

Excise Tax: N/A

Prepared by and return to:

Ashley H. Terrazas
Parker Poe Adams & Bernstein, LLP
301 Fayetteville Street
Suite 1400
Raleigh, NC 27601

STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF ORANGE

This Development Agreement (the "Agreement") is made and entered into as of the ____ day of _____ by and among **WP EAST ACQUISITIONS, LLC**, a North Carolina limited liability company (the "Developer"), and the **Town of Hillsborough**, North Carolina ("Town"), a municipal corporation of the State of North Carolina.

WITNESSETH:

WHEREAS, Developer is the contract purchaser of approximately 11.1 acres in the Town of Hillsborough, Orange County, North Carolina located at 1001 Corporate Drive, as more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the "Property").

WHEREAS, on _____, the Hillsborough Board of Commissioners (the "Town Board") approved 1) a General Use Rezoning request to amend the Official Zoning Map of the Town to rezone the Property from OI to MF, Ordinance ____ (the "Zoning"), and 2) a Text Amendment to amend the Town of Hillsborough Unified Development Ordinance (the "UDO") to allow up to 30 multi-family units per acre on certain properties in the MF district, Ordinance ____ (the "Text Amendment"), to allow development of up to 333 multi-family units on the Property.

WHEREAS, Developer desires to develop the Property into a multi-family residential community with market rate and affordable housing units in accordance with the approved Zoning, Text Amendment, and Town of Hillsborough Unified Development Ordinance, as may be amended from time to time (the "Project").

WHEREAS, North Carolina General Statutes ("G.S.") 160D-1001(b) and 160D-1003 expressly authorize local governments and agencies to enter into development agreements with

developers pursuant to the procedures and requirements of G.S. 160D-1001 through 160D-1012 for projects that require long-term commitments of both public and private resources.

WHEREAS, the Town and Developer desire to enter into this Agreement for the purposes of furthering the Town's and the Developer's mutual goal of providing high-quality, attainable housing in the Town and coordinating the necessary infrastructure and other facilities to serve the Property and the community at large.

NOW, THEREFORE, based on the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties hereby agree as follows:

1. **Recitals.** The parties agree that the foregoing recitals are true and correct and are incorporated herein by reference.
2. **Public Hearing.** Pursuant to Section 160D-1005 and Section 160D-602 of the North Carolina General Statutes, the Town conducted a public hearing on May 15, 2025, to consider the approval and execution of this Agreement in accordance with the procedures set out in Section 160D-1005. Public notice was duly given, and the notice of public hearing specified, among other things, the location of the Property subject to this Agreement, the development uses proposed on the Property, and a place where a copy of the Agreement may be obtained.
3. **Property Subject to Agreement.** The Property shall be subject to this Agreement.
4. **Term.** The term of this Agreement shall commence on the date that all parties hereto have executed this Agreement (the "Effective Date") and shall terminate on the date that is 7 years after the Effective Date, unless sooner terminated by the mutual consent of the parties (or their successors in interest), or unless extended by the mutual consent of the parties (or their successors in interest).
5. **Development Uses.** The Project will include development of up to 333 market rate and affordable residential multi-family units on the Property in accordance with the approved Zoning, Text Amendment, and the UDO. The number and location of buildings, lots, parking areas, and interior drives will be shown on the site plan (the "Site Plan") to be prepared by Developer following execution of this Agreement and reviewed administratively by Town staff.
6. **Affordability.** Recognizing that there is a need in the Town for housing that is affordable and attainable for lower income residents, the Developer dedicate no less than ten percent (10%) of the total units in the Project as affordable for a period of no less than thirty (30) years starting from the date of issuance of the first certificate of occupancy on the property or the date dwelling units are so dedicated, whichever is last to occur (the "Affordable Period") for low-income households earning no more than 80% and 60% of the Area Median Income ("AMI"), adjusted by household size, for the Durham-Chapel Hill, NC Metropolitan Statistical Area, as determined and published annually by the U.S. Department of Housing and Urban Development (the "Affordable Units"). The required number of affordable units shall be rounded to the nearest whole number. Of the Affordable Units, no fewer than half shall be affordable for households earning no more than 80% AMI and half shall be affordable to households earning 60% AMI. If the calculated number of Affordable Units results in a fraction/decimal number, the required number of Affordable Units shall be rounded up to the nearest whole number. The property owner shall certify in writing to the Town compliance with this provision on an annual basis,

such certification to be delivered by July 31st of each year, reporting the status of compliance as of June 30th of the year. The terms and obligations of Developer under this Section 6 shall survive the termination or expiration of this Agreement.

7. **Law in Effect at Time of the Agreement Governs the Development; Vested Rights.**

Except as provided in G.S. 160D-1007, G.S. 160D-1010(b), and this Agreement, the Town may not apply subsequently adopted Town regulations to the Property during the Agreement Term without the written consent of Developer. During the Agreement Term, Developer shall have a vested right to develop the Property in accordance with (i) this Agreement, (ii) the Zoning, (iii) the UDO, (iv) Town regulations, and (v) any other applicable laws, all of the foregoing (i) through (v) as they exist on the Effective Date. In accordance with G.S. 160A-400.25(a)(7), the parties agree, intend, and understand that all conditions, terms, restrictions, or other requirements applicable to the Project and reasonably determined to be necessary by the Town for the public health, safety, or welfare of its citizens, are provided for by the foregoing (i) through (v) as they exist on the Effective Date. This Agreement does not abrogate any rights that may vest pursuant to statutory or common law or otherwise in the absence of this Agreement. If the Town adopts new, different, or amended development regulations that Developer views as more favorable to the Project than the regulations in effect at the time of adoption of this Agreement, Developer may elect to be bound by the new regulations or ordinance (the "After-Adopted Regulation") without any further agreement from the Town. In the event that Developer elects to be bound by the After-Adopted Regulation, Developer will communicate that fact to the Planning Director in writing and note such change on any future permit applications affected by the change.

8. **Public Facilities.** Developer shall be responsible for installation of all of the items below in accordance with the UDO.

- a. Construction of streets, with curb and gutter, within the Property to serve the Project which may be public or private, provided all streets meet UDO requirements.
- b. Stormwater facilities serving the Property.
- c. Construction of utility lines within the Property to serve the Project, including water, sewer, and electric lines.

9. **Traffic Impact Analysis.** The developer shall prepare, or cause to be prepared, a Traffic Impact Analysis, which shall be submitted to the Town prior to site plan approval. Developer shall install all recommended on- and off-site improvements identified in the TIA to mitigate the impact of the Development, to keep the intersections of US 70A with Meadowlands Drive and the intersection of Meadowlands Drive with Corporate Drive at an overall Level of Service of C or better, or to maintain their current Level of Service if the TIA shows they are at a D or below, as a result of this development. The improvements are subject to Town and NCDOT approval.

10. **Pedestrian Connectivity Construction.** Within 90 days after the Effective Date, Developer shall complete a study of the feasibility of constructing an ADA-accessible paved pedestrian connection from the Eno Haven Apartments to the SportsPlex. If such construction is determined to be reasonably commercially feasible, including the ability to comply with all applicable laws and regulations, and if Developer can obtain all off-site easements after the exercise of commercially reasonable efforts, and if construction costs

of such connection do not exceed \$300,000, Developer shall install the described connection. If the construction costs exceed \$300,000, Developer shall incorporate and dedicate a 10-foot-wide public access easement in the Project for a future pedestrian connection, and shall pay a fee in the amount of \$300,000 to the Town prior to the approval of construction drawings for the Project.

11. **Developer Contribution to Sewer Extension.** The Parties recognize that improvements to the Cates Creek Sewer Outfall will be needed to the sewer infrastructure in the vicinity of, but not on, the Property to accommodate sewer flows from multiple approved developments, in excess of the upgrades that would otherwise be required to support the Project (the "Sewer Upgrades"). The Sewer Upgrades are a planned, but unfunded, capital improvement project for the Town. In addition to the improvements to the Property that will be needed to provide adequate sewer service to the Project as required by the UDO, Developer agrees to pay the Town a total fee-in-lieu in the amount of \$____ (the "Total Contribution") for the design and construction costs associated with the Sewer Upgrades, as shown on the cost estimate for the design and construction of the Sewer Upgrades attached as **Exhibit B**. The Total Contribution shall be paid as follows: An amount totaling \$120,000 to cover the estimated costs associated with planning and designing the Sewer Upgrades (the "Design Costs") shall be paid by the Developer to the Town upon the Developer's submittal of the first site plan for the Project. An amount totaling \$____ for the construction of the Sewer Upgrades (the "Construction Costs") shall be paid prior to construction drawing approval. The Town will be solely responsible for all work associated with the Sewer Upgrades, including contracting with all necessary third parties, public bidding, design approvals, permitting, and easement acquisition associated with the Sewer Upgrades, and shall also be responsible any additional unexpected costs associated with the Sewer Upgrades that exceed the Design Costs and Construction Costs paid by Developer in compliance with this Section. The Town shall diligently pursue completion of the Sewer Upgrades; however, the Town shall not withhold or delay or condition any development approvals, including certificates of occupancy, for the Project upon the completion of the Sewer Upgrades.
12. **Water and Sewer Allocation.** Upon the execution by the Parties of a Water and Sewer Extension Contract (the "Extension Contract"), the Town shall reserve in the Extension Contract (i) an average daily flow water capacity allocation for the Project in the amount of 35,000 gallons per day, and (ii) an average daily flow sewer capacity allocation for the Project in the amount of 35,000 gallons per day (collectively, the "Anticipated Allocation") until the final Certificate of Compliance is issued for the project. The Town shall approve the Extension Contract to reserve the Anticipated Allocation at the earlier of 1) when requested by Developer at any time after the Effective Date of this Agreement and prior to construction drawing approval for the Project, provided Developer requests the Extension Contract within two (2) years of the Effective Date of this Agreement, or 2) according to the Town's standard utility allocation reservation and system development fee payment policies. However, this shall not prohibit Developer from reserving water and sewer capacity in accordance with the Town's otherwise applicable process and timeline, if Developer so chooses. Such commitment shall not be effective until the execution of the Extension Contract. In accordance with N.C.G.S. § 162A-213(b)(2), the Developer shall pay the Town's system development fee upon execution of the Extension Contract or when capacity for the Project is otherwise reserved. If the Project requires additional allocation above the Anticipated Allocation, the Town will work in good faith with the Developer to provide additional water and sewer allocations through the initial Extension Contract or subsequent amendments.

13. **Local Development Permits.** In accordance with G.S. 160D-1001(d), the development authorized by this Agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of the Property, including laws governing permitted uses of the Property, density, intensity, design, and improvements.
14. **Good Standing.** The developer shall be in good standing with fee payments, including System Development Fees, contributions for outfall design and construction, and application review fees, before the Town will accept development applications for review.
15. **Amendment; Modification; Termination; or Extension of the Agreement Term.** This Agreement may be amended, modified, terminated, or extended by the mutual consent of both Parties. The below modifications shall be considered Major Modifications and require the same procedures as required by North Carolina law for the adoption of a development agreement. All other modifications shall be considered Minor Modifications and shall be reviewed and approved administratively, to the extent allowed by law, by the Town of Hillsborough Planning Director (the "Planning Director").
 - a. An increase or decrease in the acreage of the Property subject to this Agreement of more than five (5) percent.
 - b. A change in the Agreement Term.
16. **Recordation/Binding Effect.** Within 14 days after the Effective Date, Developer shall record this Agreement in the Orange County Register of Deeds (the "Registry"). The benefits and burdens under this Agreement shall inure to and be binding upon the parties and their successors and assigns. All of the provisions of this Agreement shall be enforceable during the Agreement Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law.
17. **Force Majeure.** In addition to specific provisions of this Agreement, no party shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such party's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities, epidemics, wars, embargoes, fires, hurricanes, adverse weather, acts of God, lawful work stoppages ordered by a governmental entity, interference duly caused by any other party, or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such party's reasonable control or due to interference by another party, any date or times by which the parties are otherwise scheduled to perform, if any, shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such party. If written notice of such delay is given to the other party after the commencement of such delay, an extension of time for such cause shall be deemed granted for the period of the enforced delay, or longer as may be mutually agreed to by the parties.
18. **Disclaimer of Joint Venture, Partnership and Agency.** This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between or among the parties, or to impose any partnership obligation or liability upon such parties.
19. **No Third Party Beneficiaries.** The Agreement is not intended to and does not confer any right or benefit on any third party that is not a party.

20. **Notices.** Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the 5th business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the parties shall be addressed to:

Town: Town of Hillsborough
Attn: Shannan Campbell
101 E. Orange St.
Hillsborough, NC 27278
Shannan.Campbell@hillsboroughnc.gov

w/ a copy, which shall not constitute notice, to:

Town Attorney
Town of Hillsborough
1526 E. Franklin St., Suite 200
Chapel Hill, NC 27514

and

Town Manager
Town of Hillsborough
101 E. Orange St.
Hillsborough, NC 27278

Developer: Caitlin Shelby
Managing Director
Wood Partners
1414 Raleigh Road, Suite 429
Chapel Hill, NC 27517
919-355-0110
Caitlin.shelby@woodpartners.com

w/ a copy, which shall not constitute notice, to:

Ashley Terrazas
Parker Poe Adams & Bernstein
301 Fayetteville Street
Suite 1400
Raleigh, NC 27601
919-835-4043
AshleyTerrazas@parkerpoe.com

21. **Entire Agreement.** This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the parties relative to this Agreement and the Property. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the parties relative to the

matters addressed herein other than as set forth or as referred to in this Agreement or as contained in the UDO or the Zoning as of the Effective Date.

22. **Assignment.** The Developer may at any time and from time to time assign its rights and responsibilities hereunder, which assignee and subsequent assigns shall retain the right to assign their respective rights and/or responsibilities hereunder or any part of all or any portion of the Property as Developer. The Developer shall provide the Town with prior written notice of any assignment and a written assignment of rights and responsibilities expressly acknowledging the assignee's agreement to the terms of this Agreement, shall be executed by the Developer and the assignee and recorded in the Registry. A deed from Developer to a subsequent owner shall be deemed to assign the conveying Developer's rights and obligations under this Agreement to the subsequent owner and this Agreement shall be enforceable during the Agreement Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Any violation of the terms and conditions of this Agreement occurring after such an assignment will be the responsibility of the then current Developer in violation.
23. **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of North Carolina. Any reference in this Agreement to a North Carolina General Statute be deemed to include any successor or replacement statute as to the same matters subject to the statute that has been succeeded or replaced. Venue for any disputes arising from this Agreement shall be the Superior Court of Orange County, North Carolina.
24. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
25. **Reserved.**
26. **Termination.** Unless the Agreement Term is extended by the Town and Developer, this Agreement shall terminate on the earlier of the expiration of the Agreement Term or by agreement of the parties. Notwithstanding the foregoing, the Developer shall have the unilateral right to terminate this Agreement upon any change in the Developer's plan for development that renders this Agreement inapplicable, in which case the Town shall be relieved of all obligations hereunder. Any termination other than by expiration of the Agreement Term shall be recorded in the Registry.
27. **No Deemed Waiver.** Except as provided in Section 4.15(b), failure of a party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder.
28. **Severability.** If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.
29. **Authority.** Each party represents it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement on behalf of such party has the authority to bind that party.

30. **Construction.** The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.
31. **Lender Protections.** Any lender of Developer (or any successor-in-title thereto) having a security interest in all or a part of the Property (a "Secured Lender") may give written notice to the Town of its security interest (a "Lender Notice"). If a Secured Lender provides a Lender Notice, then the Town shall copy the Secured Lender on any notice of default given to Developer (or any successor-in-title thereto), and the Secured Lender shall have 30 days, or such applicable longer cure period given to Developer (or any successor-in-title thereto), to cure the alleged default.
32. **Estoppel.** At any time and from time to time, Town shall deliver, to the extent accurate and permitted by law, within 45 days after Developer's (or any other owner of the Property's) written request, a written statement addressed to the requesting party, and if requested, its Secured Lender and any proposed purchaser or investor in the Property that to the best of its knowledge: (1) that this Agreement is in full force and effect; (2) that it acknowledges that this Agreement has not been amended or modified, or if so amended, acknowledges the accurateness of the amendments provided by the requestor; and (3) whether, to the knowledge of the Town, Developer (or the requesting party) is in default or claimed default in the performance of its obligation under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default; and (4) whether, to the knowledge of the Town, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute default, and, if so, specifying each such event.
33. **Non-Discrimination.** To the extent permitted by North Carolina law, the Parties for themselves, their agents, officials, directors, officers, members, representatives, employees, and contractors agree not to discriminate in any manner or in any form based on actual or perceived age, mental or physical disability, sex, religion, creed, race, color, sexual orientation, gender identity or expression, familial or marital status, economic status, veteran status or national origin in connection with this Agreement or its performance. This provision is incorporated into the Agreement for the benefit of the Town of Hillsborough and its residents and may be enforced by an action for specific performance, injunctive relief, or any other remedy available at law or equity. This section shall be binding on the successors and assigns of all parties with reference to the subject matter of the Agreement.

(End of Page; Execution Pages Follow)

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Pursuant to N.C.G.S. 160D-1005, this Development Agreement came before the Hillsborough Town Board on ____, 2025 for a duly noticed legislative hearing. Based on the information presented at the _ 2025 hearing, the Hillsborough Town Board, determined that the Town entering into this Development Agreement is in the public interest as it provides affordable housing and pedestrian infrastructure, approved this Development Agreement, and authorized the Town Manager to execute the same.

TOWN OF HILLSBOROUGH, NORTH CAROLINA

By: _____(SEAL)

Name: Eric Peterson
Title: Town Manager

Date: _____

Attest: _____
Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

TOWN ACKNOWLEDGEMENT

This is to certify that on the ____ day of _____, 20____, before me personally came _____, with whom I am personally acquainted, who, being by me duly sworn, says that she is the Town Clerk, and Eric Peterson is the Town Manager of the Town of Hillsborough, the municipal corporation described herein and which voluntarily executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by said Acting Town Clerk and that the said seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

Witness my hand and official seal this ____ day of , 2025.

(Seal)

Notary public

My Commission Expires:

Approval as to Form:

Town Attorney

WP EAST ACQUISITIONS, LLC
a North Carolina limited liability company

By: _____
[Authorized Signatory]

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: _____

EXHIBIT A

The Property

EXHIBIT B

Estimated Costs of Sewer Upgrades