



City of Annapolis

Signature Copy

Resolution: R-22-15

160 Duke Of Gloucester
Street
Annapolis, MD 21401

File Number: R-22-15

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

**CITY COUNCIL OF THE
City of Annapolis**

Resolution 22-15

Sponsored by: Mayor Pantelides

**Referred to
Economic Matters
Environmental Matters
Rules and City Government**

A RESOLUTION concerning

Street Rights-of-Way at the Enclave at Spa

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

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

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

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

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

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

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

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

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments.

CITY OF ANNAPOLIS PRIVATE RIGHT-OF-WAY AGREEMENT

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

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

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

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

WHEREAS, each of the Approvals for the Project was based upon the Plan that specifies that all road/street rights-of-way within the Project shall be privately owned and maintained by the

future residents of the Project acting collectively as the Association; and

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

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

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

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

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

a. Upon recordation of the Subdivision Plat and the Developer's conveyance of the road/street rights-of-way of the Project (collectively, the “Streets”) to the Association, the Association shall have exclusive ownership of all Streets within the Project, which shall be so indicated on the recorded Subdivision Plat and shall be based upon the Plan.

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

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

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

2. Easements to the City.

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

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

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

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

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

4. Recordation; Binding.

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

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

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

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

5. Disclosure.

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

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

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

6. City Re-Acquire Ownership of Streets.

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

7. Indemnification.

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

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

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

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

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

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

8. Waiver.

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

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

9. No Partnership.

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

10. Severability.

In the event any one or more of the provisions of this Agreement shall for any reason be held by a court or other lawful authority to be invalid, illegal or unenforceable, in whole or in part

or in any other respect, the remaining provisions hereof shall not be affected thereby, and the Agreement shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

11. Governing Law.

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

12. Captions and Headings.

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

13. Integration; Modification.

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

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

14. Counterparts.

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

15. Notice.

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

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

With a Copy to: City Attorney
 160 Duke of Gloucester Street

Annapolis, Maryland 21401
(410) 263-7954

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

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

16. Authorization.

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

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

K HOVNANIAN HOMES OF MARYLAND, L.L.C.

Witness By: _____
A. Hugo Decesaris, Regional President

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL to wit:

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

Witness my signature and Notary Seal.

NOTARY PUBLIC

THE ENCLAVE AT SPA HOMEOWNERS
ASSOCIATION, INC.

Witness By: _____
Michael Irons, Board President

STATE OF MARYLAND, COUNTY OF ANNE ARUNDEL to wit:

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

Witness my signature and Notary Seal.

NOTARY PUBLIC

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

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

APPROVED FOR FINANCIAL SUFFICIENCY: REVIEWED AND APPROVED BY:

Bruce T. Miller, Director
Finance Department

Thomas C. Andrews, City Manager

REVIEWED AND APPROVED BY:

David Jarrell, Director
Department of Public Works

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY

ADOPTED this 28th day of September, 2015.

Aye: 7 Mayor Pantelides, Alderman Budge, Alderman Paone, Alderwoman Pindell Charles, Alderwoman Finlayson, Alderman Littmann and Alderman Kirby

Nay: 1 Alderman Arnett

Absent: 1 Alderman Pfeiffer

**THE ANNAPOLIS
CITY COUNCIL**



Michael J. Pantelides

Date 10-3-2015

ATTEST



Regina C. Watkins-Eldridge, MMC

Date 10/5/15