

Instrument Prepared by:

Brief Description for index: Development Agreement

Property ID: 0013546

Mail after recording to: City of Raleigh

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made this _____ day of _____ (“Effective Date”), by and between the **CITY OF RALEIGH**, a North Carolina municipality (“City”), **CAPITAL PROPERTIES OF RALEIGH, LLC**, a North Carolina limited liability company (“Developer”), and **PIPPIN PROPERTIES, LLC**, a North Carolina limited liability company (“Owner”), herein after individually referred to as a “Party” and collectively referred to as the “Parties”.

WHEREAS, Owner is the fee owner of that certain parcel of land described in Book 8818, Page 671, located in Wake County, North Carolina, consisting of approximately 26.22 acres and being more particularly described in **Exhibit A**, attached hereto and incorporated here in a reference (“Property”).

WHEREAS, Developer is in the business of land development and construction and has entered into a contract with Owner for the purchase of the Property.

WHEREAS, Owner and Developer have petitioned the City to rezone the Property from the Manufactured Housing zoning district (“MH”) to a Residential-6 Conditional zoning district (“R-6-CU”) (said zoning petition being referred to herein as “Z-38-22”).

WHEREAS, the proposed conditions of Z-38-22 limit development of the property to 230 residential townhouses.

WHEREAS, the developer intends to develop the Property with up to 230 residential townhouses, including all required and applicable amenities and public facilities serving the Property (“Development”).

WHEREAS, City is the owner of that certain parcel of land, immediately adjacent to the Property consisting of approximately 25.13 acres with REID 0048238 and designated by the City on its official Parks Plan for development as the Forestville Road Park (“Park”).

WHEREAS, the Owner and Developer acknowledge that the Park, once developed, will be an amenity and benefit to the future residents of the Property.

WHEREAS, to facilitate the planning, design, and/or development of the Park, the Developer desires to make a donation to the City in the amount of \$600,000 (“Park Donation”).

WHEREAS, the Parties enter into this Agreement, pursuant to Article 10, Chapter 160D of the North Carolina General Statutes and Section 10.2.20 of the City’s Unified Development Ordinance (“UDO”), for the purposes of documenting the entitlements and development rights of on the Property and the timing and use of the Park Donation.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and intending to be legally bound, the Parties agree as follows:

1. **Recitals.** The recitals, above, are incorporated by reference into the body of this Agreement.

2. **Donation.** Prior to the issuance of any building permit for the Property, or portion thereof, the Developer, or such other party as may then be the permit applicant, shall remit the Park Donation to the City's Parks, Recreation and Cultural Resources Department.
3. **Disbursement.** The Park Donation shall be dispersed by the City for the planning, design, and/or development of the Park to include, but not be limited to, one or more of the following items:
 - **Master Plan for the Forestville Road Park:** Preparation of the master plan of the Park, to include, but not be limited to, public engagement, consulting services, environmental and cultural analysis, conceptual development of the future programming and public amenities.
 - **Master Plan and Cultural Site and Structure Stabilization:** If during the master plan process the structures located onsite are deemed historic, and reasonably salvageable for interpretation purposes, to be determined by the City in its sole discretion, the City may engage resources for consulting services and specialized contractors for the stabilization of the historic site and structures located within the future Park.
 - **Master Plan and Schematic Design:** Preparation of schematic Park plans to a 15% design detail level, including but not limited to estimated construction costs, and anticipated park amenities.
4. **Term.** The term of the Agreement shall commence as of the Effective Date and shall be expire unless earlier terminated pursuant to the terms of this Agreement upon the earliest to occur: 1) five (5) years from the date of receipt of the Park Donation; 2) the completion of the planning, design and development of the Forestville Road Park property; or 3) thirty (30) years following the Effective Date.
5. **Public Facilities.** All public facilities required for the development of the Property that are required of the Developer by the UDO shall be provided by the Developer to the extent and within the timeframes required by the UDO.

6. **Termination.** If either Party fails to fulfill any of its obligations, the other may terminate this Agreement on twenty (20) days written notice to the breaching Party.
7. **Entire Agreement.** This is the exclusive record of the Parties' agreement. The Parties intend the terms and conditions of this record to constitute the final, complete, exclusive and completely integrated terms and conditions to which they intend to be bound, and they do not intend to be bound by any other agreements, promises, conditions or representations, written or oral, of whatsoever kind or nature, including, without limitation, any trade usage or course of dealing which the parties hereby intend to be negated.
8. **Governing Law.** Any and all matters of dispute between the Parties to this Agreement, whether arising from the Agreement itself or arising from alleged extra contractual facts prior to, during or subsequent to the agreement, including, without limitation, fraud, misrepresentation, negligence or any other alleged tort or violation of the contract, shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina, regardless of the legal theory upon which such matter is asserted, not including North Carolina's choice of laws rules but including its statutes of limitations.
9. **Dispute Resolution.** The Parties agree to use their respective reasonable commercial efforts in good faith to resolve any disputes arising out of or related to this Agreement. To the extent that the dispute in question cannot be resolved through such normal business practices, it shall first be submitted to mediation before a professional mediator, mutually agreeable to the Parties, for a period to last no more than ninety (90) days, and if such dispute is not settled within such time, it shall then be settled by litigation before the Wake County General Court of Justice.
10. **Public Records.** Notwithstanding any other provisions of this Agreement, this Agreement and all materials submitted to the City by the Developer or Owner are subject to the public records laws of the State of North Carolina and it is the responsibility of the Developer and Owner to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law

as such and in the form required by law prior to the submission of such materials to the City. Developer and Owner understand and agrees that the City may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Agreement. To the extent that any other provisions of this Agreement conflict with this paragraph, the provisions of this section shall control.

11. **Vesting.** In accordance with North Carolina General Statute 160D-1007, the laws and development regulations applicable to the Development of the Property subject to this Agreement are those in force as of the Effective Date.
12. **Severability.** If any provision of this Agreement or the application thereof to any party or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other parties or circumstances shall not be affected thereby and that provision shall be enforced to the greatest extent permitted by law.
13. **Headings.** Section headings in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the interpretation hereof.
14. **No Oral Modification.** This Agreement may not be amended except by a writing signed by the Parties hereto.
15. **Waiver.** Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision or of the same provision in the future.
16. **Successor and Assigns.** The terms of this Agreement shall run with title to the Property and shall be binding upon, and inure to the benefit of, the heirs, personal representatives, successors and assigns of the Parties.
17. **Notices.** Except as otherwise provided in this Agreement, all notices required or permitted to be given hereunder shall be in writing and shall be sent by certified mail, postage prepaid, return receipt

requested, or by reputable overnight courier against shipment receipt, in each case addressed as follows:

If to the City:

City of Raleigh
Attn:
222 W. Hargett Street
Raleigh, North Carolina 27601

With a copy to:

If to the Developer:

Capital Properties of Raleigh, LLC
Attn: David Spalding
2840 Plaza Place, Suite 200
Raleigh, NC 27612

If to the Owner:

Pippin Properties, LLC
Attn: Leslie L Pippin
630 Whitley Way
Wendell, NC 27591

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Development Agreement upon the later date written below.

CAPITAL PROPERTIES OF RALEIGH, LLC

By: _____ (SEAL)

Name: David Stallings

Title: Member/Manager

Date: _____

STATE OF NORTH CAROLINA
WAKE COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document for the purpose stated therein and in the capacity indicated: _____.

Date: _____

Signature of Notary Public

Printed Name: _____

My Commission expires: _____

PIPPIN PROPERTIES, LLC

By: _____ (SEAL)

Name: Leslie L. Pippin

Title: Manager

Date: _____

STATE OF NORTH CAROLINA
WAKE COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document for the purpose stated therein and in the capacity indicated: _____.

Date: _____

Signature of Notary Public

Printed Name: _____

My Commission expires: _____

Pursuant to N.C.G.S. 160D-1005, this Development Agreement came before the Raleigh City Council on _____, 2023 for a duly noticed legislative hearing. Based on the information presented at the _____, 2023 hearing, the Raleigh City Council, determined that the City entering into this Development Agreement is in the public interest as it provides necessary funding for the planning and design for development of the Forestville Road Park, approved this Development Agreement, and authorized the [Mayor/City Manager] to execute the same.

CITY OF RALEIGH, NORTH CAROLINA

By: _____ (SEAL)

Name: Mary-Ann Baldwin

Title: Mayor

Date: _____

Attest: _____
Marchell Adams-David
Acting City Clerk & Treasurer

STATE OF NORTH CAROLINA

CITY ACKNOWLEDGEMENT

COUNTY OF WAKE

This is to certify that on the ____ day of _____, 20__, before me personally came Marchell Adams-David, with whom I am personally acquainted, who, being by me duly sworn, says that she is the Acting City Clerk & Treasurer, and Mary-Ann Baldwin is the Mayor of the City of Raleigh, the municipal corporation described herein and which voluntarily executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by said Acting City Clerk & Treasurer and that the said seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

Witness my hand and official seal this ____ day of _____, 20__.

(Seal)

Notary public

My Commission Expires: _____

Approval as to Form:

Deputy City Attorney

EXHIBIT A

TRACT VII: (Wake County) ID #0013546

Being all of Lot 10-A as shown on plat entitled "Estate of W. Upchurch, near Wake Crossroads, Wake County, North Carolina," dated June 1965, and September, 1966, prepared by C. W. Russum, R.L.S., and recorded in Book of Maps 1966, Volume 2, Page 164, Wake County Registry, and containing in net acreage 8.77 acres.

TRACT VIII: (Wake County) ID #0013546

Being all that certain parcel or tract of land being designated as Tract 9, containing 17.450 net acres according to a map entitled "Estate W. I. Upchurch, near Wake Crossroads, Wake County, North Carolina," dated September 1, and prepared by C. W. Russum, R.L.S., and copy of said map being recorded in Book of Maps 1966, Volume 2, Page 164, Wake County Registry.