

NORTH CAROLINA

ENCROACHMENT AGREEMENT

GUILFORD COUNTY

THIS AGREEMENT, made and entered into this the _____ day of _____, 2017, by and between the **CITY OF GREENSBORO**, “Grantor”; and **DOWNTOWN GREENSBORO INCORPORATED**, a North Carolina non-profit corporation, “Grantee”.

WITNESSETH:

WHEREAS, Grantee is required to install the 9/11 World Trade Center Memorial Sculpture; and

WHEREAS, Grantee approached Grantor to install the sculpture on City Property located at 501 S. Elm Street on the corner of S. Elm Street and Martin Luther King Jr. Drive; and

WHEREAS, the sculpture will be installed as depicted upon Exhibit A, the site map of the sculpture. The Grantee has requested permission to encroach upon Grantor’s right-of-way and property in order to display the sculpture; and

WHEREAS, Grantor, through City Charter 4.128 (c), permits encroachment on City property if, in the opinion of the Council, such encroachment will neither cause a public nuisance nor unreasonably interfere with the use of the property by the public; and

WHEREAS, Grantee agrees to maintain the sculpture (hereinafter referred to as “the Encroachment”) in a safe condition and agrees to hold the City of Greensboro harmless from any and all bodily injury and property damage to persons or property resulting from the location of the Encroachment on the Grantor’s property.

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 City property by the public.
2. The permanent encroachment shall occupy space at 501 S. Elm Street and shall have the placement and dimensions as set out in Exhibit A (site map) and Exhibit B (sculpture design) attached hereto.
3. The Grantee shall indemnify and save harmless the Grantor 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, or maintenance of the Encroachment located on the City’s property.

4. The Grantee, at the request of the Grantor and without any cost to the Grantor, shall make any necessary or required maintenance, repair, or design changes if such changes are required for public safety, including, but not limited to, the removal of the Encroachment.
5. 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.

6. The Grantee shall maintain the encroached upon area in a safe condition and 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.
7. 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, religion, national origin, biological sex, age, or disability in the selection and retention of subcontractors, including the procurement of materials and leases of equipment.
8. The Grantee, shall seek proper building permits and inspections required by the City of Greensboro.

9. The Grantee shall record their fully executed Encroachment Agreement with the Guilford County Register of Deeds and provide proof thereof in order to obtain required permitting.
10. 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.

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.

WITNESS: DOWNTOWN GREENSBORO
INCORPORATED

By: _____ By: _____
Secretary President

RECOMMENDED BY:

Transportation Director

ATTEST: CITY OF GREENSBORO

By: _____ By: _____
Deputy City Clerk Assistant City Manager

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

Approved as to Form

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 _____, 2017, before me personally appeared _____, _____ of Downtown Greensboro Incorporated, a North Carolina non-profit 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 _____, 2017, 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:_____