

TRI-PARTY AGREEMENT

This Tri-Party Agreement (this “Agreement”) is made and entered into as of May 1, 2024 (the “Effective Date”), between Laurel Street Residential, LLC, a North Carolina limited liability company (“LSR”), ZC Development MD, LLC, a Delaware limited liability company (“ZOM”) and County of Durham, a public body corporate and politic (the “County”), each referred to hereafter as a “Party” and collectively the “Parties”.

RECITALS

Whereas, LSR, ZOM Carolinas, LLC, a Delaware limited liability company (“ZOM Carolinas”) and the County entered into that certain Master Development Agreement effective as of August 17, 2021 (the “MDA”) for the purpose of redeveloping approximately 4.09 acres located at 500 East Main Street, Durham, North Carolina 27701, and having Tax Parcel Number 102897 and Durham County Parcel Identification Number 0831-09-05-9723;

Whereas, the MDA was assigned by ZOM Carolinas to ZC Development MD, LLC, a Delaware limited liability company, pursuant to that certain Assignment and Assumption of Master Development Agreement effective as of May, 23, 2022;

Whereas, the MDA was amended by the First Amendment To Master Development Agreement dated April 27, 2023 (the “First Amendment”, which together with the MDA shall be referred to hereinafter as the “MDA”);

Whereas, the MDA states that Phase I will consist of, among other things, the construction, operation and maintenance by ZOM of a linear park from Dillard Street to Elizabeth Street (the “Linear Park”).

Whereas, the MDA, as amended, states that Phase 2 of the Project will consist of, among other things, the construction of a five (5)-story affordable housing structure (the “Affordable Housing Structure”) located on the Affordable Housing Structure Site.

Whereas, LSR has experienced a delay in the commencement of construction of the Affordable Housing Structure due to a significant rise in construction costs;

Whereas, as a result of the above-referenced delay, it would be uneconomic for ZOM to construct the Linear Park at this time because LSR would need to deconstruct ZOM’s work and reconstruct the Linear Park during LSR’s construction of the Affordable Housing Structure;

Whereas, the parties desire to construct the Linear Park in phases as described hereinbelow;
and

Whereas, the Durham County Commissioners have, pursuant to Section 13.16 of the MDA, delegated to the County Manager the authority to execute any supplemental documents required to effectuate the purposes of the MDA.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Capitalized Terms. Capitalized terms used herein and not defined shall have the meanings ascribed to them in the MDA.
2. Construction of Linear Park By ZOM. In accordance with the requirements of the MDA, ZOM shall complete the construction of that portion of the Linear Park identified by the color green (the “Green Areas”) and install a 10’ wide temporary sidewalk in that portion of the Linear Park identified by the color pink (the “Pink Area”) as shown on the site plan prepared by Stewart dated December 18, 2023 (the “Stewart Site Plan”) and attached hereto as **Exhibit A**.
3. Assignment to LSR. ZOM hereby assigns its obligation to construct the remaining areas of the Linear Park to LSR (as described in paragraph 4 below), subject to the assumption of such assignment by LSR and the consent of the County. ZOM hereby reserves the right to withdraw or revoke its assignment to LSR in its sole and absolute discretion and LSR hereby agrees to relinquish or waive its rights to construct the Linear Park (as described in paragraph 4 below) if LSR fails to commence construction of the Linear Park on or before October 1, 2024 or fails to complete construction of the Linear Park on or before October 1, 2026 (“ZOM’s Self Help Rights”). The Parties agree that LSR shall have completed construction of the Linear Park on or before October 1, 2026.
4. Construction of Linear Park By LSR. During the construction period of the Affordable Housing Structure, which is expected to commence no later than October 1, 2024 and end no later than October 1, 2026, LSR shall demolish the 10’ temporary sidewalk located in the Pink Area and complete the construction of that portion of the Linear Park identified as the Pink Area and identified by the color orange (the “Orange Area”) as shown on **Exhibit A**. LSR shall construct the Linear Park in accordance with all requirements of the Stewart design plans dated April 26, 2024 as shown on **Exhibit B**, as well as all requirements of the MDA, including, without limitation, §§ 4.3, 4.4, 4.5, and 4.10 of the MDA.
5. Consent to Assignment. Pursuant to §13.7.1 of the MDA, the County hereby consents to the assignment by ZOM of its rights and obligation to construct that portion of the Linear Park as described in paragraph 4 of this Agreement; and the County hereby agrees that LSR, and not ZOM, shall be responsible hereafter for the construction of the Linear Park in accordance with the standards set forth in the MDA; provided, however, that if ZOM exercise its Self Help Rights as described in paragraph 3 above, ZOM shall be obligated thereafter to construct the Linear Park in accordance with all requirements of the MDA, including, without limitation, Sections 4.3, 4.4, 4.5, and 4.10.. The County further consents to (a) the collateral assignment of LSR’s interests in this Agreement to investors, lenders, and HUD in connection with the financing for the construction of the Affordable Housing Structure and (a) the assignment of ZOM’s interests in this Agreement to a bona fide purchaser of ZOM’s interests in the Market Rate Building Site.

6. Indemnification. LSR shall indemnify and hold harmless ZOM and the County from all claims, costs and expenses resulting from the negligence or willful misconduct of LSR arising out of the construction of the Linear Park. In addition, LSR shall indemnify and hold ZOM harmless from any claims, costs, expenses, or liabilities resulting from the negligence or willful misconduct of LSR arising from any claims for breach of warranty, breach of contract, default by ZOM under the MDA or the Parking Facility Development Agreement related to the construction of the Orange Area of the Linear Park.
7. Insurance. LSR shall provide proof of insurance for the construction of the Linear Park in accordance with the insurance requirements in the MDA for the construction of Affordable Housing Structure.
8. Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon the Parties. Neither Party 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.
9. No Third Party Beneficiaries. Except as otherwise provided herein, this Agreement is not intended to and does not confer any right or benefit on any third party that is not a Party.
10. Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a Party is required to or may give to another Party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or by email with a hard copy to be delivered by independent courier service by the next business day. The Parties shall make reasonable inquiry to determine whether the names or titles of the persons listed in this Agreement should be substituted with the name of the listed person's successor.

All notices, demands, requests, consents, approvals or communications to County addressed to:

Durham County
 Office of the County Manager
 200 East Main Street
 2nd Floor, Old Courthouse
 Durham, North Carolina 27701
 Attn: County Manager

With a copy to: Durham County
 Office of the County Attorney
 200 East Main Street

2nd Floor, Old Courthouse
Attn: County Attorney

With a copy to: Parker Poe Adams & Bernstein LLP
Three Wells Fargo Center
401 South Tryon St., Suite 300
Charlotte, NC 28202
Attn: Anthony A. Fox

All notices, demands, requests, consents, approvals or communications to ZOM shall be addressed to:

ZM Development MD, LLC
223 S. West, Suite 10020
Raleigh, North Carolina 27603
Attention: Seth Avant

With a copy to: ZC Development, LP
2001 Summit Park Drive, Suite 300
Orlando, Florida 32810
Attention: Biran Warner

The Banks Law Firm, P.A.
4309 Emperor Boulevard, Suite 110
Durham, North Carolina 27703
Attention: Sherrod Banks

And

Nelson Mullins
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801-4961
Attention: Jim Slater and Angela Shaw

All notices, demands, requests, consents, approvals or communications to LSR shall be addressed to:

Laurel Street Residential, LLC
2132 Thrift Road, Suite A
Charlotte, North Carolina 28208
Attn: Dionne Nelson, President and CEO

With a copy to: The Banks Law Firm, P.A.
4309 Emperor Boulevard, Suite 110

Durham, North Carolina 27703
Attn: Sherrod Banks

11. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.
12. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
13. No Deemed Waiver. Failure of a Party to exercise any right under this Agreement 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.
14. Immunity Not Waived. The County does not intend to waive its sovereign immunity by reason of this Agreement; provided, however, that the County 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.
15. Release of Information. The Parties acknowledge that this Agreement is subject to disclosure under the North Carolina Public Records Act, except for information that is excluded therefrom. Nothing in this Agreement precludes a Party from discussing the terms of this Agreement or its work product with its attorneys, accountants, consultants, contractors, or potential lenders or investors, or prevents the holding of public meetings of County Commissioners in compliance with applicable laws.
16. No Special Damages. IN NO EVENT SHALL A PARTY BE LIABLE TO ANOTHER 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). This section shall apply only in a manner and to the extent provided by North Carolina law, including constitutional prohibitions against exclusive emoluments and other laws prohibiting unlawful limitations of liability in favor of a Party to a government contract.
17. Amendments. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of each of the Parties to this Agreement.
18. Time of the Essence. Time is of the essence in this Agreement.
19. Recitals and Exhibits. The Recitals of this Agreement and the Exhibit attached hereto are integral and essential components of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereby set their hands and seals, effective the Effective Date.

COUNTY OF DURHAM, NORTH CAROLINA
A public body corporate and politic

[SEAL]

Name: Kimberly Sowell
Title: County Manager

ATTEST
Name: Monica Wallace
Title: Clerk of the Board

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, _____, a Notary Public of the State and County aforesaid, certify that Monica Wallace personally came before me this day and acknowledged that he/she is Clerk of the Board of the County of Durham, and that by authority duly given and as the act of the Board of County Commissioners, the foregoing instrument was signed in its name by its Manager, sealed with its corporate seal and attested by him/herself as its Clerk of the Board.

WITNESS my hand and official seal, this _____ day of _____, 2024.

Notary Public
My commission expires: _____

[Signature Page – Tri-Party Agreement]

IN WITNESS WHEREOF, the Parties hereby set their hands and seals, effective the date first above written.

LAUREL STREET RESIDENTIAL, LLC
a North Carolina limited liability company

By: _____

Name: _____

Title: _____

[Signature Page – Tri-Party Agreement]

ZC Development MD, LLC
a Delaware limited liability company

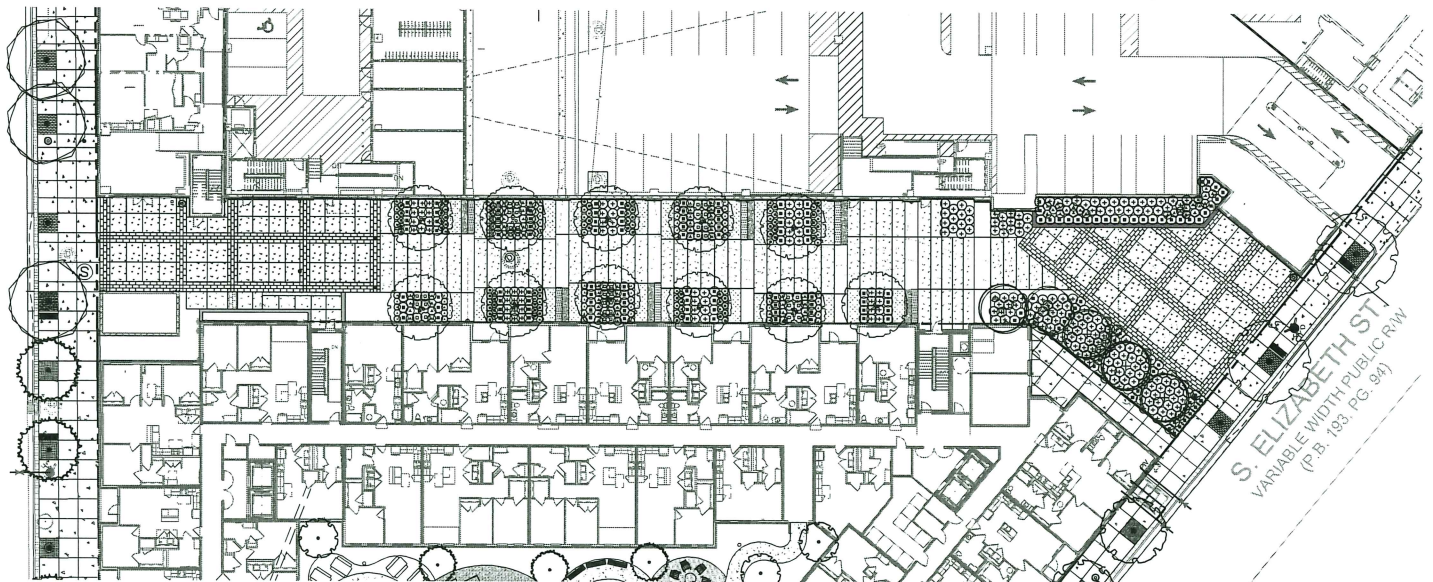
By: _____
Name: _____
Title: Senior Vice President

[Signature Page – Tri-Party Agreement]

EXHIBIT A
(Stewart Site Plan)

EXHIBIT B
(Stewart Design Plans)

S. DILLARD ST.
VARIABLE WIDTH PUBLIC R/W
(P.B. 193, PG. 94)



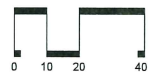
S. ELIZABETH ST.
VARIABLE WIDTH PUBLIC R/W
(P.B. 193, PG. 94)



LINEAR PARK PUBLIC PLAZA

500 EAST MAIN & 501 RAMSEUR

April 26, 2024 Draft Progress



SCALE: 1" = 20'