

STATE OF NORTH CAROLINA)
COUNTY OF DURHAM)

MEMORANDUM OF UNDERSTANDING FOR
ZOM – 500 EAST MAIN STREET – MARKET
RATE PROJECT

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is effective as of the ____ day of _____, 2019 (the “Effective Date”) and is entered into by and between DURHAM COUNTY, NORTH CAROLINA, a political subdivision and body corporate of the State of North Carolina (the “County”) and ZOM LIVING, a _____ (“ZOM” or “Developer”, and together with the County, the “Parties,” each a “Party”), for the development of the “Project” as further described in Paragraph D below in response to the County’s 300 and 500 East Main Development Solicitation for Development Partner Proposals dated Winter-Spring 2019 (the “Solicitation”) and in the Response to Durham County Solicitation for Development Partner Proposals – Laurel Street Residential and ZOM Living submitted on April 5, 2019 (the “Response”).

The following terms and conditions are intended as an outline of the material issues regarding the proposed development and operation of the Project.

RECITALS

A. GENERAL CONDITIONS.

1. This MOU is expressly conditioned upon and subject to the parties hereto finalizing and entering into a mutually satisfactory understanding and definitive written agreement as to all aspects of the proposed transaction. Accordingly, except for Paragraph F. 7., this MOU shall not be binding upon the Parties hereto in any way except to the extent it reflects the present intent of each of the Parties to (i) diligently and in good faith proceed with the development of the Project; (ii) negotiate in good faith a definitive written agreement between ZOM and the County regarding the development of the Project, including the business terms and conditions contained herein, or as otherwise agreed to by the parties; and (iii) maintain appropriate communication with each party, the public and key stakeholders throughout the development of the Project. This MOU does not otherwise state all key terms and conditions required for the parties to enter into a binding contract with enforceable obligations.

2. This MOU is intended to reflect the current understanding of the Parties. This MOU grants ZOM the exclusive right from the Effective Date until August 31, 2020 (the “Evaluation Period”) to diligently, reasonably and in good faith (i) negotiate and attempt to finalize the Purchase Development Agreement (“PDA”) and (ii) analyze and otherwise pursue the development of the Project. The PDA will also provide ZOM with an exclusive right to develop the Project, subject to the terms of the PDA. If the parties have not executed the PDA by the expiration of the Evaluation Period, this MOU and any other agreements between the parties regarding the Project shall terminate except for Paragraph F.7. of the MOU, the terms of which shall survive any termination of this MOU.

3. This MOU shall commence on the Effective Date indicated above and shall continue in effect through August 31, 2020; provided, however, the term may be extended for an

additional period of time upon the written consent of the parties, but shall not be extended for a period greater than sixty (60) days without the express written approval of the Durham County Board of County Commission (“BOCC”).

B. PURPOSE.

1. This MOU by and between the Parties is intended to accomplish the following goals:

(i) Provide a parking solution that will address Durham County employee and Health & Human Service facility customer needs and meet new demand created by the Project, and incorporate options for multiple modes of transportation;

(ii) Increase the availability of affordable housing in downtown Durham for households earning 80% Area Median Income (“AMI”) and below in a mixed income and multi-generational setting;

(iii) Provide ground-floor commercial and service offerings for tenants and workers in and around the Site (as defined in Section E.1 below) and increase activity along East Main Street;

(iv) Efficiently use public investment to maximize public benefits and attract private investment; and

(v) Focus on pedestrian-scale design that creates a walkable, vibrant, urban streetscape along East Main Street.

2. This MOU is entered into to facilitate the Project pursuant to the authority conferred upon the County under North Carolina law, including but not limited to, Chapters 153A, 157 and 158 of the North Carolina General Statutes, and Session Law 2005-172. These enactments and statutes authorize the County to enter into a public-private project for the development of the 500 East Main Street Market Building as a mixed-use building with an associated public parking facility.

C. PARTIES.

1. Developer. The Developer for the Project (except for the affordable housing component) will be ZOM.

ZOM is located at 4208 Six Forks Road, Suite 1000, Raleigh, North Carolina 27609.

ZOM, along with the following, shall hereafter be known as the Project Team:”

Developer: ZOM Living

Developer Consultant: Ashley’s Corner

Design: Little Diversified Architectural Associates (“Little Diversified”) and Neighboring Concepts

Construction: Balfour Beatty, Weaver Cooke and Harmon Construction Services

Engineering: Stewart

Legal: The Banks Law Firm, P.A.

ZOM will have the right to substitute members of the Project Team, provided (i) ZOM, or an affiliate controlled by ZOM, remains the developer of the Project and (ii) ZOM obtains prior written consent of the County of any changes to the Project Team, which consent shall not be unreasonably withheld.

D. THE PROJECT. The Project will consist of (i) the conveyance and reservation of appropriate property interests between ZOM and the County including, but not limited to, rights over public property and/or facilities, (ii) the construction of the 500 East Main Street Market Rate Building, which shall include approximately 26,690 square feet of ground-floor space for commercial uses leased at below market rental rates and apartment amenity space, (iii) construction and delivery of the County-owned 500 East Parking Deck, (iv) the construction, operation and maintenance of a triangular public plaza on the corner of East Main and Elizabeth Streets (the “Public Plaza”), and (v) the construction, operation and maintenance of a linear park from Dillard Street to Elizabeth Street (all as outlined in the Response) (the “Linear Park-500”). Furthermore, the 500 East Main Street Market Rate Building shall contain approximately two hundred fifty (250) market rate units with a variety of studio, one, two and three bedroom units for households of all sizes and ages. The 500 East Parking Deck shall contain no less than 3 access points – one along Main Street, one off of Dillard Street and the other along Elizabeth Street. A maximum of 200 parking spaces shall be reserved for the affordable housing units without charge and a maximum of 250 spaces shall be reserved for the market rate housing pursuant to a Parking Lease Agreement, a form of which to be attached to the Purchase Development Agreement. The Project correlates with the construction of a five (5)-story affordable housing structure (the “500 Affordable Housing Project”) to be constructed by Laurel Street Residential, the affordable housing developer (“Laurel Street”), pursuant to the terms of that certain Memorandum of Understanding For 500 East Main Street – Affordable Housing Project by and between the County and Laurel Street dated _____, 20____.

E. PROJECT SITE

1. The Site. The project site for the 500 East Main Street Market Rate Building is situated on a ____ acre parcel identified as Tax Parcel Number _____, which is owned and controlled by the County (the “Site”), together with all rights and appurtenances pertaining to such parcels, including, without limitation, all cross access/reciprocal access easements and subject to any rights, easements and interests retained by the County. The County shall sell the Site to ZOM pursuant to terms and conditions outlined in the Purchase and Sale Agreement, a form of which shall be attached as an Exhibit to the PDA. A schematic design of the Site is attached hereto as Appendix _____ and incorporated herein by reference.

F. PROJECT DEVELOPMENT.

1. Development Schedule. ZOM and the County shall, during the Evaluation Period, agree upon a detailed development schedule (“Development Schedule”) for the Project. The first draft of the Development Schedule shall be prepared by the Developer and submitted to the County for its review, comment, and approval on or before January 31, 2020. The Development Schedule shall reflect ZOM’s coordination with Laurel Street and the County to mutually agree on milestones, timelines and other targeted measures to assure that the entire Project, including the 500 Affordable Housing Project, will be constructed and open for use in a timely manner in accordance with this MOU. Notwithstanding the foregoing, ZOM shall provide to the County monthly written updates to confirm compliance with the Development Schedule. The Development Schedule shall address all Project components reasonably necessary to complete the Project as agreed by the Parties. Notwithstanding the foregoing, Developer shall provide to the County monthly written updates to confirm compliance with the Development Schedule. ZOM understands the need for ongoing communication and coordination with the County and Laurel Street regarding the construction of the 500 East Main Street Market Building, 500 East Parking Deck, the 500 Affordable Housing Project, and other County improvements to reduce duplication of work and ensure completion of the Project within _____ months following the date when the County has sold the Site to ZOM and the County has vacated the Site, whichever is later.

2. Development Budget. During the Evaluation Period, ZOM and the General Contractor will provide a proposed development budget for the entire Project (excluding budget items related to the affordable housing structure) (the “Development Budget”) to the County. In addition, ZOM and the General Contractor shall provide to the County an estimate of the total cost of the portion of the Project for which County will be responsible (i.e., the 500 East Parking Deck) (the “Deck Development Budget”). The Deck Development Budget shall include (i) sources such as equity, construction loan, County funds, lease-up income and other sources as needed and (ii) uses such as land costs, general contractor costs, owner controlled construction costs, costs for furniture, fixtures and equipment, professional fees, permit fees, impact fees, insurance, administration, DFI fee, developer overhead, closing costs, carry costs, interest reserve for construction loan, loan fees, contingency and other uses as needed. The Development Budget shall include (i) sources such as equity, construction loan, and other sources as needed, and (ii) uses such as land costs, hard costs, soft costs, permit fees/impact fees, DFI fee, developer overhead, financing costs and other uses as needed. The costs in both the Deck Development Budget and Development Budget are hereinafter collectively referred to as “Project Costs”.

3. Financing. The Parties agree to use their best efforts to agree upon terms for financing the entire Project, including without limitation, the 500 East Parking Deck during the Evaluation Period and such agreed-upon terms shall be incorporated in the PDA. Notwithstanding the foregoing, the Parties’ obligations under this MOU to develop the Project are conditioned upon (i) receipt by Laurel Street of written notification of housing credit awards (“Notice of Award”) of bond volume capacity and LIHTCs for the construction of the 500 Affordable Housing Project from the North Carolina Housing Finance Agency on or before August 31, 2020 (“Notice Deadline”); and (ii) completion of the Parking Facility to be constructed by the County in the 300 Block of East Main Street currently estimated to be December 31, 2021. The parties shall identify their respective sources of funding their obligations under this MOU (and later, the PDA) within ninety (90) and one hundred twenty (120) days prior to closing on the sale of the Site.

4. Project Design and County Approval. The parties acknowledge that preliminary design elements of the Project were prepared by Little Diversified. Drawings were provided as a part of the Solicitation and contained conceptual mixed-use site plans. Throughout the Project design process, ZOM shall comply with all County ordinances and regulations. ZOM and the County acknowledge that the design for the Project has not been completed; provided, however, the Parties agree that the design elements of the Project shall focus on providing a pedestrian scale design that will create a walkable, vibrant, urban streetscape along East Main Street, Dillard Street, and Elizabeth Street. The County shall approve of the updates to the design and architecture of the 500 East Market Rate Building, Public Plaza, and Linear Park-500 so long as said updates and the full plans and specifications of the 500 East Market Rate Building, Public Plaza and Linear Park-500 are substantially in conformance with schematic designs and elevations submitted to and approved by the County Commissioners during its working session on December 2, 2019. ZOM agrees to work with the County to develop and implement a design review process that will provide the County the opportunity to participate in the design process of the entire Project; provided, however, ZOM acknowledges that the County has design and architectural review and approval rights of the 500 East Parking Deck and the design of the 500 East Parking Deck is subject to the prior written approval of the County, which approval shall not be unreasonably withheld. Upon receipt by the County of the updated Project designs, the County shall have ten (10) business days from the date of receipt to review the updated design information and provide feedback and approval to ZOM. In the event ZOM fulfills all of its obligations under this MOU and the County decides to make material changes to the Project as described in ZOM's Response to the RFP, affecting the size, scope, unit mix, retail requirements, or elevations which necessitate material design changes and increase the Development Budget by ten percent (10%) or more, the County shall reimburse ZOM for all of its actual costs and expenses related to the Project not to exceed \$150,00.00.

5. Execution of Construction Contract. ZOM agrees to enter into construction contracts with its General Contractor for the 500 East Parking Deck, 500 East Market Rate Building and other elements of the Project at Closing on the acquisition of the County's land for the Project as described in the PDA. The County shall have the right to approve the construction contract for the 500 East Parking Deck and join said construction contract as a third (3rd)-party beneficiary. After Closing, Zom shall diligently and without interruption complete construction in a good and workmanlike manner, subject only to delays resulting from events of Force Majeure, and only for the period of time that such events actually delay construction. ZOM shall coordinate with Laurel Street Residential to comply with the Development Schedule for the Project. ZOM shall obtain and maintain, as a Project expense, or cause to be maintained, at all times, adequate insurance with respect to the construction and development of the Project.

6. Construction Schedule. The construction schedule will be determined by mutual agreement between the Parties.

7. Surety. Within ____ days following execution of this MOU, ZOM will deposit the sum of One Hundred Fifty Thousand Dollars (\$150,00.00) (the "Surety Amount") with a mutually-approved escrow agent pursuant to the terms of the escrow agreement (the "Escrow Agreement") attached hereto as Exhibit A. The Surety Amount will be deposited in an account held with a national banking association with commercial offices in Durham, North Carolina. In the event that ZOM is able to secure the necessary financing for the Project on terms satisfactory

to it, in its sole and absolute discretion, but elects not to proceed with the Project upon expiration of the Evaluation Period, the Surety Amount shall be paid to the County as liquidated damages. In the event the parties fail to complete or execute the Evaluation Period Documents, and/or ZOM due diligence (as contemplated in Section K.1) reveals adverse conditions prior to the conclusion of the Evaluation Period, ZOM shall have the right to elect not to proceed with the Project, and the Surety Amount shall be released to ZOM and the parties shall not be responsible for any further costs or expenses to one another. Except for a release of the Surety Amount as contemplated above, the Surety Amount shall remain in escrow until Closing, at which time it shall be release to the County and applied to the purchase price for the Site.

8. ZOM acknowledges that the public facilities included in the Project shall be constructed in accordance with approved architectural plans and design and within the budget agreed upon by the Parties to meet the needs of the County.

G. MINORITY AND WOMEN BUSINESS ENTERPRISE (“MWBE”).

ZOM shall implement a practical plan to achieve 30% MWBE participation for the Project inclusive of a 20% commitment to ethnic minority business enterprises. The 30% MWBE participation shall be inclusive of construction costs, construction management, design and engineering, legal, developer and consultant fees. Notwithstanding the foregoing, the MWBE information shall be reviewed by the Durham County Purchasing Division for MWBE compliance at the time of construction bidding pursuant to Durham County MWBE policy.

H. FORCE MAJEURE.

For purposes of this MOU, a delay in, or failure of, performance by any Party, shall not constitute a default, nor shall ZOM or the County be held liable for loss or damage or in breach of this MOU, if and to the extent that such delay, failure, loss or damage is caused by an occurrence beyond the reasonable control of such Party, and its agents, employees, contractors, subcontractors and consultants, including results from Acts of God or the public enemy, compliance with any order or request of any governmental authority or person authorized to act thereof, acts of declared or undeclared war, public disorders, rebellion, sabotage, revolution, earthquake, floods, riots, strikes, labor or equipment difficulties, delays in transportation, inability to obtain necessary materials or equipment or permits due to existing or future laws, rules or regulations of governmental authorities or any other causes, whether direct or indirect, which by the exercise of reasonable diligence said Party is unable to prevent.

I. CONVEYANCE OF PROPERTY INTERESTS.

Pursuant to the terms and conditions of the PDA, County agrees to subdivide and convey the Site to ZOM by special warranty deed, simultaneously with closing for construction financing for the 500 East Main Street Market Rate Building, the County-owned 500 East Parking Deck, the Public Plaza, and the Linear Park-500.

J. OTHER MATERIAL TERMS AND CONDITIONS.

The Parties agree to identify and negotiate all other material terms and conditions of the proposed transaction between the parties during the Evaluation Period.

K. SCHEDULE OF MILESTONE TARGETS.

Within _____ (_____) days following the Effective Date of this MOU, the Parties shall pursue completion of the milestone targets as set forth below:

1. ZOM shall complete its due diligence (i.e., tests and surveys reasonably sufficient to determine the condition of the Site, including title examination, market, geological, environmental and structural analyses) at its sole expense and risk on or before the expiration of the Evaluation Period.
2. ZOM will provide their proposed budgets for the Project during the Evaluation Period.
3. ZOM shall complete its study of the feasibility of a grocery store location on the Site.
4. The County shall subdivide the Site on or before the Closing.
5. Within twenty (20) business days of execution of this MOU, the County shall deliver to ZOM the following: (i) all title insurance policy(ies) with copies of exceptions; and (ii) all environmental site assessments (collectively, the "Property Documents"). Notwithstanding the foregoing, the County makes no representation or warranty regarding the currency or accuracy of any of the Property Documents. ZOM acknowledges that its receipt of the Property Documents does not in any way relieve ZOM from conducting such surveying; title examination; architectural, engineering, environmental, topographical, geological, soil, developmental, inspections and other due diligence reasonably sufficient to determine the condition of the Site.
6. The County will convey to ZOM necessary easements and encroachments appurtenant to the Site for access over, on and across designated entranceways, driveways and ramps and walkways as necessary for vehicular and pedestrian access to and from the Project, and other easements, rights and obligations to facilitate the development, construction, existence and operation of the Project.
7. The Parties shall negotiate and finalize the PDA for execution prior to the completion of the Evaluation Period.
8. The Parties shall negotiate a purchase and sale agreement ("PSA"), to be attached as an exhibit to the PDA, prior to expiration of the Evaluation Period.
9. The Parties shall negotiate a Parking Deck Development Agreement for the 500 East Parking Deck, to be attached as an exhibit to the PDA, prior to completion of the Evaluation Period. Among other things, the Parking Deck Development Agreement shall describe ZOM's role as Development Manager, a process for the County's inspections and approval of the work, a process for drawing down the County's funds for the construction, include the Deck Development Budget, allow for the County to contract directly with the designer(s) of the Deck, and make design choices so long as they are not inconsistent with the terms and conditions of the PDA.

L. INITIAL ZOM OBLIGATIONS.

ZOM and the County intend that the PDA will include provisions which provide for ZOM to:

1. Purchase the Site and acquire fee simple title from the County at a price of \$2,581,000; provided, however, ZOM acknowledges that the County will retain its fee simple interest in the underlying real property where the 500 East Parking Deck will be constructed.
2. Be solely responsible for the entire construction development costs including hard and soft costs of the Project, including without limitation, the costs and maintenance of Linear Park-500, but excluding costs attributable to the County pursuant to County obligations as set forth in the Development Budget and Deck Development Budget.
3. Be responsible for securing all permits including environmental, building and other such regulatory permits as required for the construction of the Project at ZOM's sole cost and expense.
4. Coordinate a development plan to effect the timely and efficient construction of the Project and the 500 Affordable Housing Project.
5. Contract with all design professionals and contractors to deliver the Project, including the 500 East Main Street Market Rate Building and the 500 East Parking Deck on time and on budget.
6. Secure all financing, including, without limitation, securing term sheets from lenders and investors for the Project including debt and equity within ninety (90) and one hundred twenty (120) days prior to Closing.
7. Execute customary financial and completion guarantees required by lenders and investors.
8. Lead the closing process with investors, lenders, contractors, and local jurisdictions.
9. Manage the Project through leasing and stabilization to meet all financial benchmarks.
10. Serve as the managing member of the ownership entity during pre-construction, construction, and leasing and also after the Site is leased and stabilized.
11. Lease up to _____ parking spaces in the newly constructed parking facility and to comply with all regulations regarding the use of the 500 East Parking Deck.
12. Enter into a Parking Deck Development Agreement with the County wherein ZOM shall act as "Development Manager" and shall be responsible for the construction and delivery of the 500 East Parking Deck with funds provided by the County.

13. DFI is a nonprofit, charitable program of the University of North Carolina at Chapel Hill School of Government (“SOG”) that has provided development services related to the Project. In accordance with the Solicitation, ZOM agrees to comply with the agreement between the County and “SOG”) dated June 19, 2017 (the “SOG Agreement”), and incorporated herein by reference, whereby the selected development partner agrees to pay a fee equal to one and one half percent (1.5%) of the total development costs to the SOG (the “DFI Fee”) as part of any development services agreement related to the development of the Project. The parties anticipate that the first development services agreement will be the Parking Deck Development Agreement, and ZOM hereby agrees to use its income from said agreement to pay the DFI Fee pari passu with ZOM’s fee for development services in connection with the Parking Deck. If the payments to SOG from ZOM’s fee under Parking Deck Development Agreement are insufficient to pay the entire DFI Fee, ZOM will use its development fee from the 500 East Main Street Market Building to pay the DFI Fee such that the balance of the DFI Fee will be paid pari passu with the ZOM Fee. It is the intent of the parties to treat the DFI Fee as developer fees such that ZOM will be obligated to pay the DFI Fee pari passu when and if ZOM actually earns fees from the Project.

14. Agree to schedule monthly updates on changes to the Development Schedule and Development Budget with County staff and DFI, as necessary.

15. Agree to schedule and provide quarterly updates on the Project to the BOCC as requested by the County.

16. Submit a commercial tenant identification plan that includes opportunities for appropriate community engagements and reaffirms ZOM’s commitment to lease the commercial space at below market rental rates.

17. ZOM shall comply with all of the material provisions of the approved Response including, but not limited to, the “Timeline” and “Execution Plan” referenced therein.

M. COUNTY OBLIGATIONS.

The Parties expressly intend that the MDA will include provisions which provide for the following obligations of the County:

1. The County agrees to sell the Site to ZOM as described in Section I above to accommodate the Project.

2. The County agrees that the fee simple and leasehold interests conveyed to ZOM shall be free and clear of all liens and encumbrances, except as otherwise provided herein.

3. The County agrees to pay one hundred percent (100%) of the entire costs (hard and soft costs) attributed to the construction of the 500 East Parking Deck pursuant to the terms and conditions of the Parking Deck Development Agreement.

4. The County shall assist ZOM in all legal and customary ways with any regulatory permits for the Project, if required, to the extent practicable and reasonably possible; provided, however, ZOM shall bear all costs associated with obtaining such permits. Notwithstanding the

foregoing, the County shall bear all costs associated with obtaining permits for the 500 East Parking Deck.

5. The County shall schedule monthly updates with ZOM and shall regularly report on progress toward finalizing the 500 East Parking Deck construction plans.

6. The County shall provide to ZOM County employee parking counts and requirements and projected utilization of the 500 East Parking Deck.

7. The County shall pay its own legal costs and expenses for the negotiation of the MOU, MDA, and all subsequent negotiations related to the 500 East Parking Deck.

N. STATEMENT OF INTENT.

The undersigned acknowledge and agree that the Project terms described in this MOU are preliminary statements of intent of the parties and are subject to any and all necessary County approvals, procedures and definitive documents setting forth the complete agreement and understanding of the parties in form and in content satisfactory to the County and ZOM.

O. EVALUATION PERIOD AGREEMENTS.

During the Evaluation Period, ZOM and the County shall prepare and execute the following agreements:

1. the PDA (which specific outlines all other documents to be delivered at Closing);
2. the Purchase and Sale Agreement (form to become an Exhibit to the PDA);
3. the Parking Deck Development Agreement to build the 500 East Parking Deck;
4. the Construction Contract to build the 500 East Parking Deck (form to become an Exhibit to the PDA);
5. Assignment and Assumption of Construction Contract (form to become an Exhibit to the PDA)
6. the Parking Lease Agreement for use of the 500 East Parking Deck (form to become an Exhibit to the PDA); and
7. the Master Declaration governing the use of land parcels, operations, maintenance, reciprocal easements, insurance requirements, etc. for the Project (form to become an Exhibit to the PDA)

P. MISCELLANEOUS.

1. Modifications. This MOU may only be modified in writing signed by ZOM and County. Should there be a conflict between this MOU, the Solicitation and the Response, the terms of this MOU shall be controlling.

2. Signature. This MOU may be signed in counterparts; each counterpart shall be considered an original.

3. County Action. Any act, obligation or action required in this MOU to be taken by the County or its BOCC may, in the discretion of the County, be taken by the BOCC, the County Manager or his designee and such action shall be deemed official action of the County.

4. Assignment. Except as otherwise provided herein, ZOM shall not assign, transfer or convey any of rights, title and interests hereunder or delegate any of the obligations or duties required to be kept or performed by it hereunder without the prior written consent of the County in the County's sole discretion.

5. No Partnership. Nothing contained in this MOU shall be deemed or construed to create a partnership or joint venture between the County and ZOM, or cause ZOM or the County to be responsible in any way for the debts or obligations of the other or those of any other party.

6. E-Verify. For agreements that include construction or services, employers and their subcontractors with 25 or more employees in North Carolina as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with the County. E-Verify is a Federal program operated by the US Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. By executing this MOU, Developer certifies that Developer complies with the requirements of the E-Verify program.

7. Iran Divestment Act Certification. Developer certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to North Carolina General Statutes Section 143-6A-4. In compliance with the requirements of the Iran Divestment Act and North Carolina General Statutes Section 143C-6A-5(b), Developer shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

8. Governing Law; Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively construed and enforced in accordance with, the laws of the State of North Carolina, except for the state's conflict of law rules. ZOM consents to jurisdiction over it and to venue in Durham County.

9. Time is of the Essence. Time is of the essence for this Agreement.

Q. RELEASE OF INFORMATION.

The Parties acknowledge that the information relating to the Project is subject to disclosure under the North Carolina Public Records Act, Chapter 32 of the North Carolina General Statutes, except any such information that the County is not required or authorized to disclose, pursuant to North Carolina General Statutes Section 132-1.2. It is understood, however, that nothing in this MOU shall preclude either Party from discussing the substance or any relevant details of the transaction contemplated in this Agreement with any of its attorneys, accountants, professional consultants or potential lenders, as the case may be, or prevent the holding of public BOCC meetings in compliance with applicable laws.

This MOU is entered into by the Parties through their duly and respective authorized representatives, as of the Effective Date.

[Signature Page Follows]

DRAFT

IN WITNESS WHEREOF, the Parties have caused this MOU to be duly executed as of the date first above written.

ZOM LIVING, a _____ (SEAL)

By: _____
Name: Darryl Hemminger _____
Title: Senior Vice President _____

COUNTY OF DURHAM, North Carolina (SEAL)

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
County Clerk

APPROVED AS TO FORM

By: _____
County Attorney

Notary Public

EXHIBIT A TO MEMORANDUM OF UNDERSTANDING

ESCROW AGREEMENT

This Escrow Agreement (the "Agreement") is made as of the ____ day of _____, 20____, by and between DURHAM COUNTY, NORTH CAROLINA, a political subdivision and body corporate of the State of North Carolina (the "County"); ZOM LIVING, a _____ ("Developer"); and _____ (the "Escrow Agent").

RECITALS

1. County and Developer are parties to a certain Memorandum of Understanding dated _____ (the "MOU") relating to the development of the 500 East Main Street – Market Rate Project in Durham, North Carolina (the "Project").
2. Pursuant to Paragraph F.7 of the MOU, a copy of which is attached to this Agreement as Exhibit A ("Surety Provision"), Developer is required to deposit with Escrow Agent the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) (the "Surety Amount") to be held and applied in accordance with the provisions of Paragraph F.7 of the MOU.
3. The parties hereto now desire to establish the terms and conditions by which the Surety Amount shall be held and disbursed as more particularly set forth herein.
4. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the MOU.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises herein contained, the parties hereto agree as follows:

1. Escrow Agent. County and Developer hereby appoint Escrow Agent as the escrow agent for the Surety Amount and authorize and direct Escrow Agent to establish and administer the Surety Amount in accordance herewith. By its execution of this Agreement, Escrow Agent accepts such appointment and agrees to act in accordance with the instructions and agreements hereunder. Escrow Agent's fee for its services under this Agreement will be _____ and 00/100 Dollars (\$_____), which shall be paid by Developer.
2. Escrow. Concurrently with the execution and delivery of this Agreement to Escrow Agent, Developer has delivered the Surety Amount to Escrow Agent. Escrow Agent hereby acknowledges receipt of the Surety Amount and agrees to deposit the Surety Amount in a trust account (the "Escrow Account") at _____, with its banking address at _____.
3. Disbursement Instructions. Escrow Agent shall hold and disburse the Surety in accordance with the terms and conditions of Section 7 of that certain Memorandum of Understanding For ZOM – 500 East Main Street – Market Rate Project dated _____, 2019 (the "MOU") attached hereto.

4. Attorneys' Fees. Should either Developer or County institute any judicial or other legal action or proceeding to enforce any provision of this Agreement or for damages by reason of alleged breach of any provision hereof or for a declaration of rights hereunder, or should Escrow Agent be entitled to recover legal fees under Paragraph 7 below, the prevailing party in such action, on trial or appeal, shall be entitled to receive all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by such prevailing party in connection with such action or proceeding and the non-prevailing party shall have responsibility for the legal fees to which Escrow Agent may be entitled under Paragraph 7.

5. Liability of Escrow Agent. In performing any of its duties hereunder, Escrow Agent shall not incur any liability for any damages, losses, or expenses, except for gross negligence or willful misconduct, and it shall accordingly not incur any such liability for (i) any action taken or omitted in good faith upon advice of its legal counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent under this Agreement, or (ii) any action taken or omitted in reliance upon any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons, and to conform with the provisions of this Agreement.

6. Resignation. In the event of a dispute between Developer and County sufficient in the sole discretion of Escrow Agent to justify it doing so, upon giving thirty (30) days prior written notice to the parties, Escrow Agent may resign. If Developer and County do not furnish written instructions, approved by both of them authorizing release or transfer of the Surety Amount within such thirty (30) day period, then Escrow Agent shall be entitled to tender the Surety Amount into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as Escrow Agent may deem appropriate, and upon such action the Escrow Agent shall be discharged from all further duties and liabilities under this Agreement.

7. Indemnity. Developer and County agree to indemnify and hold Escrow Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including, without limitation, reasonable costs of investigation and legal counsel fees, which may be imposed upon Escrow Agent or incurred by Escrow Agent in connection with the performance of its duties hereunder, including, without limitation, any litigation arising from this Agreement or involving the subject matter hereof, except arising out of Escrow Agent's gross negligence or willful misconduct.

8. Reserved.

9. Notices. All draw or disbursement requests with respect to the Escrow Amounts, and any objections to disbursement of the Escrow Amounts, shall be sent by the parties by electronic mail (email) at the email addresses for the parties set forth below. All other notices or demands under this Agreement shall be in writing, signed by the party giving the same and shall be deemed to be duly given only if delivered to the applicable addresses set forth below either (i) in person; (ii) by recognized overnight courier, including Federal Express or other reputable overnight courier service; (iii) by certified or registered mail, return receipt requested; or (iv) by email transmittal on any business day and shall be effective upon receipt, provided that the notice

shall also be sent on the same business day by Federal Express or other reputable overnight courier service. Notices on behalf of either party may be given by such party's respective counsel. Notice shall be deemed to have been duly given upon delivery thereof.

County: Durham County

Attn: _____
Email: _____

with a copy to: Parker Poe Adams & Bernstein LLP
Three Wells Fargo Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Attn: Anthony A. Fox, Esq.
Email: anthonyfox@parkerpoe.com

Developer: ZOM Living

Attn: Darryl Hemminger
Email: djh@zomliving.com

with a copy to: The Banks Law Firm
4309 Emperor Boulevard, Suite 225
Durham, North Carolina 27703

Attn: Sherrod Banks
Email : sbanks@bankslawfirm.com

Escrow Agent: _____

Addresses for notices may be changed in the same manner provided for giving notices but shall not be effective until ten (10) days elapse after their receipt.

10. Binding Effect. Except as otherwise expressly provided herein, this Agreement shall bind and inure to the benefit of Escrow Agent, County, and Developer and their respective, successors and assigns.

11. Entire Agreement; Modification. This Agreement constitutes the entire agreement between Escrow Agent, County, and Developer pertaining to the subject matter hereof and supersedes all prior agreements, understandings and representations among them with respect to the subject matter hereof. This Agreement may not be modified, amended, supplemented or otherwise changed, except in writing executed by County, Developer, and Escrow Agent.

12. Counterparts. This Agreement and any amendment hereto may be executed in any number of counterparts and by each party hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

[Signature Page Follows]

DRAFT

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

ZOM LIVING, a _____ (SEAL)

By: _____
Name: Darryl Hemminger _____
Title: Senior Vice President _____

COUNTY OF DURHAM, North Carolina (SEAL)

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
County Clerk

APPROVED AS TO FORM

By: _____
County Attorney

Notary Public

ESCROW AGENT: _____

By: _____
Name: _____
Title: _____