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DEVELOPMENT AGREEMENT FOR THE FENTON MIXED-USE DEVELOPMENT

BY AND BETWEEN

CDG Fenton, LLC

AND

THE TOWN OF CARY, NORTH CAROLINA

Table of Contents

STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF WAKE

This Development Agreement (hereinafter the "Agreement") is made and entered into as of the 8th day of November 2018, by and between CDG Fenton, LLC, a North Carolina limited liability company ("CDG Fenton"), and the TOWN OF CARY, North Carolina, a municipal corporation of the State of North Carolina (the "Town"). CDG Fenton and the Town may sometimes be referred to individually as a "Principal Party" and collectively as the "Principal Parties."

WITNESSETH

State Legislative Findings

WHEREAS, by Article 19, Part 3D "Development Agreements" of Chapter 160A, North Carolina General Statutes, the General Assembly authorized the Town to form development agreements in particular instances and set forth specific legislative findings:

(1) *Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.*
(2) *Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.*
(3) *Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.*
(4) *Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.*
(5) *Because of their size and duration, such large scale projects often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.*
(6) *To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments;* and,

The Town's CCP and ECG

WHEREAS, the Town, after years of work, unprecedented community input, and dozens of meetings and workshops, adopted on January 24, 2017 the Imagine Cary Community Plan (the "CCP"), the Town's comprehensive plan that sets out a long-term vision, policies, and strategic actions; and

WHEREAS, the CCP identifies four (4) special planning areas where, due to special characteristics or circumstances of each area, more detailed recommendations and guidance is set forth in the CCP; and

WHEREAS, the CCP identifies five (5) destination centers which are to be high density mixed use regional destination locations that may include special uses, such as prominent and unique entertainment venues; and

WHEREAS, the CCP established the Eastern Cary Gateway (the "ECG") as a special planning area and destination center; and

WHEREAS, the CCP recognizes that existing development in the ECG is generally fragmented and disconnected; and

WHEREAS, being a primary entrance into Town from Raleigh and the east with nearly 50% of the commuters entering and leaving Town each day for work travel, is a special characteristic of the ECG and this destination center; and

WHEREAS, being the location of the WakeMed Soccer Park (the "Soccer Park"), one of the most visited destinations in the Town, is another special characteristic of the ECG and this destination center; and

WHEREAS, the Town is responsible for operating and maintaining the Soccer Park, has expanded the seating capacity of the Soccer Park in 2011, and the Soccer Park has a positive economic impact on the Town and its citizens, such as generating an estimated additional spending in the Town of 2.1 million dollars in 2011, and the ECG recognizes the prominence of the Soccer Park and importance of growing it; and

WHEREAS, the ECG identifies approximately 92 acres of land adjacent to the Soccer Park north of Cary Towne Boulevard near the interchange of Cary Towne Boulevard and Interstate 40 (the "Property") as one of the last remaining large undeveloped parcels of land in the ECG and this destination center; and

WHEREAS, the ECG designates the Property as Mixed Use Center-Employment Based and the Property is the first area of focus in the ECG's Future Growth Framework; and

WHEREAS, establishing a new Mixed Use Center-Employment Based community on the Property creates a new economic center for the Town and the region providing employment, shopping, dining, recreation, and living choices in a high density urban environment with pedestrian and multi-modal interconnectivity; and

WHEREAS, the Property is a portion of a large block of land of approximately 273 acres currently owned by the State of North Carolina, which also contains the Soccer Park; and

WHEREAS, the block of land shared by the Soccer Park and the Property is framed by Cary Towne Boulevard, Interstate 40, and East Chatham Street on the south, east, and north, and these three roads provide regional connectivity, serving the Town and areas well beyond the Town; and

WHEREAS, East Chatham Street and Cary Towne Boulevard are two of the three main east-west corridors in the ECG that bring travelers into and out of Cary and there is no interconnectivity between East Chatham Street and Cary Towne Boulevard in this block of land or in the vicinity of this block of land; and

WHEREAS, the ECG identifies the need for specific new, major, publicly available transportation facilities to be located on this Property, noting that "planning for the extension of streets within Eastern Cary Gateway is critical to unlocking the area's potential;" and

WHEREAS, the Future Growth Framework for the ECG identifies the Property as part of an area in which the following are recommended:

- Additional road connectivity to the north and west and connectivity to adjacent neighborhoods and surrounding uses;
- Multiple connections to other parts of the Eastern Cary Gateway, especially to the Soccer Campus and future additional sports-oriented uses to the north;
- Parking facilities easily accessible between the Property and the Soccer Campus, including potential partnerships for providing parking; and

WHEREAS, Policy 3 of the ECG states: "The transportation network in this area should maximize connectivity within and between developments, with emphasis on walkable circulation patterns;" and

WHEREAS, every major new public transportation facility identified specifically in the ECG Future Growth Framework will be located in this block of land and at least partially located on the Property –including Quinard Drive, a new collector avenue; and the completion of Trinity Road to connect with East Chatham Street; and

CDG Fenton's Proposed Development

WHEREAS, CDG Fenton desires to develop the Property and the Property is described on **Exhibit A** of this Agreement; and

WHEREAS, Columbia Development Group, LLC, a South Carolina limited liability company ("Columbia"), has the right to purchase the Property under a purchase agreement with the State of North Carolina; and

WHEREAS, CDG Fenton has been created and is owned by Columbia, its owners, managers, or principals (collectively, "Columbia & Principals"), and Columbia & Principals are participating in and will continue to participate in CDG Fenton operations and exercise significant involvement, responsibility, and supervisory authority in the development of the Property; and

WHEREAS, CDG Fenton has demonstrated that is possesses one or more legal or equitable interests in the Property by way of Columbia's assignment of its purchase agreement

with the State of North Carolina entitling CDG Fenton to purchase the Property in its name from the State of North Carolina, such that it satisfies the statutory requirements of Part 3D, Article 19, Chapter 160A of the North Carolina General Statutes; and

WHEREAS, CDG Fenton accepts, endorses, and ratifies all of Columbia's actions involving the Property or the Town as of the Effective Date of this Agreement; and

WHEREAS, in 2016, Columbia's initial proposed plan for development of Property was a suburban-type retail use with surface parking, but Columbia revised its development plan for the Property to conform to the ECG and its development plan includes a preliminary development plan ("PDP") showing appropriate density and mix of uses, vertical mix of uses, parking decks, and an emphasis on office use; and

WHEREAS, to illustrate its development plan for the Property, Columbia identified the development in Alpharetta, Georgia known as Avalon, as one of a number of high density mixed-use developments that would be a model for developing the Property, and Town Council and Town staff, at Town expense, visited, reviewed, and studied "Avalon" and other high density urban developments, finding that Avalon is the type of development envisioned by the CCP and the ECG, and this type and quality of development is unlike any other development in the Town or the region; and

WHEREAS, based upon the Town's investigation of Avalon and other high density urban developments in Georgia, the Town formed a better and more complete understanding of Columbia's proposed plan for development of the Property and its impact upon the other portions of the ECG, the Town, and its citizens; and

WHEREAS, on April 27, 2017, Columbia filed a rezoning application proposing to rezone the Property to a Mixed Use Overlay District and Mixed Use District, now named The Fenton District; and

WHEREAS, between April 27, 2017 and January 25, 2018, Columbia supplemented its rezoning application by submitting a Community Design Guidebook (the "Design Guidebook"), and amending its PDP and Design Guidebook to more closely align its plan for development of the Property to the CCP and ECG (collectively, the "Amended Rezoning Application"); and

WHEREAS, the Amended Rezoning Application sets forth many details and components of Columbia's proposed development of the Property such as **(1)** mixed-use development designed around an 'L-shaped' main street where residential and office uses are located on top of ground-floor retail uses, **(2)** a curvilinear grid pattern of streets with a variety of pedestrian corridors, **(3)** multiple parking decks, with buildings or other appropriate materials wrapping around and screening these decks, **(4)** several office buildings and one or more hotels, **(5)** street-level retail including restaurants, hotels, institutional, and multifamily residential units, and **(6)** retail designed to feature a mix of national, regional, and local retailers, including chef-driven restaurants and wellness offerings, together with supporting infrastructure similar to other high quality, high density urban mixed use developments such as the Avalon in Alpharetta, Georgia; Santana Row in San Jose, California; Kierland Commons in Scottsdale, Arizona; and Atlantic Station in Atlanta, Georgia; and

WHEREAS, the Design Guidebook sets forth special and context specific development standards relating to building architecture, site design, and signage, and requires that development of buildings, structures, hardscape, site furnishings, lighting, screening, landscaping, signage, and public art be in accord with the Design Guidebook, and some of the context specific features are:

- Architecture and landscaping exceeding the Town's current minimum standards, establishing a unique sense of quality and place;
- Flexibility for signage to add character and variety;
- Public art integrated throughout the PDP, ranging from a planned "Art Walk" along Trinity Road to individual exhibits scattered in various locations throughout the Property;
- Community gathering areas integrated into the PDP to provide both passive and active opportunities for residents and visitors; and
- The utilization of "Jewel Box" tenant spaces, incorporated along "Village Lane;" and

WHEREAS, based on the INPLAN economic impact study commissioned by Columbia, development and use of the Property as proposedin the Amendment Rezoning Application is expected to generate at least $795,000,000 in total investment in the Town and directly create 6,295 jobs, and development and use of the Property as proposed in the Amended Rezoning Application is expected to generate economic output in excess of $2,000,000,000; and

Town's Approval of 17-REZ-14 Fenton Mixed Use Development

WHEREAS, after careful review and consideration, the Town Council approved the Amended Rezoning Application on January 25, 2018 by adopting rezoning ordinance 17-REZ-14 Fenton Mixed Use Development (the "2017 Adoption Ordinance"); and

WHEREAS, the 2017 Adoption Ordinance as originally adopted becomes effective upon the sale and closing of the Property to Columbia as evidenced by a deed properly recorded in the Wake County Registry ("Closing Date"); however, if that sale and closing does not occur prior to June 30, 2019, then the zoning ordinance will be of no effect; and

WHEREAS, on August 8, 2018, Columbia requested an amendment to the 2017 Adoption Ordinance such that either Columbia, or a related entity in which Columbia, its owners, managers, or principals own a portion of the entity and participate in operations of the entity, including significant involvement, responsibility, and supervisory authority in the development of the Property as The Fenton District, could purchase the Property from the State of North Carolina and cause the Adoption Ordinance to become effective; and

WHEREAS, on September 27, 2018 the Town Council approved the amendment (17-REZ-14A) (the "Fenton Adoption Ordinance"); and

Town's Findings Concerning the Public Need for the Development Agreement

WHEREAS, recognizing that traditional zoning processes will not adequately address the potential impacts and opportunities arising from development of the Property as shown on the Amended Rezoning Application, Columbia proposed and the Town Council approved a zoning condition that no development plan may be submitted for the Property unless "**(1)** the development is subject to a development agreement, approved by ordinance as a legislative decision of the Town Council pursuant to G.S. § 160A-400.22; **(2)** developer is in compliance with that development agreement; and **(3)** the proposed development is in compliance with the development agreement;" and

WHEREAS, the details concerning the Property required by N.C.G.S. § 160A-400.25 are set forth in **Exhibit B** and made a part hereof by reference; and

WHEREAS, for purposes of this development agreement, the Master Developer proposes to phase development of the Property into phases 1-5 as shown on the Development Schedule, attached hereto as **Exhibit C** (the "Development Schedule") and made a part hereof by reference; and

WHEREAS, the Town finds that the Town, its citizens, and the general public will reap significant benefits as soon as the public transportation facilities identified in the ECG are built and available for public use; and

WHEREAS, the Principal Parties have set forth their plan in **Exhibit D** for careful integration between the public capital facilities planning, financing and construction schedules and the phasing of The Fenton District to ensure that the guaranteed Public Facilities described in **Exhibits D, D-1,** and **D-2** (collectively, "**GPF Exhibits**") attached hereto and made a part hereof by reference, are available and enjoyed by Town citizens early during development of The Fenton District and before The Fenton District generates substantial increased demand on existing Public Facilities; and

WHEREAS, establishing Quinard Drive as described in the **GPF Exhibits** will be valuable and important to Town citizens, because Quinard Drive is a collector avenue which provides increased access for citizens, businesses, and visitors by creating a critical mid-block link between E. Chatham Street and Cary Towne Boulevard, thereby providing an additional connection from SE Maynard Road to Trinity Road and increasing mobility in the heart of the ECG; and

WHEREAS, completing Trinity Road in coordination with completing The Fenton District as planned in the **GPF Exhibits** will be valuable and important to Town citizens, because Trinity Road is an important north/south thoroughfare that provides an additional connection between E. Chatham Street and Cary Towne Boulevard, thereby providing improved access to WakeMed Soccer Park, increasing mobility within the overall ECG, and creating greater regional access via more direct access to the Cary Towne Boulevard and Chapel Hill Road interchanges with Interstate 40 and points beyond; and

WHEREAS, establishing the improvements described in the **GPF Exhibits** as the Other Public Transportation Improvements will be valuable and important to Town citizens because the

Other Public Transportation Improvements improve functionality of this Town entranceway corridor, promote development/redevelopment of the overall ECG, bridge connectivity gaps, and significantly enhance the Town's public transportation system; and

WHEREAS, all of the transportation improvements described in the **GPF Exhibits** collectively improve access and circulation in the ECG and facilitate an efficient and functional transportation system that provides mobility choices and supports future Bus Rapid Transit (BRT) infrastructure improvements and investment consistent with the Wake Transit Plan; and

WHEREAS, establishing the waterline described in the **GPF Exhibits** will be valuable and important to Town citizens because it will provide important municipal infrastructure available for use and enjoyment of Town citizens and will further complete the network of transmission lines throughout the Town's water system, increasing water system resiliency for all Cary citizens; and

WHEREAS, establishing the Iron Gate Greenway described in the **GPF Exhibits** will be valuable and important to Town citizens because this greenway will serve vital environmental protection functions and provide increased recreational opportunities for Town citizens to destinations within the ECG, while also connecting west to downtown Cary and east to tie into the larger regional greenway network; and

WHEREAS, the General Assembly has authorized Town, in its discretion, to provide incentives to developers or builders of new development for the purpose of reducing the amount of energy consumption and the Town is committed to energy efficiency as a best practice; and

WHEREAS, CDG Fenton submitted to the Town a plan describing the reduction of the amount of energy consumption resulting from the new development and operation of The Fenton District attached hereto as **Exhibit F** (the "Energy Efficiency Plan") and made a part hereof by reference and CDG Fenton, all of its successors or assigns, agree to develop, build, and operate The Fenton District in strict compliance with the Energy Efficiency Plan; and

WHEREAS, the Energy Efficiency Plan implements and commits energy efficiency in the areas of building design, building construction, and material selection to significantly improve energy efficiency; and

WHEREAS, the Energy Efficiency Plan commits to enhanced integration of pedestrian travel systems and publicly available infrastructure that encourages use of energy efficient vehicles; and

WHEREAS, the Energy Efficiency Plan maximizes the energy efficiency of uses and the location of buildings to better achieve energy efficiency for each building that is part of the Fenton District; and

WHEREAS, the Energy Efficiency Plan establishes specific goals with respect to the US Environmental Protection Agency's ENERGY STAR PROGRAM, and requires that all eligible office buildings meet the high standards of the federally recognized "Designed to Earn" Energy Star Program; and

WHEREAS, after review of the Energy Efficiency Plan, the Town Council determined, based on generally recognized standards established for such purposes as of the date of this Agreement, adoption and adherence with the Energy Efficiency Plan makes a significant contribution to the reduction of energy consumption and thereby promotes the public health, safety, and welfare, by establishing a reduction of energy consumption in excess of general Town regulations, including the LDO; and therefore, pursuant to N.C.G.S. § 160A-383.4, adjustments to otherwise applicable development regulations, and other incentives have been provided in this Agreement; and

WHEREAS, pursuant to Part 3D, Article 19, Chapter 160A, the integrated statutory plan established by the General Assembly authorizing development agreements, the Town possesses broad authority to form development agreements in instances when it determines that the location, nature, or size of a particular proposed development causes the necessity for the Town to formulate specific conditions, terms, restrictions or other requirements for the public health, safety, or welfare of its citizens; and

WHEREAS, when the Town has made a determination that a development agreement is necessary and appropriate, Part 3D, Article 19, Chapter 160A authorizes that a development agreement may cover any other matter not inconsistent with it; and

WHEREAS, in addition and supplemental to Part 3D, Article 19, Chapter 160A, the Town possesses general authority to form contracts with private parties in order to carry out any public purpose that the Town is authorized by law to engage in and possesses other and further additional statutory or charter authorizations to pay private parties after the private party has established Public Facilities when, because of location of the private party's property or the private party's plans for development, establishing of additional Public Facilities is in the interests of the public, and circumstances, such as better coordination of planning, design, and construction of Public Facilities or increased efficiencies, weigh in favor of the specially situated private party establishing these new specific Public Facilities; and

WHEREAS, Part 3D, Article 19, Chapter 160A is supplemental to the powers conferred upon the Town by other statutes and its Charter, none of the other and further authorities or powers granted or conferred on the Town are exclusive of any other authority or power granted or conferred on the Town, and the Town has taken all steps necessary to exercise these authorities and powers; and

WHEREAS, pursuant to N.C.G.S. § 160A-400.24, the Town Council conducted a public hearing on October 25, 2018 concerning forming this Agreement. The notice of public hearing specified, among other things, the location of the Property subject to this Agreement, the development uses proposed on the Property, and a place where a copy of the proposed Agreement could be obtained; and

WHEREAS, the Town finds that **(1)** development of the Property as approved by the Town Council is a large-scale development with multiple phases extending over a period of years requiring a long-term commitment of both public and private resources; **(2)** development of the Property will create potential community impacts and opportunities beyond the borders of the Property and a development agreement will minimize potential adverse impacts to the public and maximize positive opportunities for the Town and its citizens; **(3)** because of the scale,

duration, location and intensity of the development of the Property approved by Town Council, a development agreement is necessary to carefully integrate construction and availability of public transportation and other facilities for public use with the development of the Property as approved by the Town Council; **(4)** because of the size, duration and innovative character of the development of the Property approved by Town Council, the Master Developer is unwilling to risk private capital for the development of the Property without assurances that the development standards applicable to the Property will remain stable through the term of this development agreement; **(5)** because of the size, location, duration, and innovative character of the development of the Property approved by Town Council, it is necessary and appropriate to form a development agreement to, among other things, better manage impacts on surrounding areas; **(6)** forming a development agreement better structures and manages the development of the Property approved by the Town Council to ensure integration of the development into Town facility programs, including without limitation public transportation facilities and the Soccer Park; and **(7)** adoption and adherence with the Energy Efficiency Plan makes a significant contribution to the reduction of energy consumption, based on generally recognized standards established for such purposes as of the date of this Agreement, and thereby promotes the public health, safety, and welfare; and

WHEREAS, after careful review and deliberation, including without limitation the General Assembly's findings set out in N.C.G.S. § 160A-400.20, the Town Council finds forming a development agreement as permitted by Part 3D of Article 19 of Chapter 160A of the North Carolina General Statutes is appropriate and is in the best interests of the Town and its citizens.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the benefits that will accrue to the Principal Parties from development of The Fenton District, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Principal Parties agree as follows.

TERMS AND CONDITIONS OF THIS AGREEMENT

ARTICLE 1. RECITALS INCORPORATED; EXHIBITS

1.1 The Principal Parties agree the Recitals are true and correct and are incorporated as terms of this Agreement. All Exhibits referenced in this Agreement are hereby incorporated by reference and made a part hereof.

ARTICLE 2. DEFINITIONS

In the construction of this Agreement and its incorporated Exhibits, the following capitalized terms shall have the meanings set forth below wherever they appear in this Agreement. Except as otherwise provided in this Agreement, terms used in this Agreement and defined in the Town of Cary Land Development Ordinance shall have the meanings defined in the LDO, unless the context indicates otherwise.

Agreement means this Development Agreement.

Ancillary Developer means one or more Developers selected by the Master Developer who intend to undertake a portion of the Development of The Fenton District and who take a limited assignment of Master Developer rights with a corresponding assignment of Master Developer duties. Any Ancillary Developer shall coordinate its Development with the Master Developer. An Ancillary Developer must be approved by the Town in accordance with Section 8.13.

Comprehensive Plan means the CCP, ECG, and all other applicable transportation plans, capital improvement plans, official maps, and any other plans regarding land use and development that have been officially adopted by the Town Council.

Council or *Town Council* means the governing body of the Town.

Day or Days mean calendar day or days.

Developer means a Person who intends to undertake Development. Under this Agreement, there are three categories of Developers and these categories are Master Developer, Ancillary Developer, and Limited Developer. It is anticipated that there will be more than one Developer of The Fenton District.

Development means the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. "Development," as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "Development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not Development. Reference to particular operations is not intended to limit the generality of this item.

Development Permit or *Local Development Permit* means a building permit, zoning permit, subdivision or site plan approval, special or conditional use permit, variance, or any other official action of local government having the effect of permitting the Development of property.

Development Plan means a development plan (subdivision and/or site plan) as described in Section 3.9 of the LDO as of the date this Agreement becomes effective.

Effective Date means the date this Agreement is executed by the last of the Principal Parties.

Energy Efficiency Plan means the "The Fenton District Energy Efficiency Plan" attached hereto as **Exhibit F**, submitted by CDG Fenton to the Town, and describing the reduction of the amount of energy consumption resulting from the new development and operation of The Fenton District.

Fenton Adoption Ordinance means that ordinance adopted January 25, 2018 by the Cary Town Council and titled "17-REZ-14 Fenton Mixed Use Development," as amended September 27, 2018.

Financial Partner means a Person who supports the Master Developer by making a binding commitment to loan or invest no less than $10 Million Dollars ($10,000,000.00) for the limited purpose of causing Development of The Fenton District. There shall be no more than five (5) Financial Partners at any one time.

Hines means the privately owned global real estate investment, development, and management company, Hines (www.hines.com).

Land Development Ordinance or *LDO* means the Town's Land Development Ordinance.

Land Development Regulations means ordinances and regulations enacted by the Town for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

Laws means all ordinances, regulations, comprehensive plans, land development regulations, policies, and rules adopted by the Town affecting the Development of the Property, and includes laws governing permitted uses of the Property, density, design, and improvements.

Limited Developer one or more Developers selected by the Master Developer and who intend to undertake a portion of the Development of The Fenton District and who take a limited assignment of Master Developer rights without a corresponding assignment of Master Developer duties. Any Limited Developer shall coordinate its Development with the Master Developer and Master Developer shall remain directly responsible to the Town for performance of any duties under this Agreement in connection with, arising from, or related to Development undertaken by any Limited Developer.

Master Developer means CDG Fenton, an entity in which Columbia & Principals participate, will continue to participate, and will exercise significant involvement, responsibility and supervisory authority in the development of the Property, and successor Master Developers approved by the Town. The Master Developer is principally responsible for Development of The Fenton District. CDG Fenton as described above shall remain the Master Developer until a total assignment of the Master Developer's rights and duties has been approved by the Town pursuant to section 8.13.1(a) or (d) of this Agreement.

Party or *Parties* means the Principal Parties, the Master Developer, every Ancillary Developer, and every Financial Partner. No other Person shall be a Party.

Periodic Review means the process and procedures established by N.C.G.S. § 160A-400.27 and in Article 5 of this Agreement for all Developers to demonstrate good faith compliance with the terms of this Agreement.

Person means a natural person, a corporation, limited liability company, a partnership, joint venture, a trust, or any other legal entity.

Principal Party or Principal Parties means only CDG Fenton and the Town.

Property means that certain parcel of land, located on Cary Towne Boulevard between Adams Elementary School and I-40, and as described in **Exhibit A**, attached hereto and incorporated herein by reference.

Public Facilities means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and parks and recreational facilities.

Registry means the Wake County Register of Deeds.

State means the State of North Carolina.

The Fenton District means the mixed use community approved by the Fenton Adoption Ordinance.

The Fenton District Documents means the Amended Rezoning Application approved by the Town Council by adopting the Fenton Adoption Ordinance including, without limitation all components of the Amended Rezoning Application such as The Fenton District PDP and the Design Guidebook, as may be amended from time to time.

Town Manager means the Town Manager or any Deputy Town Manager or the Town Manager's designee.

ARTICLE 3. DEVELOPMENT OF THE FENTON DISTRICT

3.1 General. The Property shall be developed in compliance with this Agreement, with the Fenton Adoption Ordinance when it becomes effective, and with other applicable Laws existing on the Effective Date of this Agreement. No Development inconsistent with the Fenton Adoption Ordinance shall occur on the Property before the Fenton Adoption Ordinance becomes effective, and after the Fenton Adoption Ordinance becomes effective all Development shall be consistent with the Fenton Adoption Ordinance unless the Fenton Adoption Ordinance is amended by the Town. The Master Developer may proceed to develop the Property as The Fenton District by submitting a Development Plan for all or a portion of the Property in accordance with The Fenton District no later than December 31, 2019. The Master Developer shall exercise its best efforts to commence and complete the activities detailed in the Development Schedule in accordance with the dates set forth in the Development Schedule **Exhibit C**, attached hereto. The failure to meet a commencement or completion date set forth on **Exhibit C** shall not, in and of itself, constitute a material breach of this Agreement. In the event the Master Developer fails to (i) use commercially reasonable efforts to prepare, submit, and pursue approval of a Development Plan to develop all or a portion of the Property or (ii) fails to prepare and submit a Development Plan to the Town to develop all or a portion of the Property by December 31, 2019 then, unless otherwise agreed to by the Principal Parties in writing, this Agreement shall terminate thirty (30) days after written notice to the Master Developer by Town. For purposes of this Section 3.1, "commercially reasonable efforts" shall mean affirmative, active, diligent, and good faith efforts using business relationships, expertise, and resources normally used by developers dedicated to consummating mixed-use developments.

In addition to the provisions, conditions, and requirements of the Fenton Adoption Ordinance and The Fenton District Documents, development of The Fenton District shall

be based on sound engineering practices to ensure functional and safe street circulation and utility and stormwater systems at all times. Phasing shall be based in such a way that all public and privately owned infrastructure improvements, including Public Facilities, constructed within the Property or offsite of the Property will be provided when or before they are necessary for that phase of The Fenton District or as otherwise agreed by the Town and the Master Developer. No grading of the Property shall occur (1) except at the direction of the Master Developer after the Master Developer has become the record fee simple owner of the Property; and (2) after Master Developer has secured Financial Partners approved by the Town as described in Section 8.13.2 with an irrevocable and unconditional commitment to lend or invest at least $30 million for Development of The Fenton District.

3.2 Vesting of the Right to Develop the Property as The Fenton District. Except as provided in N.C.G.S. § 160A-400.26 and N.C.G.S. § 160A-400.29(b) and the Fenton Adoption Ordinance, the Town may not apply subsequently adopted Laws to The Fenton District during the Term of this Agreement without the written consent of the Developer(s) affected by such Laws and then only to the Property controlled by the consenting Developer(s). Accordingly, during the Term of this Agreement, every Developer shall have a vested right to develop The Fenton District in accordance with the terms, conditions, limitations, or restrictions of the Fenton Adoption Ordinance, The Fenton District Documents, other Laws applicable to the Property, and this Agreement, as they exist as of Effective Date of this Agreement ("Vested Right"), except as provided herein:

3.2.1 All Development shall comply with the Fenton Adoption Ordinance regardless of the effective date of such Ordinance.

3.2.2 Food Trucks are permitted as an accessory use only in accordance with the version of the LDO existing at the time the Developer seeks approval of Food Trucks, except that no accessory use permit shall be required.

This Agreement does not abrogate any rights that may vest pursuant to statutory or common law or otherwise in the absence of this Agreement. Notwithstanding the incentive for adoption and adherence to the Energy Efficiency Plan attached as **Exhibit F** provided by the Town through Town's payment of Town fees identified in **Exhibit G** when they become due, nothing in this Agreement limits or modifies the Town's authority to adopt and enforce the Town's schedule for fees as adopted by the Town Council from time to time.

Upon the Master Developer's request, the Town will provide a certified copy of the LDO in effect as of the Effective Date of this Agreement.

3.3 Special Provision Governing Potential Future Changes in State or Federal Law. The Principal Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In accordance with N.C.G.S. § 160A-400.26(c), in the event State or federal law is changed after the Effective Date and the change prevents or precludes compliance with one or more provisions of this Agreement, the Town may modify the affected provisions of this Agreement, with the consent of the Master Developer, upon a finding that the change in State or federal law has a fundamental effect on the Agreement, by ordinance after notice and a public hearing; and

upon such modification the Town shall record the modification in the Registry. If such change materially affects the Master Developer's rights or obligations under the Agreement, and the Master Developer does not consent to such change, the Master Developer may terminate the Agreement.

3.4 Development Moratoria. Absent an imminent threat to public health or safety, no development moratorium shall apply to the Property so long as this Agreement exists; the Town recognizes that all rights established by this Agreement have vested.

3.5 Future Development Permits and Approvals for The Fenton District. As required by N.C.G.S. § 160A-400.25(a)(6), the Principal Parties have set forth a description of all Local Development Permits approved or needed to be approved for Development of The Fenton District:

3.5.1 As of the Effective Date of this Agreement, no Local Development Permits have been approved for The Fenton District except the Fenton Adoption Ordinance.

3.5.2 Local Development Permits which may be needed to develop The Fenton District include:

a) Development Plans;
b) Grading permits;
c) Stormwater control structure and access easement and agreement;
d) Building permits;
e) Certificates of Occupancy;
f) Minor modification approvals;
g) Sign permits;
h) Temporary and accessory use permits;
i) Utilities – connection permits, etc.

This list is merely illustrative of the types of Local Development Permits that may be required; the failure of this Agreement to identify or address a particular permit, condition, term, or restriction does not relieve the Parties and owners of the Property of the necessity of complying with the Laws governing permitting requirements, conditions, terms, or restrictions. Further, if the provisions of The Fenton District Documents specifically waive the requirement for a permit on this list, The Fenton District Documents control.

Application may be made for more than one type of Local Development Permit at a time, and such permit applications shall be reviewed concurrently by the Town to the extent possible. Additionally, the Town shall, to the extent practicable, expedite the processing of the required permit and approval applications for the Development of The Fenton District. All Developers and owners of the Property, and their representatives, shall in a timely manner provide the Town with all documents, applications, plans, and other information necessary for the Town to process applications for Local Development Permits and all applicants shall exercise best efforts to ensure applications are accurate and complete.

3.6 Good Faith. The Principal Parties acknowledge and understand that Sections 3.1 through 3.5 impose a duty of good faith performance and fair dealing on all Parties and that neither Principal Party knows as of the Effective Date any reason it or any other Party cannot perform or abide by these sections so as to confer on each Party the full benefits of this Agreement.

ARTICLE 4. PROVISION OF PUBLIC FACILITIES AND INTEGRATION WITH THE FENTON DISTRICT'S DEVELOPMENT SCHEDULE

4.1 Guaranteed Public Facilities for the benefit of Town Citizens.

4.1.1 *Planning, Design, Construction, and Delivery of Guaranteed Public Facilities to the Town.* The Guaranteed Public Facilities set forth on **Exhibit D** to be delivered by Master Developer to the Town for the benefit of Town citizens are:

- Establishment of Quinard Drive from Trinity Road to SE Maynard Road
- Establishment of Trinity Road from Cary Towne Boulevard to Quinard Drive (Trinity Road South)
- Establishment of Trinity Road from Quinard Drive to East Chatham Street (Trinity Road Extension)
- Establishment of multiple off-the-Property Other Public Transportation Infrastructure Improvements
- Establishment of a waterline in Cary Towne Boulevard
- Establishment of the Iron Gate Greenway along Walnut Creek

(collectively, the "Guaranteed Public Facilities")

Master Developer's obligations to deliver the Guaranteed Public Facilities to the Town are set forth on **Exhibits D, D-1,** and **D-2** of this Agreement (collectively, "**GPF Exhibits**") along with the general sequencing of planning and design steps that are to be taken by the Principal Parties which are necessary to establish the Guaranteed Public Facilities. The Principal Parties agree to cooperate, timely communicate, and otherwise work together for the purpose of delivering the Guaranteed Public Facilities to the Town for the benefit of the Town citizens in accordance with the **GPF Exhibits**. The descriptions of Sequencing/Schedule of Events in **GPF Exhibits** associated with individual public facilities are not intended to provide the details of a robust construction schedule or the details of all Town-required regulatory processes for approval of infrastructure which Master Developer must adhere to. Instead, these descriptions are guidelines as to the principal points in the planning and design process for each Public Facility where one Party needs to provide information or data to the other Party in order for the Public Facility project to continue to move toward completion.

4.1.2 *Integration of Guaranteed Public Facilities into the Town's Capital Facilities Program and Schedule for Availability of Guaranteed Public Facilities.* The Principal Parties recognize and agree there must be careful integration of

Guaranteed Public Facilities into the Town's capital facilities program and the schedule for delivery of the Guaranteed Public Facilities to the Town must assure that the Guaranteed Public Facilities are available for Town citizens' use and enjoyment no later than concurrent with the opening of various portions of The Fenton District. The Principal Parties have set forth in the **GPF Exhibits** the terms, conditions, restrictions, and requirements necessary for careful integration of the Guaranteed Public Facilities into Town's capital facilities program and the schedule for delivery of the Guaranteed Public Facilities to the Town concurrent with the opening of various portions of The Fenton District.

4.1.3 *Payments/Reimbursements After Delivery of Guaranteed Public Facilities.* The Principal Parties agree, regardless of Development of The Fenton District, the Guaranteed Public Facilities are major capital improvements that provide substantial and significant benefits to the Town and its citizens. Pursuant to this Agreement, Master Developer agrees to manage, coordinate, and otherwise have responsibility for delivering the Guaranteed Public Facilities to the Town for use and benefit by Town citizens no later than as described in the **GPF Exhibits**. The Town requested Master Developer to provide estimates of the costs of delivery of the Guaranteed Public Facilities, facility by facility, and the Town has reviewed these estimates and independently established its own estimates of the costs of delivery of the Guaranteed Public Facilities to the Town. Through a variety of terms, conditions, restrictions, and requirements, the Principal Parties have agreed to a plan for payments based upon the best information available to the Town as to actual out-of-pocket costs that would be incurred by the Town exclusive of the costs the Town would incur in bidding, coordinating, and managing delivery of the Guaranteed Public Facilities. Under the plan set forth in the **GPF Exhibits** no payment is made to the Master Developer, or to the Person designated in a writing signed by the Master Developer and delivered to the Town to be a recipient of one or more payments, until the Public Facilities have been delivered to the Town as specified in the **GPF Exhibits**.

Exercising its authorities and powers under Part 3D of Article 19 of Chapter 160A, its general powers to contract with private parties to accomplish public purposes for which the Town is authorized to engage in, and multiple authorities and powers granted and conferred on the Town, the Principal Parties have agreed to the terms, conditions, restrictions, and requirements set forth in the **GPF Exhibits** for the financing of the Guaranteed Public Facilities through a series of payments, none of which are due to be paid before the Public Facilities are delivered to the Town and available for Town citizens' use and enjoyment, as provided in the **GPF Exhibits**.

4.1.4 *Maintenance of Stormwater Control Structure serving Public Facilities.* As part of constructing Quinard Drive and Trinity Road South (as described in the **GPF Exhibits**), Master Developer shall build a stormwater control structure ("SCS") that shall manage and treat stormwater runoff from Quinard Drive, Trinity Road South, and a portion of the private development within The Fenton District. After construction of the SCS, Trinity Road South, and Quinard Drive are substantially complete as defined in **Exhibit D**, the current owner of the land on which the SCS is constructed shall sign and grant Town an easement in a form substantially like

that attached hereto as **Exhibit H**. Simultaneous with grant of the easement, Town shall pay to Master Developer or to its written designee, who must be the current owner of the land on which the SCS is constructed, the sum of **$223,300.00** (the "SCS Payment"). Upon the Town paying the SCS Payment, the Town shall have no obligations whatsoever for operation, replacement, repair, or maintenance of the SCS under this Agreement and all such obligations shall be solely the responsibility of the owner of the land on with the SCS is located and any other private Person responsible for operation, replacement, repair, or maintenance of the SCS.

4.2 Possible Additional Public Transportation Facilities.

4.2.1 *Possible Second TIA*. The existing traffic impact analysis dated August 3, 2017 (17-TAR-422 ("TAR")) does not contemplate the maximum intensity or density of Development possible. Upon application for any Development Plan which will cause The Fenton District to exceed 700,000 square feet of office use (but not to exceed 850,000 square feet of office use), the Town, through the Town Manager, shall determine whether a new traffic impact analysis should be prepared and communicate that decision in writing to Master Developer. If the Town determines a new traffic impact analysis ("Second TIA") is needed, the Parties agree that they shall jointly fund the Second TIA (50% Master Developer, 50% Town). The Town shall cause the Second TIA to be completed and shall invoice Master Developer within thirty (30) days of completion of the Second TIA, with payment due within thirty (30) days of the date of the invoice. The Second TIA shall model impacts from traffic associated with office use of 850,000 square feet, regardless of how much office use is proposed. If additional road improvements are constructed or roadways improved by the Town as a result of the Second TIA, Master Developer shall contribute towards acquisition, permitting, and construction of such additional improvements in an amount not to exceed two hundred fifty thousand dollars ($250,000.00).

4.2.2 *Possible Third TIA*. Upon application for any Development Plan which will cause The Fenton District to exceed 850,000 square feet of office use (but not to exceed 1,200,000 square feet of office use), the Town, through the Town Manager, shall determine whether a new TIA should be prepared and communicate that decision in writing to Master Developer. If the Town determines a new TIA is needed ("Third TIA"), the Parties agree that they shall jointly fund the Third TIA (50% Master Developer, 50% Town). The Town shall cause the Third TIA to be completed and shall invoice Master Developer within thirty (30) days of completion of the Third TIA, with payment due within thirty (30) days of the date of the invoice. The Third TIA shall model impacts from traffic associated with office use of 1,200,000 square feet, regardless of how much office use is proposed. If additional road improvements are constructed or roadways are improved by the Town as a result of the Third TIA, Master Developer shall contribute towards acquisition, permitting, and construction of such additional improvements, in a total amount not to exceed five hundred thousand dollars ($500,000.00) (including any amount contributed to construction of roadway infrastructure as a result of the Second TIA).

ARTICLE 5. STATUTORILY REQUIRED PERIODIC REVIEW PROCEDURE AND REMEDIES

This Article 5 applies only to the Periodic Review required by N.C.G.S. § 160A-400.27 and any material breach found and determined as a result of the Periodic Review.

5.1 Periodic Review. Pursuant to N.C.G.S. § 160A-400.27, the Town Manager shall conduct a periodic compliance review (the "Periodic Review") at least every twelve (12) months, at which time the Master Developer and each Ancillary Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. The Town Manager shall report the results of the Periodic Review to the Town Council, the Master Developer, all Financial Partners, and all Ancillary Developers for which the Town possesses addresses. For the purpose of this subsection, notice to the Master Developer shall be notice to all other Developers. Failure of the Town to conduct this Periodic Review or report the results shall not constitute a waiver by the Town of its rights under N.C.G.S. § 160A-400.27 or this Agreement, nor shall the Master Developer, any Financial Partner, any Ancillary Developer, any Limited Developer, or any other owner of the Property have or assert any defense by reason of any failure to conduct a Periodic Review or report the results thereof.

5.2 Material Breach. If, as a result of the Periodic Review, the Town Council finds and determines that a material breach of this Agreement has been committed, the Town Manager shall serve the Master Developer with written notice of the Town Council's finding and determination in accordance with Section 8.10 of this Agreement (the "Periodic Review Breach Notice") within thirty (30) days after the Town Council's finding and determination, setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination. If Master Developer so states in the Recorded Assignment (Section 8.13.4), the Periodic Review Breach Notice will also be sent to each Ancillary Developer or Financial Partner designated in a Recorded Assignment to receive notices under Article 5. No Ancillary Developer, Limited Developer, or a Financial Partner shall have any rights or obligations under this section and the Town's failure to send such Periodic Review Breach Notice shall not affect any of the Town's rights or remedies under this Agreement. Master Developer shall indemnify and hold harmless the Town, its officers and employees, from and against all claims, costs, civil penalties, fines, losses, and damages (including but not limited to professionals' fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of or resulting from Town's delivery of, or failure to deliver, the Periodic Review Breach Notice to any Ancillary Developer, Financial Partner, Limited Developer, or any other person. This indemnification shall survive the termination of Agreement.

5.3 Master Developer's Option to Cure. After any Periodic Review Breach Notice has been served in accordance with Section 8.10 of this Agreement, the Master Developer (but no Ancillary Developer, Limited Developer, Financial Partner or other owner of the Property) shall have the option to attempt to cure the material breach and may exercise its option to cure by giving notice of its election to exercise its option to cure in accordance with Section 8.10 of this Agreement within fifteen (15) days of service of the Periodic Review Breach Notice specified in Section 5.2 above.

In the event the Master Developer exercises its option to cure as provided above, the Master Developer will be afforded at least sixty (60) days ("Initial Cure Period") and up to a maximum of 180 days, in which to cure or cause the cure as specified below. If the Master Developer has substantially commenced actions to cure or cause the cure of the material breach within the Initial Cure Period but cannot cure the material breach within the Initial Cure Period, then so long as Master Developer has and continues best efforts to cure the material breach and has provided the Town a written schedule showing times and steps to be taken by Master Developer to cure or cause the cure of the material breach, then the Initial Cure Period shall be extended based upon the written schedule submitted to the Town ("Extended Cure Period"), but in no event shall the Extended Cure Period extend beyond 180 days after service of the applicable Periodic Review Breach Notice. In the event that Master Developer fails to cure the breach found and determined by the Town Council within the applicable cure period, then, in the Town's sole discretion, the Town may terminate or modify this Agreement as provided in Section 5.4 below.

Nothing herein shall prevent the Master Developer from requesting the Town Council to grant further extensions to cure any material breach beyond the Extended Cure Period, but the Town Council may grant or deny any such request in its sole discretion or impose such terms or conditions, in its sole discretion, that will, in the Town Council's opinion, effectuate the purpose of this Agreement.

5.4 Termination or Modification by the Town. If the Master Developer elects not to exercise its option to cure or fails to cure a material breach in strict accordance with Section 5.3 above, then the Town Council may elect to terminate the entire Agreement or modify the Agreement, including terminating portions of it, in its sole discretion.

Any notice of termination or modification pursuant to this section shall be served on the Master Developer and, if requested by Master Developer, all Ancillary Developers and all Financial Partners in accordance with Section 8.10 of this Agreement and may be appealed to the Town's Zoning Board of Adjustment in the manner provided by N.C.G.S. § 160A-388(b1) by the Master Developer only. In the event the Master Developer fails to timely appeal the Town Council's termination or modification of this Agreement under this section, the Town will file a notice of termination or modification of this Agreement in the Registry and the Parties shall reasonably cooperate with the Town's filing of such notice, including signing documents for recordation. In the event the Master Developer timely appeals the notice of termination or modification to the Town's Zoning Board of Adjustment, then the final, non-appealable decision of the highest court having jurisdiction resolving the Master Developer's appeal shall be recorded in the Registry and the Parties agree to cooperate to cause such recordation.

5.5 No Breach by Owners of the Property other than the Master Developer or Ancillary Developers. N.C.G.S. § 160A-400.27 and Article 5 of this Agreement applies only to material breach by the Master Developer or Ancillary Developers.

Under this Agreement, no Person who owns a portion of the Property shall be the Master Developer or an Ancillary Developer without the express written advance approval of the Town. Every Ancillary Developer under this Agreement shall maintain control of that portion of The Fenton District for which the Ancillary Developer is responsible for

Development and shall coordinate its Development with the Master Developer. The Master Developer shall be solely responsible, or when one or more Ancillary Developers are involved, jointly responsible for Development of all of The Fenton District's shared areas and facilities, including, without limitation, common areas, landscapes, walkways, and parking decks (collectively "Private Common Areas") and for the Public Facilities.

Upon the Town's approval of completion of Development of each Public Facility as described in **Exhibit D**, excluding the SCS which shall be privately operated and maintained, ownership and control of the Public Facility shall be transferred to the Town or its designee. Upon the Town's approval of completion of Development of each Private Common Area, the Master Developer or Ancillary Developer shall maintain direct control of such Private Common Area or indirect control by way of maintaining control of the property owners' association(s) through provisions in the property owner association documents or otherwise. As Development of each portion of The Fenton District is completed, the Master Developer may request the Town to approve transfer of direct and indirect control of completed Private Common Areas to a Person who is not the Master Developer or an Ancillary Developer. Upon such request and a finding by the Town Manager that approval of the transfer of control will not impede completion of Development of The Fenton District, the Town Manager will approve such transfer subject to such terms and conditions as may be necessary in the Town's opinion to ensure completion of Development of The Fenton District; however, in no event shall approval of such transfer provide the transferee any standing, benefits, or rights under this Agreement.

ARTICLE 6. GENERAL DEFAULT, BREACH, AND DECLARATORY AND EQUITABLE REMEDIES

6.1 Default and Breach by the Town or Master Developer. In addition to the required Periodic Review and remedies provided in Article 5 of this Agreement, in the event of a default in the performance of duties or obligations created by this Agreement by either the Town or the Master Developer ("Section 6.1 Party") (except in the case of the Master Developer assigning any of its duties under this Agreement without the Town's advance written approval), the non-defaulting Section 6.1 Party shall serve the defaulting Section 6.1 Party written notice of the default in accordance with Section 8.10 of this Agreement ("Notice of Section 6.1 Party Default") and shall specify a period of not less than sixty (60) days in which the defaulting Section 6.1 Party shall have a right to cure the default; provided, however, such cure period may be extended by the non-defaulting Section 6.1 Party if all of the following occur: (a) a default cannot reasonably be cured within the cure period provided in the Notice of Section 6.1 Party Default, (b) the curing Section 6.1 Party notifies the non-defaulting Section 6.1 Party of such fact by written notice served in accordance with Section 8.10 of this Agreement no later than the end of the cure period stated in the Notice of Section 6.1 Party Default and provides a written schedule for curing the default within the notice and evidence that the defaulting Section 6.1 Party had already taken steps to cure the default, and (c) the curing Section 6.1 Party in such written extension notice covenants to (and thereafter actually does) diligently pursue the cure to completion. In no event shall the defaulting Section 6.1 Party have more than one hundred and twenty (120) days to cure the default after service of Notice of Section 6.1 Party Default.

In the event the Master Developer assigns any of its duties under this Agreement without the Town's advance written approval (if required by Section 8.13), the Town shall serve the Master Developer written notice of the default in accordance with Section 8.10 of this Agreement. Master Developer shall have fifteen (15) days to cure said default, by providing the Town a copy of an agreement signed by the assignee and the Master Developer revoking transfer of the Master Developer's duties and returning all duties to the Master Developer, or other instrument evidencing effective termination of the assignment of Master Developer duties, which cure period shall not be extended; and failure to cure results in the Town having the right to immediately terminate this Agreement in its sole discretion.

In the event the defaulting Section 6.1 Party fails to cure a default as provided herein, the non-defaulting Section 6.1 Party may declare breach of the Agreement and may either (i) terminate this entire Agreement or (ii) enforce this Agreement by the remedy of declaratory judgment and specific performance only.

In the event the defaulting Section 6.1 Party is the Master Developer, the Town will send courtesy copies of any Notice of Section 6.1 Party Default to each Ancillary Developer and Financial Partner for which the Master Developer requested that such notice be sent in the Recorded Assignment (Section 8.13.4) at the addresses provided to the Town in the Recorded Assignment. No Ancillary Developer, Limited Developer, or Financial Partner shall have any rights or obligations under this section and the Town's failure to send such courtesy copies shall not affect any of the Town's rights or remedies under this Agreement. Master Developer shall indemnify and hold harmless the Town, its officers and employees, from and against all claims, costs, civil penalties, fines, losses, and damages (including but not limited to professionals' fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with any cause resulting from Town's delivery of, or failure to deliver, such courtesy copies to any Ancillary Developer, Financial Partner, Limited Developer, or any other person. This indemnification shall survive the termination of Agreement. All time deadlines in Section 6.1 are essential terms of the Agreement.

6.2 Default and Breach by Ancillary Developers. In the event of a default in the performance of duties or obligations created by this Agreement by any Ancillary Developer, the Town shall serve the defaulting Ancillary Developer and Master Developer written notice of the default in accordance with Section 8.10 of this Agreement ("Notice of Ancillary Developer Default") and shall specify a period of not less than thirty (30) days in which the defaulting Ancillary Developer shall have a right to cure the default; provided, however, such cure period may be extended by the Town Manager if all of the following occur: (a) a default cannot reasonably be cured within the cure period provided in the Notice of Ancillary Developer Default, (b) the curing Ancillary Developer notifies the Town of such fact by written notice served in accordance with Section 8.10 of this Agreement no later than the end of the cure period stated in the Notice of Ancillary Developer Default and provides a written schedule for the cure of the default and evidence that the defaulting Ancillary Developer had already taken steps to cure the default, and (c) the curing Ancillary Developer in such written extension notice covenants to (and thereafter actually does) diligently pursue the cure to completion. In no event shall the defaulting Ancillary Developer have more than sixty (60) days to cure the default after service of Notice of

Ancillary Developer Default. In the event the defaulting Ancillary Developer fails to cure the default as provided herein, the Town may declare the defaulting Ancillary Developer in breach of the Agreement and may either (i) revoke Town's consent to the assignment of this Agreement to the defaulting Ancillary Developer, requiring the Master Developer to perform the duties assigned to the Ancillary Developer, or (ii) enforce this Agreement by the remedy of declaratory judgment and specific performance against the Ancillary Developer.

The Town will send courtesy copies of any Notice of Ancillary Developer Default to each Ancillary Developer and Financial Partner for which the Master Developer requested that such notice be sent in the Recorded Assignment (Section 8.13.4) at the addresses provided to the Town in the Recorded Assignment. Other than the Ancillary Developer in default, no other Ancillary Developers, Limited Developers, or Financial Partners shall have any rights or obligations under this section and the Town's failure to send such courtesy copies shall not affect any of the Town's rights under this Agreement. Master Developer shall indemnify and hold harmless the Town, its officers and employees, from and against all claims, costs, civil penalties, fines, losses, and damages (including but not limited to professionals' fees and charges and all court or other dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with any cause resulting from Town's delivery of, or failure to deliver, such courtesy copies to any Ancillary Developer, Financial Partner, Limited Developer, or any other person. This indemnification shall survive the termination of Agreement.

In the event the Town sends a Notice of Ancillary Developer Default, the Master Developer shall work in good faith with the Town to encourage the defaulting Ancillary Developer to remedy the default, including enforcing the contractual rights the Master Developer possesses, directly or indirectly, with respect to defaulting Ancillary Developer. Other than the duty to work in good faith with the Town on the matters specified above, the Master Developer shall have no rights, remedies, or obligations solely as a result of the issuance of a Notice of Ancillary Developer Default. All time deadlines in Section 6.2 are essential terms of the Agreement.

6.3 Informal Business Meeting. Recognizing that the Principal Parties have invested significant resources in planning The Fenton District and forming this Agreement, and the benefits to the Principal Parties derived from The Fenton District and this Agreement are substantial and broad, the Town, the Master Developer, each Ancillary Developer, and each Financial Partner agree that all issues or concerns identified as defaults under Article 6 of this Agreement shall be subject to at least one business meeting between the Town Manager and principals of Master Developer along with such Limited and/or Ancillary Developers as either the Town or the Master Developer invite to the business meeting before a notice of default is served and again before breach of the Agreement is declared. The Town will send notice of the business meeting to each Ancillary Developer and Financial Partner for which the Master Developer requested that such notice be sent in the Recorded Assignment (Section 8.13.4) at the addresses provided to the Town in the Recorded Assignment. Master Developer may, at its option, also send notice to any Financial Partner. Master Developer shall indemnify and hold harmless the Town, its officers and employees, from and against all claims, costs, civil penalties, fines, losses, and damages (including but not limited to professionals' fees and charges and all court or other

dispute resolution costs), by whomsoever brought or alleged, arising out of, resulting from, or in connection with any cause resulting from failure of any Financial Partner or any other person to receive notice of a business meeting. This indemnification shall survive the termination of Agreement.

All business meetings shall be held at Town Hall. Nothing herein precludes the Town or any Party from requesting business meetings to discuss and plan any aspect of The Fenton District.

ARTICLE 7. TERM, MODIFICATION, AND TERMINATION

7.1 Term. The term of this Agreement shall commence upon the Effective Date and it shall expire twenty-five (25) years thereafter ("Term") unless sooner terminated by mutual consent of the Town and Master Developer or pursuant to the terms and conditions of this Agreement. The Term has been established by the Principal Parties as a reasonable estimate of the time necessary to complete Development of The Fenton District, but expiration or termination of this Agreement shall have no effect on The Fenton District, The Fenton District Documents, or any Local Development Permits issued by the Town.

7.2 Amendment and Modification of Agreement. As required by N.C.G.S. § 160A-400.25(b), major modifications of this Agreement shall follow the same notice, public hearing, and approval procedures as were followed initially when forming this Agreement. Minor modifications may be made upon the mutual written consent of the Parties as further described below, and the following are minor modifications:

7.2.1 All changes to The Fenton District Documents, including the PDP, sought by any Developer, permitted by the LDO (existing on the Effective Date of this Agreement), and approved by Town;
7.2.2 Replacement of **Exhibit A** with a reference to the Survey as described in Section 8.5;
7.2.3 All assignments to Financial Partners by the Master Developer approved by the Town pursuant to Section 8.13.2;
7.2.4 All amendments to Land Development Regulations adopted after the Effective Date of this Agreement applied to any portion of the Property during the Term of this Agreement consented to in writing, as provided in Article 3, by all Developers owning the portion of the Property to which the amendment applies;
7.2.5 Any modification of time periods set forth in **Exhibit D**;
7.2.6 The Town's discretionary approval of more than five (5) Financial Partners at any one time;
7.2.7 The Town's discretionary approval of a Person as a Financial Partner that does not meet the financial limit of $10 million otherwise imposed by this Agreement;
7.2.8 The Town's approval of the assignment of all Master Developer rights and duties to a Person that includes CDG Fenton and Hines, as defined in Section 8.13.1 below as the Hines-Columbia Entity; and
7.2.9 Any assignment by the Master Developer approved by the Town pursuant to Section 8.13.1(e).

Approval of each minor modification shall be memorialized by a written amendment to Agreement executed by the appropriate Parties setting forth the specific modification together with written findings that the proposed minor modification would be consistent with the purposes and goals of this Agreement and The Fenton District; provided, however, that minor modifications as described in Section 7.2.1 shall be deemed automatic amendments to this Agreement. The Town Manager is authorized to execute minor modifications on behalf of the Town.

All other proposed modifications of this Agreement not described in Sections 7.2.1 through 7.2.9 above shall be major modifications and consideration of such proposed modifications, including assignments to Ancillary Developers, shall be as provided by N.C.G.S. § 160A-400.25 except for the Town's modification of this Agreement pursuant to N.C.G.S. § 160A-27(c).

A copy of each amendment to Agreement shall be recorded in the Registry within 14 days of the effective date of the amendment and all Parties shall cooperate by signing amendments and otherwise work together to effectuate the purpose of this section. All amendments to Agreement relate back to the prior recorded Agreement.

7.3 Termination. Unless otherwise extended by the Town and Master Developer, this Agreement shall terminate on the earlier of: (i) the expiration of the Term specified in Section 7.1 of this Agreement; (ii) a specific termination of this Agreement made by operation of the provisions of this Agreement; (iii) or by agreement of the Town and Master Developer. Any Termination other than by expiration of the Term shall be recorded in the Registry. Termination of this Agreement shall not affect the Fenton Adoption Ordinance, The Fenton District, The Fenton District Documents, or Local Development Permits issued by the Town for Development of The Fenton District, including any requirement, condition, or restriction contained in any such Local Development Permit, or the Laws in effect on the date of the termination. All Parties shall cooperate by signing amendments and otherwise work together to effectuate the purpose of this section.

ARTICLE 8. MISCELLANEOUS

8.1 No Unauthorized Exercise of Authority. The Principal Parties and each Person who becomes a Party agree that the Town has not exercised any authority or made any commitment not authorized by general or local act and has not imposed any tax or fee not authorized by otherwise applicable law either in the terms of execution of this Agreement or in the approval of The Fenton District Documents and every Developer and Person owning an interest in the Property shall be bound by this Agreement as successors in interest of the Principal Parties.

8.2 Agreement is Supplemental. This Agreement is supplemental to the powers conferred on the Town. This Agreement does not effect, modify, preclude, or supersede The Fenton District, The Fenton District Documents, or Laws existing on the Effective Date of this Agreement. This Agreement shall not exempt any Person from compliance with the State

Building Code or State or local housing codes that are not part of the Town's planning, zoning, or subdivision regulations.

8.3 Satisfaction of Zoning Condition. Upon its Effective Date, this Agreement shall satisfy The Fenton District zoning condition requiring formation of a development agreement before submission of a Development Plan for Development of The Fenton District.

8.4 Recordation/Binding Effect. Within fourteen (14) days after the Effective Date, CDG Fenton shall record this Agreement in the Registry. The Agreement shall be recorded in the Registry prior to recordation of any mortgages or other liens encumbering the Property. The burdens of this Agreement shall be binding upon the Principal Parties and all of the Principal Parties' successors and assigns having an interest in the Property at any time, and the benefits of this Agreement shall inure to the Principal Parties and all of the Principal Parties' successors and assigns having an interest in the Property at any time, but only Parties shall have the right to enforce the Agreement and only as described herein.

8.5 Condition Subsequent; Survey. In the event CDG Fenton or the Hines-Columbia Entity (defined below in Section 8.13.1) fails to close the purchase contract for purchase of the Property with the State (such sale and closing being evidenced by a deed properly recorded in the Registry, with a recorded certificate from CDG Fenton that the requisite ownership and operational control interests have been satisfied) and either become, by June 30, 2019, this date being an essential term of this Agreement, (1) the fee simple owner of the Property; or (2) with the prior written consent of the Town Manager, become the fee simple owner of a majority of the Property, sufficient to satisfy the provisions, restrictions, and conditions of The Fenton District Documents and its obligations under this Agreement; then this Agreement shall terminate automatically and by operation of law without any further act by either Principal Party or the Hines-Columbia Entity necessary to terminate it (the "Condition Subsequent"). In such an event, the Principal Parties and, if necessary, the Hines-Columbia Entity agree to execute a termination notice and record it in the Registry, but failure to execute or record a termination notice shall not affect the automatic termination of this Agreement by operation of law under this provision.

In the event the Town Manager has provided prior written consent to CDG Fenton's or the Hines-Columbia Entity's ownership of a majority of the Property as being sufficient for satisfying the provisions, restrictions, and conditions of The Fenton District Documents and its obligations under this Agreement, then the Master Developer shall prepare an amendment to **Exhibit A** within ten (10) days of CDG Fenton, or the Hines-Columbia Entity becoming the owner of a majority of the Property and submit it to the Town for the Town Manager's approval. Upon the Town Manager's approval, the Master Developer shall record the amendment to **Exhibit A** approved by the Town.

CDG Fenton shall cause a licensed North Carolina land surveyor to prepare a boundary survey of Property prior to closing on the purchase of the Property from the State of North Carolina ("Survey") and the Survey shall be referenced in the deed as the legal description of the land being transferred by the State. CDG Fenton shall submit the Survey to the Town for review and approval prior to closing on the Property, such approval not to be unreasonably withheld. Upon approval, CDG Fenton or Master Developer shall record Survey in the Registry and provide written notice to Town of such recordation. Upon

receipt of such notice of recordation and purchase of Property from the State, this Agreement shall be deemed to be modified such that **Exhibit A** is a copy of the recorded Survey. Master Developer shall prepare an amendment to **Exhibit A** within ten (10) days of recordation and submit it to the Town for the Town Manager's approval. Upon the Town Manager's approval, the Master Developer shall record the amendment to **Exhibit A** approved by the Town.

8.6 Force Majeure. In addition to specific provisions of this Agreement, no Party shall be responsible for any default, delay, or failure to perform if such default, delay, or failure to perform is due to causes beyond the Party's reasonable control, including, but not limited to, actions or inactions of governmental authorities, epidemics, wars, embargoes, fires, hurricanes, unusual adverse weather, acts of God, or the default of a common carrier. Absent an imminent threat to public health or safety, the Town may not adopt a moratorium on issuance of development approvals or a similar action and assert such moratorium as a force majeure under this Agreement. In the event of a default, delay, or failure to perform due to causes beyond a Party's reasonable control, the Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance and to complete its performance in as timely a manner as is reasonably possible. In no event shall the delayed performance be longer than the duration of a force majeure without the joint written approval of the Town and Master Developer.

8.7 Disclaimer of Joint Venture, Partnership, and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between or among the Parties, or to impose any partnership obligation or liability upon such Parties.

8.8 No Third Person Beneficiaries. The Agreement is not intended to and does not confer any right, power, or benefit on any Person other than the Parties and only the Parties may enforce, modify or terminate this Agreement as provided in the Agreement. Nothing in this Agreement requires any Party to secure the consent of a Person other than other Parties. For the sake of clarification, when a Person becomes a Limited Developer the only right under this Agreement conferred upon a Limited Developer is a vested right to develop a portion of the Property as provided in Article 3 of this Agreement. No Limited Developer shall have any other rights established by this Agreement, including any right to enforce this Agreement against the Town.

8.9 Applicable Law and Venue. This Agreement shall be governed by the laws of the State of North Carolina and the only proper venue and court for litigation related to, arising out of, or connected with this Agreement or the relationships between the Parties established by this Agreement shall be the Wake County Superior Court.

8.10 Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a Party is required to serve or may give another Party hereunder shall be in writing and shall be delivered or addressed to the other Party at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be in writing and shall be given or served upon the other Party both by email and by personal service through (i) certified return receipt requested or registered mail, postage prepaid; or (ii) FedEx or other nationally recognized commercial courier,

charges prepaid. Any such notice, demand, request or other communication shall be deemed to have been given upon the earlier of: personal delivery thereof (which, for the sake of clarity, does not include delivery by email); three (3) business days after having been mailed as provided above; or one (1) business day after deposit for next business day delivery with a commercial overnight courier service, as the case may be.

All notices, demands, requests, consents, approvals, or communications to the Town shall be addressed to:

Town Manager
316 N. Academy Street
Cary, NC 27513

With a copy to:
Town Attorney
316 N. Academy Street
Cary, NC 27513

All notices, demands, requests, consents, approvals, or communications to the Developer shall be addressed to:

CDG Fenton LLC
845 St Julian Place
Columbia, SC 29204

With a copy to:
H. Abbitt Goodwin, Jr
Columbia Development Group, LLC
PO Box 6425
Raleigh NC 27628

Russell B. Killen
Parker Poe Adams & Bernstein
301 Fayetteville Street
Suite 1400
Raleigh, NC 27601

8.11 Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions, and understandings between the Parties except for the Fenton Adoption Ordinance, The Fenton District, The Fenton District Documents, and Town Laws existing on the Effective Date of this Agreement. There are no promises, agreements, conditions, or understandings, oral or written, expressed or implied, between or among the Parties relative to the matters addressed herein other than as set forth or as referred to in this Agreement, the Fenton Adoption Ordinance, The Fenton District, The Fenton District Documents, and Town Laws existing as of the Effective Date of this Agreement.

8.12 Construction. To the extent there is a conflict between this Agreement on the one hand with the Fenton Adoption Ordinance, The Fenton District, The Fenton District Documents, or the Town Laws existing as of the Effective Date of this Agreement on the other hand and no Party is in default of this Agreement, the conflict shall be resolved by the provision and construction which most encourages, promotes, and enables Development of the Property as The Fenton District. Similarly, to the extent there is an ambiguity within this Agreement and no Party is in default of this Agreement, the construction of the Agreement which most encourages, promotes, and enables the Development of Property as The Fenton District shall control (collectively the "Fundamental Construction Rule").

So long as a construction recognizes and enforces the Fundamental Construction Rule, the following secondary construction and interpretation rules shall apply to this Agreement unless the context requires otherwise:

(1) the Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto;

(2) the singular includes the plural and the plural the singular and the pronouns "it" and "its" include the masculine and feminine;

(3) references to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation;

(4) references to contracts and agreements shall be deemed to include all amendments to them and the words "include," "including," etc. mean include, including, etc. without limitation;

(5) references to a "Section" or "section" or "paragraph" shall mean a section or paragraph of this Agreement;

(6) titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement;

(7) "duties" includes obligations and "obligations" include duties;

(8) the word "shall" is mandatory;

(9) the word "day" means calendar day; and

(10) normal business hours means Monday through Friday from 8:00 a.m. until 5:00 p.m. Eastern Standard Time or Eastern Daylight Savings Time as may be applicable.

8.13 Assignment of Master Developer's Rights and/or Duties. The Principal Parties agree that the overarching goal of the Town's consideration of any proposed assignment of Master Developer rights and duties is whether such assignment encourages, promotes, and facilitates full development of The Fenton District as set forth in The Fenton District Documents.

This section applies to all types or kinds of transfers, assignments, or delegations however denominated of Master Developer rights or duties by the Master Developer, its successors or assigns. By way of illustration, a proposed assignment by an Ancillary Developer approved by the Town to another Person of rights or duties originally owned by the Master Developer shall comply with the requirements of this section.

Any transfer, assignment, or delegation by the Master Developer of any portion of its rights or duties established by this Agreement without the advance written approval of the Town to anyone other than to a Person who receives only the rights permitted to be assigned to a Limited Developer, shall be void and shall constitute a breach of this Agreement, allowing the Town to immediately seek the remedies specified in Article 6.

The Principal Parties recognize that the participation and involvement of the Master Developer in the Development of The Fenton District is critical to accomplishing the purposes of this Agreement. Specifically, the Master Developer possesses significant expertise, experience, and capacity developing quality mixed-use communities and possesses specific knowledge of the Property, The Fenton District, and The Fenton District Documents. Recognizing that The Fenton District contains a mix of uses, including retail, residential, and Class A office, and that in some instances assignment of the Master Developer's rights and/or duties under this Agreement may be appropriate and promote full and timely development of The Fenton District, the Town and the Master Developer have carefully crafted the rules and provisions governing assignment of Master Developer's rights and/or duties as follows:

8.13.1 Except as specifically provided herein, the Master Developer shall not transfer, assign, or delegate any of its rights or duties established by this Agreement at any time without the advance written approval of the Town, which the Town may grant or withhold in its reasonable discretion.

For purposes of Section 8.13.1(c) and (d), when the Master Developer proposes an entity to which to assign any of its rights and/or duties established by this Agreement ("Proposed Assignee"), the Master Developer shall set forth in detail the rights and duties it proposes to transfer to such Proposed Assignee ("Requested Assignment") and transmit with its Requested Assignment information verified, by the Ancillary Developer or the Master Developer, demonstrating the financial strength of the Proposed Assignee and information, verified by the Ancillary Developer or the Master Developer, demonstrating the Proposed Assignee's prior development experience, status of the Proposed Assignee's current development projects, and the Proposed Assignee's litigation involving governments within the last five (5) years ("Required Documentation"). Upon review of Required Documentation, Town may request and Proposed Assignee shall provide information regarding litigation involving governments within the last ten (10) years. For purposes of this Agreement, "financial strength" means that the Proposed Assignee has sufficient liquidity and solvency to complete the Development proposed to be assigned to it. In each Requested Assignment, the Master Developer shall provide evidence that if the Town approves the Requested Assignment, the Proposed Assignee has agreed to be bound by the Agreement.

Upon the Town's receipt of the Requested Assignment pursuant to this section and all of the Required Documentation, the Town will promptly review the Required Documentation, consider the Requested Assignment as specified in the applicable section, and decide whether to approve the Requested Assignment, exercising its reasonable discretion based upon factors including but not limited to the financial strength, prior development experience, status of current projects, and litigation with governments of the Proposed Assignee. Such decision shall be made as soon as practicable by the Town and no later than forty-five (45) days after receiving the Requested Assignment and all of the Required Documentation. Should the Town decide not to approve a Requested Assignment, the Town will provide a written explanation for its adverse decision to the Master Developer.

Even if the Town's refusal to approve a Requested Assignment is found to be in violation of the standards set forth herein, no Proposed Assignee is an intended third-party beneficiary of this Agreement and no Proposed Assignee shall possess any claim, title, interest, right, or remedy enforceable against the Town under this Agreement or otherwise to challenge the Town's refusal to approve a Requested Assignment. The sole and exclusive remedy for challenging the Town's refusal to approve a Requested Assignment is a declaratory judgment brought in Wake County Superior Court by the Master Developer. In no event are damages, costs, or attorneys' fees recoverable against the Town, even if the Town's refusal to approve the Requested Assignment is found to be in violation of the standards set forth herein. The Master Developer shall disclose the terms of this subsection 8.13.1 to such Proposed Assignee and the Proposed Assignee shall have agreed to be bound by these provisions. In the event of a dispute between the Town and Master Developer regarding a Requested Assignment, the Town and the Master Developer agree to expedite prompt resolution of the dispute by way of a declaratory judgment action.

In every assignment to Ancillary or Limited Developers, the Master Developer shall retain such rights and powers between it and each Ancillary or Limited Developer to enable the Master Developer to perform all rights and duties established by this Agreement in the event that the Ancillary or Limited Developer defaults under this Agreement. Failure by the Master Developer to comply with this paragraph shall authorize the Town, in its sole discretion, to declare any assignment not in compliance with this paragraph void *ab initio.*

The categories of assignments and process for approving Requested Assignments shall be as follows:

a) The first category is a full and complete assignment of all of Master Developer's rights and duties to a Person that includes Hines and Columbia & Principals, directly or indirectly through CDG Fenton (the "Hines-Columbia Entity"). In order to qualify as the Hines-Columbia Entity under this Agreement, Columbia & Principals, directly or indirectly through CDG Fenton, shall own a portion of the Hines-Columbia Entity, shall jointly control the Hines-Columbia Entity, shall participate in the operations of the

Hines-Columbia Entity and shall have significant involvement and responsibility for the Development of the Fenton District. Upon the Master Developer's request to the Town and verification by the Town that the proposed assignee is the Hines-Columbia Entity, the Town hereby consents to such assignment and will evidence written approval of the assignment of all Master Developer's rights and duties by written consent signed by CDG Fenton, the Town, and the Hines-Columbia Entity. The written consent shall be recorded as provided in Section 8.13.4 by CDG Fenton or the Hines-Columbia Entity within fourteen (14) days of full execution of the consent. This category of assignment is a minor modification of this Agreement.

b) The second category is a limited assignment of Master Developer rights without any corresponding assignment of Master Developer duties to a Limited Developer. Under this category, the Master Developer assigns Master Developer rights for development of a discrete portion of The Fenton District, but remains solely and fully responsible to the Town for performance of this Agreement and any Development associated with the assignment of Master Developer rights to a Limited Developer. By way of illustration, the Master Developer proposes to assign rights to develop to a retail tenant allowing the tenant to up-fit its space and the tenant has expertise and experience in up-fitting retail space for its use and the Master Developer remains responsible under this Agreement for the Development of the retail space complying with this Agreement, The Fenton District, and The Fenton District Documents, as well as responsible for coordination and facilitation between Development of tenant's up-fitting of its space and other components of The Fenton District. Because this type of assignment does not modify, alter, or limit the Master Developer's duties to the Town, the Town's prior approval or consent to such assignment is not required and is deemed granted. This is the only type of assignment of Master Developer rights or duties that does not require the Town's prior written approval. As part of the Periodic Review required by N.C.G.S. § 160A-400.27, Master Developer shall notify Town of any assignments to a Limited Developer occurring during the applicable reporting period. Master Developer agrees that all Limited Developers are on record notice regarding the prohibition on assignment of duties under this Agreement to Limited Developers. In addition, Master Developer shall endeavor to include in all applicable agreements with a Limited Developer express language stating that the agreement does not assign any duties under this Agreement to the Limited Developer. This category is not a modification of the Agreement and no assignment needs to be recorded in the Registry.

c) The third category is a limited assignment of Master Developer's rights and duties to an Ancillary Developer for a discrete portion of The Fenton District, but Master Developer remains responsible under this Agreement for facilitation and coordination between the Development of such a discrete portion of The Fenton District and the remainder of The Fenton District. By way of illustration, the Master Developer proposes to assign

rights and the corresponding Master Developer duties for Development of an office building to an Ancillary Developer that has expertise and experience in office building Development and Master Developer remains responsible under this Agreement for coordination and facilitation between this office building Development and other components of The Fenton District. This category of assignment is a major modification of this Agreement and will be considered using the major modification process of N.C.G.S. § 160A-400.25. When considering the Proposed Assignee, the Town Council will consider the Requested Assignment, the Required Information, whether approval of the assignment promotes and encourages full and timely Development of The Fenton District, whether there are sufficient safeguards to ensure the Master Developer's power and commitment to coordinate and facilitate between the Proposed Assignee's Development and other components of The Fenton District, and any information discovered or comments made by the public during the major modification process (collectively "Major Modification Assignment Factors").

d) The fourth category is a total assignment of all Master Developer's rights and duties to a Person other than the Hines-Columbia Entity causing a new Person to become the new Master Developer of The Fenton District. This assignment may or may not relieve the existing Master Developer of its duties under the Agreement. No such total assignment shall be proposed by the Master Developer prior to issuance of certificates of occupancy for 380,000 square feet of developed space in Phases A and B of The Fenton District. Every proposed total assignment of all Master Developer's rights and duties shall be submitted to the Town with the Required Documentation and shall be supplemented upon the Town's request with any and all verified information requested by the Town. Every total assignment shall be a major modification and will require the Town to undertake extensive review and study to ensure, among other things, that such a proposed total assignment satisfies all of the Major Modification Assignment Factors and the Proposed Assignee possesses a history of cooperation with governments and the capacity to perform the role of Master Developer.

e) The final category is a limited assignment of Master Developer's rights and duties. After (1) issuance of the final certificate of occupancy showing completion of all development in or associated with Phases A & B (as shown on **Exhibit D-1**) other than Public Facilities, and (2) the Town's acceptance of the Public Facilities deemed by this Agreement to be included in Phases A & B as shown on **Exhibit D-1**, Master Developer may assign all or a portion of Master Developer's rights and duties to develop Phase C to a Person purchasing the underlying land on which the Development of Phases A, B, & C, or Phases B & C, is located. Such assignment shall be deemed to be an assignment to an Ancillary Developer and the Master Developer will remain and continue as Master Developer for all of The Fenton District, upon the Master Developer providing written evidence to the Town that the Person is the record owner of the underlying land on

which the Development of Phases A, B, & C or Phases B & C is located. Upon the Town's verification of the foregoing, the Town, subject to its rights under Section 8.13.3, will consent to such assignment and will evidence written approval of the assignment as provided by Section 8.13.4. The assignment shall be recorded in the Registry by Master Developer within fourteen (14) days of full execution of the consent. Nothing in this Section 8.13.1(e) grants the Proposed Assignee rights, duties, or remedies greater or different than the rights, duties, or remedies of an Ancillary Developer under this Agreement. This category of assignment is a minor modification of the Agreement because a significant portion of The Fenton District will have been completed by Columbia & Principals and Columbia & Principals remain committed to completion of Development of Phases C & D of The Fenton District.

8.13.2 Limited and Special Assignment to Financial Partners. At any specific point in the Development of The Fenton District, the Master Developer may have Financial Partners who are third Person lenders, financial institutions, equity partners, or other investment entities providing investment capital and/or financing to the Master Developer for development of The Fenton District. Contractors, suppliers, and other entities to which the Master Developer may be in debt shall not be Financial Partners.

The Master Developer may assign this Agreement in whole or in part as collateral to any Financial Partner as provided herein. Upon the happening of each of the following, the Town will recognize an assignment to a Financial Partner: Master Developer's request to the Town and verification by the Town that (1) a proposed Financial Partner has or will commit to loan to or invest at least $10 Million Dollars ($10,000,000.00) for the limited and sole purpose of Development of The Fenton District; and (2) the proposed Financial Partner is an entity including or similar in nature to Prudential, Northwestern Mutual, MetLife, Lubert Adler, Carlyle Group, etc. However, no assignment to a Financial Partner shall be approved until (1) the Master Developer has delivered to the Town documentation showing that the Financial Partner has executed a binding commitment to loan or invest at least $10 Million Dollars ($10,000,000.00) for Development of The Fenton District; and (2) within three hundred sixty (360) days of the Requested Assignment, the Master Developer provides evidence that the Financial Partner has actually loaned or invested at least one million dollars ($1,000,000.00) towards the Development of the Fenton District. Such assignment shall be conditionally approved, subject to delivery to the Town of the evidence of loan or investment within three hundred sixty (360) days when it shall be deemed finally approved. The Town will evidence written approval of limited and special assignment of this Agreement as collateral to Financial Partners by written notice to the Master Developer and Financial Partner as provided in section 8.13.4. There shall never be more than five (5) entities designated by the Master Developer as Financial Partners at any one time.

Under such limited and special assignment for collateral, an approved Financial Partner may possess the right, under the financial arrangement or agreement between the Master Developer and such Financial Partner, to perform certain rights

and duties of the Master Developer only upon breach by the Master Developer of this Agreement and as described herein. If there is more than one Financial Partner, each Financial Partner may perform the rights and duties of the Master Developer upon breach by the Master Developer of this Agreement only to the extent necessary to cure in order to avoid impairment of this Agreement as collateral. If there is only one Financial Partner, that Financial Partner may perform all rights and duties of the Master Developer. All Financial Partners approved by the Town for this limited and special assignment shall possess the Master Developer's right to receive reimbursements or payments under this Agreement and may propose new Master, Ancillary, or Limited Developers only upon breach by the Master Developer of this Agreement. When exercising these rights, Financial Partners are subject to all terms of this Agreement that would apply to the Master Developer, including, without limitation, Articles 5 and 6 and Section 8.13.

Within forty-five (45) days of a Financial Partner performing any rights or duties of the Master Developer, the Financial Partner, the Town, and the Master Developer from which the Financial Partner received Master Developer's rights and duties shall hold a business meeting at Cary Town Hall. At the Town Manager's request, other Parties may also attend such meeting.

Notwithstanding the foregoing, nothing in this Section 8.13.2 or the Town's consent to an assignment to a Financial Partner grants to any Financial Partner rights, duties, or remedies greater or different than the rights, duties, or remedies of the Master Developer under this Agreement nor relieves the Master Developer from performing all of its duties under this Agreement, and no assignment to any Financial Partner shall cause any agreement or understanding between the Financial Partner and any other Person to alter, merge, or become part of this Agreement. This category of assignment is a minor modification of the Agreement because it facilitates the Development of The Fenton District and does not relieve the Master Developer from any of its duties to complete Development of The Fenton District.

The sole and exclusive remedy for challenging the Town's refusal to approve a limited and special assignment to a Financial Partner is a declaratory judgment brought in Wake County Superior Court by the Master Developer. In no event are damages, costs, or attorneys' fees recoverable against the Town, even if the Town's refusal to approve the assignment is found to be in violation of the standards set forth herein. The Master Developer shall disclose the terms of this Agreement to every Person proposed as a Financial Partner. In the event of a dispute between the Town and Master Developer regarding the Town's approval of a Financial Partner, the Town and the Master Developer agree to expedite prompt resolution of the dispute by way of a declaratory judgment action.

8.13.3 Reasonable Terms and Conditions on Assignments. In connection with any proposed assignment of the Master Developer rights and/or duties under sections 8.13.1 and 8.13.2 of this Agreement, the Town may recommend in writing that restrictions, limitations, or conditions are imposed on the assignment as a means to address Town concerns regarding the Proposed Assignment ("Town's Recommendation"). Upon the Master Developer's acceptance of the Town's

Recommendation, such restrictions, limitations, or conditions shall be material terms and conditions of any such assignment.

8.13.4 No assignment requiring Town Approval or consent shall be effective under this Agreement until documents evidencing such an assignment have been executed by the Master Developer, the Town, and Proposed Assignee or Financial Partner and such documentation has been recorded in the Registry ("Recorded Assignment") by Master Developer. In such documentation the Master Developer shall state whether the assignee is entitled to notice under Articles 5 or 6 of this Agreement.

8.13.5 The Principal Parties recognize that they and every other Person who becomes a Party owe each other a duty of good faith and fair dealing under Section 8.13 and that during the term of this Agreement, many factors beyond their control could occur. No Party shall engage in a sale of assets, merger or share exchange, or reorganization, for the purpose of defeating or eroding Section 8.13 or to undermine the purpose of Development of The Fenton District. Therefore, the Principal Parties and every other Party agree that early, frequent, and forthright communications regarding possible requests to the Town to consent to assignments of the Master Developer's rights and/or duties are appropriate and important to the success of this Agreement.

8.14 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

8.15 Agreement to Cooperate. In the event of any legal action instituted by a Person or governmental entity challenging the validity of any provision of this Agreement or the approval of The Fenton District, the Parties agree to cooperate in connection with such action; provided, however, each Party shall retain the right to pursue its own independent legal defense. If the Town elects to the take the lead on any joint defense, the Town shall have the right to choose counsel. In no event shall Columbia, CDG Fenton, the Master Developer, any other Party, or any owner of the Property, their successors or assigns, contest the approval or validity of The Fenton District or the legality or validity of this Agreement or any provision herein.

8.16 No Deemed Waiver. Failure of a Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.

8.17 Invalidity. If any term or provision of this Agreement, or its application to any Person, is held to be unenforceable for any reason, this Agreement shall be adjusted as a major modification rather than voided in order to achieve the intent of the Principal Parties to the fullest extent possible. In the event the Town Council fails to approve the revised agreement as a major modification within ninety (90) days of this Agreement or any portion of this Agreement being held to be unenforceable, this Agreement shall be void automatically and by operation of law without any further act by any Party being necessary to terminate it. In such an event, the Parties agree to execute a termination notice and record it in the Registry, but failure to execute or record a termination notice shall not affect the automatic termination of this Agreement by operation of law under this provision.

8.18 Authority. Each Principal Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the Person signing this Agreement has the authority to bind each of the Principal Parties.

8.19 Transparency and Public Involvement. It is the intent of the Principal Parties that all aspects of the implementation of this Agreement shall be carried out in an open, transparent fashion with opportunities for effective and meaningful public involvement. The Parties shall take reasonable steps to make information regarding the implementation of this Agreement fully available for public review with the exception of any information protected from disclosure by the North Carolina Public Records Act or other Laws.

8.20 Public Records. Town may provide copies of public records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by the Master Developer, the Town will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. § 66-152, that are specifically designated as a "trade secret" or "confidential" at the time of initial transmittal by the Master Developer to the Town, and that are otherwise entitled to protection under N.C.G.S. § 132-1.2(1).

8.21 Estoppel. Each of the Parties agree, from time to time, within twenty (20) days after request of the other Party, to deliver to the requesting Party or designee, an estoppel certificate substantially in the form attached hereto as **Exhibit E** or as may otherwise be reasonably requested by Financial Partner. Such estoppel shall not relieve any Party of its duties under this Agreement.

8.22 Gifts and Favors. All Parties shall be aware of and comply with the North Carolina Constitution and Laws related to gifts and favors, conflicts of interest and the like, including without limitation N.C.G.S. §14-234, N.C.G.S. § 133-1, and N.C.G.S. § 133-32.

8.23 Electronic Version of Agreement. Town may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

8.24 Verification of Work Authorization. All Developers and all subcontractors shall comply with Article 2, Chapter 64, of the North Carolina General Statutes to the extent applicable.

8.25 Pre-Audit Requirement. This Agreement has not been fully executed and is not effective until the Preaudit Certificate (if required by N.C.G.S § 159-28) has been affixed and signed by the Town of Cary finance officer or deputy finance officer.

8.26 Authority of Town. Columbia, CDG Fenton, the Master Developer, all other Parties, now or in the future, and all owners of the Property, now or in the future, and all these Persons' successors or assigns, covenant that none of them, individually or collectively, will take any legal action against the Town in which it is alleged that the Town lacks authority to enter into any part of this Agreement or undertake the commitments herein.

8.27 Absence of Duress. Columbia, CDG Fenton, the Master Developer and all other Parties, now or in the future, and their successors or assigns, represent that each of them entered into this Agreement knowingly and voluntarily, not under duress, and in pursuit of its desire to maximize the success of The Fenton District. Columbia, CDG Fenton, the Master Developer and all other Parties, now or in future, and their successors or assigns, further covenant that none of them will take legal action against the Town in which it is alleged that any of them entered into this Agreement or any amendments to the Agreement under duress.

8.28 Representations and Warranties of the Principal Parties. The Principal Parties, and the persons executing this Agreement on their behalf, represent and warrant, as applicable, that (a) such Principal Party or person has the full power and authority to enter into this Agreement, to execute it on behalf of the Principal Party indicated on the signature page, and to perform the obligations hereunder, (b) CDG Fenton is a limited liability company duly organized, validly existing and in good standing under the laws of the State of North Carolina duly qualified to do business and are in good standing in every jurisdiction in which such licensing and qualification is required, (c) such Principal Party is acting on its own behalf, (d) this Agreement is a valid and binding obligation, enforceable against the Parties in accordance with its terms, (e) entering into this Agreement does not conflict with any other agreements entered into by either Principal Party, and (f) the execution, delivery, and performance of this Agreement has been duly and validly authorized by all necessary corporate or governmental action on its part. Specifically (and not as a limitation), the Town represents and warrants to CDG Fenton that this Agreement has been pre-audited to ensure compliance with the budgetary accounting requirements (if any) that apply thereto. In the event that any of the obligations of the Town in this Agreement constitute debt, the Town has complied, at the time of the obligation to incur the debt and before the debt becomes enforceable against the Town, with any applicable constitutional and statutory procedures for the approval of the debt. Notwithstanding the foregoing, it is not the intent of Section 8.28 to make any individual personally liable for the performance or nonperformance of this Agreement.

The Principal Parties agree that a provision substantially similar to the promises and representations made by the Principal Parties to each other in section 8.28 shall be required and included in any Recorded Assignment, amendment, modification or termination of the Agreement.

[signature pages follow]

IN WITNESS WHEREOF, the Principal Parties hereby set their hands and seals, effective the date first above written.

Town of Cary

By: _____
Sean R. Stegall, Town Manager

State of North Carolina

County of Wake Harnett

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Sean R. Stegall personally came before me this day and acknowledged that he is Town Manager of the Town of Cary and acknowledged, on behalf of the Town of Cary, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 8 day of November, 2018.

_____
Notary Public

My Commission Expires:
June 8, 2021

VIRGINIA JOHNSON
NOTARY PUBLIC
HARNETT COUNTY, NC

Certificate of Town of Cary Finance Officer

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

_____
Finance Officer

11/8/18
Date

CDG Fenton, LLC,
A North Carolina limited liability company

By: _____

Name: Edward C. Mann, III
Its: Member/Manager

==========

State of ~~North Carolina~~ South Carolina

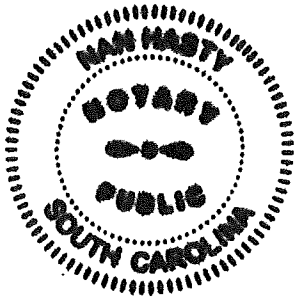
County of ~~Wake~~ Richland

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Edwin C. Mann, III, personally came before me this day and acknowledged that he is the Member/Manager of CDG Fenton, LLC, a North Carolina limited liability company, and acknowledged, on behalf of CDG Fenton, LLC, a North Carolina limited liability company, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 5th day of November, 2018.

_____
Notary Public

My Commission Expires:

2/26/24



EXHIBITS INCORPORATED BY REFERENCE

EXHIBIT A:	LEGAL DESCRIPTION OF PROPERTY
EXHIBIT B:	DISCLOSURES REQUIRED BY N.C.G.S. § 160A-400.25
EXHIBIT C:	DEVELOPMENT SCHEDULE REQUIRED BY N.C.G.S. § 160A-400.25(B)
EXHIBIT D:	PUBLIC FACILITIES
EXHIBIT D-1:	MAP OF PUBLIC FACILITIES BY PHASE
EXHIBIT D-2:	DETAILED DESCRIPTION OF PUBLIC FACILITIES BY PHASE
EXHIBIT E:	ESTOPPEL CERTIFICATE
EXHIBIT F:	THE FENTON DISTRICT ENERGY EFFICIENCY PLAN
EXHIBIT G:	PAYMENT OF FEES AS TOWN INCENTIVE FOR ENERGY EFFICIENCY COMMITMENTS AS AUTHORIZED BY LAW
EXHIBIT H:	FORM OF STORMWATER EASEMENT

Exhibit A

Property Description

BEING THAT CERTAIN PARCEL OF LAND LOCATED IN WAKE COUNTY, NORTH CAROLINA, CONTAINING 77.41 ACRES AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING R/W MONUMENT ALONG THE NORTHERN RIGHT-OF-WAY OF CARY TOWNE BLVD. (A VARIABLE WIDTH PUBLIC R/W), HAVING A NC GRID COORDINATE (NAD 83) OF N=738073.99' AND E=2071900.20'; THENCE ALONG THE NORTHERN RIGHT-OF-WAY OF CARY TOWNE BLVD., SOUTH 65°00'03" WEST A DISTANCE OF 819.55 FEET TO A CALCULATED POINT MARKING THE SOUTHEAST CORNER OF LANDS OWNED BY NOW OR FORMERLY WAKE COUNTY BOARD OF EDUCATION (DB 1793, PG 449), POINT BEING THE POINT OF BEGINNING; THENCE WITH THE EASTERN LINE OF WAKE COUNTY BOARD OF EDUCATION, NORTH 00°14'24" EAST A DISTANCE OF 3222.69 FEET TO A CALCULATED POINT; THENCE WITH THE SOUTHERN LINE OF THE LEASE AREA DESCRIBED IN DB 8470, PAGE 793, ALONG A NEW LINE, SOUTH 43°30'21" EAST A DISTANCE OF 102.01 FEET TO A CALCULATED POINT; THENCE SOUTH 69°48'41" EAST A DISTANCE OF 773.36 FEET TO A CALCULATED POINT; THENCE SOUTH 36°28'57" EAST A DISTANCE OF 835.92 FEET TO A CALCULATED POINT; THENCE SOUTH 54°28'53" EAST A DISTANCE OF 621.335 FEET TO A CALCULATED POINT ALONG THE WESTERN RIGHT-OF-WAY OF TRINITY ROAD (A 126' WIDE PUBLIC R/W); THENCE WITH THE WESTERN RIGHT-OF-WAY OF TRINITY ROAD, SOUTH 54°24'59" WEST A DISTANCE OF 464.97 FEET TO A CALCULATED POINT; THENCE, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 723.00 FEET, AN ARC LENGTH OF 1002.08 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 14°42'37" WEST, 923.77 FEET TO A CALCULATED POINT; THENCE SOUTH 24°59'44" EAST A DISTANCE OF 100.32 FEET TO A CALCULATED POINT; THENCE SOUTH 21°02'30" EAST A DISTANCE OF 11.34 FEET TO A CALCULATED POINT ALONG THE NORTHERN RIGHT-OF-WAY OF CARY TOWNE BLVD.; THENCE WITH THE NORTHERN RIGHT-OF-WAY OF CARY TOWNE BLVD., SOUTH 64°59'20" WEST A DISTANCE OF 555.34 FEET TO A CALCULATED POINT; THENCE SOUTH 65°00'03" WEST A DISTANCE OF 819.55 FEET TO THE POINT OF BEGINNING, CONTAINING 3,371,852 SQUARE FEET OR 77.41 ACRES OF LAND, MORE OR LESS.

TOGETHER WITH THAT CERTAIN PARCEL OF LAND LOCATED IN WAKE COUNTY, NORTH CAROLINA, CONTAINING 14.56 ACRES AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING R/W MONUMENT ALONG THE NORTHERN RIGHT-OF-WAY BOUNDARY OF CARY TOWNE BLVD. (A VARIABLE WIDTH PUBLIC R/W), HAVING A NC GRID COORDINATE (NAD 83) OF N=738073.99' AND E=2071900.20'; THENCE ALONG THE NORTHERN RIGHT-OF-WAY BOUNDARY OF CARY TOWNE BLVD. NORTH 64°59'20" EAST A DISTANCE OF 1,504.04 FEET TO A CALCULATED POINT, BEING THE POINT OF BEGINNING; THENCE NORTHERN RIGHT-OF-WAY BOUNDARY OF CARY TOWNE BLVD. SOUTH 64°59'20" WEST A DISTANCE OF 811.89 FEET TO A CALCULATED POINT ON THE EASTERN RIGHT-OF-WAY BOUNDARY OF TRINITY ROAD (A 126' WIDE PUBLIC R/W); THENCE WITH THE EASTERN RIGHT-OF-WAY BOUNDARY OF TRINITY ROAD, NORTH 28°48'35" WEST A DISTANCE OF 33.92 FEET TO A CALCULATED POINT; THENCE NORTH 24°58'19" WEST A DISTANCE OF 78.00 FEET TO A CALCULATED POINT; THENCE, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 597.00 FEET, AN ARC LENGTH OF 827.20 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 14°43'20" EAST, 762.60 FEET TO A CALCULATED POINT; THENCE NORTH 54°24'59" EAST A DISTANCE OF 464.96 FEET TO A CALCULATED POINT; THENCE NORTH 35°35'01" WEST A DISTANCE OF 126.00 FEET TO A CALCULATED POINT; THENCE WITH THE SOUTHERN LINE OF THE LEASE AREA DESCRIBED IN DB 8470, PAGE 793, SOUTH 54°28'53" EAST A DISTANCE OF 89.31 FEET TO A CALCULATED POINT; THENCE SOUTH 35°18'17" EAST A DISTANCE OF 330.28 FEET TO A CALCULATED POINT; THENCE SOUTH 25°04'42" EAST A DISTANCE OF 202.15 FEET TO A CALCULATED POINT; THENCE ALONG A NEW LINE SOUTH 09°48'58" WEST A DISTANCE OF 368.63 FEET TO THE POINT OF BEGINNING, CONTAINING 634,093 SQUARE FEET OR 14.56 ACRES OF LAND, MORE OR LESS.

EXHIBIT B

Disclosures Required By N.C.G.S. § 160A-400.25

A legal description of the property subject to the agreement and the names of its legal and equitable property owners:

The legal description of the Property is contained in **Exhibit A** of this Agreement. The names of its current legal and equitable property owners are the State of North Carolina and Columbia Development Group, LLC and CDG Fenton, LLC.

A description of the development uses permitted in The Fenton District, including population densities and building types, intensities, placement on the site and design:

A mixture of uses are permitted on the Property including office, residential, commercial, and hotel use. The specific uses, population densities, and building types, intensities, placement on the site, and design of the development are detailed in the Fenton Preliminary Development Plan, adopted January 25, 2018 ("PDP") and the other Fenton District Documents. The proposed development is located on the east and west sides of Trinity Road near the intersection of Cary Towne Boulevard and I-40. Cary Towne Boulevard runs along the southern border of the Property and Walnut Creek runs along the northeast border of the Property.

A description of public facilities that will service the property, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development:

The existing public facilities serving the property are Cary Towne Boulevard; existing Trinity Road; and sanitary sewer. The new public facilities needed include the road and traffic improvements listed on the PDP, as well as sewer, water, drainage, and storm water infrastructures.

The Master Developer will, at a minimum, construct these new public facilities consistent with the Development Schedule described in **Exhibit C** and per Development Plans approved by the Town to assure the public facilities are available concurrent with the impacts of the development. All public facilities related to Phase 1 will be completed no later than 5 years after the commencement date for Phase 1. All public facilities related to Phase 2 will be completed no later than 5 years after the commencement date for Phase 2. All public facilities related to Phase 3 will be completed no later than 5 years after the commencement date for Phase 3. All public facilities related to Phase 4 will be completed no later than 5 years after the commencement date for Phase 4. All public facilities related to Phase 5 will be completed no later than 5 years after the commencement date for Phase 5.

In addition, Master Developer will construct those Public Facilities listed in **Exhibit D** consistent with the requirements of **Exhibit D**.

A description of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property:

The Master Developer will dedicate land for the greenway along Walnut Creek and will dedicate right-of-way for Quinard Road, consistent with the locations shown on the PDP. The Master Developer will also dedicate any utility easements that must be located outside of public right-of-way.

A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the Town for the public health, safety or welfare of its citizens:

The conditions, terms, and restrictions listed in the PDP, The Fenton District Documents, and this Agreement were approved by the Town and determined to be necessary for the public health, safety, and welfare of its citizens. There are no additional terms outside of those listed in the PDP, The Fenton District Documents, and this Agreement.

A description of any provisions for the preservation and restoration of historic structures:

None.

EXHIBIT C

Development Schedule Required By N.C.G.S. § 160A-400.25(b)

Phasing.

G.S. 160A-400.25(b) requires this Agreement to provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals. This statute allows the Town and CDG Fenton to determine whether The Fenton District is developed with or without phasing.

The Town and CDG Fenton determined, because of the size and complexity of The Fenton District and the requirement of a schedule to assure Public Facilities are available concurrent with the impacts of the Development of The Fenton District (G.S. § 160A-400.25(a)(4)), that phasing the Development of The Fenton District is necessary and appropriate. Under the LDO, phasing is accomplished by Master Developer submitting individual development plans for Town approval.

As part of The Fenton District and The Fenton District Documents, Columbia set forth and Town Council approved the following provisions regarding development plans for The Fenton District. Development plans shall be proposed and development shall occur in accordance with the following schedule.

1. Phase 1. The scope of Phase 1 will include a minimum of 60,000 square feet of non-retail development; a maximum of 210,000 square feet of retail development; and a minimum of 60,000 square feet of vertically integrated development. Master Developer shall submit a development plan for Phase 1 in accordance with The Fenton District no later than December 31, 2019. The completion date for Phase 1 is five (5) years after the commencement date for Phase 1.

2. Phase 2. The scope of Phase 2 will include a minimum of 100,000 square feet of non-retail development; a maximum of 230,000 square feet of retail development; and a minimum of 100,000 square feet of vertically integrated development. The commencement date for Phase 2 is five (5) years after the completion date of Phase 1. The completion date for Phase 2 is five (5) years after the commencement date for Phase 2.

3. Phase 3. The scope of Phase 3 will include a minimum of 130,000 square feet of non-retail development; a maximum of 250,000 square feet of retail development; and a minimum of 130,000 square feet of vertically integrated development. The commencement date for Phase 3 is five (5) years after the completion date of Phase 2. The completion date for Phase 3 is five (5) years after the commencement date for Phase 3.

4. Phase 4. The scope of Phase 4 will include a minimum of 340,000 square feet of non-retail development; a maximum of 270,000 square feet of retail development; and a minimum of 175,000 square feet of vertically integrated development. The commencement date for Phase 4 is five (5) years after the completion date of Phase 3. The completion date for Phase 4 is five (5) years after the commencement date for Phase 4.

5. Phase 5. The scope of Phase 5 will include a minimum of 450,000 square feet of non-retail development; a maximum of 325,000 square feet of retail development; and a minimum of 230,000 square feet of vertically integrated development. The commencement date for Phase 5 is five (5) years after the completion date of Phase 4. The completion date for Phase 5 is five (5) years after the commencement date for Phase 5.

The completion date for the Development of The Fenton District is twenty-five (25) years after Columbia purchases the Property from the State and becomes the fee simple owner of the Property. **However, nothing herein prohibits CDG Fenton and/or Master Developer from (i) commencing Development of any phase or portion of a phase; or (ii) completing development of any phase or portion of a phase at a pace faster than the Development Schedule, but the order of the phasing (1-5) shall be maintained unless this Agreement is subsequently amended.**

To that end, an essential element of the Required Periodic Review set forth in Article 5 of this Agreement, is Master Developer submitting an updated projection of commencement and completion dates for each phase to the Town Manager on or before December 1 of each year of the Term of this Agreement.

Note: N.C.G.S. § 160A-400.25(b) states and the Principal Parties agree that the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of a development agreement.

EXHIBIT D

Public Facilities

Background: One of the core reasons for forming development agreements is to require careful integration between public capital facilities planning, financing, and construction schedules and phasing of private development. A development agreement should structure and manage development approvals to ensure proper integration of private development approvals into the local capital facilities program. To these ends, a development agreement provides flexibility in negotiating these matters.

Two (2) of the eight (8) mandatory minimum provisions of a development agreement are:

(A) a description of public facilities that will serve the development, including who provides the facilities, the date of construction of new facilities, and a schedule to assure public facilities are available concurrent with the impacts of private development; and

(B) a description of any conditions, terms, restrictions, or other requirements determined to be necessary by the Town for the public health, safety, or welfare of its citizens.

Impact of The Fenton District: Given the large-scale, intensity, vibrancy, and horizontal and vertical mixture of uses along with the array of types of private structures and buildings of The Fenton District, the Town and CDG Fenton are setting forth in detail in **Exhibits D, D-1,** and **D-2** of the Agreement the terms, conditions, restrictions, and requirements governing public facilities planning, financing, and construction. To this end, the Principal Parties' mutual goal is that new public facilities serving Town citizens in the vicinity of The Fenton District are available for public use and enjoyment no later than being concurrent with development of The Fenton District.

PUBLIC FACILITIES SERVING THE GENERAL PUBLIC

I. **General Terms**

The following terms, restrictions, conditions and requirements apply to all Public Facilities (as defined in the Agreement) described in **Exhibit D**:

A. All Public Facilities described in **Exhibit D** are included in the Town's Capital Improvement Plan.

B. All Public Facilities described in **Exhibit D** are sized, designed, and constructed to serve the needs of Town citizens traveling, working, conducting business, or living in vicinity of The Fenton District and the greater Eastern Cary Gateway.

C. The design, construction, and financing of all Public Facilities described in **Exhibit D** shall be as follows:

1. All Public Facilities shall be designed and constructed to Town standards and any applicable standards of state or federal agencies ("Design and Construction Requirements"). All design, engineering, and plans for the Public Facilities must be approved by the Town in its regulatory capacity. The Master Developer shall be responsible for meeting all local, State, and Federal permit requirements and for obtaining all governmental approvals and permits related to Public Facilities (except as specifically stated herein). The Town shall reasonably cooperate with the Master Developer's efforts to obtain such approvals.

2. Master Developer shall pay all costs and expenses incurred in connection with Public Facilities design and construction (collectively, the "Work").

3. No payment by the Town associated with a particular Public Facility shall be requested by the Master Developer until the particular facility is substantially complete. For purposes of this **Exhibit D**, "substantially complete" means the Public Facility was designed and constructed in accordance with the Design and Construction Requirements and is sufficiently complete so that the Town and/or the public can occupy or utilize the Public Facility for its intended use.

4. Request for payment by Master Developer must be accompanied or preceded by documentation reasonably acceptable to the Town of the cost of designing, managing, and completing the construction of the Public Facility and all ancillary work required with the construction of such Public Facility. If any Work required by Town or NCDOT has not been satisfactorily completed at the time of payment request, cost of cure of those outstanding items will not be available for payment until such items are completed or a bond for such items is provided.

5. Contracts necessary for design and construction of Public Facilities eligible for payments from the Town that would have required competitive bidding if the contract had been awarded by the Town shall be formed after soliciting bids in accordance with Article 8 of Chapter 143 of the North Carolina General Statutes.

6. All construction contracts for Public Facilities shall require the contractor to provide a one-year warranty on all Work to begin after substantial completion and acceptance for routine maintenance by the Town. Such warranty must either be enforceable by Master Developer and the Town or enforceable by Master Developer and assignable to the Town.

7. Master Developer shall deliver to Town an affidavit listing all contractors, subcontractors, materialmen, and suppliers ("Contractors") hired directly by Master Developer who supplied any Work, material, supplies, or equipment to each Public Facility identified in **Exhibit D**. Master Developer shall also provide signed lien waivers from all Contractors hired directly by Master Developer evidencing

payment upon completion of the Public Facilities Work. Master Developer shall satisfy all claims for money owed that result from or arise out of Public Facilities Work.

8. Master Developer shall thereafter take such steps and execute such instruments as are reasonable and necessary for Town to accept the Public Facilities. For purposes of this **Exhibit D**, "accepted by the Town" or "accept the Public Facility" means the Public Facility is accepted by the Town for routine maintenance as described in LDO Section 8.1.8; this occurs before final acceptance of the Public Facilities by the Town.

9. No Developer shall be entitled to, and shall make no request for, transportation development fee credits, utility fee credits or reimbursements, parks and recreation fee credits, or similar, related to Master Developer's design or construction of any public facilities described in **Exhibit D**, including but not limited to Quinard Drive, Trinity Road South, Trinity Road Extension, Other Public Transportation Infrastructure Improvements, Waterline, or Greenway, as defined below.

D. All Work, schedules, activities, reviews, and approvals by Master Developer and the Town described in **Exhibits D, D-1, D-2** or otherwise shall be cooperative, in good faith, and proceed in a commercially reasonable manner. The descriptions of *Sequencing/Schedule of Events* in **Exhibit D** associated with individual Public Facilities are not intended to provide the details of a robust construction schedule or the details of all Town-required regulatory processes for approval of infrastructure which Master Developer must adhere to. Instead, these descriptions are guidelines as to the principal points in the planning and design process for each Public Facility where one Party needs to provide information or data to the other Party in order for the Public Facility project to continue to move toward completion.

II. Quinard Drive and Trinity Road South

A. Quinard Drive

1. *Sequencing/Schedule of Events*

i. The location of the intersection of Quinard Drive and Trinity Road is depicted on The Fenton District approved Preliminary Development Plan. Master Developer shall be responsible for the functional design of Quinard Drive which shall begin within a reasonable time period after the Effective Date of this Agreement.

ii. Within sixty (60) days after the Closing Date, the Town shall secure access for surveying and other investigations of the land west of the

Property for Master Developer to develop an alignment and design of Quinard Drive from the Property to SE Maynard Road.

iii. Master Developer shall submit its proposed design of Quinard Drive to the Town for Town review and approval.

iv. Master Developer shall submit its proposed construction drawings of Quinard Drive to the Town for Town review and approval. The construction drawings shall include appropriate traffic signalization at the Quinard Drive/SE Maynard Road/Sloan Drive intersection, as determined and approved by the North Carolina Department of Transportation. The design shall include any and all improvements needed on Quinard Drive and any other streets or driveways connecting to or to be connected to Quinard Drive.

v. Master Developer shall submit property and easement acquisition exhibits to the Town, and shall stake the proposed right-of-way in the field, so that the Town may initiate acquiring right-of-way for Quinard Drive from the Property to SE Maynard Rd.

vi. Within one hundred-eighty (180) days of Master Developer's fulfillment of condition (v) above, Town shall have made best efforts to acquire the property rights sufficient for Master Developer to build the portion of Quinard Drive located off the Property. For purposes of this paragraph, "best efforts" means Town has either acquired the property rights required by this paragraph or has initiated condemnation actions to acquire such property rights, by filing Notice of Action pursuant to N.C.G.S. § 40A-41 and, if not stopped by the court, instituting the action pursuant to N.C.G.S. § 40A-42.

vii. Absent court action affecting the acquisition of right of way for Quinard, the entire length of Quinard Drive shall be open for public use from SE Maynard Road to Trinity Road no later than the date when the last permanent or temporary certificate of completion for a building shell is issued for Phase B of The Fenton District, as depicted on **Exhibit D-1** and as will be more particularly shown on the approved development plan for Phase B.

2. *Estimates of Costs of Design and Construction of the Quinard Drive Project and the Quinard Drive Project's Value to the Public*

i. CDG Fenton and the Town have independently forecasted/estimated the costs of designing and constructing Quinard Drive including but not limited to (a) the costs of public water and sanitary sewer lines located within the right of way; (b) the costs of storm drainage, retaining walls; (c) professional fees, construction management fees, and other costs to be

incurred in connection with construction; and (d) the cost of appropriate traffic signalization at the intersection of Quinard Drive, Sloan Drive, and SE Maynard Road ("Quinard Drive Project"). However, such costs do not include the costs of acquiring land off the Property that shall be incurred by the Town solely. Based upon the information available to the Town, the Town believes that actual cost of design and construction of the Quinard Drive Project will be no less than **$9,622.960.58.**

ii. The amount of payments made by the Town to Master Developer for design, construction, and management of the Quinard Drive Project do not exceed the estimated costs of the Quinard Drive Project. The Town determined that it is more cost efficient and of greater value to Town citizens for the Quinard Drive Project to be completed as one project at one time, and in connection with Master Developer's development of The Fenton District. When available to Town citizens, Quinard Drive will provide east-west collector avenue connectivity between SE Maynard Road to existing Trinity Road and south to Cary Towne Boulevard. When Trinity Road is extended north to East Chatham Street, Quinard Drive will provide east-west interconnectivity between SE Maynard Road and either East Chatham Street or Cary Towne Boulevard, two major gateways into the Town.

By the Agreement requiring the Quinard Drive Project to be completed by the time Phase B of The Fenton District is substantially complete, the Town ensures proper integration of Quinard Drive into the Town's capital facilities program and potential adverse impacts to Town citizens are avoided. The Town avoids the costs of bidding, contracting, and managing design and construction of the Quinard Road Project.

3. *Payments by the Town*

The Quinard Drive Project as described herein is eligible for payments by the Town when all Conditions of Eligibility set forth in this **Exhibit D** have been satisfied.

B. Trinity Road South

1. *Sequencing/Schedule of Events*

i. Master Developer shall design Trinity Road, from its existing intersection with Cary Town Boulevard to its intersection with Quinard Drive ("Trinity Road South").

ii. Master Developer shall submit its proposed design of Trinity Road South to the Town for review and approval.

iii. Master Developer shall submit its proposed construction drawings of Trinity Road South to the Town for Town review and approval.

iv. Trinity Road South shall be completed and open for public use no later than the date when the first permanent or temporary certificate of occupancy is issued for Phase A of The Fenton District, as depicted on **Exhibit D-1**.

2. *Estimates of Costs of Design and Construction of Trinity Road South and Its Value to the Public*

i. CDG Fenton and the Town have independently forecasted/estimated the costs of designing and constructing Trinity Road South including but not limited to (a) the costs of public water and sanitary sewer lines located within the right of way; (b) the costs of storm drainage, retaining walls; and (c) professional fees, construction management fees and other costs to be incurred in connection with the construction of Trinity Road South ("Trinity Road South Project"). Based upon the information available to the Town, the Town believes that the actual cost of design and construction of the Trinity Road South Project will be no less than **$5,284,574.07.**

ii. The amount of payments made by the Town to Master Developer for Master Developer's design, construction, and management of Trinity Road South do not exceed the estimated costs of Trinity Road South. The Town determined that it is more cost-efficient and of greater value to Town citizens for Trinity Road South and Quinard Drive to be constructed in connection with the development of The Fenton District. When both Trinity Road South and Quinard Drive Projects have been completed, connectivity between SE Maynard Road and Cary Towne Boulevard will be increased.

By the Agreement requiring the Trinity Road South Project and Quinard Drive Project to be completed on or before the time Phase B of The Fenton District is completed, the Agreement ensures proper integration of the Trinity Road South and Quinard Drive Projects into the Town's capital facilities program, and potential adverse impacts to Town citizens are avoided. The Town avoids the costs of bidding, contracting, and managing the construction of the Trinity Road South Project.

3. *Payments by the Town*

The Trinity Road South Project as described herein is eligible for payments by the Town when all Conditions of Eligibility set forth in this **Exhibit D** have been satisfied.

III. **Other Public Transportation Infrastructure Improvements**

A. *Sequencing/Schedule of Events*

1. The Laws applicable to the Property, through voluntary conditions offered by Columbia and accepted by the Town, require Master Developer to design and construct a variety of off the Property transportation and other public infrastructure improvements not part of the Quinard Drive Project or Trinity Road South Project, such as provision of traffic signals, turn lanes, and communication infrastructure as approved in Preliminary Development Plan and described in **Exhibit D-2** (collectively identified as "Other Public Transportation Infrastructure Improvements").

2. Master Developer shall design and complete the Other Public Transportation Infrastructure Improvements in accordance with the phasing schedule shown as **Exhibits D-1** and **D-2**.

B. *Estimates of Costs of Design and Construction of the Other Off the Property Public Infrastructure Improvements and the Other Off the Property Public Infrastructure Improvements Value to the Public*

1. CDG Fenton and the Town have independently forecasted/estimated the costs of designing, constructing, and installing Other Public Transportation Infrastructure Improvements. Based upon the information available to the Town, the Town believes that actual cost of design, construction, and installation of Other Public Transportation Infrastructure Improvements would be no less than the amounts set forth below for each improvement:

i.	Construct Right Turn Lane	$283,524.28
ii.	Frontage Widening Along Cary Towne Boulevard	$850,572.85
iii.	Install Traffic Signal and Construct Lanes	$1,701,145.69
iv.	Install Signals at I-40 / Cary Towne Boulevard Ramps	$737,497.82
v.	Construct Lanes at I-40 / Cary Towne Boulevard Interchange and Modify Signals	$1,228,686.58
vi.	Install Traffic Signal When Trinity Road Extension is Constructed or When Office Land Becomes Occupied	$387,123.91
vii.	Restripe Lanes and Modify Signal at Trinity Road at Chapel Hill Road	$291,599.18
viii.	Restripe for Left-Turn Lane and Modify Signal at Maynard Road at Chapel Hill Road	$292,377.79

2. The amount of payments made by the Town to Master Developer for Other Public Transportation Infrastructure Improvements does not exceed the estimated costs of the Other Public Transportation Infrastructure Improvements. The Town determined that it is more cost efficient for the Other Public Transportation Infrastructure Improvements to be completed expeditiously in connection with Master Developer's development of The Fenton District. The Other Public Transportation Infrastructure Improvements are significantly valuable to Town

citizens because they enhance existing Town public infrastructure, improving its capacity, safety, and traffic management.

By the Agreement requiring the Other Public Transportation Infrastructure Improvements to be completed in accordance with the phasing schedule shown as **Exhibits D-1** and **D-2**, the Agreement ensures proper integration of the Other Public Transportation Infrastructure Improvements into the Town's capital facilities program and adverse impacts to Town citizens are avoided. The Town also avoids the costs of bidding (if necessary), contracting, installing, and managing the Other Public Transportation Infrastructure Improvements.

C. *Payments by the Town*

The Other Public Transportation Infrastructure Improvements project as described herein are eligible for payments by the Town when all of the Conditions of Eligibility set forth in **Exhibit D** have been satisfied.

IV. Cary Towne Boulevard Waterline Extension

A. *Sequencing/Schedule of Events*

1. The Laws applicable to the Property, through voluntary conditions offered by Columbia and accepted by the Town, require Master Developer to design and construct a waterline extension in the right-of-way of Cary Towne Boulevard ("Waterline").

2. Master Developer shall design, construct, and install the Waterline and shall complete design, construction, and installation of the Waterline no later than the date the first permanent or temporary certificate of occupancy is issued for Phase A of The Fenton District.

B. *Estimates of Costs of Design and Construction of the Waterline and the Waterline Value to the Public*

1. CDG Fenton and the Town have independently forecasted/estimated the costs of designing, constructing, and installing the Waterline. Based upon the information available to the Town, the Town believes that actual cost of design, construction, and installation of Waterline would be no less than **$505,005.43**.

2. The amount of payments made by the Town to Master Developer for Waterline does not exceed the estimated costs of the Waterline. The Town determined that it is more cost-efficient for the Waterline to be completed early in the development of The Fenton District to improve availability of water service and avoid construction along Cary Towne Boulevard, a major gateway into the Town, after Phase A of The Fenton District is open.

By the Agreement requiring the Waterline to be completed expeditiously, the Agreement ensures proper integration of the Waterline into the Town's capital facilities program and adverse impacts to Town citizens are avoided. Increased water service will be available to Town citizens and the operations of the Town's drinking water system will be improved by the Waterline. The Town avoids the costs of bidding (if necessary), contracting, installing, and managing the Waterline.

C. *Payments by the Town*

The Waterline as described herein is eligible for payments by the Town when all of the Conditions of Eligibility set forth in **Exhibit D** have been satisfied.

V. Iron Gate Greenway

A. *Sequencing/Schedule of Events*

1. The Laws applicable to the Property through voluntary conditions offered by Columbia and accepted by the Town, require Master Developer to design and construct an extension of the Iron Gate Greenway along Walnut Creek (Greenway).

2. Master Developer shall design, construct, and install the Greenway and complete design, construction, and installation of the Greenway by no later than the last permanent or temporary certificate of completion is issued for a building shell in Phase B of The Fenton District as depicted on **Exhibit D-1** and as will be more particularly shown on the approved development plan for Phase B.

B. *Estimates of Costs of Design and Construction of the Greenway and the Greenway's Value to the Public*

1. CDG Fenton and the Town have independently forecasted/estimated the costs of designing, constructing, and installing the Greenway. Based upon the information available to the Town, the Town believes that actual cost of design, construction and installation of Greenway would be no less than **$1,348,326.74**.

2. The amount of payments made by the Town to Master Developer for Greenway does not exceed the estimated costs of the Greenway. The Town determined that it is important to ensure that the Greenway is available to Town citizens as quickly as is practically possible and providing the Greenway promptly is consistent with The Town's policy of encouraging, fostering, and providing public recreational facilities.

The Agreement ensures proper integration of the Greenway into the Town's capital facilities program and the value of these improvements being completed expeditiously enhances the quality of life for Town citizens. The Town avoids the costs of bidding (if necessary), contracting, installing, and managing the Greenway.

C. *Payments by the Town*

The Greenway as described herein is eligible for payments by the Town when all of the Conditions of Eligibility set forth in **Exhibit D** have been satisfied.

VI. Trinity Road Extension

The Laws applicable to the Property, through voluntary conditions offered by Columbia and accepted by the Town, require Master Developer to design and construct Trinity Road Extension (Trinity Road South from its intersection with Quinard Drive, north to East Chatham Street) in accordance with the PDP approved by the Fenton Adoption Ordinance. If not constructed sooner, Trinity Road Extension will be built in connection with construction of Phase D as shown on **Exhibit D-1**. On September 11, 2018, the Council of State agreed to grant to Town "necessary right of way easement areas" for construction of Trinity Road Extension.

The Principal Parties agree that, unless otherwise agreed to in writing by the Town Manager, (i) Trinity Road Extension shall be opened no later than the opening of any private development in Phase D, and (ii) no Developer may request issuance of building permits for structures in Phase D until the Town and Master Developer have amended this Agreement to detail construction requirements and reimbursement procedures for Trinity Road Extension. To the extent necessary, the Town and Master Developer shall cooperate regarding compliance with any federal, state, or local environmental regulations applicable to Trinity Road Extension, including signing applications for governmental approvals.

PAYMENT/REIMBURSEMENT TERMS AND CONDITIONS

VII. Eligibility for Payments

Master Developer is eligible to request payments from the Town in an amount up to $ twenty- two million five hundred thirty-three thousand three hundred ninety-four ($22,533,394.93) dollars, exclusive of the Cost of the Trinity Road Extension (the "Total Eligible Payments"). As set forth in more detail below, the payments available to Master Developer shall in no event exceed the value of the Public Facilities completed as established by this Agreement. In addition, such payments shall only be available upon Master Developer's satisfaction of the General Terms set forth in this **Exhibit D** and under the following conditions:

Conditions of Eligibility for Payments

A. Certificates of completion must be obtained for the shells of all buildings in Phase A; permanent or temporary certificates of occupancy must be obtained for 120,000SF in Phase A; and a development plan including all buildings in Phase B, as depicted on **Exhibit D-1**, must be approved;

B. **$5,284,574.07** will be eligible for payment when Trinity Road South has been constructed, inspected, and accepted by the Town, subject to the bonding of any incomplete or uncorrected items if applicable;

C. **$9,622,960.58** will be eligible for payment when Quinard Road has been constructed, inspected, dedicated to, and accepted by the Town subject to the bonding of any incomplete or uncorrected items if applicable;

D. **$5,772,528.10** will be eligible for payment of Other Public Transportation Infrastructure Improvements. When one or more of the Other Public Transportation Improvements have been dedicated, constructed, installed, inspected, and accepted by the Town or NCDOT (as applicable), subject to the bonding of any incomplete or uncorrected items if applicable, an amount equal to the value of the applicable completed Other Public Transportation Improvements as set forth in Section III.B.1 of this **Exhibit D** will be eligible for payment;

E. **$1,348,326.74** will be eligible for payment when the Greenway has been constructed, inspected, and accepted by the Town, subject to the bonding of any incomplete or uncorrected items if applicable; and

F. **$505,005.43** will be eligible for payment when the Waterline, has been constructed, inspected, and accepted by the Town subject to the bonding of any incomplete or uncorrected items if applicable.

Items A through F immediately above shall be referred to as the "Conditions of Eligibility."

VIII. Payments

Upon Master Developer becoming eligible for payment and requesting payment as set forth above, the Town shall make payments to Master Developer pursuant to the following payment schedule:

A. *First Base Lump Sum Payment.* Upon receiving building permits and inspection approval of footings for at least 50% of the floor area of Phase B of The Fenton District, as depicted in an approved development plan for all of Phase B, Master Developer shall be entitled to receive up to $3,380,009.24 (15% of the value of the Total Eligible Payments). However, any payment to Master Developer shall not exceed total amount available for payment to Master Developer based on the Conditions of Eligibility. By way of example, if Master Developer receives building permits and inspection approval of footings for at least 50% of the floor area of Phase B of The Fenton District, but Master Developer has only completed the Waterline as set forth in the Conditions for Eligibility, the payment to Master Developer would be limited to the value of the Waterline until additional Public Facilities are completed. At the point additional Public Facilities are completed in accordance with the Conditions of Eligibility, the value associated with the subsequently completed Public Facilities would be eligible for payment and additional payments would then be made by the Town to Master Developer (upon request of Master Developer) until the full amount of $3,380,009.24 was paid under this first Lump Sum Payment. This

method of payment after the completion of additional Public Facilities applies to all payments to be made by the Town under **Exhibit D** of this Agreement.

For purposes of this Subsection VIII, "floor area" means:

The gross total horizontal area of all floors including:

(a) usable basements and cellars;

(b) the portion of attics accessible by fixed stairs where the distance between floor and ceiling is at least five (5) feet; and

(c) below the roof and within the outer surface of the main walls of principal or accessory buildings, or the centerlines of a party wall separating such buildings or portions thereof, or within lines drawn parallel to and two (2) feet within the roofline of any building or portions thereof without walls.

In the case of non-residential buildings, floor area calculations shall not include arcades, porticos, and similar areas open to the outside air which are accessible to the general public and which are not designed or used as areas for sales, display, storage, service, or production.

B. *Second Lump Sum Payment.* Upon obtaining building permits and inspection approvals of footings for 100% of the floor area in Phase B of The Fenton District, as depicted in an approved development plan for all of Phase B, Master Developer shall be entitled to receive up to $6,760,018.48 (30% of the value of the Total Eligible Payments). However, any payment to Master Developer shall not exceed total amount available for payment to Master Developer based on the Conditions of Eligibility. First Lump Sum Payment (if any) shall be credited against the amount due for Second Lump Sum Payment.

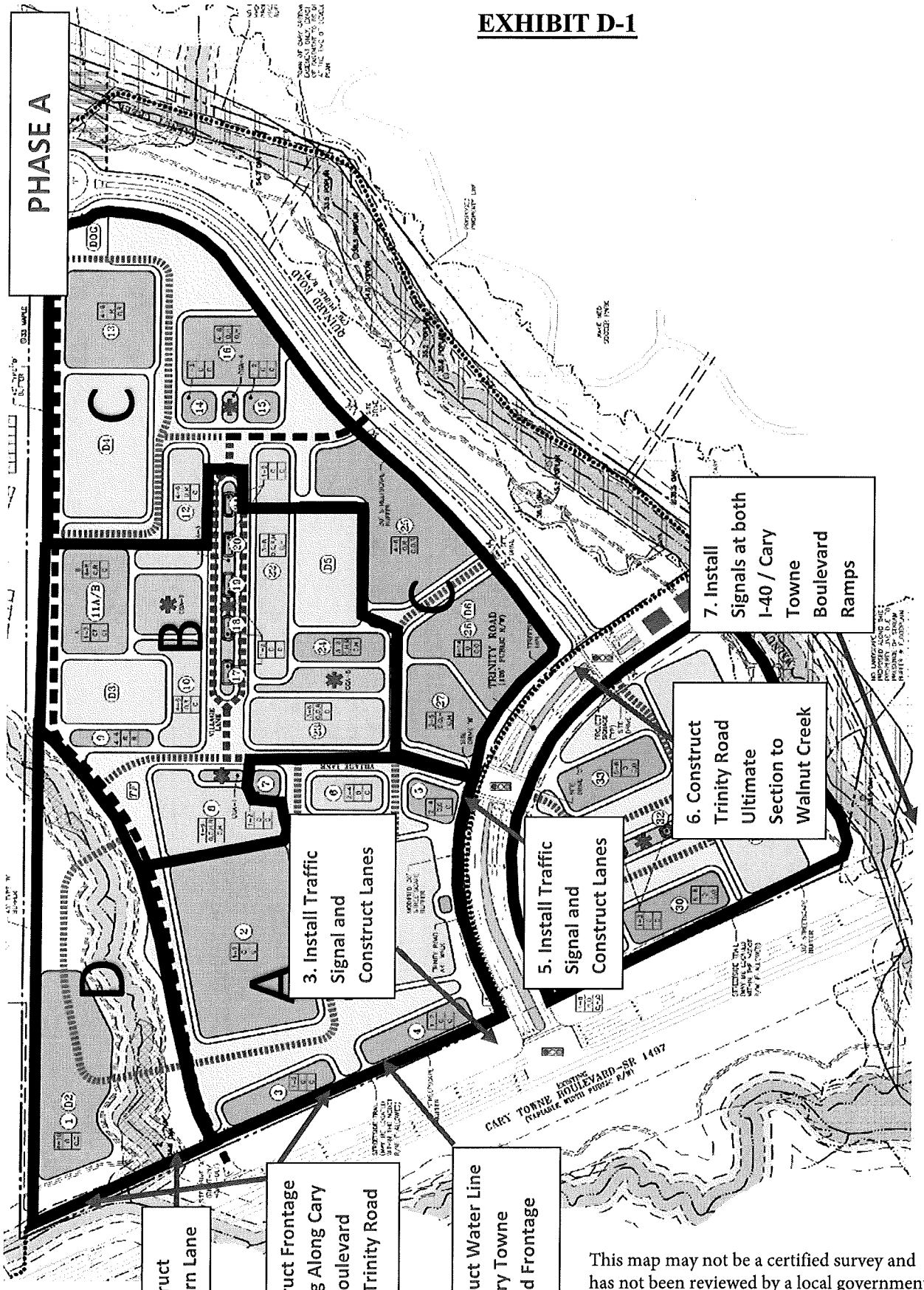
C. *Third Base Lump Sum Payment.* Upon receiving certificates of completion for 50% of the building shells in Phase B of The Fenton District as depicted in an approved development plan for all of Phase B, Master Developer shall be entitled to receive up to $12,393,367.21 (55% of the value of the Total Eligible Payments). First and Second Lump Sum Payment (if any) shall be credited against the amount due for Third Lump Sum Payment.

D. *Fourth Base Lump Sum Payment.* Upon receiving certificates of completion for 100% of the building shells in Phase B, and permanent or temporary certificates of occupancy for 50% of the square footage of Phase B of The Fenton District, as depicted in an approved development plan for all of Phase B, Master Developer shall be entitled to receive up to $18,026,715.94 (80% of the value of the Total Eligible Payments). First, Second, and Third Lump Sum Payment (if any) shall be credited against the amount due for Fourth Lump Sum Payment.

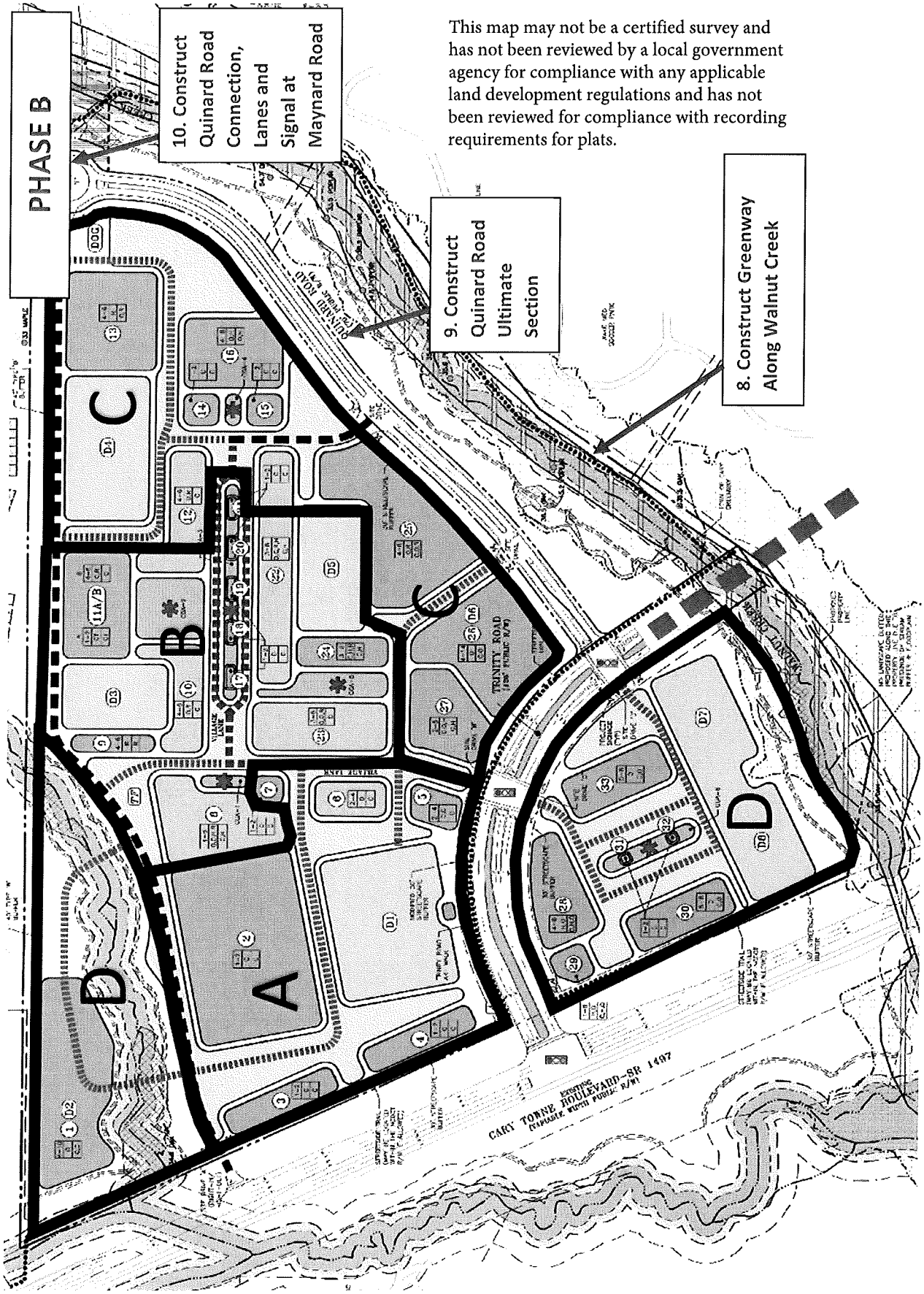
E. *Non-Retail/Density Incentives.* If at the time Master Developer obtains building permits and inspection approvals of footings for 100% of the floor area of Phase B of The Fenton District as outlined in Subsection B above, the building permits obtained to date allow construction of non-retail space in excess of 200,000 square feet, Master Developer shall be entitled to receive an additional $2,253,339.49 (10% of the value of the Total Eligible Payments). Alternatively, if at the time Master Developer obtains building permits

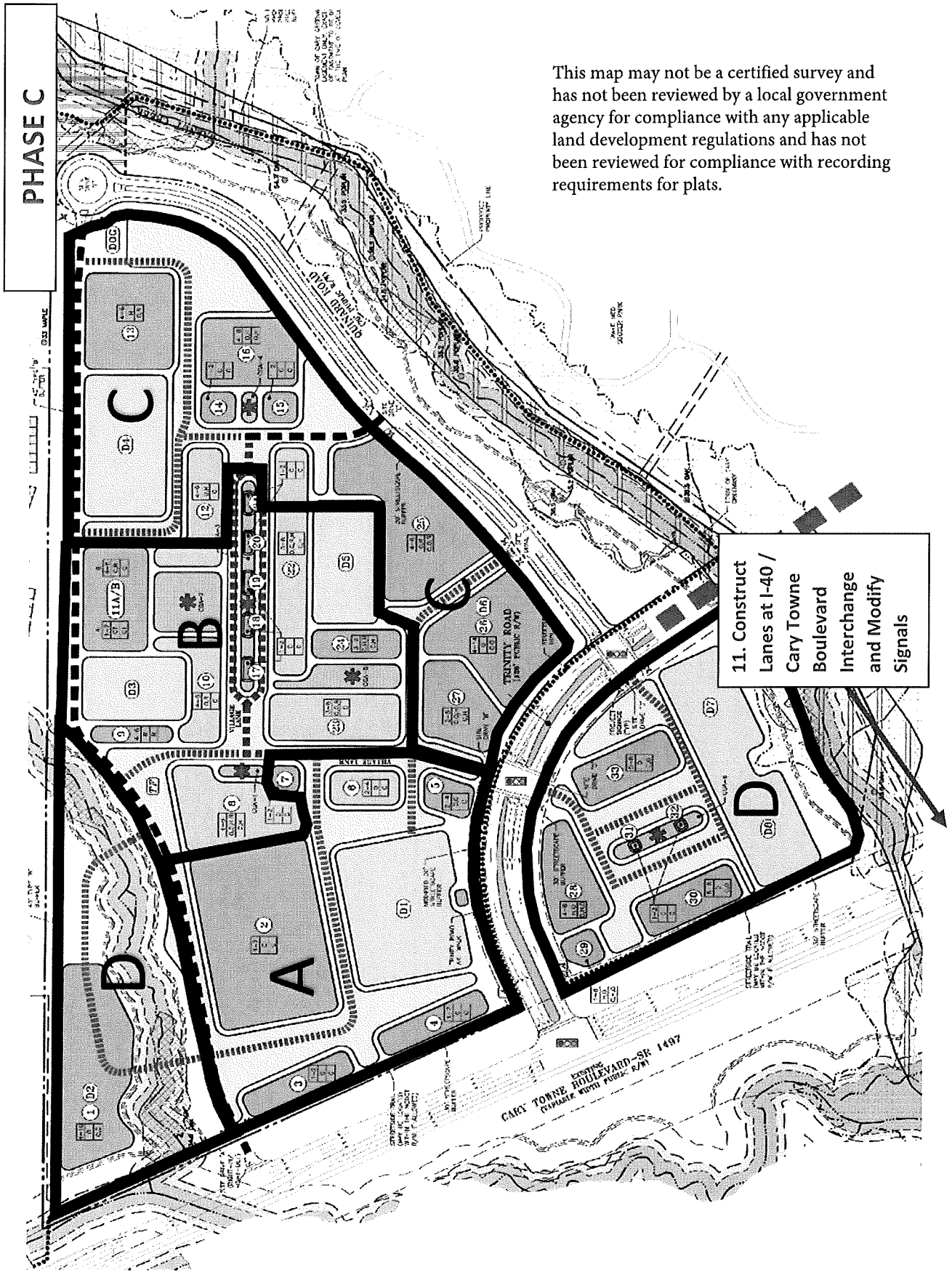
and inspection approvals of footings for 100% of the floor area of Phase B of The Fenton District as outlined in Subsection VIII.B above, the building permits obtained to date allow construction of non-retail space in excess of 425,000 square feet, Master Developer shall be entitled to receive an additional $4,506,678.99 (20% of the value of the Total Eligible Payments). If temporary or final certificates of occupancy for ninety percent (90%) of the full square footage (200,000 or 425,000, as applicable) are not obtained within three years of Town's payment of incentive, Town shall be entitled to deduct the full amount of the applicable payment made under this Subsection VIII.E. from any future payments due under this Subsection VIII; if all payments under this Subsection VIII have been made, Master Developer shall repay the Nonretail/Density Incentive to the Town. If temporary or final certificates of occupancy for more than ninety percent (90%) but less than one hundred percent (100%) of the full square footage (200,000 or 425,000, as applicable) are not obtained within three years of Town's payment of incentive, Town shall be entitled to deduct a pro rata amount of the applicable payment made under this Subsection VIII.E. from any future payments due under this Subsection VIII; if all payments under this Subsection VIII have been made, Master Developer shall repay a pro rata amount of the Nonretail/Density Incentive to the Town. For purposes of this paragraph, "non-retail space" shall mean the following principal uses identified on The Fenton District Documents: office, residential, hospitality, public/institutional, and research laboratories.

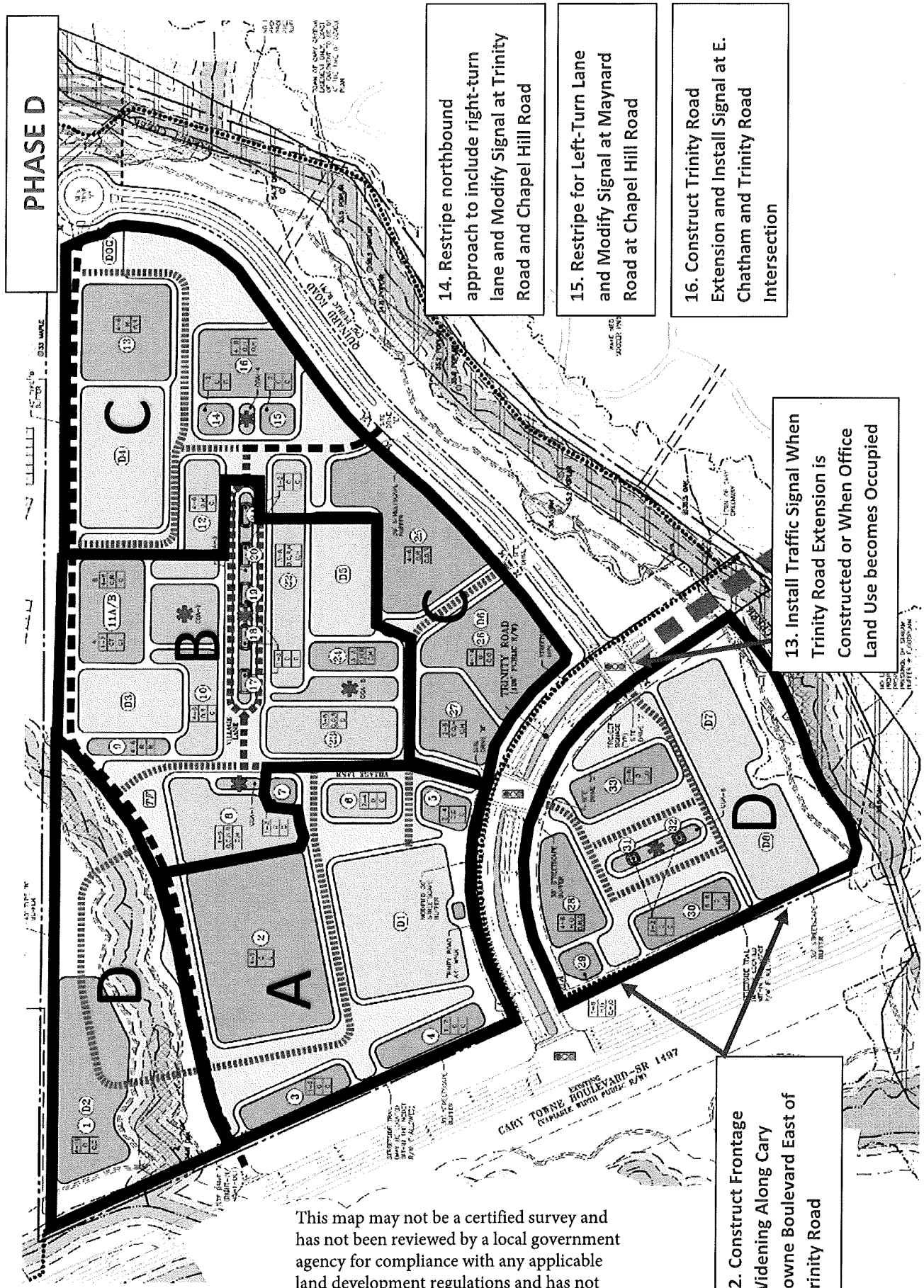
EXHIBIT D-1



This map may not be a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations and has not been reviewed for compliance with recording requirements for plats.


PHASE B
10. Construct Quinard Road Connection, Lanes and Signal at Maynard Road
9. Construct Quinard Road Ultimate Section
8. Construct Greenway Along Walnut Creek
This map may not be a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations and has not been reviewed for compliance with recording requirements for plats.
A
B
C
D
TRINITY ROAD
CARY TOWNE BOULEVARD-SR 1497


PHASE C
This map may not be a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations and has not been reviewed for compliance with recording requirements for plats.
11. Construct Lanes at I-40 / Cary Towne Boulevard Interchange and Modify Signals
A
B
C
D
CARY TOWNE BOULEVARD-SR 1497
TRINITY ROAD
QUINARD ROAD



This map may not be a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations and has not been reviewed for compliance with recording requirements for plats.

EXHIBIT D-2

Item Number	Development Phase	Item Description
		DEVELOPMENT PHASE A
1	A	CARY TOWNE BLVD & ACCESS A (IMPROVEMENTS 8A, 8B & 8C) (8A) WIDEN THE WESTBOUND APPROACH TO PROVIDE AN EXCLUSIVE RIGHT-TURN LANE WITH AT LEAST 100 FEET OF STORAGE AND APPROPRIATE TAPER.
2	A	FRONTAGE WIDENING – WEST (IMPROVEMENT 1) (1) WIDEN CARY TOWNE BOULEVARD AND TRINITY ROAD ALONG THE FRONTAGE OF THE PROPOSED DEVELOPMENT *BETWEEN THE SITE'S WESTERN BOUNDARY AND TRINITY ROAD* TO HALF OF THE ULTIMATE CROSS-SECTION AS DEFINED IN THE TOWN'S COMPREHENSIVE TRANSPORTATION PLAN.
3	A	TRINITY RD & CARY TOWNE BLVD (IMPROVEMENTS 7A, 7B, 7C, 7D, 7E & 7F) (7A & 7F) INSTALL A TRAFFIC SIGNAL WITH A CCTV CAMERA AND CONNECTIONS TO THE TOWN'S ATMS THAT MEETS THE TOWN OF CARY AND NCDOT'S ENGINEERING DESIGN STANDARDS. (7B) WIDEN CARY TOWNE BOULEVARD ALONG THE PROPERTY FRONTAGE TO PROVIDE A THIRD WESTBOUND THROUGH LANE ACROSS THE INTERSECTION. (7C) WIDEN THE WESTBOUND APPROACH TO PROVIDE AN EXCLUSIVE RIGHT-TURN LANE WITH AT LEAST 350 FEET OF STORAGE AND APPROPRIATE TAPER. (7D) WIDEN THE EASTBOUND APPROACH TO PROVIDE A SECOND LEFT-TURN LANE WITH AT LEAST 450 FEET OF STORAGE AND APPROPRIATE TAPER. (7E) WIDEN TRINITY ROAD TO PROVIDE TWO RECEIVING LANES AND THREE APPROACH LANES WITH ONE EXCLUSIVE RIGHT-TURN LANE AND TWO EXCLUSIVE LEFT-TURN LANES WITH AT LEAST 500 FEET OF STORAGE AND APPROPRIATE TAPER.
4	A	CONSTRUCT WATER LINE ALONG CARY TOWNE BOULEVARD FRONTAGE.
5	A	TRINITY RD & ACCESS B/C (IMPROVEMENTS 9A, 9B, 9C, 9D, 9E & 9F) (9A) INSTALL A TRAFFIC SIGNAL WITH A CCTV CAMERA AND CONNECTIONS TO THE TOWN'S ATMS THAT MEETS THE TOWN OF CARY AND NCDOT'S ENGINEERING DESIGN STANDARDS. (9B) CONSTRUCT TRINITY ROAD AS TWO NORTHBOUND LANES AND TWO SOUTHBOUND LANES. (9C) CONSTRUCT TWO NORTHBOUND LEFT-TURN STORAGE LANE WITH 300 FEET OF STORAGE AND APPROPRIATE TAPER. (9D) CONSTRUCT A SOUTHBOUND LEFT-TURN STORAGE LANE WITH 250 FEET OF STORAGE AND APPROPRIATE TAPER. (9E) CONSTRUCT ACCESS B AT THE PLANNED LOCATION TO CONSIST OF TWO INBOUND LANES AND THREE OUTBOUND LANES. THE THREE

EXHIBIT D-2

Item Number	Development Phase	Item Description
		OUTBOUND LANES WILL CONSIST OF A SHARED THROUGH/LEFT-TURN LANE AND TWO RIGHT-TURN LANES. (9F) CONSTRUCT ACCESS C AT THE PLANNED LOCATION TO CONSIST OF ONE INBOUND LANE AND TWO OUTBOUND LANES. THE OUTBOUND LANES WILL CONSIST OF AN EXCLUSIVE LEFT-TURN LANE AND A SHARED THROUGH/RIGHT-TURN LANE.
6	A	TRINITY ROAD TO WALNUT CREEK (IMPROVEMENT 9B & PER PDP) (9B) CONSTRUCT TRINITY ROAD FROM CARY TOWNE BOULEVARD TO WALNUT CREEK IN ACCORDANCE WITH THE TOWN'S COMPREHENSIVE TRANSPORTATION PLAN.
7	A	CARY TOWNE BLVD & I-40 RAMPS (IMPROVEMENTS 5A & 6A) (5A & 6A) INSTALL TRAFFIC SIGNALS WITH CCTV CAMERAS AND CONNECTIONS TO THE TOWN'S ATMS THAT MEET THE TOWN OF CARY AND NCDOT'S ENGINEERING DESIGN STANDARDS AT CARY TOWNE BOULEVARD AND THE EASTBOUND AND WESTBOUND I-40 ON/OFF RAMPS.
DEVELOPMENT PHASE B		
8	B	CONSTRUCT GREENWAY ALONG WALNUT CREEK.
9	B	QUINARD (IMPROVEMENTS 11A, 11B, 11C, 12A, 12B, 12C, 13A, 13B & 13C) CONSTRUCT QUINARD ROAD FROM TRINITY ROAD TO THE PROPERTY LINE IN ACCORDANCE WITH THE TOWN'S COMPREHENSIVE TRANSPORTATION PLAN. PROVIDE ACCESS POINTS E, F AND G.
10	B	QUINARD (IMPROVEMENTS PER PDP & DEVELOPMENT AGREEMENT) CONSTRUCT QUINARD ROAD FROM THE PROPERTY LINE TO MAYNARD ROAD IN ACCORDANCE WITH THE TOWN'S COMPREHENSIVE TRANSPORTATION PLAN.
DEVELOPMENT PHASE C		
11	C	CARY TOWNE BLVD & I-40 RAMPS (IMPROVEMENTS 5B, 5C, 6B & 6C) (5B) MODIFY THE EASTBOUND APPROACH AND DEPARTURE TO PROVIDE A SECOND EASTBOUND THRU LANE. THIS WILL REQUIRE MODIFICATION OF THE I-40 EASTBOUND ON-RAMP FROM THE CURRENT LANE-DROP TO AN EXCLUSIVE RIGHT-TURN STORAGE LANE WITH 250 FEET OF STORAGE AND APPROPRIATE TAPER. (5C) THE FRONTAGE WIDENING ALONG CARY TOWNE BOULEVARD WILL PROVIDE A THIRD WESTBOUND LANE AND THE I-40 EASTBOUND OFF-RAMP TRAFFIC TRAVELING WESTBOUND ON CARY TOWNE BOULEVARD WILL PROVIDE A FREE-FLOW LANE FOR SUCH TRAFFIC. (6B) EXTEND THE EXISTING EASTBOUND LEFT-TURN LANE ACROSS THE BRIDGE TO FORM A CONTINUOUS LANE. (6C) CONSTRUCT A SECOND EASTBOUND LEFT-TURN LANE WITH 234 FEET OF STORAGE AND APPROPRIATE TAPER. THIS WILL REQUIRE THAT A SECOND RECEIVING LANE BE CONSTRUCTED ON THE ON-RAMP. THIS

EXHIBIT D-2

Item Number	Development Phase	Item Description
		LANE SHOULD CONSIST OF A MINIMUM OF 600 FEET OF FULL-WIDTH AND APPROPRIATE TAPER.
		DEVELOPMENT PHASE D
12	D	FRONTAGE WIDENING – EAST (IMPROVEMENT 1) (1) WIDEN CARY TOWNE BOULEVARD AND TRINITY ROAD ALONG THE FRONTAGE OF THE PROPOSED DEVELOPMENT *BETWEEN TRINITY ROAD AND THE SITE'S EASTERN BOUNDARY* TO HALF OF THE ULTIMATE CROSS-SECTION AS DEFINED IN THE TOWN'S COMPREHENSIVE TRANSPORTATION PLAN.
13	D	TRINITY RD & ACCESS D / QUINARD RD (IMPROVEMENTS 10A & 10B) (10A) INSTALL A TRAFFIC SIGNAL WITH A CCTV CAMERA AND CONNECTIONS TO THE TOWN'S ATMS THAT MEETS THE TOWN OF CARY AND NCDOT'S ENGINEERING DESIGN STANDARDS. (10B) CONSTRUCT ACCESS D AT THE PLANNED LOCATION TO CONSIST OF ONE INBOUND LANE AND TWO OUTBOUND LANES WITH A SHARED THROUGH/RIGHT-TURN LANE AND A LEFT-TURN LANE OF AT LEAST 100 FEET OF STORAGE AND APPROPRIATE TAPER.
14	D	TRINITY RD AT CHAPEL HILL RD (IMPROVEMENTS 3A & 3B) (3A) RESTRIPE THE NORTHBOUND APPROACH OF TRINITY ROAD TO INCLUDE A RIGHT-TURN LANE WITH 250 FEET OF STORAGE AND APPROPRIATE TAPER. (3B) MODIFY TRAFFIC SIGNAL AT THIS INTERSECTION BASED ON THE TOWN OF CARY AND NCDOT'S DESIGN STANDARDS TO ACCOMMODATE THE LANE GEOMETRICS CHANGES.
15	D	NE MAYNARD RD & CHAPEL HILL RD (IMPROVEMENTS 2A & 2B) (2A) RESTRIPE THE WESTBOUND APPROACH TO PROVIDE A SECOND LEFT-TURN LANE WITH 236 FEET OF STORAGE AND APPROPRIATE TAPER. (2B) MODIFY TRAFFIC SIGNAL AT THIS INTERSECTION BASED ON THE TOWN OF CARY AND NCDOT'S DESIGN STANDARDS TO ACCOMMODATE THE LANE GEOMETRICS CHANGES.
16	D	TRINITY RD EXT (IMPROVEMENTS 4A, 4B, 4C, 4D, 4E, 4F & PER PDP) CONSTRUCT TRINITY ROAD, INCLUDING BRIDGE OVER WALNUT CREEK, FROM SOUTH SIDE OF CREEK NORTHWARD TO E. CHATHAM STREET: (4A) INSTALL A TRAFFIC SIGNAL WITH RAILROAD PREEMPTION, A CCTV CAMERA AND CONNECTIONS TO THE TOWN'S ATMS THAT MEETS THE TOWN OF CARY AND NCDOT'S ENGINEERING DESIGN STANDARDS. (4B) CONSTRUCT NORTHBOUND TRINITY ROAD TO INTERSECT WITH E. CHATHAM STREET AT THE CURRENT LOCATION OF SOUTHBOUND TRINITY ROAD AT E. CHATHAM STREET. (4C) CONSTRUCT TRINITY ROAD AS ONE NORTHBOUND AND ONE SOUTHBOUND LANE.

EXHIBIT D-2

Item Number	Development Phase	Item Description
		(4D) WIDEN THE NORTHBOUND APPROACH TO PROVIDE AN EXCLUSIVE LEFT-TURN LANE WITH AT LEAST 300 FEET OF STORAGE AND APPROPRIATE TAPER. (4E) WIDEN THE NORTHBOUND APPROACH TO PROVIDE AN EXCLUSIVE RIGHT-TURN LANE WITH AT LEAST 150 FEET OF STORAGE AND APPROPRIATE TAPER. (4F) THE CONTINUOUS NORTHBOUND LANE WILL PROVIDE AN EXCLUSIVE THRU-LANE FOR NORTHBOUND TRAFFIC ON TRINITY ROAD TO CROSS CHATHAM STREET AND THE RAILROAD TRACKS.

NOTE: AS INDICATED BY GENERAL NOTE 3 ON THE COVER SHEET OF THE APPROVED PDP, "ROAD ALIGNMENTS AND CROSS-SECTIONS SHOWN ON THIS PDP ARE APPROXIMATE." IN ADDITION, THE LEGEND ON SHEET 2 OF THE APPROVED PDP (SHEET C-2) IDENTIFIES THE LOCATION OF ALL INTERNAL STREETS AND TRINITY ROAD EXTENSION AS BEING CONCEPTUAL. ACCORDINGLY, IF ALTERNATE LOCATIONS OR CONFIGURATIONS OF THESE INTERNAL STREETS ARE APPROVED AS PART OF FUTURE DEVELOPMENT PLAN REVIEW, THIS AGREEMENT AND THE IMPROVEMENTS NOTED ABOVE SHALL BE MODIFIED TO CONSTRUCT THE DEVELOPMENT PLAN-APPROVED IMPROVEMENT IN AN EQUIVALENT MANNER, AS APPROVED BY THE TOWN'S PLANNING AND DEVELOPMENT SERVICES DIRECTOR.

EXHIBIT E

Estoppel Certificate

To: [Name and Address of Other Party to Development Agreement Entitled to Request an Estoppel]

Re: The Fenton District, Cary, NC

The undersigned, as a Principal Party to the "Development Agreement for the Fenton Mixed-Use Development" dated _____, between the Town of Cary and CDG Fenton, LLC (the "Agreement"), hereby certifies, to its actual knowledge, that:

1. **A true and complete copy of the Agreement is attached hereto.**

2. **The Agreement has not been amended or modified, except as follows: _____. [signatory to confirm if accurate]To the actual knowledge of the undersigned, the Agreement is full force and effect.**

3. **[signatory to confirm if accurate]The undersigned has not defaulted in its obligations under the Agreement.**

4. **[signatory to confirm if accurate]To the actual knowledge of the undersigned, without any inquiry of any other party and without any due diligence as to such matters, no other party is in default under the Agreement.**

The foregoing Estoppel Certificate is provided solely for the purpose of confirming the terms, conditions and agreements set forth in the Development Agreement. This certificate is not intended to, and shall not, amend or modify any of the terms, conditions and agreements set out in the Development Agreement or affect any of the undersigned's rights and remedies under the Development Agreement. In the event of any conflict or discrepancy between the terms, conditions and agreements set forth in this certificate and those in the Development Agreement, the terms, conditions and agreements set forth in the Development Agreement shall govern.

[name of entity providing the estoppel]

By: _____

EXHIBIT F

The Fenton District Energy Efficiency Plan

Background. Energy efficiency promotes public health, safety and welfare. N.C.G.S. §§ 160A-383.4 & 160A-459.1(a).

Land use regulation can encourage energy efficiency through regulating the uses and the locations of buildings on land, but zoning does not regulate construction of buildings or the type of materials used in the construction of those buildings to achieve energy efficiency.

The Fenton Adoption Ordinance requires location and design of private uses, buildings, and their connectivity with public transportation infrastructure to achieve far greater energy efficiencies than many designs of new developments. CDG Fenton, having voluntarily agreed to The Fenton Adoption Ordinance, has committed voluntarily to achieve energy efficiency within the framework of land use regulations. For example, separate developments containing office, residential, and commercial uses totaling the size of The Fenton District would be expected to generate over 44,000 external vehicular trips to use the external street system on a typical weekday. However, due to the mixed-use nature of The Fenton District, nearly 7,000 of those daily trips are captured internally, resulting in a reduction of daily external vehicular trips to just over 37,000 (*see* 17-TAR-422, dated August 3, 2017). This estimate of actual external trips is conservative, as no transit, walking, or bicycling reductions were made to calculate this number.

The Fenton District Energy Efficiency Plan (FDEEP) implements energy efficiency in the areas of building design, building construction, and construction materials to significantly improve energy efficiency and further implements energy efficiency by commitments to establish enhanced integration of pedestrian travel systems and publicly available infrastructure that encourages use of energy efficient vehicles.

The FDEEP maximizes the energy efficiency of uses and location of buildings approved by The Fenton Adoption Ordinance and better achieves "stand alone" energy efficiency for each building or structure. Accordingly, the FDEEP achieves significant energy efficiency and The Fenton District's energy efficiency is substantially improved by the FDEEP.

Description of the FDEEP. The FDEEP contains three components. First, it establishes a mandatory process of review and consideration of best building design and construction to ensure that energy efficiency is evaluated during design and construction of every building in The Fenton District. Second, FDEEP establishes a mandatory energy efficiency objective requirement for all office buildings and areas in buildings where office use is located. Third, FDEEP establishes a mandatory requirement for the Master Developer and all Developers of office and residential uses in The Fenton District to use currently available energy efficient materials and equipment or equivalents in all buildings they construct in The Fenton District.

Components of the FDEEP

1. Energy Efficiency Building Design and Construction Practices and Processes. The best practices of cost-effective energy efficient building design and construction are constantly evolving because of evolving construction practices, technological innovation, and development of new construction materials. Given the duration of this Agreement, the Principal Parties do not intend to hamstring innovative building design and construction in The Fenton District to 2018 knowledge.

   Instead, the Principal Parties have agreed to a mandatory process that encourages all developers and end users in The Fenton District to consider maximizing energy efficiency during design, construction, and reconstruction of buildings and areas in The Fenton District during the term of the Development Agreement. The mandatory elements of this component are:

   - The Master Developer shall advertise in its marketing materials that The Fenton District is an energy efficient community dedicated to cost efficient energy practices, design, and construction.

   - In communications with prospective Developers of The Fenton District, the Master Developer shall provide materials regarding energy efficient building design and construction practices. Such materials will include one or more of the following or equivalent materials:

     - An Architect's Guide to Integrating Energy Modeling in the Design Process published by the American Institute of Architects;

     - Materials describing the ENERGY STAR Program and other similar programs that may be established to encourage energy efficiency;

     - Materials published by trade associations such as ULI, NAIOP, and ICSC describing energy efficiency practices, design, and materials; and

     The Master Developer shall also provide the potential Developer with the Contact information for the Town's Sustainability Manager (or equivalent position).

   - To the extent the Master Developer reviews construction design and material selection by other Developers, or future owners or occupants of The Fenton District, the Master Developer will, to the extent reasonable and appropriate, provide comments, recommendations, and suggestions regarding appropriate means and methods for achieving more cost-efficient energy efficiency.

   Desired Outcome of this Component. The Master Developer establishes The Fenton District as an energy efficient community and every member of The Fenton District community considers energy efficiency during design and construction of their respective buildings, areas, or uses.

2. Mandatory Energy Efficiency in Office Buildings and Areas. The U.S. Environmental Protection Agency developed the ENERGY STAR program to promote energy conservation. As part of the overall ENERGY STAR program, a commercial project can be "Designed to Earn" the ENERGY STAR recognition by meeting strict EPA criteria for estimated energy performance. The Design to Earn ENERGY STAR designation signifies that, once built, the building is poised to achieve top energy performance. The ENERGY STAR program utilizes a 1 – 100 ENERGY STAR score that is derived from fuel consumption data of existing commercial buildings, which includes the energy use associated with buildings across the country. The mandatory elements of this component of the FDEEP are:

    - All office buildings and vertically integrated office space in The Fenton District eligible at the time of design for the Design to Earn ENERGY STAR program shall be designed to achieve an ENERGY STAR score of 75 or greater based on the 2018 Design to Earn ENERGY STAR requirements. (A Design to Earn ENERGY STAR score of 75 denotes that the energy use of the building is intended to be in the top 25 percent of all similar buildings nationwide.)

    - Master Developer will provide the Design to Earn ENERGY STAR rating (or equivalent) for each building to the Town within sixty (60) days of receipt of the rating and will also provide this information to the Town annually in connection with the Periodic Review.

    Desired Outcome of this Component. Using the existing ENERGY STAR program as a guide, office buildings and uses in The Fenton District will exceed current average energy efficiency practices significantly.

3. Mandatory design and construction materials implemented by Master Developer directly. The following elements, or a functional equivalent substitute, will be utilized by Master Developer in connection with the Development of The Fenton District:

    - Creation of a high density, mixed use, walkable community designed to encourage non-automobile modes of transportation within the development;

    - Use of vertically integrated parking;

    - LED lighting associated with the roadway lighting, parking garage lighting, and exterior building lighting;

    - Use of white Thermoplastic Polyolefin single-ply roofing membranes in all residential buildings constructed by the Master Developer;

    - Incorporation of electric vehicle charging stations;

    - Dedicated hybrid vehicle parking locations;

    - Transit stops located in strategic points within The Fenton District;

- Integration of The Fenton District's walkable community elements with the public pedestrian systems, including the Town's greenway system and public bus systems so the user has an efficient, safe, and seamless experience;

- Extensive dedicated bicycle lanes and dedicated bicycle parking facilities located within The Fenton District;

- Installation of energy efficient kitchen equipment within all the residential units of The Fenton District;

- Installation of energy efficient, insulated, low emissivity windows on retail and office buildings and building shells and areas constructed by the Master Developer;

- Installation of high efficiency window units on residential units in The Fenton District; and

- Installation of high efficiency mechanical equipment in all buildings, building shells, and areas constructed by the Master Developer.

Desired Outcome of this Component. The Master Developer incorporates energy efficient design, practices, materials, and equipment into its Development of the Fenton District.

EXHIBIT G

Payment of Fees as Town Incentive for Energy Efficiency Commitments as Authorized by Law

Background. As identified in the Recitals of the Agreement, the CCP designates the Property as Mixed Use Center – Employment Based and part of a Destination Center. Through the Fenton Adoption Ordinance, The Fenton District will provide employment, shopping, dining, recreation, and living choices in a mixed-use, urban environment, providing interconnectivity of developed areas through pedestrian and multi-modal vehicular circulation patterns. Thus, the CCP's policy intent to "improve air quality and energy consumption by enabling shorter trips for shopping and services" will be partially achieved. (CCP SHAPE, Policy 1)

Nevertheless, the Fenton Adoption Ordinance cannot regulate **(1)** construction design of private buildings for energy efficiency, **(2)** use of construction materials in private buildings for energy efficiency or **(3)** type of equipment installed in private buildings. These aspects of construction of new Development are regulated by the State Building Code. The Town lacks regulatory authority to amend or set mandatory higher standards than the State Building Code in The Fenton District.

Purpose. One of the purposes of development agreements is to "permit communities and developers to experiment with different or nontraditional types of development concepts and standards." N.C.G.S. § 160A-400.20(5). The General Assembly recognizes that "reducing the amount of energy consumption" promotes the public health, safety, and welfare, N.C.G.S. § 160A-383.4, and "a city has an integral role in furthering this purpose by promoting and encouraging renewable energy and energy efficiency within the city's territorial jurisdiction." N.C.G.S. § 160A-459.1(a).

Specifically, the General Assembly authorizes the Town to grant local energy efficiency incentives "if the developer or builder agrees to construct new development in a manner that the ...municipality determines, makes a significant contribution to the reduction of energy consumption." N.C.G.S. § 160A-383.4.

Description of the Agreement Significantly Contributing to Reduction of Energy Consumption. The Fenton District is a large, new, vertically and horizontally mixed use Development fulfilling the intent of its CCP classification as Mixed Use Center-Employment Based. When completed, The Fenton District will consume substantial energy resources. By this Agreement, the private Principal Party and the Master Developer agree to undertake the duties described in **Exhibit F** of this Agreement to **(1)** achieve measurable energy reduction in significant portions of The Fenton District by achieving a minimum Energy Star rating, **(2)** use energy efficient construction materials, **(3)** install energy efficient equipment, and **(4)** encourage energy efficienct design in private buildings and structures located in The Fenton District.

In exchange for these promises to significantly contribute to reduction of energy consumption in this Agreement, the Town agrees to pay at the time a fee is due, fees due to the Town in connection with private Development in Phases A and B of The Fenton District.

Interpretation of Exhibit G. The list of fees agreed to be paid by the Town at the time each fee becomes due to the Town is stated in **Exhibit G** of this Agreement. **Exhibit G** is a complete list of all fees to be paid by the Town and no other fees will be paid by the Town. The dollar amount associated with each fee stated in **Exhibit G** is based upon the amount of private Development planned by the Master Developer. The dollar amount associated with each fee in **Exhibit G** has been reviewed and verified by the Town as a reasonable calculation of the fee due the Town based upon the amount of private Development planned by the Master Developer using the Town's standard methodology for calculating fees and charges and the Town's current Schedule of Fees and Charges.

The dollar amount of each fee identified in **Exhibit G** is the maximum incentive provided by the Town for a particular fee or charge, and no incentive allocated to one fee or charge in **Exhibit G** may be transferred to other fees or charges. Once the incentive has been applied to a fee or charge identified on **Exhibit G**, the incentive is exhausted and is no longer available.

For any specific fee, the dollar amount of incentive identified in **Exhibit G** may be greater than the actual dollar amount of the specific fee due to the Town. Some of the causes for the actual fee to be less than the amount stated in **Exhibit G** are the Developer builds less private Development than is currently planned, the Town's methodology for fee and charge calculation changes, or the Town's Schedule of Fees and Charges changes. In that event, the Developer pays nothing to the Town in order to secure the permit or approval associated with the specific fee or charge.

For any specific fee, the dollar amount of incentive identified in **Exhibit G** may be less than the actual dollar amount of the specific fee due to the Town. Some of the causes for the actual fee to be more than the amount stated in **Exhibit G** are the Developer builds more private Development than is currently planned, the Town's methodology for fee and charge calculation changes, or the Town's Schedule of Fees and Charges changes. In that event, the Developer pays the difference between the full amount of the incentive stated on **Exhibit G** and the actual amount of the fee in order to secure the permit or approval associated with the specific fee or charge.

The Town's Considerations. When considering providing this incentive, the Town, among other considerations and factors, determined the following facts **(1)** The Energy Efficiency Plan attached as **Exhibit F**, based upon generally recognized standards established to measure energy efficiency, such as EnergyStar standards, makes a significant contribution to the reduction of energy consumption which could not be achieved by the Town without this Agreement, **(2)** the incentive granted by this Agreement begins to be realized by the Master Developer only when the Master Developer starts construction of private Development in Phases A and B and is fully realized only when the Master Developer substantially completes private Development in Phases A and B, **(3)** the incentive is connected to the amount of private Development in Phases A and B so that the incentive is incremental and connected to reducing the impact of new energy consumption arising out of actual new private Development in Phases A and B, **(4)** the Energy Efficiency Plan applies to all Phases (A through D) of the Fenton District, but the incentive is limited to fees paid to the Town for private Development in Phases A and B, and **(5)** any fiscal impact of the incentive to the Town will be significantly ameliorated by the increase in the tax base generated by The Fenton District.

Assumptions:

Use Category	Gross Buildable Area
Retail Anchor	98,870
Retail	273,781
Loft Office	150,954
Multi-Family	401,435
TOTAL	**925,040**

Retail Breakdown	Gross Buildable Area
Shops	105,588
Restaurants	83,157
Mini-Anchors	14,379
Theater	38,887
Lead Tenants	31,770
Total	**273,781**

Restaurant Breakdown	Gross Buildable Area
Full Service	81,107
Single Service	2,050
Total	**83,157**

Fees to be Paid by the Town:

Cost Item A&B Total	Quantity	Unit	Unit Price	Phase
Impact, Permits & Plan Fees (Overall Development)				
Rezoning - MXD	1		$2,500	$2,500
Site Plan & Site Plan Revisions	10		$4,350	$43,500
Parking Decks Building Permits	614,486sf		$0.11	$67,593
Minor Alteration	20		$150	$3,000
Plat	20		$475	$9,500
Master Sign Plan	1		$200	$200
Ground Sign Permit	14		$100	$1,400
Grading Permit - Mass Grading	75	acres	$515	$38,625
Irrigation Water Development Fee		305sf/1000	$734.23	$223,940
Stormwater Control Measure (SCM) Maintenance Fee	4,425,375		15%	$663,806
Town of Cary Engineering Inspection Fees	75	acres	$1,300.00	$97,500
Subtotal				**$1,151,565**
Retail Impact, Permits & Plan Fees				
Transportation Fee - "General Retail/Shopping Center"		289.49sf/1000	$1,637	$473,902
Transportation Fee - "Restaurant, Sit-Down"		83.16sf/1000	$1,871	$155,587
Transportation Fee - "Restaurant, Fast Food"		sf/1000	$5,017	$0

Water/Sewer Development Fees - Retail, Large (>80,000 sf)		250.61sf/1000	$443	$111,019
Water/Sewer Development Fees - Full Service Restaurant		81.11sf/1000	$7,491	$607,573
Water/Sewer Development Fees - Single Service Item Restaurant		2.05sf/1000	$1,950	$3,998
Water/Sewer Development Fees - Theater		38.89sf/1000	$767	$29,826
Building Permit Fee	273,781		$0.11	$30,116
Subtotal				**$1,412,020**
Loft Office Impact, Permits & Plan Fees				
Transportation Fee		150.95sf/1000	$2,113	$318,966
Water/Sewer Development Fees		150.95sf/1000	$333	$50,268
Water/Sewer Tap Fees	1		$100,000	$100,000
Building Permit Fee	150,954sf		$0.11	$16,605
Subtotal				**$485,838**
Multi-Family Impact, Permit & Plan Fees				
Transportation Fee		346units	$975	$337,350
Water/Sewer Development Fees		346units	$3,479	$1,203,734
Park and Greenway Payment in Lieu		346units	$2,385	$825,210
Building Permit Fee (part 1)	401,435sf		$0.165	$66,237
Building Permit Fee (part 2)		346units	$60	$20,760
Subtotal				**$2,453,291**
TOTAL (PHASE A&B - Not including hotel development fees)				**$5,502,714**

EXHIBIT H

Prepared by and Return to:
Parker Poe Adams & Bernstein LLP
P.O. Box 389
Raleigh, NC 27602

Real Estate ID: _____

Excise Tax: $_____

NON-EXCLUSIVE STORMWATER EASEMENT AND GRANTOR'S OPERATING COVENANT
(Stormwater)

THIS NON-EXCLUSIVE STORMWATER EASEMENT AND GRANTOR'S OPERATING COVENANT ("**Agreement**") is entered into effective _____, 2019 ("**Effective Date**") by and between the **CDG Fenton, LLC,** a North Carolina limited liability corporation, its successors or assigns, ("**Grantor**") with a mailing address of _____, and **TOWN OF CARY**, a North Carolina municipal corporation, its successors or assigns ("**Grantee**" or "**Town**"), with a mailing address of P.O. Box 8005, Cary, North Carolina 27512-8005.

A. Grantor owns an approximately 92 acre tract located in Cary, North Carolina, having Real Estate ID # _____, and being more particularly described in that deed recorded in Book _____, Page _____, Wake County Registry ("**Grantor's Parcel**").

B. Grantee is the owner of the right-of-way described in that plat recorded in Book of Maps _____, Page _____, Wake County Registry as "Quinard Drive" and "Trinity Road" (the "**Town ROW**"). [*NOTE: this will be a reference to the plat whereby CDG Fenton dedicates Quinard to Town; may also need to reference any plats that show Quinard "off-site" and may need to reference separate plat for Trinity*]

C. Grantor's Parcel is adjacent to the Town ROW. Pursuant to that certain Development Agreement dated _____, 2018 and recorded at Book _____, Page _____, Wake County Registry ("**Development Agreement**"), Grantor constructed Quinard Drive and Trinity Road, including construction of a stormwater control structure ("**SCS**") that manages and treats all stormwater flowing from the Town ROW and Grantor's Parcel.

D. Grantor agrees to grant and convey to Grantee an irrevocable permanent non-exclusive stormwater easement over, across, under, and through those portions of Grantor's Parcel described on **Exhibit A** of this Agreement to receive all stormwater, regardless of source, discharged from the Town ROW for the uses and purposes described below ("**Stormwater Easement**"). In addition to granting the Stormwater Easement, Grantor agrees to perpetually operate, maintain, replace and repair the SCS in accordance with all applicable laws, rules, and regulations, including without limitation, Town laws, rules, and regulations for the purpose of properly and lawfully receiving, managing and treating all stormwater, regardless of source, discharged from the Town ROW to the Grantor's Parcel (collectively, "**Operating Covenant**").

NOW THEREFORE, for the sum of **$223,300** and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantee, Grantor and Grantee hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference and are material terms of this Non-exclusive Stormwater Easement and Operation and Maintenance Agreement.

2. Grant of Stormwater Easement.

(a) Stormwater Easement. Grantor grants and conveys to Grantee, for the benefit of Town an irrevocable, permanent, non-exclusive easement over, across, under and through the Grantee's Parcel for the following purposes: (i) the discharge and drainage of stormwater from the Town ROW over, across, under, and through Grantor's Parcel and into SCS (located within Grantor's Parcel); (ii) accepting, managing and treating in the SCS all stormwater, regardless of source, discharged from the Town's ROW to Grantor's Parcel; and (iii) perpetual vehicular and pedestrian ingress, egress, and regress necessary and appropriate for the Town to ensure that the SCS is adequately performing and operating in accordance with the Operating Covenant contained in this Agreement. (collectively, **"Stormwater Easement"**).

(b) Grantee's Powers and Authority. Nothing in this Agreement shall restrict or inhibit the police powers or regulatory authority of the Town and the Stormwater Easement and Operating Covenant are additive to the rights, powers and authorities possessed by the Town.

(c) Grantor's Responsibilities and Rights. The Town shall be entitled to the reasonable use of the Stormwater Easement and Grantor shall not obstruct, encroach upon, or utilize the Stormwater Easement in any manner that interferes with Grantee's use of Grantor's Parcel. However, Grantor shall have the right to use the Stormwater Easement in any manner not inconsistent with the Stormwater Easement, its purposes and uses. Because of the nature and purpose of the Stormwater Easement, the Grantor recognizes that the Town's full enjoyment of the Stormwater Easement is paramount to Grantor's use of the Stormwater Easement. In

connection therewith, Grantee shall promptly make any repairs to the Stormwater Easement and any improvements thereon arising from or in any way related to negligent acts or omissions of the Grantee, its employees, or agents. Grantee shall also promptly repair any damage to Grantor's Parcel related to negligent acts or omissions of the Grantee, its employees, or agents and shall restore to the condition existing prior to the Grantee's disturbance, all to the satisfaction of Grantor, which shall not be unreasonably withheld or delayed.

3. Operating Covenant

(a) Grantor Construction and Operation Responsibilities. Grantor shall be solely and exclusively responsible for constructing, operating, maintaining, repairing, and replacing the SCS perpetually at no cost to the Town. At all times, the SCS shall be constructed, operated, maintained, repaired, and replaced so as to accomplish the uses and purposes of the Stormwater Easement and to otherwise comply with all laws, rules, and regulations, including without limitation the Town's laws, rules, and regulations.

(b) Notice of Grantor's actions. Grantor shall maintain the SCS in good condition and repair, in compliance with all applicable laws and regulations, and in such a manner as to adequately and lawfully manage and treat stormwater from the Town ROW, at Grantor's sole cost and expense. Grantor shall notify Grantee in writing at least 72 hours in advance of any maintenance of SCS or any other actions undertaken by Grantor that will impact use of the Town ROW by the traveling public, and shall notify Grantee in writing at least 30 days prior to any maintenance of the SCS or any other action undertaken by the Grantor that may require temporary closure of the Town ROW. Grantor promises to use its best efforts to not take any action that impacts the use of the Town ROW.

(c) Insurance. Grantor must procure and maintain liability insurance in an amount not less than $1,000,000.00 for the protection of the SCS.

(d) Run with the Land. This Operating Covenant shall run with the Grantor's Parcel in perpetuity and shall be a servitude on the Grantor's Parcel.

4. General Provisions Applicable to this Agreement

The following provisions shall apply to this Agreement, the Stormwater Easement and Operating Covenant:

(a) Grantor's Representation. Grantor represents that no deeds of trusts, mortgages, or liens (other than property tax liens for the current year) are superior to this Agreement. To the extent necessary to comply with this representation, Grantor represents that it has caused all deeds of trusts, mortgages, and liens to be subordinated to this Agreement or has taken such steps, subject to the Town's prior approval, that this Agreement, the Stormwater Easement and Operating Covenant shall not be affected by any deed of trust, mortgage, or lien.

(b) Town's Rights and Duties. Nothing in this Agreement shall require the Town to monitor, operate, repair, maintain, or replace the SCS under any circumstances. However, the Grantor and Grantee recognized that accumulation of stormwater on the Town's ROW could pose an imminent threat to public health, safety, and welfare. Accordingly the Town shall have

the right (but not the obligation) to take whatever steps, actions, and remedies the Town deems in its sole discretion may be necessary and appropriate to protect public safety, including but not limited to taking measures on Grantor's Parcel including but not limited to operating, repairing, and maintaining the SCS, and Grantor shall not object or complain of the Town's actions and steps. Only to the extent Grantor possesses assessments, insurance proceeds, or other sources to reimburse the Town for the steps and actions taken by the Town, but no further, the Grantor shall reimburse the Town for all of its out-of-pocket expenses not otherwise recoverable by the Town through other sources.

(c) Successors and Assigns. This Agreement shall run with title to Grantor's Parcel and the Town ROW and shall be binding upon, and inure to the benefit of, the heirs, personal representatives, successors, and assigns of Grantor and Grantee.

(d) Governing Law and Venue. This Agreement is governed by North Carolina law. Any action brought to enforce this Agreement shall be brought exclusively in Wake County Superior Court, North Carolina.

(e) Amendment. No subsequent modification of this Agreement shall be effective or binding unless it is made in writing, signed by an authorized agent of each party and recorded in the Wake County Registry.

(f) Term. This Agreement vests all rights and duties immediately upon execution and will remain in effect in perpetuity, unless earlier terminated by a recorded termination signed by the then-owners of Grantor's Parcel and the Town.

(g) Severability. If any provision of this Agreement shall be held to be invalid or unenforceable, then the validity and enforceability of the remaining provisions hereof shall not be affected. Furthermore, in lieu of such invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be reasonably possible.

(h) Notices. All notices, requests, demands or other communications provided for, permitted or required by this Agreement shall be deemed validly given if in writing and delivered by commercial courier, registered or certified mail, return receipt requested, or commercial overnight delivery service to the applicable address listed in the first paragraph of this Agreement (or to any other address the party to be notified may have designated to the sender by notice properly given under this section). Such notices shall be deemed received (a) when delivered or when delivery is refused as indicated on the courier's records (if sent by courier or commercial overnight delivery service); or (b) two (2) business days after the date postmarked when sent by mail.

(i) Interpretation. Except as otherwise specified in this Agreement: (a) "includes" and "including" mean includes or including by way of illustration and not by way of limitation; (b) "may" is permissive; (c) references to Exhibits, Sections or subsections are to those attached to or included in this Agreement, and all Exhibits are incorporated into this Agreement; and (d) the section and other headings in this Agreement are for convenience only and do not limit or expand any provisions of this Agreement.

(j) Counterparts. This Agreement may be executed in multiple counterparts which, when assembled, shall constitute one original.

TO HAVE AND TO HOLD the aforesaid Stormwater Easement, Operating Covenant and covenants, terms, conditions, obligations and restrictions set forth or imposed by this Agreement and all of these shall be binding upon the Grantor, its successors and assigns forever. The Grantor covenants that it is vested in Grantor's Parcel in fee simple, has the right to convey the same in fee simple; that the Grantor's Parcel is free from encumbrances except as herein stated or subordinated herein, and Grantor will warrant and defend such title to the same against claims of all persons whatsoever. Title to the Grantor's Parcel is subject to the Development Agreement, all utility rights of way and easements recorded in the Wake County Registry prior to the Development Agreement, plats of any or all of the Grantor's Parcel recorded in the Wake County Registry prior to the Development Agreement and restrictive covenants affecting any part or all of Grantor's Parcel, recorded prior to the Development Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement under seal as of the Effective Date.

Grantor:

[INSERT NAME]

By: _____ (SEAL)
Name: _____
Title: _____

State of _____

County of _____

I, _____, a Notary Public in and for the above County and State, certify that _____ personally came before me this day and acknowledged that such person, being authorized to do so, executed the foregoing instrument under seal in the capacity indicated.

Witness my hand and official seal, this ____ day of _____, 2018.

_____
Notary Public

My Commission Expires:

_____

(Official Seal)

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement under seal as of the Effective Date.

Grantee:

TOWN OF CARY,
a North Carolina Municipal Corporation

By: _____ (SEAL)
Name: _____
Title: _____

State of _____

County of _____

I, _____, a Notary Public in and for the above County and State, certify that _____ personally came before me this day and acknowledged that such person, being authorized to do so, executed the foregoing instrument under seal in the capacity indicated.

Witness my hand and official seal, this ____ day of _____, 2018.

_____
Notary Public

My Commission Expires:

_____

(Official Seal)