

RESOLUTION NO. 22-157

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into an agreement between the City of Huntsville and Chase Creek, L.L.C., and related improvements, in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said contract is substantially in words and figures similar to that document attached hereto and identified as "Detention Facilities Maintenance Agreement between the City of Huntsville and Chase Creek, L.L.C.", consisting of a total of seven (7) pages plus three (3) additional pages including Exhibit "A", and the date of March 10, 2022, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 10th day of March, 2022.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 10th day of March, 2022.

Mayor of the City of Huntsville,
Alabama

STATE OF ALABAMA)
)
COUNTY OF MADISON)

**DETENTION FACILITIES
MAINTENANCE AGREEMENT**

This Detention Facilities Maintenance Agreement ("Agreement"), made and entered into this 21st day of January, 2022 by and between Chase Creek, LLC (the "Owner") and The City of Huntsville, Alabama (the "City").

WITNESSETH:

WHEREAS, Owner is the owner of that certain tract of land in Madison County, Alabama, more particularly described on Exhibit A attached hereto and incorporated by this reference (the "Owner Property") upon which Owner intends to construct residential apartments and related improvements (the "Development"); and

WHEREAS, Owner has submitted plans (the "Plans") to the City as a part of Owner's permitting process for construction of the Development, which plans evidence that Owner shall construct certain stormwater detention and retention facilities, which may include but not be limited to swales, berms, pipes, and related appurtenances, upon the Owner Property (the "Detention Facilities");

WHEREAS, the City has requested that Owner enter into this Agreement to provide for the maintenance of the Detention Facilities;

NOW, THEREFORE, for Ten and 00/100 Dollars and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Maintenance and Detention Facilities. Owner agrees to construct the Detention Facilities in accordance with the Plans, except as the same may be modified with the consent of the City, and to maintain the Detention Facilities in good working order acceptable to the City Engineering Department. Upon Owner's failure to perform such maintenance obligations, the City shall have the right but not the obligation to perform the same pursuant to the easement granted in Section 2 below and shall have the right to receive reimbursement from Owner for the costs of such maintenance as set forth in Section 3 below.

President of the City Council of
the City of Huntsville, Alabama
Date: March 10, 2022

2. Grant of Easement. Owner does hereby grant, bargain, sell and convey unto the City, its successors and assigns, a permanent and perpetual, non-exclusive easement in and to that portion of the Owner Property as may be required for the City to perform inspection of the Detention Facilities whenever deemed necessary and to perform maintenance of the Detention Facilities if at any time Owner, after notice and opportunity to cure if notice and opportunity to cure are required as set forth in Section 5 hereof, fails to maintain the Detention Facilities in accordance with Section 1 hereof; provided, however, that in the exercise of such easement rights, the City shall use its best efforts to minimize any disruption to Owner's Apartments and the residents thereof.

3. Maintenance Costs. In the event Owner, after notice and opportunity to cure if notice and opportunity to cure are required as set forth in Section 5 hereof, fails to perform its maintenance obligations pursuant to Section 1 hereof and the City performs such maintenance of the Detention Facilities after such failure, Owner agrees to promptly reimburse the City for all reasonable costs incurred by the City in maintaining the Detention Facilities.

4. Indemnity/Liability. Owner hereby agrees to indemnify and hold harmless and does indemnify and hold harmless the City, its successors and assigns, and their respective present and future officials, officers, boards, commissions, employees, agents, attorneys, contractors, and subcontractors from and against any and all claims, actions, judgments, damages, fines, costs, liabilities, interest or losses (including reasonable attorneys' fees and expenses and court costs and fees), together with all costs and expenses of any kind or nature, which arise directly or indirectly from Owner's intentional or negligent acts, either sole or concurrent, with respect to the use or maintenance of the Detention Facilities and any other obligations imposed upon the Owner under the terms of this Agreement (including the intentional or negligent acts, either sole or concurrent, of Owner's employees, agents, contractors, subcontractors, tenants, subtenants, invitees, licensees, transferees, successors and assigns).

In no event shall the City, its successors and assigns, and their respective present and future officials, officers, boards, commissions, employees, agents, attorneys, contractors, and subcontractors (collectively referred to hereafter for purposes of this paragraph as "City") be liable to the Owner, its employees, agents, contractors, subcontractors, tenants, subtenants, invitees, licensees, transferees, successors and assigns, for any act or omission of the City in the event the City performs the maintenance obligations imposed on the Owner under the terms of this Agreement and Owner shall indemnify and hold harmless the City for same in accordance with the provisions of this paragraph 4.

Nothing contained in this paragraph 4 shall be construed as a waiver of any immunity of statutory protection of the City and no third party may expand any recovery against the City due to the Owner's duty of indemnification.

5. Notice and Cure. Notwithstanding anything to the contrary contained herein, the City shall not exercise any of its rights pursuant to Section 2 or Section 3 above

until the City has provided written notice of Owner's failure to perform its obligations hereunder as set forth herein and Owner has had thirty (30) days in which to cure such failure; provided, however, in the event there is an immediate threat to the health or safety of the public or to public property, then the City shall not be required to give Owner notice or an opportunity to cure. All notices and communications required, necessary or desired to be given to Owner pursuant to this Agreement, including a change of address for purposes of such notices and communications, shall be in writing and shall be given by personal delivery, overnight commercial courier, facsimile transmission or by United States mail, certified, return receipt requested, postage prepaid and addressed as follows:

OWNER: Chase Creek, LLC
174 Lo Ann Lane
Huntsville, AL 35811
TELEPHONE: (256)585-0800
FAX : None

or to the then-current owner of the Owner Property, as recorded in the County Tax Assessors Office where the property lies.

6. Representations. Each party represents and warrants that it has the full right, power and authority to enter into, execute and deliver this Agreement and to convey the aforesaid easements and related rights and to be bound hereby and hereto.

7. Estoppel Certificate. The City agrees that it will, within sixty (60) days of receipt of written request by Owner, execute and deliver any estoppel certificate reasonably requested by Owner, for the benefit of Owner's mortgagee or prospective assigns, certifying that, to the best of the City's knowledge, information and belief, no amounts are due and owing under this Agreement and the Owner is in compliance with all of its obligations hereunder. Such written request shall be sent by personal delivery, overnight commercial carrier, or by U.S. Mail, certified, return receipt requested, postage prepaid and addressed as follows:

City Engineer
City of Huntsville
320 Fountain Circle
Huntsville, Alabama 35801

With a copy to:

City Attorney
City of Huntsville
308 Fountain Circle
Huntsville, Alabama 35801

8. Non-Waiver. Failure of the City to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Agreement or to exercise any of its

rights hereunder shall not waive such rights, but the City shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

9. Successors and Assigns. This Agreement is a covenant running with the land/Owner Property and shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns, and shall pass with the conveyance of all or any portion of such property, whether specifically referred to or not.

10. Choice of Law. Any and all disputes arising out of this agreement shall be governed, construed and enforced in accordance with the laws of the State of Alabama. All actions related to the validity, construction, interpretation and enforcement of this agreement shall be instituted and litigated in the courts of Alabama. Owner submits to the jurisdiction of the courts of Alabama located in Madison County, Alabama.

11. Entire Agreement. This Agreement contains the sole and entire agreement of the parties with respect to matters contemplated hereunder, and no representations, inducement, promise or agreement, oral or written, between Owner and the City and not incorporated herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by Owner and the City.

12. Running With Land. The easement contained herein shall run with the land as a burden to the Owner Property, and shall pass with the conveyance of all or any portion of such property, whether specifically referred to or not.

13. Severability. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement.

[Signatures appear on following pages.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal and delivered as of the date first above written.

Chase Creek, L.L.C., an
Alabama limited liability company
Owner

By: Forest R. Knowles
Forest R. Knowles, Managing Member

By: John A. Hayden
John A. Hayden, Managing Member

STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned Notary Public, in and for said County and State, hereby certify that Forest R. Knowles, whose name as Managing Member of Chase Creek, L.L.C., is signed to the foregoing Detention Facilities Maintenance Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of this Detention Facilities Maintenance Agreement, he, as such officer, and with full authority, executed the same voluntarily for and as the act of the said limited liability company, as of the day the same bears date.

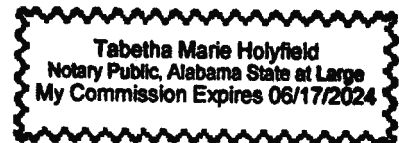
Given under my hand and official seal this 21st day of January,
2022.

My Commission Expires:

06/17/2024

Tabetha Marie Holyfield
NOTARY PUBLIC
State of Alabama
County of Madison [SEAL]

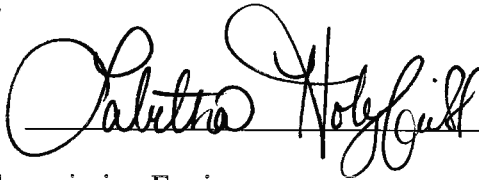
[Signatures continued on following page]



STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned Notary Public, in and for said County and State, hereby certify that John A. Hayden, whose name as Managing Member of Chase Creek, L.L.C., an Alabama limited liability company, is signed to the foregoing Detention Facilities Maintenance Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of this Detention Facilities Maintenance Agreement, he, as such Managing Member, and with full authority, executed the same voluntarily for and as the act of the said limited liability company, as of the day the same bears date.

Given under my hand and official seal this 21st day of January, 2022.



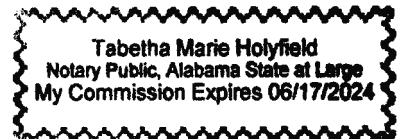
NOTARY PUBLIC
State of Alabama
County of Madison

My Commission Expires:

06/17/2024

[SEAL]

[Signatures continued on following page]



CITY:

THE CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle
Its: Mayor

ATTEST:

Kenneth Benion
City Clerk-Treasurer

STATE OF ALABAMA

COUNTY OF MADISON

Before me, the undersigned, a Notary Public in and for said County in said State, personally appeared Tommy Battle, whose name as Mayor of the City of Huntsville, Alabama, and Kenneth Benion, whose name as Clerk-Treasurer of the City of Huntsville, Alabama, are signed to the foregoing Detention Facilities Maintenance Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of said Detention Facilities Maintenance Agreement, they, as such officers and with full authority executed the same voluntarily for and as the act of said City of Huntsville, Alabama as the day the same bears date.

GIVEN under my hand and seal this _____ day of _____, 2022.

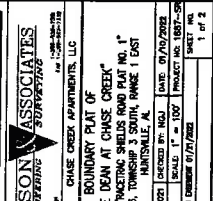
Notary Public
My Commission expires: _____

This instrument prepared by:
Matthew S. Hale
Wallace Jordan Ratliff & Brandt, LLC
800 Shades Creek Parkway, Suite 400
Birmingham, AL 35209
(205) 870-0555

EXHIBIT "A"

LEGAL DESCRIPTION

LOT 2 OF RACETRAC SHIELDS ROAD PLAT NO. 1, AS RECORDED IN PLAT BOOK 2022, PAGE 1, IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA.



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WAFES DOKKER
CITY OF BIRMINGHAM, ALABAMA

Agreed Upon 11/27/2002

FCATE

"THE DEAN AT CHASE CREEK" LOT 2 OF "RACETRACK SHELLS ROAD PLAT NO. 1" SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST HUNTSVILLE, ALA.		CHECKED BY: NGJ DATE: 01/01/2002 SCALE: 1" = 100' DATE: 01/01/2002	PROJECT NO. 1887-SH SHEET NO. 1 of 2
FIELD DATE: 08/28/2001 DRAWN BY: MLO REV. #1: 08/28/01 L&B CHANGES		DATE: 01/01/2002	

[illegible]

1. **Florida Building Code (FBC) and the Florida Building Code (FBC) and the Florida Building Code (FBC)** are the primary codes governing the construction of buildings in the state of Florida. The FBC is published by the Florida Building Code Council (FBC Council) and is updated annually. The FBC Council is a non-profit organization that is composed of representatives from the building industry, government, and academia. The FBC Council's mission is to develop and maintain a code of practice for the building industry that is based on the latest research and technology. The FBC Council's code is the basis for the building code in every city and county in the state of Florida. The FBC Council's code is the basis for the building code in every city and county in the state of Florida.
2. **Florida Building Code (FBC) and the Florida Building Code (FBC) and the Florida Building Code (FBC)** are the primary codes governing the construction of buildings in the state of Florida. The FBC is published by the Florida Building Code Council (FBC Council) and is updated annually. The FBC Council is a non-profit organization that is composed of representatives from the building industry, government, and academia. The FBC Council's mission is to develop and maintain a code of practice for the building industry that is based on the latest research and technology. The FBC Council's code is the basis for the building code in every city and county in the state of Florida. The FBC Council's code is the basis for the building code in every city and county in the state of Florida.

1. NATANA C. JOHNSON, THE LAND SURVEYOR OF RECORD HEREBY CERTIFY THE FOLLOWING:

1. THE NORTH SECTION IS BASED ON CROWN MAPS, MATTHEWS' CROWN MAP OF ALABAMA (LATE 1800s) AND THE STATE PLATTE PUBLIC LAND SURVEY OF 1891. (DETERMINED BY GPS COORDINATES);

2. THE WIDTH OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY REPRESENTS THE TRUE AND CORRECT LOCATION OF THE LAND SURVEYING IN THE STATE OF ALABAMA AS ADOPTED BY THE ALABAMA SURVEYING AND MAPPING ACT.

Professional Land Surveyor

Natana C. Johnson

NATANA C. JOHNSON, A.L.S. NO. 18800

(Signature of Natana C. Johnson)

