

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of the Supplemental and Amendatory Agreement dated March 6, 1998) and the Amendatory Agreement fully and completely superseded the provisions of Section 6 of the Original Annexation Agreement (but no others); and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 14th day of March, 2022.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

Approved by City Council 3-14-22

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 14th, day of March 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

Approved by City Council 3-14-22

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 _____, 2022, 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 (the “**Allocated Multi-Family Rental Units**”).

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. Of that Multi-Family Density Allowance, Market Rate Rental Units shall not exceed 570 units, consisting of the Allocated Multi-Family Rental Units and up to 270 additional Market Rate Rental Units with no more than 10% of the total additional Market Rate Rental 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 _____, 2022.

Notary Public
My Commission Expires: _____

[SEE NEXT PAGE FOR ADDITIONAL EXECUTION]

Approved by City Council 3-14-22

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 _____, 2022.

Notary Public
My Commission Expires: _____

[SEE NEXT PAGE FOR ADDITIONAL EXECUTION]

Approved by City Council 3-14-22

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 _____, 2022.

Notary Public
My Commission Expires: _____

Approved by City Council 3-14-22