



# Morrisville Planning and Zoning Board

Planning and Zoning Board Meeting  
June 13, 2024, 6:30 PM

---

**1. Call to Order**

**2. Pledge of Allegiance**

**3. Adoption of Agenda**

**4. Approval of Minutes**

[Approval of April 4, 2024 Meeting Minutes](#)  
[Draft PZB Minutes 2024-4-4](#)

**5. Presentations**

**6. Public Comment**

**7. Old Business**

**8. New Business with Public Comment**

[Town Center Development Agreement](#)  
[Brandon Zuidema, Town Manager](#)  
[Todd Rankine, Singh Development](#)  
[2024-213-0 RES Approving a Development Agreement.pdf](#)  
[2024-213-0 Project Overview Presentation - Town Center](#)  
[2024-213-0 PRES Town Center Development Agreement.pdf](#)  
[2024-213-0 ATTH01- Development Agreement.pdf](#)

**9. Staff Comments**

[Planning Newsletter April - May 2024](#)  
[April - May 2024 Planning Newsletter](#)

**10. Board Comments**

**11. Adjournment** Thank you for attending the Planning and Zoning Board meeting tonight.  
We hope you will join us again soon!

# Planning and Zoning Board Agenda Item Report

Agenda Item No.

Submitted by: Brooke Dodson

Submitting Department Planning

Meeting Date: June 13, 2024

## **SUBJECT**

Approval of April 4, 2024 Meeting Minutes

## **Recommendation:**

Approve

## **Updates/History of Briefing:**

N/A

## **Executive Summary and Background Information:**

N/A

## **Advisory Board/Committee Review:**

Planning and Zoning Board

## **Insert Date of Advisory Board/Committee Review:**

## **Advisory Board/Committee Recommendation and/or Vote:**

None

## **Potential Options:**

None

## **Staff Recommendation:**

None

## **ATTACHMENTS**

- [Draft PZB Minutes 2024-4-4](#)



Planning and Zoning Board  
April 4, 2024, 6:30 p.m.

---

NOTE: Minutes are summaries only, reflecting committee action and main points of discussion. For the meeting agenda, presentations, and other related agenda materials, click [here](#).

**1. Call to Order**

*Chairman Langston* called the meeting to order at 6:30 p.m.

Members Present

*Chairman Lee Langston*  
*Vice Chairman Kenneth Sack*  
*Member Chris Robuck*  
*Member Kristen Richardson*  
*Alternate Member Sushama Pradhan*

Members Absent

*Member Tim Toterhi*  
*Alternate Member Rick Bain*

Staff Present

*Giselle Rodriguez–Villanueva, Deputy Town Manager*  
*Michele Stegall, Planning Director*  
*Eliot Ward, Planning Manager*  
*Ben Mills, Stormwater Engineering Manager*  
*Mark Spanioli, Engineering Director*  
*Caleb Allred, Planner II*  
*Mae Golden, Planner I*  
*Brooke Dodson, Planning & Zoning Board Secretary*

**2. Pledge of Allegiance**

**3. Adoption of the April Agenda**

**Motion:** *Member Richardson* made a motion to approve the agenda as submitted.

**Second:** *Member Robuck* seconded the motion.

**Vote:** Unanimous

**4. Approval of March 14<sup>th</sup>, 2024, PZB Minutes**

**Motion:** *Member Robuck* made a motion to approve the March 14, 2024, minutes as submitted.

**Second:** *Vice Chairman Sack* seconded the motion.

**Vote:** Unanimous

**5. Presentations**

There were no presentations.

**6. Public Comment**

There were no public comments.

**7. Old Business with Public Comment**

**7.a Proposed UDO Text Amendments for Masonry Painting, Greenhouses /Nursery (Research), Tobacco and Hemp Sales, Government Accessory Buildings Exemptions and Stormwater Management**

As a continuation of the March 14<sup>th</sup>, 2024, meeting, *Planning Manager Ward* provided an update of the proposed UDO text amendments for masonry painting, greenhouses/nurseries, tobacco and hemp sales and stormwater management. The update included amendments to the following UDO sections:

- Adding to Section 4.2.5.D.1 exemption from the standards in Section 4.3.3.A.4 for the Government Maintenance, Storage, or Distribution Facility and Administrative Government Service uses
- Adding Section 5.9.2.c exempting accessory buildings/structures associated with the Government Maintenance, Storage, or Distribution Facility and Administrative Government Service uses from the Building Configuration and Design standards in Section 5.9

*Planning Manager Ward* presented updated site maps that depicted a 1000 ft buffer from Tobacco and Hemp Sales shops from public/private schools, daycares, places of worship and public parks. These updated maps were requested by the Board at the March 14<sup>th</sup>, 2024, meeting after staff proposed a 500 ft buffer.

*Planning Manager Ward* presented an update to the definition of Tobacco and /or Hemp retail use in Section 11.5 to include “any amount of THC”.

*Planning Manager Ward* provided an update on Masonry Painting. *Planning Manager Ward* stated that staff proposed adding language to the UDO section 5.16.2.D.18 to prohibit signs from being painted onto a masonry building or structure.

*Planning Manager Ward* stated that staff recommended removing Greenhouse / Nursery from the proposed UDO text amendments. *Planning Manager Ward* stated that more research would be needed to address concerns regarding possible light pollution.

**Board Discussion - Tobacco and Hemp Sales:**

*Member Robuck* stated that the update looked great.

*Member Richardson* stated that she is in favor of the 500 ft buffer requirement as it would be most appropriate when considering the size of the Town.

**Board Discussion – Masonry Painting:**

The Board had no questions or concerns regarding Masonry Painting.

**Board Discussion – Greenhouses / Nurseries:**

The Board had no questions or concerns regarding Greenhouses / Nurseries.

*Engineering Director Spanioli* presented an overview of the proposed UDO text amendments to sections 4.2 and 5.9 for Government Accessory Buildings Architectural Exemptions. The proposed amendments would allow for the new Public Works Facility to have accessory structures to include a maintenance yard, 3-sided shed, vehicle wash station, salt storage facility and bulk storage containment area.

*Engineering Director Spanioli* continued his presentation by stating that staff also proposed adding and removing language to UDO Section 7.4, Maintenance, to comply with the recently passed Session Law 2023-108 that prohibited the collection of stormwater maintenance security cash payments and capped the amount that could be collected for associated escrows.

**Board Discussion – Government Accessory Buildings Exemptions:**

*Chairman Langston* asked where the bulk storage area would be located. *Engineering Director Spanioli* stated that the area is currently vacant and highlighted the proposed location on the conceptual design rendering. *Engineering Director Spanioli* stated that the storage area would replace the existing convenience center.

**Board Discussion – Stormwater Management**

The Board had no questions or concerns regarding Stormwater Management.

**Motion:** *Member Robuck* made a motion to recommend approval of Ordinance 2024-46-0 of the Morrisville Town Council Approving Text Amendments to the Unified Development Ordinance Related to Masonry Painting, Tobacco and Hemp Sales, Government Accessory Buildings Architectural Exemptions, and Stormwater Management.

**Second:** The motion was seconded by *Vice Chairman Sack*.

**Vote:** Unanimous.

**8. New Business**

There were no Public Comments.

**9. Staff Comments**

*Planning Director Stegall* reviewed the March 2024 Newsletter.

**10. Board Comments**

*Member Robuck* thanked staff for making the Board’s requested updates.

**11. Adjournment**

**Motion:** *Member Richardson* made a motion to adjourn the meeting.

**Second:** *Member Robuck* seconded the motion.

**Vote:** Unanimous

Meeting adjourned at 6:50 PM

\_\_\_\_\_  
Lee Langston  
Planning and Zoning Board Chairman

\_\_\_\_\_  
Brooke Dodson  
Secretary to the Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Planning and Zoning Board Agenda Item Report

Agenda Item No.

Submitted by: Michele Stegall

Submitting Department Administration

Meeting Date: June 13, 2024

## **SUBJECT**

Town Center Development Agreement

Brandon Zuidema, Town Manager

Todd Rankine, Singh Development

## **Recommendation:**

Approve

## **Updates/History of Briefing:**

NA

## **Executive Summary and Background Information:**

At the June 13 Planning and Zoning Board meeting an overview of the proposed Development Agreement (ATTH01) between the Town of Morrisville and Singh Development for the construction of the Town Center will be presented. The Agreement establishes the framework by which the Town and Singh will work together in the development of Town Center. The Agreement sets forth the responsibilities for project design, construction and management; the financial obligations of the parties; responsibilities related to operation of the parking deck and legal considerations related to items such insurance, liability and warranties, among other things. Town Manager Zuidema will present an overview of the Agreement terms at the meeting (see attached).

Todd Rankine from Singh development will also be present at the meeting and will provide an overview of the Town Center plan for the Board's information (see attached).

## **Advisory Board/Committee Review:**

Planning and Zoning Board

## **Insert Date of Advisory Board/Committee Review:**

## **Advisory Board/Committee Recommendation and/or Vote:**

None

**Potential Options:**

The Planning and Zoning Board is requested to review the proposed Development Agreement and make a recommendation to Town Council for:

1. Approval;
2. Approval with changes; or
3. Denial.

Review of a Development Agreement is a legislative decision and is generally discretionary.

**Staff Recommendation:**

None

**ATTACHMENTS**

- [2024-213-0 RES Approving a Development Agreement.pdf](#)
- [2024-213-0 Project Overview Presentation - Town Center](#)
- [2024-213-0 PRES Town Center Development Agreement.pdf](#)
- [2024-213-0 ATTH01- Development Agreement.pdf](#)



**RESOLUTION 2024-213-0 OF THE MORRISVILLE TOWN  
COUNCIL AUTHORIZING A DEVELOPMENT AGREEMENT  
WITH SINGH DEVELOPMENT LLC FOR TOWN CENTER  
PHASE I**

---

**WHEREAS**, The Town published a Town Center Core – Phase I Solicitation for Development Partners (“RFP”) in November of 2020 seeking proposals for development of a mixed-use Town Center Core, including residential, retail and office/commercial uses; and

**WHEREAS**, Singh Development LLC submitted a proposal dated February 26, 2021 in response to the RFP and the Town reviewed the qualifications of and selected Singh Development LLC to serve as its partner to develop Phase I of the Town Center Core subject to the negotiation and execution of a development agreement; and

**WHEREAS**, North Carolina General Statutes (“N.C.G.S.”) §160D-1001 through §160D-1012, enables local governments to enter into binding development agreements with entities intending to develop real property; and

**WHEREAS**, the proposed development agreement facilitates the development of Phase I of Town Center as recommended in the 2021 Land Use Plan; and

**WHEREAS**, the Town will benefit from the Agreement through the establishment of a central Town core, providing residential housing, office and retail space for residents, as well as a recreation and open space through the development of the Town Green, facilitating community gatherings, cultural events and other recreational pursuits; and

**WHEREAS**, Singh Development LLC will benefit from the Agreement by obtaining sufficient certainty and predictability in the Town’s development and review process to justify the required substantial initial capital investment for the development which will require multiple years to complete, and will benefit from substantial commitments to public facilities and infrastructure by the Town as a result of the development; and

**WHEREAS**, the area subject to proposed Agreement is depicted on Exhibit A attached hereto and legally described in Exhibit B attached hereto; and

**WHEREAS**, following due and proper notice in accordance with all requirements of law, the Planning and Zoning Board held a public comment session on June 13, 2024 and voted to recommend approval of the proposed Development Agreement by a vote of <> “yes” and <> “no; and

**WHEREAS**, following due and proper notice in accordance with all requirements of law a public hearing on the proposed Development Agreement was held at Morrisville Town Hall, 100 Town Hall Drive, Morrisville, NC at 6:00 PM on Tuesday July 23, 2024.

**NOW, THEREFORE, BE IT RESOLVED BY THE MORRISVILLE TOWN COUNCIL THAT:**

The Town Council of the Town of Morrisville authorizes the Town Manager to enter into a Development Agreement, substantially in the form of Exhibit “C” attached hereto, with Singh Development LLC for the construction of Town Center Phase I.

Adopted this the 13th of August, 2024.

---

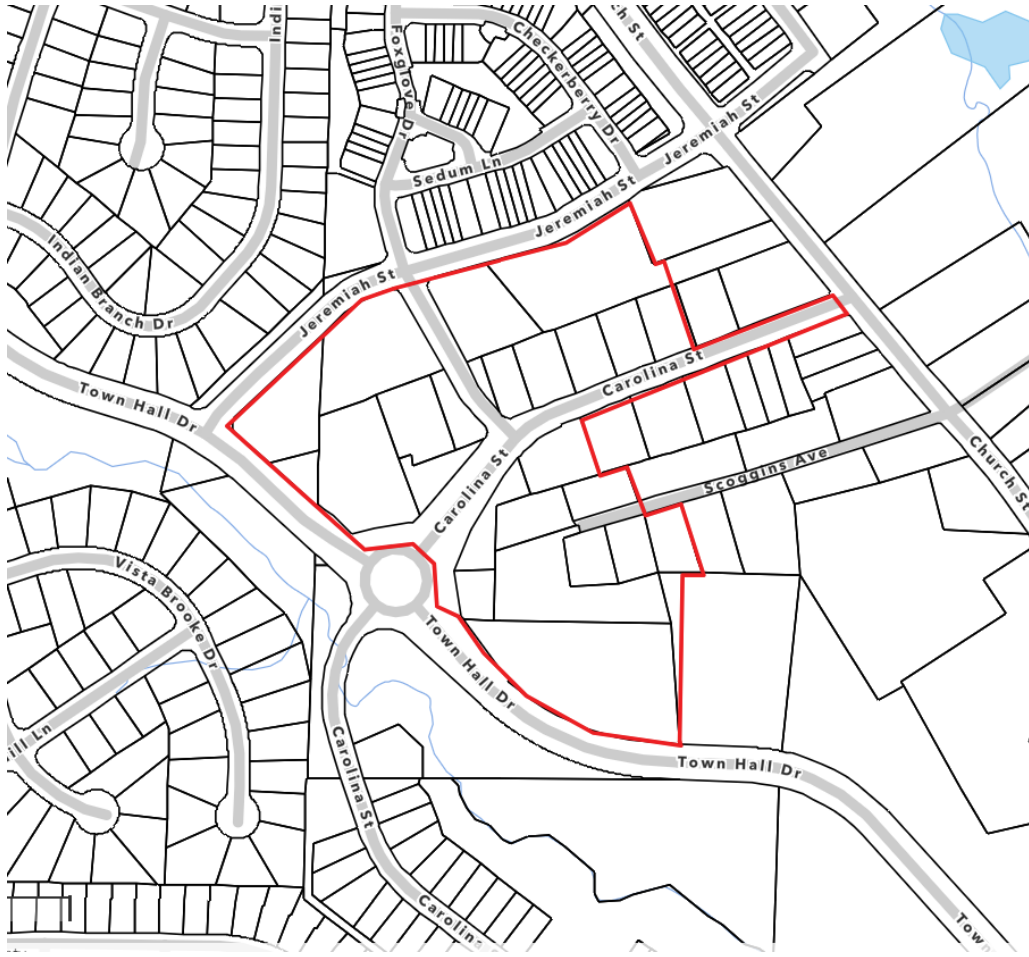
TJ Cawley, Mayor

ATTEST:

---

Patricia Spillane, Town Clerk

# Exhibit A Location Map



## **Exhibit B**

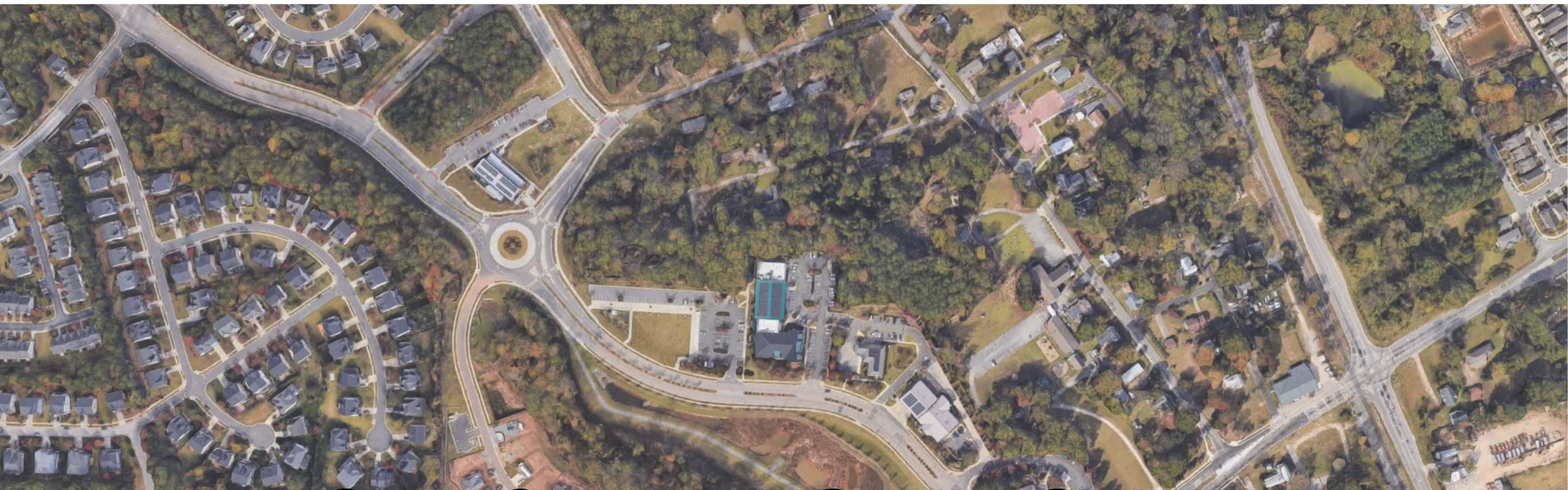
### **Legal Description and PINs**

#### MORRISVILLE TOWN CENTER PROJECT REZONING BOUNDARY LEGAL DESCRIPTION

Beginning at a point in the northerly right of way of Town Hall Drive, said point having North Carolina State Grid coordinates of North 754,590.79 and East 2,050,087.65 ((NAD83 (2011)) to a point; running thence along the northerly and northeasterly right of way of Town Hall Drive the following 16 courses and distances: (1) N 87°23'18" W 1.53' to a point; (2) N 87°36'50" W 40.57' to a point; (3) with a curve turning to the right with an arc length of 384.63', a radius of 560.00', a chord bearing of N 67°48'30" W, and a chord length of 377.11' to a point; (4) N 42°04'57" E 6.79' to a point; (5) N 46°23'23" W 29.49' to a point; (6) N 35°58'05" W 131.34' to a point; (7) N 35°58'05" W 15.39' to a point; (8) N 10°04'49" W 103.51' to a point; (9) N 48°44'45" W 116.91' to a point; (10) S 81°51'48" W 86.20' to a point; (11) N 74°14'03" W 52.20' to a point; (12) N 46°51'00" W 59.33' to a point; (12) with a curve turning to the right with an arc length of 43.75', a radius of 253.00', a chord bearing of N 52°34'48" W, and a chord length of 43.70' to a point; (13) S 42°08'47" W 4.00' to a point; (14) N 47°51'13" W 134.39' to a point; (15) N 47°51'13" W 40.05' to a point; and (16) with a curve turning to the left with an arc length of 58.34', a radius of 623.00', a chord bearing of N 50°32'11" W, and a chord length of 58.32' to a point; running thence along the northwesterly and northerly right of way of Jeremiah Street the following seven (7) courses and distances: (1) with a reverse curve turning to the right with an arc length of 52.31', a radius of 30.00', a chord bearing of N 03°16'08" W, and a chord length of 45.93' to a point; (2) N 46°40'52" E 309.44' to a point; (3) with a curve turning to the right with an arc length of 138.81', a radius of 290.00', a chord bearing of N 60°23'39" E, and a chord length of 137.49' to a point; (4) N 74°34'51" E 103.70' to a point; (5) N 74°35'12" E 235.93' to a point; (6) with a curve turning to the left with an arc length of 99.82', a radius of 360.00', a chord bearing of N 66°39'12" E, and a chord length of 99.50' to a point; and (7) N 58°43'03" E 132.19' to a point; thence leaving said right of way and running S 20°27'44" E 151.64' to a point N 69°33'11" E 39.52' to a point and S 20°14'06" E 210.11' to a point in the northerly right of way of Carolina Street; running thence along the northerly right of way of Carolina Street N 69°33'40" E 319.25' to a point in the southwesterly right of way of Church street; running thence along said right of way S 39°34'13" E 52.92' to a point in the southerly right of way of Carolina Street; running thence along said southerly right of way S 69°33'43" W 436.56' to a point and S 69°33'41" W 206.84' to a point; thence leaving said right of way and running S 20°38'12" E 138.70' to a point, N 73°17'43" E 56.68' to a point and S 17°52'34" E 83.89' to a point in the northerly right of way of Scoggins Avenue; running thence along said northerly right of way N 73°59'47" E 95.03' to a point; running thence S 16°39'51" E 29.33' to a point in the southerly right of way of Scoggins Avenue; thence leaving said right of way and running S 16°39'51" E 162.55' to a point, N 88°50'50" W 29.64' to a point and S 03°11'22" W 382.85' to the point of beginning, having an area of 713,157 square feet or 16.372 acres.

PINs: 0745951353; 0745954582; 0745958657; 0745952139; 0745954039; 0745955322;  
0745956336; 0745956113; 0745957400; 0745957471; 0745958455; 0745959550; 0755050543;  
0745958203; 0745957058; 0745958174; 0745948960; 0745958080; 0745959072;  
0755050081; 0755041787; 0745948775

**Exhibit C**  
**Development Agreement**



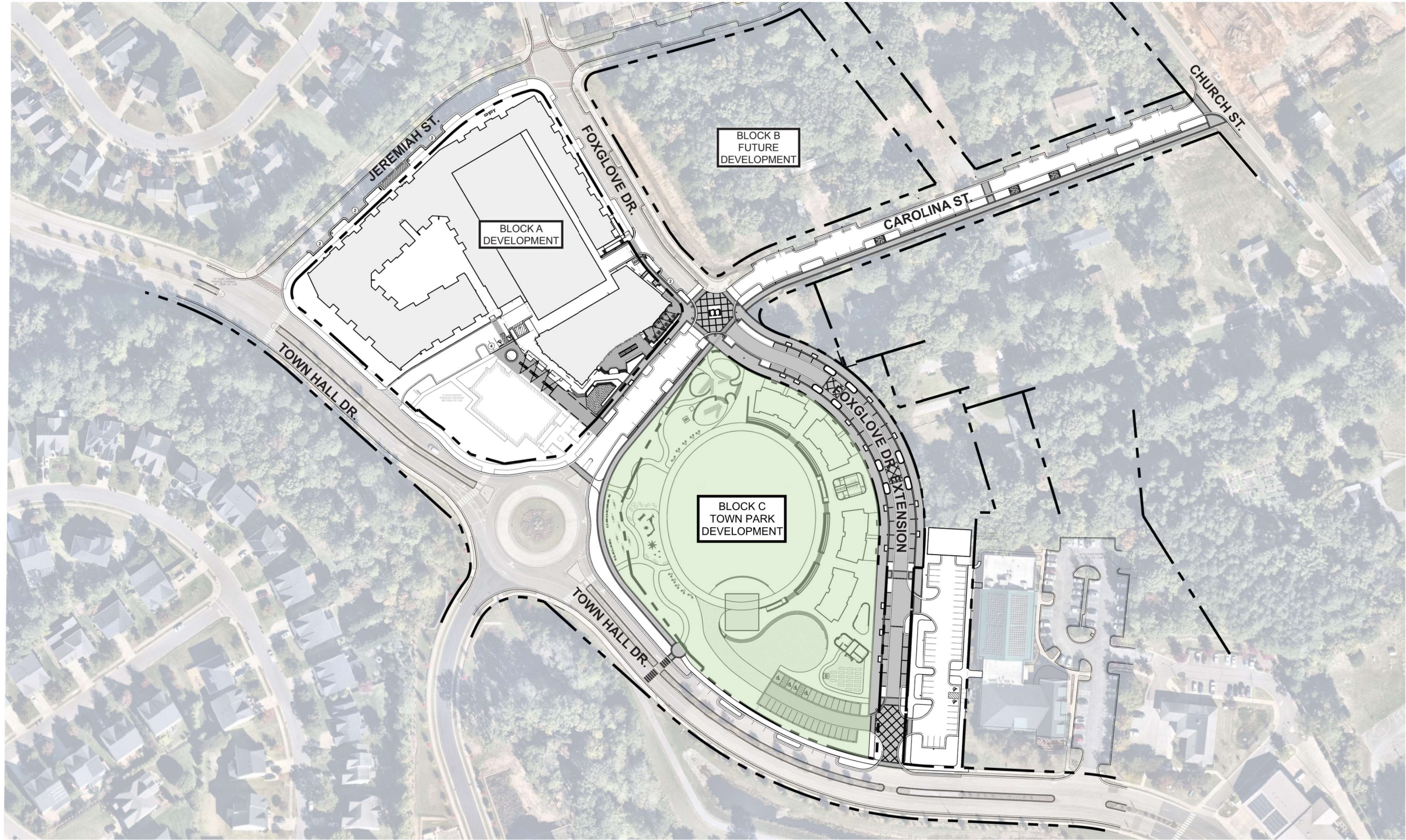
# MORRISVILLE TOWN CENTER

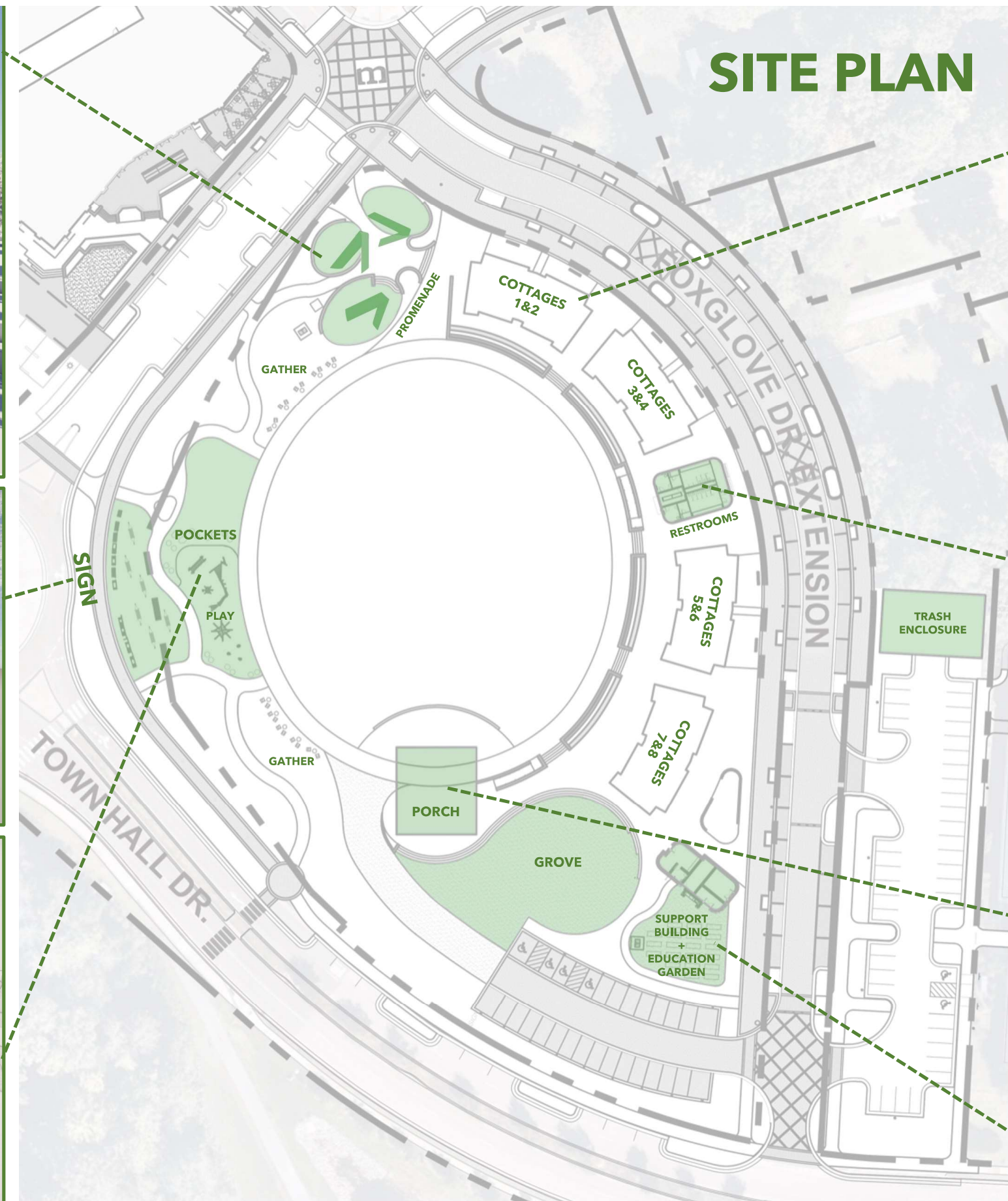
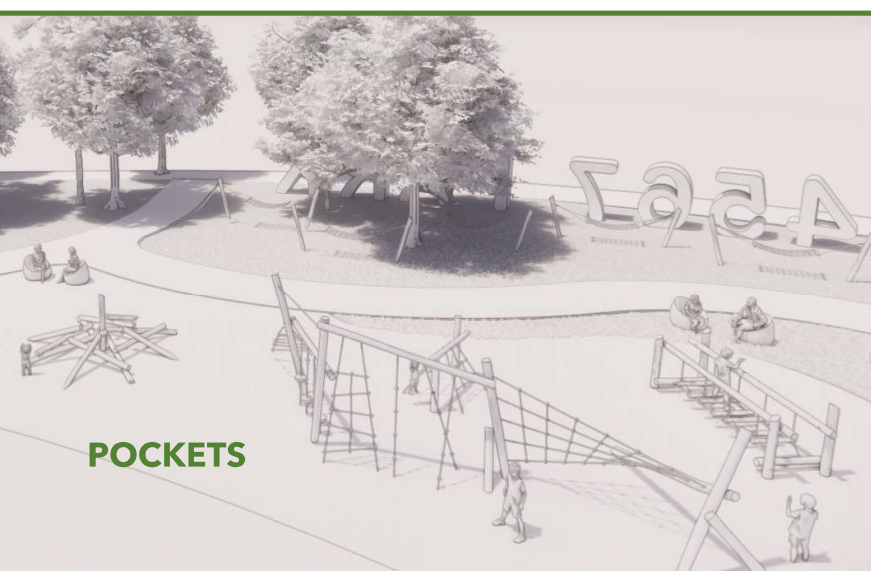
PZB MEETING

JUNE 13, 2024



# SITE PLAN





# THE PROMENADE

## CONCEPTUAL 3D IMAGES



# THE PROMENADE

## CONCEPTUAL 3D IMAGES



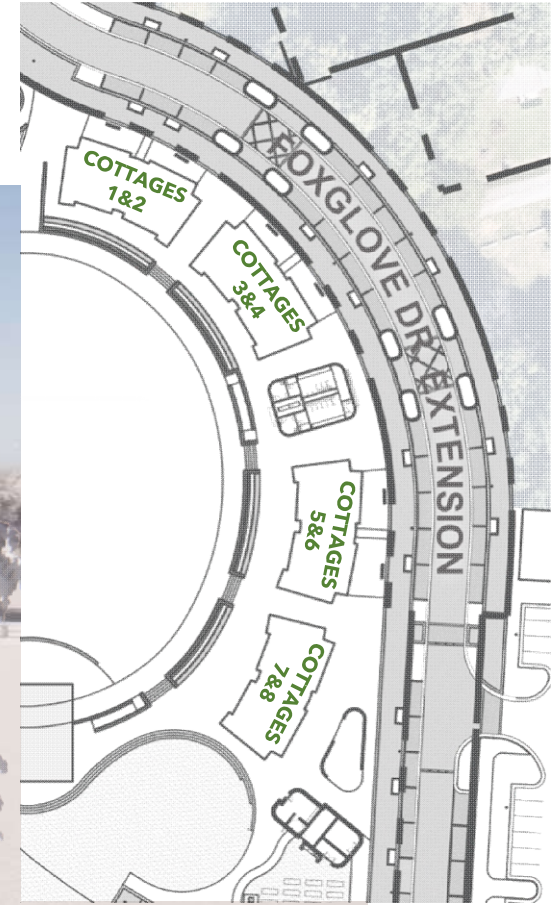
# THE PROMENADE

## CONCEPTUAL 3D IMAGES



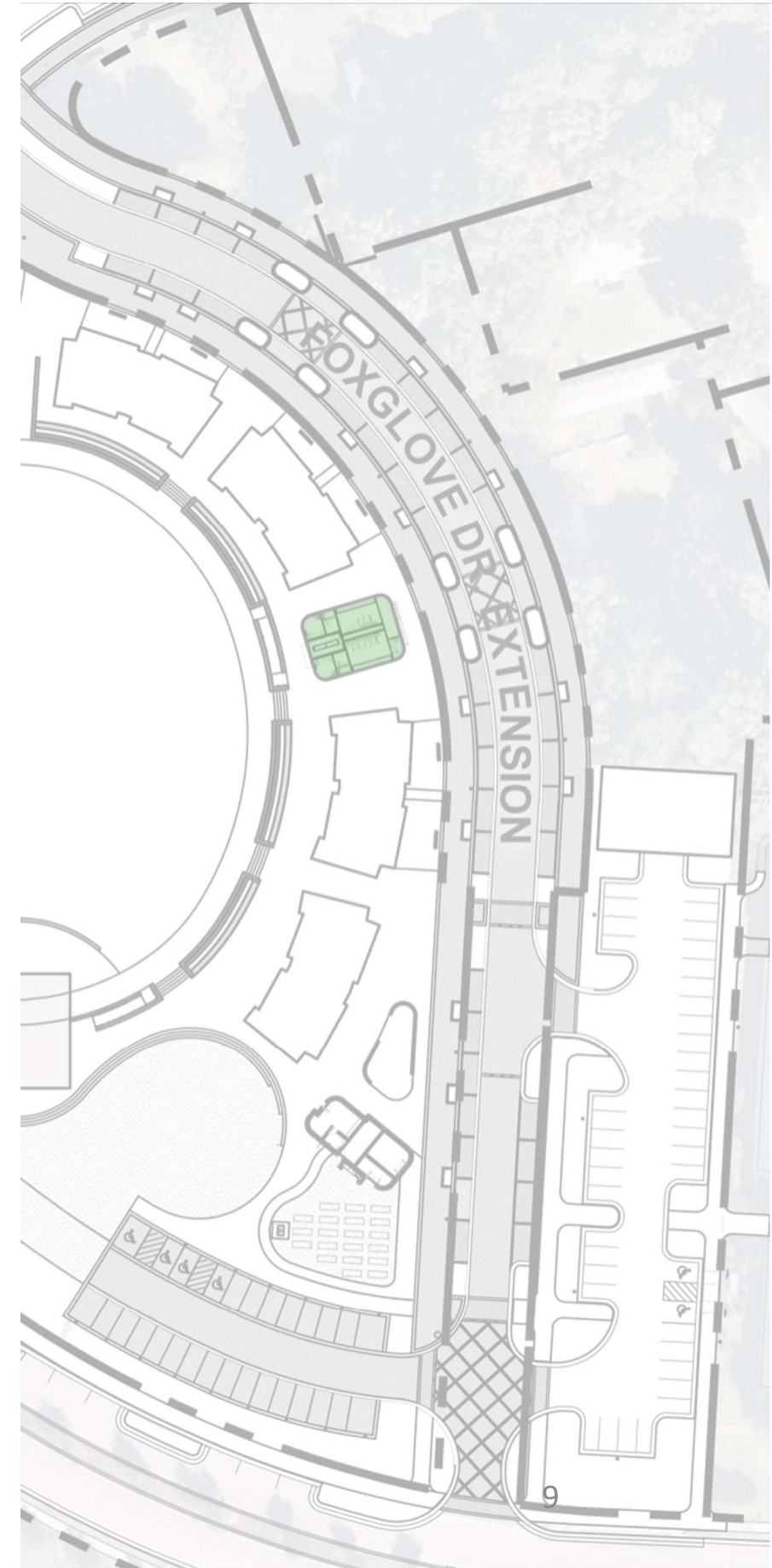
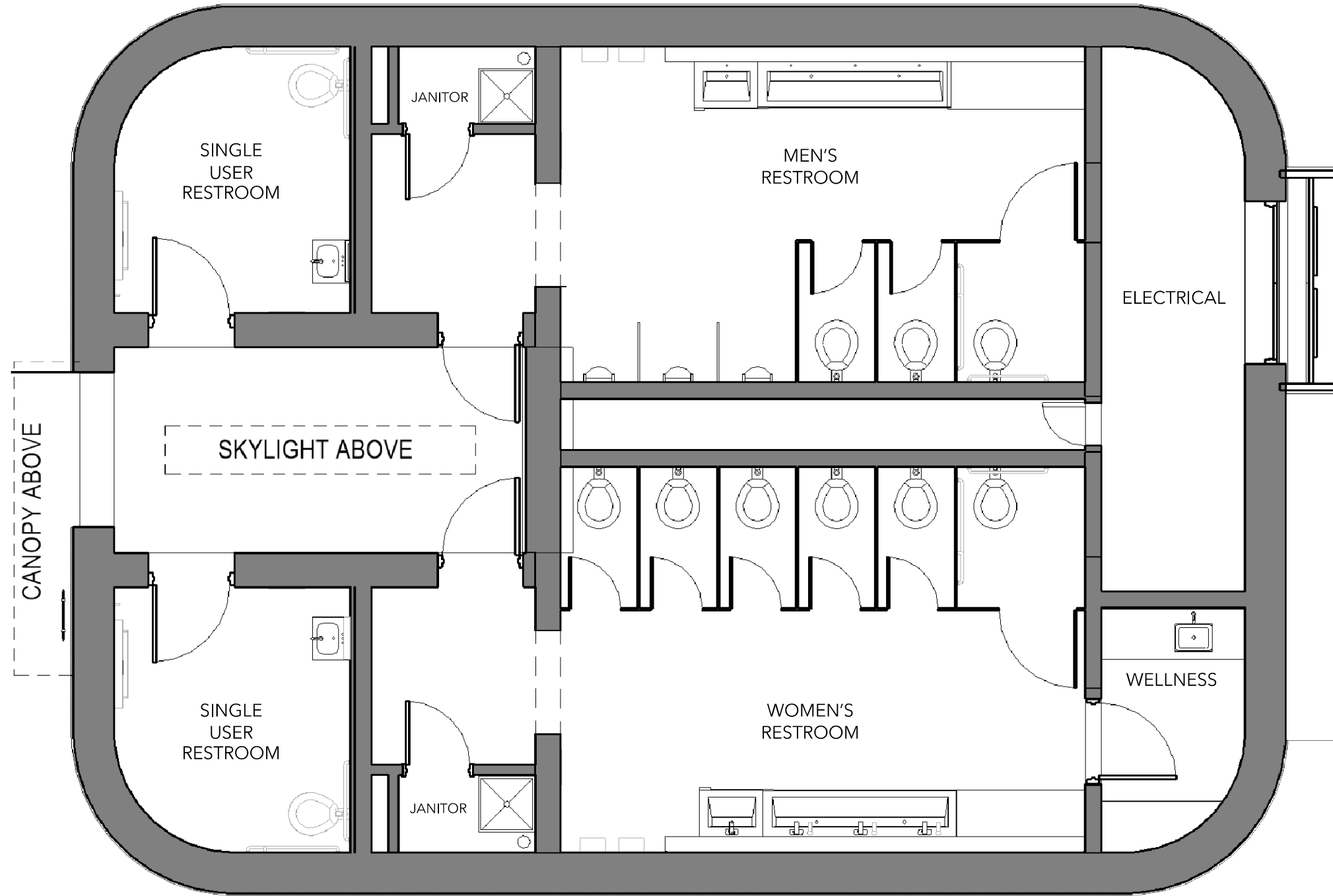
# THE COTTAGES

## CONCEPTUAL 3D IMAGES



# THE PUBLIC RESTROOMS

## FLOOR PLAN

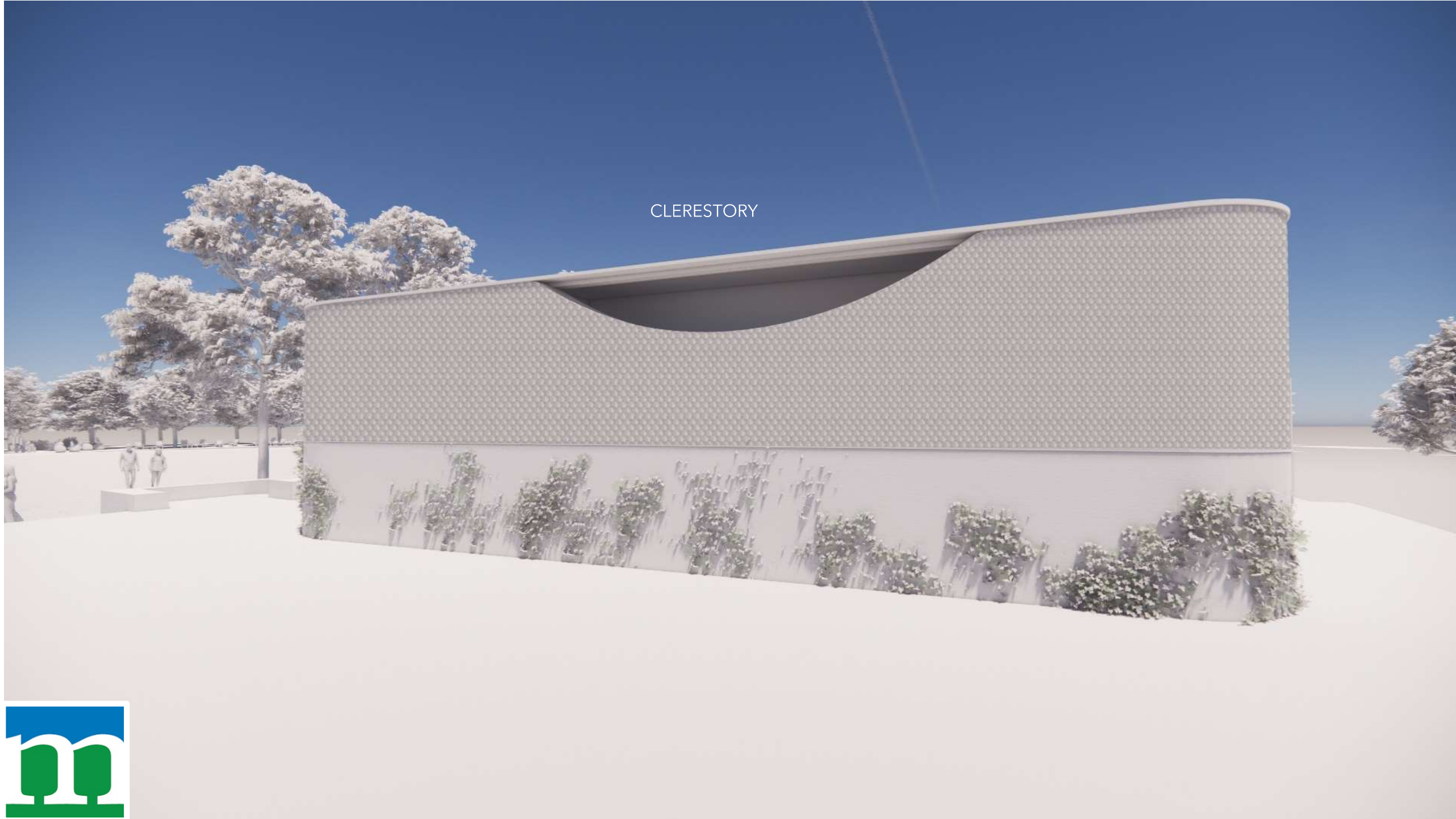


# THE PUBLIC RESTROOMS

## CONCEPTUAL 3D IMAGES



**CONCEPTUAL 3D IMAGES**



**CONCEPTUAL 3D IMAGES**

DIGITIZED PUBLIC ART - SCREEN + BENCH



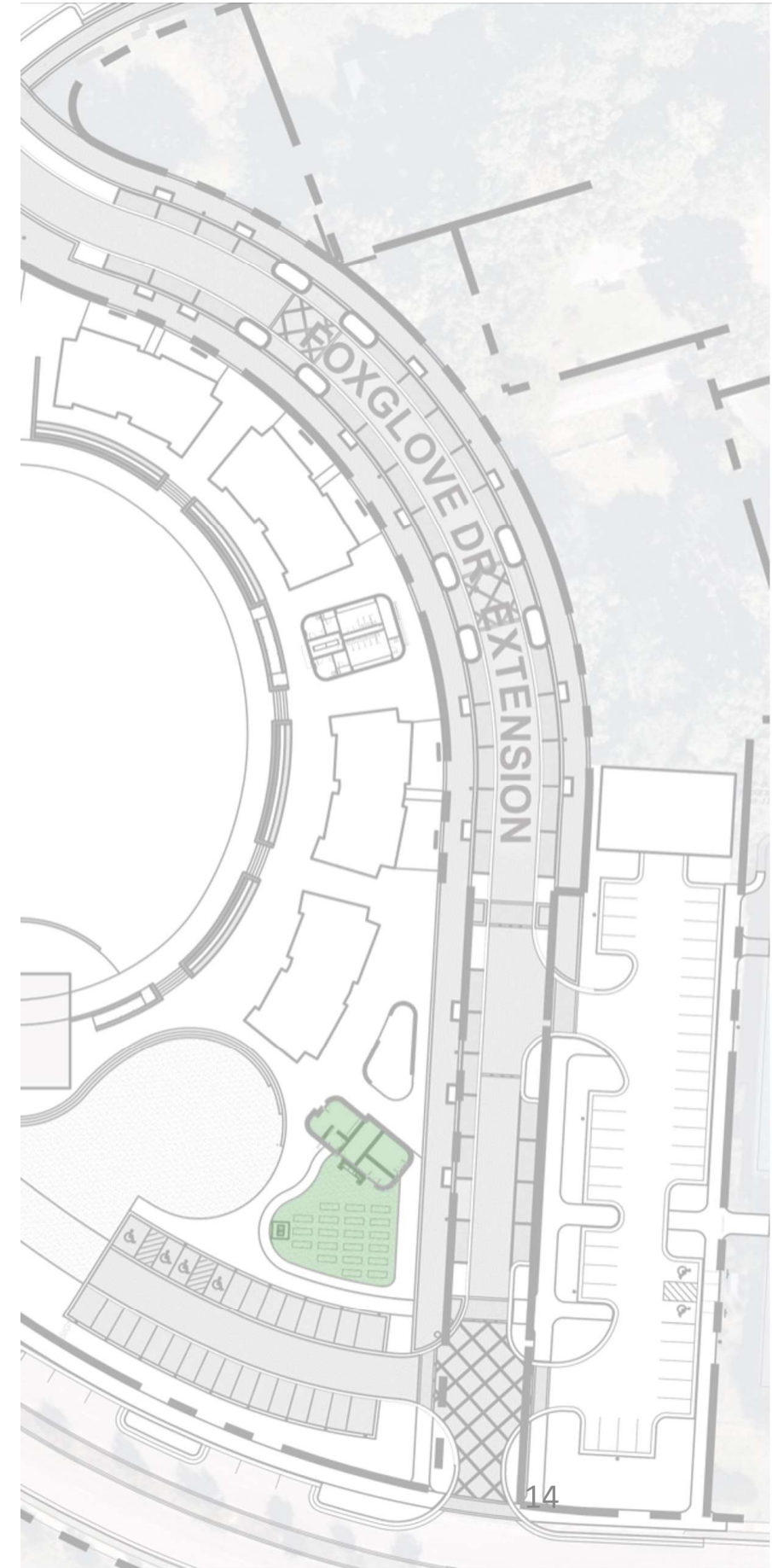
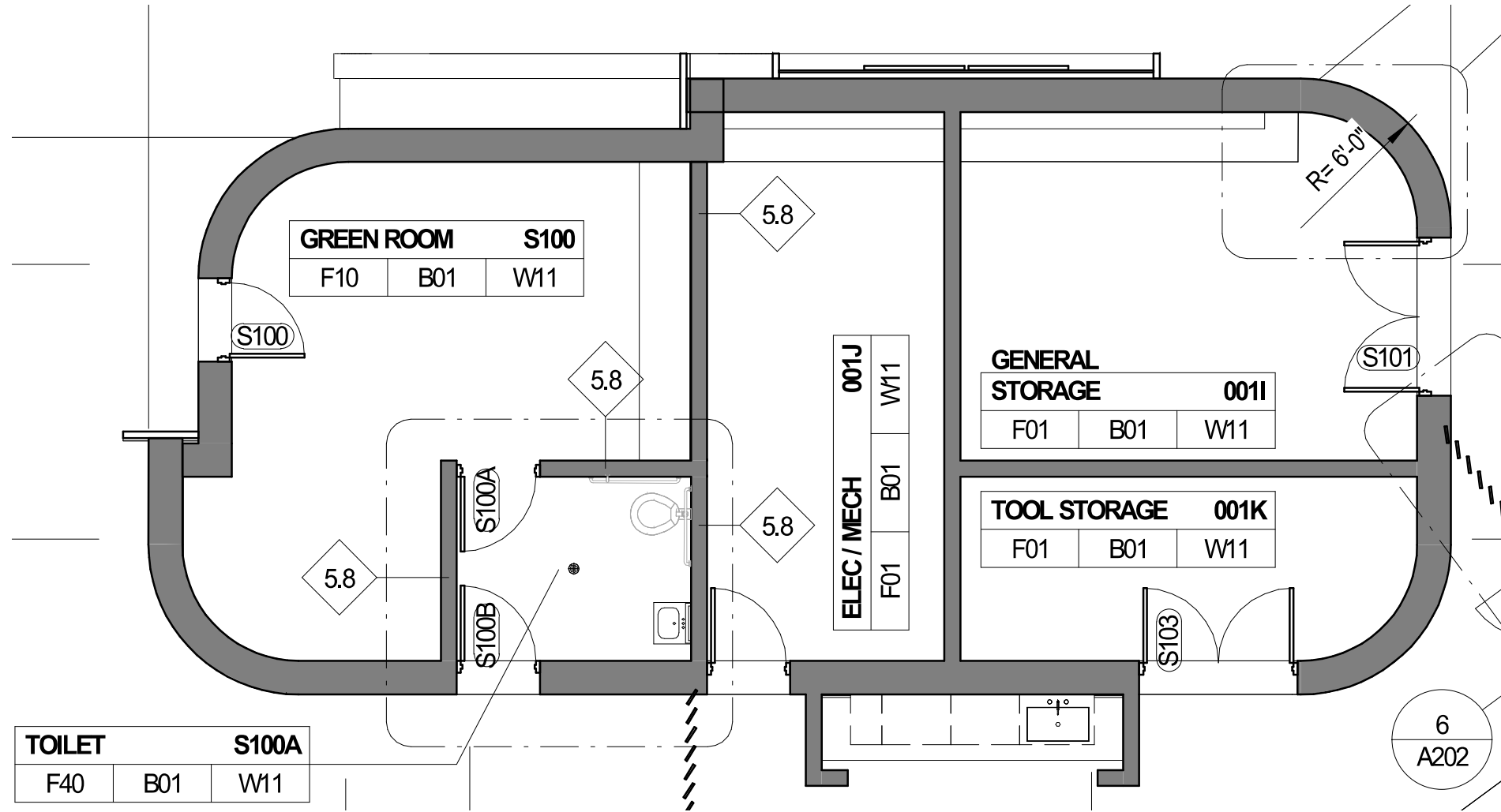
**CONCEPTUAL 3D IMAGES**

DIGITIZED PUBLIC ART - SCREEN + BENCH



# EDUCATION GARDEN + SUPPORT

## FLOOR PLAN



**CONCEPTUAL 3D IMAGES**



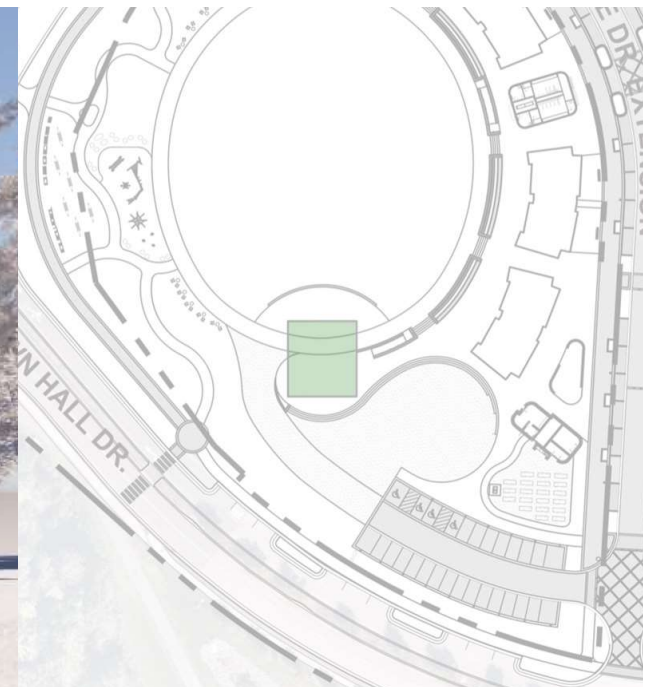
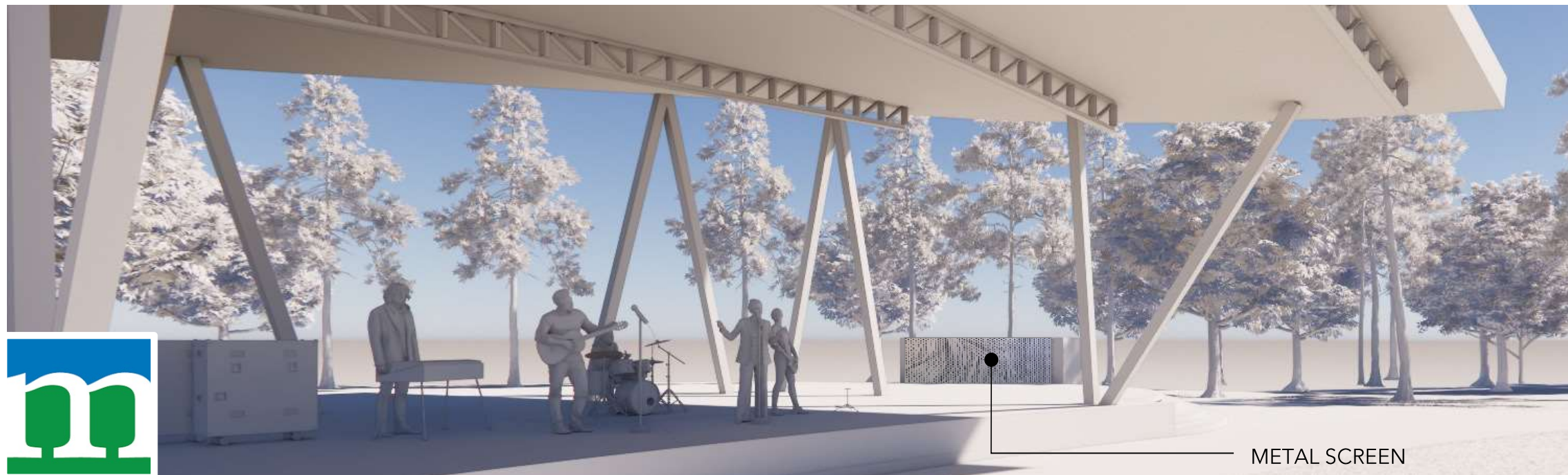
**EDUCATION GARDEN + SUPPORT**

**CONCEPTUAL 3D IMAGES**



# THE PORCH

## CONCEPTUAL 3D IMAGES



# THE POCKETS

## CONCEPTUAL 3D IMAGES



# THE POCKETS

## SITE PLAN DIAGRAM

### ZONES OF PLAY + GATHERING



ROM COST (PER SOFA): \$2,000\*  
 ROM COST (PER CHAIR): \$1,200\*  
 ROM COST (PER COFFEE TABLE): \$600\*

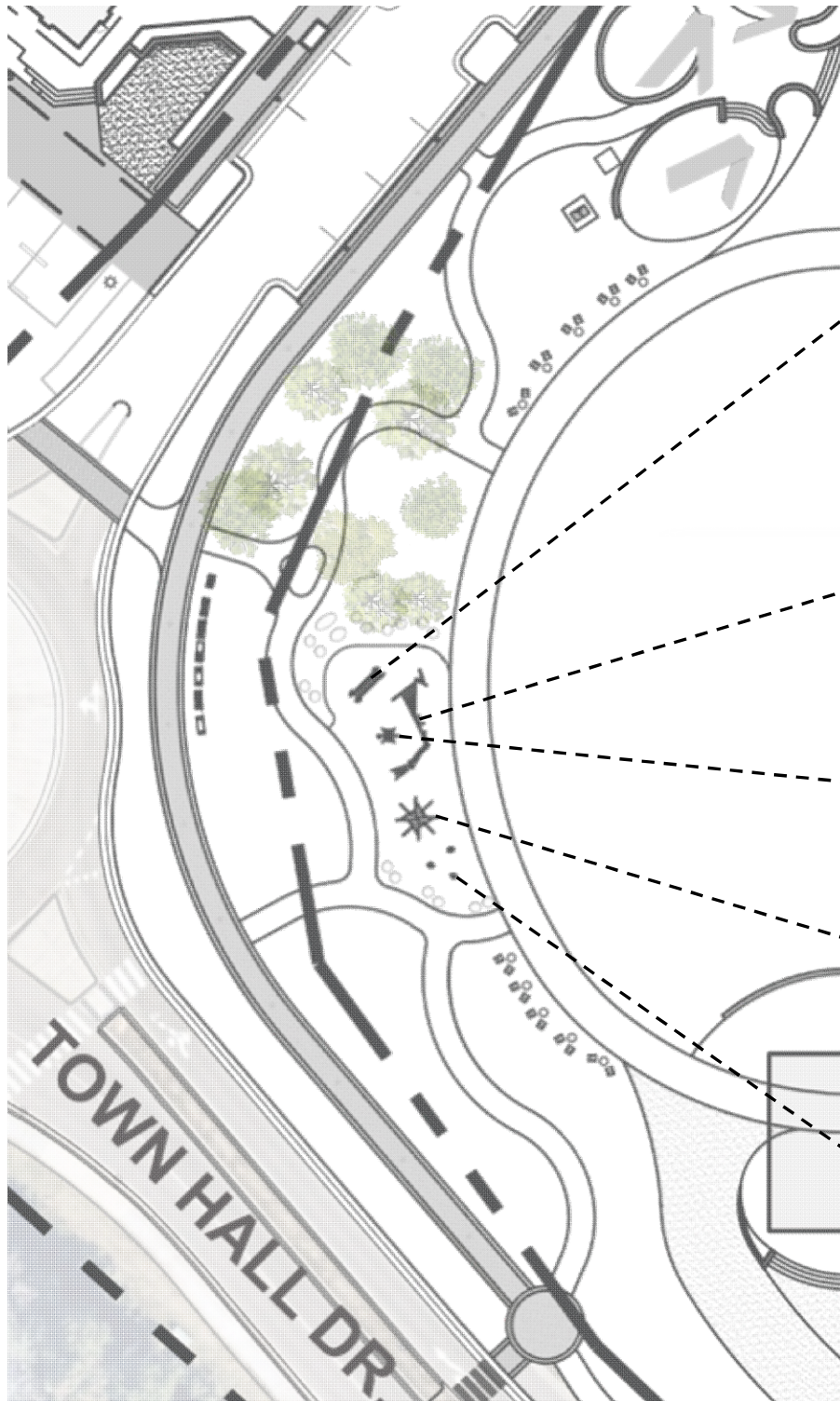


#### HAMMOCK

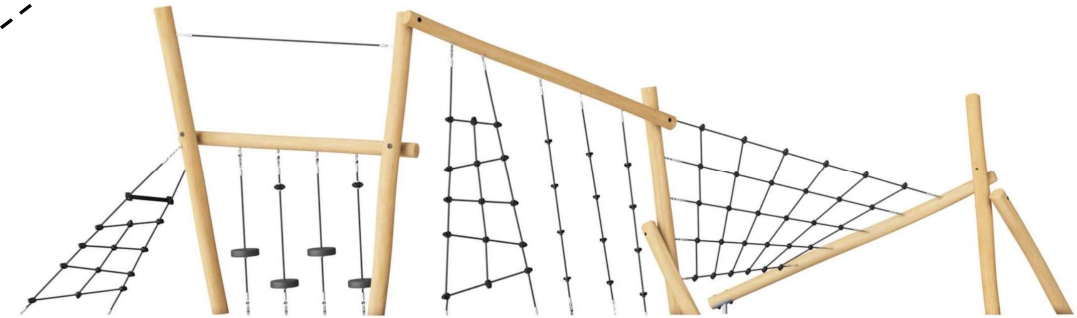
ROM COST: \$6,000 / EACH\*



ROM COST (PER CHAIR): \$895\*  
 ROM COST (PER TABLE): \$395\*



**WOBBLE BRIDGE**  
 ROM COST: \$8,000\*



**PARKOUR 4**  
 ROM COST: \$16,000\*



**UP & OVER NET**  
 ROM COST: \$6,000\*



**CRAWLING PYRAMID**  
 ROM COST: \$7,000\*



**SPINNER PLATES**  
 ROM COST: \$1,800 / EACH\*

\*KOMPAN: 20% FREIGHT + INSTALL INCLUDED  
 \*LOOSE FURNITURE: FREIGHT NOT INCLUDED

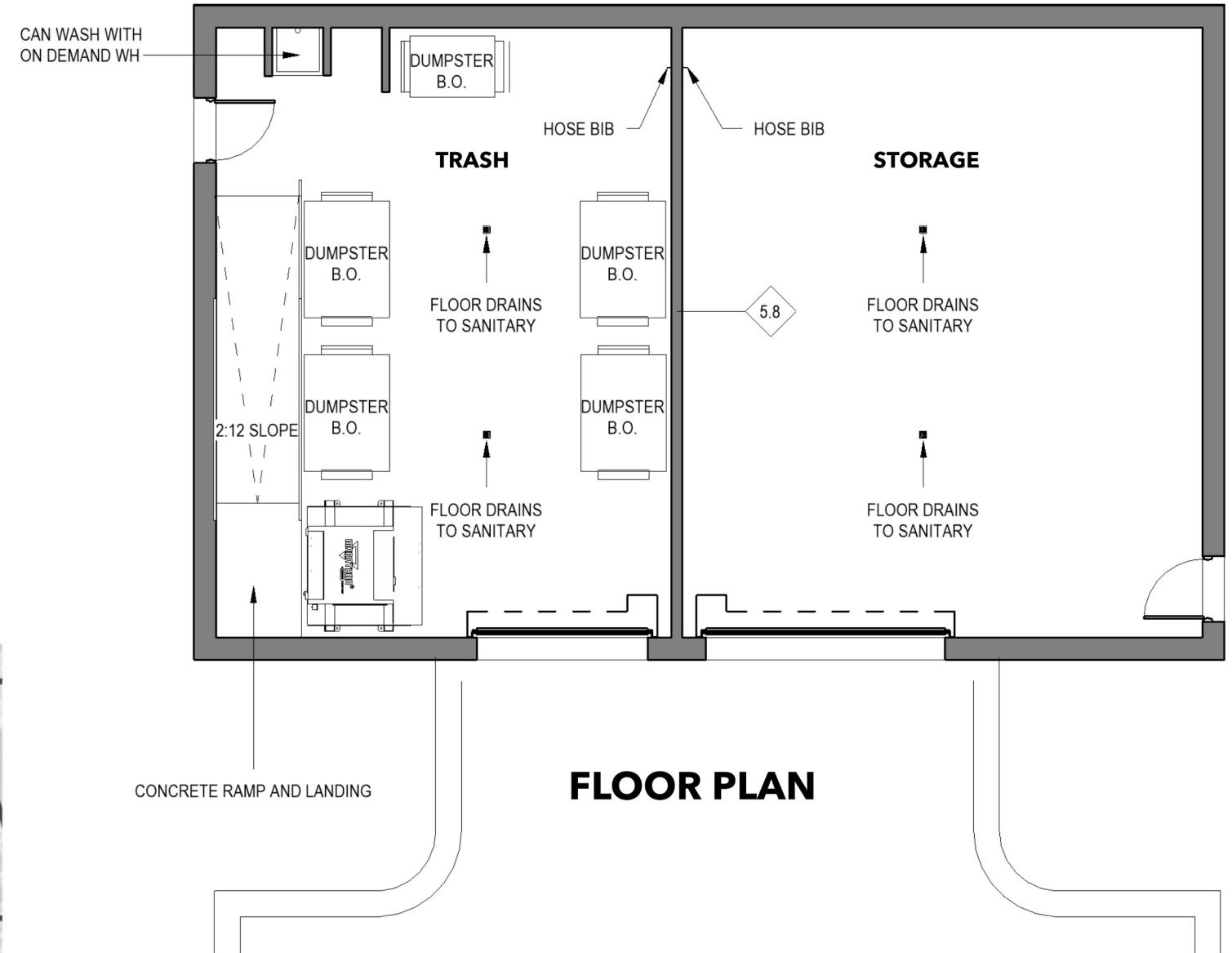
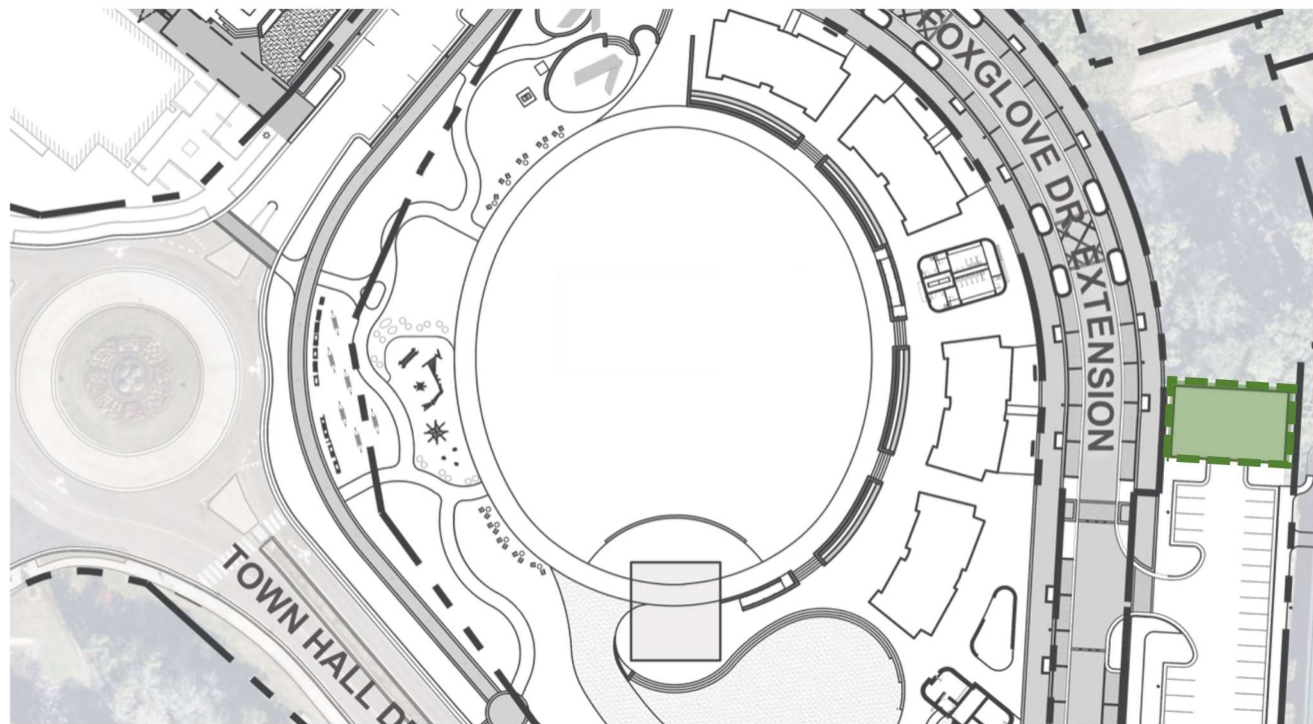
# THE PUBLIC RESTROOMS

## CONCEPTUAL 3D IMAGES THE SIGN - BLOCK LETTERS



# THE TRASH ENCLOSURE

## CONCEPTUAL 3D IMAGE



## FLOOR PLAN

# STREETSCAPE MATERIALS

## FEEDBACK RECEIVED FROM TOWN COUNCIL

**Is a modern or traditional look and feel preferred?**

*A traditional look with modern accents is preferred.*

**What is the preferred color palette (i.e. cool grays, warm reds, or tans)?**

*A mix of warm reds, tans, and browns is the preferred color palette.*



# STREETSCAPE MATERIALS

## FEEDBACK RECEIVED FROM TOWN COUNCIL

**Are there any concerns with blending with surrounding existing materials?**

*Materials shall complement existing pavement and architecture within the study area.*

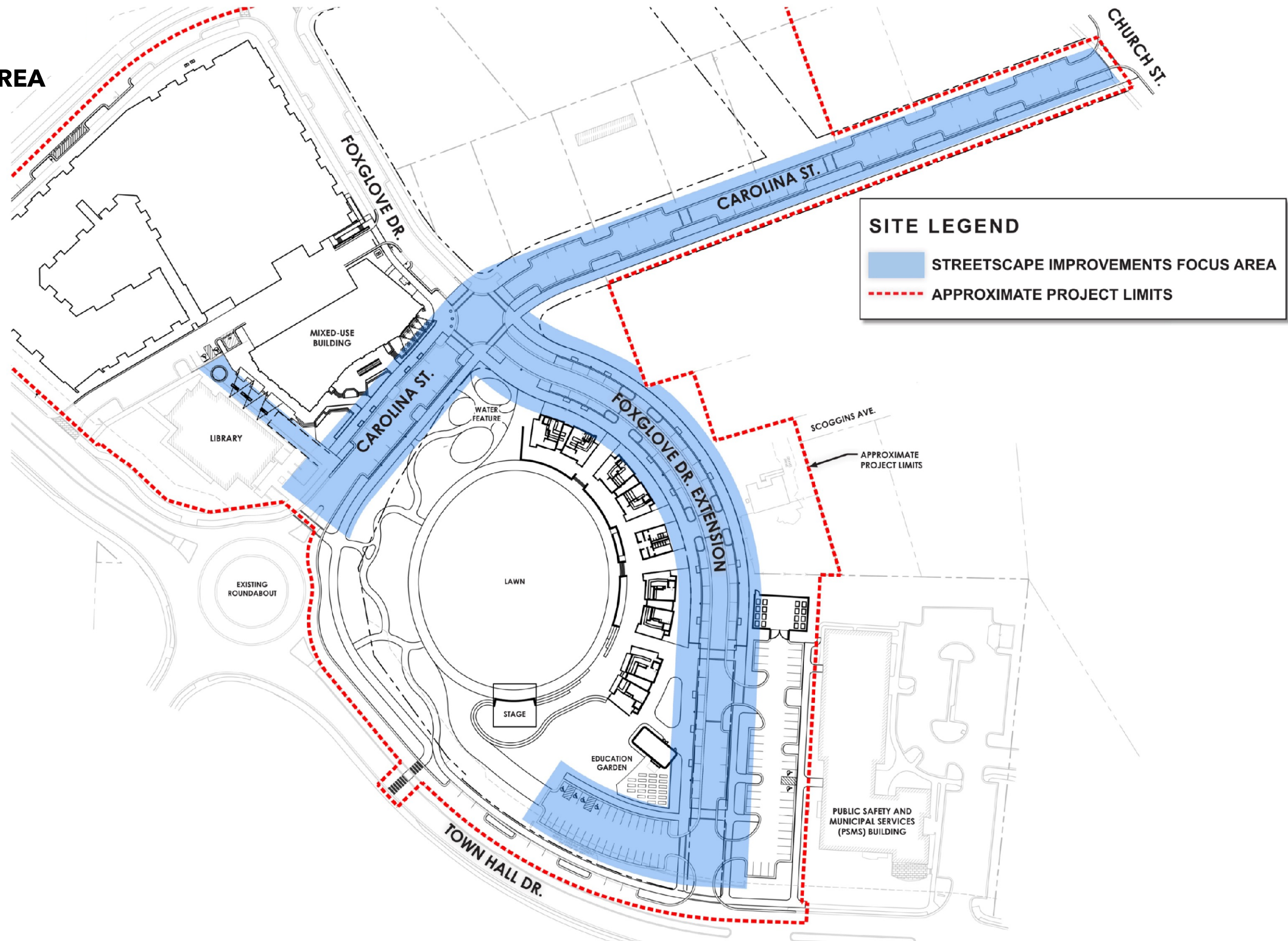
**Where are textured surfaces versus smooth surfaces preferred?**

*Smooth textures should be utilized for high-traffic areas with textures incorporated where appropriate.*



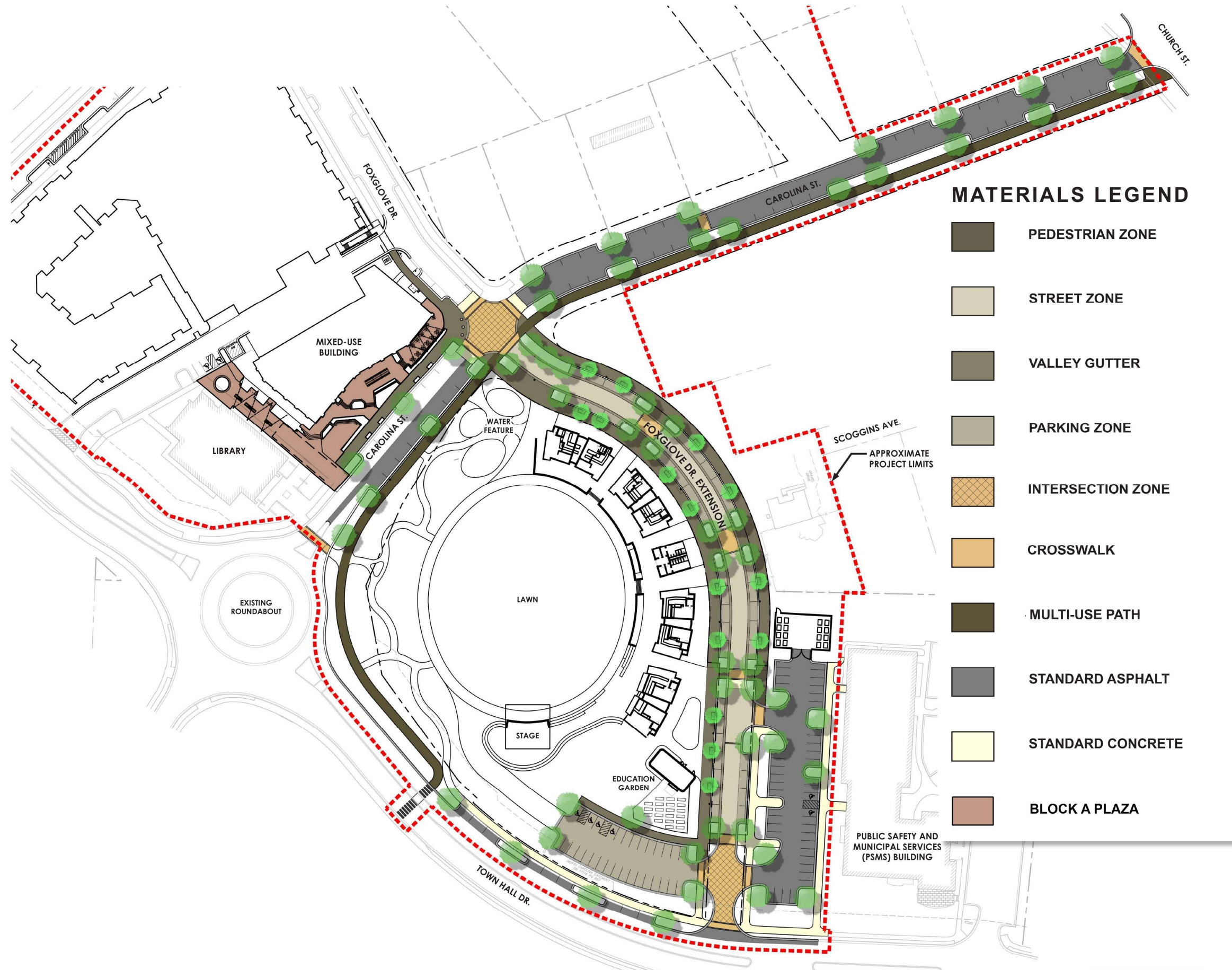
# STREETSCAPE MATERIALS

FOCUS AREA



# STREETSCAPE MATERIALS

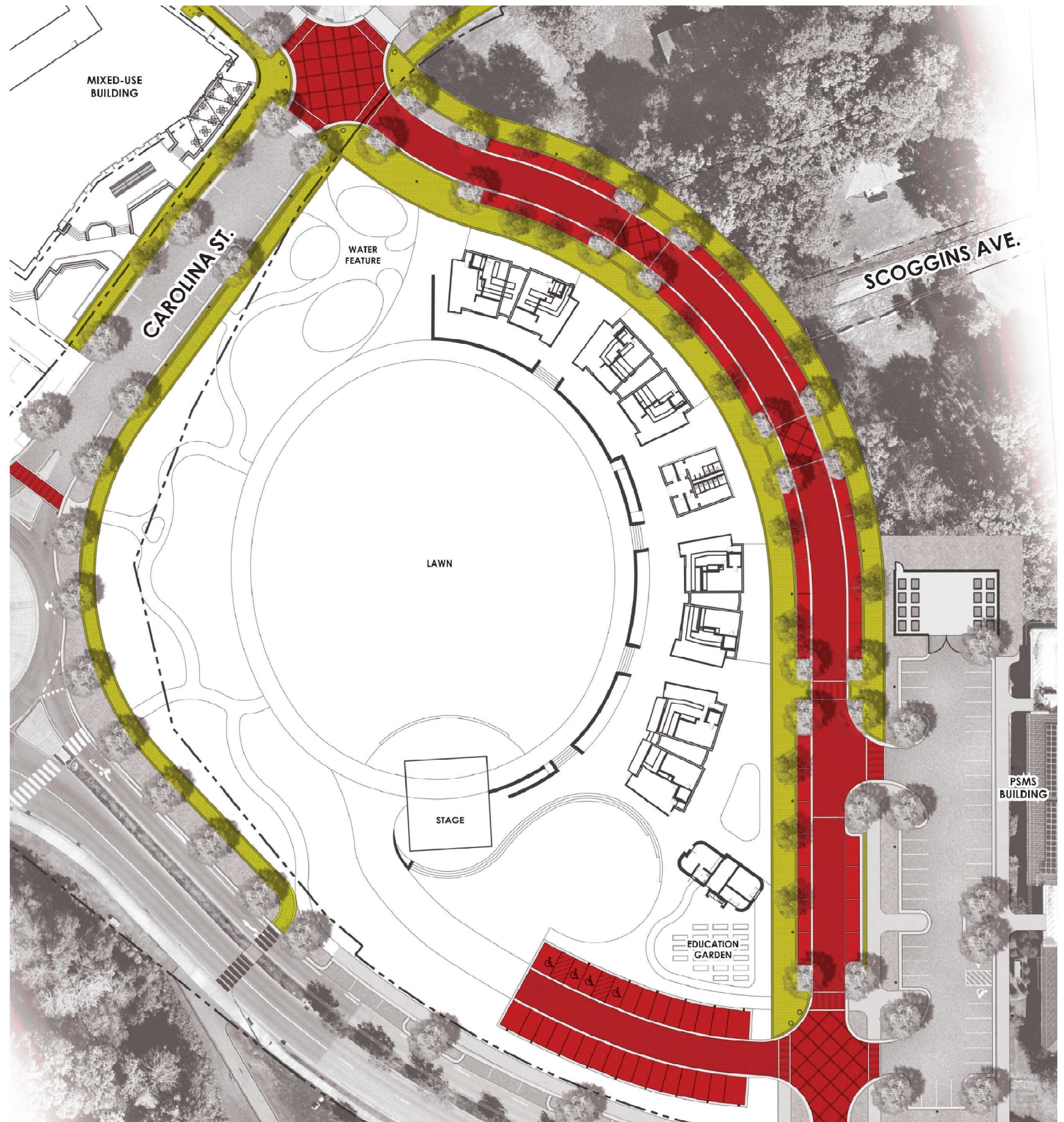
## LAYOUT



# STREETSCAPE MATERIALS

## VEHICULAR V.S. PEDESTRIAN AREAS

FOXGLOVE DRIVE



# STREETSCAPE MATERIALS

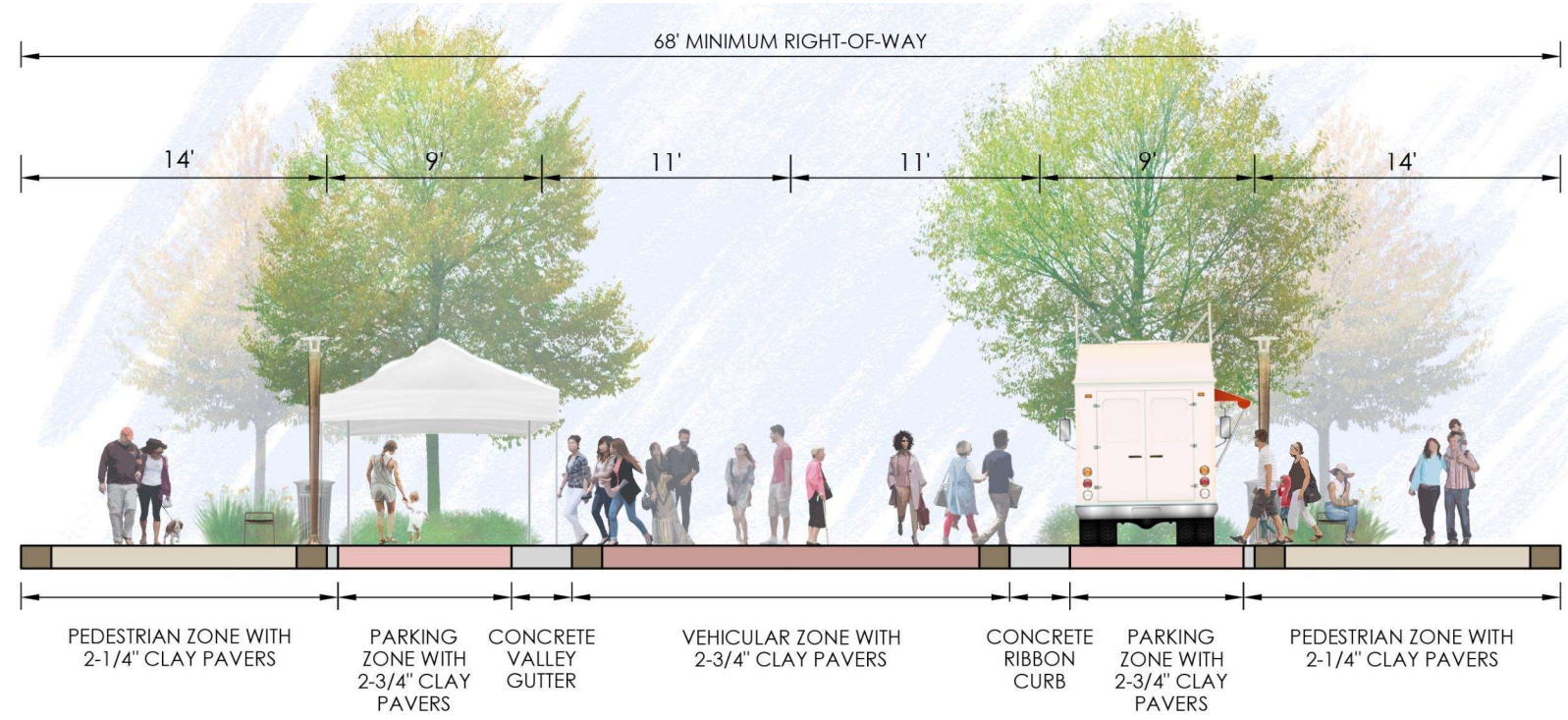
## VEHICULAR V.S. PEDESTRIAN AREAS

### CAROLINA STREET



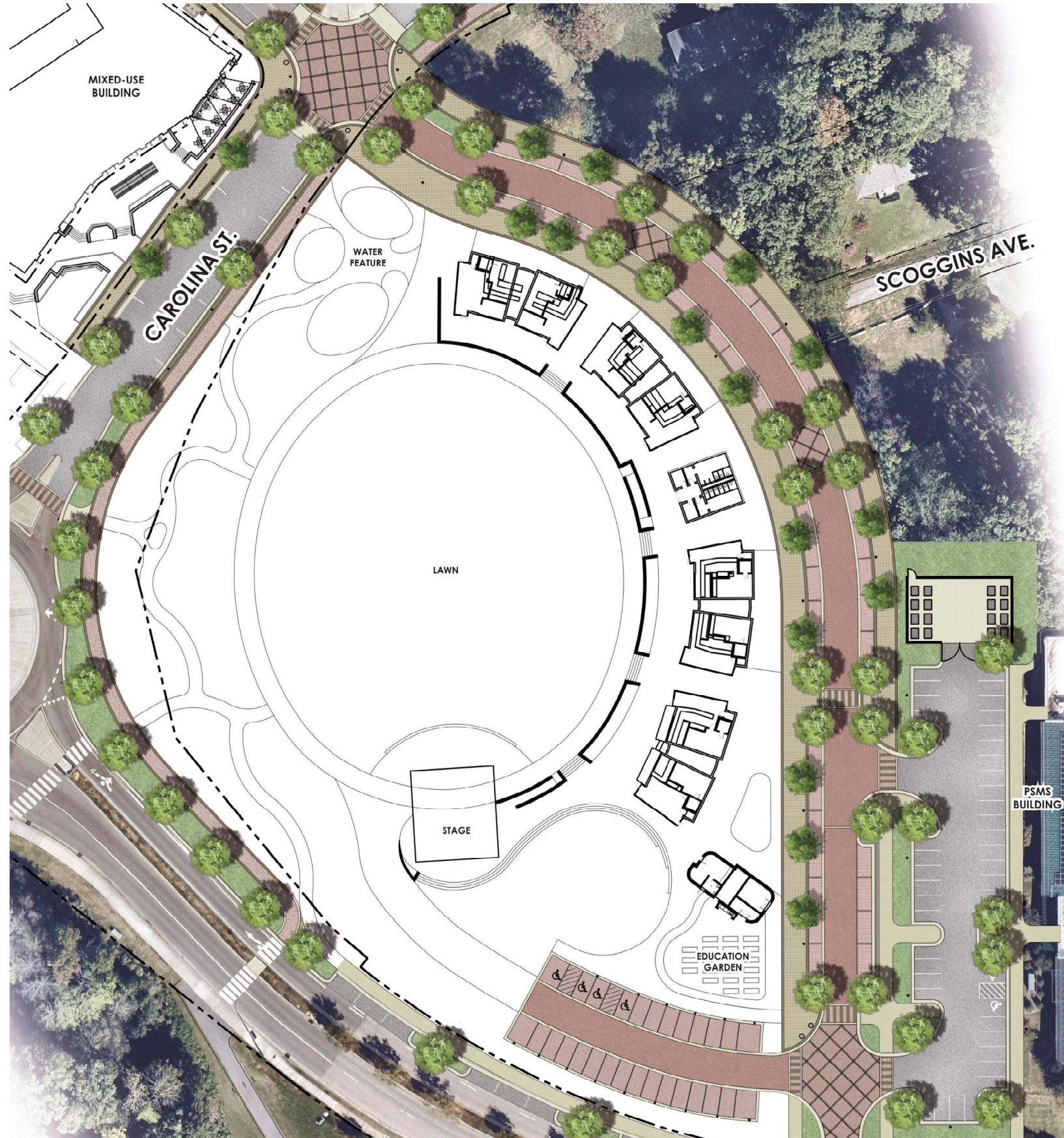
# STREETSCAPE MATERIALS

## FOXGLOVE DRIVE



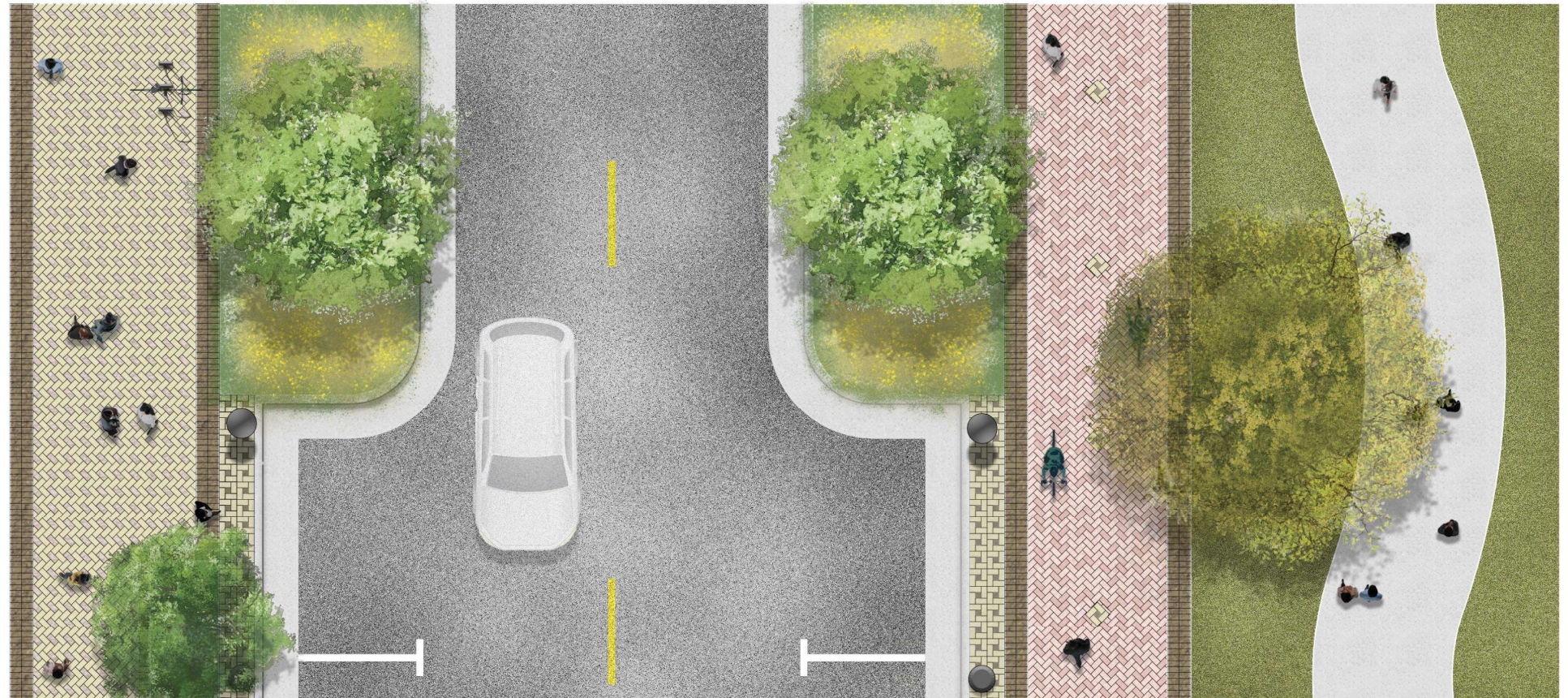
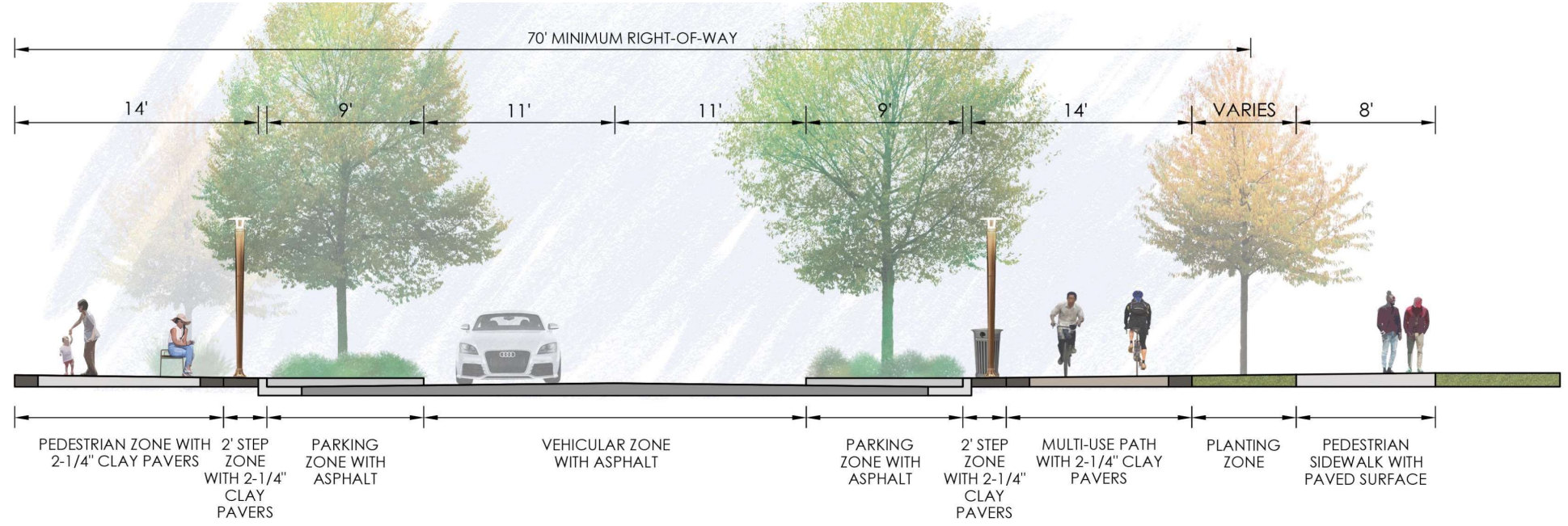
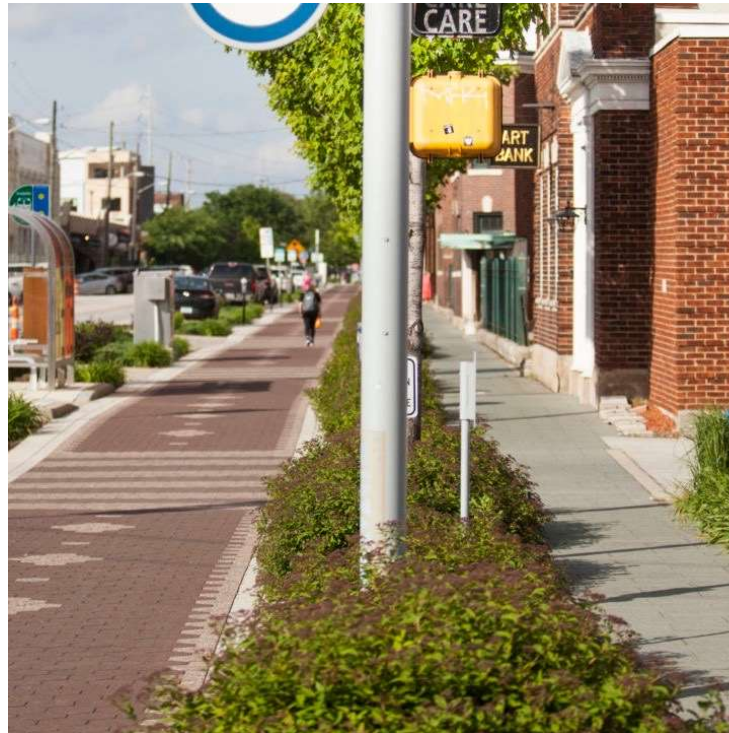
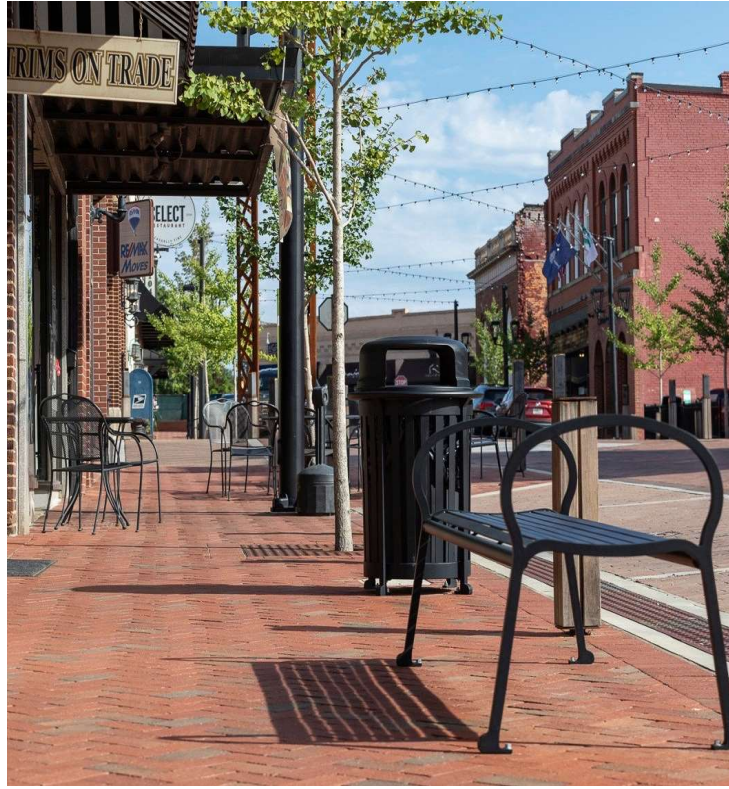
# STREETSCAPE MATERIALS

## FOXGLOVE DRIVE



# STREETSCAPE MATERIALS

## CAROLINA STREET



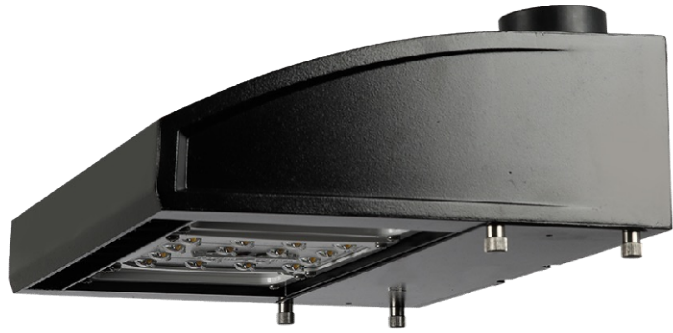
# STREETSCAPE MATERIALS

## CAROLINA STREET



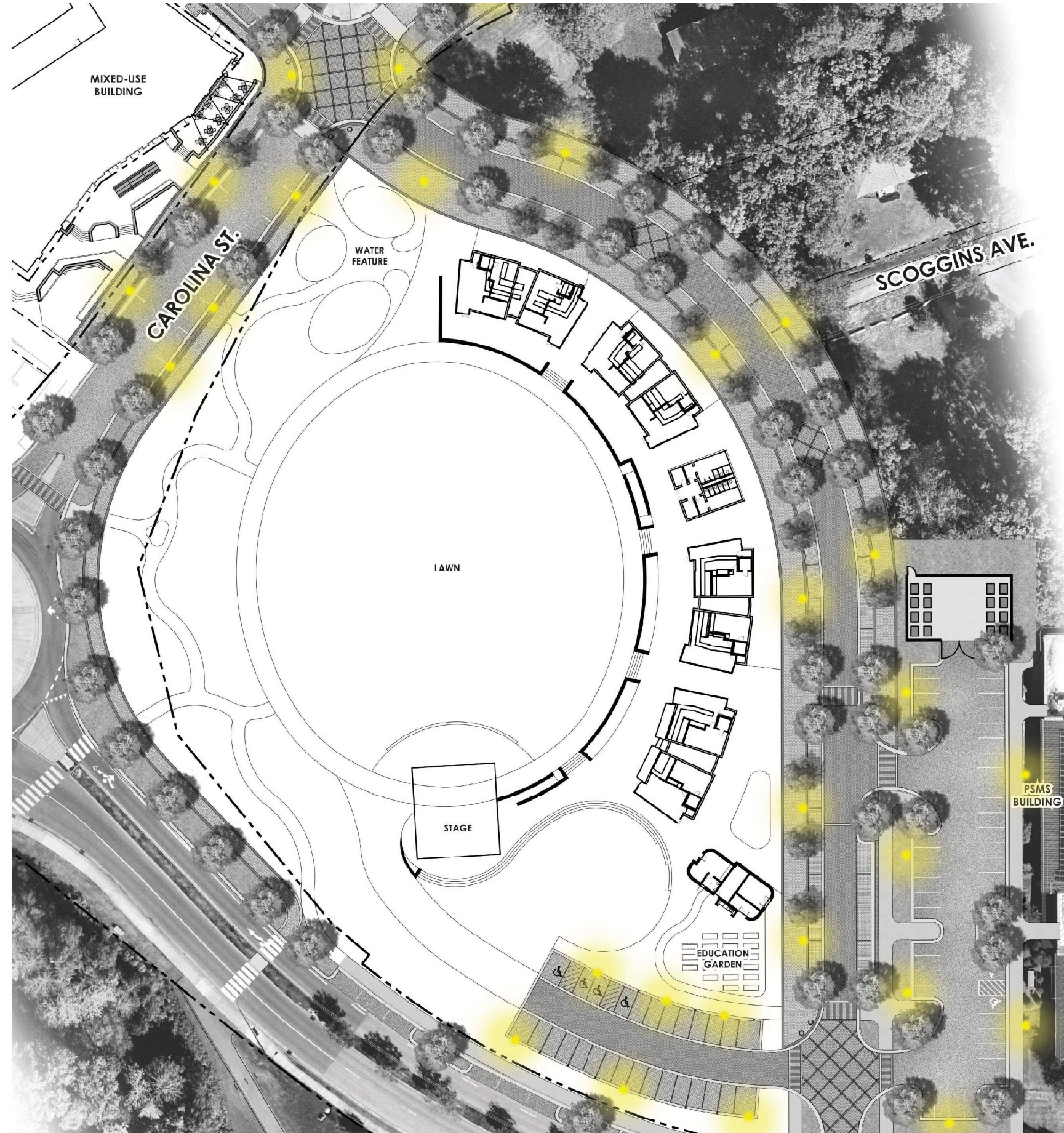


# STREET LIGHT OPTIONS



# STREET LIGHT LOCATIONS

## FOXGLOVE DRIVE



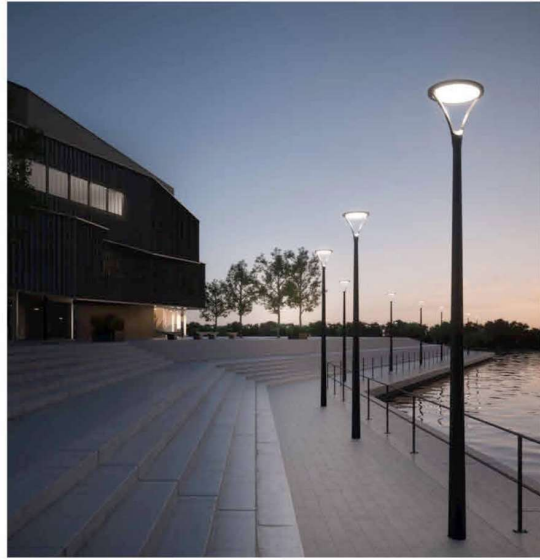
# STREET LIGHT LOCATIONS

## CAROLINA STREET



# PARK LIGHTING

**POLE LIGHTING**  
BASIS OF DESIGN: BEGA EDGE-LIT POLE-TOP LUMINAIRE



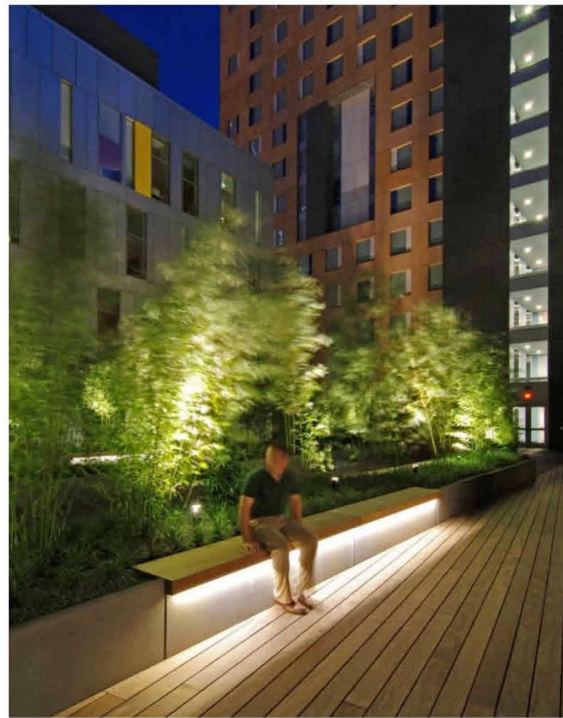
**LOW BOLLARDS**  
BASIS OF DESIGN: BEGA BOLLARD SYMMETRIC



**UPLIGHTING AT TREES**



**UNDER BENCH LIGHTING**



BASIS OF DESIGN: KELVIX SIGNWAVE 7 BENDABLE LED WITH DMX LIGHTING CONTROL / PROGRAMMABLE COLOR + SCENES



VIEW FROM CAROLINA STREET

MULTIFAMILY / MIXED USE DEVELOPMENT



VIEW FROM CAROLINA STREET

MULTIFAMILY / MIXED USE DEVELOPMENT





**Morrisville**  
Live connected. Live well.

---

# **Town Center Development Agreement Overview**

Planning and Zoning Board Meeting  
June 13, 2024

Town Manager Brandon Zuidema

# Tonight's Discussion

---

- Goals tonight include:
  - Provide PZB with a project update
  - Provide PZB with an overview of the Town Center Development Agreement
  - Seek PZB endorsement of the Town Center Development Agreement prior to it going to Town Council

# Project Update

---

- January 2024 - Town Council approved the rezoning of the Town Center phase 1 properties.
- January / February 2024 -Town Council reviewed the Town Green and related amenities.
- April / May 2024 - Town Council reviewed the Town Center streetscape plan.
- June 2024 - Town staff received a pre-construction estimate.
- June 2024 – Presentations to PZB / Town Council seeking Development Agreement approval

# The Development Agreement

---

- The Development Agreement:
  - Represents the formal legal agreement and contract between the Town and Singh for construction of the project.
  - Has been finalized between Town and Singh staff.
  - Is now being submitted for PZB review and Town Council approval.

# The Development Agreement

---

- The Development Agreement includes:
  - Legal requirements and recitals
  - Singh and Town responsibilities
  - Design and construction requirements
  - Exhibits to address the following:
    - Description and sale of the property,
    - Development plan,
    - Project schedule,
    - Parking and retail leases,
    - Right of first refusal for the cottage retail, and
    - A budget estimate for the public facilities.

# Development Agreement Overview

---

- The following slides address the “highlights” and noteworthy points from the draft Development Agreement.
- While there may be minor adjustments over time, this draft addresses all significant points and requirements associated with the Town Center Phase I project.

# Development Agreement Overview

---

- Legal Framework
  - Cites the North Carolina General Statutes that authorize Public Private Partnerships (PPP) and Development Agreements involving municipalities.
- Recitals (PPP requirements)
  - Project overview
  - Purpose of the agreement
  - How each party benefits
  - Will acknowledge the public hearing once held

# Development Agreement Overview

---

- Article I – Definitions
- Article II – Responsibilities
  - Development schedule
  - Town responsibilities:
    - Land cost
    - How the Town funds the project
    - Hold 4 events per quarter at Town Green

# Development Agreement Overview

---

- Town Responsibilities (continued)
  - Town pays Singh a project management fee to management the construction of the public facilities
    - Town Green
    - Infrastructure
      - Widening of Carolina Street to Church Street
      - Foxglove Drive extension from Carolina St. to Town Hall Drive
      - Town Hall Drive modifications
        - Remove turn lane and add parking spaces

# Development Agreement Overview

---

## – Town Responsibilities (continued)

- Management fee is 4% of final construction budget for public facilities.
- At current estimate of \$19,424,560 the management fee would be \$776,982.
- That fee is established as the “not to exceed number” so that even if project costs increase the management fee will not.
- DFI has confirmed that 4% is a fair market rate for this type of project management.
- Total project cost estimate is \$20,201,542

# Development Agreement Overview

---

- Town Responsibilities (continued)
  - In exchange for the project management fee, Singh will manage the construction project, all contractors and subcontractors, and will process all invoices for Town approval.
  - Having one project manager is advantageous:
    - No unexpected conflicts between Town and Singh project components.
    - Greater flexibility in adjusting schedules as needed.
    - Potential cost savings with fewer coordination meetings.

# Development Agreement Overview

---

- Article II (continued)
  - Singh Responsibilities:
    - Construct the parking deck and provide the Town a minimum of 80 leased spaces.
    - Provide office space for PRCR Admin (in the retail space adjacent to the library on Carolina Street).
    - Donate the completed Town Green back to the Town at no additional cost.
  - Article II also includes an applicable law session to meet PPP requirements.

# Development Agreement Overview

---

- Article III – Closing
  - Defines the legal requirements for closing on this agreement.
  
- Article IV – Due Diligence
  - Authorizes any remaining due diligence not already completed under the Pre-Development Agreement.

# Development Agreement Overview

---

- Article V – Design & Construction
  - Defines the following:
    - Scope of work for public amenities based on the Development Plan (Town Green & infrastructure)
    - Requirement for a parking deck, multi-family, commercial, and retail amenities based on the Development Plan
    - Development Standards
    - Town input on contractors / sub-contractors

# Development Agreement Overview

---

- Article V – Design & Construction (continued)
  - Defines the following:
    - Development Schedule
    - Required notification of proposed cost increases
    - Definition of how pay applications will be addressed
- Article VI – Insurance
  - Defines the required insurance for the project

# Development Agreement Overview

---

- Article VII – Representations & Warranties
  - Commitments between the Town and Singh related to:
    - The property,
    - The quality of the work,
    - Protection of the Town Green property while being developed,
    - Singh’s status to do business in NC, and
    - The successful completion of the project.

# Development Agreement Overview

---

- Article VIII – Parking Deck Operations
  - 30-year lease for a minimum of 80 parking spaces
  - Spaces on the first level of the deck
  - Singh to operate / maintain the deck
  - \$100 per space with a 3% annual increase for first five years; re-evaluated every five years
- Article IX – Development Finance Initiative
  - Addresses the 1% fee due to DFI from Singh (\$194,246)

# Development Agreement Overview

---

- Article X – Requirements of the Act
  - Defines the property involved (by Exhibit)
  - Confirms the Town owns the property in question
  - References the re-zoning which will address allowable development.
  - Requires dedication of the Town Green to the Town once completed (at no additional cost to the Town).
- Article XI – Default
  - Identifies legal conditions related to either party defaulting on the agreement.

# Development Agreement Overview

---

- Article XII – Miscellaneous
  - Acknowledges a contractual relationship between the Town and Singh as a result of the Development Agreement.
  - Confirms the Development Agreement is a legislative act on the part of Town Council.
  - Establishes that the Town will consider prior Public Private Partnership experience as a factor in reviewing future phase proposals.

# Development Agreement Overview

---

- Exhibits - The Development Agreement includes a total of eight (8) Exhibits:
  - A – Legal description of the real property
  - B – The Development Plan
  - C – The Development Schedule
  - D – The Land Disposition Agreement  
(Sale of the land to Singh for \$1,070,000)
  - E – Parking Lease Agreement

# Development Agreement Overview

---

- Exhibits - The Development Agreement includes a total of eight (8) Exhibits:
  - F – Retail Lease Agreement for PRCR Admin space
  - G – Right of First Refusal for the Cottage Retail properties
  - H – Budget for the public facilities

# Timeline

---

- Tentative project timeline moving forward:
  - June 2024  
Development Agreement submitted to Council
  - July – August 2024  
Town Council Review
  - August / September 2024  
Town Council Approval
  - September 2024 – February 2025  
Site Plan Submittal / Approval
  - March 2025  
Groundbreaking

---

# Questions and Discussion

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE TOWN OF MORRISVILLE, NORTH CAROLINA AND  
SINGH DEVELOPMENT, LLC**

**Date:\_, 2024**

## **DEVELOPMENT AGREEMENT**

THIS **DEVELOPMENT AGREEMENT** (together with the Exhibits attached hereto, the “**Agreement**”) is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “**Effective Date**”), by and between **THE TOWN OF MORRISVILLE**, a municipal corporation of the State of North Carolina (the “**Town**”), and **SINGH DEVELOPMENT, LLC**, a Michigan limited liability company (with its successors and permitted assigns, the “**Developer**”). The Town and Developer are sometimes separately referred to in this Agreement as a “**Party**” or jointly referred to as the “**Parties**.”

### **LEGAL FRAMEWORK**

The North Carolina General Statutes (“N.C.G.S.”) §160D-1001 through §160D-1012, as it exists on the Effective Date of this Agreement (the “**Act**”), enables local governments to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Act. Among other things, the Act provides as follows:

N.C.G.S. §160D-1001(a)(1) provides that “Development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources.”

N.C.G.S. §160D-1001(a)(2) provides that “Such developments often create community impacts and opportunities that are difficult to accommodate within traditional zoning processes.”

N.C.G.S. §160D-1001(a)(3) provides that “Because of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development.”

N.C.G.S. §160D-1001(a)(4) provides that “Such projects involve substantial commitments of private capital, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development.”

N.C.G.S. §160D-1001(a)(5) provides that “Such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.”

N.C.G.S. §160D-1001(a)(6) provides that “To better structure and manage development approvals for such developments and ensure their proper integration into local capital facilities programs, local governments need flexibility to negotiate such developments.”

N.C.G.S. §160D-1004 provides that “a local government may enter into a development agreement with a developer for the development of property as provided in this Article for developable property of any size,” and that “development agreements shall be of a reasonable term specified in the agreement.”

N.C.G.S. §160D-1315(a) authorizes joint development projects allowing a local government to acquire, construct, own, and operate or participate in the acquisition, construction,

ownership, and operation of a joint development project or of specific facilities within such a project.

N.C.G.S. §160D-1315(b) allows a local government to enter into binding contracts with one or more private developers with respect to acquiring, constructing, owning, or operating such joint development projects, which contracts may specify: (1) the property interests of both the local government and the developer, provided that the property interests of the local government shall be limited to facilities for a public purpose; (2) the responsibilities of the local government and the developer for construction of the project; and (3) the responsibilities of the local government and the developer with respect to financing the project.

N.C.G.S. §160D-1315(c) provides that a joint development project may be constructed on property acquired by the developer or on property acquired by the local government.

The Town is authorized to convey property to a private developer under N.C.G.S. §158-7.1 and N.C.G.S. §160D-1315, among other statutory authority.

The foregoing expressly authorizes local governments to enter into development agreements with developers pursuant to the procedures and requirements of N.C.G.S. §160D-1001 through §160D-1012, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.

In addition to any force of law conferred upon this Agreement by North Carolina law related to local governments, the terms of this Agreement are also contractual in nature, are a significant inducement and consideration to enter into this Agreement and may be enforced as contractual terms.

### RECITALS

A. The Town owns fee simple title to certain real property which is more particularly described on **Exhibit A** which is attached hereto and incorporated herein by reference (“**Real Property**”).

B. The Town published a Town Center Core – Phase I Solicitation for Development Partners (“**RFP**”) in November of 2020 seeking proposals for development of a mixed-use Town Center Core, including residential, retail and office/commercial uses.

C. Developer submitted a proposal dated February 26, 2021 in response to the RFP.

D. The Town reviewed the qualifications of Developer to serve as its partner to develop the Property as further described herein. Developer’s proposal was selected by the Town subject to the negotiation and execution of this Agreement.

E. Pursuant to the authority recited in the Legal Framework above, the Town desires to facilitate the development of the Real Property as described herein, and Developer desires to participate in the same.

F. The project that is the subject of this Agreement is comprised of the following improvements to the Real Property, to be developed by the Town and Developer in approximately two phases as set forth below (collectively, the “**Project**”):

Phase 1A is to consist of the development and construction of the Public Facilities, Multifamily Complex, Parking Deck, Retail Space, Retail Plaza, and Cottage Retail, all as generally depicted on **Exhibit B**.

Phase 1B development and construction is to be determined in the future in those locations generally depicted on **Exhibit B**, at which time this Agreement will be amended.

G. The purpose of this Agreement is to facilitate the development and construction of the Project in the most effective way that results in the public benefits intended for the Town and the private benefits intended for Developer. The Development of the Real Property requires a major investment by the Developer and the Town and substantial commitment of resources to achieve the benefits of the Development for the parties. The Developer will be unable to make and realize the benefits from such commitments without the assurances of the Town as provided by this Agreement. The Town will be unable to make and realize the benefits from such commitments without the assurances of the Developer as provided by this Agreement.

H. The Town will benefit from the Project because, among other things, the Project establishes a central Town core, providing residential housing, office and retail space for residents, as well as a recreation and open space through the development of the Town Green, facilitating community gatherings, cultural events and other recreational pursuits.

I. Developer benefits from the Project because, among other things, it is in the business of developing mixed use projects and will obtain sufficient certainty and predictability in the Town’s development and review process to justify the required substantial initial capital investment for Development of the Real Property which will require multiple years to complete, and will benefit from substantial commitments to public facilities and infrastructure by the Town as a result of Development of the Real Property.

J. The Parties desire to enter into this Agreement with the expectation that the concepts and agreements contained herein will be set forth in greater detail in other ancillary legal documents to be executed and delivered at a future date after the Project has been fully designed, bid and priced by Developer pursuant to architectural and engineering plans to be mutually agreed upon by the Parties.

K. The Town Manager presented this Agreement for approval to the Town Council on August 13, 2024.

L. Pursuant to N.C.G.S. § 160D-1005, a public hearing regarding this Agreement was held at the Planning and Zoning Board meeting on June 13, 2024 and at the Town Council meeting on July 23, 2024. The notice of public hearing specified, among other things, the location of the Real Property subject to this Agreement, the development uses proposed for the Real Property in accordance with the Development Plan, and a place where a copy of the proposed Agreement could be obtained. The initial draft of this Agreement was available for public inspection at Town offices.

M. The Town Council has made all disclosures required by applicable law, including the appraised value of the Real Property, considered and provided all required approvals to effectuate this Agreement, and authorized the entry of the Town into this Agreement. The approval of this Agreement constitutes a legislative act of the Town Council.

**NOW, THEREFORE**, in consideration of the premises of this Agreement and the mutual benefits to the parties, the parties agree as follows:

## **ARTICLE I DEFINITIONS**

Capitalized terms in the Agreement shall have the meanings assigned to them below or elsewhere herein. Except as otherwise provided in this Agreement, terms used in the relevant portions of the North Carolina General Statutes shall have the same meanings as employed in those statutes.

**“Applicable Law”** means all federal, state, and local statutes, ordinances, regulations, and requirements governing the Project, including, without limitation, the Current Regulations.

**“Current Regulations”** means all ordinances, resolutions, regulations, and comprehensive plans adopted by the Town on or before the Effective Date affecting the Development of the Real Property and includes, without limitation, laws governing permitted uses of the Real Property, density, design, and improvements. The term shall automatically include all subsequently adopted resolutions, ordinances, regulations or plans that are applicable to the Property by operation of law or agreement of the Parties (subject to Applicable Law).

**“Development”** means the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the combination of parcels or dividing of land into two or more parcels. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

**“Development Permit”** means any building permit, site plan approval, subdivision approval, rezoning certification, construction plan approval, variance, certificate of occupancy and any other official action of the Local Government having the effect of permitting the Development or use of property.

**“Development Plan”** means the general plan for Development of the Project pursuant to this Agreement, as set forth on **Exhibit B** hereto and as may be modified from time to time by mutual agreement of the parties.

**“Final Completion”** means acceptance by the Town of the work performed by Developer and Developer’s contractors and subcontractors with respect to the Public Facilities, as evidenced by the Town’s signature on a Final Certificate of Completion. The Final Certificate of Completion shall be executed only after the Town has assured itself that all of the provisions of this Agreement have been completed to the Town’s satisfaction, including completion of all punch list items. Occupation or use of any Public Facilities prior to Final Completion shall not operate as acceptance of the work to be performed under this Agreement or a waiver of the Town’s rights or Developer’s duties under this Agreement.

**“Infrastructure”** means the Street Improvements and related improvements associated with the Street Improvements including, but not limited to, bike lanes, medians, and right-of-way installations for sanitary sewer, solid waste, drainage, utilities, and potable water.

**“Local Government”** means any municipality or governmental entity of the State of North Carolina established pursuant to Applicable Law which exercises regulatory authority over, and grants Development Permits for land Development or which provides public Infrastructure.

**“Periodic Review”** means the process and procedures established by Section 2.5.24.C.7 of the UDO for the Developer to demonstrate good faith compliance with the terms of this Agreement.

**“Project”** means the Development that will occur within and upon the Real Property pursuant to this Agreement.

**“Public Facilities”** refers to those amenities or improvements which are to be owned by the Town and/or dedicated for public use and for which the Town has payment responsibility as set forth on **Exhibit C**, which is attached hereto and incorporated by reference. The Public Facilities include the Town Green and Infrastructure.

**“Real Property”** means real property to be Developed pursuant to this Agreement consisting of approximately 11 acres, as more particularly described and depicted on **Exhibit A** hereto.

**“Street Improvements”** means the Town Hall Drive modifications, Carolina Street modifications, Foxglove Drive extension (from Carolina Street to Town Hall Drive), Jeremiah Street connection to Carolina Street, and Carolina Street and Foxglove Drive intersection improvements.

**“Substantial Completion”** means completion of any building or structure or phase of the Project to the point wherein the owner or lessee can enjoy its use, in compliance with any jurisdictional concurrence or approval for its occupancy. For avoidance of doubt, a permanent

certificate of occupancy shall constitute evidence this requirement has been met with respect to buildings or structures to which a certificate of occupancy is required to be issued by law.

**“Town Council”** shall mean the elected governing body of the Town of Morrisville.

**“Town Green”** shall mean that portion of the Real Property that is to be developed as a Town Green, with related facilities potentially including a public art space, stage structure, entry plaza, play space or other amenities, all with related infrastructure, subject to final approval of plans and specifications by the Town.

**“Unavoidable Delay”** means any delay, obstruction, or interference with a Party's performance of its obligations pursuant to this Agreement resulting from any act or event that is beyond the reasonable management or control of such Party, that is not separately or concurrently caused primarily by any willful or negligent act or omission of that Party, and that could not have been prevented through the use of commercially reasonable efforts on that Party's part, including, but not limited to delay, obstruction, restriction or interference in a Party's performance resulting from: (a) weather conditions (but not including reasonably anticipated weather conditions), landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, terrorism, restrictive governmental laws or regulations, extortion, war blockade or insurrection, riot or civil disturbance; (b) a material change in Applicable Law after the Effective Date; (c) the failure of any utility to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Property; (d) any unforeseeable subsurface condition of the Property that prevents construction of the Project pursuant to the Development Plan; (e) the failure of any contractor, subcontractor or supplier to furnish labor, services, materials or equipment promptly due to an Unavoidable Delay as defined herein for which that Party is not reasonably able to obtain substitute labor, services, materials or equipment on the agreed upon dates; (f) strikes, work stoppages or other substantial labor dispute; (g) a third party's breach, revocation or termination of, or refusal to extend or renew, any contract, license, permit or other authorization that is necessary or required in order for a Party to perform its obligations under this Agreement; and (h) interruption of normal construction or financing activities or the performance of state, local or national government operations affecting the Project due to epidemic or pandemic.

## ARTICLE II DEVELOPMENT RESPONSIBILITIES OF THE PARTIES

**2.1 General Development Obligations.** The development obligations of the Parties with respect to the Project elements and the timeline for completion (**“Development Schedule”**) are set forth on **Exhibit C** which is attached hereto and incorporated herein by reference. Developer and the Town shall construct the Project substantially in accordance with (i) the provisions of **Exhibit C** attached hereto, (ii) the Development Plan attached hereto as **Exhibit B**, (iii) approved plans and specifications, and (iv) Applicable Law, including standards set forth in the Town's Unified Development Ordinance (**“UDO”**) governing the Main Street Planned Development District.

## **2.2 Additional Town Obligations.**

2.2.1 This Agreement contemplates that although the Town will be responsible for costs and expenses associated with construction and development of the Public Facilities, Developer will perform such work on behalf of the Town, subject to Section 2.2.7 below. For each project element for which the Town retains payment responsibility, but where Developer holds the performance responsibility as set forth on **Exhibit C**, payment from Town to Developer shall include a maximum development fee of **\$(TBD)**, which is equal to 4.0% of the anticipated construction cost of the Public Facilities as set forth on **Exhibit H**. The Development Fee shall be capped at the foregoing figure, even if the anticipated construction cost of the Public Facilities increases. However, the Development Fee shall be reduced if the anticipated construction cost of the Public Facilities decreases. The Development Fee shall not be paid in a lump sum, but rather shall be paid over the course of the Project. No bond proceeds will be used to pay the Development Fee.

For each invoice submitted by Developer to the Town, the Town shall pay 4% of the construction costs outlined therein as a portion of the overall Development Fee, which expense shall be separately itemized on the invoice, until such time as work has concluded or the maximum Development Fee has been paid, whichever occurs first. The Town agrees that it is essential and necessary to the completion and viability of the Project that the Project have the benefit and use of the Public Facilities according to the Development Schedule set forth on **Exhibit C** attached hereto. All infrastructure, amenities, or improvements constructed by Developer but paid for by the Town shall be owned by the Town.

2.2.2 At Closing, the Town shall convey the Real Property to Developer for the purchase price of \$1,070,000.00 as set forth in the Land Disposition Agreement attached as **Exhibit D**.

2.2.3 At Closing, the Town shall enter into a Parking Agreement and Right of First Refusal in the forms attached as **Exhibits E** and **G**. The Town shall enter into a Retail Lease Agreement in substantial form as set forth on **Exhibit F** at such time as the retail space that is the subject of said agreement is constructed.

2.2.4 The Town anticipates funding the Public Facilities with a combination of General Obligation Bond proceeds (proposed Series 2024) and Town Pay-GO Reserves; **specific details will be provided once they are completed.**

2.2.5 To the extent that any county or other Local Government, state or federal approvals are required in connection with the Development of the Project, the Town shall use reasonable efforts to facilitate and assist Developer in obtaining such approvals, but shall not be required to incur any expense related to the same or to take any action that would violate applicable law.

2.2.6 Beginning upon Substantial Completion of the Town Green, and continuing for a period of five (5) years, the Town shall use commercially reasonable efforts to program, publicly promote, and operate no fewer than four (4) events per calendar quarter within the publicly owned portions of the Project, each of which events shall be planned and intended to attract at least 500 visitors, and all of which shall collectively cater to a variety of interests, which may include, without limitation, festivals and celebrations, artistic, musical, and theatrical events, games and competitions, and children's activities. However, the failure to program, promote and operate events as set forth above shall not constitute a breach of this Agreement, nor shall the failure to gain the anticipated visitors.

2.2.7 Notwithstanding the foregoing, the Town may elect, on or before Closing, to construct the Public Facilities itself instead of as provided herein. In such event, the Town shall complete the Public Facilities in conformance with Exhibit B, and the location of the Public Facilities shall be excluded from the Real Property conveyed to Developer at Closing.

### **2.3 Additional Developer Obligations.**

2.3.1 For all project elements for which Developer has payment responsibility and performance responsibility as per **Exhibit C**, Developer shall be solely responsible for the construction and development costs associated with the same.

2.3.2 At Closing, Developer shall accept the Real Property via general warranty deed for the purchase price of \$1,070,000.00 as set forth in the Land Disposition Agreement attached as **Exhibit D**.

2.3.3 Developer shall license parking use rights for a minimum of 80 parking spaces in the Parking Deck to the Town and at Closing shall enter into a Parking Agreement in the form attached as **Exhibit E**.

2.3.4 Developer shall lease one of the retail units in Building 3 as shown on **Exhibit B** to the Town in substantial accordance with the Retail Lease Agreement in the form attached hereto as **Exhibit F**.

2.3.5 Developer agrees to grant the Town a right of first refusal related to the Cottage Retail units shown on **Exhibit B**, and will execute and authorize the Town to record a right of first refusal in substantial compliance with the form attached as **Exhibit G**.

2.3.6 Developer shall participate in semi-monthly meetings with the Town upon request, and shall update the Town regarding the Development Schedule and Development Budget as necessary. Developer shall be available to provide updates to the Town Council on the Project as requested by the Town Manager.

2.3.7 Developer shall develop the Town Green in accordance with plans and specifications approved by the Town. Developer agrees that it is essential and necessary to the completion and viability of the Project that the Project have the benefit and use of the Public Facilities according to the Development Schedule set forth on Exhibit C attached hereto.

2.3.8 Within thirty (30) days following Substantial Completion of the Town Green, Developer shall donate the Town Green, for no additional fee, to the Town, and shall convey the same via special warranty deed free and clear of all liens and encumbrances. For purposes of this Section 2.3.8, the term “substantial completion” shall be deemed to include the following: (i) satisfaction of all engineering department requirements related to construction completion, acceptance of as-built submissions, approval from the Town of Cary for water, and a final certification letter from the Engineer of Record; (ii) the issuance of a Certificate of Occupancy or a Certificate of Compliance as required for the Town Green; (iii) satisfaction of all planning requirements identified in the site plan; and (iv) after a final walk-through by Engineering, Inspections, Parks, Recreation and Cultural Resources, Planning, and Public Works staff, a finding that all work is acceptable per the plans, specifications, and terms of this Agreement.

## **2.4. Applicable Law.**

2.4.1 General Conformance. Except as otherwise provided by this Agreement and in accordance with N.C.G.S. § 160D-1007, Development of the Real Property, including, without limitation, approval procedures and impact fees applicable thereto, shall be in conformance with the Current Regulations and all other Applicable Law. Notwithstanding the foregoing, in the event any ordinance, regulation, or requirement of the Town shall conflict with, be in excess of, or be more restrictive than the Current Regulations, the Current Regulations shall control. In the event that State or federal law is changed after this Agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the Agreement, the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the Agreement.

2.4.2 Vested Rights. Pursuant to the authority granted in N.C.G.S. § 160D-1007 and subject to the provisions of Section 2.4.1 above, all rights and prerogatives accorded Developer by this Agreement, including, without limitation, application of the Current Regulations, except as otherwise set forth herein, shall constitute vested rights for the Development of the Real Property throughout the term of this Agreement. The Town represents and warrants that the Current Regulations do not contain any provision requiring, in connection with the Project, construction or funding of facilities relating to public education, public health systems and facilities, libraries, public housing, jails and other detention sites, courts, and trash or garbage disposal sites. Such exemptions shall not, however, exempt Developer from payment of applicable user fees for any such facilities.

2.4.3 Zoning. Developer has obtained rezoning approval for the Real Property, such that the property will be zoned Main Street Planned Development District. The provisions of the UDO setting forth standards for the Main Street Planned Development District shall apply to the Project.

2.4.4 Building Codes. Developer, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any building, housing, electrical, mechanical, plumbing and gas codes in effect at the time of construction. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical,

mechanical, plumbing and gas codes adopted by the Town or other governmental entity after execution of this Agreement.

2.4.5 Local Development Permits and Other Permits Needed. The Parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the Development of the Project: rezoning to Main Street Planned Development District, Site Plan, Construction Plan, stormwater, plat, building permit, occupancy permit and other similar approvals issued by the Town and utility construction and operating permits issued by the Town of Cary. The parties also anticipate that there could be a requirement for permits for State erosion control, Division of Water Quality, and the Army Corps of Engineers. The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer of the necessity of complying with all laws governing permit requirements, conditions, terms, or restrictions.

2.4.6 Non-Material and Material Changes. Non-material changes to the Development Plan and the Development Schedule may be administratively approved by the Town's Town Manager and shall include, without limitation, all changes that neither (i) cause the anticipated date of Substantial Completion of the project to occur after the Termination Date, nor (ii) alter the relationship between Project Development milestones and the required date for delivery of Public Facilities. However, any non-material changes or minor modifications that are subject to procedures set forth in the UDO shall be approved in accordance with the UDO, including without limitation minor modifications of the approved Main Street Planned Development District by the Planning Director pursuant to Section 2.5.3.C.7.C.1 of the UDO. Material change to the Development Plan shall be approved in accordance with the procedures set forth in the Town's UDO.

### **ARTICLE III CLOSING**

3.1 Closing. The Town and Developer shall enter into the Land Disposition Agreement and Parking Agreement in one transaction as set forth below (the "Closing"). The date for the Closing (the "Closing Date") shall be no later than five (5) days after the satisfaction of all conditions precedent for the Closing, as set forth below, but in any event no later than November 30, 2024 (the "Outside Closing Date"). Either Party may extend the Closing Date by thirty (30) days, including an extension beyond the Outside Closing Date. No extension of the Closing Date will, without the mutual agreement of the Parties, extend any other deadlines set forth in this Agreement or the documentation to be entered into pursuant to this Agreement, at the Closing Date or otherwise. If, after the Outside Closing Date and any applicable extension above, any of the conditions precedent to the Parties' obligation to close is not fulfilled, then Developer or Town may terminate this Agreement and neither Party shall have any obligation to the other hereunder except to the extent that such obligations expressly survive the expiration or other termination of this Agreement.

3.2 Conditions Precedent for Closing by Town. The occurrence of each of the following events shall be conditions precedent to the Town's obligation to close: (i) receipt of the Local Government Commission's approval of this Agreement and the Town's financing

obligations under this Agreement; (ii) rezoning of the Real Property to a Main Street Planned Development District; (iii) Developer is not in default (beyond the applicable cure period) under this Agreement; and (iv) execution of the Land Disposition Agreement.

3.3 **Conditions Precedent for Closing by Developer.** The occurrence of each of the following events shall be conditions precedent to the Developer's obligation to close: (i) approval of the rezoning of the Real Property to a Main Street Planned Development District; (ii) the Town is not in default (beyond the applicable cure period) under this Agreement; and (iii) execution of the Land Disposition Agreement.

## **ARTICLE IV DUE DILIGENCE**

The Town has, prior to the Closing, permitted the Developer to conduct due diligence and pre-development work pursuant to that Pre-Development Agreement dated May 10, 2023, as amended on February 13, 2024. If additional due diligence work is required, Developer may perform, at Developer's sole expense and risk, tests and surveys reasonably sufficient to determine the condition of the Real Property, including geotechnical and structural analyses and a non-intrusive environmental audit. The Developer shall restore the Real Property, to the extent practicable, as to any damage caused by the negligence of the Developer, its employees, agents, contractors, or subcontractors in making the inspections, to the condition existing prior to such damage. The Developer shall have no right to terminate this Agreement after the Closing for any condition of the Real Property that was discoverable prior to Closing. Developer shall indemnify and hold harmless the Town from any and all claims arising out of the negligent acts or omissions of the Developer, its employees, agents, contractors, or subcontractors in making the inspections referenced in this Article.

## **ARTICLE V DESIGN AND CONSTRUCTION OF THE PROJECT**

5.1 **Design and Construction of Public Facilities.** Developer shall prepare and provide to the Town the proposed plans and specifications for the Public Facilities. Plans shall be submitted for review and approval in accordance with the requirements of the UDO. The Town shall be responsible for the costs of construction and development associated with the Public Facilities in accordance with Section 2.2.1 and **Exhibit B**.

5.1.1 The Parties have agreed on a scope of work ("**Work**") related to the Public Facilities, which scope of work includes an estimated budget in the form attached hereto as **Exhibit H** ("Project Budget"). Any change in the scope of Work shall not be effective as an agreement between the Parties until the same shall have been submitted to and approved by the Town and Developer in writing. Once such change order has been approved in writing by both Parties, it shall become a part of this Agreement and enforceable as such.

At any time prior to or during the term of this Agreement, Developer may submit and/or the Town may require the Developer to submit an updated Project Budget. The Project Budget shall be in such detail as the Town may reasonably require and all aspects thereof shall be

subject to the Town's approval, which approval shall not be unreasonably withheld, conditioned or delayed. If there are increases in the Project Budget because of increased costs of materials or for any reasons not caused by Developer's negligence or willful misconduct, or the negligence or willful misconduct of any of Developer's subcontractors or agents, Developer shall notify the Town of said increased costs. The Town's approval of a change to the Project Budget to cover said increased costs shall not be unreasonably withheld, conditioned or delayed.

5.1.2 In connection with Development of the Public Facilities, Developer shall utilize a bidding process for each contractor or subcontractor selected to perform work on the Public Facilities, and shall notify the Town of each contractor or subcontractor selected for such work, and the Town shall have a period of five business days following each such notice during which the Town may reject any such proposed contractor or subcontractor, and, in such event, Developer shall select an alternate subcontractor for such work. The foregoing obligation of Developer to utilize a bidding process shall not be construed as requiring Developer to accept the lowest responsible responsive bid. However, in the event the Developer does not select the lowest responsible responsive bid the Developer will meet with the Town to discuss Developer's justification for the decision. The Town shall approve Developer's choice unless good cause exists to object, and in that case Developer shall select an alternate bid.

5.1.3 Developer shall supervise the Work to be performed and shall be responsible to the Town for acts and omissions of Developer's employees, general contractors, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Developer, or its contractors or subcontractors.

5.1.4 Developer shall submit to the Town, on or about the last day of each month during which any portion of the Work has been performed, a pay application for Work performed pursuant to this Agreement, in a form acceptable to the Town. Disbursements for the work performed under this Agreement, equipment, materials and other "hard costs" shall be paid on the basis of ninety percent (90%) of the value of the work actually performed with ten percent (10%) of value held as retainage and shall be paid within 30 days after receipt of a valid pay application. Five percent (5%) of the retainage described in the preceding sentence shall be held by the Town until the Public Facilities have reached Substantial Completion, and five percent (5%) shall be held by the Town until the Public Facilities have reached Final Completion. The retainage shall be paid to Developer only if no lien or other interest has been permitted to attach to the funds owed to Developer or any subcontractors that have not been bonded over or insured against; and construction of the Project has been conducted in a good and workmanlike manner, in substantial conformance with plans approved by the Town, and any material damage to the Project has been satisfactorily repaired. However, the Town shall release any retainage to Developer to pay contractors and providers within 30 days after such contractor's or provider's work on the Project is complete and approved by the Town, and, if applicable, a lien waiver is secured.

5.1.5 In addition to any other indemnification obligation that might exist per the terms of this Agreement, Developer shall indemnify, defend, and hold harmless the Town and its employees, officials, and authorized agents from and against any and all claims, suits, judgments, damages, causes of action of any kind or nature, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from Developer's negligent performance of the Work or

willful misconduct, or the negligent performance or willful misconduct of Developer's general contractors, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Developer or any of its contractors or subcontractors. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described herein. In claims against any person or entity indemnified pursuant to this section by an employee of Developer, or its contractors or subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, this indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts or other employee benefit acts.

5.2 **Design and Construction of Parking Deck, Residential, Retail and Commercial Structures.** Developer shall prepare at its sole cost and expense the proposed plans and specifications for all non-Public Facilities, including the parking deck and all residential, retail and commercial structures that are to be located on the Real Property. Plans shall be submitted for review and approval in accordance with the requirements of the UDO. Developer shall be solely responsible for the costs of construction and development associated with the foregoing.

5.3 **Development Standards.**

5.3.1 Developer shall perform the Work in accordance with the standard of care and expertise normally employed by development firms, consultants and contractors performing similar services in metropolitan areas in North Carolina, and all duties under this Agreement shall be measured and interpreted in accordance with such standard of performance. Notwithstanding the foregoing, all structures and other improvements shall be constructed in a good and workmanlike manner and in compliance with all Applicable Laws.

5.3.2 The Developer hereby warrants to the Town that the materials and equipment furnished in accordance with this Agreement will be of good quality, that the work will be free from defects, and that the work will conform with approved plans and specifications. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Developer hereby represents, warrants, and covenants that neither it nor its affiliates shall file a mechanic's lien, materialmen's lien, or other lien against the Public Facilities or any real property owned by the Town or other assets of the Town, and hereby waives and releases any right it may have or may hereafter acquire to file a lien against the Public Facilities or any real property owned by the Town or any other assets of the Town. The Developer shall indemnify and hold harmless the Town from any losses, damages, and/or liabilities, to or as a result of a breach of this provision.

5.3.3 Developer shall pay all fees levied by the Town or any other governmental entity, including, but not limited to, all permit fees. Developer shall obtain and pay for all construction related permits and all certificates of occupancy for any housing to be located within the Real Property. The Town shall cooperate with the Developer as is reasonably necessary for Developer to obtain such approvals, permits and certificates of occupancy.

5.3.4 Developer shall apply for and maintain in full force and effect any and all governmental permits and approvals required for the lawful construction of the improvements contemplated in this Agreement, and comply with all the terms and conditions applicable to the Project.

5.3.5 Developer shall conform to all Applicable Law, including Current Regulations.

5.4 **Development Schedule.** The Parties agree to complete their respective obligations in accordance with the Development Schedule attached hereto as **Exhibit C**, as it may be amended from time to time by prior written consent of the Parties or as a result of an Unavoidable Delay.

## **ARTICLE VI INSURANCE**

6.1 **Insurance Required of Developer.** Developer shall maintain, or cause its general contractor to maintain, as appropriate, commercial property insurance on the Real Property in the amount of replacement cost, commercial general liability insurance to the limits set forth below and workers' compensation insurance to the extent required by applicable law. Developer shall cause its architect, general contractor and all subcontractors to maintain such insurance as may be required.

6.2 **Required Coverage.** Developer shall maintain, during the construction of the Project, Commercial General Liability ("CGL") insurance in an amount not less than \$1,000,000 each occurrence for bodily injury and property damage and shall cover the liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The Town, its officials, agents, and employees are to be covered as an additional insured under the policy by an endorsement providing equivalent coverage as respects to liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer; premises owned; leased or used by the Developer. Developer's insurance shall be primary with respect to the Town, its officers, officials, agents, and employees. The policies are to contain, or be endorsed to contain, the following provisions:

6.2.1 To the extent possible, each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be modified or canceled by Developer's insurer except after thirty (30) days prior written notice has been given to the Town. Regardless of whether such endorsement is available, Developer acknowledges that failure to remain fully insured at all times in accordance with this Agreement is grounds for the termination of this Agreement, provided, however, the Developer shall have fifteen (15) days from notice of termination by the Town to reinstate such insurance coverages and preempt the termination of this Agreement by the Town. At all times, Developer shall remain obligated to notify the Town immediately in writing of any changes in the status of the terms of its insurance coverage and to be fully liable for the direct or consequential damages for the failure to do so.

6.2.2 If Developer's liability policies do not contain the standard ISO "Separation of Insureds" provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

6.2.3 Developer's excess liability policy shall be in the amount of at least \$5,000,000.

### 6.3 **Additional Requirements.**

6.3.1 Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII unless specific approval has been granted by Town.

6.3.2 Prior to commencing work, Developer shall furnish the Town with a certificate(s) of insurance executed by a duly authorized representative of each insurer showing compliance with the insurance requirements above, and thereafter upon renewal or replacement of each policy providing certified coverage until all operations under this contract are deemed complete.

6.3.3 Developer shall include all contractors as an insured under its policies or shall furnish separate certificates for each contractor. All coverage for contractors shall be subject to all of the requirements stated herein. Commercial General Liability coverage shall include independent contractors' coverage, and the contractor shall be responsible for ensuring that all contractors are properly insured.

6.3.4 By requiring insurance herein, the Town does not represent that coverage and limits will necessarily be adequate to protect Developer and such coverage and limits shall not be deemed as a limitation of Developer's liability under the indemnities granted to the Town in this Agreement. The Town reserves the right to inspect any policy and to approve its form, including all exclusions and endorsements.

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES**

7.1 **Representations and Warranties of Town.** The Town hereby represents and warrants to Developer as of the Closing:

7.1.1 All consents, approvals, authorizations and orders of governmental authorities which are required as a condition to the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been obtained by or on behalf of the Town and are in full force and effect.

7.1.2 The Town will execute, deliver and perform this Agreement in accordance with all applicable laws.

7.1.3 To the best of the Town's knowledge, no modification of the Current Regulations applicable to the Property, including land use ordinances, are necessary in order for the Project to conform to the Current Regulations except that the Real Property must be rezoned as part of the Main Street Planned Development District.

7.1.4 To the best of the Town's knowledge, the Property is not the subject of any litigation, pending or overtly threatened, or other judicial or quasi-judicial procedure which would, if determined unfavorably to the Town, settled or otherwise resolved by the Town, result in any financial liability on the part of Developer or interfere with the development of the Project.

7.1.5 To the best of the Town's knowledge, the Property is not the subject of any procedure for the taking of the Property by eminent domain, in whole or in part, pending or overtly threatened by the Town or any other governmental authority with the power of eminent domain.

7.1.6 To the best of the Town's knowledge, no one has made any claim to title to the Property, in whole or in part, superior to the claim of the Town by virtue of its chain of title.

7.2 **Representations and Warranties of Developer.** Developer represents and warrants to the Town that:

7.2.1 Developer is a valid limited liability company duly organized, validly existing and in good standing under the laws of the State of Michigan.

7.2.2 Developer is duly qualified to do business and is in good standing under the laws of the State of North Carolina.

7.2.3 Developer has the power to consummate the transactions contemplated by this Agreement. Upon request, Developer shall provide the Town with a resolution signed by its manager(s) authorizing it to enter into this Agreement and to perform its obligations hereunder, which request may be made from time to time during the period of Development.

7.2.4 The execution and delivery by Developer of this Agreement and the consummation by Developer of the transactions contemplated therein will not (i) conflict with, be in violation of, or constitute (upon notice or lapse of time or both) a default under its charter, bylaws, or any agreement, instrument, order or judgment to which it is a party or is subject, or (ii) result in or require the creation or imposition of any lien of any nature upon or with respect to any of its properties now owned or hereafter acquired, except as contemplated by this Agreement.

7.2.5 Developer has the full right, power, and authority to enter into this Agreement and the agreements referenced herein and to perform its obligations hereunder without contravention of any obligation on the part of Developer, whether statutory, contractual or otherwise; and

7.2.6 Developer will execute, deliver and perform this Agreement in accordance with all Applicable Law.

7.2.7 Developer warrants that it shall construct or cause to be constructed all improvements in substantial accordance with approved plans and specifications. Developer shall supervise the performance of its general contractor, architects, engineers and all other prime contractors.

7.2.8 Developer warrants that there is no pending litigation in which Developer is involved that will impact the Project.

7.2.9 Developer warrants and agrees that during its ownership of the Town Green, it will do nothing to impair title to the Town Green, nor will it convey any interest in the Town Green to any other person or entity except the Town per the provisions of this Agreement. Developer warrants and agrees that in the event this Agreement is terminated for any reason, whether by the Town or Developer or otherwise, and whether or not the Town is alleged to have been in default, Developer will within ten (10) days of the date of termination dedicate and convey the Town Green to the Town at no additional cost, free and clear of all encumbrances. Developer agrees that the Town may include in any deed of conveyance of the Town Green, language evidencing reversion of the Town Green to the Town upon termination of this Agreement.

7.2.10 Developer warrants to the Town that all labor furnished to progress the Work will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise agreed to by the parties, and that the Work will be of good quality and free from material faults and defects. Any and all Work not strictly conforming to these requirements may be considered defective.

Developer shall be responsible for the failure of any contractor or subcontractor to carry out the Work in accordance with the applicable Contract Documents and shall immediately cause to be corrected defective Work at no cost to the Town. If within one (1) year after Substantial Completion of the Work on the Project, any of the Work is found to be defective or not in accordance with the Contract Documents, Developer shall cause such Work to be corrected within a commercially reasonable time upon receipt of written notice from the Town. This obligation shall survive final payment by the Owner and termination of this Agreement.

## **ARTICLE VIII OPERATION OF PARKING DECK**

8.1 **Operation of the Parking Deck.** Developer will retain fee simple ownership of the Parking Deck shown on **Exhibit B**; provided, however, Developer shall make available to the Town for thirty (30) years, no fewer than 80 parking spaces within the Parking Deck for Town purposes, including without limitation use by library patrons and visitors to the Town Center, subject to the terms of the Parking Agreement attached hereto as **Exhibit E** and incorporated herein by reference and the following:

8.1.1 The parking spaces reserved to the Town shall be located on the ground floor of the Parking Deck, provided, if there are fewer parking spaces located on the ground floor after completion of the Parking Deck than the number of parking spaces the Town is licensed to

use, then the nearest available spaces within the Parking Deck shall be reserved for public use up to the required number of parking spaces.

8.1.2 Developer shall be responsible for all capital and operating expenses of maintaining the Parking Deck in good, clean, and working order.

8.2 **Lease Payments.** The Town shall initially pay to Developer a fee of \$100 per public parking space per month to ensure parking is available for Town purposes, including without limitation use by library patrons and visitors to the Town Center, at no cost to those users. The fee shall be increased by three percent (3%) each year for the first five (5) years following the date the Parking Deck shall first open for operation. Thereafter, the fee shall be subject to review and adjustment every successive five (5) years to determine a fee that is consistent with comparable market rates, provided that such rate shall not be decreased. If the parties cannot agree on a comparable market rate, then each of them will appoint one person to meet and attempt to resolve the dispute in an atmosphere of good faith. If agreement still cannot be reached in a reasonable time, then the matter will be determined through binding arbitration with a single arbitrator pursuant to Article 45C of the North Carolina General Statutes, commonly known as the Revised Uniform Arbitration Act, as it may be amended from time to time. Venue for the proceeding shall be Wake County, North Carolina. The sole issue for determination shall be the proper fair market rate for lease of the parking spaces. Each party shall bear its own costs and attorneys' fees associated with such proceeding.

## **ARTICLE IX DEVELOPMENT FINANCE INITIATIVE**

The Town's consultant is a nonprofit, charitable program of the University of North Carolina at Chapel Hill School of Government ("SOG"). In accordance with that certain Service Agreement between SOG and Town of Morrisville, fully executed on June 24, 2015, as amended (the "**Pre-Development Fee Agreement**") and incorporated herein by reference, the conveyance or lease of any portion of the Real Property to Developer (and its successors and assigns) is conditioned upon the execution of this Development Agreement and the payment of a fee to SOG ("**Development Services Fee**"). The Development Services Fee shall be **\$TBD**, which is the amount equal to one percent (1.0%) of the total projected costs of development of the Real Property (such total projected costs to be reduced by amounts paid by Town to Developer for publicly-owned improvements pursuant to this Development Agreement), as calculated by Developer in the most recent version of the pro forma and other financial projections prepared by Developer ("**Developer Financials**") and delivered to lenders and/or investors prior to or contemporaneously with the Effective Date of this Agreement (and in the event that projected costs are not available at time of execution, then Developer shall provide Developer Financials as soon as possible thereafter), and in the event of any inconsistencies in the projected total costs among different versions of the Developer Financials, the version of the Developer Financials showing the greatest total costs of development of the Real Property shall be used to calculate the Development Services Fee. Developer shall, no later than Closing on the Real Property, either (i) pay the Development Services Fee to SOG (and its successors and assigns) for predevelopment services provided for the project, or (ii) shall certify that it has entered into a fully executed written agreement between SOG

and Developer regarding payment of the Development Services Fee on an alternative schedule. SOG is an intended third-party beneficiary to this Contract. This section shall survive the Closing.

## ARTICLE X REQUIREMENTS OF THE ACT

10.1 **Property Description.** The Real Property is described on **Exhibit A.**

10.2 **Ownership of Property.** The Real Property is owned by the Town of Morrisville as of the date of execution of this Agreement. Developer will acquire the Real Property at Closing, except for any publicly dedicated areas such as street rights of way. Following development of the Town Green, Developer will dedicate and convey the Town Green to the Town.

10.3 **Duration of the Agreement.** The term of this Agreement shall commence only upon the full execution of this Agreement, and, unless earlier terminated, shall terminate at 5:00 p.m. EST upon Final Completion of the last phase of the Project; provided, however, that to the extent any obligations of either party have accrued as of the date of such termination but have not yet been performed, such obligations shall survive such termination.

10.4 **Permitted Development Uses, Population Densities and Building Types, Intensities, Placement on the Site, and Design.** See the zoning requirements for the Main Street Planned Development zoning district, subject to those conditions imposed by Ordinance 2023-359-0 of the Morrisville Town Council, the terms of which are incorporated herein by reference.

10.5 **Public Facilities.** The Public Facilities shall include development of the Town Green and the Infrastructure. The Town is the responsible party for payment of development of these facilities, but Developer is responsible for performance of the development of these facilities, subject to Section 2.2.7 hereof. The Public Facilities will be completed per the schedule set forth on **Exhibit C**, and in accordance with the overall timelines for the Project.

10.6 **Dedication.** Developer has agreed to donate the Town Green to the Town and to convey the same to the Town at no additional cost following Substantial Completion of the development of the Town Green in accordance with Section 2.3.7.

## ARTICLE XI DEFAULT

11.1 **Default.** In the event of default by any party to this Agreement of any term, covenant, representation, warranty, undertaking or restriction contained herein, the non-defaulting party (“Non-Defaulting Party”) shall notify the other party (the “Defaulting Party”) in writing of the alleged default. The Defaulting Party shall have a period of thirty (30) days following receipt of such notice in which to cure or commence a cure of such default. If such default cannot reasonably be cured within thirty (30) days, the Defaulting Party shall be entitled to an additional thirty (30) days, following receipt of such notice of default provided that the Defaulting Party provides evidence of diligent pursuit of a cure. Notwithstanding the foregoing, the Developer shall have no obligation to continue the Project during the pendency of any material breach by the Town.

For the avoidance of doubt, a party's failure to meet the dates listed in the Development Schedule in **Exhibit C** shall be considered a material breach. Provided, however, that Developer acknowledges that a significant portion of work on the Project which is the ultimate responsibility of the Town will be performed through Developer. Developer shall not use any delay, act or omission on the part of Developer or its affiliates, employees, agents, representatives, contractors, subcontractors, or other individual acting on behalf of or at the direction of Developer as grounds for holding the Town in breach of this Agreement, including with respect to the failure to meet the dates listed in **Exhibit C**.

11.2 **Events of Default**. An Event of Default under this Agreement shall include, but is not limited to:

- a. Failure of Developer to complete the Project by the Substantial Completion Date, except for delays caused by an Unavoidable Delay, as defined herein, or as a result of a period of default by the Town;
- b. Failure of Developer or the Town to pay or perform any material obligation of Developer or the Town, as applicable, under this Agreement;
- c. Any material fraudulent misrepresentation by Developer or the Town;
- d. Developer (i) becomes insolvent or ceases to pay its debts as they mature without making an arrangement with or for the benefit of its creditors; (ii) consents or acquiesces to the appointment of a receiver, trustee or liquidator for any substantial part of its property; (iii) files a voluntary petition for bankruptcy, or has an involuntary petition for bankruptcy filed against it, that is not dismissed within ninety (90) days; (iv) elects to dissolve its business organization; or, (v) experiences the levy of any distress, execution or attachment upon its property that could substantially interfere with its performance under this Agreement.

Neither party to this Agreement shall be in default because of any failure to perform this Agreement under its terms if the failure results from an Unavoidable Delay. In the event there is an Unavoidable Delay, the Project Schedule, including the Substantial Completion Date, and any other times for performance or completion of any obligation affected by the Unavoidable Delay, shall be extended for the period of the Unavoidable Delay and thereafter, the parties shall make a reasonable amendment to the Project Schedule and proceed to complete the Project, if feasible.

11.3 **Remedies Upon Events of Default**. In the event of an uncured event of default after the giving of notice and the expiration of applicable cure periods, the Non-Defaulting Party shall be entitled to any of the following remedies subject to the terms of Section 11.3 (c) hereunder:

- a. Termination of this Agreement;
- b. Action at law for damages; and/or

- c. Specific performance of this Agreement where no adequate remedy at law exists. The Town hereby acknowledges and agrees that Developer will be developing the Public Facilities simultaneously with the development of other private facilities, and the success of Developer's development is dependent upon the completion of the Public Facilities. The Town, therefore, acknowledges and agrees that in the event there is an uncured event of default hereunder on the part of the Town that results in the Public Facilities not achieving Substantial Completion, Developer will suffer substantial damages that will be difficult or impossible to fully calculate or assess, and Developer's remedies at law will be, therefore, inadequate to redress its injuries. As a result, upon such an occurrence, Developer's sole remedy shall be the right to specific performance to enforce this Agreement against the Town.

Notwithstanding the foregoing, if Developer fails to cure a material breach within the time given, and the Town chooses to terminate or modify this Agreement, said notice of termination or modification may be appealed to the Planning and Zoning Board per N.C.G.S. § 160D-1008, unless another board has been authorized by ordinance to hear appeals of administrative decisions made by Town staff.

11.4 **Effect of Termination.** Upon the termination of this Agreement, the obligations of Developer and the Town under this Agreement shall cease and be of no effect, provided that any obligation for the payment of money shall not be affected by such termination and shall remain in full force and effect until satisfied in full or waived, or until the remedies available in this Agreement have been exercised in full, waived or barred.

If the Town terminates this Agreement as a result of an uncured event of default by Developer, the Town shall pay Developer for all work properly performed (including any portion of the Development Fee invoiced but unpaid as of the date of termination) through the date of termination, less any actual damages suffered by the Town as a result of Developer's uncured event of default.

If Developer terminates this Agreement as a result of an uncured event of default by the Town under circumstances where an adequate remedy at law exists, the Town shall be liable to Developer for all reasonable and actual costs resulting from such termination upon the receipt by the Town of a termination claim to the Town setting out in detail: (a) the total compensation for the work performed to the date of termination, including the pro-rata portion of the Development Fee earned based on the percentage completion of the Project, and third party costs based on the percentage of work completed, less the total amount of contract payments already made to Developer; (b) reasonable administrative costs for settling and paying claims under subcontracts and material orders for work performed for which payment has not been disbursed by the Town; and (c) the cost of preserving and protecting the work already performed until the Town or its designee takes possession thereof or assumes responsibility therefor. The Town will act on the claim(s) for prompt payment; or state its objections and/or make a written request further documentation within thirty (30) days of receipt of the claim(s).

11.5 **Disposition of Documents and Other Tangible Items Upon Termination.** If for any reason this Agreement is terminated by either party, the parties agree that all of Developer's rights and interests in the plans, specifications and other documents related to the Public Facilities which, as determined by the Town, are necessary or required to complete the Public Facilities shall be assigned to the Town. The Town shall be entitled to use such documents for any purpose without the necessity of any further assignment or approval by Developer.

11.6 **Limitation on Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY THIRD PARTY, WHETHER OR NOT CLAIMING THROUGH SUCH OTHER PARTY) FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER).

11.7 **Town Green.** In the event of termination of the Agreement for any reason whatsoever, if the Developer holds title to the Town Green, Developer shall, within ten (10) days, dedicate and convey the Town Green to the Town for no additional fee, free and clear of all liens and encumbrances.

## ARTICLE XII MISCELLANEOUS

12.1 **Relationship of the Parties.** This Agreement creates a contractual relationship between the Parties. This Agreement shall not be interpreted or construed to create the relationship of master/servant, principal/agent, association, partnership, joint venture, or any other relationship where one Party may be held responsible for acts of the other Party. Neither the Developer nor the Town shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other Party.

12.2 **Legislative Act.** This Agreement constitutes a legislative act of Town Council. Town Council adopted this Agreement only after following procedures required by Applicable Law.

12.3 **Performance of Governmental Functions.** The terms of this Agreement regarding the design and construction of the Project and the role of the Town therein are independent of any obligations binding upon the Town or Developer pursuant to Applicable Law. In no event will any approvals given by the Town pursuant to the terms of this Agreement constitute the performance by the Town of any review or issuance of any permits, approvals or licenses that it is obligated to conduct or consider pursuant to any Applicable Law. Nothing in this Agreement or any approvals or consents by the Town in connection with this Agreement will in any way stop, limit or impair the Town from exercising or performing any regulatory, policing or other governmental function with respect to either Party, including, but not limited to, the review, approval and issuance by the Town of applications, approvals, permits and licenses regarding the Project pursuant to any Applicable Law. The Town will, to the extent reasonably appropriate and permitted by Applicable Law, facilitate the Developer's submissions, requests and applications pursuant to the Applicable Law regarding the Project; provided the Developer's

submissions, requests and applications are complete and include all necessary fees and are otherwise compliant with Applicable Law.

12.4 **Future Phases.** The Town shall consider experience with public-private partnerships in town center developments as a factor in its review of any proposal submitted in response to Requests for Proposals issued by the Town for development of any future phase of the Town Center area. The Town does not, however, guarantee that Developer will be awarded any such work.

12.5 **Amendment.** As required by N.C.G.S. §160D-1006(e), major modifications of this Agreement shall follow the same notice, public hearing, and approval procedures as were followed initially when formed this Agreement.

Minor modifications of this Agreement may be approved by the Planning Director, if the Planning Director makes written findings that the proposed minor modifications would not significantly change the use, intensity or design of the Project, would be consistent with the purposes and goals of the Agreement, would comply with the UDO, and would not adversely affect the public health, safety, or general welfare.

Except as otherwise set forth herein, this Agreement may be amended only by written mutual consent of the parties or by their successors in interest. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment. Wherever said consent or approval is required, the same shall not be unreasonably withheld. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, the pertinent provisions of this Agreement shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations. In such event, compliance with all other provisions of this Agreement shall remain unaffected and unmodified.

12.6 **Severability.** If any word, phrase, sentence, paragraph or provision of this Agreement shall be finally adjudicated to be invalid, void, or illegal, it shall be deleted and in no way affect, impair, or invalidate any other provision hereof.

12.7 **Merger.** This Agreement, coupled with its Exhibits, which are incorporated herein by reference, states the final and complete expression of the Parties' intentions with respect to the subject matter hereof, provided that this Agreement shall be read together with the Pre-Development Agreement dated May 10, 2023 and any further agreement duly executed between the Parties after the date hereof, which are not merged into this Agreement and shall remain separate and valid agreements between the parties. The Recitals of this Agreement and the Exhibits attached hereto are integral and essential components of this Agreement.

12.8 **Further Assurances.** The Parties shall cooperate with each other to effectuate the provisions of this Agreement and to act reasonably and expeditiously in all obligations under the Agreement. In the event of any legal action or other proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties shall cooperate in defending such action.

12.9 **Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the substantive laws of the State of North Carolina, without regard to principles of conflicts of laws. The only proper venue and court for litigation related to, arising out of, or connected with this Agreement or the relationships between the parties established by this Agreement shall be Wake County Superior Court.

12.10 **Successors and Assigns.** The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the parties to this Agreement. The term “Developer” as used herein, shall denote (i) the named Developer herein, and (ii) any successor or assign of Developer hereunder, only in connection with such Developer’s interest in any portion of the fee interest in the Real Property on which the Project has not yet achieved Substantial Completion. This Agreement shall be recorded against the Real Property by Developer within fourteen (14) days after the Effective Date, and the rights and obligations of Developer contained herein shall run with the land. This Agreement may not be assigned by Developer without the prior written consent of the Town, which consent may be withheld in the sole discretion of the Town, except that Developer may assign its rights under this Agreement to one or more affiliates of Developer (being controlled by, controlling, or under common control with Developer) without seeking or obtaining the Town’s consent, but upon written notice to the Town. No such assignment, with or without the consent of the Town, shall be effective unless each such assignee shall assume and agree to perform and observe all of the covenants and agreements of Developer being assigned thereby. No assignment of this Agreement by Developer shall release or relieve the assigning Developer of any duties, obligations or liabilities under this Agreement, and from and after any such assignment the assigning Developer shall be jointly and severally liable with the assignee for the performance of and compliance with all of Developer’s duties obligations and liabilities under this Agreement.

12.11 **Third Party Beneficiaries.** The Agreement is not intended to and does not confer any right or benefit on any third party that is not a Party, except as provided in Article IX (Development Finance Initiative).

12.12 **Estoppel.** Each Party agrees, from time to time, within thirty (30) days after request of another Party, to deliver to the requesting Party or such Party’s designee, an estoppel certificate stating that this Agreement is in full force and effect, the unexpired term of this Agreement, and whether or not, to such Party’s knowledge, there are any existing defaults or matters which, with the passage of time, would become defaults under this Agreement. It is understood and agreed that the Party’s obligations to furnish such estoppel certificates in a timely fashion is a material inducement for execution of this Agreement.

12.13 **Indemnification.** Developer agrees to indemnify, defend, and hold harmless the Town and its employees, authorized agents and elected officials from liability for injury or death to any person, or damage to any property, that arises out of or results from the negligent or intentional acts of Developer in connection with any one or more of the following: (i) Development by the Developer on the Real Property; and (ii) operation of any portion of the Real Property owned by the Developer. To the extent permitted by applicable law, the Town agrees to indemnify, defend, and hold harmless Developer and its authorized agents from liability for injury or death to

any person, or damage to any property, that arises out of or results from the negligent or intentional acts of the Town in connection with the Town's presence or activities on or affecting the Real Property.

12.14 **Force Majeure.** In addition to specific provisions of this Agreement, no Party shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Party's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities, epidemics, wars, embargoes, fires, hurricanes, adverse weather, acts of God, interference duly caused by any other Party, or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such Party's reasonable control or due to interference by another Party, any date or times by which the parties are otherwise scheduled to perform, if any, shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Party. If written notice of such delay is given to the other Party after the commencement of such delay, an extension of time for such cause shall be deemed granted for the period of the enforced delay, or longer as may be mutually agreed to by the parties. Developer shall additionally be entitled to a day-for-day extension of the time set forth for performance of its obligations pursuant to **Exhibit C** attached hereto for each day of unreasonable delay on the part of the Town which affects Developer's ability to meet such obligations.

12.15 **Construction of Agreement.** Both Parties hereto have been represented by counsel in the negotiation of this Agreement, and neither this Agreement nor any provision hereof shall be construed against a Party hereto because such Party drafted it or caused it to be drafted.

12.16 **No Waiver.** Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the Town Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of the Town has the power to amend, modify or alter this Agreement or waive any of its conditions except as set forth herein.

12.17 **Attorneys' Fees.** Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeal or re-hearings, the prevailing Party shall be entitled to receive from the other Party thereto reimbursement for all reasonable attorneys' fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, the prevailing party may request that said reimbursement be specified therein.

12.18 **Notices.** All notices hereunder shall be given in writing by certified mail, postage prepaid, or by delivery through a nationally recognized overnight carrier, delivery confirmation required, provided that such notices may be delivered via electronic mail if such notice shall also be delivered by one of the other methods described in this section. Delivery shall be deemed effective as of the date of the delivery receipt, or, for notices delivered electronically, on the date such notice was sent via electronic mail without automatic notification of any delivery error. Notices shall be delivered to the following addresses:

**To the Town:**

Town Manager's Office  
Town of Morrisville  
100 Town Hall Drive, Morrisville, NC 27560  
Email: [bzuidema@morrisvillenc.gov](mailto:bzuidema@morrisvillenc.gov)

**With copies to:**

Frank Gray  
Jordan Price Law Offices  
1951 Clark Avenue  
Raleigh, NC 27605  
Email: [fgray@jordanprice.com](mailto:fgray@jordanprice.com)

Lori Jones  
Jordan Price Law Offices  
1951 Clark Avenue  
Raleigh, NC 27605  
Email: [ljones@jordanprice.com](mailto:ljones@jordanprice.com)

**To the Developer**

Singh Development, LLC  
2601 Weston Parkway, Suite 203  
Cary, NC 27513  
Attn: Avi Grewal  
Email: [avi@singhmail.com](mailto:avi@singhmail.com)

**With copies to:**

Morningstar Law Group  
421 Fayetteville Street, Suite 530  
Raleigh, NC 27601  
Attn: Molly M. Stuart  
Email: [mstuart@morningstarlawgroup.com](mailto:mstuart@morningstarlawgroup.com)

12.19 **Execution of Agreement.** This Agreement may be executed in multiple parts as originals or by facsimile or scanned copies of executed originals and may further be executed by counterpart signature pages.

12.20 **Time for Performance.** Any reference to “day” or “days” herein shall mean calendar day(s) unless otherwise specified, and any deadline or outside date set forth herein falling on a Saturday, Sunday, or holiday on which the Town is closed shall be automatically extended to the following business day.

12.21 **Public Records.** Developer acknowledges that its submissions to the Town pursuant to this Agreement are public records subject to the North Carolina Public Records Act, except to the extent excluded therefrom.

12.22 **Immunity Not Waived.** The Town does not intend to waive its sovereign immunity by reason of this Agreement; provided, however, that the Town acknowledges and agrees that by entering into this Agreement, governmental immunity shall not be a valid defense to a breach of contract claim brought hereunder.

12.23 **Iran Divestment Act Certification.** Developer certifies that, if it submitted a successful bid for this Agreement, then as of the date it submitted the bid, Developer was not identified on the Iran List. If it did not submit a bid for this Agreement, the Developer certifies that as of the date that this Agreement is entered into, the Developer is not identified on the Iran List. It is a material breach of this Agreement for the Developer to be identified on the Iran List during the term of this Agreement or to utilize on this Agreement any contractor or subcontractor that is identified on the Iran List. "Iran List" means the Final Divestment List - Iran, the Parent and Subsidiary Guidance List- Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with N.C.G.S. §143C-6A-4 of the N.C. Iran Divestment Act.

12.24 **E-Verify Certification.** The Developer certifies that it verifies the authorization of its employees to work in the United States in accordance with the Immigration and Reform Control Act of 1986, that it has enrolled in the U.S. Citizenship and Immigration Service's E-Verify program, and that it utilizes E-Verify as required by N.C.G.S. §64-25.

12.25 **Conflicting Terms; Conflicting Requirements.** In the event of a conflict between the requirements of this Agreement and the requirements of any Exhibits or any of the Related Agreements, the more stringent requirements shall apply.

[Separate signature pages to follow.]

IN WITNESS WHEREOF, this Development Agreement has been executed by the Parties on the day and year first above written.

TOWN OF MORRISVILLE

By: \_\_\_\_\_  
Brandon Zuidema, Town Manager

Attest:

\_\_\_\_\_  
Town Clerk

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that they saw the within named Town of Morrisville, by \_\_\_\_\_, its Town Manager, and \_\_\_\_\_, its Municipal Clerk, sign and seal the within written Development Agreement, and as the act and deed of Town of Morrisville deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

\_\_\_\_\_

SWORN to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
Notary Public for North Carolina

My Commission Expires: \_\_\_\_\_

This Instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Town of Morrisville

\_\_\_\_\_  
By:  
Title: Finance Director

SINGH DEVELOPMENT, LLC

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

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

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named Singh Development, LLC, by \_\_\_\_\_, its \_\_\_\_\_, sign and seal the within written Development Services Agreement, and as the act and deed of Singh Development, LLC deliver the same, and that (s)he witnessed the execution thereof.

\_\_\_\_\_

SWORN to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
Notary Public for North Carolina

My Commission Expires: \_\_\_\_\_

**EXHIBIT A TO DEVELOPMENT AGREEMENT**

**DESCRIPTION OF THE REAL PROPERTY**

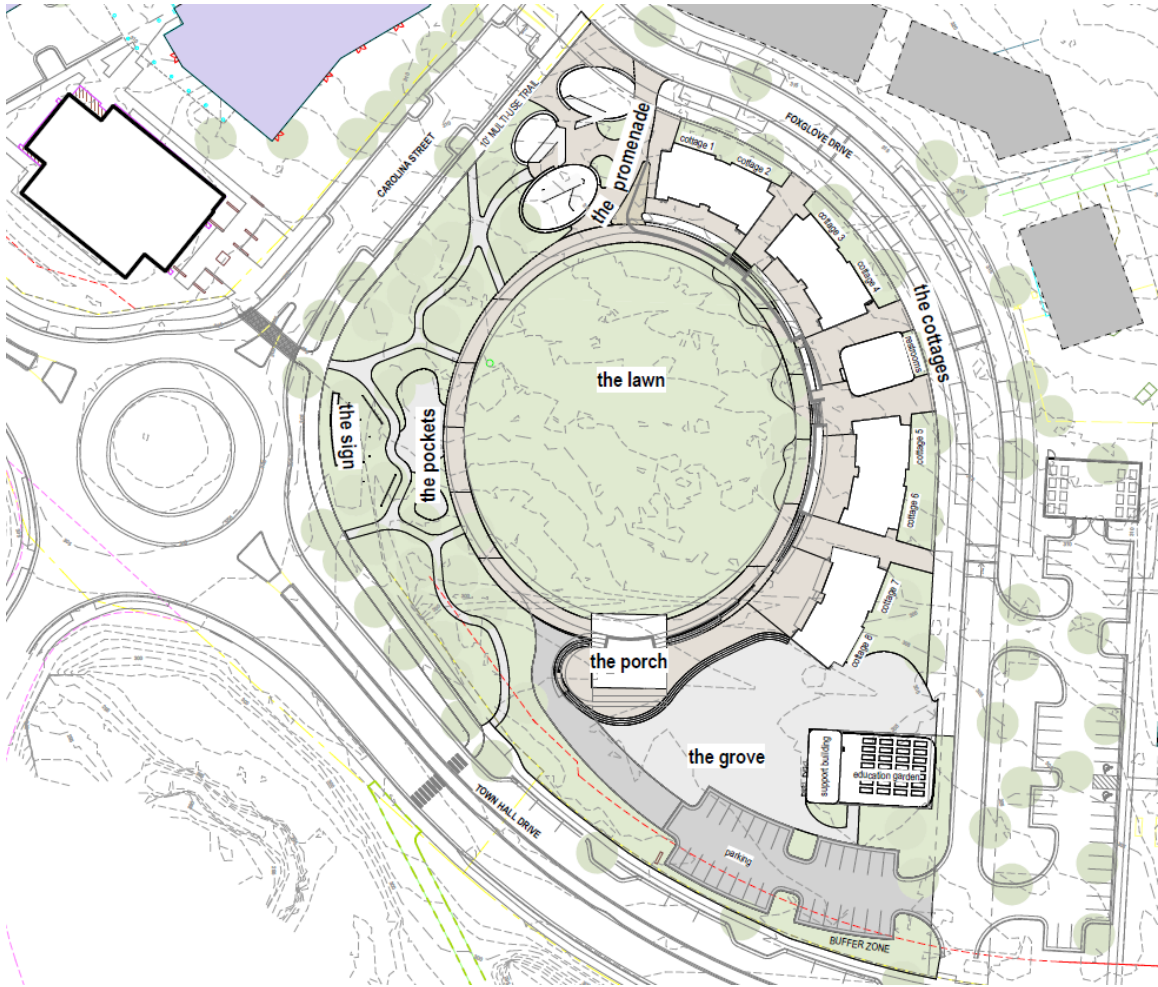
Beginning at a point in the northerly right of way of Town Hall Drive, said point having North Carolina State Grid coordinates of North 754,590.79 and East 2,050,087.65 ((NAD83 (2011)) to a point; running thence along the northerly and northeasterly right of way of Town Hall Drive the following 16 courses and distances: (1) N 87°23'18" W 1.53' to a point; (2) N 87°36'50" W 40.57' to a point; (3) with a curve turning to the right with an arc length of 384.63', a radius of 560.00', a chord bearing of N 67°48'30" W, and a chord length of 377.11' to a point; (4) N 42°04'57" E 6.79' to a point; (5) N 46°23'23" W 29.49' to a point; (6) N 35°58'05" W 131.34' to a point; (7) N 35°58'05" W 15.39' to a point; (8) N 10°04'49" W 103.51' to a point; (9) N 48°44'45" W 116.91' to a point; (10) S 81°51'48" W 86.20' to a point; (11) N 74°14'03" W 52.20' to a point; (12) N 46°51'00" W 59.33' to a point; (12) with a curve turning to the right with an arc length of 43.75', a radius of 253.00', a chord bearing of N 52°34'48" W, and a chord length of 43.70' to a point; (13) S 42°08'47" W 4.00' to a point; (14) N 47°51'13" W 134.39' to a point; (15) N 47°51'13" W 40.05' to a point; and (16) with a curve turning to the left with an arc length of 58.34', a radius of 623.00', a chord bearing of N 50°32'11" W, and a chord length of 58.32' to a point; running thence along the northwesterly and northerly right of way of Jeremiah Street the following seven (7) courses and distances: (1) with a reverse curve turning to the right with an arc length of 52.31', a radius of 30.00', a chord bearing of N 03°16'08" W, and a chord length of 45.93' to a point; (2) N 46°40'52" E 309.44' to a point; (3) with a curve turning to the right with an arc length of 138.81', a radius of 290.00', a chord bearing of N 60°23'39" E, and a chord length of 137.49' to a point; (4) N 74°34'51" E 103.70' to a point; (5) N 74°35'12" E 235.93' to a point; (6) with a curve turning to the left with an arc length of 99.82', a radius of 360.00', a chord bearing of N 66°39'12" E, and a chord length of 99.50' to a point; and (7) N 58°43'03" E 132.19' to a point; thence leaving said right of way and running S 20°27'44" E 151.64' to a point N 69°33'11" E 39.52' to a point and S 20°14'06" E 210.11' to a point in the northerly right of way of Carolina Street; running thence along the northerly right of way of Carolina Street N 69°33'40" E 319.25' to a point in the southwesterly right of way of Church street; running thence along said right of way S 39°34'13" E 52.92' to a point in the southerly right of way of Carolina Street; running thence along said southerly right of way S 69°33'43" W 436.56' to a point and S 69°33'41" W 206.84' to a point; thence leaving said right of way and running S 20°38'12" E 138.70' to a point, N 73°17'43" E 56.68' to a point and S 17°52'34" E 83.89' to a point in the northerly right of way of Scoggins Avenue; running thence along said northerly right of way N 73°59'47" E 95.03' to a point; running thence S 16°39'51" E 29.33' to a point in the southerly right of way of Scoggins Avenue; thence leaving said right of way and running S 16°39'51" E 162.55' to a point, N 88°50'50" W 29.64' to a point and S 03°11'22" W 382.85' to the point of beginning, having an area of 713,157 square feet or 16.372 acres.

PINs: 0745951353; 0745954582; 0745958657; 0745952139; 0745954039; 0745955322; 0745956336; 0745956113; 0745957400; 0745957471; 0745958455; 0745959550; 0755050543; 0745958203; 0745957058; 0745958174; 0745948960; 0745958080; 0745959072; 0755050081; 0755041787; 0745948775

# EXHIBIT B TO DEVELOPMENT AGREEMENT

## DEVELOPMENT PLAN

Note: The plan below is not intended to represent a literal depiction of the eventual site plan, which will require Town review and approval, but a general indication of the types and locations of the Project elements.



**EXHIBIT C TO DEVELOPMENT AGREEMENT**  
**DEVELOPMENT OBLIGATIONS AND SCHEDULE**

**(THIS DOCUMENT IS IN DEVELOPMENT)**

## EXHIBIT D TO DEVELOPMENT AGREEMENT

### LAND DISPOSITION AGREEMENT

THIS LAND DISPOSITION AGREEMENT (“Agreement”) is made as of the Effective Date (as defined herein) by and between the Town of Morrisville, a North Carolina municipal corporation (“Seller”), and Singh Development, LLC, a Michigan limited liability company (“Buyer”).

1. Sale and Purchase. Pursuant to this Agreement, Seller shall sell and Buyer shall purchase, subject to the terms and conditions herein, certain Property (as defined below) located in Wake County, North Carolina. The Property consists of an approximately 11 acre tract of land described in Exhibit A attached hereto, which land is depicted on Exhibit A-1 attached hereto (the “Land”), together with any and all improvements thereon, easements, water rights, mineral rights and other rights appurtenant thereto, together with any and all development fees, impact fees, water, sewer or other utility tap, connection, meter or service fees or amounts which have been paid to any governmental authority in connection with any previous development of the Land or any utility service provided to any improvement located on said Land (collectively, the “Property”).
  
2. Purchase Price. The purchase price for the Property (the “Purchase Price”) is \$1,070,000.00. Buyer will pay \$1,000 (the “Deposit”) within ten (10) days after the Effective Date (as hereinafter defined) to an interest-bearing escrow account with Fidelity National Title company of Greensboro, North Carolina (“Title Company”), with interest accruing to Buyer (the Deposit, and any and all interest accrued thereupon shall sometimes be referred to herein collectively as the “Transaction Deposit”). For the avoidance of any confusion, any such earned interest shall be in all aspects construed throughout this Agreement to be included in any refund of the Transaction Deposit to Buyer hereunder. The balance of the Purchase Price after application of the Transaction Deposit will be paid upon closing of this sale (the “Closing”) by certified check or Federal wire transfer.

Contemporaneously with the execution and delivery of this Agreement, Buyer has paid to Seller, as further consideration for this Agreement, the receipt of which Seller hereby acknowledges, the sum of One Hundred Dollars (\$100.00) (the “Independent Consideration”), in addition to the Deposit and the Purchase Price and independent of any other consideration provided hereunder, which Independent Consideration is fully earned by Seller and is not refundable under any circumstance.

3. Survey. Buyer shall, in accordance with that certain Pre-Development Agreement dated May 10, 2023 by and between Buyer and Seller and the exhibits thereto (the “PDA”) obtain a survey of the Property (the “Survey”). The Survey will show each Schedule B exception contained in the Commitment (as defined herein) and its effect on the Property.

4. Title Review. Title Company shall, in accordance with the PDA, provide Buyer with a commitment for an ALTA owner's title policy on the Property (the "Commitment"), and copies of all instruments shown by the Commitment as exceptions. At Closing Seller shall in all aspects pay and release all amounts secured by mortgages, deeds of trust, judgments, assessments or other liens on the Property ("Monetary Liens") and terminate all existing tenancies or rights to possession of the Property ("Tenancy Rights"). Buyer shall have thirty (30) days after receipt of the Commitment, Survey and copies of all documents constituting exceptions to title and survey (the "Review Period"), to review the Commitment and Survey and provide Seller with written notice (the "Title Objection Letter") of any objections to any matters in the Commitment or Survey (the "Title Objections"). If Buyer does not either accept or object to the Commitment and Survey within the Review Period, Buyer shall be in default and Seller may give Buyer notice pursuant to Section 8. Within thirty (30) days following receipt of Buyer's notice, Seller shall have the right, but not the obligation, to attempt to cure or remove the Title Objections to the reasonable satisfaction of Buyer and the Title Company (the "Cure Period"). If Seller is willing to attempt to cure any Title Objection, it will provide notice (the "Title Response Letter") thereof to Buyer within ten (10) days of its receipt of the Title Objection Letter. Otherwise, Seller shall be deemed to have refused to cure any Title Objections. In the event Seller fails to clear title of the matters to which Buyer objects, Buyer may, in its sole discretion, elect to (i) terminate this Agreement, receive a refund of the Transaction Deposit, together with all interest earned thereon, and Seller shall pay to Buyer Buyer's Actual Costs (as defined herein), or (ii) excepting Monetary Liens, which shall in all aspects be paid and released by Seller at Closing, clear the title of the defects and objections so specified, which correction Buyer may make a condition of Closing, and receive a Purchase Price credit at Closing for the expenses incurred in connection with clearing such defects in an amount not to exceed \$5,000.00, or (iii) waive such objections and proceed to Closing. In the event of termination of this Agreement pursuant to this Section, Title Company shall return the Transaction Deposit, Seller shall pay to Buyer Buyer's Actual Costs, and all interest accrued thereon to Buyer and, thereafter, neither Buyer nor Seller shall have any further obligations hereunder, except as otherwise provided in this Agreement.

Except for Monetary Liens, Tenancy Rights and other matters to which Buyer objects, exceptions contained in the Commitment are the "Permitted Exceptions." The Permitted Exceptions shall not be deemed to include any of the standard exceptions to coverage found in the Commitment or the Policy (as hereinafter defined). If the Commitment is amended, updated, or supplemented after Buyer has submitted its objections to Seller, the same time periods, procedures and notices for objections and clearance of title shall apply to matters disclosed thereby.

5. Title Insurance and Deed. At Closing, Seller shall convey to Buyer marketable fee simple title to the Property by general warranty deed in a form acceptable to Buyer, subject only to the Permitted Exceptions, and containing the legal description

prepared from the Survey. The deed shall specifically list the Permitted Exceptions on an exhibit and shall not contain language such as, or similar in context to, "subject to all matters of record." Buyer must be able to obtain at Closing, at Buyer's expense (which shall not exceed the promulgated rate), a standard form ALTA Owner's Title Insurance Policy (the "Policy") issued by Title Company in the amount of the Purchase Price, insuring to Buyer marketable fee simple title as to the Property and containing no exceptions or conditions other than the Permitted Exceptions. Buyer may, at its own expense, obtain such endorsements to the Policy as Buyer may require. Buyer will be responsible for the costs of any endorsements other than endorsements obtained by Seller to cure Buyer's title objections as set forth in Section 4 above.

6. Risk of Loss and Condemnation. Until Closing, Seller has the risk of loss or damage to the Property. If any loss or damage occurs prior to Closing, Buyer may, at its option, either (i) cancel this Agreement and receive a refund of the Transaction Deposit, or (ii) accept the Property with the Purchase Price reduced by the cost of replacement or repair. If all or any part of the Property is condemned or any condemnation action or proceeding is commenced prior to Closing, Buyer may, at its option, either (a) cancel this Agreement and receive a refund of the Transaction Deposit, or (b) proceed with this Agreement, with all condemnation proceeds and claims being assigned to Buyer pursuant to one or more undertakings to be executed by Seller promptly upon request by Buyer. Seller further covenants and agrees that Seller will not (i) change or alter the physical condition of the Property, (ii) grant, create, consent to, or modify any encumbrance benefitting or burdening the Property, or (iii) pursue or consent to any rezoning of the Property. Notwithstanding the foregoing, Seller may install at its sole cost and expense a temporary disc golf course pursuant to the terms of Section 2 of the PDA, which use shall in all aspects (i) be installed in the location described thereby; and (ii) expire and discontinue upon 30 days' written demand of Buyer.
7. Taxes and Assessments. Any real property taxes, water rates, sewer charges and rents shall be prorated and adjusted on the basis of the actual days in the then current fiscal year, Seller to have up through the last day immediately preceding the date of Closing. Taxes for all prior years shall be paid by Seller. Excepting the payment of any taxes which may accrue or otherwise become due and owing as a result of the Property enjoying tax exemption or any present agricultural, forestry, or similar open space designation with the relevant taxing authority, which shall be paid by Seller, any taxes which become due or which are levied as a result of a change in the use of the Property in implementing Buyer's plan for the development of the Property shall be prorated in accordance with this Section and paid by Buyer. If Closing occurs before the tax rate is fixed for the then-current year, taxes will be apportioned upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, to be adjusted between the parties based on actual taxes for the year in which Closing occurs at the time actual taxes are determined. If the Property is currently part of a larger tax parcel, Seller agrees to cooperate with Buyer to establish a separate tax parcel as soon as possible. If the tax parcel is carried on the

tax rolls in the name of Seller, Seller warrants and agrees that so long as the Property remains part of such tax parcel, Seller shall pay all taxes on the tax parcel in a timely manner and shall not allow such taxes to become delinquent. Assessments, either general or special, for improvements completed prior to Closing, whether matured or unmatured, shall be paid in full by Seller (including all principal and interest). All other assessments shall be paid by Buyer. The Seller will provide to Buyer such real property tax information for the Property as Buyer requests. Both parties agree to execute any tax forms required.

8. Notice of Default. In the event either party is in default of any provision hereof, including pursuant to Section 19, the non-defaulting party must give the defaulting party written notice of the same in strict accordance with the notice requirements of Section 18, and such notice shall be a condition precedent to the exercise of its remedies. The defaulting party shall have thirty (30) business days from receipt of such notice to cure the default, or such longer period as may be reasonably required so long as either party has commenced and is diligently pursuing same. If the defaulting party timely cures the default, the default shall be deemed waived, and this Agreement shall continue in full force and effect. If the defaulting party does not timely cure such default, the non-defaulting party shall be entitled to pursue its remedies as set forth in Sections 9 or 10 below, as applicable.
9. Remedies of Seller. If Buyer defaults under this Agreement and does not cure such default within the applicable cure period, Seller's sole and exclusive remedy shall be to retain the Transaction Deposit as liquidated damages and cancel this Agreement, and Seller hereby waives any action, whether legal or equitable, as a result of such default by Buyer. The parties acknowledge that: (i) it would be impracticable to fix the actual damages suffered by Seller as a result of such default; and (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Seller for such default.
10. Remedies of Buyer. If Seller defaults under this Agreement and does not cure such default within the applicable cure period, Buyer may, at its option, (a) cancel this Agreement in which case the Title Company is irrevocably instructed to return the Transaction Deposit with all interest accrued thereupon to Buyer, and Seller shall be immediately liable to Buyer for any and all reasonable expenses paid or incurred by Buyer in connection with this Agreement, including without limitation the amount equal to all actual, documented third-party out-of-pocket costs and expenses incurred by Buyer in the negotiation and preparation of this Agreement, in Buyer's due diligence investigation and preparation for Closing, design cost, architectural cost, pre-construction cost and in Buyer's pursuit of Governmental Approvals (the "Buyer's Actual Costs"), (b) proceed with this Agreement and purchase the Property pursuant to this Agreement, subject to an abatement in the Purchase Price equal to all damages or losses suffered by Buyer due to Seller's breach(es), or (c) pursue any other legal or equitable remedy, including without limitation a suit for specific performance; provided, however, that if specific performance is not an available remedy because of Seller's wrongful conveyance

of the Property to a third party or any other wrongful acts of Seller, Buyer shall have the right to pursue any other legal or equitable remedy under applicable law.

11. Right of Entry and Inspection. At any time prior to Closing, at Buyer's sole expense, Buyer or its authorized agents may enter upon the Property for any lawful purpose, including making Inspections (as defined below); provided, however, Buyer shall provide the Town not less than 48 hours' notice of its intent to enter any portion of the Property. If any request for Inspection will unreasonably interfere with use of the Property by Town personnel or residents, the Parties shall reasonably cooperate to find an alternative time for the Inspection. Buyer may select qualified professionals to make "Inspections" (surface, subsurface, topographical, environmental or otherwise, including without limitation tests, borings, surveys, studies, inspections, investigations and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards. Buyer shall be responsible for removing any equipment associated with an Inspection reasonably promptly upon completion of the Inspection.

Buyer shall keep the Property free of any liens relating to Buyer's exercise of its rights under this Section 11, and shall repair any material physical damages to the Property arising from the Inspections as reasonably possible. Under no circumstances shall Buyer have any liability with respect to any Contamination (as defined in Section 13E) discovered as the result of any Inspections. If any Inspections disclose matters unsatisfactory to Buyer in Buyer's sole and absolute discretion, Buyer may cancel this Agreement and, if such cancellation occurs prior to the end of the Feasibility Period (as defined in Section 15(b) below), receive a refund of the Transaction Deposit with all interest earned thereupon.

In the event that, during the course of the Inspections, Buyer or its agents shall enter upon the Property and place any equipment or install any borings (including monitoring wells) upon the Property, and in the further event that this Agreement is terminated prior to the removal of such equipment or capping of the borings, Buyer, through its agents, shall have, and Seller hereby grants to Buyer, a temporary license to enter upon the Property to remove such equipment or properly cap the borings. Furthermore, Buyer hereby indemnifies and agrees to defend and hold Seller harmless from all claims, costs, liabilities, judgments or expenses (including attorneys' fees) caused by Buyer's Inspections or entry upon the Property; provided, however, under no circumstances shall Buyer have any liability with respect to any preexisting conditions discovered as the result of any Inspections. These provisions shall survive the termination of this Agreement.

12. Brokerage Fees. With respect to the transaction contemplated by this Agreement, Seller and Buyer each represent that it has not dealt with or engaged on its behalf or for its benefit with any broker. Each party hereto agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the sale

of the Property by Seller to Buyer, and such claim is made by, through or on account of any acts or alleged acts of said party or its representatives, said party will protect, indemnify, defend and hold the other party free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys' fees) in connection therewith. This Section 12 shall survive Closing.

13. Seller's Warranties. Seller makes the following representations and warranties which are true and accurate as of the Effective Date of this Agreement and as of Closing:
- (a) Seller owns fee simple title to the Property free and clear of all liens, special assessments, easements, encroachments, reservations, restrictions, and encumbrances.
  - (b) Seller has no knowledge of any violations of city, county, state, federal, agency, building, land use, zoning, fire, health, safety, environmental, hazardous materials or other governmental or private or public codes, ordinances, regulations, or orders with respect to the Property, or any lands adjacent to the Property owned by Seller.
  - (c) No litigation is pending, threatened or likely with respect to the Property, Seller's interest therein, or which would inhibit Buyer obtaining clear title to the Property, including without limitation with respect to condemnation, eminent domain, or with respect to any proposed changes in traffic patterns or management of traffic flow, nor is there including without limitation any bankruptcy, insolvency, reorganization or similar action or proceeding, whether voluntary or involuntary, pending, anticipated, foreseen, or threatened.
  - (d) Seller has no knowledge of any facts concerning the Property, including without limitation with respect to the zoning classification or any public or private restrictive covenants, consents, or exclusives, which would adversely affect the ability of Buyer to develop the Property for those purposes set forth in the "Development Agreement" and related and ancillary uses or any other lawful use (collectively, the "Intended Use").
  - (e) The Property is not contaminated with, nor threatened with contamination from outside sources by, any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state, county, local or regional authority or which is known to pose a hazard to health and safety and the Property has never been used for a landfill, dump site, underground improvements, storage of hazardous or regulated substances, or by a manufacturer of any product or for any other industrial use, nor is the Property subject to any wetlands or other environmental limitation (collectively, "Contamination"). No activity or operation of Seller during the pendency of its ownership of the Property is being or has been conducted

in such a manner so as to result in or contribute to any Contamination or nor has Seller otherwise used the Property in a manner materially impacting its environmental status.

- (f) There is no dispute involving or concerning the location of the lines and corners of the Property; to Seller's knowledge there are no encroachments on the Property, no gaps or gores exist within the Property and no portion of the Property is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and no portion of the Property is located within a watershed area imposing restrictions upon use of the Property or any part thereof, as shown on the Survey.
- (g) There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal affecting or relating to the Property in any way, nor are there any declarations, architectural review committees, or property owner associations of record or otherwise.
- (h) Except to the extent this Agreement provides otherwise, the Property will remain in the condition existing as of the Effective Date until Closing.
- (i) The individual signing this Agreement on behalf of Seller has the authority to bind the Seller to the agreements set forth herein.
- (j) Seller has the lawful right, power, municipal authority and capacity to enter into this Agreement and to sell the Property and consummate the transactions contemplated hereby, in accordance with the terms, provisions, and conditions of this Agreement, and all of which have been duly authorized and approved in accordance with its organizational documents and all other laws.
- (k) The execution, delivery and performance by Seller of this Agreement and all documents and instruments delivered in connection herewith have been duly authorized, executed, and delivered by Seller's duly authorized officer or manager as the case may be, and this Agreement and all documents and instruments delivered in connection herewith are the legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, except as the enforcement thereof may be subject to (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforcement is sought in a proceeding in equity or at law).

- (l) Seller is not a “foreign person” within the meaning of Section 1445(e)(3) of the Internal Revenue Code of 1986, as amended, and Buyer will not be required to withhold any amounts from the Purchase Price pursuant thereto or otherwise.
- (m) Seller has not received any notice that the Property is or will be subject to any reassessment due to a change in use of the Property or subject to any special assessments, whether or not presently a lien.
- (n) The Property does not contain sinkholes, caverns, faults, conduits, voids, mines, or other geological, environmental, historic, or endangered species anomalies which could affect the development of the Property.
- (o) The Property is located within the Main Street Planned Development District under the zoning ordinance of the jurisdiction in which the Property is located. Within such zone, Buyer’s Intended Use is permitted as of right.
- (p) Seller is solvent, which means that (a) the fair value of the property of Seller is greater than the total amount of liabilities (including, without limitation, contingent liabilities) of Seller, (b) the present fair market value of the assets of Seller is not less than the amount that will be required to pay the probable liability of Seller on its debts as they become absolute and matured, (c) Seller is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, and (d) Seller does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature.
- (q) Neither the execution and delivery of this Agreement nor the performance of the provisions of the agreements herein contained on the part Seller will contravene, violate or cause a default under its organizational documents, or under any applicable law, ordinance or governmental regulation, nor will constitute a breach or default under any other contract, mortgage, agreement or other document or instrument to which the Seller is or will be a party.

In the event any of the representations or warranties become untrue or misleading in any respect prior to Closing, the event will constitute a default by Seller and Buyer shall have the remedies as set forth in Section 10. All of the terms and conditions hereof shall have been complied with and all of the foregoing representations and warranties will be reaffirmed in writing by Seller as true and correct as of the date of the Closing and shall survive the Closing. The covenants, representations, warranties, indemnities, and all other provisions of this Section shall survive the expiration or earlier termination of this Agreement, and Seller hereby agrees, at its sole cost and expense, to defend, indemnify, and otherwise hold harmless Buyer, Buyer’s affiliates, and their officers, directors, managers, members, employees, agents, contractors, attorneys, successors, and assigns

(collectively, the “Buyer Parties”) from any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, orders, costs, disbursements, and expenses arising out of or relating to Seller’s breach of its representations and warranties made in this Agreement.

14. Environmental Indemnity. To the extent allowed by applicable law, Seller hereby indemnifies and agrees to defend and hold the Buyer Parties harmless from all claims, costs, liabilities, judgments or expenses resulting from any representations and warranties in Section 13(e) being untrue. Seller agrees, at its sole cost and expense, to perform all acts necessary to cause the Property to comply with all federal, state and local environmental laws, rules and regulations (a “Clean-Up”). Buyer may postpone Closing until Seller does so, or, postpone Closing and, with consent of Seller, undertake actions necessary to fulfill Seller’s obligations hereunder and receive a credit against the Purchase Price for the expenses incurred by Buyer in fulfilling Seller’s duties hereunder.

15. Contingencies.

(a) Governmental Approvals. This Agreement is expressly conditioned on Buyer’s pursuit and receipt of any and all public and private approvals, easements, permits, subdivisions, annexations, dedications, amendments, approvals, licenses, architectural consents, and entitlements deemed necessary by Buyer in its sole discretion for its Intended Use and for the construction and operation of Buyer’s planned facilities, including without limitation the completion of all required internal approval processes of Buyer, subject only to conditions and stipulations acceptable to Buyer (collectively, the “Governmental Approvals”). If Contamination is present, Buyer may elect, in its sole discretion, for such Governmental Approvals to include the disclosure of Contamination information to governmental agencies in order to ascertain the extent of Clean-Up necessary and to obtain permits in connection with such Clean-Up. Seller shall, in all ways, fully cooperate with Buyer in the pursuit of the Governmental Approvals including, without limitation, executing applications and other instruments necessary to obtain each and every Governmental Approval.

“Final Approval” of the Governmental Approvals shall be the date when: (i) all of the Governmental Approvals have been reviewed and finally approved by the appropriate governmental or internal agencies or groups, (ii) any ordinances with respect thereto have taken effect, (iii) the time has passed for appeal of all Governmental Approvals, (iv) no notice of referendum or initiative with respect to any Governmental Approval has been published or publicized, and (v) any appeals or litigation with respect to the Property have been prosecuted and resolved in a manner which is satisfactory to Buyer and is not subject to remand to lower courts or governmental agencies. If Final Approval has not occurred on or before

Closing, or Buyer has provided written notice to Seller that despite Buyer's use of commercially reasonable efforts in pursuing the Governmental Approvals Buyer has determined that receipt of all or a portion of same is not reasonably obtainable, which determination shall be made in Buyer's sole and absolute discretion, then Buyer may in either event, at its option, either (a) terminate this Agreement, and Title Company shall deliver to Buyer the Transaction Deposit and any additions thereto or any interest earned thereon, and Seller shall pay to Buyer Buyer's Actual Costs, and thereafter, neither Buyer nor Seller shall have any further obligations hereunder, except as otherwise provided in this Agreement, or (b) waive this contingency and proceed to Closing.

- (b) Feasibility Period. Buyer shall have a 60 day period from the Effective Date of this Agreement (the "Feasibility Period") to determine the feasibility of Buyer's planned development of the Property. At any time prior to the end of the Feasibility Period, the Buyer may, for any reason in its sole and absolute discretion, cancel this Agreement and promptly receive a refund of the Transaction Deposit with all interest earned thereupon and thereafter, neither Buyer nor Seller shall have any further obligations hereunder, except as otherwise provided in this Agreement or that certain Development Agreement dated TBD by and between Buyer and Seller (the "DA") or PDA. It is understood that a cancellation of this Agreement shall be deemed a termination by Buyer of the DA and PDA

In the event that Buyer does not terminate this Agreement prior to the end of the Feasibility Period, then the Transaction Deposit and all interest accrued thereon shall be deemed non-refundable to Buyer (but fully applicable against the Purchase Price) unless this Agreement is terminated under the following circumstances (each, a "Refundability Event"):

- (i) Seller defaults hereunder and Buyer elects to terminate this Agreement and receive the return of the Transaction Deposit in accordance with Section 10;
- (ii) there is a casualty or condemnation with respect to the Property and Buyer elects to terminate this Agreement and receive the return of the Transaction Deposit in accordance with Section 6;
- (iii) in the event there is any environmental condition of the Property arising subsequent to the Feasibility Period, but prior to the Closing;  
or
- (iv) Buyer does not timely obtain the Governmental Approvals in accordance with Section 15(a), and Buyer elects to terminate this Agreement and receive the return of the Transaction Deposit in accordance with Section 15(a).

16. Buyer's Warranties. Buyer makes the following representations and warranties which are true and accurate as of the Effective Date of this Agreement.
- (a) The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transaction contemplated by this Agreement are within Buyer's capacity and all requisite action has been taken to make this Agreement valid and binding on Buyer in accordance with its terms.
  - (b) The execution by Buyer of this Agreement and the consummation by Buyer of this transaction hereby contemplated does not and will not (i) result in a breach of or default under any indenture, agreement, instrument or obligation to which Buyer is a party, or (ii) to the best of Buyer's actual knowledge, constitute a violation of any material governmental requirement applicable to Buyer.
17. Information. Within ten (10) days after the Effective Date of this Agreement, Seller shall provide Buyer with copies of all surveys, site plans, studies, engineering reports, environmental studies, agreements pertaining to any water rights or supply, matters similar to the results of Inspections and other materials prepared for or by Seller or in Seller's possession relating to the Property. If this Agreement is terminated, the information provided will be returned to Seller; otherwise, Buyer may retain the information. Seller shall immediately disclose any material changes with respect to any information contained in this Agreement which occur prior to Closing.
18. Notices. All notices and communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

If to Seller:

Town Manager's Office  
Town of Morrisville  
100 Town Hall Drive,  
Morrisville, NC 27560  
Email: bzuidema@morrisvillenc.gov

If to Buyer:

Singh Development, LLC  
2601 Weston Parkway, Suite 203  
Cary, NC 27513  
Attn: Avi Grewal  
Email: avi@singhmail.com

With copy to:

Frank Gray  
Jordan Price Law Offices  
1951 Clark Avenue  
Raleigh, NC 27605  
Email: fgray@jordanprice.com

With copy to:

Morningstar Law Group  
421 Fayetteville Street  
Suite 530  
Raleigh, NC 27601  
Attn: Amanda S. Bambrick

Lori Jones  
Jordan Price Law Offices  
1951 Clark Avenue  
Raleigh, NC 27605  
Email: ljones@jordanprice.com

If to Title Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed to have been given upon receipt or refusal.

19. Closing. Closing shall occur at a place and time mutually agreed upon by the parties, within five (5) days following the date when all conditions and contingencies set forth in this Agreement are satisfied or waived in writing by Buyer. Seller shall deliver to Buyer and Title Company all information, affidavits, and documents required of it for Closing including without limitation as set forth below at least ten (10) days prior to Closing. If Seller fails to do so, Buyer may, at its option, delay Closing until ten (10) days after all information and documents are delivered. Each party authorizes the use of settlement statements for the Closing on HUD forms which show both the Buyer and Seller columns on a single settlement statement and disclose to the other party both the Buyer's and the Seller's half of any settlement statement, pre-audit or similar closing statement. Seller shall deliver possession of the Property to Buyer at Closing. Seller shall deliver to Buyer all information and documents as enumerated below at least ten (10) days before the Closing:
  - (a) A general warranty deed in form acceptable to Buyer, duly executed and acknowledged by Seller, conveying to Buyer fee simple title to the Property, free and clear of all leases, rights of tenants and parties in possession, easements, restrictions, agreements, conditions, covenants, matters disclosed by the Survey or an inspection of the Property, liens, claims and

encumbrances other than the Permitted Exceptions, except as expressly set forth in Section 34 hereof;

- (b) An affidavit in form satisfactory to Buyer that Seller is not a “foreign person” within the meaning of Section 1445(e)(3) of the Internal Revenue Code of 1986, as amended;
- (c) Any and all information required for compliance with the IRS 1099S reporting requirements;
- (d) Such resolutions, authorizations, certificates, bylaws or other organizational, testamentary, or other documents relating to Seller as shall be required by Buyer or Title Company in connection with the transaction described in this Agreement and/or the right of Seller to perform the obligations of Seller under this Agreement;
- (e) A duly executed affidavit or certificate, in favor of Buyer or Title Company sufficient to remove the general exceptions from the Buyer’s title policy for mechanic’s lien and parties in possession;
- (f) A settlement statement, duly executed by Seller;
- (g) A certificate duly executed by an authorized officer or manager of Seller which states that as of Closing (a) Seller is in full compliance with any and all covenants as set forth herein; and (b) each of Seller’s representations and warranties as set forth herein are true and correct; and
- (h) Any other documents, affidavits, certificates, instruments, records, correspondence or agreements required by Buyer or Title Company or otherwise.

20. Closing Costs. Notwithstanding anything to the contrary contained herein, the following costs shall be paid as follows at Closing except as otherwise expressly set forth in the PDA:

By Seller (Seller hereby authorizing Title Company to deduct the following expenses from the Seller’s proceeds due at Closing):

- (a) Expenses of placing title in proper condition.
- (b) Preparation of general warranty deed, affidavits and any other documents required to convey title.
- (c) Revenue stamps, transfer tax, documentary stamps or excise tax.
- (e) Monetary liens.
- (f) Any and all costs related to the conveyance of the Town Green (as defined herein).

By Buyer:

- (a) Recording fees.
- (b) The cost of the Survey.
- (c) Title insurance examination and standard owner's policy premium.
- (d) A fee, payable to the University of North Carolina School of Government Development Finance Initiative or its designee, as is further described in the Development Agreement.

Upon the occurrence of any cost that is not enumerated in this Section 20, such cost shall be prorated or otherwise paid in accordance with the terms and conditions of Section 7 above.

- 21. Time of Essence. Time is of the essence of this Agreement.
- 22. Entire Agreement; Operations. The Development Agreement and this Agreement contain the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement. Seller understands and agrees that any costs incurred on the Property or in relation thereto by it or its agent prior to Closing shall be incurred solely at its risk, and that if this Agreement is terminated prior to Closing, Buyer shall have no obligation to reimburse such costs or other expenses to Seller or its agent, and Seller hereby waives any action, whether legal or equitable.
- 23. Headings. The section headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.
- 24. Modifications and Waiver. This Agreement may be amended only by an instrument in writing signed by both Seller and Buyer. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both Seller and Buyer or as otherwise expressly required pursuant to the terms and conditions of the DA. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.
- 25. Successors. This Agreement shall inure to the benefit of and bind the parties hereto and their respective executors, heirs, administrators, successors and assigns. Seller may not assign this Agreement without the prior written consent of Buyer. This Agreement may not be assigned by Buyer without the prior written consent of the Seller, which may be withheld in the sole discretion of Seller, except that Buyer may assign its rights under this Agreement to one or more affiliates of Buyer (being controlled by, controlling, or under common control with Buyer) without seeking or obtaining the Seller's consent, but upon written notice to the Seller.

26. Internal Revenue Code. Seller agrees to comply with Section 1445 of the Internal Revenue Code and will complete and submit to Buyer the form attached hereto as Exhibit B at or prior to Closing.
27. Attorney's Fees; Court Costs. In any action or proceeding arising out of this Agreement, each party shall bear its own attorney's fees, and the prevailing party shall be entitled to recover only court costs from the non-prevailing party incurred by such party in enforcing its rights hereunder. In the event of a legal dispute, the laws of the State where the Property is located shall prevail.
28. Survival. All warranties, indemnities, representations and covenants herein shall survive Closing.
29. Dates of Performance. If any date for performance of any obligation or exercise of any right hereunder falls on a Saturday, Sunday or holiday recognized by the Town, the time for performance of such obligation or exercise of such right shall be extended until the next business day following such date.
30. Enforceability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof.
31. Effective Date. The term "Effective Date" or such other similar term shall be the date upon which the latter of Seller or Buyer shall so execute this Agreement, such date to be evidenced by the date inserted beneath the signatures of Seller and Buyer.
32. Escrow Provisions. It is agreed that the duties of Title Company with respect to the Transaction Deposit are only as herein specifically provided and purely ministerial in nature, and Title Company shall incur no liability whatever except for willful misconduct or gross negligence, as long as Title Company has acted in good faith. Buyer and Seller each release Title Company from any act done or omitted to be done by Title Company in good faith in the performance of its duties hereunder, except the parties shall not release Title Company from willful misconduct or gross negligence. Title Company is acting as stakeholder only with respect to the Transaction Deposit and any other monies or documents to the extent delivered to Title Company pursuant to this Agreement. Title Company agrees that at such time as either party alleges that there is a default entitling the other party to the Transaction Deposit or a document, then Title Company shall send notice to Seller and Buyer advising that the other party has made demand on Title Company for such Transaction Deposit or document. If the party alleged to be in default does not dispute Title Company disbursing the Transaction Deposit or document within five (5) business days of receipt of notice that Title Company intends to disburse the Transaction Deposit or document or Title Company notifies the parties that it intends to disburse a portion of the Transaction Deposit or a document and neither of the parties disputes such disbursement within five (5) business days after written

notice that Title Company intends to disburse all or a portion of such Transaction Deposit or the document, then Title Company is authorized to disburse the Transaction Deposit or document as set forth in Title Company's notice. If there is any valid dispute as to whether Title Company is obligated to deliver the Transaction Deposit or the cash or documents to close or as to whom the Transaction Deposit, or cash or documents to close is to be delivered, Title Company shall not make any delivery, but in such event, Title Company shall hold same until receipt by it of an authorization in writing, directing the disposition of same executed by Buyer and Seller or in the absence of such authorization, Title Company shall hold the Transaction Deposit and/or the cash or documents to close until final determination of the rights of the parties in the appropriate proceedings. If such written authorization is not given or proceedings for such determination are not begun within thirty (30) days of written demand by Title Company to Seller and Buyer and diligently continued, Title Company may bring an appropriate action or proceeding to interplead such Transaction Deposit or documents. Any such interpleader action must be brought in the Town in which the Property is located. Title Company shall be reimbursed for all costs and expenses of such action or proceeding, including, without limitation, reasonable attorneys' fees and disbursements, by the party determined to have wrongfully disputed Title Company's authority to disburse. Upon making delivery of the Transaction Deposit and/or the cash or documents to close, Title Company shall have no further liability unless such delivery constituted willful misconduct or gross negligence. The provisions of this Section shall survive Closing or any earlier termination of this Agreement.

33. No Confidentiality. Developer acknowledges that this Agreement and its submissions to the Town pursuant to this Agreement are public records subject to the North Carolina Public Records Act, except to the extent excluded therefrom.
34. Reconveyance. Within thirty (30) days after substantial completion of the Town Green, as defined in Section 2.3.7 of the Development Agreement, Buyer shall reconvey to Seller that certain [4.62 acres] of the Property depicted on Exhibit C attached hereto and incorporated herein (the "Town Green") by special warranty deed substantially in the form attached hereto as Exhibit D.
35. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument. Signatures by either party may be by means of electronic signature, which the parties agree shall be binding for all purposes.
36. Construction. Each party hereto warrants and represents that each party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Agreement and has had ample opportunity to read, review, and understand the provisions of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party

- by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.
37. No Third-Party Beneficiary Rights. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto, except for the University of North Carolina School of Government Development Finance Initiative or its designee.
38. Tolling Provision. Notwithstanding and in addition to any other rights or remedies of Buyer as set forth herein, any and all deadlines hereunder obligating Buyer to perform shall be automatically tolled and extended in all aspects, and no default by Buyer shall be deemed to have occurred hereunder, if Buyer's performance is prevented by virtue of (i) Buyer's inability to obtain Final Approval of any and all items in accordance with Section 15(a) hereof in Buyer's sole and absolute discretion, (ii) the occurrence of any event beyond the control of Buyer, its contractors, or any entity controlled by Buyer that delays the performance of any obligation under this Agreement despite Buyer's reasonable efforts to fulfill the obligation including without limitation with respect to casualty or force majeure, or (iii) any failure by Seller to perform hereunder in any aspect, any act or omission of Seller or others under its control, and/or in the event of any Seller default hereunder.
39. Iran Divestment Act Certification. Developer certifies that as of the date that this Agreement is entered into, the Developer is not identified on the Iran List. It is a material breach of this Agreement for the Developer to be identified on the Iran List during the term of this Agreement or to utilize on this Agreement any contractor or subcontractor that is identified on the Iran List. "Iran List" means the Final Divestment List - Iran, the Parent and Subsidiary Guidance List- Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with N.C.G.S. §143C-6A-4 of the N.C. Iran Divestment Act.

*Remainder of page intentionally blank; signature pages follow.*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date hereof.

**TOWN OF MORRISVILLE:**

**SINGH DEVELOPMENT, LLC:**

By: \_\_\_\_\_  
Town Manager

By: \_\_\_\_\_  
Authorized Company Official

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*This Instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.*

\_\_\_\_\_  
Town Finance Officer

Date: \_\_\_\_\_

By joinder hereto, Title Company hereby acknowledges and accepts the terms and conditions hereof and agrees to hold and disburse the Transaction Deposit as set forth herein.

[\_\_\_\_\_]

By:

Name:

Title:

Date:

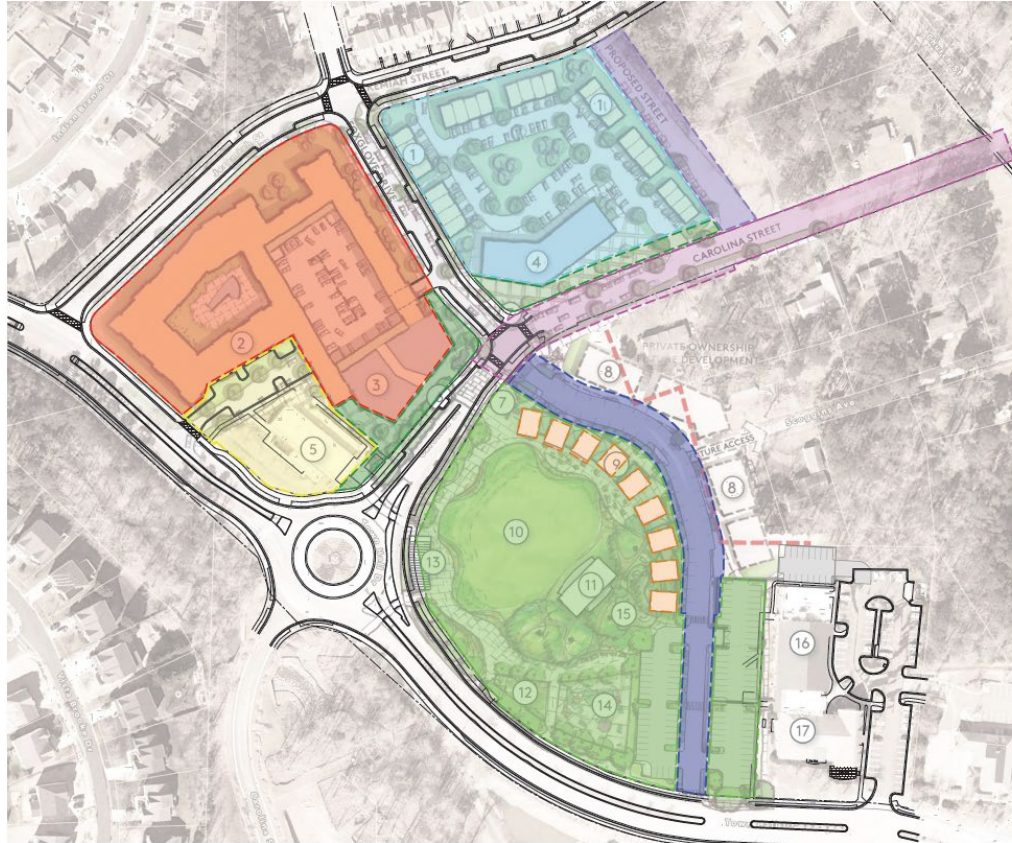
**EXHIBIT A TO LAND DISPOSITION AGREEMENT**

**DESCRIPTION OF PROPERTY**

**(WILL BE INSERTED WHEN COMPLETE)**

**EXHIBIT A-1 TO LAND DISPOSITION AGREEMENT**

**DEPICTION OF THE LAND**



**ACREAGE LEGEND**

- PROPOSED MULTIFAMILY  
APPROXIMATE AREA: 3.18 AC
- EXISTING LIBRARY  
APPROXIMATE AREA: 0.85 AC
- PROPOSED TOWNHOMES  
APPROXIMATE AREA: 2.47 AC
- PROPOSED RETAIL / PUBLIC PLAZA  
APPROXIMATE AREA: 0.45 AC
- PROPOSED STREET 1  
APPROXIMATE AREA: 0.41 AC
- CAROLINA STREET EXTENSION  
APPROXIMATE AREA: 1.10 AC
- PROPOSED STREET 2  
APPROXIMATE AREA: 1.25 AC
- PROPOSED PARK, APPROXIMATE AREA: 4.15 AC  
(EXCLUDES COTTAGES)
- PROPOSED COTTAGE  
APPROXIMATE AREA (TOTAL): 0.25 AC

**ACREAGE SPLIT**

TOWN OF MORRISVILLE: 8.07 ACRES  
SINGH DEVELOPMENT: 5.90 ACRES

**EXHIBIT B TO LAND DISPOSITION AGREEMENT**

*(Form of Non-Foreign Affidavit)*

**ENTITY TRANSFEROR**

Personally appeared before me the undersigned officer, duly authorized to administer oaths, \_\_\_\_\_, who being duly sworn according to law, deposes and says on oath as follows:

1. The undersigned is presently Town Manager of the Town of Morrisville, a municipal corporation (the "Town").

2. The undersigned is familiar with the affairs of the Town and has personal knowledge of the facts sworn to in this Affidavit, and is authorized on behalf of the Town to make this Affidavit.

3. The Town is the owner of that certain property (the "Property") described on Exhibit "A" attached hereto and by this reference made a part hereof and the Town has caused to be executed and delivered that certain deed, of even date herewith, conveying the Property to \_\_\_\_\_, a \_\_\_\_\_ partnership ("Purchaser").

4. Section 1445 of the Internal Revenue Code provides that a purchaser of a U.S. real property interest must withhold tax if the seller is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the Purchaser that the withholding of tax is not required upon the disposition of the Property by the Town, the undersigned hereby certifies the following on behalf of the Town:

- (a) The Town is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii);
- (b) The Town's U.S. Employer Identification Number is 56-106-5616;
- (c) The Town's office address is 100 Town Hall Drive, Morrisville, NC 27560.

5. The Town understands that this certification may be disclosed to the Internal Revenue Service by the Purchaser and that any false statement contained herein could be punished by fine, imprisonment, or both.

6. Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Town.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_

Date: \_\_\_\_\_

SWORN TO and SUBSCRIBED before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, who  is personally known to me, or  has produced a \_\_\_\_\_ driver's license as identification, or  has produced \_\_\_\_\_ as identification.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Notary Public, State of \_\_\_\_\_

Commission Number: \_\_\_\_\_

\_\_\_\_\_  
[Notary Seal]

My commission expires:

***EXHIBIT C TO LAND DISPOSITION AGREEMENT***

**DESCRIPTION OF TOWN GREEN**

**(WILL BE INSERTED WHEN COMPLETE)**

*EXHIBIT D TO LAND DISPOSITION AGREEMENT*  
FORM OF NON-WARRANTY DEED FOR TOWN GREEN

**(WILL BE INSERTED WHEN COMPLETE)**

**EXHIBIT E TO DEVELOPMENT AGREEMENT**

**PARKING AGREEMENT**

THIS PARKING AGREEMENT (the “Agreement”) entered into this [ ] day of [ ], 20\_\_ by and between SINGH DEVELOPMENT, LLC, a Michigan limited liability company (“Licensor”), and the TOWN OF MORRISVILLE, a municipal corporation of the state of North Carolina (“Licensee”). Licensor and Licensee are sometimes separately referred to in this Agreement as a “Party” or jointly referred to as the “Parties.”

RECITALS

WHEREAS, Licensor and Licensee have entered into that certain Development Agreement dated \_\_\_\_\_ (the “Development Agreement”) wherein Licensor has agreed to develop the Real Property (as defined in the Development Agreement) pursuant to the terms and conditions of the Development Agreement;

WHEREAS, pursuant to the Development Agreement, Licensor is responsible for the construction and operation of the Parking Deck (as defined in the Development Agreement);

WHEREAS, Licensee desires to reserve long-term parking spaces for Town purposes, including without limitation for use by library patrons and Town Center visitors; and

WHEREAS, Licensor desires to provide a long term license for a portion of the Parking Deck to the Town, for such purposes on the terms and conditions set forth herein,

NOW THEREFORE, in consideration of the foregoing, the parties hereby agree as follows:

1. Grant of License. Licensor hereby grants to Licensee during the Term (as hereinafter defined) an exclusive, irrevocable license to use the Premises (as hereafter described) for the Permitted Uses (as hereafter defined). Licensor represents and warrants to Licensee that Licensor owns fee simple title to the Premises and that this Agreement does not conflict with any agreement to which Licensor or the Premises is subject.

2. Premises.

2.1 Description. The Premises are a portion of the Parking Deck consisting of (collectively, the “Premises”):

- a. A minimum of 80 parking spaces located within the Parking Deck, which shall be located on the ground floor of the Parking Deck, provided, if there are fewer parking spaces

located on the ground floor after completion of the Parking Deck than the number of parking spaces Licensor is licensed to use, then the nearest available spaces within the Parking Deck shall be reserved for public use up to the required number of parking spaces; and

- b. the non-exclusive right to utilize the driveways and drive aisles within the Parking Deck, elevators, and stairways and walkways, for purposes of vehicular and pedestrian access from the public right of way to the Premises.

All use of the Premises by Licensee shall be subject to the provisions of Section 4 below.

3. Term. The Term of this Agreement shall begin on date on which Licensor delivers the Premises to Licensee for its use and occupancy (the "Commencement Date"), and shall end thirty (30) years following the Commencement Date (the "Term"), provided, however, that Licensor may unilaterally revoke this Agreement, in its sole discretion, upon Default by Licensee as provided in Section 7. The Commencement Date shall occur upon Licensor's completion of the Parking Deck and acquisition of all permits, licenses or other permissions necessary to allow use of the Parking Deck for its intended purpose. Promptly after the Commencement Date, Licensor and Licensee shall execute a commencement date agreement in letter form acknowledging the Commencement Date. However, failure by either Party to execute a commencement date agreement shall not constitute an event of default under this Agreement.

4. Permitted Uses. Licensee may use the Premises during the Term for Town parking purposes, including without limitation parking for library patrons and town center visitors, on a 24 hour, seven day per week basis. Licensee shall have the right, at Licensee's cost and in accordance with applicable code requirements, to install signage identifying the Premises and the public's right to park therein. The Parties acknowledge that initially the Premises will be available to the public on an "open occupancy" basis with no reserved spaces; provided, however, the Town reserves its right to later designate certain spaces as "Reserved." The Parties agree that the installation of signage and designation of reserved spaces constitutes an expenditure of money by the Town in reliance on Licensor's grant of the irrevocable (during the Term) license set forth herein.

5. Payment. For the rights herein granted, Licensee shall initially pay to Licensor a fee of \$100 per public parking space per month (the "Fee") to ensure parking is available for Town purposes, including without limitation use for parking by library patrons and visitors to the Town Center, at no cost to those users. The Fee shall increase by three percent (3%) each year for the first five (5) years following the date the Premises shall first open for Town use. Thereafter, the Fee shall be subject to review and adjustment every successive five (5) years to determine a fee that is consistent with comparable market rates. If the parties cannot agree on a comparable market rate, then each of them will appoint one person to meet and attempt to resolve the dispute in an atmosphere of good faith. If agreement still cannot be reached in a reasonable time, then the matter will be

determined through binding arbitration with a single arbitrator pursuant to Article 45C of the North Carolina General Statutes, commonly known as the Revised Uniform Arbitration Act, as it may be amended from time to time. Venue for the proceeding shall be Wake County, North Carolina. The sole issue for determination shall be the proper fair market rate for licensed use or lease of the parking spaces. Each party shall bear its own costs and attorneys' fees associated with such proceeding. Payment of the Fee will be due in advance on or before the first of each month during the Term of this Agreement. For avoidance of doubt, no additional payment to Licensor shall be required by any individual user of the Premises other than the Fee paid by the Town.

If Licensee fails to timely pay the Fee within sixty (60) days of said Fee becoming due, Licensee shall be charged an amount equal to 10% per month of the overdue Fee (the "Late Fee") in addition to, and separate from, the Fee.

In the event of any damage or destruction of all or any portion of the Premises, Licensor shall undertake promptly to repair and/or rebuild the Premises to provide to Licensee as promptly as reasonably possible after the date of such damage or destruction the parking contemplated by this Agreement. In the event that any or all of the spaces described herein are unavailable for the Town's use as a result of any such damage or destruction, fees payable for such spaces shall be abated until the Premises is restored and the affected spaces are again available for use by the Town. In addition, and provided no Licensee Default has occurred and is continuing, Licensee shall not be required to pay the Fee for any time period in which Licensor is in default as set forth in Section 8.

6. Responsibilities of the Parties.

a. Licensor shall maintain the Parking Deck in good working condition and repair and will make such repairs, perform such preventative maintenance, structural repairs or other improvements as is reasonably necessary to keep the Parking Deck in a clean and safe condition for its intended use. In performing maintenance, repairs or replacements, Licensor shall use all commercially reasonable efforts to minimize interference with the use, occupation and enjoyment of the Premises. If possible, maintenance, repairs and replacements within the Premises shall be confined to the area actually being so maintained, repaired or replaced. Licensor shall provide and maintain interior and exterior illumination sufficient in compliance with all applicable laws and regulations, including applicable building code requirements.

b. During the pendency of the Term, Licensor shall maintain a comprehensive insurance program in accordance in all aspects with Article VI of the Development Agreement. Notwithstanding the foregoing, Licensee shall also maintain a policy or policies of commercial general liability insurance, such policy or policies to afford, through primary and/or excess coverage, minimum protection of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and/or property damage and Two Million Dollars (\$2,000,000.00) general aggregate provided, Licensee shall carry such greater limits of liability coverage as Licensor may reasonably request from time to time, and Licensee shall also carry umbrella coverage with no less than a limit of Five Million Dollars

(\$5,000,000.00). All insurance policies required to be maintained by Licensee shall (a) be issued by and binding upon solvent insurance companies licensed to conduct business in the State of North Carolina, (b) have all premiums fully paid on or before the due dates, (c) name Licensor and any requested affiliates thereof as an additional insured, and (d) provide that they shall not be cancelable and/or the coverage thereunder shall not be reduced without at least thirty (30) days advance notice to Licensee

c. Licensee acknowledges that prior to the Commencement Date it will inspect the Premises, and unless Licensee notifies Licensor of any deficiency within sixty (60) days of the Commencement Date, accepts the Premises “as is, where is”, without further obligation on Licensee’s part except as specifically set forth in this Agreement.

d. Licensor is responsible for the towing and monitoring of vehicles utilizing the Premises in accordance with Licensor’s practices with respect to the remainder of the Parking Deck, which practices will be provided in writing to the Town once established; provided, however, if Licensor does not respond to written requests from the Licensee related to unapproved parking, Licensor shall be deemed to have delegated to Licensee all right and authority necessary for the towing of vehicles from the Premises, but any costs of such towing incurred by the Town shall become a credit against the Fee.

7. Licensee Default. The failure of Licensee to pay any amount due hereunder on or before the due date if such failure is not remedied within thirty (30) days after written notice from Licensor shall constitute a default under this Agreement, provided that in no event shall Licensor be obligated to give written notice more than twice in any twelve (12) month period. Licensor shall be entitled to terminate this Agreement in the event of such failure to pay that is not remedied by Licensee.

8. Licensor Default. The failure or refusal by Licensor to perform any of its covenants or obligations under this Agreement within thirty (30) days after written notice of nonperformance is given by the Licensee to Licensor shall constitute a default; provided, however, that if such failure to perform cannot reasonably be cured within thirty (30) days, Licensor shall not be in default if it commences within thirty (30) days steps reasonably calculated to cure the nonperformance and in good faith pursues those steps diligently and in good faith to completion (not to exceed sixty (60) days). Furthermore, any revocation or attempt at revocation of this Agreement by Licensor prior to the end of its Term shall constitute a default.

Upon the occurrence of a default, Licensee may immediately terminate this Agreement by written notice to Licensor. Whether or not Licensee terminates the Agreement, Licensee shall be entitled to the repayment of monies paid by Licensee to Licensor during the period of default or a deduction from any payment due to Licensor by Licensee for any spaces that are not able to be used due to such default, nonperformance, or breach for the period of time of such inability to use such spaces. Licensee may also in the event of a default by Licensor hereunder exercise any and all other rights and remedies available to Licensee at law or in equity, including without limitation the recovery of any and all monetary damages that Licensee has suffered as a result of such default.

9. Indemnification.

a. To the extent permitted by law, Licensor hereby assumes liability for, and shall indemnify, protect, defend, save and keep harmless Licensee, and its employees, agents, and elected officials (individually a "Licensee Indemnitee" and collectively, "Licensee Indemnitees") from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees actually incurred), whenever they may be suffered or incurred by, imposed on or asserted against a Licensee Indemnitee, as applicable (collectively, "Licensee Claims"), arising out of or resulting from: (i) any default, breach, violation, or nonperformance by Licensor under this Agreement; or (ii) any negligent act or omission of Licensor, including, without limitation, injury to or death of any person or damage to property arising out of any work, construction, reconstruction, restoration, maintenance, repair or other work to be done hereunder by Licensor, except in all cases to the extent such Licensee Claims are caused by the negligent act or omission or willful misconduct of Licensee or Licensee Indemnitees. The provisions of this Section 9(a) shall survive the expiration or earlier termination of this Agreement.

b. To the extent permitted by law, Licensee hereby assumes liability for, and shall indemnify, protect, defend, save and keep harmless Licensor, and its officers, directors, managers, members, employees, and agents (individually a "Licensor Indemnitee" and collectively, "Licensor Indemnitees") from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees actually incurred), whenever they may be suffered or incurred by, imposed on or asserted against a Licensor Indemnitee, as applicable (collectively, "Licensor Claims"), arising out of or resulting from: (i) any default, breach, violation, or nonperformance by Licensee under this Agreement; or (ii) any negligent act or omission of Licensee, except in all cases to the extent such Licensor Claims are caused by the negligent act or omission or willful misconduct of Licensor or Licensor Indemnitees. The provisions of this Section 9(b) shall survive the expiration or earlier termination of this Agreement.

10. Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, or by delivery through a nationally recognized overnight carrier, delivery confirmation required, provided that such notices may be delivered via electronic mail if such notice shall also be delivered by one of the other methods described in this section. Delivery shall be deemed effective as of the date of the delivery receipt, or, for notices delivered electronically, on the date such notice was sent via electronic mail without automatic notification of any delivery error. Notices shall be delivered to the following addresses:

To Licensor:

Singh Development, LLC  
2601 Weston Parkway, Suite 203  
Cary, NC 27513  
Attn: Avi Grewal

Email: avi@singhmail.com

With copies to:

Morningstar Law Group  
421 Fayetteville Street, Suite 530  
Raleigh, NC 27601 Attn: Molly M. Stuart  
Email: mstuart@morningstarlawgroup.com

To Licensee:

Town Manager's Office  
Town of Morrisville  
100 Town Hall Drive  
Morrisville, NC 27560  
Email: bzuidema@morrisvillenc.gov

With copies to:

Frank Gray  
Jordan Price Law Offices  
1951 Clark Avenue  
Raleigh, NC 27605  
Email: fgray@jordanprice.com

Lori Jones  
Jordan Price Law Offices  
1951 Clark Avenue  
Raleigh, NC 27605  
Email: ljones@jordanprice.com

The Parties may designate alternative contact information related to the persons to receive notice by delivering a written notice of change to the other Party in the same manner as other notices are to be served hereunder, without the need for formal amendment of this Agreement.

10. Miscellaneous.

a. This Agreement, together with the Development Agreement, represents the complete agreement of the parties with respect to the subject matter hereof.

b. This Agreement may only be altered or amended by a written instrument signed by duly authorized representatives of both parties.

c. This Agreement will be governed by the laws of the State of North Carolina without giving effect to any conflict or choice of law principles.

d. Any reference to “day” or “days” herein shall mean calendar day(s) unless otherwise specified, and any deadline or outside date set forth herein falling on a Saturday, Sunday, or holiday on which the Town is closed shall be automatically extended to the following business day.

e. Developer certifies that as of the date that this Agreement is entered into, the Developer is not identified on the Iran List. It is a material breach of this Agreement for the Developer to be identified on the Iran List during the term of this Agreement or to utilize on this Agreement any contractor or subcontractor that is identified on the Iran List. "Iran List" means the Final Divestment List - Iran, the Parent and Subsidiary Guidance List- Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with N.C.G.S. §143C-6A-4 of the N.C. Iran Divestment Act.

f. It is the intent of the Parties that this Agreement be construed as an irrevocable license coupled with an interest for use of the Premises for Permitted Uses during the Term and to be binding on Licensor’s successors and assigns. This Agreement shall not be assignable by Licensee.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**TOWN OF MORRISVILLE:**

**SINGH DEVELOPMENT, LLC:**

By: \_\_\_\_\_  
Authorized Town Official

By: \_\_\_\_\_  
Authorized Company Official

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*This Instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.*

\_\_\_\_\_  
Town Finance Officer

Date: \_\_\_\_\_

**EXHIBIT F TO DEVELOPMENT AGREEMENT**

**RETAIL LEASE AGREEMENT**

**\*\* DRAFT ONLY – WILL BE FINALIZED PRIOR TO COMPLETION OF THE  
RETAIL SPACE INTENDED FOR LEASE \*\***

THIS RETAIL LEASE AGREEMENT (“Lease”) is made as of the Effective Date by and between the LANDLORD and the TENANT for the LEASED PREMISES, all as designated in Section 1.01, below, upon the terms and conditions contained herein.

WITNESSETH:

WHEREAS, Landlord is the owner of [insert Unit/Building 3 description] within the Town of Morrisville, Wake County, North Carolina; and

WHEREAS, Landlord and Tenant have agreed that Landlord shall lease to Tenant and Tenant shall lease from Landlord the premises located at [insert address], Morrisville, North Carolina and have agreed to enter into this Lease to evidence the terms and conditions of leasing of the space by Landlord to Tenant;

NOW, THEREFORE, inconsideration of the foregoing and the mutual covenants, conditions and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Landlord and Tenant hereby agree as follows:

ARTICLE I  
BASIC TERMS

**Section 1.01 Basic Lease Terms and Definitions.**

- A. **Landlord:** SINGH DEVELOPMENT, LLC, whose address is 7125 Orchard Lake Road, Suite 200, West Bloomfield, MI 48322.
- B. **Tenant:** The Town of Morrisville, represented by the Town Manager’s Office, whose address is 100 Town Hall Drive, Morrisville, NC 27560
- C. **Effective Date:** [ \_\_\_\_\_, 20\_\_ ]
- D. **Leased Premises:** The [ \_\_\_\_\_ ], Morrisville, North Carolina, containing approximately [ \_\_\_\_\_ ] square feet.
- F. **Term:** Thirty-six (36) full calendar months from the Rental Commencement Date, plus any partial first month as set forth in Section 1.03.
- G. **Rental Commencement Date:** The Rental Commencement Date shall be the date that Landlord has obtained a Certificate of Occupancy and tendered possession of the Leased Premises to Tenant. The Rental Commencement Date shall occur no later than sixty (60) days following issuance of a Certificate of Occupancy for the Leased Premises.

H. **Condition of Leased Premises:** Landlord will construct the Leased Premises as a so-called "plain white box" according to Section 1.04(a) and the "Landlord's Work" section of Exhibit "B". Landlord estimates that the Landlord's Work will be completed by \_\_\_\_\_ 20[\_\_\_].

I. **Rent:**

<u>Month</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
1-12	\$ _____	\$ _____
13-24	\$ _____	\$ _____
25-36	\$ _____	\$ _____

J. **Tenant's Share of Real Estate Taxes, Common Area Expense and Insurance:**  
 [\_\_\_\_\_/\_\_\_\_\_] (\_\_\_\_%)

K. **Security Deposit:** No Security Deposit is required.

L. **Building:** one building containing \_\_\_ retail units and the common areas and facilities servicing the building.

M. **Use:** Tenant shall use the Leased Premises solely for the purpose of general offices, administration and storage for the Town's Parks, Recreation and Cultural Resources Department and for community uses and meeting space ("**Primary Use**"), unless otherwise approved in writing by Landlord.

**Section 1.02 Leased Premises.** Landlord hereby leases the Leased Premises to Tenant and Tenant hereby leases the Leased Premises from Landlord.

**Section 1.03 Term.**

(a) The term of this Lease shall begin on the Effective Date hereof and shall continue for the number of full months or years after the Rental Commencement Date set forth in Section 1.01, above. If the Rental Commencement Date shall be a day other than the first day of a calendar month, then the term of this Lease shall be deemed extended by the number of days between the Rental Commencement Date and the first day of the next calendar month. In such case, Tenant shall pay prorated Rent and other charges in advance for such partial first month.

(b) In the event Landlord is unable to deliver possession of the Leased Premises to Tenant by reason of the Leased Premises not being ready for occupancy as a result of any cause reasonably beyond the control of Landlord, Landlord shall not be liable for any damage caused for failing to deliver possession and this Lease shall not be void or voidable. During the period that Tenant shall be unable to occupy the Leased Premises for any of the aforesaid reasons, the Rental Commencement Date and the term of the Lease shall be extended for a number of days equal to the number of days that Landlord was delayed in delivery of possession of the Leased Premises to Tenant.

**Section 1.04 Construction.**

(a) Landlord shall substantially complete the "Landlord's Work" described in Exhibit "B" attached hereto, and deliver possession of the Leased Premises to Tenant. The Leased Premises shall be deemed ready for occupancy when Landlord has obtained a Certificate of Occupancy for the Leased Premises. The Landlord shall be the sole judge as to when the Leased Premises are ready for occupancy.

(b) Landlord shall be responsible for the Building, including the Leased Premises, being in full compliance with the Americans with Disabilities Act (as amended, "ADA"), as of the Rent Commencement Date. Landlord shall continue after the Commencement Date to be responsible for maintaining the Building, including the Leased Premises in compliance with the ADA. Landlord's expense of complying with such law shall not be an expense chargeable to Tenant as a Common Area Expense or otherwise.

(c) Tenant agrees prior to the Rental Commencement Date, at Tenant's sole cost and expense, to provide and complete all work and materials necessary to make the Leased Premises ready for Tenant's intended use, including, without limitation, "Tenant's Work" as described in Exhibit "B" attached hereto. Prior to delivery of possession, Tenant shall be permitted to install fixtures and other equipment so long as such activities do not interfere with construction work, and it is agreed by Tenant that Landlord shall have no responsibility or liability whatsoever for any loss or damage to the Leased Premises and fixtures or other equipment so installed or left on the Leased Premises.

(d) After Tenant completes "Tenant's Work" as described in Exhibit "B" attached hereto and the issuance of a complete and full certificate of occupancy for the Leased Premises, Tenant will send to Landlord a list of the amounts paid by Tenant for the construction of the Tenant's Work and copies of the supporting invoices ("**Tenant Allowance Documentation**"). Landlord will reimburse Tenant for the cost of the Tenant's Work up to but not more than \$100,000.00 (the "**Tenant Improvement Allowance**") Landlord's reimbursement shall be made within thirty (30) days of Landlord's receipt of Tenant's documents described above. Tenant shall pay for any expense and not seek reimbursement from Landlord for any expense that exceeds the Tenant Improvement Allowance.

## **ARTICLE II RENT**

**Section 2.01 – Rent.** Beginning on the Rental Commencement Date, Tenant shall pay to Landlord the Rent for the Leased Premises in the amounts and at the rates set forth in Section 1.01, above. All Rent shall be paid in advance in consecutive monthly installments on or before the first day of each month at the office of Landlord without any prior demand therefore or without any deductions or set off whatsoever. The first full month's Rent shall be paid upon the execution of this Lease. Landlord shall have no obligation to accept less than the full amount of any installment of Rent and other charges which are due and owing by Tenant to Landlord, and if Landlord shall accept less than the full amount owing, the payment shall be on account only, Landlord may apply the sums received toward such of Tenant's obligations as Landlord shall determine in its sole discretion.

**Section 2.02 – Other Charges.** Tenant's obligation to reimburse Landlord for real estate taxes, Landlord's insurance and Common Area Expenses shall begin on the Rental Commencement Date, notwithstanding any free rental or concession periods that may be contained in this Lease.

**Section 2.03 – Lease Year.** The term "Lease Year" as used herein means each calendar year during the term of this Lease, except that the first Lease Year shall begin on the Rental Commencement Date of this Lease and the last Lease Year shall end on the date this Lease expires or sooner terminates.

**Section 2.04 – Additional Payments.** Any and all sums of money or charges required to be paid by Tenant under this Lease other than Rent shall be deemed to be additional Rent, and Tenant's failure to pay such amounts or charges when due shall carry with it the same consequences as Tenant's failure to pay Rent. Unless otherwise specified, all such amounts or charges shall be payable to Landlord at the place where the Rent is payable.

### **ARTICLE III REAL ESTATE TAXES**

**Section 3.01 – Tenant's Tax Obligation.** Tenant agrees to pay to Landlord, as additional Rent, Tenant's proportionate share (Section 1.01(J)) of the amount of all real estate taxes, assessments (general and special) and other charges which may be levied, assessed or charged against the Building (hereinafter called "**Real Estate Taxes**"), accruing or becoming due and payable during the term of this Lease and any extension thereof. Real estate taxes shall be deemed to accrue ratably over the calendar year period during which such taxes become due and payable. Tenant's proportionate share, for purposes of this Section, shall be the proportion which the total floor area of the Leased Premises bears to the total floor area of the Building, as set forth in Section 1.01(J). Landlord shall annually in March estimate the amount of such real estate taxes and notify Tenant of its proportionate share of such estimate, which will be paid monthly along with the Rent; provided that in the event Landlord is required under any mortgage covering the Building to escrow any real estate taxes, Landlord may, but shall not be required to, use the amount required to be so escrowed as a basis for its estimate of the monthly installments due from Tenant hereunder. Any over or under charges will be adjusted at least once annually and will be credited or invoiced to Tenant as appropriate. Tenant's tax payment obligation shall begin on the date on which possession of the Leased Premises is delivered to Tenant without regard to the Rental Commencement Date.

**Section 3.02 – Tax Changes.** In the event the State of North Carolina or any political subdivision thereof or any governmental authority having jurisdiction thereover shall impose a tax and/or assessment of any kind or nature upon, against or with respect to rent payable by Tenant to Landlord, or on the income of Landlord derived from the Building (other than the federal income tax or state single business tax), or with respect to the ownership, occupancy or rental of the land and buildings comprising the Building, either by way of substitution for all or any part of the real estate taxes levied or assessed against such land and buildings, or in addition thereto, such tax and/or assessment shall be deemed to constitute a real estate tax against such land and such buildings for purposes of this section.

**Section 3.03 – Real Estate Tax Protest.** Landlord may at its option seek a reduction in the assessed valuation of the Building and/or contest any real estate taxes, assessments or other charges levied against the Building. All attorneys' fees and other expenses incurred as a result of such action shall be deemed excess real estate taxes payable (to the extent of Tenant's proportionate share) as additional Rent at the times set forth in Section 3.01 hereof. Any refunds received by Landlord as a result of any such contest shall be returned to the appropriate tenants.

#### **ARTICLE IV SECURITY DEPOSIT**

**Section 4.01 – Security Deposit.** No Security Deposit is required.

#### **ARTICLE V CONDUCT OF BUSINESS BY TENANT**

**Section 5.01 – Use of Leased Premises.** Tenant covenants and agrees to use the Leased Premises only for the use or uses specifically described in Section 1.01, above. Tenant further agrees that it will obtain and maintain in full force and effect all necessary permits for the conduct of its business, and Tenant will not use the Leased Premises for any purpose in violation of any law, ordinance, regulation or building and use restriction. Tenant shall not use the Leased Premises, nor allow the Leased Premises to be used, for any purpose or in any manner that would (i) invalidate any policy of insurance now or hereafter carried by Landlord on the Buildings, or (ii) increase the rate of premiums payable on any such insurance policy unless Tenant reimburses Landlord for any increase in premium charged.

**Section 5.02 – Care of Leased Premises.** Tenant shall not damage or injure the Building or create a nuisance or menace to other tenants in the Building and shall keep the Leased Premises orderly, neat, safe, clean and free from rubbish and dirt at all times and shall store all trash and garbage within the Leased Premises or at such other areas as may be designated by Landlord from time to time. Tenant shall also promptly comply with all laws and ordinances and orders and regulations affecting the Leased Premises and the cleanliness, safety, occupancy and use of same.

**Section 5.03 – Environmental Matters.** Tenant covenants that it will not place, hold, release, store or dispose of any Hazardous Substance on the Leased in violation of any environmental laws, and that any improvements constructed in or upon the Leased Premises by Tenant will not contain any asbestos or other Hazardous Substance in violation of any environmental laws. As used herein the term "Hazardous Substance" means any hazardous, toxic or dangerous waste, substance or material defined as such in any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree relating to the protection, contamination or pollution of the environment, now or at any time hereafter in effect. To the extent allowed by law, Tenant shall indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, damages, liens, injuries, costs, expenses and claims of any and every kind whatsoever, paid, incurred or suffered by, or asserted against, Landlord for, with respect to, or as a direct or indirect result of any breach of covenant, misrepresentation or mistake of fact by Tenant of any

matter set forth in this paragraph. The covenants, representations, warranties and indemnities set forth in this paragraph shall survive the termination of the Lease.

**Section 5.04 – Trash Dumpster and Removal.** Landlord will provide trash dumpsters for the common use of the Building tenants, and will provide for the rental, maintenance, and periodic emptying of the dumpsters, as a Common Area Expense. At Landlord's election, in its sole discretion, Tenant shall secure and pay for containers for Tenant's trash and shall arrange and pay for pick up and disposal of Tenant's trash.

## **ARTICLE VI ALTERATIONS AND SIGNS**

**Section 6.01 – Alterations.** No substantial alteration, addition or improvement to the Leased Premises shall be made by Tenant without the written consent of Landlord, which consent shall not be unreasonably withheld. All alterations, additions, improvements and fixtures (other than Tenant's removable trade fixtures) made by either of the parties hereto shall immediately become the property of Landlord and shall be considered a part of the Leased Premises, provided, however, that Landlord may designate by written notice to Tenant those alterations, additions, improvements and fixtures which shall be removed by Tenant at the expiration or termination of this Lease, and Tenant shall remove the same and repair any damage to the Leased Premises caused by such removal before the last day of the term or within thirty (30) days after notice of election is given, whichever is later. Tenant's removable property shall include, if furnished by or at the expense of Tenant, removable trade fixtures, electric fans, water coolers, furniture, storage and display cases, counters, shelves and racks, and business equipment, but shall not include, without limitation, ventilating, silencing, air-circulating and refrigeration systems, and electric, lighting, plumbing, heating and sprinkling systems, partitions, railings, gates, doors, vaults, paneling, molding, carpeting and flooring. Tenant shall ensure that all alterations shall be made in accordance with all applicable laws, regulations and building codes, in a good and workmanlike manner, using only new and first-class materials, and of quality equal to or better than the original construction of the Building, and Tenant shall be responsible for obtaining all required permits for all such alterations. Tenant shall cause all contractors and subcontractors performing work on its behalf to carry customary worker's compensation insurance, general liability insurance, property damage insurance, non-owned automobile insurance, and such other insurance as Landlord may reasonably require. No person shall be entitled to any lien derived through or under Tenant for any labor or material furnished to the Leased Premises, and nothing in this Lease shall be construed to constitute Landlord's consent to the creation of any lien. If any lien is filed against the Leased Premises for work claimed to have been done for or material claimed to have been furnished to Tenant, Tenant shall cause such lien to be discharged of record within thirty (30) days after filing. Tenant shall indemnify, defend and hold harmless Landlord from all costs, losses, expenses and attorneys' fees in connection with any construction or alteration performed by or for Tenant or at Tenant's direction and any related lien.

**Section 6.02 – Signs and Advertising.** Tenant, at its own cost, may install one sign on the exterior of the Leased Premises, at the location for signs specified by Landlord, in accordance with the requirements of Exhibit "C" attached hereto. Tenant shall not erect or install any other exterior roof, wall, window or door signs, advertising media, lettering or placards without the prior written consent of Landlord, nor shall Tenant install any interior signs that are designed to be visible from outside the Leased Premises without the

prior written consent of Landlord. Tenant's sign shall be designed and fabricated by a sign contractor approved by Landlord and shall comply with all of the requirements of the Town of Morrisville, including those pertaining to size, color, materials and lighting (internally illuminated signs are not permitted). Tenant agrees not to use any advertising media that shall be deemed objectionable to Landlord or other tenants such as search lights, flashing lights, loud speakers, phonographs or radio broadcasts in a manner to be seen or heard outside the Leased Premises. Tenant shall not install any exterior or storefront lighting or plumbing fixtures, shades, awnings, or any exterior decorations or painting, or build any fences or make any changes to the store front without the prior written consent of Landlord, which may be withheld by Landlord in its sole discretion. In the event Tenant shall erect or install any signs or other items in violation of this Section, Landlord may, in addition to any other rights it may have under this Lease, remove any such signs without notice and charge the cost thereof to Tenant.

## **ARTICLE VII MAINTENANCE OF LEASED PREMISES**

**Section 7.01 – Designation of Common Areas.** Whenever used in this Lease, the term "Common Area" shall include, without limitation, all building surface areas, parking areas, access roads, driveways, truck ways, loading areas, traffic and directional signs, underground utility lines or pipes, curbs, retaining walls, lighting facilities, building exteriors and facades, and storefronts appurtenant to the Building, roofs and overhangs, fixtures, trash disposal facilities, service corridors, closets, janitorial service areas, equipment storage areas, pedestrian sidewalks, stairways, plazas, ramps, landscaped and planting areas and other facilities which may be furnished by Landlord in connection with the Building and designated from time to time by Landlord as Common Area, and all other areas and improvements which may be provided and so designated by Landlord for the general use and convenience of the Building.

**Section 7.02 – Maintenance of Common Areas.** Landlord shall operate, maintain, repair and administer the Common Areas, provided, however, that Landlord shall not be responsible for any portion of the Common Area which any tenant has agreed to maintain provided further, to the extent any such repairs, replacements or maintenance are required because of the negligence, misuse or default of Tenant, its employees, agents, contractors, customers or invitees, or the failure of Tenant to satisfy any of its obligations under this Lease, Landlord shall make such repairs at Tenant's sole expense and Tenant shall pay the cost of such repairs to Landlord immediately upon demand. The manner in which such areas and facilities shall be maintained and operated and the expenditures therefore shall be at the sole discretion of Landlord. Landlord shall keep the exterior lighting illuminated during all usual business hours designated by Landlord for the Building when lighting is necessary. Landlord hereby grants to Tenant and Tenant's employees, agents, customers and invitees the right during the term of this Lease to use in common which others entitled to the use thereof, the Common Areas of the Building, provided that such use shall be subject to such rules and regulations as Landlord may establish from time to time. Landlord may temporarily close any of the Common Areas for maintenance purposes or to prevent a public dedication. With respect to any repairs or other work which is required or permitted to be made by Landlord, the same may be made during normal business hours, and Landlord shall have no liability for damages to Tenant for inconvenience, annoyance or interruption of business arising therefrom, provided that

Landlord shall exercise reasonable efforts to minimize interference with Tenant's business.

**Section 7.03 – Tenant' Share of Common Area Expense.** Tenant agrees to pay to Landlord, as additional Rent, Tenant's proportionate share of the cost of operating, maintaining, repairing, replacing and improving the Common Areas, to which shall be added an amount equal to ten percent (10%) thereof for administrative costs in relation thereto (the "**Common Area Expense**"). The Common Area Expense shall include all sums expended by Landlord for, without limitation, the cost of equipping, policing and protecting, lighting, trash and garbage removal, cleaning and maintenance of storefronts, periodic painting, illumination, cleaning, sealing, resurfacing, repainting and striping, janitorial services, promotional decorations, planting and landscaping, water usage, drainage (including regular cleaning of the sanitary and storm drains), personal property taxes, supplies, periodic and holiday decorations, total compensation benefits paid to or on behalf of the employees in the performance of their duties under this Section, premiums on public liability and property damage and worker's compensation insurance, and other costs necessary in Landlord's judgment for the operation, repair and maintenance of the Common Areas. Common Area Expenses shall not include any items payable by Tenant under any other Section of this Lease, the cost of improvements to the premises of other tenant's, depreciation, principal and interest payments on Landlord's mortgage, broker's commission, Landlord's legal fees, and costs for which Landlord is reimbursed by any other party. Tenant's proportionate share, for purposes of this Section, shall be the proportion which the total floor area of the Leased Premises bears from time to time to the total floor area of the Building. Tenant's Common Area Expense Obligation shall begin on the date on which possession of the Leased Premises is delivered to Tenant without regard to the Rental Commencement Date. Landlord may estimate the cost of Common Area Expense from time to time and will notify Tenant from time to time of its proportionate share, which shall be paid monthly along with the Rent. An itemized statement showing in reasonable detail all disbursements and charges will be furnished to Tenant not less than once annually and any over or under charges will be invoiced or credited to Tenant at that time. Tenant may request backup documentation for any Common Area Expense and the same shall be provided by Landlord on a monthly basis.

**Section 7.04 – Tenant's Obligations for Maintenance.** Tenant agrees to keep the Leased Premises in good order, condition and repair, including all plumbing, electrical, heating, air conditioning and any other equipment installed in or appurtenant to the Leased Premises, the roof or pad mounted HVAC unit(s) servicing the Leased Premises, the tenant improvements, including all doors, door frames, the window glass, window casings, window frames, windows or any of the appliances or appurtenances of said door or window casings, window frames and windows, or any attachment thereto or attachments to said building used in connection therewith, regardless of whether full replacement or simple repair is needed. Further, Tenant agrees to keep the Leased Premises in a clean, sanitary and safe condition in accordance with the laws of the State of North Carolina and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector or other proper officers of the governmental agencies having jurisdiction, at the sole cost and expense of Tenant, and Tenant shall further comply with all requirements of all laws and ordinances otherwise touching or concerning the Leased Premises. If Landlord shall determine that Tenant or its employees or agents or invitees abused the plumbing facilities or the adjoining or connecting sewer lines or mains or used them for any purpose other than that for which they were constructed or threw any kind of foreign substance therein, the expense of any breakage, stoppage, damage, cleaning or

additional repair resulting therefrom shall be borne by Tenant. Landlord shall warranty the HVAC unit servicing the Leased Premises for the first twelve (12) months following the Rental Commencement Date.

## **ARTICLE VIII INSURANCE AND INDEMNIFICATION**

**Section 8.01 – Tenant's Insurance Requirements.** Tenant shall at all times keep in full force and effect, at its sole cost and expense, the following types of insurance in the amounts specified:

(a) A policy of commercial general liability and property damage insurance, or its equivalent, with respect to the Leased Premises, and the business operated by the Tenant in the Leased Premises in which the limits of commercial general liability shall not be less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Tenant may satisfy these limits thru the use of an umbrella insurance policy.

(b) A special form property insurance policy written on an “all risk of physical loss basis”, including boiler & machinery insurance if applicable, providing full coverage for all Tenant's personal property, fixtures, improvements, betterments, and alterations located on the Leased Premises, including all plate and other glass located on the Leased Premises, and in an amount equal to the full replacement value of said property.

(c) Worker's compensation and employer's liability insurance in amounts required by applicable law.

All policies of insurance required to be maintained by Tenant shall have a Best Rating of no less than A X and shall name Landlord, SINGH DEVELOPMENT, LLC, and other parties in interest designated by Landlord and Tenant as Additional Insured as their respective interests may appear and (i) shall contain a provision that the insurer will not cancel or change the insurance without giving Landlord thirty (30) days' prior written notice and (ii) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and non-contributing with Tenant's insurance. All such policies shall provide that any loss shall be payable to Landlord who shall be named as Loss Payee and any other parties in interest designated by Landlord notwithstanding any act or negligence of Tenant which might otherwise result in forfeiture of such insurance. On or before the Rental Commencement Date (or the date of any earlier entry or occupancy by Tenant), and thereafter, within thirty (30) days prior to the expiration of each such policy, Tenant shall furnish Landlord with certificates of insurance in the form of ACORD 28 (or other evidence of insurance reasonably acceptable to Landlord), evidencing all required coverages, together with a copy of the blanket endorsement to Tenant's commercial general liability policy by which the appropriate parties are named as additional insureds.

### **Section 8.02 – Landlord's Insurance.**

(a) Landlord shall during the term of this Lease keep in full force and effect (i) comprehensive public liability and property damage insurance with respect to the Building with limits of not less than the amounts specified in Section 8.01 hereof; (ii) fire and

extended coverage insurance covering the Building and other improvements located on or near the Building, including the Leased Premises and all appurtenances thereto (except Tenant's merchandise, trade fixtures, furnishings, equipment, personal property, signs, all coverings, carpeting and drapes), and special extended coverage endorsements commonly known as "all risks" endorsements in an amount equal to the full replacement value, if available, but not less than that required by Landlord's mortgagee from time to time; (iii) rental insurance; (iv) worker's compensation insurance; (v) contractors operations insurance; and (vi) such other coverage as may be deemed necessary by Landlord or its mortgagee.

(b) Tenant agrees to pay Landlord as additional Rent, Tenant's proportionate share of the cost of Landlord's insurance payable in any Lease Year by Landlord pursuant to Section 8.02(a) hereof. Tenant's proportionate share, for purposes of this Section 8.02(b), shall be the proportion which the total floor area of the Leased Premises bears to the total rentable floor area of the Building, as set forth in Section 1.01(J). Tenant's insurance payment obligation shall begin on the date on which possession of the Leased Premises is delivered to Tenant without regard to the Rental Commencement Date. Landlord will annually estimate the amount of such cost and will notify Tenant of its proportionate share of such estimate, which will be paid monthly along with the Rent. Any over or under charges will be adjusted at least once annually.

**Section 8.03 – Covenant to Hold Harmless.** To the extent allowed by law, Tenant covenants to indemnify and hold harmless Landlord from and against all claims, costs (including attorney's fees), expenses and liabilities incurred in connection with any claims, actions or proceedings arising from or as a result of (a) any accident, injury, loss or damage whatsoever to any person or to the property of any person as shall occur on the Leased Premises during the term of this Lease, (b) the occupancy or use by Tenant of the Leased Premises, or (c) any act or omission whatsoever or negligence of Tenant or any subtenant, concessionaire, licensee or departmental lessee of Tenant or its agents, contractors, servants or employees or that of any subtenant, concessionaire, licensee or departmental licensee. It is understood and agreed that all personal property of any kind, nature or description whatsoever kept, stored or maintained upon or in the Leased Premises shall be kept, stored or maintained at the sole risk and responsibility of Tenant exclusively.

**Section 8.04 – Increased Insurance Hazard.** Tenant will not do nor permit to be done anything to the Leased Premises, including carrying any stock of goods or bringing anything into said premises or permitting anything to be brought into or kept in said premises, which will in any way tend to increase the insurance rates on the Leased Premises and/or the Building. Tenant agrees to pay as additional Rent any increase in premiums for fire insurance that may be charged during the term of this Lease on the amount of insurance to be carried by Landlord on the Leased Premises and or the Building resulting from any of the acts or occurrences as hereinabove stated in this Section, whether or not Landlord has consented to the same.

**Section 8.05 – Waiver of Subrogation.** Notwithstanding anything contained in this Lease Agreement to the contrary, Landlord and Tenant hereby waive any rights each may have against the other on account of any loss of or damage to their respective property, the Leased Premises or its contents, arising from any risk which is required to be insured against by this Article Eight. The special form coverage insurance policies maintained by Landlord and Tenant as provided in this Lease Agreement shall include a

waiver of any rights of subrogation by the insurance company against Landlord and Tenant, as applicable, as set forth herein.

## **ARTICLE IX UTILITY CHARGES**

**Section 9.01 – Utility Charges.** Tenant shall pay, when due, for the use of all utilities for the Leased Premises, including, without limitation, water, sewer, gas, electricity, cable, telephone, heating and air conditioning, and other similar utility charges, if any. Tenant shall pay for all sewer and water inspection and meter connection fees attributable to the Leased Premises, except for the initial tap and inspection and permit fees paid by the Landlord when the Building is constructed. When the Building was constructed Landlord purchased a standard sewer and water tap as required by the municipality. If Tenant's use requires the payment of additional sewer and water tap fees or charges (such as for restaurants or hair salons), then the additional tap fees or charges shall be paid by Tenant. If any utilities are not separately metered or assessed or are only partially separately metered or assessed and are used in common with other tenants, then Tenant shall pay to Landlord its proportionate share of such utility charges based on the ratio that the square footage of the Leased Premises bears to the square footage of floor space leased to all units using such common facilities. The obligation of Tenant to pay for water, sewer, gas, electricity, and heating and air conditioning, as herein provided, shall commence as of the date on which possession of the Leased Premises is delivered to Tenant without regard to the Rental Commencement Date. Landlord may, at their sole discretion, charge Tenant One Hundred (\$100) Dollars per month, or partial month thereof, for each utility not put in Tenant's name during Tenant's tenure in the Leases Premises. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility and no such failure or interruption shall entitle Tenant to terminate this Lease or withhold sums due hereunder, nor shall any such failure or delay give rise to any claim in Tenant's favor that Tenant has been evicted, either constructively or actually, partially or wholly.

**Section 9.02 - Water and Sewer Charges.** Landlord will install a separate water meter or submeter to the Leased Premises. Tenant shall pay when due for all water and sewer consumption attributable to the Leased Premises, either to the municipality in the case of a separate meter or to Landlord in the case of a submeter. Tenant shall not allow any lien to attach to the Building or the Leased Premises because of non-payment of water and sewer bills.

## **ARTICLE X ASSIGNMENT AND SUBLETTING**

**Section 10.01 – Consent Required.** Tenant shall not assign this Lease or any interest in this Lease, nor sublet or permit the Leased Premises or any part thereof to be used by others without the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed in each instance. Tenant shall not mortgage, pledge or otherwise encumber this Lease under any circumstance. If this Lease is assigned or if the Leased Premises or any part thereof is sublet or occupied by anybody other than Tenant, Landlord may, without waiving or affecting any obligations or claims against Tenant under this Lease, collect Rent from the assignee, subtenant, or

occupant and apply the net amount collected to the Rent herein reserved. No such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant or the acceptance of the assignee, subtenant or occupant as tenant or as a release of Tenant from the further performance by Tenant of the covenants in this Lease. The consent by Landlord to an assignment or subletting shall not be construed to relieve Tenant from obtaining the consent in writing of Landlord to any further assignment or subletting. In the event of any permitted assignment or subletting, Tenant shall remain primarily liable hereunder, and any extension, expansion, rights of first offer, rights of first refusal or other options granted to Tenant under this Lease shall be rendered void and of no further force or effect. In the case of an assignment, the assignee shall enter into an agreement satisfactory to Landlord pursuant to which the assignee shall assume all of Tenant's obligations hereunder (without thereby relieving Tenant). No assignment, subletting or other occupancy hereunder shall relieve the originally named Tenant from its obligations hereunder and such entity shall remain fully and primarily liable therefor.

## **ARTICLE XI OFFSET STATEMENT, ATTORNMENT AND SUBORDINATION**

**Section 11.01 – Offset Statement.** Within ten (10) days after request by Landlord at any time or times, Tenant shall execute and deliver to Landlord a statement in writing certifying: (i) that this Lease is in full force and effect; (ii) the date of commencement of the term of this Lease; (iii) that Rent is paid currently without any offset or defense thereto; (iv) the amount of Rent, if any, paid in advance; (v) that there are no uncured defaults by Landlord or stating those claimed by Tenant, provided that, in fact, such facts are accurate and ascertainable; and (vi) such other information as may be required by any mortgagee, prospective mortgagee or prospective purchaser of the Building.

**Section 11.02 – Attornment.** Tenant shall, in the event of the sale or assignment of Landlord's interest in the Leased Premises, or in the event any proceedings are brought for the foreclosure of such interest, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Leased Premises, or for the eviction of Landlord under any underlying lease by Landlord, attorn to the purchaser and recognize such purchaser or lessor as the landlord under this Lease. Such attornment shall be self-operative without the execution or delivery of any further instrument by Tenant, provided, however, that no such attornment (except in the event of the sale for value of the Building) shall cause such subsequent landlord to be liable for any act or omission of Landlord or subject to any offsets or defenses against Landlord or bind it for any Rent or additional Rent which Tenant may have paid in advance to Landlord.

**Section 11.03 – Subordination.** Tenant hereby agrees that this Lease is and shall be subject and subordinate at all times to any and all present and future ground or underlying leases, mortgages and secured loans of any type or nature affecting Landlord's interest in the Leased Premises and on the land and buildings of which the Leased Premises are a part or upon any buildings or other improvements hereafter placed upon the land of which the Leased Premises form a part. Tenant also covenants and agrees that any mortgagee, overriding or ground lessor or secured lender may elect at any time to have this Lease prior to its interest in Building, and in the event of such election and upon notification to Tenant to that effect, this Lease shall thereupon be deemed so prior, whether this Lease is dated prior or subsequent to the date of such other interest.

**Section 11.04 – Acknowledgements by Tenant.** Tenant also covenants and agrees to execute and deliver upon demand such further instrument or instruments as may be required to carry out the intentions of this Article XI.

## **ARTICLE XII DESTRUCTION OF LEASED PREMISES**

**Section 12.01 – Reconstruction of Damaged Premises.** If the Leased Premises shall be damaged or destroyed in whole or in part by fire or other casualty, and unless Landlord shall elect not to rebuild as hereinafter provided, the Leased Premises shall be repaired by Landlord at Landlord's expense. The obligation of Landlord hereunder shall be limited to the work as required to construct a "plain white box".

**Section 12.02 – Election to Terminate.** If the Leased Premises shall be damaged or destroyed in whole or in part by fire or any other casualty or occurrence and such casualty or occurrence shall not be completely covered by the insurance required pursuant to Section 8.02, or if more than twenty-five percent (25%) of the Building shall be damaged or destroyed in whole or in part by fire or any other casualty or occurrence, then Landlord may elect either to repair or rebuild the Leased Premises or to terminate this Lease upon giving notice of such election in writing to Tenant within sixty (60) days after the happening of the event causing the casualty. Rent and all other charges shall be prorated as of the date that Tenant surrenders or loses possession and use of the Leased Premises.

**Section 12.03 – Abatement of Rental.** If any casualty shall render the Leased Premises untenable in whole or part, a proportionate abatement of the Rent and other charges payable hereunder shall be allowed from the date when the damage occurred until the date Landlord completes the repairs or rebuilding or, in the event Landlord elects to terminate this Lease, until the date that Tenant surrenders or loses possession and use of the Leased Premises. Said abatement shall be computed on the basis of the ratio which the floor area of the Leased Premises rendered untenable bears to the entire floor area thereof. Other than the hereunder stated abatement, Tenant shall have no other rights to abate any amount payable under this Lease.

**Section 12.04 – Tenant's Obligations.** Tenant shall give immediate notice to Landlord in case of fire or accident in the Leased Premises. If Landlord is required or elects to repair or rebuild the Leased Premises as provided in this Article XII, Tenant shall promptly repair or replace its merchandise, trade fixtures, furnishings, equipment, personal property and leasehold improvements in a manner and to a condition equal to that existing prior to its damage or destruction.

## **ARTICLE XIII EMINENT DOMAIN**

**Section 13.01 – Total Condemnation of Leased Premises.** In the event that the whole of the Leased Premises or the Building shall be taken in any proceeding by public authorities by condemnation or otherwise be acquired for public or quasi-public purposes, then the term of this Lease shall cease and terminate and all Rent shall be paid up to the date that Tenant surrenders or loses possession and use of the Leased Premises, and

Tenant shall have no claim against Landlord nor the condemning authority for the value of any unexpired term of this Lease. Whenever there is a reference in this Lease to a taking by public authority, such reference shall be deemed in each case to include a purchase and sale in lieu of such a taking.

**Section 13.02 – Partial Condemnation of Leased Premises.** In the event that any part of the Leased Premises shall be taken as hereinabove described, then either party may terminate this Lease by notifying the other in writing within thirty (30) days of the notice of such taking, and upon such notice being given the condemnation shall be treated as a total condemnation pursuant to Section 13.01. In the event that more than twenty-five percent (25%) of the floor area of the Building shall be taken, then Landlord shall have the option of terminating this Lease by notifying Tenant in writing of its election to do so on or before the date of such taking, and upon such notice being given the condemnation shall be treated as a total condemnation pursuant to Section 13.01. In the event that this Lease is not or cannot be terminated pursuant to the provision of this Section 13.02, then Landlord shall, at its sole cost and expense, restore the remaining portion of the Leased Premises to the extent necessary to render it suitable for the purposes for which it was leased, provided that such work shall not exceed the scope of the work required to be done by Landlord in originally constructing such building and that the cost thereof shall not exceed the proceeds of its condemnation award. If this Lease shall not be terminated as herein provided, this Lease shall continue for the balance of its term as to the part of the Leased Premises remaining without any reduction or abatement of or effect upon the term hereof or the liability of Tenant to pay in full any amount under this Lease, except that the Rent to be paid by Tenant after such taking for the Leased Premises shall be reduced pro rata in the proportion which the floor area of the Leased Premises remaining after any restoration and repair bears to the entire floor area of the Leased Premises immediately prior to such taking.

**Section 13.03 – Distribution of Award.** All compensation awarded or paid upon a total or partial taking of the Leased Premises shall belong to and be the property of Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Leased Premises, provided, however, that Landlord shall not be entitled to any separate award made to Tenant for depreciation to and cost of removal of merchandise and trade fixtures, or Tenant's loss of business.

#### **ARTICLE XIV DEFAULT OF THE TENANT**

**Section 14.01 – Default.** The occurrence of any of the following shall constitute an Event of Default:

(a) Delinquency in the payment of Rent or any other amount payable by Tenant under this Lease, whether or not such payment shall have been demanded, for a period of thirty (30) days after the due date;

(b) Delinquency by Tenant in the performance or compliance with any of the terms, covenants or agreements to be performed under this Lease other than those described in the foregoing Section 14.01(a), and failure to rectify or remove said default(s) within fifteen (15) days after written notice of such default has been given to Tenant; except, however, that no notice shall be required in cases where Tenant's default is causing damage or destruction to the Building or the Leased Premises, or is causing a

health hazard or safety risk to persons or property, or which otherwise constitutes an emergency which would reasonably necessitate immediate action by Landlord.

(c) Commencement by or against Tenant of a proceeding under the United States Bankruptcy Code and the failure of the trustee to properly assume this Lease or permitting this Lease to be deemed rejected or terminated;

(d) Filing by or against Tenant in any state court pursuant to any state statute for the relief of debtors, or for reorganization, dissolution or rearrangement, or for the appointment of a receiver or trustee of all or a portion of Tenant's property (except that when any such proceeding is filed against Tenant, Tenant shall have sixty (60) days after commencement to have such proceeding dismissed), or for any assignment of the property of Tenant for the benefit of creditors, or for any admission of insolvency;

(e) Abandonment, vacation or desertion of the Leased Premises (failure to occupy and operate the Leased Premises for ten (10) consecutive days shall be deemed an abandonment);

(f) Default by Tenant in the observance or performance of any promissory note, security agreement, letter agreement or other agreements made between Landlord and Tenant relating to this Lease, the construction of Tenant's improvements, or Tenant's occupancy of the Leased Premises.

**Section 14.02 – Remedies.** Upon the occurrence of an Event of Default Landlord, in addition to all other rights and remedies it may have at law or in equity, shall have the right to any one or more of the following remedies:

(a) To re-enter and recover possession of the Leased Premises by any means allowed by or not prohibited by law;

(b) To bring an action to enjoin or restrain any default or threatened default by Tenant, or to specifically enforce Tenant's obligations set herein;

(c) To bring an action at law for damages as set forth in Section 14.03;

(d) To terminate this Lease and re-enter and recover possession of the Leased Premises upon such notice and in accordance with such proceedings as may be allowed by law.

All the rights and remedies of Landlord set forth herein are cumulative and are in addition to any other rights or remedies accorded to Landlord by law, regulation, ordinance or rule and may be pursued concurrently, separately or successively. All personal property, trade fixtures or other property remaining upon the Leased Premises, at the time that the Landlord recovers possession, may be put out of the Leased Premises and Landlord shall not be liable therefor.

**Section 14.03 – Damages.** Should Landlord elect to exercise any of its remedies as set forth in this Lease or as provided by law or in equity, then Tenant shall, notwithstanding the exercise of any such remedy and notwithstanding that Landlord may elect to terminate this Lease in exercising any such remedy, remain liable for damages as follows:

(a) For Rent and all other charges accruing to Landlord to the date that Landlord recovers possession of the Leased Premises;

(b) For the cost to Landlord of exercising any of its remedies, including attorneys' fees, court costs, bailiff's charges, lock replacement, and storage, cartage and sale expenses incurred in connection with the sale or disposal of any personal property, trade fixtures or other property;

(c) For the Rent and all other sums which would have been payable if repossession and lease termination had not occurred, less the net proceeds, if any, of any reletting of the Leased Premises after deducting Landlord's expenses in connection with such reletting, including, without limitation, brokerage commissions, alteration and remodeling costs and attorneys' fees. If the new lease term extends beyond Tenant's lease term or covers additional premises, the rents received shall be apportioned appropriately.

(d) For the cost to repair and restore any damage to the Leased Premises and to place the Leased Premises in the condition required under Section 16.01, below;

(e) For the cost incurred by Landlord to discharge any liens or for any other charges that may be asserted against the Tenant's improvements, the Building or the Leased Premises (e.g. mechanics' or construction liens, unpaid utility bills, water bills, tax liens, personal property taxes, etc.).

**Section 14.04 – Curing of Tenant's Default.** Notwithstanding anything herein contained to the contrary, if Tenant shall be in default in the performance of any of the terms or provisions of this Lease and Landlord gives notice in writing to Tenant of such default specifying the nature thereof and Tenant fails to cure the default within the time provided or immediately if an emergency exists, then Landlord may, in addition to its other remedies, cure such default at the cost and expense of Tenant and the sums so expended by Landlord shall be deemed to be additional Rent and shall be paid by Tenant on the day when Rent shall next become due.

## **ARTICLE XV ACCESS BY OWNER**

**Section 15.01 – Right of Entry.** Landlord shall have the right to install, maintain, use, repair and replace pipes, ducts, wires and conduits leading through the Leased Premises in locations which will not materially interfere with Tenant's use of such premises and serving other parts of the Building. Landlord or its agents shall have the right to enter the Leased Premises at all reasonable times to examine it, to show it to prospective lenders, purchasers or lessees, or to make repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. During the six (6) months prior to the expiration of the term of this Lease, Landlord may place upon the Leased Premises the usual "For Rent" or "For Lease" notice.

**ARTICLE XVI  
SURRENDER OF PREMISES, HOLDING OVER, SUCCESSORS**

**Section 16.01 – Surrender of Leased Premises.** On the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Leased Premises and all keys and passes to the Leased Premises in first class condition, free of all alterations, additions, improvements or fixtures that Tenant has the right to remove or is obligated to remove pursuant to Section 6.01 hereof. Tenant shall remove all its trade fixtures and other removable personal property and perform all restoration made necessary by the removal of any such alterations, additions, improvements, fixtures or other property within the same time periods. All such property which is not so removed and disposed of in such manner as Landlord may see fit, the Tenant shall be liable to Landlord for any and all costs and expenses incurred in connection with any such removal and disposal, including court costs, attorneys' fees and storage charges for such property. If Tenant fails to surrender the Leased Premises to Landlord on the expiration or earlier termination of this Lease, Tenant shall hold Landlord harmless from all damages resulting from Tenant's failure to surrender the Leased Premises, including, without limitation, claims made by a succeeding tenant resulting therefrom.

**Section 16.02 – Abandoned Property.** All personal property, fixtures, equipment, merchandise or other property of any nature whatsoever which has not been removed by Tenant prior to Tenant's surrender of possession of the Leased Premises or Landlord's recovery of possession of the Leased Premises shall be deemed to have been abandoned by Tenant and may be retained by Landlord as its property or may be removed and disposed of in such manner as Landlord may see fit, and Tenant shall be liable to Landlord for all costs and expenses incurred by Landlord in connection with any such removal and disposal, including court costs, attorneys' fees and storage charges for such property.

**Section 16.03 – Holding Over.** It is hereby agreed that in the event of Tenant holding over after the termination of this Lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary, upon the same terms and conditions as are contained herein, except that the Rent shall be equal to 150% what was in effect at the time of expiration or termination of the Lease and Landlord's right to damages for such illegal occupancy shall survive. Landlord may treat any holding over without the consent of Landlord as a trespass. In addition, Tenant shall pay all other charges payable by Tenant under this Lease.

**Section 16.04 – Successors.** Except as otherwise set forth herein, all rights and liabilities herein given to or imposed upon the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said parties. No rights, however, shall inure to the benefit of any assignee or subtenant of Tenant unless the assignment or sublease has been approved by Landlord in writing as provided in Section 10.01 hereof.

**ARTICLE XVII  
QUIET ENJOYMENT**

**Section 17.01 – Landlord's Covenant.** Upon payment by Tenant of the Rents herein provided and upon the observance and performance of all the covenants, terms

and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the term hereby demised without hindrance or interruption by Landlord of any other person acting through or under Landlord, subject, however, to the terms and conditions of this Lease.

**Section 17.02 – Non-Liability of Landlord.** Landlord shall not be responsible or liable to Tenant for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connected with the Leased Premises or located in the Building or any loss or damage resulting to Tenant or Tenant's property from burst, stopped or leaking water, gas or sewer pipes, or for any damage or loss of property within the Leased Premises from any cause whatsoever.

**Section 17.03 – Liability of Landlord.** If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed and if as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Building and out of the rents and other income from such property receivable by Landlord, or out of the consideration received by the Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Building; and Landlord and its agents, employees and any other persons holding interests under or through Landlord shall not be liable for any deficiency.

## **ARTICLE XVIII OPERATION OF LEASED PREMISES**

**Section 18.01 – Landlord's Use of Common Areas.** Landlord reserves the right from time to time to utilize portions of the Common Areas for product shows, entertainment events, the leasing of kiosks, sidewalk sales, or such other uses which in Landlord's judgment tend to attract the public. Further, Landlord reserves the right to utilize all sign structures, building exteriors and other parts of the Common Areas for advertising purposes. Landlord's Use of the Common Area shall at all times be in compliance with all applicable law.

**Section 18.02 – Taxes on Leasehold.** Tenant shall pay before delinquency all municipal, county or state taxes, assessments or other charges levied, assessed or charged during the term of this Lease against any leasehold interest or improvements or personal property of any kind regarding the Leased Premises. If any such amounts are levied against Landlord or Landlord's property, or if the assessed value of the building or other improvements of the Building is increased by the inclusion of a value placed on such items, Tenant shall on demand immediately reimburse Landlord for the amount of taxes so levied against Landlord or the proportion of the taxes of Landlord resulting from such increase.

**Section 18.03 – Wi-Fi Network.** Tenant shall have the right to install a wireless intranet, Internet, and communications network (also known as "**Wi-Fi**") within the Leased Premises for the use of Tenant and its employees (the "**Network**") or the public. Tenant agrees that Tenant's Network equipment ("**Tenant's Communications Equipment**") shall be of a type and, if applicable, a frequency that will not cause radio frequency,

electromagnetic, or other interference to any other party or any equipment of any other party including, without limitation, Landlord, other tenants, or occupants of the Building. In the event that Tenant's Communications Equipment causes any such interference, upon receipt of notice from Landlord of such interference, Tenant will take all steps necessary to correct and eliminate the interference. If the interference is not eliminated within 24 hours (or a shorter period if Landlord believes a shorter period to be appropriate) then, upon request from Landlord, Tenant shall shut down the Tenant's Communications Equipment pending resolution of the interference, with the exception of intermittent testing upon prior notice to and with the approval of Landlord. Tenant acknowledges that Landlord has granted and/or may grant Wi-Fi network rights to various other tenants and occupants of the Building and to telecommunications service providers.

## **ARTICLE XIX MISCELLANEOUS**

**Section 19.01 – Force Majeure.** In the event Landlord or Tenant is delayed or prevented from performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, pandemic, epidemic, war or other reason of a like nature not the fault of the party for whom performance is required, then the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the delay. The provisions of this Section shall not operate to exclude Tenant from prompt payment of Rent, additional Rent or any other payments required by the terms of this Lease for any reason whatsoever.

**Section 19.02 – Transfer of Landlord's Interest.** In the event of any transfer or transfers of Landlord's interest in the Leased Premises, the transferor shall be automatically relieved of any and all liabilities on the part of Landlord accruing from and after the date of such transfer.

**Section 19.03 – Sale of the Building.** Landlord shall have the right to sell the Building at any time during the Term, subject only to the rights of Tenant hereunder; and such sale shall operate to release Landlord from liability hereunder after the date of such conveyance.

**Section 19.04 – Recording.** Tenant may record this Lease or a Memorandum of Lease.

**Section 19.05 – Liens.** In the event construction lien(s) shall be filled against the Building or the Leased Premises or Tenant's interest as a result of the work undertaken by Tenant, Tenant shall within (10) days after receipt of notice, discharge such lien(s) by payment of the indebtedness or by filing a bond (as provided by statute) as security therefore. In the event Tenant shall fail to discharge such lien, Landlord shall have the right to discharge the lien by filing such bond, the Tenant shall pay the cost of the bond and all related expenses to Landlord as additional Rent upon the next day that Rent shall be due.

**Section 19.06 – Late Charges and Interest on Late Payments.** If any amount due from Tenant is not received by Landlord within five (5) days of when due, Tenant shall pay to Landlord an additional sum equal to two percent (2%) of all outstanding overdue

amounts as a late charge. In addition, any such amount which is not received by Landlord within thirty (30) days of when due shall bear interest at twelve percent (12%) per annum (or such lesser rate equal to the maximum interest rate than permitted by law) from the date due until received. Payment of any such late charge shall not excuse or cure any default or prevent Landlord from exercising any of its other available rights and remedies.

**Section 19.07 – Accord and Satisfaction.** No payment by Tenant or receipt and acceptance by Landlord of a lesser amount than the full Rent or any other amounts due hereunder shall be deemed to be other than on account of the earlier Rent and/or other amounts due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment under this Lease be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to its right to recover the balance of the amount due hereunder or pursue any other remedy.

**Section 19.08 – Waiver.** No default in the payment of Rent or any other provision set forth herein, and any forbearance on the part of Landlord in the enforcement of this Lease shall be construed as creating a custom of deferring payment or as modifying in any way the terms of this Lease or as a waiver of Landlord's right to enforce the provisions hereof. No waiver by Landlord of any provision, condition or term shall affect any other provision, condition or term of this Lease, nor shall any such waiver on a single occasion be deemed to constitute or imply a subsequent waiver of any such provision, condition or term. No breach of a covenant or condition of this Lease shall be deemed to have been waived by Landlord unless in writing by Landlord.

**Section 19.09 – Real Estate Brokers.** Each party hereto represents that it has had no dealings with any real estate broker, finder or other person with respect to this Lease in any manner. Each party hereto shall indemnify and hold the other party harmless from all damages resulting from any claims which may be asserted against the other party by any broker, finder or other person with whom the other party has or purportedly has dealt.

**Section 19.10 – Laws of the State of North Carolina.** This Lease shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina. The unenforceability, invalidity or illegality of any terms or provisions of this Lease shall not render any other terms or provisions unenforceable, invalid or illegal.

**Section 19.11 – Entire Agreement.** This Lease, the Exhibits and Rider, if any, and the Development Agreement between the parties dated \_\_\_\_\_ set forth the entire agreement between Landlord and Tenant, and there are no other understandings, representations, warranties or other agreements between Landlord and Tenant. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by each party.

**Section 19.12 – Interpretation and Use of Premises.** Nothing contained herein shall be deemed or construed to create the relationship of principal and agent or of partnership or joint venture between the parties hereto. Nothing contained herein shall be construed to limit the right of Landlord to rent any portion of the Building not covered by this Lease upon any terms or conditions whatever and for any use or purpose Landlord desires (consistent with applicable law, including zoning conditions), or to grant privileges or immunities to other tenants not granted to Tenant; and Landlord shall at all times have the right to change the appearance of the Building, or the name, title or address under

which it is known or to change the address of the Leased Premises. The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises, and this Lease becomes effective as a lease only upon execution and delivery thereof by Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include any other genders when required by the context of this Lease. If any language is stricken or deleted from this Lease, such language shall be deemed never to have appeared herein and no implication shall be drawn therefrom.

**Section 19.13 – Notices.** Any notice, demand, request, consent or other instrument which may be or is required to be given under this Lease shall be in writing and either served personally or sent by facsimile transmission, or by regular first class United States mail, postage prepaid, and addressed to the other party at the address set forth in the introductory paragraph of this Lease or at such other place as either party may designate by written notice to the other. Any written notice sent by mail shall be deemed to have been served as of the date the written notice is received in accordance with the foregoing provisions. If any notice or tender is required or permitted to be given on a Saturday, Sunday or legal holiday, then the time for giving such notice or tender is hereby extended to the next regular business day.

**Section 19.14 – Execution of Lease.** If either party hereto is a partnership, limited partnership, corporation, limited liability company, limited liability partnership or other joint venture or association, the individual(s) executing this Lease on behalf of such entity warrant and represent that such entity is validly organized and existing and authorized to do business under the laws of the state where it was formed, that the form of entity is as set forth in the introductory paragraph of this Lease and the acknowledgements at the end of this Lease, that the entity has full power and lawful authority to enter into this Lease in the manner and form herein set forth, and that the execution of this Lease by such individual(s) is authorized by such entity and is proper and sufficient to legally bind such entity in accordance with the terms and conditions hereof. If Tenant consists of more than one person or entity, then the obligations imposed on Tenant shall be joint and several.

**Section 19.15 – Captions and Section Numbers.** The table of contents, captions, article numbers and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections.

**Section 19.16 – Option Terms.** Tenant shall have the option to extend the Term of this Lease for two (2) additional periods of sixty (60) months (each a “**Renewal Term**”), provided that the following conditions are satisfied: (i) the Tenant notifies the Landlord in writing of its election to exercise the option to renew at least one hundred eighty (180) days prior to the expiration of the original term or the end of the first Option Term; and (ii) at the time of such notice Tenant is not then in default beyond all applicable notice and cure periods. Provided that the foregoing conditions precedent have been satisfied, then this Lease shall be deemed extended upon the same terms, covenants, and conditions as those set forth herein, except as to the amount of the Rent payable under Paragraph 1(I) hereof and except that there shall be no additional option to extend. The monthly Rent for the Demised Premises payable pursuant to Paragraph 1(I) hereof during the Renewal Term shall be the following:

[to be added]

Section 19.18 - Iran Divestment Act Certification. Developer certifies that as of the date that this Agreement is entered into, the Developer is not identified on the Iran List. It is a material breach of this Agreement for the Developer to be identified on the Iran List during the term of this Agreement or to utilize on this Agreement any contractor or subcontractor that is identified on the Iran List. "Iran List" means the Final Divestment List - Iran, the Parent and Subsidiary Guidance List- Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with N.C.G.S. §143C-6A-4 of the N.C. Iran Divestment Act.

IN WITNESS WHEREOF, the parties hereto hereby execute this Lease as of the day and year first above written.

**LANDLORD:**

a [ \_\_\_\_\_ ] limited liability company

[ \_\_\_\_\_ ],

By: \_\_\_\_\_  
Ajitpal Singh Grewal, Manager

**TENANT:**

The Town of Morrisville,  
a North Carolina municipal  
corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT "A" TO RETAIL LEASE AGREEMENT  
SITE PLAN & LOCATION OF LEASED PREMISES**

**EXHIBIT "B" TO RETAIL LEASE AGREEMENT**  
**LANDLORD'S WORK; TENANT'S WORK**

I. DESCRIPTION OF LANDLORD'S WORK:

Landlord shall perform the following described work, at Landlord's sole expense:

A. Structure: Landlord shall provide a structural shell in accordance with the following specifications:

(1) Roof & Exterior Walls: Roofs, exterior walls, overhangs, sidewalks and other site improvements to be supplied substantially in the locations shown on Exhibit "A", with steel, masonry or metal framing as specified by Landlord's architect.

(2) Storefront: Storefronts, as designed by the Landlord's architect. In the event the Tenant desires a storefront design other than that furnished by the Landlord, the Tenant shall provide a design which must be approved by the Landlord as being consistent with the Shopping Center Area concept, and Tenant shall pay all design and construction costs associated with such storefront.

(3) Exterior Finishes: Exterior walls shall be finished with appropriate materials with an appearance and decorative quality to be determined by Landlord's architect.

(4) Mechanical Openings: Wall openings, frames or supports for equipment required by the Tenant other than as hereinafter included under basic heating, ventilating and air conditioning, shall be at the Tenant's expense.

(5) Partition Walls: Landlord to supply partition walls between tenant spaces, and partition walls for two bathrooms.

(6) Interior Wall Finish: Interior wall finish supplied by Landlord will be drywall, taped and sanded, but not painted. Interior finish of rear or side exterior masonry block walls may be exposed masonry block, at Landlord's option.

The interior finish of non-glazed areas of storefronts shall be gypsum wallboard where framing occurs.

(7) Ceilings and Space Height: The ceilings shall consist of exposed structural members, exposed underside of floor support deck for the story above, and exposed utilities serving both commercial space as well as residential units above.

(8) Floor: Landlord shall provide a concrete slab with a smooth finish.

(9) Service Doors: Landlord shall provide one hollow metal type service door for the Leased Premises at a location designated by Landlord's architect.

(10) Bathroom: One bathroom shall be provided, at a rear location specified by the Landlord's architect. The bathroom shall include one hollow core door and necessary hardware, gypsum wallboard taped and sanded on walls and ceiling, lighting

and ventilation, one sink, one toilet, per bathroom. One electric 6-gallon hot water heater shall be provided.

(11) Furnace: One furnace room for the sole purpose of serving a single typical commercial bay (column to column) shall be provided

(12) Service Sink: One 24"x24" floor mounted mop basin and faucet shall be provided.

B. Utility Distribution Systems:

(1) Water and Sanitary Sewer: Landlord will install cold water and sanitary sewer branch lines to the Leased Premises with connections to all bathroom and service sink mop basin fixtures.

(2) Electrical: Electrical wire and conduit to the Leased Premises (including meter socket box), terminating in a distribution panel. Duplex wall outlets and wiring for ceiling light fixtures shall be supplied as required by code.

(3) Gas: Landlord shall install gas lines to the heating unit and meter location designated by Landlord. If desired by Tenant, Tenant shall install branch lines to the Leased Premises, at its own expense.

(4) Fire Protection: Landlord shall provide a full sprinkler system above the Leased Premises at locations determined by Landlord to provide required coverage for the non-partitioned space. Additional fire protection branches and heads as required to support Tenant's layout is the responsibility of the tenant.

(5) Telephone: Landlord shall provide an empty conduit sleeve to the Leased Premises.

(6) Plumbing Vent Riser: Landlord shall provide a plumbing vent riser from the bathroom waste system through the roof.

(7) Toilet Exhaust: Landlord shall provide common toilet exhaust ducts at locations to be determined by Landlord, and all necessary connector ducts to the Leased Premises.

(8) Lighting Fixtures: Electrical feeds will be provided to service standard lighting fixtures.

(9) HVAC System: Individual gas fired, warm air furnaces and a distribution duct system with registers shall be installed in each Tenant space with roof or ground mounted air-cooled condensers for air conditioning.

II. DESCRIPTION OF TENANT'S WORK.

[TBD].

**EXHIBIT "C" TO RETAIL LEASE AGREEMENT  
SIGN SPECIFICATIONS**

- A. The Tenant signage requirements for the Building are meant to provide signage that is consistent and designed to promote the aesthetics of the Building.
- B. Elevation drawing in full color and build detail drawings must be supplied for Landlord or Landlord's Architect's written approval prior to any application to the Town of Morrisville building department permit process. All sign designs and specifications must be approved as to colors, background graphics, letter size, sign placement and other design elements by Landlord and other governmental authorities having jurisdiction thereof. Drawings must include size of letters, square footage calculations, electrical specifications, and raceway location and size.
- C. Sign Allowance and Placement. Up to 1ft<sup>2</sup> of overall signage for each 1 foot of width per first-floor tenant façade (up to 100ft<sup>2</sup>). Sign height not to exceed 32"(h) (and will be either 32"(h) or 24"(h)), horizontally-centered over the canopy above the tenant entry door and vertically centered between the first-floor wall trim-band and top of glass above canopy. Keep any sign elements minimum of 24" away from any vertical building corners/edges. Limit lines of text to 1-2 for maximum readability.
- D. All signage must be in compliance with the requirements established in the Main Street Planned Development rezoning document approved by the Morrisville Town Council.
- E. Retail facades and door graphics cannot exceed 22"(w) x 36"(h) and shall be centered horizontally within door-glass width and shall be placed within 38"(h) – 74"(h) from ground. Must be made from individually-cut vinyl graphics/text applied directly to the exterior surface door glass (1<sup>st</sup>-surface application). No printed decal-stickers with a solid background covering door.
- F. Tenant may have its business name, address and store hours applied to the rear service door, using professionally and individually vinyl die cut letters, white, Helvetica style letters not to exceed 2 ½ inches in height. No other type of signage will be permitted for this purpose.
- G. Plastic "open and closed" signs, changeable boards or window stickers to this effect are not permitted.
- H. Security stickers, alarm system notifications or similar notices may be placed at the bottom center portion of the front door. The size of such stickers is subject to the Landlord's approval.
- I. All window neon signs should be on a separate circuit so that they will remain on 24 hours per day, independently of the time clocks for any other signage. All neon signs must be approved by Landlord, which may be approved or rejected in Landlord's sole discretion for any reason whatsoever.

- J. All interior signs will be controlled by a photocell or timer mechanism, as specified by the Landlord, and supplied by Tenant.

**EXHIBIT G TO DEVELOPMENT AGREEMENT**

**RIGHT OF FIRST REFUSAL**

Prepared by and return to: Abigail R. Breedlove, Esq., Jordan Price Wall Gray Jones & Carlton, 1951 Clark Avenue, Raleigh, NC 27605

STATE OF NORTH CAROLINA

**RIGHT OF FIRST REFUSAL**

COUNTY OF WAKE

THIS RIGHT OF FIRST REFUSAL AGREEMENT (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **SINGH DEVELOPMENT, LLC**, a Michigan limited liability company (“Seller”), and **THE TOWN OF MORRISVILLE**, a municipal corporation of the State of North Carolina (“Purchaser”).

WHEREAS, Seller is the owner of those tracts of real property located at [REDACTED] Morrisville, North Carolina bearing Wake County Real Estate ID [REDACTED], which are more particularly described on Exhibit A which is attached hereto and incorporated herein by reference (collectively, the “Property”); and

WHEREAS, Purchaser is interested in having a first right of refusal to purchase the Property;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, Seller hereby grants Purchaser a right of first refusal (“Right of First Refusal”) to purchase the Property, or any portion of the Property, in accordance with the terms below:

1. If, during the [REDACTED] year period following the date of execution of this Agreement, Seller receives a bona fide written offer by a willing third party to purchase all or part of the Property which Seller intends to accept or a purchase agreement which Seller intends to enter into (collectively, “Offer”), Seller shall give written notice to Purchaser at the address provided below accompanied by a copy of such Offer which shall include the name and address of the proposed purchaser.
2. Within fifteen (15) days after receipt of the written notice and Offer, Purchaser shall have the right to notify Seller that it is exercising its Right of First Refusal and will purchase the Property pursuant to a purchase agreement which incorporates the terms and conditions of the Offer. Purchaser’s written notice of its exercise of its Right of First Refusal shall be given to [REDACTED] at the address provided below. Buyer’s rights under this Agreement shall remain in effect with

respect to any portion of the Property not covered by an Offer, and if a transaction contemplated by any Offer fails for any reason to close, Buyer's Right of First Refusal shall be reinstated with respect to any subsequent Offer.

3. Should Seller decide to sell the Property or any portion thereof during the [ ] year period following the date of execution of this Agreement, Seller shall notify Buyer of the terms on which Seller is willing to sell. Buyer shall have the right for a period of fifteen (15) days after receiving written notice to purchase the Property or any portion thereof on terms stated in the notice. Should Buyer fail to exercise the right within said period, Seller shall have the right to sell the Property to a third party on the same terms stated in the notice to Buyer. Any proposed sale on materially different terms reinstates Buyer's Right of First Refusal.
4. If Purchaser fails to exercise its Right of First Refusal in accordance with the time periods stated above, this Agreement shall have no more force and effect.
5. In consideration for the rights granted herein, within five (5) days after execution of this Agreement by Seller, Purchaser shall deposit with Seller the sum of One Thousand and No/100 Dollars (\$1,000.00). If a sale to Purchaser is closed, said monies shall be applied toward the purchase price. If the rights under this Agreement expire unexercised, Seller shall retain said sum.
6. Time is of the essence in this Agreement.
7. Any notice, request or demand herein provided for or given hereunder, given by the parties hereto, shall be effected (a) when delivered in person to the receipt named below, (b) one day after timely deposit with a responsible overnight courier to the recipient named below, or (c) five days after being mailed by postage paid, certified mail return receipt requested as follows:

Seller: Singh Development, LLC  
2601 Weston Parkway, Suite 103  
Cary, NC 27513  
Attn: Avi Grewal  
Email: [avi@singhmail.com](mailto:avi@singhmail.com)

With copies to:  
Morningstar Law Group  
421 Fayetteville Street, Suite 530  
Raleigh, NC 27601  
Attn: Molly M. Stuart  
Email: [mstuart@morningstarlawgroup.com](mailto:mstuart@morningstarlawgroup.com)

Purchaser: Town Manager's Office  
Town of Morrisville  
100 Town Hall Drive, Morrisville, NC 27560

Email: [bzuidema@morrisvillenc.gov](mailto:bzuidema@morrisvillenc.gov)

With copies to:

Frank Gray  
Jordan Price Wall Gray Jones & Carlton  
1951 Clark Avenue  
Raleigh, NC 27605  
Email: [fgray@jordanprice.com](mailto:fgray@jordanprice.com)

Lori Jones  
Jordan Price Wall Gray Jones & Carlton  
1951 Clark Avenue  
Raleigh, NC 27605  
Email: [ljones@jordanprice.com](mailto:ljones@jordanprice.com)

8. Miscellaneous.

- a. Entire Agreement. This Agreement is the entire Agreement among the parties and, when executed by the parties, supersedes all prior agreements, understandings and communications, either verbal or in writing, between the parties with respect to the subject matter contained herein.
- b. Amendments. This Agreement may not be amended, modified or changed except by written instrument signed by all of the parties.
- c. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective heirs, beneficiaries, legal representatives, personal representatives, successors and assigns.
- d. Captions. All captions and headings are inserted for the convenience of the parties and shall not be used in any way to modify, limit or otherwise affect this Agreement.
- e. Counterparts. This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- f. Waiver. Any failure by a party to comply with any obligation, agreement or condition herein may be expressly waived in writing by each of the other parties, but such waiver or failure to insist upon strict compliance with such obligation, agreement or conditions shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

- g. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the internal domestic laws of the State of North Carolina, without reference to choice of law principles.
- h. **Severability.** If any term, provision or condition of this Agreement is determined by a court or other judicial or administrative tribunal to be illegal, void or otherwise ineffective or not in accordance with public policy, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.
- i. **Interpretation.** In the event of a dispute or disagreement arising under this Agreement, this Agreement shall be interpreted in accordance with its fair meaning and shall not be interpreted for or against any party on the ground that such party drafted or caused to be drafted this Agreement.
- j. **Successors and Assigns.** Buyer's rights hereunder shall be personal to the Buyer and shall not be assignable by Buyer.
- k. **Foreclosure.** Notwithstanding anything herein to the contrary, (i) this Agreement shall automatically terminate in the event that proceedings are brought for the foreclosure of Seller's interest in the Property, or in the event of exercise of a power of sale under any mortgage or deed of trust on the Property; and (ii) no such events set out in Section 8(k)(i) above shall constitute an offer, conveyance, or other event giving rise to Buyer rights as set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year first above written.

[Signatures on the following pages]

**SELLER:**

**SINGH DEVELOPMENT, LLC,**  
a Michigan limited liability company

(SEAL)

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

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

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

STATE OF \_\_\_\_\_

**ACKNOWLEDGEMENT**

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

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me and acknowledged that the signature above is his/her signature and that s/he voluntarily executed the foregoing instrument for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

**PURCHASER:**

**THE TOWN OF MORRISVILLE,**

a municipal corporation of the State of North  
Carolina

By: \_\_\_\_\_  
Brandon Zuidema, Town Manager

STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public of the County and  
State aforesaid, certify that Martha L. Paige personally appeared before me and  
acknowledged that the signature above is her signature and that she voluntarily executed  
the foregoing instrument for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this \_\_\_ day of \_\_\_\_\_,  
2023.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

**EXHIBIT A TO RIGHT OF FIRST REFUSAL**

[Cottage Retail Units]

**EXHIBIT H TO DEVELOPMENT AGREEMENT**  
**DEVELOPMENT BUDGET FOR PUBLIC FACILITIES**

**(THIS DOCUMENT IS BEING FINALIZED)**

# Planning and Zoning Board Agenda Item Report

Agenda Item No.

Submitted by: Brooke Dodson

Submitting Department Planning

Meeting Date: June 13, 2024

## **SUBJECT**

Planning Newsletter April - May 2024

## **Recommendation:**

None

## **Updates/History of Briefing:**

N/A

## **Executive Summary and Background Information:**

N/A

## **Advisory Board/Committee Review:**

Planning and Zoning Board

## **Insert Date of Advisory Board/Committee Review:**

## **Advisory Board/Committee Recommendation and/or Vote:**

None

## **Potential Options:**

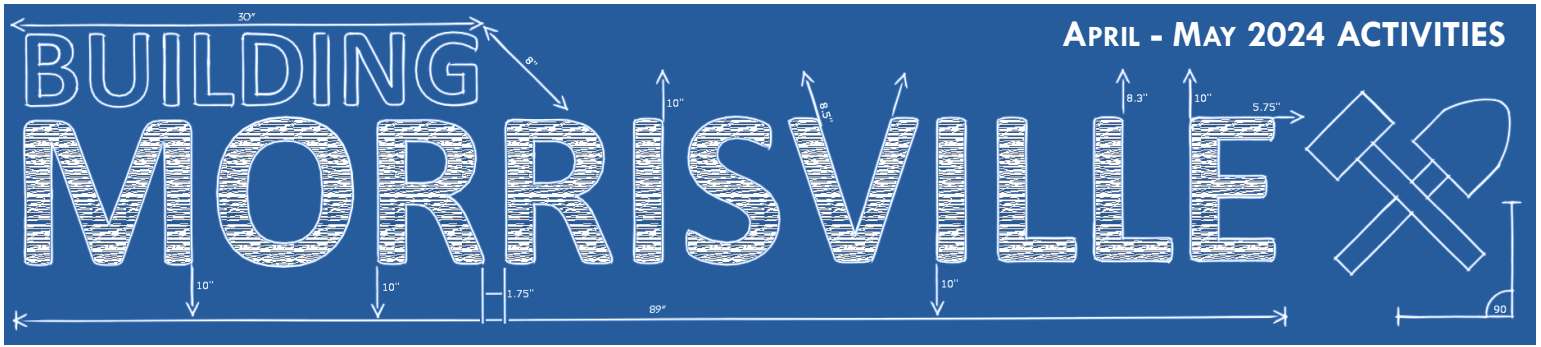
None

## **Staff Recommendation:**

None

## **ATTACHMENTS**

- [April - May 2024 Planning Newsletter](#)



**a monthly newsletter highlighting development around town**

**New Development Applications**

Site Plan/Development Combo

- None

**Town Council Approvals**

Town Council Approvals

- The Southport Master Sign Plan was recently approved at the April 22 Town Council meeting. The plan sets the stage for cohesive signage throughout the Southport area.

**Administrative Approvals**

Site and Construction Plans

- None

**Other News**

Other News

- On May 16 a Town Council work session was held to further discuss with Habitat for Humanity a potential affordable housing partnership on Town-owned properties located at 101-105 Church Street.
- The proposed FY25 Town budget includes funding for an affordable housing rental assistance and deposit assistance program. Program frameworks will be developed pending approval of funding in the FY25 budget.
- The final draft of the Morrisville Parkway Comprehensive Access Management Study and Stirrup Iron Creek/Mills Spring Greenway Feasibility Study are both under review and expected to be presented to Town Council on June 25.
- Town Council was briefed, and a public hearing was held on the UDO text amendments related to masonry painting, tobacco/hemp use restrictions, government accessory buildings architectural exemptions, and stormwater management at the May 14 meeting. Action on this item is slated for the June 11 Town Council meeting.

