

EXHIBIT A

NORTH CAROLINA
WAKE COUNTY

DATE: October 9, 2017

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

AND

JS Development Company

LICENSE AGREEMENT FOR
PROPERTY ENCROACHMENT -
WAKE COUNTY
D&SC RAIL DORRIDOR, MP DD.19.85

THIS LICENSE AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department and/or Licensor," and JS Development Company, hereinafter referred to as "Company and/or Licensee," and individually hereinafter referred to as "Party," and collectively, as "Parties."

WITNESSETH:

THAT WHEREAS, the Licensor is the owner of the Rail Corridor right-of-way as described on Exhibit A ("Premises") as attached hereto and incorporated by reference; and,

THAT WHEREAS, the Licensee desires to encroach and has encroached on the right-of-way of the Rail Corridor as described on Exhibits A1 and A 2 ("Premises") attached hereto and incorporated by reference, located in Wake County, North Carolina with the construction, maintenance, and use of a 8-inch (8") ductile iron pipe (DIP) carrier in 16 inch (16") steel casing pipe; and,

THAT WHEREAS, Licensor is willing to grant Licensee the privilege of making such encroachment upon the Premises subject to and in accordance with this Agreement (such privilege, the "License");

NOW, THEREFORE, IT IS AGREED that Licensor hereby grants to Licensee the privilege to make this encroachment as shown on the attached plan sheet(s), specifications, and special provisions which are incorporated by reference upon the following conditions:

SCOPE OF WORK:

The sewer pipe line construction will cross under the American Tobacco Trail (ATT) approximately 1800 feet south of Green Level –West Road near milepost 19.85 in Wake County. Associated drawing and pipe specification form are attached to agreement as Exhibits A and B. Sewer pipe line is to be installed by "Bore & Jack" method eight (8) feet below American Tobacco Trail surface. Specifications for pipe construction shall meet engineering standards outlined in Section 5.3 of American Railway Engineering and Maintenance-of-way Association (AREMA) Manual for Railway Engineering. Construction of pipe line shall not compromise American Tobacco Trail (ATT) surface and shall not interfere with pedestrian use of ATT.

1. In consideration of Licensor's granting of this privilege to encroach upon Licensor's Premises, Licensee agrees to pay Licensor a one-time lump sum payment of \$3000.00. Payment is due when Licensee signs this License Agreement.
2. The License is granted solely and exclusively for the improvement, maintenance, and use of the encroachment as expressly set forth herein. This grant shall not be construed to convey or otherwise vest in the Licensee any other greater interest.
3. It is agreed between Licensor and Licensee that this license is personal to Licensee and shall not inure to the successors or assigns of Licensee. The parties understand and agree that any right or claim of Licensor created by this License Agreement shall inure to the benefit of, and be enforceable by, any successor or assignee of Licensor.
4. Licensor makes no warranties or representations regarding the condition of the Premises, and this Agreement shall not be construed to make or imply any warranty. Licensee accepts the use of the Premises "AS IS" and expressly waives any and all claims against Licensor relating to or arising from the condition of the Premises and the property surrounding the Premises, including, without limitation, any claims and costs related to environmental contamination (such as, without limitation, those claims which might arise under CERCLA, RCRA, and the North Carolina Oil Pollution and Hazardous Substances Act).
5. The installation, operation, and maintenance of the encroachment by Licensee (including Licensee's employees, contractors, and agents) will comply with the North Carolina Department of Transportation's latest RAIL CORRIDOR PRESERVATION POLICY, POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS-OF-WAY and THE AMERICAN RAILWAY ENGINEERING AND MAINTENANCE OF WAY ASSOCIATION MANUAL, and such revisions and amendments thereto as may be in effect at the date of this Agreement, all of which are hereby incorporated as terms and conditions of this Agreement, and compliance with which may not be waived except by written agreement of all parties. Information as to these policies and procedures may be obtained from the North Carolina Department of Transportation.
6. The Licensee agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto.
7. The Licensee shall improve and/or maintain the encroachment at Licensee's own cost and expense. The Licensor shall be exempt from any costs, charges, or assessments of any kind or character on account of or incident to the License, the location and improvement of the encroachment within the limits of the right-of-way, or on account of any action or omission by the Licensee in connection therewith.
8. The Licensee agrees to install and/or maintain the encroachment in such safe and proper condition that the exercise of the License and the encroachment shall (i) will not interfere with or endanger existing or future uses by the Licensor of said right-of-way for railroad, trail, or other transportation purposes, (ii) will neither obstruct nor interfere with the proper operation and maintenance of said right-of-way or any tracks, structures, or appurtenances located thereon. The Licensee will reimburse the Licensor for any costs incurred by Licensor including, but not limited to costs for repairs or maintenance to the Licensor's corridor, roadways, and structures resulting from the installation and existence of Licensee's encroachment, or Licensee's exercise of the License granted

pursuant to this Agreement. Licensee shall take such measures as are required by applicable laws, rules, and regulations to identify improvements and encroachment facilities, including but not limited to those that are located beneath the surface of the ground.

9. The Licensee agrees to install and maintain in good order the encroachment in such a manner as not to interfere with the proper drainage of the roadbed/trackbed and right-of-way. The Licensee will not allow or permit the diversion of any additional drainage into existing drainage facilities or upon the right-of-way, and, moreover, the Licensee will arrange its drainage system so as to prevent the ponding of water upon the right-of-way.
10. In the event Licensee deems it necessary for Licensor to remove, adjust and relocate any structures or property of third persons or corporations, including, but not limited to, wire lines and poles or other supports, now located and constructed upon or near Licensor's right-of-way, the Licensee shall obtain the consent of Licensor prior to initiating any such removal, adjustment or relocation, and will remove, adjust and/or relocate or arrange for the removal, adjustment and/or relocation of same without cost or expense to the Licensor, and in all respects in accordance with the requirements of the Licensor. Any utility changes must conform to specifications promulgated by the American Railroad Engineering and Maintenance of Way Association (AREMA) and the North Carolina Department of Transportation.
11. The Licensee agrees to protect, indemnify, and save Licensor wholly harmless from and against the consequences of any damages or loss of life, personal injury, or property which may be caused by or result from the improvement, maintenance or use of the encroachment, or the failure or neglect of the Licensee to maintain proper drainage in connection with the encroachment, or the failure of Licensee to comply with applicable laws, rules or regulations, or the terms of this Agreement. This provision shall survive the termination, lapse, or expiration of this Agreement or the abandonment of the encroachment by Licensee.
12. The Licensee agrees to restore all areas disturbed during installation or maintenance of the encroachment to the Licensor's reasonable satisfaction. The Licensee agrees to exercise every reasonable precaution during construction or maintenance to prevent eroding of soil; silting or pollution of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces, or other property; or pollution of the air. When any installation or maintenance operation disturbs the ground surface and existing ground cover, Licensee agrees to remove and replace the sod or otherwise reestablish the grass cover to the reasonable satisfaction of the Licensor.
13. Licensee shall comply with applicable laws, rules and regulations of North Carolina, including but not limited to the rules and regulations of the North Carolina Department of Environmental Quality, and ordinances and regulations of various counties, municipalities, and other agencies relating to pollution prevention and control. Licensee agrees to comply with all federal, state and local environmental laws, rules, and regulations. None of the terms of this paragraph, or of this Agreement elsewhere shall be construed as a waiver of any environmental regulations. If hazardous or any other unauthorized material is discovered, and it is determined that such material is present as a result of action by Licensee, Licensee shall be solely responsible and hold the Department harmless for all costs associated with the removal of the material and any damages caused by the existence of said material. This provision shall survive the termination, lapse, or expiration of this Agreement or the abandonment of the encroachment by Licensee.

14. It is agreed by all parties that this Agreement shall become void if actual construction of the work contemplated herein is not begun within one (1) year from the date of authorization by the Licensor, unless written waiver is secured from the Licensor.

NOTICES

All notices, requests, or other communications permitted or required to be given by one Party to the other and all questions about the contract from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Department/Licensor:

If Delivered by US Postal Service:	If Delivered by Any Other Means:
Allan Paul Operations & Facilities Branch NCDOT Rail Division 1553 Mail Service Center Raleigh, NC 27699-1553 Telephone: 919-707-4712 Fax: 919-715-6580 Email: wshhead@ncdot.gov	Allan Paul Operations & Facilities Branch NCDOT Rail Division 1553 Mail Service Center Raleigh, NC 27699-1553

For the Corporation/Licensee:

If Delivered by US Postal Service:	If Delivered by Any Other Means:
<u>Mr. Mick Michael</u> <u>JS Development Company</u> <u>441 Six Forks Road, Suite 106-117</u> <u>Raleigh, NC 27587</u> Telephone: 919-414-4780 Fax: N/A Email: mick@envisionhomesnc.com	<u>Mr. Mick Michael</u> <u>JS Development Company</u> <u>441 Six Forks Road, Suite 106-117</u> <u>Raleigh, NC 27587</u> Telephone: 919-414-4780 Fax: N/A Email: mick@envisionhomesnc.com

15. In the case of noncompliance with any of the terms of this Agreement by Licensee, Licensor will give Licensee written notice of such noncompliance. If Licensee fails to comply with the reasonable satisfaction of the Licensor within sixty (60) days after receiving such written notice, unless written waiver is secured from the Licensor, the Licensor reserves the right to discontinue the use of the encroachment until it has been brought into compliance. Alternatively, at no cost to the Licensor, Licensor may remove the encroachment from the right-of-way and require the Licensee to reimburse the Licensor for all expenses for said removal. .

16. The Licensee agrees to give written notice to the Licensor within thirty (30) days of completion of all work contained herein.
17. The Licensee shall make all necessary changes to the reasonable satisfaction of the Licensor, at Licensee's own cost and expense, within sixty (60) days after written notice from the Licensor, to address the safety concerns of the Licensor or to accommodate the Licensor's use of the right-of-way for railroad, trail, or other transportation purposes, unless written waiver is secured from the Licensor. Such changes include, but are not limited to, the construction of a grade-separated facility for railroad, trail, or other transportation purposes; the installation, maintenance, and upgrading of any safety devices, signs, or other facilities necessary for the Licensor's use of the corridor; and any changes of location, height, depth, or design of the encroachment, or consolidation of at-grade crossings.
18. In the event the Licensor requires the removal of the encroachment from the right-of-way, then the Licensor shall have the right to demand such removal, and the Licensee, at its own cost and expense, within sixty (60) days after written notice from the Licensor, unless written waiver is secured from Licensor, shall discontinue the use of the same, remove the encroachment from the right-of-way, and restore the same to the condition existing prior to the location of the encroachment upon the right-of-way.
19. In the case of a utility encroachment, Licensee agrees to periodically monitor and verify the depth or height of the utility in relation to the tracks and facilities present on the Premises, and to relocate the utility at Licensee's own cost and expense should such relocation or change be necessary to comply with the minimum clearance requirements as set forth in this Agreement or as required by any public authority.
20. If the operation, existence, or maintenance of the encroachment causes interference, physical, magnetic, or otherwise, with train control systems or facilities, or interference in any manner with the operation, maintenance, or use of the right-of-way, tracks, structures, pole lines, devices, other property, or any appurtenances thereto for railroad, trail, or other purposes, Licensee shall, within sixty (60) days of written notice from the Licensor, at Licensee's own cost and expense, promptly make such changes in its encroachment as may be required in the reasonable judgment of the Licensor to eliminate all such interference, unless written waiver is secured from the Licensor.
21. If the Licensee undertakes to revise, renew, relocate, or change in any manner whatsoever all or any part of the encroachment plans, such plans shall be submitted to the Licensor for approval before any such change is made. After approval, the terms and conditions of this Agreement shall apply thereto.
22. This Agreement shall at all times be governed by the provisions of the law of North Carolina.
23. This Agreement shall not be construed to create any relationship of agency or employment between the parties hereto.
24. By signing this Agreement, Licensee certifies that, as of the date of this Agreement, Licensee is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58, and that Licensee is authorized to make this certification.

25. N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By signing this Agreement, Licensee attests that Licensee is not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by Licensee (including Licensee's employees, agents, and representatives).

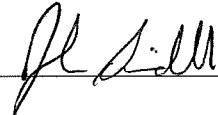
26. E-Verify is the federal program operated by the United States Department of Homeland Security and other Federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. The Parties warrant that they and any subcontractor performing work under this Agreement: (i) uses E-Verify if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach of this warranty by any Party will be considered a breach of this Agreement, which entitles the other Parties to terminate this Agreement, without penalty, upon notice to the breaching Party.

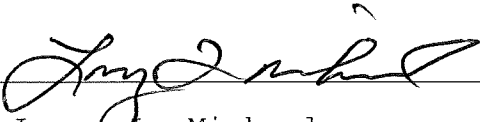
IN WITNESS WHEREOF, this License Agreement has been executed, in triplicate originals, the last day and year set out below, on the part of the Department and PSNC Energy by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

JS DEVELOPMENT COMPANY

BY: 
NAME: Josh Swindell
TITLE: Member
DATE: 12.4.17

BY: 
NAME: Larry L. Michael
TITLE: Member
DATE: 12.4.17

FEDERAL TAX IDENTIFICATION NUMBER

47-2537376

JS DEVELOPMENT COMPANY.

MAILING ADDRESS

JS Development Company
441 Six Forks Road, Suite 106-117
Raleigh, NC 27587
ATTN: Mick Michael

IN WITNESS WHEREOF, this License Agreement has been executed, in duplicate originals, the last day and year set out below, on the part of the Department and PSNC Energy by authority duly given.

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ATTEST

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY:

Tereca W Batts

BY:

Julie White

NAME:

Tereca Batts

NAME:

Julie White

TITLE:

Processing Agent

TITLE:

Deputy Secretary Of Multi-Modal
Transportation

DATE:

12-7-17

DATE:

12-7-17

SEAL

MAILING ADDRESS

North Carolina Department of Transportation
Rail Division, Design and Construction Branch
1556 MSC
Raleigh, North Carolina 27699-1556
ATTN: Andy Miller
samiller@ncdot.gov

EXHIBIT B

PIPE SPECIFICATION FORM

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION RAIL DIVISION

Operations & Facilities Branch

1553 Mail Service Center Raleigh, NC 27699

Note: Rail Corridor & Property Manager to complete form and submit to applicant for approval/signature

<u>PIPE SPECIFICATIONS</u>	<u>CARRIER PIPE</u>	<u>CASING PIPE</u>
Material	<u>DIP</u>	<u>Steel</u>
Material Specifications and Grade	<u>Class 50</u>	<u>Grade B</u>
Min. Yield Strength of Material PSI	<u>42,000</u>	<u>35,000</u>
Mill Test Pressure PSI	<u>350</u>	<u>N/A</u>
Inside Diameter	<u>8"</u>	<u>15.5"</u>
Wall Thickness	<u>0.27"</u>	<u>0.25"</u>
Outside Diameter	<u>9.05"</u>	<u>16"</u>
Type of Seam	<u>N/A</u>	<u>Seamless</u>
Laying Lengths	<u>18'</u>	<u>18'</u>
Type of Joints	<u>Gasketed</u>	<u>Welded</u>
Total Length within RR R/W	<u>102'</u>	
VENTS: Number <u>0</u> Size _____ Hgt. Above ground _____		
SEALS: Both ends _____ One end <u>Grout & Block</u>		
BURY: Base of rail to top of casing _____ ft. _____ in.		
BURY: (Not beneath tracks) _____ ft. _____ in.		
BURY: (Roadway ditches) _____ ft. _____ in.		
CATHODIC PROTECTION: (X) Yes () No		
PROTECTIVE COATING: (X) Yes () No Kind <u>1 shop</u>		
<u>coat of epoxy primer and 2 field coats of black coal tar epoxy.</u>		
Type, Size and Spacing of Insulators or Supports <u>Metal fabricated spiders with poly feet -- Advance Products & Systems, Inc., Pipeline Seal and Insulator Ltd. Or BWM Company. Spacing shall be 8' O.C. and within 3' of pipe joint</u>		

Method of Installation Bore & Jack

If application is approved, applicant agrees to reimburse the Rail Division for any cost incurred by the Rail Division incident to installation, maintenance, and/or supervision necessitated by this pipe line installation, and further agrees to assume all liability for accidents or injuries which arise as a result of this installation.

9.19.17

Date

Mick Michael - Member

Signature and Title of Officer Signing Application

Mick Michael