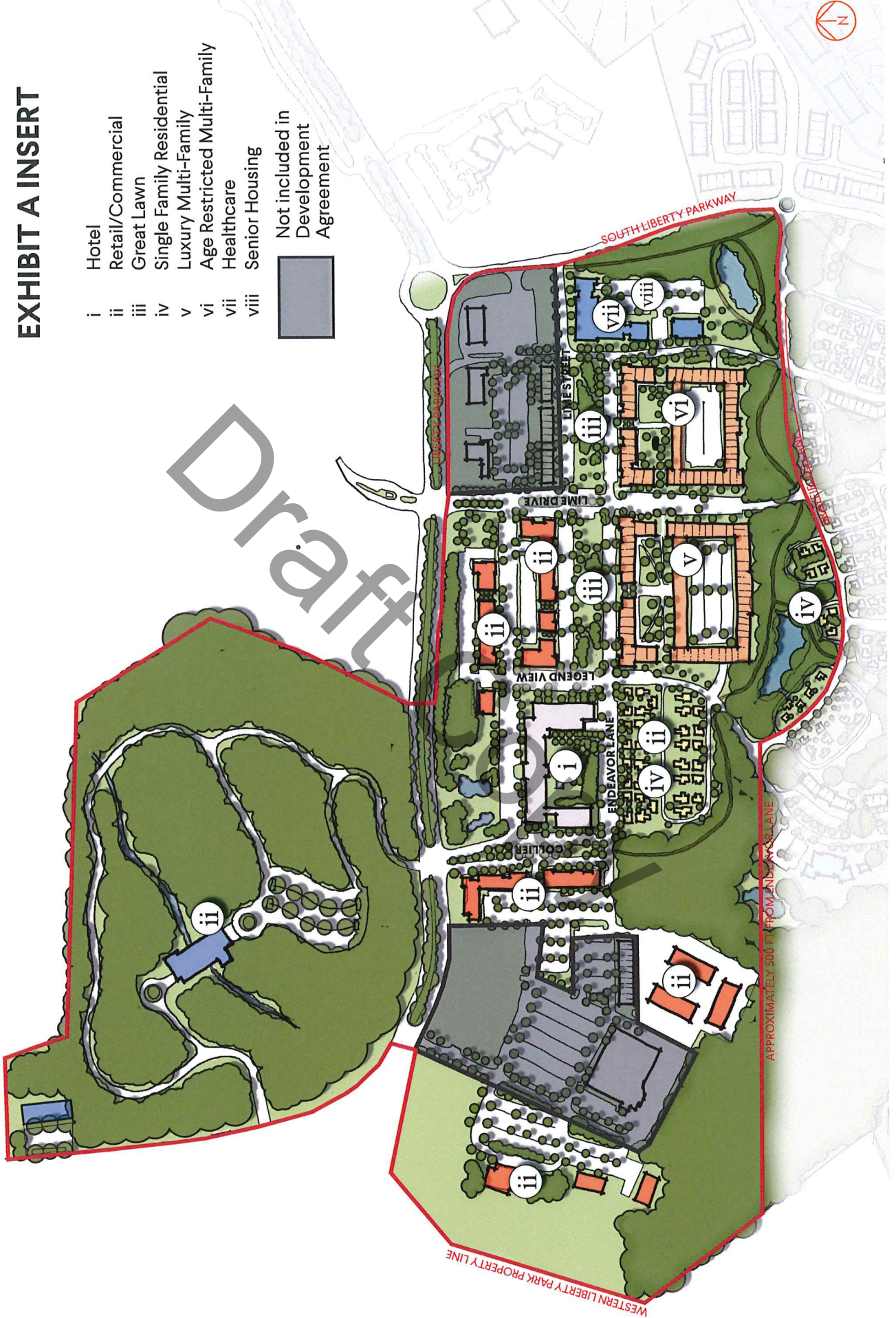
*[See attached Exhibit A Insert]*

Draft Copy



# EXHIBIT A INSERT

- i Hotel
  - ii Retail/Commercial
  - iii Great Lawn
  - iv Single Family Residential
  - v Luxury Multi-Family
  - vi Age Restricted Multi-Family
  - vii Healthcare
  - viii Senior Housing
- Not included in Development Agreement



**EXHIBIT "B"**

**Existing Roadway Improvements**

*[See Attached]*

Draft Copy



1001 22nd Street South, 3509 Brentwood Park SW, Atlanta, Georgia 30329  
 404.252.3464 | 404.252.3471 | schobel.com

EXHIBIT 'B'  
 ROAD DEDICATION - LIBERTY PARK  
 VESTAVIA HILLS, ALABAMA

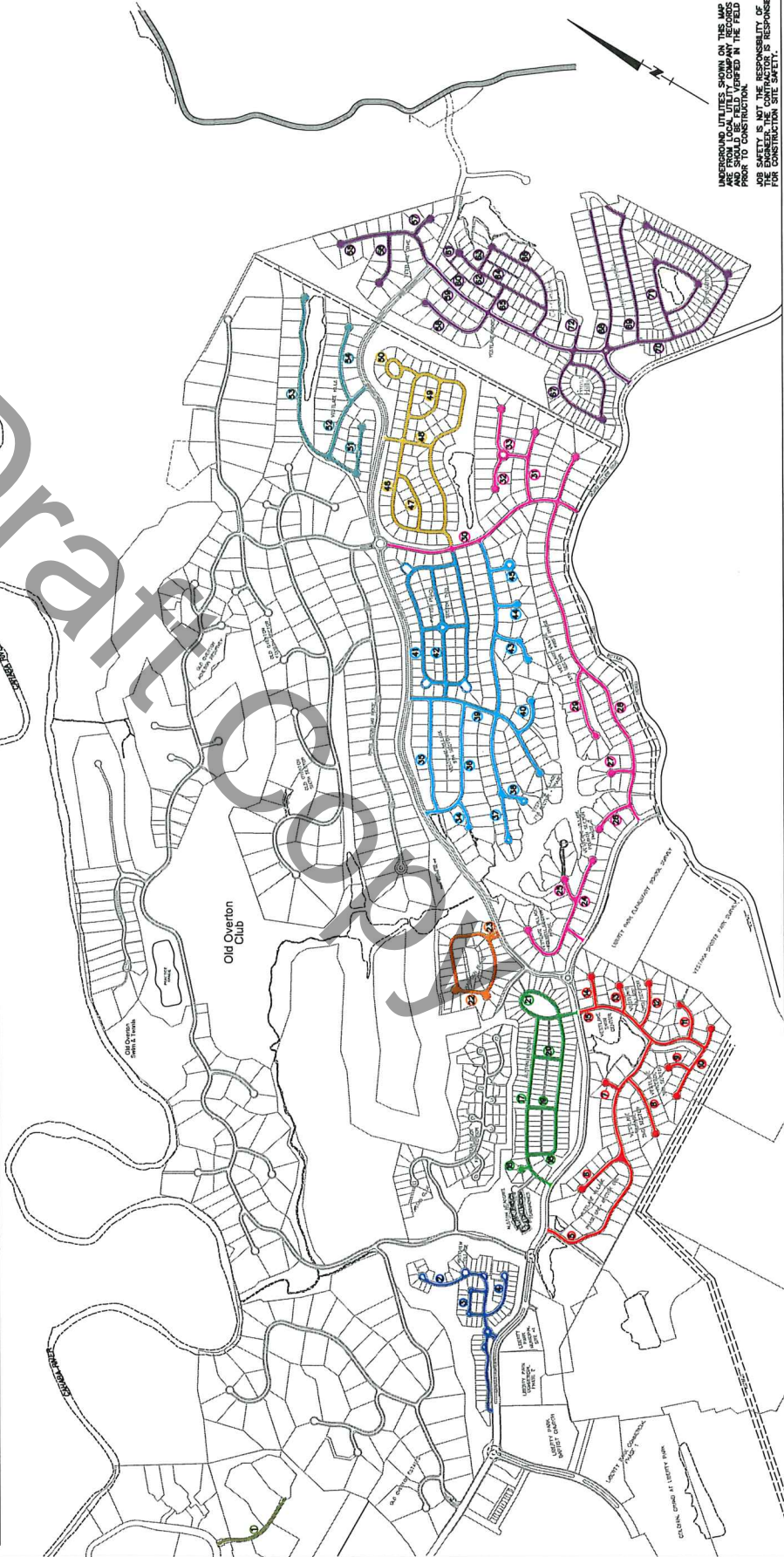
Exhibit A - Ordinance No. 3086

DRAWING SET:	
REVISIONS:	
DRAWN BY: J.E.S.	FILE NAME: LIBERTY_PARK_EXHIBIT_B
CHECKED BY: J.P.	DATE: 9/7/16/2016

EXHIBIT 'B'

LEGEND:

ROAD NO.	ROAD NAME	ROAD NO.	ROAD NAME	ROAD NO.	ROAD NAME	ROAD NO.	ROAD NAME
1	CORPORATE WOODS DRIVE	34	LAMBERT COVE	55	VESTLAKE COVE DRIVE		
2	VESTVIEW DRIVE	35	LAMBERT TRAIL	56	LONDON COURT		
3	VESTVIEW CIRCLE	36	LAMBERT TERRACE	57	VESTLAKE RIDGE		
4	LAKE RAV DRIVE	37	REYNOLDS LAKE	58	VESTLAKE RIDGE DRIVE		
5	LAKE RAV CIRCLE	38	REYNOLDS TRAIL	59	VESTLAKE RIDGE ALLEY		
6	LAKE VISTA CIRCLE	39	REYNOLDS CREST	60	STONECREST ALLEY		
7	LAKE HOLLOW CIRCLE	40	REYNOLDS COVE	61	STONECREST COURT		
8	PARK CREST ROAD	41	PAXTON WAY	62	REFLECTION DRIVE		
9	PARK CREST CIRCLE	42	REYNOLDS PLACE	63	VESTLAKE RIDGE WAY		
10	PARK VIEW CIRCLE	43	REYNOLDS WAY	64	REFLECTION DRIVE		
11	PARK RIDGE CIRCLE	44	REYNOLDS CIRCLE	65	VESTLAKE RIDGE WAY		
12	PARK LAKE CIRCLE	45	SOULDER LAKE CIRCLE	66	JACKSON LOOP		
13	PARK HILL CIRCLE	46	SOULDER LAKE DRIVE	67	LIBERTY PARK LAKE		
14	PARK HILL DRIVE	47	SOULDER LAKE DRIVE	68	HERITAGE HILLS WAY		
15		48	SOULDER LAKE WAY	69	PROVIDENCE DRIVE		
		49	SOULDER LAKE LAKE	70	PROVIDENCE DRIVE		
		50	SOULDER LAKE COURT	71	ENCLAVE COURT		
		51	HAWLEN PLACE	72	ENCLAVE COURT		
		52	MARSHEN DRIVE				
		53	TERNVIEW ROAD				
		54	MARSHEN WAY				



UNDERGROUND UTILITIES SHOWN ON THIS MAP ARE NOT TO BE CONSIDERED AS THE RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS RESPONSIBLE FOR CONSTRUCTION SITE SAFETY.

**EXHIBIT "C"**

**Remaining Undeveloped Land**

*[See Attached]*

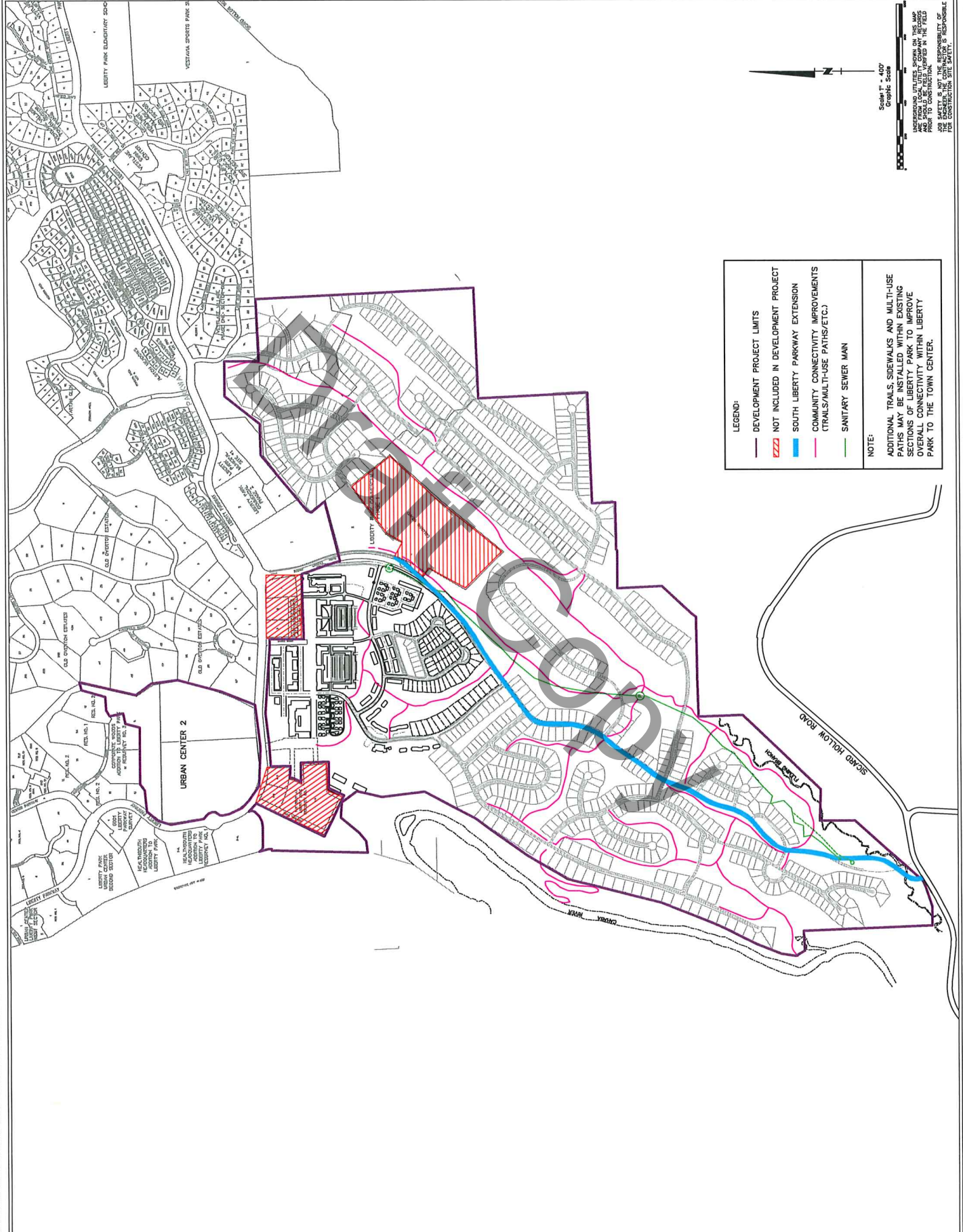
Draft Copy

# EXHIBIT 'C' INFRASTRUCTURE IMPROVEMENTS THE BRAY AT LIBERTY PARK VESTAVIA HILLS, ALABAMA



DATE	DESCRIPTION

DRAWN BY: JLS  
 CHECKED BY: JLS  
 PROJECT NO.: 2015-0000000000  
 SHEET NO.: 1 OF 1  
**EXHIBIT 'C'**



**LEGEND:**

- DEVELOPMENT PROJECT LIMITS
- ▨ NOT INCLUDED IN DEVELOPMENT PROJECT
- SOUTH LIBERTY PARKWAY EXTENSION
- COMMUNITY CONNECTIVITY IMPROVEMENTS (TRAILS/MULTI-USE PATHS/ETC.)
- SANITARY SEWER MAN

**NOTE:**  
ADDITIONAL TRAILS, SIDEWALKS AND MULTI-USE PATHS MAY BE INSTALLED WITHIN EXISTING SECTIONS OF LIBERTY PARK TO IMPROVE OVERALL CONNECTIVITY WITHIN LIBERTY PARK TO THE TOWN CENTER.

Scale 1" = 400'  
 Graphic Scale  
 IMPROVEMENTS SHOWN ON THIS MAP ARE FROM LOCAL UTILITY DEPARTMENTS AND ARE SUBJECT TO CHANGE PRIOR TO CONSTRUCTION. THE CONTRACTOR IS RESPONSIBLE FOR CONSTRUCTION SITE SAFETY.



**EXHIBIT "D"**

**Phase I Infrastructure Assistance Warrant**

Draft Copy

**EXHIBIT "D"**

**FORM OF PHASE I INFRASTRUCTURE ASSISTANCE WARRANT**

**This Warrant has not been registered (i) under the Securities Act of 1933, as amended, in reliance upon the exemption provided by Section 4(2) of said act, or (ii) under any state securities law, in reliance upon applicable exemptions, and may not be transferred without registration except pursuant to an exemption therefrom.**

**THIS WARRANT DOES NOT BEAR INTEREST**

**UNITED STATES OF AMERICA  
STATE OF ALABAMA**

**CITY OF VESTAVIA HILLS  
GENERAL OBLIGATION ECONOMIC DEVELOPMENT WARRANT  
(LIBERTY PARK PROJECT – PHASE I INFRASTRUCTURE ASSISTANCE  
PAYMENTS)**

No. R- \_\_\_\_\_  
DATED DATE:

MATURITY DATE:

\_\_\_\_\_, 20\_\_

Infrastructure Assistance Termination Date

The **CITY OF VESTAVIA HILLS**, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "**City**"), for value received, hereby acknowledges itself indebted to

**LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership ("**Developer**")

or registered assigns (collectively the "**Holder**") in a principal amount not exceeding

**FIVE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,500,000.00)**

as determined pursuant to the Development Agreement (as hereinafter defined), and hereby orders and directs the City Clerk and Treasurer of the City to pay to the Holder, solely from the Infrastructure Assistant Warrant Fund hereinafter designated, said principal amount, without interest, on each Payment Date, until and including the Maturity Date specified above.

**Authority for Issuance**

This Warrant is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the Constitution of Alabama of 1901, as amended (collectively the "**Enabling Law**"), and that certain Development

Agreement the above Dated Date (the “**Development Agreement**”) between the City and Developer.

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Development Agreement.

Reference is made to the provisions of the Development Agreement, to and by which all of which provisions the Holder, by acceptance of this Warrant, assents and agrees to be bound.

### **Payment**

Payment of this Warrant shall be made to or as directed by the Holder; provided the final payment of principal of this Warrant shall be made only upon presentation and surrender of this Warrant to the City for cancellation.

Each payment of principal made on this Warrant shall be reflected by the notations made by the City on its internal records (which may be kept by computer or by other means determined by the City) and the City is hereby authorized so to record thereon all such payments. All payments of principal on this Warrant and the aggregate unpaid principal amount of this Warrant reflected on the internal records of the City (whether by computer or otherwise) shall be rebuttably presumptive evidence of the principal amount of this Warrant outstanding and unpaid.

All payments of principal of this Warrant by the City shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the City upon this Warrant to the extent of the amounts so paid.

The person in whose name this Warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the principal of this Warrant shall be made only to or upon the order of the Holder hereof or its legal representative, and neither the City nor any agent of the City shall be affected by any notice to the contrary.

### **Security**

The indebtedness evidenced and ordered paid by this Warrant shall be a general obligation of the City and shall be secured by an irrevocable pledge of the full faith, credit and taxing power of the City.

The City has established a special fund designated “**Infrastructure Assistance Warrant Fund**” for the payment of this Warrant and has obligated itself to pay or cause to be paid into the Infrastructure Assistance Warrant Fund, from the revenue or funds of the City lawfully available therefor or other sums received by the City, sums sufficient to provide for the payment of this Warrant.

In addition (but without in anyway limiting the City’s payments obligations hereunder), the indebtedness evidenced and ordered paid by this Warrant is secured by the funds now or hereafter deposited into the Infrastructure Escrow Account as described in the Development Agreement.

### **Prepayment and Redemption**

The City may, on any date, pay in advance the entire unpaid principal amount of this Warrant or any lesser portion or portions thereof by paying to the Holder the principal amount to be prepaid without premium or penalty.

### **Registration and Transfer**

This Warrant is registered as to principal and interest in the name of the Holder on the book of registration maintained for that purpose by the City.

This Warrant may be transferred only upon written direction of the registered owner or its legal representative, addressed to the City, presentation of this Warrant to the City accompanied by a written instrument of transfer, satisfactory to the City, duly executed by the registered owner or its attorney duly authorized in writing, and compliance with Article 7(e) of the Development Agreement. Upon presentation of this Warrant to the City for transfer, the City shall record such transfer on said book of registration and shall endorse on the Registration of Ownership hereon the name of the transferee and the principal amount of this Warrant then outstanding. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

### **General**

No covenant or agreement contained in this Warrant or in the Development Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the City in the individual capacity thereof and none of such parties or persons nor any officer executing this Warrant shall be liable personally on this Warrant or be subject to any personal liability or accountability by reason of the issuance of this Warrant.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that this Warrant represents a valid claim against the Infrastructure Assistance Warrant Fund, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, the adoption of the resolution approving the Development Agreement, and the execution and delivery of the Development Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the principal amount of this Warrant, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the City, acting by and through the City Council of the City, as the governing body thereof, has caused this Warrant to be executed in its name and on its behalf by the Mayor of the City, has caused its corporate seal to be affixed hereto and the same attested by the City Clerk of the City, and has caused this Warrant to be dated the date and year first above written.

**CITY OF VESTAVIA HILLS, ALABAMA**  
a municipal corporation

By: \_\_\_\_\_  
Ashley C. Curry  
Its Mayor

SEAL

Attest: \_\_\_\_\_  
City Clerk

**REGISTRATION CERTIFICATE**

The undersigned hereby certifies that this Warrant has been duly registered as a conditional claim against the City of Vestavia Hills, in the State of Alabama, and the Infrastructure Assistance Warrant Fund referred to herein, and the Economic Incentive Payments pledged to the payment hereof.

City Clerk and Treasurer of the City of  
Vestavia Hills, Alabama

\_\_\_\_\_

**VALIDATION CERTIFICATE**

Validated and confirmed by judgment of the Circuit Court of Jefferson County, State of Alabama entered on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

---

Clerk of Circuit Court of  
Jefferson County, Alabama

Draft Copy

**REGISTRATION OF OWNERSHIP**

This Warrant is recorded and registered on the warrant register of the CITY OF VESTAVIA HILLS in the name of the last owner named below. The principal of this Warrant shall be payable only to or upon the order of such registered owner.

<b><u>Date of Registration</u></b>	<b><u>In Whose Name Registered</u></b>	<b><u>Principal Amount Outstanding</u></b>	<b><u>Signature of Authorized Office of Municipality</u></b>
------------------------------------	--	--	--

Dated Date

Draft Copy

**ASSIGNMENT**

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ this warrant and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney to transfer this warrant on the books of the within named Municipality with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**NOTE:** The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank or Trust Company)

By: \_\_\_\_\_  
(Authorized Officer)

Draft Copy



**EXHIBIT "E"**

**Phase II Infrastructure Assistance Warrant**

Draft Copy

**EXHIBIT "E"**

**FORM OF PHASE II INFRASTRUCTURE ASSISTANCE WARRANT**

**This Warrant has not been registered (i) under the Securities Act of 1933, as amended, in reliance upon the exemption provided by Section 4(2) of said act, or (ii) under any state securities law, in reliance upon applicable exemptions, and may not be transferred without registration except pursuant to an exemption therefrom.**

**THIS WARRANT DOES NOT BEAR INTEREST**

**UNITED STATES OF AMERICA  
STATE OF ALABAMA**

**CITY OF VESTAVIA HILLS**

**GENERAL OBLIGATION ECONOMIC DEVELOPMENT WARRANT  
(LIBERTY PARK PROJECT – PHASE II INFRASTRUCTURE ASSISTANCE PAYMENTS)**

No. R-\_\_\_\_\_  
DATED DATE:

MATURITY DATE:

\_\_\_\_\_, 20\_\_

Infrastructure Assistance Termination Date

The **CITY OF VESTAVIA HILLS**, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "**City**"), for value received, hereby acknowledges itself indebted to

**LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership ("**Developer**")

or registered assigns (collectively the "**Holder**") in a principal amount not exceeding

**FIVE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,500,000.00)**

as determined pursuant to the Development Agreement (as hereinafter defined), and hereby orders and directs the City Clerk and Treasurer of the City to pay to the Holder, solely from the Infrastructure Assistant Warrant Fund hereinafter designated, said principal amount, without interest, on each Payment Date, until and including the Maturity Date specified above.

**Authority for Issuance**

This Warrant is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the Constitution of Alabama of 1901, as amended (collectively the "**Enabling Law**"), and that certain Development

Agreement the above Dated Date (the “**Development Agreement**”) between the City and Developer.

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Development Agreement.

Reference is made to the provisions of the Development Agreement, to and by which all of which provisions the Holder, by acceptance of this Warrant, assents and agrees to be bound.

### **Payment**

Payment of this Warrant shall be made to or as directed by the Holder; provided the final payment of principal of this Warrant shall be made only upon presentation and surrender of this Warrant to the City for cancellation.

Each payment of principal made on this Warrant shall be reflected by the notations made by the City on its internal records (which may be kept by computer or by other means determined by the City) and the City is hereby authorized so to record thereon all such payments. All payments of principal on this Warrant and the aggregate unpaid principal amount of this Warrant reflected on the internal records of the City (whether by computer or otherwise) shall be rebuttably presumptive evidence of the principal amount of this Warrant outstanding and unpaid.

All payments of principal of this Warrant by the City shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the City upon this Warrant to the extent of the amounts so paid.

The person in whose name this Warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the principal of this Warrant shall be made only to or upon the order of the Holder hereof or its legal representative, and neither the City nor any agent of the City shall be affected by any notice to the contrary.

### **Security**

The indebtedness evidenced and ordered paid by this Warrant shall be a general obligation of the City and shall be secured by an irrevocable pledge of the full faith, credit and taxing power of the City.

The City has established a special fund designated “**Infrastructure Assistance Warrant Fund**” for the payment of this Warrant and has obligated itself to pay or cause to be paid into the Infrastructure Assistance Warrant Fund, from the revenue or funds of the City lawfully available therefor or other sums received by the City, sums sufficient to provide for the payment of this Warrant.

### **Prepayment and Redemption**

The City may, on any date, pay in advance the entire unpaid principal amount of this Warrant or any lesser portion or portions thereof by paying to the Holder the principal amount to be prepaid without premium or penalty.

### **Registration and Transfer**

This Warrant is registered as to principal and interest in the name of the Holder on the book of registration maintained for that purpose by the City.

This Warrant may be transferred only upon written direction of the registered owner or its legal representative, addressed to the City, presentation of this Warrant to the City accompanied by a written instrument of transfer, satisfactory to the City, duly executed by the registered owner or its attorney duly authorized in writing, and compliance with Article 7(e) of the Development Agreement. Upon presentation of this Warrant to the City for transfer, the City shall record such transfer on said book of registration and shall endorse on the Registration of Ownership hereon the name of the transferee and the principal amount of this Warrant then outstanding. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

### **General**

No covenant or agreement contained in this Warrant or in the Development Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the City in the individual capacity thereof and none of such parties or persons nor any officer executing this Warrant shall be liable personally on this Warrant or be subject to any personal liability or accountability by reason of the issuance of this Warrant.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that this Warrant represents a valid claim against the Infrastructure Assistance Warrant Fund, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, the adoption of the resolution approving the Development Agreement, and the execution and delivery of the Development Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the principal amount of this Warrant, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the City, acting by and through the City Council of the City, as the governing body thereof, has caused this Warrant to be executed in its name and on its behalf by the Mayor of the City, has caused its corporate seal to be affixed hereto and the same attested by the City Clerk of the City, and has caused this Warrant to be dated the date and year first above written.

**CITY OF VESTAVIA HILLS, ALABAMA**  
a municipal corporation

By: \_\_\_\_\_  
Ashley C. Curry  
Its Mayor

SEAL

Attest: \_\_\_\_\_  
City Clerk

**REGISTRATION CERTIFICATE**

The undersigned hereby certifies that this Warrant has been duly registered as a conditional claim against the City of Vestavia Hills, in the State of Alabama, and the Infrastructure Assistance Warrant Fund referred to herein, and the Economic Incentive Payments pledged to the payment hereof.

City Clerk and Treasurer of the City of  
Vestavia Hills, Alabama

\_\_\_\_\_

**VALIDATION CERTIFICATE**

Validated and confirmed by judgment of the Circuit Court of Jefferson County, State of Alabama entered on the \_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Clerk of Circuit Court of  
Jefferson County, Alabama

Draft Copy

**REGISTRATION OF OWNERSHIP**

This Warrant is recorded and registered on the warrant register of the CITY OF VESTAVIA HILLS in the name of the last owner named below. The principal of this Warrant shall be payable only to or upon the order of such registered owner.

<b><u>Date of Registration</u></b>	<b><u>In Whose Name Registered</u></b>	<b><u>Principal Amount Outstanding</u></b>	<b><u>Signature of Authorized Office of Municipality</u></b>
------------------------------------	--	--	--

Dated Date

Draft Copy

**ASSIGNMENT**

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ this warrant and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney to transfer this warrant on the books of the within named Municipality with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
**NOTE:** The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank or Trust Company)

By: \_\_\_\_\_  
(Authorized Officer)

Draft Copy



**EXHIBIT "F"**

**Economic Incentive Warrant A**

Draft Copy

**EXHIBIT "F"**

**FORM OF ECONOMIC INCENTIVE WARRANT A**

**This Warrant has not been registered (i) under the Securities Act of 1933, as amended, in reliance upon the exemption provided by Section 4(2) of said act, or (ii) under any state securities law, in reliance upon applicable exemptions, and may not be transferred without registration except pursuant to an exemption therefrom.**

**THIS WARRANT DOES NOT BEAR INTEREST**

**UNITED STATES OF AMERICA  
STATE OF ALABAMA**

**CITY OF VESTAVIA HILLS  
LIMITED OBLIGATION ECONOMIC INCENTIVE WARRANT A  
(LIBERTY PARK PROJECT – ECONOMIC INCENTIVE PAYMENTS)**

No. R- \_\_\_\_\_

DATED DATE:

\_\_\_\_\_, 20\_\_

MATURITY DATE:

Economic Incentive Termination Date

The **CITY OF VESTAVIA HILLS**, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "**City**"), for value received, hereby acknowledges itself indebted to

**LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership ("**Developer**")

or registered assigns (collectively the "**Holder**") in a principal amount not exceeding **SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00)** as determined pursuant to the Development Agreement (as hereinafter defined), and hereby orders and directs the City Clerk and Treasurer of the City to pay to the Holder, solely from the Economic Incentive Payments as specified in the Development Agreement, said principal amount, without interest, on each Payment Date, until and including the Maturity Date specified above.

**Authority for Issuance**

This Warrant is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the Constitution of Alabama of 1901, as amended (collectively the "**Enabling Law**"), and that certain Development Agreement the above Dated Date (the "**Development Agreement**") between the City and Developer.

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Development Agreement.

Reference is made to the provisions of the Development Agreement, to and by which all of which provisions the Holder, by acceptance of this Warrant, assents and agrees to be bound.

### **Payment**

Payment of this Warrant shall be made to or as directed by the Holder; provided the final payment of principal of this Warrant shall be made only upon presentation and surrender of this Warrant to the City for cancellation.

Each payment of principal made on this Warrant shall be reflected by the notations made by the City on its internal records (which may be kept by computer or by other means determined by the City) and the City is hereby authorized so to record thereon all such payments. All payments of principal on this Warrant and the aggregate unpaid principal amount of this Warrant reflected on the internal records of the City (whether by computer or otherwise) shall be rebuttably presumptive evidence of the principal amount of this Warrant outstanding and unpaid.

All payments of principal of this Warrant by the City shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the City upon this Warrant to the extent of the amounts so paid.

The person in whose name this Warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the principal of this Warrant shall be made only to or upon the order of the Holder hereof or its legal representative, and neither the City nor any agent of the City shall be affected by any notice to the contrary.

### **Economic Incentive Warrant B**

Pursuant to the Development Agreement, contemporaneously herewith, the City has issued to Developer its Limited Obligation Economic Incentive Warrant B (Liberty Park Project) in the original principal amount of Five Million and No/100 Dollars (\$5,000,000.00) (“**Economic Incentive Warrant B**”).

### **Security**

Each of this Warrant and Economic Incentive Warrant B is a limited obligation of the City payable solely from the Economic Incentive Payments attributable to City Permit Proceeds, City Net Sales Tax Proceeds, and City Net Lodgings Tax Proceeds as provided in the Development Agreement.

The Economic Incentive Payments are hereby pledged to the payment, and for the benefit, of this Warrant and Economic Incentive Warrant B, subject to (i) all prior pledges of the City Net Tax Proceeds for the benefit of long term indebtedness of the City and (ii) in accordance with *Johnson v. Sheffield*, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary,

there must first be paid from all City Net Tax Proceeds (including without limitation the Economic Incentive Payments) the legitimate and necessary governmental expenses of operating the City.

Neither this Warrant nor Economic Incentive Warrant B shall ever constitute a charge against the general credit or taxing powers of the City within the meaning of any constitutional provision or statutory limitation whatsoever.

The City has established a special fund designated “Economic Incentive Warrant Fund” (the “Economic Incentive Warrant Fund”) for the payment of this Warrant and Economic Incentive Warrant B and has obligated itself to pay or cause to be paid into the Economic Incentive Warrant Fund the City Permit Proceeds, City Net Sales Tax Proceeds, and Net Lodging Tax Warrant, sums sufficient to provide for the payment of this Warrant and Economic Incentive Warrant B. The provision of Section 4.2 of the Development Agreement are incorporate herein by reference as if set forth in full for the application of Economic Incentive Payments from City Permit Proceeds, City Net Sales Tax Proceeds, and Net Lodging Tax Warrant to this Warrant or Economic Incentive Warrant B.

### **Prepayment and Redemption**

The City may, on any date, pay in advance the entire unpaid principal amount of this Warrant or any lesser portion or portions thereof by paying to the Holder the principal amount to be prepaid without premium or penalty.

### **Registration and Transfer**

This Warrant is registered as to principal and interest in the name of the Holder on the book of registration maintained for that purpose by the City.

This Warrant may be transferred only upon written direction of the registered owner or its legal representative, addressed to the City, presentation of this Warrant to the City accompanied by a written instrument of transfer, satisfactory to the City, duly executed by the registered owner or its attorney duly authorized in writing, and compliance with Article 7(e) of the Development Agreement. Upon presentation of this Warrant to the City for transfer, the City shall record such transfer on said book of registration and shall endorse on the Registration of Ownership hereon the name of the transferee and the principal amount of this Warrant then outstanding. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

### **General**

No covenant or agreement contained in this Warrant or in the Development Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the City in the individual capacity thereof and none of such parties or persons nor any

officer executing this Warrant shall be liable personally on this Warrant or be subject to any personal liability or accountability by reason of the issuance of this Warrant.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that this Warrant represents a valid claim against the Economic Incentive Payments, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, the adoption of the resolution approving the Development Agreement, and the execution and delivery of the Development Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the principal amount of this Warrant, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

[Remainder of Page Intentionally Left Blank]

Draft Copy

**IN WITNESS WHEREOF**, the City, acting by and through the City Council of the City, as the governing body thereof, has caused this Warrant to be executed in its name and on its behalf by the Mayor of the City, has caused its corporate seal to be affixed hereto and the same attested by the City Clerk of the City, and has caused this Warrant to be dated the date and year first above written.

**CITY OF VESTAVIA HILLS, ALABAMA**  
a municipal corporation

By: \_\_\_\_\_  
Ashley C. Curry  
Its Mayor

SEAL

Attest: \_\_\_\_\_  
City Clerk

**REGISTRATION CERTIFICATE**

The undersigned hereby certifies that this Warrant has been duly registered as a conditional claim against the City of Vestavia Hills, in the State of Alabama, and the Net Lodgings Tax Warrant Fund referred to herein, and the Economic Incentive Payments pledged to the payment hereof.

City Clerk and Treasurer of the City of  
Vestavia Hills, Alabama

\_\_\_\_\_

**VALIDATION CERTIFICATE**

Validated and confirmed by judgment of the Circuit Court of Jefferson County, State of Alabama entered on the \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Clerk of Circuit Court of  
Jefferson County, Alabama

Draft Copy

**REGISTRATION OF OWNERSHIP**

This Warrant is recorded and registered on the warrant register of the CITY OF VESTAVIA HILLS in the name of the last owner named below. The principal of this Warrant shall be payable only to or upon the order of such registered owner.

<b><u>Date of Registration</u></b>	<b><u>In Whose Name Registered</u></b>	<b><u>Principal Amount Outstanding</u></b>	<b><u>Signature of Authorized Office of Municipality</u></b>
------------------------------------	--	--	--

Dated Date

Draft Copy



**ASSIGNMENT**

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ this warrant and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney to transfer this warrant on the books of the within named Municipality with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTE: The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank or Trust Company)

By: \_\_\_\_\_  
(Authorized Officer)

Draft Copy

**EXHIBIT "G"**

**Economic Incentive Warrant B**

Draft Copy

**EXHIBIT "F"**

**FORM OF ECONOMIC INCENTIVE WARRANT B**

**This Warrant has not been registered (i) under the Securities Act of 1933, as amended, in reliance upon the exemption provided by Section 4(2) of said act, or (ii) under any state securities law, in reliance upon applicable exemptions, and may not be transferred without registration except pursuant to an exemption therefrom.**

**THIS WARRANT DOES NOT BEAR INTEREST**

**UNITED STATES OF AMERICA  
STATE OF ALABAMA**

**CITY OF VESTAVIA HILLS  
LIMITED OBLIGATION ECONOMIC INCENTIVE WARRANT B  
(LIBERTY PARK PROJECT – ECONOMIC INCENTIVE PAYMENTS)**

No. R- \_\_\_\_\_

DATED DATE:

\_\_\_\_\_, 20\_\_

MATURITY DATE:

Economic Incentive Termination Date

The **CITY OF VESTAVIA HILLS**, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "**City**"), for value received, hereby acknowledges itself indebted to

**LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership ("**Developer**")

or registered assigns (collectively the "**Holder**") in a principal amount not exceeding **FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00)** as determined pursuant to the Development Agreement (as hereinafter defined), and hereby orders and directs the City Clerk and Treasurer of the City to pay to the Holder, solely from the Economic Incentive Payments as specified in the Development Agreement, said principal amount, without interest, on each Payment Date, until and including the Maturity Date specified above.

**Authority for Issuance**

This Warrant is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the Constitution of Alabama of 1901, as amended (collectively the "**Enabling Law**"), and that certain Development Agreement the above Dated Date (the "**Development Agreement**") between the City and Developer.

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Development Agreement.

Reference is made to the provisions of the Development Agreement, to and by which all of which provisions the Holder, by acceptance of this Warrant, assents and agrees to be bound.

### **Payment**

Payment of this Warrant shall be made to or as directed by the Holder; provided the final payment of principal of this Warrant shall be made only upon presentation and surrender of this Warrant to the City for cancellation.

Each payment of principal made on this Warrant shall be reflected by the notations made by the City on its internal records (which may be kept by computer or by other means determined by the City) and the City is hereby authorized so to record thereon all such payments. All payments of principal on this Warrant and the aggregate unpaid principal amount of this Warrant reflected on the internal records of the City (whether by computer or otherwise) shall be rebuttably presumptive evidence of the principal amount of this Warrant outstanding and unpaid.

All payments of principal of this Warrant by the City shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the City upon this Warrant to the extent of the amounts so paid.

The person in whose name this Warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the principal of this Warrant shall be made only to or upon the order of the Holder hereof or its legal representative, and neither the City nor any agent of the City shall be affected by any notice to the contrary.

### **Economic Incentive Warrant A**

Pursuant to the Development Agreement, contemporaneously herewith, the City has issued to Developer its Limited Obligation Economic Incentive Warrant A (Liberty Park Project) in the original principal amount of Seven Million and No/100 Dollars (\$7,000,000.00) (“**Economic Incentive Warrant A**”).

### **Security**

Each of this Warrant and Economic Incentive Warrant A is a limited obligation of the City payable solely from the Economic Incentive Payments attributable to City Permit Proceeds, City Net Sales Tax Proceeds, and City Net Lodgings Tax Proceeds as provided in the Development Agreement.

The Economic Incentive Payments are hereby pledged to the payment, and for the benefit, of this Warrant and Economic Incentive Warrant A, subject to (i) all prior pledges of the City Net Tax Proceeds for the benefit of long term indebtedness of the City and (ii) in accordance with *Johnson v. Sheffield*, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary,

there must first be paid from all City Net Tax Proceeds (including without limitation the Economic Incentive Payments) the legitimate and necessary governmental expenses of operating the City.

Neither this Warrant nor Economic Incentive Warrant A shall ever constitute a charge against the general credit or taxing powers of the City within the meaning of any constitutional provision or statutory limitation whatsoever.

The City has established a special fund designated “Economic Incentive Warrant Fund” (the “Economic Incentive Warrant Fund”) for the payment of this Warrant and Economic Incentive Warrant A and has obligated itself to pay or cause to be paid into the Economic Incentive Warrant Fund the City Permit Proceeds, City Net Sales Tax Proceeds, and Net Lodging Tax Warrant, sums sufficient to provide for the payment of this Warrant and Economic Incentive Warrant A. The provision of Section 4.2 of the Development Agreement are incorporate herein by reference as if set forth in full for the application of Economic Incentive Payments from City Permit Proceeds, City Net Sales Tax Proceeds, and Net Lodging Tax Warrant to this Warrant or Economic Incentive Warrant A.

### **Prepayment and Redemption**

The City may, on any date, pay in advance the entire unpaid principal amount of this Warrant or any lesser portion or portions thereof by paying to the Holder the principal amount to be prepaid without premium or penalty.

### **Registration and Transfer**

This Warrant is registered as to principal and interest in the name of the Holder on the book of registration maintained for that purpose by the City.

This Warrant may be transferred only upon written direction of the registered owner or its legal representative, addressed to the City, presentation of this Warrant to the City accompanied by a written instrument of transfer, satisfactory to the City, duly executed by the registered owner or its attorney duly authorized in writing, and compliance with Article 7(e) of the Development Agreement. Upon presentation of this Warrant to the City for transfer, the City shall record such transfer on said book of registration and shall endorse on the Registration of Ownership hereon the name of the transferee and the principal amount of this Warrant then outstanding. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

### **General**

No covenant or agreement contained in this Warrant or in the Development Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the City in the individual capacity thereof and none of such parties or persons nor any

officer executing this Warrant shall be liable personally on this Warrant or be subject to any personal liability or accountability by reason of the issuance of this Warrant.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that this Warrant represents a valid claim against the Economic Incentive Payments, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, the adoption of the resolution approving the Development Agreement, and the execution and delivery of the Development Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the principal amount of this Warrant, together with all other indebtedness of the City, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

[Remainder of Page Intentionally Left Blank]

Draft Copy

**IN WITNESS WHEREOF**, the City, acting by and through the City Council of the City, as the governing body thereof, has caused this Warrant to be executed in its name and on its behalf by the Mayor of the City, has caused its corporate seal to be affixed hereto and the same attested by the City Clerk of the City, and has caused this Warrant to be dated the date and year first above written.

**CITY OF VESTAVIA HILLS, ALABAMA**  
a municipal corporation

By: \_\_\_\_\_  
Ashley C. Curry  
Its Mayor

SEAL

Attest: \_\_\_\_\_  
City Clerk

**REGISTRATION CERTIFICATE**

The undersigned hereby certifies that this Warrant has been duly registered as a conditional claim against the City of Vestavia Hills, in the State of Alabama, and the Net Lodgings Tax Warrant Fund referred to herein, and the Economic Incentive Payments pledged to the payment hereof.

City Clerk and Treasurer of the City of  
Vestavia Hills, Alabama

\_\_\_\_\_

**VALIDATION CERTIFICATE**

Validated and confirmed by judgment of the Circuit Court of Jefferson County, State of Alabama entered on the \_\_\_\_ day of \_\_\_\_\_, 2021.

---

Clerk of Circuit Court of  
Jefferson County, Alabama

Draft Copy



**REGISTRATION OF OWNERSHIP**

This Warrant is recorded and registered on the warrant register of the CITY OF VESTAVIA HILLS in the name of the last owner named below. The principal of this Warrant shall be payable only to or upon the order of such registered owner.

<b><u>Date of Registration</u></b>	<b><u>In Whose Name Registered</u></b>	<b><u>Principal Amount Outstanding</u></b>	<b><u>Signature of Authorized Office of Municipality</u></b>
------------------------------------	--	--	--

Dated Date

Draft Copy

**ASSIGNMENT**

For value received, \_\_\_\_\_ hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_ this warrant and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_ attorney to transfer this warrant on the books of the within named Municipality with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTE: The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank or Trust Company)

By: \_\_\_\_\_  
(Authorized Officer)

Draft Copy

**EXHIBIT "H"**

**Elementary School Site**

*[See Attached]*

Draft Copy

Scale 1" = 400'  
Graphic Scale

INDICATIONS UTILIZED SHOWN ON THE MAP  
WAS FROM LOCAL UTILITY COMPANY RECORDS  
AND FIELD SURVEY. THE USER SHALL VERIFY THE  
ACCURACY OF THE INFORMATION SHOWN ON THE  
MAP PRIOR TO CONSTRUCTION.



**LEGEND:**

- DEVELOPMENT PROJECT LIMITS
- ▨ NOT INCLUDED IN DEVELOPMENT PROJECT
- ELEMENTARY SCHOOL SITE (ES-1)

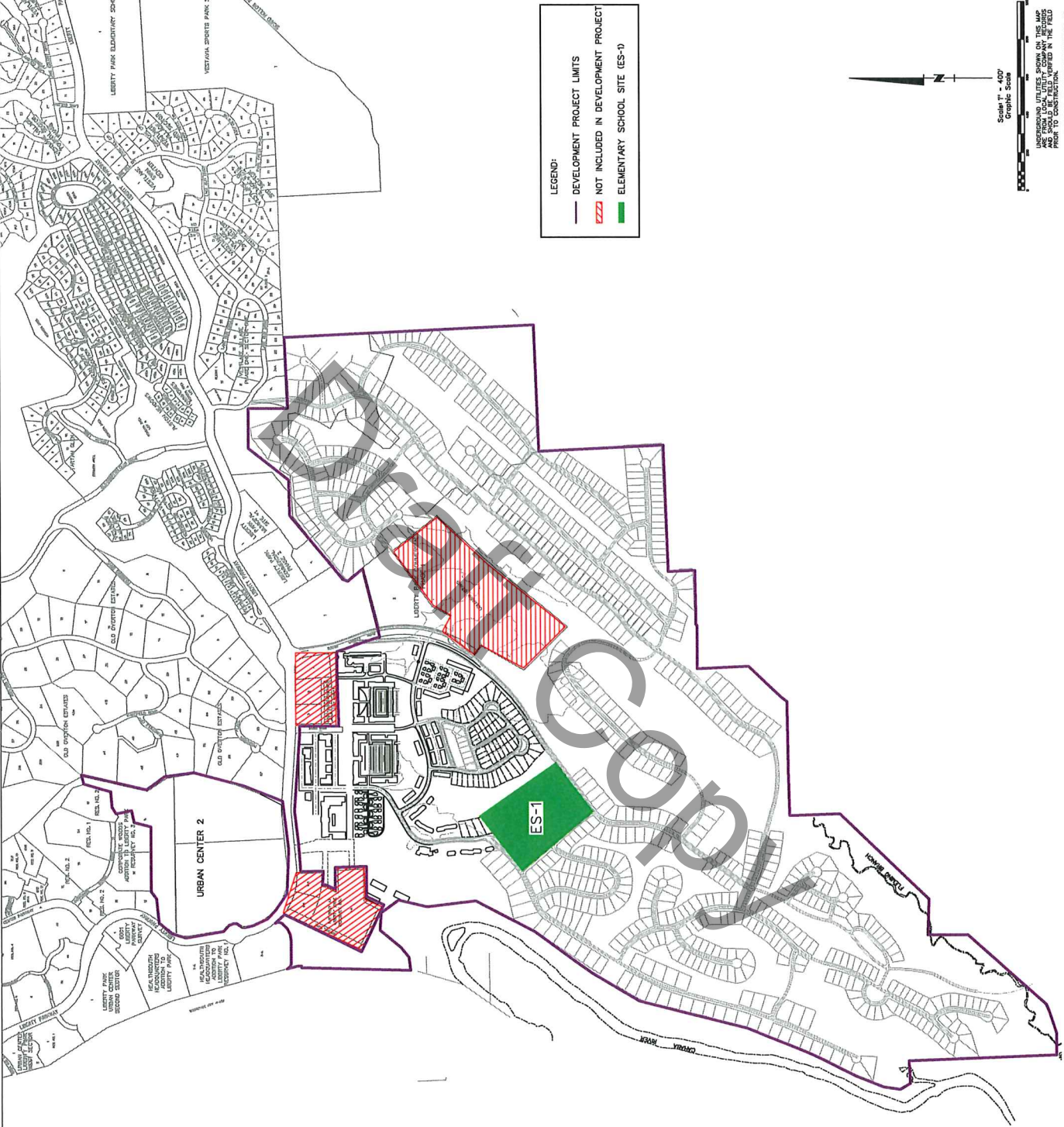


EXHIBIT 'H'  
THE BRAY AT LIBERTY PARK  
MUNICIPAL SITE OPTIONS  
VESTAVIA HILLS, ALABAMA

**SCHOBEL**

1000 22ND STREET SOUTH, SUITE 200  
BIRMINGHAM, ALABAMA 35202  
PH: 205.988.2200  
WWW.SCHOBEL.COM

Civil Engineering | Land Use Planning | Surveying | Construction Administration  
Environmental | Water Resources | Asset Management

**EXHIBIT "I"**

**Elementary School Conceptual Plan**

*[See Attached]*

Draft Copy

DATE: 2021-09-14  
SCALE: 1" = 100'

### CONCEPTUAL ELEMENTARY SCHOOL SITE PLAN

**SCHOBEL**  
 CIVIL  
 Surveying  
 Environmental  
 Water Resources  
 Laser Scanning + Modeling  
 1001 22nd Street South  
 Birmingham, Alabama 35205  
 205.923.6166

