

THIS AGREEMENT, made 19th day of May, 2023 between the County of Albemarle, Virginia, **GRANTOR**, and the COMMONWEALTH OF VIRGINIA, acting by and through the Commissioner of Highways, **GRANTEE**,

WITNESSETH:

WHEREAS, in connection with State Highway Route R201 Project 9999-002-900, in the County of Albemarle, Virginia (“Project”), the **GRANTEE**, in accordance with the provisions of Title 33.2, Chapter 10 of the Code of Virginia of 1950, as amended, has lodged with the Clerk of the Circuit Court of Albemarle County, Virginia, Certificate Number C-716019 in the amount of \$50,085.00, partially for the benefit of the **GRANTOR**; and

WHEREAS, the **GRANTEE** has appointed the law firm of St. John, Bowling & Lawrence, PLC as his attorney to institute condemnation proceedings for the purpose of determining the amount to be paid for the land, or interest therein, as described in the Certificate aforesaid, and damages to the remaining lands, if any, of the **GRANTOR**; and

WHEREAS, the **GRANTEE** has properly filed a Petition In Condemnation in the Circuit Court of Albemarle County, styled Commissioner of Highways v River Heights Limited Partnership and County of Albemarle, Case No. CL16-274; and

WHEREAS, the parties have now agreed upon the following amount of just compensation for the land and/or interests therein and damages to the remainder, if any, and for all other claims and demands by the **GRANTOR** against the **GRANTEE** arising out of the filing of the Certificate, the Petition In Condemnation, and the conveyance of the property.

NOW THEREFORE, in consideration of the recitations above which are made a part of this Agreement, the parties agree as follows:

1.) All issues between the **GRANTEE** and the **GRANTOR** as described herein, including but not limited to just compensation, public use, public necessity, lost profits and lost access, the **GRANTEE'S** bona fide but ineffectual effort to purchase the property prior to the filing of the Certificate, and all other statutory prerequisites to condemnation are hereby settled and forever resolved and the pending condemnation proceeding will be dismissed in accordance with Section 33.2-1027 of the Virginia Code (1950), as amended. The recitals set forth above are hereby incorporated herein as if repeated in full and are true in all respects.

2.) **GRANTEE** has offered and the **GRANTOR** has accepted consideration in the amount of \$1,177.00 as total just compensation for the acquisition of all of the property and/or property rights identified and described in the Certificate, and satisfaction of all Claims (as defined below) including but not limited to Claims arising out of the filing of the Certificate, the filing of the Petition In Condemnation, any physical invasion of or physical damage to the **GRANTOR'S** property outside of the fee or easement areas described in the Certificate which the **GRANTOR** has actual knowledge of or should have knowledge of based upon a reasonable inquiry, as of the date of this Agreement, and/or the conveyance of said property to **GRANTEE** pursuant to Virginia Code Section 33.2-1001, as well as all Claims for lost profits and/or lost access, and all Claims under the Rules of the Virginia Supreme Court related to the taking of said property. Said amount is inclusive of the amount deposited under the Certificate. In addition, **GRANTOR** accepts such just compensation in full, final and unconditional settlement and release of any and all claims, demands, remedies, damages and liability in the manner and to the extent as set forth below. **GRANTOR** agrees to provide **GRANTEE'S** counsel with properly executed tax information forms (Virginia Department of Accounts Substitute W-9 Form) contemporaneously with delivery of this properly executed Agreement, if **GRANTOR** has one.

3.) Other than interest on funds being held by the Clerk of the Circuit Court, if any, **GRANTOR** hereby waives and relinquishes all rights, claims, demands, remedies, damages, costs, interest, expert fees, attorney fees, and liability, including claims against **GRANTEE**, **GRANTEE'S** agents and contractors, and any utility company or agent or contractor of such utility company involved in the construction work of the Project and any other parties acting under the color of the Certificate, (collectively referred to as "Claims"), that **GRANTOR** may have arising out of or related to the filing of the Certificate, the filing of the Petition In Condemnation, the acquisition of the property and/or property rights described in the Certificate, any physical invasion of or physical damage to the **GRANTOR'S** property outside of the fee or easement areas described in the Certificate of which the **GRANTOR** has actual knowledge or should have knowledge based upon a reasonable inquiry, as of the date of this Agreement, and/or the conveyance of said property to **GRANTEE** pursuant to Virginia Code Section 33.2-1001, *et seq.* as well as all Claims for lost profits and/or lost access and all Claims under the Rules of the Virginia Supreme Court relating to the taking of said property.

4.) Notwithstanding any provision to the contrary, **GRANTOR'S** settlement in paragraph two (2) and waiver in paragraph three (3) does not apply to any unlawful interference with access caused by something other than the rights conveyed in the Certificate and/or Petition, any physical invasion of or physical damage to the **GRANTOR'S** property outside of the fee or easement areas described in the Certificate of which the **GRANTOR** has no actual knowledge nor should have no knowledge based upon a reasonable inquiry, as of the date of this Agreement. **GRANTOR** hereby represents and warrants that, as of the date of this Agreement, **GRANTOR** is unaware of (a) any unlawful interference with access caused by something other than the rights conveyed in the Certificate and/or Petitioner, (b) any physical invasion of any property outside the fee or easement area described in the Certificate and (c) any physical damage caused by **GRANTEE**, his agents or contractors to

GRANTOR'S remaining property. Nothing in this paragraph shall be read to exclude any other lawful claims that the **GRANTOR** may otherwise possess and which are not otherwise waived in this Agreement.

5.) As part of the consideration for this Agreement, **GRANTOR** warrants and represents that since the recordation of the aforesaid Certificate and continuing to the date of this Agreement, there has been no sale or contract for sale of the land or interest therein or any part thereof between the **GRANTOR** and any third party.

6.) As further consideration for this Agreement, **GRANTOR** agrees that any order presented to the Court pursuant to Section 33.2-1027 of the code for entry confirming absolute and indefeasible fee simple title in the Commonwealth may require that all amounts necessary to satisfy liens transferred to the fund held by the Clerk upon the filing of the Certificate, pursuant to Section 33.2-1021 of the Code, be retained by the clerk pending further proceedings under Sections 33.2-1027, 33.2-1023, 25.1-240 or 25.1-241 of the Code, as applicable, unless such liens were previously satisfied, released, or subordinated, as appropriate. The **GRANTOR** agrees that any funds due to or for the benefit of the **GRANTOR** pursuant to this Agreement are deemed to have been paid to the **GRANTOR** (or the **GRANTOR's** attorney if the **GRANTOR** has properly agreed and consented thereto and executed documentation satisfactory to the **GRANTEE** memorializing said agreement and consent), at the time of deposit of the funds with the court, regardless of whether or not deposited funds are or will be retained by the court pending further proceedings regarding liens, allocation, or entitlement to the funds. Nothing in this Agreement shall be construed i) to alter the priority of liens or to give rise to any obligation on the part of the **GRANTEE** to satisfy or obtain releases with regard to any outstanding liens on the property or the funds, or ii) to require distribution of funds on deposit that are subject to a lien or liens to

anyone other than the applicable lienholder or lienholders without prior satisfaction, release, or subordination of the applicable liens, as appropriate.

7.) There have been no other promises, consideration or representations made which are not set forth in this Agreement; **PROVIDED, HOWEVER**, that if there is an Attachment 1 to this Agreement setting forth such additional terms and conditions as to which the parties have agreed, then those terms and conditions are incorporated herein by reference and made a part hereof.

8.) The consideration hereinabove mentioned represents the value of all estates or interests in such land and the damage to the remaining property, if any, and is in lieu of any and all Claims (subject to the terms of Paragraph 4, above) for compensation and damages by reason of the location, construction and maintenance of the highway including such drainage facilities within the fee and easement acquisition areas as may be described in the Certificate.

9.) The **GRANTOR** agrees to accept its legally proportionate share (if there be such apportionment) of such total consideration for the interests and rights in the land.

10.) The parties hereto agree that the total consideration set forth above shall be reduced to the extent of any payment previously made pursuant to the provisions of Section 33.2-1023 of the Code of Virginia 1950, as amended, if any.

11.) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original.

WITNESS the following signatures and seals:

COUNTY OF ALBEMARLE, VIRGINIA

By: _____ (SEAL)
Jeffrey B. Richardson, County Executive

STATE OF _____
COUNTY/CITY OF _____

The foregoing Agreement was acknowledged before me this _____ day of _____
_____, 20__, by Jeffrey B. Richardson, County Executive, on behalf of the County
of Albemarle, Virginia.

My Commission expires _____ Notary Registration No.: _____

Notary Public

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COMMISSIONER OF HIGHWAYS

BY: _____
STATE DIRECTOR
RIGHT OF WAY AND UTILITIES

Commonwealth of Virginia,
City/County of _____, to-wit:

The foregoing Agreement was acknowledged before me this ____ day of _____, 20__ by Lori A. Snider, on behalf of the Commissioner of Highways.

Given under my hand this ____ day of _____, 20__.

My Commission expires _____ Notary Registration No.: _____

Notary Public

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