

**NORTH CAROLINA**

**DISPOSITION CONTRACT**

**WAKE COUNTY**

**Pursuant to N.C.G.S. 160A-274**

This DISPOSITION CONTRACT ("Contract") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between **WAKE COUNTY, NORTH CAROLINA**, a body politic and corporate, whose address is P.O. Box 550, Raleigh, North Carolina 27602 (the "County") and the **TOWN OF HOLLY SPRINGS, NORTH CAROLINA**, a municipal corporation and body politic (the "Town"), jointly referred to herein as the "Parties."

**WITNESSETH:**

WHEREAS, the County owns 19+ acres of real property ("the Property") more particularly described in Exhibit "A" attached hereto and incorporated and further identified in Deed Book 5418, Page 249, Wake County Registry, located in Holly Springs, North Carolina; and

WHEREAS, by vote of the Wake County Board of Commissioners ("Board") on or about June 5, 2017, the Property was declared "surplus"; and

WHEREAS, in January 2020, an RFP was released for the purpose of solicit offers for its sale pursuant which mandated a certain portion of the real property be utilized for the construction of affordable housing, subject to final acceptance by the Board; and

WHEREAS, My Computer Career, Inc. ("MCC") and DHIC, Inc. ("DHIC") were the only parties to respond to the RFP and submitted a satisfactory, joint proposal; and

WHEREAS, MCC and DHIC submitted a detailed RFP response that includes a plan for the subdivision of the real property into two parcels for the construction of affordable housing and commercial development; and

WHEREAS, MCC and DHIC have jointly engaged the Town and have developed a preliminary site plan with input from Town planning staff and have entered into a Memorandum of Agreement (MOA) originally dated September 16, 2020, and subsequently revised, approved by the respective governing boards of the County and Town; and

WHEREAS, the MOA process has yielded discussions between the County and Town staff regarding oversight and control of the collaborative development, wherein it has been determined that the County is best suited to handle the real estate transaction for the parcel intended to be dedicated for affordable housing in accordance with G.S. 153A-378(3) and the Town is best suited to handle the real estate transaction to for the parcel intended to be sold for commercial development under the Town's economic development policy in accordance with G.S. 158-7.1; and

WHEREAS, notwithstanding the MOA, the Town shall maintain all jurisdictional control over land use planning and development permitting for the site given its location in the Town limits; and

WHEREAS, staff for the County and Town have negotiated a donative conveyance of an approximate 10+/- acre portion of the property ("Town Parcel") as identified in Exhibit B, said conveyance being duly authorized by the Wake County Board of Commissioners on November 16, 2020 and the Town of Holly Springs Town Council on November 17, 2020, and subject to the terms and conditions of this Agreement; and

WHEREAS, the County will retain ownership of the approximate 9+/- acre portion of the property ("County Parcel") as identified in Exhibit B for the purpose of facilitating development of the planned affordable housing; and

WHEREAS, upon the terms hereinafter set out, the County hereby agrees to transfer, and the said Town hereby agrees to accept fee simple ownership in Town Parcel.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the County and the Town agree that the terms and conditions governing the donative conveyance of the Town Parcel is as follows:

1. The Town Parcel shall be conveyed, without monetary consideration, to the Town pursuant to N.C.G.S. 160A-274, subject to the terms and conditions set forth and incorporated herein.
2. As a condition to the County's donative conveyance of the Town Parcel, the Town must demonstrate satisfaction of the following special conditions prior to conveyance:
  - i. Rezoning of the Property to allow for intended development and use of a portion appropriate thereof for multi-family residential development;
  - ii. A resolution approved by the Town Council entered upon its minutes that: 1) authorizes the Manager to enter into this Contract, 2) accepts the conveyance of the Town Parcel subject to a deed restriction for public use with a compensation reservation in favor of the County in the event the parcel is sold or leased for non-public use, and 3) accepts conveyance of the Town Parcel with the condition that the County is not required to expend any additional funding to effectuate the conveyance or improve the Town Parcel; and
  - iii. Approval of a subdivision plat of the subject Property into two (2) separate parcels, roughly 9+/- acres and 10+/- to accommodate the intended development and use of the 9+/- acre parcel for multi-family residential development.
  - iv. Failure of the Town to comply with any of the above executory actions shall be considered a breach, and the remedy would be specific performance by the County, or its assigns.

3. As a condition to the County's donative conveyance of the Town Parcel, the Town hereby obligates itself to the following executory actions, which may occur at any time relative to the conveyance:
  - i. Final site plan approval for the County Parcel vesting rights for the development of a multi-family residential development with a minimum of 125 units in conformance with the MOU and otherwise approved by the County;
  - ii. Failure of the Town to comply with any of the above executory actions shall be considered a breach, and the remedy would be specific performance by the County, or its assigns.
4. The Parties additionally make the following representations, warranties and covenants as of the date of this Contract and as of the date of closing; such representations, warranties and covenants shall survive closing:
  - i. The Parties have full authority to enter into this Contract and to execute all documents contemplated hereby, and their execution, delivery and performance of this Contract will not violate the provisions of any other contract or agreement to which either Party is bound.
  - ii. The Town Parcel will be conveyed in its present condition "as is", "where is", "with all faults," environmental or otherwise, including both latent and patent defects, and without any representations and warranties whatsoever from the County. Except for the express warranties contained herein, the Town hereby waives all warranties, and accepts the Town Parcel and any improvements thereon "as is" without recourse against the County.
  - iii. The County shall not be required to expend any additional funding to effectuate the conveyance of the Town Parcel to the Town. The County shall not be required to make any additional improvements to the Town Parcel.
  - iv. The County has good and marketable title to the Town Parcel and has not pledged the Town Parcel as collateral or otherwise encumbered the Town Parcel with any security contract, lien (including materialmen's lien), promissory note, Deed of Trust, or mortgage and as such, there are no known persons or entities other than County who have a right, claim, ownership or interest in the Town Parcel.
  - v. Within three (3) years of conveyance, the Town (and/or its designees/successors/assigns) covenants and agrees to develop the Town Parcel or offer for development to a third-party for uses compatible with the proposed multi-family residential development on the adjacent County Parcel. For purpose of clarity, the Parties agree that the uses described in the MOU (i.e., office space, neighborhood entertainment, and retail) are compatible. Until such time as the Town determines what portion of the Town Parcel shall be suitable for disposition to a third-party, the Town covenants and agrees that any use of the Town Parcel shall be a

public use that is compatible with the proposed multi-family residential development planned on the County Parcel, as determined and approved by the Town. For purposes of this section, "public use" shall exclude any commercial uses of the Town Parcel that do not further or advance a municipal or governmental function, purpose, or activity. Nothing herein shall restrict the Town's ability to independently determine appropriate public uses of the Town Parcel or to partner with private or non-profit entities for the joint use of the Town Parcel, provided the use is in keeping with the restrictions stated herein.

- vi. The Town covenants and agrees that in the event the Town Parcel, or any portion thereof, is sold at a future date for monetary consideration, the Town will disburse the net sales proceeds derived from said sale to the County. For purposes of this provision, any sale of the Town Parcel, or a portion thereof, must comply with Article 12 of Chapter 160A of the North Carolina General Statutes and unless otherwise exempt, shall be sold for fair market value. For purposes of this Contract, fair market value shall be determined based on an appraisal performed by a licensed North Carolina MAI appraiser mutually selected by the Town and the County. This covenant is inserted as a condition to the donative conveyance and in consideration of the County's investment in the Town Parcel. It is not the intent of this restriction to foreclose or restrict the Town's ability to dispose of the Town Parcel in accordance with any of the disposition procedures set forth in Chapter 160A of the General Statutes, but to merely preserve the County's consideration for transferring the Town Parcel in accordance with G.S. 160A-274 without the benefit of monetary consideration or payment to the County.
- 5. There are no prorations or adjustments between the Parties to be paid at closing.
  - 6. The Town Parcel must be in substantially the same condition at Closing as on the date of this Contract. The Town shall remove the County's name or logo from all signage located on the Town Parcel within 30 days of closing.
  - 7. Title will be delivered at closing by Non-Warranty Deed. The form of Deed for this transaction is attached hereto as "Exhibit C" and shall include the following special covenants and reservations, being further described in paragraph 3(v) and 3(vi), above:
    - i. Covenant of Restriction on Use: The Town Parcel may be used for any public purpose without advancement of compensation to the Grantor. If a portion or portions of the Town Parcel are conveyed or leased for a non-public purpose, the Town shall receive consideration equal to fair market value and compensate the Grantor in accordance with the Compensation Reservation provision set forth herein. Any use of the Town Parcel shall be compatible with the multi-family residential use of the adjacent County Parcel.
    - ii. Grantor's Compensation Reservation: As part of the consideration for this Deed, the County hereby reserves for itself the right to compensation in the event the Town Parcel, or any portion thereof, is leased, sold, conveyed, or transferred by the Town to a third-party ("Sale") for monetary consideration. The Town hereby covenants and agrees that any Sale of the Town Parcel will not be less than fair market value as determined by a licensed North

Carolina real estate appraiser. For purposes of this reservation, the County shall be entitled to a portion of the net proceeds "County Proceeds" (as defined and calculated below), derived from the Sale. The "County Proceeds" shall be calculated by subtracting from the "Net Closing Proceeds" received by the Town at closing, any reasonable costs or expenses incurred by the Town in maintaining the Town Parcel during the Town's period of ownership, which shall not exceed \$50,000.00 ("Town Holding Costs"). The "Net Proceeds" shall be that same amount listed on the standard HUD- Settlement Statement "Cash to Seller" line, representing the net amount allocated to the Seller (Town) at closing or the rental payment proceeds as identified by a lease agreement. The "County Proceeds" shall be paid by the Town at or within three (3) business days from the closing date or alternatively to coincide with the first date of a prospective lease term.

COUNTY PROCEEDS = Net Proceeds – Town Holding Costs

- iii. Reverter Clause: In the event the Town Parcel is not actively used by the Town or conveyed within three (3) years from the date of this Deed, all right, title, and interest in the property shall automatically revert to the grantor. The Parties understand that in order to accommodate the residential use on the County Parcel, it may be necessary to dedicate certain sections of the Town Parcel for right of way, easements, or other public uses necessary to serve the County Parcel. As such, in the event of any reverter, the Town shall transfer back to the County only those areas of the Town Parcel not otherwise encumbered by rights of way, easements, or other hereditaments necessary to accommodate the residential use on the County Parcel.
8. This Contract may not be assigned without approval of the Wake County Board of Commissioners and the Town Council.
9. Any provision herein contained which by its nature and effect if required to be observed, kept or performed after the closing shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.
10. The Town acknowledges that it has preliminarily inspected the Town Parcel and has received due diligence documents and site inspection reports associated with the Town Parcel. The Town shall have the ability to perform due diligence to complete its final inspections, surveys, appraisals, environmental audits and other assessments any time before Closing, but shall coordinate with the County to obtain access to the Town Parcel for accomplishing the same. The Town and County shall equally split the costs associated with the survey work to be performed associated with the subdivision of the Property contemplated herein and the appraisal to be performed in accordance with Section 3(vi) of this Contract.
11. The Parties confirm they have not hired or engaged a broker or agent in this transaction. To the extent legally permissible, the Parties shall each indemnify and hold the other harmless from and against any claim made by any broker or other person or entity claiming a commission or fee as a result of having any Contract with the indemnifying party, in connection with this transaction.
12. The Town shall pay for the recording fees associated with the Non-Warranty Deed.

13. Subject to satisfaction of all closing conditions, the terms and conditions of this Contract, the Parties agree to execute any and all documents and papers necessary in connection with closing and transfer title on or before \_\_\_\_\_ (“CLOSING DATE”), unless a later closing date is agreed to in writing.
14. This Contract contains the entire agreement of the Parties and there are no representations, inducements, or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all Parties.
15. The parties, their successors and/or assigns agree to cooperate with each other during development with respect to any temporary or utility easements necessary to effectuate the purpose of the MOU.

IN TESTIMONY WHEREOF, said parties have executed this CONTRACT in duplicate originals (one copy of which is retained by each party) the day and year written below.

BY: COUNTY

WAKE COUNTY

\_\_\_\_\_  
David Ellis, County Manager

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

Approved as to form:

\_\_\_\_\_  
Scott W. Warren, County  
Attorney

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

\_\_\_\_\_  
Wake County Finance Director, or designee

\_\_\_\_\_(SEAL)  
(name, title)

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

BY TOWN:

TOWN OF HOLLY SPRINGS

\_\_\_\_\_  
Randy J. Harrington, Town  
Manager

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

Approved as to form:

\_\_\_\_\_  
John Schifano, Town Attorney

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

\_\_\_\_\_  
Town Finance Director, or designee

\_\_\_\_\_(SEAL)

Linda McKinney, Town Clerk

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

**EXHIBIT A**

**Legal Description**

**EXHIBIT B**

**Proposed Subdivided Parcels  
(County Parcel & Town Parcel)**