CITY COUNCIL

Ed L. Hatley, Mayor
Kevin Demeny, Mayor Pro Tem
Mark Johnson
Jill Tipton
Roby Jetton

Lincolnton NC
Near the City. Near the Mountains. Near Perfect.

CITY MANAGER

Ritchie Haynes
rhaynes@lincolntonnc.org
CITY CLERK
Daphne Ingram
dingram@lincolntonnc.org
CITY ATTORNEY
John M. Friguglietti, Jr.

HOLD HARMLESS AGREEMENT, RELEASE OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNIFICATION AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF LINCOLN

THIS HOLD HARMLESS AGREEMENT, RELEASE OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNIFICATION AGREEMENT ("Agreement") is entered into this _____ day of _____, **20**_____, by and between _____ ("Property Owner"), and the City of Lincolnton, North Carolina ("City").

WHEREAS, Property Owner is the owner of certain real property located at:

Parcel ID Number:_____.

(the "Property");

WHEREAS, the Property contains, is burdened by, or is adjacent to one or more City utility facilities, utility easements, prescriptive easements, water lines, sewer lines, stormwater pipes, storm drainage infrastructure, electrical facilities or lines, utility corridors, access rights, or other utility infrastructure owned, operated, maintained, or claimed by the City (collectively referred to herein as the "Utility Facilities");

WHEREAS, Property Owner has constructed, installed, maintained, permitted, or allowed structures, improvements, landscaping, fencing, paving, retaining walls, pools, sheds, buildings, additions, driveways, personal property, or other encroachments within, upon, above, adjacent to, or otherwise affecting the Utility Facilities or areas subject to City easement rights (collectively referred to herein as the "Encroachments"); and

WHEREAS, the City is willing to permit the Encroachments to remain subject to the terms and conditions contained herein, without waiving any rights possessed by the City.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Property Owner agrees as follows:

1. ACKNOWLEDGMENT OF CITY RIGHTS

Property Owner acknowledges and agrees that the City possesses and reserves all rights relating to any utility easement, prescriptive easement, utility line, water line, sewer line, stormwater pipe, storm drainage facility, electrical facility or line, access route, utility corridor, or other utility interest affecting the Property.

Nothing contained herein shall be construed as a waiver, abandonment, relinquishment, modification, limitation, or impairment of any rights held by the City.

2. ASSUMPTION OF RISK

Property Owner knowingly and voluntarily assumes all risks associated with the existence, operation, maintenance, repair, replacement, relocation, failure, leakage, rupture, overflow, backup, collapse, excavation, access, construction, reconstruction, emergency work, interruption of service, electrical faults, power outages, drainage failures, stormwater overflows, or other activities involving the Utility Facilities.

Property Owner acknowledges that such activities may result in personal injury, death, property damage, flooding, erosion, loss of use, business interruption, environmental impacts, diminution in value, loss of electrical service, drainage issues, stormwater impacts, or other damages.

3. RELEASE OF LIABILITY

TO THE FULLEST EXTENT PERMITTED BY LAW, PROPERTY OWNER, ON BEHALF OF HIMSELF OR HERSELF AND HIS OR HER HEIRS, SUCCESSORS, ASSIGNS, TENANTS, GUESTS, INVITEES, INSURERS, AND REPRESENTATIVES, HEREBY RELEASES, WAIVES, ACQUITS, AND FOREVER DISCHARGES THE CITY OF LINCOLNTON, ITS OFFICERS, ELECTED OFFICIALS, EMPLOYEES, AGENTS, CONTRACTORS, ENGINEERS, CONSULTANTS, INSURERS, SUCCESSORS, AND ASSIGNS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, DAMAGES, LOSSES, COSTS, EXPENSES, LIABILITIES, OR JUDGMENTS OF ANY KIND ARISING OUT OF OR RELATED TO:

a. The existence of the Utility Facilities;

b. The failure, rupture, leakage, overflow, backup, collapse, maintenance, repair, replacement, relocation, operation, use, interruption of service, electrical fault, power outage, drainage failure, stormwater event, or malfunction of the Utility Facilities;

c. The City's entry onto the Property for inspection, maintenance, repair, replacement, emergency response, or access purposes;

d. Damage to any Encroachments;

e. Damage to the Property;

f. Personal injury, death, or property loss occurring as a result of the Utility Facilities or Encroachments; and

g. Any requirement that Encroachments be removed, relocated, demolished, modified, disturbed, or destroyed.

4. INDEMNIFICATION AND HOLD HARMLESS

TO THE FULLEST EXTENT PERMITTED BY LAW, PROPERTY OWNER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY OF LINCOLNTON, ITS OFFICERS, ELECTED OFFICIALS, EMPLOYEES, AGENTS, CONTRACTORS, ENGINEERS, CONSULTANTS, AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LOSSES, LIABILITIES, JUDGMENTS, PENALTIES, COSTS, EXPENSES, AND REASONABLE ATTORNEY'S FEES ARISING OUT OF OR RELATED TO:

a. The Encroachments;

b. The Property Owner's use of the Property;

c. Any interference with the Utility Facilities;

d. Any injury to persons or damage to property resulting from the Encroachments; and

e. Claims brought by tenants, occupants, guests, invitees, contractors, purchasers, successors, insurers, or any third party relating to the Encroachments or Utility Facilities.

This indemnification obligation shall survive termination of this Agreement and any transfer of ownership to the fullest extent permitted by law.

5. NO RESPONSIBILITY FOR DAMAGE TO ENCROACHMENTS

Property Owner acknowledges and agrees that the City may, at any time and without compensation, remove, disturb, excavate around, damage, destroy, relocate, or require removal of any Encroachments that interfere with the City's use, maintenance, repair, replacement, operation, access to, or protection of the Utility Facilities.

The City shall have no obligation to repair, replace, restore, reimburse, or compensate Property Owner for any resulting damages.

Property Owner further acknowledges and agrees that maintenance, repair, replacement, relocation, emergency response, excavation, restoration, or other work involving any water line, sewer line, stormwater pipe, drainage facility, electrical facility or line, utility easement, prescriptive easement, or other Utility Facility may necessarily result in damage to structures, landscaping, pavement, fencing, retaining walls, improvements, or other Encroachments located within or near the affected area, and Property Owner expressly assumes all risk of such damage.

6. CITY ACCESS RIGHTS

Property Owner shall not obstruct or interfere with the City's access to the Utility Facilities.

The City shall have the unrestricted right to enter the Property as necessary to inspect, maintain, repair, replace, upgrade, relocate, operate, protect, or access the Utility Facilities.

7. NOTICE TO FUTURE OWNERS

Property Owner agrees that this Agreement may be recorded in the Office of the Register of Deeds and shall be binding upon Property Owner and Property Owner's heirs, successors, assigns, tenants, and transferees to the fullest extent permitted by law.

Property Owner shall disclose the existence of this Agreement to all future purchasers, tenants, occupants, and transferees of the Property.

8. NO ADMISSION BY CITY

Execution of this Agreement shall not constitute an admission by the City regarding the validity, location, extent, or existence of any easement, prescriptive easement, utility right, or property interest.

9. SEVERABILITY

If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

10. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties concerning the matters addressed herein and supersedes all prior discussions or understandings.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

PROPERTY OWNER.

PROPERTY OWNER:

Printed Name:_____

Signature:_____

Date: _____

CITY OF LINCOLNTON.

By: _____

Name: _____

Title: _____

Date: _____

STATE OF NORTH CAROLINA

COUNTY OF LINCOLN

I, _____, a Notary Public of _____ County and State of North Carolina, certify that _____ personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 20_____.

_____
Notary Public

My Commission Expires: _____. [SEAL]