

This document was prepared by:
Albemarle County Attorney
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

Parcel ID Number 046B5-00-00-001C0

This instrument is exempt from taxation under *Virginia Code* §§ 58.1-811(A)(3) and/or 58.1-811(C)(4) and from Clerk's fees under *Virginia Code* § 17.1-266.

NON-EXCLUSIVE REVOCABLE STORMWATER FACILITY LICENSE

THIS NON-EXCLUSIVE REVOCABLE LICENSE (the "License") dated _____, 2024, is by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as the "County" or "Licensor") and **BROOKHILL TOWN CENTER, LLC**, a Virginia limited liability company (hereinafter referred to as "Licensee").

WHEREAS, the County is the fee simple owner Parcel ID Number 046B5-00-00-001C0, located in Albemarle County, Virginia.

WHEREAS, the County desires to grant to Licensee a non-exclusive revocable license to use certain portions of Parcel ID Number 046B5-00-00-001C0, described below as the "Licensed Premises," for the purposes hereinafter set forth, subject to the terms and conditions set forth in this License.

WITNESS:

NOW, THEREFORE, for and in consideration of TEN DOLLARS (\$10.00), cash in hand paid and in consideration of the mutual premises stated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Licensee hereby agree as follows:

1. Grant of License. Subject to the terms and conditions set forth herein, the County hereby grants to Licensee a non-exclusive revocable license within the Licensed Premises to establish, install, construct, maintain, and repair all required erosion and sediment control measures and drainage and stormwater management facilities. The Licensed Premises consists of those certain areas shown as "New V/W Public SWM Facility Area" on that certain plat of Roudabush, Gale & Assoc., Inc., dated October 17, 2022, last revised February 2, 2024, and titled "Plat Creating Various Public Easements and Boundary Line Adjustments Creating an Extension of Archer Avenue on Tax Map Parcels: 46E-9-A, 46E-10-E, 46B5-1C, and 46E-A, Rivanna Magisterial District, County of Albemarle, Virginia" (SUB202200188).

2. Establishment and Maintenance of Improvements. As a condition of subdivision approval, Licensee must establish, install, construct, maintain, and repair, at its sole cost and expense, the following improvements (collectively, the "Improvements") as required by and shown on the "Brookhill – Archer Avenue Extension VSMP Plan" (WPO-2022-00040) within the Licensed Premises.

- All grading, drainage, and stormwater management facilities, including but not limited to the stormwater management basin, level spreader, pipes, riprap, structures, vegetated filter strip, and other improvements, and

- All temporary and permanent erosion and sediment control measures, including but not limited to sediment trap, silt fence, baffles, pipes, structures, riprap, dust control, inlet/outlet protection, diversions, and other measures.

All Improvements within the Licensed Premises will be and remain the property of the County.

3. Maintenance of Licensed Premises and Improvements. As provided in the separate Stormwater Management Agreement between the parties, the Licensee must maintain, at its sole cost and expense, the Licensed Premises and Improvements. The County has the right, but not the obligation, to maintain the Licensed Premises and/or any Improvement(s) in the event that Licensee fails or otherwise refuses to do so, and, thereafter, the County will be entitled to reimbursement from Licensee for the reasonable costs associated therewith.

4. Rights of Licensee Associated with Maintaining the Licensed Premises. Licensee, its agents, employees and contractors may enter the Licensed Premises under the following terms:

A. Right of Ingress and Egress. Licensee may enter the Licensed Premises at any time for the purpose of establishing, installing, constructing, inspecting, maintaining, and/or repairing the Licensed Premises and will be solely responsible for inspecting, maintaining, and repairing the Licensed Premises and any Improvements thereon.

B. Right to Disturb, Maintain and Repair the Licensed Premises.

(i) While establishing, installing and constructing any Improvements, Licensee may trim, cut or remove from the Licensed Premises any trees, brush or shrubbery and other natural vegetation; remove and relocate fences, structures or other obstructions within the Licensed Premises; and take other similar action reasonably necessary in its good faith judgment to establish, install and construct any required Improvement(s); and

(ii) After establishing, installing and constructing any Improvements, Licensee may trim, cut or remove from the Licensed Premises any trees, brush or shrubbery; remove and relocate fences, structures or other obstructions within the Licensed Premises; and take other similar action reasonably necessary to maintain, operate, use and manage the Licensed Premises.

C. Obligation to Remove Trash and Other Debris. Licensee must remove from the Licensed Premises all trash and other debris resulting from or otherwise accumulating due to the establishment, installation, construction, maintenance, or repair of the Licensed Premises and/or Improvements.

5. Termination.

A. Either the County or its successors may revoke this License at any time and for any reason by giving sixty (60) days' written notice to the Licensee or its successors of the terminating party's intent to terminate, and this License will automatically terminate without any further action of either party hereto on the date specified in such notice (but not earlier than 60 days after such notice) and may not thereafter be reinstated without the express consent of the County.

B. Within thirty (30) days of the termination of this License or as soon thereafter as practical, if so requested by the County, Licensee must promptly remove, at its sole cost and expense, any improvements installed by Licensee in the Licensed Premises. If Licensee does not promptly complete such

removal, the County may either (i) complete such removal and thereafter the County will be entitled to reimbursement by Licensee for reasonable costs associated therewith, or (ii) accept ownership of any Improvements and thereupon the County will be the sole owner of said Improvements, which will be deemed a part of the real property and improvements comprising Parcel ID Number 046B5-00-00-001C0, free and clear of any claims, liens, encumbrances or the like of any party.

6. Non-Exclusivity; Restrictions.

A. This License is non-exclusive; provided, however, that the County will not grant any license, right, permission, consent or any interest in land that allows the grantee thereof to occupy or enter the Licensed Premises in a manner inconsistent with the terms of this License.

B. Each party will use reasonable best efforts to ensure that no party interferes with the peaceful enjoyment of the other party in the rightful use of the Licensed Premises.

C. Licensee may use the Licensed Premises and any Improvements only for the purposes set forth in this License and in accordance with this License. The County may enter the Licensed Premises or any Improvements at any time and from time to time for any purpose that is not inconsistent with the terms of this License. Licensee must maintain the Licensed Premises and any Improvements in a neat and orderly fashion at all times, free of refuse and debris and anything that might reasonably pose a hazard or danger to the safety of any person thereupon. The County acknowledges and agrees that the Licensed Premises is an active construction site and will be maintained by Licensee as such.

D. No Improvements may be substantially relocated or expanded by Licensee within the Licensed Premises without the County's prior written consent in each instance.

7. **Liability.** The County has no affirmative obligation to maintain the Licensed Premises (or any Improvement(s) thereon). Notwithstanding anything to the contrary set forth herein, the County has no liability or obligation with respect to the Licensed Premises, except as related to the gross negligence or malfeasance of the County.

8. **Liability Insurance.** Licensee must add the County to Licensee's general liability insurance policy as an additional insured with respect to the License granted herein to Licensee. Licensee must maintain at all times general liability insurance coverage reasonably satisfactory to the County that names the County as an additional insured thereon. The County will not be liable to Licensee or Licensee's employees, agents, patrons, visitors, or any other person whomsoever, for any injury to person or damage to property, or for any loss, liability, damages or claims resulting on or about or otherwise arising in connection with the Licensed Premises from the use thereof or of any Improvements by Licensee, its agents, servants or employees, or any other person. Such insurer, by endorsement upon the policy or policies issued by it or by independent instrument furnished to the County, must give the County thirty (30) days' prior written notice of the effective date of any alteration or cancellation of such policy. If such insurance policy does lapse, with or without notice to the County, this License will automatically terminate without any further action of either party hereto and may not thereafter be reinstated without the express consent of the County.

9. **Hold Harmless.** Notwithstanding any other provision in this License, Licensee will protect, defend and save harmless the County from and against any and all liabilities, obligations, losses, claims, damages, demands, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses and court costs) of any kinds imposed upon, incurred by, or otherwise asserted against the County on account of (a) any loss or damage caused by the Licensee or its agents during construction of the Improvements to the Licensed Premises or Archer Avenue, or (b) any injury to, or death

of, any person that may be occasioned by any cause whatsoever pertaining to or otherwise associated with this License or any Improvements, except the gross negligence or malfeasance of the County. The terms of this Section 9 including the Licensee's indemnity obligations hereunder will survive the expiration or termination of this License.

10. Reimbursement of Costs. Licensee must reimburse the County for any cost or expenses incurred by the County in maintaining this License or the Licensed Premises, or any Improvements, within thirty (30) working days after receiving a written request from the County for such reimbursement.

11. Title, Access and Authority. The County covenants and warrants to Licensee that it presently owns the fee simple interest in and to Parcel ID Number 046B5-00-00-001C0, and that the County is duly authorized and empowered to grant this License.

12. No Dedication.

A. Licensee certifies, represents and declares that it has no title in or to the Licensed Premises nor to the fee or any portion thereof and has not, does not, and will not in the future claim any such title nor any easement (or other rights except as expressly set forth in this License or any future written agreement with the County) on all or any portion thereof.

B. Notwithstanding any other provision in this License, the License herein granted is not intended to and will not effect or constitute a dedication to the Licensee of the Licensed Premises, and the rights created hereunder are and will remain for the benefit only of the authorized and permitted persons designated herein, including Licensee.

13. Governmental and Other Requirements. Licensee will (a) faithfully observe all applicable laws in the use of the Licensed Premises, (b) bear all costs incurred in the performance of any permitted activities set out herein, and (c) complete all such activities in accordance with, all municipal and county ordinances and codes and all state and federal statutes, rules and regulations, and reasonable rules and regulations established by the County, now in force or which may hereafter be in force.

14. Miscellaneous Provisions.

A. Modifications. This Agreement may not be modified, except in a writing signed by the County and Licensee.

B. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or oral or written agreements between the parties respecting subject matter herein contained.

C. Assignment. Licensee may not assign or allow another party to assume its interest in this License without the prior written approval of the County in each such instance. Permission to any single assignment will not operate as a waiver of such right to approve any subsequent assignment. This License is not appurtenant to and does not run with the Licensed Premises.

D. Successors and Assigns. The covenants, promises, conditions, licenses and agreements contained in this License are binding upon, apply and inure to the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

E. Governing Law. This License is governed by and construed in accordance with the laws of the Commonwealth of Virginia, principles of conflicts of law notwithstanding.

F. Recordation; Release. In the event of recordation of this License, the County and Licensee agree to deliver upon the termination of this License an executed document or instrument (in form reasonably acceptable to the County and recordable in the in the Clerk's Office of the Circuit Court of Albemarle County, Virginia) acknowledging the termination of this License and that Licensee, for itself, its successor and assigns, expressly relinquishes any and all rights and interest in the Licensed Premises arising under this License, and Licensee expressly authorizes the County to record such document or instrument in the aforesaid Clerk's Office upon receipt of same.

The County, acting by and through its County Executive, duly authorized by the Board of Supervisors of Albemarle County, Virginia, does hereby consent to the terms of this License.

Licensee, acting by and through its duly authorized agent, does hereby consent to the terms of this License.

WITNESS the following signatures.

LICENSOR

COUNTY OF ALBEMARLE, VIRGINIA,
a political subdivision of
the Commonwealth of Virginia,

By: _____
Jeffrey B. Richardson, County Executive

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____:

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

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM:

County Attorney

LICENSEE:

BROOKHILL TOWN CENTER, LLC,
a Virginia limited liability company

By: 
Alan R. Taylor, Jr., President

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE:

The foregoing instrument was acknowledged before me this 16th day of February,
2024 by Alan R. Taylor, Jr., President on behalf of Brookhill Town Center, LLC.


Notary Public

My Commission Expires: Oct. 31st 2027

