

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT ("Agreement") is made and entered into by and between the CITY OF SANGER, TEXAS ("City"), and QT South, LLC, a Texas limited liability company ("User"). City and User are sometimes referred to collectively as the "parties" or individually as a "party."

WHEREAS, City and any Franchise Utility Company (each a "Franchisee") have existing rights in certain real property by virtue of that certain Plat of the QT 1859 Addition ("Replat"), approved by the Sanger City Council on August 15, 2022, to be filed in the Plat Records, Denton County, Texas. The Plat, which more particularly describes and depicts a 15-foot Utility Easement ("Easement"), is incorporated herein by reference for all purposes; and

WHEREAS, User desires permission to install site improvements, light poles, paving, driveway, grading and/or landscaping, and the utilities shown on the attached **Exhibit "A"** incorporated herein (collectively, "**Encroaching Facility**") within the area or boundaries of the Easement, shown on the attached drawing marked **Exhibit "A"** and incorporated herein ("**Easement Area**").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and User ("**the Parties**") do hereby agree as follows:

1. **Location of Encroaching Facility.** User may locate the Encroaching Facility in the Easement Area, but only as shown herein. User may not relocate, modify, upgrade or expand the Encroaching Facility within the Easement Area without the written consent and approval of the City, which consent and approval shall be at the City's reasonable discretion.
2. **Restrictions on Use of Easement Area.** User shall use only so much of the Easement Area as may be necessary to construct, maintain and repair the Encroaching Facility. User shall, at its own cost and expense, comply with all applicable laws, including but not limited to, existing zoning ordinances, governmental rules and regulations enacted or promulgated by any governmental authority and shall promptly execute and fulfill all orders and requirements imposed by such governmental authorities for the correction, prevention and abatement of nuisances in or upon or caused by said Encroaching Facility. At the conclusion of any construction, User shall remove all debris and other materials from the Easement Area and restore the Easement Area to the substantially same condition it was in prior to the commencement of User's construction thereon or in proximity thereto.

User shall not place or store trash dumpsters, toxic substances, hazardous materials, flammable materials, salvage materials, or any other substance found to be dangerous or unacceptable by the City within the Easement Area. Except for the Encroaching Facility, User shall not place upon the Easement Area any improvements, including but not limited to, buildings, structures, or jersey barriers (excluding barriers installed around transmission towers, if applicable), unless approved in advance in writing by the City, or contained in Exhibit A.

User shall not store heavy equipment, bulk materials, or any other heavy load which the City reasonably deems to be cause for overburden risk on subsurface facilities and equipment, without a detailed list of such equipment or materials (specifically regarding weight, loaded and empty, for hauling and load bearing equipment) being approved in writing by the City prior to its placement within the Easement Area.

User shall notify the City no less than forty-eight (48) hours prior to work being performed within the Easement Area, and User shall fulfill all obligations in accordance with the City prior to performing any work, or moving any equipment or materials onto, the Easement Area.

3. **Maintenance of Encroaching Facility.** Where applicable, User, at User's sole expense, shall maintain and operate the Encroaching Facility that is not owned, operated, or maintained by a governmental entity. The City will not be responsible for any costs of construction, reconstruction, operation,

maintenance, repair, replacement, protection, or removal of User's Encroaching Facility.

4. **Risk and Liability**. User assumes all risks and liability resulting or arising from or relating to (a) User's use, (b) the existing condition or location, or existing state of maintenance, repair or operation of the Easement Area, and (c) the use or enjoyment of easement rights, including any modification, alteration, extension or expansion of its facilities. It is further agreed that the City shall not be liable for any damage to the Encroaching Facility as a result of the City's use or enjoyment of its Easement; except for any damage caused by the negligence or willful misconduct of the City. Any City property within the Easement Area damaged or destroyed by User or its agents, employees, invitees, contractors or subcontractors shall be repaired or replaced by the User at the User's expense.

5. **Contact Information**. If either party needs to contact or notify the other party regarding this Agreement or any activity on the Easement, use the following:

If to City of Sanger:

City of Sanger
Attention: Ramie Hammonds | Development Services
Director/Building Official
201 Bolivar Street
Sanger, TX 76266
Telephone: (940) 458-2059
Email: rhammonds@sangertexas.org

with a copy to:

City of Sanger
Attention: John Noblett
City Manager
502 Elm Street
Sanger, Texas 76266
Telephone: (940) 458-7930
Email: jnoblett@sangertexas.org

If to QuikTrip:

Joseph S. Faust, Regional Director of Real Estate
QT South, LLC
4705 South 129th East Avenue
Tulsa, OK 74134 Phone: (918) 615-7277
Email: jsfaust@quiktrip.com

with a copy to:

QuikTrip Corporation
4705 S. 129th E. Ave.
Tulsa, Oklahoma 74134
Attn: General Counsel
Fax: (918) 994-3594
E-Mail: legalnotice@quiktrip.com

If the contact information for either party changes, that party shall provide the other party with updated contact information.

6. **Indemnification; Credit Assurances**. User agrees to defend, indemnify and hold harmless the

City, its officers, agents and employees from and against any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorney's fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, for personal injury (including death), property damage or other harm for which recovery of damages is sought or suffered by any person or persons, including claims based on strict liability, arising out of or in connection with User's actions or omissions or the actions or omissions of its officers, agents, associates, employees, contractors or subcontractors or the actions or omissions of any other person entering onto the Easement Area or the Encroaching Facility pursuant to this Agreement, except that the indemnity provided in this paragraph shall not apply to any liability resulting from the gross negligence, willful misconduct or sole negligence of the City, its officers, agents and employees.

7. **Removal by the City.** If (a) at any time in the future, in the reasonable judgment of the City, the City is required to remove, disturb or alter the Encroaching Facility due to any modification, alteration, extension or expansion of its facilities, or (b) this Agreement terminates pursuant to Section 8, then the City shall have the right to temporarily remove, disturb or alter said Encroaching Facility. Any damage done to the Encroaching Facility shall be repaired and replaced by User, at User's sole cost and expense. The City shall notify User in writing that within **thirty (30) days** the Encroaching Facility must be removed at User's sole cost in conformance with the requirements of this Agreement. If at the end of the 30-day period the Encroaching Facility has not been removed, the City may remove it at User's sole risk and expense, and payment is due upon User's receipt of an invoice from the City evidencing the actual cost of removal work. Except to the extent arising from or related to the City's gross negligence, intentional misconduct, or sole negligence, the City will not be responsible, nor will compensation be paid, for damages incurred by such removal, including, but not limited to, damages for loss of use or value of the Encroaching Facility or business interruption. However, in an emergency the City shall have the right to immediately remove the Encroaching Facility. Following the modification, alteration, extension, or expansion of its facilities or other acts resulting in the removal of the Encroaching Facility, the User shall have the right at its sole cost and expense to repair, replace and reconstruct the Encroaching Facility.

8. **Default and Termination.** It is understood and agreed that, in case of default by User or its agents in any of the terms and conditions herein stated and such default continues for a period of **sixty (60) days** after the City notifies User of such default in writing, the City may, in addition to any other remedies available at law or in equity, at its election forthwith terminate this Agreement and upon such termination all of User's rights hereunder shall cease and come to an end. This Agreement shall also terminate upon the abandonment (actual or constructive) by User. This Agreement shall be construed and enforced in accordance with the laws of the State in which the Easement Area is located and shall be binding upon the Parties and their respective successors and assigns. Each party shall be entitled to recover from the other party any and all reasonable attorney's fees, penalties, costs and expenses incurred after the date of this Agreement in enforcing any rights or remedies under this Agreement, including for removal of the Encroaching Facility, as well as seek any other relief provided by law or in equity.

This Agreement sets forth the entire agreement and understanding among the Parties as to the subject matter hereof and supersedes all previous agreements and discussions among the Parties related to the Encroaching Facility. No waiver or modification of the terms of this Agreement shall be valid unless it is in writing and signed by all Parties.

This Agreement shall extend to and be binding upon User and its successors and assigns, and is not to be interpreted as a waiver or release of any rights held by the City under its Easement. The foregoing notwithstanding, User may not assign this Agreement or any of the rights and obligations contained herein without the prior written consent of the City.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE FOLLOWS]

Executed this ____ day of _____, 2022.

CITY OF SANGER, TEXAS

By: _____
John Noblitt
City Manager

STATE OF TEXAS

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COUNTY OF DENTON

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BEFORE ME, the undersigned authority, on this day personally appeared John Noblitt, known to me to be the person whose name is subscribed to the foregoing instrument; and they acknowledged to me that he is the City Manager and duly authorized representative of the CITY OF SANGER, TEXAS, a Texas municipality, and that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of the CITY OF SANGER, TEXAS.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A.D. 2022.

Notary Public in and for the State of Texas
My Commission Expires: _____

Executed this ____ day of _____, 2022.

QT SOUTH, LLC

By QTR Corporation
Its Managing Member

By: _____

Joseph S. Faust
Regional Director of Real Estate

STATE OF OKLAHOMA

§

COUNTY OF TULSA

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BEFORE ME, the undersigned authority, on this day personally appeared Joseph S. Faust, as Regional Director of Real Estate of QTR Corporation, an Oklahoma corporation, the Managing Member of QT South, LLC, a Texas limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of such limited partnership., and for the purposes and consideration therein expressed and in the capacity therein stated, and that he was authorized to do so.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A.D. 2022.

Notary Public in and for the State of Oklahoma
My Commission Expires: _____

Return to:

ATTN: Corey Vaughan Real Estate Project Manager

QuikTrip Dallas Fort Worth Division Office

8700 Freeport Parkway, Suite 115

Irving, TX 75063

EXHIBIT A

