

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 \_\_\_\_\_, 2023, by and between Apex Industrial Owner 3, LLC, Inc 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 industrial lot of land in the County of Wake, State of North Carolina, which is designated as **PIN #0751-13-2324** by the Wake County Revenue Department and more particularly described as **NEW TRACT B** as shown on that certain plat recorded in **Book of Maps 2021, Page 2111**, Wake County Registry (hereinafter the "**Subdivision Plat**"). The industrial lot is also known as **1251 Burma Drive, Apex, NC 27539**. The industrial lot described in this paragraph is hereinafter referred to as the "**Industrial Lot.**"

WHEREAS, the Town is the owner of a **60' Public Right of Way known as Burma Drive** as shown on that certain plat recorded in Book of Maps 2021, Page 0493, Wake County Registry, hereinafter referred to as the "**Public Right of Way.**"

WHEREAS, Grantee has installed certain commercial structures more particularly described as a **Pre-existing Industrial Structure onto the Public Right of Way**, hereinafter referred to as the "**Encroachment**", all as shown on the attached **Exhibit A**. 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 Right of Way**.

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 Right of Way** 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 and shall be allowed to maintain the Encroachment and to perform all necessary repairs, maintenance, and replacement of the Encroachment as may be necessary from time to time.

3. The Town shall not be held 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; provided that, Grantee shall not be obligated hereunder to indemnify the Town for any negligent acts or omissions of the Town, its contractor(s) (including sub-contractors) and their respective officers, agents and employees.

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: Apex Industrial Owner 3, LLC  
Woodlawn Hall at Old Parkland  
3953 Maple Avenue, Suite 300  
Dallas, TX 75219-3228

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 Right of Way**.

10. If the Town deems, within its sole discretion, that removal of all or a portion of the Encroachment is necessary in order to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Right of Way**, then Grantee shall cause such removal to be made at Grantee's sole expense within 30 days after receipt of notice from the Town and shall be completed in a manner that will allow the Town complete and safe access to the **Public Right of Way**. In the event that the Grantee fails to timely remove the Encroachment or in the event of an emergency associated with the condition of the **Public Right of Way**, the Town is authorized to remove all or such portion of the Encroachment as the Town determines in its sole discretion to be reasonably necessary, convenient or advisable to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Right of Way**. The Town shall have the sole discretion to determine the existence of an emergency associated with the condition of the **Public Right of Way**

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. Grantees, if not self-performing the installations that are the subject of this Agreement, agree to purchase or cause to be procured from a responsible insurance carrier or carriers authorized under the laws of the State of North Carolina, valid general liability insurance in the minimum amount of \$500,000 and provide a certificate of such insurance naming the Town of Apex as additional insured by endorsement to the policy. Where the Grantees are self-performing the installations, Grantees shall show proof of insurance with personal liability coverage in a minimum amount of at least \$300,000. Grantees shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

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 **Industrial 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**

**Apex Industrial Owner 3, LLC**

By: \_\_\_\_\_ (SEAL)

President

**NORTH CAROLINA**

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

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_, personally appeared before me this day and acknowledged that he is the President for Apex Industrial Owner 3, LLC, Grantee herein, and that by authority duly given as President 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 \_\_\_\_ day of \_\_\_\_\_, 2023.

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

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

(SEAL)

**TOWN OF APEX**

\_\_\_\_\_  
Catherine Crosby  
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 for \_\_\_\_\_  
\_\_\_\_\_ County, North Carolina, certify that Allen Coleman personally came before me this day and  
acknowledged that he is 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 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]

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

(SEAL)