

Parent Parcel Id Nos. _____

LICENSE AND MAINTENANCE AGREEMENT

Private Rights

THIS LICENSE AND MAINTENANCE AGREEMENT (the “**Agreement**”) is made this _____ day of _____, 202__, by and between **THE MAYOR AND COUNCIL OF ROCKVILLE**, a Maryland municipal corporation (hereinafter referred to as the “**City**”) and **COMMUNITY ASSOCIATES, LLC**, a Maryland limited liability company (hereinafter referred to as “**Owner**”), their successors and assigns.

RECITALS:

R1. Owner is the owner of that certain parcel together with all improvements thereon, legally and particularly described as _____, as established in that certain plat (the “**Plat**”) recorded as Plat No. _____ among the Land Records of Montgomery County, Maryland (the “**Property**”), copies of which plat is attached hereto as **Exhibit A**.

R2. The Property is part of a development known as the “The Village at Rockshire” project (“**Project**”) in the City of Rockville pursuant to the terms and provisions of Site Plan Application #STP2024-00493 approved on October 23, 2024 (the “**Site Plan**”).

R3. The Site Plan for the Project and other development permits and approvals, as each of them may be amended or modified (collectively, the “**Site Plan Approval**”) has been issued for the development of the Subject Property and the Project.

R4. The Site Plan Approval includes a condition that the streets to be constructed on the Property shall be dedicated as public rights-of-way. The Plat includes the dedication of the rights-of-way (the “**City Property**”) to satisfy that condition.

R5. Certain private uses, encroachments and improvements are planned to be located within the City Property to serve the Project as approved by the Site Plan Approval (collectively, “**Private Rights**”). The Private Rights consists of the uses, encroachments and improvements listed in **Exhibit B**, attached hereto.

R6. The City requires a license and maintenance agreement to be entered into between the City and the Owner governing the rights and obligations to install, inspect, maintain, repair, and replace the Private Rights for the benefit of the Property for the life of the development on the Plat as part of the Site Plan Approval within the rights-of-way of public streets under the terms set forth in this Agreement.

R7. In reliance on this Agreement to permit the Private Rights to be located within the City Property to service and benefit the Property for the life of the development on the Plat as part

of the Site Plan Approval, Owner is proceeding to implement the Site Plan Approval, and its lenders, investors and partners are proceeding to lend and invest money to construct the Project.

NOW, THEREFORE, for the purpose of complying with the Site Plan Approval, in compliance with the foregoing recitals and attached exhibits, each of which are incorporated in and made a substantive part of this Agreement, the sum of One Dollar (\$1.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City hereby grants and declares, and the Owner and City hereby covenant and agree, as follows:

1. Private Rights License. Subject to the reservations and conditions set forth in Paragraph 5 below, the City hereby grants, establishes, and declares to Owner, its successors and assigns, a revocable license in, through, over, and across the area shown as “Private Rights License Area” on the plan attached as **Exhibit C (“Private Rights License Area”)**, for the purpose of installing, inspecting, maintaining, repairing, and replacing of Private Rights to serve the Project on the Property and proposed rights-of-way, together with a right of entry for all proper purposes associated with such installation, inspection, maintenance, repair, and replacement and together with all the rights, privileges, appurtenance, and advantages thereto belonging or appertaining to their proper use and benefit by Owner, its successors and assigns.

The Owner, without the prior written consent of the City, will neither perform nor permit upon or within the Private Right License Area: (i) the erection or installation of any structure, building or other improvements, (ii) the excavation or filling of land, or (iii) the installation of trees, shrubs, or other landscaping, unless shown on the approved Site Plan or other City issued permit. The Owner will not block access in the right-of-way without the prior written consent of the City by permit or otherwise.

2. Obligation for Construction of Private Rights. In the event the Site Plan Approval is implemented on the Property, and all necessary permits and bonds have been obtained and posted, Owner shall be responsible to construct and install the Private Rights in accordance with City permits within the Private Rights License Area and shall further provide for inspection and necessary maintenance of the Private Rights in accordance with the approved design standards of applicable laws, rules, and regulations. City issuance of any required permit for the Private Rights shall constitute necessary consent for the construction of the Private Rights within the Private Rights License Area. All costs associated with such construction shall be borne solely by Owner. Owner and/or its contractors shall be responsible for all warranty repair and replacement work arising out of the initial construction.

3. Maintenance Agreement After Construction. Upon satisfactory completion of construction of the Private Rights improvements as determined by final inspection, Owner shall be responsible for inspecting and maintaining the Private Rights in a good state of repair in accordance with City Code and in a safe and orderly condition. If the City damages the Private Rights in the course of maintaining the City’s public infrastructure within the footprint of the Private Rights License Area, then Owner shall be responsible for repairing the damage to the Private Rights, unless such damage is the result of the negligence or intentional misconduct of the City or its agents, employees or contractors.

Owner shall notify the City in writing, c/o the Director of Public Works, seventy-two (72) hours prior to performing any inspection, maintenance, repair, or replacement of any improvements in the Private Rights License Area, except for regularly occurring maintenance. If required, appropriate Department of Public Works permits will be required for such work. Provided, however, that Owner shall not be required to notify the City or obtain a permit in advance in cases where emergency repairs to protect the public safety are required. Owner shall be required, however, to obtain a permit for the emergency repairs, as required by the Department of Public Works, after such emergency repairs are made. Failure of Owner to properly perform its responsibilities to inspect, maintain, repair and/or replace the Private Rights as required by the City Code may result in the City seeking any remedy afforded by State law and City Code, as well as issuance of a City citation and fine. The obligations and remedies set forth in this Paragraph 3 are in addition to other obligations and remedies contained in this Agreement. In no event, however, shall Owner be liable for any indirect, consequential or punitive damages for any breach, default or other matter related to this Agreement or the Private Rights.

4. Clean-Up and Restoration. Upon the completion of any work by Owner and/or its contractors in the Private Rights License Area, the entity performing the work shall remove any construction debris and shall restore the City Property to a condition as close to its condition prior to performance of the work as is reasonably possible and as approved by the City. In addition, if any damage is caused by Owner, its contractors or agents, to the City Property at any time during the term of this Agreement, Owner shall notify the City of the damage, and shall repair such damage according to a schedule as reasonably determined by the Department of Public Works. Should Owner not perform the work within the time determined by the Director of the Department of Public Works, the City may, in its reasonable discretion, perform the necessary work and shall bill Owner for the reasonable cost of said work. Owner must reimburse the City for said reasonable costs within sixty (60) days of the date of said bill delivered to Owner with supporting documentation, or in accordance with any alternative payment schedule that may be agreed upon in writing by the City and Owner. Subject to the provisions of Paragraph 7 below, in the event that Owner fails to timely reimburse the City for said costs, such costs shall constitute a lien, collectible in the same manner as City property taxes, or in such other manner permitted by law. Such reimbursement obligations shall survive termination of this Agreement.

5. City Rights. The City shall have the right, in its sole discretion but without obligation, to provide emergency repairs to the Private Rights when public safety is at risk. Notice of the City's performance of emergency repairs shall be provided as soon as reasonably practicable. Owner shall reimburse the City for the reasonable costs of emergency repairs performed by the City within sixty (60) days of delivery of an invoice with supporting documentation for such repair, or in accordance with any alternative payment schedule that may be agreed upon in writing by the City and Owner.

If, after reasonable written notice by the City, the Owner shall fail to properly perform its responsibilities to install, inspect, maintain, repair, and replace the Private Rights in accordance with the approved design standards, with all applicable laws, rules and regulations, the City may, but is not obligated to, access the Private Rights and perform all necessary installation, inspection, maintenance, repair, and/or replacement, and may assess the Owner for the cost of the work. Notice of the failure to adequately install, inspect, maintain, repair, and/or replace the Private Rights to City standards after initial construction shall be provided to Owner with at least thirty

(30) days or such reasonable period of time to obtain a permit and commence a cure. If the Private Rights are not adequately inspected, maintained, operated, repaired or restored to City standards within such stated cure period, then the City shall deliver a notice of City's intention to perform work after ten (10) days at the Owner's expense. Owner shall reimburse the City for the reasonable costs of work performed by the City within sixty (60) days of delivery of an invoice with supporting documentation for such work or in accordance with any alternative payment schedule that may be agreed upon in writing by the City and Owner. Subject to the provisions of Paragraph 7 below, if Owner fails to timely reimburse the City, the costs shall be a lien against the Property and may be placed on the property tax bill and collected in the same manner as property taxes by the City or in any other manner permitted by law. Such reimbursement obligations shall survive the termination of this Agreement.

The City shall have the right to improve, inspect, maintain, repair, or replace the public streets rights-of-way, including within the Private Rights License Area, and it may do so at any time with no notice to Owner except where such City activities will, or have the potential to, impact, interfere, obstruct, and/or damage the Private Rights.

6. Ownership and Insurable Interest. Notwithstanding who constructed and installed the Private Rights, upon its completion, the ownership of, the insurable interest in, and responsibility to replace, the Private Rights shall be held by the Owner, and its successors and assigns.

7. Binding Effect. All provisions of this Agreement, including the benefits and burdens, shall touch, concern, and run with the land and be binding upon and inure to the benefit of the Owner and the City, and their respective successors and assigns. Notwithstanding anything to the contrary in this Paragraph 7 or elsewhere in this Agreement, at such time as the homeowners association for the Property (the "**HOA**") is legally created, the HOA shall be solely responsible for (i) maintaining, inspecting, operating, repairing and replacing the Private Rights, (ii) reimbursing the City for any costs incurred pursuant to Paragraphs 4 and 5 of this Agreement, as applicable, and (iii) performing all other obligations and liabilities of the Owner under this Agreement. The obligations set forth in this Agreement shall be included in the governing documents of the HOA, and only the real property owned by the HOA and/or Owner (or any successor developer of the Property) shall be subject to a lien for failure to pay any costs which may be due and payable by the Owner under this Agreement from and after the HOA is established. In no event shall any owners of the individual lots and dwelling units thereon be responsible for the performance of the obligations of the Owner under this Agreement, nor shall any of the costs described under Paragraphs 4 and 5 be assessed against, or become a lien upon, such homeowner's individual or dwelling unit. Prior to the legal creation of the HOA, the Owner shall remain liable for all obligations under this Agreement. Owner shall give the City written notice at such time as the HOA is legally created, with contact information for the HOA.

8. Limitations with Respect to Owner. The obligations and liabilities of Owner shall apply with respect to the period during which Owner owns an interest in any part of the Property which utilizes the Private Rights. When Owner ceases to own an interest in the Property, or with respect to any part thereof, the obligations and liabilities thereafter accruing shall be the obligations of the successors in ownership or interest of Owner as to such whole or part (excluding third party homebuyers per Paragraph 7 above).

9. Limitations with Respect to the City. The obligations and liabilities of the City shall apply with respect to the period during which the City owns an interest in the City Property. When the City ceases to own an interest in the City Property, the obligations and liabilities thereafter accruing shall be the obligations of the successors in ownership or interest of the City.

10. Revocation. The City acknowledges that the Private Rights: (i) is an integral part of the Project, (ii) satisfies certain required State and City regulations and permits; (iii) that in reliance on this Agreement, Owner is proceeding to implement the Site Plan Permits, its lenders and partners are proceeding to lend and invest money to construct the Property; (iv) that the cost of initial construction of the public streets and the Private Rights is significant; and (v) that the Project is a benefit to the City and the general public; and therefore, although this License is a revocable license and not an easement because the Private Rights will lie within a dedicated public right-of-way, it is the intention of the City that this be a long term license to service the Property so long as the Project improvements thereon operate in accordance with the Site Plan Approval, and shall not be revoked except as expressly provided in this paragraph.

The City may revoke this Agreement only under the following circumstances: (1) if the City reasonably determines that the Private Rights is, or is likely to become, an immediate safety hazard due to Owner's consistent material breach of this Agreement, and/or (2) Owner repeatedly breaches in a material way and fails to cure such breaches after notice from the City within a reasonable cure period (such period to be determined by the City in its sole reasonable discretion as prescribed in its written notice of breach) or other additional period agreed to by the City; and then only after one hundred twenty (120) days' notice to Owner, and if appealed, exhaustion of any public and court appeal process. During such one hundred twenty (120) days' notice to Owner, the City shall have the right, in its sole discretion, to inspect, operate, maintain, repair, restore, and/or replace the Private Rights and shall bill the Owner for the reasonable costs incurred. In the event that Owner fails to timely reimburse the City for such costs, such costs shall constitute a lien, collectible in the same manner as City property taxes, or in such other manner permitted by law. Such reimbursement obligations shall survive termination of this Agreement.

In the event the City revokes this Agreement as permitted under this Agreement, Owner shall reimburse the City for all reasonable costs associated with the removal and area restoration within sixty (60) days after receipt of an invoice with supporting documentation for such costs. In the event that Owner fails to timely reimburse the City for such costs, such costs shall constitute a lien, collectible in the same manner as City property taxes, or in such other manner permitted by law. Such reimbursement obligations shall survive termination of this Agreement.

Monetary defaults are expressly not material breaches giving rise to the remedy of revocation as the City has enforcement rights for collection of monies through the judicial system, liens and tax collection.

11. Indemnification. Owner shall indemnify and save harmless the City and all of its officers, contractors, employees, agents, representatives, servants, and assigns from any and all liability, loss, damages, claims, causes of action, judgments, and expenses, including reasonable attorney's fees, in connection with Owner's performance and the performance of its contractors, employees, agents, officers, and servants, of its responsibilities, or failure to perform its responsibilities, under this Agreement, except for any liability or claims for damage caused by the

gross negligence or willful misconduct of the City. In no event, however, shall Owner be liable for any indirect, consequential or punitive damages. Any liability on the part of the City shall be subject to the limitations and immunities provided by law, including without limitation, the Local Government Tort Claims Act, Section 5-303(a) of the Courts and Judicial Proceedings Article of the Maryland Code.

12. Insurance. Prior to the City's release of all bonds for the construction of the Private Rights, Owner, upon request from the City shall provide the City with evidence of insurance coverage for the Private Rights License Area naming the City as an insured party so as to protect the City against any and all claims for personal and property injuries, including death, arising solely from Owner's use of the Private Rights License Area for the Private Rights, in the amount of One Million Dollars (\$1,000,000.00) per occurrence. At the request of the City, Owner shall provide the City with a certificate and endorsement evidencing that the insurance required herein is in effect.

13. Notice of Transfer. The Owner shall endeavor to notify the City of the legal and/or equitable transfer of any of the Owner's responsibilities for the Private Rights within thirty (30) days of such transfer, and shall supply the City with a copy of any executed documents of said transfer, including contact information for a representative of the transferee. The Owner shall provide all subsequent owners, successors, and any other party responsible for the maintenance of the Private Rights with a copy of this License and Maintenance Agreement.

14. Remedies. The remedies set forth herein are not exclusive. In addition to any other remedy available to the Owner and/or the City for breach of this License and Maintenance Agreement, Owner and/or the City shall have the right to bring an action for legal or equitable relief, and/or municipal citations necessary to enforce the provisions of this agreement. In no event, however, shall Owner be liable for any indirect, consequential or punitive damages.

15. Other Improvements. Nothing in this Agreement shall be deemed to authorize Owner to install any additional improvements in the Private Rights License Area without the approval of, and appropriate permits from, the City.

16. Notices. Any notice required to be given by this Agreement shall be in writing and shall be sent by hand delivery (with signed receipt), commercial overnight courier (which requires a signed receipt), or certified mail – return receipt requested to the following:

If to the City:

Director of Public Works
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

With a copy to:

City Attorney
Rockville City Hall
111 Maryland Avenue

Rockville, Maryland 20850

If to the Owner:

c/o RMJ Development Group, LLC
1650 Tysons Boulevard, Suite 820
McLean, VA 22102
Silver Spring, MD 20904

And a copy to:

Community Realty Co., Inc.
11161 New Hampshire Avenue, Suite 200
Silver Spring, MD 20904

Either party may change its address by written notice to the other party in the manner described above. If Owner transfers the Property to a successor developer, such new Owner shall promptly notify the City of the Owner's new address. In addition, at such time as the Owner transfers its obligations under this Agreement to the HOA, the HOA shall promptly notify the City of its address for notice purposes.

17. No Waiver. No restriction, condition, obligation, or provision of this License and Maintenance Agreement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

18. Modifications. This License and Maintenance Agreement shall not be modified or amended except by an instrument duly executed by Owner and the City, or their respective successors, which instrument shall be recorded among the Land Records.

19. Severability. The terms and provisions of this Agreement are severable and in the event that any term or provision is invalid or unenforceable for any reason, the remaining terms and provisions hereof shall remain in full force and effect.

20. Effective Date and Applicable Law. This License and Maintenance Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, and shall be effective upon recordation among the Land Records.

21. Authorization and Consents. Owner hereby certifies that there are no suits, liens, leases, mortgages or trust affecting the Property, other than those for which the holder in interest has signed this document or otherwise consented in writing, to this License and Maintenance Agreement. Owner further certifies that all parties with an interest in the Property necessary to give full effect to this License and Maintenance Agreement have signed, or otherwise consented in writing to, this document.

22. Recordation. Owner agrees to record this License and Maintenance Agreement in the land records of Montgomery County, Maryland, at the Owner's expense within ten (10) days

of the date of this Agreement and shall provide the City with documentary proof of recordation within five (5) days of said recordation.

23. Assignment. Owner shall not assign this Agreement or its rights hereunder, without the prior written consent of the City, except that this Agreement may be assigned by Owner to any subsequent owner of the Property or to any property owners association with respect to the Property without City's consent.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this License and Maintenance Agreement has been executed and sealed by the parties on the day and year indicated above.

WITNESS

MAYOR AND COUNCIL OF ROCKVILLE

By: _____, City Manager

Reviewed for legal sufficiency by:

Nicholas D. Dumais
Senior Assistant City Attorney

* * *

STATE OF MARYLAND

*

*

to wit:

COUNTY OF MONTGOMERY

*

I HEREBY CERTIFY that on this ____ day of _____, 202_, before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the City Manager of the MAYOR AND COUNCIL OF ROCKVILLE, a municipal corporation in the State of Maryland, in such capacity and being authorized so to do, executed the foregoing License and Maintenance Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

IN WITNESS WHEREOF, this License and Maintenance Agreement has been executed and sealed by the parties on the day and year indicated above.

WITNESS:

OWNER:

COMMUNITY ASSOCIATES, LLC, a
Maryland limited liability company

By: _____

Name: _____

Title: _____

* * *

STATE OF: _____

*

*

COUNTY OF: _____

*

I HEREBY CERTIFY that on this _____ day of _____, 202__, before the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the authorized representative of _____, a _____ limited liability company, being authorized so to do, executed the foregoing instrument on behalf of the aforesaid company for the purposes therein.

IN TESTIMONY WHEREOF, I have caused the seal of the court to be affixed, or have affixed my official seal, this _____ day of _____, 202__.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

EXHIBIT “A”
COPY OF PLAT

EXHIBIT “B”

PRIVATE RIGHTS

- Neighborhood Signs
- Cluster Mailboxes
- Access for electronic scooters
- Scored Concrete

EXHIBIT “C”

PRIVATE RIGHTS LICENSE AREA

ATTORNEY'S CERTIFICATION

I HEREBY CERTIFY that the within instrument has been prepared by or under the supervision of the undersigned attorney.

Date: _____

INFORMATION FOR RECORDING:

Record Legal Description: _____

Parties: _____

Parcel Identification No.: _____

AFTER RECORDATION, PLEASE MAIL TO:

