

Instrument Prepared By Roger W. Knight
Brief Description for Index: _____
Name of Development: _____
Town of Knightdale Case Number: _____
Parcel Identification Number: _____
REID: _____

Mail After Recording to: Jason Brown
Director of Development Services
Town of Knightdale
950 Steeple Square Ct.
Knightdale, NC 27545

**STATE OF NORTH CAROLINA
WAKE COUNTY**

**KNIGHTDALE GATEWAY
UTILITY ALLOCATION AGREEMENT**

THIS UTILITY ALLOCATION AGREEMENT (the "Agreement") is made effective as of the 15th day of February 2023 by and between the TOWN OF KNIGHTDALE, a municipal corporation existing under the laws of the State of North Carolina ("Town"), and BIN – KG LLC ("Owner" and "Developer"), a North Carolina limited liability company.

WITNESSETH:

WHEREAS, Owner possesses legal title to real property (PINs 1744-05-1637, 1744-06-2710, 1734-96-6250, 1734-96-3421, 1734-96-5130, 1734-96-2197, 1734-96-3080, 1734-95-7218, 1734-95-5361, 1734-95-4346, 1734-96-0208, and 1734-95-0783) consisting of 54.14 acres, more or less, within the planning jurisdiction of the Town, as more particularly described on Exhibit A

attached hereto and incorporated herein (the "Property");

WHEREAS, Developer is the owner (contractor) of the Property;

WHEREAS, Owner warrants that all parties having an interest in the Property have executed this Agreement except for those specifically set out on Exhibit A, that the Property is free and clear of encumbrances except for those specifically set out on Exhibit A, and that Developer shall warrant and defend the Property against the claims of all persons whomsoever;

WHEREAS, Owner, by executing this Agreement, assumes all affirmative obligations to develop the Property and consents to develop the Property in accordance with the terms of this Agreement;

WHEREAS, the terms of this Agreement imposing obligations on the Owner shall be effective upon signing of this Agreement;

WHEREAS, Owner has received Town approval of a Master Subdivision Plan, with case number ZMA-16-21 (a copy of which is attached hereto as Exhibit B), authorizing development of the Property as a 510,995 square foot industrial facility feature two buildings, which shall include ancillary public and private facilities including streets, sidewalks, water and sewer lines, storm drainage improvements, and certain public gathering spaces (collectively the "Project"), all to be developed pursuant to the terms of this Agreement;

WHEREAS, the Master Subdivision Plan proposes an industrial development of not more than 510,995 square feet compliant with all Town ordinances and development standards, to be built within one phase, and Town has agreed to allocate utilities for the development.

WHEREAS, Developer has committed to Property enhancements as shown on the Master Subdivision Plan and as described in this Agreement in order to satisfy the Town's Water Allocation Policy and to supplement the tax base of the Town and contribute to the quality of life of current and future Town residents.

NOW, THEREFORE, in consideration of Owner's development of the Property in accordance with the terms hereof and Town's allocation of water and wastewater capacity as described herein for the same, and other mutual covenants and agreements contained 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. Definitions. Whenever used in this agreement, the following terms shall have the definitions indicated hereinafter in this Section 1. Other terms may be defined elsewhere in this agreement.

A. "Infrastructure" shall mean all public and private infrastructure necessary to serve the Property including, but not limited to, police and fire protection facilities, water mains, valves, fittings, fire hydrants, service connections, service lines, shutoffs, meter boxes, sewage pumping stations, force mains, gravity sewer mains, manholes, laterals, streets, curbs, gutters, sidewalks, greenways, bikeways, transit facilities, park and recreation facilities, storm drainage facilities, and stormwater

retention facilities. Infrastructure to be located within or abutting the Property shall be referred to as "Onsite" and is also referred to herein as "Community Amenities." Other Infrastructure serving the Property shall be referred to as "Off-site." Infrastructure shall either be owned by Town or other government entity ("Public Infrastructure") or by Developer or the property owners association for the Project or a sub association thereof, if applicable (each an "Owners Association") ("Private Infrastructure").

B. "Master Subdivision Plan " shall mean the approved plans for the Project (Site Plan, Subdivision Plan, Planned Unit Development or other approval required by the Town's Unified Development Ordinance, however termed), and all subsequent modifications, amendments and extensions, construction drawings, and specifications that may hereafter be made a part thereof, but all of which will be contained in the Town Development Services Department's file for this project.

C. "Standard Specifications" shall mean all applicable legal requirements pertaining to the development of the Property including, but not limited to, Master Subdivision Plan, applicable permits, and construction drawings required for all Infrastructure, including, without limitation, the Town's Unified Development Ordinance, Knightdale's Water Allocation Policy (Ordinance # 13-06-19-001 and Ordinance # 16-09-06-001) and Standard Specifications and Construction Details Manual. The failure of this Agreement to describe any other permit, condition, or term of restriction applicable to the Property does not relieve Developer of the necessity of complying with the same.

Section 2. Town Approval of Development Covenants, Etc. Town's reasonable legal expenses associated with the Town Attorney's review and approval of this Agreement, any Articles of Incorporation, Declaration of Covenants, all deeds, easements, documents, plans or covenants related to the Property that affect Town's ability to enforce any part of this Agreement, shall be reimbursed to Town by Developer in a timely manner. Any requested approval or review by the Town Attorney shall not be unreasonably delayed or withheld, and legal expenses allocated to the Developer, and/or by Town shall not exceed fees charged for like services in the Research Triangle, North Carolina market area. Notwithstanding the foregoing or any other language in this Agreement, the Town Attorney shall represent only Town and his duties shall run to Town as his sole client.

Section 3. Developer Filings.

A. Annexation & Phasing. Developer acknowledges Project is currently within the Corporate Limits of the Town and no further petition is required. Developer acknowledges that the Project will be developed within one phase and in accordance with the Phasing Schedule set forth on Exhibit C.

B. Master Subdivision Plan Approval Schedule. Developer has received Town approval of a Master Subdivision Plan, with case number ZMA-16-21 and Ordinance #22-08-17-006 and subsequent extensions of vested rights. Developer intends to develop the Project, submitting a subdivision site plan for approval by Town for the Project. Developer will construct the Project in accordance with the approved Master Subdivision Plan. At the time of approval of a subdivision site plan, the subdivision site plan shall be deemed to be a "Site Specific Development Plan" pursuant to Section 12.2.D.5 of the Unified Development Ordinance of Town entitled to the Vested Rights set forth in such ordinance. Town shall not unreasonably deny a submitted subdivision site plan that substantially conforms to the approved Master Subdivision Plan and Standard Specifications. Without limiting the generality of the foregoing, it is expressly acknowledged that Town determination as to

whether Infrastructure required to be provided by Developer is sufficient to meet the requirements of any subdivision site plan, the applicable calculation shall be made based on the approved Master Subdivision Plan for the Project as a whole. However, the amount of improved open space dedicated or proposed to be dedicated by each subdivision site plan shall equal or exceed the amount of open space required to be dedicated under the terms of the UDO, taking into account the previously dedicated open space submitted for site subdivision plan approval.

Section 4. Infrastructure to be Provided by Developer. Except as set forth in this Agreement, Developer shall design, construct and install at its expense all required Infrastructure in accordance with the design criteria set forth in the Standard Specifications.

A. Procedure. The plans for Infrastructure shall be prepared by a licensed engineer employed by Developer and approved by Town, with such approval not to be unreasonably withheld. Developer shall obtain, at its expense, all required permits and approvals from all governmental agencies prior to commencing construction of the Infrastructure. Town agrees to cooperate with and reasonably assist Developer in its efforts to obtain necessary permits, approvals, or licenses from other governmental entities necessary or beneficial for the development of the Property in accordance with this Agreement and as otherwise approved by Town.

B. As-Built Drawings. Developer shall provide Town a complete set of as-built drawings showing all the Infrastructure, if any, and any easements as located by a North Carolina licensed surveyor and certified by Developer's engineer of record. The as-built drawings shall be submitted in a digital format compatible with the Town's GIS system and approved by the Town Manager.

C. Contracts for Public Infrastructure. Developer shall use commercially reasonable efforts to provide that all contracts for engineering, design, construction, and/or construction management for Public Infrastructure (expressly excluding Private Infrastructure) include specific language that provides (1) that the contract does not limit any warranties provided under operation of statute or common law concerning the engineering, design, construction, adequacy, or performance of the Improvements; (2) the contract does not limit or shorten any statute of limitations provided by law regarding claims concerning the engineering, design, construction, adequacy, or performance of the Improvements; (3) the Town is named a third-party beneficiary of the contract for the purpose of making any claims regarding the engineering, design, construction, adequacy, or time of installation of the Improvements; and (4) all warranties available to the Developer under the contract are, in addition to, available and assignable to the Town. Developer shall provide or acquire all easements and/or right-of-way necessary for all Public Infrastructure.

D. City of Raleigh and State of North Carolina Approval of Utility Plans. Sanitary sewer lines and water distribution infrastructure to serve the Project shall be constructed at Developer's sole expense in accordance with plans approved by the State of North Carolina, City of Raleigh and Town. Town shall facilitate any discussions required with the City of Raleigh or State of North Carolina with respect to the Sewer and Water Infrastructure.

E. Public Road Improvements. The public right-of-way dedication and street improvements required of Developer related to Knightdale Gateway development shall be governed by this Section 4.E and, where applicable, the requirements of the North Carolina Department of Transportation, the approved Master Plan and Standard Specifications.

F. Easements. The parties acknowledge that the installation of the public

infrastructure may require Developer to acquire certain easements or rights-of-way located outside the Property (the "Off- site Easements") or North Carolina Department of Transportation (NCDOT) Right-of-Way Encroachment Agreements. Developer shall acquire the Off-site Easements at its sole cost and expense; provided that if, after reasonable efforts, Developer is not able to acquire one or more of the Off-site Easements or rights-of-way, Developer may, at its discretion and by written notice to the Town, request the Town to acquire those Off-site Easements or rights-of-way through its exercise of eminent domain or similar proceedings. The request shall describe the easement or right-of-way needed and include copies of offers or other evidence of unsuccessful acquisition efforts. After notice to the affected property owner and upon finding that the easement or right-of-way is needed by the Town or other public authority for extension of street, water, sewer or other public facilities, the Town may exercise its power of eminent domain to acquire the same. All expenses incurred by the Town, including the purchase price or court- awarded compensation, appraisal fees, attorneys' fees and court costs, shall be reimbursed by Developer on demand. The Off-site Easements and NCDOT Encroachment Agreements acquired by Developer shall be in a form reasonably acceptable to the Town and shall, in any event, be dedicated to the Town or another public agency designated by Town.

Section 5. Construction Design Standards. Buildings constructed on the Property shall comply with those standards set forth on Exhibit D.

Section 6. Community Design Exceptions. Developer hereby agrees that the following zoning conditions were granted by the approved Master Subdivision Plan:

- A. The following uses shall be permitted on-site, and all other uses otherwise permitted in the MI zoning district shall be prohibited.
 - a. Manufacturing, Light
 - b. Research and Development
 - c. Storage – Warehouse, indoor storage
 - d. Wholesaling and Distribution
 - e. Brewer/Winery/Distillery
 - f. Laboratory – medical, analytical, research & development
- B. In order to allow additional creative flexibility in the design of the Monument Sign, the Monument Sign shall be exempt from the dimensional standards of UDO Section 8.6.C.5. The maximum height of the Monument Sign shall be limited to 10-feet and have a maximum area of no greater than 100 square feet.
- C. To assist in achieving the creation of a new River District, the applicant shall provide hardscaping such as stacked stone and incorporate “Knightdale’s River District” into signage for the development along Farmwell Road, Westover Drive, and internal to the site.
- D. The developer shall dedicate a 30-foot wide public greenway trail easement shown in the general location on the approved Construction Drawings.
- E. The developer shall install mast arm traffic signals at Knightdale Blvd and Westover Drive as shown on the approved Construction Drawings, and shall be eligible for transportation impact fee credits not to exceed the amount owed to the Town.

Section 7. Reimbursements. Any reimbursements or credits available to the Developer hereunder for costs related to providing Infrastructure will be provided in accordance with Town and/or City of Raleigh policies in effect at the time of completion of such Infrastructure. Town makes no representation, expressed or implied, that any reimbursement or credit will be available to or applied for Developer's benefit.

Section 8. Water and Sewer Capacity Reservation, Allocation & Fees.

A. Upon Subdivision Plan approval, water and sewer allocation from the Town shall be reserved in an amount appropriate to serve 510,995 square feet of industrial space. Such reserved capacity from the Town shall be allocated to new development on the Property once Developer's Master Subdivision Plan/Site Plan is approved and recorded.

B. Subject to denial of approval from another superior governmental agency, the timely performance by Developer of its obligations set forth described in Section 7 of this Agreement, Town shall maintain the water and sewer allocation available for the Property in accordance with time periods established in the approved Phasing Schedule. The Town Development Services Department shall maintain a public list of all assigned flows and the Town's available capacity for allocation of water and sewer.

C. The amount of flow assigned for a development shall be the average flow requirement for the type of development as determined by Town and/or the City of Raleigh sufficient to support the development approved, which is currently 25,000 gallons per day.

D. Developer and Town acknowledge that the Master Subdivision Plan was submitted under the Town's Water Allocation Policy (Ordinance # 13-06-19-001) then in effect, which required a project be awarded at least 50 total points to merit water allocation. Developer and Town also acknowledge that the Town's Water Allocation Policy (Ordinance # 13-06-19-001) now in effect awards a Manufacturing/Industrial Employment Center 70 base points, automatically granting water allocation. Developer acknowledges that the Town has the authority to approve water allocation through a utility allocation agreement even if a project does not achieve the minimum of 50 total points.

Section 9. Force Majeure. The parties hereto shall not be liable for any failure to perform hereunder as a result of an external event or events beyond the control of the party claiming force majeure, including acts of the United States of America, acts of the State of North Carolina (including the denial of or delay in granting permits that Developer or Town has, respectively, pursued in good faith), embargos, fire, flood, drought, hurricanes, tornadoes, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism, civil riots, or acts of terrorism provided, the party claiming such force majeure (i) shall notify in writing the other party promptly upon becoming aware that the performance of any duty or obligation required under this Agreement will be delayed or prevented by a force majeure and (ii) shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance and to complete performance in as timely a manner as possible.

Section 10. Indemnification of Town.

A. As used in this Section, "Charges" means claims, lawsuits, judgments, costs,

damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included within "Charges" are (1) interest; (2) reasonable attorney's fees; and (3) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders, including any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). In this Indemnification, "Town" includes Town and its officers, officials, employees, independent contractors, and agents, but shall not be construed to include Developer.

B. Indemnification. To the maximum extent allowed by law, Developer shall defend, indemnify, and save harmless Town from and against all third-party claims for loss of life, personal injury and property damage, as well as Charges that result of negligent or willful acts or omissions of Developer or Developer's contractors or subcontractors or anyone directly or indirectly employed by or contracting with any of them or anyone for whose acts any of them may be liable in accordance with this Section. In performing its duties under this Section, Developer shall, at its sole expense, defend all claims with legal counsel reasonably acceptable to Town.

C. Other Provisions Separate. Nothing in this Section shall affect any warranties in favor of Town that are otherwise provided in or arise out of this Agreement. This Section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

D. Survival. With respect to Indemnification for which Developer is responsible pursuant to Section 10(B), which are caused by third-parties (*i.e.*, by parties other than Town), this Section shall remain valid despite termination of this Agreement (whether by expiration of the term or otherwise) for one (1) year after expiration of the applicable statute of limitations (and for the duration of any claims brought within the time period specified above) for such third-party claims. This Section shall automatically terminate after four (4) years following the termination of this Agreement (whether by expiration of the term or otherwise) with respect to all other Charges.

E. Limitations of Developer's Obligation. Subsections "A" and "B" above shall not require Developer to indemnify or hold harmless Town against liability for Charges resulting from the negligence or willful act or omission of Town.

Section 11. Written Consents from Town. Where this Agreement refers to written approvals or consents to be given by Town and the person or position that may give consent is not identified, the authority to give such approvals shall be deemed to be with the Town Manager or his designee and Developer may rely on such authority and approvals to no detriment of their own. An approval required by this Agreement shall not be effective unless given in writing. Unless provided otherwise herein, the written approvals or consents required by Town shall not be unreasonably withheld, conditioned, or delayed.

Section 12. No Waiver of Governmental Authority or Discretion. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Knightdale Town Council in a manner not permitted by law. Town shall incur no liability to the Developer for any losses or damages it may incur as result of or in connection with Town's exercise or performance of its regulatory, legislative, or

governmental powers or functions, or any judicial determination regarding the same.

Section 13. Miscellaneous.

A. Choice of Law and Forum. This Agreement shall be deemed made in Wake County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. Except for any cause of action for which a federal court has exclusive jurisdiction, the exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Wake County. Such actions shall neither be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

B. Waiver. No action or failure to act by either party shall be deemed to constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

C. Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable, the unenforceable provisions shall be severed from the remainder of this Agreement, which shall remain enforceable in accordance with its terms, and the severed provision shall be deemed to be replaced with an amended provision that is as near to achieving the intent of the parties hereto as the severed but is not unenforceable.

D. No Third-Party Rights Created. This Agreement is intended for the benefit of Town and Developer and their successors and assigns as permitted under this Agreement and not for any other person, and no such persons shall enjoy any right, benefit, or entitlement under this Agreement

E. Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) the singular includes the plural and the plural, the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "includes," and "including" are to be read as if they were followed by either the phrase "without limitation" or "but not limited to." (2) References to a "Section" or "section" shall mean a section of this Agreement. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day. (9) Attorneys for all parties have participated in the drafting of this document, and no future interpretation shall favor or disfavor one party over another on account of authorship. (10) All exhibits, attachments, or documents attached to this Agreement or referred to in this Agreement are incorporated by reference into this Agreement as if fully set forth herein.

F. Covenant of Good Faith and Fair Dealing. The Town and Developer shall cooperate and act in good faith to perform their obligations under this Agreement and shall refrain from any action inconsistent with their contractual rights or obligations that would prejudice or injure the other party's rights to receive the benefits of this Agreement.

G. Consideration. The parties hereto agree that this Agreement is mutually beneficial in that it provides for orderly urban growth and systematic extension of municipal improvements while at the same time saving a substantial amount of money for the development by relieving it of certain infrastructure expenses for which it would otherwise have been obligated. The major subdivision, single-family dwelling construction standards and the project enhancements required pursuant to the Town's Water Allocation Policy (Ordinance # 16-09-06-001) are considered by the parties to be the minimum additions to the Town's corporate tax basis sufficient to enable the Town to finance the provision of municipal services to the Property. The parties acknowledge that these mutual benefits are sufficient to constitute good and valuable consideration in support of this contractual agreement.

H. Construction of Agreement. This Agreement supersedes and replaces all prior understandings and agreements *between* Town, Owner and Developer in their entirety with respect to the subject matter hereof. In the event of a conflict or inconsistency between this Agreement and any currently existing agreement between Town, Owner and Developer, the provisions of this Agreement shall control. In the event of a conflict or inconsistency between this Agreement and the Standard Specifications, the provisions of this Agreement shall control.

I. Amendment. This Agreement shall not be modified in any manner except in writing, signed by each of the parties, except that Owner shall not be required to join in any amendment once Owner no longer owns the Property.

J. Applicability of Agreement. This Agreement shall be applicable to the Property and the Master Subdivision Plan as approved by Town and as the same shall thereafter be amended or modified by agreement of the then-owner(s)/developer(s) of the Property and Town in writing.

K. Preambles. The preambles to this Agreement are a part of the agreement of the parties as set forth in this Agreement and shall be binding upon the parties in accordance with their terms.

L. Acreages. Where specific acreages and distances are set forth herein, such amounts are subject to change based on actual conditions on the Property and necessary or desirable adjustments made during construction.

M. Further Assurances. Town and Developer shall, at the request of the other, take such further actions and enter into such further agreements as are reasonably required to effectuate the intent of this Agreement.

N. Multiple Originals and Counterparts. This Agreement may be executed in multiple originals and separate counterparts each of which shall constitute an original and all of which taken together shall constitute the whole Agreement. Facsimile signatures shall be deemed to have the

same effect as originals.

Section 14. Term. The term of this Agreement shall be a period of seven (7) years following recordation of this Agreement.

Section 15. Real Covenant: Delegation of Duties. This Agreement shall be recorded in the office of the Register of Deeds of Wake County, North Carolina and shall be a real covenant running with and appurtenant to the Property, and any portion thereof, as it may be subdivided or recombined, and shall apply to the development of all or any portion of the Property. Developer may assign all or a portion of its interest in this Agreement and/or be released from all or a portion of its obligations under this Agreement only upon the assumption of all or a portion of Developers' obligations hereunder by a successor in title to the Property and only with the prior written consent of Town. Town's consent shall not be unreasonably withheld, conditioned or delayed and in any event shall not be withheld if the party assuming all or a portion of Developers' obligations possesses adequate financial resources, ownership interests and development expertise needed to complete the requirements of this Agreement being assigned, and provided Developer delegates, and proposed assignee assumes and agrees to fulfill, in writing, all of Developers' duties set forth in this Agreement which are being assigned.

Section 16. Consideration: Authority to Enter Agreement. The parties hereto agree that this Agreement is mutually beneficial in that it provides for orderly urban growth and systematic extension of municipal improvements while at the same time relieving Town of the expense of constructing additional infrastructure and providing for a predictable increase in the real property tax base with development of the Property as provided herein. The parties acknowledge that these mutual benefits are sufficient to constitute good and valuable consideration in support of this contractual agreement. This Agreement was ratified by the Town Council at an open meeting on February 15, 2023 following any notice required by applicable law, if any. Such ratification shall be deemed to satisfy any requirements for Town Council approval of any item contained herein whether or not specifically stated in such ratification.

Section 17. Default by Developer. The Town's Land Use Administrator or his designee shall conduct an annual investigation on each anniversary date of recording this Agreement to determine if Developer is in compliance with the construction obligations attached hereto. Any breach of Developer's obligations to install Public Infrastructure in accordance with the Standard Specifications which remains uncured for a period of thirty (30) days after receipt of written notice from the Town of non-compliance shall entitle the Town to seek and enforce as its sole and exclusive remedy an action at law for its actual damages or an action in equity for specific performance of Developer's obligations thereunder. Furthermore, the Town may halt and enjoin further development activities on the Property by withholding the issuance of permits, map recordings, and/or utility extension or connections for any period of time within which the Development remains in material breach which is uncured for a period of thirty (30) days after receipt of written notice of non-compliance from the Town. For any other breach of Developer's obligations hereunder which remains uncured for a period of thirty (30) days after receipt of written notice from the Town of non-compliance the Town as its sole and exclusive remedy shall be entitled to halt and enjoin further development activities on the Property by withholding the issuance of permits, map recordings, and/or utility extension or connections for any period of

time within which the Developer remains in breach which is uncured for a period of thirty (30) days after receipt of written notice of non-compliance from. Any failure of the Town to exercise any right or remedy as provided for herein shall not be deemed a waiver of the Town's right to strictly enforce Developer's obligations in any other instance.

Section 18. Default by Town. In the event of a default by the Town in performance of its obligations hereunder, Developer's sole relief and remedy shall be limited to a suit for specific performance of this Agreement. No monetary damages or costs shall be recoverable from Town.

Section 19. Mutual Estoppel. As consideration for entering into this Agreement, all parties certify as follows:

A. This Agreement supersedes any and all previous agreements regarding the subject matter and neither party has asserted any claims, counterclaims, rights of offset against the other, and that no circumstances exist which would justify cancellation or termination of the Agreement.

B. In consideration of the mutual promises contained herein and other good and valuable consideration, Owner and Developer on behalf of themselves and their affiliates, divisions, parents, subsidiaries, predecessors, successors, assigns, agents, employees, officers, directors, shareholders, representatives and insurers, whether named herein or not, do hereby irrevocably and unconditionally release, remise, acquit and discharge the Town, including its elected officials, employees, former employees, representatives, attorneys, contractors and insurers, whether named herein or not, from any and all claims, demands, actions or causes of action, or suits of law or in equity for damages, declaratory relief, injunctive relief, or any other form of monetary or non-monetary relief, based upon legal or equitable theory of recovery, known or unknown, past, present, or future, suspected to exist or not suspected to exist, anticipated or not anticipated, which have arisen prior to the effective date of this Agreement and which are in any manner related to the subject matter of this Agreement.

C. In consideration of the mutual promises contained herein, and other good and valuable consideration, the Town, including its elected officials, employees, former employees, representatives, attorneys, contractors and insurers, whether named herein or not, except for past sums owed by Developer for fees, charges or reimbursements due pursuant to the Town's development fee schedule, for property taxes of general application, and/or due pursuant to applicable Sections of this Agreement, does hereby irrevocably and unconditionally release, remise, acquit and discharge Owner and Developer, their affiliates, divisions, parents, subsidiaries, predecessors, successors, assigns, agents, employees, former employees, officers, directors, shareholders, representatives, attorneys, contractors and insurers, whether named herein or not, from any and all claims, demands, actions or causes of action, or suits of law or in equity for damages, declaratory relief, injunctive relief, or any other form of monetary or non-monetary relief, based upon any legal or equitable theory of recovery, known or unknown, past, present, or future, suspected to exist or not suspected to exist, anticipated or not anticipate, which have arisen prior to the effective date of this Agreement and which are in any manner related to the subject matter of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

ATTEST:

TOWN OF KNIGHTDALE

By: _____
Brittney Hunt, Deputy Town Clerk

By: _____
Jessica Day, Mayor

NORTH CAROLINA WAKE COUNTY

I certify that _____, Town Clerk of the Town of Knightdale, personally appeared before me this day and certified to me under oath or by affirmation that she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed Jessica Day sign the foregoing document, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Today's Date _____, 2023

[Notary's signature as name appears on seal]

— [Notary's printed name as name appears on seal]

My commission expires: _____

[Affix Notary Seal in Space Above]

This agreement has been found to be in compliance with the North Carolina Local Government Fiscal Control Act.

Finance Director

OWNER/DEVELOPER

BEACON KG LLC,
a North Carolina limited liability company

By: Beacon KG Partners LLC,
a North Carolina limited liability company,
its Manager

By: Beacon GP LLC, a North Carolina
limited liability company, its Manager

By: _____
Name: Jon L. Morris
Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____, a Notary Public of Mecklenburg County and State of North Carolina, do hereby certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated: Jon L. Morris, Manager of Beacon GP LLC, which is the Manager of Beacon KG Partners LLC, which is the Manager of Beacon KG LLC, a North Carolina limited liability company.

Witness my hand and official stamp or seal this ____ day of _____, 2023.

Notary Public

Print Name: _____

My Commission Expires: _____

AFFIX NOTARY SEAL

List of Exhibits

- | | |
|------------------|--|
| Exhibit A | Property Description |
| Exhibit B | Master Subdivision Plan/Planned Unit Development |
| Exhibit C | Phasing Schedule |
| Exhibit D | Construction Design Standards & Elevations |

Exhibit A

Property Description

Situated in the State of North Carolina, County of Wake, Town of Knightdale, and consisting of a 8.755 acre tract conveyed to Motaparth Properties, LLC of record in Deed Book 18857, Page 939, a 1.132 acre tract conveyed to BIN – KG LLC of record in Deed Book 19107, Page 1551, a 1.336 acre tract conveyed to Patricia W. Simmons of record in Deed Book 12-E, Page 3602, a 8.269 acre tract conveyed to Patricia W. Simmons of record in Deed Book 12-E, Page 3602, a 0.689 acre tract conveyed to Patricia W. Simmons of record in Deed Book 12-E, Page 3602, a 7.686 acre tract conveyed to Patricia W. Simmons of record in Deed Book 12-E, Page 3602, a 0.505 acre tract conveyed to Patricia W. Simmons of record in Deed Book 12-E, Page 3602, a 0.443 acre tract conveyed to BIN – KG LLC of record in Deed Book 19099, Page 574, a 0.379 acre tract conveyed to BIN – KG LLC of record in Deed Book 19099, Page 574, a 1.024 acre tract conveyed to BIN – KG LLC of record in Deed Book 19099, Page 574, a 2.616 acre tract conveyed to BIN – KG LLC of record in Deed Book 18429, Page 630, and a 21.004 acre tract conveyed to BIN – KG LLC of record in Deed Book 19099, Page 574, and being more particularly bounded and described as follows:

Beginning at a concrete monument found at the northeast corner of said 21.004 acre BIN – KG LLC tract; said point also being on the westerly line of a 17.17 acre tract conveyed to William W. Adams of record in Deed Book 1942, Page 00-E-, having North Carolina State Plane Coordinates (NAD 83—2011 Adjustment): Northing 746753.1250, Easting 2140559.5900; Thence, **S 21° 01' 43" W**, a distance of **22.95 feet** along the easterly lot line of said 21.004 acre tract, the westerly line of said 17.12 acre tract to an iron pipe found; Thence, **S 25° 16' 03" W**, a distance of **681.98 feet** along the easterly lot line of said 21.004 acre tract, the westerly line of said 17.12 acre tract to an iron pipe found; Thence, **S 04° 17' 32" E**, a distance of **352.76 feet** along the easterly lot line of said 2.616 acre tract, the westerly line of a 2.69 acre tract conveyed to Amy A. Jackson of record in Deed Book 13-E, Page 2254, to an iron pipe set. Thence, **S 23° 16' 28" W**, a distance of **606.95 feet** along the westerly line of said 2.69 acre tract, the easterly line of said 2.616 acre tract, to a calculated point; said point being on the northerly right-of-way of Farmwell Road (S.R. 2946); Thence, along the northern right-of-way of said Farmwell Road, the southern line of said 21.004 acre tract the following four (4) courses; **N 85° 19' 37" W**, a distance of **41.67 feet** to a calculated point; **N 88° 36' 57" W**, a distance of **61.97 feet** to a calculated point; **N 01° 23' 03" E**, a distance of **28.46 feet** to an iron pipe set; **N 87° 57' 55" W**, a distance of **70.33 feet** to a calculated point; Thence, **N 88° 39' 58" W**, a distance of **260.45 feet** along the southerly line said 0.379 acre BIN–KG LLC tract, the northerly right-of-way of said Farmwell Road to a calculated point; Thence, **N 88° 57' 20" W**, a distance of **130.04 feet** along the southerly line of said 0.443 acre BIN – KG LLC tract, the northerly right-of-way of said Farmwell Road to an iron pipe found; Thence, **N 88° 39' 52" W**, a distance of **105.06 feet** along the southerly line of said 0.505 acre Patricia W. Simmons tract, the northerly right-of-way of said Farmwell Road to an iron pipe found; Thence, **N 0° 48' 45" E**, a distance of **227.02 feet** along the westerly line of said 0.505 acre tract, the easterly line of a 0.58 acre tract conveyed to Derrick and Kristen Kemp of record in Deed Book 17328, Page 1614 to an iron pipe set; Thence, **N 69° 00' 20" W**, a distance of **240.83 feet** along the southerly line of said 7.686 acre Patricia W. Simmons tract, across the right-of-way of Coffey Street (S.R. 2292) to a mag nail found; Thence, **N 69° 39' 03" W**, a distance of **194.35 feet** along the southerly line of said 1.132 acre BIN – KG LLC tract, across the right-of-way of said Coffey Street to an iron pipe found; Thence, **N 69° 39' 03" W**, a distance of **265.68 feet** along the southerly line of said 8.755 acre Motaparth Properties, LLC tract, across the right-of-way of said Coffey

Street to a mag nail found; Thence, along the westerly line of said 8.755 acre tract, the easterly line of a 7.83 acre tract conveyed to Scott R. Jeffreys of record in Deed Book 18972, Page 860 the following two (2) courses; **N 18° 32' 18" E**, a distance of **513.24 feet** to an iron pipe found; **N 12° 25' 58" W**, a distance of **750.06 feet** to an iron pipe set; Thence, along the northerly line of said 8.755 acre tract, the southerly line of a 7.00 acre tract conveyed to Patrick H. Simmons Trustee and the Patrick H. Simmons Revocable Trust of record in Deed Book 17050, Page 1486 the following two (2) courses; **N 82° 06' 50" E**, a distance of **132.30 feet** to an iron pipe found; **N 29° 46' 50" E**, a distance of **73.48 feet** to a calculated point; Thence, **N 52° 41' 01" E**, a distance of **76.90 feet** along the southerly line of said 7.00 acre tract, the northerly line of said 8.269 acre tract to a calculated point; Thence, along the northerly line of said 8.269 acre tract, the southerly line of a 46.17 acre tract conveyed to Milburnie Fishing Club of record in Deed Book 2819, Page 749 the following two (2) courses; **S 53° 19' 57" E**, a distance of **158.25 feet** to an iron pipe found; **S 72° 04' 59" E**, a distance of **309.75 feet** to an iron pipe found; Thence, **S 72° 05' 03" E**, a distance of **526.16 feet** along the northerly line of said 7.686 acre tract, the southerly line of said 46.17 acre tract to an iron pipe found; Thence, along the northerly line of said 21.004 acre tract, the southerly line of said 46.17 acre tract the following four (4) courses; **N 23° 54' 04" E**, a distance of **199.94 feet** to an iron pipe found; **N 33° 14' 34" E**, a distance of **259.75 feet** to a concrete monument found; **S 84° 52' 57" E**, a distance of **229.48 feet** to a concrete monument found; **S 18° 55' 40" E**, a distance of **211.45 feet** to a concrete monument found; Thence, **S 47° 23' 42" E**, a distance of **218.65 feet** along the northerly line of said 21.004 acre tract, the southerly line of said 46.17 acre tract, to the **Point of Beginning**, and containing **54.132 acres** of land, more or less, as calculated by the above courses; All deed references contained herein can be found at the Wake County Register of Deeds. The above description as prepared by James D. Whitacre, P.L.S. L-5273 on October 20, 2022.

Exhibit B

Planned Unit Development & Master Plan

[insert before recording]

Exhibit C

Phasing Schedule

Exhibit D

Construction Design Standards

The Developer has provided actual elevations that will be built in the development. In addition to the elevations, the applicant agrees to the Manufacturing Building Type Standards found in UDO Ch. 6.12 and the additional conditions listed below:

1. In order to divide and create vertical orientation on building facades and add visual interest, expanses of blank wall shall not exceed seventy (70) feet in width without being interrupted with an architectural feature such as, but not limited to:
 - a. columns,
 - b. recesses in or projections from the building façade,
 - c. piers,
 - d. rooflines,
 - e. brick patterns, or
 - f. reveals in concrete tilt construction with contrasting paint colors.
2. Each building façade shall have architectural features that are repeated through the pattern of walls and openings. Each building façade shall have an identifiable base, body, and cap with horizontal elements separating these components. The body of the building shall constitute a minimum of 50% of the total building height.
3. Buildings shall be architecturally compatible by way of colors and use of materials.
 - a. Each building exterior shall have a minimum of two different colors.
 - b. Each building exterior shall have a minimum of two different materials.
 - c. The primary façade of each building shall include one of the following materials:
 - i. Concrete tilt or precast concrete wall panels, with a base wall paint color in conjunction with varying complimentary accent paint colors,
 - ii. Brick masonry,
 - iii. Stone or Ceramic Tile accents, or
 - iv. Aluminum storefronts with anodized or pre-finished colors.
 - d. The following exterior building materials shall be prohibited:
 - i. Vinyl siding,
 - ii. Painted, smooth faced concrete block (decorative blocks are acceptable).
4. EIFS or synthetic stucco shall not be used in the first four feet above grade and shall be limited to only 25% of each building façade.
5. Soffit and fascia materials shall be EIFS, architectural metal panels (ACM), or tongue and groove wood.
6. Windows and storefront glazing shall have mullions that provide rhythm and visual interest.
7. Each building's primary entrance shall emphasize street level, pedestrian focused visual interest through the use of features such as, but not limited to:
 - a. columns,
 - b. piers,
 - c. windows,
 - d. recessed entries,

- e. sheltering elements,
 - f. rooflines,
 - g. trim,
 - h. color change,
 - i. material change, or
 - j. masonry patterns.
8. Each building's secondary entrances shall emphasize street level, pedestrian focused visual interest through the use of features such as, but not limited to:
 - a. recessed entries,
 - b. sheltering elements, or
 - c. adjacent storefront windows.
 9. Building facades facing public streets shall incorporate enhanced architectural features to create visual interest
 10. The façade of building corners shall maintain a relation to each other, but are not required to be identical.
 11. Each building shall have a minimum of two parapet heights.
 12. Simple parapet roof edges with coping shall be used.
 13. Roof features may include architectural standing seam metal or canopies using architectural prefinished metal panels (Aluminum Composite Material).