

This instrument prepared by  
and after recording return to:

Tracy J. Robin, Esquire  
Straley Robin Vericker  
1510 W. Cleveland Street  
Tampa, FL 33606  
(813) 223-9400

### **Temporary Access and Construction Easement Agreement**

This Temporary Access and Construction Easement Agreement (this “**Agreement**”) is made and entered into as of the \_\_\_\_\_ day of May, 2021, by the **Waterstone Community Development District**, a local unit of special purpose government organized under Chapter 190, Florida Statutes, (the “**Grantor**”), and **K. Hovnanian Aspire At Waterstone, LLC**, a Florida limited liability company (the “**Grantee**”).

#### **Background and Purpose:**

Grantor owns the road rights of way identified as Parcel PA on the Plat of Waterstone – Phase One, recorded in Plat Book 52, on Pages 35 - 47 in the public records of St. Lucie County, Florida, and more particularly the traffic island located in the right of way for Amina Place, at the intersection of Amina Place and Waterstone Boulevard (the “**Traffic Island**”), as depicted on the “as built” Paving, Drainage and Grading Plan attached hereto as **Exhibit “A”**. Grantee has requested that Grantor convey, and Grantor has agreed to convey a temporary easement to Grantee over, under and across the Traffic Island for purposes of constructing a monument entry sign (the “**Monument Sign**”), together with associated lighting, landscaping and irrigation improvements (together with the Monument Sign, the “**Improvements**”), for the “Aspire At Waterstone” neighborhood entrance..

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby covenant and agree as follows:

1. **Background and Purpose.** The foregoing recitals are true and correct, and are incorporated herein by reference.

2. **Grant of Temporary Access and Construction Easement.** Grantor hereby grants and conveys unto the Grantee a temporary non-exclusive access and construction easement (“**Easement**”) in, over and across the Traffic Island for the purpose of constructing the Improvements at the location and in substantial conformance with the illustration and depiction shown on **Exhibit “B”** attached hereto. Grantor, its representatives, and any governmental or other appropriate authorities and their respective representatives, shall at all times have access to the Traffic Island for any lawful purpose, including inspection.

3. **Restoration.** On or prior to termination of the Easement, Grantee shall restore the Traffic Island to the same condition that existed prior to Grantee’s access (excluding those areas of the Traffic Island upon which the Improvements are constructed). Grantee shall use

reasonable efforts to minimize disruption to the normal operation of any existing infrastructure of the Grantor or any other owner, and shall maintain the work site in clean and safe condition until the Improvements are conveyed to Grantor.

4. **Termination of Easement.** The Easement will expire upon the earlier of the completion of the Improvements and conveyance of the same to Grantor or \_\_\_\_\_, 2020 (unless further extended by Grantor in writing) without need for further documentation. Upon completion of the Improvements and request by Grantor, Grantee shall deliver a written termination of the Easement and this Agreement in recordable form.

5. **Costs and Expenses.** All construction related costs and expenses for the Improvements shall be the sole responsibility of Grantee.

6. **Permits and Licenses.** To the extent necessary, the Grantor will cooperate and assist the Grantee by consenting to and executing any permits or licenses necessary for the construction of the Improvements. Grantee shall pay for all permits and licenses, and provide copies thereof to Grantor.

7. **Compliance with Governmental Regulation.** Grantee shall construct and install the Improvements in compliance with all requirements of governmental laws, rules, regulations, or ordinances.

8. **Liens and Claims.** No rights created herein to enter upon the Traffic Island shall permit or empower Grantee to encumber the Traffic Island or the Improvements with liens arising from the construction of the Improvements. In this regard, Grantee shall not suffer or permit any construction lien to be placed upon or against Grantor's property or the Traffic Island, and in the case of any such construction lien, shall immediately pay and remove the same. If a construction lien(s) is filed, and thereafter Grantee fails to pay and remove the same within thirty (30) days after receiving written notice thereof, then Grantor, at its option, may pay and satisfy the same or transfer the lien to other security, whereupon Grantee shall reimburse Grantor for all such sums paid, together with accrued interest thereon at the highest rate allowed by Florida law from and after the date of payment, and attorneys' fees and costs incurred for enforcement of this Agreement and/or defending such lien or claim, including appellate proceedings and bankruptcy. Notwithstanding anything in the foregoing to the contrary, the terms and provisions of this Section are not intended, and shall not be construed to limit any of the remedies available to Grantor under Section 15 of this Agreement.

9. **Conveyance of Amenities.** Upon completion of the Improvements and certification by Grantor's engineer as to completion thereof, Grantee shall convey the Improvements to Grantor by bill of sale in a form mutually agreed upon by the parties and countersigned by the Grantor to evidence its acceptance. Grantee shall assign and transfer to Grantor all warranties and guaranties received by Grantee in connection with any work on the Improvements to the extent such warranties and guaranties are assignable. If such warranties and guaranties are not by their terms assignable, Grantee agrees to use commercially reasonable efforts to initiate claims and enforce such warranties in accordance with their terms for the benefit of Grantor, upon demand.

10. **Insurance.** Grantee and any contractor constructing the Improvements shall maintain throughout the construction period the following insurance:

a. Worker's Compensation Insurance in accordance with the laws of the State of Florida.

b. Commercial General Liability Insurance covering the Grantee's or any contractor's legal liability for bodily injuries, with limits of not less than \$1,000,000 combined single limit bodily injury and property damage liability, and covering at least the following hazards:

(i) Independent Contractors Coverage for bodily injury and property damage in connection with contractors' operation.

(ii) Employer's Liability Coverage with limits of at least \$1,000,000 (one million dollars) per accident or illness.

c. Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 combined single limit bodily injury and for property damage, providing coverage for any accident arising out of or resulting from the operation, maintenance, or use by Grantee or contractors of any owned, non-owned, or hired automobiles, trailers, or other equipment required to be licensed.

Prior to commencing the work, the Grantee and/or contractors shall add Grantor, and its respective staff, consultants and supervisors as an additional insured to its insurance policies. The Grantee or contractor shall furnish Grantor with the Certificate of Insurance evidencing compliance with this requirement. No certificate shall be acceptable to Grantor unless it provides that any change or termination within the policy periods of the insurance coverages, as certified, shall not be effective within thirty (30) days of prior written notice to Grantor.

11. **Indemnification.** Grantee agrees to indemnify and hold Grantor and its respective officers, agents and employees harmless from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage of any nature, arising out this Agreement or the work to be performed by Grantee or its contractors hereunder, including litigation or any appellate proceedings with respect thereto; excepting, however, that Grantor shall not be indemnified against loss or liability resulting from Grantor's own negligence or the negligence of its contractors, employees or agents. Grantee further agrees that nothing herein shall constitute or be construed as a waiver of the Grantor's limitations on liability contained in section 768.28, Florida Statutes, or other statute. Any contractor retained by the Grantee shall acknowledge the same in writing. Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorney fees, and paralegal fees, whether incurred in court, out of court, on appeal, or in bankruptcy proceedings.

12. **Assignment.** No party may assign this Agreement without the prior written approval of the other parties. Any purported assignment without such approval shall be void.

13. **Modification or Amendment.** This Agreement may not be modified in any respect whatsoever, or rescinded, in whole or in part, except with the written consent of the parties.

14. **Controlling Law.** This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida, with venue in St. Lucie County, Florida.

15. **Enforcement of Agreement.** A default by any party under this Agreement shall entitle the other parties to all remedies available at law or in equity. In the event that any party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, appellate proceedings, and bankruptcy.

16. **Severability.** The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument.

18. **Entire Agreement.** This instrument shall constitute the final and complete expression of this Agreement between the parties relating to the subject matter of this Agreement. To the extent that any provisions of this Agreement conflict with the provisions in any exhibit, the provisions in this Agreement shall control over provisions in any exhibit.

19. **Failure to Perform.** If any party fails to perform its respective obligations under this Agreement, the non-defaulting party may perform the defaulting party's respective obligations after providing written notice to the defaulting party specifying in reasonable detail the nature of the default and forty-five (45) days in which to cure such default, and shall thereafter have a right to collect the cost of such obligations from the defaulting party, together with interest at the highest rate allowed by Florida law.

20. **Breach Shall Not Permit Termination.** No breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any breach of this Agreement.

21. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given when (a) hand delivered, (b) delivered via Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) transmitted via facsimile or email, provided a copy is sent the next business day by method (a) or (b). All notices shall be addressed as follows:

To Grantee: K. Hovnanian Aspire At Waterstone, LLC  
Atten: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

With a copy to:

To Grantor: Waterstone Community Development District  
Attn: Rich Hans  
Governmental Management Services-SF, LLC  
5385 N. Nob Hill Road  
Sunrise, Florida 33351  
Phone: (954) 582-2861 Ext. 201  
Fax: (954) 721-9202  
E-mail: [rhans@fmssf.com](mailto:rhans@fmssf.com)

And to: Tracy J. Robin, Esquire  
Straley Robin Vericker, Attorneys at Law  
1510 W. Cleveland Street  
Tampa, FL 33606  
Phone: (813) 223-9400  
Fax: (813) 223-5043  
E-mail: [TRobin@srvlegal.com](mailto:TRobin@srvlegal.com)

**REMAINDER OF PAGE INTENTIONALLY BLANK**  
**SIGNATURES LOCATED ON THE FOLLOWING PAGE**

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

\_\_\_\_\_  
Witness 1 Signature  
Printed Name: \_\_\_\_\_

**Waterstone Community Development  
District**

By: \_\_\_\_\_  
Stanley Markofsky, Chair

\_\_\_\_\_  
Witness 2 Signature  
Printed Name: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2020 by Stanley Markofsky, Chair of the Board of Supervisors of the Waterstone Community Development District, who is  personally known to me or  who has produced \_\_\_\_\_ as identification.

[Notary Seal]

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

\_\_\_\_\_  
Name typed, printed or stamped  
My Commission Expires: \_\_\_\_\_

**K. Hovnanian Aspire At Waterstone, LLC,**  
A Florida limited liability company

\_\_\_\_\_  
Witness 1 Signature  
Printed Name: \_\_\_\_\_

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

\_\_\_\_\_  
Witness 2 Signature  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name Here

Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_, 2020, by \_\_\_\_\_, of K. Hovnanian Aspire At Waterstone, LLC , a Florida limited liability company, on behalf of the company, who is personally known to me or has produced \_\_\_\_\_ as identification.

[Notary Seal]

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

\_\_\_\_\_  
Name typed, printed or stamped  
My Commission Expires: \_\_\_\_\_