

**NORTH CAROLINA**

**ENCROACHMENT  
AGREEMENT**

**GUILFORD COUNTY**

THIS AGREEMENT, made and entered into this the \_\_\_\_ day of April, 2015, by and between the **CITY OF GREENSBORO**, "Grantor"; and **GREENSBORO DOWNTOWN HOTEL, INC.**, a North Carolina corporation, "Grantee".

**WITNESSETH:**

THAT WHEREAS, Grantee owns certain real property located at 332 S. Greene Street, Guilford County Tax Map Parcel Number 0000563 and has requested permission to encroach upon the right of way of Grantor in order to build and install two metal composite panel canopies overhanging the sidewalk on West McGee and S. Greene Street; and plant two Columnar European Hornbeam trees sixty six feet on center along the West McGee street placed with a four foot landscape strip, hereinafter referred to as the "encroachments" for the purposes of providing shelter and landscaping at the Grantee's building located at 332 S. Greene Street in the City of Greensboro, North Carolina as seen on Exhibit A;

WHEREAS, the approximate measurements of the canopy at the West McGee Street sidewalk is approximately forty three feet (43') and protrudes less than six feet (6') from the outer most point of the building encroaching over the sidewalk less than five feet (5') into the City right of way and minimum clearance on the west end of the canopy is eleven feet (11'). Due to the sloping sidewalk, the minimum clearance on the east end of the canopy increases to twelve feet (12');

WHEREAS, the approximate measurements of the canopy at the S. Greene Street sidewalk within City right of way is approximately four feet (4') by eight feet and two inches (8' 2") and the southern point radius with a minimum clearance at the corner of the canopy where the encroachment occurs is approximately eighteen feet four inches (18'-4");

WHEREAS, Grantee shall be solely responsible for maintenance of the canopies, periodic clean up, removal of accumulated trash, and maintenance of trees;

WHEREAS, Grantee agrees to maintain the encroachments in a safe condition and agrees to hold the City of Greensboro harmless from any and all loss to persons or property resulting from the encroachments location in the Grantor's 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. The Grantee guarantees that the Encroachment will neither cause a public nuisance nor unreasonably interfere with the use of the public streets and private streets and sidewalks by the public;

2. The Grantee shall indemnify and save harmless the Grantor from any and all damages and claims for damages that may arise by reason of the installation and location of the Encroachment; at the request of the Grantor, without any cost to the Grantor;
3. The Grantee shall make any necessary and required design changes if such changes are required, including, but not limited to, the removal of the Encroachment;
4. The Grantee shall maintain and repair the Encroachment until such time as the Encroachment, is removed either at the request of the Grantor or otherwise as a decision of the Grantee;
5. The Grantee, during the building and installing of the Encroachment, for itself, its assignees and successors in interest, agrees that it will require that the contractor, with regard to the work performed by the contractor during the building and installation of the Encroachment within the rights of way of the Grantor, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including the procurement of materials and leases of equipment;
6. The Grantee, shall seek proper building permits and inspections required by the Grantor;
7. The Grantee shall record their fully executed Encroachment Agreement with the Guilford County Register of Deeds and provide proof thereof in order to obtain permitting;
8. The Grantee assumes all costs associated with the proposed installation of the Encroachment including: utility locates, delivery and removal of the Encroachment, delivery of engineer-stamped drawing of installation design, installation and de-installation of the Encroachment by a fully qualified contractor, insurance for damage and liability for the Encroachment, repair of any disturbance to the site at the time of installation and at the time of de-installation, and all routine maintenance of the Encroachment;
9. The Grantee does hereby agree to indemnify and save harmless the Grantor, its officers, agents and employees against all claims, actions, lawsuits and demands, including reasonable attorney fees for damages, loss or injury, including environmental damages, to the extent caused by the negligent or willful acts or omissions of the Grantee;
10. Grantee assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether State or Federal, as to all employees engaged in the performance of work. In addition, Grantee agrees to pay any and all gross receipts, compensation, transaction, sales, use, or other taxes and assessments of whatever nature and kind levied or assessed as a consequence of the work performed or on the compensation paid under this contract;
11. 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 \$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 statutory 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 term 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;

12. Alterations, deletions, and/or additions to the terms and conditions of this contract may only be made by the mutual written consent of the parties;
13. The Grantor, in its sole discretion, may terminate this Agreement in whole or in part whenever the Grantor determines that said termination is in its best interest. Any such termination shall be effected by the delivery to the Grantee of a written notice of termination thirty (30) days before the effective date of the termination;
14. Should Grantee fail to comply with the terms of this contract, Grantee, upon actual or constructive notice of the default shall have thirty (30) days to remedy the default. Should Grantee fail to remedy the default, the contract is terminated immediately upon the expiration of the thirty (30) days;
15. In hiring, contracting, and all other acts, Grantee shall abide by all local, State and federal laws and regulations relevant to Minority/Women's Business Enterprises and shall not discriminate on the basis of sex, age, race, creed, color, religion, national origin, or disability;
16. Any term or condition of the Contract which by operation or existence is in conflict with applicable Local, State, or Federal Law shall be rendered void and inoperative. Grantor and Grantee agree to accept the remaining terms and conditions;
17. Should any part of this contract be declared unenforceable, all remaining sections remain in force;
18. This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of North Carolina. Venue for any legal action resulting from this Agreement shall lie in Guilford County; and
19. This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

WITNESS:

GREENSBORO DOWNTOWN HOTEL, INC.

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

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

Recommended:

By: \_\_\_\_\_  
Engineering & Inspections Director

ATTESTED BY:

CITY OF GREENSBORO

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

By: \_\_\_\_\_  
Assistant City Manager

Approved as to Form and Legality

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

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Finance Officer

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 \_\_\_\_\_, 2015, before me personally appeared \_\_\_\_\_, \_\_\_\_\_ of Greensboro Downtown Hotel, LLC, a North Carolina 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 s/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

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

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 \_\_\_\_\_, 2015, before me personally appeared \_\_\_\_\_, City Clerk/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/herself as its City Clerk/Deputy City Clerk.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

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