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Tax Map Parcels 04600-00-00-019B8 and 04600-00-00-019B9

This instrument is exempt from Clerk's fees under Virginia Code § 17.1-266.

AGREEMENT TO MAINTAIN PEDESTRIAN TUNNEL

THIS AGREEMENT, dated this 5th day of May, 2021, is entered into by and between **CROCKETT CORPORATION**, a Virginia corporation ("Crockett") and **BROOKHILL MASTER ASSOCIATION, INC.**, a Virginia non-stock corporation ("Brookhill"), collectively hereinafter called the "Owner," and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter called the "County."

RECITALS

- R-1.** Owner is the owner of certain real property described as Albemarle County Tax Map Parcels 46-19B8 and 46-19B9 (together, the "Property"); and
- R-2.** Owner is proceeding to build on and develop the Property into a residential subdivision known as "Brookhill"; and
- R-3.** As part of the development of the Property, the Owner has agreed to install a 10' x 8' high box culvert to serve as a pedestrian tunnel, or grade separation structure (the "Tunnel"), which will ultimately be maintained by the Owner, under portions of Polo Grounds Road, identified on the Plan (as defined below) as "Polo Grounds Road", which is maintained by the Commonwealth of Virginia, Department of Transportation ("VDOT"); and
- R-4.** The Tunnel is required as part of the extension of the existing greenway and trail system which runs through the Property (the "Trail System"), and pursuant to the proffer statement for ZMA 201800011, dated April 18, 2019, as the same may be amended, hereinafter called the "Plan," which is expressly made a part hereof, as approved or to be approved by the County, and which provides for certain improvements to the Trail System through the Property; and
- R-5.** As a condition of permitting the Tunnel under Polo Grounds Road, VDOT is requiring the County to enter a certain "Agreement for the Inspection and Maintenance of the Grade Separated Structure of Brookhill Trail/Greenway, Albemarle County" (the "VDOT Agreement", a true copy of which is attached hereto and incorporated herein as Exhibit A), in which the County is agreeing to assume responsibility for the Tunnel; and

R-6. As a condition of entering the required VDOT Agreement, the County requires that the Owner assume a portion of the County's obligations, responsibilities, and liabilities under the VDOT Agreement; and

R-7. As part of the ongoing approval of the Brookhill development on the Property, including the Plan and any additional plans or phases of the Plan which may be approved by the County in the future, the County further requires that the Tunnel, including the concrete culvert and all supporting infrastructure necessary to allow safe and convenient passage of pedestrians under Polo Grounds Road, all structures, berms, drainage structures, and any other improvement that may affect the proper functioning of the Tunnel (collectively, the "Facilities") be constructed by the Owner and adequately maintained by the Owner in perpetuity.

In consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. **Obligation of the Owner to construct the Facilities.** The Owner shall construct and protect any required Facilities in accordance with the plans and specifications identified in the Plan and as shown on that certain plan entitled "WPO 201800013 Brookhill VSMP Plan" prepared by Bohler Engineering and last revised 9/27/18.
2. **Obligation of the Owner to maintain the Facilities.** The Owner shall maintain the Facilities in good working condition for so long as the Facilities exist, in a manner that meets or exceeds the maintenance standards provided herein, subject to the following:
 - A. **"Good working condition" defined.** For the purposes of this Agreement, a Facility is in "good working condition" when it performs its design function in accordance with the plans and specifications identified in the Plan, including all conditions imposed in conjunction with approval of the Plan.
 - B. **"Maintain and maintenance" defined.** For the purposes of this Agreement, "maintain" and "maintenance" include (but are not limited to): maintaining, repairing, replacing, reconstructing, preserving, and restoring the Facilities or any part thereof necessary to comply with the plans and specifications identified in the Plan.
3. **Inspections and the Inspection Report by the Owner.** At least once per year following completion of the construction of the Facilities, the Owner must have the Facilities inspected to ensure that the Facilities are in good working condition. The Owner's inspection report to the County must include, at a minimum: the date of the inspection, the name of the inspector, a description of the condition of the concrete culvert and all structures, berms, inlet and outlet structures, and any other improvement that may affect the proper functioning of the Facilities, a list of all deficiencies causing the Facilities not to be in good working condition, if any, a list of required maintenance work to be performed so that the Facilities are restored to good working condition, and the date by which the maintenance work will be performed (the "Inspection Report"). Upon written request from the County, the Owner must submit the Inspection Report and any other requested documentation to

the Director, Albemarle County Department of Facilities and Environmental Services, 401 McIntire Road, Charlottesville, Virginia 22902 or a successor department, office and address as specified by the County to the Owner. The Owner must provide the Inspection Report to the Department within thirty (30) days of such request.

4. **Permission to the County or VDOT to inspect the Facilities.** The Owner hereby grants permission to the County and to VDOT, including its authorized agents and employees, to enter upon the Property and to inspect the Facilities whenever the County or VDOT deems an inspection to be necessary, subject to the following terms:

A. **Purposes for County/VDOT inspection.** The County and VDOT may inspect the Facilities for the purpose of determining the condition of the Facilities including (but not limited to) determining whether the Facilities are in good working condition, investigating any deficiencies reported in the Inspection Report, responding to citizen complaints about the Facilities, and inspecting or observing any maintenance of the Facilities.

B. **Prior notice to the Owner not required.** Neither the County nor VDOT is required to provide prior notice to the Owner to enter the Property to conduct the inspection.

C. **Inspection findings and demand for maintenance.** The County and/or VDOT will provide the Owner with a copy of the findings of its/their inspection of the Facilities. If the inspection concludes that maintenance of any of the Facilities is required, the County and/or VDOT also will notify the Owner of the required maintenance and the date by which the maintenance work must be completed.

5. **The Owner's response to the Inspection, the Inspection Report or the County's or VDOT's demand for maintenance.** If the Inspection Report under Section 3 or the inspection conducted by the County and/or VDOT under Section 4 identifies Facility deficiencies, the Owner must promptly complete the maintenance work by the date specified in the Inspection Report or as demanded by the County or VDOT. When the maintenance work is completed, a qualified inspector retained by Owner must certify to the County and VDOT that the Facilities are in good working condition.

6. **Permission to the County to access the Facilities to conduct routine maintenance.** The Owner hereby grants permission to the County, including its authorized agents and employees, to enter the Property and to perform routine non-structural maintenance (such as landscaping and cleaning) when the County deems necessary. The County has the right, but not the responsibility, to perform any such maintenance.

7. **Obligation of the Owner to indemnify and hold harmless the County.** The following terms apply to this Agreement:

A. **Owner Performance under the VDOT Agreement.** The Owner hereby assumes all obligations, responsibilities, and liabilities of the County under the VDOT Agreement.

B. No County liability. This Agreement imposes no liability of any kind whatsoever on the County, including its agents, officers and employees.

C. Obligation of the Owner to indemnify and hold harmless. The Owner hereby indemnifies and holds harmless the County (including its agents, officers and employees) for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the County (including its agents, officers and employees) resulting from (a) the VDOT Agreement or (b) the failure of the Facilities to perform their design function or to otherwise operate properly; any repairs, maintenance, construction, or any other acts performed by the County or the Owner, including their respective agents, officers and employees, related to the Facilities, regardless of how those acts were performed, except if the County's acts are the product of willful misconduct.

D. Notice of and defense of actions. If a claim is asserted against the County, including its agents, officers and employees, based upon any of the indemnities in subsection (C), the County will promptly notify the Owner of the claim. The Owner shall defend, at its expense, any lawsuit or other action arising therefrom. If, as a result of a claim, any judgment is allowed against the County, its agents, officers and employees, or any of them, the Owner shall pay all damages, costs, expenses and fees associated with the judgment.

8. References to County departments and officers; successors. Any reference in this Agreement to a County department or office includes its successor department or office as determined by the County.

9. Covenant running with the land. This Agreement will be recorded by the County in the Clerk's Office of the Circuit Court of Albemarle County, Virginia. It constitutes a covenant running with the land, and is binding on the Owner, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowners' association.

10. Date of this Agreement. This Agreement will be deemed to have been entered into by the parties and will be effective on and after the date it is signed by the Albemarle County Executive.

WITNESS the following signatures:

OWNER:

CROCKETT CORPORATION

By: Ann O. Haugh

Name: ANN O. HAUGH

Title: President

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF ALBEMARLE :

The foregoing instrument was acknowledged before me this 5th day of MAY, 2021 by Ann O. Haugh as President of Crockett Corporation, a Virginia corporation.

[Signature]

Notary Public

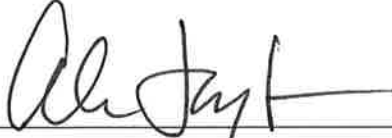
My Commission Expires: 8-31-2024

Registration Number: 101961

SIGNATURES CONTINUE ON THE FOLLOWING PAGE



BROOKHILL MASTER ASSOCIATION, INC.

By: 
Alan R. Taylor, Jr., President

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Charlottesville :

The foregoing instrument was acknowledged before me this 10th day of May, 2021 by Alan R. Taylor, Jr. as President of Brookhill Master Association, Inc., a Virginia non-stock corporation.



Notary Public

My Commission Expires: Oct. 31st 2023

Registration Number: 7807103



SIGNATURES CONTINUE ON THE FOLLOWING PAGE

COUNTY OF ALBEMARLE, VIRGINIA

By: _____

Jeffrey B. Richardson, County Executive

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Jeffrey B. Richardson, County Executive, on behalf of the County of Albemarle, Virginia.

Notary Public

My Commission Expires: _____

Registration Number: _____

Approved as to Form:

County Attorney

Date