

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, being made this ____ day of _____
2019, by and between **TOLL NC II LP, a North Carolina Limited Partnership**, hereinafter referred to as
"Grantee," and the Town of Apex, hereinafter referred to as the "Town."

WHEREAS, the Grantee is the owner of **.39 acres** of residential land in the County of Wake, State
of North Carolina, which is described as **PIN #0723-75-5956** and more particularly described as **"LO114
Regency at White Oak Creek PH6 BM2018-00596"** as shown and recorded in **Book of Maps 2018, Page
00596, Wake County Registry**. The residential lot has a mailing address of **2501 Cedar Hedge Court,
Apex, NC, 27523**. The lot described in this paragraph is hereinafter referred to as the **"Residential Lot."**

WHEREAS, the Town is the owner of a **public drainage easement** as shown on **Book of Maps
2018, Page 00596, Wake County Registry**, as **"TOWN OF APEX PUBLIC DRAINAGE EASEMENT,"**
hereinafter referred to as the **"Public Drainage Easement."**

WHEREAS, Grantee wishes to install certain improvements, more particularly described as
NOTE: DRIVEWAY ENCROACHMENT WITHIN DRAINAGE EASEMENT. 59 S.F. (CROSSHATCHED) which
will encroach upon a portion of the **Public Drainage Easement**, hereinafter referred to as the
"Encroachment," as shown on the attached "Exhibit A." Grantee desires to make certain agreements
and covenants regarding the **Encroachment**.

6. 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: Toll NC II LP
250 Gibraltar Road
Horsham, PA 19044

7. 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.

8. Grantee agrees to abide by all applicable laws, regulations, statutes and ordinances.

9. This Encroachment Agreement shall not divest the Town of any rights or interest in said **Public Drainage Easement** and 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** as specified by the Town.

10. If the Town deems, within its sole discretion, that there is not time to give Grantee notice as provided in Paragraph 9 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 **Public Drainage Easement**, then no notice shall be required and the Town may remove the **Encroachment** from the **Public Drainage Easement** without cost, risk or liability to the Town.

11. 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 10 or if Grantee fails to remove the **Encroachment** within the time limit after receiving notice under Paragraph 9.

12. 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 personal injury, property damage or wrongful death caused by the construction, maintenance, location, repair or visual obstruction of said **Encroachment**. Grantee shall furnish the Town, without demand, each July a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect. Both Grantee and the Town shall be named as insured parties by endorsement of the policy. 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.

13. Notwithstanding Section 14 below, Grantee shall be released from its obligation under this Encroachment Agreement only upon the assumption of said obligations either by a successor in title to the residential Lot, or by assumption of said obligations by an incorporated party approved by the Town. 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's obligations possesses adequate financial resources and ownership interest, and Grantee's delegate and proposed assignee assume and agree to fulfill, in writing, all of Grantee's duties set forth in this Encroachment Agreement.

14. The right to encroach is appurtenant to and runs with the land hereinabove referred to and shall forever be subject to the conditions above agreed on between the parties. This Encroachment Agreement is binding upon the heirs, assigns, transferees, and successors in interest of the Grantee and shall, upon execution, be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

In testimony whereof, said Grantee and said Town have here unto set their hands and seals, the day and year first above written.

GRANTEE

TOLL NC II LP

a North Carolina Limited Partnership

By: Toll Southeast LP Company, Inc.
A Delaware corporation
General Partner

By: David Kelly

Print Name: DAVID KELLY

Title: DIVISION PRESIDENT

STATE OF North Carolina

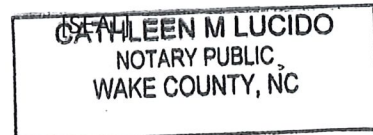
COUNTY OF Wake [county in which acknowledgement taken]

I, do hereby certify that David Kelly personally appeared before me this day and acknowledged that he/she is Division President of Toll Southeast LP Company, Inc., a General Partner of Toll NC II, LP, and that he/she as the Division President of Toll Southeast LP Company, Inc., being authorized to do so, executed the foregoing on behalf of the corporation as General Partner of Toll NC II, LP, with the authority of said limited partnership.

Witness my hand and official stamp or seal, this the 9 day of October, 2019.

Cathleen M. Lucido
[Signature of Notary Public]

My Commission Expires: 6-16-2023



TOWN OF APEX

(Corporate Seal)

Andrew L. Havens
Town Manager

ATTEST:

Donna B. Hosch, MMC, NCCMC
Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, _____, a Notary Public of _____
County, North Carolina, certify that **Donna B. Hosch** personally came before me this day and
acknowledged that she is Town Clerk of 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 **Town Manager**, sealed with its corporate seal and
attested by her as its **Town Clerk**.

Witness my hand and official stamp or seal, this _____ day of _____, 2019.

[Signature of Notary Public]

(Seal)

My Commission Expires: _____