

Excise Tax: \$15.00

Prepared by, and Return to:

St. Amand & Efir PLLC (DHH)
3315 Springbank Lane, Suite 308
Charlotte, North Carolina 28226

STATE OF NORTH CAROLINA
COUNTY OF WAKE

**PERMANENT RIGHT-OF-WAY,
TEMPORARY CONSTRUCTION AND
SIGNAGE AND LANDSCAPING
EASEMENT AGREEMENT**

THIS PERMANENT RIGHT-OF-WAY, TEMPORARY CONSTRUCTION AND SIGNAGE AND LANDSCAPING EASEMENT AGREEMENT (this “**Agreement**”) dated as of the ____ day of _____, 202____ (the “**Effective Date**”) is made by and between **WAKE COUNTY**, a body politic and corporate of the State of North Carolina (“**Grantor**”) and **RXR LEN APEX OWNER LLC**, a Delaware limited liability company (“**Grantee**”). Grantor and Grantee may each be referred to as a “**Party**” and collectively as the “**Parties**” under this Agreement.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

RECITALS

A. Grantor is the owner of that certain parcel of land located in Wake County, North Carolina identified as Parcel ID# 0740026492 and more particularly described on **Exhibit A** attached hereto and incorporated by reference herein (the “**Grantor Property**”).

B. Grantee is the owner of that certain parcel of land located in Wake County, North Carolina, located near the Grantor Property and more particularly described on **Exhibit B**, attached hereto and incorporated by reference herein (collectively, the “**Grantee Property**”).

C. Grantor and Grantee desire that Grantee shall have certain easements and other rights over Grantor Property in furtherance of the development of the Grantee Property, as more particularly described herein.

NOW, THEREFORE, in consideration of Seven Thousand Four Hundred and No/100 Dollars (\$7,400.00) and other consideration, paid by Grantee to Grantor, the receipt of which is hereby acknowledged and confessed, Grantor and Grantee do hereby grant, convey, covenant and agree (as the case may be) as follows:

1. Grant of Permanent Right-of-Way by Grantor. Subject to the terms hereof, Grantor hereby grants and conveys to Grantee, and its respective successors and assigns, for its benefit and for the benefit of the Grantee Property, a permanent, perpetual, non-exclusive easement and right-of-way (the “**Access Easement**”) over, across, in and through that portion of the Grantor Property labeled “**RIGHT OF WAY 8,793 SQ.FT./0.20 AC.**” on Exhibit C attached hereto and incorporated herein by reference (the “**Access Easement Area**”) for purposes of vehicular and pedestrian access thereover. Grantor further hereby grants and conveys to Grantee, and its respective successors and assigns, for their benefit and for the benefit of the Grantee Property, (a) the right to construct improvements; including, but not limited to, paving, drainage ditches/pipelines, cut/fill slopes, retaining walls, stormwater lines/pipes, water lines, sewer lines and other similar improvements necessary to improve the Access Easement Area for use by Grantee and the future owners of any portion of the Grantee Property (collectively, the “**Improvements**”); and (b) the right to maintain, repair, reconstruct and replace the Improvements. Notwithstanding the foregoing, Grantee shall have no obligation to construct the Improvements. In its construction of the Improvements, if at all, Grantee shall act in accordance with the requirements of the applicable governmental authority regarding the specifications for same, and until such time as the Improvements (or any portion thereof) are dedicated to and accepted by the applicable governmental authority for maintenance and repair (the “**Dedication and Acceptance**”).

2. Grant of Temporary Construction Easements. Grantor hereby grants, sells, bargains, assigns and conveys to Grantee and its successors, assigns, employees, agents, consultants and contractors for their benefit and for the benefit of the Grantee Property, temporary non-exclusive easements over, through, under, above and across those portions of the Grantor Property labeled “**TEMPORARY CONSTRUCTION EASEMENT 1 315 SQ.FT., TEMPORARY CONSTRUCTION EASEMENT 2 316 SQ.FT., TEMPORARY CONSTRUCTION EASEMENT 3 868 SQ.FT. and TEMPORARY CONSTRUCTION EASEMENT 4 1,203 SQ.FT.**” on Exhibit C attached hereto and incorporated herein by reference (collectively, the “**Construction Easements**”) for purposes of grading, clearing, staging and otherwise conducting all construction and related work reasonably required to install the Improvements contemplated herein. Subject to events of force majeure, the Construction Easement herein granted is temporary and shall terminate without need for action of either party hereto on the date which is the earlier of: (a) the date that is five (5) years following the date this Agreement is recorded in the Office of the Register of Deeds for Wake County (the “**Registry**”); and (b) the date of the Dedication and Acceptance.

3. Grant of Permanent Signage and Landscaping Easement. Grantor hereby grants, sells, bargains, assigns and conveys to Grantee and its successors and/or assigns a permanent, perpetual easement, appurtenant to the Grantee Property, for the installation, maintenance, repair, replacement and operation of monument identification signs (the “**Signage**”) within those portions of the Grantor Property labeled “**MONUMENT EASEMENT 1 626 SQ.FT. and MONUMENT**”

EASEMENT 2 626 SQ.FT.” on **Exhibit C** attached hereto and incorporated herein by reference (the “**Sign Easement Area**”). Grantee shall also have the right to improve the Sign Easement Area with the Signage, along with landscaping, lighting and other improvements related thereto, all of which shall be constructed, installed, operated and maintained in accordance with the requirements of the applicable governmental authority regarding the specifications for same.

4. **Indemnification.** Grantee shall indemnify, defend and hold harmless Grantor, and its successors and assigns, from and against all liabilities, damages, expenses, causes of action, suits, judgments or claims (including, without limitation, reasonable attorney’s fees and court costs), arising from the exercise of the easement rights granted in this Agreement, provided, however, such indemnity obligations do not apply to (a) any loss, liability, cost or expense to the extent arising from or relating to the acts or omissions of Grantor or Grantor’s employees, agents, contractors or consultants; (b) any diminution in value of the Grantor Property arising from or relating to matters discovered by Grantee during the performance of any work on the Grantor Property in connection with this Agreement; (c) any latent defects in the Grantor Property discovered by Grantee; or (d) the release or spread of any substance or material defined or designated as a hazardous or toxic waste, material or substance, chemical contaminant, or other similar term, deemed to be such by any federal, state or local environmental statute, regulation or ordinance presently or hereafter in effect, as such statutes, regulations or ordinances may be amended from time to time, which is discovered (but not deposited) on or under the Grantor Property by Grantee.

5. **Dedication of Improvements.** Upon completion of the installation of Improvements, Grantee is hereby authorized by Grantor to assign, dedicate and/or convey the easements granted herein and the Improvements to the applicable governmental or utility authority, as Grantee may desire or as may otherwise be required of Grantee, and Grantor will at no material cost to Grantor, act reasonably to cooperate with Grantee in connection with the same, including without limitation, executing all such documents, instruments, applications or plats as are reasonably required within five (5) business days following Grantee’s written request therefor.

6. **Maintenance and Repair.** Grantee (and/or its successors and assigns) agrees to maintain the Access Easement Area and Sign Easement Area, along with the improvements constructed by Grantee therein, if any, at its sole cost and expense. Further, Grantee shall repair any and all damage to the Grantor Property caused by Grantee in the exercise of the easement rights granted to it herein, and agrees to promptly remove any encroachments onto the Grantor Property extending beyond the boundaries of the Access Easement Area and Sign Easement Area; provided, however, that to the extent any damage or encroachment is caused by the acts of Grantor or its agents, contractors, employees or invitees, Grantee shall have no obligation to repair or remove same and Grantor shall be solely responsible for any such repairs or removal necessitated thereby.

7. **Right to Assign to Homeowners Association.** In the event that a homeowner’s association or property owner’s association (an “**Association**”) is formed and represents the owner or owners of the Grantee Property, Grantee shall have the right to assign its rights and obligations under this Agreement to the Association, and, upon assumption by the Association of all rights and obligations of Grantee hereunder, Grantee shall be released from its obligations and liabilities hereunder.

8. No Obstructions. No barriers, fences, or other obstructions shall be placed or constructed by Grantor within the easement areas provided herein.

9. Cumulative Rights; No Waiver. Except as otherwise expressly set forth in this Agreement, all rights, powers and privileges conferred hereunder upon the parties are cumulative but not restricted to those given by law. No failure of any Party to exercise any power given such Party hereunder, or to insist upon strict compliance by any other Party to its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, constitutes a waiver of any Party's right to demand exact compliance with the terms hereof.

10. Applicable Law. This Agreement shall be construed and interpreted exclusively in accordance with the laws of the State of North Carolina.

11. Headings. The headings of the articles, sections, paragraphs, subparagraphs, subdivisions, and subsections of this Agreement are for the convenience of reference only, are not to be considered a part hereof and do not limit or otherwise affect any of the terms hereof.

12. Severability. Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision is ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

13. Number and Gender. Whenever the singular or plural number, or the masculine, feminine, or neuter gender is used herein, it legally includes the other.

14. Amendment or Termination. This Agreement may be amended or terminated only by a written agreement executed by the Parties or their respective assignee(s), and properly recorded in the Registry. Notwithstanding the foregoing, so long as RXR LEN Apex Owner LLC owns any portion of the Grantee Property, no amendment to this Agreement shall be valid unless consented to in writing by RXR LEN Apex Owner LLC.

15. Duration; Running with the Land. Except as otherwise set forth herein, the provisions of this Agreement shall run with, benefit, burden (as the case may be), and bind title to the Grantor Property, and shall inure to the benefit of Grantee, its successors and/or assigns, and the Grantee Property.

16. Further Assurances. The Parties to this Agreement agree to cooperate with one another in executing any additional documents or agreements necessary to carry out the covenants contained in this Agreement.

17. Counterparts. This Agreement may be signed in counterparts which, when assembled, constitute one agreement.

TO HAVE AND TO HOLD, the easements and associated rights and privileges as set forth in this Agreement unto Grantee, its successors and assigns forever.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

GRANTOR:

WAKE COUNTY, NC a body politic and corporate (Corporate Seal)

By: _____

Shinica Thomas, Chair

Wake County Board of Commissioners

ATTESTED BY: Yvonne C. Gilyard, Clerk to the Wake County Board of Commissioners

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____ a Notary Public of the County and State aforesaid, certify that Yvonne C. Gilyard, personally appeared before me this day and acknowledged that she is the Clerk of the Wake County Board of Commissioners, and that by authority duly given, the foregoing instrument was signed in its name by its Chair of the Wake County Board of Commissioners, sealed with its corporate seal and attested by Yvonne C. Gilyard as its Clerk. Witness my hand and official stamp or seal, this ____ day of _____, 2023.

Notary Public _____ (Seal)

Notary Printed or Typed Name _____

My Commission Expires: _____

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first above written.

GRANTEE:

RXR LEN APEX OWNER LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF _____

I hereby certify that the foregoing instrument was acknowledged before me this ____ day of _____, 202__ by _____, as the _____ of RXR LEN Apex Owner LLC, who acknowledged to me that he is the person who executed the foregoing instrument for the purposes and in the capacity herein indicated.

_____ (Seal)

Notary Public for _____

My Commission Expires: _____

EXHIBIT A

Grantor Property

BEING a parcel of land containing approximately 25.77 acres located on the west side of N.C.S.R. 1153 and being the same parcel conveyed to Grantor by a deed from Jessie Ruth Cunningham, dated March 15, 1958, recorded in Deed Book 1310, Page 553 Wake County Registry; less and except that parcel conveyed to Herman M. Satterwhite by deed dated December 30, 1982, recorded in Deed Book 3075, Page 787, said registry; further less and except any out-conveyances of record.

See deed recorded at Deed Book 4803, Page 67, Wake County Registry, for reference.

EXHIBIT B

Grantee Property

BEING located in Wake County, North Carolina, having Real ID#s 0330768, 0070841 and 0407981 and more particularly described as follows:

BEGINNING AT AN EXISTING IRON PIPE ON THE EAST LINE OF TRACT A, AS SHOWN ON BOOK OF MAPS 1998, PAGE 782 OF THE WAKE COUNTY REGISTRY, BEING ALSO THE NORTHWEST CORNER OF TRACT 2, AS SHOWN ON BOOK OF MAPS 2016, PAGE 1428; THENCE WITH SAID TRACT A, NORTH 04°58'10" EAST A DISTANCE OF 362.56 FEET TO A POINT; THENCE SOUTH 89°45'44" WEST A DISTANCE OF 59.47 FEET TO A POINT ON THE EASTERN RIGHT OF WAY OF VERIDEA PARKWAY, AS DESCRIBED IN DEED BOOK 15539, PAGE 1885; THENCE WITH SAID RIGHT OF WAY NORTH 13°15'47" EAST A DISTANCE OF 53.04 FEET TO A CONCRETE MONUMENT; THENCE A CURVE TO THE LEFT, A RADIUS OF 1,700.00 FEET, AN ARC LENGTH OF 338.32 FEET, A CHORD BEARING OF NORTH 07°33'43" EAST, A CHORD LENGTH OF 337.77 FEET TO A CONCRETE MONUMENT; THENCE A CURVE TO THE LEFT, A RADIUS OF 1,900.00 FEET, AN ARC LENGTH OF 76.93 FEET, A CHORD BEARING OF NORTH 01°06'08" WEST, A CHORD LENGTH OF 76.92 FEET TO A CONCRETE MONUMENT; THENCE A CURVE TO THE LEFT, A RADIUS OF 1,900.00 FEET, AN ARC LENGTH OF 63.33 FEET, A CHORD BEARING OF NORTH 01°01'01" WEST, A CHORD LENGTH OF 63.33 FEET TO A CONCRETE MONUMENT; THENCE A CURVE TO THE LEFT, A RADIUS OF 1,900.00 FEET, AN ARC LENGTH OF 31.67 FEET, A CHORD BEARING OF NORTH 02°26'58" WEST, A CHORD LENGTH OF 31.67 FEET TO A CONCRETE MONUMENT; THENCE NORTH 02°54'23" EAST A DISTANCE OF 203.97 FEET TO A CONCRETE MONUMENT ON THE SOUTHERN RIGHT OF WAY OF NORTH CAROLINA HIGHWAY 540; THENCE WITH SAID RIGHT OF WAY NORTH 48°17'55" EAST A DISTANCE OF 64.35 FEET TO A POINT; THENCE NORTH 48°17'55" EAST A DISTANCE OF 3.48 FEET TO A CONCRETE MONUMENT; THENCE SOUTH 76°02'09" EAST A DISTANCE OF 316.69 FEET TO A CONCRETE MONUMENT; THENCE SOUTH 77°42'22" EAST A DISTANCE OF 224.13 FEET TO A CONCRETE MONUMENT; THENCE NORTH 74°21'52" EAST A DISTANCE OF 186.60 FEET TO A CONCRETE MONUMENT; THENCE NORTH 46°45'41" EAST A DISTANCE OF 297.04 FEET TO A CONCRETE MONUMENT; THENCE NORTH 47°49'13" EAST A DISTANCE OF 182.30 FEET TO A CONCRETE MONUMENT; THENCE NORTH 64°40'03" EAST A DISTANCE OF 179.28 FEET TO A POINT, THE NORTHWEST CORNER OF GREENWAY WASTE SOLUTIONS AS DESCRIBED IN DEED BOOK 9099, PAGE 1039; THENCE WITH SAID COMMON LINE SOUTH 06°34'16" EAST A DISTANCE OF 760.63 FEET TO AN IRON PIPE; THENCE SOUTH 79°02'49" EAST A DISTANCE OF 220.90 FEET TO A POINT; THENCE SOUTH 75°06'07" EAST A DISTANCE OF 218.69 FEET TO AN IRON PIPE; THENCE SOUTH 70°32'46" EAST A DISTANCE OF 183.78 FEET TO AN IRON PIPE; THENCE SOUTH 55°38'24" EAST A DISTANCE OF 327.19 FEET TO A POINT IN WHITE OAK CREEK; THENCE WITH SAID CREEK SOUTH 07°50'07" EAST A DISTANCE OF 31.18 FEET TO A POINT; THENCE SOUTH 24°25'22" EAST A DISTANCE OF 138.13 FEET TO A POINT, THE COMMON CORNER OF WAKE COUNTY FELTONVILLE LANDFILL, AS SHOWN ON BOOK OF MAPS 2016, PAGE 1427; THENCE WITH SAID CREEK, THE COMMON LINE, SOUTH 04°34'33" WEST A DISTANCE OF 63.94 FEET TO A POINT; THENCE SOUTH 18°23'05" WEST A DISTANCE OF 94.25 FEET TO A POINT; THENCE SOUTH 00°53'17" WEST A DISTANCE OF 65.12 FEET TO A POINT; THENCE SOUTH 00°53'17" WEST A DISTANCE OF 39.71 FEET TO A POINT; THENCE SOUTH 12°47'10" WEST A DISTANCE OF 52.16 FEET TO A POINT; THENCE SOUTH 58°49'54" WEST A DISTANCE OF 25.88 FEET TO A POINT; THENCE SOUTH 13°29'07" WEST A DISTANCE OF 65.67 FEET TO A POINT, THE NORTHEAST CORNER OF TRACT 2 AS SHOWN ON BOOK OF MAPS 2016, PAGE 1428; THENCE WITH SAID COMMON LINE NORTH 82°38'31" WEST A DISTANCE OF 877.31 FEET TO AN IRON PIPE; THENCE NORTH 88°36'32" WEST A DISTANCE OF 1370.01 FEET TO THE POINT OF BEGINNING; CONTAINING 2,282,096 SQUARE FEET OR 52.39 ACRES.

EXHIBIT C

Finalized Signed and Sealed Exhibit to be Inserted After This Page.