

ORDINANCE NUMBER 3226

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AMENDMENT TO MEMORANDUM OF LEASE BY AND BETWEEN THE CITY OF VESTAVIA HILLS AND T-MOBILE USA TOWER LLC REGARDING AN EASEMENT FOR INGRESS/EGRESS

WHEREAS, in 2010, the City of Vestavia Hills owned 62.93 acres of unimproved land in the Liberty Park community (the "property"); and

WHEREAS, on November 23, 2010, the City leased 525 square feet of the property to T-Mobile South, LLC for cell tower use, together with a 30-foot easement for ingress/egress. CCTMO LLC ("Crown") serves T-Mobile pursuant to a Limited Power of Attorney; and

WHEREAS, in March 2024, the City and LPJV concluded a land swap. LPJV conveyed 22.42 acres to the City in exchange for a conveyance by the City of 3.80 acres of the City property to LPJV. It is important to note that the 3.80-acre parcel conveyed by the City to LPJV was part of the 62.93 acres of City property; and

WHEREAS, both the City and LPJV were anxious to close the land swap in late March 2024 in order to beat the "bat season." The survey that we had at the time of closing of the swap was only a boundary survey and not an ALTA survey; and

WHEREAS, the need to release the 3.80-acre parcel conveyed by the City to LPJV in accordance with the land swap from the ingress/egress easement wasn't discovered until after the land swap was closed. LPJV submitted to the City an Amendment to Memorandum of Lease by and between the City and T-Mobile USA LLC in order to release the portion of property that LPJV purchased, a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3226 as if written fully therein. The purpose of the Amendment will accomplish that release; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to release said 3.80 acres from the 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 said Amendment of Lease between the City and T-Mobile USA LLC; and
2. A copy of said Amendment shall be submitted to the City Clerk for record; and

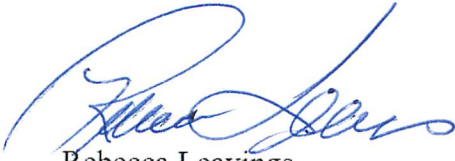
3. This Ordinance Number 3226 shall be effective immediately following adoption and approval and posting/publishing pursuant to Alabama law.

ADOPTED and APPROVED this the 10th day of June, 2024.



Ashley C. Curry
Mayor

ATTESTED BY:

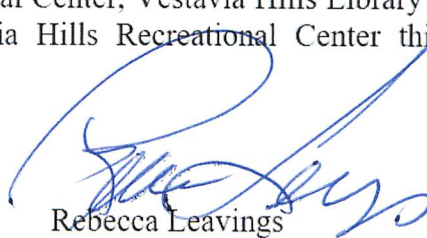


Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3226 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 10th day of June, 2024, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkel House and Vestavia Hills Recreational Center this the 10th day of June, 2024.



Rebecca Leavings
City Clerk

Prepared By:
Gail Livingston Mills, Esq.
Burr & Forman LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

Cross Reference to:
Book LR201102, Page 10693
Jefferson County, Alabama Records

AMENDMENT TO MEMORANDUM OF LEASE

THIS AMENDMENT TO MEMORANDUM OF LEASE (this "Amendment") is made as of April ____, 2024, by and between **CITY OF VESTAVIA HILLS, ALABAMA**, a municipal corporation ("Landlord"), having a mailing address of 1032 Montgomery Highway, Vestavia Hills, Alabama 35216, and **T-MOBILE USA TOWER LLC**, a Delaware limited liability company (as successor to T-Mobile South LLC) ("Tenant"), having a mailing address of c/o CCTMO LLC, 2000 Corporate Drive, Canonsburg, Pennsylvania 15317.

RECITALS:

A. Landlord and Tenant entered into that certain Site Lease with Option dated December 2, 2010 (the "Lease"), a memorandum of which was recorded in Book LR201102, Page 10693 in the Office of the Judge of Probate of Jefferson County, Alabama (the "Memorandum"), with respect to a portion of certain real property owned by Landlord as described on Exhibit A attached to the Memorandum.

B. The Memorandum did not clearly describe the "Property" and the "Premises" (each as defined in the Lease), and this Amendment is being recorded to correct and clarify such legal descriptions as more particularly set forth herein.

C. Tenant granted to **CCTMO LLC**, a Delaware limited liability company ("Crown"), a Limited Power of Attorney dated November 30, 2012 and recorded as Instrument No. 20131202001282680 in the aforesaid recording office, with respect to the Lease and any amendment or other document relating to the Lease, including the Memorandum, and therefore Crown is authorized to execute this Amendment on behalf of Tenant as its Attorney in Fact.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Recitals hereto are true and correct and are hereby incorporated in this Amendment.

2. The introductory paragraph of the Memorandum is hereby amended and restated in its entirety as follows:

A Site Lease with Option (the "Lease") by and between the City of Vestavia Hills, Alabama, an Alabama municipality ("Landlord"), and T-Mobile USA Tower LLC, a Delaware limited liability company (as successor to T-Mobile South LLC) ("Tenant"), was made with respect to a portion of the real property owned by Landlord more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). The portion of the Property leased to Tenant by Landlord under the Lease is more particularly described on Exhibit "B-1" attached hereto and incorporated herein by reference and is generally depicted as set forth on Exhibit "B-2" attached hereto and incorporated herein by reference (the "Premises"). The Premises leased to Tenant is comprised of approximately 525 square feet exclusive of easements.

3. The legal description of the leased premises set forth on Schedule 1 attached hereto and incorporated herein by reference is hereby attached to the Memorandum as Exhibit "B-1" thereto and is incorporated therein by reference.

4. The surveyed depiction of the leased premises set forth on Schedule 2 attached hereto and incorporated herein by reference is hereby attached to the Memorandum as Exhibit "B-2" thereto and is incorporated therein by reference.

5. This Amendment may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

6. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

7. This Amendment shall be governed by and construed in accordance with the laws of the State of Alabama.

[Remainder of page intentionally left blank. Signatures and acknowledgments to follow.]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first above written.

LANDLORD:

CITY OF VESTAVIA HILLS, ALABAMA,
a municipal corporation

By: _____
Ashley C. Curry
Its Mayor

By: _____
Jeffrey D. Downes
Its City Manager

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the **CITY OF VESTAVIA HILLS, ALABAMA**, a municipal corporation under the laws of the State of Alabama, is signed to the foregoing instrument, and 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 _____ day of April, 2024.

Notary Public
My Commission expires: _____

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the **CITY OF VESTAVIA HILLS, ALABAMA**, a municipal corporation under the laws of the State of Alabama, is signed to the foregoing instrument, and 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 _____ day of April, 2024.

Notary Public
My Commission expires:_____

TENANT:

T-MOBILE USA TOWER LLC,
a Delaware limited liability company

By: **CCTMO LLC,**
a Delaware limited liability company
Its Attorney in Fact

By: _____
Name: _____
Its: _____

STATE OF _____)

COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that, _____, whose name as _____ of **CCTMO LLC**, a Delaware limited liability company, as Attorney in Fact for **T-MOBILE USA TOWER LLC**, a Delaware limited liability company, has signed the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he/she with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this _____ day of April, 2024.

Notary Public

My Commission Expires: _____

[SEAL]

SCHEDULE 1 TO AMENDMENT TO MEMORANDUM OF LEASE

EXHIBIT "B-1" TO MEMORANDUM OF LEASE

Legal Description of Leased Premises

15' X 30' LEASE AREA (AS-SURVEYED)

A leased parcel being a portion of that certain tract of land as recorded in Book LR200616, Page 16634 in the Office of the Judge of Probate, Jefferson County, Alabama, lying in the Southwest 1/4, Section 8, Township 18 South, Range 1 West, said County, and being more particularly described as follows:

Commencing at a 1/2" capped rebar found (Weygand) at the northeast corner of the Southeast 1/4 of the Southwest 1/4 of said Section 8; thence run S 89°03'09" W along the north line of said Southwest 1/4 for a distance of 1115.01 feet to a point; thence S 00°56'51" E leaving said north line for a distance of 431.01 feet to a 5/8" capped rebar set (CA-627-LS) and the Point of Beginning; thence S 20°57'09" E for a distance of 15.00 feet to a 5/8" capped rebar set (CA-627-LS); thence S 69°02'51" W for a distance of 35.00 feet to a 5/8" capped rebar set (CA-627-LS); thence N 20°57'09" W for a distance of 15.00 feet to a 5/8" capped rebar set (CA-627-LS); thence N 69°02'51" E for a distance of 35.00 feet to the Point of Beginning. Said above described leased parcel contains 0.01 acres, more or less.

30' INGRESS/EGRESS & UTILITY EASEMENT (AS-SURVEYED)

An easement being a portion of that certain tract of land as recorded in Book LR200616, Page 16634 in the Office of the Judge of Probate, Jefferson County, Alabama, lying in the Southwest 1/4, Section 8, Township 18 South, Range 1 West, said County, and being more particularly described as follows:

Commencing at a 1/2" capped rebar found (Weygand) at the northeast corner of the Southeast 1/4 of the Southwest 1/4 of said Section 8; thence run S 89°03'09" W along the north line of said Southwest 1/4 for a distance of 1115.01 feet to a point; thence S 00°56'51" E leaving said north line for a distance of 431.01 feet to a 5/8" capped rebar set (CA-627-LS); thence S 20°57'09" E for a distance of 15.00 feet to a 5/8" capped rebar set (CA-627-LS); thence S 69°02'51" W for a distance of 11.33 feet to the Point of Beginning of an Ingress/Egress and Utility Easement being 30 feet in width and lying 15 feet each side of the following described centerline; thence S 36°33'51" E for a distance of 123.50 feet to a point; thence with a curve turning to the right with a radius of 25.00 feet, an arc length of 41.27 feet, and having a chord bearing of S 10°22'06" W for a chord length of 36.74 feet to a point; thence S 57°39'55" W for a distance of 260.13 feet to a point; thence S 32°17'31" E for a distance of 151.81 feet to a point; thence S 57°42'29" W for a distance of 101.22 feet to a point; thence with a curve turning to the right with a radius of 40.00 feet, an arc length of 59.09 feet and having a chord bearing of N 79°58'06" W for a chord length of 53.87 feet to a point; thence N 37°38'41" W for a distance of 61.29 feet, more or less, to the easterly right-of-way line of Sicard Hollow Road and the Point of Ending. Said above described easement contains 0.55 acres, more or less.

UTILITY EASEMENT (AS-SURVEYED)

An easement being a portion of that certain tract of land as recorded in Book LR200616, Page 16634 in the Office of the Judge of Probate, Jefferson County, Alabama, lying in the Southwest 1/4, Section 8, Township 18 South, Range 1 West, said County, and being more particularly described as follows:

Commencing at a 1/2" capped rebar found (Weygand) at the northeast corner of the Southeast 1/4 of the Southwest 1/4 of said Section 8, thence run S 89°03'09" W along the north line of said Southwest 1/4 for a

distance of 1115.01 feet to a point; thence S 00°56'51" W leaving said north line for a distance of 431.01 feet to a 5/8" capped rebar set (CA-627-LS); thence S 20°57'09" E for a distance of 15.00 feet to a 5/8" capped rebar set (CA-627-LS); thence S 69°02'51" W for a distance of 11.33 feet to a point; thence S 36°33'51" E for a distance of 123.50 feet to a point; thence S 50°01'17" W for a distance of 15.05 feet to the Point of Beginning of a Utility Easement being 10 feet in width and lying 5 feet each side of the following described centerline; thence S 57°39'55" W for a distance of 267.23 feet to a point; thence from said point, said Utility Easement becomes 30 feet in width and lying 15 feet each side of the following described centerline; thence S 75°16'39" W for a distance of 17.19 feet, more or less, to the the easterly right-of-way line of Sicard Hollow Road and the Point of Ending. Said above described easement contains 0.07 acres, more or less.

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

E-Mail: patrickboone@bellsouth.net

May 22, 2024

City Manager Jeffrey D. Downes
Vestavia Hills Municipal Center
P. O. Box 660854
Vestavia Hills, Alabama 35266-0854

In Re: Land Swap Between the City and LPJV in 2024

Dear Mr. Downes:

In connection with the above matter, I forward you copy of Amendment to Memorandum of Lease by and between the City of Vestavia Hills, Alabama ("Landlord") and T-Mobile USA Tower LLC ("Tenant") prepared by attorney, Gail Livingston Mills, who represents Liberty Park Joint Venture ("LPJV").

I approve the Amendment from a legal standpoint and recommend the execution and delivery thereof. It will, therefore, be greatly appreciated if you will put this matter on the Agenda for the City Council meeting scheduled for June 10, 2024 for consideration by the City Council.

I. BACKGROUND INFORMATION

In 2010, the City of Vestavia Hills, Alabama ("City") owned 62.93 acres of unimproved land in the Liberty Park community (the "property").

On November 23, 2010, the City leased 525 square feet of the property to T-Mobile South, LLC for cell tower use, together with a 30-foot easement for ingress/egress. CCTMO LLC ("Crown") serves T-Mobile pursuant to a Limited Power of Attorney.

In March 2024, the City and LPJV concluded a land swap. LPJV conveyed 22.42 acres to the City in exchange for a conveyance by the City of 3.80 acres of the City property to LPJV. It is important to note that the 3.80-acre parcel conveyed by the City to LPJV was part of the 62.93 acres of City property.

Both the City and LPJV were anxious to close the land swap in late March 2024 in order to beat the "bat season." The survey that we had at the time of closing of the swap was only a boundary survey and not an ALTA survey.

May 22, 2024

page 2

II. BASIS FOR RECOMMENDATION

The 3.80-acre parcel conveyed by the City to LPJV in accordance with the land swap needs to be released from the ingress/egress easement. This wasn't discovered until after the land swap was closed. The purpose of the enclosed Amendment will accomplish that.

I discussed this matter with Gail Livingston Mills earlier today. She assures me that Crown as POA for T-Mobile is ready to sign the Amendment. The execution and delivery by the City will clear the title to the 3.80 acres owned by LPJV.

Please call me if you have any questions regarding this legal opinion.

Very truly yours,



Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp

cc: City Clerk Rebecca Leavings (by e-mail)
Gail Livingston Mills, Esq. (by e-mail)