

DRAWN BY: JoAnne L. Carlyle, City Attorney
PICK UP: City Attorney, P.O. Box 230, High Point, NC 27261

NORTH CAROLINA
GUILFORD COUNTY

RIGHT OF WAY
ENCROACHMENT AGREEMENT

THIS AGREEMENT (Agreement) made this 25 day of April, 2022, between **THE CITY OF HIGH POINT**, a municipal corporation, located at 211 South Hamilton Street, High Point, North Carolina, 27260, existing under the laws of the State of North Carolina (the "City") and **PETERS DEVELOPMENT III, LLC**, a foreign Corporation located at 645 N Main Street, High Point, NC 27262, hereinafter known as the "Company"

WITNESSETH

WHEREAS, the City owns the public right of way that includes N Wrenn St; and

WHEREAS, the Company desires, for its interest and convenience, to install, maintain and put in place two (2) parking lot lights, two (2) Heart of Gold Redbuds, twenty-four (24) Steeds Holly shrubs, two (2) fountain grasses, and variegated liriop as shown on Exhibit A in said right-of-way; and

WHEREAS, the City under the terms and conditions herein set forth, is willing to allow the above described improvements to be made, and allow the Company to encroach upon the above-referenced City-owned right of way; and

WHEREAS, the Company has paid to the City the sum of \$300.00, which partially defrays the administrative costs of the City.

NOW, THEREFORE, in consideration of the premises and \$300.00 in hand paid receipt of which is hereby acknowledged and other consideration, the Company hereby covenants and agrees that:

1. The Company is responsible for any and all expenditure of labor or materials required in the installation, erection, repair, maintenance or location of the above-referenced improvements.

2. The Company is responsible for any and all labor or expense which results from any and all future maintenance and repair of such Improvements, and the removal or dismantling of the improvements if and when the improvements are removed.

3. The Company is to be fully responsible for any and all property damage or injury to or death of any person which results from any and all negligence, omission, defect in design, maintenance or workmanship created by the Company, its agents, employees, contractors or subcontractors in connection with the Encroachment, or any cause of action arising out of the installation, maintenance, or location of said improvements or any other cause of action arising out of the planting, installation, maintenance, or location of said improvements (collectively, "Claims and Causes of Action").

4. The Company agrees:

- (a) to hold the City, its officers, agents and employees harmless from any and all liability arising out of any such Claims and Causes of Action, and
- (b) to defend the City, its officers, councilors and employees and pay all attorney fees in any and all actions brought as a result of such Claims and Causes of Action; and
- (c) indemnify the City, its officers, agents and employees against any and all loss sustained by reason of such Claims and Causes of Action.

5. The Company, 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 One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate, combined single limit for personal injury, property damage, or wrongful death caused by construction, maintenance, location, repair or visual obstruction of said encroachment with the City of High Point being included as additional insured as respects work under this Agreement. Company shall furnish the City upon the City's request, but no more than once in any 12-month period, 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 (or proof of self-insurance as referenced below). Company shall give the City at least 30 days advanced written notice of any cancellation of any required coverage that is not replaced. Should Company fail to pay premiums upon said insurance, or should Company fail to obtain said insurance, or to perform any of the

agreements, terms, or conditions herein contained; the City at its option, by written notice may declare this agreement cancelled and terminated and all rights acquired hereunder by Company shall thereupon terminate, except Owner shall still be responsible for removing the Equipment from the right of way. In lieu of the foregoing, Company may self-insure for any or all of the coverages set forth above.

6. The Company, upon completion of the installation of the Improvements, shall submit to the City revised drawings in the form of an AutoCad (.dwg) file for retention by the City if the actual installation differs significantly from the installation shown on the Exhibit A (Site Plan) (in such event, the Company shall secure approval of the City prior to the differing installation).

7. The Company agrees to abide by all lawful statutes and ordinances governing construction of the Improvements as contemplated herein.

8. This Agreement shall not divest the City of any rights or interest in said right of way.

9. The Company shall contact "NC One Call Center" prior to excavation where and in the manner required by the NC One Call law.

11. This Agreement shall be binding upon and ensure to the benefit of all of the parties hereto and their heirs, personal representatives, grantees, successors, and assigns.

12. All matters relating to this Agreement shall be governed by laws of the State of North Carolina without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Guilford County Superior Court or the United States District Court for the Middle District of North Carolina.

13. All notices required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed as follows:

If to City:

City of High Point
Planning & Development Department
P.O. Box 230
High Point, NC 27261
ATTN: Planning Director

If to Company:

PETERS DEVELOPMENT III, LLC
645 N Main Street
High Point, NC 27262

IN WITNESS WHEREOF, the City of High Point has caused this instrument to be signed by its Mayor and attested by its Clerk and its seal to be affixed by the duly-granted authority of its City Council, the day and year first above written.

PETERS DEVELOPMENT III, LLC

By: [Signature]

Print Name: Lenin Peters

Title: President CEO

STATE OF North Carolina

Forsyth COUNTY

I, Soteroula Tsiolkas, a Notary Public of said County and State, do hereby certify that Lenin Peters, personally came before me this day and acknowledged that he/she is CEO, and that he/she, as President CEO being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official stamp or seal, this the 25 day of April, 2022.

Soteroula Tsiolkas
NOTARY PUBLIC
Forsyth County, NC
My Commission Expires October 11, 2022

10-11-2022

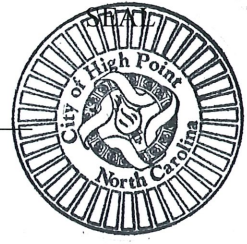
Soteroula Tsiolkas
Notary Public

CITY OF HIGH POINT

By: [Signature]
Jay W. Wagner, Mayor

ATTEST:

[Signature]
Lisa B. Vierling, City Clerk



NORTH CAROLINA

GUILFORD COUNTY

I, Amy Hannah Myers, a Notary Public of said county and state do hereby certify that Lisa B. Vierling is known to me as City Clerk of the City of High Point; that she personally appeared before me this date; and, that by authority duly given, and as the act of the said City of High Point, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal, and attested by herself as its clerk.

Witness my hand and official stamp or seal, this the 3rd day of May, 2022.

My commission Expires: 4/30/2025

Amy Hannah Myers
Notary Public

