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RETURN TO: JoAnne Carlyle, City Attorney
City of High Point
P.O. Box 230
High Point, NC 27261

Prepared by: JoAnne Carlyle, City Attorney

NORTH CAROLINA
GUILFORD COUNTY

RIGHT OF WAY
ENCROACHMENT AGREEMENT
AND FENCE EASEMENT

NTC

THIS ENCROACHMENT AGREEMENT AND FENCE EASEMENT (Agreement) made this 15th day of May, 2017, between **THE CITY OF HIGH POINT**, a municipal corporation existing under the laws of the State of North Carolina (the "City") and **HIGH POINT UNIVERSITY**, a North Carolina nonprofit corporation, (the "University").

WITNESSETH

WHEREAS, the City owns the public right of ways known as N. Centennial Street, E. Farriss Ave., and a section of unimproved Fifth Street as shown on a map entitled "Plat No. 2, Sherwood Park" as recorded in Plat Book 11 Page 67 of the Guilford County Register of Deeds; and

WHEREAS, the City owns property lying between two 34-foot right of ways of the northern and southern margins of E. Farriss Ave., indicated as City Park on the above referenced "Plat No. 2, Sherwood Park", said City Park being transferred to the City of High Point in Deed Book 921 Page 518 of the Guilford County Register of Deeds; and

WHEREAS, the University desires, for its interest and convenience, to construct, maintain, and put in place a decorative fence and wall constructed of brick or metal, or a combination of the two materials, hereafter known as "Improvements", in said public rights of way, and in said City Park as described on attached Exhibit A; an

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 University to encroach upon the above-referenced City-owned right of ways, and grant an easement upon the above referenced City-owned park.

NOW, THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt of which is hereby acknowledged, the University hereby covenants and agrees that:

1. The University 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 University 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 University 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 University, its agents, employees, contractors or subcontractors in connection with the Improvements, or any cause of action arising out of the installation, maintenance, location, or existence of said Improvements or any other cause of action arising out of the planting, installation, maintenance, location, or existence of said Improvements (collectively, "Claims and Causes of Action").

4. The University 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, agents 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 University, prior to construction of the Improvements, agrees to submit to the City detailed Construction Drawings and shall secure approval from the City of all permits required for the construction of the Improvements.

6. The University agrees to abide by all lawful statutes and ordinances governing installation of the Improvements as contemplated herein.

7. This Agreement shall not divest the City of any rights or interest in said rights of way or the City-owned Park.

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

9. 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.

10. 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.

12. 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
Office of the City Manager
P.O. Box 230
High Point, NC 27261

If to University

High Point University
Attn: Barry Kitley
1 North University Parkway
High Point, NC 27268

NOW, THEREFORE, the City, for and in consideration of these promises and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to the University, its successors and assigns, a revocable encroachment and easement for the Grantee's Improvements, as described in the attached Exhibit, for so long as the property and right of ways are not needed by the Grantor.

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.

CITY OF HIGH POINT

By: William S. Bencini
William S. Bencini, Mayor

ATTEST:

Maria Smith
Maria Smith
Deputy City Clerk



NORTH CAROLINA
GUILFORD COUNTY

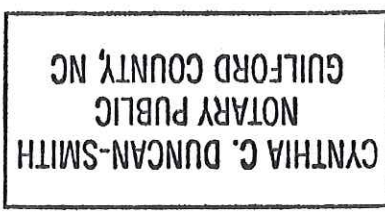
I, Cynthia C. Duncan-Smith, a Notary Public of said county and state do hereby certify that Lisa B. Vierling is known to me as City Clerk of the City of High Point; that she personally appeared before me this date; and, that by authority duly given, and as the act of the said City of High Point, the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

Maria Smith

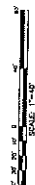
Witness my hand and official seal this the 24th day of May, 2017.

My commission Expires: 11/18/2020

Cynthia C. Duncan-Smith
Notary Public



E. FARRISS AVENUE, FIFTH ST., AND PARK AREAS
CITY OF HIGH POINT
GUILFORD COUNTY - NORTH CAROLINA



Approved by the Technical Review Committee for 2 years, subject to the approval of a materials long-stitching parent and/or areason control plan, and may be extended in accordance with the provisions of Section 9-6-4(e) of the High Point Development Ordinance.

CONSTRUCTION OF ANY IMPROVEMENTS WITHIN THE AREAS DESIGNATED AS ENCROACHMENT AREAS OR WITHIN ANY OTHER PUBLIC RIGHT OF WAY ARE SUBJECT TO REVIEW AND APPROVAL BY THE CITY OF HIGH POINT. ANY IMPROVEMENTS CONSTRUCTED IN CONFORMANCE WITH THE CITY OF HIGH POINT REQUIREMENTS, INCLUDING BUT NOT LIMITED TO, THE CITY OF HIGH POINT REQUIREMENTS FOR CONSTRUCTION, SHALL BE INITIATED BY HIGH POINT UNIVERSITY. UTILITIES AND CONSTRUCTION ACTIVITIES WILL BE COORDINATED WITH THE CITY OF HIGH POINT AND THE CITY OF HIGH POINT PERMITS AND APPROVALS HAVE BEEN ISSUED BY APPROPRIATE CITY DEPARTMENTS.

FENCE IMPROVEMENTS SHALL BE EITHER HIGH POINT UNIVERSITY'S "SIGNATURE" STYLE, WITHOUT MON, OR A COMBINATION OF THE TWO.

ENCROACHMENTS SHOWN ON THIS PLAN MUST BE APPROVED BY THE HIGH POINT CITY ENGINEER. THE CITY OF HIGH POINT WILL REVIEW THE APPROVAL OF THE ENCROACHMENTS WITH THE CITY OF HIGH POINT.

CALL 1-800-332-4349 BEFORE DIGGING. GAS LINES ARE LOCATED WITHIN SURVEYED PROPERTY.

THIS MAP IS NOT A CERTIFIED SURVEY
AND HAS NOT BEEN REVIEWED BY A LOCAL
GOVERNMENT AGENCY FOR COMPLIANCE
WITH ANY APPLICABLE LAND DEVELOPMENT
REGULATIONS.



BEFORE YOU DIG!
CALL 1-800-832-4949
N.C. ONE-CALL CENTER
IT'S THE WAY TO LIVE

JAMESTOWN ENGINEERING GROUP, INC.
117 EAST MAIN STREET
P.O. BOX 365
C-0626



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