

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 \_\_\_\_\_, 2021, by and between Western Wake Development, LLC hereinafter referred to as “Grantee,” and the Town of Apex, hereinafter referred to as the “Town.”

WHEREAS, the Grantee is the owner of a certain lot of land designated as a Resource Conservation Area (hereinafter the “RCA Lot”) in the County of Wake, State of North Carolina, which is designated as PIN #0721-71-2889 by the Wake County Revenue Department and more particularly described as a **RCA lot** located in the subdivision known as **Madison – Phase 2** as shown on that certain plat recorded in **Book of Maps 2016, Page 536**, Wake County Registry (hereinafter the “**Subdivision Plat**”).

WHEREAS, the Town is the owner of a **20’ Town of Apex Drainage Easement and an Existing 20’ Town of Apex Sanitary Sewer Easement** as shown on the **Subdivision Plat** hereinafter referred to as the “**Public Drainage Easement**” and the “**Public Sanitary Sewer Easement.**”

WHEREAS, Grantee wishes to install certain improvements, more particularly described as **25 LF of retaining wall that will encroach upon portions of the Public Drainage Easement** and **77 SF of a rip-rap pad that will encroach upon portions of the Public Sanitary Sewer Easement**, both serve the RCA

Lot, hereinafter referred to as the “**Encroachment**”, all as shown on the attached **Exhibit A**. Grantee desire to make certain agreements and covenants regarding the Encroachment.

WHEREAS, the Town, under the terms and conditions herein set forth, is willing to allow the above-described Encroachment upon the **Public Drainage Easement and the Public Sanitary Sewer Easement**.

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 **Public Drainage Easement and the Public Sanitary Sewer Easement** 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 Encroachment shown in **Exhibit A** and described in this Encroachment Agreement. Grantee is responsible for any and all expenditures of labor or materials required for the installation, erection, repair, removal, or maintenance of the above-referenced Encroachment.

3. Grantee is fully responsible for any and all property damage or injury or death of any person which results from any and all negligence, omission, defect in design, maintenance, or workmanship created by the Encroachment described herein, or any cause of action arising out of the installation, maintenance, removal, destruction, or location of said Encroachment.

4. Grantee agrees to and does 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, claim, cost, or expense arising out of the installation, maintenance, removal, or location of said Encroachment.

5. Sections 3 and 4 shall survive the termination of this Encroachment Agreement for any reason.

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: Western Wake Development, LLC  
Mr. Brant W. Chesson  
7101 Creedmoor Road, Suite 115  
Raleigh, NC 27613

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 Public Sanitary Sewer 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 the 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 and the Public Sanitary Sewer Easement**, then no notice shall be required and the Town may remove the Encroachment from the **Public Drainage Easement and the Public Sanitary Sewer 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 real property known as **RCA Lot, Madison Phase 2 (Wake County PIN: 0721-71-2889)**, or by assumption of said obligations by an incorporated property or condominium owners association for **Madison Phase 2**. 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 delegate and proposed assignee assume and agree to fulfill, in writing, all of Grantee 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**

**Western Wake Development, LLC.**

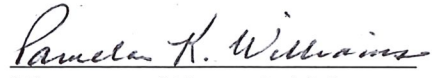
By:  (SEAL)  
**Brant W. Chesson**  
**Member**

STATE OF NORTH CAROLINA

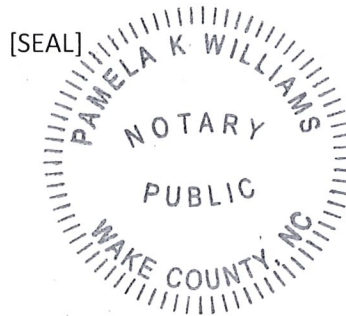
COUNTY OF WAKE [county in which acknowledgement taken]

I, do hereby certify that **Brant W. Chesson** personally appeared before me this day and acknowledged that he is a **Member** for Western Wake Development, LLC Grantee herein, and that by authority duly given and as a **Member** for the company, the foregoing instrument was signed and sealed by him on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this the 30 day of April, 2021.

  
[Signature of Notary Public]

My Commission Expires: 8-30-2021



TOWN OF APEX

\_\_\_\_\_  
Ralph Clark  
Interim Town Manager

(Corporate Seal)

ATTEST:

\_\_\_\_\_  
Donna B. Hosch, MMC, NCCMC  
Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_ [county in which acknowledgement taken]

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 **Interim 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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
[Signature of Notary Public]

(Seal)

My Commission Expires: \_\_\_\_\_