
(Space Above Line for Use by Recording Office)

THIS INSTRUMENT PREPARED BY:

Dentons US LLP
Attn: Jess A. Pinkerton, Esq.
303 Peachtree Street, N.E., Suite 5300
Atlanta, Georgia 30308

PUBLIC DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT

This **PUBLIC DRAINAGE EASEMENT AND MAINTENANCE AGREEMENT** (“Agreement”), is made and entered into as of the _____, day of _____, 2023, by and between **EVERSTEAD AT MADISON, LLC**, a Delaware limited liability company (“Developer”), and **THE CITY OF MADISON**, a municipal corporation in the State of Alabama (hereinafter referred to as “City,” together with the Developer, the “Parties,” and each a “Party”).

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in **Exhibit “A”** attached hereto (the “Developer Property”), which is embraced by the Final Plat/Boundary Plat of The Everstead at Madison (the “Plat”), a recorded copy of which is attached hereto as **Exhibit “B”**; and

WHEREAS, Developer intends to develop the Developer Property into lots or units for development, sale and/or lease (the “Development”); and

WHEREAS, Developer has constructed certain drainage improvements, infrastructure, systems, facilities, features, and amenities (the “Drainage Improvements”) within that portion of the Developer Property identified as a “Public Drainage Easement” on Tract 1 of the Plat (the “Easement Area”), and the Parties are desirous of entering into this Agreement to memorialize each Party’s respective rights with respect to the repair, maintenance, and replacement of the Drainage Improvements.

NOW, THEREFORE, for and in consideration of (a) the premises which are deemed a material part of this Agreement and, by this reference, are incorporated herein, (b) the mutual agreements, covenants, provisions and terms of this Agreement set forth herein, (c) the execution, acknowledgment and delivery of this Agreement by the Parties hereto, and (d) other good and valuable consideration, the receipt and sufficiency of all of which is hereby expressly

acknowledged by City and Developer, and intending to be legally bound hereby, City and Developer agree and covenant with and unto each other, as follows:

Section 1. Definitions.

Private Owner means and refers to any person or entity who is the grantee in each deed or other conveyance recorded in the real estate records in the Office of the Judge of Probate of the County in which the Development is located of the fee simple title to all or any portion of the real property comprising Tract 1 of the Developer Property.

Section 2. Maintenance Obligations.

(a) The City shall be responsible for the continuous and proper maintenance, operation, replacement, repair or restoration of the Drainage Improvements (the “Maintenance Obligations”). Such Maintenance Obligations shall be in conformance with all applicable laws, regulations, standards and specifications, now existing or hereafter established, the subdivision regulations, state nuisance laws, City ordinances and codes governing nuisances, as such may be superseded or amended from time to time.

Section 3. Default in Maintenance Obligations. Upon the failure of the City to perform its Maintenance Obligations, and after any notice and opportunity to cure required by Section 4 hereof, Developer, each Private Owner, and/or the Association (if any obligations of Developer or a Private Owner hereunder are assigned by Developer or such Private Owner to the Association) shall have the right but not the obligation to perform, or have performed on its behalf, the Maintenance Obligations, in whole or part, and shall have the right to receive full reimbursement from the City for the costs of such Maintenance Obligations as set forth in Section 6 below.

Section 4. Notice and Cure. Except in the event of an emergency, neither the Developer, a Private Owner, nor an Association shall perform the Maintenance Obligations until it has first given the City notice of (a) the need to perform Maintenance Obligations identified in the notice, and (b) thirty (30) days after the date of such notice within which to cure and perform the same; provided, however, that if such obligations cannot be reasonably completed within such thirty (30) day period, then the City shall have additional time to complete such obligations, so long as the City commences such obligations within the initial thirty (30) day period and uses good faith efforts to diligently complete the same. Any notice required hereunder shall be given in the manner prescribed in Section 7 below.

Section 5. Public Dedication and Acceptance of Easement Area.

(a) The City has accepted dedication of the Easement Area, the Drainage Improvements, and other public easements and improvements set forth on the Plat, which dedication and acceptance shall include a grant to the City and its authorized agents, contractors, and employees, a continuous, permanent and irrevocable right of entry, access, ingress and egress easement across, along, over, under and through the Easement Area in order to perform such acts as contemplated in this Agreement in accordance with applicable federal, state, and local laws governing stormwater management, as such laws may be amended or superseded from time to time. The easements contained in the Plat and this Agreement shall run with the land as a burden

to Tract 1 of the Developer Property and shall pass with the conveyance of all or any portion thereof, whether specifically referred to or not in any said conveyance.

(b) Notwithstanding anything to the contrary herein, the Developer reserves the right, exercisable in its sole discretion, to relocate the Drainage Improvements at its sole cost and expense, provided that any such relocation or construction shall be performed in such a manner that shall not materially and adversely interfere with the flow of stormwater from adjacent real property over the Developer Property. If requested by Developer, following completion of such relocation work, Developer and the City shall amend this Agreement and all referenced easements to reflect such change in a form reasonably satisfactory to the parties and shall record the same in the real estate records in the Office of the Judge of Probate of Madison County, Alabama.

Section 6. Recovery of Maintenance Obligations Costs and Collection Costs. In the event that the Developer, a Private Owner, and/or the Association performs any Maintenance Obligations pursuant to, and in accordance with the terms hereof, such party shall have the right to recover from the City the reasonable, actual, documented out of pocket costs and expenses of all labor, equipment, fuel, materials, services, supplies and similar items used in such performance (“Maintenance Obligations Costs”), and the City shall pay such Maintenance Obligation Costs to such party within thirty (30) days after receipt of an invoice therefor (together with reasonable supporting documentation of the Maintenance Obligation Costs incurred by such party).

Section 7. Notices. All notices given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given on the earlier of (i) when delivered in person, (ii) when deposited with Federal Express, or other overnight delivery service for next day delivery, addressed to the appropriate party at the address set out below, (iii) or when delivered as a PDF, or other digital image file, attachment to an email.

The City: Michael Johnson
Department of Engineering
100 Hughes Road
Madison, Alabama 35758
Email: michael.johnson@madisonal.gov

with a copy to: City Attorney
100 Hughes Road
Madison, Alabama 35758
Email: legal@madisonal.gov

Developer: Everstead at Madison, LLC
c/o Landmark Properties
Attn: Blair Sweeney and David Phillips
3060 New Peachtree Road, N.W., Suite 500
Atlanta, Georgia 30305
Emails: blair.sweeney@landmarkproperties.com
david.phillips@landmarkproperties.com

With copies to: Everstead at Madison, LLC

c/o Landmark Properties
Attn: W. Christopher Hart
315 Oconee Street
Athens, Georgia 30601
Email: chris.hart@landmarkproperties.com

and:

Dentons US LLP
303 Peachtree Street, NE
Atlanta, Georgia 30308
Email: Jess.Pinkerton@dentons.com
Attn: Jess A. Pinkerton, Esq.

Rejection or other refusal by the addressee to accept, or the inability to deliver because of a changed address or changed e-mail address of which no notice was given, shall be deemed to be receipt of the notice sent. Any party shall have the right, from time to time, to change the address or email address to which notices to it shall be sent by giving to the other party or parties at least ten (10) days' prior notice of the changed address or changed email address.

Section 8. Association/Restrictions/Other Maintenance. Nothing contained in this Agreement shall be construed or deemed as prohibiting the Developer or the Private Owners from: (a) forming an owners, homeowners, condominium owners, business owners, or residence association (the "Association"), or (b) creating and establishing covenants, restrictions or restrictive covenants (the "Restrictions"), for the benefit, construction, governance, insurance, maintenance, operation, repair or regulation, of the Development. Nothing contained in this Agreement shall be construed to affect private maintenance responsibilities which are outside the scope of this Agreement.

Section 9. Termination of Developer(s)'s Liability and Obligations. Notwithstanding anything contained in this Agreement to the contrary, the Developer's liability and obligations under this Agreement will terminate with respect to any portion of Tract 1 of the Developer Property when Developer no longer owns such portion of Tract 1 of the Developer Property or when Developer has assigned its liability and obligations hereunder to the Association and/or any successor interest of the Developer Property, if applicable. This Agreement shall not be construed or applied to confer any rights or benefits to third-parties, except to the extent assigned to a third party by Developer or a Private Owner, including, without limitation, the Association, if applicable.

Section 10. Authority and Power. Each Party covenants, represents and warrants to each other party that it has complete and unrestricted authority, power and right to enter into, execute and deliver this Agreement.

Section 11. Recordation. This Agreement shall be recorded in the real estate records in the Office of the Judge of Probate of Madison County, Alabama.

Section 12. Covenants Running with the Land. This Agreement and each of its agreements, covenants, provisions and terms are covenants running with the land as to Tract 1 of the Developer Property and shall be binding on City, Developer, and Private Owners (and the Association, if any rights or obligations of Developer or a Private Owner hereunder are assigned by Developer or such

Private Owner to the Association) and all persons and entities claiming through or under them for a period of twenty-five (25) years from the date this Agreement is filed for record in the Office of the Judge of Probate of Madison County, Alabama, after which time this Agreement shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the City and Developer has been filed for record in such Probate Judge's Office, agreeing to abolish or amend this Agreement in whole or in part.

Section 13. Miscellaneous.

(a) *Entire Agreement/Merger.* This Agreement, along with all exhibits and attachments or other documents affixed hereto or referred to herein (including the Plat), embodies the entire agreement, intent and understanding of City and Developer as to the transactions contemplated and evidenced hereby and merges herein all prior and contemporaneous agreements, covenants, discussions, representations, statements and understandings heretofore made between City and Developer as to such transactions, whether written, oral or both. Any agreements, covenants, representations, statements or understandings by and between City and Developer as to such transactions not contained herein are and shall be null and void, unenforceable and of no force and effect.

(b) *Applicable Law/Jurisdiction/Venue.* This Agreement is made in, and thus shall be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning in accordance with the internal laws of, the State of Alabama, without regard to principles of conflicts of laws. For any action concerning this Agreement (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

(c) *Severability.* If, for any reason or no reason, any agreement(s), covenant(s), provision(s), or term(s) of this Agreement (whether material to the bargain of City and Developer or not) should be declared illegal, null and void, unconstitutional or unenforceable, in whole or in part, by any court of competent jurisdiction, the offending portion of this Agreement shall be deemed severed herefrom as though the same was never a part hereof; provided, however, the remainder of this Agreement shall not be impaired and shall remain in full force and effect according to its remaining agreements, covenants, provisions and terms.

(d) *Binding Effect.* The City's and Developer(s)'s respective heirs, personal representatives, successors and assigns (including, but not limited to, the Private Owners and the Association, if applicable) shall be fully bound by this Agreement and each and every agreement, covenant, provision and term hereof just as they are bound. Each and every agreement, covenant, provision and term of this Agreement inures, and shall inure, to the benefit of City, its successors and assigns, and shall be binding upon or inure to the benefit of the Developer and its heirs, personal representatives, successors and assigns (including the Private Owners and the Association).

(e) *Amendment, etc.* Neither this Agreement nor any agreement, covenant, provision or term hereof, shall be amended, changed or modified in any respect, nor may any estoppel, novation or waiver regarding the same be effectuated, without City, and Developer first executing

a writing, in equal dignity to this Agreement, embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver.

(f) *Captions.* The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the intent or scope of this Agreement.

(g) *Incorporation of Exhibits.* This Agreement hereby incorporates by reference and makes a part hereof all exhibits referred to herein and appended hereto.

(SIGNATURES ON FOLLOWING PAGES)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed under their respective seals and delivered as of the date first above written.

EVERSTEAD AT MADISON, LLC,
a Delaware limited liability company

By: _____ (SEAL)
Name: W. Christopher Hart
Title: Authorized Signatory

STATE OF GEORGIA)

COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that W. Christopher Hart, whose name as Authorized Signatory of Everstead at Madison, LLC, a Delaware limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such Authorized Signatory and with full authority, executed the same voluntarily for and as the act of said entity.

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

Notary Public
My Commission Expires: _____

SEAL

IN WITNESS WHEREOF, the Parties have signed, sealed, and delivered this Agreement as of the date first above referenced.

CITY OF MADISON, ALABAMA,
a political subdivision of the State of Alabama

By: _____ (SEAL)
Name: Paul Finley
Title: Mayor

STATE OF ALABAMA)

COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Paul Finley, whose name as Mayor of the City of Madison, Alabama, a political subdivision of the State of Alabama, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such Mayor and with full authority, executed the same voluntarily for and as the act of said entity.

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

Notary Public
My Commission Expires: _____

SEAL

EXHIBIT "A"
DEVELOPER PROPERTY

THAT PARCEL OF PROPERTY LOCATED IN SECTION 9, TOWNSHIP 4 SOUTH, RANGE 2 WEST, HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA BEING MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A 1/2" CRIMP TOP PIPE THAT BEARS NORTH 02°00'10" EAST AND 25.0' FEET FROM THE CENTER OF THE SOUTH BOUNDARY OF THE S/W 1/4 OF SECTION 9, TOWNSHIP 4 SOUTH, RANGE 2 WEST, HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA (AND ALSO BEING SOUTH 89°03'23" EAST AND 349.93 FEET FROM THE S/E CORNER OF LOT 3, CLIFT MILL ROAD SUBDIVISION AS PER INSTRUMENT # 2021-31178) AND RUN NORTH 02°49'04" EAST, A DISTANCE OF 99.62 FEET TO A FENCE POST;

THENCE RUN NORTH 03°00'10" EAST, A DISTANCE OF 62.41 FEET TO A FENCE POST;

THENCE RUN NORTH 01°29'55" EAST, A DISTANCE OF 82.37 FEET TO A 5/8" REBAR AND CAP (JWKLS 17254);

THENCE RUN NORTH 89°25'34" WEST, A DISTANCE OF 89.96 FEET TO A 1/2" CRIMP TOP PIPE;

THENCE RUN SOUTH 01°15'17" WEST, A DISTANCE OF 12.01 FEET;

THENCE RUN NORTH 87°59'50" WEST, A DISTANCE OF 261.85 FEET TO A POINT;

THENCE RUN NORTH 02°00'31" EAST, A DISTANCE OF 1169.82 FEET, PASSING A 1/2 INCH REBAR & CAP (KLSS 21780) AT 2.56 FEET FOR THE EXISTING N/E CORNER OF SAID LOT 3 ALSO BEING THE S/E CORNER OF LOT 4 OF CLIFT MILL ROAD SUBDIVISION, AS PER PLAT RECORDED IN INSTRUMENT #2021-31178, OFFICE OF JUDGE OF PROBATE, MADISON COUNTY, ALABAMA; AND ALSO PASSING A 1/2 INCH REBAR & CAP (MULLINS) AT 225.31 FEET FOR THE EXISTING N/E CORNER OF SAID LOT 4, TO A HEX IRON PIN;

THENCE RUN SOUTH 89°04'52" EAST, A DISTANCE OF 349.78 FEET TO A HEX IRON PIN;

THENCE RUN NORTH 01°15'40" EAST, A DISTANCE OF 244.09 FEET TO A 5/8 INCH REBAR;

THENCE RUN SOUTH 88°33'22" EAST, A DISTANCE OF 329.80 FEET TO A HEX IRON PIN;

THENCE RUN SOUTH 89°08'23" EAST, A DISTANCE OF 330.06 FEET TO A HEX IRON PIN;

THENCE RUN SOUTH 88°49'10" EAST, A DISTANCE OF 275.60 FEET TO A POINT;

THENCE RUN SOUTH 01°45'52" WEST, A DISTANCE OF 631.24 FEET TO A POINT;

THENCE RUN SOUTH 88°14'08" EAST, A DISTANCE OF 30.00 FEET TO A CONCRETE MONUMENT;

THENCE RUN SOUTH 01°57'29" WEST, A DISTANCE OF 131.97 FEET TO A 5/8 INCH REBAR & CAP(HILL PLS 14107);

THENCE RUN SOUTH 01°56'32" WEST, A DISTANCE OF 512.70 FEET TO A POINT;

THENCE RUN NORTH 88°43'08" WEST, A DISTANCE OF 600.54 FEET TO A POINT;

THENCE RUN SOUTH 01°34'47" WEST, A DISTANCE OF 373.28 FEET TO A POINT;

THENCE RUN NORTH 89°12'23" WEST, A DISTANCE OF 367.82 FEET TO THE **POINT OF BEGINNING** CONTAINING 40.33 ACRES (1,756,933 Sq. Ft.), MORE OR LESS AND SUBJECT TO ANY EASEMENTS AND/OR RIGHTS-OF-WAY, RECORDED AND UNRECORDED.

EXHIBIT "B"
PLAT

(ATTACHED)