

**PRE-MEETING AGENDA  
MOUNTAIN BROOK CITY COUNCIL**

**CITY HALL COUNCIL CHAMBER (A108)  
56 CHURCH STREET  
MOUNTAIN BROOK, AL 35213**

**JULY 25, 2022, 6:15 P.M.**

**As a matter of convenience, members of the public are invited to listen, observe and participate in public meetings by Internet video conference. Presenters and others interested in a particular matter for discussion are encouraged to attend the meeting in-person. The City is not responsible for technical issues that may occur that interfere with the virtual meeting. The City Council, at its sole discretion, may proceed with its in-person business meeting regardless of whether virtual attendees can hear and/or observe the proceedings. The City intends to make the meeting available by way of the Zoom app (re: Meeting ID 801-559-1126, password 07252022). Unvaccinated in-person attendees are asked to mask.**

1. Two (2) Villages Design Review Committee appointments-Tyler Slaten (See attached information. This item may be added to the formal agenda.)
2. Right-of-Way encroachment agreement for 2100 English Village Lane-Carter Slappey (See attached information. This item may be added to the formal agenda.)
3. Executive Session



**Tyler Slaten**  
56 Church Street  
Mountain Brook, Alabama 35213  
Telephone: 205/802-3816  
Fax: 205.879.6913  
hazend@mtnbrook.org  
www.mtnbrook.org

DATE: July 25, 2022  
TO: Mayor, City Council & City Manager  
FROM: Tyler Slaten, Senior Planner  
RE: VDR Re-Appointment of Ashley Spotswood and Katie Wohlwend

The Village Design Review Committee has been polled and recommends the re-appointments of Ashley Spotswood and Katie Wohlwend to the VDR Committee for another three year term.

**THIS INSTRUMENT PREPARED BY:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**JEFFERSON COUNTY     }  
STATE OF ALABAMA    }**

**RIGHT-OF-WAY ENCROACHMENT AGREEMENT**

This **Right of Way Encroachment License Agreement** (the "Agreement") is entered this \_\_\_\_\_ day of \_\_\_\_\_ 202\_, by and between the **City of Mountain Brook, Alabama**, a municipal corporation (hereinafter the "City" or "Licensor"), and Grant and Kacey Todd (hereinafter individually or collectively referenced for purposes of this Agreement as the "Licensee").

**WITNESSETH:**

**WHEREAS**, the Licensee represents that it owns the following real property located in the City of Mountain Brook, Jefferson County, Alabama:

Address: 2100 English Village Lane Mountain Brook, AL 35223  
Parcel ID #: 28-00-06-4-016-009.000  
Legal Description Lots 9 & 10 Block 12 South Highlands Pb 7/Pg 105

(the "Property");

**WHEREAS**, the Property abuts right(s) of way that is owned by the City and reserved for the use of the general public (the "City ROW");

**WHEREAS**, the Licensee desires to install and maintain use of private road on public right of way at the location depicted on the attached Exhibit "A" (collectively hereinafter the "Improvement"), and intend that the Improvement will be used by the occupants of the Property or their guests;

**WHEREAS**, part or all of the area in which the Improvement will be installed lies within and encroaches upon the City Right of Way (hereinafter, the "Encroachment Area"); and

**WHEREAS**, subject to terms, conditions and understandings herein, the City agrees to grant the Licensee a non-exclusive, revocable license to install and use the encroaching Improvement within the City ROW.

**NOW, THEREFORE**, in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The City grants the Licensee a non-exclusive, revocable license to utilize the City ROW for purposes reasonably related to the construction, installation, maintenance and use of above-described encroaching Improvement within the Encroachment Area (the "License"). No other uses of the City ROW are authorized.

2. The Licensee agrees and acknowledges that this Agreement grants it (or them) only a license, not any interest, title, permanent right or estate. The grant made hereunder is personal to the Licensee and does not run with the land. Further, the Licensee agrees to not claim any permanent interest in the Encroachment Area by entering into this Agreement or by its use of any contemplated encroaching Improvement.

3. The Licensee agrees to (a) keep the Encroachment Area clean and free of debris, weeds or overgrown grass, (b) maintain the contemplated encroaching Improvement in good and sound condition, and (c) not use the Encroachment Area or any encroaching Improvement in a manner that creates a hazard or causes damage to any third persons or adjacent properties.

4. The Licensee acknowledges that, in the event that the City, in the exercise of its sole discretion, determines that the Licensee's utilization of the Encroachment Area or the Improvement conflicts with City's use of or plans to use that Area, it may revoke the License effective upon providing the Licensee written notice from the Mayor, the City Manager or the City's other executive official. If the License is revoked, the City, in the exercise of its sole discretion, either (a) may request that the Licensee, at its (or their) expense, remove any encroaching Improvement and restore the City ROW to a condition that is reasonably satisfactory to the City within thirty (30) days after the receipt of notice of revocation, or (b) at the City's expense, may remove any encroaching Improvement placed by the Licensee in the Encroachment Area. If the City revokes the License, the Licensee waives and releases the City from any and all claims for expenses incurred by the Licensee to construct or maintain any Improvement in the Encroachment Area.

5. The Licensee may not assign or transfer this Agreement (or any benefit, right or obligation hereunder) to any third party without advance written consent by the City, which consent shall not be unreasonably withheld.

6. All plans, designs and work to construct any contemplated encroaching Improvement shall be subject to review and approval of the City's Building Inspection Department, or such other department as the City may designate. Further, the Licensee agrees that all operations related to the installation or maintenance of any such Improvement will comply with applicable federal, state and local laws, ordinances and regulations (including but not limited to, license and permit requirements) that relate to those operations.

7. The Licensee shall not permit any mechanic or materialman's lien to be filed against the City or concerning the Encroachment Area by reason of any labor, services, materials or equipment supplied or claimed to have been supplied to construct or maintain any encroaching Improvement (collectively, a "Lien"). If such a Lien is filed, then the Licensee, after notice of its filing, promptly shall either (a) cause the same to be discharged by depositing adequate funds in court or issuing a bond; or (b) indemnify the City against any loss from a Lien by posting security or taking other actions that are reasonably satisfactory to the City.

8. The Licensee, for itself and on behalf of any of its heirs, personal representatives, authorized assigns or other persons or entities that may succeed to its interest in this Agreement (collectively the "Licensee" for purposes of this provision) agrees to waive, release, indemnify, defend and hold harmless the City, and its officers, employees, and representatives (collectively for purposes of this provision, the "City"), from and against any claim, liability, loss, expense (including, reasonable attorney fees and costs of court), demand or action asserted against the City by the Licensee or by any third party claiming personal injury, property damage or any other loss of any kind (collectively, a "Claim") that arises from or is in any manner related to (a) the Licensee's use of the License granted herein or the Encroachment Area, or (b) any encroaching Improvement placed in the City ROW. The scope of this indemnification obligation includes Claims that are caused or allegedly caused in whole or part by the negligence of the City; provided that the Licensee shall not be obligated hereunder to indemnify the City for Claims that are caused by the gross negligence or willful misconduct of the City.

9. If the Licensee removes or substantially modifies an encroaching Improvement after this Agreement is executed, it shall not replace or construct another or different Improvement or structure in the City ROW without advance approval from the City; provided that nothing herein shall prohibit the Licensee from maintaining, repairing or refurbishing any encroaching Improvement contemplated by this Agreement.

10. All notices that may be required to be given hereunder shall be deemed to have been properly given if in writing and (a) if personally delivered, or (b) sent either by registered or certified mail, postage prepaid, and addressed as follows, or by nationally recognized overnight courier to the following address (or such other address as a party may designate in writing):

To the City:

City of Mountain Brook, Alabama  
Attention: City Manager  
56 Church Street  
Mountain Brook, AL 35213

To the Licensee:

2100 English Village Lane  
Mountain Brook, AL 35223

Notices shall be deemed given upon receipt or refusal of delivery.

11. Miscellaneous Provisions.

(a) This Agreement may not be amended or modified unless all parties execute a writing that is signed by their duly authorized representatives.

(b) The failure of the City to enforce any of the terms, conditions or provisions of this Agreement shall not be construed as a waiver of its right to subsequently compel enforcement of that or any other term, condition or provision herein. The rights, benefits and obligations under this Agreement may be waived only in a writing signed by the parties.

(c) This Agreement, and the conditions, terms and provisions herein, do not create, and are not intended to create or confer any benefit to any third party.

(c) This Agreement contains the complete agreement of the parties concerning the subject matter herein. Any prior negotiation, agreement or understanding, whether oral or written, concerning the matters addressed herein is superseded and of no effect unless expressed herein.

(d) This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile or other form of electronic transmission, and any signature so transmitted will be given the same force and effect as an original signature

(e) If requested by the City, the Licensee shall record a fully-executed form of this Agreement in the real property records of the Probate Court for Jefferson County.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the date hereinabove set forth.


ATTEST:

**CITY OF MOUNTAIN BROOK, ALABAMA**

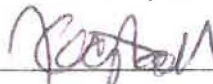
\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

LICENSEE (if individual)

\_\_\_\_\_  


LICENSEE (if individual)

\_\_\_\_\_  


LICENSEE (if entity)

\_\_\_\_\_  
Name of Entity

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

*(For Use if Licensee is Individual)*

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Grant Todd whose name is

signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this 20<sup>th</sup> day of July, 2022  
Shirley J. Richard  
NOTARY PUBLIC  
My Commission expires: 1-2-2023

STATE OF ALABAMA )  
COUNTY OF JEFFERSON ) (For Use if Licensee is Individual)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that Nancy Todd whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she executed same voluntarily.

Given under my hand and official seal this 20<sup>th</sup> day of July, 2022  
Shirley J. Richard  
NOTARY PUBLIC  
My Commission expires: 1-2-2023

STATE OF ALABAMA )  
COUNTY OF JEFFERSON ) (For Use if Licensee is Entity)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of \_\_\_\_\_, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she as such officer and with full authority, executed same voluntarily for and as the act of said entity.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission expires: \_\_\_\_\_

**EXHIBIT A – DEPICTION OF ENCROACHMENT AREA**  
*(Attach survey with dimensional data)*