

ECONOMIC DEVELOPMENT AGREEMENT BETWEEN LONGFELLOW REAL ESTATE PARTNERS, LLC AND THE CITY OF DURHAM

THIS AGREEMENT (the “Agreement”), is made, dated and entered into as of the _____ day of _____, 2015, by and between the City of Durham (the “City”), a North Carolina municipal corporation and Longfellow Real Estate Partners, LLC, a _____ limited liability company (“Company”) organized and existing under the law of _____. The City and Company are also referred to individually as “Party” and collectively as “Parties.”

1. BACKGROUND AND PURPOSE

The purpose of this Agreement is to aid and encourage the development of the properties located at 224 Morris Street and 302 Morris Street, and 301 Morris Street Durham, North Carolina. The property is located inside the Downtown Development Tier of the City of Durham. The City Council finds that the construction of the capital improvements to be made by the Company and the resulting jobs to be created is likely to have a positive effect on the revitalization of the City of Durham’s downtown. The City Council also finds that it is in the City’s interest and of benefit to the Central Park District.

2. DEFINITIONS

2.1 “Associated Parking Improvements,” refers to the improvements to be constructed for parking to be used by the Durham Innovation District Phase I, and to be made available for use by the general public on the terms stated in Section 3.4 of this Agreement.

2.2 “Capital Investment,” refers to expenditures that are subject to City and County property taxes and are in the nature of the types of capital investment expenditures defined in the Resolution Establishing an Economic Development Financial Assistance and Incentive Policy for Job Creation, Job Retention and Capital Investment Approved by the City Council on April 21, 2014, Resolution #9890.

2.3 “Certificate of Compliance,” refers to the final, official document issued by the local governing authority certifying that a newly constructed or renovated building or structure is in compliance with applicable building codes, regulations and laws, such that said building or structure may be lawfully and beneficially occupied for its intended purpose as contemplated by this Agreement.

2.4 “City Payment,” refers to the payments the Company is eligible to receive if the Company satisfies the requirements of this Agreement.

2.5 “City Payment Period,” refers to the period of time during which the City is obligated to make City Payments to the Company and the Company is eligible to receive City Payments.

2.6 “Commercial Space,” refers to the total square footage of rentable office, laboratory, and commercial spaces described in the Use Development Requirements planned for the Property.

2.7 “Construction Activities,” refers to activities necessary for the construction and completion of the Use Development Requirements to be made on the Property.

2.8 “Continuous Occupancy,” refers to the maintenance of an average occupancy of at least 65% for the Commercial Space based upon Valid Lease agreement(s) and calculated by taking the total square feet of Commercial Space actually leased times the number of days leased during the three-year period immediately preceding the date of receipt by the City of the invoice for a City Payment, and dividing that number by the total rentable square feet of Commercial Space times the number of days in the subject three-year period.

2.9 “Durham Innovation District Phase I” refers to the commercial building(s) containing the Commercial Space, Associated Parking Improvements, and Open Space to be constructed on the Property.

2.10 “First Date of Operation,” refers to the first day of the calendar month immediately following the date on which the Company demonstrates to the satisfaction of the City that the Company has fully complied with all the provisions of Sections 3.1.1, 3.1.2, 3.1.3, 3.1.4 and 3.1.5 of the Agreement unless such date actually falls on the first day of any calendar month.

2.11 “Minimum Required Capital Investment,” refers to a minimum expenditure of at least \$87,000,000.00 in Capital Investment to be made in the Property pursuant to the terms of the Agreement.

2.12 “Open Space,” refers to the open space to be constructed by the Company for use by owner and tenants of the Property, and to be made available for use by the general public on the terms stated in Section 3.1.5 of this Agreement.

2.13 “Property,” refers collectively to the properties upon which the Durham Innovation District Phase I improvements are to be made, which includes 224 and 302 Morris Street and 301 Morris Street, and which are identified by Durham County Tax Parcel ID Nos.: 103025, 103024 and 104871.

2.14 “Use Development Requirements,” refers to the specific development improvements or renovations to be made to the Property by the Company, which development shall include (a) construction of a commercial building providing approximately 271,000 square feet of commercial office and laboratory space and (b) the construction of the Associated Parking Improvements including a parking garage having approximately 820 spaces, and Open Space as described in this Agreement. For the purposes of the definition of Use Development Requirements, the term “approximately” as used in this definition shall mean no less than a 10% downward deviation in any unit of use development listed above.

2.15 “Valid Lease” means a binding lease agreement for an identifiable amount of rentable square footage in the Durham Innovation District Phase I, whether all such space is immediately occupied by the tenant on the date of the lease or not, between the Company (and/or its successor, assigns, or affiliates) and a tenant, which serves a legitimate business purpose. A lease is not considered a Valid Lease under this Agreement if it is a sham transaction, in the reasonable opinion of the City, designed solely for the purpose of circumventing the Continuous Occupancy provisions of this Agreement. However, the City acknowledges that the Company has a legitimate business reason for offering periods of free or reduced rent in an effort to attract tenants and businesses, and the single fact that a lease contains such a provision in no way indicates that said lease is a sham transaction.

3. PARTY REQUIREMENTS AND OBLIGATIONS

3.1 Company Requirements for City Payment. As a precondition to eligibility for City Payments and to maintain continuing eligibility for City Payments, Company shall comply with the following requirements:

3.1.1 Commencement and Completion of Construction. The Company shall apply for a permit(s) valued at no less than \$1,500,000 by no later than December 31, 2016 and secure a final Certificate of Compliance for 100% of the improvements made to the Commercial Space, the Associated Parking Improvements, and the Open Space by June 30, 2019 (hereinafter, “Completion Date”).

3.1.2 Use Development Requirements. As part of the Use Development Requirements, the Company shall cause to be invested the Minimum Required Capital Investment in connection with development of the Property that meets the Use Development Requirements. The Company shall provide marketing material or other appropriate documentation verifying the type and quantity of use development for the Property necessary to comply with the Use Development Requirements.

3.1.3 Workforce Plan and Durham-Based Business Plan Conditions. Company shall complete and return the document entitled “Durham-Based Business Plan” (attached hereto as Exhibit A) upon execution of this Agreement and comply with its provisions (as revised) during the City Payment Period. Company shall complete and return the document entitled “Workforce Development Plan” (attached hereto as Exhibit B) upon execution of this Agreement and comply with its provisions during the City Payment Period.

3.1.3.1 Company shall meet with the Director of the City’s Office of Economic and Workforce Development (“Director” and “OEWD”, respectively) prior to the Company entering into any contract(s) for construction of the Property in order to discuss potential contracting opportunities for goods and services or construction and repair work with Durham-based firms.

3.1.3.2 The Director will provide the Company with recommended goals for hiring such identified Durham-based firms.

3.1.3.3 In all solicitations for which goal(s) are established, Company's contractor responsible for hiring construction related firms, will not enter into contracts without first soliciting bids from Durham-based firms and requiring bidders to submit a participation plan identifying whether it is a Durham-based firm (as defined by OEWD) and the level of participation of other Durham-based firms as subcontractors. If a Company's contractor responsible for hiring construction related firms fails to achieve the goal(s), the Company's contractor responsible for hiring construction related firms must submit documentation to Company of its good faith efforts to achieve the goal(s) within two working days after bid opening. Company shall take all reasonable actions needed to see that its contractors comply with this subsection. Company shall make bids and documentation of good faith efforts available to the Director.

3.1.3.4 Company will notify the Director of OEWD of upcoming contracting opportunities to ascertain the availability of Durham-based firms that might be capable of providing the pertinent work. Each such notice shall be given in a manner and schedule so that the Durham-based firms will have a reasonable amount of time to respond.

3.1.3.5 Company will provide reports quarterly, or more frequently if requested by the City, using a form highly similar in format to, Exhibit C "Durham-Based Business Plan Quarterly Report", on all contracting activity, to the Director, for reporting to the City Council. The reports shall be due the last day of April (for January – March), July (for April – June), October (for July – September) and January (for October – December).

3.1.4 Assurance by Company of Appropriate Treatment of Contractors and Lower Tier Subcontractors. In order to remain eligible for City Payments, upon written request by the City delivered in accordance with the notice provisions of this Agreement, Company shall provide documentation showing either that all entities with whom it has a contract to construct all or any portion of the improvements on the Property have been paid in full and on time, or that a bona fide dispute over the satisfactory completion the work to be performed exists and is in the process of being resolved in accordance with applicable law. Further, Company shall include a requirement in any agreement it enters into with any entity to construct all or any portion of the improvements on the Property requiring such entity to include a provision in any subcontract it enters into which permits the City to require that contractor and its subcontractor to provide documentation showing either that all entities who have been contracted to construct all or any portion of the improvements on the Property have been paid in full and on time, or that a bona fide dispute over the satisfactory completion the work to be performed exists and is in the process of being resolved in accordance with applicable law. The documentation the City may request shall include certified payment applications, a certificate or affidavit of payment by the Company, owner(s), prime contractors or subcontractors, invoices, cancelled checks, schedule of values or such other information as may be reasonably requested by the City. Evidence of bona fide disputes over the satisfactory completion of

any work pursuant to any contract or subcontract shall include, but not be limited to, unsatisfied property or payment liens, pending lawsuits or unresolved contract claims made in writing. If the City, through its City Manager, determines that the Company has failed to pay any entity with which it has a direct contract to construct all or any portion of the improvements on the Property have not been paid in full and on time, and that a bona fide dispute over the satisfactory completion the work to be performed which is in the process of being resolved in accordance with applicable law does not exist, the City shall give the Company thirty (30) days written notice of its intent to suspend City Payments. If the Company has not provided sufficient documentation at the end of this thirty (30) day period either that the payment(s) in question have been made, or that a bona fide dispute over the satisfactory completion the work to be performed exists and is in the process of being resolved in accordance with applicable law, the City may suspend City Payments. City Payments shall be resumed upon the submission by the Company to the City of sufficient documentation showing either that the payments in question have been made, or that a bona fide dispute over the satisfactory completion the work to be performed exists and is in the process of being resolved in accordance with applicable law. The City shall have no power to suspend City Payments due to failures of contractors and subcontractors with whom the Company does not have a direct contractual relationship to comply with the terms of contracts to which the Company is not a party. The rights and obligations of the City and the Company pursuant to this Section 3.1.4 shall only apply during the City Payment Period, and only shall apply to the initial construction of the Use Development Requirements pursuant to this Agreement, and not to any subsequent construction work or tenant upfit performed on the Property at a later date.

3.1.5 Provision of Open Space. On or before the Completion Date, the Company shall designate an area of Open Space within the area of the Property for use by the owner and tenants of the Property, and the general public on the following terms:

3.1.5.1 The Open Space shall consist of a tract of land within the boundaries of the Property which shall be of a size that is at least 7.23% of the gross acreage of the Property;

3.1.5.2 In determining the location and configuration of the Open Space, the Company agrees to review the Durham Parks and Recreation Master Plan and Downtown Open Space Plan and consult with the City Parks and Recreation Department and City/County Planning Department. It is understood that the purpose of such consultation is to insure that consistency with current and planned pedestrian access and greenway connectivity in the area of downtown Durham where the Property is located is a factor considered by the Company in determining where to designate the Open Space, which determination otherwise shall be in the sole discretion of the Company, subject to the terms of this Section 3.1.5;

3.1.5.3 The Open Space shall be located so that it abuts and has unrestricted access to and from at least one existing public street or right-of-way, so that

pedestrians may gain easy access to the Open Space on foot; and

3.1.5.4 On or before the Completion Date, and in consideration of the City Payments and the terms of this Agreement, the Company shall prepare and record a set of protective covenants for the Property which, among other things, will provide that the Open Space shall be maintained as common area for the use and enjoyment of the Owners and Tenants of the Property, that the Owner and its successors or assigns shall bear all the expense of maintaining the Open Space as common area, and granting an easement to the City for the benefit of the general public which gives the general public the same privileges to use and enjoy the Open Space as are enjoyed by the Owners and Tenants of the Durham Innovation District Phase I.

3.1.6 Maintenance of Minimum Level of Continuous Occupancy. Subject to Section 23 (Force Majeure) below and to ensure job creation and maintenance, the Company shall maintain the Commercial Space in Continuous Occupancy throughout the City Payment Period of this Agreement in order to be eligible for each City Payment beginning with the 3rd City Payment. Failure to maintain Continuous Occupancy shall result in a 100% reduction in the City Payment for the subject year (i.e., no City Payment for that year). For the purpose of the Continuous Occupancy requirements pursuant to this Agreement, any space for which there is a Valid Lease shall be considered to be occupied space.

Example 1: Assume the total Commercial Space is 271,000 square feet (sf). If during the 3 years prior to the receipt by the City of an invoice for a City Payment that 100% of the Commercial Space was leased but only for 700 days during the subject 3 year period, the Continuous Occupancy requirement would not be met and there would be no City Payment for that year. The calculation is as follows:

$$(271,000(sf) \times 700 (days)) \div (271,000(sf) \times 1095 (days)) = 64\%$$

Example 2: Assume the total Commercial Space is 271,000 square feet (sf). Assume that during the 3 years prior to the receipt by the City of an invoice for a City Payment (a) 50% of the Commercial Space was leased for the entire 3-year period, (b) 50% of the Commercial space was leased for 745 days. The Continuous Occupancy requirement would be met and Company would be eligible for the City Payment. The calculation is as follows:

$$\left((135,500(sf) \times 1095 (days)) + (135,500(sf) \times 745(days)) \right) \div (271,000(sf) \times 1095(days)) = 84\%$$

3.2 City Obligations to Pay Incentives. After the Company has satisfied the preconditions of Sections 3.1.1, 3.1.2, 3.1.3, 3.1.4, and 3.1.5 the City agrees to make City Payment for Year 1 and 2 to the Company according to the conditions of this Section 3.2. For the remaining City Payments Year 3 through Year 15, Section 3.1.6 shall also apply

to the Company's eligibility for the remaining City Payments. The maximum eligible payment for each annual City Payment is \$350,000.00.

The total maximum possible City Payments shall not exceed \$5,250,000.00 over the City Payment Period.

3.2.1 Invoicing and Timing of Incentive Payments. The Company shall send invoices to the City for the aforementioned City Payment amounts to be paid pursuant to this Agreement. Each invoice shall document, to the reasonable satisfaction of the City: confirmation that the Company has complied with required preconditions to be eligible for the City Payments, including such additional information as may be reasonably requested by the City. Within 60 days after the City receives a City Payment invoice, with appropriate documentation, the City shall send the Company a check for the applicable City Payment.

3.2.1.1 Year 1 City Payment Timing. Upon establishment of the First Date of Operation, the Company may invoice the City for the Year 1 City Payment no earlier than January 1 of the calendar year after the 1st year anniversary of the First Date of Operation. By way of example, if the First Date of Operation is determined to be July 1, 2019, the earliest that the Company could invoice the City for the Year 1 City Payment would be January 1, 2021. If, however, the First Date of Operation was established to be December 31, 2018, the earliest the Company could invoice the City for the Year 1 City Payment would be January 1, 2020.

3.2.1.2 Year 2 through Year 15 City Payment Timing. The Company may invoice the City annually for each City Payments Year 2 through Year 15 beginning on the 1st anniversary of the Company's receipt of the Year 1 City Payment.

3.3 No additional Tax Credits or Tax Exemptions. To induce the City to enter into this Agreement, Company covenants and agrees that during the City Payment Period, no new or additional application for designation of any portion of the Property pursuant to N.C.G.S. § 160A-400.5 or any similar or successor statute, shall be submitted to the City or County which would have the effect of reducing the tax revenue of the City for all or any portion of the real estate which comprises the Property. The Company further agrees that no application for exemption from ad valorem property taxes shall be submitted to the City or County for any portion of the Property. Notwithstanding the foregoing, the Company shall not be prohibited from seeking or obtaining the continuation of the existing landmark status of the Property or from pursuing or participating in programs for credits or deductions related to state or federal income tax. Further, the company shall not be prohibited from contesting the valuation of the Property for tax purposes by the County Tax Assessor in accordance with applicable law. Unless the City waives such Section 3.3 requirement in writing, failure of the Company to comply with this Section 3.3 shall release the City of its obligation to make any further City Payment otherwise required and shall allow the City to seek reimbursement for all City Payment made as of the date of non-compliance by the Company of this Section 3.3 in an amount equal to the City

Payment(s) made to the Company for the year(s) during which such ad valorem property tax exemption applied.

3.4 Parking Available to General Public during Evening and Weekend Hours.

3.4.1 General Public Parking. For a period of forty (40) years from the Commencement Date (“General Public Parking Term”), Company shall make available a minimum of 50% of the parking spaces constructed on the Associated Parking Improvements to the general public on a first-come, first-serve basis, during evening and weekend hours at Market Rates in accordance with the terms of this Section 3.4 (hereinafter, “General Public Parking”). It currently is estimated that the Associated Parking Improvements will consist of approximately 820 spaces, but the specific design and capacity of the Associated Parking Improvements has not yet been determined and therefore those improvements may consist of more, or less, than 820 spaces.

3.4.2 Market Rate, Hours of Operation. For the purpose of this Section 3.4, the term “Market Rates” shall mean an hourly charge for parking on the Associated Parking Improvements which is comparable to that charged by other parking facilities of similar quality to the Associated Parking Improvements which are located in the Downtown Development Tier of the City of Durham, including without limitation and by way of example only, those parking facilities owned or operated by the City of Durham in that location, and those parking facilities owned or operated by the County of Durham in that location. By way of example, an acceptable Market Rate shall be a rate that approximates the mean rate charged by public and privately owned comparable parking facilities located in the Downtown Development Tier. The hours of operation for General Public Parking shall include “evening hours” to be from 7:00 p.m. through 6:00 a.m. the next morning Monday through Thursday, and weekend hours to be from 7:00 p.m. Friday through 6:00 a.m. Monday. Company may charge the general public Market Rates for the General Public Parking for use of the Associated Parking Improvements consistent with the terms of Section 3.4.

3.4.3 No Discrimination Against General Public Parkers. Company shall not discriminate against the general public for use of, and access to, the Associated Parking Improvements for General Public Parking. The Company shall have the right to designate up to 50% of the spaces within the Associated Parking Improvements as reserved for specified users during evening hours and weekends. The Company shall have the right to designate up to 100% of the spaces within the Associated Parking Improvements as reserved for specified users during weekdays (excluding evening hours subject to the General Public Parking times). However, subject to the Company’s right to designate reserved parking spaces, the Company’s right to charge Market Rates for parking and the hours of operation for General Public Parking pursuant to Section 3.4.2, the general public shall have the same access and rights of use of the Associated Parking Improvements as the tenants of the Durham Innovation District Phase I.

3.4.4 Enforcement of General Public Parking Rights. On or before the Completion Date, and in consideration of the City Payments and the terms of this Agreement, the

Company shall prepare and record a set of protective covenants for the Property which, among other things, shall grant an easement to the City for the benefit of the general public for the period of the General Public Parking Term, providing that the Associated Parking Improvements are subject to the General Public Parking rights set forth in this Section 3.4. The set of protective covenants granting easement to the City and prepared by the Company must be reasonably satisfactory to the City and approved by the City as being consistent with the terms of this Section 3.4. The City shall have the right to enforce its easement for the General Public Parking rights in accordance with applicable law.

4. Time Of Essence. Notwithstanding any other provision contained in this Agreement, the City shall have no obligation to and shall not make any payment to the Company pursuant to this Agreement if the Construction Activities on the Property are not started by the Commencement Date and completed by the Completion Date as described in Section 3.1.1.

5. Address and Contact Information. The payment to the Company and written notices pursuant to this Agreement shall be mailed or otherwise delivered to:

Attn:
Jamison N. Peschel
Managing Partner
Longfellow Real Estate Partners, LLC
260 Franklin St #1520,
Boston, MA 02110
(617) 303-2901

When a notice is required or permitted by this Agreement, it shall be given by written notice to the City by delivery to:

Director
Office of Economic and Workforce Development
City of Durham
302 East Pettigrew Street, Suite 190
Durham, North Carolina 27701
FAX – 919-560-4986

6. Change Of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be given in writing may be delivered by hand, overnight courier, United States Mail or by fax, and shall be deemed given at the time of actual delivery, if it is hand delivered or sent by fax. If the notice or other communication is delivered by overnight courier, it shall be deemed given on the date delivery was certified by the carrier to have occurred. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

7. EEO Provisions. During the performance of this Agreement the Company agrees as follows: (1) The Company shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Company shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Company shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Company shall in all solicitations or advertisement for employees placed by or on behalf of the Company, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Company shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Company's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this Agreement, in whole or in part, and the City may declare the Company ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Company shall include these EEO provisions in every purchase order for goods to be used in performing this Agreement and in every subcontract related to this Agreement so that these EEO provisions will be binding upon such subcontractors and vendors.

8. City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

9. Assignment. Successors And Assigns. Without the City's written consent, the Company shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Company and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Company's duties that arise out of this Agreement and all of the City's claims that arise out of this Agreement. Without granting the Company the right to assign, it is agreed that the duties of the Company that arise out of this Agreement shall be binding upon it and its heirs, personal representatives, successors, and assigns. Notwithstanding the foregoing limitations on assignment, the City's consent shall not be required for an assignment of the Company's rights and duties hereunder if: a) the Company makes such assignment to any entity that is an affiliate of the Company; or b) the Company makes such assignment in connection with a sale of the Property.

10. Default. Termination. If the Company fails to fulfill any of its material obligations under the Agreement, or if any certification made by the Company is materially false, then in that event, subject to the notice and cure provisions in Section 25, the City may hold the Company in default and (a) terminate this Agreement and make no further payments to

Company, and (b) in the case of a materially false certification by Company, recover all prior payments and reasonable direct expenses incurred by the City in connection with the Company's materially false certifications or failure to fulfill its obligations pursuant to this Agreement, including reasonable attorney's fees. If the Company does not deliver to the City the Certification of Compliance pursuant to Section 3.1, and does not seek payment under Section 3.2, the Company shall not be considered in default for failing to deliver the required certification. In the event the Company fails to provide such required certification(s) pursuant to Section 3.1.1 above within 18 months after the First Date of Operation, either party shall have the right to terminate this Agreement. The Parties agree that the only obligation of the City under this Agreement is to pay the company the City Payments pursuant to the terms herein under Section 3.2. Accordingly, if the City defaults on its obligation to make such incentive payments pursuant to this Agreement, the Company's sole claim or remedy at law shall be the value of the incentive payment(s) that the City was found obligated to pay, including reasonable direct expenses and attorney's fees incurred in obtaining such incentive payment.

11. Choice Of Law And Forum. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of the State North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section 11.

12. Modifications. Entire Agreement. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a Deputy or Assistant City Manager signs it for the City. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

13. City Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this Agreement or the Company's services under this Agreement, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

14. Principles Of Interpretation And Definitions. In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this Agreement. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement. (5) "Duties" includes obligations. (6) The word "person"

includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word “shall” is mandatory. (8) The word “day” means calendar day.

15. Exhibits. The following exhibits are made a part of this Agreement:

Exhibit A, “Durham Based Business Plan,” (containing 5 pages);
Exhibit B, “Workforce Development Plan,” (containing 4 pages); and,
Exhibit C, “Durham-Based Business Plan Quarterly Report,” (containing 1 page).

In case of conflict between an exhibit and the text of this Agreement excluding the exhibit, the text of this Agreement shall control.

16. Indemnification. (a) To the maximum extent allowed by law, the Company shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Company or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection “a,” the Company shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsection “a” above -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding the Company. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement. (d) Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Company under this Agreement. (e) Limitations of the Company's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection “a” above shall not require the Company to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

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

18. Performance Of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

19. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law unless the provision invalidated is so fundamental to this Agreement that this Agreement shall fail of its essential purpose without the provision that was invalidated..

20. Compliance With Law. In performing all of the Work, the Company shall comply with all applicable law.

21. No Third Party Rights Created. This Agreement is intended for the benefit of the City and the Company and not any other person.

22. Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act, event, notice, or default after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the county where the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m., Eastern Standard Time.

23. Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of the following: labor dispute, including strike and lockout; unavailability of essential materials, riot; epidemic; war, extreme weather events, fire; explosion; accident; delays or default of the other party, then performance of such act shall be excused for the period of the delay, and thereafter the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, a party may take advantage of the preceding sentence only to the extent that the event is not substantially caused by the party to this Agreement who seeks to use said event as an excuse for failure to perform. A party must use its best efforts to perform despite said events and its best efforts to prevent or cure the effects of said event insofar as it prevents performance.

24. Regulatory Process. If the Durham Planning Department or other regulatory agency delays or does not grant promptly an application for a permit or site plan approval made by the Company in connection with its development of the Property pursuant to this Agreement, then each of the deadlines contained herein may be extended by the length of such delay, subject to discussion by the Parties.

25. Cure Period. No default by either party hereto shall result in a termination or limitation of any rights of such party hereunder unless and until the other party shall have notified the defaulting party in writing of said default, and the defaulting party shall have failed to cure said default within thirty (30) days after the receipt of said written notice provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but the defaulting party commences and diligently pursues a cure of such default promptly within the initial thirty

*Economic Development Agreement between
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(30) day cure period, then the other party shall not exercise its remedies or limit the rights of the defaulting party unless such default remains uncured for more than ninety (90) days after the initial delivery of the other party's original default notice.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed under seal themselves or by their respective duly authorized agents or officers.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

*Economic Development Agreement between
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ATTEST:

CITY OF DURHAM

By: _____

Pre Audit Certificate

LONGFELLOW REAL ESTATE PARTNERS, LLC

By: _____ (SEAL)
Manager

State of _____

**ACKNOWLEDGMENT BY
LONGFELLOW REAL ESTATE
PARTNERS, LLC**

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally (1) appeared before me this day (2) stated that he or she is the manager of LONGFELLOW REAL ESTATE PARTNERS, LLC , a limited liability company organized and existing under the laws of the State of North Carolina, (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution, under seal, of the contract on behalf of the company. This the _____ day of _____, 2015.

My commission expires: _____

Notary Public