

After Recording Mail To: Development Services
Town of Apex
PO Box 250
Apex, NC 27502

STATE OF NORTH CAROLINA
COUNTY OF WAKE

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT ("Agreement"), being made this ____ day of _____, 2023, by and between White Oak Creek Homeowners Association, Inc., a North Carolina non-profit corporation (hereinafter referred to as "Association" and/or "Grantee") and the Town of Apex, (hereinafter referred to as "Town" and/or "Grantor"). Grantor and Grantee are sometimes hereafter referred to individually as a "Party" and collectively as "Parties".

RECITALS:

WHEREAS, Grantee desires to encroach into that certain 50' public street right(s) of way located at and known as Beckwith Road (hereinafter "**ROW**") under the Town's jurisdiction in the neighborhood known as **Regency at White Oak Creek, Phase 1A**, as shown on the plat recorded in **Book of Maps 2015, Page 01580**, Wake County Registry (hereinafter the "**Subdivision Plat**"); and

WHEREAS, the properties located in the Regency at White Oak Creek neighborhood are subjected to the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens For White Oak Creek recorded in Book 016284, Page 616 of the Wake County Registry and all amendments and supplements thereto (hereinafter "Declaration") and is thereby governed by the Association; and

WHEREAS, pursuant to Article 1, Section 8 of the Declaration, the Association is responsible for any improvement located on, under, in or over public right-of-way which improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry; and

WHEREAS, Grantee wishes to install certain improvements, consisting of a **private retaining wall, of which forty-nine (49) Linear Feet will encroach into the Town's ROW**, hereinafter referred to as the "Encroachment", as more particularly described and shown in those drawings or plans attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the Town, under the terms and conditions herein set forth, is willing to allow the above-described Encroachment upon the **ROW**.

NOW, THEREFORE, in consideration of these promises and other consideration, the receipt and sufficiency of which is hereby acknowledged, Grantee and the Town hereby covenant and agree:

1. Subject to the terms herein, the Town agrees to allow Grantee, and Grantees' successors and assigns at Grantee sole risk and expense, to encroach into the **ROW** of the Town as shown in the attached **Exhibit A**, and incorporated by reference as though fully set forth herein.
2. The Encroachment shall not be enlarged or increased beyond the size of the Encroachment as shown in **Exhibit A** and described in this Agreement.
3. The Town is not responsible for any expenditures of labor or material required for the installation, erection, repair, or removal of the Encroachment. Grantee is responsible for any and all expenditures of labor or materials required for the repair, removal, or maintenance of the Encroachment.
4. Grantee shall be responsible for any and all property damage, injury to or death of any person which results from any and all negligence, omission, defect in design, maintenance, or workmanship or any cause of action arising out of the installation, erection, repair, maintenance, dismantling or removal, or presence of the Encroachment.

5. Grantee agrees to and shall hereby hold the Town, its officers, council members and employees harmless from any and all liability arising out of such negligence, omission, defect or other cause of action; that it will defend the Town, its officers, council members and employees, and pay all attorney fees in any and all actions brought as a result of such; and that it will indemnify the Town, its officers, council members, and employees against any and all loss sustained by reason of such negligence, omission, defect, or other cause of action, arising out of the installation, maintenance, removal, or location of said Encroachment.
6. Sections 4 and 5 shall survive the termination of this Encroachment Agreement as they relate to any damage or cause of action arising prior to the termination.
7. All notices required herein shall be deemed given by depositing such in the United States mail, first class, and addressed to:

To Town: Town Manager
 Town of Apex
 PO Box 250
 Apex, NC 27502

To Grantee: White Oak Creek Homeowners Association, Inc. c/o CAMS
 1612 Military Cutoff Rd., Ste 108
 Wilmington, NC 28403

8. In the event there is a dispute between the parties concerning the interpretation of the terms of this Encroachment Agreement or their respective rights and obligations hereunder, such dispute or controversy shall be adjudged pursuant to the laws of the State of North Carolina.
9. Grantee agrees to abide by all applicable laws, regulations, statutes and ordinances.
10. This Encroachment Agreement shall not divest the Town of any rights or interest in said **ROW**. The Town may terminate this Encroachment Agreement by giving Grantee ninety (90) days written notice of termination. Prior to the termination date, Grantee shall remove, at its own expense, all or part of the Encroachment, if and as instructed and specified by the Town.

11. If the Town deems, within its sole discretion, that there is not time to give the Grantee notice of ninety (90) days as provided in Paragraph 10 and that removal of the Encroachment is necessary in order to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **ROW**, then fifteen (15) days' notice shall be required. The Grantee shall remove, at its own expense, all or part of the Encroachment, if and as instructed and specified by the Town. If the Town deems, within its sole discretion, that there is not time to give the Grantee notice of fifteen (15) days as provided above and that removal of the Encroachment is necessary in order to operate, protect, maintain, modify, replace, add-to, or improve its facilities located within the **ROW**, then no notice shall be required and the Town may remove the Encroachment from the **ROW** without cost, risk or liability to the Town.
12. Grantee agrees to pay and reimburse the Town the entire expense and cost of removal of the Encroachment in the event that the Town removes the Encroachment as provided in the Paragraph 11 or if Grantee fails to remove the Encroachment within the time limit after receiving notice under Paragraph 10.
13. Grantee, during the life of this Encroachment Agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers authorized under the laws of the State of North Carolina, insurance in the minimum amounts of \$300,000/\$500,000/\$300,000 covering full liability for any and all bodily injury, (including death) and property damage caused by the construction, maintenance, location, repair or visual obstruction of said Encroachment, with the Town being included as an additional insured as its interest may appear under this Agreement. Grantee shall furnish the Town, without demand, each July a certificate of insurance ("COI") from the insurance carrier or carriers with whom the insurance herein mentioned is carried, evidencing that such insurance is in full force and effect. In the event of any change in the insurance policy, Grantee shall give the Town thirty (30) days notice of such change. Should Grantee fail to pay premiums upon said insurance or to perform any of the agreement, terms or conditions herein contained, the Town, at its option, by written notice may declare this Encroachment Agreement canceled and terminated and all rights acquired hereunder by Grantee shall thereupon terminate.

14. Notwithstanding Section 15 below, Grantee shall be released from its obligation under this Encroachment Agreement only upon one of the following: (i) If Grantee or the Town removes the Encroachment such that the purpose of the Encroachment becomes obsolete; (ii) the assumption of said obligations by a successor in title to the real property known as the ROW described hereinabove; or (iii) by assumption of said obligations by an incorporated property owners association for **Regency at White Oak Creek Phase 1A Subdivision**. The Town's consent to such assumption and release shall be required but shall not be withheld, conditioned or delayed if, as reasonably determined by the Town, the party assuming Grantee obligations possesses adequate financial resources and ownership interest, and Grantee delegated and proposed assignee assume and agree to fulfill, in writing, all of Grantee duties set forth in this Agreement.

15. This Encroachment Agreement is binding upon and inures to the benefit of all the parties hereto, their heirs, personal representatives, grantees, assigns, transferees, and successors in interest and shall, upon execution, be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

16. This Agreement may not be amended, modified, or terminated except by written instrument duly executed by the Parties.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

In witness whereof, the Grantee and Town have executed this instrument under seal as of the date stated above.

GRANTEE

White Oak Creek Homeowners Association, Inc.

By: Edward R. Franchi (SEAL)

Name: Edward R. Franchi

Title: WOC HOA Board President

NORTH CAROLINA

COUNTY OF Wake _____ [county in which acknowledgement taken]

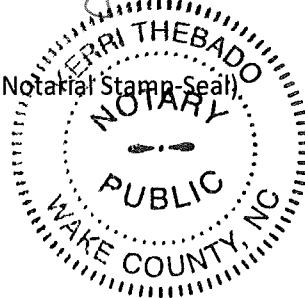
I, Kerri Thebado, a Notary Public of Wake County, North Carolina, certify that Edward R. Franchi, personally came before me this day and acknowledged that he/she is the Board President of White Oak Creek Homeowners Association, Inc. and that he/she, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this 18th day of July, 2023.

Kerri Thebado
[Signature of Notary Public]

(Affix Notary Seal)

My Commission Expires: April 30, 2028



TOWN OF APEX

Shawn Purvis, ICMA-CM
Interim Town Manager

(Corporate Seal)

ATTEST:

Allen Coleman, CMC, NCCCC
Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____
County, North Carolina, certify that Allen Coleman personally came before me this day and acknowledged
that he is the Town Clerk for the Town of Apex, a North Carolina Municipal Corporation, and that by
authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its
Interim Town Manager, sealed with its corporate seal and attested by him as its Town Clerk.

Witness my hand and official stamp or seal, this _____ day of _____, 2023.

[Signature of Notary Public]

(Seal)

My Commission Expires: _____