

*Prepared by:  
Benjamin W. Emerson, VSB # 23578  
Sands Anderson PC, Interim City Attorney  
Charlottesville City Attorney's Office  
P.O. Box 911, Charlottesville, VA 22902*

*Tax Map Reference No. 030130000  
Prepared without benefit of title examination*

## **ENCROACHMENT AGREEMENT**

THIS ENCROACHMENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by 1117 PRESTON AVENUE, LLC, a Virginia limited liability company, "Grantor", and the CITY OF CHARLOTTESVILLE, VIRGINIA, P.O. Box 911, Charlottesville, Virginia, 22902, Grantee ("City");

### **WITNESSETH**

WHEREAS, the Grantor is the owner of that certain described tract or parcel of land lying and being situate in the City of Charlottesville, located at 1117 Preston Avenue ("the Property), a portion of which is shown on the attached Exhibit A entitled "Encroachment Exhibit for Preston House (1117 Preston Avenue)" prepared by Timmons Group dated June 7, 2023, which is by this reference incorporated herein, Grantor having acquired such property by deed dated January 31, 2023, recorded in the Clerk's Office of the Circuit Court of the City of Charlottesville, Virginia as Instrument No. 2023-00000264.

WHEREAS, the City is the owner of certain public right-of-way adjacent to the Property, identified as Preston Avenue; and

WHEREAS, the Grantor is in the process of finalizing a site plan authorizing development of the Property (the "Site Plan") and the construction of a multifamily residential building immediately adjacent to the right-of-way along Preston Avenue, and the Grantor desires to be able to construct the building and related improvements in accordance with the approved final Site Plan; and

WHEREAS, the Site Plan for the Property contemplates certain improvements to be located in a portion of land within the Preston Avenue right-of-way along its western boundary with the Property and shown as the area designated as “Encroachments in Preston Avenue Right-of-Way” on Exhibit A, such items to consist of driveway, frontage sidewalk, stairs and handrails, and related items as reflected on the Site Plan as finally approved by the City (collectively, the “Encroachments”);

WHEREAS, following completion of construction pursuant to the Site Plan, the Grantor desires to allow the Encroachments to remain within and permanently occupy the applicable portion of the City’s right-of-way, and Grantor understands that such items constitute encroachments in the public right-of-way;

WHEREAS, the City consents to the location of the Encroachments within the designated portion of the City’s right-of-way on the terms and conditions set forth herein; and

WHEREAS, in consideration of its use and occupancy of the City’s right-of-way in the manner and to the extent described above, the Grantor desires to bind itself, its successors and assigns, for all liabilities for and relating to the Encroachments and other construction activities to be conducted by Grantor within the City right-of-way during construction, and the subsequent continued occupation of the City right-of-way by the Encroachments following construction;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Grantor, on behalf of itself, its successors and assigns, does hereby covenant and agree as follows, for the benefit of the City:

1. The Grantor shall be liable for negligence on account of the Encroachments within the City’s right-of-way;
2. The Grantor shall indemnify and hold the City harmless from and against any and all liability, losses, suits, actions, judgments, claims, demands, damages, penalties, fines, expenses and costs, of every kind and nature, incurred by or asserted or imposed against the City by reason of any accident, injury

(including death) or damage to any person, property, equipment or utility facilities (including, without limitation any property, equipment, or utility facilities owned by the City), however caused, resulting from or arising out of the Grantor's use and occupancy of the public right-of-way adjacent to the Property during **(a)** Grantor's construction activities, by Grantor, its construction contractors and subcontractors, and **(b)** thereafter, during such period of time as the Encroachments continue to occupy the public right-of-way, except to the extent that such loss or damage is the result of the gross negligence, willful, or wanton conduct of the City; and Grantor shall maintain liability insurance in amounts reasonably acceptable to the City, with the City named as an additional insured thereunder.

3. Upon completion of construction, Grantor at its own cost and expense shall have the obligation to perform ordinary, routine upkeep, maintenance and repair activities on the Encroachments. Grantor acknowledges and agrees that the City shall have no obligation for any maintenance, repairs, alterations, modifications or improvements to the Encroachments. Upon completion of construction, Grantor may maintain the Encroachments as then existing until such structures are destroyed or removed, subject to the other provisions of this Agreement.

4. Upon completion of construction, Grantor shall provide the City with as-built plans showing existing conditions, in an electronic format acceptable to the City Engineer, such as-built plans to provide geographic information system (GIS) coordinates or a physical survey of the location and dimension(s) of each of the Encroachments that will remain within the public right-of-way of Preston Avenue adjacent to the Property;

5. The Grantor agrees that the City shall have and retain any and all legal rights it may have pursuant to Virginia Code Sec. 15.2-2009 and Sec. 15.2-2011, as such statutes exist as of the date of this Agreement and as they may subsequently be amended, in addition to any other legal rights or remedies the City may have. In the event that the City determines that removal of the Encroachments in the right-of-way is necessary or desirable, the City shall so notify Grantor in writing at the mailing address of the

Property on file with the City Tax Assessor. Grantor shall have thirty (30) days from the date of City's notice to commence removal of the Encroachments, and Grantor shall use commercially reasonable efforts to diligently pursue until completion such removal at Grantor's sole cost and expense. If Grantor fails to remove the Encroachments pursuant to the foregoing, the City may remove the Encroachments, charge the cost of removal to the Grantor, and collect the cost of removal in any manner provided by law for the collection of state or local taxes; and

6. The Grantor's covenants and agreements set forth within this Agreement shall run with the land described herein as the Property, and shall be binding on Grantor, its successors and assigns.

[SIGNATURE PAGES FOLLOW]

WITNESS the following signatures.

GRANTOR:

1117 PRESTON AVENUE, LLC

BY: \_\_\_\_\_

TITLE: Manager

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me, a Notary Public in and for the aforesaid City/County and State, by \_\_\_\_\_, Manager, on behalf of 1117 Preston Avenue, LLC, on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

Registration #: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**IN WITNESS WHEREOF**, the City of Charlottesville has caused this Encroachment Agreement to be executed by its Mayor, pursuant to the Resolution approved by City Council on \_\_\_\_\_, 2023.

GRANTEE: **CITY OF CHARLOTTESVILLE, VIRGINIA**

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

COMMONWEALTH OF VIRGINIA  
CITY OF CHARLOTTESVILLE

The foregoing instrument was acknowledged before me by \_\_\_\_\_,  
Mayor of the City of Charlottesville, Virginia, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
Registration #: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

*Approved as to Form:*

\_\_\_\_\_  
*Jacob P. Stroman (VSB #31506)*  
*City Attorney*