NORTH CAROLINA

ENCROACHMENT

AGREEMENT

GUILFORD COUNTY

THIS AGREEMENT (this "Agreement"), made and entered into this ____day of _____, 2014, by and between the CITY OF GREENSBORO, "Grantor", and BELK, INC., "Grantee".

WITNESETH:

THAT WHEREAS, Grantee desires to install the following cables and ductbanks beneath City right-of-way and has requested permission to encroach into City street right-of-way, said encroachment to be in the nature of a limited license agreement for the underground installation of 3-1¼" PVC conduits and communication lines crossing 604 Green Valley Road using 80 linear feet of fiber optic communication lines along the route as seen on Exhibit A.

WHEREAS, the installation is not intended to benefit any further resale of the property, as an income producing line, or for use apart from the business of Grantee, the installation shall not be sold, transferred or leased to any other person except to any of the following: (a) any entity which, directly or indirectly, that controls Grantee, is under common control with Licensee or that is controlled by Grantee, (b) a successor to Grantee by purchase, merger, consolidation or reorganization, (c) a successor to Grantee acquiring all or substantially all of Grantee's assets or stock, or (d) any transfer of the voting shares/rights (including but not limited to a merger, consolidation or reorganization) of Grantee for estate planning purposes;

WHEREAS, Grantee shall be soley responsible for maintenance of all utilities mentioned above except in connection with Grantor's gross negligence or willful misconduct; and

WHEREAS, Grantee shall be responsible for the removal of the installation in accordance with City standards at the request of the City or in the event of the end of the need for the installation; and

WHEREAS, Grantee agrees to maintain the encroachment in a safe condition during the term of this Agreement and agrees to hold the City of Greensboro harmless from any and all loss, claims, actions, suits demands or liabilities of any nature to persons or property arising out of or due to any act or omission of Grantee and/or Grantee's contractors or engineers related to the construction, location and maintenance of the installation located in street right-of-way;

NOW, THEREFORE, IT IS AGREED that the Grantor hereby grants to the Grantee the limited right and privilege to encroach on the property of the Grantor within the above defined limits upon the following conditions:

1. Grantee guarantees that the installation will neither cause a public nuisance nor unreasonably interfere with the use of streets and sidewalks by the public or public utilities;

2. Grantee shall provide all locates of Grantees infrastructure within Grantor's right of way upon request by the Grantor at no cost to the Grantor and join the 811;

3. During the performance of the services under this Agreement, Grantee and its contractors, and engineers shall maintain the following insurance:

   General Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, including explosion, collapse and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than $1,000,000 for each occurrence and not less than $2,000,000 in the aggregate, and with property damage limits of not less than $1,000,000 for each occurrence and not less than $2,000,000 in the aggregate, with property damage limits of not less than $500,000 for each occurrence and not less than $500,000 in the aggregate.

   Automobile Liability Insurance, covering owned, non-owned, hired vehicles and trailers using in connection with this project. This insurance shall provide bodily injury and property damages limits of not less than $1,000,000 combined single limit/aggregate.

   Worker's Compensation Insurance in accordance with statute requirements and Employer's Liability Insurance with limits of not less than $100,000 for each occurrence. In case any work is sublet under this Agreement, Grantee shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This Agreement shall be void and of no effect unless Grantee shall secure and keep in effect during the terms of this Agreement. Grantee's compliance with the provisions of the Worker's Compensation laws of the State of North Carolina.

   Grantee shall furnish certificates of insurance for all of the insurance coverages described herein within ten (10) days after this Agreement is ratified and certified copies of any amendments and/or renewals to the policies which occur thereafter. At least thirty (30) days written notice shall be given to the Grantor prior to any cancellation, modification or non-renewal of any insurance required under this Agreement.

   All project contractors shall be required to include Grantor and Grantee as additional insured on their General Liability insurance policies;

4. Grantee hereby agrees to indemnify and save harmless the Grantor from any and all suits; actions, claims, demands, liability of any nature whatsoever arising out of the construction, location and maintenance by Grantee or Grantee's contractors or engineers of the installation and its structures in the

street right-of-way, except in connection with Grantor's gross negligence or willful misconduct, and shall remove any or all of the installation or its structures from the encroachment space at the request of the City, without any cost to the City. Such request shall not be arbitrary or unreasonable;

5. Grantee hereby agrees to maintain the installation in a safe condition and tag and identify all underground utilities during the term of this Agreement;

6. The Grantee within thirty (30) days from the execution of this Agreement, shall make arrangements to begin installation of the encrochments and will require the contractor to take necessary and reasonable precautions to protect the public from danger during the building and installing of the encrochments with the right of way of the Grantor;

7. Grantee agrees to pay annual linear foot fees to occupy City right-of-way per City Code Chapter 28.1 Telecommunications during the term of this Agreement;

8. The installation shall be constructed in accordance with approved plans and coordinated with the City's right-of-way manager, and

9. Grantee during the construction of the installation, for itself, its assignees and successors in interest, agrees that the contractor(s), with regard to the work performed by it during the construction and maintenance of the installation of the encroachment, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment.

[signatures on following page]

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

BELK, INC.

_____

Gregory V. Wilson, Vice President of Belk, Inc.

Corporate Seal

Recommended:

By:_____

Engineering & Inspections Director

ATTESTED BY:

By:_____

City Clerk

CITY OF GREENSBORO

By:_____

City Manager

(This instrument has been pre-audited in the manner by the Local Government-Budget and Fiscal Control Act)

By:_____

Finance Officer

(Approved as to form and legality)

By:_____

Assistant City Attorney

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

I, Linda Susan Clark, a Notary Public in and for said County and State, do hereby certify that on this 17th day of April, 2014, before me personally appeared Gregory V. Wilson, Vice President of Belk, Inc. a Delaware corporation, personally known to me, or proved to me by satisfactory evidence to be the person whose name is signed on the preceding attached record, and acknowledged to me that by authority duly given and as the act of the corporation/he signed it voluntarily for its stated purpose.

LINDA SUSAN CLARK NOTARY PUBLIC MECKLENBURG COUNTY, NC

Linda Susan Clark

Notary Public

Linda Susan Clark

Printed Name of Notary Public

My commission expires: 10-22-15

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

I, _____, a Notary Public in and for said County and State, do hereby certify that on this _____ day of _____, 2014, before me personally appeared _____, Deputy City Clerk of the City of Greensboro, personally known to me or proved to me by satisfactory evidence to be the person whose name is signed on the preceding attached record, and acknowledged to me that by authority duly given and as the act of the City of Greensboro, the foregoing document was signed in its name by its _____, sealed with its seal, and attested by him/himself as its Deputy City Clerk.

_____

Notary Public

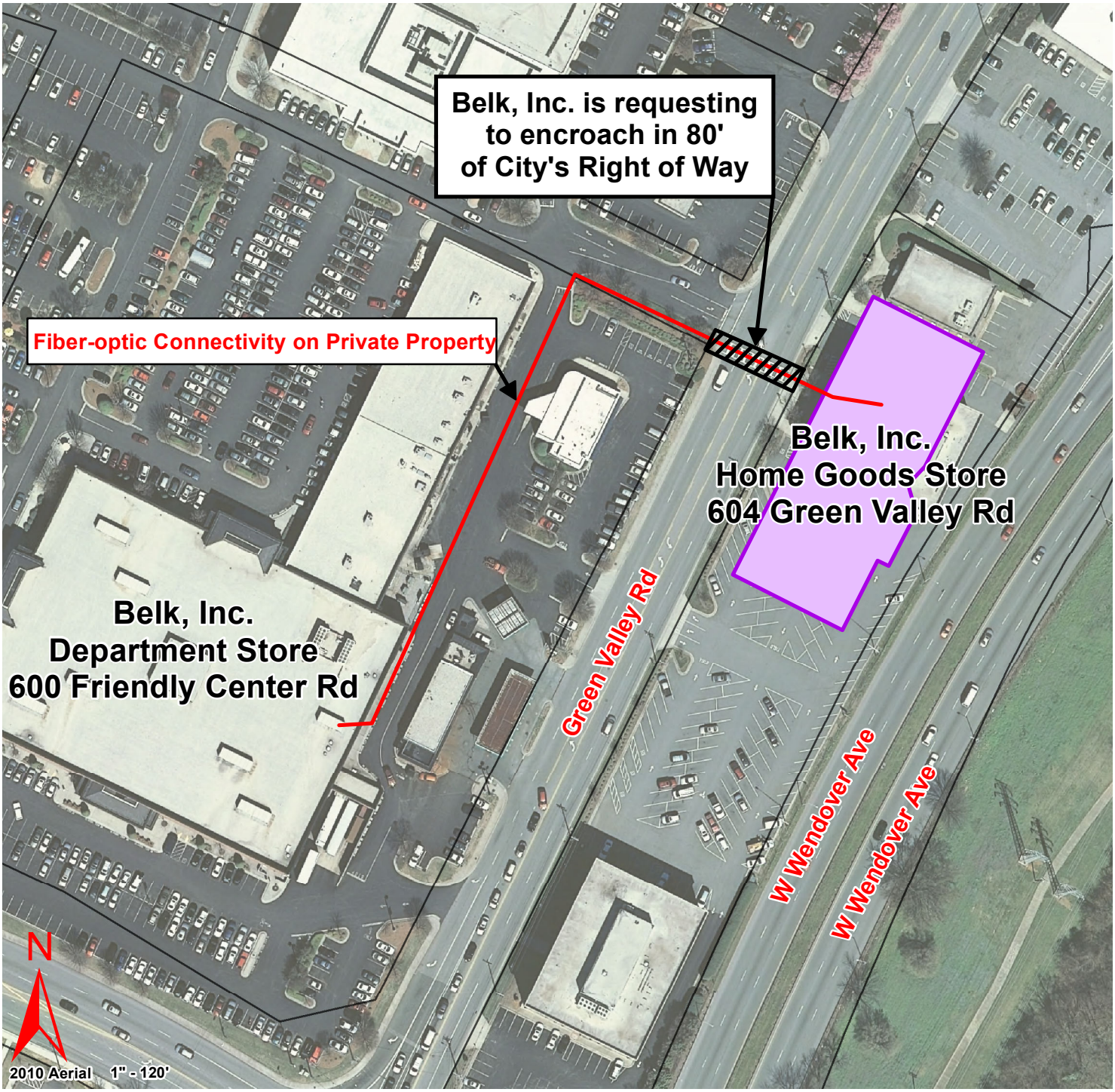
_____

Printed Name of Notary Public

My commission expires:_____

City of Greensboro - Encroachment Agreement

Exhibit A



SITE PLAN WITH PROPOSED ENCROACHMENT IN CITY RIGHT-OF-WAY

For Belk, Inc.
604 Green Valley Road
Use of 80 linear feet of City's Right of Way for fiber-optic connectivity.

GREENSBORO