

ENCROACHMENT AND MAINTENANCE AGREEMENT

THIS ENCROACHMENT AND MAINTENANCE AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between \_\_\_\_\_, a Virginia corporation (hereafter referred to as “Owner”), and James City County, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as “James City County”).

WHEREAS, James City County is the owner of certain right of way located, lying and being in James City County, Virginia known and designated as Kings Way and Queens Path (hereafter referred to as the “Right of Way”);

WHEREAS, Owner is fee simple owner of a parcel of land located, lying and being in James City County, Virginia, known as Parcel 22, Williamsburg Crossing (the “Property”) having a tax map parcel identification number of 4812200022, immediately adjacent to the Right of Way;

WHEREAS, there are landscaping improvements owned and used by Owner as part of the Property that encroach into portions of the Right of Way;

WHEREAS, Owner desires to be allowed to maintain the landscaping improvements that encroach into the Right of Way in their present locations and James City County, pursuant to Section 15.2-2009 of the Code of Virginia, is willing to allow the Owner to do so subject to the terms, provisions, and conditions set forth in this Agreement.

NOW, THEREFORE, WITNESSETH, that for and in consideration of the premises herein, the obligations and agreements of the parties herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, Owner and James City County hereby agree as follows:

1. The encroachments of landscaping owned and used by Owner in conjunction with the Property are shown and depicted on that certain plat entitled “VDOT RECORD DRAWINGS FOR KINGS WAY & QUEENS PATH” prepared by AES Consulting Engineers dated May 5, 2017 (the property and landscape improvements referred to together as “Areas of Encroachment”).
2. Subject to the terms, provisions, and conditions set forth herein, James City County will allow Owner to maintain the existing Areas of Encroachment in the present locations; however, Owner may not expand or enlarge the Areas of Encroachment. Owner may replace and maintain vegetation with similar vegetation that is no larger than and occupies no more space than the vegetation being replaced.
3. Owner shall be solely responsible for obtaining any other third-party agreements, land use permits or approvals necessary to maintain the landscaping within the Areas of Encroachment and for any expenses incurred in obtaining such agreements, permits, or approvals.
4. Owner shall be responsible for maintaining the Areas of Encroachment in a neat, clean, and attractive state and in accordance with the Virginia Department of Transportation regulations

and standards. Owner shall perform the periodic cutting, trimming, pruning and other routine maintenance needed to keep the Areas of Encroachment in such state.

5. The Areas of Encroachment shall not obstruct, interfere with, or impede drainage within the Right of Way and shall be in accordance with the Virginia Department of Transportation regulations and standards.
6. Owner, at its sole cost, shall remove, dispose of, and clean-up all debris generated by the installation and/or maintenance of the Areas of Encroachment.
7. The Virginia Department of Transportation, its employees, agents, contractors, and/or assigns, shall have the right to remove any landscaping placed within the Right of Way.
8. Owner shall obtain and maintain insurance to protect against liability for personal injury and property damage that may arise from the activities performed under the authority of this Agreement and the operations permitted hereunder up to \$1,000,000.00 per occurrence to protect James City County and the Commonwealth of Virginia. James City County may require a valid certificate or letter of insurance from the Owner's carrier evidencing such insurance. The Owner shall comply with any surety and bond requirements as requested by the Virginia Department of Transportation.
9. Owner and occupants of the Property shall indemnify and hold James City County harmless from any liabilities arising from any activity related to the Areas of Encroachment.
10. The Owner shall at all times give strict attention to the safety and rights of the travelling public, James City County, its employees, contractors, agents, successors and assigns, and the Virginia Department of Transportation, its employees, agents, contractors and/or assigns.
11. James City County may terminate this Agreement at any time and may require the owner or occupant of the Property to remove the Areas of Encroachment and, after fifteen (15) calendar days, pending such removal, may charge the owner of the Property compensation for the use of such portion of the street, road, or other public right-of-way the equivalent of what would be the tax upon the land so occupied if it were owned by the owner of the Property. If removal is not accomplished within the time ordered, James City County may (i) impose penalties for each day that the Areas of Encroachment are allowed to continue, or (ii) may remove the Areas of Encroachment and charge the cost thereof to the owner or occupant of the Property, and may collect the cost in any manner provided by law for the collection of state or local taxes. In the event Owner fails to maintain the landscaping, terms and conditions of this Agreement, or Virginia Department of Transportation regulations and standards, and such failure is not cured within ten (10) calendar days following receipt of written notice from the Virginia Department of Transportation, its employees, agents, contractors and/or assigns, then any and all costs incurred by the Virginia Department of Transportation shall become a lien against the Property until fully paid, together with interest at the legal rate of interest then in effect.
12. Any notice to be given to Owner shall be given and delivered Owner at the address of the owner shown on the then-current real estate tax records of James City County for the Property.

13. This Agreement shall be recorded in the land records of the Circuit Court of the James City County and the City of Williamsburg, Virginia. It shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns and shall run with the title of the Property hereby affected.
14. This Agreement is executed in the Commonwealth of Virginia and shall be governed by the laws of the Commonwealth of Virginia.

*Remainder of page left intentionally blank.*

*Signature pages to follow.*

WITNESS the following signatures and seals, hereunto duly authorized:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF \_\_\_\_\_, to-wit:

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

My Registration Number: \_\_\_\_\_

**James City County, a political subdivision of  
the Commonwealth of Virginia**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Authorized by Resolution adopted 11/13/2018

COMMONWEALTH OF VIRGINIA

COUNTY/CITY OF \_\_\_\_\_, to-wit:

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

My Registration Number: \_\_\_\_\_

Approved as to form: \_\_\_\_\_  
County Attorney or designee