

## ENCROACHMENT AGREEMENT AND RELEASE OF LIABILITY

This Encroachment Agreement and Release of Liability for an encroachment on a Public Easement/Right-of-Way is entered into by and between the City of Broken Arrow, an Oklahoma municipality (City), and Alfa Laval Inc. (Owner).

The City owns public easements and/or rights-of-way across and upon Owners' property. Said property is more particularly described as:

A tract of land in the South Half (S/2) of the Northwest Quarter (NW/4) of Section Thirteen (13), Township Eighteen (18) North, Range Fourteen (14) East, City of Broken Arrow, Tulsa County, State of Oklahoma (see attached recorded plat), also known as 1201 S 9<sup>th</sup> Street and 1020-30 E Nashville Street, Broken Arrow, OK

Owner has requested the permission of the City to construct a direction sign, as described in the Plans attached hereto as Exhibit A, to allow traffic to be guided to the various locations on the property, which if allowed would encroach upon the City's right-of-way which is depicted on Plat #3502 attached hereto as Exhibit B.

The City has agreed to allow the Owner to erect and maintain the described signage upon a portion of said right-of-way located near the intersection of Lynn Lane and East Nashville Street, as depicted on Drawing for Sign 5 Placement attached hereto as Exhibit C, subject to the terms and conditions set forth in this Agreement.

The Owner shall not construct or permit additional encroachments upon the right-of-way and shall not alter, improve, replace or add to the encroachment permitted herein without the express written permission of the City, which may be withheld in its sole discretion.

The City reserves the right to require Owner to remove all encroachments from the applicable public right-of-way at any time in the event that the encroached upon right-of-way is required, in the sole judgment of the City, to be used for public purposes.

In consideration of the City's agreement to allow Owner to place the directional signage on the public right-of-way, Owner agrees, on behalf of itself, and its agents, devisees, successors, grantees, and assigns (collectively referred to as "Owner") to **waive any and all claims, causes of action, for damages of any kind or nature, including but not limited to any foreseen or unforeseen personal injury (including death), property damages (including loss of use), or other losses or damages arising from the construction, repair, or**

**maintenance of streets or utilities within the easements and right of ways,** against the City of Broken Arrow, Oklahoma, its employees, officers, agents or assigns, which may arise out of or in connection with any aspect of the encroachment upon the above described right-of-way.

In consideration of the City's agreement to allow Owner to place the directional signage on the right-of-way, Owner also agrees to **indemnify, defend (at the City's option), and hold harmless** the City, its employees, officials, agents, representatives and volunteers **from and against any and all causes of action (whether groundless or not), losses, liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suits, actions, or proceedings and reasonable attorney's fees, and actual damages of any kind or nature** directly or indirectly arising out of or in connection with the encroachment upon the above described right-of-way.

In consideration of the City's agreement to allow Owner to place the directional signage on the right-of-way, Owner also agrees to **reimburse City for any direct or indirect costs or expenses** that the City may incur as a direct or indirect result of any encroachment upon the above-described property. The presence or absence of any insurance shall not be construed as a limitation on the duties or obligations of Owner under this Agreement.

Owner shall obtain all required release agreements from applicable utility companies and shall comply with all local, state, and federal regulations and laws which may be applicable to Owner's encroachment upon the above easement/right-of-way.

**OWNER UNDERSTANDS IT MAY INCUR PERSONAL, PROPERTY, AND/OR FINANCIAL RISKS AND LIABILITIES AS A RESULT OF THIS AGREEMENT, AND OWNERS AGREE TO ACCEPT THESE RISKS AND LIABILITIES KNOWINGLY AND VOLUNTARILY.**

Owner seeks this agreement with the City voluntarily, and acknowledges that no promises, agreements or other inducements have been made to Owner. Owner understands that the City of Broken Arrow, Oklahoma will rely on this statement, that the terms of this Agreement are contractual in nature, and this Agreement is specifically designed to protect the City of Broken Arrow, Oklahoma, its citizens, employees, officers, agents, and assigns.

This Agreement may be recorded and is perpetual and runs with the land forever.

**I HAVE READ THE ABOVE STATEMENT AND I UNDERSTAND IT. I HAVE SOUGHT AND OBTAINED ANY AND ALL LEGAL ADVICE I NEEDED OR MAY**

HAVE NEEDED PRIOR TO SIGNING THIS DOCUMENT, AND I SIGN THIS DOCUMENT FREELY AND VOLUNTARILY.

Alfa Laval Inc.

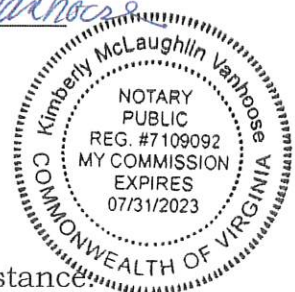
By: RT Madison  
Name: Robert Madison  
Title: Assistant Treasurer

\_\_\_\_\_  
Commonwealth of Virginia )  
County of Henrico ) ss.

On this 6<sup>TH</sup> day of SEPTEMBER, 2019 before me personally appeared \_\_\_\_\_, known to me to be the person(s) named herein and who executed the foregoing **ENCROACHMENT AGREEMENT AND RELEASE OF LIABILITY**, and who acknowledged to me that he/she/they knowingly and voluntarily executed the same.

7/31/2023  
My Commission Expires

Kimberly McLaughlin Vanhose  
Notary Public



Approved as to Form:  
[Signature]  
Assistant City Attorney

Approved as to Substance:  
\_\_\_\_\_  
City Manager

Dated: \_\_\_\_\_

Attested by:

\_\_\_\_\_  
City Clerk