

Prepared by and return to: Marc L. Isaacson, Esq.

**NORTH CAROLINA**

**ENCROACHMENT AGREEMENT**

**GUILFORD COUNTY**

**THIS AGREEMENT**, made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **CITY OF GREENSBORO**, "Grantor;" and **SPARTAN STUDENT APARTMENTS, LLC**, a Georgia limited liability company, "Grantee."

**W I T N E S S E T H:**

**WHEREAS**, Grantee approached Grantor to locate fiber optic communication lines beneath beginning at the southeast corner of the intersection of Poe Street and Sherwood Street, running 262 linear feet along the north side of Sherwood Street, crossing Granite Street and running 340 linear feet along north side of Sherwood Street, crossing onto Chapman Street; and

**WHEREAS**, Communication line will be installed by bore in City right-of-way as depicted upon Exhibit A ("Site Map for Proposed Encroachment"). The Grantee has requested permission to encroach upon the right-of-way; and

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

**WHEREAS**, Grantee agrees to maintain the communication line (hereinafter referred to as "the Encroachment") 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 location of the Encroachment within 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 acknowledges and agrees that the Encroachment will be designed and constructed so that the Encroachment neither causes a public nuisance nor unreasonably interferes with the use of the public streets and private streets and sidewalks by the public. The granting of a building permit and approval of inspections required by the City of Greensboro shall constitute Grantor's acknowledgement and agreement that the Encroachment has been designed and constructed so that as of the time of the completed inspections, the Encroachment neither causes a public nuisance nor unreasonably interferes with the use of the public streets and sidewalks by the public.

Notwithstanding any other provision herein, this Encroachment Agreement shall be revocable at will by the Grantor and the Encroachment is subject to removal upon request of the Grantor at the Grantee's expense. Prior to such revocation, Grantor will provide to Grantee written notice of the reason for such revocation and an opportunity to cure any basis for such revocation, not to exceed thirty (30) days after the date of such notice.

2. The Grantee may remove the Encroachment and terminate this Encroachment Agreement upon thirty days (30) written notice to the Grantor.
3. 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, including, but not limited to, the removal of the Encroachment.
4. 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.

To the extent Grantee owns or leases any vehicles: 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.

To the extent Grantee has any employees or subcontractors: 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.

5. 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. In the event the conduit is not used, Grantee shall restore the Grantor's right of way to a condition substantially similar to that existing prior to the date of this Encroachment Agreement.
6. 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 in street right-of-way.
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 record the fully executed Encroachment Agreement with the Guilford County Register of Deeds and provide proof thereof in order to obtain required permitting.
9. The Grantee shall apply for permits from Engineering & Inspections: Utility Coordination and also be a member of the North Carolina 811.

**REMAINDER OF PAGE LEFT BLANK  
SIGNATURES ON FOLLOWING PAGES**

**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.

SPARTAN STUDENT APARTMENTS, LLC,  
a Georgia limited liability company

By: Spartan Student Housing Venture, LLC,  
a Georgia limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said County and State, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared \_\_\_\_\_, \_\_\_\_\_ of Spartan Student Housing Venture, LLC, a Georgia limited liability company, Manager of Spartan Student Apartments, LLC, a Georgia limited liability company, 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 limited liability company, s/he signed it voluntarily for its stated purpose.

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

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

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

(AFFIX SEAL)

**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.

RECOMMENDED BY:

\_\_\_\_\_  
Information Technology Director

ATTEST:

CITY OF GREENSBORO

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

By: \_\_\_\_\_  
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 and Legality

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

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

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 \_\_\_\_\_, 2019, 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.

(AFFIX SEAL)

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

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

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