



## **DOWNTOWN DEVELOPMENT AUTHORITY AGENDA**

**June 8, 2015**

**11:00 AM**

**CITY HALL**

**147 Technology Parkway, Suite 200**

- A) CALL TO ORDER**
- B) APPROVAL OF MINUTES: Meeting of March 9, 2015**
- C) OLD BUSINESS: (None)**
- D) NEW BUSINESS:**
  - 1. Introduction of new DDA Members: Rob Binion and Aaron Kappler**
- E) STAFF ITEMS: Update on Town Center Development Services Agreement  
(in Executive Session)**
- F) COMMENTS FROM BOARD MEMBERS**
- G) EXECUTIVE SESSION**
- H) ADJOURN**



**DOWNTOWN DEVELOPMENT AUTHORITY  
MEETING MINUTES  
March 9, 2015 at 11:00 AM**

The Downtown Development Authority (DDA) of the City of Peachtree Corners held a meeting at City Hall, 147 Technology Parkway, Suite 200, Peachtree Corners, GA 30092. The following were in attendance:

|                     |                 |
|---------------------|-----------------|
| Chairman            | Dan Graveline   |
| Vice Chairman       | Bob Saville     |
| Board Member        | LC Johnson      |
| Board Member        | Ruth Strickland |
| Board Member        | Gene Witkin     |
| Director, Com. Dev. | Diana Wheeler   |
| City Clerk          | Kym Chereck     |
| Attorney            | Jed Beardsley   |

**MINUTES:**

**MOTION TO APPROVE THE MINUTES FROM THE JANUARY 12, 2015  
DOWNTOWN DEVELOPMENT AUTHORITY MEETING.**

**By: L.C. Johnson**

**Seconded: Bob Saville**

**Vote: (5-0) (Johnson, Saville, Graveline, Strickland, Witkin)**

**OLD BUSINESS:**

There was no old business.

**NEW BUSINESS:**

**1. R2015-001**

A Resolution of the City of Peachtree Corners, Georgia Downtown Development Authority to approve the contract for the sale of land and authorize the chairman to execute associated documents.

Mrs. Diana Wheeler, Community Development Director, and Mr. Jed Beardsley, Attorney, gave a brief overview of the proposed Resolution and the Purchase and Sale Contract. A motion was made after discussion which resulted in removing Section 29 (confidentiality) of the Purchase and Sale Contract.

**MOTION TO APPROVE R2015-001.**

**By: Bob Saville**

**Seconded: LC Johnson**

**Vote: (5-0) (Saville, Johnson, Graveline, Strickland, Witkin)**

**STAFF ITEMS:**

Mrs. Wheeler gave a brief overview of the proposed site plan for the Roberts property which will be brought before the Planning Commission on March 10, 2015.

**ADJOURNMENT:**

**MOTION TO ADJOURN AT 12:50 PM.**

**By: Bob Saville**

**Seconded: LC Johnson**

**Vote: (5-0) (Saville, Johnson, Graveline, Strickland, Witkin)**

Approved,

Attest:

\_\_\_\_\_  
Dan Graveline, Chairman

\_\_\_\_\_  
Kym Chereck, City Clerk

## **DRAFT** SITE DEVELOPMENT AGREEMENT

**THIS SITE DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made by **CITY OF PEACHTREE CORNERS**, a public body corporate and politic (“**Owner**”), **CITY OF PEACHTREE CORNERS DOWNTOWN DEVELOPMENT AUTHORITY**, a public body corporate and politic (“**DDA**”) and **FUQUA DEVELOPMENT SERVICES, LLC**, a Georgia limited liability company (“**Developer**”), as of \_\_\_\_\_, 2015.

### **RECITALS:**

A. Developer intends to develop a retail/residential mixed use project (the “**Project**”) as depicted on the site plan attached hereto as Exhibit A (the “**Site Plan**”).

B. Developer is the owner of the portion of the Project depicted on the Site Plan as “Developer Tract” and being more particularly described on Exhibit B (the “**Developer Tract**”).

C. Owner is or will be the owner of the portion of the Project depicted on the Site Plan as “Owner Tract” and being more particularly described on Exhibit C (the “**Owner Tract**”).

D. DDA is the owner of the portion of the Project depicted on the Site Plan as “DDA Tract” and being more particularly described on Exhibit D (the “**DDA Tract**,” and together with the Developer Tract and the Owner Tract, collectively, the “**Tracts**”).

E. Developer, Owner and DDA recognize that it is cost-efficient and in their mutual interest to cooperate in the development of their respective Tracts.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Site Construction Documents. Developer has caused to be prepared the utility plans, grading plans, road plans, erosion and drainage plans described on Exhibit E attached hereto (as amended or modified by any change orders issued and accepted pursuant to Section 4(D) below, the “**Site Construction Documents**”). Developer, Owner and DDA hereby approve the Site Construction Documents.

Section 2. Site Improvement Work. Developer, pursuant to the allocation of costs described in Section 6 of this Agreement, shall cause the following activities (as described in subsections A-E below, the “**Site Improvement Work**”) to be completed in accordance with the Site Construction Documents the Construction Schedule and the Budget, each as defined below, and the other requirements of this Agreement:

(A) Developer shall clear and rough grade to the grades indicated on the grading plans included in the Site Construction Documents, all existing improvements on

the Owner Tract, the DDA Tract and the areas outside the Owner Tract and DDA Tract, such outside areas depicted as “**Off-Site Areas**” on the Site Plan. For the purpose of clarification, the Off-Site Areas shall not include any portion of the Developer Tract.

(B) Developer shall construct those internal streets, driveways, curbs, gutters, streetscapes, pedestrian improvements, common area landscaping, offsite improvements, “on street” parking, street lighting, detention and other infrastructure improvements located on the Owner Tract, the DDA Tract and the Off-Site Areas depicted on the plat attached hereto as Exhibit F (the “**Off-Site Areas Plat**”), all in accordance with the Site Construction Documents.

(C) Developer shall construct and install utilities, including but not limited to electric, gas, water, sanitary sewer, storm sewer, storm water detention, cabling and related improvements for phone and internet connectivity and all infrastructure related to such utility improvements, and shall also relocate and retrofit existing utilities on the Owner Tract, DDA Tract and/or Off-Site Areas, all as further described and/or depicted Exhibit G attached hereto, and all in accordance with the Site Construction Documents.

(D) Developer shall construct a public green space area and pedestrian walkways for the public green space area on the DDA Tract, including all improvements and infrastructure related to such public green space area and pedestrian walkways, and connecting such pedestrian walkways to the remainder of the Project, all as further described and/or depicted Exhibit H attached hereto, and all in accordance with the Site Construction Documents.

(E) Developer shall construct a parking deck on the Owner Tract, including all improvements and infrastructure related to such parking deck, all as further described and/or depicted Exhibit I attached hereto, and all in accordance with the Site Construction Documents.

Section 3. Site Construction Documents; Approval by Governmental Authorities. Developer shall promptly submit the Site Construction Documents to the appropriate governmental authorities (the “**Governmental Authorities**”), including, without limitation, any and all utility companies having jurisdiction over any components of the Site Improvement Work, in order to obtain all building and development permits necessary for the performance of the Site Improvement Work (“**Site Improvement Work Permits**”) and shall use its best efforts to thereafter obtain such Site Improvement Work Permits as promptly as practicable and in any event in sufficient time to allow Developer to comply with the Construction Schedule, as defined below. Owner agrees to cooperate with Developer in connection with the submittal and processing of the Site Construction Documents to and by the Governmental Authorities. If, during the review by the Governmental Authorities of the Site Construction Documents, material modifications or additions thereto are required as a condition to any of the Site Improvement Work Permits, and if such modifications or additions are acceptable to Developer, then Developer will submit all modifications and additions to Owner for its approval or disapproval. If Owner disapproves any of the modifications and additions to the Site Construction Documents which are required by the Governmental Authorities as

a condition to issuing any Site Improvement Work Permits, then Owner and Developer shall promptly meet with the applicable Governmental Authority to attempt to agree to such modifications and additional changes to the Site Construction Documents which are acceptable to both Owner and Developer. Developer hereby agrees to use its best efforts to cause the Governmental Authorities to agree to limit the modifications and additions to the Site Construction Documents to those which are acceptable to Owner and DDA.

Section 4. Construction/Installation of the Site Improvement Work.

(A) Developer shall serve as the construction manager and Developer's affiliated entity, as designated by Developer, may serve as the general contractor (the "**Site Improvement Work Contractor**") and collectively perform the Site Improvement Work in accordance with and subject to this Agreement. The Site Improvement Work Contractor shall award contracts for the performance of the Site Improvement Work to one or more subcontractors selected by the Site Improvement Work Contractor (each, a "**Site Improvement Work Subcontractor**" and collectively, the "**Site Improvement Work Subcontractors**") and reasonably approved by Owner, all through use of a competitive bid process reasonably acceptable to Owner.

(B) The contract for the Site Improvement Work with the Site Improvement Work Contractor (the "**Site Improvement Work Contract**") and each subcontract with each Site Improvement Work Subcontractor shall provide, among other things, for the following:

- (i) completion of the Site Improvement Work (or portion of the Site Improvement Work in the case of subcontracts) in accordance with the Site Construction Documents and other requirements of this Agreement, the schedule set forth on Exhibit J (the "**Construction Schedule**") and the budget set forth on Exhibit K (the "**Budget**") ;
- (ii) recognition of Owner's right to assume control of the Site Improvement Work in the place of Developer / Site Improvement Work Contractor to the extent permitted in Section 5 of this Agreement.

Developer shall provide Owner with a copy of the proposed Site Improvement Work Contract prior to execution thereof and shall not enter into such contract without the prior written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Upon request by the Owner or DDA, Developer shall provide or cause to be provided to the Owner and DDA, copies of subcontracts entered into with Site Improvement Work Subcontractors.

(C) Developer shall perform the Site Improvement Work in accordance with the Site Construction Documents Construction Schedule, Budget and other requirements of this Agreement (and as same may be modified pursuant to section 4 (D) below and subject to the provisions of Section 9 hereof).

(D) Any discretionary change order as to the Site Improvement Work initiated by Developer or Owner shall be subject to the approval of the other party. If Owner or Developer, as the case may be (the “**Initiating Party**”) wishes to initiate a change order, the other party (the “**Receiving Party**”), such Initiating Party shall provide notice to Receiving Party describing the proposed change order with reasonable specificity (“**Change Order Proposal Notice**”). Initiating Party shall then provide written notice (“**Change Order Effect Notice**”) to the Receiving Party as to the amount of any increase in the cost of the Site Improvement Work resulting from such change order and any extension of the deadlines for completion set forth in the Schedule. The Change Order Proposal Notice and the Change Order Effect Notice may be delivered in one combined notice provided such combined notice articulates that it serves as both the Change Order Proposal Notice and the Change Order Effect Notice. Within two (2) business days of the receipt of Initiating Party’s Change Order Effect Notice, Receiving Party shall notify Initiating Party whether it wishes to proceed with such change order. The failure to provide such written notice within such two (2) business days shall be conclusively deemed to signify a decision by Receiving Party not to proceed with the proposed change order. If Receiving Party elects to proceed with the change order, Owner and Developer shall pay the amount of the increase in the cost of the Site Improvement Work resulting from such change order consistent with and subject to Section 6 (B) below as construction of the work that is the subject of such change order progresses. Developer shall provide Owner a revised Construction Schedule and Budget in connection with approval of the change order.

(E) Developer may utilize its own project engineer (the “**Project Engineer**”) in connection with performing the Site Improvement Work. Owner and DDA may inspect the Site Improvement Work, including any work related to an approved change order pursuant to Section 4 (D) above, from time to time. Developer agrees to have any such item to which Owner or DDA objects inspected by the consulting engineer selected by mutual agreement of Owner and Developer, but who is independent of Owner, DDA and Developer (the “**Consulting Engineer**”). If such item is found by the Consulting Engineer, acting in a commercially reasonable manner, to be defective or not in compliance with the Site Construction Documents or any approved change order pursuant to Section 4 (D) above (the “**Defect**”), Developer, at Developer’s cost, agrees to immediately cause any such Defect to be corrected. If the Consulting Engineer, acting in a commercially reasonable manner, does not believe the Defect exists, Owner or DDA may, at its option, proceed to correct the Defect at its own expense. Owner or DDA, as the case may be shall be reimbursed by Developer for the reasonable cost of such corrective work, including all indirect costs such as permits, consultant review, design and recommendations, if it is later reasonably determined that the Defect existed.

(F) As soon as possible after completion of the Site Improvement Work, Developer shall give notice to the Project Engineer, Consulting Engineer, Owner and DDA that the Site Improvement Work is ready for final inspection. Within ten (10) days of receipt of such notice, the parties, the Project Engineer and the Consulting Engineer shall complete their inspection thereof. If no written objections are made, Developer shall cause the Project Engineer to issue to Owner, DDA and Developer the Certificate of

Completion. If such inspection results in a determination that the Site Improvement Work is not completed in all respects, than Developer and Owner shall prepare a written punch list setting forth the incomplete and defective items of the Site Improvement Work that require additional work by the Site Improvement Work Contractor (“**Site Improvement Work Punch List**”). To the extent reasonably practicable, Developer shall cause the Site Improvement Work Contractor to perform or cause all items of incomplete and defective work disclosed in the Site Improvement Work Punch List to be completed within thirty (30) days following preparation of the Site Improvement Work Punch List. If such work requires more than thirty (30) days to complete, Developer shall not be in default hereunder if it causes the Site Improvement Work Contractor to commence the performance of such Site Improvement Work Punch List items within such thirty (30) day period and causes the Site Improvement Work Contractor to diligently pursue to completion such Site Improvement Work Punch List items. The foregoing notwithstanding, any inspection by Owner or DDA, and any failure to reject or object to any of the Site Improvement Work, shall not constitute, nor be deemed to be evidence of, any approval by Owner or DDA of the Site Improvement Work, nor waive or release Developer from its obligation to construct and complete the Site Improvement Work in accordance with the Site Construction Documents, the Construction Schedule, the Budget and other requirements of this Agreement.

(G) Developer shall obtain the final inspections and approvals of all of the Site Improvement Work and any approved change orders pursuant to Section 4 (D) above, from all appropriate governmental authorities and utility companies and certification from the Project Engineer, acting in a commercially reasonable manner, and where applicable, the Consulting Engineer, that the Site Improvement Work is substantially complete according to the Site Construction Documents and any approved change orders pursuant to Section 4 (D) above (the “**Certificate of Completion**”).

(H) Developer warrants to Owner and DDA that all the Site Improvement Work and any work done pursuant to an approved change order under Section 4 (D) shall be of good quality, free from faults and defects, and that all materials and the Site Improvement Work and any work done pursuant to an approved change order under Section 4 (D) above shall be in conformance, in all material respects, with all applicable laws, the Site Construction Documents and the terms of this Agreement. This warranty shall expire on the first (1st) anniversary of the date that is the later of (i) substantial completion of the Site Improvement Work and any work done pursuant to an approved change order under Section 4 (D), or (ii) the date of the First Certificate of Occupancy for any commercial building on the Developer Tract. In addition, Developer will provide to Owner and DDA copies of any and all warranties pertaining to the performance, design and construction of the Site Improvement Work performed on the Owner Tract, the DDA Tract and the Off-Site Areas, and will assure that either such warranties are assigned to Owner or DDA, as the case may be, or that any such warranties name Owner or DDA, as the case may be, as beneficiary.

(I) Developer and Site Improvement Work Contractor shall set up and maintain orderly files containing correspondence, receipt bills, invoices, evidence of

payments, lien waivers, certificates of insurance, records of inspections, permits, working papers, and other documents pertaining to the Site Improvement Work.

(J) Developer shall provide to Owner and DDA copies of interim lien waivers from all contractors, subcontractors and material providers, upon Developer's receipt of such interim lien waivers. Developer shall provide to Owner, upon completion of the Site Improvement Work and any work done pursuant to an approved change order under Section 4 (D), copies of final lien waivers from all contractors, subcontractors and material providers and any written acceptances or certificates of the Site Improvement Work and any work done pursuant to an approved change order under Section 4 (D) by the appropriate Governmental Authorities, if applicable.

(K) Developer shall provide to Owner and DDA, upon completion of the Site Improvement Work and any work done pursuant to an approved change order under Section 4 (D), copies of all "As-Built" drawings and specifications, including all changes made to the Development Plans during construction. The As-Built documents shall be provided in hard copy and electronic form suitable for Owner's and DDA's use.

Section 5. Takeover Right. If Developer fails to complete the Site Improvement Work in accordance with the Construction Schedule (subject to delays pursuant to Section 9 below), then upon thirty (30) days written notice to Developer, Owner and/or DDA may deliver to Developer a takeover notice stating the basis for the need of takeover of the construction of the Site Improvement Work and any work being done pursuant to an approved change order under Section 4 (D) ("**Takeover Notice**"). Within ten (10) days after Developer's receipt of the Takeover Notice, Developer may invalidate such Takeover Notice by Owner and/or DDA if Developer provides notice to Owner and DDA establishing, to Owner's and DDA's reasonable satisfaction, that Developer has implemented procedures that will result in Developer completing the Site Improvement Work in accordance with the Construction Schedule and completing any work being done pursuant to an approved change order under Section 4 (D) in the time frame contemplated in the approved change order. If Owner and/or DDA takes over the completion of the Site Improvement Work and any work being done pursuant to an approved change order under Section 4 (D) (a "**Takeover**"), Owner and/or DDA shall complete same as promptly as practicable under the circumstances. All costs incurred during the Takeover shall be paid consistent with and subject to section 6 (B).

Section 6. Construction Cost Reimbursement; Security For Owner's Obligations.

(A) Site Improvement Work Costs. For purposes hereof, the term "**Site Improvement Work Costs**" means all commercially reasonable hard and soft costs associated with the Site Improvement Work and any work being done pursuant to an approved change order under Section 4 (D). By way of example and without limiting the foregoing, such costs include costs of preparing the Site Construction Documents; geotechnical consultant's, Project Engineer's fees and costs; Consulting Engineer's fees and costs; costs of all applications, submittals, permits or other fees to obtain all applicable governmental approvals and permits for the construction of the Site

Improvement Work and any work being done pursuant to an approved change order under Section 4 (D); impact or related fees as required by the Governing Authorities and costs of preparing the final construction plans and drawings for the Site Improvement Work and any work being done pursuant to an approved change order under Section 4 (D); costs of preparing the ALTA survey of the Project; costs of preparing any geotechnical and environmental reports; contractors' fees, including general conditions; legal fees related to Developer's construction of the Site Improvement Work and any work being done pursuant to an approved change order under Section 4 (D), and the permitting of such work, including but not necessarily limited to contract review and negotiation and contractor disputes; premiums for payment, performance, completion and other bonds required by any Governmental Authorities; premiums for insurance relating to the performance of the Site Improvement Work and any work being done pursuant to an approved change order under Section 4 (D); and costs of the Site Improvement Work and any work being done pursuant to an approved change order under Section 4 (D), including labor and materials costs and any other sums payable under the Site Improvement Work Contract and any change orders approved under Section 4 (D). The Site Improvement Work Costs shall also include a sum payable to Developer as a construction management fee equal to \$150,000.00.

(B) Categorization of Site Improvement Work Costs. Notwithstanding anything to the contrary contained in this Agreement, all Site Improvement Work Costs shall be categorized as either Owner Borne Costs or Shared Costs, each as defined below. The cost of Site Improvement Work and any work done pursuant to an approved change order under Section 4 (D) for internal roadways, the parking deck, curb/gutter and the public green space area and pedestrian walkways in the public green space area, traffic signalization and road signage, and relocation of the gas main at the Medlock Bridge intersection shall be borne by Owner (the "**Owner Borne Costs**"). However, the cost of other Site Improvements Work and any work done pursuant to an approved change order under Section 4 (D) including but not necessarily limited to grading, storm water management and detention, utilities that serve in whole or in part the Owner Tract, DDA Tract or Off-Site Areas, and landscaping which affect the Owner Tract, the DDA Tract and the Off-Site Areas (the "**Shared Costs**") shall be borne [redacted] percent ([redacted]%) by Developer ("**Developer's Proportionate Share**") and [redacted] percent ([redacted]%) by Owner ("**Owner's Proportionate Share**"). All construction related costs associated with development of the Developer Tract, including, without limitation, water, sewer, internal roadways and related signage, parking, curb/gutter, sidewalks, commercial signage, utilities (including but not limited to utilities located on the Owner Tract, DDA Tract or Off-Site Areas that only serve the improvements on the Developer Tract) and any connection fees, impact fees and any other governmental fees associated with development of the Developer Tract shall be borne by Developer (the "**Developer Borne Costs**").

(C) Payment of Site Improvement Work Costs. Developer shall submit monthly to Owner a complete payment request as described more fully below in this Section 6(c). In accordance with Section 6 (B), Owner shall pay to Developer the amount of Owner Borne Costs and Owner's Proportionate Share, less retainage under the Site Improvement

Work Contract, within 30 days following receipt of a complete payment request from Developer with payment of Owner's Proportionate Share drawn out of the escrow account contemplated in Section 7 (B) of this Agreement. Developer shall pay Developer Borne Costs as and when due, so as not to default on any payment obligations under any contract, account or loan entered into by Developer or Site Improvement Work Contractor related to the Project. Developer shall pay Developer's Proportionate Share out of the escrow account contemplated in Section 7 (B) of this Agreement at the same time payment for such Shared Costs is made by Owner from such escrow account. Developer's request for payment to Owner shall include (i) a certification from the Project Engineer that the applicable Site Improvement Work and any work done pursuant to an approved change order under Section 4 (D) has been performed in accordance with the approved Site Construction Documents and the applicable change order, (ii) copies of invoices and draw requests, and (iii) as to the invoices covered by the immediately preceding draw request, proof of payment and interim lien waivers from all materialmen, suppliers, contractors or subcontractors who provided services or materials for the Site Improvement Work in excess of \$5,000. Should Owner, in connection with Owner Borne Costs or Owner's Proportionate Share, or Developer, in connection with Developer's Proportionate Share, fail to make payment in the manner specified in this Section 7 (C), the total amount due and owing will bear interest at seven percent (7%) per annum (but in no event higher than the highest rate allowed under Georgia law, which shall accrue from the date the payment became past due).

#### Section 7. Financial Assurances

(A) Assurances Regarding Funding. To assure Developer that sufficient funds will be available from Owner to pay those Site Improvement Work Costs that are categorized as Owner Borne Costs as described in Section 6 (B) hereof, Owner shall provide Developer with evidence reasonably satisfactory to Developer that Owner has special purpose local option sales tax proceeds ("**SPLOST**") set aside or specifically allocated to satisfy Owner's obligation to pay Owner Borne Costs. To assure Owner and DDA that sufficient funds shall be available from Developer to pay Developer Borne Costs as described in Section 6 (B) hereof, Developer shall provide Owner and DDA with evidence reasonably satisfactory to Owner and DDA that Owner has sufficient cash, loans and/or other assets to satisfy Owner's obligation to pay Owner Borne Costs, such evidence to include but not necessarily be limited to providing Owner and DDA with documentation to confirm the commitment by one or more lenders or equity partners to provide Developer with funds, to be used specifically for the Project, sufficient for Developer to fulfill its obligations under this Agreement.

(B) Construction Escrow. Owner and Developer shall establish, upon the date of this Agreement, an escrow account with a financial institution or title company (either, the "**Escrow Agent**") reasonably acceptable to Owner and Developer. Owner and shall deposit therein cash in an amount equal to [REDACTED] percent ([REDACTED]%) of those Site Improvement Work Costs that are categorized as Shared Costs (to be paid as Owner's Proportionate Share) as described in Section 6 (B) hereof, and Developer shall deposit therein cash in an amount equal to [REDACTED] percent ([REDACTED]%) of those Site Improvement Work Costs that are categorized as Shared Costs (to be paid as Developer's Proportionate

Share) as described in Section 6 (B) hereof. Should the amount of SPLOST as described in Section 7 (A) be insufficient to fund Owner Borne Costs (a “**SPLOST Shortfall**”), an amount equal to the amount of such SPLOST Shortfall shall be deposited into the escrow account upon the date of this Agreement, and used to supplement payment of Owner Borne Costs. The aforementioned deposits shall be invested according to reasonably prudent instructions from Owner, reasonably agreeable to Developer, recognizing preservation of capital as the primary investment obligation. The escrow shall provide *inter alia* that:

- (i) all interest earned shall be accumulated in the account and made available on a pro rata basis (based on the same percentages identified in Section 6 (B)) for satisfying Owner's and Developer's obligations under this Agreement, as the case may be;
- (ii) the funds shall be used only to pay Site Improvement Work Costs and Escrow Agent shall be obligated to disburse same to Developer upon Escrow Agent's receipt of a draw request from Developer pursuant to Section 7 (B) above, or Owner in the event of a Takeover pursuant to Section 5 above; and
- (iii) upon satisfaction of Owner’s obligations under this Agreement, the balance of the escrow account attributable to and held for payment of Owner’s Proportionate Share and SPLOST Shortfall (“Owner’s Escrow Subaccount”) shall be paid to Owner; and upon satisfaction of Developer’s obligations under this Agreement, the balance of the escrow account attributable to and held for payment of Developer’s Proportionate Share (“Developer’s Escrow Subaccount”) shall be paid to Developer.

If the balance in Owner’s Escrow Subaccount is at any time reasonably shown to be insufficient to cover one hundred five percent (105%) of Site Improvement Work Costs that are categorized as Shared Costs (to be paid as Owner’s Proportionate Share), as described in Section 6 (B) hereof, or the SPLOST Shortfall, Owner agrees, upon receipt of written notice from Developer and provided that Developer is not then in default under this Agreement or any construction contract, account or loan related to the Project, to deposit additional funds into the escrow account to eliminate any such deficiency. If the balance in Developer's Escrow Subaccount is at any time reasonably shown to be insufficient to cover one hundred five percent (105%) of Site Improvement Work Costs that are categorized as hared Costs (to be paid as Developer's Proportionate Share) as described in Section 6 (B) hereof, Developer agrees, upon receipt of written notice from Owner and provided that Owner is not then in default under this Agreement, to deposit additional funds into the escrow account to eliminate any such deficiency. All costs associated with opening, managing and closing the escrow account shall be assumed and paid equally by Owner and Developer. Only Developer and Owner shall be permitted to draw on such account, in either case, only as contemplated in this Agreement. Neither, Owner nor Developer shall pledge or hypothecate the escrow account or their respective interest therein. Neither Owner nor Developer, nor any

respective successor or assign thereof, shall have any right to withdraw any funds from the escrow account except as specifically provided in this Agreement. Developer, Owner and Escrow Agent shall enter into an Escrow Agreement memorializing the terms of this Section 7. The escrow account shall remain outstanding until Developer has completed the Site Improvement Work and any work done pursuant to an approved change order under Section 4 (D). Notwithstanding the foregoing in the preceding sentence, (i) at the time when Owner has paid all sums due hereunder and performed all obligations of Owner hereunder, any funds remaining in Owner's Escrow Subaccount shall be returned to Owner, and (ii) at the time when Developer has paid all sums due hereunder and performed all obligations of Developer hereunder, any funds remaining in Developer's Escrow Subaccount shall be returned to Developer.

Section 8. Indemnity; Default. (A) Developer shall defend, protect, indemnify and hold harmless Owner and DDA from and against all claims or demands, including any actions or proceedings brought thereon, and all costs, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from any construction activity performed under this Agreement by Developer, or anyone claiming by, through or under Developer; provided, however, the foregoing obligation shall not pertain to the extent such claims or demands are based on Owner's negligence. The foregoing terms of this Section 8 shall expressly survive the termination of this Agreement.

(B) Should Developer or Site Improvement Work Contractor fail to make payment in the manner specified in any contract, account or loan entered into by Developer or Site Improvement Work Contractor related to the Project or otherwise defaults under any such contract, account or loan, Developer shall immediately provide written notice thereof to Owner and DDA, and shall be deemed in default hereunder if such failure to make payment or other default is not cured within thirty (30) days after the date such payment was originally due or other default occurred. If Developer does not cure such failure to make payment or other default during such thirty (30) day cure period, Developer will be considered in default under this Agreement, and Owner and DDA shall have such remedies as are available to each of them including but not limited to the remedy of Takeover contemplated in Section 5 of this Agreement.

Section 9. Permitted Delays. Whenever performance is required of any party hereunder, such party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God (including, without limitation, hurricanes), war, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by reason of fire or other casualty not caused by Developer or its agents or contractors, any act or omission of the other party, inclement weather, governmental delays, any delay as to or failure by any governmental authority to issue any permit or certificate, perform any inspection or grant any approvals, any delay in or failure to issue any permits perform inspections or issue approvals, or causes beyond the reasonable control of a party (other than unavailability of labor or materials, financial reasons, or in the case of Developer, default by the Site Improvement Work Contractor or

any other contractor or subcontractor) then, the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused. The provisions of this Section shall not operate to excuse any party from the prompt payment of any monies required by this Agreement.

Section 10. Construction Access. From and after the date of this Agreement until the construction is completed, all construction traffic will access the Project only through one (1) point of entry and exit on the site located on Medlock Bridge Road, such point of entry and exit being mutually agreed to by Developer and Owner. No construction traffic of any kind may access the site from Peachtree Parkway. Developer agrees to cause the Site Improvement Work Contractor and all subcontractors to strictly comply with the requirements of this Section 10 throughout the entirety of the Project.

Section 11. Insurance

(A) Prior to commencing construction of the Site Improvement Work, Developer shall (i) obtain or require the Site Improvement Work Contractor to obtain and, in either case, thereafter maintain so long as such construction activity is occurring or this Agreement is in effect, and (ii) require each subcontractor to obtain and thereafter maintain so long as such subcontractor is providing services or materials to or at the Project, at least the minimum insurance coverages set forth below:

- (i) Worker's compensation insurance, as required by any applicable law or regulation, including, but not limited to, worker's compensation insurance for all of Developer's, Site Improvement Work Contractor's and each subcontractor's workers at the Project.
- (ii) Employer's liability insurance in the amount of not less than Five Hundred Thousand and No/100 Dollars (\$500,000) each accident for bodily injury and not less than One Hundred Thousand and No/100 Dollars (\$100,000) for each employee for bodily injury or disease.
- (iii) Commercial general liability insurance: commercial general liability insurance covering all operations by or on behalf of Developer, the Site Improvement Work Contractor and each subcontractor, which shall include the following minimum limits of liability and coverages: (A) One Million and No/100 Dollars (\$1,000,000) for each occurrence (for bodily injury and property damage); (B) One Million and No/100 Dollars (\$1,000,000) for Personal Injury Liability; (C) Two Million and No/100 Dollars (\$2,000,000) aggregate for Products and Completed Operations.
- (iv) Automobile liability insurance: Automobile liability insurance (bodily injury and property damage liability) covering liability arising out of any automobile (including owned, hired, and non-owned automobiles) having limits of liability of not less than One

Million and No/100 Dollars (\$1,000,000) combined single limit each accident for bodily injury and property damage combined.

- (v) Commercial Umbrella/Excess Liability Insurance: The Developer, Site Improvement Work Contractor and each subcontractor shall also carry commercial umbrella/excess liability insurance in the amount of Five Million and No/100 Dollars (\$5,000,000).
- (vi) Completion Bond if the Site Improvement Work Contractor is not affiliated with Developer.

(B) Owner and DDA shall each be an additional insured under the insurance described in Section 11(A) (other than worker's compensation and automobile liability insurance) and all insurance policies described in Section 11(A) shall provide that the insurance shall not be canceled, or reduced in amount or coverage below the requirements of this Agreement, without at least thirty (30) days prior written notice to the additional insureds.

(C) All insurance policies described in Section 11(A) above shall be endorsed to be primary to, and shall receive no contribution from, any insurance policies or self-insurance programs afforded to or available to Owner or DDA. All such insurance policies shall be carried by an insurance company or companies that are, at all times, qualified to do business in the State and, at all times, have a Best's Key Rating Guide Property-Casualty United States rating of at least an "A-" and a financial rating of "VII" (based on the most current edition of A.M. Best's Key Rating Guide). The insurance referenced in Section 11(A) may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such party, so long as the amount and coverage of insurance required to be carried hereunder is not diminished, or (iii) a combination of any of the foregoing insurance programs.

Section 12. Notices. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication maybe given by counsel and shall be in writing and shall be delivered by hand, by nationally-recognized overnight express delivery service, by U. S. registered or certified mail, return receipt requested, postage prepaid, or by electronic transfer by facsimile or by e-mail in .pdf, to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

Owner: City of Peachtree Corners  
147 Technology Parkway, Suite 200  
Peachtree Corners, GA 30092  
Attention: Julian Jackson, City Manager  
Telephone: 678-691-1200  
Facsimile: 678-891-1201  
Email: [jjackson@peachtreecornersga.gov](mailto:jjackson@peachtreecornersga.gov)

and  
City Attorney  
Riley McClendon, LLC  
315 Washington, Ave.  
Marietta, Georgia 30060  
Attention: William F. Riley, Esq.  
Telephone: (770) 590-5900  
Facsimile: 770-590-0400  
Email: [briley@rileymclendon.com](mailto:briley@rileymclendon.com)

DDA:  
City of Peachtree Corners Downtown  
Development Authority  
147 Technology Parkway, Suite 200  
Peachtree Corners, GA 30092  
Attention: Diana Wheeler, Secretary  
Telephone: 678-691-1200  
Facsimile: 678-891-1201  
Email: [dwheeler@peachtreecornersga.gov](mailto:dwheeler@peachtreecornersga.gov)

and  
Baker, Donelson, Bearman, Caldwell and  
Berkowitz, PC  
Monarch Plaza  
Suite 1600  
3414 Peachtree Road NE  
Atlanta Georgia 30326  
Attention: Jed S. Beardsley Esq.  
Telephone: (404) 223-2214  
Facsimile: (404) 238-9614  
Email: [jbeardsley@bakerdonelson.com](mailto:jbeardsley@bakerdonelson.com)

Developer: Fuqua Development, Inc.  
Eleven Piedmont Center  
3495 Piedmont Rd., NE, Suite 905  
Atlanta, Georgia 30305  
Attention: Jeffrey S. Fuqua  
Telephone: (404) 907-1709  
Facsimile: (404) 228-4630  
Email: jeff.fuqua@fuquadev.com

and Sutherland Asbill & Brennan LLP  
999 Peachtree Street, NE, Suite 2300  
Atlanta, Georgia 30309  
Attention: James B. Jordan, Esq.  
Telephone: (404) 853-8101  
Facsimile: (404) 853-8806  
Email: jim.jordan@sutherland.com

Any notice or other communication mailed as hereinabove provided shall be deemed effectively given (a) on the date of delivery, if delivered by hand; (b) on the date mailed if sent by overnight express delivery or if sent by U.S. mail; or (c) on the date of transmission, if sent by e-mail or electronic transfer device with a follow-up by regular mail. Such notices shall be deemed received (a) on the date of delivery, if delivered by hand or overnight express delivery service; (b) on the date indicated on the return receipt if mailed; or (c) on the date of transmission, if sent by e-mail electronic transfer device. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing. Upon at least ten (10) days' prior written notice, each party shall have the right to change its address to any other address within the United States of America. Informal communications made between Owner, DDA and Developer during the completion of construction activities performed under this Agreement may be made by their respective project managers as designated from time to time, but such informal communications shall not constitute notice under this Agreement.

Section 13. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between Developer and Owner, or Developer and DDA.

Section 14. Costs and Attorney's Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party in such action shall be entitled to recovery of all costs and expenses of litigation, including reasonable attorney's fees.

Section 15. Exhibits Incorporated. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

Section 16. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

Section 17. Limitation of Liability. In all events, (i) Developer's, Owner's or DDA's liability under this Agreement shall not exceed, and (ii) neither party shall have the right to levy execution against any property of the other party or any person or entity comprising such party other than, Developer's, Owner's or DDA's equity interest in the Project, as the case may be, and any improvements thereon and any rents, profits and proceeds derived therefrom. In no event shall any partner of Developer or Owner or DDA nor any joint venturer in such party, nor any officer, director, shareholder, elected official, appointed official, or employee of such party or any such partner or joint venturer of such party be personally liable hereunder; provided, however, nothing in this Section 17 shall in any way be deemed to limit Developer's and Owner's right to draw on the cash escrow as provided in this Agreement.

*[SIGNATURE PAGE FOLLOWS]*

**SIGNATURE PAGE  
FOR  
SITE DEVELOPMENT AGREEMENT  
BETWEEN  
CITY OF PEACHTREE CORNERS,  
CITY OF PEACHTREE CORNERS DOWNTOWN DEVELOPMENT  
AUTHORITY  
AND  
FUQUA DEVELOPMENT SERVICES, LLC**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

DEVELOPER:

FUQUA DEVELOPMENT SERVICES, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SIGNATURE PAGE  
FOR  
SITE DEVELOPMENT AGREEMENT  
BETWEEN  
CITY OF PEACHTREE CORNERS,  
CITY OF PEACHTREE CORNERS DOWNTOWN DEVELOPMENT  
AUTHORITY  
AND  
FUQUA DEVELOPMENT SERVICES, LLC**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

OWNER:

**CITY OF PEACHTREE CORNERS**, a public  
body corporate and public

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Kym Chereck, City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**SIGNATURE PAGE  
FOR  
SITE DEVELOPMENT AGREEMENT  
BETWEEN  
CITY OF PEACHTREE CORNERS,  
CITY OF PEACHTREE CORNERS DOWNTOWN DEVELOPMENT  
AUTHORITY  
AND  
FUQUA DEVELOPMENT SERVICES, LLC**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

DDA:

**CITY OF PEACHTREE CORNERS  
DOWNTOWN DEVELOPMENT  
AUTHORITY**, a public body corporate and public

By: \_\_\_\_\_  
Daniel A. Graveline, Chairman

**EXHIBIT A**

[Insert Site Plan]

**EXHIBIT B**

[Insert Legal Description of Developer Tract]

**EXHIBIT C**

[Insert Legal Description of Owner Tract]

**EXHIBIT D**

[Insert Legal Description of DDA Tract]

**EXHIBIT E**

[Insert description of Site Construction Documents]

**EXHIBIT F**

[Insert Off-Site Areas Plat]

**EXHIBIT G**

[Utilities Insert]

**EXHIBIT H**

[Park Insert]

**EXHIBIT I**

[Parking Deck Insert]

**EXHIBIT J**

[Insert Construction Schedule]

**EXHIBIT K**

[Insert Budget]