Instrument prepared by:
Mail after recording: Town Clerk, Town of Rolesville, PO Box 250, Rolesville, NC 27571

NORTH CAROLINA

WAKE COUNTY

DEVELOPMENT AGREEMENT
ATTICUS WOODS

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made to be effective as of the _____ day of _____, 2025, by and between the **TOWN OF ROLESVILLE**, a North Carolina municipal corporation (the "**Town**") and **ARDENT BUILDING, LLC**, a North Carolina limited liability company (the "**Developer**").

WITNESSETH:

WHEREAS, Developer desires to develop the real property comprised of approximately 101.123 acres and which is more particularly described on Exhibit A, attached hereto and incorporated herein (the "**Property**"); and

WHEREAS, the Property is an assemblage of parcels currently owned by Thales Academy and WFINV, LLC; and

WHEREAS, Developer has the right to purchase the Property under a purchase agreement(s) with Thales Academy and WFINV, LLC; and

WHEREAS, Developer desires to develop the Property as a mixed use development with a retail center and a neighborhood of single-family homes and townhomes, the concept plan for which is attached hereto and incorporated herein as Exhibit B;

WHEREAS, on _____, Developer filed a rezoning application (REZ-24-05) proposing to rezone the Property to Neighborhood Center ("NC") (the "Rezoning Application"); and

WHEREAS, between _____ and _____, Developer supplemented the Rezoning Application by amending its concept plan to more closely align its

plan for development of the Property to the Town's Land Development Ordinance ("LDO") and Comprehensive Land Use Plan (collectively, the "Amended Rezoning Application"); and

WHEREAS, pursuant to Section 3.4.3.D and Table 3.4.3 of Rolesville's Land Development Ordinance ("LDO"), the timing of development standards and development standards for the development may be modified as part of this Development Agreement; and

WHEREAS, on _____, following a public hearing before the Town Board of Commissioners, the Town approved the Amended Rezoning Application; and

WHEREAS, the approved rezoning of the Property permits up to 300 single-family home and townhome residential lots, up to 200,000 square feet of retail and office uses, along with ancillary public and private facilities, including streets, sidewalks, water and sewer lines, storm drainage improvements, open space, and passive and/or active recreation facilities that will be developed in multiple phases, requiring a long-term commitment of private and public resources; and

WHEREAS, pursuant to Article 10, Chapter 160D of the General Statutes, the Town possesses broad authority to form development agreements in instances when it determines that the location, nature, or size of a particular proposed development causes the necessity for Town to formulate specific conditions, terms, restrictions or other requirements for the public health, safety, or welfare of its citizens; and

WHEREAS, the Development will provide new retail and office space in an area of Rolesville where such uses are needed and currently lacking; and

WHEREAS, the residential areas of the Development will be developed to conserve significant open space and stream buffers in a manner that will benefit residents of the Town but is difficult to accommodate without modification to the residential lot standards; and

WHEREAS, pursuant to G.S. § 160D-1005, the Town Board of Commissioners conducted a public hearing on _____ concerning forming the Agreement. The notice of public hearing specified, among other things, the location of the Property subject to the Agreement, the development uses proposed on the Property, and a place where a copy of the proposed Agreement could be obtained; and

WHEREAS, the Town finds the following: (1) development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources; (2) such developments create community impacts and opportunities that are difficult to accommodate within traditional zoning processes; (3) because of the scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development; (4) 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 the development; (5) 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; (6) 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; and **(7)** modification of the LDO development standards described herein will facilitate the development of commercial uses in an area of Town that currently lacks such uses and will permit the Town to experiment with nontraditional standards for residential development while still preserving significant open space; and thereby promotes the public health, safety, and welfare; and

WHEREAS, after careful review and deliberation, including without limitation the General Assembly's findings set out in G.S. § 160D-1001, the Town Board of Commissioners finds forming a development agreement as permitted by Article 10 of Chapter 160D of the General Statutes is appropriate and is in the best interests of Rolesville and its citizens.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties hereto agree as follows:

1. Modification of Development Standards.

    a. The NC District Development Standards in Table 3.4.3 of the LDO are modified as follows:

        i. The minimum side setback for detached, single-family homes shall be reduced to 5'.

        ii. The maximum single-use/building size for self-storage, enclosed use, shall be 100,000 square feet.

        iii. The maximum single-use/building size for grocery store use, shall be 65,000 square feet.

2. Force Majeure. The parties hereto shall not be liable for any failure to perform hereunder as a result of an external event or events beyond their respective control, including, without limitation, acts of the United States of America, acts of the State of North Carolina (including the denial of permits which have been pursued in good faith), embargos, fire, flood, drought, hurricanes, tornadoes, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism, civil riots, or pandemic. However, if any such event interferes with the performance by a party hereunder, such party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance or to complete performance in as timely a manner as is reasonably possible.

3. Indemnification of Town.

    a. To the maximum extent allowed by law, Developer shall defend, indemnify, and hold harmless the Town from and against all Charges (as defined below) that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Developer or contractors or subcontractors or anyone directly or indirectly employed by or contracting with any of them or anyone for whose acts any of them may be liable. In performing its duties under this section, Developer shall, at is sole expense, defend all Charges with legal counsel

reasonably acceptable to the Town. Notwithstanding the foregoing, this Subsection shall not require Developer to indemnify or hold harmless the Town and indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the gross negligence, in whole or in part, of the Town.

b. "**Charges**" shall mean claims, suits, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, interest, reasonable attorney's fees, expenses, and 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. In this Indemnification, "the Town" includes the Town and its officers, officials, employees, independent contractors, and agents, which shall not be constructed to include the Developer.

c. Nothing in this Section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

d. This Section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and is not limited by any Warranty Period appearing elsewhere in the Agreement.

4. Written Consents from the Town. Where this Agreement refers to written approvals or consents to be given by the Town and the person or position that may give consent is not identified, the authority to give such approvals shall be delegated to the Town Manager or his designee. An approval required by this Agreement shall not be effective unless given in writing.

5. No Waiver of Governmental Authority or Discretion. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Town of Rolesville Board of Commissioners in a manner not permitted by law. The Town shall incur no liability to the Developer for any losses or damages it may incur as a result of or in connection with the Town's exercise or performance of its regulatory, legislative, or governmental powers or functions or any judicial determination regarding the same.

6. Miscellaneous.

a. Choice of Law and Forum. This Agreement shall be deemed made in Wake County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Wake County, North Carolina. Such actions shall neither be

commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

b. Waiver. No action or failure to act by the Town 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.

c. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

d. No Third-Party Rights Created. This Agreement is intended for the benefit of the Town and Developer and not for any other person, and no such persons shall enjoy any right, benefit, or entitlement under this Agreement.

e. Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) the singular includes the plural and the plural, the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "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" means the action is mandatory. (8) The word "day" means calendar day. (9) Attorneys for all parties have participated in the drafting of this document, and no future interpretation shall favor or disfavor one party over another on account of authorship.

f. Construction of Agreement. In the event of a conflict or inconsistency between this Agreement and any currently existing agreement between the Town and Developer, the provisions of this Agreement shall control. In the event of a conflict or inconsistency between this Agreement and the approved Standard Specifications, the approved Standard Specifications shall control.

g. Amendment. This Agreement shall not be modified in any manner except in writing, signed by each of the parties.

h. Applicability of Agreement. This Agreement shall be applicable to the Property and Construction Documents as approved at the time of this Agreement, and as the same shall thereafter be amended or modified and approved by the Town.

i. Preambles. The preambles to this Agreement are a part of the agreement of the parties set forth in this Agreement and shall be binding upon the parties in accordance with their terms.

7. Term. The term of this Agreement shall be a period of twelve (12) years following execution by both parties.

8. Real Covenant. This Agreement shall be a real covenant running with the Property, and any portion thereof, as it may be subdivided or recombined from time to time and shall apply to the development of all or any portion of the Property, and this Agreement shall be binding upon and shall insure to the benefit of any successor in title to the Property or any portion thereof.

9. Assignment. Developer shall be released from its obligations under this Agreement only upon the assignment and assumption of Developer's obligations hereunder by a successor in title to the Property and only with the prior written consent of the Town. The Town's consent shall not be unreasonably withheld, conditioned, or delayed if, as reasonably determined by the Town, the proposed assignee assuming Developer's obligations possesses adequate financial resources, ownership interests and development expertise needed to complete the requirements of this Agreement. An assignee's assumption of the obligations of this Agreement shall be memorialized by an assignment and assumption agreement executed by Developer and the assignee, and joined by the Town for the sole purpose of evidencing Town's consent, in a form reasonably approved by the Town Attorney and recorded in the Wake County Registry. Without otherwise modifying the foregoing, the Town consents to _____., as a permitted assignee upon execution and recordation of the aforementioned agreement.

10. Consideration. The parties hereto agree that this Agreement is mutually beneficial in that it provides for orderly urban growth and systematic extension of municipal improvements while at the same time saving a substantial amount of money for Developer by relieving Developer of certain infrastructure expenses for which it would otherwise have been obligated.

11. Default by Developer. The Town's Planning Director or his designee shall conduct an annual investigation on each anniversary date of recording this Agreement to determine if Developer is in compliance with the schedules and construction obligations attached hereto. In addition to other remedies provided for in this Agreement or by law or equity, any material breach which remains uncured for a period of thirty (30) days after receipt of written notice from the Town of non-compliance with the Phasing Schedule shall entitle the Town to require specific performance of Developer's obligations hereunder and recover such damages as to which the Town may be entitled, plus reasonable attorneys' fees and costs of any such litigation.

12. Lender Subordination. Any existing deeds of trust, mortgages, or liens encumbering the Property, other than property tax liens for the current tax year or governmental improvement assessment liens, must be subordinated to this Agreement. Such encumbrances must be listed, and this Agreement must be executed by the beneficiary

and trustee (if trustee execution is necessary per the terms of the security instrument), mortgagee, or lien holder to evidence such subordination. Grantor represents that no superior deeds of trust, mortgages, or liens (other than property tax liens for the current tax year or governmental improvement assessment liens) encumber or affect the property at the time of the execution and recording of this Agreement, or that if any of the foregoing exist, they shall be subordinate to this Agreement through the subordination language herein.

13. Effectiveness of Agreement. This Agreement shall be effective upon its recording in the offices of the Wake Register of Deeds.

14. Legal Obligations. The failure of this Agreement to describe any permit, condition, or term of restriction applicable to the Property by law does not relieve Developer of the necessity of complying with such laws governing permitting requirements, conditions, terms or restrictions.

[Signature, Acknowledgment, & Exhibit Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed under seal on the day and year first written above:

"Town"

TOWN OF ROLESVILLE

By: _____
Ronnie Currin, Mayor

[municipal seal above]

Attest:

_____
Chritina Ynclan, Town Clerk

Approved as to Form:

_____
David J. Neill, Town Attorney

NORTH CAROLINA
WAKE COUNTY

I certify that Christina Ynclan, Town Clerk of Rolesville, personally appeared before me this day and certified to me under oath or by affirmation that she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed Ronnie Currin, as Mayor of Rolesville, sign the foregoing document, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Today's Date: _____, _____. _____
[Notary's signature as name appears on seal]

_____
[Notary's printed name as name appears on seal]

My commission expires: _____, 20__

[Affix Notary Seal in Space Above]

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

By: _____
Amy Stevens, Town Finance Director

"Developer"

ARDENT BUILDING, LLC

(SEAL)

By: _____
Name: _____
Manager

NORTH CAROLINA
WAKE COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____.

Today's Date: _____, _____. _____
[Notary's signature as name appears on seal]

_____
[Notary's printed name as name appears on seal]

My commission expires: _____, 20__

EXHIBIT A
The "Property"

[legal description to be attached]

EXHIBIT B
The "Development"

[final concept plan to be attached]