

NORTH CAROLINA

LAND EXCHANGE AGREEMENT

WAKE COUNTY

THIS LAND EXCHANGE AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between North Carolina II LP (“**NC II**”) and the Town of Apex (“**Town**”).

**WITNESSETH:**

WHEREAS, Section 160A-271 of the North Carolina General Statutes expressly provides that a city may exchange any real property belonging to the city for other real property by private negotiations if the city receives full and fair consideration in exchange for its property; and

WHEREAS, NC II and the Town desire to exchange with each other certain tracts of real property of like value.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**Section 1. Land Exchange.**

(a) The Town is the owner of a certain tract of land comprising 1.441 acres located in the County of Wake, State of North Carolina, which is designated as PIN #0742-71-4334 by the Wake County Revenue Department, and is more particularly described in the deed recorded in Deed Book 16213, Page 1421, and as “Lot 5” as shown in “Recombination & Major Subdivision Final Plat Old Mill Village Lot 3 – Phase 1 for Apex First Development Co, LLC,” recorded in Book of Maps 2007, Page 2390-2391, Wake County Registry. The entire tract shall be known as the Town Tract.

(b) NC II is the owner of a certain tract of land comprising 1.722 acres located in the County of Wake, State of North Carolina, which is designated as PIN #0742-53-2930 by the Wake County Revenue Department, and is more particularly described in the deed recorded in Deed Book 12626, Page 0412 and as “Lot 7” as shown in “Major Subdivision Final Plat The Villages of Apex South Village – Phase 1 Lot 3 and Lot 4, Lot 5, Lot 6 and Lot 7,” recorded in Book of Maps 2009, Page 05, Wake County Registry. The entire tract shall be known as the NC II Tract.

(c) Subject to the terms and conditions of this Agreement, NC II agrees to exchange the NC II Tract for the Town Tract and the Town agrees to exchange the Town Tract for the NC II Tract (the “**Exchange**”). The consideration provided by each party to the other shall be the simultaneous conveyance of the NC II Tract by NC II to the Town and the conveyance of the Town Tract by the Town to NC II.

**Section 2. Commissions; Agency.**

Neither party shall be responsible for payment of any commission payable to a broker or agent arising out of this transaction except as specifically retained and agreed by that party, and each party agrees to otherwise indemnify the other, non-retaining, party from liability for any such commission.

**Section 3. Cooperation.**

Each party agrees to take such action and execute such documents as are reasonably necessary to enable the other party to use the property it acquires under this agreement for the use intended by the acquiring party.

**Section 4. Environmental.**

Each party warrants that, to the best of that party's knowledge, the property being conveyed by that party is free of underground storage tanks, pollution, contamination, hazardous materials, toxic wastes, asbestos, and products containing same, and is in compliance with all environmental regulations. Each party shall, upon signing this contract, furnish the other party with any available environmental reports or audits pertaining to the property being conveyed by that party.

**Section 5. Property Condition.**

Except as specifically set forth above, neither party warrants the physical condition of the property being conveyed by that party or any improvements thereon, and each tract is conveyed "as-is" as to physical condition.

**Section 6. Closing.**

The closing (the "**Closing**") of the Exchange shall occur no later than \_\_\_\_\_, 2020 (the "**Closing Date**"), at a location designated by the Town. At Closing, the following shall occur:

- (a) Each party shall deliver to the other party the items set forth below, to the reasonable satisfaction of each party's counsel:
  - (i) A General Warranty Deed (the "**Deed**") fully and duly executed and acknowledged by the party, that conveys to the other party the tract as provided in Section 1. Each party agrees to pay at Closing the cost of the excise tax if any due and payable in connection with recording the General Warranty Deed from it to the other party and to pay at Closing the cost of recording the General Warranty Deed to it from the other party;
  - (ii) Each party shall provide the other with an affidavit (the "**Title Affidavit**") stating that there are no unpaid debts for work performed on or materials provided to that

party's tract as of the Closing Date;

(iii) Each party shall provide the other with a certificate (the "**FIRPTA Certificate**") executed and sworn to by it that it is not a "foreign person" as defined under Section 1445 of the Internal Revenue Code;

(b) Each party shall pay for the cost of the title insurance policy (if any) obtained by it for the tract to be conveyed to it. Each party shall pay its own costs and expenses incurred in connection with this Agreement, including its respective attorneys' fees and any other expenses specifically allocated hereunder.

(c) Each party shall pay the real estate taxes due on its own tract that it is conveying to the other party, or will be due in the year at closing. Each party shall be responsible for any special assessments which are owing or due on its property as of the Closing Date. The provisions of this Section shall survive the Closing.

### **Section 7. Title.**

(a) At Closing, each party shall deliver to the other the Deed, subject to Acceptable Encumbrances (as defined below), conveying to the other, an indefeasible, fee simple, marketable title to the Property, insurable at regular rates by a reputable title insurance company of Purchaser's choice (the "**Title Company**").

(b) Within **ten (10) days** after the Execution Date of this Agreement, each party agrees to deliver to the other copies of all relevant title information and title policies in possession of, or reasonably available to it.

(c) As a condition to being obligated to close, each party shall be able to obtain a commitment for a policy of title insurance insuring title to the property it will receive at standard rates from the Title Company, subject only to the following (collectively the "**Acceptable Encumbrances**"):

(i) Real property taxes for the year in which the sale and purchase shall be closed.

(ii) Any other exceptions that specifically approved in writing.

(d) Acceptable Encumbrances are limited to the following: any easements to the Town of Apex.

(e) Each party shall have until fifteen (15) days before the Closing Date within which to cause the title to the Property to be examined and then to notify the other party of any objections thereto that render title other than good, marketable and insurable. If a party so notifies the other party and the other party does not cure the title defect within **ten (10) days** of the mailing of the Notice, then notifying party shall have the right to terminate this contract by written Notice to the other party.

**Section 8. Further Warranties.**

The parties respectively make the following representations to each other. Such representations also shall be deemed made as of the Closing.

(a) Each party has the full right, power, and authority to execute, deliver, and perform this Agreement.

(b) There are no unpaid bills for labor or materials related to the tracts. There are no taxes, charges or assessments that would constitute a lien against the tracts that are unpaid other than ad valorem taxes for the current year now due and payable.

(c) Each party has complied with all applicable laws, ordinances, regulations, and restrictions relating to its tracts.

**Section 9. Notices.**

Any notice required under this Agreement shall be in writing and shall be delivered in person, by certified mail, return receipt requested, or by a nationally recognized overnight delivery service. Notices shall be effective as of the time of delivery. Notices shall be addressed as follows:

To NC II: \_\_\_\_\_

To Town: Drew Havens, Town Manager, Town of Apex, P.O. Box 250, Apex, NC, 27502

Either party may, at any time, and from time to time, designate in writing a substitute address by giving notice to the other party.

**Section 10. Further Assurances.**

Each of the parties hereto agrees to perform, execute, acknowledge and deliver and cause to be performed, executed, acknowledged and delivered all such further acts, assignments, transfers and assurances as shall reasonably be requested of it in order to carry out this Agreement. Without in any manner limiting their specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

**Section 11. Other Terms or Conditions.**

This Agreement is the entire agreement between NC II and the Town concerning the properties and no modification hereof is effective unless it be in writing and signed by the parties. This Agreement shall be binding and inure to the benefit of NC II and the Town, their heirs, legal representatives, successors and assigns.

**EXECUTED** the date and year noted beside the respective signatures.

**North Carolina II, LP**

By: \_\_\_\_\_

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
*[Signature of Notary]*

\_\_\_\_\_  
*[Print of Type Notary Name]*

My Commission Expires: \_\_\_\_\_

**Town of Apex**

(Corporate Seal)

\_\_\_\_\_  
Jacques K. Gilbert, Mayor

ATTEST:

\_\_\_\_\_  
Donna B. Hosch, Town Clerk

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Donna B. Hosch personally came before me this day and acknowledged that she is Town Clerk of the Town of Apex, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its Town Clerk. Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
*[Notary Signature]*

\_\_\_\_\_, Notary Public  
*[Print or Type Notary Name]*

My Commission Expires: \_\_\_\_\_