

**STATE OF NORTH CAROLINA**

**ECONOMIC DEVELOPMENT  
AGREEMENT**

**(APEX DEVELOPMENT SITE – PROJECT REAL)**

**COUNTY OF CHATHAM**

This **ECONOMIC DEVELOPMENT AGREEMENT** (“**Agreement**”) is entered into and effective as of this \_\_\_ day of \_\_\_\_\_, 2022 (“**Effective Date**”) by and among **MILLS CHATHAM DEVELOPMENT GROUP, LLC**, a North Carolina limited liability company (the “**MCDG**”), and the **TOWN OF APEX**, North Carolina, a municipal corporation of the State of North Carolina (the “**Town**”), and describes the agreement between the parties relating to an economic development project (as described herein, and commonly known as “**Project Real**”) located in the Town of Apex, North Carolina.

**RECITALS**

WHEREAS, pursuant to North Carolina General Statute 158-7.1, the Town of Apex is authorized to make appropriation for economic development purposes when the Council determines the appropriations will increase the population, taxable property, employment, industrial output, or business prospects of the town; and

WHEREAS, the Town is vitally interested in the economic welfare of its citizens and the creation and maintenance of sustainable jobs for its citizens in strategically important industries and therefore wishes to provide the necessary conditions to stimulate investment in the local economy and promote business, resulting in the creation of a substantial investment in the Town and to encourage economic growth and development opportunities which the Town has determined will be made possible pursuant to the Project (as defined below); and

WHEREAS, MCDG has contracted with an affiliate of BIN – AG LLC, a North Carolina limited liability company (“**BIN – AG**”) to develop the portion of the Site (as defined herein) owned by MCDG, including the design and construction of certain infrastructure improvements and an industrial or commercial building which will be leased to an affiliate of MCDG. MCDG intends to make a capital investment for the real property, infrastructure improvements and facility, of at least \$25,000,000.00 (the “**Capital Investment**”); and

WHEREAS, the portion of the Site to be owned by BIN – AG or an affiliate of BIN – AG will be developed for the benefit of future tenants that would bring additional jobs and investment to the Town. In connection therewith, BIN – AG intends to make a capital investment of at least \$68,750,000.00 for the infrastructure improvements and industrial or commercial buildings at the Site (as defined below); and

WHEREAS, such infrastructure and the building to be owned by MCDG and located on the Site are referred to as the “**MCDG Facility**;” the infrastructure and building to be owned by BIN – AG or an affiliate of BIN – AG and located on the Site are referred to as the “**BIN – AG Facility**;” and all of the facilities located on the Site are collectively referred to as the “**Facilities**;” and

WHEREAS, in order to locate the Project on the Site, a sewer and water line extension would be required to provide sewer and water services to the Site. The extension would benefit Project Real and future companies locating on the Site; and

WHEREAS, the Town recognizes that the Project will bring direct and indirect benefits to the Town, including needed infrastructure, job creation, economic diversification and stimulus in technology and manufacturing skills, and has offered economic development incentives (the “**Town Incentives**” as defined below) to induce MCDG to locate the Project at the Site; and

WHEREAS, MCDG fully intends to establish through the Project an important presence in the Town by making a substantial investment in the Project and hereby affirms that the terms of this Agreement, including specifically the Town Incentives and other assistance described in this Agreement, constitute a dispositive inducement for MCDG and its tenant to locate and develop the Facility at the Site.

Based on the above Recitals and the Terms contained below, which the parties acknowledge constitute sufficient consideration to make this Agreement legally binding and enforceable, the parties agree as set forth below.

## TERMS

### I. TOWN INCENTIVES GENERALLY

The Town will provide incentives, as specified below, so long as the provisions of this Agreement are specifically met.

### II. TOWN ECONOMIC DEVELOPMENT INCENTIVES RELATED LAND DEVELOPMENT AND INFRASTRUCTURE

#### A. Town’s Incentives

Upon the completion of construction of the Improvements, as described below and in Section III, the Town will reimburse costs associated with the extension and installation of public utilities, specifically water and sewer, (the “**Improvement(s)**”) to the Site in an amount not to exceed two-million two hundred thousand dollars (\$2,200,000.00) (“**Maximum Town Incentive**”). The Improvements are described more specifically in the construction plans which have been or will be submitted to and approved by the Town. MCDG will provide evidence of the amount and completion of the construction of the Facilities and Improvements to the Town. Such evidence will include an AIA certificate of substantial completion signed by MCDG’s architect, civil engineer and general contractor, as applicable for Facilities and EJCDC C-625 Certificate of Substantial Completion signed by MCDG’s engineer and general contractor, as applicable. The County Assessor may request additional evidence reasonably necessary to properly assess each phase of the Facility.

B. Town Incentive payments.

Upon certification, inspection, and acceptance of the Improvements, the Town shall make ten (10) annual Town Incentive payments to MCDG. Each payment shall be \$220,000 and in no event shall the total Town Incentive paid to MCDG under this agreement exceed \$2,200,000.00. The initial payment shall be made within six (6) months following the acceptance of the Improvements by the Town, and the remaining payments shall be made annually thereafter as provided herein so long as this Agreement remains in effect.

III. MCDG OBLIGATIONS.

A. Improvements to the property.

MCDG and BIN - AG, at their sole cost and expense, shall construct the Improvements described above; construct Facilities and develop the Project known as Project Real on a tract or tracts of land owned by MCDG consisting of approximately 54.51 acres; and a tract or tracts of land to be owned by BIN - AG consisting of approximately 77.6 acres, all such tracts located at the intersection of US-64 and NC-751 in the County of Chatham, North Carolina (collectively, the "Site"). The Site is denoted on the map attached as Exhibit A.<sup>1</sup> The tax parcels included in the Site are provided in the table attached as Exhibit B.

Certification, Inspection, and Acceptance of Improvements.

Upon completion of construction of the Improvements, MCDG shall provide the Town with written certification and as-built drawings from MCDG's designated consulting engineering firm that the Improvements are complete and have been constructed and installed in compliance with this Agreement and within appropriate Town easements or fee simple parcels. The Improvements shall be offered for public dedication to the Town upon completion of construction and shall be subject to inspection and acceptance by the Town. Thereafter, the Town shall own the Improvements, have exclusive possession and control of the Improvements and responsibility for maintenance thereof. In the event that any defect or breach of warranty claim becomes known to the Town after acceptance and dedication of the Improvements to the Town, MCDG agrees either to assign such rights and claims to the Town as directed by the Town and reasonably cooperate with the Town in the Town's pursuit of its rights and claims against the contractor or other party responsible for the defect or breach of warranty. In the event any recovery is actually received by MCDG, MCDG shall promptly pay over such recovery to the Town.

B. Job creation.

MCDG, whether directly or indirectly through its affiliates, lessees, licensees, vendors, or tenants, is expected to create a minimum of one hundred eighty (180)

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<sup>1</sup> Confirming if this is available. If not, we would propose substituting the tax parcel maps.

new full time jobs (herein “**Qualified Jobs**”) within the Town of Apex (Chatham County) by the date that is thirty-six (36) months following the Effective Date. The expected median average hourly wage for the Qualified Jobs at the Project is expected to be above the then-current median average hourly wage paid in Chatham County. The term “median average hourly wage” is defined as the median average hourly wage for all insured industries in the County as determined by the Employment Security Commission for the most recent period for which data is available. The Parties acknowledge that the median average hourly wage in Chatham County, according to data provided by the NC Department of Commerce, is currently \$20.98 per hour with an annual average wage of \$42,789.00.

C. Tax Generation.

The Project is expected to generate Property Tax Revenue, whether directly or indirectly through MCDG, BIN – AG, and their affiliates, lessees, licensees, vendors, or tenants, from the Site over its first ten years of operations, following the Effective Date, on the following schedule:

**Apex-Chatham 751/US64 Site - Economic Development Estimates**

Year	Estimated Tax Value*	Tax Rate**	Estimated Tax Revenue	Company Incentive†	Net Tax Revenue	Cumulative Tax Revenue
2025	\$ 93,750,000	0.390	\$ 365,625	\$ 329,063	\$ 36,563	\$ 36,563
2026	\$ 93,750,000	0.405	\$ 379,688	\$ 341,719	\$ 37,969	\$ 74,531
2027	\$ 93,750,000	0.405	\$ 379,688	\$ 341,719	\$ 37,969	\$ 112,500
2028	\$ 93,750,000	0.405	\$ 379,688	\$ -	\$ 379,688	\$ 492,188
2029	\$ 93,750,000	0.380	\$ 356,250	\$ -	\$ 356,250	\$ 848,438
2030	\$ 93,750,000	0.380	\$ 356,250	\$ -	\$ 356,250	\$ 1,204,688
2031	\$ 93,750,000	0.380	\$ 356,250	\$ -	\$ 356,250	\$ 1,560,938
2032	\$ 93,750,000	0.380	\$ 356,250	\$ -	\$ 356,250	\$ 1,917,188
2033	\$ 93,750,000	0.360	\$ 337,500	\$ -	\$ 337,500	\$ 2,254,688
2034	\$ 93,750,000	0.360	\$ 337,500	\$ -	\$ 337,500	\$ 2,592,188
2035	\$ 93,750,000	0.360	\$ 337,500	\$ -	\$ 337,500	\$ 2,929,688

<b>Assumptions</b>
Highlighted years indicate revaluation years
* Estimates are derived from expected investment for Project Real (\$25M) and subsequent projects (\$68.75M) on The Site and are subject to change based on actual costs of construction and equipment.
**Tax rate is for estimate purposes only and based on the current rate with future adjustments made to reflect an estimated revenue-neutral tax rate occurring with Wake County revaluations. The setting of the tax rate is at the sole discretion of the Apex Town Council on an annual basis.
†Years 2025 through 2027 reflect potential economic development tax incentives typically provided by Apex to new industries that provide significant investment and job creation. The current incentive policy is a 90% grant back for three years.

It is recognized that these are revenue projections, based on current tax rates and tax structure.

D. Commencement of Operations. MCDG, whether directly or indirectly through its affiliates, lessees, licensees, vendors, or tenants, is expected to commence operations within two and one-half (2.5) years of the Effective Date.

E. Other.

- (1) Permits. MCDG shall obtain and maintain all permits and approvals required by federal, state and local law for the construction and operation of the proposed Improvements and the Project.
- (2) Quarterly Reports. MCDG shall provide the Town's Economic Development Director with copies of all monthly and/or quarterly tax and wage statements, at the time of filing, for MCDG and for each tenant or vendor of MCDG conducting business on the Site or operating as part of the Project for purposes of demonstrating compliance with the requirements of Sections IV.B. and C. below. Said statements and other documents may be necessary to allow the Town to determine compliance with the Jobs Creation and Tax Revenue benchmarks.
- (3) Extensions. For good cause, including Force Majeure, the time for performance of any obligation set forth herein may be extended by the party to whom the performance is due; provided that the aggregate of extensions may not cause the time for completion of the Improvements to extend beyond five years from the Effective Date.

IV. REDUCTION AND RECAPTURE OF INCENTIVES

The Parties acknowledge that the creation of Qualified Jobs and additional Capital Investment, with corresponding projected increases in tax revenue to the Town, are the essence of this Agreement and form the legal basis for the Town's participation. Pursuant to NCGS § 158-7.1(h), the Town's remedies for failure by MCDG to meet its obligations as set out herein are:

- A. If MCDG, along with that of its tenants, lessees, affiliates or Agents, fails to construct the contemplated Improvements within the times set out in this Agreement, then the Town may elect to terminate this Agreement under the provisions of paragraph F below.
- B. If MCDG, along with that of its tenants, lessees, affiliates or Agents, does not reach the number of Qualified Jobs as outlined in paragraph III.B as shown on its Quarterly Report within the times set out in this Agreement, then the Town may elect to terminate this Agreement under the provisions of paragraph F below.
- C. Failure to maintain jobs. For any year in which MCDG, along with that of its tenants, lessees, affiliates or Agents, fails to retain the number of Qualified Jobs actually created in the prior years under this Agreement, the Town may elect to terminate this Agreement under the provisions of paragraph F below.
- D. Failure to Maintain Property Tax Revenue. Notwithstanding the initial capital investment, if MCDG, BIN – AG, and their successors or assigns, with their tenants, lessees, affiliates or Agents, fail to maintain a total level property tax revenue within Chatham County at the levels and for the periods of time set forth

in paragraph III.C then the Town may elect to terminate this Agreement under the provisions of paragraph F below, subject to the revenue catch up provisions of paragraph I below.

- E. If MCDG, along with that of its tenants, lessees, affiliates or Agents, is not current on all other taxes, fees, assessments or other amounts owed to the Town related to the Project at the time a Town Incentive is to be paid, in addition to any other remedies provided by law, this Agreement may be terminated.
- F. Termination. Upon failure of MCDG to meet its Obligations as set forth herein, the Town may elect to terminate this Agreement in whole or in part. If the Town elects to terminate, notice of termination shall be given in the manner set forth in Section IX.C. Failure of the Town to elect termination in whole or in part shall not constitute a waiver of the right of the Town to make such election at a later time. Nothing herein shall prohibit the parties from negotiating an alternative remedy for the failure of MCDG to meet one or more of its obligations, consistent with North Carolina law.
- G. The provisions of this Section IV survive the termination of this Agreement.
- H. Alternative Remedies for Partial Performance. To the extent permitted by North Carolina law, MCDG and Town agree that the following remedies or “claw backs” may be applied in the case of partial performance by Company.
- I. In the event of a failure by MCDG, along with that of its tenants, lessees, affiliates or Agents, to create or maintain the minimum number of Qualified Jobs, MCDG shall pay to Town an amount equal to the economic impact credit that MCDG received for each Qualified Job not created as required per this Agreement. The “economic impact credit” per job is defined as the Maximum Town Incentive less the 10-year average cumulative tax revenue estimate divided by the total number of Qualified Jobs.<sup>2</sup> For purposes of this section, the parties acknowledge the “economic impact credit” per job equals five thousand, one-hundred forty dollars (\$5,140.00). For example, if MCDG’s job creation is 20 less Qualified Jobs than that required by this agreement, MCDG would be required to reimburse the Town \$102,800<sup>3</sup>. In the event that MCDG fails to make the Capital Investment or that the Project for any reason fails to generate the projected property tax revenue as shown on the table in Sec. III.C, then MCDG shall pay to the Town the difference between the projected tax revenue and the actual tax revenue, subject to adjustment pursuant to the “Revenue Catch Up” provision below.
- J. Revenue Catch Up. For any year in which the actual property tax revenues are less than the projected property tax revenues, MCDG shall be required to pay Town the difference, provided that Town may defer said payment for up to two years in order

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<sup>2</sup> Maximum Incentive – 10 yr avg tax / number of jobs required (\$2,200,000 - \$1,274,872 = \$925,128) / 180 = \$5,139.60 Rounded to \$5,140

<sup>3</sup> \$5,140 multiplied by 20 = \$102,800/

to allow for the recognition of any surplus revenue in subsequent years, unless the deficit occurs in year 10, in which case MCDG shall pay the Town any difference between the total projected tax revenue and the actual tax revenue.

Nothing herein shall prevent the parties from negotiating other remedies for partial performance, as allowed by North Carolina law and in no event shall MCDG be required to pay to Town an amount greater than the amount of Town Incentives actually paid by Town to MCDG pursuant to the terms of this Agreement.

#### V. RIGHT TO CURE

In the event the Town determines that MCDG is deficient in its obligations under this Agreement, the Town shall provide written notice of deficiency to MCDG describing the nature of the deficiency and the steps required to cure the deficiency. For each year in which a deficiency occurs, MCDG shall have a twelve (12) month cure period from the time it receives notice of the deficiency to provide written evidence to the Town that the deficiency has been cured, did not occur, or was cured prior to receipt of notice of deficiency. In the event MCDG does not cure or provide evidence of compliance within the twelve (12) month cure period, MCDG shall forfeit any Incentive Payment to which the deficiency applies. No default or deficiency by MCDG shall result in a termination or limitation of any rights of MCDG unless and until the Town shall have notified MCDG in writing of said default or deficiency. Upon the cure of any deficiency, the Town Incentive payment shall be restored and shall be payable within thirty (30) days following the cure date.

#### VI. INDEMNIFICATION AND LIMITATIONS

MCDG will indemnify and hold harmless the Town and its Town Council, and employees and agents (the "Indemnified Parties") for damages imposed upon them by a court of final determination based on any claims of third parties arising out of any act or omission of MCDG in the performance required of it by this Agreement, provided, however, that such indemnification (i) is not contrary to law and (ii) shall not apply to third party claims arising out of or relating to a negligent act or omission of the Town. The Town agrees that none of the foregoing shall be construed to release Town from the obligations it has undertaken elsewhere in this Agreement, in connection with the Town Incentives or otherwise. Except as otherwise set forth, each Indemnified Party and MCDG agree to pay their own costs incurred in such connection, including all costs incurred in connection with the preparation of this Agreement.

MCDG SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION OF MCDG IN THE PERFORMANCE REQUIRED OF IT BY THIS AGREEMENT FOR SPECIAL INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUES AND PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. This provision also applies to the indemnity set forth in the above paragraph.

## VII. DISCLAIMER OF WARRANTIES

MCDG acknowledges that the Town has not designed the Facility or the Improvement(s), that the Town has not supplied any plans or specifications with respect thereto and that the Town: (a) is not a manufacturer of, or dealer in, any of the component parts of the Facility or Improvement(s), (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to the Facility or Improvement(s) or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Facility or Improvement(s) or any component part thereof or any property or rights relating thereto at any stage of the construction, (c) has not at any time had physical possession of the Facility or Improvement(s) or any component part, and (d) has not made any warranty or other representation, express or implied, that the Facility or Improvement(s) or any component part or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which MCDG intended, or (iii) is safe in any manner or respect.

The Town makes no express or implied warranty or representation of any kind whatsoever with respect to the Facility or Improvement(s) or any component part, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability for any particular purpose, and further including the design or condition, the safety, workmanship, quality, or capacity; compliance with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the ability of the Facility or Improvement(s) to perform any function; or any other characteristic of the Facility or Improvement(s); it being agreed that as between the Town and MCDG, MCDG is to bear all risks relating to the Facility or Improvement(s), its completion or the transactions contemplated hereby and MCDG waives the benefits of any and all implied warranties and representation of the Town.

The provisions of this Section VII shall survive the termination of this Agreement.

## VIII. TERMINATION OF AGREEMENT

Unless terminated earlier as provided in section IV.F, this Agreement shall terminate at the end of the tenth year after the Town has made the last of the Town Incentive payments to MCDG, or upon payment of the Maximum Town Incentive payments if sooner, as required by this Agreement. After such termination, this Agreement will be null and void, and the parties to this Agreement will have no further obligations from one to the other thereafter, except as specifically noted in this Agreement. Provided, however, in no event will any payment be made by the Town to MCDG after December 31, 2038.

## IX. ASSIGNMENTS

MCDG shall not assign this Agreement or any portion thereof without the written consent



of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed, nor shall MCDG assign any Town Incentive payments due or to become due to it under this Agreement without the written consent of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, MCDG shall be permitted to (i) assign this Agreement or any portion thereof, or any funds due or to become due to it hereunder, to any direct or indirect wholly-owned subsidiary or other related party of MCDG, and (ii) any Tax Incentive payments actually received by MCDG to any other party..

## X. REPRESENTATIONS

MCDG represents as of the date of this Agreement as follows:

- A. MCDG (i) is a limited liability company duly organized and validly existing under the laws of its state of incorporation; (ii) is duly qualified to transact business and is in good standing in North Carolina; (iii) is not in violation of any provision of its organizational documents; (iv) has full corporate power to own its properties and conduct its business; (v) has full power and authority to enter into this Agreement and to enter into and carry out the transactions contemplated by this Agreement; (vi) by proper action has duly authorized the execution and delivery of this Agreement; and (vii) is not in default under any provision of this Agreement.
- B. The execution and delivery of this Agreement neither conflicts with, nor will result in, a breach or default under its organizational documents; nor, to the best of its knowledge, will its execution and delivery conflict with, or result in, a breach or default under the terms, conditions, or provisions of any statute, order, rule, regulation, agreement, or instrument to which each such company is a party or by which it is bound; nor will its execution and delivery result in the imposition of any lien on its property.
- C. MCDG has duly authorized, executed, and delivered this Agreement, and to MCDG's knowledge, this Agreement constitutes its legal, valid, and binding obligations, enforceable in accordance with its terms.

The Town represents as of the date of this Agreement as follows:

- A. At the time of execution of this Agreement, the Town (i) has full power and authority to enter into this Agreement and to enter into and carry out the transactions contemplated by this Agreement; (ii) by proper action has duly authorized the execution and delivery of this Agreement; and (iii) is not in default under any provisions of this Agreement.
- B. The Town has duly authorized, executed, and delivered this Agreement, and this Agreement constitutes the Town's legal, valid, and binding obligation, enforceable in accordance with its terms.

- C. To the Town's knowledge, there is no litigation or proceeding pending or threatened against the Town or affecting it which would adversely affect the validity of this Agreement.
- D. To the best of the Town's knowledge at the time of execution of this Agreement, the Town is not in default under any provision of State law which would affect its existence or its powers.
- E. To the best of the Town's knowledge at the time of execution of this Agreement, no official of the Town has any interest (financial, employment, or other) in MCDG or the transactions contemplated by this Agreement.
- F. With respect to this Agreement, Town has complied fully with all requirements of N.C. Gen. Stat. §158-7.1, to the Town's ability and knowledge.

NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE TOWN FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE TOWN'S MONEYS, NOR SHALL ANY PROVISION OF THIS AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE TOWN GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE TAKES PRIORITY.

#### XI. MISCELLANEOUS

- A. Definitions. All terms with initial capitals used in this Agreement and not otherwise defined will have the meanings ascribed to those terms in Webster's Third New International Dictionary.
- B. Governing Law. The parties intend that the law of the State of North Carolina will govern this Agreement.
- C. Notices.
  - (1) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.

(2) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand or after being deposited in the mail by first-class certified mail, postage prepaid, and addressed as follows:

(i) If to MCDG: Mills Chatham Development Group, LLC  
Attn: Mr. Hager Rand, Manager  
3214 Hillsborough Road  
Durham, NC 27705  
Telephone: 919-383-2058  
Email: [Hagerr@durhamcoke.com](mailto:Hagerr@durhamcoke.com)

With a copy to: Manning, Fulton & Skinner, P.A.  
Attn: Eugene F. Dauchert, Jr.  
280 S. Mangum Street, Suite 130  
Durham, NC 27701  
Telephone: 919-510-9286  
Email: [dauchert@manningfulton.com](mailto:dauchert@manningfulton.com)

(ii) If to the TOWN: Town of Apex  
Attn: Town Manager  
PO Box 250  
Apex, NC 27502

With copy to: Town of Apex  
Attn: Town Attorney  
PO Box 250  
Apex, NC 27513

Any addressee may designate additional or different addresses for communications by notice given under this Section to each other.

- D. Non-Business Days. If the date for making any payment or performing any act or exercising any right is not a business day, such payment must be made or act performed or right exercised on or before the next business day.
- E. Entire Agreement: Amendments. This Agreement, including Exhibits, which are incorporated by reference, constitutes the entire contract between the parties. This Agreement may not be changed except in writing signed by both parties.
- F. Binding Effect. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns. There are no other agreements or other conditions precedent to the binding nature of the

respective obligations of the Town, other than the performance by MCDG of its obligations under this Agreement.

- G. Time. TIME IS OF THE ESSENCE of this Agreement and each and of each and every provision hereof.
- H. Liability of Officers and Agents. No officer, agent, or employee of the Town or MCDG shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
- I. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
- J. Provide W-9. MCDG shall provide a completed W-9 form to the Town upon execution of this Agreement.
- K. Dissolution of MCDG. If the legal entity of either MCDG is dissolved or suspended and MCDG does not notify the Town of such dissolution within thirty (30) business days and/or the entity status is not reinstated within sixty (60) business days, this Agreement, at the sole option of the Town, shall be declared null and void or MCDG may be allowed to execute a new Agreement showing the correct legal entity of MCDG.
- L. Notice of Potential Disclosure of Confidential Information. MCDG acknowledges that it has been informed by the Town that the Town is required by North Carolina law to disclose "Public Records" as the term is defined by N.C. Gen. Stat. §132-1, upon request. All information disclosed to the Town by MCDG which is subject to that definition and whose disclosure is not otherwise protected by law will be released by the Town upon request as provided by N.C. Gen. Stat. §132-6. The Town may withhold from disclosure confidential records as defined by N.C. Gen. Stat. §132-1.2. MCDG acknowledges that it has read and is familiar with the Town's obligations of public disclosure of documents and the definitions of confidential documents as contained in Chapter 132 of the North Carolina General Statutes. In order to prevent the disclosure of the confidentiality of information identified by MCDG as a trade secret or as "confidential" pursuant to N.C. Gen. Stat. §132.1.2 the Town shall, if it receives a request for disclosure of such information, notify MCDG of such request so that MCDG may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a public record. The parties agree that this Section will survive the termination of the Agreement.

- M. Force Majeure. Any delay in the performance of any of the duties or obligations of either party (the “Delayed Party”) shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay arises out of or is caused by, directly or indirectly, (i) forces beyond the Delayed Party’s control, including, without limitation, strikes, work stoppages, lockouts, job actions, boycotts, accidents, acts of war or terrorism, insurrections, civil or military disturbances, riots, nuclear or natural catastrophes, earthquakes, fire, flood, pandemics, epidemics, public health emergency, state of declared emergency, loss or malfunctions of utilities, communications or computer (software and hardware) services (ii) with regard to MCDG, the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the facility after a good faith effort to obtain same has been made; (iii) with regard to MCDG, shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of the Delayed Party (each of them a “Force Majeure Event”). The Delayed Party shall give prompt notice to the other party of such cause, and shall take whatever reasonable steps are necessary to relieve the effect of such cause as promptly as possible. No such event shall excuse the payment of any sums due and payable hereunder on the due date except any payment due upon the occurrence of any act or event for which delayed performance is excused as provided above.
- N. Severability. If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then (a) such holding shall not invalidate or render unenforceable any other provision of this Agreement, unless such provision is contingent on the invalidated provision; and (b) the remaining terms hereof shall, in such event, constitute the parties’ entire agreement.
- O. Audit Right. The Town reserves the right to require a certified audit or may perform the audit through the use of its staff pertaining to MCDG’s compliance with any provision in this Agreement during normal business hours and upon reasonable prior notice.

*[Signature Pages to Follow]*

IN WITNESS, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[SEAL]

TOWN OF APEX  
NORTH CAROLINA

ATTEST:

By: \_\_\_\_\_  
Allen Coleman, CMC, NCCCC  
Town Clerk

By: \_\_\_\_\_  
Jacques Gilbert  
Mayor  
Town of Apex

TOWN OF APEX

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

\_\_\_\_\_  
\_\_\_\_\_, Finance Director  
Town of Apex, North Carolina  
Date: \_\_\_\_\_

*[Signature Pages Continue]*

MILLS CHATHAM DEVELOPMENT  
GROUP, LLC, a North Carolina limited  
liability company

By: \_\_\_\_\_  
M. Hager Rand, Manager

*[End Signature Pages]*

Exhibit A

Property Description or Map

**[SITE PLAN]**



Exhibit B

Tax Parcels

2021 Baseline Tax Parcel No.(s): 0060523, 0071694,0073702, 0017900\*

**2021 Baseline Tax Information**

\*Parcel numbers prior to change of ownership and recordation of recombination / subdivision plat; Parcel 0017900 has been subdivided into two separate tax parcels and assigned Tax Parcel No.(s) 0017900 and 95398.

Parcel No.:	0060523	0071694	0073702	0017900 and 95398	<b>Total</b>
Real Property Assessed Value:	\$8,869	\$288,863	\$332,840	\$159,507	\$790,079
Chatham County Taxes Paid	\$69.56	\$2,357.91	\$2,620.56	\$1,232.99	\$6,281.01
Town of Apex Taxes Paid	\$0	\$0	\$0	\$0	\$0
<b>Total Taxes Paid</b>	\$69.56	\$2,357.91	\$2,620.56	\$1,232.99	\$6,281.01