

Instrument Prepared By Roger W. Knight  
Brief Description for Index: Residential Development Agreement  
Name of Development: Brio West  
Town of Knightdale Case Number: ZMA-9-21  
Parcel Identification Number: 1755-15-5783, 1755-25-4643  
REID: 0001926, 0329412

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**

**BRIO SUBDIVISION  
DEVELOPMENT AGREEMENT**

THIS UTILITY ALLOCATION AGREEMENT (the "Agreement") is made effective as of the 18<sup>th</sup> day of June 2024 by and between the TOWN OF KNIGHTDALE, a municipal corporation existing under the laws of the State of North Carolina ("Town"), and TRIGATE -SUNCREST BRIO WEST LLC ("Owner" and "Developer"), a North Carolina limited liability company.

WITNESSETH:

WHEREAS, Owner possesses legal title to real property (PIN 1755-15-5783, 1755-25-4643) consisting of 97.12 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 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-9-21 (a copy of which is attached hereto as Exhibit B), authorizing development of the Property as single-family residential subdivision, which shall include residential uses and ancillary public and private facilities including streets, sidewalks, water and sewer lines, storm drainage improvements, and certain active and passive recreation facilities (collectively the "Project"), all to be developed pursuant to the terms of this Agreement;

WHEREAS, the Master Subdivision Plan proposes a residential subdivision of not more than 288 residential dwelling units (excluding the age-restricted Brio phase also referred to as "Brio-AR", which has its own construction drawings and will be captured under a subsequent Utility Allocation Agreement) 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 subassociation 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.

D. "Owners Association" shall mean a nonprofit association incorporated under North Carolina law by Developers. The Owners Association shall among other things have primary enforcement responsibility for subdivision restrictive covenants within the residential portion of the Project and for maintenance of Onsite Private Infrastructure provided by Developer. All future property owners within the residential portions of the Project shall be members of the Owner's Association or a subassociation thereof.

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, and Bylaws for any Owners Association created, 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 Project will be developed within three phases (Phase 1 has 3 sub-phases) 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-9-21 and Ordinance # 22-07-20-003 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.G.3.g 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 will ensure that all contracts for engineering, design, construction, and/or construction management for Public 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 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 Brio 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.

Developer shall make those street improvements set forth on Exhibit F attached hereto and incorporated herein. In general, road improvements included with this section of Brio (excluding the age restricted phase "BRIO-AR" phase identified in Exhibit B) will include all required TIA improvements along Old Crews Road. As described in Exhibit F, the term "completed" in the phasing schedule shall mean completion as determined by the Town Engineer following inspection of improvements. In the event of delay, Developer may post a bond of letter of credit in an amount equal to 125% of the estimated infrastructure cost.

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. For each section or portion of right of way included in the written request for the Town's exercise of its powers of eminent domain, the Owners shall provide the following:

1. One or more certified appraisals including a description of the property appraised and the location in relation to the road and right of way.
2. A detailed description of the reasonable efforts Owner made to acquire the portion of the right of way for that section or portion of the right of way, including the amounts of offers and counteroffers (if any).
3. The name and address and telephone number(s) of the owners.

Should the Town, in its sole discretion, determine the efforts of the Owner to acquire one or more portions of the right of way are not reasonable under the circumstances, or that the reasonableness cannot be adequately determined, the Town may decline to exercise its powers of eminent domain until such time as the Owner has conclusively established that the Owner has exhausted all reasonable efforts to acquire the necessary right of way. At that point the Town may decide to acquire the property by right of way, may decide to omit or delay the construction of the road improvement indefinitely or may require a modification of the project to accommodate the change in the planned road and access.

Section 5. Residential Construction Standards. Dwellings 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:

1. Single-family dwelling lots accessed via a driveway that connects to the fronting public right-of-way may be a minimum of 50-feet wide. Side setbacks for front-loaded units shall be a minimum of five feet. Additionally, all dwellings will be served by driveways that are a minimum length of 25-feet.
2. The Required Distribution of Uses shall be modified to be consistent with the mixture of lots and housing types provided on the approved Master Plan.

Distribution of Uses	
Dwelling-Duplex/Townhome	15%
Dwelling-Multi-Family	3-8%
Dwelling-Single Family	78%
Mixed Use*	0-5%
Lodging/Office/Service/Retail/Restaurant /Entertainment/Recreation*	0-5%
Civic/Institutional*	0-5%
*Within the Brio PUD, the commercial/multi-family pod can support all non-residential uses contained here, as well as upper floor multi-family	

3. Mass grading is permitted on all front-loaded single-family lots. A new, three-inch caliper canopy tree shall be planted in the front yard of all front-loaded single-family lots prior to issuance of the Certificate of Occupancy for that home.
4. Due to the amount of environmental features which will remain undisturbed, the connectivity index shall be reduced to 1.30. Additionally, up to eight cul-de-sacs shall be permitted in the general locations depicted on the approved Master Plan.
5. A 20-foot Type B Landscaped Buffer shall be provided on single-family portion of the site, adjacent to other parcels. A 30-foot Type C buffer shall be provided on the commercial/multi-family pod to other parcels.
6. Approximately 67 market rate townhomes shall be front-loaded and be oriented to the interior of the development.

Section 7. Community Amenities: On-Site Recreational Amenities to be Provided by Developer. Developer acknowledges that Town requires on-site amenities for the residents of the Project for the following reasons, among others: (i) the size, scope, and location of the Project; (ii) to ensure a suitable tax base to support the increase in municipal services as a result of the Project; and (iii) to increase the desirability of the Property for residents and potential residents of Town. All onsite recreational amenities shall be provided at the expense of Developer. Developer's proposed amenities shall include at a minimum the following, which shall be deemed Private Infrastructure unless designated otherwise below:

- A. Approximately 19.02 acres of active and passive open space, consisting of a pool and clubhouse, playground equipment, public and private greenway trails, preserved natural areas, seating & gathering areas, fire pits and grills, a dog park, and more in substantially the locations shown on the Master Subdivision Plan.

B. All Onsite Amenities will be owned and maintained by Developer or transferred to an Owners Association, who shall be responsible for its maintenance. If Developer or any successor in interest desires to materially change, substitute, and/or remove any community amenity included in an approved Master Subdivision Plan and/or Site Plan, Town first must consent in writing to such change or removal, such consent not to be unreasonably withheld, conditioned, or delayed.

Section 8. 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 9. 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 288 residential dwellings. Such reserved capacity from the Town shall be allocated to new development on the Property once Developer's Master Subdivision Plan/Site Plan 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 8 of this Agreement, Town shall maintain the water and sewer allocation available for the Property in accordance with time periods established in the approved 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 250 gallons per day per unit.

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 major subdivision 15 base points and requires a project be awarded at least 50 total points to merit 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. Operating under the current Water Allocation Policy, Developer acknowledges that it receives 15 base points for a single-family subdivision, and Developer acknowledges that it must achieve at least 35 bonus points. Town acknowledges that Developer achieves the minimum 35 bonus points through the provision of those project enhancements indicated on Exhibit E. The project enhancements as listed on Exhibit E shall not be changed unless approved by Town Council.

Section 10. 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. Notwithstanding the foregoing, the Town's provision of municipal services, including water and sewer, to the Property is conditioned upon Developer's timely performance of its obligations hereunder.

Section 11. 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 claims for loss of life, personal injury and property damage, as well as Charges that arise in connection with this Agreement or as a 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 9(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 gross negligence or willful act or omission of Town.

Section 12. 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. 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 13. 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 14. 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 15. Term. The term of this Agreement shall be a period of seven (7) years following execution by both parties.

Section 16. 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 17. 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 June 18, 2024 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 18. 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. In addition to other remedies provided for in this Agreement or by law or equity, any material breach 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 require specific performance of Developer's obligations thereunder and recover such damages as to which the Town may be entitled, plus reasonable attorneys' fees and costs of any such litigation. 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. 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 19. 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 20. 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: \_\_\_\_\_  
Heather Smith, 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 \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
[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

TRIGATE -SUNCREST BRIO WEST LLC

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document in the capacity indicated: \_\_\_\_\_.

Today's Date \_\_\_\_\_, 20\_\_\_\_

[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]

## **List of Exhibits**

- EXHIBIT A** Property Description
- EXHIBIT B** Master Subdivision Plan/Planned Unit Development
- EXHIBIT C** Phasing Schedule
- EXHIBIT D** Residential Construction Standards
- EXHIBIT E** Bonus Points - Water Allocation Policy
- EXHIBIT F** Phasing Study for Off-Site Improvements

## EXHIBIT A

### Property Description

Beginning at an existing iron pipe in the south west corner of the boundary; thence north  $00^{\circ}47'46''$  east a distance of 1546.89 feet to a iron pipe set; thence north  $63^{\circ}19'26''$  east a distance of 437.20 feet to a point; thence south  $86^{\circ}29'56''$  east a distance of 248.05 feet to a point; thence south  $62^{\circ}55'14''$  east a distance of 258.50 feet to a point; thence south  $75^{\circ}55'14''$  east a distance of 233.25 feet to a point; thence north  $42^{\circ}33'30''$  east a distance of 164.29 feet to a point; thence north  $85^{\circ}19'37''$  east a distance of 171.79 feet to a point; thence south  $71^{\circ}01'33''$  east a distance of 320.75 feet to a point; thence north  $86^{\circ}39'30''$  east a distance of 366.69 feet to a point; thence north  $19^{\circ}42'39''$  east a distance of 17.20 feet to a point; thence north  $42^{\circ}15'49''$  east a distance of 14.12 feet to a point; thence south  $66^{\circ}18'16''$  east a distance of 47.22 feet to a point; thence south  $10^{\circ}41'51''$  east a distance of 32.54 feet to a point; thence south  $63^{\circ}14'47''$  east a distance of 84.83 feet to a point; thence south  $67^{\circ}52'24''$  east a distance of 43.71 feet to a point; thence north  $42^{\circ}39'12''$  east a distance of 62.03 feet to a point; thence south  $02^{\circ}10'35''$  east a distance of 1995.13 feet to an iron pipe; thence south  $88^{\circ}45'40''$  west a distance of 1098.33 feet to an iron pipe; thence north  $35^{\circ}46'15''$  west a distance of 779.46 feet to an iron pipe; thence south  $77^{\circ}01'50''$  west a distance of 834.07 feet to the point and place of beginning containing 97.12 acres, 4230705 square feet.

**EXHIBIT B**

Planned Unit Development & Master Plan

[insert before recording]

## EXHIBIT C

### Estimated Phasing Schedule

#### Overall Phasing Schedule:

Note: Start dates relate to *estimated* site improvements beginning. End dates relates to *estimated* final plats being obtained. The main amenity in Phase 1C is anticipated to be *constructed* by June of 2027. Please note that BRIO AR (the age restricted section north of Beaverdam Creek) was included in the Brio Master Plan but has separate Construction Drawings and will have a subsequent Utility Allocation agreement to be approved by the Town as well.

Phase 1A, 1B, and 1C [Brio CDs Phasing Plan] (Phase 1A 151 lots, Phase 1B 41 lots, Phase 1C Amenity Site)

- Start Q4 2024
- End Q4 2025

Phase 2 [Brio CDs Phasing Plan] (40 lots)

- Start June of 2025
- End February of 2026

Phase 3 [Brio CDs Phasing Plan] (56 lots)

- Start November of 2025
- End November of 2026

## **EXHIBIT D**

### **Residential Construction Standards**

#### Single-Family Dwelling Architectural Standards:

1. All Single-Family houses shall have a two-car garage.
2. All front entrances shall be raised from the finished grade (at the frontage line) a minimum of 18 inches in height and be wrapped in brick or stone. This standard shall not apply to age-restricted single-family dwelling lots.
3. Foundations shall be raised slabs, stem wall, or crawls 18-inches in height and wrapped in brick or stone. The requirement for raised foundations shall not apply to age-restricted single-family dwelling lots.
4. Usable porches and stoops shall be a minimum of six (6) feet deep and extend more than 50% of the facade. Garages shall be excluded from this calculation of the 'front facade'.
5. Wall materials shall be limited to a combination of wood clapboard, cementitious fiber board, shingle/shake, drop siding, primed board, wood board and batten, brick and/or stone.
6. Front facades shall be comprised of a minimum of two (2) of the listed wall materials. On age-restricted lots, at least 50% of homes shall use stone or masonry as one of the two wall materials.
7. Roof Materials may be comprised of the following: standing seam metal, asphalt shingles, copper, or wood shingles.
8. No vinyl siding shall be permitted. Vinyl trim and soffit are permitted.
9. Principle roofs shall have a pitch between 6:12 and 12:12.
10. Eaves shall project 8-12-inches.
11. The following additional standards shall apply to front-loaded SFD units:
  - a. Maximum garage width as a percentage of the front facade:
    - i. 50% for all lots
  - b. Maximum garage projection: two feet beyond porch or other furthest facade element unless home is a "J" configuration (courtyard) garage. No more than 25% of age-restricted homes may utilize courtyard style garages and no two "J" configuration homes shall be adjacent to one another.
  - c. All garage doors shall have accent lighting, glass windows, and carriage style handles.
  - d. A minimum square footage of 1,600 heated SF.
    - i. For 60-foot and 75-foot-wide lots, this minimum heated square footage shall increase to 1,800 and 2,400 SF respectively.

#### Townhome Dwelling Architectural Standards:

1. Townhomes shall include a minimum of 1,400 heated square footage.
2. Townhome units may vary in width from 20-feet to 26-feet wide. Age-restricted townhome units may vary in width from 24-feet to 32-feet. A minimum of 60% of Townhome units shall be 22-feet wide or wider.
3. Townhomes less than 22-feet in width shall have at least a one-car garage and all Townhomes 22-feet or wider shall have a two-car garage. At a minimum, 60% of Townhomes shall have a two-car garage.
4. On front-loaded townhomes, all interior units shall have a one-car garage. All end units may have a one-car or two-car garage.

5. All front-loaded townhomes shall incorporate a rear deck or patio (minimum 80 square feet). These decks or patios may encroach up to ten-feet into the rear setback, due to the presence of vegetated buffers behind all units.
6. Townhomes may be two-story or two-story buildings. Up to a maximum of 40% of the townhome units may be two-story. These standards shall not apply to age-restricted townhomes.
7. All rear-loaded townhomes shall have front entrances raised from the finished grade (at the frontage line) a minimum of 18-inches. Front-loaded townhomes shall have a 12-inch minimum raised entrance. The requirement for raised entrances shall not apply to the age-restricted townhomes.
8. Foundations shall be raised slabs, stem walls or crawls and clad in brick or stone (excluding age-restricted units). Foundations on front-loaded townhomes shall be raised a minimum of 12-inches.
9. Wall materials shall be limited to a combination of wood clapboard, cementitious fiber board, shingle/shake, drop siding, primed board, wood board and batten, brick and/or stone.
10. Roof Materials may be comprised of the following: standing seam metal, asphalt shingles, copper, or wood shingles.
11. Front facades shall be comprised of a minimum of two (2) of the listed wall materials, one of which shall be brick or stone.
12. Townhouse Buildings shall have doors, stoops, balconies, terraces and/or windows on any facade clearly visible from a public right-of-way.
13. No vinyl siding shall be permitted. Vinyl trim and soffit are permitted.
14. Principle roofs shall have a pitch between 6:12 and 12:12.
15. Eaves shall project 8-12-inches.
16. All front entry doors shall have window inserts.
17. All townhomes shall provide detailed design along all facades visible from a public right-of-way. A minimum of one (1) architectural feature from three (3) of the four (4) categories shall be utilized.
  - a. Entrance:
    - i. Recessed Entry with 6-inch minimum width door trim
    - ii. Covered stoop (5-footx5-foot minimum)
    - iii. Usable porch a minimum of 5-feet deep and extending more than 50% of the facade.
  - b. Building Off-Set (Minimum of two per building cluster):
    - i. Facade Off-set (12-inch minimum).
    - ii. Roof Line off-set (12-inch minimum).
  - c. Façade:
    - i. Bay Window.
    - ii. Balcony.
    - iii. Window Trim (4-inch minimum. width).
    - iv. Patterned Finish (Scales, Shakes, Wainscoting, etc.)
  - d. Roof:
    - i. Dormer
    - ii. Gable
    - iii. Cupola/Tower/Chimney

## EXHIBIT E

### Water Allocation Policy - Project Enhancements for Point Compliance

	Points
Base Points - Major Residential Subdivision	15
Options to Obtain additional 35 points:	
Residential Architectural Standards	15
On-Street Public Parking	4
Stormwater Pond with Fountain	4
Junior Olympic Pool	5
IPEMA Certified Playground Equipment	4
Deck/Patio - More than 3,000 square feet	3
Clubhouse with Meeting Space up to 2,500 square feet	5
<i>Total Proposed Bonus Points:</i>	<i>40</i>
<b>Total Points (50 Points Required)</b>	<b>55</b>

## **EXHIBIT F**

Phasing Study for Off-Site Improvements

To be inserted upon delivery by DRMP