

STATE OF ALABAMA                     )  
  :  
COUNTY OF SHELBY                    )

**COMMON MAINTENANCE AGREEMENT**

THIS COMMON MAINTENANCE AGREEMENT (this "Agreement") is made and entered into as of the 1st day of December, 2001 by TOWN BUILDERS, INC., an Alabama corporation ("Developer").

**R E C I T A L S:**

Developer is the owner of Lots 7-13, 7-14, 7-15 and 7-16, according to the Final Plat for the Private, Mixed-Use, Traditional Neighborhood Development Subdivision of Mt Laurel – Phase 1A, which has been recorded in Map Book 27, Pages 72A and B in the Office of the Judge of Probate of Shelby County, Alabama (individually, a "Lot" and collectively, the "Lots").

Developer has constructed on each of the Lots a single-family townhouse residence (individually, a "Townhouse" and collectively, the "Townhouses"). Furthermore, attached garages (individually, a "Garage" and collectively, the "Garages") have been constructed at the rear of each of the Lots.

Developer desires to enter into this Agreement for the benefit of each of the Lots in order to establish a method for maintaining certain common portions of the Townhouses, the Garages and the Lots which will be binding upon the then record owner, whether one or more persons or entities, of fee simple title to each of the Lots and the respective heirs, executors, successors and assigns of any such persons or entities (individually, an "Owner" and collectively, the "Owners").

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, Developer does hereby declare and establish that each of the Lots and each Owner thereof shall be subject to the following covenants, agreements, easements and obligations, which covenants, agreements, easements and obligations shall constitute covenants running with the land which shall be binding upon and inure to the benefit of each Owner and the respective heirs, executors, successors and assigns of each Owner:

1.     **Common Maintenance.**

(a)     Subject to the terms and provisions of Paragraphs 1(b) and 1(c) below, the costs and expenses of maintaining the following portions of the Lots, Townhouses and Garages (collectively, the "Common Maintenance Expenses") shall be paid for equally by the Owners of each of the Lots in accordance with the provisions of Paragraph 2 below:

(i)     All costs and expenses of repairing, patching, replacing and re-roofing the roofing, gutters and downspouts on all of the Townhouses and the Garages;

(ii) The costs and expenses of repainting any of the exterior surfaces of all of the Townhouses and the Garages including: exterior walls, eaves, cornices and gables; the handrails and steps for the front entrances to the Townhouses; front porches; and all exterior doors, windows and window frames; provided, however, that the foregoing shall not be applicable to any fences along the lot lines of any of the Lots or any decks, porches, walkways or steps attached to or providing access between the Garage and any Townhouse on any Lot or which may be situated at the rear of any of the Townhouses; and

(iii) The costs and expenses of repairing and replacing the common brick paver walkways in front of the Townhouses (the "Common Walkways"); provided, however, that the foregoing shall not be applicable to the repair or replacement of the sidewalks or common concrete steps lying within the right-of-way of Hawthorn Street which are maintained by the Mt Laurel Neighborhood Association, Inc. (the "Association").

(b) An Owner shall be obligated to pay such Owner's share of the Common Maintenance Expenses only if such Common Maintenance Expenses have been approved by at least fifty percent (50%) of all of the Owners of the Lots. Common Maintenance Expenses shall not be incurred without the approval of at least fifty percent (50%) of all of the Owners of the Lots.

(c) Notwithstanding anything provided in this Agreement to the contrary, the Owner of each Lot shall be solely responsible for repairing or replacing any of the items specified in Paragraph 1(a) above which constitute Common Maintenance Expenses to the extent any Common Maintenance Expenses result from or are occasioned by any negligent or intentional acts of such Owner or such Owner's family members, guests, agents, employees or invitees.

(d) Except for the Common Maintenance Expenses specified herein and as provided in Paragraph 5 below, each Owner shall, at such Owner's sole cost and expense, be obligated to maintain all other portions of such Owner's Lot, Townhouse and Garage in good condition and repair and in accordance with the terms, provisions and requirements of the "Mt Laurel Design Code", the "Rules and Regulations" and the "Town Architect", as such terms are defined in the Mt Laurel Declaration of Charter, Easements, Covenants and Restrictions dated September 1, 2000 and recorded as Instrument #2000-35580 in the Office of the Judge of Probate of Shelby County, Alabama, as amended (as so amended, the "Declaration").

2. **Obligation to Pay.** To the extent any Common Maintenance Expenses are approved by at least fifty percent (50%) of all of the Owners of the Lots, then (a) the Owner of each Lot shall be required to pay one-fourth (1/4) of the total amount of such approved Common Maintenance Expenses and (b) such obligation shall be a binding obligation on all of the Owners even though an Owner may not have approved such Common Maintenance Expenses.



3. **Easements to Common Walkways.** Developer does hereby declare and establish for the benefit of each Owner of each Lot a permanent, perpetual and non-exclusive easement over, across, through and upon the Common Walkways for the purpose of providing pedestrian access to and from each of the Townhouses and Hawthorn Street.

4. **Default.**

(a) In the event the Owner of any Lot fails to pay such Owner's prorata share of Common Maintenance Expenses within ten (10) days following written notice from any of the other Owners, such failure shall constitute a default hereunder in which even any one or more of the other Owners (the "Non-Defaulting Owners") shall have the right to take any and all legal action necessary or required to collect any and all amounts due from such delinquent Owner and such delinquent Owner shall be obligated to pay any and all attorneys' fees, court costs and all other expenses paid or incurred by the Non-Defaulting Owners in enforcing the payment by such delinquent Owner of all amounts due hereunder.

(b) Any and all notices of default required or permitted to be given pursuant to the terms and provisions of this Agreement shall be deemed to have been given upon the deposit of written notice of default in the United States mail, first-class mail, postage prepaid and addressed to such Owner at the address then shown in the Shelby County, Alabama Tax Assessor's Office for the assessment of ad valorem taxes for such Owner's Lot.

(c) The rights and remedies described in this Paragraph 3 shall not be deemed exclusive of any other rights and remedies available at law or in equity to any of the Non-Defaulting Owners as a result of any Owner's failure to pay such Owner's prorata share of the Common Maintenance Expenses.

(d) If, for any reason, the Owners fail to timely and properly undertake the Common Maintenance Expenses in accordance with the terms and provisions set forth above, then the Association shall have the right, at its option (but without any obligation to do so), to exercise all of its rights and remedies set forth in the Declaration with respect to the failure of the Owners to properly maintain the Lots.

5. **Maintenance of Common Fences, Steps, Porches and Decks.**

(a) Any fences which are constructed along the common property line of any two (2) Lots shall constitute a Common Fence and shall be maintained by the Owners of the Lots adjoining such Common Fence as provided by the terms and provisions of Section 2.05(d) of the Declaration.

(b) Any common stairs, steps, porches and decks (the "Limited Common Areas") which serve or benefit at least two (2) of the Townhouses (but not all of the Townhouses) shall, subject to the terms and provisions of this Paragraph 5(b), be maintained by, and the reasonable costs and expenses of maintaining, repairing or replacing the Limited Common Areas shall be shared equally by, the Owners of those Townhouses which are specifically benefitted by and utilize such Limited Common Areas. The Owners of the Townhouses which share Limited Common Areas covenant and agree to at all times maintain the Limited Common Areas in good condition and

repair in accordance with the terms, provisions and requirements of the "Mt Laurel Design Review Code", the "Rules and Regulations" and the "Town Architect", as such terms are defined in the Declaration. Notwithstanding the foregoing, to the extent any Limited Common Areas are damaged or destroyed through the acts of any Owner or such Owner's agents, employees, servants, tenants, guests, family members, invitees, licensees or pets, whether such act is willful, negligent or accidental, then such Owner shall forthwith proceed to rebuild, repair and replace the same to as good a condition as to which such Limited Common Areas existed immediately prior to such damage or destruction without the Owner of the adjoining Townhouse having any obligation to pay any such costs or expenses. To the extent any Limited Common Areas are damaged or destroyed by fire or other casualty, then each adjoining Owner shall share equally in the costs to repair or replace the same regardless of whether insurance proceeds are available or are sufficient to pay for such restoration and repair. In the event of any disagreement between the Owners of any Townhouses with respect to their respective rights and obligations as to any Limited Common Areas, then such dispute or disagreement shall be submitted to binding arbitration to the Mt Laurel Design Review Board (or any designee thereof) whose decision shall be final, conclusive and binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other with respect to the maintenance, repair and replacement of any of the Limited Common Areas.

6. **Miscellaneous.**

(a) Captions and headings contained in this Agreement are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Agreement. Whenever appropriate in this Agreement, personal pronouns shall be deemed to include all other genders and the singular shall be deemed to include the plural and vice versa.

(b) All of the terms and provisions contained in this Agreement constitute covenants running with the land which shall be binding upon, inure to the benefit of and be enforceable by all Owners and the respective heirs, executors, personal representatives, successors and assigns of each of the Owners. Any grantee accepting a deed to any of the Lots will automatically become a party to and bound by all of the terms and provisions of this Agreement from and after the date of such conveyance.

(c) If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be affected thereby and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

(d) Nothing contained in this Agreement and no action by the Owners will be deemed or construed by the Owners or by any third party to create the relationship of principal and agent, or a partnership or a joint venture or any association between or among any of the Owners.

(e) This Agreement will be construed in accordance with the internal laws of the State of Alabama.

(f) This Agreement and any provision contained herein may be terminated, extended, modified or amended only with the express written consent of all Owners of all of the Lots.

IN WITNESS WHEREOF, Developer has caused this Agreement to be executed as of the day and year first above written.

TOWN BUILDERS, INC., an Alabama corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Elton B. Stephens, Jr., whose name as Vice President of TOWN BUILDERS, INC., an Alabama corporation, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 5<sup>th</sup> day of February, 2001.

Jessica Lynn Lockwood  
Notary Public

[NOTARIAL SEAL]

My commission expires: 01-26-04

This instrument prepared by and upon recording should be returned to:

Stephen R. Monk, Esq.  
Bradley Arant Rose & White LLP  
2001 Park Place, Suite 1400  
Birmingham, Alabama 35203  
(205) 521-8429  
1/867263.2

Inst # 2002-06620

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SHELBY COUNTY JUDGE OF PROBATE  
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