

LANDSCAPING AND BUFFER AGREEMENT

THIS AGREEMENT (this “Agreement”) is made and entered into as of the 23rd day of December 2022 (the “Commencement Date”), by and among **THE CITY OF MADISON, ALABAMA**, a municipal corporation (the “City”), and **JIM SIBLEY**, as property owner of property located at the Southeast corner of the intersection of Hughes Road and Portal Lane (“Licensee”).

RECITALS

WHEREAS, D & S COWBOYS #1, LLC was the previous owner/lessor of certain real property located at 99 Hughes Road Madison, AL 35758 (“the Property”); and

WHEREAS, the City owns certain right-of-way that lies adjacent to the Property, which is depicted in **Exhibit A** to this Agreement (the “Licensed Area”); and

WHEREAS, D & S COWBOYS #1, LLC applied to the City of Madison Zoning Board of Adjustments and Appeals (the “Board”) requesting a variance to use the Licensed Area for landscaping and buffer purposes; and

WHEREAS, the Board held a hearing after giving proper notice, and decided to grant a variance to Licensee for the use of the Licensed Area for landscaping and buffer purposes contingent on a formal agreement with the City;

WHEREAS, on September 29, 2022 the Property was conveyed to **JIM SIBLEY**; and

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows:

1. Recitals and Incorporation. The foregoing recital clauses are true and correct in all respects and form an integral part of this Agreement, the same as if they were set forth in the numbered paragraphs hereof. Furthermore, the Board’s Order on a Request for a Variance, dated the March 30, 2021, in Case No. VAR 2021-003 related to the Licensee and the Property, a copy of which is attached hereto as **Exhibit B** hereof, is incorporated by reference and made a material part of this Agreement as though fully set forth herein as additional duties of the Licensee. Except as modified by the Board’s Order on a Request for a Variance attached as Exhibit B, the terms and requirements of the Madison Zoning Ordinance, as it may be amended over time, are also incorporated by reference and made a material part of this Agreement as though fully set forth herein as additional duties of the Licensee.

2. License. The City hereby grants to Licensee, and Licensee hereby accepts, a non-

exclusive license (the "License") to use and occupy the Licensed Area for the purpose of erecting and extending the landscaping from the Property into the Licensed Area for the License Period. The parties do not intend to create a lease or any other interest in real property for Licensee through this Agreement. The Licensed Area shall be used by Licensee for the express permitted use, as set forth in this Section, and for no other purpose except as may be agreed upon by the City in writing in its reasonable discretion.

THE PARTIES DO NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE LICENSED AREA, OR THE PROPERTY.

3. Maintenance of Improvements. The Licensee shall be solely and absolutely responsible for the maintenance and repair of the landscape and buffer. The Licensee agrees to maintain it in a pleasing and good condition.

4. Removal. Licensee expressly recognizes and agrees that the City may remove the landscaping and buffer if necessary to carry out the purposes of the easement, to accomplish a governmental purpose, or for any other reason that the City deems necessary. The Licensee agrees that the reestablishment of the buffer and landscaping is the sole responsibility of the Licensee and must be accomplished within thirty days of a request to do so by the City or within such other time that may be authorized in writing by the City's Director of Development Services (or the City's successor position, by whatever name it may be called).

5. Access. The City and its officers, agents, employees, contractors, subcontractors, guests, invitees, and the general public shall have the right of access to the Licensed Area at all times.

6. License Period. The "License Period" for the Licensed Area shall commence on the Commencement Date and shall run in perpetuity unless and until this Agreement is terminated by the City. Under no circumstances shall the Licensee be permitted to unilaterally terminate this Agreement. At the City's sole option, upon reasonable notice to the Licensee, the City may either unilaterally terminate this Agreement or the City may unilaterally give notice to the Licensee of an amended description of the Licensed Area.

7. Liability.

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL THE CITY BE LIABLE TO THE LICENSEE FOR ANY INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING LOSS OF GOODWILL OR LOSS OF PROFITS. The City and Licensee agree that none of the City's officers, employees, shareholders, or any of its agents shall have any personal obligation hereunder, and that Licensee shall not seek to assert any claim or enforce any of its rights hereunder against any of such parties in their personal capacities.

(b) Licensee shall indemnify and hold the City and its agents, officers, and employees harmless from any liability asserted or attempted to be asserted against the City related

to the License Area, related to the Licensee's creation or maintenance of the landscaping or buffer, or the related to the use of the Licensed Area by members of the general public, except for such liability that is asserted on account of an intentional wrong by the City. During such time as Licensee and/or its agents, servants or employees are on the Licensed Area, such agents, servants or employees shall remain solely the agents, servants or employees of Licensee and shall not in any way be the agents, servants or employees of the City, nor shall the City be the insurer, principal, or employer of such agents, servants or employees during the time that they are present upon, transporting, using or otherwise participating in any activity regarding the Licensed Area.

8. Notices.

(a) Unless specifically stated otherwise in this Agreement, all notices, demands, requests, consents, approvals, or other communications (for purposes of this Section collectively referred to as "Notices") shall be in writing and delivered to the City or Licensee, at the addresses set forth below, by one the following methods:

- (i) personal delivery, whereby delivery is deemed to have occurred at the time of delivery;
- (ii) overnight delivery by a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier;
- (iii) registered or certified mail, postage prepaid, return receipt requested, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or

(b) The addresses for all communications and notices shall be as follows:

If to City:

Name: City of Madison Alabama
Address: 100 Hughes Road
Madison, AL 35758
ATTN: Mayor

With a copy to:

Name: City of Madison Alabama
Address: 100 Hughes Road
Madison, AL 35758
ATTN: City Attorney

If to Licensee:

Name: JIM SIBLEY
PO Box 232
Courtland, AL 35618

(c) Any party may, by notice given in accordance with this Section, designate a different address or person for receipt of all communications or notices.

(d) Any notice under this Agreement may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

9. Entire Agreement. This Agreement embodies the entire Agreement and understanding between the Parties and supersedes any prior agreements and understandings between such parties relating to the subject matter hereof.

10. Amendment and Waiver. Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by both parties.

11. Miscellaneous.

(a) Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(c) Section Headings. The section titles herein are for convenience only and do not define, limit or construe the contents of such sections.

(d) Recording. Recording of this Agreement with the Madison County, Alabama, Judge of Probate is required and must be accomplished by the Licensee within ten days of the Commencement Date.

(e) Severability. If any provision or provisions in this Agreement is/are found to be in violation of any law or otherwise unenforceable, all other provisions remain unaffected in full force and effect.

(f) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and shall not be modified except by an express written agreement signed by a duly authorized representative of both parties.

(g) Assignability. This Agreement may be freely assigned by the City. Licensee may assign this Agreement only with the written approval of the City or in conjunction with a transfer of Licensee's entire interest in the Property.

[Remainder of page left intentionally blank; Signature pages to follow]

IN WITNESS WHEREOF, the undersigned has executed this Agreement effective as of the date first above written.

THE CITY OF MADISON, ALABAMA,
a municipal corporation.

Mayor

ATTEST:

City Clerk

IN WITNESS WHEREOF, the undersigned has executed this Agreement effective as of the date first above written.

JIM SIBLEY

Signature: _____

By (Printed Name): _____

Its (Title): _____

STATE OF ALABAMA)
MADISON COUNTY)

I, _____, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of _____, a _____, 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 said instrument, he or she, in such capacity and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this _____ day of _____, 2023.

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, the undersigned has executed this Agreement effective as of the date first above written.

D & S COWBOYS #1, LLC

Signature: _____

By (Printed Name): _____

Its (Title): _____

STATE OF ALABAMA)
MADISON COUNTY)

I, _____, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of _____, a _____, 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 said instrument, he or she, in such capacity and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this _____ day of _____, 2023.

Notary Public
My Commission Expires: _____