

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 ITM Real Estate Management, 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 residential lot of land in the County of Wake, State of North Carolina, which is more particularly described as **LO1 EC Smith Survey 3/11/1946** as described in that certain deed recorded in **Deed Book 17269, Page 1555**, Wake County Registry (hereinafter the "**Deed**"). The residential lot is also known as **400 West Street, Apex, NC 27502**. The residential lot described in this paragraph is hereinafter referred to as the "**Residential Lot**."

WHEREAS, the Town is the owner of a 30' **Public Right of Way along Baucom Street as shown on Book of Maps 1885, Page 134**, hereinafter referred to as the "**Public Right of Way**."

WHEREAS, Grantee desires to encroach upon through installation of a **private sewer line 312 SF encroaching into the Public Right of Way** which serves the Residential Lot, 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 Grantee's successors and assigns at Grantee's 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.

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: ITM Real Estate Management, LLC
PO Box 46207
Raleigh, NC 27620

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** 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 Right of Way**, then no notice shall be required and the Town may remove the Encroachment from the **Public Right of Way** 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 fail to remove the Encroachment within the time limit after receiving notice under Paragraph 9.

12. Grantee acknowledges that some portions of the private sewer line are located over private property. Nothing in this Agreement and no action by Town shall be construed to offer, grant or approve any right or license to use such property without the consent of the private property owner.

Town has no obligation to expand or obtain such rights on Grantee's behalf. It is the sole obligation of the Grantee to obtain the necessary consent or additional easement rights, if any, at Grantee's own expense.

13. Grantee, during the life of this 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) day's 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 Agreement canceled and terminated and all rights acquired hereunder by Grantee shall thereupon terminate.

14. 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 **LO1 EC Smith Survey 3/11/1946 (400 West Street, Apex, NC 27502)**, or by assumption of said obligations by an incorporated property or condominium owners association. 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.

15. 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.

[SIGNATURE PAGES FOLLOW]

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

GRANTEE

ITM Real Estate Management, LLC

By: *Yolanda D. Wilson*
Yolanda D. Wilson, Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE [county in which acknowledgement taken]

I, Laticia D. Austin, certify that Yolanda D. Wilson personally appeared before me this day and acknowledged that she is a member/manager of ITM Real Estate Management, LLC, Grantor herein, and that by authority duly given as a member/manager of the company, the foregoing instrument was signed and sealed by her 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 13 day of April, 2020

Laticia D. Austin
[Signature of Notary Public]

[SEAL]

My Commission Expires: 5-29-2024



TOWN OF APEX

Andrew L. Havens
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 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 _____, 2020.

[Signature of Notary Public]

(Seal)

My Commission Expires: _____