

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 _____
2020, by and between **MREC DT Beaver Creek, LLC** hereinafter referred to as "Grantee," and the Town
of Apex, hereinafter referred to as the "Town."

WHEREAS, the Grantee is the owner of **.06 acres** of residential land in the County of Wake, State
of North Carolina, which is described as **PIN #0732-45-3603** and more particularly described as "**LO6
Hempstead at Beaver Creek PH3**" as shown and recorded in **Book of Maps 2018, Page 00539, Wake
County Registry**. The residential lot is also known as **1900 Creekside Landing Drive, Apex, NC, 27502**.
The lot described in this paragraph is hereinafter referred to as the **Residential Lot**".

WHEREAS, the Town is the owner of a **20' Public Drainage Easement** as shown on **Book of Maps
2018, Page 0539, Wake County Registry**, hereinafter referred to as the "**Public Drainage Easement**".

WHEREAS, Grantee wishes to install certain improvements, more particularly described as a **5'
private retaining wall access and maintenance easement** of which **164.3 square feet** will encroach
upon a portion of the **Public Drainage Easement**, hereinafter referred to as the "**Encroachment**".
Grantee desires 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**.

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 Grantee's successors and assigns at Grantee's sole risk and expense, to encroach upon the **Public Drainage Easement** of the Town as shown in the attached **Exhibit A**.

2. The Encroachment shall not be enlarged or increased beyond the **Encroachment** shown in **Exhibit A**. 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 to be 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: MREC DT Beaver Creek, LLC
13860 Ballantyne Corporate Place, Suite 130
Charlotte, NC 28277-3167

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

MREC DT Beaver Creek, LLC
By: MREC DT Portfolio, LLC, it's Manager
By: NVR, Inc., it's Manager

By:  _____

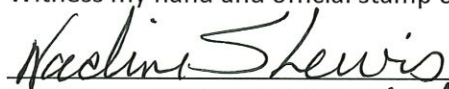
Print Name: Richard Ohmann

Title: Vice President

STATE OF NC
COUNTY OF wake [county in which acknowledgement taken]

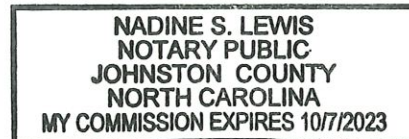
I, do hereby certify that **Richard Ohmann** personally appeared before me this day and acknowledged that he is **Vice President** for **NVR, Inc.**, which is the sole **Manager** of **MREC DT Portfolio, LLC** which is the sole **Manager** of **MREC DT Beaver Creek, LLC**, the Grantee herein, and that by authority duly given and as a **Vice President** for the **Manager** of the Grantee, 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 2nd day of January, 2020.


[Signature of Notary Public] Nadine S Lewis

[SEAL]

My Commission Expires: 10/7/23



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: _____