

## GROUND LEASE

**THIS GROUND LEASE**, dated this 14<sup>th</sup> day of December, 2017 (the "Effective Date"), by and between **JACK1, LLC**, a North Carolina limited liability company ("Landlord"), and **THE TOWN OF APEX NORTH CAROLINA**, a political subdivision of the State of North Carolina and municipal corporation ("Tenant") (the "Lease").

### RECITALS:

A. Landlord is the owner of that certain tract of land located in the City of Apex, White Oak Township, Wake County, North Carolina, as recorded in Book 2013 Page 1625 in the Wake County Registry.

B. Landlord and Tenant are parties to a Development Agreement, dated December \_\_, 2017, which is attached hereto as **Exhibit A** and incorporated by reference (the "Development Agreement").

C. Landlord and Tenant desire for Landlord to lease to Tenant the Premises, as hereinafter defined, to permit Tenant to construct improvements thereon, (the "Improvements") and to market all or portions of the Premises.

**NOW, THEREFORE**, in consideration of the rent to be paid, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. Tenant hereby accepts this Lease and the Premises upon the covenants and conditions set forth herein and subject to any encumbrances, covenants, conditions, restrictions and other matters of record as of the date hereof (the "Permitted Encumbrances") and all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises.

**TO HAVE AND TO HOLD THE SAME** subject to the terms and conditions set forth herein.

### ARTICLE 1 - PREMISES

For and in consideration of the rents, taxes and insurance and other charges and expenses to be paid by Tenant, and in consideration of the performance by Tenant of the covenants set forth herein, Landlord does hereby demise and lease to Tenant all that certain real property consisting of 121.305 acres of land, located within Wake County, North Carolina, more particularly described on **Exhibit B** attached hereto, together with the Improvements thereon (the "Premises").

## ARTICLE 2 -TERM

**2.1 Term.** The term of this Lease shall commence on the date hereof and shall expire three (3) years after the Effective Date (the "Term").

**2.2 Options to Extend Term.** Landlord further hereby grants Tenant three (3) successive options to extend the Term, each for an additional period of three (3) years, as follows: Provided it is not then in default under this Lease beyond any applicable cure period, Tenant shall have the option to extend the Term for each successive three (3) year period ("Extended Term") by giving notice to Landlord of its exercise of the option at least ninety (90) days prior to the expiration of the Term or the then-expiring Extended Term, as the case may be. All of the terms and conditions of this Lease shall apply during each Extended Term. Notwithstanding the foregoing, in the event that Tenant fails to meet one (1) or more of the Development and Marketing Milestones set forth in the Development Agreement, Tenant's right to extend the Term or Extended Term, as the case may be, shall be subject to the prior written consent of Landlord.

## ARTICLE 3 -RENT

**3.1 Rent.** In consideration of leasing the Premises, Tenant agrees to pay Landlord, or Landlord's designated agent, at the address set forth herein or such other address as Landlord from time to time may designate in writing, the Annual Rent (as defined below), due and payable annually within thirty (30) days after Landlord delivers to Tenant a written notice specifying the amount of the Rent, its annual tax bill(s) evidencing same, and evidence that the tax bill has been paid. The annual rent shall be equal to the amount by which all personalty and real property taxes due and attributable to the Premises each tax year (including, without limitation, the taxes listed in Section 4.1) exceed the amount of the annual property taxes actually paid by the Landlord for the Premises as of the date of the execution of the Lease (as determined by the most recent tax bills received by Landlord prior to the Effective Date) (the "Annual Rent"). Tenant shall not be responsible for paying any late fees or interest on past due amounts for the payment of taxes due and payable by Landlord on the Premises. All other amounts to be paid by Tenant under this Lease shall constitute "Additional Rent" hereunder, due and payable within thirty (30) days after Tenant's receipt of Landlord's written request therefor.

The term "Lease Year" as used herein shall mean each consecutive twelve (12) month period from and after the Effective Date until the expiration of the Term; provided, however, if the Effective Date falls on a day other than the first day of a calendar month, then the first Lease Year shall be longer than one calendar year and shall end on the last day of the twelfth (12<sup>th</sup>) full calendar month after the Effective Date. Each subsequent Lease Year shall end on the last day of that same calendar month.

**3.2 Late Charge.** If Tenant fails to pay any installment of Rent, or any other charge that Tenant is obligated to pay hereunder within thirty (30) days after the same is due and payable, then, without limiting Landlord in the exercise of any other right or remedy of Landlord with respect to such failure, Tenant shall pay Landlord a late charge equal to five percent (5.00%) of the amount of the late payment to compensate Landlord for any inconvenience or

damage resulting therefrom; provided, however, such late charge shall not be imposed more than once for any particular late payment and shall not be applicable to any payment which becomes due on or after the date on which Landlord elects to pursue any remedy available hereunder. In addition to the late fee provided herein, Tenant shall pay interest on any amount not paid within thirty (30) days after the same is due and payable at the rate of the lower of eighteen percent (18%) per annum or the maximum amount per annum permitted under North Carolina law. Interest shall begin to accrue on any unpaid amount on the day that such amount is due and payable.

**3.3 Rent Independent.** Tenant's covenants to pay Minimum Rent, Additional Rent (as defined in Section 4.1) and any other sums payable to Landlord under this Lease are independent of any other covenant, condition, provision, or agreement contained herein. Nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time that the same becomes due and payable hereunder, or limit any other remedy of Landlord. Annual Rent and Additional Rent are sometimes collectively referred to as "Rent." Rent shall be payable without deduction, offset, or prior notice or demand in lawful money of the United States.

#### ARTICLE 4 -TAXES AND UTILITIES

**4.1 Real Property Taxes and Assessments.** Landlord shall be responsible for the payment taxes to the applicable taxing authority; provided, however, from and after the Effective Date, Tenant shall be responsible for all increases in all personalty, real property and other taxes and assessments attributable to the Property, or installments thereof, whether general or special, or ordinary or extraordinary, every nature, name and kind whatever, including all governmental charges of whatever nature or kind, which are levied, assessed, charged or imposed against the Premises or any part of the Premises, the Improvements, the leasehold of Tenant under this Lease or against Tenant by reason of ownership of the Improvements and become due in accordance with Section 3.1.

**4.2 Utilities.** Tenant shall make all arrangements for obtaining, and during the Term shall pay for, all utilities and services furnished to, or to be used on, the Premises, including, without limitation, electricity, water, gas, sewer, telephone service and trash collection, and for all service commencement charges and meter reading fees. Such charges and expenses shall be paid directly to the utility companies or other entities to which such charges and fees are payable.

**4.3 Personal Property Taxes.** During the Term, Tenant shall pay all personal property taxes levied upon the personal property on the Premises, before the date on which such taxes would be delinquent.

**4.4 Impact Fees.** Notwithstanding anything contained in this Lease to the contrary, Tenant shall not assess any impact fees on Landlord by virtue of this ground lease and the option arrangement pursuant to the Development Agreement; provided, however, in the event that Landlord elects to reacquire full title to any portions of the Premises pursuant to Section 13 of the Development Agreement to build a facility to lease to an end user, impact fees may be

imposed by the town as a result of that new facility and the end user to occupy such new facility (“Permitted Impact Fees”).

## ARTICLE 5 -USE OF PREMISES

**5.1 Permitted Use.** The Premises shall be used only for purposes of marketing the Premises to recruit companies to the Town of Apex, provided that the companies being recruited are “Acceptable Businesses” as defined in Section 14 of the Development Agreement, or for any other lawful purpose approved in writing by the Landlord, which approval shall not be unreasonably withheld or delayed. The Premises shall not be used in such manner as to knowingly violate any applicable law, rule, ordinance, or regulation of any governmental body. In addition, the Premises shall not be used for a purpose which would result in a breach or violation of any recorded document.

**5.2 Enforcement of Use Restrictions.** Landlord may enforce the restrictions on Tenant’s use of the Premises by cancellation of this Lease or by injunctive or other equitable relief in addition to any other legal remedies available to Landlord and in the event of any such legal or equitable action, Landlord shall, among other things, be entitled to recover attorney’s fees and costs.

## ARTICLE 6 -CONSTRUCTION OF IMPROVEMENTS; REPAIRS AND MAINTENANCE; ALTERATIONS AND IMPROVEMENTS

**6.1 Repairs and Maintenance.** Tenant agrees that, subject to the provisions of Article 8 below, during the Term it will, at its expense and without any expense to Landlord, make all necessary repairs to or replacements of the Improvements, including all parking areas, sidewalks, curbs, lawns and landscaping on the Premises, and maintain the Premises in good, sanitary and neat order, condition and repair, including repairs and replacement of the electrical, plumbing, heating, air conditioning and other equipment of all types on or in the Premises. Tenant shall, at its sole expense, keep any sidewalks and parking areas on the Premises free from snow, ice, rubbish and other obstructions. Tenant shall, at all times following said construction, assure that the Premises and all improvements constructed thereon are in compliance with all applicable laws and so as not to create a nuisance. Tenant shall not commit waste with respect to the Premises.

**6.2 Alterations and Improvements.** Tenant shall have the right, at any time and from time to time, during the Term, at its expense, to (a) make changes or alterations, structural or otherwise, to the Improvements, (b) erect, construct or install upon the Premises buildings and improvements in addition to or in substitution for those now or hereafter located thereon, and (c) demolish and remove the Improvements or any other structures hereafter located on the Premises for the purpose of replacing the same; provided, however, that the fair market value of all improvements on the Premises following each such change, alteration, construction or installation shall be at least equal to the fair market value of all improvements on the Premises immediately prior to such change, alteration, construction or installation.

**6.3 Title to Improvements.** At all times while this Lease is in force and effect, title to the Improvements shall belong solely to Tenant. Upon the termination or expiration of this Lease, title to the Improvements shall pass to Landlord, without payment therefor to Tenant, and Tenant shall have no further rights therein. Provided however, that land dedicated and donated to the Town of Apex pursuant to Section 8 of the Development Agreement to provide rights of ways for the installation of water lines, waste water treatment lines, electrical lines, and roads into and to serve the Premises, shall not pass to the Landlord at the termination or expiration of this Lease, if such improvements have been constructed and placed on the property. If such improvements have not been constructed, the unused rights of ways shall be conveyed back to the Landlord.

#### **ARTICLE 7 - LIENS**

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant, and shall indemnify, protect and hold harmless Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. Provided however, that the Landlord consents to, and the provisions of this section of the Lease are not applicable to a lien on the Premises to secure repayment to the Town of Apex for expenditures for Development Costs as defined and set forth in Sections 11 and 34 of the Development Agreement.

If, at any time during the Term, any interest of Landlord in the Premises becomes subject to a lien for labor or materials furnished to Tenant in the repair or improvement of the Premises, within thirty (30) days after Tenant's receipt of written notice informing Tenant of the recording of such lien, Tenant shall cause the lien to be bonded or discharged, and shall otherwise save Landlord harmless on account thereof, provided, however, that if Tenant desires in good faith to contest the validity or correctness of any such lien, it may do so, and Landlord shall cooperate to whatever extent may be necessary, provided only that Tenant shall indemnify Landlord against any costs, loss, liability or damage on account thereof, including reasonable attorneys' fees, which amounts shall constitute Additional Rent and shall be payable on demand with interest at the rate set forth in Section 3.3 accruing from the date paid or incurred by Landlord until reimbursed to Landlord by Tenant.

## ARTICLE 8 - LIABILITY INSURANCE

**8.1 Tenant's Insurance.** Tenant covenants and agrees that from and after the delivery of the Premises from Landlord to Tenant, Tenant shall carry and maintain, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided:

A. Public Liability and Property Damage. Commercial general public liability and property damage insurance with a combined single limit of Three Million Dollars (\$3,000,000.00) insuring against any and all liability of the insured with respect to the Premises or arising out of the maintenance, use, or occupancy thereof. All such personal injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions set forth herein as to liability for injury to or death of persons and injury or damage to property.

B. Casualty Insurance – An “all risk” policy against all loss or damage by casualty (including, but not limited to, fire, vandalism, malicious mischief and all other hazards, risks and periods usually covered in the State of North Carolina by extended coverage) in an amount equal to the then current full replacement cost of the buildings and improvements located at the Premises. Landlord shall be named as additional insured and Tenant shall be named as insured under the casualty policies of insurance required to be carried by Tenant. If Tenant has heretofore or shall hereafter mortgage or pledge its leasehold estate to a leasehold mortgagee/or lessor, insurance proceeds payable under the policies may be paid solely to such mortgagee/or lessor only if such mortgagee or lessor agrees that the same shall be made available to pay restoration or rebuilding costs.

C. Workers' Compensation Coverage. Tenant shall provide to Landlord a certificate of insurance evidencing proof of coverage within the statutory limits providing a Waiver of Subrogation to Landlord.

D. Pollution and Environmental Insurance. Pollution and environmental insurance with a combined single limit of One Million Dollars (\$1,000,000.00) insuring against any and all liability of the insured with respect to the Premises or arising out of Tenant's activities at the Premises.

E. Policy Form. All policies of insurance provided for herein shall be issued by insurance companies satisfactory to Landlord with general policyholders' rating of not less than A and a financial rating of AAA as rated in the most current available "Best's Insurance Reports", and qualified to do business in the State of North Carolina, and shall be issued in the names of Landlord, Tenant, and such other person or firms as Landlord specifies from time to time, including mortgagees of Landlord. Such policies shall contain a waiver of the right of subrogation against Landlord. Such policies shall be for the mutual and joint benefit and protection of Landlord, Tenant, and others hereinabove mentioned, and executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within five (5) days after Tenant's receipt of written request therefor. All public liability and property damage policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to Landlord and Landlord's servants, agents, and employees by reason of the negligence or misconduct of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. Tenant shall provide written notice to Landlord at least fifteen (15) days prior to the expiration of the term of each such insurance policy, of any cancellation or lapse, or the effective date of any reduction in the amounts of insurance. All public liability, property damage, and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. If Tenant fails to keep any such insurance in force, Landlord may, but shall not be required to, obtain such insurance, and the expense thereof shall constitute and be collectible as Additional Rent, payable to Landlord on Landlord's demand.

**8.2 Exculpation of Landlord.** It is expressly understood and agreed by and between Landlord and Tenant that Landlord shall have no liability for damage or injury to any person or property in, on or about the Premises caused by or resulting from acts or omissions of any tenant, occupant, licensee or invitee of the Premises, electricity, gas, rain, ice, snow, or leakage or flow of water from or into any part of the Improvements, or from any other cause or occurrence, unless such damage or injury is caused by or results from the gross negligence or willful misconduct of Landlord or Landlord's agents, employees, representatives, or contractors.

**8.3 Tenant's Indemnification of Landlord.** Tenant agrees to indemnify, protect, defend and hold Landlord and Landlord's partners, shareholders, employees, lender and managing agent harmless from and against any and all claims, losses, costs, liabilities, actions and damages, including, without limitation, attorneys' fees and costs by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from any breach or default on the part of Tenant in the performance of any representation, warranty, covenant or other agreement on the part of Tenant to be performed, pursuant to the terms of this Lease, or arising from any action, inaction or negligence on the part of Tenant or its agents, contractors, servants, employees, licensees or invitees, or arising from any accident, injury or damage to the extent caused by Tenant or its agents or employees to any person, firm or corporation occurring during the Term of this Lease or any renewal thereof, in or about the Premises, and from and against all costs, reasonable attorneys' fees, expenses and liabilities actually incurred in or about any such claim or action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord or its managing agent by reason of any such claim, Tenant, upon notice from

Landlord, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord.

**8.4 Tenant's Property.** All property on the Premises belonging to Tenant or its agents, employees, invitees or otherwise located at the Premises, shall be at the risk of Tenant only, and Landlord shall not be liable for damage thereto or theft, misappropriation or loss thereof and Tenant agrees to defend and hold Landlord and Landlord's agents, employees and servants harmless and indemnify them against claims and liability for injuries to such property; provided, however, the foregoing shall not apply to any intentional or grossly negligent act or omission of Landlord, its employees, agents or independent contractors or to a breach of this Lease by Landlord.

## ARTICLE 9 – [INTENTIONALLY DELETED]

## ARTICLE 10 - DAMAGE AND DESTRUCTION

**10.1 No Abatement of Rent.** Notwithstanding any statute or rule of law of the state in which the Premises are located to the contrary, if the Improvements or any part thereof are damaged or destroyed by fire or other casualty, this Lease shall continue in full force and effect and such damage or destruction shall not affect, abate or mitigate Tenant's obligation to pay rental or other sums due hereunder.

**10.2 Restoration of Improvements.** In the event of damage to or destruction of the Improvements, then, within a reasonable period of time after the date of the damage or destruction, Tenant shall proceed to repair, restore, and replace the Improvements to their prior condition and shall have available to it all proceeds from Tenant's property insurance; provided, however, in the event more than fifty percent (50%) of the square footage of the Improvements are damaged or destroyed, Tenant may elect not to restore the Improvements to their prior condition, in which case Tenant shall promptly tear down and remove all remaining parts of the Improvements and restore the Premises to their original condition. Tenant's determination not to restore the Improvements shall not affect any of Tenant's obligations under this Lease. In the event the Improvements are to be restored, the proceeds of Tenant's property insurance shall be placed in an escrow account and shall be applied exclusively to the costs of repairs and replacements. The escrow account shall be maintained by Landlord or by Tenant's leasehold mortgagee, if required, and shall be disbursed during the course of the repairs. If the insurance proceeds are insufficient to pay the costs of the repair work, Tenant shall pay any and all deficiency. Under no circumstances shall Landlord be obligated to make any payment, disbursement or contribution towards the cost of the repairs or replacements. If the proceeds exceed the cost of such work, Tenant may retain the excess, except that, where any leasehold mortgage contains a contrary provision regarding the excess, such provision shall govern the application of the excess insurance proceeds.

## ARTICLE 11 - CONDEMNATION



**11.1 Complete Taking.** If, at anytime during the Term, the whole of the Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, including any such taking by "inverse condemnation," then this Lease shall terminate as of the earlier of the date that title vests in the condemnor or the date that the condemnor takes possession of the property so taken ("Date of Taking"). In such event, Minimum Monthly Rent, all Additional Rent, and all other charges payable hereunder shall be prorated and paid to the date of termination.

**11.2 Partial Taking.** If, at anytime during the Term, more than fifty percent (50%) of the acreage of the Premises or any part of a driveway or other access way which is reasonably necessary for access to the business on the Premises is taken for the purposes set forth in Section 11.1 and Landlord cannot provide an alternative driveway or access, and such taking materially, adversely affects the operation of the business on the Premises, Tenant shall have the right to terminate this Lease as of the Date of Taking, by giving written notice of such termination to Landlord within ninety (90) days after the date of Tenant's receipt of notice of such taking. In such event, Minimum Monthly Rent, all Additional Rent, and all other charges payable hereunder shall be prorated and paid to the date of termination.

**11.3 Allocation of Condemnation Award.** Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 11.3, provided Tenant's award does not reduce or affect Landlord's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

## **ARTICLE 12 - BANKRUPTCY**

If, at any time during the Term, bankruptcy, insolvency or other similar proceedings shall be instituted by or against Tenant, whether or not such proceedings result in an adjudication against Tenant, or should a receiver of the business or assets of Tenant be appointed, such proceedings or adjudication shall not affect the validity of this Lease so long as the Rent and additional rent reserved hereunder continues to be paid to Landlord when due, and the other terms, covenants and conditions of this Lease on the part of Tenant to be performed are performed, and in such event this Lease shall remain in full force and effect in accordance with its terms.

## **ARTICLE 13 - ASSIGNMENT AND SUBLETTING**

This Lease may be assigned pursuant to the terms set forth in Section 19 of the Development Agreement. The Premises may not be sublet by the Tenant to any other party.

## **ARTICLE 14 - EVENTS OF DEFAULT; REMEDIES**

**14.1 Events of Default.** The occurrence of any one or more of the following events (in this Article sometimes called an "Event of Default") shall constitute a default and breach of this Lease by Tenant:

a. If Tenant fails to pay any Rent or Additional Rent payable under this Lease or fails to pay any obligation required to be paid by Tenant and such failure shall continue for a period of ten (10) days after written notice from Landlord to Tenant that the same is due and payable.

b. If Tenant fails to perform any of Tenant's non-monetary obligations or breaches any covenant or representation or warranty under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more time is required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) day period and thereafter diligently pursues its completion without interruptions. The notice required by this subsection is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement.

c. If Landlord discovers that any financial statement, warranty, representation or other information given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest of Tenant or any guarantor of Tenant's obligation hereunder, and any of them, in connection with this Lease, was materially false or misleading when made or furnished.

d. Abandonment of the Premises, Improvements or the leasehold estate.

**14.2 Remedies.** Upon the occurrence of an Event of Default by Tenant, and at any time thereafter, at Landlord's option, and without limiting Landlord in the exercise of any other rights or remedies which Landlord may have at law or in equity by reason of such breach, with or without notice or demand, Landlord may:

a. Without terminating this Lease, re-enter the Premises with or without service of notice or resort to process of law, take possession of the same, and expel or remove Tenant and all other parties, occupying the Premises and remove all property of Tenant and store such property in a public warehouse or elsewhere at the costs of and for the account of Tenant without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may, at its option, at any time and from time to time repair, alter, remodel and/or change the character of the Premises as it may deem fit and/or relet the Premises or any part thereof for the account of Tenant, for such term, upon such conditions, and at such rental as Landlord may deem proper. In such event, Landlord may receive and collect the rent from such reletting and shall apply it against any amounts due from Tenant hereunder, including, without limitation, such expenses as Landlord may have incurred in recovering possession of the Premises, placing the same in good order and condition, altering or repairing the same for reletting, and all other expenses, commissions and charges, including attorneys' fees, which Landlord may have paid or incurred in connection with such repossession and

reletting. Landlord may execute any Lease made pursuant hereto in Landlord's name or in the name of Tenant, as Landlord may see fit, and the Tenant thereunder shall be under no obligation to see to the application by Landlord of any rent collected by Landlord, nor shall Tenant have any right to collect any rent thereunder. Whether or not the Premises are relet, Tenant shall pay to Landlord all amounts required to be paid by Tenant up to the date of Landlord's reentry, and thereafter Tenant shall pay to Landlord, until the end of the Term, the amount of all rent and other charges required to be paid by Tenant hereunder, less the proceeds of such reletting as provided above. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and Landlord need not wait until the termination of this Lease to recover them by legal action or otherwise. Landlord shall not be deemed to have terminated this Lease or the liability of Tenant for the total rent hereunder by any reentry or other act, unless Landlord shall give Tenant written notice of Landlord's election to terminate this Lease.

b. Terminate this Lease by giving written notice to Tenant of Landlord's election to so terminate, re-enter the Premises with or without process of law and take possession of the same, and expel or remove Tenant and all other parties occupying the Premises, and remove all property of Tenant and store such property in a public warehouse or elsewhere at the costs of and for the account of Tenant without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.

**14.3 Limitation on Landlord's Liability.** In the event of a default or breach by Landlord in the performance of Landlord's obligations hereunder or a violation by Landlord of any of the provisions of this Lease, there shall be no personal liability of Landlord and Tenant shall look solely to the equity of Landlord in the Premises for satisfaction of Tenant's remedies.

## **ARTICLE 15 - SURRENDER OF THE PREMISES**

At the expiration or earlier termination of this Lease pursuant to the provisions hereof, Tenant shall quit and surrender the Premises to Landlord without delay, and in good order, condition and repair, ordinary wear and tear (and damage and destruction or condemnation if this Lease is terminated pursuant to either Article 10 or 11 excepted). Such surrender of the Premises shall be accomplished without the necessity for any payment therefor by Landlord. Upon such event, title to the Improvements shall automatically vest in Landlord without the execution of any further instrument; provided, however, Tenant covenants and agrees, upon either such event, to execute (at no cost or expense to Tenant) such appropriate documentation as may be reasonably requested by Landlord to transfer title to the Improvements to Landlord.

## **ARTICLE 16 - QUIET ENJOYMENT AND TITLE**

**16.1 Covenant of Quiet Enjoyment.** Subject to the terms of this Lease, upon paying the Rent and Additional Rent and performing the other terms, covenants and conditions of this Lease on Tenant's part to be performed, Tenant shall and may peaceably and quietly have, hold, occupy, possess and enjoy the Premises during the Term, subject to the rights, if any, of the parties under easements or encumbrances of record or pursuant to the Declaration.

**16.2 Right to Possession.** Landlord covenants, warrants and represents that: (a) Landlord alone has the full right to lease the Premises for the Term and as set forth in this Lease, (b) the Premises are now unoccupied and tenant-free, and (c) absolute, tenant-free possession of the Premises will be delivered to Tenant on the Effective Date.

#### **ARTICLE 17 - TRADE FIXTURES**

Anything contained in this Lease to the contrary notwithstanding, Landlord acknowledges, consents and agrees that all furniture, fixtures and equipment which are installed or placed in, on or about the Improvements or other parts of the Premises by Tenant or its affiliate ("Trade Fixtures"), whether affixed to the Premises or otherwise (excluding heating, ventilating, and air conditioning system, and all electrical, mechanical, and plumbing systems and components thereof that constitute an integral part of the Building), shall be and at all times remain the property of Tenant or its affiliate and provided that Tenant is not in default under the terms of this Lease, may be removed at any time during the Term or upon the expiration or earlier termination of this Lease, whether or not such Trade Fixtures may be regarded as property of Landlord by operation of law or otherwise. Tenant shall cause any damage to the Improvements caused by such removal to be repaired at no cost to Landlord, including performing any work that may be required to restore the Improvements to a complete architectural unit, such as, by way of example only, restoring an exterior wall section left open after removal of equipment that theretofore served to complete the wall section. Provided that Tenant is not at such time in default under the terms of this Lease, Landlord further agrees that, upon expiration or earlier termination of this Lease, Tenant shall have the right to remove from the Premises all signs and other distinctive features of the business on the Premises. Tenant shall, at its expense, repair any damage caused by such removal.

#### **ARTICLE 18 - SUBORDINATION**

**18.1 Subordination.** This Lease and all of Tenant's rights hereunder are and shall be subordinate to any mortgages or deeds of trust which Landlord may place on the the Premises. Upon Landlord's request, Tenant shall promptly execute and deliver to Landlord such instrument as may be reasonably necessary to effect such subordination, in form and content reasonably acceptable to Landlord, provided that Landlord delivers to Tenant an agreement in writing and in recordable form from the mortgagee or holder of the deed of trust requesting such subordination to the effect that:

a. Such person shall not for any reason disturb the possession, use or enjoyment of the Premises by Tenant, its successors and assigns, so long as all of the obligations of Tenant are fully performed in accordance with the terms of this Lease; and

b. Such person shall permit application of the insurance proceeds and condemnation proceeds in accordance with Articles 10 and 11 above, respectively, in the event of damage to or destruction of the Improvements, or condemnation of the Improvements or any part of the Premises.

## ARTICLE 19 - HAZARDOUS SUBSTANCE OR WASTE

**19.1 Landlord's Liability.** Landlord hereby represents and warrants that, to the best of its actual knowledge without investigation, there does not exist on, in or under the Premises any "hazardous substance" or "hazardous waste" as those terms are used under the various applicable federal and state environmental laws, including, without limitation, petroleum, petroleum products and asbestos-containing materials ("Hazardous Material").

**19.2 Tenant's Liability.** Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials on or from the Premises. Tenant shall not allow the storage or use of such substances or materials in or on the Premises in any manner not sanctioned by law and by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into or on the Premises, any such materials or substances except to use in the ordinary course of business. If any such Hazardous Material is discovered at any time during the Term or any time thereafter, Tenant shall indemnify, defend with counsel reasonably satisfactory to Landlord, and hold and save Landlord harmless from and against all claims, liabilities, actions, judgments, responsibilities and damages of every kind and nature arising from or related to the presence of such Hazardous Material during said period, including investigation costs, engineering fees, remediation costs and reasonable attorney's fees.

**19.3 Hazardous Material.** Without limitation, "hazardous substances and material" shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; any applicable state or local laws and the regulations which have been or may be enacted for the purpose of regulating or governing the environment or any aspect thereof, If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials in violation of Tenant's obligations under this Section 19.3, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as Additional Rent if such requirement applies to the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of hazardous materials on the Premises occurring while Lessee is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The covenants in this Section 19.3 shall survive the expiration or earlier termination of the term of this Lease.

## ARTICLE 20 - NOTICES AND DEMANDS

Any notice, demand or other communication required or permitted by law or any provision of this Lease to be given or served on either party shall be in writing, addressed to the party at the address set forth below, or such other address as the party may designate from time to time by notice, and (a) deposited in the United States mail, registered or certified, return receipt requested, postage prepaid or (b) delivered by an overnight private mail service which

provides delivery confirmation such as, without limitation, Federal Express, Airborne or UPS,. All communications delivered as set forth herein shall be deemed received at the earlier of actual delivery, forty-eight (48) hours after deposit in registered or certified United States mail, postage prepaid or twenty-four (24) hours after deposit with an institutional overnight delivery service, and addressed to the parties as follows:

To Landlord:

Gray Cash  
738 Cash St.  
Apex, NC 27502

To Tenant:

Town Manager  
73 Hunter St. PO Box 250  
Apex, NC 27502

#### ARTICLE 21 - ATTORNEY'S FEES

If any action or proceeding, whether judicial or non-judicial, is commenced with respect to any claim or controversy arising from a breach of this Lease or seeking the interpretation or enforcement of this Lease, including any exhibits attached hereto, in addition to any and all other relief, the prevailing party or parties in such action or proceeding shall receive and be entitled to recover all costs and expenses, including reasonable attorney's fees and costs, incurred by it on account of or related to such action or proceeding.

#### ARTICLE 22 - GENERAL PROVISIONS

**22.1 Binding on Successors.** All of the covenants, agreements, provisions and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto, their successors, legal representatives and assigns.

**22.2 Severability.** If any term or provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable, to any extent, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the maximum extent permitted by law.

**22.3 Entire Agreement.** This Lease and the exhibits attached hereto contain the entire agreement between the parties and shall not be modified in any manner except by a document executed by the parties hereto or their respective successors in interest.

**22.4 Captions.** The captions used in this Lease are inserted as a matter of convenience only, and in no way define, limit or describe the scope of this Lease or the intentions of the parties hereto, and shall not in any way affect the interpretation or construction of this Lease.

**22.5 No Waiver.** A waiver by Landlord or Tenant of any breach of any provision of this Lease shall not be deemed a waiver of any breach of any other provision hereof or of any subsequent breach by Tenant or Landlord of the same or any other provision.

**22.6 Time of Essence.** Time is of the essence with regard to every provision of this Lease and the exhibits attached hereto.

**22.7 Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

**22.8 Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.

**22.9 No Third Party Rights.** The terms and provisions of this Lease shall not be deemed to confer any rights upon, nor obligate any party hereto to, any person or entity other than the parties hereto.

**22.10 Landlord's Right of Entry.** Landlord reserves the right to enter upon the Premises at any time during construction or repair of Improvements or regular business hours to inspect the same or for the purpose of exhibiting the same to prospective purchasers or mortgagees or, during the last six (6) months of the Term or Extended Term, to prospective lessees. Landlord may post any customary sign stating "for lease" or "for sale" during the last six (6) months of the Term or Extended Term.

**22.11 Estoppel Certificates.** Landlord and Tenant agree that within fifteen (15) days after receipt of a written request from either to the other, the party receiving the request will execute and deliver to the other a certificate certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modifications and that, as so modified, this Lease is in full force and effect, (b) the date to which the rent and other charges hereunder are paid in advance, if any, (c) the then-scheduled expiration date of the Term and the number and duration of any unexercised, unexpired options to extend the Term, (d) that to the certifying party's knowledge, as of the date of the certificate, there are no uncured defaults hereunder on the part of the requesting party or specifying such defaults as are claimed by the certifying party, and (e) as to such other matter as may be reasonably requested by the certifying party.

**22.12 Due Authorization.** Each person executing this Lease on behalf of Landlord and Tenant, respectively, warrants and represents that the party for whom he or she is acting has been duly formed, is in good standing, and has duly authorized the transactions contemplated herein and the execution of this Lease by him or her and that, when so executed, this Lease shall constitute a valid and binding obligation of the party on whose behalf it is so executed.

**22.13 Relationship of Parties.** Nothing contained in this Lease shall be deemed to create a partnership or joint venture between Landlord and Tenant, and Landlord and Tenant's relationship in this Lease shall be deemed to be one of landlord and tenant only.

**22.14 Incorporation of Exhibits.** All exhibits attached to this Lease are hereby incorporated herein as though set forth in full in this Lease itself.

**22.15 Controlling Document.** Notwithstanding anything contained in this Lease to the contrary, all terms in this Lease are subject to the terms of the Development Agreement, dated December \_\_, 2017, by and between the Tenant and the Landlord, and in the event of any ambiguity or conflict between this Lease and the Development Agreement, the terms of the Development Agreement shall control.

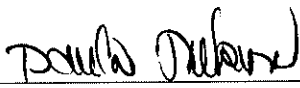
(SIGNATURE PAGE FOLLOWS)

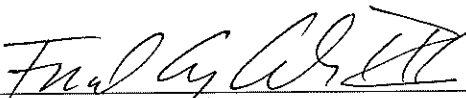


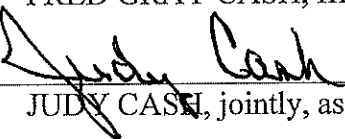
IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

**LANDLORD:**

**JACK1, LLC,  
a North Carolina limited liability company**

By:  (SEAL)  
PAULA PERKINS, Member-Manager


By:  (SEAL)  
FRED GRAY CASH, III, and

By:  (SEAL)  
JUDY CASH, jointly, as Member-Manager


IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

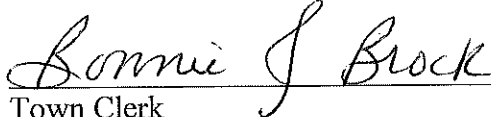
**TENANT:**

**TOWN OF APEX, NORTH CAROLINA**

By:   
Name: Vance Olive  
Title: Mayor

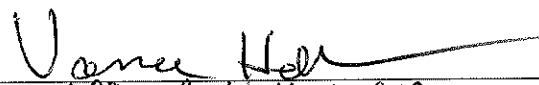
**ATTEST:**

  
Name: Bonnie J Brock

  
Town Clerk

Deputy

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

  
Name: Vance Holloman  
Finance Officer, Town of Apex, North Carolina

**EXHIBIT A**

**DEVELOPMENT AGREEMENT**  
**BETWEEN**  
**TOWN OF APEX, NORTH CAROLINA**  
**AND**  
**JACK1, LLC**

**ENTERED INTO ON THE 14<sup>th</sup> DAY OF DECEMBER, 2017**

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into this \_\_\_ day of December, 2017, between **THE TOWN OF APEX, NORTH CAROLINA**, a political subdivision of the State of North Carolina and municipal corporation (alternatively the "Town" or "Apex"), and **JACK1, LLC**, a North Carolina limited liability company (referred to as "Jack 1"). The Town and Jack 1 are referred to herein individually as a "Party" and collectively as the "Parties."

**WHEREAS**, Jack 1 owns land as described in Exhibit A, which is located within Wake County (the "Property");

**WHEREAS**, the Town desires to acquire and develop the Property for purposes of promoting economic development within the Town, and thereby creating an increase in employment and an improved and diversified property tax base;

**WHEREAS**, the Parties desire to structure the acquisition in such a way as to allow for the Town's funds to go to infrastructure to serve the Property, improvements to the Property, and marketing of the Property, which will be for the mutual benefit of both of the Parties; and

**WHEREAS**, the Parties desire to enter into the equity participation arrangement described herein.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Ground Lease.** Jack 1, contemporaneously with the execution of this Agreement, has entered into a ground lease (the "Lease") of the Property to the Town. The Lease is in the form as shown at Exhibit B. The initial term of the Lease is three (3) years from the Effective Date, as defined in Section 33 below. If Apex is in compliance with the Development and Marketing Milestones as set forth in Section 10 of this Agreement, at each time that Apex has an opportunity for an extension of the Lease, Apex shall have the option, in its sole discretion, to extend the term of the Lease for up to three (3) additional three (3) year lease terms, resulting in a total lease term of twelve (12) years. Provided however, if Apex fails to meet one (1) or more of the Development and Marketing Milestones as set forth in this Agreement, in the initial term or any additional optional term of this Lease, then the Town may only extend the Term of this Lease for the next three (3) year Lease term with the written consent of Jack 1. At the end of the initial Lease term or any extended optional three (3) year Lease term, if the Town has failed to meet a Development or Marketing Milestone required to be completed prior to the expiration of that Lease term, Jack 1 shall have the right to terminate this Lease.

2. **Lease Payments.** As more fully set forth in the Lease, the Lease payments pursuant to the terms of the Lease will be equivalent to the amount by which the personalty and real estate property taxes due and attributable to the Property each year exceed the amount of the annual property taxes actually paid by Jack 1 for the Property as of the date of the execution of the Lease, which increases in any such taxes are attributable to the Town's development efforts, the passage of time, and/or a result of being annexed into the Town, pursuant to Section 7 below. Provided however that the Town will not be responsible for paying any late fees or interest on property taxes due on the Property. Lease payments shall be paid by the Town annually to Jack 1 no later than thirty (30) days following the date on which Jack 1 gives its annual property tax bill and proof of payment of that bill to the Town. It is understood and agreed that the Town will not assess any impact fees on Jack 1 by virtue of this lease and option arrangement. But, provided however, that if Jack 1 chooses to reacquire full title to any portions of the Property, pursuant to Section 13, and to build a facility to lease to an end user, impact fees may be imposed by the Town as a result of that new facility and the company to occupy the facility, and that those impact fees will be due and payable by Jack 1 or the company to occupy the new facility.

3. **Insurance and Indemnification.** As more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will maintain property, casualty and environmental impairment insurance on the Property to cover any damages or liabilities which might arise as a result of the Town's development activities, and the Town will provide copies of all such insurance policies to Jack 1 upon request. Such insurance policies shall name Jack 1 as additional insured parties. Also, as more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will defend, indemnify and hold Jack 1 harmless from any damages or losses whatsoever which are the result of any actions, inactions, or neglect on the part of the Town or its contractors, agents or invitees. Provided however that the Town shall not have the responsibility of providing insurance coverage for or indemnifying Jack 1 for any property, casualty or environmental losses, claims or damages arising before or attributable to conditions of the Property prior to the Effective Date of this Agreement.

4. **Option to Purchase.** The Town and Jack 1, contemporaneously with the execution of the Lease, have entered into an option to purchase (the "Option"), pursuant to which the Town will have the option [in its sole discretion] to purchase all or portions of the Property, pursuant to the terms, conditions, and limitations set forth herein and in the Option. The Option shall be in the form as shown at Exhibit C. The Town shall pay Jack 1 an option fee of one hundred dollars (\$100.00) in consideration for the Option.

5. **Term of Option.** The Option shall have an initial term of three (3) years which shall run contemporaneously with the initial term of the Lease as set forth in Section 1 above. The Option may be extended, [in the sole discretion] of Apex, for up to three (3) additional three (3) year terms, if the Town also exercises its corresponding options to enter into extended three (3) year terms under the Lease. If Apex does not exercise its option to enter into a three (3) year extension of the Lease, or if this Agreement or the

Lease is terminated for any reason whatsoever, then the Option shall be terminated as of the date the Lease is terminated.

6. **Exercise of Option.** The Town may acquire all or portions of the Property, pursuant to the terms and price as set forth in Sections 8 and 9 below, respectively.

7. **Annexation.** Within fifteen (15) business days following the execution of this Agreement, Jack 1 will file applications for the Property to be annexed into the Town's territorial jurisdiction and to rezone the Property to LI-CZ, and will fully cooperate in and continue to pursue the annexation and zoning processes until their conclusion. The Town will dedicate a staff member to assist Jack 1 in the entire annexation and rezoning processes and will waive any applicable fees, such that Jack 1 will incur no costs related to these processes. Should the Cash Family fail to comply with this term or if the annexation or zoning is not finally approved for any reason whatsoever, this Agreement and the Lease and Option shall be terminated and the Parties will have no further obligations from one to the other; provided, however, that the Town's indemnity obligations as set forth in Section 3 above shall survive any termination of the Lease or this Agreement.

8. **Property Conveyance.** When the Town chooses to exercise its rights under the Option from time to time to acquire all or portions of the Property, those purchases shall be pursuant to a Contract to Purchase in the form as set forth at Exhibit D. Jack 1 will donate to the Town any rights of way necessary for the installation of water lines, waste water treatment lines, electrical lines and roads into and to serve the Property, and for the placement of signage and plantings at the entrance to the Property. The portions of the Property donated by Jack 1 to the Town shall not be subject to the minimum acreage requirements referred to herein.

9. **Purchase Price.** The purchase price of the Property (as defined below) is to be paid on an acreage release basis as all or portions of the Property are purchased by the Town. As used herein, the term "Purchase Price" shall mean the sum of the following:

- a. The price of the Property, per acre, as of the date hereof (the "Base Price"). The Base Price has been determined by an appraisal of the Property in its current state, prior to the execution of this Agreement, with such appraisal having been completed by an appraiser agreed to by the Parties. Such appraisal of the Property is attached hereto as Exhibit H and made a part hereof. The Base Price is fifty four thousand nine hundred eighty five dollars (\$54,985.00) per acre.
- b. Plus, twenty-five percent (25%) of the "equity" created in the Property by virtue of the Town's development and marketing efforts, the construction of new company facilities on the Property, and/or the passage of time (the "Equity Participation Portion"). The equity in the Property is defined as the difference between the cumulative total of the Base Price per acre or portion thereof, plus reimbursement to Apex of a per acre or portion of an acre pro rata amount of all Development Costs expended by the Town in the

development of the Property, and the per acre fair market value of the Property as determined by a mutually satisfactory appraisal completed by an appraiser agreed to by the Parties at the time the Town notifies Jack 1 of its desire to purchase all or portions of the Property.

At such time as the Town notifies Jack 1 of its desire to purchase all or portions of the Property, a survey will be completed to determine the acreage to be acquired by the Town. All such surveys shall be paid for by the Town, and the costs of such surveys will be included in the Town's Development Costs. The Town will pay to Jack 1 the Purchase Price for each acre or portion of an acre on a pro rata basis of the Purchase Price for an acre which will be equal to the percentage rounded to the nearest hundredth of a percent of an acre being purchased.

NOTWITHSTANDING THE ABOVE DEFINITION OF THE "PURCHASE PRICE," OR ANYTHING ELSE TO THE CONTRARY AS SET FORTH HEREIN, IN NO EVENT WILL THE PURCHASE PRICE TO BE PAID TO JACK 1 EVER BE LESS THAN THE BASE PRICE, AS DEFINED ABOVE.

10. **Development and Marketing Milestones.** It is understood and agreed that a portion of the value to be realized by Jack 1 is based upon the Town undertaking development efforts and aggressively marketing the Property which is expected to increase the fair market value of the Property and thereby increase Jack 1's Equity Participation Portion. Consequently, the Town's adherence to the following milestones in its development efforts and marketing of the Property (the "Development and Marketing Milestones") are an essential part of this Agreement and are a material inducement to Jack 1's execution hereof. To this end, the Town will achieve the following Development and Marketing Milestones no later than the timeframes shown below following the effective date of this Agreement:

a. Application for rezoning of the Property to LI-CZ	No Later Than Sixty (60) days following the Effective Date
b. Development of marketing materials	No Later Than Ninety Days (90) following the Effective Date
c. Extension of wastewater treatment service to the Property	No Later Than One (1) Year following the Effective Date
d. Construction of short road into the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
e. Extension of electric service to the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date

f. Development of entrance and signage to the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
g. Site Certification	No Later Than One Hundred and Eighty Days (180) following the Effective Date
h. Extension of water service to the Property	No Later Than One Hundred and Eighty (180) days following the Effective Date
i. Purchase of percentages of the Property: i. Ten percent (10%)  ii. Additional fifteen percent (15%)  iii. Additional twenty-five percent (25%)  iv. Additional twenty-five percent (25%)  v. Additional twenty-five percent (25%)	No Later Than Three Years following the Effective Date of this Agreement  No Later Than Five Years following the Effective Date of this Agreement  No Later Than Six (6) Years following the Effective Date of this Agreement  No Later Than Seven (7) Years following the Effective Date of this Agreement  No Later Than Eight (8) Years following the Effective Date of this Agreement

11. **Liens and Encumbrances.** The Town shall not place any liens on or encumber the Property without the prior written consent of Jack 1, which consent shall not be unreasonably conditioned, delayed, or withheld. The prior sentence notwithstanding, the Town shall have the right to acquire by donation of Jack 1 rights of way for any utility infrastructure or roads to be placed on the Property. Development Costs incurred by the Town shall be evidenced by a promissory note securing future advances in the form as shown at Exhibit E and will be secured by a deed of trust in the form as shown at Exhibit F.



The promissory note at Exhibit E will not require any interest. Payments of the amounts evidenced by this promissory note will be payable on a pro rata basis as property is sold by Jack 1, as set forth in Section 12 below, or offset against the compensation due to Jack 1 for parcels purchased by the Town, pursuant to Sections 6, 8 and 9 above.

12. **Satisfaction of Deed of Trust.** As portions of the Property are sold by Jack 1 to the Town or a business and thereby released from the Lease and the Option as described in Section 13 below, or are sold by Jack 1 following the termination of the Lease and the Option, and after the payment of the Development Costs and the Town's equity share as described in Section 13 below, the Town will provide to Jack 1 an executed Satisfaction of Promissory Note and Deed of Trust which shall be in the form as shown at Exhibit G. These documents will be executed by the Town and delivered to Jack 1 contemporaneously with the payment of the amounts as described in Section 13 below.

13. **Jack 1 Reacquisition of Property.** Jack 1 shall have the option to release portions of the Property from the Lease and Option if they have an agreement to sell all or portions of the Property to a business which meets the criteria set forth in Section 14 below. In the event that Jack 1 does exercise its option to so release certain portions of the Property, it shall pay to the Town an amount which is the sum of the following amounts on a per acre, or pro rata per acre, basis:

- a. A pro rata portion or a per acre basis of the Development Costs incurred by the Town on the Property; and
- b. Seventy-five percent (75%) of the "equity" in the Property, as defined in Section 9.b. above, attributable to the portion of the Property which is released from the Lease and Option.

14. **Acceptable Businesses.** It is understood and agreed by the Parties that neither the Town nor Jack 1 will recruit a business to the Property or sell Property to a business unless it meets the following criteria:

- a. The business will provide new jobs and/or capital investments sufficient to meet the economic development goals of the Town.
- b. The zoning required for that particular business will be consistent with the zoning applicable to the Property as set forth in Section 10.a. above.
- c. The type of business being recruited will not be detrimental to the future development of the Property as a whole.
- d. The business will require the utilization of at least ten (10) acres for its facility; or if agreed to by Jack 1, less than ten (10) acres.

- e. To the knowledge of the Town and Jack 1, the business will not be planning to conduct any testing of its products on animals within the facility to be located on the Property.

The obligation of Jack 1 to only sell portions of the Property to companies which will meet the above criteria shall remain in effect for seven (7) years following the date on which the Lease and Option are terminated; provided, however, that no restrictions on the future lease or sale of the Property (or any portions thereof) shall apply in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder. Such requirements will be set forth in deed restrictions.

15. **Deferred Taxes.** Jack 1 may have to pay up to three (3) years of deferred taxes as a result of a change in the zoning of the Property. The Town will provide funds to Jack 1 to pay for any and all deferred taxes that Jack 1 might be required to pay. Any of the amounts advanced to Jack 1 by the Town shall be credited against the Purchase Price of the first portion(s) of the Property purchased by the Town. If this transaction is terminated as a result of Jack 1 reacquiring a portion or all of the Property pursuant to Section 13, then the amount of such funds advanced to Jack 1 by the Town shall be added to the promissory note and secured by the deed of trust as set forth in Section 11; provided, however, that Jack 1 will not be under any obligation to return any such funds in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder.

16. **Jack 1 Leases.** It is understood by the Parties that Jack 1 has an interest in any opportunity to lease Property and improvements to companies that might be recruited to or located on the Property. Consequently, the Town will allow Jack 1 the earliest opportunity possible to talk with companies being recruited, to the extent that the company is interested in a lease arrangement and is willing to discuss this with Jack 1. Also, prior to contact with the company, Jack 1 and its representatives will sign a confidentiality agreement, in a form reasonably acceptable to the Town and company being recruited, protecting the interests of the company being referred to them.

17. **Warranties.** Except as set forth in the Contract to Purchase at Exhibit D or any of the other documents attached hereto, there are no other warranties from one Party to the other.

18. **Temporary Extensions of Development and Marketing Milestones.** Notwithstanding anything herein to the contrary, if the Town shall be prevented or delayed from fulfilling, or continuing to fulfill, any of the Development and Marketing Milestones set forth herein by direct reason of a:

- a. Government moratorium affecting Town operations beyond the scope of this Agreement and the activities contemplated hereunder;

- b. Delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite timely and reasonable efforts by the Town to obtain same;

- c. Enemy or hostile governmental action;
- d. Act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- e. Strike, lockout or a labor dispute involving entities other than the Town which causes the Town an inability to obtain labor or materials;
- f. Any failure or neglect of Jack 1 to undertake a necessary act despite written notice and a reasonable opportunity to cure same; or
- g. Any other event, other than normal business exigencies, which is beyond the reasonable control of the Town,

then the time allowed to achieve Development and Marketing Milestones shall be equitably expanded to reflect the effect of such event, with there being one day of extension of time in all of the Development and Marketing Milestones for each day of delay caused by a force majeure.

19. **Assignments.** Notwithstanding anything contained in this Agreement or any document related to this Agreement the contrary, this Agreement and any rights and/or obligations related to this Agreement, may be assigned by Jack 1 without the prior written consent of the Town or any other third party. This Agreement shall not be assigned by Jack 1 to any entity created or organized outside of the United States without prior written consent of the Town. Any assignee of Jack 1 shall be subject to and bound by the terms of this Agreement to the same extent as Jack 1. This Agreement may only be assigned by the Town, upon prior written notice to Jack 1, to a nonprofit economic development entity established by the Town to assist in this project, provided that the Town shall guarantee the performance by any assignee of all obligations due under this Agreement and any documents related to this Agreement.

20. **LIMITED OBLIGATION OF TOWN. 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 TOWN'S SOLE DISCRETION 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 THE 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 SHALL TAKE PRIORITY.**

21. **Governing Law.** The Parties intend that this Agreement shall be governed by the law of the State of North Carolina.

22. **Notices.**

- a. Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.
- b. Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first class mail, postage prepaid, by overnight delivery, or by email, and addressed as follows:
  - i. If to Jack 1 LLC, to Gray Cash, 738 Cash St. Apex, NC 27502.
  - ii. If to the Town, to Town Manager, 73 Hunter Street, Post Office Box 250, Apex, North Carolina 27502 drew.havens@apexnc.org.
- c. Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

23. **Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

24. **Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

25. **Entire Agreement: Amendments.** This Agreement, including Exhibits A through G attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the Parties.

26. **Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by Parties and their respective successors and assigns.

27. **Time.** Time is of the essence in this Agreement and each and all of its provisions.

28. **Liability of Officers and Agents.** No officer, agent, or employee of the Town 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.

29. **Presumptions as to Drafter.** The Parties agree that each of them have been represented by legal counsel in the negotiation and drafting of this Agreement. Consequently, in the interpretation of this Agreement, no inference or presumption will be attributed to either Party as to such interpretation.

30. **E-Verify Compliance.** Jack 1 shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Jack 1 shall require all of Jack 1's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

31. **Iran Divestment Act Certification Required by N.C.G.S. 147-86.60.** N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement, Jack 1 hereby certifies that Jack 1 is not listed on the Final Divestment List created by the North Carolina State Treasurer and that Jack 1 will not utilize any subcontractors found on the Final Divestment List.

32. **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.

33. **Effective Date.** As used herein, the term "Effective Date" shall mean the date first shown above.

34. **Development Costs.** As used herein, the term "Development Costs" shall be defined as reasonable, and necessary costs actually paid by the Town, in its sole discretion, to third parties in direct connection with the Town's efforts to meet the Development and Marketing Milestones set forth in Section 10 above. Development Costs shall include, but not be limited to, all costs of materials, fees, contractor's labor, expenses and profits, mitigation costs, construction management, testing and certifications related to or necessary for the extensions of water and waste water treatment lines to and into the Property, electrical lines to and into the Property, roadways into the Property, signage and entrance improvements for the Property, certification of the Property, surveys of the Property as described herein, and appraisals of the Property as described herein. If the Town harvests timber from any portions of the Property, the proceeds from that timber sales will be applied to and deducted from the current amount of the accrued Development Costs. But if timber from any portions of the Property is harvested by any other party, and

the Town does not receive the proceeds from such timber sales, then this provision will not apply. Development Costs shall not include the Town's expenses for time spent or activities of Town employees. Jack 1 or its representatives shall have the right to examine the Town's records and receipts relating to any such Development Costs within twenty (20) days following the furnishing of any statement of same to Jack 1. Unless Jack 1 takes written exception to any item within fifteen (15) days following the furnishing of the statement to Jack 1, such statement shall be considered as final and accepted by Jack 1. If such examination reveals that the Town has overcharged Jack 1, the parties shall endeavor in good faith to agree upon a mutually acceptable amount of such costs. Additionally, in the event such examination reveals that the Town has overcharged Jack 1 by five percent (5%) or more, the Town shall also pay to the reasonable costs of such examination.

35. **Revisions to Attached Documents.** The documents attached as Exhibits to this Agreement are intended to be sufficient to effectuate and carry out the intent as expressed in this Agreement. If any of the documents at the attached Exhibits needs to be amended in one or more transactions between the Parties to close on the purchase of portions or all of the Property, the Parties will work together cooperatively and negotiate in good faith as to any needed amendments.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, 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.

**JACK1, LLC,**  
a North Carolina limited liability company

By: \_\_\_\_\_ (SEAL)  
PAULA PERKINS, Member-Manager

By: \_\_\_\_\_ (SEAL)  
FRED GRAY CASH, III, and

By: \_\_\_\_\_ (SEAL)  
JUDY CASH, jointly, as Member-Manager

**TOWN OF APEX, NORTH CAROLINA**

By: \_\_\_\_\_  
Name: Lance Olive, Mayor Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Donna Hosch, Town Clerk

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

\_\_\_\_\_  
Name: Vance Holloman  
Finance Officer, Town of Apex, North Carolina  
Date: \_\_\_\_\_

**EXHIBIT B**

**Legal Description of Premises**

Being those certain parcels or tracts of land located in White Oak Township, Wake County, North Carolina and more particularly described as follows:

Being all of Lot 1R, containing 60.6525 acres, and all of Lot 2R, containing 60.6525 acres, as shown on that survey entitled "Recombination Plat for Fred Gray Cash, III and Paula Perkins Trust", prepared by Smith and Smith Surveyors, dated October 8, 2013, and recorded in Book of Maps 2013, Page 1625, Wake County Registry.

Said parcels having Wake County PIN numbers of: 0751130961 and 0751234512