

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

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

JULY 24, 2023 6:15pm

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 07242023).

1. Discussion of time limits for use of playing fields and courts-Shanda Williams (See attached information.)
2. ROW encroachment agreement for 64 Pine Crest Road-Dana Hazen (See attached information. This item may be added to the formal agenda.)
3. ROW encroachment agreements for alley behind Braddock Avenue in regard to the City's drainage project in this location-Whit Colvin (See attached information. These items may be added to the formal agenda.)

Date: July 21, 2023
To: Council Members
From: Shanda Williams, Parks and Recreation
Subject: Field and Court Time Limits

With the popularity of the pickleball courts, we have become aware that there are no official regulations on when our fields and courts can be used outside of school hours. The Park Board has set time limits on when parks, fields and courts will be closed in the evenings, but none state when they will open in the mornings.

In the evenings, parks, fields, and courts with no lights close at sundown.
Fields and courts with lights close at 9pm. The only exception that I am aware of is at MBHS where occasionally some activities will go past 10pm.

For the morning start times, I checked on what other communities have in place for their tennis and pickleball courts and it varies greatly from 6:30am-10am, but the most common are 7am or 8am. Our noise ordinance states that lawn care companies are allowed to start work at 7am on weekdays and 8am on weekends. I think this is a reasonable time for sports as well.

These are my general suggestions:

Passive activities that do not generate noise in parks, fields, and courts are allowed to begin at sunrise.
Noise generating activities in parks, fields, and courts can begin at 7am on weekdays and at 8am on weekends.

All activities in parks, fields, and courts with no lights will cease at sundown.

All activities in parks, fields and courts with lights will cease at 9pm.

Facilities on Board of Education property will be closed to the public while schools are in session or they are being used by the Board of Education.

Exceptions may be allowed with permission from the Board Of Education or Parks and Recreation department.

No one is allowed to provide their own lights when facilities are closed. (We have had instances where people used their car headlights to light a court after dark)

Sam Gaston

From: Dana Hazen <hazend@mtnbrook.org> on behalf of Dana Hazen
Sent: Friday, July 21, 2023 7:32 AM
To: Glen Merchant; Sam Gaston
Cc: Heather Richards
Subject: Re: ROW-64 Pine Crest Road

Glen,
I appreciate Schoel's point of view (and it may be enough for the council) but the question still remains as to whether or not it would be more prudent to require permeable pavers instead of a solid surface. Please get with the property owner and discuss permeable alternatives. And the answer to the solid parking pad across the street is that it was installed before the present stormwater pressure on the city really took on new life. Thanks.

On Thu, Jul 20, 2023 at 4:51 PM Glen Merchant <merchantg@mtnbrook.org> wrote:
Heather and Dana,

Please see the details from our Engineering Consultant below.

----- Forwarded message -----

From: William Thomas <wthomas@schoel.com>
Date: Thu, Jul 20, 2023, 4:29 PM
Subject: RE: ROW-64 Pine Crest Road
To: Glen Merchant <merchantg@mtnbrook.org>, Dana Hazen <hazend@mtnbrook.org>

Glen,

I went to the residence and reviewed where the street drainage currently goes and potential impact the additional runoff may have due to the proposed parking pad. There is an existing inlet on Pine Crest Road immediately downstream from the proposed parking pad as well as another inlet around the corner on Virginia Road. It appears that the inlet on Pine Crest Road ties to the inlet on Virginia Road. The drainage continues between homes and ultimately crosses the Canterbury Church property between the parking deck and the main campus buildings discharging into the tributary along Overbrook Road. The proposed parking pad will add approximately 405 sq feet of impervious area within the ROW. A Google Street View image from 2015 shows a gravel parking pad in the front of the residence and it is also shown on the provided survey. When the prior

parking pad was removed, the area was sodded. In addition, the area within the ROW at the intersection of Pine Crest Road and Virginia Road was also sodded and replaced the sparsely mulched compacted earth. It is our opinion that the minimal increase in runoff from the proposed parking pad is offset by the landscaping improvements (sod) in the ROW at the intersection. Based on this review, we do not see an adverse impact due to the proposed parking pad.

One additional note is that all of the residences on Pine Crest Road in the vicinity of 64 Pine Crest Road have a driveway coming off of Pine Crest Road. The subject property has a driveway at the rear of the residence off Virginia Road. This makes this site a unique situation as it does not currently have an option for off-street parking for guest/deliveries to access the front entrance of the residence. I know the owner emailed examples of the safety issues with cars being hit and mailboxes damaged so this may also be a valid justification for allowing the parking pad at this residence.

Let me know if you have any questions or need anything else. Thanks.

-William

William R. Thomas, PE, CFM

Principal

Direct: 205.313.1150

CONNECT WITH US

From: Glen Merchant <merchantg@mtnbrook.org>

Sent: Monday, July 17, 2023 11:00 AM

THIS INSTRUMENT PREPARED BY:

Julie Y. Lewis

JEFFERSON COUNTY }
STATE OF ALABAMA }

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

This Right of Way Encroachment License Agreement (the "Agreement") is entered this 26 day of June 2023 by and between the City of Mountain Brook, Alabama, a municipal corporation (hereinafter the "City" or "Licensor"), and William and Julie Lewis (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: 64 Pine Crest Rd Mountain Brook AL 35223
Parcel ID #: 28 00 09 2 005 001 000
Legal Description _____

(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 blue stone parking pad and sidewalk/patio 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:

William and Julie Lewis
64 Pine Crest Rd
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)

[Handwritten Signature]

LICENSEE (if individual)

[Handwritten Signature]

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 William Lewis 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 26th day of June, 2023.

Shawn Marie Davis
NOTARY PUBLIC
My Commission expires: August 24, 2026

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 William Lewis 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 26th day of June, 2023.

Shawn Marie Davis
NOTARY PUBLIC
My Commission expires: August 24, 2026

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.

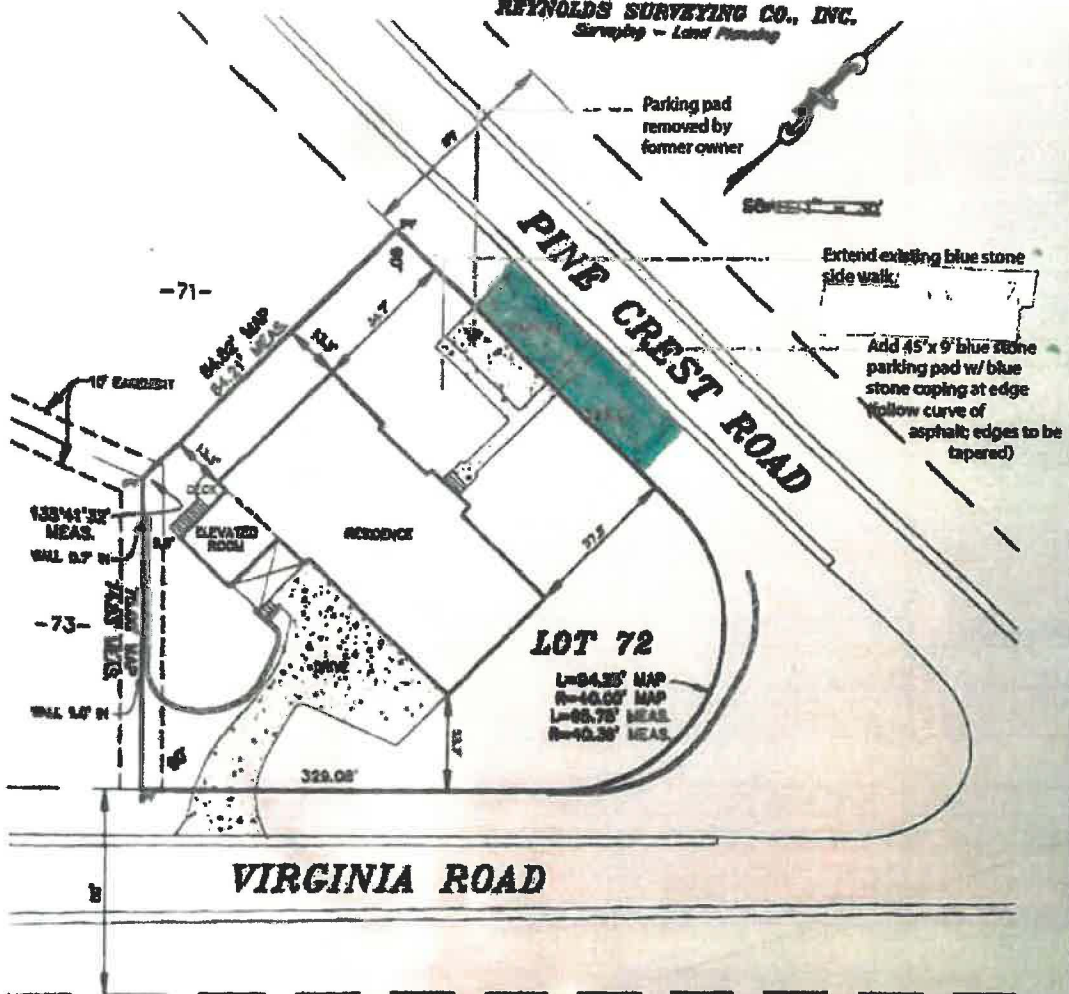
Given under my hand and official seal this _____ day of _____, 20__.

NOTARY PUBLIC
My Commission expires: _____

Aug 2014

EXHIBIT A – DEPICTION OF ENCROACHMENT AREA

See attached.



--- UNIMPROVED
--- 1/2" = 10' SCALE
--- 1/4" = 20' SCALE
--- 1/8" = 40' SCALE
--- 1/16" = 80' SCALE
--- 1/32" = 160' SCALE
--- 1/64" = 320' SCALE
--- 1/128" = 640' SCALE
--- 1/256" = 1280' SCALE

STATE OF ALABAMA
JEFFERSON COUNTY

"CLOSING SURVEY"



I, Robert Reynolds, a Registered Surveyor, do here by state that this is a true and correct plat or map of Lot 72, Block of PINE CREST as recorded in Map Book 18, Page 51 in the Office of the Judge of Probate in Jefferson County, Alabama. All parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice of Surveying in the State of Alabama to the best of my knowledge, information and belief. The improvements on said premises are as shown. There are no visible encroachments on over or across said lands except as shown. According to my survey this the 13th day of JUNE, 2018.

NOTE: This survey is not transferable to any additional institutions or subsequent owners.
Purchaser: DUMAS
1668684 PINE CREST ROAD

THIS INSTRUMENT PREPARED BY:

Whit Colvin
Bishop Colvin, LLC
1910 First Avenue North
Birmingham, Alabama 35203

JEFFERSON COUNTY }
STATE OF ALABAMA }

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

This **Right of Way Encroachment License Agreement** (the “Agreement”) is entered this 24th day of July, 2023, by and between the **City of Mountain Brook, Alabama**, a municipal corporation (hereinafter the “City” or “Licensor”), and **Jeffrey Tillett and Allison Tillett** (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: 700 Braddock Avenue, Mountain Brook, Alabama 35213

Parcel ID #: 23 00 33 4 004 005.000

Legal Description: Lot 13, Block B, according to the Survey of Overlook Subdivision, as recorded in Map Book 15, Page 19, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

(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 has constructed and desires to maintain a brick wall at the location depicted on the attached Exhibit “A” (collectively hereinafter the “Improvement”), and intends 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 is located 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 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:
Jeffrey Tillett
Allison Tillett
700 Braddock Avenue
Mountain Brook, Alabama 35213

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.

(d) 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.

(e) 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

(f) 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)

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that _____ 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 ____ day of _____, 20__.

NOTARY PUBLIC
My Commission expires: _____

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that _____ 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 ____ day of _____, 20__.

NOTARY PUBLIC
My Commission expires: _____

EXHIBIT A – DEPICTION OF ENCROACHMENT AREA

See attached.

Scale: 1" = 20'
Graphic Scale



FAIRMONT DRIVE

BRADDOCK AVE

700 BRADDOCK AVE

LOT 13

ENCROACHMENT
AREA

LOT 14

LOT 15

Shrubs

Conc.

IMPROVEMENT

147

147 FAIRMONT DR

Conc.

LOT 12

LOT 11

Pole

Brick Walk

Chain Link Fence

Wood Fence

EXHIBIT ONLY
NOT A BOUNDARY SURVEY

THIS INSTRUMENT PREPARED BY:

Whit Colvin
Bishop Colvin, LLC
1910 First Avenue North
Birmingham, Alabama 35203

JEFFERSON COUNTY }
STATE OF ALABAMA }

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

This **Right of Way Encroachment License Agreement** (the “Agreement”) is entered this 24th day of July, 2023, by and between the **City of Mountain Brook, Alabama**, a municipal corporation (hereinafter the “City” or “Licensor”), and **James Mailon Kent, III and Dana Kent** (hereinafter individually or collectively referenced for purposes of this Agreement as the “Licensee”).

W I T N E S S E T H:

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

- Address: 147 Fairmont Drive, Mountain Brook, Alabama 35213
- Parcel ID #: 23 00 33 4 004 004.001
- Legal Description: Lot 12, Block B, according to the Survey of Overlook Subdivision, as recorded in Map Book 15, Page 19, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

(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 has constructed and desires to maintain a retaining wall at the location depicted on the attached Exhibit “A” (collectively hereinafter the “Improvement”), and intends 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 is located 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 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:

James Mailon Kent, III
Dana Kent
147 Fairmont Drive
Mountain Brook, Alabama 35213

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.

(d) 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.

(e) 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

(f) 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)

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that _____ 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 ____ day of _____, 20__.

NOTARY PUBLIC
My Commission expires: _____

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public duly commissioned in and for the County and State aforesaid, hereby certify that _____ 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 ____ day of _____, 20__.

NOTARY PUBLIC
My Commission expires: _____

EXHIBIT A – DEPICTION OF ENCROACHMENT AREA

See attached.

Scale: 1" = 20'
Graphic Scale



IMPROVEMENT

FAIRMONT DRIVE

BRICK WALL

700 BRADDOCK AVE
LOT 13

ENCROACHMENT
AREA

BRADDOCK AVE

LOT 14

LOT 15

Shrubs

Chain Link Fence

Post

Brick Wall

Conc.

Conc.

Brick Walk

Wood Fence

147 FAIRMONT DR

LOT 12

LOT 11

EXHIBIT ONLY
NOT A BOUNDARY SURVEY