

1 **..Title**

2 **Street Rights-of-Way at the Enclave at Spa** - For the purpose of privatizing the street rights-
3 of-way in the Enclave at Spa residential planned development in accordance with Section
4 20.20.01.A of the Code of the City of Annapolis.

5 **..Body**

6 **CITY COUNCIL OF THE**
7 **City of Annapolis**

8
9 **Resolution 22-15**

10
11 **Sponsored by: Mayor Pantelides**

12
13 **Referred to**

14 **Economic Matters**

15 **Environmental Matters**

16 **Rules and City Government**

17
18 **A RESOLUTION** concerning

19
20 **Street Rights-of-Way at the Enclave at Spa**

21
22 **FOR** the purpose of privatizing the street rights-of-way in the Enclave at Spa residential
23 planned development in accordance with Section 20.20.01.A of the Code of the City of
24 Annapolis.

25
26 **WHEREAS**, a development is underway for certain property owned by the Developer consisting
27 of approximately 3.819 acres, more or less, located at 1023 Spa Road, Annapolis,
28 Maryland 21403; and

29
30 **WHEREAS**, the Planning Commission adopted its Opinion and Order for Planned Development
31 and Preliminary Record Plat approved on the 1st day of May 2014;and

32
33 **WHEREAS**, each of the Approvals for the Project was based upon the Plan that specifies that all
34 road/street rights-of-way within the Project shall be privately owned and maintained
35 by the future residents of the Project acting collectively as the Association; and

36
37 **WHEREAS**, pursuant to § 20.20.010(A) of the Code of the City of Annapolis, as may be
38 amended, a community association may assume responsibility and liability for
39 roads/streets within the boundaries of its community, which roads/streets shall
40 remain privately owned by that community association instead of the City taking
41 ownership of or maintenance responsibilities for such streets/roads; and

42
43 **WHEREAS**, the Association has agreed to assume responsibility and liability for the
44 roads/streets of the Project pursuant to § 20.20.010(A) of the Code.

45
46

1 **NOW THEREFORE BE IT RESOLVED BY THE ANNAPOLIS CITY COUNCIL** that
2 pursuant to Section 20.20.01.A of the Code of the City of Annapolis regarding the City of
3 Annapolis' ownership and maintenance of certain street rights-of-way, the City of Annapolis
4 shall not take ownership of or maintenance responsibilities for the street rights-of-way within the
5 boundaries of the Enclave at Spa residential planned development, and said street rights-of-way
6 shall be privately owned and maintained by the Association with the Association assuming
7 responsibility and liability for the same in accordance with the Agreement made a part of this
8 Resolution by and among the City of Annapolis and K HOVNANIAN HOMES OF
9 MARYLAND, L.L.C., a Maryland limited liability company, and THE ENCLAVE AT SPA
10 HOMEOWNERS ASSOCIATION, INC., a Maryland corporation.

11
12 **NOW THEREFORE BE IT FURTHER RESOLVED BY THE ANNAPOLIS CITY**
13 **COUNCIL** that this Resolution shall become effective on the date of its adoption by the City
14 Council.

15
16 **EXPLANATION**

17 CAPITAL LETTERS indicate matter added to existing law.

18 ~~Strikethrough~~ indicates matter stricken from existing law.

19 Underlining indicates amendments.
20

1 **CITY OF ANNAPOLIS PRIVATE RIGHT-OF-WAY AGREEMENT**

2
3 **THIS PRIVATE RIGHT-OF-WAY AGREEMENT** (“Agreement”) is made this
4 _____ day of _____, 2015, by and among the City of Annapolis, a municipal corporation
5 of the State of Maryland (“City”), K HOVNANIAN HOMES OF MARYLAND, L.L.C., a
6 Maryland limited liability company (the “Developer”), and THE ENCLAVE AT SPA
7 HOMEOWNERS ASSOCIATION, INC., a Maryland corporation (the “Association”).
8

9 **WHEREAS**, a development is underway for certain property owned by the Developer
10 consisting of approximately 3.819 acres, more or less, located at 1023 Spa Road, Annapolis,
11 Maryland 21403 (the “Development”), and as more accurately described in a deed recorded at
12 Liber 3906, folio 711 among the Land Records of Anne Arundel County (collectively, the
13 “Property”); and
14

15 **WHEREAS**, the Development shall be in accordance with the site plan (the “Plan”),
16 attached hereto and incorporated herein as **Attachment A**; and
17

18 **WHEREAS**, the Planning Commission adopted its Opinion and Order for Planned
19 Development and Preliminary Record Plat approved on the 1st day of May 2014;and
20

21 **WHEREAS**, each of the Approvals for the Project was based upon the Plan that specifies
22 that all road/street rights-of-way within the Project shall be privately owned and maintained by
23 the future residents of the Project acting collectively as the Association; and
24

25 **WHEREAS**, pursuant to § 20.20.010(A) of the Code of the City of Annapolis (the
26 “Code”), as may be amended, a community association may assume responsibility and liability
27 for roads/streets within the boundaries of its community, which roads/streets shall remain
28 privately owned by that community association instead of the City taking ownership of or
29 maintenance responsibilities for such streets/roads; and
30

31 **WHEREAS**, the Association has agreed to assume responsibility and liability for the
32 roads/streets of the Project pursuant to § 20.20.010(A) of the Code; and
33

34 **WHEREAS**, such private ownership of all the Project’s roads/streets shall be indicated
35 on the recorded subdivision plat for the Project (the “Subdivision Plat”), which Subdivision Plat
36 is incorporated herein by reference; and
37

38 **NOW THEREFORE**, in consideration of these premises and the mutual covenants and
39 promises set forth below, and other good and valuable consideration, the receipt and sufficiency
40 of which the parties acknowledge, the parties agree as follows:
41

42 **1. Ownership and Maintenance of Private Road/Street Rights-Of-Way.**

43
44 a. Upon recordation of the Subdivision Plat and the Developer's conveyance of the
45 road/street rights-of-way of the Project (collectively, the “Streets”) to the Association, the

1 Association shall have exclusive ownership of all Streets within the Project, which shall be so
2 indicated on the recorded Subdivision Plat and shall be based upon the Plan.
3

4 b. The Association shall be the fee simple owner of the Streets, and the appurtenances
5 thereto and shall, at its own cost and expense, be solely responsible for any and all maintenance,
6 both preventative and routine, reconstruction, construction and/or repair of the Streets or any
7 portions thereof, and any and all costs and expenses therefore. Said maintenance shall include,
8 but not be limited, to the following, along any and all Streets within the Project:
9

- 10 1. Routine maintenance, both preventative and routine, of all Streets, alleys,
11 sidewalks and other vehicular and pedestrian ways within the Project.
- 12 2. Maintenance, removal and planting of trees and other vegetation along or
13 near the Streets.
- 14 3. All maintenance and energy costs associated with lighting the Streets.
- 15 4. Maintenance and operation of all stormwater management facilities and
16 drainage facilities for the Streets subject to a maintenance agreement to be
17 executed after the execution of this Agreement (the "Maintenance
18 Agreement"), which Maintenance Agreement is incorporated herein by
19 reference.
- 20 5. Snow removal for the Streets, with the additional provision that no snow
21 shall be plowed into, or disposed of in, any City street.
- 22 6. Street sweeping.
- 23 7. Litter, trash, garbage, yard waste and refuse removal and recycling for the
24 Project, except as otherwise provided in Paragraph 3 of this Agreement.
- 25 7. All requirements of the Real Property Article, Title II of the Annotated
26 Code of Maryland, as may be amended, and all standards for public streets
27 as determined by the City Director of Public Works.
28

29 c. Neither the Association, nor the individual property owners within the Property or
30 the Project (collectively, the "Individual Owners"), shall petition the City to modify Paragraphs
31 1(a) or 1(b) of this Agreement.
32

33 **2. Easements to the City.** 34

35 a. In advance of the granting of any other rights-of-way or easements, or fee simple
36 transfer of property, the Developer shall reserve unto itself easements for the construction,
37 reconstruction, repair, inspection and other activities as may be necessary by the City
38 Department of Public Works for the operation of water and sanitary sewer on the Property and
39 for the Project. Such easement widths and locations shall be as specified by the City Department
40 of Public Works.
41

42 b. In advance of granting of any other rights-of-way or easements or fee simple
43 transfer of the property, the Developer shall reserve unto itself rights to establish an easement for
44 police and fire vehicular and personnel access via the Streets within the Project.
45

1 c. At the time of the release of the Developer's bond for the Project, as required by
2 the City, the Developer shall transfer the easement rights indicated in Paragraphs 2(a) and 2(b) to
3 the City in accordance with the terms and conditions of instruments to be prepared by, and
4 satisfactory to, the City. These easement rights shall be perpetual and subject to no liens of any
5 mortgages or deeds of trust.
6

7 **3. Trash, Garbage, Refuse, Yard Waste and Recycling Removal from the Property.**
8

9 The City agrees to provide, in accordance with the fee schedule established by the City
10 Council, as may be amended, trash, garbage, yard waste, refuse, and recyclable collection and
11 removal to those Individual Owners whose front public rights-of-way are along Enclave Court,
12 provided that the Individual Owners of each applicable residential unit provides refuse containers
13 at a place convenient and satisfactory to the City Director of Public Works and in accordance
14 with Title 10, "Health and Safety" of the Code.
15

16 **4. Recordation; Binding.**
17

18 a. This Agreement, the Subdivision Plat and the Maintenance Agreement shall all be
19 recorded among the Land Records of Anne Arundel County at the Association's sole cost and
20 expense, and the duties and responsibilities of this Agreement shall run with the title(s) to the
21 Property and the Project, including all those portions individually owned by the Individual
22 Owners and their successors and assigns.
23

24 b. The Subdivision Plat shall include the following notation: "At no time from this
25 date henceforth shall the owners of the individual housing units or the Association (on behalf of
26 the owners) petition the City to take over the road/street rights-of-way or assume responsibilities
27 for maintenance as outlined in the Maintenance Agreement recorded among the Land Records of
28 Anne Arundel County at _____."
29

30 c. The parties and their respective successors, assigns and purchasers shall be
31 entitled to all of the rights and privileges of this Agreement and shall be bound by all of its duties
32 and responsibilities. All references to the "Property Owner" herein shall be interpreted to
33 specifically refer to all of the Developer's and Association's respective successors, assigns and
34 purchasers, without regard to privity with the City under this Agreement.
35

36 d. The terms of this Agreement shall be binding upon and shall inure to the benefit
37 of the parties, any successor municipal authorities of the City or any successor quasi-
38 governmental authority. Successor owners of record of the Property and/or the Project, or any
39 respective portion thereof, and/or the successors and assigns of the Individual Owners may
40 assign their benefits, rights, duties and obligations hereunder either as part of the conveyance of
41 the Property and/or the Project as an entirety or severally as part of the conveyances of portions
42 of the Property and/or the Project.
43

44 **5. Disclosure.**
45

1 a. The Developer shall incorporate, within the bylaws of the Association, a
2 provision memorializing this Agreement (the "Provision"). This Provision shall not be
3 incorporated into the bylaws of the Association until reviewed and approved, in writing, by the
4 City Office of Law, after consultation with the City Department of Public Works.

5
6 b. The Provision shall be recited within all deeds transferring real property fee
7 simple rights to any property within the Property and/or the Project. All such deeds shall include
8 an acceptance signature line by the new owners, including, but not limited to, the Individual
9 Owners.

10
11 c. The Developer and all Individual Owners shall disclose in writing to each
12 potential buyer of the Property and/or the Project the contents of this Agreement. The Individual
13 Owners and each potential buyer shall be provided a copy of this Agreement by the Developer or
14 the Association prior to any contract of sale being executed for any portion of the Property
15 and/or the Project.

16 17 **6. City Re-Acquire Ownership of Streets.**

18
19 If the City, at any time, should agree through City Council resolution to re-acquire
20 ownership of the Streets, whether pursuant to Chapter 20.20 or Chapter 14.28 of the Code, as
21 either may be amended, then the Association shall be required to bring the Streets into
22 compliance with all federal, state, local and City standards (including, but not limited to, those
23 required in Chapters 20.20 and 14.28 of the Code) prior to the City assuming any ownership,
24 liability, obligations and/or other responsibilities of or for the Streets.

25 26 **7. Indemnification.**

27
28 a. The Developer shall forever indemnify, defend and hold harmless the City, its
29 elected officials, appointees, directors, employees, agents, contractors and representatives from
30 and against all liability for injuries to persons, including death, and damage to City property and
31 other property arising from acts or omissions of the Developer, its officers, agents, employees,
32 contractors, patrons, volunteers, guests or invitees resulting in connection with this Agreement or
33 the Streets of the Project.

34
35 b. The Association shall forever indemnify, defend and hold harmless the City, its
36 elected officials, appointees, directors, employees, agents, contractors and representatives from
37 and against all liability for injuries to persons, including death, and damage to City property and
38 other property arising from acts or omissions of the Association, its officers, agents, employees,
39 members, contractors, patrons, volunteers, guests or invitees resulting in connection with this
40 Agreement or the Streets of the Project.

41
42 c. Developer and/or Association indemnification does not limit any immunity which
43 the City, its elected officials, appointed officers, directors, employees, agents, contractors and
44 representatives are entitled to assert, and includes all costs and expenses, including attorney's
45 fees, whether or not related to administrative or judicial proceedings.

1 d. The City, in its sole discretion, may participate in handling its own defense or
2 exclusively handle its own defense, and select its own attorneys, including the City Attorney.
3 The indemnification for attorney fees applies whether or not the City Attorney or other attorney
4 handles the defense.

5
6 e. The Developer shall reimburse the City, within thirty (30) calendar days after
7 invoicing for such reimbursement, for any damage to the City's streets, utility systems, water
8 and/or sewer mains, facilities, equipment or other property caused by the negligence or willful
9 misconduct of the Developer, its officers, agents, employees, contractors, patrons, volunteers,
10 guests or invitees.

11
12 f. The Association shall reimburse the City, within thirty (30) calendar days after
13 invoicing for such reimbursement, for any damage to the City's streets, utility systems, water
14 and/or sewer mains, facilities, equipment or other property caused by the negligence or willful
15 misconduct of the Association, its officers, agents, employees, members, contractors, patrons,
16 volunteers, guests or invitees.

17
18 **8. Waiver.**

19
20 a. No delay or omission on the part of the City to exercise any right granted to the
21 City under this Agreement, in any one or more instances shall constitute a waiver of the City's
22 rights hereunder and each such right shall remain continuously in full force and effect.

23
24 b. The parties hereby understand and agree that this Agreement shall not waive any
25 rights, powers or remedies that the City may have pursuant to the Code, as may be amended.

26
27 **9. No Partnership.**

28
29 Nothing contained in this Agreement shall be construed in a manner to create any
30 relationship between the parties other than expressly specified herein, and the parties shall not be
31 considered partners or co-venturers for any purpose on account of this Agreement.

32
33 **10. Severability.**

34
35 In the event any one or more of the provisions of this Agreement shall for any reason be
36 held by a court or other lawful authority to be invalid, illegal or unenforceable, in whole or in
37 part or in any other respect, the remaining provisions hereof shall not be affected thereby, and the
38 Agreement shall remain operative and in full force and effect and shall in no way be affected,
39 prejudiced or disturbed thereby.

40
41 **11. Governing Law.**

42
43 This Agreement and its interpretation shall be governed by Maryland law. The venue for
44 all actions pursuant to this Agreement shall be the Courts of Anne Arundel County, Maryland.
45 The parties waive trial by jury in all actions brought pursuant to this Agreement.

46

1 **12. Captions and Headings.**
2

3 The captions and headings contained in this Agreement are included herein for
4 convenience of reference only and shall not be considered a part hereof and are not in any way
5 intended to limit or enlarge the terms hereof.
6

7 **13. Integration; Modification.**
8

9 a. This Agreement is the final and entire agreement of the parties concerning all
10 matters having to do with the Streets of the Project. The parties acknowledge that there are no
11 other understandings or representations, oral or written, regarding the subject or matters having
12 to do with the Streets of the Project.
13

14 b. None of the terms or provisions of this Agreement may be changed, waived, or
15 modified exempt by written instrument executed by all parties hereto.
16

17 **14. Counterparts.**
18

19 This Agreement may be executed in any number of counterparts and by the parties hereto
20 in separate counterparts, each of which when so executed and delivered shall be deemed to be an
21 original and all of which taken together shall constitute but one and the same instrument.
22

23 **15. Notice.**
24

25 Any notice required to be delivered shall be deemed to have been received when the
26 notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with
27 signed receipt to the following address and individual or such other address and/or such other
28 individual as a party may identify in writing to the other party:
29

30 To the City: Department of Public Works
31 145 Gorman Street, 2nd Floor
32 Annapolis, Maryland 21401
33 Attn: Director
34 (410) 263-7949
35

36 With a Copy to: City Attorney
37 160 Duke of Gloucester Street
38 Annapolis, Maryland 21401
39 (410) 263-7954
40

41 To the Developer: K Hovnanian Homes of Maryland, L.L.C.
42 Attn: A. Hugo Decesaris, Regional President
43 1802 Brightseat Road
44 Landover, Maryland 20785
45 (301) 683-6270
46

1 To the Association: The Enclave at Spa Homeowners Association, Inc.
2 Attn: Michael Irons, Board President
3 1802 Brightseat Road
4 Landover, Maryland 20785
5 (301) 683-6270
6

7 **16. Authorization.**

8
9 This Agreement is authorized by the City Council pursuant to Ordinance No. R-22-15.

10
11 **IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed
12 under Seal as of the day and year written below.

13
14 K HOVNIANIAN HOMES OF MARYLAND, L.L.C.

15
16
17 _____ By: _____
18 Witness A. Hugo Decesaris, Regional President

19
20 STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL to wit:

21
22 I hereby certify that on this ____ day of _____, 2015, before me, the subscriber,
23 a Notary Public in and for the State and County aforesaid, personally appeared A. Hugo
24 Decesaris, Regional President, and he/she has signed this Agreement in my presence and
25 acknowledged that it is his/her free and voluntary act and the free and voluntary act of the K
26 Hovnianian Homes of Maryland, L.L.C. made for the purposes set forth therein.

27
28 Witness my signature and Notary Seal.

29
30 _____
31 NOTARY PUBLIC

32
33 THE ENCLAVE AT SPA HOMEOWNERS
34 ASSOCIATION, INC.

35
36
37 _____ By: _____
38 Witness Michael Irons, Board President

39
40 STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL to wit:

41
42 I hereby certify that on this ____ day of _____, 20__, before me, the subscriber,
43 a Notary Public in and for the State and County aforesaid, personally appeared Michael Irons,
44 Board President, and he/she has signed this Agreement in my presence and acknowledged that it
45 is his/her free and voluntary act and the free and voluntary act of The Enclave at Spa
46 Homeowners Association, Inc. made for the purposes set forth therein.

1
2 Witness my signature and Notary Seal.
3

4 _____
5 NOTARY PUBLIC
6

7
8 ATTEST:

CITY OF ANNAPOLIS

9
10
11 _____
12 Regina C. Watkins-Eldridge, MMC,
13 City Clerk
14

By: _____
Michael J. Pantelides, Mayor (Seal)

15 APPROVED FOR FINANCIAL SUFFICIENCY: REVIEWED AND APPROVED BY:
16
17

18 _____
19 Bruce T. Miller, Director
20 Finance Department
21

Thomas C. Andrews, City Manager

22 REVIEWED AND APPROVED BY:
23
24

25 _____
26 David Jarrell, Director
27 Department of Public Works
28

29 APPROVED FOR FORM AND LEGAL SUFFICIENCY:
30
31

32 _____
33 OFFICE OF THE CITY ATTORNEY
34

**ATTACHMENT A
PLAN**