

NORTH CAROLINA  
GUILFORD COUNTY

**ENCROACHMENT AGREEMENT**

THIS ENCROACHMENT AGREEMENT, is made and entered into this the \_\_\_\_ day of October 2014, by and between the CITY OF GREENSBORO (“Grantor”)(“the City”) and SUN CAPITAL, INC., (“Grantee”)(“Sun Capital”) a North Carolina corporation.

WHEREAS, Sun Capital, Inc. is the owner of that certain real property described on a final plat in Exhibit A attached hereto and incorporated herein by reference (the “Berkshire Subdivision Plat”); and

WHEREAS, Sun Capital is the owner of that certain real property set forth as Lot 1 and Lot 10 on Exhibit B attached hereto and incorporated herein by reference (the “Berkshire Subdivision Wall Detail Drawing”); the property being hereinafter collectively referred to herein as the “Grantee’s Property”; and

WHEREAS, Grantor owns that certain real property described on Exhibit C attached hereto and incorporated herein by reference (the “City Property”); and

WHEREAS, Lot 1 and Lot 10 of Sun Capital, Inc. and the City Property share a common property line on the southern sides of Lot 1 and Lot 10, and an easement is located along the southern sides of Lot 1 and Lot 10 as shown on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Sun Capital proposes to build a four (4) foot high wall along the southern end of Lot 1 and a four (4) foot high wall along the southern end of Lot 10 (“the Walls”), each of which will encroach five (5) feet on the City’s 10 foot right-of-way;

WHEREAS, the Walls will not affect traffic visibility because they are located outside the sight triangle; and

WHEREAS, the utilities located in the encroachment area are three (3) water meters and a clean-out, all of which will be removed during construction; and

WHEREAS, construction, installation, repair, replacement, maintenance and use of the Walls by Grantee are not intended for any use apart from the use of Grantee, and their successors and assigns, as the owner(s) of Lot 1 and Lot 10 located on Grantee’s Property; and

WHEREAS, this encroachment is revocable in the reasonable discretion of the City as may be required for right of way, utility and public safety needs of the City; and

WHEREAS, Grantee agrees to hold the Grantor 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 related to the construction, location, repair, replacement, maintenance and use of the Walls located thereon; and

WHEREAS, The City has determined that the Walls are akin to Development Entrance Signs as defined in the Land Development Ordinance 30-14-7.3(D); and

WHEREAS, such signs are allowed to encroach into a public right-of-way only so long as there is an encroachment agreement in effect between the owner(s) of the Walls and the City in a form determined by the City Attorney; and

WHEREAS, by this agreement, Grantee intends to bind any and all of its assigns, heirs, successors, and successors-in-interest to the terms agreed to herein; and

WHEREAS, the Grantee agrees that Grantee will not be compensated by the City for any loss of or damage to the Walls from any cause; and

WHEREAS, the Grantee must remove the Walls, or any portion thereof, at the Grantee's expense if the City determines at any time that the Walls, or any portion thereof, interfere with the public use of the right-of-way; and

WHEREAS, the Grantee must maintain the Walls; and

WHEREAS, if the Walls, or any portion thereof, project or are suspended over the public right-of-way, the Grantee must agree to provide insurance or satisfactory indemnification of the City against liability for injury to persons or property resulting from the position or maintenance of the Walls or any portion of the Walls; and

WHEREAS, The City has determined that the Walls are akin to fences, the Grantee will comply with Land Development Ordinance 30-7-1.6 which states that fences that are permitted encroachments are subject to removal; and

WHEREAS, the Walls will comply with Land Development Ordinance 30-9-4.6 which states that no fence or wall may exceed 4 feet in height within 15 feet of any public or private street right-of-way; and

WHEREAS, the Walls will comply with Land Development Ordinance 30-7-1.4 (c) which allows for encroachments that meet the requirements of Chapter 16-8 of the City Code for sight triangles; and

WHEREAS, the Walls will comply with Chapter 16-8 of the City Code for visibility at intersections and sight triangles; and

WHEREAS, Grantor has agreed to grant to the Grantee the encroachment described above, but only upon the condition that Grantee grants to the Grantor a permanent easement for the purpose of using that portion of the easement for the benefit of the City of Greensboro, and Sun Capital has agreed to grant such easement to the Grantor.

NOW, THEREFORE, BE IT RESOLVED THAT:

The City of Greensboro does hereby incorporate the above recitals and exhibits; and

The City of Greensboro hereby grants and conveys to the Grantee, their assigns, heirs, successors, and successors-in-interest the right to build two (2) walls, each wall being four (4) feet high, which encroach five (5) feet on the City's right-of-way; provided however, the Grantee agrees to be bound by the terms stated above and herein.

TO HAVE AND TO HOLD the foregoing described encroachment to the Grantee, their successors and assigns in title to the Grantor's Property. The Grantor covenants that it is seized of the right-of-way in fee simple and has that right to allow the encroachment to the Grantee described herein; Sun Capital, Inc. covenants that it is seized of that portion of property shown on Exhibit A and Exhibit B which has an easement for the benefit of the City of Greensboro in fee simple and is free from any and all encumbrances except easements, restrictions and other encumbrances of record in the Guilford County Register of Deeds office, and that it will warrant the title to the same against the claims of all persons claiming by, under or through Sun Capital, Inc. except for easements, restrictions and other encumbrances of record referenced above.

Grantee, their successors and assigns, for so long as Grantee is the owner(s) of Grantee's Property, and thereafter any subsequent owner of the Grantee's Property, shall protect, defend, indemnify and hold harmless Grantor, its successors and assigns in title to the City Property, from any and all claims or demands arising out of the acts or omissions of Grantee or their successors and assigns, and their tenants, agents, employees, licensees or contractors in connection with the exercise of Grantee's, or their successors', and their tenants', agents', employees', licensees' or contractors' use of the easement granted to the Grantee herein.

Grantee hereby agrees for themselves, and their successors and assigns in title to the Grantee's Property, that, the owner(s) of the Grantee's Property (or their designees) shall pay all of the costs of construction, including costs of necessary utility removal, maintenance, reconstruction, repair, resurfacing, landscaping, grass mowing, snow removal, and general upkeep associated with the Walls, and shall keep the Walls in a good and safe condition.

The encroachment provided herein by Grantor is revocable in the reasonable discretion of the City as may be required for right of way, utility and public safety needs of the City.

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.

**SIGNATURE PAGE  
TO  
ENCROACHMENT AGREEMENT**

**Dated \_\_\_\_\_, 2014**

ATTESTED BY:

CITY OF GREENSBORO

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Finance Officer

By: \_\_\_\_\_  
Mayor

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

STATE OF NORTH CAROLINA     )

COUNTY OF GUILFORD            )  
SS:

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_, Notary Public

My commission expires: \_\_\_\_\_

**SIGNATURE PAGE  
TO  
ENCROACHMENT AGREEMENT**

**Dated \_\_\_\_\_, 2014**

**SUN CAPITAL, INC.**  
a North Carolina corporation

By: \_\_\_\_\_  
Name: Ken Miller  
Title: Principal

STATE OF NORTH CAROLINA     )

  SS:  
COUNTY OF GUILFORD         )

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_, Notary Public

My commission expires: \_\_\_\_\_

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**EXHIBIT A**

Legal Description  
(Berkshire Subdivision Plat)

Lot 1 and Lot 10 shown on the Final Plat were formerly recorded at Plat Book 14, Page 43, and Deed Book 7573, Page 2104, in the Office of the Register of Deeds of Guilford County, North Carolina, and the Final Plat for the new subdivision, to be known as Berkshire Subdivision, has not yet been recorded.

(see unrecorded Final Plat on following page)

**EXHIBIT B**

Berkshire Subdivision Wall Detail Drawing

(see Drawing on following page)

**EXHIBIT C**

Legal Description  
(City Property)

The Final Plat, yet to be recorded in the office of the Register of Deeds of Guilford County, North Carolina, but derived from Plat Book 14, Page 43, reserves for the City of Greensboro easements in the subdivision.