

RESOLUTION NO. 2024-08

A RESOLUTION BY THE MAYOR AND COMMISSIONERS OF THE TOWN OF PERRYVILLE TO APPROVE AN ANNEXATION AGREEMENT ASSOCIATED WITH THE ANNEXATION OF 21.18 ACRES OF LAND, MORE OR LESS, INTO THE CORPORATE LIMITS OF THE TOWN OF PERRYVILLE.

WHEREAS, Noah F. Stephens and Phyllis I. Stephens are the owners (“Owners”) of 21.18 acres, more or less, of real property situate and lying in the Seventh Election District of Cecil County, Maryland, located at 50 Mill Creek Road, by virtue of a Deed dated June 28, 1984, and recorded among the Land Records of Cecil County, Maryland in Liber 121, folio 694 (“the Property”); and

WHEREAS, the Property is depicted on a plat entitled “Annexation Plat Lands of Noah F. Stephens & Phyllis I. Stephens, Joseph A. Ruff, Jr. & Kendall D. Ruff” dated 11-23-23 (signed 03/12/2024), and prepared by Morris & Ritchie Associates, Inc., and described by metes and bounds dated 1/26/2024, and prepared by Morris & Ritchie Associates, Inc.; and

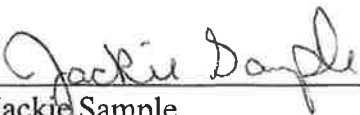
WHEREAS, the owners have submitted a petition for the annexation of the Property into the corporate limits of the Town of Perryville; and

WHEREAS, the Town, and the Owners desire to enter into an Annexation Agreement to set forth terms and conditions under which the Town will annex the Property into the Town.

BE IT HEREBY RESOLVED BY THE MAYOR AND COMMISSIONERS OF THE TOWN OF PERRYVILLE, that the Mayor and Commissioners of the Town of Perryville hereby approve the form of Annexation Agreement attached to this Resolution and authorize the Mayor to execute the Annexation Agreement on behalf of the Town.

ATTEST:

MAYOR AND BOARD OF
TOWN COMMISSIONERS



Jackie Sample,
Town Clerk



Michelle Linkey, Mayor

Date Approved: 7/2/2024

**EXHIBIT C TO ANNEXATION RESOLUTION
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT, hereinafter referred to as "this Agreement", entered into this 5th day of March, 2024, by and between **TOWN OF PERRYVILLE**, a municipal corporation of the State of Maryland, hereinafter referred to as "the Town", party of the first part; and **50 MILL CREEK, LLC**, hereinafter referred to as "Mill Creek", party of the second part, and **NOAH F. STEPHENS** and **PHYLLIS I. STEPHENS**, , hereinafter collectively referred to as "Owners," parties of the third part.

EXPLANATORY STATEMENT: Owner has filed a Petition for Annexation with the Town in accordance with the provisions of the Local Government Article of the Maryland Annotated Code. This Petition requests the Town to annex into the corporate limits of the Town the real property that adjoins and is contiguous to the existing corporate limits of the Town consisting of 21.17 acres of land, more or less, described on Exhibit A and depicted on Exhibit B, both of which are attached to this Agreement and incorporated by reference. This 21.17 acre, more or less, parcel of land is referred to in this Agreement as "the Tract." Mill Creek is the contract purchaser of the Tract from Owners.

The Town, Mill Creek and Owners desire to enter into an agreement to establish certain terms, circumstances and conditions upon which the Town agrees to annex the Tract into the corporate limits of the Town and which will be applicable to the Tract after the annexation becomes effective. The provisions of this Agreement are in addition to any other terms and conditions that may be set forth in a resolution of the Town Mayor and Commissioners providing for the annexation of the Tract and any other Town ordinances, rules and regulations that may be applicable to the development and use of the Tract after it is annexed into the Town.

Now, therefore,

WITNESSETH, that for and in consideration of the mutual promises and covenants hereinafter set forth, and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Annex.

The Town's Mayor and Commissioners agree to enact a Resolution approving the annexation of the Tract into the corporate limits of the Town, subject to the terms and conditions set forth in this Agreement and any other terms and conditions contained in the Annexation Resolution.

2. Condition Precedent.

The obligations of Mill Creek and Owners, and the rights, restrictions and conditions upon the development and use of the Tract after annexation, all as hereinafter set forth, are contingent upon the enactment of the Annexation Resolution by the Town's Mayor and Commissioners, and the taking effect of such Resolution.

3. Use Criteria and Restrictions for the Tract.

a. Unless otherwise agreed by the Town's Mayor and Commissioners by Resolution, the Tract shall be developed as an integrated development and used for a residential community consisting of not more than 61 single-family detached dwellings (one existing dwelling and 60 newly constructed dwellings), associated open space and recreational areas, storm drainage facilities and roads.

b. The Tract shall be developed and used in accordance with all applicable Town, Cecil County and State development laws, regulations, processes and procedures in effect from time to time.

4. Water and Sewer Service.

a. The Town agrees to provide Town water and sewer service to accommodate development of the Tract at generally applicable rates, and pursuant to conditions generally applicable to other properties within the Town, if and when all components of the Town's water and sewer systems (including, but not limited to collection, distribution, production and treatment systems, lines and facilities) have sufficient capacity and operational capability to provide such service to the Tract, and the provision of Town water and sewer service to the Tract is authorized by the Cecil County master water and sewer facilities plan. Mill Creek and Owners agree that the annexation of the Tract and the entering into this Agreement do not obligate the Town to construct or install any new water or sewer lines or facilities, or upgrade or expand the Town's existing water and sewer lines and facilities, in order to provide service to or accommodate development of the Tract. Notwithstanding the foregoing provisions of this Paragraph 4.a., the Town shall not be obligated to provide water or sewer service to the Tract at any time that the Town is prevented from doing so by moratorium or other action of another governmental agency.

b. Mill Creek and Owners, at Mill Creek and Owners' sole cost and expense, shall acquire all necessary rights-of-way and construct, install, upgrade and expand, in accordance with plans approved by the Town, all on-site and off-site public water and sewer lines and facilities (including sewage pumping stations), other than the Town's water treatment plant and wastewater treatment plant, that may be necessary to provide Town water and sewer service to and for the Tract. Mill Creek and Owners also agree to undertake any such construction, installation, upgrade and expansion necessary to provide Town water and sewer service to and for the Tract in accordance with the laws, rules, regulations, policies, specifications, standards and approvals (including State and County if any), existing or required at the time of construction, including any

applicable recoupment agreements. Notwithstanding anything to the contrary herein, Mill Creek and Owners shall not be obligated to undertake any construction, installation, upgrade and/or expansion necessary for any future development not contained within the Tract.

c. In order to determine what construction, installation, upgrade and expansion of the Town's water and sewer systems will be required for Mill Creek and Owners to undertake in order for the Town to furnish water and sewer service to accommodate development of the Tract, KCI Technologies prepared at Mill Creek's cost and expense, and submitted to the Town, a study of the Town's water and sewer systems. Mill Creek and Owners agree to provide an update or updates to such study as requested by the Town. Any updates shall be in such form and contain such information as may be required by the Town, and shall be subject to review and approval by the Town. Any updates shall be prepared and submitted to the Town at such time during the process for approval of the development of the Tract as the Town shall require.

d. The construction, installations, upgrades and expansions necessary to provide Town water and sewer service to and for the Tract required by this Paragraph 4 are supplementary to any water and sewer facilities that Mill Creek and Owners will be required to install under the Town's Subdivision and Adequate Public Facilities Regulations. Any security given to the Town to secure Mill Creek's and Owners' performance of their water and sewer public works obligations in connection with subdivision approval for the Tract shall contain a sufficient amount to provide security for any construction, installations, upgrades and expansions under this Paragraph 4.

e. In addition to the installation of other water facilities as may be required to serve development of the Tract, Mill Creek and Owners agree to install, at their expense, a looped water system as recommended by the water study prepared by KCI Technologies. The

looped water system shall be designed and developed to provide redundancy to the provision of water to the Tract and nearby properties served, or to be served, by the Town's municipal water system.

f. Mill Creek, Owners and the Town agree to cooperate to apply for and obtain any amendments to the Cecil County master water and sewer facilities plan as may be required to enable the Town to provide Town water and sewer service to the Tract, and to enable Mill Creek and Owners to undertake the water and sewer facilities improvements contemplated by this Paragraph 4.

5. Off-site Road Improvements.

a. Mill Creek and Owners agree to undertake construction, installations or improvements of off-site Town, Cecil County and State streets, roads and intersections as reasonably may be required to safely accommodate traffic to be generated from development of the Tract, as determined by the Town, Cecil County, or the State Highway Administration, during the approval process for the development of the Tract. In particular, and without limitation, Mill Creek and Owners agree to work with the State Highway Administration, as the Administration may require, to evaluate the safety of the use of the existing cross-over of U.S. Route 40 by westbound traffic from Mill Creek Road.

b. In order for the Town, Cecil County and the State Highway Administration to determine what construction, installations or improvements of off-site Town, Cecil County and State streets, roads and intersections will be required to accommodate traffic to be generated from development of the Development Parcel, Mill Creek has had prepared, at its sole cost and expense, and furnished to the Town, a traffic impact study of nearby streets, roads and intersections. The traffic impact study shall be subject to review and approval by the Town, Cecil County and the

Maryland State Highway Administration. Mill Creek and Owners agree to provide an update or updates to such study as requested by the Town. Any updates shall be in such form and contain such information as may be required by the Town, County or State Highway Administration, and shall be subject to review and approval by the Town. Any updates shall be prepared and submitted at such time during the process for approval of the development of the Tract as the Town shall require.

c. The construction, installations, upgrades and expansions required by this Paragraph 5 are supplementary to any road construction, installation or improvements that Mill Creek and Owners will be required to undertake under the Town's Subdivision and Adequate Public Facilities Regulations. Any security given to the Town to secure Mill Creek's and Owners' performance of their road public works obligations in connection with subdivision approval for the Tract shall contain a sufficient amount to provide security for any construction, installations or improvements under this Paragraph 5.

6. Applicability of Town Laws.

After the annexation of the Tract becomes effective, the Tract and any and all persons who hereafter may reside on the Tract, shall be subject to the Charter and all laws, rules and regulations of the Town, and shall be subject to taxation by the Town, as all generally are applicable to property and residents of the Town, subject to the terms and conditions of this Agreement.

7. Payment of Annexation Costs and Expenses.

a. Mill Creek shall pay to the Town all costs and expenses of the Town associated with the annexation of the Tract. These costs and expenses include, but are not limited to attorney's fees, engineering and planning consulting fees and expenses, publication costs, recording fees, and costs and expenses associated with any referendum election that may be required to be

conducted on the annexation. Mill Creek and the Town entered into a Professional Services Agreement dated June 9, 2023, by which Mill Creek deposited in escrow with the Town the sum of \$50,000 to pay such costs and expenses.

b. Before the Town Mayor and Commissioners take any action on a Resolution to annex the Tract all costs and expenses incurred by the Town in connection with the annexation proceeding shall be deducted from such escrowed funds, or from such other funds as may be authorized pursuant to the Professional Services Agreement. Within thirty (30) days after the conclusion of all annexation proceedings, including any referendum on the annexation as may be petitioned, the Town shall refund to Mill Creek any monies paid in excess of the Town's actual costs and expenses associated with the annexation proceeding, including any referendum. Mill Creek shall pay to the Town, within 30 days after demand by the Town, the difference between monies previously paid by Mill Creek and the Town's actual costs and expenses associated with the annexation proceeding and any referendum. The Town shall have no obligation to process any development approval requests for the Tract until the obligations of this Section 7(b) are satisfied in full.

8. Notices.

Any notice required to be given pursuant to this Agreement shall be given in writing by postage prepaid certified mail, return receipt requested, or by commercial delivery service (*e.g.*, FedEx, UPS, DHL) with delivery confirmed, to the parties at the following addresses, or at such other address as one party may provide to the other by written notice in the manner required by this paragraph:

As to the Town:

Town of Perryville
c/o Town Administrator

515 Broad Street
P.O. Box 773
Perryville, Maryland 21903

With a copy to:

Frederick C. Sussman, Esquire
1388 Rosebay Court
Annapolis, Maryland 21409

As to Mill Creek:

50 Mill Creek, LLC
c/o Chad Johnston, Member
316 Main Street
Rising Sun, Maryland 21911

With a copy to:

Dwight Thomey, Esquire
Baker, Thomey & Emrey, P.A.
153 E. Main Street
Elkton, Maryland 21921

As to Owners:

Noah F. Stephens and Phyllis I. Stephens
50 Mill Creek Road
Perryville, Maryland 21903

9. Noncontestability of Agreement.

The parties agree not to challenge or contest, and waive any right to challenge or contest, in any legal or equitable proceeding, in any forum whatsoever, the validity, legality or enforceability of this Agreement or any or all of its provisions, terms or conditions.

10. Agreement Constituting Covenants Running With the Land.

Mill Creek and Owners hereby declare that, from and after the date of this Agreement, and subject to the satisfaction of the condition precedent specified in Paragraph 2 above, the Tract shall be held, conveyed, encumbered, sold, leased, rented, used, occupied and improved subject to such

covenants, conditions, restrictions, use limitations, easements, obligations and equitable servitudes as are set forth in this Agreement, all of which covenants, conditions, restrictions, use limitations, easements, obligations, and equitable servitudes shall be deemed to run with and bind to the land and be binding on Owners and Mill Creek, their heirs, personal representatives, successors and assigns, and shall not be construed merely as personal obligations or covenants of Owners and Mill Creek, and shall be for the benefit of the Town, its successors and assigns, and enforceable by it at law or in equity.

11. Enforcement.

a. If any covenant, condition, restriction, provision, obligation or term of this Agreement which is the responsibility of Mill Creek or Owners to fulfill is not satisfied within the time specified in this Agreement, time being of the essence, the Town may refuse to accept or process applications for, and issue or grant, any further building permits, use permits, occupancy permits, subdivision approvals, site plans or other permits or approvals required for any development or construction on any portion of the Tract, and Mill Creek and Owners waive their rights to compel or require the Town to accept, process, issue or grant any such applications, permits or approvals, until has satisfied the particular covenant, condition, restriction, provision, obligation or term of this Agreement.

b. Any monies not paid when due to the Town by Owners or Mill Creek as required by this Agreement, or if no due date is specified within 30 days after demand by the Town, shall bear interest on the unpaid amount at the rate of ten percent (10%) per annum from the due date or date of demand until paid.

c. The remedies and limitations set forth in Paragraph 11.a. and b. are in addition to, and not in lieu of, any other rights and remedies available to the Town, and to any other

person to be benefited by any provision or term of this Agreement, under this Agreement, in law or equity.

12. Governing Law.

This Agreement is being executed and delivered, and is intended to be performed, in the State of Maryland, and shall be interpreted, construed and enforced in accordance with the laws of such State without regard to those principles governing conflicts or choice of laws.

13. Gender Based Terminology.

In construing this Agreement, feminine, gender neutral or plural nouns and pronouns shall be substituted for those masculine or singular in form, and vice versa, in any place in which the context so requires.

14. Agreement Prepared by All Parties.

This Agreement has been prepared by all parties hereto, and the language used in this Agreement shall not be construed in favor of or against any particular party or parties.

15. Explanatory Statement Material.

The provisions stated and contained in the EXPLANATORY STATEMENT above are intended to be a material part of this Agreement and are not merely prefatory in nature.

16. Entire Understanding.

This Agreement contains the entire understanding of the parties and there are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

17. Scope of Agreement.

All of the promises, stipulations, obligations, covenants, terms, conditions, restrictions, use limitations, equitable servitudes, easements and agreements herein contained shall inure to the

benefit of and shall apply to, bind, and be obligatory upon the parties hereto and the successors and assigns of each whether so expressed or not.

18. Modification of Agreement.

a. This Agreement shall be modified, amended, supplemented or rescinded only in the manner set forth in this Paragraph 18, unless other requirements are expressly provided by law.

b. A modification, amendment, supplementation or rescission of this Agreement shall be effective only if it is made in writing, is executed with the same formality as this Agreement, states the date of the public hearing referred to in subparagraph 18.c., and is recorded among the Land Records of Cecil County, Maryland.

c. A modification, amendment, supplementation or rescission of this Agreement shall not be effective unless approved by the Mayor and Commissioners of Perryville after a public hearing first has been held before the Mayor and Commissioners, notice of which public hearing has been given by publication at least once a week for two successive weeks in a newspaper of general circulation in the Town, the last such publication being not less than five nor more than ten days before the public hearing. The notice shall include the date, time, place and purpose of the public hearing, sufficient to advise the public of the nature of the proposed modification, amendment, supplementation or rescission.

20. Severability.

If any provision of this Agreement is held to be invalid or unenforceable, all other provisions hereof shall nevertheless continue in full force and effect.

21. Time of Essence.

Time is of the essence in this Agreement, and of the performance of all obligations under this Agreement.

22. Attorney's Fees Upon Breach.

If Mill Creek or Owners breach any part of this Agreement, the breaching party shall pay the reasonable attorney's fees, court costs, cost of suit, and expenses incurred by the prevailing party in enforcing the provisions of this Agreement with respect to said breach or in obtaining damages therefor.

23. Effect of Waiver on Breach.

The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of such breach by any other party, as an amendment of this Agreement, or as a waiver of any subsequent breach of the same or any other provision of this Agreement by waiving party or by any other party hereto.

24. Recordation of Agreement.

Upon enactment of the Annexation Resolution, the Town shall record this Agreement, at the expense of Mill Creek, among the Land Records of Cecil County, Maryland.

25. Duplicate Counterparts.

This Agreement may be executed by the various parties on several separate counterparts hereof, all of which shall together be valid and fully binding upon the parties hereto notwithstanding the fact that the undersigned parties may not have signed the same counterpart.

IN WITNESS WHEREOF, and as of the day and year first hereinabove written, the parties hereto have affixed below their respective signatures and seals to multiple counterparts of this Agreement, any of which shall be deemed to be an original.

ATTEST:

50 MILL CREEK, LLC

Duke D. ...

By: A. Chad Johnston (SEAL)
Chad Johnston, Member

WITNESS:

[Signature]

Noah F. Stephens (SEAL)
Noah F. Stephens

WITNESS:

[Signature]

Phyllis I. Stephens (SEAL)
Phyllis I. Stephens

ATTEST:

TOWN OF PERRYVILLE

Jackie Sample
Jackie Sample, Town Clerk

By: Michelle Linkey (SEAL)
Michelle Linkey, Mayor

STATE OF MARYLAND, CECIL COUNTY, to wit:

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that on this 3rd day of 2024, appeared MICHELLE LINKEY, MAYOR OF THE TOWN OF PERRYVILLE, known to me or satisfactorily proven to me to be the person whose name is subscribed to the within Annexation Agreement, and said person acknowledged that, being authorized to do so, he executed the within Annexation Agreement as Mayor on behalf of the Town of Perryville for the purposes therein contained.

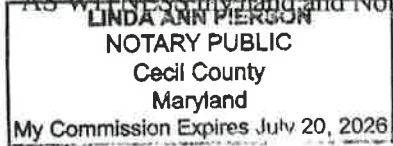
AS WITNESS my hand and Notarial Seal.

Jackie Sample
Notary Public
My Commission Expires: 10/27/2024

STATE OF MARYLAND, Cecil COUNTY, to wit:

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that on this 5th day of March, 2024, appeared CHAD JOHNSTON, known to me or satisfactorily proven to me to be a member of 50 MILL CREEK, LLC, and the person whose name is subscribed to the within Annexation Agreement, and said person acknowledged that, being authorized to do so, he executed the within Annexation Agreement as Member of 50 Mill Creek, LLC, to be the act of said limited liability company for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.



Linda Ann Pierson
Notary Public
My Commission Expires:

7:00 PM 5/15

STATE OF ~~MARYLAND~~ Tennessee, Knox COUNTY, to wit:

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that on this 5th of March, 2009, appeared NOAH F. STEPHENS, known to me or satisfactorily proven to me to the person whose name is subscribed to the within Annexation Agreement, and said person acknowledged the within Annexation Agreement to be said person's act for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Madison Z
Notary Public
My Commission Expires: 11/30/27

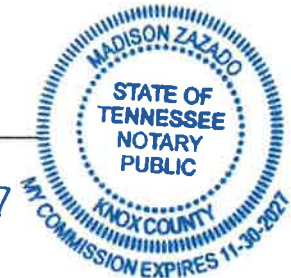


STATE OF Tennessee, Knox COUNTY, to wit:

I, the undersigned, a Notary Public in and for the State and County aforesaid, do hereby certify that on this 5th of March, 2024, appeared PHYLLIS I. STEPHENS, known to me or satisfactorily proven to me to the person whose name is subscribed to the within Annexation Agreement, and said person acknowledged the within Annexation Agreement to be said person's act for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Madison Z
Notary Public
My Commission Expires: 11/30/27



AFTER RECORDING RETURN TO:

George Patchell, Town Administrator
Town of Perryville
515 Broad Street
P.O. Box 773
Perryville, Maryland 21903

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS



**Particular Description
21.1719 Acre Parcel of Land
Lands of Noah F. & Phyllis I. Stephens
Seventh Election District – Cecil County, Maryland**

Beginning for the same at a point located on or near the centerline of Millcreek Road (18' paving width), said point being also located at the beginning of the first or North 23°59'20" West, 528 foot line of lands described in deed dated June 28, 1984 from Fannie Mayberry and Hazel M. Price to Noah F. Stephens and Phyllis I. Stephens and recorded among the Land Records of Cecil County, Maryland in Liber N.D.S. 121, folio 694

Thence leaving said point and running with and binding on the first line of the aforementioned deed, as now surveyed, referring all courses of this description to the meridian of the Maryland Coordinate System (NAD '83/91)

1. **North 28 degrees 00 minutes 12 seconds West, 528.05 feet** to a point on or near the centerline of the aforementioned Millcreek Road;

Thence leaving Millcreek Road and running with and binding on the second through fourth lines of the aforementioned deed and also running with and binding, in part, on the Corporate Limits of the Town of Perryville, the following three (3) courses and distances, viz:

2. **North 36 degrees 53 minutes 42 seconds East, passing over a 1" iron pipe found at 18.22 feet, in all, 1021.79 feet** to a 1" iron pipe found;
3. **South 80 degrees 32 minutes 41 seconds East, 1024.92 feet** to a point; and
4. **South 51 degrees 06 minutes 52 seconds West, 825.74 feet** to a concrete monument found;

Thence running with and binding on the fifth line of the aforementioned deed

5. **South 50 degrees 53 minutes 02 seconds West, passing over a pipe found at 920.78 feet, in all, 945.71 feet** to the point and place of beginning.

Containing an area of 922,248 square feet or 21.1719 acres of land, more or less.

3445-A Box Hill Corporate Center Drive, Abingdon, MD 21009 (410) 515-9000 Fax: (410) 515-9002 www.mragta.com

Abingdon, MD ♦ Baltimore, MD ♦ Laurel, MD ♦ Towson, MD ♦ Georgetown, DE ♦ New Castle, DE ♦ Purcellville, VA ♦ Raleigh, NC ♦ Orlando, FL
(410) 515-9000 (443) 490-7201 (410) 792-9792 (410) 821-1690 (202) 855-6734 (302) 326-2200 (703) 994-4047 (984) 200-2103 (407) 317-6288

EXHIBIT A

Re: 21.1719 Acre Parcel of Land
January 26, 2024
Page 2 of 2

Being all of those lands as described in deed dated June 28, 1984 from Fannie Mayberry and Hazel M. Price to Noah F. Stephens and Phyllis I. Stephens and recorded among the Land Records of Cecil County, Maryland in Liber N.D.S. 121, folio 694.

I hereby certify that this legal description was prepared by me or under my direct supervision and in in compliance with COMAR 09.13.06.08. License expires 9/18/2024.

