

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

**MASTER DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF DURHAM AND
WEST CHAPEL HILL DEVELOPMENT LLC**

THIS MASTER DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2020 (the “Effective Date”), by and between the City of Durham, North Carolina, a municipal corporation organized and existing under the laws of the State of North Carolina (“City”), and West Chapel Hill Development LLC, a Delaware limited liability company (“Developer”).

BACKGROUND

- A. The General Services Department of the City issued a Request for Proposals dated April 16, 2019 (“RFP”) soliciting proposals from interested developers for construction of a mixed-use development, including affordable housing, on the property then owned by the City located at 505 West Chapel Hill Street, Durham, North Carolina, as more particularly described on Exhibit A attached hereto (the “Property”).
- B. The Fallon Company LLC (“Fallon Company”) submitted a response to the RFP that proposed a phased mixed-use development on the Property, containing a new residential development (including affordable housing), a new commercial building with associated retail, restaurant and other active use space, renovation of the existing commercial building on the Property, open space, and parking, all as described herein (the “Project”).
- C. The City reviewed the responses to the RFP and selected Fallon Company to complete the redevelopment of the Property.
- D. Pursuant to the City’s authority under, without limitation, North Carolina General Statutes §§160A-267 and 279, Secs. 86 and 86.1 of the Durham City Charter, the City conveyed the Property to Developer, which is an affiliate of Fallon Company, on the date hereof.
- E. Developer intends that the Property be developed as a phased development. Developer intends to develop Phases or convey Phases to Project Developers for development in accordance with this Agreement.

To establish the mutual agreements and obligations of the Parties, and in consideration of the recitals, covenants and promises set forth herein, the Developer and the City agree as follows:

ARTICLE I

DEFINITIONS

1.1. Definitions. In addition to the capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings specified below:

- a. “Affordable Unit” means a one- or two-family dwelling unit made available initially to and thereafter occupied by an Eligible Household for the Period of Affordability.
- b. “Applicable Laws” means all applicable laws, rules, regulations, and codes of federal, state, and local governments.
- c. “Class A Office” means first class office space within the Durham market.
- d. “Commence” or “Commencement” means with respect to each applicable Phase of the Project, the initial building permit for the construction of the improvements contemplated by this Agreement has been issued.
- e. “Developer” shall have the meaning set forth in the introductory statement hereof, and shall include any successor in interest or assign (including a transferee permitted under Article X hereof), whether by act of a party to this Agreement, or by operation of law or otherwise, subject, however, to the provisions specific to Project Lenders pursuant to Article XVI.
- f. “Eligible Household” means a household earning up to and including 60 percent of Area Median Income (AMI) as defined and published by the United States Department of Housing and Urban Development (HUD) from time to time. An Eligible Household shall be determined upon initial occupancy and, thereafter, its status as an Eligible Household shall be governed by the rules and regulations for occupancy under Section 42 of the Internal Revenue Code (“Section 42”) and the NCHFA’s Qualified Allocation Plan for LIHTC Units (“QAP”) during the Period of Affordability (as defined below). The occupancy rules and regulations of Section 42 and the QAP shall be used to determine an Eligible Household whether or not the Affordable Units are then subject to a Declaration of Land Use Restrictive Covenants by and between the owner of the Affordable Units and the North Carolina Tax Reform Allocation Committee.
- g. “Fallon Entity” means an entity in which Fallon Company, Joseph F. Fallon or Michael J. Fallon, or their respective controlled trusts, have the power, directly or indirectly, to control the day-to-day management, policies and operations subject to customary rights in favor of equity providers.
- h. “Fallon Proposal” means the response to the RFP, submitted by Fallon Company dated June 28, 2019, as clarified by Memorandum from Fallon Company dated October 18, 2019, together with all other modifications, additions, and clarifications.
- i. “Force Majeure Events” means events beyond the reasonable control of the affected Party, and not caused by its fault or neglect, such as, without limitation, labor dispute, including strike and lockout; unavailability of essential materials; unusual delay in deliveries; riot; epidemic; pandemic; war, extreme weather events; fire; explosion; accident; delays or default of the other party; government imposed development, construction or other similar moratoria; any material and adverse change in the prevailing economic or market conditions; or any adverse change in the prevailing lending or underwriting standards imposed by national financial institutions during which otherwise qualified developers are unable to obtain financing for the product types to be developed as a part of the Project. Notwithstanding the foregoing, the following shall not be considered Force Majeure Events: (i) any delay to the extent caused by disputes, deaths, or disabilities within the ownership/corporate structure of Developer (or the applicable Project

Developer); and (ii) any delay to the extent caused by changes in financial condition specific to Developer or applicable Project Developer.

- j. “LIHTC” stands for Low-Income Housing Tax Credit.
- k. “Milton Small Building” means the existing building on the Property originally designed by architect Milton Small.
- l. “Milton Small Phase” means the Phase that will contain the Milton Small Building.
- m. “NCHFA” stands for North Carolina Housing Finance Agency.
- n. “New Commercial Building” means a new commercial building, which the Developer intends for the applicable Project Developer to construct in accordance with this Agreement. When constructed, the New Commercial Building will include Class A Office space, laboratory space, research and development uses and/or other commercial uses permitted under the City’s UDO, together with parking and/or ancillary uses.
- o. “New Commercial Phase” means the Phase that will contain the New Commercial Building.
- p. “Open Space” means certain privately-owned areas outside of the footprint of the Project buildings designated by the Developer or the Association from time to time as open to the public, which may include sidewalks and other pedestrian pathways and other pedestrian-oriented hardscaped and/or landscaped surfaces.
- q. “Party(ies)” or “party(ies)” means the City and the Developer, and their successors and assigns to the extent permitted by this Agreement.
- r. “Period of Affordability” means the period of compliance during which the Affordable Units must be made available to Eligible Households in accordance with the Restrictive Covenants, which is in perpetuity beginning on the date of the issuance of a Certificate of Compliance by the Durham City-County Inspections Department or other appropriate governing authority for the Affordable Units.
- s. “Permitted Residential Transferee” means an individual or entity, other than a Fallon Entity or Winn Entity, that has (i) extensive residential experience, as evidenced by a minimum of 10 years developing, constructing, managing and programming mixed-income or 100% affordable residential developments in an urban setting, (ii) capacity to secure appropriate financing for the Residential Building, as evidenced by not less than two letters of interest and/or support from lenders and/or equity partners and (iii) no litigation that would have a material adverse impact on its ability to construct and maintain the Residential Building or loan events of default in the past ten (10) years.
- t. “Person(s)” or “person(s)” means individuals, partnerships, limited liability companies, trusts, firms, associations, corporations and any other form of business or government organization or entity, or one or more of them, as the context may require.

- u. “Project Completion Date” means two (2) years following Substantial Completion of the Residential Building, the Milton Small Building and the New Commercial Building.
- v. “Project Developer” means the owner of the applicable Phase from time to time, and shall include any successor in interest or assign (including a transferee permitted under Article X hereof), whether by act of a party to this Agreement or by operation of law or otherwise, subject, however, to the provisions specific to Project Lenders pursuant to Article XVI. The Developer may be the Project Developer with respect to one or more Phases.
- w. “Project Lender” shall mean (i) any construction or permanent lender on the Project or any portion thereof, (ii) any mezzanine lender whose loan is secured by direct or indirect interests in the Developer or a Project Developer and (iii) any preferred equity investor holding direct or indirect interests in the Developer or a Project Developer, together with their respective successors and assigns.
- x. “Registry” means the Register of Deeds for Durham County, North Carolina.
- y. “Related Documents” means the Restrictive Covenants, Development Plan, Open Space Operations and Maintenance Plan, Community Engagement Plan, Underutilized Business Inclusion, and Minority Ownership & Participation Plan.
- z. “Residential Building” means, collectively, a new residential building or buildings, which the applicable Project Developer agrees to construct in accordance with this Agreement. When constructed, the Residential Building will contain no fewer than 200 units of new market-rate rental housing, and no fewer than 80 Affordable Units.
- aa. “Residential Phase” means the Phase that will contain the Residential Building.
- bb. “Restrictive Covenants” means the Amended and Restated Restrictive Covenants recorded in Book _____, Page ____ in the Registry, as amended, restated, or renewed in accordance with the terms thereof from time to time.
- cc. “Retail Space” means space in the Project developed for retail, restaurant and other active uses.
- dd. “Substantial Completion” or “Substantially Complete” means with respect to any Phase of the Project, the applicable improvements contemplated by this Agreement have been substantially completed in accordance with this Agreement to the point that the main building structure in such Phase can be occupied for its intended use (but expressly excluding interior fit out for commercial tenants, interior fit out of residential space, customary punchlist-type items and items awaiting seasonal availability). Substantial Completion shall be conclusively evidenced with respect to a Phase (as defined below) by the issuance of a Certificate of Compliance for occupancy issued by the Durham City-County Inspections Department, or, if requested by the applicable Project Developer in writing, other equivalent and satisfactory approval as mutually agreed to by such Project Developer and the City.
- ee. “Target Construction Schedule” means the estimated construction schedule attached hereto as Exhibit B.

ff. “UBE”, which stands for Underutilized Business Enterprise, means a business, including a sole proprietorship, partnership, corporation, limited liability company, joint venture or any other business or professional entity that has been certified by (i) the State of North Carolina as a historically underutilized business (HUB) pursuant to G.S. 143-128.4, as amended; (ii) the North Carolina Department of Transportation as a disadvantaged minority-owned or woman-owned business pursuant to G.S. 136-28.4, as amended; or (iii) the Small Business Administration 8(a) Business Development Program of the Small Business Administration of the U.S. Department of Commerce pursuant to 15 U.S.C. 637(a), as amended.

gg. “UDO” means the Unified Development Ordinance in effect in Durham, North Carolina, as amended from time to time.

hh. “Winn Entity” means Winn Development Company Limited Partnership, or an affiliate thereof.

ARTICLE II

SCOPE AND TERM

2.1. Scope. This Agreement sets forth specific rights and responsibilities of the City, the Developer, and each applicable Project Developer in connection with the completion of the Project on the Property.

2.2. Term. The term of this Agreement shall begin on the Effective Date and shall terminate upon the Project Completion Date, unless the Agreement is otherwise extended with respect to a particular Phase by mutual agreement of the City and the applicable Project Developer or terminated pursuant to the terms described herein. The expiration of the term of this Agreement will not, in and of itself, cause any separate agreement among the Parties (e.g., without limitation, the Restrictive Covenants) to expire, or cause the termination of any covenant, term or condition hereof which is expressly provided herein to survive termination.

ARTICLE III

REPRESENTATIONS

3.1. Representations by the Developer. As of the Effective Date, the Developer represents and warrants that:

a. Corporate Status and Power. The Developer is a limited liability company duly organized and existing under the laws of the State of Delaware, and qualified to do business in North Carolina. The Developer has all requisite power to carry on its business as it is now being conducted and as it is proposed to be conducted.

b. Authority for Agreement. The Developer has full power and authority to enter into, execute, deliver, accept, and perform the terms of this Agreement. This Agreement and the consummation of the transactions contemplated hereby, and the performance by the Developer of its obligations hereunder, have been duly authorized and approved by all limited liability company and other actions required under the governing documents of the Developer, and upon due

execution and delivery hereof by the Parties shall constitute the legal, valid and binding obligation of the Developer enforceable in accordance with the terms hereof. The signatory to this Agreement is duly authorized and empowered to execute and deliver this Agreement and all Related Documents to which the Developer is a party on behalf of the Developer, and no person other than said signatory is required to join in the execution or delivery of this Agreement or any Related Documents in order for the same to legally bind the Developer to the terms and conditions herein.

c. No Breach. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not conflict with or result in a breach of any of the terms or conditions of any restriction or agreement to which the Developer is now a party or by which it is bound and do not constitute a default under any of the foregoing and do not result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of the Developer under the terms of any instrument or agreement other than this Agreement.

d. No Claims. (i) There are no existing actions, suits, or proceedings, involving any material amounts, pending, or to the knowledge of the Developer, threatened, against the Developer, or relating to the business, properties, and assets of the Developer, and (ii) no final judgment, order, or decree has been rendered against the Developer that has not been fully satisfied or complied with, in each case that would affect the Developer's ability to perform its obligations under this Agreement in any material respect.

3.2. Representations by the City. As of the Effective Date, the City represents and warrants that:

a. Corporate Status. The City is a municipal corporation duly organized and existing under the laws of North Carolina.

b. Authority for Agreement. The City has full power and authority to enter into, execute, deliver, accept, and perform the terms of this Agreement. This Agreement and the consummation of the transactions contemplated hereby, and the performance by the City of its obligations hereunder, have been duly authorized and approved by all legislative and other actions required under the Charter of the City of Durham, as amended, or other Applicable Laws, and upon due execution and delivery hereof by the Parties shall constitute the legal, valid and binding obligation of the City enforceable in accordance with the terms hereof. The City Manager of Durham is duly authorized and empowered to execute and deliver this Agreement and the Related Documents to which the City is a party on behalf of the City, and no person other than said Manager and those City officials whose names and/or positions are set forth on the signature page(s) hereto are required to join in the execution or delivery of this Agreement or any Related Documents in order for the same to legally bind the City to the terms and conditions herein.

c. No Breach. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not conflict with or result in a breach of any of the terms or conditions of any agreement to which the City is now a party or by which it is bound, and do not constitute a default under any of the foregoing and do not result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the City under the terms of any instrument or agreement other than this Agreement.

d. No Claims. (i) There are no existing actions, suits, or proceedings, involving any material amounts, pending, or to the knowledge of the City, threatened, against the City, or relating to the business, properties, and assets of the City, and (ii) no final judgment, order, or decree has been rendered against the City that has not been fully satisfied or complied with, in each case that would affect the City's ability to perform its obligations under this Agreement in any material respect.

ARTICLE IV DEVELOPMENT OF PROJECT GENERALLY

4.1. Target Construction Schedule. The City and the Developer acknowledge their mutual goal of proceeding with the development and construction of the Project generally on the timeframe set out in the Target Construction Schedule, subject to anticipated timing of required approvals under Applicable Laws and to the extent commercially and economically feasible. The City and the Developer also recognize that real estate development is cyclical in nature, with local, national and international market conditions making it difficult to predict in advance appropriate timing for proceeding with particular phases and emphasizing the need for flexibility. Such flexibility will permit the Developer and each Project Developer to develop the Project in a way that allows particular elements to proceed when they are best positioned to succeed operationally and financially.

4.2. Minimum Project Requirements.

a. Non-Retail Commercial Space. Upon final completion of the overall Project, the Project will include not less than Three Hundred Thousand (300,000) gross square feet of Class A Office space, laboratory space, research and development uses, and other supporting uses, such as, without limitation, meeting facilities, conference space, and building amenity spaces for tenants, contained in the New Commercial Building and the Milton Small Building.

b. Retail Space. Upon final completion of the overall Project, the Project will include not less than Ten Thousand (10,000) gross square feet of Retail Space. Of such 10,000 gross square feet, at least Five Thousand (5,000) gross square feet shall have frontage along West Chapel Hill Street.

c. Open Space. Upon final completion of the overall Project, the Project will include not less than Twenty-Five Thousand (25,000) square feet of Open Space. Of such Twenty-Five Thousand (25,000) square feet, at least Ten Thousand (10,000) square feet shall be greenspace and/or other pedestrian-oriented landscaped areas. The Open Space shall be delivered in phases in connection with the Project buildings as determined by the Developer. The Developer intends that the Open Space (i) will reflect the design intent set forth in the Fallon Proposal and (ii) will include a destination central greenspace.

d. Parking. The Project will include parking sufficient for the uses constructed thereon, as determined by Developer, and in accordance with all Applicable Laws. Upon completion and during operating hours determined by the Developer, any commercial parking garage located on the Property shall be open to the public for parking at market-rates, subject to availability.

4.3. Phased Development. To permit development of the Project on a phase-by-phase basis, the City will reasonably cooperate with Developer in its efforts to subdivide or create a land condominium for applicable portions of the Project (each such portion of the Property on which

the Residential Building, the Milton Small Building or New Commercial Building will be constructed, including the applicable land, improvements, easements, parking rights, and other appurtenances, a “Phase”, in each case designated as such by the Developer in any instrument recorded with the Registry); provided, however, that (i) the Developer shall be solely responsible for all costs associated with such efforts and (ii) no approval of the City or any other person shall be required under this Agreement in connection with the creation of any Phase.

4.4. Use of Site During Development. Before construction of each Phase, the applicable portions of the Project site may be used by Developer and/or any applicable Project Developer as a surface parking lot, for construction staging, or for enabling uses (e.g., marketing activities) and/or for potential events or any other interim uses to help activate the site.

ARTICLE V

RESIDENTIAL PHASE

5.1. Generally. The applicable Project Developer will construct the Residential Building on the Property in accordance with this Agreement. The Affordable Units in the Residential Building will be of equivalent quality and appearance to the market-rate units in the Residential Building and disbursed throughout the Residential Building by floor and area, in each case in compliance with Applicable Laws (the Parties acknowledging, for example, that the NCHFA will have requirements that impact location and treatment of Affordable Units). The Residential Building will be designed to be certifiable to one of the following established green building standards: LEED, EarthCraft, or Enterprise Green Communities, or a comparable other standard identified by the Developer and reasonably approved by the City. The applicable Project Developer must specify the proposed standard prior to the issuance of the building permit for shell construction of the Residential Building, and must submit reasonable evidence that the Residential Building has been so designed upon Substantial Completion.

5.2. Restrictive Covenants. The entire Property is currently subject to the Restrictive Covenants. After the Residential Phase is divided into a legally separate unit or parcel and at Developer’s request, the City will amend the Restrictive Covenants to limit their applicability to the Residential Phase, in substantially the form attached hereto as Exhibit C. The applicable Project Developer will comply with the City’s procedures set forth on Exhibit D to confirm compliance with the Restrictive Covenants, and such other reasonable and customary affordable housing compliance procedures as the City may adopt from time to time. In addition to retention of records as required by Exhibit D, the applicable Project Developer will retain records related to marketing of the Affordable Units for two (2) years. The applicable Project Developer will allow the City access to such records for its annual compliance audit of the Affordable Units, and will allow the City access to such other information regarding the leasing and marketing of Affordable Units as is reasonably requested by the City from time to time, subject to Applicable Laws. The terms of this Section 5.2 shall survive the expiration of this Agreement.

5.3. Assurance of Completion. Not less than 15 days prior to the applicable Project Developer’s obtaining issuance of the initial building permit for the shell construction of the Residential Building, the applicable Project Developer shall make available to the City or its representatives for inspection (i) reasonable evidence of sufficient equity and debt commitments for the

construction through Substantial Completion, (ii) if then available, a copy of the completion guaranty or other evidence of assurance of Substantial Completion provided by the applicable Project Developer or its affiliate to the applicable Project Developer's construction lender or third party tax credit investor, in substantially the form approved by the City prior to the Effective Date or such other form as may be reasonably acceptable to the City (such guaranty or other evidence of assurance, the "Residential Completion Guaranty") and (iii) any other available information that may be requested by the City to reasonably demonstrate the applicable Project Developer's obligations to Substantially Complete the construction of the Residential Building.

5.4. Commencement of Residential Building. The applicable Project Developer shall Commence construction of the Residential Building within three (3) years after the Effective Date (the "Residential Building Outside Commencement Date"). The City and the Developer share the mutual goal of submitting a LIHTC preliminary application with respect to the Residential Building as soon as reasonably possible. However, provided that the Developer or the applicable Project Developer submits such preliminary application by the next available filing deadline published by NCHFA for tax exempt volume cap and 4% LIHTC's following the January 2021 deadline, and thereafter diligently pursues LIHTC funding, the Residential Building Outside Commencement Date will be extended for a period equal to the period in which the applicable Project Developer has diligently pursued, but is unable to secure, LIHTC funding.

5.5. Completion of Residential Building. Following Commencement of construction of the Residential Building, the applicable Project Developer will diligently prosecute the same to Substantial Completion. In the event there is no Residential Completion Guaranty in place at the time of Commencement of construction of the Residential Building, the applicable Project Developer agrees to Substantially Complete construction of the Residential Building no later than fifty-four (54) months after Commencement of construction (the "Residential Completion Deadline").

ARTICLE VI RENOVATION OF MILTON SMALL BUILDING

6.1. Generally. The applicable Project Developer will renovate the Milton Small Building as office space and/or other commercial uses permitted under the City's UDO, together with Retail Space and/or ancillary uses, to at least a standard consistent with first class renovations of comparable buildings. Neither the Developer nor any applicable Project Developer will develop the Milton Small Building for residential use. It is the intent of the Developer that the design principles for the renovation of the Milton Small Building will be consistent with the design principles submitted in the Fallon Proposal, including designing the renovations to the Milton Small Building in a manner that pays respect to the original design intent for the Milton Small Building, emphasizes openness and transparency and a pedestrian friendly activated entrance to the site and includes an expansion of the ground floor to engage and activate West Chapel Hill Street.

6.2. Assurance of Completion. Not less than 15 days prior to the applicable Project Developer obtaining issuance of the initial building permit for the renovation of the Milton Small Building, the applicable Project Developer shall make available to the City or its representatives for inspection (i) reasonable evidence of sufficient equity and debt commitments for the renovation

through Substantial Completion, (ii) a copy of the completion guaranty or other evidence of assurance of Substantial Completion provided by the applicable Project Developer or its affiliate to such Project Developer's construction lender and (iii) any other available information that may be requested by the City to reasonably demonstrate the applicable Project Developer's obligations to Substantially Complete the renovation of the Milton Small Building.

6.3. Commencement of Milton Small Building. The applicable Project Developer shall Commence renovation of the Milton Small Building within three (3) years after the Effective Date (the "Milton Small Building Outside Commencement Date").

6.4. Completion of Milton Small Building. Following Commencement of the renovation of the Milton Small Building, the applicable Project Developer will diligently prosecute the same to Substantial Completion.

ARTICLE VII CONSTRUCTION OF NEW COMMERCIAL BUILDING

7.1. Generally. Neither the Developer nor any applicable Project Developer will develop the New Commercial Building for residential use.

7.2. Commencement of Construction. The applicable Project Developer shall not Commence construction of the New Commercial Building prior to Commencement of construction of the Residential Building.

ARTICLE VIII OPERATION AND PROGRAMMING OF OPEN SPACE

8.1. Management of Open Space. The Developer intends to program the Open Space to activate the site and create a new destination for Durham residents. The Open Space shall be managed, activated, and programmed by or on behalf of the Developer or a successor association of building owners ("Association") consistent with the City of Durham's principles described in Section 8.2, as and to the extent provided from time to time in a mutually-agreeable "Open Space Operations and Maintenance Plan".

8.2. Open Space Operations and Maintenance Plan. The Open Space Operations and Maintenance Plan will codify specifics of Open Space programming, including hours of operation, types of programming, and anticipated frequency of events, and will reflect the following City of Durham standards and principles:

a. Open Space elements must be open and accessible to the public for permitted uses during mutually-agreeable specified times (subject to full or partial closure for special events, etc., as will be more fully set forth in the Open Space Operations and Maintenance Plan), with accessible points of ingress and egress to promote ease of access.

b. Open Space elements will be free-flowing and open, with no gates restricting public access (subject to full or partial closure as described above), intended to allow pedestrian flow from Jackson Street through to West Chapel Hill Street and onto South Duke Street.

c. Open Space will include appropriate safety lighting, and visible signage, as appropriate, to

promote access to the Open Space elements.

8.3. Expense of Operations. The Association, the Developer and/or the Project Developers will have sole right to, and responsibility for, operating, programming, maintaining and any and all other matters with respect to the Open Space, subject to compliance with the Open Space Operations and Maintenance Plan. The City will have no responsibility under this Agreement for expenses incurred to program and host events in the Open Space.

ARTICLE IX FORCE MAJEURE

9.1. Force Majeure Extensions. In the event that any Party to this Agreement shall be delayed or hindered in or prevented from the performance of any act, meeting any deadline or time period or otherwise complying with its obligations under this Agreement in any respect by reason of Force Majeure Events, then such performance, deadline or other obligation shall be excused and/or extended for the period of the delay or hindrance, and thereafter the period for the performance, deadline or other obligation shall be extended for a period equivalent to the period of such delay or hindrance.

9.2. Force Majeure Substantiation. Within twenty (20) days after City, Developer or the applicable Project Developer (as applicable under this Article IX, the “Delayed Party”) becomes aware it has been delayed or hindered in or prevented from the performance of any act, meeting any deadline, or otherwise complying with its obligations under this Agreement (“Force Majeure Delay”) by reason of one or more Force Majeure Events, the Delayed Party shall provide written notice thereof to the other Party (as applicable under this Article IX, the “Reviewing Party”) along with, to the extent available, substantiation of the Force Majeure Event and the Force Majeure Delay (collectively, the “Force Majeure Substantiation”) and any proposed or adopted mitigation measures, if feasible and commercially reasonable. If reasonably practicable, the Delayed Party shall also provide an estimate of the anticipated period of prevention, delay, or stoppage that such Force Majeure Delay is expected to have on future activities, it being acknowledged that such estimate shall not be binding upon the Delayed Party. Failure by the Delayed Party to provide written notice to the Reviewing Party within the twenty (20) day deadline set forth in this Section 9.2 shall be deemed an irrevocable waiver of the claimed Force Majeure Event. Upon the Reviewing Party’s receipt of the Force Majeure Substantiation as required above, the Reviewing Party shall have twenty (20) days to confirm or object in writing to the claimed Force Majeure Delay. Should the Reviewing Party confirm the existence of the Force Majeure Delay, or should the Reviewing Party not object in writing to the Force Majeure Delay within such twenty (20) day period, then the Delayed Party’s time to perform shall be extended based on the delay, hindrance, or prevention period resulting therefrom. If the Delayed Party provides the Force Majeure Substantiation as set forth herein, but the Reviewing Party in good faith objects, in whole or in part, in writing within the twenty (20) day period to the Force Majeure Delay (such written objection, as applicable under this Article IX, the “Objection Notice”), then such objection shall be decided by arbitration pursuant to Section 9.3, below.

9.3. Arbitration Process. Any and all objections by the Reviewing Party pursuant to Section 9.2, above, concerning Force Majeure Delays (collectively, “Force Majeure Disputes;” in the singular, “Force Majeure Dispute”) shall be resolved by mandatory, binding arbitration as follows:

a. The Reviewing Party shall commence the arbitration by delivering the Objection Notice to the Reviewing Party with a copy to the potential arbitrators identified in Section 9.3(b), below, within the time period for objection described in Section 9.2, above. Failure by the Reviewing Party to commence arbitration in strict accordance with this subsection shall be deemed an irrevocable waiver of the Force Majeure Dispute and its objection to the claimed Force Majeure Delay, and the Delayed Party's time to perform shall be extended based on the delay, hindrance, or prevention period resulting from the Force Majeure Event.

b. **[Note to Draft: Parties to confirm with arbitrators that they are willing to handle.]** Any arbitration commenced under this Section 9.3 shall be heard and decided by Rene Stemple Trehy, serving as sole arbitrator. In the event Rene Stemple Trehy is unable to serve as arbitrator, then the arbitration shall be heard and decided by Brian Beverly serving as sole arbitrator. In the event Brian Beverly is unable to serve as arbitrator, then the arbitration shall be heard and decided by Rod Malone serving as sole arbitrator. In the event Rod Malone is unable to serve as arbitrator, and the Parties are not able to agree on an alternate arbitrator using good faith efforts within five (5) business days, then the arbitrator shall be selected from a roster of neutrals provided by the AAA in accordance with "R-12 Appointment from National Roster" of the AAA Commercial Rules and the parties shall use their best efforts to have such arbitrator appointed within ten (10) days after the Reviewing Party's delivery of the Objection Notice to the Delayed Party.

c. The Parties select Durham, North Carolina as the sole and exclusive venue for any and all motion and/or evidentiary hearings that may be conducted in connection with any arbitration proceeding commenced under this Section 9.3. The Delayed Party shall bear the burden of proof in the arbitration and, as such, shall present its case in chief first in the evidentiary hearings.

d. Evidentiary hearings in the arbitration shall conclude no later than 60 days after the commencement of the arbitration pursuant to Section 9.3(b). The hearings shall be conducted in a manner reasonably determined by the arbitrator, provided that in all events the following: (i) the hearings shall be limited to no more than three (3) full days inclusive of opening statements, direct and cross examinations, and closing arguments; and (ii) each Party shall have a maximum of ten (10) hours to present its case during the evidentiary hearings, including each Party's opening statement, direct examinations, cross examinations, and closing argument. The arbitrator shall issue a written Final Award within seven (7) days of the final day of the evidentiary hearings. The arbitrator shall include in the Final Award a concise opinion briefly explaining the bases for the arbitrator's determination(s), but the arbitrator need not issue a formal, reasoned award unless both Parties request such an award before the arbitrator's closing of the evidentiary hearings. The Final Award shall be final and binding upon the Parties as to the Force Majeure Delay, and judgment may be entered upon it in any competent court having jurisdiction.

e. Discovery in advance of the evidentiary hearings shall be completed within 45 days after the commencement of the arbitration pursuant to Section 9.3(a). Discovery shall be conducted and limited in strict accordance with the following:

- (i) The Delayed Party shall disclose the identity of each and every expert witness from whom it seeks to elicit opinion testimony at the evidentiary hearings no fewer than five (5) weeks before the first day scheduled for such hearings, with such disclosure to include the substance of the facts and

opinions to which each expert is expected to testify and a summary of the grounds for each opinion;

- (ii) The Reviewing Party shall disclose the identity of each and every expert witness from whom it seeks to elicit opinion testimony at the evidentiary hearings no fewer than five (5) weeks before the first day scheduled for such hearings, with such disclosure to include the substance of the facts and opinions to which each expert is expected to testify and a summary of the grounds for each opinion;
- (iii) Each Party may, in its sole discretion, take the deposition of the other Party pursuant to Rule 30(b)(6) of the North Carolina Rules of Civil Procedure.
- (iv) Each Party may, in its sole discretion, take the deposition of each and every testifying expert disclosed by the other Party;
- (v) Each deposition shall be limited in duration to seven (7) hours of actual deposition time occurring during a single calendar day;
- (vi) The Parties shall exchange exhibits and witness lists no less one (1) week before the first day scheduled for the evidentiary hearings; and
- (vii) The arbitrator shall be empowered to resolve any and all disputes regarding the scope and sufficiency of discovery.

Neither interrogatories nor requests for admission shall be permitted in any arbitration proceeding initiated under this Section 9.3. While the arbitrator is empowered to extend or otherwise amend interim discovery deadlines in his or her reasonable discretion, the arbitrator shall have no power to direct the Parties to conduct discovery not contemplated by this Section 9.3(e).

f. The arbitrator shall require the non-prevailing party to reimburse the prevailing party for any arbitrators' fees and expenses incurred by the prevailing party in connection with the arbitration required by this Article IX.

ARTICLE X CONVEYANCE OF PROPERTY

10.1. Conveyance Prior to Substantial Completion. Except as provided in this Section 10.1, Section 10.2 or as otherwise expressly set forth in this Agreement, the Developer or applicable Project Developer may not convey its fee simple interest in or enter into a long-term ground lease with respect to (to "Convey"/ a "Conveyance", as the context permits) any Phase prior to Substantial Completion of such Phase without the prior written consent of the City, which consent will not be unreasonably withheld, so long as the proposed owner is demonstrated to have equivalent strength to Fallon Company. Equivalent strength will be determined by the City in its reasonable good-faith discretion based on: (i) having substantially equivalent financial strength, as demonstrated by evidence of past ability and capacity to secure appropriate project financing for similar development projects in an urban setting comparable to Durham, (ii) having no litigation that would have a material adverse impact on its ability to construct and maintain the applicable

Phase or loan events of default in the past ten (10) years, and furnishing to the City at least two (2) letters of interest and/or support from certified lenders and/or equity partners; (iii) having demonstrated experience successfully delivering developments comprising residential, retail, or office space in Durham or another similar urban context, and experience participating in public-private partnerships; (iv) for proposed developers of the Residential Phase, specific previous experience in mixed-income or 100% affordable residential developments; and (v) for proposed developers of the New Commercial Phase and Milton Small Phase, specific previous experience in successful delivery and tenanting of comparable commercial projects in similar urban markets.

Notwithstanding the foregoing, the Developer or applicable Project Developer may Convey a Phase prior to Substantial Completion thereof without the City's consent as follows:

- a. The Developer or applicable Project Developer may Convey the Milton Small Phase and/or the New Commercial Phase to a Fallon Entity.
- b. The Developer or applicable Project Developer may Convey the Residential Phase to (i) a Winn Entity, (ii) a Fallon Entity, or (iii) a Permitted Residential Transferee.

Any Conveyance of any Phase prior to Substantial Completion of such Phase will be subject to the following conditions: (i) the Developer or applicable Project Developer must give the City at least 30 days' prior written notice of the intended Conveyance, along with information sufficient to confirm that the new entity is a Winn Entity, Fallon Entity or Permitted Residential Transferee, as applicable, if the Conveyance is a Conveyance pursuant to clauses (a) or (b) above; (ii) each Phase that is Conveyed will continue to be bound by this Agreement until all development obligations with respect to such Phase under this Agreement have been satisfied in full; (iii) only with respect to a Conveyance of the Residential Phase or any portion thereof, the deed or other instrument Conveying all or any portion of the Residential Phase shall be made expressly subject to the Restrictive Covenants; and (iv) Developer or applicable Project Developer, on one hand, and the transferee, on the other hand, must enter into an Assignment and Assumption Agreement in substantially the form attached hereto as Exhibit E, with respect to all outstanding obligations under this Agreement that affect the Phase being conveyed.

10.2. Conveyance of Open Space. The Developer may Convey to the Association some or all of the Open Space and other portions of the Project, provided that such Conveyance shall cause the Association to assume all applicable executory obligations under this Agreement with respect to such Conveyed portions of the Project, including any obligations with respect to operations and programming, and provided further that no such Conveyance shall release Developer or the applicable Project Developer from its obligations, if any, to complete all applicable improvements, landscaping and other development work contemplated herein pertaining thereto (the "Open Space Work").

10.3. Conveyance After Substantial Completion. Following the Substantial Completion of each Project Phase, there will be no limitations on the transferability of any Phase or any portion thereof, except, with respect to a Conveyance of the Residential Phase or any portion thereof, as set forth in the Restrictive Covenants.

10.4. No Transfer by the City. Transfer by the City of this Agreement requires the prior written consent by the Developer, which consent may be granted or withheld in Developer's sole and

absolute discretion.

10.5. Other Transfers. Except as expressly provided in this Article X, there shall be no limitations in this Agreement on the Conveyance, assignment or other transfer of the Property or the Project or any interest therein.

10.6. Fallon as Primary Contact. Despite any permitted sale or transfer of any portion of the Property, Joseph F. Fallon and/or Michael J. Fallon will remain as the City's primary point of contact with respect to the overall Project and this Agreement, until Substantial Completion of each respective Phase, and with respect to the Open Space, until all Open Space Work is completed. In the event Joseph F. Fallon and/or Michael J. Fallon are unable to serve as the primary point of contact due to death or disability, Developer will appoint a successor to act in such capacity, which successor must be acceptable to City using its reasonable discretion. If the City, in its reasonable discretion, disapproves of the successor appointed by the Developer to act in such capacity by delivering written notice of such disapproval to the Developer within seven (7) days after such appointment stating the grounds for such disapproval, the Developer will appoint a different successor to act in such capacity, and such process shall repeat until the Developer has appointed a successor that is acceptable to the City in its reasonable discretion.

10.7. No Cross-Default. The Developer, each Project Developer, the Association and every other person (other than the City) that holds a fee simple interest to any portion of the Property shall be bound by this Agreement only with respect to, and to the extent applicable to, its Phase or other interest in the Property, but shall not be liable or responsible for the failure of any other person or party to perform in accordance with this Agreement nor shall it be responsible or have any liability for any obligations or other provisions under this Agreement relating to any other portions of the Project or Property not owned by such party. For the avoidance of doubt, the original Developer shall be responsible for each and every obligation of Developer and any Project Developer under this Agreement (including The 1 Durham Real Estate Plan attached as Exhibit F), and shall not be released from liability for any obligation under this Agreement, unless and until such obligation is assumed by a Project Developer, Association or other party. Notwithstanding the foregoing, the partners, shareholders, members, directors, officers, employees and principals, direct and indirect, comprising Developer or any applicable Project Developer (collectively, the "Developer Parties") shall not be liable for the performance of Developer's or such Project Developer's obligations under this Agreement. The City shall look solely to Developer or the applicable Project Developer to enforce such party's obligations hereunder and shall not seek any damages against any of the Developer Parties.

**ARTICLE XI
ADMINISTRATION OF DEVELOPMENT;
DEVELOPER'S OBLIGATIONS**

11.1. Underutilized Business Inclusion Plan. The Developer agrees to comply with its obligations set forth in the Underutilized Business Inclusion section of The 1 Durham Real Estate Plan attached hereto as Exhibit F.

11.2. Minority Ownership & Participation Plan. The Developer agrees to comply with its obligations set forth in Minority Ownership & Participation section of The 1 Durham Real Estate Plan attached hereto as Exhibit F.

11.3. Community Engagement Plan. The Developer agrees to comply with its obligations set forth in the Community Engagement section of The 1Durham Real Estate Plan attached hereto as Exhibit F.

11.4. Construction of the Project.

a. Approvals. Each Project Developer shall be responsible for coordinating, directing, and managing the progress of the construction with respect to each Phase, and the Developer or applicable Project Developer shall obtain all approvals necessary for the construction of the Project or applicable portion thereof under Applicable Laws, including, without limitation, planning approvals, zoning permits, zoning changes and variances, building permits, certificates of occupancy, easements, and utility and related services. The City will support the Developer's and applicable Project Developer's requests for rezoning, plan review, and permit issuances as needed, but the Developer or such Project Developer will be solely responsible for achieving all such development approvals. To the extent practicable (and in any event in compliance with Applicable Laws), the City will cooperate with the Developer or applicable Project Developer in the event such party wishes to utilize any available mechanisms to expedite such processes.

b. Development Plan Rezoning. The City Council has approved a rezoning plan for development of the Property ("Development Plan"). The Development Plan is less detailed and may in some cases be less restrictive than this Agreement. In case of any conflict, the more stringent requirements shall control.

11.5. Status Reports and Information. The Developer will provide periodic updates regarding the pre-development and construction process as reasonably requested by the City. At a minimum, the Developer will provide written reports during the pre-development and construction process at least every six (6) months regarding the pre-development and construction process, key milestones achieved and any potential deviations from the Target Construction Schedule. In addition, in the event construction of the Residential Building has not physically begun by [_____] [**Note to Draft: Insert date that corresponds to the Twenty-seventh (27th) month following the Effective Date**], by [_____] [**Note to Draft: Insert date that corresponds to 60 days of said milestone**], upon the City's request, the Developer and any applicable Project Developer will present in person (or via videoconference or other methods required by City Council) to City Council during a regularly scheduled Work Session on the status of the Project.

11.6. Limited Right of Access for Inspection by City. To investigate compliance with this Agreement, the City shall have a limited right to enter upon the Open Space (but not any other portions of the Property) at all reasonable times to inspect such Open Space. This right is separate from and in addition to any rights afforded to the City by building codes and other applicable codes.

11.7. Financing. The Developer and/or applicable Project Developers are responsible for financing the entire Project or applicable portions thereof using their own respective equity and other sources of debt and equity finance. The City will support, as needed and as appropriate, the applicable Project Developer's efforts to secure a four percent (4%) LIHTC award from the NCHFA, a HUD 221d(4) construction to permanent loan, and any other federal or state forms of support for development of the Affordable Units. This will solely be administrative support, and the City will provide no subsidy or financing for any component of the Project except by mutual

agreement of the Parties.

ARTICLE XII

BROWNFIELDS AGREEMENT

12.1. Brownfields Program. The City will continue to work in good faith with the Developer to pursue a Brownfields Agreement, in accordance with the Purchase and Sale Agreement between the City and Developer dated _____, 2020. **[Note to Draft: Update as needed if BA is complete before closing.]** If the Property is successfully accepted into the Brownfields Program, the Parties recognize that, under NC state law, certain “qualified improvements” (as defined in North Carolina General Statute Section 105-277.13(b)) constructed on the Property may qualify for a graduated partial property tax exclusion for five taxable years beginning after the completion of such improvements (the “Brownfields Exclusion”). For each taxable year in which the Brownfields Exclusion is in effect and applicable to the Residential Phase, the Project Developer of the Residential Phase will pay the City a contractual payment equal to the “Exclusion Amount” for such taxable year. The “Exclusion Amount” for any taxable year shall be equal to (x) the amount of ad valorem real property taxes that would have been paid to the City for such year with respect to qualified improvements included in the Residential Phase only without the Brownfields Exclusion minus (y) the ad valorem real property taxes actually paid to the City for such year with respect to qualified improvements included in the Residential Phase only. The Project Developer of the Residential Phase will pay the City the Exclusion Amount for each applicable taxable year on or before the later of (i) if the applicable Project Developer timely files an appeal with the applicable authority, the date such Project Developer pays the ad valorem real property taxes with respect to the Residential Phase qualified improvements for such year following the final resolution of such appeal and (ii) January 5 of the following year.

ARTICLE XIII

REMEDIES

13.1. Failure to Commence or Complete Construction of Residential Building. In the event: (i) the applicable Project Developer fails to Commence construction of the Residential Building by the Residential Building Outside Commencement Date, (ii) the applicable Project Developer fails to Substantially Complete construction of the Residential Building by the Residential Completion Deadline, if applicable, or (iii) the City asserts in writing delivered to the Developer and the applicable Project Developer (the “Diligence Notice”) that the applicable Project Developer has failed to diligently prosecute construction of the Residential Building to Substantial Completion (a “Diligence Failure”) and neither the Developer nor the applicable Project Developer cures such Diligence Failure within thirty (30) days after its receipt of the Diligence Notice (or, notwithstanding the foregoing, if the Diligence Failure cannot reasonably be cured within thirty (30) days after delivery of the Diligence Notice, and Developer or the applicable Project Developer promptly commences the cure within such thirty (30) day period and diligently prosecutes the cure, Developer or the applicable Project Developer may cure the Diligence Failure within such other period as may be reasonable under the circumstances, but in no event to exceed sixty (60) days after delivery of the Diligence Notice) (either of the foregoing in subsection (ii) or (iii), a “Completion Failure”), the City shall have the right to provide a written notice to the applicable Project Developer and the Developer and thereafter commence an action at law to recover title to the Residential Phase by filing an action with a court of competent jurisdiction (“Right of Re-

entry”), subject to and in accordance with the following:

a. If (i) the failure is a failure to Commence construction of the Residential Building by the Residential Building Outside Commencement Date and (ii) the applicable Project Developer is not a Fallon Entity, the Developer shall have an additional 365-day cure period following the Residential Building Outside Commencement Date to recover title to the Residential Phase from the applicable Project Developer and/or Commence construction of the Residential Building. Upon the City’s written request, the Developer shall provide periodic status updates to the City during such period. If the Developer Commences (or causes Commencement) of the Residential Building within such 365-day cure period, the Project Developer’s failure to Commence construction of the Residential Building by the Residential Building Outside Commencement Date shall be conclusively deemed to have been timely cured and satisfied.

b. If (i) the failure is a Diligence Failure, (ii) the Diligence Failure has not been cured within the applicable cure period described in Section 13.1, and (iii) the applicable Project Developer is not a Fallon Entity, the Developer shall have an additional 365-day cure period following the applicable cure period described in Section 13.1 to recover title to the Residential Phase from the applicable Project Developer and/or cure such Diligence Failure. Upon the City’s written request, the Developer shall provide periodic status updates to the City during such period. If the Developer cures (or causes to be cured) such Diligence Failure within such 365-day cure period, that particular Diligence Failure shall be conclusively deemed to have been timely cured and satisfied.

c. Any Project Lender that is the beneficiary of a deed of trust on the Residential Phase shall have an additional 180 day period following the applicable cure periods described in Sections 13.1, 13.1(a) and 13.1(b) to cure any and all failure(s) to Commence construction of the Residential Building by the Residential Building Outside Commencement Date and/or any and all Completion Failure(s). If the Project Lender cures (or causes to be cured) such failure(s) within such 180-day period, such failures shall be conclusively deemed to have been timely cured and satisfied.

d. The City’s exercise of its Right of Re-entry must be initiated, if at all, within one (1) year after expiration of the applicable cure periods provided under sections a., b., and c. above. Failure of the City to invoke such remedy within such one (1) year period shall be deemed to be a waiver of the failure or violation.

e. Upon the successful exercise of such Right of Re-entry by the City, the City will take title to the Residential Phase subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the first position deed of trust of record and any rights or interests provided in this Agreement for the protection of Project Lenders, (ii) existing leases and occupancy agreements and (iii) all matters of record and any and all other encumbrances.

f. From and after a re-vesting of title to the Residential Phase in the City pursuant to the provisions of this Section 13.1, the City shall have liability for all costs and expenses in connection with the ownership and occupancy of the Residential Phase arising after such re-vesting of title. The proceeds of any subsequent sale, resale or other transfer of the Residential Phase or any portion thereof, together with the net income, if any, derived by the City from its operation and management of the Residential Phase, shall promptly be used and applied as follows:

i. First, to payment of the obligations to Project Lenders secured by the first position deed of trust, if any, until satisfied, and to the extent that the balance of such proceeds is insufficient to pay such obligations in full, such sale,

resale or other transfer of the Residential Phase or any portion thereof shall be subject to any such deed of trust for the amount thereof remaining unpaid;

- ii. Second, to the City in an amount equal to \$500,000 as deemed reimbursement for City's expenses in connection with the Project (and the City shall not be entitled to any other amounts on account of expenses in connection with the Developer's failure to Commence construction of the Residential Phase or Completion Failure(s), except as described in and subject to the ordering set forth in subsections iii and v below).
- iii. Third, if the City recovers title to the Residential Phase after Commencement but prior to Substantial Completion of the Residential Building, to the City for all documented expenses expended by City in connection with Substantially Completing the Residential Phase (if any).
- iv. Fourth, to reimburse the applicable Project Developer for (i) an amount equal to \$250,000 plus (ii) documented out-of-pocket third-party expenses expended by the Developer and the applicable Project Developer in connection with developing the Residential Phase.
- v. Fifth, the balance to the City.

g. From and after a re-vesting of title to the Residential Phase in the City pursuant to the provisions of this Section 13.1, neither Developer nor the applicable Project Developer shall object to the City communicating with the architect, general contractor, or any subcontractors in connection with the Residential Phase. The applicable Project Developer shall additionally use commercially reasonable efforts to pursue language in the applicable contracts allowing, following a re-vesting of title to the Residential Phase in the City pursuant to the provisions of this Section 13.1, the applicable plans for the Residential Phase to be utilized by the City for purposes of completing, using, and maintaining the Residential Phase.

The Right of Re-entry described in this Section 13.1, including the distributions described above to the extent available, shall be the City's sole and exclusive remedy, at law or in equity, with respect to a breach of the obligation to Commence construction of the Residential Building by the Residential Building Outside Commencement Date, or a Completion Failure.

13.2. Failure to Maintain Affordable Units. In the event of a breach of this Agreement by the applicable Project Developer, or its permitted successors and assigns, of the requirement to limit the Affordable Units to Eligible Households in perpetuity as required by and more specifically set forth in the Restrictive Covenants beyond the notice and cure periods set forth in the Restrictive Covenants, the City may thereafter, as the City's sole and exclusive remedies, at law or in equity:

- a. institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation or attempted violation or compel specific performance of such obligation, all as more specifically set forth in the Restrictive Covenants; and
- b. receive "Liquidated Damages" as defined and as more specifically set forth in the Restrictive Covenants.

13.3. Failure to Commence Construction of Milton Small Building. In the event of a failure by the applicable Project Developer to Commence renovation of the Milton Small Building by the Milton Small Building Outside Commencement Date, the City shall have the right, upon thirty (30) days' prior written notice to the applicable Project Developer while such failure is continuing, to require the applicable Project Developer to pay the City liquidated damages for each year (or portion thereof) that such failure continues in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000.00) per year, beginning with the year following the year in which the Milton Small Building Outside Commencement Date occurs and continuing until Commencement of renovation of the Milton Small Building. Such liquidated damages shall be prorated on a daily basis for any partial year. Each payment shall be paid in arrears no later than January 31 following the year in which it is owed. Such liquidated damages shall be the full, agreed, and liquidated damages with respect to a breach of the obligation to Commence renovation of the Milton Small Building by the Milton Small Building Outside Commencement Date, and shall be the City's sole and exclusive remedy, at law or in equity, with respect to such a breach.

13.4. Other Failures.

a. Failures by Developer or Project Developer. In the event of a breach of this Agreement by Developer or a Project Developer, or their respective permitted successors and assigns, other than the specific breaches for which exclusive or sole remedies are expressly stated as such in this Article XIII or elsewhere in this Agreement (for which the City shall only have the sole or exclusive remedies for such breaches provided), the City may, following the notice periods described below, institute and prosecute any proceeding at law or in equity to: abate, prevent, or enjoin any such violation; compel specific performance of this Agreement; or recover direct monetary damages (but in no event punitive, consequential, indirect, special or any other indirect monetary damages) caused by the breach.

b. Failures by City. In the event of a breach of this Agreement by the City, the Developer or any applicable Project Developer may, following any applicable notice and cure periods, institute and prosecute any proceeding at law or in equity to: abate, prevent, or enjoin any such violation; compel specific performance of this Agreement; or recover direct monetary damages (but in no event punitive, consequential, indirect, special or any other indirect monetary damages) caused by the violation.

c. Default Notice and Remedies. In the event that any Party (the "Defaulting Party") defaults by failing to comply with or violating any of the provisions of this Agreement other than those defaults described in Sections 13.1, 13.2 or 13.3, then the other Party (the "Non-Defaulting Party") shall notify the Defaulting Party in writing of any such default (any such notice, a "Default Notice"). The Defaulting Party shall thereupon have thirty (30) days from the receipt by it of such Default Notice to cure such default, or if more than thirty (30) days are required to cure such default because of the nature of such default and the necessary cure, the Defaulting Party shall have such time as is reasonably necessary to cure the default, provided that the Defaulting Party promptly begins to cure such default within such thirty (30) day period and diligently proceeds to cure such default within the shortest reasonable time.

If the Defaulting Party does not cure such default within thirty (30) days of receipt of a Default Notice with respect thereto (or within such extended period of time as may be necessary

to cure such failure or violation as noted above) and, with respect to the Developer or a Project Developer, if the applicable Project Lenders do not exercise their rights to cure such failure or violation (as provided in Article XVI) or commence to exercise their rights under such building loan agreement or deed of trust to obtain possession and control of the applicable portion of the Property within forty-five (45) days after the end of the period provided for cure of such failure or violation by the Developer or applicable Project Developer (and during such additional forty-five (45) day period Developer, the applicable Project Developer and any Project Lenders with respect to the applicable portion of the Property may cure or commence to cure such violation or failure), the Non-Defaulting Party may institute such actions and proceedings as it deems advisable, including to compel specific performance and/or the payment of actual damages in accordance with this Section 13.4.

d. Remedies Cumulative. All remedies of the Parties provided for in this Section 13.4 are cumulative and shall be in addition to any and all other rights and remedies provided or available at law or in equity. Except as otherwise provided in this Agreement, the exercise of any right or remedy by any Party under this Agreement shall not in any way constitute a cure or waiver of default hereunder except to the extent that any remedy is specifically stated to be an exclusive or sole remedy for a particular type of default, or invalidate any act done pursuant to any notice of default, or prejudice such Party in the exercise of any of its rights. Except as otherwise provided in this Agreement, no delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE XIV INDEMNIFICATION

14.1. Survival. This Article XIV shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise).

14.2. Definitions. These definitions apply to this Article XIV:

a. **Defend:** to pay for or furnish counsel at the expense of the Developer to defend any of the Indemnitees (defined below) against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract.

b. **Fault:** a breach of contract beyond applicable notice and cure periods; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

14.3. Standard Indemnification. To the maximum extent allowed by law, the Developer or applicable Project Developer shall defend, indemnify, and hold harmless the City, and its officers, officials, independent contractors, agents and employees (together with the City, the “Indemnitees”) from and against all Charges incurred by the Indemnitees that arise in any manner from, in connection with, or out of this contract as a result of such Developer’s or Project Developer’s respective fault. In performing its duties under this subsection, the Developer or Project Developer, as applicable, shall at its sole expense defend Indemnitees with legal counsel

reasonably acceptable to the City. "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses, including reasonable attorney's fees and reasonable court costs.

14.4. Restriction regarding Indemnitees' Negligence. Nothing in this Article XIV requires the Developer or any Project Developer to indemnify or hold harmless Indemnitees or any other person or entity against Charges arising out of bodily injury to persons or damage to property proximately caused by or resulting from the fault, in whole or in part, of any Indemnitee.

14.5. Restriction regarding Fault. Nothing in this Article XIV requires the Developer or any Project Developer to indemnify or hold harmless Indemnitees or any other person or entity against Charges unless the fault of the Developer or such Project Developer, as applicable, or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

ARTICLE XV INSURANCE REQUIREMENTS

15.1. Insurance. Each Project Developer shall obtain and maintain Commercial General Liability insurance having a combined single limit of no less than \$1,000,000 Each Occurrence and \$2,000,000 Aggregate, which policy must contain contractual liability coverage insuring performance by such Project Developer of the indemnity provisions of this Agreement. Each such Project Developer may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There shall be no minimum Per Occurrence limit of liability under any Umbrella or Excess Liability policies, however, the Annual Aggregate limits shall not be less than \$1,000,000.

ARTICLE XVI PROJECT LENDER PROTECTIVE PROVISIONS

16.1. Notwithstanding any other provisions of this Agreement, the Developer and Project Developers shall at all times have the right to encumber, pledge, transfer or convey their respective rights, title and interest in and to the Property, or applicable portion or portions thereof, and holders of direct or indirect ownership interests in the Developer and/or any Project Developer shall have at all times the right to encumber, pledge, transfer or convey their individual ownership interests, by way of a bona fide deed of trust, pledge, preferred equity arrangement or other financing arrangement.

16.2. A Project Lender (including a person who obtains title to the Property or any portion thereof or control of the Developer or applicable Project Developer by foreclosure or action in lieu thereof, but not including a person who obtains title through such holder or any purchaser at a foreclosure sale other than the Project Lender) shall not be obligated by this Agreement to construct or complete the Project or applicable Phase or to guarantee such construction or completion, but instead shall have the options described in this Section 16.2. If a Project Lender, through the operation of the Project Lender's contract to finance the Project or applicable portion thereof required by this Agreement to be constructed by the Developer or applicable Project Developer on the Property, or by foreclosure or action in lieu thereof, acquires fee simple title to the Property or any portion thereof or control of the Developer or applicable Project Developer prior to Substantial Completion of the applicable portion of the Project, such Project Lender shall have the following options and shall use its commercially reasonable efforts in connection with such options:

a. complete construction of such portion of the Project in accordance with this Agreement, and in all respects comply with the provisions of this Agreement with respect to such portion; or

b. sell, assign or transfer fee simple title to the applicable portion of the Property or any part thereof to a purchaser, assignee or transferee who (i) shall not require approval by the City; (ii) shall have demonstrated experience successfully delivering developments comprising residential, retail, or office space in Durham or another similar urban context, and experience participating in public-private partnerships; (iii) shall have no litigation that would have a material adverse impact on its ability to construct and maintain the applicable Phase or loan events of default in the past ten (10) years, (iv) for proposed developers of the Residential Phase, shall have previous experience in mixed-income or 100% affordable residential developments; (v) for proposed developers of the New Commercial Phase or Milton Small Phase, shall have previous experience in successful delivery and tenanting of comparable commercial projects in similar urban markets; and (vi) shall assume in writing, all of the covenants, agreements and obligations of the Developer or applicable Project Developer under this Agreement in respect of the applicable portion of the Property or part thereof.

16.3. If a Project Lender, through the operation of the Project Lender's contract to finance the Project or applicable portion thereof required by this Agreement to be constructed by the Developer or applicable Project Developer on the Property, or by foreclosure or action in lieu thereof, or otherwise acquires fee simple title to the Property or any portion thereof or control of the Developer or applicable Project Developer, as applicable after Substantial Completion of the applicable portion of the Project, such Project Lender, for the period during which such Project Lender holds such title or control, shall comply with the applicable provisions of this Agreement.

16.4. In no event shall any Project Lender be liable for breaches of this Agreement prior to the time it acquires title or takes possession of the Property or applicable portion thereof or after it shall convey title or possession, provided that development, ownership and operation of the Property or applicable portion thereof shall be subject to compliance with this Agreement. Notwithstanding the immediately preceding sentence, in no event shall any Project Lender ever be subject to personal liability for breaches of this Agreement whether or not it owns or controls the Property or any portion thereof, any such liability being hereby limited to said Project Lender's interest in the Property.

16.5. If the City gives written notice to the Developer or applicable Project Developer of a default under this Agreement, including without limitation, any failure to make any payment required hereunder or to commence or complete construction of the Project or any portion thereof, the City shall forthwith furnish a copy of the notice to each of the applicable Project Lenders of which City has been given written notice identifying (i) the name and address of the Project Lender and/or applicable Project Developer, and (ii) the Phase or other portion of the Project in which such Project Lender and/or Project Developer holds an interest. To facilitate the operation of this Section 16.5, the Developer and each Project Developer shall at all times keep the City up-to-date as to the names and addresses of Project Lenders from whom such party has obtained loans for the

acquisition of the Property or any portion thereof and/or construction and/or operation of the Project or any portion thereof, and any such Project Lender may notify the City of its address and request that the provisions of Section 17.15 as they relate to notices apply to it. The City agrees to comply with any such request.

16.6. If the Developer or a Project Developer has received a Default Notice, Diligence Notice, or any other notice from the City of a failure or violation under this Agreement and such failure or violation is not cured by the Developer or the applicable Project Developer, the applicable Project Lender(s) may cure any such failure or violation by giving written notice of their intention to do so to the City and proceeding to cure the failure or violation within forty-five (45) days after the end of the period provided for cure of such failure or violation by the Developer or applicable Project Developer. Any such cure by a Project Lender shall be deemed to be a cure by the Developer or applicable Project Developer for all purposes hereunder.

ARTICLE XVII

TERMS OF GENERAL APPLICABILITY

The following terms and covenants shall be applicable throughout the term of this Agreement:

17.1. E-Verify Requirements. The Developer, and the Developer's subcontractors, must comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

17.2. Whole Agreement. This Agreement, including the exhibits attached hereto, which are incorporated by reference, shall be the whole agreement between the City and the Developer with respect to the matters herein.

17.3. No Waiver. No waiver of any default or breach by the any Party hereunder shall be implied from any delay or omission by the other party to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver, and it shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein must be in writing and shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by any Party to or of any act by any other Party requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of any Party hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy.

17.4. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the City, the Developer and their successors and assigns (including the applicable Project Developers), and no other person or persons shall have any right to action hereon at any time, nor shall the City owe any duty whatsoever to any claimant for labor performed or material furnished in connection with the construction of the Project, or to exercise any right or power of the City hereunder or arising from any default by the Developer or any Project Developer. It is the intention of the City that the covenants running with the land which are contained in any instrument of conveyance relating to the Property shall be enforceable only by the City and/or its

designated agent and those holding title to an interest in the Property and that such covenants shall not be enforceable by any other parties.

17.5. Recordation. Simultaneously with the full execution and delivery of this Agreement, the Parties shall cause a Memorandum of Master Development Agreement in the form attached hereto as Exhibit G (the “Notice of MDA”) to be recorded with the Registry. So long as this Agreement remains in effect, the Parties may, by an instrument in form reasonably acceptable to the Parties and executed and acknowledged by both of them, amend or terminate the Notice of MDA as appropriate from time to time to reflect any amendments to or limitation of either Party’s rights under this Agreement, release of portions of the Property following Substantial Completion thereof in accordance with this Agreement, as described below in this Section 17.5, or termination of this Agreement. Within ten (10) days following the effectiveness of a termination of this Agreement with respect to the Property or any portion thereof, the City and the Developer shall, by an instrument in form reasonably acceptable to the Parties and executed and acknowledged by both of them, terminate the Notice of MDA or amend the Notice of MDA to clarify what portion of the Property remains affected, as applicable. If the City does not execute and acknowledge such an instrument within such ten (10) day period, then Developer shall send the City a written notice regarding such failure and demanding the City’s execution and acknowledgment of such instrument. If the City still does not execute and acknowledge such an instrument within ten (10) days after its receipt of such written notice, then Developer shall have the right to unilaterally reflect the termination of the MDA with respect to such portion of the Property by recording an instrument to that effect accompanied by an affidavit attesting to Developer’s full compliance with the foregoing notice requirements and the City’s failure to execute and acknowledge such an instrument as required under this Section 17.5. Any wrongful and bad faith unilateral recording by Developer of such instrument shall constitute a material breach of this Agreement.

17.6. Enforcement of Liability. Notwithstanding anything contained in this Agreement to the contrary, there shall be no personal liability on the part of any partners, shareholders, members, directors, officers, employees and principals of Developer or any Project Developer, directly or indirectly, with respect to any obligations to be performed hereunder. If a party shall sell, assign, transfer, convey or otherwise dispose of all or any portion of its Property (other than as security for a loan to such party) (each, a “Transfer”), then, to the extent of such Transfer, (i) such party shall be freed and relieved of any and all covenants and obligations arising under this Agreement which accrue under this Agreement from and after the date of such Transfer, provided, however, that such Transfer shall be subject to any lien imposed against such Property under this Agreement, and (ii) the Person who succeeds to such party’s interest in such Property shall be deemed to have assumed all covenants and obligations of such party arising under this Agreement. For the avoidance of doubt, as provided in Section 10.6, the original Developer shall not be released from liability for any obligation under this Agreement unless and until such obligation is assumed by a Project Developer, Association or other party.

17.7. City Approvals. Whenever the approval of the City is required under this Agreement, such approval shall not be unreasonably withheld, nor shall it be made contingent upon or structured so as to require, directly or indirectly, the payment of any fee or charge by the Developer, any Project Developer or any other interested party. Whenever there is hereunder a requirement that any thing, act or circumstance under this Agreement shall be satisfactory to the City or shall be done and performed to the City’s satisfaction or there is any other requirement of similar import, the

standards of reasonableness and customary practice with respect to projects of similar size, location and complexity as the Project shall be used by the City in determining the adequacy and sufficiency of Developer's and each Project Developer's respective performance. For the avoidance of doubt, the provisions of this Section 17.7 shall apply to matters arising under this Agreement, and shall be separate from any rights afforded to the City in its capacity as a governmental authority by building codes and other applicable codes.

17.8. Heirs, Successors, Assigns, Assignment: The terms hereof shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

17.9. Definitions. Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine. References to a "Section" or "Article" shall mean a section or article of this Agreement unless otherwise expressly stated.

17.10. Governing Law; Venue. This Agreement shall be deemed made in Durham County, North Carolina and shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Durham County or a federal district court of competent jurisdiction in North Carolina. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

17.11. Severability. Invalidation of any one or more of the provisions of this Agreement shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

17.12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

17.13. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision hereof.

17.14. Estoppel Certificates. Each Party agrees that from time to time, upon not less than fifteen (15) business days' prior written request from any other Party, such Party will deliver a statement in writing certifying (a) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as modified and identifying the modifications), (b) whether or not the requesting Party is in default under any provisions of this Agreement, and if such a default exists, the nature of such default and (c) as to any other factual matter reasonably requested by the requesting Party.

17.15. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth below. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon receipt, (b) sent by email, with written confirmation by a nationally recognized overnight courier sent the same day as the email, in which case notice shall be deemed

delivered upon transmission of such email, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. Any notice sent by email or personal delivery and delivered after 6:00 p.m. eastern standard time shall be deemed received on the next business day. A Party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such notice.

To City: City of Durham, General Services Department
101 City Hall Plaza (mailing address)
2011 Fay Street (physical address)
Durham, NC 27701
Attention: Director
Email: Jina.Propst@durhamnc.gov

with a copy to: Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27601
Attention: Stephanie L. Sanders
Email: ssanders@poynerspruill.com

To Developer,
Project Developers
and the
Association:

West Chapel Hill Development LLC
c/o The Fallon Company
327 Hillsborough Street
Raleigh, North Carolina 27603
Attention: Zac Vuncannon
Email: zvuncannon@falloncompany.com

and to: c/o The Fallon Company
One Marina Park Drive
Boston, Massachusetts 02210
Attention: Michael J. Fallon
Email: mfallon@falloncompany.com

with a copy to: DLA Piper LLP (US)
33 Arch Street, 26th Floor
Boston, Massachusetts 02110-1447
Attention: Brian M. Awe
Email: brian.awe@dlapiper.com

In addition, and despite any permitted sale or transfer of any portion of the Property, notices to Developer, the applicable Project Developer and the Association shall additionally be provided to Joseph F. Fallon and/or Michael J. Fallon at the addresses set forth below until (i) with respect to each Phase and the applicable provisions of this Agreement, Substantial Completion of such Phase and (ii) with respect to the Open Space, all Open Space Work is substantially completed:

c/o The Fallon Company
One Marina Park Drive
Boston, Massachusetts 02210
Attention: Joseph F. Fallon
Michael J. Fallon
Email: jfallon@falloncompany.com
mfallon@falloncompany.com

17.16. No Discrimination. The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors and developers to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts and loans.

17.17. No Partnership. Nothing in this Agreement is intended or shall be considered to create a joint venture or partnership between the City, the Developer or any Project Developer or constitute either the agent of the other or to make the City, the Developer or any Project Developer in any way responsible for the duties, responsibilities, obligations, liabilities, debts or losses of the other.

17.18. Rule Against Perpetuities. In the event any contingent interest granted under this Agreement or any Related Document does not vest within twenty-one (21) years of the date of this Agreement or such Related Document, then such contingent interest shall terminate and be of no further force and effect to the extent the failure to vest would violate the rule against perpetuities as applied in the State of North Carolina, with the least possible effect otherwise on the validity and enforceability of this Agreement.

[Signature pages to follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed on its behalf and attested as of the date first written above.

CITY OF DURHAM

By: _____

_____, City Manager

ATTEST:

City Clerk

NORTH CAROLINA

COUNTY OF DURHAM

I, A Notary Public in and for the aforesaid county and state certify that _____ personally appeared before me this day, and acknowledged that she is the City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by its said City Clerk. This the _____ day of _____, 2020.

My Commission expires: _____

Notary Public: _____

PRE-AUDIT STATEMENT

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

City of Durham Finance Officer

Date

WEST CHAPEL HILL DEVELOPMENT LLC,
a Delaware limited liability company

By: Fallon Management Company LLC

By: _____

Name:

Title: Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of _____, _____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he or she signed it voluntarily for its stated purpose.

Notary Public

My commission expires: _____

EXHIBIT A
PROPERTY

Being all that parcel of land situated in the City of Durham, County of Durham, North Carolina, and more particularly described as follows:

BEGINNING at a monument located in the northwest intersection of the boundary lines of Jackson Street and South Duke Street, and running thence North 00° 26' 00" East a distance of 476.87 feet to a point, which is the southwest intersection of the boundary lines of West Chapel Hill Street and South Duke Street; thence South 89° 44' 59" West a distance of 365.01 feet to a stake, which is the southeast intersection of the boundary lines of South Gregson Street and West Chapel Hill Street; thence South 03° 21' 23" West a distance of 199.70 feet to a point; thence South 03° 53' 19" West a distance of 134.03 feet to a point; thence North 89° 39' 55" East a distance of 8.89 feet to a point; thence South 03° 03' 15" West a distance of 131.49 feet to a stake; thence in a southeasterly direction along a curve to the left having a radius of 12 feet and a length of 19.54 feet to a stake; thence North 89° 45' 28" East a distance of 368.36 feet to a monument, being the point and place of BEGINNING and being approximately 4.10 acres, as shown on that plat and survey entitled "Title Survey for Webb-Wittenberg Ventures" by Ballentine Associates, P.A. and recorded in Plat Book 124, Page 60, Durham County Registry, to which plat reference is made for a more particular description.

The parcel is further identified as 505 W. Chapel Hill Street, Durham, NC 27701, parcel #114577.

This is the same property acquired by the City of Durham in the deed recorded in Book 2273, Page 350, Durham County Registry.

EXHIBIT B
TARGET CONSTRUCTION SCHEDULE

[See attached]

EXHIBIT C
AMENDMENT TO RESTRICTIVE COVENANTS

Prepared by and Return to:
Stephanie Sanders
Poyner Spruill LLP
PO Box 1801
Raleigh, NC 27602
STATE OF NORTH CAROLINA

COUNTY OF DURHAM

AMENDMENT TO AMENDED AND RESTATED
DECLARATION OF RESTRICTIVE COVENANTS

THIS AMENDMENT TO AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS (“Amendment”) is made this ___ day of _____, 20__ by and between the City of Durham, a municipal corporation organized and existing pursuant to North Carolina state law (“City”), and WEST CHAPEL HILL DEVELOPMENT LLC, a Delaware limited liability company (“Subsequent Owner”).

WHEREAS, the City recorded an Amended and Restated Declaration of Restrictive Covenants dated _____, 2020 and recorded in Book ____, Page ____, Durham County Registry (the “Declaration”).

WHEREAS, the property that was subjected to the Declaration, which is described on Exhibit A attached thereto (the “Original Property”), has been [subdivided/subjected to a land condominium regime], pursuant to [describe condominium plat or subdivision plat] (the “Plat”) [and describe condominium declaration if applicable];

WHEREAS, Subsequent Owner, as current owner of the Original Property, intends that [Parcel/Unit] ___ as shown on the Plat (the “Residential Property”) will be developed for residential uses under the general scheme of development for the Original Property; and

WHEREAS, in accordance with Section 4 of the Declaration, the City and Subsequent Owner are executing this Amendment to limit the property encumbered by the Declaration to only such Residential Property, as more specifically set forth herein.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Subsequent Owner do hereby amend the Declaration as follows:

1. Definition of Property. The Declaration is hereby amended by deleting the definition of “Property” therein in its entirety and replacing it with the following:

“Property” means all and any part of that certain real property in Durham, North Carolina commonly known as [_____], as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, including all improvements thereon.

2. Subdivided Property Subject to Declaration. The Declaration is hereby amended by deleting Exhibit A attached thereto in its entirety and replacing it with Exhibit A attached to this Amendment.

3. Binding Effect; Release and Discharge from Declaration. The Declaration shall only run with, be applicable to and binding upon and pertain to the Property as defined in Section 1 of this Amendment. The Original Property, other than such Property defined in Section 1 of this Amendment, is hereby forever released and discharged from the terms, conditions, restrictions and encumbrances contained in the Declaration.

4. Miscellaneous. All capitalized terms not otherwise defined in this Amendment shall have the same meaning as in the Declaration. Except as expressly amended or modified hereby, all covenants, conditions, restrictions, and easements established by and contained in the Declaration shall remain unchanged and in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City and the Subsequent Owner have executed this Amendment, by authority duly given, as of the date first above written.

CITY OF DURHAM

By: _____(SEAL)
_____, City Manager

ATTEST:

_____(SEAL)
City Clerk

State of _____

ACKNOWLEDGMENT

County of _____

I, a Notary Public in and for the aforesaid County and State, certify that _____ personally appeared before me this day and stated that he or she is the City of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by _____, CITY MANAGER, sealed with its corporate seal and attested by herself as its City Clerk.

This the _____ day of _____, 2020.

My commission expires:

Notary Public

SUBSEQUENT OWNER:

WEST CHAPEL HILL DEVELOPMENT LLC,
a Delaware limited liability company

By: Fallon Management Company LLC

By: _____

Name:

Title: Manager

STATE OF _____

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____

Date: _____

Official Signature of Notary: _____

Notary's Printed or Typed Name: _____, Notary Public

My Commission Expires: _____

(Official Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[Insert legal description of residential parcel(s) or unit(s), including any applicable easements, parking rights and other appurtenances.]

EXHIBIT D

COMPLIANCE MONITORING AND RECORD RETENTION

A. Ongoing Compliance Requirements and Monitoring

1. Annual Tenant Income Certification (TIC)

- a. *Certification Required.* Household income of tenants must be recertified annually during the Period of Affordability, and tenants must complete an Annual Student Certification each year, prior to the execution of a new lease agreement.
- b. *Notice to Tenant.* Tenants must be given an initial notice of annual certification at least 90 days prior to the end of a lease term. If the tenant does not complete the certification within 60 days of the initial certification notice, a second notice must be sent. If the tenant does not comply within 30 days of the second notice, a final notice must be sent giving the tenant 30 days' notice that they no longer qualify for the Affordable Unit due to the failure to complete annual certification. At this point, the Project Developer has the discretion to request that the tenant vacate the unit or to allow the tenant to remain in the unit. However, if the tenant remains in the unit without completing the certification, the unit can no longer be considered an Affordable Unit.
- c. *Verifying Income Eligibility.* The TIC for each tenant in an Affordable Unit should document the tenant's Annualized Gross Income according to 24 CFR Part 5 (Section 8), regulations for determining a household's income eligibility. For further explanation of verification methods, see Chapter 5 of the HUD Handbook 4350.3 titled Determining Income & Calculating Rent, provided online at https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350. Acceptable sources of documentation for income verification include: Current Social Security Benefit Letters; Pension / Retirement Statements; Pay Check Stubs (Minimum 4 - 6 Weeks of Consecutive Stubs); Verification of Employment form completed by HR or Payroll; Child Support Verification; Bank Statements; Depository Cards; Other Assets: Real Estate, Whole Life Insurance Policies, 401K/Retirement Savings, Personal Property Held as an Investment, etc. In the event that a tenant has a Housing Choice Voucher issued by the Durham Housing Authority, or another form of rental assistance approved by the City, the Project Developer may present written proof of the voucher in lieu of a TIC.
- d. *Records.* The Project Developer shall maintain complete and accurate records pertaining to the TIC and the Annual Student Certification for each tenant residing in an Affordable Unit on the Property and shall permit, upon five (5) business days' notice to the Project Developer, any duly authorized representative of the City to inspect such records. For purposes of this Exhibit D, "Property" shall mean the Residential Phase only.

2. Project Developer Annual Certification

- a. *Certification Required.* Annually, throughout the Period of Affordability, the Project Developer must submit a rent roll for the Property's Affordable Units and certify Contract compliance utilizing the Project Developer's Certification of Continuing Compliance form provided by CDD. The initial annual certification will be required on the first anniversary of the issuance of the Certificate of Compliance for the Affordable Units. In subsequent years, the Project Developer's certification will be due on the anniversary of the issuance of the Certificate of Compliance.
- b. *Information to be Certified.* The Project Developer's Certification of Continuing Compliance requires the Project Developer to certify that the Property has met the following requirements for the 12-month period prior to the submission date:
 - i. The Property complies with the affordability requirements in any applicable restrictive covenants.
 - ii. At annual recertification, Project Developer has completed a TIC and tenants have completed Annual Student Certifications for each Affordable Unit.
 - iii. All Affordable Unit leases shall be for 12-month terms.
 - iv. No tenants in Affordable Units were evicted or had their tenancies terminated other than for cause.
 - v. All units are made available in accordance with local, State and Federal Fair Housing laws.
 - vi. No finding or charges of discrimination has occurred for the Property by local, State or Federal officials.
 - vii. All Affordable Units are suitable for occupancy, taking into consideration local and state health, safety, minimum housing codes, and building codes (or other habitability standards).
 - viii. There are no notices of violation issued by the Durham City-County Inspections Department or the Durham City County Planning Department that have not been remedied by the Project Developer.
 - ix. All tenant facilities such as swimming pools, recreational facilities, parking areas, washer/dryer hookups, and appliances are provided to Affordable Units on a comparable basis to market rate units.
 - x. There has been no unreported change in the ownership or management of the Property.

3. Compliance Monitoring

- a. *Maintenance of Records.* The Project Developer must maintain tenant records utilizing forms prepared by the Project Developer and approved by the City. The forms shall document the record of qualifying household income compliance for each Affordable Unit.
- b. *Monitoring by the City.* Compliance monitoring by the City shall include, but is not limited to, a review of: (1) at least 20% of the Affordable Units, including the TIC and the Annual Student Certification, and (2) an inspection of the general physical

condition of the Affordable Units and market rate units on the Property. The Project Developer will receive notice of planned monitoring visits at least 30 days in advance. The Project Developer shall have the following documentation available at the monitoring visit: current rent roll for the Affordable Units, Project Developer's Certification of Continuing Compliance, and tenant files for the Affordable Units. If the City is monitoring a sample of tenant files, files will be chosen as a mix of half chosen by the Project Developer and half selected by the City.

- c. *Elective Frequency.* The City of Durham may elect to do a review of 100% of files for Affordable Units for the first two years of the Period of Affordability and/or the first two years after a change in ownership or property management company. If during those two years the Property has satisfactory performance (no Findings or repeated Concerns are noted), the City may elect to conduct Desk Audit reviews of only 20% of the Affordable Unit files. If Findings or repeated Concerns are found in the first two years, the City will continue to audit 100% of the Affordable Unit files until satisfactory performance is obtained. The City reserves the right to perform audits more frequently if complaints are received regarding the Property.
- d. *Comparison of Units.* As necessary, the City will perform inspections of Affordable Units and market rate units to assure that units of both types are of substantially similar quality and condition. If the market rate units in the project are under separate ownership or on a separate parcel, the Project Developer shall take any steps necessary to provide with City with a right of entry for the purposes noted in this Section 3. At a minimum, 20% of the Affordable Units in a Property will be inspected during compliance monitoring and at times 100% of Affordable Units may be inspected until the Project Developer demonstrates a history of maintaining Affordable Units and market rates units so that they are substantially similar in quality and condition. The City will specify in the monitoring notice the list of units selected for physical inspection.
- e. *Maintenance.* During a physical inspection the City will be ensuring that Affordable Units are being maintained in a "decent, safe and sanitary condition and in good repair" as required by local and state requirements.

B. Record Keeping and Retention

- 1. **Records Required.** The Project Developer must keep the following records for the Property for each year during the Period of Affordability:
 - a. The total number of residential rental units in the Property (including the number of bedrooms and the size in square feet of each residential rental unit);
 - b. The number of occupants in each Affordable Unit and the household's student status;
 - c. The number and percentage of residential units in the Property that qualify as Affordable Units.
 - d. The rent charged on each Affordable Unit as well as any additional charges; documentation must include tenant ledgers and leases for the Affordable Units;

- e. The Affordable Unit vacancies in the building and documentation that shows when and to whom each of the next available units was rented; and
- f. Documents to support each income certification including a TIC, application and all supporting documents.

2. Retention of Records. All Affordable Unit tenant files must be retained for a minimum of three years after the tenant moves out of the unit or no longer qualifies for an Affordable Unit. Files should be stored to maintain the confidentiality of tenant information.

C. Defined Terms

1. Annual Student Certification. Each tenant in an Affordable Unit should complete an Annual Student Certification consistent with the requirements for Qualified Low Income Student Households under Section 42 of the Internal Revenue Code.

2. Finding. An action or a decision that is not in compliance with the Master Development Agreement or the City's rules and procedures in this Exhibit, such as failing to fully certify a current Affordable Unit tenant's eligibility prior to lease renewal. If Findings are identified, the City will state them in the exit interview that is conducted at the conclusion of the monitoring, and the Project Developer must provide a written action plan that will correct the Findings and prevent them from recurring. City Staff must review and approve written action plan and may request additional actions before such approval is granted.

3. Concern. Deficiencies in performance that, although they may not represent deviations from minimum compliance requirements, represent a pattern of oversights or errors in judgment, such as ignoring or overlooking indications of fraud by not researching unusual activity in a bank statement. The Project Developer must provide a written action plan that will correct the Concerns and prevent them from recurring. City Staff must review and approve a written action plan and may request additional actions before a plan is approved.

4. Desk Audit. A review of tenant files for the Affordable Units to verify that information submitted as part of the annual certification process matches the tenant files. A Desk Audit may be performed when a Property has had no compliance issues during previous audits.

EXHIBIT E
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”), entered into as of the ___ day of _____, 20__, is by and between _____, a _____ (“**Assignor**”), and _____, a _____ (“**Assignee**”).

RECITALS

- A. Assignor is party to that certain Master Development Agreement, dated as of the ___ day of _____, 20__ (as amended from time to time, the “**Master Development Agreement**”) with the City of Durham, North Carolina, pertaining to the development of the real property located at 505 West Chapel Hill Street, Durham, North Carolina, as more particularly described on Exhibit A attached to the Master Development Agreement and incorporated herein by reference.
- B. By separate instrument effective simultaneously herewith, Assignor is conveying (the “**Transferred Phase Conveyance**”) that certain Phase of the Project described on **Exhibit A** attached hereto and incorporated by reference herein (the “**Transferred Phase**”).
- C. As required by Section 10.1 of the Master Development Agreement, Assignor and Assignee are entering into this Agreement to effectuate the assignment and assumption of the Assigned Rights and Obligations (hereinafter defined) on the terms set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, Assignor and Assignee agree as follows:

- 1. **Defined Terms.** Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Master Development Agreement.
- 2. **Assignment and Assumption.** Effective simultaneously with, and expressly conditioned up on the occurrence of, the Transferred Phase Conveyance, Assignor hereby assigns, grants, conveys and transfers to Assignee any and all its right, title and interest in the Master Development Agreement pertaining to the Transferred Phase except [_____] (the “**Assigned Rights and Obligations**”), and Assignee hereby assumes, accepts and agrees to perform all of the terms, covenants and conditions of the Master Development Agreement on the part of Assignor therein required to be performed with respect to the Assigned Rights and Obligations.
- 3. **Receipt of Master Development Agreement.** Assignee has received, and has been given ample opportunity to review and seek independent legal counsel with respect to the legal effect of and Assignee’s obligations under, the Master Development Agreement with respect to the Assigned Rights and Obligations.

4. **Release from Liability.** Effective simultaneously with, and expressly conditioned up on the occurrence of, the Transferred Phase Conveyance, Assignor is hereby released from liability under the Master Development Agreement with respect to the Assigned Rights and Obligations.

5. **Notice.** Assignee's address for notice of matters arising in connection with the Master Development Agreement is set forth on Assignee's counterpart signature page hereto.

6. **Governing Law.** This Agreement shall be deemed made in Durham County, North Carolina and shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Durham County or a federal district court of competent jurisdiction in North Carolina.

7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

8. **Further Assurances.** Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof.

(The signature pages follow.)

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on its behalf and attested as of the date first written above.

ASSIGNOR:

[_____], a
[_____]

By:
Name:
Title:

ASSIGNEE:

[_____], a
[_____]

By:
Name:
Title:

Address for Notice:

Attn.:

With copy to:

Attn.:
Email:

Exhibit A

Description of the Transferred Phase

[Insert or attach description]

EXHIBIT F
THE 1DURHAM REAL ESTATE PLAN

The Fallon Company and WinnDevelopment, together with our local development partners and the City of Durham, have created **The 1Durham Real Estate Plan** to encourage active community participation in the redevelopment of the 505 West Chapel Hill Street project.

Mayor Steve Schewel's 2020 State of the City Address boldly envisioned "a prosperous, innovative, green and welcoming" Durham, a city that "thrives on diversity and difference" and "embodies the belief that all residents must have an opportunity to share in our newfound prosperity". In this spirit, we will partner with the Durham community in a manner that reflects the City's diverse and dynamic identity, fosters a cooperative and trusting relationship between all parties, and elevates the voices of those persons of color who have been historically underrepresented and most often marginalized in such conversations.

Communities today are facing multiple challenges, from the collapse of local economies due to COVID-19 to addressing the long overdue focus on the past and present systemic injustices of minority populations. It is our belief that this project, while only a singular opportunity, can offer solutions to the challenges of today while simultaneously representing a more inclusive vision for the future of downtown Durham.

In addition to providing a significant amount of on-site affordable housing in perpetuity for Durham's downtown residents, the project also includes the following community initiatives, further described in this document:

1. Community Engagement
2. Minority Ownership and Participation
3. Underutilized Business Inclusion
4. Open Space Program

While each of these focus areas speak to a different component of the project, they all share the same fundamental goal – to create authentic community participation that balances a range of public interests, including financial opportunities for shared prosperity by people of color, and to deliver a project that serves all of Durham. The common thread of participation within each section utilizes similar methodologies based on the following foundational principles:

- Transparency of Expectations
- Adaptability to Input
- Accessibility to Opportunities

To further strengthen our efforts within **The 1Durham Real Estate Plan**, we will create advisory boards comprised of trusted community partners to help identify opportunities for success. The advisory boards will also help guide the project's understanding and

recognition of Durham's complex history, from the proud legacy of Black Wall Street to the resilience of many neighborhoods negatively impacted from past government actions.

Ultimately, we view this development as the start of a productive and long-lasting relationship with the Durham community, one where trust is not expected or assumed but rather earned through partnership and genuine, ongoing engagement.

COMMUNITY ENGAGEMENT

Transparency of Expectations

The Community Engagement plan for the 505 West Chapel Hill Street redevelopment highlights the Development Partners' commitment to an inclusive communication framework, one that provides a genuine sense of partnership with the diverse set of voices in Durham. We desire to foster collaboration that yields connectivity to all members of the Durham community and to best inform aspects of the project that authentically reflect the city's past and promising future, including its vibrant cultural identity.

Adaptability to Input

The Development Partners will conduct an engagement process that reserves meaningful opportunities for the Durham community to actively influence elements of site planning and open space programming, which collectively comprise the public realm of the project. In an effort to achieve a vibrant public realm for the project, we will diligently and transparently solicit and evaluate perspectives offered by the community consistent with community engagement best practices.

The Development Partners will utilize the following engagement modes to pursue equitable access to opportunities for public input:

- ☑ Develop and maintain an interactive project website to serve as a communication tool between the Development Partners and the community. The website will incorporate accessibility best practices, including but not limited to:
 - Content provided in English and Spanish
 - Compliance with the Web Content Accessibility Guidelines to make the content more accessible to people with disabilities

- ☑ The Development Partners will host community meetings to provide project updates, solicit community feedback, and foster community collaboration. Potential examples include but are not limited to:
 - Design and implement open meeting formats that promote community participation by tailoring meeting locations, size, times, facilitation style and available resources consistent with community engagement best practices, which may include accommodations for food, childcare, transportation, translation, interpretation, and disability access
 - Identify interested and impacted community groups and request to appear on the agenda at regular meetings convened by the groups
 - Coordinate with selected community-rooted partners to conduct small group sessions with historically underrepresented populations to solicit input from those communities

Accessibility to Opportunities

The Development Partners will identify meaningful opportunities for the Durham community to influence specific design and programming elements that contribute to the project's overall experience. Potential examples include but are not limited to:

- ☑ Community-driven opportunities to influence the contemplated public realm and other project programming initiatives as part of community engagement for the project. Specific examples may include:
 - Community-driven inspiration for public events, performances, art exhibits and other open space programming
 - Community-driven inspiration for design and branding of select open space elements and/or residential lobby or amenity spaces
 - Community-driven inspiration for identification of local businesses to contribute to a retail tenant mix that fosters a vibrant, culturally relevant, and inclusive public realm for the project
 - Community-driven inspiration for partnerships with Durham public schools, universities, and/or non-profits to provide specific educational opportunities, training, and internships related to the project
- ☑ Community-driven opportunities to influence and cultivate a high-quality living experience as part of a thoughtful mixed-income residential management strategy. Examples of specialized programming for residents of the project may include:
 - *Education*: partner with select community organizations to design and implement educational programming, program enrollment processes, and resource referrals for residents of the project
 - *Employment Development*: provide eligible residents of the project with access to career training partnerships to support financial independence and economic upward mobility
 - *Health and Wellness*: facilitate access to health and wellness programs in the local community to residents of the project
 - *Other Access*: design and implement a program to provide access to tools, resources, and local organizations that can offer assistance in areas of importance to residents of the project

MINORITY OWNERSHIP & PARTICIPATION

Transparency of Expectations

The Minority Ownership and Participation plan for the redevelopment of 505 West Chapel Hill Street will strive to provide opportunities for ownership and other forms of financial participation to minorities and minority-led institutions. The Development Partners recognize the importance of intentionality given that minorities, particularly people of color, have historically lacked meaningful opportunities for participation in real estate development and land use policy within their communities. As a result, minorities have had few opportunities to build wealth and the accumulated benefits via ownership or employment within the real estate industry.

The Development Partners hope to create a project that can serve as a testament to the rich and vibrant history of Durham in addition to creating a more inclusive present and prosperous future for all. Overlooking the Durham Freeway, the highway that was erected through the heart of the black business community more than six decades ago, this project hopes to serve as a model for future real estate development in Durham and demonstrate the power of diverse economic inclusion to both honor the past while simultaneously educating and prioritizing future equality.

Adaptability to Input

The Development Partners will establish a Durham advisory group during the site plan phase for the project to assist in the identification of qualified, minority investors and to also help craft appropriate opportunities for financial participation in other aspects of the project. The Development Partners will take the below steps in a concerted effort to balance the confidential nature of personal information with the goal of fostering trust in the process for minority ownership and participation:

- ☑ The Development Partners will notify the City Manager or designated City representative once the formation of the advisory group has been completed.
- ☑ Provide educational presentations to interested organizations, including coordination with local educational institutions, on real estate investing to help prepare the community for participation in real estate opportunities as Durham continues its growth.
 - A particular focus will be given to Durham Public Schools, North Carolina Central University, and minority communities as part of initiating conversations to empower and better position individuals to take advantage of opportunities for future economic prosperity.
- ☑ The Development Partners will make themselves available to City staff for periodic updates as to the progress of the project's minority ownership and financial participation goals. Examples of such updates may include:
 - Access to non-confidential marketing materials
 - Discuss minority participation progress during such times when the project is pursuing such investment opportunities
 - Solicit advice from community partners and the City of Durham on ways to

improve the marketing and outreach initiatives for future opportunities

Accessibility to Opportunities

The Development Partners will create various opportunities for financial participation by minorities and minority-led institutions in the project. Examples may include ownership interests, project fee participation based on specific roles and responsibilities, and strategic financial services relationships with local institutions.

- ☑ The Development Partners will make available a minimum of 10% of the developer equity requirement in the project to qualified minority investors, with the aspirational goal of creating in excess of \$3 million in total minority ownership value.
 - The Development Partners may also pursue a retail specific investment structure for qualified minority investors in order to expand investment opportunities and encourage partnerships with local, minority-owned businesses.
- ☑ Project specific fee participation by local minority development partners to include leadership roles in development, construction, leasing, and community engagement. The Development Partners will identify leading firms to work with on this project with an emphasis on hiring and partnering with diverse companies.
- ☑ The Development Partners will pursue specific financing and other financial services opportunities for local institutions with a track record of successful minority community reinvestment initiatives.

In addition to the above financial goals of the project, the Development Partners will proactively seek out entrepreneurial talent from the minority communities and work with local commercial brokers to assist in the identification of businesses that will help cultivate a more diverse and vibrant experience for residents, tenants, and visitors to the project.

UNDERUTILIZED BUSINESS INCLUSION

Transparency of Expectations

The Underutilized Businesses Inclusion plan for the 505 West Chapel Hill Street redevelopment defines the Development Partners' approach to pursue competitive contracting opportunities exist for underutilized businesses to benefit from participation in the design, construction, operation, and management of the project. We recognize that minority-owned businesses often have difficulty competing for business most often due to unequal access to capital, information, and opportunities. The Development Partners believe that the inclusion of businesses that are most often excluded from participation should be a goal for the project, including an emphasis on promoting participation by people of color.

To help guide the participation by underutilized businesses in the project, the Development Partners have established an aspirational goal that 25% of the contract opportunities associated with the construction of the project be awarded to such businesses, with not less than 12.5% of such awards going to businesses owned by people of color.

Adaptability to Input

The Development Partners will administer a comprehensive outreach and participation strategy plan to inform businesses regarding contracting opportunities associated with the project to promote participation. Examples may include but are not limited to:

- ☑ Identify qualified subcontractors and vendors to communicate the details regarding opportunities for inclusion by underutilized businesses.
- ☑ Document the outreach and participation strategy to ensure accountability and provide for strategy refinement as needed throughout construction of the project.
- ☑ Utilize clear and concise internal procedures to enable equal access and equal opportunity for qualified underutilized businesses in construction activities.
- ☑ Deliver quarterly reports, as requested by the City of Durham, evidencing strategy implementation and documentation, including corrective action plans where applicable. Documentation measures to include:
 - The total dollar value of work per project phase, broken down by work category, in addition to the total dollar value and percentage of work awarded to underutilized businesses.
 - The name, address, and category of work for each participating underutilized business.
 - The reasons, if applicable, for any early termination of contracts with underutilized businesses.

The Development Partners will designate a program coordinator to be responsible for the management and reporting activities during the pre-construction phase of the project to ensure

that the detailed procedures for inclusion of underutilized businesses are followed. The coordinator will maintain an electronic filing system that will contain all files for each phase of construction and will also prepare reports during the preconstruction and construction portions of each project phase.

Accessibility to Opportunities

The Development Partners will host local networking events prior to the commencement of construction for each project phase to promote opportunities for participation and inclusion, with periodic additional meetings during the construction of a phase to communicate any new opportunities that may exist for underutilized businesses. Implementation examples may include, but are not limited to:

- ☑ Collaborate with local trade organizations and business entities to conduct a pre-bid meeting with the construction manager to promote opportunities.
- ☑ Provide electronic access of construction plans and project specifications to qualified bidders in advance of bid process, subject to confidentiality requirements. Additional arrangements will be made for prospective bidders who do not have access to the online document center.
- ☑ Explore creative alternatives, if feasible and appropriate, to help assist underutilized businesses with access to insurance and bonding providers in addition to equipment and material suppliers.
- ☑ Assist the construction manager in identifying potential partnership opportunities between underutilized businesses and other creative ways to prepare the bid packages in order to provide additional opportunity to qualified firms.
- ☑ Review the construction manager's payment process to ensure that subcontractors are paid in a timely fashion so as to not impede participation by underutilized businesses.

The Development Partners may also sponsor local job fairs to encourage participation by underutilized businesses and individuals during the post-construction phase of the project, with potential opportunities including building operations and on-site management, residential and commercial leasing, and management of the publicly accessible open space. In addition, the Development Partners will explore internship and job training programs in partnership with local schools and organizations such as Durham Public Schools, Durham Technical Community College, North Carolina Central University, North Carolina Works, and the Durham Office of Economic and Workforce Development in order to lay the foundation for Durham's next generation of real estate leaders.

OPEN SPACE PROGRAM

Transparency of Expectations

The Open Space Program for the 505 West Chapel Hill Street redevelopment expresses the Development Partners' commitment to design, operate, and program the project's open space in a manner that creates a vibrant, safe, and inclusive public realm. The Development Partners recognize the value of creating an accessible and welcoming open space environment for project residents, tenants, patrons and visitors, as well as the importance of respecting the dignity of all human beings who interact with the open space.

Adaptability to Input

The Development Partners may construct, operate, and program the open space in a phased manner as other project elements are constructed. The open space will be managed by either the property manager or a project owner's association in a first-class manner consistent with best business practices. The open space will be accessible for the enjoyment of the public during hours of normal operation, subject to temporary closures associated with private events, maintenance, capital improvements, public safety measures, or similar activities.

The manager will establish policies that govern the use and treatment of the open space, including allowable activities and hours of normal operation. Such policies will seek to ensure the safety and enjoyment of the overall public realm for all users in a manner that values difference, promotes equity, and considers a restorative justice approach to addressing violations. Examples of operational best practices include but are not limited to:

- ☑ The manager will install signage, and/or provide other written, visual, or oral communication tools to notify users of applicable policies and how violations may be addressed.
- ☑ The manager will monitor compliance and track instances of noncompliance to be evaluated as part of future community engagement and program development.
- ☑ The manager will be responsible for the maintenance of the public realm, with separate programs specific to the landscaped sections and hardscaped areas of the open space.

Accessibility to Opportunities

The manager will strive to foster public use and community benefit of the open space through thoughtful programming of hardscaped and landscaped areas. The manager and Development Partners will leverage perspectives learned and data collected during engagement with the community to inform a calendar of culturally relevant events and programs for the open space. Programming of the open space will also evolve over time based on usage patterns and recommendations collected from the community. Examples of programming types contemplated by the Development Partners include but are not limited to:

- ☑ Art exhibits to honor and celebrate the history of Durham's Black Wall Street in partnership with Durham's Hayti Heritage Center, the Durham Arts Council, and other local or visiting artists.
- ☑ Curated student field trips and other community events that help educate people on the

history of minority entrepreneurial excellence in Durham. Partnership opportunities may include the History Department at North Carolina Central University, The Greater Durham Black Chamber of Commerce, local residents, and other community stakeholders.

- Art exhibits and community events to celebrate the history of the Latinx community in Durham.

Health and wellness activities to emphasize additional personal enrichment opportunities for members of the community.

EXHIBIT G
NOTICE OF MDA

MEMORANDUM OF MASTER DEVELOPMENT AGREEMENT

Prepared by and Return to:
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601
Attention: Stephanie L. Sanders

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

This Memorandum of Master Development Agreement (“Memorandum”) is made between the **CITY OF DURHAM, NORTH CAROLINA**, a municipal corporation organized and existing under the laws of the State of North Carolina (“City”), whose address is c/o City of Durham, General Services Department, 2011 Fay Street, Durham, NC 27701, and **WEST CHAPEL HILL DEVELOPMENT LLC**, a Delaware limited liability company (“Developer”), whose address is c/o The Fallon Company, 327 Hillsborough Street, Raleigh, North Carolina 27603. As used herein, “Parties” means City, Developer, and their permitted successors and assigns.

On or about the date hereof, (i) the City conveyed to the Developer the property located at 505 West Chapel Hill Street, Durham, North Carolina, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “Property”) and (ii) the City and the Developer entered into that certain Master Development Agreement dated as of the date hereof (the “MDA”). Capitalized terms used herein and not otherwise defined shall be defined as provided in the MDA.

The Parties hereby give notice of the existence of the MDA and of the rights and benefits granted to, and certain obligations imposed upon, the Parties and their respective permitted successors and assigns, all as more specifically detailed in the MDA.

The MDA sets forth certain rights and obligations between the City and Developer regarding the Developer’s planned phased mixed-use development on the Property, containing a new residential building (including affordable housing) (as more specifically defined in the MDA, the “Residential Building”), a new commercial building with associated retail, restaurant and other active use space (as more specifically defined in the MDA, the “New Commercial Building”), renovation of the existing commercial building on the Property (as more specifically defined in the MDA, the “Milton Small Building”), open space, and parking, all as described in the MDA (as more specifically defined in the MDA, the “Project”).

The term of the MDA begins on the date hereof, and shall terminate two (2) years following Substantial Completion of the Residential Building, the Milton Small Building and the New Commercial Building, unless the MDA is otherwise extended or terminated as described therein.

The Developer, each Project Developer, the Association and every other person (other than the City) that holds a fee simple interest to any portion of the Property shall be bound by the MDA only with respect to, and to the extent applicable to, its Phase or other interest in the Property, but shall not be liable or responsible for the failure of any other person or party to perform in accordance with the MDA nor be responsible or have any liability for any obligations or other provisions under the MDA relating to any other portions of the Project or Property not owned by such party. Subject to the foregoing, the terms of the MDA shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

This Memorandum may be amended or terminated only by an instrument executed and acknowledged by the Parties, except that, following the effectiveness of a termination of the MDA with respect to the Property or any portion thereof and a failure of the City to execute and acknowledge an instrument terminating this Memorandum or amending this Memorandum to clarify what portion of the Property remains affected, as applicable, after applicable notice and cure periods under the MDA, Developer shall have the right to unilaterally reflect such termination or amendment of this Memorandum by recording an instrument to that effect accompanied by an affidavit attesting to Developer's full compliance with such notice requirements and the City's failure to execute and acknowledge such an instrument as required under the MDA.

This Memorandum is subject to all of the terms and conditions set forth in the MDA, which agreement is incorporated herein by reference and made a part hereof, as fully as though copied verbatim herein. In the event of a conflict between this Memorandum and the MDA, the MDA shall prevail.

This Memorandum may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Memorandum, it shall not be necessary to produce or account for more than one such counterpart.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, City and Developer have caused the within Memorandum to be executed as of the dates set forth below.

City of Durham

By: _____

_____, City Manager

ATTEST:

City Clerk

NORTH CAROLINA

COUNTY OF DURHAM

I, A Notary Public in and for the aforesaid county and state certify that _____ personally appeared before me this day, and acknowledged that she is the City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested by its said City Clerk. This the _____ day of _____, 2020.

My Commission expires: _____

Notary Public: _____

PRE-AUDIT STATEMENT

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

City of Durham Finance Officer

Date

WEST CHAPEL HILL DEVELOPMENT LLC,
a Delaware limited liability company

By: Fallon Management Company LLC

By: _____
Name:
Title: Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of _____, _____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he or she signed it voluntarily for its stated purpose.

Notary Public

My commission expires: _____

Exhibit A

Property

Being all that parcel of land situated in the City of Durham, County of Durham, North Carolina, and more particularly described as follows:

BEGINNING at a monument located in the northwest intersection of the boundary lines of Jackson Street and South Duke Street, and running thence North 00° 26' 00" East a distance of 476.87 feet to a point, which is the southwest intersection of the boundary lines of West Chapel Hill Street and South Duke Street; thence South 89° 44' 59" West a distance of 365.01 feet to a stake, which is the southeast intersection of the boundary lines of South Gregson Street and West Chapel Hill Street; thence South 03° 21' 23" West a distance of 199.70 feet to a point; thence South 03° 53' 19" West a distance of 134.03 feet to a point; thence North 89° 39' 55" East a distance of 8.89 feet to a point; thence South 03° 03' 15" West a distance of 131.49 feet to a stake; thence in a southeasterly direction along a curve to the left having a radius of 12 feet and a length of 19.54 feet to a stake; thence North 89° 45' 28" East a distance of 368.36 feet to a monument, being the point and place of BEGINNING and being approximately 4.10 acres, as shown on that plat and survey entitled "Title Survey for Webb-Wittenberg Ventures" by Ballentine Associates, P.A. and recorded in Plat Book 124, Page 60, Durham County Registry, to which plat reference is made for a more particular description.

The parcel is further identified as 505 W. Chapel Hill Street, Durham, NC 27701, parcel #114577.

This is the same property acquired by the City of Durham in the deed recorded in Book 2273, Page 350, Durham County Registry.