

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

DEVELOPMENT AGREEMENT REGARDING
SOUTH GREENSBORO STREET PROPERTY
BY AND BETWEEN
THE TOWN OF CARRBORO, NORTH CAROLINA
AND
THE COUNTY OF ORANGE, NORTH CAROLINA

THIS DEVELOPMENT AGREEMENT (the "*Agreement*"), made and entered into this 4th day of December, 2017, by and between the **TOWN OF CARRBORO**, a North Carolina municipal corporation, hereafter referred to as the "*Town*", and **THE COUNTY OF ORANGE**, a North Carolina county, hereafter referred to as the "*County*". Collectively, the Town and the County are sometimes referred to in this Agreement as the "*Parties*".

W I T N E S E T H:

WHEREAS, the County and the Town have desired to investigate and pursue the development of an Orange County Southern Branch Library to be operated by the County and located in downtown Carrboro; and

WHEREAS, the Town owns an approximately 0.88 acre parcel of land in Carrboro known as 203 South Greensboro Street and identified by Orange County parcel identification Number 9778-85-7932 (hereinafter, the "*Property*", illustrated in Exhibit A) which the Town acquired in April 2013 for a purchase price of Six Hundred Thousand Dollars (\$600,000.00); and

WHEREAS, the Town has conducted facilities needs studies to determine and forecast the Town's current and future needs for facilities to house Town administrative operations and offices; and

WHEREAS, the Town and the County have each determined that they may each derive benefits for themselves and for the residents of the Town and the County if they can cooperatively plan and develop a facility (the "*Facility*") to house the Orange County Southern Branch Library and Town administrative offices, with potential for also accommodating other compatible uses if space and financing considerations make such collocation feasible; and

WHEREAS, the County and the Town desire to establish terms pursuant to which they will cooperatively proceed with the planning, financing and development of the Property for joint use as a County library and Town administrative offices, and associated parking garage/deck facilities (collectively, all proposed improvements to the Property may be referenced to as the "*Facilities*"); and

WHEREAS, the Property is appropriately zoned for the use proposed for the project, except that, in order for the County and the Town to construct and operate the Facility at the Site,

certain zoning text amendments, administrative modifications and/or binding interpretations must be made pursuant to the Town's Land Use Ordinance so that all local government permits for the project can be issued; and

WHEREAS, the Town is authorized to enter into this contract pursuant to, *inter alia*, the North Carolina General Statutes ("N.C.G.S.") 160A-16, and the County is authorized to enter into this contract pursuant to, *inter alia*, North Carolina General Statutes 153A-11, *et seq.*, and the Town's Board of Aldermen and the County's Board of County Commissioners have each determined that it is in the best interests of their citizens to do so.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the County intending to be legally bound do hereby agree as follows:

ARTICLE I

Definitions

(a) "Agreement" shall have the meaning set forth in the preamble.

"County" means Orange County, North Carolina.

"Common Area" means portions of the Facilities constructed on the Property (but not the land itself) that are necessary for the Parties to function as occupants of the space. Common areas include but are not limited to stairwells, emergency egress areas, building lobbies, elevator services, restroom facilities, and equipment rooms housing electric, mechanical and other building systems.

"Condominium" means the designation of portions of the Property for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, consistent with Chapter 47C of the North Carolina General Statutes.

"Condominium documents" means the declaration of covenants and restrictions governing the condominiums proposed for the Property, including the description and delegation of rights and obligations of the Town, the County and any other potential condominium owner regarding access to and use of parking spaces, common areas and other common elements described in such documents. These documents also include the organizational and operating documents that will guide the condominium association regarding the operation, maintenance, and other business associated with the Property.

"Development" means the planning, design and construction by the Town and the County of the Facilities on the Property.

"Development Permit" means a building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action of Local Government having the effect of permitting the development of the

Property.

“Development Standards” means the standards for Development set forth in the Town’s Land Use Ordinance.

“Facility” or “Facilities” shall have the meaning set forth in the recitals.

“Governing Body” means, with respect to the Town, the Board of Aldermen, and with respect to the County, the Board of County Commissioners.

“Gross floor area” as used in this Agreement means the area of space within the building to be constructed on the Property occupied by each party to this Agreement, plus the proportional share of Common Areas attributable to each party (i.e., Common Areas shall be apportioned between the parties in proportion to the amount of “gross floor area” each occupies in the building). The proportion of “gross floor area” occupied by each party shall be finally calculated upon completion of the construction plans for the building and parking deck to be constructed on the Property, and a written schedule (following in principle the Elements of Value Exhibit C) signed by each party shall be attached to this Agreement as an Addendum at that time.

“Land Development Regulations” means the Town’s Land Use Ordinance (“LUO”) and/or those ordinances and regulations enacted by the Town for the regulation of any aspect of development and includes zoning, subdivision, or any other land development ordinances.

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

“Local Government” shall mean the Town of Carrboro, North Carolina.

“N.C.G.S.” means the North Carolina General Statutes.

“NCDEQ” means the North Carolina Department of Environmental Quality.

“NCDOT” means the North Carolina Department of Transportation.

“Project” means the planning, design and construction of an approximately 65,000 gross square foot building, site improvements, and associated parking spaces and/or structure with adequate capacity for the Project. Project characteristics will include sustainable design and operation elements consistent with the adopted facility development principles of the Board of Orange County Commissioners attached as Exhibit B. The Parties also agree to incorporate the principles of value engineering during the design and construction process, thereby ensuring efficient design and use of both the initial construction capital

and ongoing operations capital. It is anticipated that upon completion of the Project, the parties may convert the Facilities to a condominium form of ownership to be governed by covenants adopted by mutual agreement of the Parties.

“Public facilities” means the major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

“Schematic Design Acceptance” means the point in time defined by the mutual acceptance of both the Town and County governing boards of the final Schematic Design offered by the Designer of the Project.

“Shared Areas” are areas exclusive to a condominium owner that may be reasonably offered for use by other Parties according to a mutual agreement.

“Town” means the Town of Carrboro, North Carolina.

“Upfit costs” means the cost of interior finishes of space in the building to be constructed on the Property such as, but not necessarily limited to, floor finishes and carpets, wall treatments, electric outlets and fixtures, plumbing fixtures, and furnishings.

ARTICLE II

Description Of Development Agreement

- A. **Legal Description; Property Owners.** A map and the legal description of the Property are contained in Exhibit A. The Town is the owner of the Property.
- B. **Permitted Uses.** The uses permitted on the Property, including population densities and building types, intensities, placement on the Site and design, are controlled by the applicable zoning designation for the Property under the Town’s Land Use Ordinance (“*LUO*”).
- C. **Public Facilities.** The following public facilities will service the Development:
 - 1. **Off-Site Infrastructure:** The Property is served by public water and sanitary sewer (Orange Water and Sewer Authority). The Property is also served by public roads under NCDOT jurisdiction and Town jurisdiction, and by storm water services administered by the Town.
 - 2. **On-Site Infrastructure:** The Town and the County shall cooperate with respect to the design of the Facilities, including the planning and development of any onsite infrastructure necessary for the construction, use and operation of the Facilities at the Property in accordance with the terms of this Agreement.

- D. ***Development Standards.*** The Project shall be subject to the Town's policies and procedures regarding standards of development, as set forth in the Town's Land Use Ordinance.

ARTICLE III Parties' Responsibilities

- A. The Parties' agree to negotiate and enter into such other agreements as may be necessary or appropriate to facilitate the financing and construction of the Project. The Parties intend that upon substantial completion of construction, they may convert ownership of the Facilities to be constructed on the Property pursuant to this Agreement to a condominium form of ownership to be governed by mutually agreed upon covenants.
- B. The County and the Town, in accordance with applicable laws pertaining to public construction projects, will undertake to select a designer for the Project. The Town and the County will provide four (4) persons each to serve on the designer evaluation and recommendation Committee. The County elected Board will approve two preferred designers recommended by the Committee and will refer these designers to the Town elected Board for the final selection of the Designer. The Town and the County will work together with the selected designer to prepare the necessary local government permit application(s) for the Project. The design of the Facilities shall be mutually agreed upon by the Parties. The County and Town will bear the costs for the preparation of schematic design drawings in accordance with Article IV.A of this agreement. The Town will be responsible for contracting for the designer and related professional services providing preliminary information that inures to the design of the Project
- C. The Town, as Owner of the Property, will be primarily responsible for procuring all necessary development approvals for the Project to permit the Orange County Southern Branch Library on the Building's lower floors, the proposed uses on the upper floors as described herein and the required associated parking. The County will support the Town's efforts to secure the necessary permits.
- D. Provided the Town approves and issues all necessary development permits for the Project, the Parties will coordinate to complete construction drawings for the Project.
- E. The Town, in accordance with applicable laws pertaining to public construction projects, will enter into contract(s) for development of the construction documents for the Project.
- F. Upon approval of the construction documents and issuance of the necessary permits (the "Building Permit(s)"), the Town will at a time reasonably agreed between the Parties begin construction of the Project.

- G. The Parties will finance their respective shares of the Project costs according to Exhibit C – Elements of Value. The Town will arrange for construction financing of its proportional share of the Project costs (based on Exhibit C), subject to Local Government Commission approval of the financing plan. The County shall finance its proportionate share of the Project costs (based on Exhibit C) in such manner as may be determined by the County.
- H. The Town will contract with all necessary design, engineering and construction firms for any environmental remediation work required by NCDEQ. The Town is solely responsible for the cost of such environmental remediation work for remediation of any conditions existing on the Property at the time of or prior to the day and date first set out above.
- I. The Town will contract with professionals for the construction of the Project, using a legally permitted construction delivery method. Upon completion, the Facilities, including the Building and structured parking, shall be subject to a new condominium declaration with terms mutually agreed upon by the Town and the County, pursuant to which the County will acquire a fee simple condominium interest in the assigned parking areas and the Orange County Southern Branch Library.
- J. The Town will enter into a construction contract for the work.
- K. The Town has historically provided support for the McDougle branch library and the Cybrary. As part of the Project, the Town will provide, in lieu of its historical support of the McDougle branch library and the Cybrary, a single mode dark fiber optic continuous physical path consisting of a single strand of fiber connecting a County specified demarcation location inside the Branch Library to an MCNC NCREN point of presence located on the University of North Carolina Chapel Hill (UNCCH) campus. Use of this path by the County may be terminated by the Town with a minimum of six (6) months written notice to the County, but only in the event that UNCCH notifies the Town of UNCCH's intention to terminate its agreement with the Town pursuant to which the Town has access to the dark fiber path on the UNCCH campus. At the time of such termination, the parties agree to negotiate in good faith an agreement regarding the Town providing substitute service to the Library. The Town will also provide the County access to the Town's multi-strand dark fiber optic network giving the County potential interconnectivity to the University of North Carolina Chapel Hill campus, OWASA, CHCCS, Town of Chapel Hill and other locations within and near the Town. The Town will pay the capital cost of the infrastructure improvements necessary to provide access to the single mode dark fiber optic path described in this paragraph (estimated to be approximately \$70,000.00).
- L. The Parties agree that the Town shall have the right in its sole discretion to lease, or subdivide and convey title to, those portions of the Property and any

improvements thereon which are not conveyed to the County for use as parking spaces and the Orange County Southern Branch Library.

- M. As contemplated by this agreement, upon completion of construction the building and parking garage shall be converted to condominium ownership, with the Town and the County each owning condominium interests in building space and associated parking spaces. This includes parking spaces in any constructed parking structure and ground spaces. As part of the condominium arrangement, the parties will also have an undivided interest in the Common Areas designated on the final plans, and which Common Areas will be subject to the rules, rights and responsibilities established in the condominium documents. The parties agree that the conversion of spaces in the parking deck to condominium ownership will include in the condominium documents language establishing appropriate easements for ingress, egress and access to and between the public right-of-way and all parking spaces and establishing rules and regulations concerning use, management and maintenance of parking spaces. The parties agree that in the event on-site parking spaces are constructed as part of the project an adequate number of on-site parking spaces will be owned and paid for by the County shall be available for use by Library patrons during normal Library operating hours. This number of spaces will be determined during the permitting and design of the project. These spaces will be made available to the Town while the Library is closed. All parking spaces will be considered flexible in use by both the Town and County so as to not cause unreasonable restrictions supporting Facility use by either the Town or County. The parties understand and agree that the Town will police and enforce all parking rules and regulations for the Facility. Moreover, if either party decides in the future to consider converting their parking spaces to paid parking, they will, prior to making a final decision to convert their spaces to paid parking spaces, discuss the issue with the other party. Each party shall be responsible for managing their condominium units unless the parties mutually agree otherwise in writing. Each party has the right to protect and isolate its parking (e.g. gated parking for continued free parking during library hours should paid parking be otherwise established) for the Parties' sole use and interest.

ARTICLE IV

Allocation Of Project Costs

The Parties shall share in the costs of the Project as follows:

- A. Pre-development costs, site improvement costs, building design and construction costs, construction administration costs, financing costs, and contingency costs shall be shared by the parties in accordance with the Elements of Value attached as Exhibit C to this Agreement. The parties recognize and agree that some of these Values and the corresponding level of proportionality may not be finally established until after the majority of the design work is completed (and after this Agreement is executed). The parties acknowledge that Exhibit C represents their general understanding of the cost sharing; however, the parties agree to negotiate

in good faith the fair and equitable share of all costs associated with this project as soon as possible after the Schematic Design work is completed. If the parties are unable to come to an agreement within forty five (45) days after the Schematic Design Acceptance date (such date of completion to be established by written notice to the parties from the design professional) then either party may terminate this agreement by providing ten (10) days advance written notice to the other party of its intention to terminate this agreement. Upon such termination, each party shall be responsible for all costs it has incurred in connection with this project through the date of termination.

- B. The County shall pay the cost for the amount of parking deemed required to support the library facility within the total cost of constructing parking on the Property. The Town shall be responsible for the balance of the cost of constructing the parking for the Project. The intent is for the County to pay the cost for the parking spaces reasonably expected and determined to be associated with the Orange County Southern Branch Library use. Upon completion of the work and when the Facilities become operational, the County agrees that the parking spaces allocated for the Orange County Southern Branch Library use of the Property shall be available for public parking during hours when the library is closed.
- C. The parties will each be responsible for their own legal and financing expenses incurred in relation to the Project.

ARTICLE V

Term And Termination

This Agreement shall be effective upon the full execution of the Contracts and shall continue until completion of the Project unless earlier terminated as provided herein.

This Agreement shall terminate: (i) at any time by either party within forty five (45) days after the design professional has confirmed to the parties in writing that the Schematic Design for the building and parking deck on the Property is substantially completed as set forth in Article IV.A above, (ii) at any other time by mutual agreement of the Parties; or (iii) by the Town, upon the material breach by County of any provision contained herein which material breach remains uncured by County after the Town provides thirty (30) days advance written notice of said material breach to County, or (iv) by County, upon the material breach by the Town of any provision contained herein which material breach remains uncured by the Town after County provides thirty (30) days advance written notice of said material breach to the Town.

ARTICLE VI

Conditions Precedent And Contingencies

The Parties understand and agree that there are a number of conditions precedent and contingencies that will impact their ability to enter into the Contracts for the Project. At a

minimum, the Parties understand and agree that the following must be resolved to the County's and the Town's satisfaction:

- A. The Town obtaining all Permits, including zoning, conditional/special use permits, variances, subdivision plats, approvals, permits, easements and licenses for the Project and the Town grants all necessary Permits which allow for the County's proposed use of the Property.
- B. The County and the Town secure all necessary approvals from their respective governing Boards or Managers as delegated by their respective Boards to proceed with the Project at mutually agreed, predefined points during the project (for example: sizing and elements of exclusive, shared, and common area spaces, the selection of Designer, schematic design, construction method, etc.).
- C. The Town and the County are able to procure suitable financing for their respective components of the Project. The parties contemplate that upon completion of construction, the parties may divide the Facilities, or parts thereof, into condominium units to be owned by the County and the Town, respectively. The parties acknowledge that these contemplated financing agreements and transactions may be altered by mutual agreement of the Parties and are or may be subject to approval of the North Carolina Treasurer, Local Government Commission.
- D. The mutual negotiation and execution of an Environmental Indemnification Agreement whereby the Town will indemnify the County for any and all liability, loss, damage, cost and expense (including reasonable attorneys' fees and expenses) resulting from any "Hazardous Substance" (as defined below) existing on or under the Property or originating on the Property and migrating off-site in violation of applicable Environmental Laws, but only to the extent that the Hazardous Substance existed at the Property prior to the date of this Agreement. The Town shall not be liable with regard to any Hazardous Substances disposed of, placed, or otherwise existing on or under the Property because of the actions of the County. The County will likewise, and to the extent permitted by law, indemnify the Town for any and all liability, loss, damage, cost and expense (including reasonable attorneys' fees and expenses) resulting from any Hazardous Substances existing on or under the Property or originating on the Property and migrating off-site in violation of applicable Environmental Laws that are introduced or placed on the Property, or caused to migrate off the property, because of the actions of the County. Save and except any liability resulting from remediation required by NCDEQ which shall solely rest with the Town, neither Party shall be liable to the other for liabilities, losses, damages, costs or expenses resulting from the actions of third Parties after the date on which the County leases or otherwise acquires a legal interest in the Property.

"Hazardous Substances" shall mean: (a) those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes," and "toxic pollutants," as such terms are defined under the Environmental Laws, or any of them; (b) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof; (c) natural gas, synthetic gas and any mixtures thereof; (d) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable; (e) polychlorinated biphenyl ("PCBs") or PCB-containing materials or fluids; (f) radon; (g) any other hazardous or radioactive substance, material, pollutant, contaminant or waste; and (h) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring or remediation. As used herein, the term "Environmental Laws" shall mean all federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees and binding judgments relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et. seq.*), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 5101 *et. seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 *et. seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601 *et seq.*), the Clean Air Act, as amended (42 U.S.C. § 7401 *et. seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et. seq.*), the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et. seq.*), any state or local counterpart or equivalent of any of the foregoing, and any federal, state or local transfer of ownership notification or approval statutes. "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substances.

- E. The negotiation and completion of agreements and documents guiding the selection of designers and contractors, the timelines for the completion of various aspects of the design work, the methods and scheduling input, and other specific design and construction coordination necessary to ensure the successful completion of the Project.
- F. The negotiation and execution of this Agreement (wherein the Town and the County's property interests in the Facilities may convert to condominium interests post-construction) under which the Parties shall have

the right to construct the improvements on the Property subject to the Parties' obligation to subject all improvements constructed on the Property to a condominium.

- G. Confirmation that adequate utilities services suitable for the proposed uses to be included within the Building are available for connection within a reasonable distance from the Property.
- H. The Town complying with all necessary requirements for contracting applicable to North Carolina local governments.
- I. All governmental and other third party consents and approvals shall be obtained; there shall be no significant pending or threatened litigation materially adversely affecting the Property.
- J. The Town understands and agrees that the provision of sufficient way-finding and other signage is necessary for the public to quickly and conveniently locate the Orange County Southern Branch Library. The Parties understand and agree that wayfinding signage for the Project is subject to regulation by the Town.
- K. The Parties under this Agreement (prior to the completion of construction) and as condominium unit owners (following the completion of construction) will agree to contribute pro rata to the common area maintenance and insurance provided by the Town as lessor and/or by any condominium owners association to be formed by the Parties, for the Project including a reasonable pro-rata contribution for maintenance of the sidewalks and other shared amenities at the Property. Because the Parties are exempt from paying ad valorem taxes, the typical procedure of apportioning each tenant a share of those taxes assessed against common areas is not applicable.
- L. During hours when the Library is not being used by the County, the County will agree to allow its parking spaces to be used by the public.
- M. The Town secures environmental regulatory approval from NCDEQ prior to the commencement of construction or provides reasonable security to cover the Town's environmental responsibilities until regulatory approval is obtained.
- N. Consistent with the scope of each Party's responsibilities hereunder, all necessary and appropriate construction and crane easements will be secured by the Town and County from all adjacent landowners.

ARTICLE VII

Representations And Warranties

The Town and the County each represent to the other to the best of their respective knowledge:

- A. The Town and the County have all requisite power and authority to execute this Agreement, and any other instruments required to be delivered by the Town or the County hereunder.
- B. The Town's and the County's entry into this Agreement will not violate any private restriction or agreement or, to the best of the Town's or the County's knowledge without investigation or inquiry, any applicable statute, ordinance, governmental restriction or regulation.
- C. During the Term, the Town will not execute or create any lease, contract, option, easement, covenant, condition, restriction, lien or encumbrance with respect to the Property or any portion thereof without the written consent of County unless the same is terminable upon no more than sixty (60) days written notice, or otherwise may be cleared on or before any Closing or Lease Commencement Date that may be contemplated in any Contract that may be entered into between the Town and the County, or that otherwise will be subordinated to the County's potential ground lease.
- D. There is no pending or threatened action, litigation, bankruptcy, condemnation, or other proceeding of any kind pending against the Town or the County which materially adversely affects the Property.
- E. No broker, finder or other intermediary is involved in the transaction contemplated by this Agreement, and that no brokerage fee or commission is due and payable by the Town or the County upon any lease or conveyance of the Property.
- F. The Town has not received written notice of any violations of any laws, ordinances or similar rules and regulations relating and/or applicable to the ownership, use and operation of the Property as it is now operated, and/or other licenses or permits, which remain uncured.
- G. No assessments or special assessments for public improvements or otherwise have been levied or are now affecting the Property.
- H. To the best of the Town's present knowledge, the Property is not within an area determined to be flood-prone under the Federal Flood Protection Act of 1973.

ARTICLE VIII

Remedies And Dispute Resolution

- A. ***Concerning Remedies.*** The exercise of a particular remedy does not preclude the exercise of any or all other available remedies herein except as provided

herein. No delay in the exercise of a remedy shall constitute a waiver of that remedy. Nothing in this Agreement is intended to relieve a party from its common law duty to mitigate damages.

- B. **Disputes.** The parties shall attempt in good faith to resolve any dispute, controversy or claim arising out of this Agreement between them by negotiations by those persons of the Town and the County who have authority to act and who will promptly meet for negotiations to attempt to settle the dispute.

ARTICLE IX Miscellaneous

- A. **Assignment.** The rights under this Agreement may be transferred and assigned only upon the written consent of the non-assigning Party.
- B. **Fees and Expenses.** Except as may be specifically provided in this Agreement, each Party will be responsible for his or its own legal fees and expenses incurred in connection with the transactions contemplated by this Agreement.
- C. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Any dispute regarding this Agreement shall be filed in a court of competent jurisdiction located in Orange County, NC.
- D. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same document. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. **Amendment.** This Agreement shall not be amended except by a written instrument executed by both the County and the Town.
- F. **No Third Party Beneficiaries.** Nothing contained in this Agreement shall be deemed to create a contractual relationship with, or a cause of action in favor of, any third party against the Town or the County.
- G. **Entire Agreement, Amendment; Construction.** This Agreement, together with the Exhibits attached hereto and all other agreements referred to herein or relating to the subject matter hereof, contains the entire agreement between the parties as to the subject matter referenced herein, and supersedes all prior agreements, understandings or undertakings (whether oral, written, electronic or otherwise) between the parties with respect to the subject matter hereof. No amendment may be made to this Agreement except with the prior written consent of all parties hereto. The section titles and headings herein are for convenience of reference

only and do not define, modify or limit any of the terms and provisions hereof. Article, Section and Exhibit references herein are to Articles, Sections and Exhibits of this Agreement unless otherwise noted. The use of words “include” or “including” in this Agreement shall be by way of example rather than by limitation. The use of the words “or,” “either” or “any” shall not be exclusive.

H. Representations and Warranties of the Parties. Each of the parties, and each person executing this Agreement on behalf thereof, represent and warrant, as applicable, that (1) such party or person has the full power and authority to enter into this Agreement and the agreements or instruments referred to herein, to execute them on behalf of the party indicated on the signature page thereof, and to perform the obligations hereunder and thereunder, (2) such party is acting on its own behalf and on behalf of its members, successors and assigns, (3) this Agreement and the other agreements referenced herein are the valid and binding obligations of such party, enforceable against it in accordance with their terms, (4) entering into this Agreement and the other agreements referenced herein does not conflict with any other agreements entered into by either party, and (5) the execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary corporate or governmental action on its part.

J. Exhibit List. The following exhibits are hereby incorporated by reference:

EXHIBIT A: Map Denoting Site, Legal Description of Site, Legal and Equitable Owners

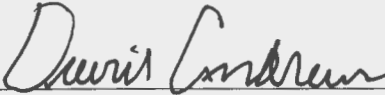
EXHIBIT B Sustainable Design and Operations Elements Guidelines

EXHIBIT C Elements of Value

[signatures contained on next page]

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

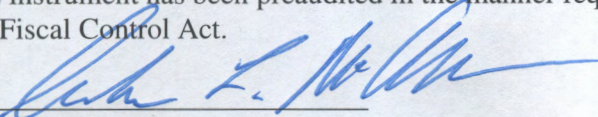
TOWN OF CARRBORO

BY: 
David Andrews, Town Manager

This document is sufficient as to form.


Town Attorney

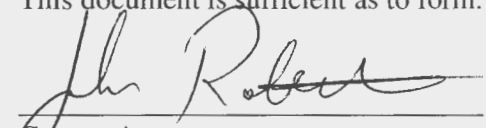
This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.


Finance Director

COUNTY OF ORANGE

BY: 
Bonnie Hammersley, County Manager

This document is sufficient as to form.


County Attorney

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

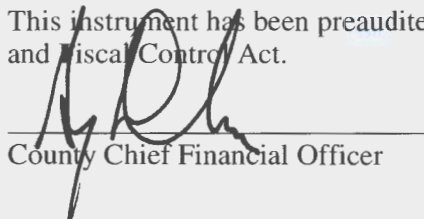

County Chief Financial Officer

Exhibit A - 203 S. Greensboro St.



ML



20130410000065470 DEED
Bk:RB5582 Pg:486
04/10/2013 10:41:55 AM 1/4

FILED Deborah B. Brooks
Register of Deeds, Orange Co., NC
Recording Fee: \$26.00
NC Real Estate TX: \$1200.00

(K)

Prepared by: Ellis & Winters LLP (DLH), 1100 Crescent Green Drive, Suite 200, Cary, NC 27518
Return to: Grantee

Brief Description for the Index

203 S. Greensboro Street

DB

STATE OF NORTH CAROLINA)

) SPECIAL WARRANTY DEED

ORANGE COUNTY)

Excise Tax: \$1,200.00
Pin(s): 9778-85-7932 *to*

THIS DEED made this 10th day of April, 2013, by and between

GRANTOR

SunTrust Bank,
a Georgia banking corporation
whose mailing address is:
303 Peachtree Street, N.E., 36th Floor
Atlanta, GA 30308

GRANTEE

The Town of Carrboro,
a North Carolina municipal corporation
whose mailing address is:
301 W. Main Street,
Carrboro, NC 27510

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee, as used herein, shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid at and before the delivery of these presents, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, transferred, conveyed and confirmed and by these presents does grant, bargain, sell, and convey unto the Grantee in fee simple, all that certain tract or parcel of land lying and being in Orange County, North Carolina, being more particularly described on



EXHIBIT A (the "Property") attached hereto and incorporated herein by reference.

The Property hereinabove described was acquired by Grantor by instrument recorded in Book 5517, Page 541, Orange County Registry.

The Property herein conveyed does not include the primary residence of Grantor.

TO HAVE AND TO HOLD the aforesaid Property and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And Grantor covenants with Grantee, that Grantor has done nothing to title to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated.

Title to the Property is subject to the following exceptions: (i) the lien of real estate taxes, taxes imposed by special assessment and water, sewer, vault, public space and other public charges which are not yet due and payable, (ii) all applicable laws (including zoning, building ordinances and land use regulations), (iii) all easements, restrictions, covenants, agreements, conditions, and other matters of record, and (iv) all matters that may be revealed by a current and accurate survey or inspection of the Property.

Grantor makes no warranty or representation as to the condition of the Property or any improvements thereon, including without limitation, any latent or environmental defects in the Property or in any improvements thereon and the serviceability or fitness for a particular purpose of the Property or any improvements thereon, and Grantee accepts the Property and any improvements thereon "AS IS" without recourse against Grantor.

[Signature page follows.]



IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name and delivered as of the date indicated on the first page of this Deed.

GRANTOR:

SunTrust Bank,
a Georgia banking corporation

By: 

Name: Erica S. Henning

Title: Vice President

Wake County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Erica S. Henning.

Date: 4/5/2013

My Commission Expires:

8/31/2014

[Affix Notary Stamp or Seal]


Notary Public
Print Name: John Flynt

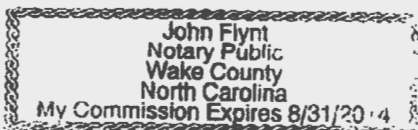


EXHIBIT A
(to Special Warranty Deed)



Legal Description of Property

All of that property consisting of 0.883 acres, surveyed as "Fakhoury Property" per Recombination Map of Fakhoury Property" surveyed by Kenneth Close, Inc. recorded in Book of Maps 94, Page 24, Orange County Registry, formerly identified as Tract 1 and Tract 2, now combined.

New Parcel # 9778-85-7932 from old Parcel #s 9778-85-5886 and 9778-85-6892

Exhibit B – Sustainable Design and Operations Elements Guidelines

The Development Agreement recognizes the goals of Orange County and the Town of Carrboro to be guided by design and operations elements of the High Performance Building Standards developed by the Triangle J Council of Governments (“TJCOG”) in 2001. Orange County adopted this standard as part of its Space Development criteria in 2005.

These High Performance Building Standards were initially developed by a task force led by TJCOG, including representatives from Orange County, and design professionals within the Triangle Area. These published guidelines have been nationally recognized and formed the basis for the Leadership in Energy and Environmental Design (“LEED”) version II, established by the United States Green Building Council (“USGBC”). The standards are recognized for their innovation and quality of results related to sustainable, energy efficient, and resilient building outcomes.

Orange County and Carrboro recognize the current initiative to update these guidelines consistent with current benchmarks and advances in design and building science. Sustainable design, construction and operations methods will be evident within the design and build process and will be explicitly communicated throughout the development process.

EXHIBIT C

203 S. Greensboro Development Agreement
Elements of Value

	All Town	All County	Share		Notes
			Equal	Proportional	
Land					
1 Property	X				
2 Existing environmental remediation, monitoring	X				
Adequate Structured Parking				X*	
Design/Testing/Permitting/Entitlements/Fees					
5 Preliminary vision planning			X		Includes discussions on level of finish, appearance, aesthetics
6 Zoning/Land Use application fees			X		
7 Utility/infrastructure analysis fees			X		
8 Utility/infrastructure impact fees			X		
9 Designer Fees for Carboro Planning Process/Approvals			X		Includes geotechnical, environmental, cultural, traffic studies High performance building standards analysis, cost-benefit analysis
10 Preliminary site assessment fees			X		
11 Sustainability/Energy Modeling and Analysis Fees			X		
12 Site/Civil/Landscape design, CA fees, design contingencies			X		
13 Building Shell, Core Area design, Construction Administration, design contingencies	X	X	X		Occupants pay for uplift costs
14 Occupant Uplift design, Construction Administration, design contingencies					
Site Topics					
15 De-construction			X		if necessary in design
16 Clearing, grading, erosion control			X		
17 Subsurface conditions/unstable soils			X		
18 Site stormwater management system			X		
13 Retaining wall / safety railing			X		If separately metered, per condominium owner
14 Onsite walkways, specialty surfacing			X		
16 Temporary staging / stockpiling areas			X		
17 Building Shell Utility services to identified demarcation points			X		
18 Utility connection fees			X		All main systems to identified demarcations within exclusive occupant interior spaces
19 Site lighting			X		
20 Shell marquis signage / exterior wayfinding signage			X		
21 Amenities / site furniture / bike parking			X		
22 Solid waste / recycling facilities			X		From site demarcation to Core & Common Area facilities
23 Bus stop / shelter / site considerations			X		
24 Sanitary lift station requirements (if necessary)			X		
25 Site construction contingencies			X		
Off-Site Topics					
26 Off site roadway or pedestrian improvements			X		Each party bears all costs of exclusive space needs
27 Off site building shell utility improvements (to property line)			X		
28 Off site Bicycle pathway considerations			X		
29 Off site construction material staging area costs			X		
Off site contingencies			X		Branch systems include electrical, mechanical, plumbing, and fire protection within exclusive areas Walls, doors, ceilings, floor covering/treatment, lighting, etc
Shell, Core & Identified Common Area Construction					
30 Foundation System			X		
31 Roof System, Building drainage leaders/surface drainage piping			X		
32 Core elevator, shaft and equipment			X		Each party bears its own costs
33 Core & identified Common Area potable water service / backflow preventer			X	X*	
34 Core & identified Common Area sanitary sewer service				X*	
35 Core & identified Common Area power transformer / service				X*	
36 Core & identified Common Area natural gas service				X*	Each party bears all costs of exclusive space needs
37 Core & identified Common Area fire protection shell components				X*	
38 Core & identified Common Area sustainable systems installation				X*	
39 Core & identified Common Area uplift construction				X*	
40 Core & identified Common Area security/access/AV/teledata				X*	Each party bears its own costs
41 Core & identified Common Area furniture, fixtures, and equipment				X*	
42 Shell, Core & identified Common Area contingencies				X*	
Exclusive Condominium Space Interiors					
43 Uplift branch building systems	X	X			Each party bears its own costs
44 Uplift (architectural components)	X	X			
45 Uplift security/access/AV/teledata	X	X			
46 Uplift furniture, fixtures, and equipment	X	X			
47 Uplift contingencies	X	X			Each party bears its own costs
Other Costs					
48 Legal Costs	X	X			
49 Financing Costs	X	X			

The Parties agree as follows:

The Town's costs pursuant to this Agreement shall not exceed \$9,600,000.00 (Nine Million Six Hundred Thousand Dollars).
Any costs in excess of this amount must be authorized by the Town of Carboro Alderpersons through a written amendment to the Agreement.

The County's costs pursuant to this Agreement shall not exceed \$7,547,500.00 (Seven Million Five Hundred Forty Seven Thousand Five Hundred Dollars).
Any costs in excess of this amount must be authorized by the Orange County Board of Commissioners through a written amendment to the Agreement.

*proportional basis for these items is anticipated to be determined in the design phase as building elements and systems are more specifically known, with the cost sharing likely to be less than equal but more than on a proportional square footage basis.