

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 James T. Macdonell and wife, Katharine G. Macdonell, hereinafter referred to as "Grantees," and the Town of Apex, hereinafter referred to as the "Town."

WHEREAS, the Grantees are the owners of a certain residential lot of land in the County of Wake, State of North Carolina, which is designated as PIN #0722-64-5123 and more particularly described as **Lot 55** of the subdivision known as **Stratford at Abbingdon Ph. 2**, which is shown on that certain plat recorded in **Book of Maps 2008, Page 34**, Wake County Registry (hereinafter the "**Subdivision Plat**"). The residential lot is also known as **2671 Timken Forest Drive, 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 Utility Easement as shown on the **Subdivision Plat** hereinafter referred to as the "**Public Utility Easement**."

WHEREAS, Grantees wishes to install certain improvements, more particularly described as a **fence with a portion of the fence encroaching 115 LF into the Public Utility Easement** which serves the Residential Lot, hereinafter referred to as the "**Encroachment**," all as shown on the attached **Exhibit A**. Grantees 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 Utility Easement**.

NOW, THEREFORE, in consideration of these promises and other consideration, the receipt and sufficiency of which is hereby acknowledged, Grantees and the Town hereby covenant and agree:

1. Subject to the terms herein, the Town agrees to allow Grantees, and Grantees' successors and assigns at Grantees' sole risk and expense, to encroach into the **Public Utility 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. Grantees are 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. Grantees are 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. Grantees agree 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 Grantees: James T. Macdonell and Katharine G. Macdonell
2671 Timken Forest Drive
Apex, NC 27502

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. Grantees agree 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 Utility Easement** and the Town may terminate this Encroachment Agreement by giving Grantees ninety (90) days written notice of termination. Prior to the termination date, Grantees 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 Grantees 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 Utility Easement**, then no notice shall be required and the Town may remove the Encroachment from the **Public Utility Easement** without cost, risk or liability to the Town.

11. Grantees agree 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 Grantees fail 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 homeowner's 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, Grantees 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 **Lot 55 Stratford at Abbington Phase 2 (2671 Timken Forest Drive, Apex, NC 27502)**, or by assumption of said obligations by an incorporated property or condominium owners association for **Stratford at Abbington 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 Grantees' obligations possesses adequate financial resources and ownership interest, and Grantees' delegate and proposed assignee assume and agree to fulfill, in writing, all of Grantees' 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 Grantees and shall, upon execution, be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

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

GRANTEES

By: 
James T. Macdonell

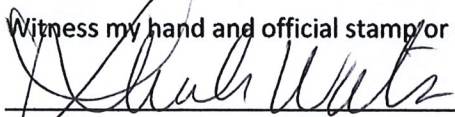
By: 
Katharine G. Macdonell

STATE OF NORTH CAROLINA

COUNTY OF Wake [county in which acknowledgement taken]

I, do hereby certify that James T. Macdonell, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 29 day of June, 2020.


[Signature of Notary Public]

LAURA A. WATSON
NOTARY PUBLIC
WAKE COUNTY, N.C.

My Commission Expires: April 28, 2023

STATE OF NORTH CAROLINA

COUNTY OF Wake [county in which acknowledgement taken]

I, do hereby certify that Katharine G. Macdonell, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 29 day of June, 2020.


[Signature of Notary Public]

LAURA A. WATSON
NOTARY PUBLIC
WAKE COUNTY, N.C.

My Commission Expires: April 28, 2023

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: _____