

**ORDINANCE NO.** 7643-20

AN ORDINANCE AUTHORIZING AN ENCROACHMENT UPON THE JEFFERSON AVENUE RIGHT OF WAY, IN THE CITY OF NEWPORT NEWS, VIRGINIA, AS MORE PARTICULARLY SET FORTH HEREIN, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST AN ENCROACHMENT AGREEMENT BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA AND THE NEWPORT NEWS REDEVELOPMENT AND HOUSING AUTHORITY.

WHEREAS, the Council of the City of Newport News, Virginia is authorized, pursuant to Virginia Code § 15.2-2009 and § 15.2-2010, to permit encroachments upon or awnings to overhang certain public ways within the City of Newport News, Virginia; and

WHEREAS, the Newport News Redevelopment and Housing Authority (“NNRHA”), owns a parcel of real property (the “Property”) known as 2812 Jefferson Avenue, Newport News, Virginia (Tax ID: 306.0302-05), more fully described as:

All those certain lots, pieces or parcels of land situate, lying and being in the City of Newport News, Virginia, known, numbered and designated as Lot 29A, as shown on that certain plat entitled “Property Line Vacation Plat, Property of the Newport News Redevelopment and Housing Authority Lots 29 Thru 44-A - Block 139, Map of Part of the City of Newport News (P.B. 1- PG. 3)” prepared by Alfonso & Associates, Inc., dated April 2, 2018, which was recorded as Instrument Number 180009951 in the Clerk’s Office of the Circuit Court for the City of Newport News, Virginia, on August 1, 2018;

and

WHEREAS, the Property is adjacent to an eighty foot (80') right-of-way owned by the City known as Jefferson Avenue (“Jefferson Avenue Right-of-Way”); and

WHEREAS, the Property is the site of a new multifamily development to be known as Carrier Point I; and

WHEREAS, NNRHA has requested an encroachment to allow the construction of a canopy awning which will extend approximately 3 feet and 6 inches into the Jefferson Avenue Right-of-Way, as shown on the drawing attached to the proposed Encroachment Agreement between the City of Newport News, Virginia and the Newport News Redevelopment and Housing Authority, a copy of which is attached hereto as Exhibit A (the “Encroachment Agreement”); and

WHEREAS, this encroachment can be facilitated without causing undue public danger or inconvenience, and will have no adverse effect on the maintenance of the right-of-way, given the terms incorporated in the proposed Encroachment Agreement; and

WHEREAS, NNRHA has requested that the City Council authorize the encroachment and the execution of the Encroachment Agreement; and

WHEREAS, the City Manager recommends that the Council authorize the encroachment recommended by NNRHA and authorize the execution of the Encroachment Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

1. That it desires to, and hereby does, authorize a non-permanent, revocable encroachment upon the Jefferson Avenue Right-of-Way as described herein.

2. That the non-permanent, revocable encroachment is authorized subject to compliance with the terms of that certain Encroachment Agreement between the City of Newport News, Virginia and the Newport News Redevelopment and Housing Authority, a copy of which is attached hereto and made a part hereof.

3. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Encroachment Agreement between the City of Newport News, Virginia and the Newport News Redevelopment and Housing Authority.

4. That a copy of this ordinance and the executed Encroachment Agreement be recorded in the real estate records of the Clerk's Office of the Circuit Court of the City of Newport News, Virginia.

5. That this ordinance shall be in effect on and after the date of its adoption, August 11, 2020.

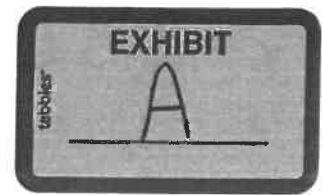
PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON AUGUST 11, 2020

Mabel Washington Jenkins, MMC  
City Clerk

McKinley L. Price, DDS  
Mayor

A true copy, teste:

City Clerk



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**PREPARED BY AND  
RETURN TO:  
Office of the City Attorney  
2400 Washington Ave, 9<sup>th</sup> Floor  
Newport News, VA 23607  
(757) 926-8416 phone  
(757) 926-8549 fax**

**Tax ID No. 306.03-02-05  
2812 Jefferson Avenue, Newport News, VA 23607**

**Consideration: \$0**

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**ENCROACHMENT AGREEMENT**

**THIS ENCROACHMENT AGREEMENT** (the "Agreement") is made and entered as of this 11<sup>th</sup> day of August, 2020, by and between the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal corporation in the Commonwealth of Virginia whose mailing address is 2400 Washington Avenue, Newport News, Virginia 23607 (hereinafter referred to as "GRANTOR" or "City"), in favor of the **NEWPORT NEWS REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia, whose mailing address is 227 – 27<sup>th</sup> Street, Newport News, Virginia 23607 (hereinafter referred to as "GRANTEE" or "NNRHA").

**WITNESSETH:**

WHEREAS, GRANTEE is the owner of a parcel of real property (the "Property") known as 2812 Jefferson Avenue, Newport News, Virginia, more fully described as:

All those certain lots, pieces or parcels of land situate, lying and being in the City of Newport News, Virginia, known, numbered and designated as Lot 29A, as shown on that certain plat entitled "Property Line Vacation Plat, Property of the Newport News Redevelopment and Housing Authority Lots 29 Thru 44-A - Block 139, Map of Part of the City of Newport News (P.B. 1- PG. 3)" prepared by Alfonso & Associates, Inc., dated April 2, 2018, which was

recorded as Instrument Number 180009951 in the Clerk's Office of the Circuit Court for the City of Newport News, Virginia, on August 1, 2018;

and

WHEREAS, the Property is adjacent to an eighty (80') foot right-of-way owned by the City known as Jefferson Avenue ("Jefferson Avenue Right-of-Way"); and

WHEREAS, Grantee wishes to install an awning attached to the Property that will extend approximately three feet and six inches (3' 6") into the Jefferson Avenue Right-of-Way, as shown on the attached Exhibit A ("the Encroachment"); and

WHEREAS, City has determined that there is no objection to the Encroachment; and

WHEREAS, the City Council of the City of Newport News by ordinance adopted at its meeting on August 11, 2020, approved the Encroachment described herein upon the aforesaid Jefferson Avenue Right-of-Way.

**NOW, THEREFORE**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantee, Grantor and Grantee do hereby agree as follows:

**1. Acknowledgement and Agreement Regarding Encroachment.**

Grantor, insofar as its rights and interests are concerned, does hereby consent to the Encroachment, pursuant to Va. Code §15.2-2009 and §15.2-2010, and hereby grants permission to the Grantee to install and maintain the awning located within the Jefferson Avenue Right-of-Way, subject to the following terms and conditions.

2. **Use.** Permission for the Encroachment is granted provided the construction, use, and maintenance thereof do not interfere with the safe and efficient construction, operation, maintenance or use of Grantor's right-of-way, sidewalk, or any of the facilities therein ("Grantor's Facilities"), and further provided that such activities are in compliance with all applicable laws, ordinances, regulations, and codes. Grantee agrees it will not construct or cause to be constructed or erected any other structure or improvement upon the Jefferson Avenue Right-of-Way.

3. **Defective Condition.** If the Encroachment is determined by the Grantor to be in such a defective condition as to cause damage to or to otherwise adversely affect Grantor's Facilities, the safety and health of pedestrians, or the general safety and health of the public, Grantee shall cause the condition to be corrected, remedied or removed at no expense to Grantor within thirty (30) days after written notification by Grantor. Grantee agrees to reimburse Grantor all costs incurred by Grantor in repairing any

damage to Grantor's Facilities arising out of the use of the Encroachment within thirty (30) days of receiving an invoice from Grantor for such costs.

4. **Indemnity.** The Grantee hereby agrees to defend, indemnify and save harmless the Grantor and its agents, officials, and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of, or arising out of the use of the Encroachment under the consent hereby granted, except to the extent caused by the gross negligence or willful misconduct of Grantor.

5. **Insurance.** The Grantee will maintain general liability coverage in the amount of at least One Million Dollars (\$1,000,000) per occurrence, endorsed to name the Grantor as an additional insured thereon, and obtain an endorsement requiring the insurer to provide the City with at least thirty (30) days advance notice of cancellation (10 days' notice for cancellation due to non-payment of premium), and shall continue to provide the Grantor with updated certificates of insurance upon each renewal of the coverage. Failure to provide or maintain the required insurance coverage shall result in termination of this Encroachment Agreement.

6. **Termination.** This Agreement shall in no way be construed as the granting of a perpetual easement or any type of property right by Grantor. The Agreement is revocable at will by either party upon one hundred eighty (180) days' notice.

7. **Reservation.** Grantor reserves all rights of access to its Jefferson Avenue Right-of-Way for construction, operation, and maintenance of its facilities without incurring any liability for damage to or loss of use of the Encroachment described herein or for inverse condemnation thereof. Grantor expressly reserves all rights, privileges, and immunities granted to it under the laws and statutes of the United States and the Commonwealth of Virginia and under the Code of Ordinances of the City of Newport News as to any claims made against it.

8. **Governing Law.** This Agreement shall be governed and construed under the laws of the State of Virginia, without regard to its conflicts laws or choice of law rules.

9. **Successor and assigns.** The terms of this Agreement are binding upon and shall inure to the benefit and obligation of the heirs, personal representatives, successors and assigns of the parties and their respective successors in title, but shall not otherwise grant any rights to any entity not a party to this Agreement nor create any rights in any third-party beneficiary of this Agreement.

10. **Exhibits.** The Exhibit attached to this Agreement is incorporated herein by reference and made a part hereof.

WITNESS the following signatures and seals

**GRANTOR**

CITY OF NEWPORT NEWS, VIRGINIA

By: \_\_\_\_\_

Name: Cynthia D. Rohlf

Title: City Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Mabel Washington Jenkins,  
City Clerk

\_\_\_\_\_  
Collins L. Owens, Jr.  
City Attorney

COMMONWEALTH OF VIRGINIA  
City of Newport News, to wit:

I, \_\_\_\_\_, a Notary Public in and for the City and Commonwealth aforesaid, whose commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, do hereby certify that the CITY OF NEWPORT NEWS, VIRGINIA, by Cynthia D. Rohlf, as City Manager, and attested by Mabel Washington Jenkins, as City Clerk, whose names are signed to the foregoing writing, have acknowledged the same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC

Registration No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**GRANTEE**

NEWPORT NEWS REDEVELOPMENT  
AND HOUSING AUTHORITY

By: \_\_\_\_\_

Name:

Title:

APPROVED AS TO FORM:

\_\_\_\_\_  
Raymond H. Suttle, Jr.  
Counsel for NNRHA

COMMONWEALTH OF VIRGINIA  
City of Newport News, to wit:

I, \_\_\_\_\_, a Notary Public in and for the City and  
Commonwealth aforesaid, whose commission expires on the \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, do hereby certify that the NEWPORT NEWS  
REDEVELOPMENT AND HOUSING AUTHORITY, by \_\_\_\_\_, as  
\_\_\_\_\_, whose name is signed to the foregoing writing, has acknowledged the  
same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

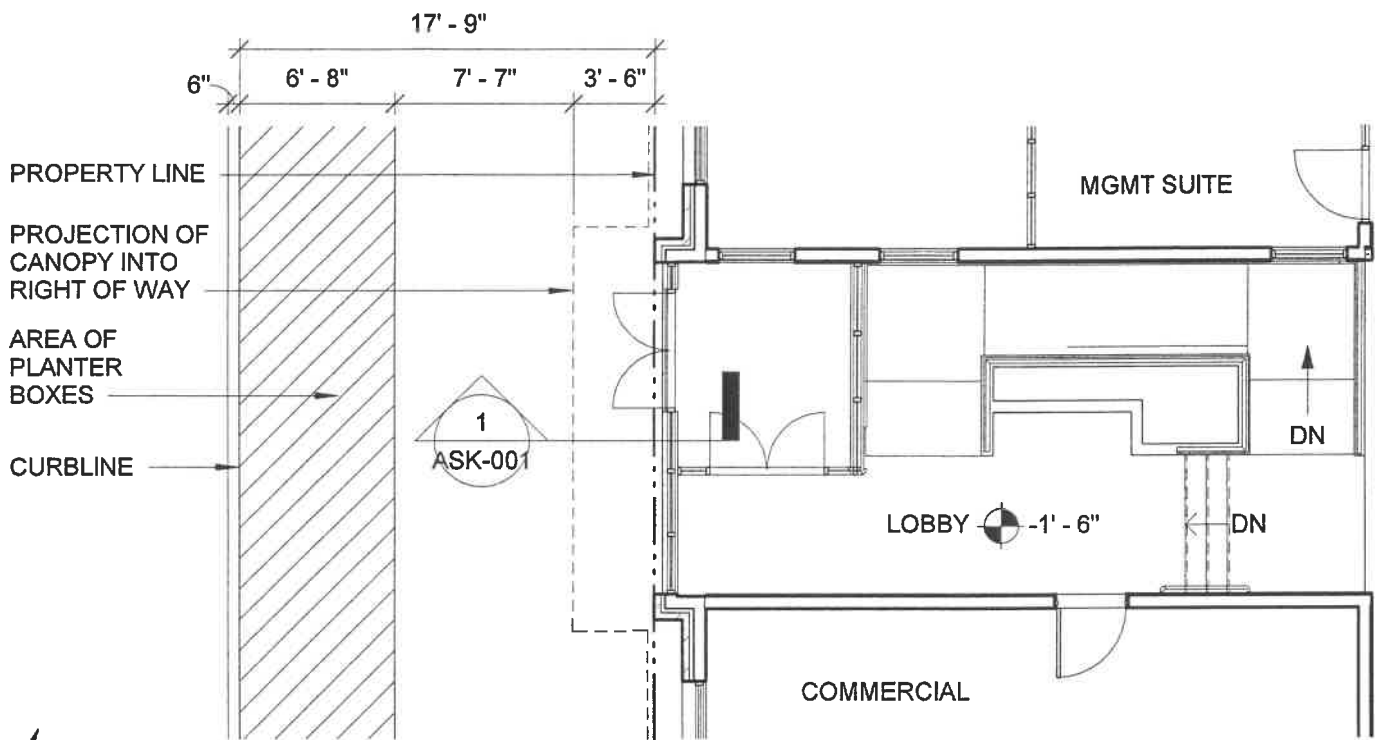
\_\_\_\_\_  
NOTARY PUBLIC

Registration No. \_\_\_\_\_

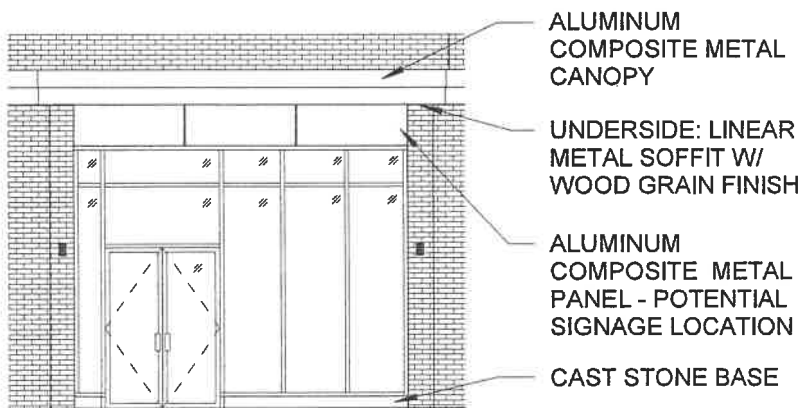
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

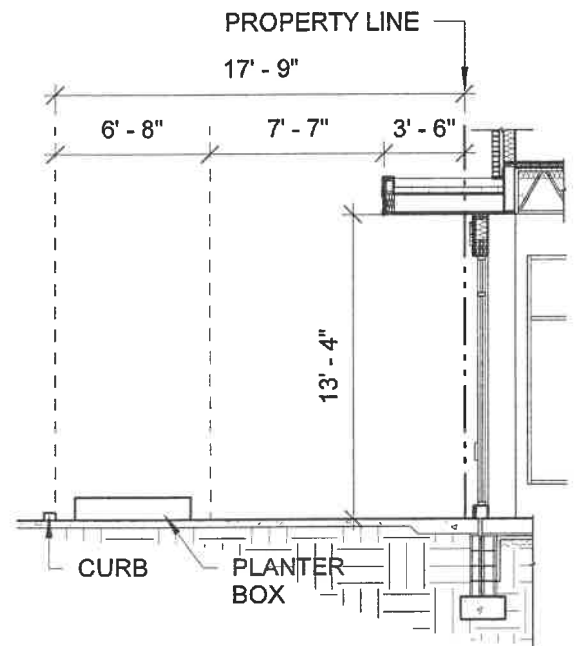




PLAN DETAIL



ENLARGED ELEVATION



SECTION DETAIL



**MARSHALL-RIDLEY PHASE I**

**CARRIER POINT I ENTRANCE CANOPY**

1700 Market Street, Suite 2800 Philadelphia, PA 19103  
 wrtdesign.com 215.732.5215

REF  
 MBV

DATE  
 04/23/20

ASK-001  
 1/8" = 1'-0"