

REVIEWED BY:

Tammy S. Lehman
1713 Piazza Place
Hampton, VA 23666

Portion of: Aspenwood Drive

PREPARED BY & AFTER RECORDATION RETURN TO:

Hampton City Attorney's Office
22 Lincoln Street
Hampton, VA 23669
(757) 727-6127 (VEM)

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this "Agreement") made and entered into this 13th day of December, 2017, between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia located at 22 Lincoln Street, Hampton, Virginia 23669 (the "City" and "Grantor"), and **BENJAMIN'S LANDING HOMEOWNERS' ASSOCIATION, INC.**, a Virginia corporation located at 228 Albany Drive, Hampton, Virginia 23666 ("Licensee" and "Grantee").

WHEREAS, the City owns the right-of-way known as Aspenwood Drive (the "Property");

WHEREAS, Licensee is responsible for (i) managing operational standards and civic and social activities and (ii) maintaining common areas in the Benjamin's Landing subdivision ("Licensee's Parcel");

WHEREAS, Licensee had a neighborhood sign on the Property that was damaged and now desires to replace this sign as well as legalize its encroachment;

WHEREAS, Licensee requests permission to encroach into an area of the Property comprising 125 square feet (25' x 5'), more or less ("Licensed Area") for installation and maintenance of the sign (the "Licensed Improvement") as illustrated on Exhibit "A" attached hereto; and

WHEREAS, pursuant to § 34-86 of the City Code, the City agrees to grant Licensee a revocable license for the proposed encroachments under certain terms and conditions as specified herein.

NOW, THEREFORE, in consideration of these covenants, the parties agree as follows:

NOW, THEREFORE, in consideration of these covenants, the parties agree as follows:

1. The City as "Licensor" hereby grants a non-exclusive revocable license to Licensee for the Licensed Improvement upon and under the Property in the Licensed Area identified on the sketch designated as Exhibit "A," which is attached hereto and made a part hereof.

2. Licensee agrees:

A. To repair any damage to right-of-way, sidewalks and brick, landscaping, or other public improvements inside or outside the Licensed Area, caused by or resulting from or arising out of any act on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement, or maintenance or repair of the Licensed Improvement in the Licensed Area;

B. All work under this Agreement shall occur within the unpaved right-of-way, or Licensee shall obtain private easements;

C. The sign shall not exceed the dimensions of 170" wide x 48" high x 24" deep;

D. To remove and replace the Licensed Improvement if any utilities in the Licensed Area require maintenance;

E. To ensure the Licensed Improvement does not restrict the City's ability to inspect and maintain the Property or infrastructure in the Licensed Area;

F. The City is not responsible to repair or replace any damage to the Licensed Improvement that may result from work performed in the right-of-way; and

G. Except as otherwise provided herein, Licensee shall keep the Licensed Area in a neat and clean manner, free of noxious fumes and any additional obstructions so as not to cause disruption or hazard to pedestrian or vehicular traffic on the Property.

3. The license herein granted shall commence on December 13, 2017 and continue unless otherwise sooner terminated pursuant to this Agreement.

4. The Licensed Improvement shall remain in the same location as described herein and as shown on the attachment identified as Exhibit "A".

5. Licensee shall not use the Licensed Area for any purpose other than the purposes set forth in this Agreement.

6. Licensee may terminate this Agreement and any rights and obligations granted herein at any time upon 30 days' written notice to the City, provided, however, Licensee shall comply with any reasonable conditions imposed by the City regarding said termination, including but not limited to removal of the Licensed Improvement. The Director of Public Works specifically is delegated the responsibility to establish and enforce these conditions.

7. In the event the City reconstructs, widens, changes, or improves the areas of Aspenwood Drive and/or Todds Lane, and the reconstruction, widening, changing, or improvement would necessitate relocation of the Licensed Improvement, Licensee agrees that, upon receipt of written notice accompanied by plans for such work from the City Manager or her authorized designee, within a reasonable time and at its sole expense, Licensee shall relocate the Licensed Improvement to conform with the City's plans. The City agrees to consider granting an additional license to Licensee if deemed necessary for relocation of the Licensed Improvement.

8. It is understood and agreed that Licensee hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Licensee, its subcontractors, agents, or employees under or in connection with this Agreement or the performance or failure to perform any work required hereunder. Licensee agrees to indemnify and hold harmless the City, and its agents, volunteers, servants, employees, and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses, suffered by any indemnified party or entity as a result of claims or suits, due to, arising out of, or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this Agreement, and (c) the performance of work by the Licensee or those for whom Licensee is legally liable. Upon written demand by the City, Licensee shall assume and defend at Licensee's sole expense any and all suits or defense of claims made against the City, its agents, volunteers, servants, employees, or officials.

9. Licensee acknowledges and accepts any risk of damage to the Licensed Improvement located under and along the Property which may have been caused from the construction or maintenance activities of the City in the vicinity of the Licensed Improvement. Licensee hereby releases, acquits, and discharges the City from any liability for damage to the Licensed Improvement by the City's contractors or by franchised utility companies. Further, and

without waiving the City's rights of sovereign immunity, nothing contained herein shall constitute a release of any claim or cause of action which Licensee may have resulting from damages to the Licensed Improvement which is caused by the willful, wanton, or intentional act or gross negligence of the City or its agents, volunteers, servants, employees, and officials.

10. Licensee shall maintain at its expense throughout the term of this Agreement, general liability insurance covering the Licensed Improvement in an amount at least equal to the current liability coverage in Licensee's Parcel. Such insurance shall be with a company satisfactory to the City. Any deductible provision of said insurance shall be subject to the approval of the City Attorney's Office. Such insurance specifically shall insure the Licensee against all liability assumed by it under the terms of this Agreement and the license granted hereunder as well as any liability imposed by law and shall insure both the City and Licensee but shall be so endorsed as to create the same liability on the part of the insurer as if separate policies had been written for the City and Licensee. Licensee shall provide the City's Risk Management Administrator with a Certificate of Insurance naming the City as an additional insured, which shall be in a form satisfactory to the City and the City Attorney's Office. Licensee shall provide the City's Risk Management Administrator the Insurance Certificate annually without demand. Each insurer mentioned in this section shall agree by endorsement on the policy or policies issued by it or by independent instrument furnished to the City that it will give the City at least 30 days' written notice before the policy or policies in question shall be altered or cancelled.

11. Licensee may not sublet or assign the rights granted under this Agreement without the prior written consent of the City.

12. Any notice, communication, or request under this Agreement by the City or Licensee shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery if receipt is evidenced by a signature of the addressee or authorized agent, and addressed to the applicable parties as follows:

As to Grantor: City of Hampton, Virginia
Director of Public Works
Fourth Floor
22 Lincoln Street
Hampton, VA 23669

Copy to: City of Hampton
City Attorney's Office
Eighth Floor
22 Lincoln Street
Hampton, VA 23669

As to Licensee: Board of Directors
Benjamin's Landing Homeowners' Association, Inc.
228 Albany Drive
Hampton, VA 23666.

Either party may change its address for notice purposes by giving notification thereof to the other party, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

13. Licensee shall pay all required sums hereunder in the amount and at the times and in the manner herein provided and shall keep and perform all terms and conditions hereof on its part to be kept and performed and at the expiration or sooner termination of this Agreement or the revocation of the license granted hereunder, peacefully and quietly surrender to the City the rights subject to the license granted hereunder. Licensee shall remove the Licensed Improvement at the written request of the City Manager to Licensee after the termination or expiration of this Agreement or the revocation of the license granted thereunder. In the event Licensee has not removed the Licensed Improvement within 30 days of receipt or deemed receipt of the City Manager's written request to remove the Licensed Improvement, the Licensed Improvement shall become the property of the City, with the City reserving the right to remove the Licensed Improvement; and the expense of said removal to be paid by Licensee which shall be collected as real estate taxes are collected if not paid by Licensee.

14. Failure of the City to take action with respect to any breach of any term, covenant, or condition herein contained shall not be deemed a waiver of such term, covenant, or condition herein contained.

15. The covenants and conditions contained herein, subject to the provisions as to assignment, transfer, or subletting, shall apply to and bind the heirs, successors, executors,

administrators, and assigns of all parties hereto; and all parties shall be jointly and separately liable hereunder.

16. The license granted hereunder is revocable by the City Council upon giving the Licensee 30 days' written notice of revocation, which right of revocation shall not be exercised unreasonably.

17. The City Council hereby delegates to the City Manager the right to revoke the license granted hereunder for violation of Paragraph No. 19 of this Agreement, subject to the terms thereof.

18. This Agreement is a Virginia contract deemed executed and accepted in the City of Hampton; and any and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

19. In the event Licensee is for any reason or through any cause be in default under any of the terms of this Agreement, the City shall give Licensee written notice of such default by certified mail, return receipt requested, at the address set forth in Paragraph No. 12 of this Agreement. Unless otherwise provided, Licensee shall have 10 days from the date such notice is deemed given in Paragraph No. 12 above in which to cure the default, provided, however, that if it is impossible to cure such default within 10 days, the cure period provided herein shall be extended as long as Licensee is using good faith effort to effect such cure and proves such good faith effort to the satisfaction of the City. Upon Licensee's failure to cure the default, the City immediately may cancel and terminate this Agreement which operates as a revocation of the license granted thereunder as of the mailing date of the default notice. Upon termination, the Licensee shall cease performance of any further activities under the Agreement.

20. This Agreement contains the final and entire contract between the parties hereto and contains all the terms and conditions agreed upon; it being the intent of the parties that neither shall be bound by any terms, conditions, or other representations not herein written.

21. The parties executing this Agreement represent and warrant that they are duly authorized to execute it in their representative capacities as indicated.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

WITNESS the following signatures and seals as of the date first written above.

GRANTOR:

CITY OF HAMPTON, VIRGINIA

By: _____
City Manager / Authorized Designee

COMMONWEALTH OF VIRGINIA:
City of Hampton, to wit:

I hereby certify on this _____ day of December, 2017, that the foregoing Encroachment Agreement was acknowledged before me by _____, City Manager or Authorized Designee for the City of Hampton, Virginia. She/He is known to me personally.

Notary Public

My Commission Expires: _____
Registration No.: _____

ATTEST:

Katherine K. Glass, Clerk of Council


COMMONWEALTH OF VIRGINIA
City of Hampton, to-wit:

I hereby certify on this _____ day of December, 2017, that the foregoing Encroachment Agreement was acknowledged before me by Katherine K. Glass, Clerk of Council for the City of Hampton on the City's behalf. She is known to me personally.

Notary Public

My Commission Expires: _____
Registration No. _____

Approved as to Form:

By:  _____
Deputy City Attorney

Approved as to Content:

By:  _____ 11/28/2017
Department of Public Works

LICENSEE / GRANTEE:

By: *Tammy S. Lehman*
Name: Tammy S. Lehman
Title: Treasurer, BL HOA

COMMONWEALTH OF VIRGINIA:
City of Hampton, to wit:

I hereby certify on this 3rd day of November, 2017, that the foregoing Encroachment Agreement was acknowledged before me by Tammy S. Lehman (name), the Treasurer (title) of Benjamin's Landing Homeowners' Association, Inc. He/She is known to me personally or provided VAD/L as identification.

Cynthia A. Hurr
Notary Public

My Commission Expires: 5-31-2018
Registration No.: 194880

Commonwealth of Virginia
Cynthia A. Hurr
Notary Public
Notary Registration Number 194880

* * * * *

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA:
City of _____, to wit:

I hereby certify on this _____ day of _____, 2017, that the foregoing Encroachment Agreement was acknowledged before me by _____ (name), the _____ (title) of Benjamin's Landing Homeowners' Association, Inc. He/She is known to me personally or provided _____ as identification.

Notary Public

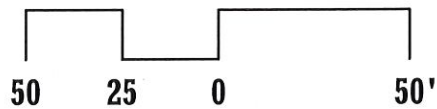
My Commission Expires: _____
Registration No.: _____



**Exhibit "A" for Encroachment
 Granted to: Benjamin's Landing HOA
 at Benjamin's Landing Subdivision**

Prepared by: CITY of HAMPTON
 Dept. of Public Works - Engineering Services

Scale: 1" = 50'



Map printed: 2 November, 2017



DISCLAIMER Although the information contained herein is believed to be reliable, no warranty, expressed or implied, is made regarding the accuracy, completeness, legality, reliability, or usefulness of any information, either isolated or in the aggregate, unless expressly specified. Neither is this information intended as a substitute for applicants' obligation to retain its own independent professional advice from an engineer, surveyor, attorney, or the like.