

## **ORDINANCE NO: 22-**

**BE IT ORDAINED** by the City Council of the City of Huntsville, Alabama as follows:

**Section 1.** Chapter 12, Environmental Management, of the Code of Ordinances of the City of Huntsville, Alabama (“City”) is hereby amended by adding the following Article VIII:

### **ARTICLE VIII. – MAINTENANCE AREAS**

#### **DIVISION 1. – PLATTED LANDS**

##### **Sec. 12-500. – Coverage; findings; purpose.**

(a) *Coverage.* This division is intended to govern lands that require final plat or boundary plat approval pursuant to the Subdivision Regulations of the Planning Commission of the City of Huntsville, Alabama.

(b) *Findings and purpose.*

(1) In connection with lands that are to be platted in accordance with the Subdivision Regulations of the Planning Commission of the City of Huntsville, Alabama, there are areas within a subdivision/development that will contain certain private improvements, infrastructure, systems, facilities, features, amenities or areas, which are dependent upon private maintenance, which if not properly performed would negatively impact upon the public health, safety, morals and general welfare, including those of the general public as well as the residents and occupants of the subdivision/development. The city is desirous of establishing a maintenance agreement as a means to facilitate the performance of the private maintenance obligations for a subdivision/development and a means whereby the city may, but is not obligated to, perform what would otherwise be private responsibilities, and to receive reimbursements therefor so as to prevent the expenditure of municipal funds so as to prevent burdening the general taxpayers with the cost of said maintenance.

(2) Section 10.4 of The Zoning Ordinance of the City of Huntsville, Alabama, concerning private streets and private subdivisions, as one of the conditions for approval, requires in section 10.4.3. the following: “Adequate provision must be made, as shown on the approved plan, for maintenance of private streets, private accessways and common areas to the standard practiced in the city for maintenance of public streets and areas by use of a homeowners association or other agreement approved by the city attorney.” The city is desirous of establishing a maintenance agreement that fulfills said condition for approval.

(3) As a condition of final plat or boundary plat approval, section 2.11 of the City of Huntsville Stormwater Management Manual requires private owners to enter into an agreement with the city in order to perform, or provide for, certain long-term maintenance obligations in connection with the post-construction stormwater management program plan. The city is desirous of establishing a maintenance agreement that will satisfy said requirement.

**Sec. 12-501. – Definitions.** The following words, terms, and phrases, when used in this division shall have the following meanings ascribed to them in this section, unless the context clearly indicates a different meaning.

*Maintenance area* means and refers to each of the following:

- a. In the case of a multiple lot (i.e. two lots or more) subdivision/development, which includes private subdivisions: Common areas for the common benefit, enjoyment or use of owners, occupants or guests of lands contained within the subdivision/development, which common areas include those designated on the plat as “Common Area”, “Common Property”, or other similar words to that effect;
- b. In the case of a single lot subdivision/development that is developed, whether at the time of final/boundary platting or sometime thereafter, as a residential condominium development: Exterior common elements, including access ways, for the benefit of the condominium unit owners, whether or not such common elements are designated on the plat as “Common Elements”;
- c. In the case of a multiple lot or single lot (residential or non-residential leaseholds or condominiums) subdivision/development: Areas that are or will be designated on the final/boundary plat as “Private Detention Area”, “Private Stormwater Management Area”, or similar words to that effect, or areas that otherwise contain private drainage improvements or features that are subject to post-construction stormwater management controls, that will not be or are not within a public easement in favor of the city or will not be or are not dedicated to and accepted by the city as public; and
- d. In the case of private subdivisions: Private rights-of-way, access-ways, streets, and alleys, inclusive of islands thereupon or within; and
- e. Additional areas dedicated, denominated or used as a maintenance area for the subdivision/development or any other real property, after the lands have been final/boundary platted.

*Post-construction stormwater management controls* mean and refer to post-construction stormwater management structural and non-structural controls, and a schedule for periodic inspections, required in accordance with the city’s Stormwater Management Manual, as such may be superseded or amended from time to time.

*Private subdivision* means and refers to a subdivision/development that is subject to the provisions of section 10.4 of the Zoning Ordinance of the City of Huntsville, Alabama, (“Zoning Ordinance”) as such section may be amended at any time and from time to time.

*Subdivision/development* means and refers to the platted lands or lands to be platted, as such lands are now or hereafter constituted, enlarged, developed, subdivided or resubdivided.

**Sec. 12-501. – Maintenance agreement required for plat approval.**

(a) *Requirement.* As an express condition precedent to approval by the Planning Commission of the City of Huntsville, Alabama, of any final/boundary plat of any real property located within City's planning jurisdiction, which contains a maintenance area, is or is proposed to be a private subdivision, or is subject to post-construction stormwater management controls:

(1) Each owner, who is the grantee in each deed or other conveyance recorded in the real estate records in the office of the judge of probate of the county in which the lands of the subdivision/development are located, of the fee simple title to all or any portion of the lands embraced by the subdivision/development (excluding, however, (i) any governmental entity owning any interest in any lands within said subdivision/development dedicated to and accepted by the public such as public streets and rights-of-way and (ii) any person holding any interest in such lands solely as security for the performance or satisfaction of any obligation), shall enter into a *maintenance agreement and access easement* with the city that is substantially in the form and substance as hereinafter set forth; and

(2) The holder of any lien or encumbrance which grants title (including as a contract purchaser but only if said interest is of record) to all or any portion of the lands embraced by the final/boundary plat shall execute an acknowledged ratification on the face of such plat so as to give full force and effect to said *maintenance agreement and access easement*; and

(3) The final plat/boundary plat shall contain a plat note suitable in form and content to the city attorney or his/her designee which incorporates by reference said *maintenance agreement and access easement*.

(b) *Mayor authorized.* The mayor is hereby authorized, directed and empowered to enter into and execute said *maintenance agreement and access easement*, and corresponding plat note, on behalf of the City for each such final/boundary plat.

(c) *Maintenance agreement and access easement.* The following *maintenance agreement and access easement*, which shall constitute a covenant running with the land as to the real property made the subject of such plat, shall be incorporated by reference into each such plat:

STATE OF ALABAMA )  
 :  
COUNTY OF \_\_\_\_\_)

**MAINTENANCE AGREEMENT AND ACCESS EASEMENT**

This **MAINTENANCE AGREEMENT AND ACCESS EASEMENT** ("Agreement"), is made and entered into as of the \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_, by and between/among \_\_\_\_\_ (hereinafter referred to as "Developer(s)") and the City of Huntsville, a municipal corporation in the State of Alabama (hereinafter referred to as "City")(referred to collectively hereinafter as "Parties"):

**WITNESSETH:**

**WHEREAS**, Developer(s) is the owner of the real property described in **Exhibit "A"** attached hereto (the "Developer Property"), which is embraced by the Final Plat/Boundary Plat of the \_\_\_\_\_ Subdivision/Development (the "Plat"), a copy of which is attached hereto as **Exhibit "B"**; and

**WHEREAS**, Developer(s) intends to subdivide or develop the Developer Property into lots or units for development, sale or lease and may subdivide, resubdivide or develop the Developer Property into phases and may add additional property to the Subdivision/Development (the "Subdivision/Development"); and

**WHEREAS**, Developer(s) has submitted said Plat to the Planning Commission of the City of Huntsville, Alabama (the "Planning Commission") for its approval; and

**WHEREAS**, the Subdivision/Development will include certain private improvements, infrastructure, systems, facilities, features, amenities or areas, which are dependent upon private upkeep, including their maintenance, operation, repair, replacement, inspection, or restoration, which private upkeep will not be at public expense; and

**WHEREAS**, based on the findings and purpose set forth in Section 12-500(b) of the Code of Ordinances of the City of Huntsville, Alabama (hereinafter referred to as "City Code"), which section is incorporated herein by reference as if fully set forth herein, and as consideration for and in connection with the approval of the Subdivision/Development in accordance with Chapter 12, Article III, Division 1 of the City Code, the Parties are desirous of entering into this Agreement.

**NOW, THEREFORE**, for and in consideration of (a) the premises which are deemed a material part of this Agreement and, by this reference, are incorporated herein, (b) the mutual agreements, covenants, provisions and terms of this Agreement set forth herein, (c) the execution, acknowledgment and delivery of this Agreement by the Parties hereto, and (d) other good and valuable consideration, the receipt and sufficiency of all of which is hereby expressly

acknowledged by City and Developer(s), and intending to be legally bound hereby, City and Developer(s) agree and covenant with and unto each other, as follows:

## **Section 1. Definitions.**

(a) **In general.** The following capitalized and non-capitalized words, terms and phrases when used in this Agreement, including the foregoing premises, shall have the meanings/rules of construction ascribed to them in this section, except where the context clearly indicates a different meaning or unless otherwise more specifically defined in this Agreement. Words in the single number include the plural number, and words in the plural number include the singular. The words “shall” and “will” are mandatory, and “may” is permissive. Words not defined shall be given their common and ordinary meaning:

### **(1) General terms/rules of construction.**

**City** means and refers to the City of Huntsville, Alabama, and where necessary to perform the acts contemplated hereinafter, shall include its officials, officers, employees, contractors, and agents.

**City Engineer** means and refers to the Director of Engineering of the City and his/her designees or subordinates.

**Conjunctions.** In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

- a. "And" indicates that all the connected terms, conditions, provisions or events apply.
- b. "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- c. "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

**Include.** The term *include*, including its derivations, does not limit a term to a specified example.

**Maintenance Area** means and refers to each of the following:

- a. In the case of a multiple lot (i.e. two lots or more) Subdivision/Development, which includes Private Subdivisions: Common areas for the common benefit, enjoyment or use of owners, occupants or guests of lands contained within the Subdivision/Development, which common areas include those designated on the Plat as “Common Area”, "Common Property”, or other similar words to that effect;
- b. In the case of a single lot Subdivision/Development that is developed, whether at the time of final/boundary platting or sometime thereafter, as a

residential condominium development: Exterior common elements, including access ways, for the benefit of the condominium unit owners, whether or not such common elements are designated on the Plat as “Common Elements”;

c. In the case of a multiple lot or single lot (residential or non-residential leaseholds or condominiums) Subdivision/Development: Areas that are or will be designated on the Plat as “Private Detention Area”, “Private Stormwater Management Area”, or similar words to that effect, or areas that otherwise contain private drainage improvements or features that are identified on the *Post-Construction Stormwater Management Program Plan*, that are not or will not be within a public easement in favor of the city or will not be or are not dedicated to and accepted by the City as public;

d. In the case of Private Subdivisions: Private rights-of-way, access-ways, streets, and alleys, inclusive of islands thereupon or within; and

e. Additional areas as hereinafter provided for in Section 9.

***Post-Construction Stormwater Management Program Plan*** means and refers to the plan set forth in **Exhibit “C”** attached hereto, as such plan may be amended at any time and from time to time, which plan includes post-construction activities related to stormwater drainage features identified therein that will require performance of post-construction stormwater management, including structural and non-structural controls, and a schedule for periodic inspections, in accordance with the City’s Stormwater Management Manual, as such may be superseded or amended from time to time.

***Private Owner*** means and refers to any person or entity who is the grantee in each deed or other conveyance recorded in the real estate records in the Office of the Judge of Probate of the County in which the Subdivision/Development is located of the fee simple title to all or any portion of the real property embraced by the Subdivision/Development, except for and excluding (i) a Public Owner and (ii) a Security Owner. This term “Private Owner” by definition shall include any owner of the Maintenance Area including an Association contemplated by Section 8. below.

***Private Owners’ Lot/Unit*** means and refers to any lands within the Subdivision/Development owned by Developer(s) or a Private Owner other than the Public Areas.

***Private Subdivision*** means and refers to a subdivision or development that is subject to the provisions of section 10.4 of the Zoning Ordinance of the City of Huntsville, Alabama, (“Zoning Ordinance”) as such section may be amended at any time and from time to time.

***Public Areas*** mean and refer to any lands, including improvements situated thereon, within the Subdivision/Development dedicated/conveyed to and accepted by/on behalf of the public such as public streets and rights-of-way, public greenways, and public easements.

**Public Owner** means and refers to any governmental entity owning any interest in any Public Areas.

**Security Owner** means and refers to any person or entity holding any interest in the Subdivision/Development solely as security for the performance or satisfaction of any obligation; *provided, however*, in the event a Security Owner succeeds to the right, title and interest of a Private Owner in and to any portion of the Subdivision/Development for any reason (whether by nonjudicial foreclosure, judicial foreclosure, conveyance in lieu of foreclosure or otherwise) then, in that event, and from and after the date of acquisition of title, said Security Owner shall become a Private Owner as to such portion of the Subdivision/Development and thus subject to the duties, liabilities, obligations and responsibilities of a Private Owner under this Agreement.

**Subdivision/Development** shall have the same meaning ascribed to it in the premises and shall mean and refer to the Developer Property as now or hereafter constituted, enlarged, developed, subdivided or resubdivided.

(2) *Definitions concerning Maintenance Obligations.* The following capitalized terms are Maintenance Obligations included under this Agreement:

**General Maintenance** means and refers to general maintenance, repair and upkeep, including control of grass and weeds, removal of junk and litter, and pest and rodent control, but shall not include maintenance which is performed by the City in accordance with applicable ordinances governing maintenance of Public Areas.

**Private Amenities Maintenance** means and refers to the maintenance of all present or future private improvements, amenities, and features, including bath houses, fountains, lakes, walkways, trails, lighting, signage, ways, parking lots, playgrounds, ponds, pools, recreational areas and equipment, tennis courts, swimming pools, and other water features; which maintenance shall include General Maintenance, Water Quality Control, and any such other maintenance required to prevent the property from becoming a nuisance.

**Private Drainage Feature Maintenance** means and refers to the maintenance of all present or future private detention or retention ponds, culverts, drains, pipes, swales, berms, ditches, and other private drainage systems or improvements, which are: (1) denominated on the Plat as being private, (2) which are not within a public drainage easement, or (3) which have not been dedicated to and accepted by the City as public; which maintenance shall include: General Maintenance, Water Quality Control, SWMPP Maintenance, and maintenance of the side slopes, erosion and siltation/sedimentation control, security, water levels, and any such other maintenance necessary for aesthetics, functionality and safety.

**Private Subdivision Improvements Maintenance** means and refers to maintenance, operation, replacement, repair and restoration of all present or future private infrastructure within a Private Subdivision, whether within or without a Maintenance

Area, that is to be privately owned, operated, and maintained for the use and benefit of the Subdivision/Development rather than being dedicated/conveyed to and accepted by the City as public, including: (1) private drainage systems and features, including detention or retention ponds, culverts, drains, pipes, swales, berms, and ditches, (2) private rights-of-way, streets, access ways and alleys inclusive of all improvements thereon and appurtenant thereto such as sidewalks, signage and lighting, (3) private sanitary sewer facilities inclusive of all infrastructure and equipment appurtenant thereto, and (4) any other private infrastructure now existing or hereafter established; which maintenance, operation, replacement, repair and restoration shall include General Maintenance, Water Quality Control, Private Drainage Feature Maintenance, and any and all maintenance, operation, restoration, replacement and repair necessary for aesthetics, functionality and safety.

***Public Improvements Maintenance*** means and refers to the maintenance of all public drainage improvements or features including public detention or retention ponds, culverts, drains and ditches and other public improvements, which maintenance shall include General Maintenance and Water Quality Control, but shall not include maintenance which is performed by the City in accordance with applicable ordinances governing maintenance of public easements.

***Repair/Restoration Maintenance*** means and refers to the repair/restoration of the Maintenance Area, including the private streets and private ways and improvements thereon, which repairs or restorations are necessitated due to the City's construction, maintenance or repair of any public infrastructure such as sanitary sewer and storm drainage infrastructure within said Maintenance Area. Such repair/restoration shall include restoration of landscaping, curb and gutter repairs, maintenance of any temporary pavement, final asphalt patching or replacement of improvements. The City shall only be obligated to bring any required fill materials to grade.

***SWMPP Maintenance*** means and refers to the obligations set forth in Subsection 2(d) below.

***Water Quality Control*** means and refers to the control of water quality for algae, pond scum and any other such similar conditions.

## **Section 2. Maintenance Obligations.**

(a) Developer(s) and each Private Owner shall be jointly and severally responsible for the continuous and proper maintenance, operation, replacement, repair or restoration of any and all Maintenance Areas, including Public Areas situated thereon, and the Private Subdivision Improvements, within the Subdivision/Development, without expenditure of municipal funds (the "Maintenance Obligations").

(b) Such Maintenance Obligations shall be in conformance with all applicable laws, regulations, standards and specifications, now existing or hereafter established, including section 10.4 of the Zoning Ordinance, the subdivision regulations, state nuisance laws, City ordinances



and codes governing nuisances, and the Stormwater Management Manual, as such may be superseded or amended from time to time; and conformance with same shall be as determined by the City.

(c) Such Maintenance Obligations include: (i) within the Maintenance Area, General Maintenance, Water Quality Control, Public Improvements Maintenance, Private Drainage Feature Maintenance, Private Subdivision Improvements Maintenance, Private Amenities Maintenance, and Restoration/Repair Maintenance, and (ii) without the Maintenance Area, Private Subdivision Improvements Maintenance.

(d) SWMPP Maintenance includes each of the following “Post-Construction Stormwater Management Program Plan Obligations” as additional Maintenance Obligations:

(1) Inspections that are required pursuant to the Post-Construction Stormwater Management Program Plan, which inspections shall be performed annually, or at such other frequency as the City Engineer may require or allow, by a properly qualified credentialed inspector (QCI) or a qualified credentialed professional (QCP), as defined by the Alabama Department of Environmental Management (ADEM), to insure compliance with the Post-Construction Stormwater Management Program Plan, including its design standards and maintenance requirements;

(2) Remediation, in a manner as may be approved or prescribed by the City Engineer, of deficiencies identified by an inspection, including inspections performed by or on behalf of the City, which remediation may include replacement, repair, restoration, or mitigation work, and which remediation shall be completed upon verification by an engineer’s report within forty five (45) days after the date of the inspection, or such additional time as the City Engineer may allow; provided, however, if the inspection identifies a public safety or public health hazard, then the remediation shall be performed immediately; and

(3) Retention of inspection reports and remediation efforts reports for a period of five years, which shall be provided to the City Engineer upon request.

**Section 3. Default in Maintenance Obligations.** Upon the failure of Developer(s) or a Private Owner to perform said Maintenance Obligations, and after any notice and opportunity to cure required by Section 7. hereof, the City shall have the right but not the obligation to perform, or have performed on its behalf, the Maintenance Obligations, in whole or part, and shall have the right to receive joint and several full reimbursement from Developer(s) and each Private Owner the costs of such Maintenance Obligations and the costs of collection of the same as set forth in Section 5. below.

**Section 4. Grant of Access and Maintenance Easement.** Developer(s), for itself and for each Private Owner, Public Owner and Security Owner, hereby grants City, and City’s authorized agents, contractors, and employees, a continuous, permanent and irrevocable right of entry, access, ingress and egress easement across, along, over, under and through the Maintenance Area, drives, ways, private utility or drainage easements, and other portions of the

Subdivision/Development unimproved with a building/structure in order to perform as contemplated in this Agreement, and in accordance with applicable federal, state, and local laws governing post-construction stormwater management, as such laws may be amended or superseded from time to time, including: (a) inspection of the Maintenance Area or Private Subdivision Improvements; and (b) upon default by Developer(s) or a Private Owner of the Maintenance Obligations, to perform the Maintenance Obligations whenever City deems necessary. The easement contained herein shall run with the land as a burden to the Subdivision/Development and shall pass with the conveyance of all or any portion thereof, whether specifically referred to or not in any said conveyance.

**Section 5. Recovery of Maintenance Obligations Costs and Collection Costs.** In the event that City performs any Maintenance Obligations, City shall have the unconditional right to recover jointly and severally from Developer(s) or any one or more or all of the Private Owners (a) the costs and expenses of all labor, equipment, fuel, materials, services, supplies and similar items used in such performance (“Maintenance Obligations Costs”), and (b) the sum of all costs, disbursements and expenses (including reasonable attorneys and engineering fees) incurred in collecting the same, together with all statutory pre- and post-judgment interest (“Collection Costs”).

Each Private Owner, by the acceptance of a conveyance for such Private Owners’ Lot/Unit, whether or not expressed in such conveyance, is hereby deemed to agree and covenant to pay to City the Maintenance Obligations Costs and Collection Costs. All such Maintenance Obligations Costs and Collection Costs shall be both (a) the personal obligation of the Private Owner at the time when the Maintenance Obligations Costs and Collection Costs are incurred by City and (b) a charge and lien on such Private Owners’ Lot/Unit.

The City shall be reimbursed for all Maintenance Obligations Costs and Collection Costs within twenty (20) days after City’s written demand for the same.

As security for the prompt and faithful payment of the Maintenance Obligations Costs and the Collection Costs, City shall have, and is hereby granted, a lien (the “City Lien”) against both the Maintenance Area and each Private Owners’ Lot/Unit, which City Lien is and shall be paramount and prior to all liens on the Maintenance Area and each Private Owners’ Lot/Unit except for and subject to (a) the lien for current and future ad valorem taxes and (b) the lien of a construction or first mortgage held by an institutional or private lender.

In the event Developer(s) or any Private Owner shall fail to pay City the Maintenance Obligations Costs and the Collection Costs after said written demand for the same, City may pursue any one or more remedies for collection of the same (legal, equitable or otherwise) concurrently or consecutively (despite any defense of election of remedies or similar doctrines) including a suit for money damages against Developer(s) or one or more or all of Private Owners or enforcement of the City Lien against the Maintenance Area or any one or more of the Private Owners’ Lots/Units, whether by nonjudicial foreclosure, judicial foreclosure or otherwise.

**Section 6. Reimbursement of Maintenance Obligations Costs and Collection Costs.**

(a) Subject to Subsection (b), any Private Owner (including Developer(s)) who has paid to City any Maintenance Obligations Costs and Collection Costs shall have the unconditional right to recover jointly and severally from any other Private Owner (including Developer(s)) the amount by which such paying Private Owner's payment to City exceeds his/her/its "Prorata Share". As used herein, the term "Prorata Share" means a fraction, (a) the numerator of which is one and (b) the denominator of which is the total number of Private Owners' Lots/Units within the Subdivision/Development, including lots within phases that have received final/boundary plat approval, and lots within phases which have not been finalized in which case the calculation is based on the lots as shown on the Plat or, in the case of a condominium development, on the recorded condominium plat; excluding however the Maintenance Area.

*For example, and for illustration purposes only,* assuming (i) the total Maintenance Obligations Costs and Collection Costs incurred by City in one instance is \$20,000.00, (ii) the total number of Private Owners' Lots within the Subdivision/Development are 50, and (iii) "Private Owner Smith" has paid City \$1,000.00 for Maintenance Obligations Costs and Collection Costs, then "Private Owner Smith" may recover from one or more of the remaining Private Owners (including Developer(s)) up to each other Private Owner's Prorata Share the aggregate sum of \$600.00 calculated as follows:

$$\$1,000.00 - (\$20,000.00 \times 1/50) = \$600.00$$

A Private Owner's right of reimbursement from any one or more other Private Owners (including Developer(s)) shall in no way defeat, impair, prevent or prohibit City's recovery of Maintenance Obligations Costs and/or Collection Costs from Developer(s) or any Private Owner.

(b) The right of prorata reimbursement does not apply in the case of a single lot Subdivision/Development that is an apartment complex with leasehold units.

**Section 7. Notice and Cure.** Except in the event of an immediate threat to the public health, safety, morals, general welfare or to public property in which event the City shall not be required to give Developer(s) or any then-current Private Owner within the Subdivision/Development any notice or opportunity to cure, the City shall not perform the Maintenance Obligations until it has first given Developer(s), the then-current Private Owner of the Maintenance Area, or any then-current Private Owner within the Subdivision/Development notice of (a) the need to perform Maintenance Obligations identified in the notice and (b) thirty (30) days after the date of such notice within which to cure and perform the same, subject to the right of the City Engineer, at his/her discretion, to grant an extension of the cure period for good cause shown upon written request. Such notice may be given in City's absolute and sole discretion and option in any one of the following ways:

- (a) By posting written notice upon the Maintenance Area; or
- (b) By written notice given by (i) personal delivery, or (ii) overnight commercial courier, or (iii) facsimile transmission or (iv) United States First Class Certified Mail, postage prepaid, Return Receipt Requested, and addressed to the Developer(s), the then-current Private Owner of the Maintenance Area, or any then-current Private Owner within the

Subdivision/Development, as appears from the then-current records in the Office of the Tax Assessor of the County in which the Subdivision/Development is located; or

(c) By written notice left at the residence of the principal of the Developer(s) or the residence of the authorized agent of the Association or the residence of any then-current Private Owner within the Subdivision/Development; or

(d) Publication of ten (10) days written notice in a newspaper of general circulation published in the City or in the County in which the Subdivision/Development is located.

**Section 8. Association/Restrictions/Other Maintenance.**

(a) Nothing contained in this Agreement shall be construed or deemed as prohibiting the Developer(s) or the Private Owners from: (1) forming an owners, homeowners, condominium owners, business owners, or residence association (the "Association"), or (2) creating and establishing covenants, restrictions or restrictive covenants (the "Restrictions"), for the benefit, construction, governance, insurance, maintenance, operation, repair or regulation, of the Subdivision/Development, the Maintenance Area or Private Subdivision Improvements. Such Association or Restrictions may, *inter alia*, establish and impose construction, governance, insurance, maintenance, operating, repair or regulatory obligations and responsibilities equal to or greater than those set forth in this Agreement, but shall not abrogate, impair, hinder, lessen or extinguish those imposed by this Agreement, nor shall they affect or supersede the City's rights and remedies under this Agreement.

(b) Nothing contained in this Agreement shall be construed to affect private maintenance responsibilities which are outside the scope of this Agreement.

**Section 9. Additional Areas.** In the event that any portion of the Subdivision/Development that is not designated as Maintenance Area on the Plat is/are hereafter dedicated, denominated or used as a Maintenance Area for the Subdivision/Development or any other real property, then such other portions shall be *ipso facto* included within the term "Maintenance Area" and subjected to this Agreement.

**Section 10. Termination of Developer(s)'s Liability.** Notwithstanding anything contained in this Agreement to the contrary, each Developer(s)'s liability under this Agreement will terminate when that Developer(s) is no longer a Private Owner.

**Section 11. Remedies Cumulative/No Third-Party Beneficiaries.**

(a) The City's rights and remedies under this Agreement shall be in addition to any other rights and remedies it might now or hereafter have under any federal, state or local law.

(b) This Agreement shall not be construed or applied to confer any rights or benefits to third-parties.

**Section 12. Authority and Power.** Each party covenants, represents and warrants to each other party that it has complete and unrestricted authority, power and right to enter into, execute and deliver this Agreement.

**Section 13. Recordation.** This Agreement shall be recorded by City at Developer(s)'s prepaid expense in the real estate records in the Office of the Judge of Probate of each County in which the Developer(s) Property is located.

**Section 14. Covenants Running with the Land.** This Agreement and each of its agreements, covenants, provisions and terms are covenants running with the land as to the Developer(s) Property and the Subdivision/Development and shall be binding on City, Developer(s) and Private Owners (and, if applicable, Association) and all persons and entities claiming through or under them for a period of twenty-five (25) years from the date this Agreement is filed for record in the Office of the Judge of Probate of the County in which the Subdivision/Development is located, after which time this Agreement shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the City, Developer(s) and a majority of the then Private Owners has been filed for record in such Probate Judge's Office, agreeing to abolish or amend this Agreement in whole or in part.

**Section 15. No Liability.** Anything in this Agreement to the contrary notwithstanding, it is expressly agreed, intended and understood that (a) neither City nor any Public Owner nor any Security Owner has any duty, liability, obligation or responsibility to maintain or repair the Maintenance Area or Private Subdivision Improvements within the Subdivision/Development, (b) in no event shall this Agreement be construed to impose any such duty, liability, obligation or responsibility on the City or on any Public Owner or on any Security Owner, (c) the operation, maintenance and repair of the Maintenance Area or Private Subdivision Improvements within the Subdivision/Development is at all times the direct and sole duty, liability, obligation and responsibility of Developer(s) and each Private Owner, and (d) neither the City nor the Public Owners nor their respective agents, employees or assigns, shall be liable to Developer(s) or any Private Owner or any other person or entity for (i) the manner in which any of them exercise, or for the failure or refusal of any of them to exercise any authority or right granted to them herein, whether discretionary or not; (ii) the failure or refusal of Developer(s) or any Private Owner to comply with any of the agreements, covenants, provisions and terms hereof; or (iii) the failure or refusal of City to enforce any one or more of the agreements, covenants, provisions and terms hereof against Developer(s) or any Private Owner, and their respective heirs, personal representatives, successors or assigns.

**Section 16. Miscellaneous.**

(a) *Entire Agreement/Merger.* This Agreement, along with all exhibits and attachments or other documents affixed hereto or referred to herein (including the Plat), embodies the entire agreement, intent and understanding of City and Developer(s) as to the transactions contemplated and evidenced hereby and merges herein all prior and contemporaneous agreements, covenants, discussions, representations, statements and understandings heretofore made between City and Developer(s) as to such transactions, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between City and Developer(s) as to such transactions not contained herein are and shall be null and void, unenforceable and of no force and effect.



(b) *Applicable Law/Jurisdiction/Venue.* This Agreement is made in, and thus shall be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning in accordance with the internal laws of, the State of Alabama, without regard to principles of conflicts of laws. For any action concerning this Agreement (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

(c) *Severability.* If, for any reason or no reason, any agreement(s), covenant(s), provision(s), or term(s) of this Agreement (whether material to the bargain of City and Developer(s) or not) should be declared illegal, null and void, unconstitutional or unenforceable, in whole or in part, by any court of competent jurisdiction, the offending portion of this Agreement shall be deemed severed herefrom as though the same was never a part hereof; provided, however, the remainder of this Agreement shall not be impaired and shall remain in full force and effect according to its remaining agreements, covenants, provisions and terms.

(d) *Binding Effect.* City's and Developer(s)'s respective heirs, personal representatives, successors and assigns (including, but not limited to, the Private Owners and the Association) shall be fully bound by this Agreement and each and every agreement, covenant, provision and term hereof just as they are bound. Each and every agreement, covenant, provision and term of this Agreement inures, and shall inure, to the benefit of City, its successors and assigns, and shall be binding upon or inure to the benefit of the Developer(s) and its heirs, personal representatives, successors and assigns (including the Private Owners and the Association).

(e) *Amendment, etc.* Neither this Agreement nor any agreement, covenant, provision or term hereof, shall be amended, changed or modified in any respect, nor may any estoppel, novation or waiver regarding the same be effectuated, without City, Developer(s), and a majority of the then Private Owners (and, if applicable, the Association), first executing a writing, in equal dignity to this Agreement, embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver.

(f) *Captions.* The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the intent or scope of this Agreement.

(g) *Incorporation of Exhibits.* This Agreement hereby incorporates by reference and makes a part hereof all exhibits referred to herein and appended hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed under their respective seals and delivered as of the date first above written.

[Insert signature and acknowledgements of the parties]

**Section 2.** City of Huntsville Ordinance No. 04-874, as amended by City of Huntsville Ordinance No. 05-712, is hereby repealed, which ordinance(s) was included in the Subdivision Regulations of the Planning Commission of the City of Huntsville, Alabama in section 1.8 thereof.

**Section 3.** The severability provisions of section 1-8 of the Code of Ordinances of the City of Huntsville, Alabama are specifically included herein by reference as if fully set forth.

**Section 4.** This Ordinance shall become effective upon its adoption and publication.

**ADOPTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
President of the City Council  
Of the City of Huntsville, Alabama

**APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama