

**ADMINISTRATIVE APPROVAL AND AGREEMENT
FOR CONSTRUCTION IN TOWN RIGHTS-OF-WAY**

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF BUNCOMBE

THIS AGREEMENT is entered into this the ____ day of _____, year_____, by and between TOWN OF MONTREAT, a North Carolina municipal corporation (hereinafter referred to as the “Town”), and _____, residents of _____ County, North Carolina (hereinafter referred to as the “Property Owners”).

WITNESSETH:

WHEREAS, the Property Owners own a ____ acre tract of real property located on *[Street Name]* _____ in Montreat, North Carolina, shown as Lot ____ on the Plat of the Mountain Retreat Association recorded in Plat Book _____ at Page _____, and described in the deed recorded in Book _____ at Page _____ in the Office of the Register of Deeds for Buncombe County, North Carolina (hereinafter referred to as the “Lot”);

WHEREAS, the Property Owners have requested permission from the Town to install and maintain *[Improvement Description]* _____

in the street right-of-way for *[Street Name]* _____
as shown on the attached survey and the plat recorded in Plat Book _____ at Page _____ ;

WHEREAS, Section 616 of the Montreat Zoning Ordinance (Approval for Construction in Rights-of-Way) allows private construction projects in public right-of-way if they “produce a public benefit”;

WHEREAS, Section 616 further provides that “[n]o private improvements on public rights-of-way shall be allowed which will interfere with existing or future public benefits of public rights-of-way;”

WHEREAS, the Town desires to grant and the Property Owners desire to accept permission to install the *[Improvement Description]* _____

upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, parties agree as follows:

1. The Town hereby grants to the Property Owners permission to install and maintain **[Improvement Description]** _____

in the street right-of-way for **[Street Name]** _____
in the location shown on the drawing labeled Exhibit A, attached hereto and incorporated herein by reference (hereinafter referred to as the "**[Improvement]**" _____), subject to the terms and conditions set forth in this Agreement. The **[Improvement]** _____ shall be designed by a Mechanical Contractor licensed in the State of North Carolina, installed by a _____ contractor certified in the State of North Carolina and maintained in accordance with the manufacturer's suggested standards and guidelines for this specific type of _____ system.

2. This permissive use shall be contingent upon the Property Owners meeting the following terms and conditions:

a. The Property Owners shall retain a Mechanical Contractor licensed in the State of North Carolina and _____ Contractor certified in the State of North Carolina to prepare the _____ plans which shall show the location of the **[Improvement]** _____

_____ and shall include stabilization of any cut and fill banks, adequate drainage measures, and other matters deemed necessary by the Town. The Property Owners shall not begin construction until such plans have been (i) reviewed for compliance with this Agreement, Town ordinances, and applicable governmental regulations, and (ii) approved by the Town Administrator and Zoning Official.

b. The Property Owners shall remove only the trees and shrubs approved by the Town. The Property Owners shall restore the topography of the right-of-way after installation of the **[Improvement]** _____ to approximately the same condition as existed before said installation or as may be approved by the Town.

c. The Town shall have no obligation to maintain the **[Improvement]** _____ and the Property Owners shall have sole responsibility for the maintenance of the **[Improvement]** _____.

d. The Property Owners shall repair any damage to existing improvements located in the right-of-way and any damage to the adjoining property caused by the construction or maintenance of the **[Improvement]** _____.

e. The Property Owners agree and acknowledge that the Town shall have the authority to allow other property owners to use the public right-of-way and agree that they shall not take any measures that would prevent or discourage public use of the street right-of-way.

3. If the Town elects to widen the public road in the right-of-way or use the road right-of-way for another public purpose or if the Town determines that the **[Improvement]** _____ do not produce a public benefit as required by Section 616, the Property Owners shall, upon request by the Town, at their sole cost and expense remove the **[Improvement]** _____ and any other improvements located in the right-of-way. The Property Owners agree that the Town shall bear no cost for the removal of any improvements installed by the Property Owners in connection with the installation, construction, or maintenance of the **[Improvement]** _____.

4. The Property Owners shall indemnify and hold the Town harmless from and against all liabilities, claims, and demands for personal injury, property damage, or any other liabilities or claims arising out of or caused by the design, installation, construction, or maintenance of the **[Improvement]** _____.

5. The Town shall at all times have the right to use the street right-of-way in any manner it deems appropriate. The Town retains the right to grant easements and allow the installation, maintenance and repair of utility lines, including but not limited to, electric, gas, telephone, cable, sewer, or water lines.

6. The Town shall have the right to pass over and upon the street right-of-way with appropriate roadways for use by the public. As to paved roads, the Property Owners, in future repairs or maintenance of the **[Improvement]** _____

_____, shall be responsible for regravelling, tamping and patching the portion of said paved roads disturbed by such work. As to non-paved roads, the Property Owners shall be responsible for regravelling and tamping in connection with any repairs or maintenance.

7. If the Property Owners fail to meet to terms and conditions set out in this Agreement, the permission granted in this Agreement shall terminate without further action by the Town.

8. Upon termination of this Agreement, the Property Owners shall promptly remove the *[Improvement]* _____ and shall repair any damage and restore the street right-of-way to its condition at the time of the construction or installation of the *[Improvement]* _____.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

[The remainder of this page is left blank intentionally. Signatures follow on attached pages.]

**Signature Page for Agreement
Between the Town of Montreat and**

_____(Seal)

_____(Seal)

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

I, _____ a Notary Public of _____ County, North Carolina, certify that _____ and _____, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument.

Witness my hand and official stamp or seal, this ____ day of _____, year_____.

[Notarial Seal]

Notary Public

Notary's Printed or Typed Name

My commission expires:_____

**Signature Page for Agreement
Between the Town of Montreat and**

TOWN OF MONTREAT

By: _____
Timothy R. Helms, Mayor

Attest:

Angela Murphy, Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of Buncombe County, North Carolina, do hereby certify that Angela Murphy personally appeared before me this day and acknowledged that she is the Town Clerk of Montreat, a 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 Mayor sealed with its corporate seal and attested by herself as its Town Clerk.

Witness my hand and official stamp or seal, this ____ day of _____,
year_____.

[Notarial Seal]

Notary Public

Notary's Printed or Typed Name

My commission expires:_____