

After recording, Mail to: Alex Sewell, Wadesboro Town Manager, P.O. Box 697, Wadesboro, NC, 28170

NORTH CAROLINA

ENCROACHMENT AGREEMENT

Anson County

This Encroachment Agreement made this 4th day of ~~November~~^{December}, 2017, by and between South Carolina Telecommunications Group Holdings, LLC DBA Spirit Communications (“Spirit”) and the Town of Wadesboro (the “Town”).

WITNESSES:

WHEREAS, the Town is the owner of the right-of-way for Tice St and Jordan St (the “**Right-of-Way**”); and

WHEREAS, Spirit desires to install fiber optic communication cables in three 1.25 inch conduits in the Right-of-Way. Spirit and Town acknowledge that the conduit and communication lines will be an encroachment upon the Right-of-Way (the “**Encroachment**”); and

WHEREAS, Spirit and Town desire to make certain agreements and covenants regarding the Encroachment.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Subject to the terms hereof, the Town agrees to allow Spirit at its own risk and expense, to install the Encroachment in the Right-of-Way. The approximate location of the Encroachment is shown on the diagram attached hereto as Exhibit A which is incorporated by reference.
2. The Encroachment shall be installed in strict conformance with construction plans approved in writing by the Town Public Utilities Director (the “**Director**”). No construction of any kind shall be started until the Director issues written approval of specific construction plans. Spirit shall restore all areas disturbed during installation and maintenance of the Encroachment to the satisfaction of the Director. Spirit shall provide an indemnity bond to the Town effective for one year from the completion of installation of the encroachment in the amount of \$10,000 to

cover damage to the Town's street or utility facilities arising from or related to the Encroachment. The bond shall be in a form acceptable to the Town. Maintenance and repair of the Encroachment is entirely the responsibility of Spirit.

3. The Town makes no representation or warranty as to the title or fee ownership of property within the Right-of-Way. The Town is not granting any right or permission for Spirit to be on the property of another. Spirit is responsible for obtaining any necessary permissions or easements from the fee owner or any adjacent property owner.

4. Notwithstanding any other provision of this Encroachment Agreement, neither Spirit, its agents, its contractors, its employees, nor the Encroachment shall damage, harm, prejudice or interfere with the Town's street, utility, drainage or other facilities located, or in the future located, within the Right-of-Way, including, but not limited to, the Town's installation, operation, maintenance, protection, modification, replacement, upgrading, adding-to and improvement of said street, utility, drainage or other facilities.

5. Spirit agrees and covenants that it will remove the Encroachment from the right-of-way within one hundred eighty (180) days of receiving a written request to do so from the Town. Such removal shall be paid for by Spirit and includes, but is not limited to, removing the lines and conduit. In the event that Spirit fails to remove the Encroachment in accordance with a written request under this Paragraph, the Town, after giving Spirit fifteen (15) days prior written notice, may remove the Encroachment from the right-of-way without further notice to Spirit and without the Town's having any liability to Spirit. Such removal shall be paid for by Spirit.

6. If the Town deems, within its sole discretion, that there is not time to give Spirit notice as provided in Paragraph 5 and that removal of the Encroachment is necessary in order to install, operate, maintain, protect, modify, replace, add-to or improve its utility facilities located within the Easement, then no notice shall be required and the Town may remove the Encroachment from the Right-of-Way without having any liability to Spirit.

7. If Spirit fails to remove the Encroachment within the time limit after receiving notice under Paragraph 5 or if the Town removes the Encroachment as provided in the Paragraph 6, then Spirit shall pay and reimburse the Town the entire expense and cost of removal of the Encroachment.

8. In the event that a situation arises in which the Encroachment is impeding the installation, operation, maintenance, protection, modification, replacement, upgrading, addition-

to or improvement of the Towns' utility facilities/infrastructure located within the right-of-way, the Town may, but is not required to, offer Spirit the opportunity to avoid removal of the Encroachment by Spirit paying the increased costs of working around the problem created by the Encroachment without removing it.

9. The Town shall have no liability to Spirit for any damage to the Encroachment, resulting from removal of the Encroachment or resulting from the working around the Encroachment in the installation, operation, maintenance, protection, modification, replacement, upgrading, addition-to or improvement of the Town's utility facilities/infrastructure located within the Right-of-Way.

10. To the fullest extent permitted by law, Spirit agrees and covenants to defend, pay on behalf of (including but not limited to attorney's fees and any and all other litigation costs), indemnify, and hold harmless the Town, its elected and appointed officials, employees and volunteers working on behalf of the Town against any and all claims, demands, suits or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the Town of Wadesboro, its appoints officials, employees, volunteers, and others working on behalf of the Town of Wadesboro, by reason of personal injury, including bodily injury or death and/or property damage, including the loss of use thereof, which arises out of or is in any way connected or associated with this Encroachment Agreement. Moreover, in the event that Spirit, its agents, its contractors, its employees or the Encroachment cause any damage to the Right-of-Way, Spirit agrees to pay or reimburse the entire costs thereof to the Town. Neither party will be liable for any incidental, consequential, special or punitive damages arising out of its performance under this Encroachment Agreement.

11. Neither Spirit nor its successors in title shall acquire any rights or interests adverse to the Town's interests in the Right-of-Way by adverse possession, prescription or any claim based on use, possession or occupation, and Spirit hereby waives any such rights or interests.

12. The obligations and duties on Spirit created hereby shall apply to and become obligations and duties of all successors in interest to the Encroachment in perpetuity. All agreements, covenants, obligations and duties made or undertaken by Spirit related to the Encroachment are made and undertaken for and are binding on it, its successors in interest in perpetuity for the benefit of the Town, its successors in interest and assigns. The rights of Spirit

created hereby shall apply to and inure to the benefit of Spirit and its successors in interest. The obligations, duties and rights applicable to the Town shall apply to and inure to the benefit of the Town and the Town's assigns and successors. Spirit is and shall be jointly and severally liable for the performance of all duties, obligations and financial commitments imposed by or arising under this Encroachment Agreement.

13. Spirit, during the life of this Agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers authorized under the laws of the State of North Carolina, insurance in the minimum amounts of \$1,000,000 covering full liability for any and all personal injury, property damage or wrongful death caused by the construction, maintenance, location, repair or visual obstruction of said Encroachment. Spirit shall furnish the Town upon the execution of this Agreement and at the request of the Town thereafter, a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect. Both Spirit and the Town shall be named as insured parties by endorsement of the policy. In the event of any change in the insurance policy, Spirit shall make a commercial effort to give the Town thirty (30) days' notice of such change. Should Spirit fail to pay premiums upon said insurance or to perform any of the agreement, terms or conditions herein contained, the Town, at its option, by written notice may declare this Agreement canceled and terminated and all rights acquired hereunder by Grantee shall thereupon terminate.

14. Any notice to Spirit may be given to them at the following address:
1500 Hampton Street, Columbia, SC 29201
Attention: Michael D. Baldwin – VP Business & Legal Affairs
With a copy to: Senior Contract Specialist.

Such notice is deemed received by them four days after the Town's mailing with the US Postal Service or sending by a recognized overnight delivery service. The Town may use this same address for Spirit and all successors in title unless they shall provide the Town with an amended notice address in writing.

Any notice to Town may be given to them at the following address:

Town Manager, Town of Wadesboro
PO Box 697, Wadesboro, NC 28170

Such notice shall be given by mailing with the US Postal Service or sending by a recognized overnight delivery service and is effective upon receipt by the Town. The Town may update this address by written notice to Spirit.

15. This agreement contains and constitutes the entire agreement of the parties and shall be construed and enforced in accordance with the laws of North Carolina.

16. Spirit and/or Spirit's chosen contractor will supervise and direct the design, construction, and ongoing maintenance of the Encroachment, and will be solely responsible for the means, methods, techniques, sequences and procedures of design, construction, and ongoing maintenance. Spirit and/or Spirit's chosen contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all persons at the Encroachment jobsite and related activities. Spirit and/or Spirit's chosen contractor is responsible for complying with all applicable best-practices related to safety, as well as all applicable laws, ordinances, rules, and regulations.

[SIGNATURES APPEAR ON THE NEXT TWO PAGES]

In testimony whereof, said South Carolina Telecommunications Group Holdings LLC DBA Spirit Communications and the Town have caused this instrument to be signed in its corporate name by their duly authorized officers and their seals to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

South Carolina Telecommunications Group Holdings, LLC d/b/a Spirit Communications

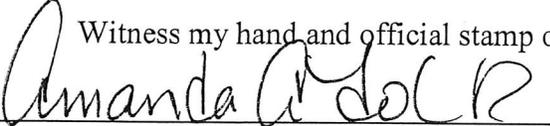
Sign: 

Print name: Michael D. Baldwin
VP – Business & Legal Affairs
Authorized Representative

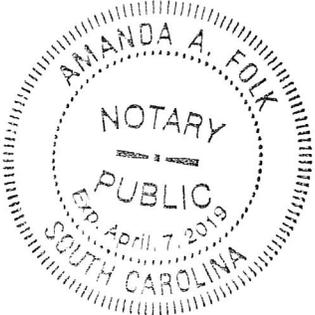
SOUTH CAROLINA
COUNTY OF RICHLAND

I, a Notary Public of the County and State aforesaid, certify that Michael D. Baldwin personally came before me this day and acknowledged that he a representative of South Carolina Telecommunications Group Holdings, LLC that he as Vice-President of the company, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official stamp or seal, this 30th day of November, 2017.

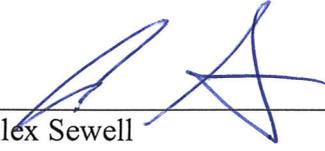

[Signature of Notary Public]

My Commission Expires: 04/07/2019



TOWN OF WADESBORO

(Corporate Seal)



Alex Sewell
Town Manager

ATTEST:



Cindi Pope
Town Clerk



NORTH CAROLINA
COUNTY OF ANSON

I, a Notary Public of the County and State aforesaid, certify that Alex Sewell, personally came before me this day and acknowledged that he/she is Town Manager of the Town of Wadesboro, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Town Manager, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and official stamp or seal, this 5th day December, 20 17.



[Signature of Notary Public]

My Commission Expires: Expiration March 30, 2019

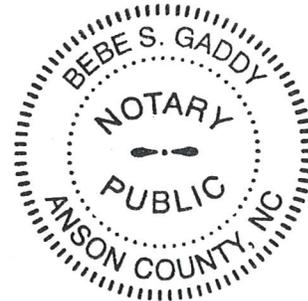


Exhibit A