

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

ENCROACHMENT AGREEMENT

Burdened Property: Carolina Beach Avenue
Right-of-Way &
R09006-005-003-000

For the Benefit of: R09006-005-019-000 &
R09006-005-016-000

THIS ENCROACHMENT AGREEMENT (“Encroachment Agreement”) made this ____ day of _____, 2024, by and between the TOWN OF CAROLINA BEACH, a North Carolina municipal corporation, whose address is _____ (hereinafter called “GRANTOR” or “TOWN”) and PAGE S. JOHNSON, II and AMY A. JOHNSON, husband and wife, as Tenants by the Entirety, whose address is 1300 Diamond Springs Road, Ste. 204, Virginia Beach, VA 23455 (hereinafter called “GRANTEES”).

WITNESSETH

WHEREAS, GRANTEES are the owners of those certain tracts or parcels of land identified by the New Hanover County Tax Office as R09006-005-019-000 and R09006-005-016-000 and being further described as: Being all that real property located in New Hanover County, North Carolina legally described in that deed recorded in Deed Book 6684 at Page 566 in the New Hanover County Registry (collectively, hereinafter referred to as “GRANTEES’ Properties”)

WHEREAS, TOWN is the owner of certain tracts or parcels of land located adjacent to the GRANTEES’ Properties and further described a public right of way known as “Carolina Beach Avenue” and a tract or parcel of land identified by the New Hanover County Tax Office as a R09006-005-003-000 (hereinafter collectively, referred to as “TOWN’s Properties”); and

WHEREAS, there is located on the GRANTEES’ Properties certain improvements, including planter boxes, decking, storages areas, roof overhang and building façade (hereinafter collectively referred to as the “Encroachments”) as more specifically shown on Exhibit A attached hereto (hereinafter referred to as the “Encroachments Exhibit”); which encroach onto the TOWN’s Properties and GRANTEES have requested TOWN’s permission to continue to allow for the Encroachments to encroach upon the TOWN’s Properties in the locations shown on the Encroachments Exhibit; and

WHEREAS, TOWN has determined that the Encroachments do not substantially impair or hinder the use of the TOWN's Properties and in the exercise of the authority conferred upon it by law, is willing to allow and grant GRANTEES the privilege of a continuing the encroachment of Encroachments onto the TOWN's Properties pursuant to the conditions stated in this agreement.

NOW, THEREFORE, IT IS AGREED that the TOWN hereby grants to the GRANTEES the privilege to continue Encroachments pursuant to all the terms and conditions recited herein:

GENERAL CONDITIONS

- (1) The GRANTEES are using the Encroachments in a safe and proper manner and shall maintain the Encroachments in a safe and proper condition at all times so that the Encroachments will not unreasonably interfere with or endanger the use of the TOWN's Properties by the TOWN or general public.
- (2) The GRANTEES agree to restore all areas of the TOWN's Properties which are disturbed by any construction, renovation, operation, maintenance and use by GRANTEES of the Encroachments to a condition reasonably satisfactory to the TOWN.
- (3) Nothing herein shall be construed to grant any exclusive use right to GRANTEES in or to any area or property which either belongs to the TOWN or is dedicated to public use.
- (4) The Encroachments may not be modified or otherwise altered in any substantial manner that would increase the degree of encroachment into the TOWN's Properties without review and approval by TOWN, not to be unreasonably withheld or delayed.
- (5) This Encroachment Agreement shall automatically terminate upon complete removal of the Encroachments by GRANTEES.
- (8) The TOWN's failure, to insist upon the strict performance of any provision of this Encroachment Agreement, or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Encroachment Agreement.
- (9) GRANTEES agree to indemnify and save harmless TOWN from all damages and claims for damage that may arise by reason of the GRANTEES' failure to perform pursuant to this Encroachment Agreement.
- (10) All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.
- (11) This Encroachment Agreement constitutes the entire understanding of the parties with respect to the hereinabove described certain Encroachments.

(12) If any section, subsection, paragraph, sentence, clause, phrase or portion of this agreement is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

(13) This Encroachment Agreement shall not be modified or otherwise amended except in writing signed by the parties.

(14) The designations GRANTEES, GRANTOR and TOWN as used herein shall include singular, plural, masculine, feminine or neuter as required by context.

IN WITNESS WHEREOF, each of the parties to this Encroachment Agreement has caused the same to be executed in the day and year first above written.

GRANTOR:
TOWN OF CAROLINA BEACH

By: _____

APPROVED AS TO FORM:

ADD APPROPRIATE NOTARY

GRANTEES:

PAGE S. JOHNSON, II

By: _____

_____ County, North Carolina

I certify that Page S. Johnson, II, personally appeared before me this day, each acknowledging to me that he signed the foregoing document.

Date: _____
(Official Seal)

Signature of Notary

Notary's printed or typed name

My commission expires:

AMY A. JOHNSON

By: _____

_____ County, North Carolina

I certify that Amy A. Johnson, personally appeared before me this day, each acknowledging to me that she signed the foregoing document.

Date: _____
(Official Seal)

Signature of Notary

Notary's printed or typed name

My commission expires:

**EXHIBIT A
ENCROACHMENTS EXHIBIT**

