

NORTH CAROLINA

LAND EXCHANGE AGREEMENT

WAKE COUNTY

THIS LAND EXCHANGE AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2024, by and between ACRE Manager, LLC, a Delaware Limited Liability Company (“ACRE”) and the Town of Apex (“Town”)(each, a “party” and collectively, the “parties”).

WITNESSETH:

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

WHEREAS, ACRE and the Town desire to exchange certain tracts of real property of like value and the Apex Town Council authorized this Agreement on October 8th , 2024.

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

Section 1. Land Exchange.

(a) Town is owner of a 51.16-acre tract of land, Wake County PINs 0741326706 and 0741427922 (the “Town Tract”) and ACRE is under contract to purchase a 47.01-acre tract of land, Wake County PIN 0741331566 (the “ACRE Tract”). The Town Tract and the ACRE Tract are adjacent and share a common property line.

(b) Subject to the terms and conditions of this Agreement, Town agrees to convey to ACRE an approximately 34.81 acre portion of the Town Tract west of the future alignment of Perry Road, labeled “Tract #2” (the “Town Exchange Property”) on the exhibit titled “Hopson Gateway – Land Swap Exhibit 9-24-2024” attached as **Exhibit A** (the “Land Exchange Exhibit”) in exchange for an approximately 23.27 acre portion of the ACRE Tract east of the future alignment of Perry Road, labeled “Tract #3” (the “ACRE Exchange Property”) on the Land Exchange Exhibit. After Closing (as defined below), ACRE will own “Tract #1” and “Tract #2” (collectively, the “New ACRE Tract”) and the Town will own “Tract #3” and “Tract #4” (collectively, the “New Town Tract”). Prior to Closing, the parties shall cause an exempt subdivision plat (the “Exempt Subdivision Plat”) to be drafted to create the New ACRE Tract and the New Town Tract. The Exempt Subdivision Plat shall be held in trust and recorded at Closing contemporaneously with the Deeds. The Exempt Subdivision Plat may increase or decrease the acreages of the New ACRE Tract and New Town Tract by up to five (5%) as agreed to between the parties to reflect updated survey data and/or other development needs. If the tract acreages shown on the Exempt Subdivision Plat differ by more than five (5%) from the acreages shown on the Land Exchange Exhibit, either party may elect to terminate this Agreement or consent to the acreage as shown on the Exempt Subdivision Plat. Town consent to a difference in acreage greater than 5% shall be subject to the requirements of Article 12, Sale and Disposition of Property, Chapter 160A of the North Carolina General Statutes.

(c) At Closing (as defined below), ACRE shall pay the Town additional consideration (the “Additional Consideration”) which represents the difference between the market value of the Town Tract and the market value of the New Town Tract. The Additional Consideration, together with the conveyance of the ACRE Exchange Property to the Town, shall constitute full and fair consideration for the Town Exchange Property. The Additional Consideration shall be calculated as follows:

(i) If the closing of the swap occurs within 60 days of the approval of the resolution authorizing the exchange, the consideration to be paid by ACRE to the Town shall equal \$160,000.00 per acre for the difference in acreage between the Town Exchange Property and the ACRE Exchange Property. The difference in acreage is 11.54 acres. The consideration in this alternative (i) shall equal \$1,846,400.00.

(ii) If the closing of the swap occurs between 60 days after the approval of the resolution authorizing the exchange and August 31, 2025, the consideration to be paid by ACRE to the Town shall equal \$168,000 per acre for the difference in acreage between the Town Exchange Property and the ACRE Exchange Property. The difference in acreage is 11.54 acres. The consideration in this alternative (ii) shall equal \$1,938,720.00.

(iii) If the closing of the swap occurs after August 31, 2025, the consideration to be paid by ACRE to the Town shall equal \$176,400 per acre for the difference in acreage between the Town Exchange Property and the ACRE Exchange Property. The difference in acreage is 11.54 acres. The consideration in this alternative (iii) shall equal \$2,035,656.00.

If Tract acreages are adjusted on the Exempt Subdivision Plat as permitted by Section 1(b) of this Agreement, the Additional Consideration shall be adjusted using the formula provided above in subsections (i) through (iii).

Section 2. Rezoning. ACRE intends to develop the New ACRE Tract (the “Development”). The Development requires the New ACRE Tract to be rezoned (the “Rezoning”). Town agrees to execute any and all documents reasonably necessary to allow ACRE to submit the Rezoning application to include the Town Exchange Property no later than November 1, 2024.

Section 3. Underlying Contract. Town acknowledges ACRE is party to an agreement with the current property owner to purchase the ACRE Tract (the “Underlying Contract”). If the Underlying Contract is terminated, for any reason or no reason, then this Agreement shall automatically terminate without liability to ACRE, any funds paid to the Town hereunder shall be refunded, and the parties shall have no further rights or obligations under this Agreement. If the Underlying Contract is terminated, ACRE shall provide the Town with written notice no later than ten (10) days following such termination.

Section 4. Perry Road Alignment. The existing Perry Road right of way traverses the New Town Tract (the “Existing Perry Road ROW”). The Land Exchange Agreement depicts a preliminary alignment (the “Perry Road Alignment”) of Perry Road to be constructed to its ultimate section as a 4-land divided road by ACRE as part of the Development and based on the alignment shown on the Town’s Thoroughfare and Collector Street Plan. NCDOT approval of the Perry Road Alignment is a precondition to closing. Prior to Closing, ACRE and the Town

shall collaborate to obtain initial NCDOT review of plans to close the Existing Perry Road ROW. If NCDOT fails to approve the Perry Road Alignment, then this Agreement shall automatically terminate without liability to either party.

Section 5. Commissions; Agency. Neither party shall be responsible for payment of any commission to a broker or agent arising out of this Agreement except as specifically retained and agreed by that party, and each party agrees to otherwise indemnify the other, non-retaining party from liability for any such commission.

Section 6. Cooperation. Each party agrees to take such action and execute such documents as are reasonably necessary to enable the other party to use the property it acquires under this Agreement for the use intended by the acquiring party.

Section 7. Environmental. Each party warrants that, to the best of that party's actual knowledge, the property being conveyed by that party is free of underground storage tanks, pollution, contamination, hazardous materials, toxic wastes, asbestos, and products containing same, and is in compliance with all environmental regulations. Each party shall, upon signing this Agreement, furnish the other party with any available environmental reports or audits pertaining to the property being conveyed by that party.

Section 8. Property Condition. Except as specifically set forth herein, neither party warrants the physical condition of the property being conveyed by that party or any improvements thereon, and each tract is conveyed "as-is" as to physical condition.

Section 9. Examination Period. The parties shall have the right from the Effective Date of this Agreement through 11:59 p.m. Eastern Time on that date which is one hundred twenty (120) days after the Effective Date (the "Examination Period") to make such investigations, studies and tests with respect to the exchange properties as the parties deem necessary or appropriate to determine the feasibility of acquiring and developing the exchange properties. If, during the Examination Period, either party determines, in its sole discretion, that the other party's Exchange Property is not acceptable, then such party may terminate this Agreement and the parties shall have no further rights or obligations under this Agreement.

Section 10. Closing. Closing of the exchange (the "Closing") shall occur following ACRE closing on the purchase of the ACRE Tract (the "First Closing"). Town acknowledges that Closing is expressly contingent on occurrence of the First Closing and that, if the First Closing does not occur for any reason, the parties shall have no further rights or obligations under this Agreement. Unless the Parties otherwise agree, the Closing shall occur no later than close of business on August 26, 2026 (the "Closing Date"), provided ACRE may, in its sole discretion, consummate the Closing earlier than the Closing Date upon thirty (30) days' prior written notice to Town. At Closing, the following shall occur:

- (a) At, or prior to, Closing, each party shall deliver to the other party the following:
 - (i) A Special Warranty Deed (the "Deed") fully and duly executed and acknowledged by the party, that conveys to the other party the tract as provided in Section 1, subject only to the Permitted Exceptions. Each party agrees to pay at Closing the cost of the excise tax if any due and payable in connection with recording the deed

from it to the other party and to pay at Closing the cost of recording the deed to it from the other party.

(ii) The Exempt Subdivision Plat.

(iii) An affidavit (the "Title Affidavit") stating that there are no liens on the property for work performed on or materials provided to that party's tract as of the Closing Date.

(iv) A certificate (the "FIRPTA Certificate") executed and sworn to by it that it is not a "foreign person" as defined under Section 1445 of the Internal Revenue Code.

(v) If required by the Title Company, a gap indemnity.

(vi) An executed Closing statement reflecting the transaction described in this Agreement.

(vii) Such other executed documents as may be necessary to consummate the transaction.

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

(c) If property tax bills for the ACRE Tract and Town Tract for the year in which Closing occurs are available on the Closing Date, then taxes shall be prorated as of the Closing Date and paid at Closing. If property tax bills for the ACRE Tract and Town Tract for the year in which closing occurs are not available on the Closing Date, then taxes shall not be prorated or paid at Closing and ACRE shall be responsible for paying all property taxes for the New ACRE Tract and the Town shall be responsible for paying all property taxes for the New Town Tract for the year in which Closing occurs.

Section 11. Title.

(a) At Closing, each party shall deliver to the other the Deed, subject to Permitted Exceptions (as defined below), conveying to the other, indefeasible, fee simple, marketable title to the Property, insurable at regular rates by a reputable title insurance company (the "Title Company").

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

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

(i) Real property taxes for the year of Closing, not yet due and payable.

(ii) Valid and enforceable easements, covenants, restrictions, reservations and rights-of-way and other matters of record (excluding mortgages, deeds of trust, attachments, judgments, liens for delinquent taxes, mechanic's liens and other monetary liens).

(iii) Zoning ordinances affecting the property.

(d) Each party shall have until the end of the Examination Period to cause title to the property to be examined and then to notify the other party of any objections thereto that render title other than good, marketable and insurable. If a party so notifies the other party and the other party does not cure the title defect within fifteen (15) days of receipt of the Notice, then notifying party shall have the right to terminate this Agreement by written Notice to the other party.

Section 12. Warranties. The parties respectively make the following representations to each other. Such representations shall be deemed made as of the Closing Date.

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

(b) There are no unpaid bills for labor or materials related to the tracts. There are no taxes, charges or assessments that would constitute a lien against the tracts that are unpaid other than ad valorem taxes for the current year not yet due and payable.

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

Section 13. Notices. Any required notice under this Agreement shall be in writing and delivered in person, by certified mail, return receipt requested, or by nationally recognized overnight delivery service. Notices shall be effective as of the time of delivery. Notices shall be addressed as follows:

To ACRE: ACRE MANAGER, LLC
252 NW 29th Street, 9th floor
Miami, FL 33127
Attn: Jesse Kehoe
(786) 634-4857
Jesse.Kehoe@acremgt.com

With Copy to: Parker Poe Adams & Bernstein LLP
301 Fayetteville Street, Suite 1400
Raleigh, NC 27601
Attn: Matthew Carpenter
(919) 835-4049
Matthew.Carpenter@parkerpoe.com

To Town: Town of Apex
PO Box 250
Apex, NC 27502
Attn: Randy Vosburg, Town Manager

(919) 249-1042
Randy.Vosburg@apexnc.org

With Copy to:

Town of Apex
PO Box 250
Apex, NC 27502
Attn: Town Attorney
(919) 249-3376
Laurie.Hohe@apexnc.org

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

Section 14. Further Assurances. Each party agrees to perform, execute, acknowledge and deliver and cause to be performed, executed, and acknowledged and delivered all such further acts, assignments, transfers and assurances as shall reasonably be requested of it to carry out this Agreement. Without in any manner limiting their specific rights and obligations in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

Section 15. Effective Date; Assignment. This Agreement shall become binding on the date signed by both parties (the “Effective Date”). ACRE may assign this Agreement to any party controlled by, under common control with, or affiliated with ACRE without Town’s written consent.

Section 16. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable und present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been a part of this Agreement.

Section 17. Other Terms or Conditions. This Agreement is the entire agreement between ACRE and Town concerning the properties and no modification of this Agreement shall be effective unless in writing and signed by the parties.

EXECUTED the date and year noted beside the respective signatures.

ACRE Manager, LLC,
a Delaware Limited Liability Company

By: _____
Name/Title:

STATE OF _____
_____ COUNTY

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

Date: _____
_____, Notary Public

[Affix Notary Stamp or Seal]

My Commission Expires: _____

Town of Apex

Randal Vosburg, Town Manager

(Corporate Seal)

ATTEST:

Allen Coleman, Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Allen Coleman personally came before me this day and acknowledged he is Town Clerk of the Town of Apex, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Manager, sealed with its corporate seal and attested by him as its Town Clerk. Witness my hand and official stamp or seal, this the ___ day of _____, 2024.

[Notary Signature]

_____, Notary Public

[Print or Type Notary Name]

My Commission Expires: _____

EXHIBIT A
Land Exchange Exhibit