DOWNTOWN DEVELOPMENT AUTHORITY
AGENDA

January 11, 2016
11:00 AM
CITY HALL
147 Technology Parkway, Suite 200

A) CALL TO ORDER

B) APPROVAL OF MINUTES: Meeting of September 21, 2015

C) OLD BUSINESS: (None)

D) NEW BUSINESS:

1. **Consideration of a Resolution to Approve the Grant of Ingress, Egress, and Reciprocal Easements and Restrictions Agreement for the Town Center Property and to authorize the Chairman to Execute the Agreement and any associated documents.**

2. **Consideration of a Resolution authorizing the Chairman to sign all closing documents associated with, and required for, the sale of approximately 12 acres of the Town Center land to Fuqua Acquisitions II, LLC.**

E) STAFF ITEMS: Update on Town Center plans including design of the Town Green and the Peachtree Parkway pedestrian bridge.

F) COMMENTS FROM BOARD MEMBERS

G) ADJOURN

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DOWNTOWN DEVELOPMENT AUTHORITY
MEETING MINUTES
SEPTEMBER 21, 2015 at 9:00 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 - Absent
Board Member	LC Johnson
Board Member	Ruth Strickland - Absent
Board Member	Gene Witkin - Absent
Board Member	Rob Binion
Board Member	Aaron Kappler
City Manager	Julian Jackson
Director, Com. Dev.	Diana Wheeler
City Clerk	Kym Chereck
City Attorney	Bill Riley
Attorney	Jed Beardsley

MINUTES:

MOTION TO APPROVE THE MINUTES FROM THE AUGUST 3, 2015 DOWNTOWN DEVELOPMENT AUTHORITY MEETING.
By: Aaron Kappler
Seconded: LC Johnson
Vote: (4-0) (Kappler, Johnson, Graveline, Binion)

OLD BUSINESS:

There was no old business.

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NEW BUSINESS:

1. **Consideration of approving a bond resolution related to the financing of the Town Center project along with approval of an inter-governmental agreement with the City of Peachtree Corners.**

Mrs. Diana Wheeler, Community Development Director and Mr. Peter Lloyd, Bond Attorney with Alston & Bird, gave a brief overview of the proposed Resolution. A motion was made after discussion concerning the City's debt and the total for the bond ($14,675,000).

MOTION TO APPROVE A BOND RESOLUTION RELATED TO THE FINANCING OF THE TOWN CENTER PROJECT ALONG WITH APPROVAL OF AN INTER-GOVERNMENTAL AGREEMENT WITH THE CITY OF PEACHTREE CORNERS.
By: LC Johnson
Seconded: Aaron Kappler
Vote: (4-0) (Johnson, Kappler, Graveline, Binion)

STAFF ITEMS:

Town Center Project Update

Mrs. Wheeler gave a brief introduction of T Y Lin, the company that will be designing the Pedestrian Bridge spanning from the Forum to the Town Center. After the introduction, Mrs. Wheeler presented a few very rough drafts of the proposed Bridge.

ADJOURNMENT:

MOTION TO ADJOURN AT 10:10 AM.
By: LC Johnson
Seconded: Aaron Kappler
Vote: (7-0) (Johnson, Kappler, Graveline, Binion)

Approved, Attest:

_____ _____

Dan Graveline, Chairman Kym Chereck, City Clerk

Space Above Reserved for Recorder's Use Only

This document prepared by
and after recording return to:
James B. Jordan, Esq.
Sutherland Asbill & Brennan LLP
999 Peachtree Street, NE
Suite 2300
Atlanta, GA 30309-3996

GRANT OF INGRESS, EGRESS AND RECIPROCAL EASEMENTS AND RESTRICTIONS

THIS GRANT OF INGRESS, EGRESS AND RECIPROCAL EASEMENTS AND RESTRICTIONS (this "**Agreement**") is made this _____ day of _____, 2016 (the "**Effective Date**"), by and among **CITY OF PEACHTREE CORNERS,** a public body corporate and politic ("**City**"), **CITY OF PEACHTREE CORNERS DOWNTOWN DEVELOPMENT AUTHORITY**, a public body corporate and politic ("**DDA**"), **FUQUA _____LLC**, a Georgia limited liability company (**"Fuqua**") and **JWH ACQUISITIONS, LLC**, a Delaware limited liability company (**"Wieland"**)

W I T N E S S E T H

WHEREAS, Fuqua is the owner of certain real property located in Gwinnett County, Georgia which is more particularly described on **Exhibit A** attached hereto (the **"Retail Tract**");

WHEREAS, Wieland is owner of certain real property located in Gwinnett County, Georgia which is more particularly described on **Exhibit B** attached hereto (the **"Residential Tract**");

WHEREAS, City is the owner of certain real property consisting primarily of driveways and roadways lying contiguous with and/or adjacent to the Fuqua Tract, which is more particularly described on **Exhibit C** attached hereto (collectively, the "**City Tract**");

WHEREAS, DDA is the owner of certain real property consisting primarily of a parking facility, green spaces and trails lying contiguous with and/or adjacent to the Fuqua Tract, which is more particularly described on **Exhibit D** attached hereto (collectively, the "**DDA Tract**") (the Fuqua Tract, the City Tract and the DDA Tract are collectively, the "**Land**");

WHEREAS, the Retail Tract, the Residential Tract, the City Tract and the DDA Tract are depicted on the site plan attached hereto as **Exhibit E** (the "**Site Plan**") and are intended to be developed as a "town center" style project, including a shopping center, restaurants, theatre, multifamily residential units and public recreational facilities and parking (the "**Project**");

WHEREAS, the Owners wish to enter into this Agreement to provide for integrated use of the Land in the development of the Project, subject to the covenants, conditions and restrictions hereinafter set forth;

WHEREAS, the DDA has determined that there is a public benefit in developing the Land as described herein;

WHEREAS, in partial consideration of the consideration paid by Fuqua for the Retail Tract, the DDA agrees to enter into this Agreement and grant Fuqua the easement rights granted hereunder; and

NOW THEREFORE, in consideration of the premises, and Ten Dollars ($10.00), the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
DEFINITIONS

In addition to any terms whose definitions are fixed and defined elsewhere in this Agreement, each of the following terms, when used herein with an initial capital letter, shall have the following meaning:

1.1 Building. "Building" or "Buildings" shall mean any building(s) and other vertical improvements (not including signage) constructed on the Land from time to time.

1.2 Capital Repair. "Capital Repair" shall mean any repair or maintenance item that would be capitalized in accordance with generally accepted accounting principles.

1.3 Cell Tower Agreement. "Cell Tower Agreement" shall mean that certain Short Form of Ground Lease Agreement between Ether Wheeler and Lealer Wheeler and AirTouch Cellular of Georgia, dated December 30, 1996, filed for record January 8, 1997 and recorded in Deed Book 13661, Page 46, Gwinnett County, Georgia Records, as amended by First Amendment to Ground Lease Agreement and Short Form of Ground Lease Agreement between Ether Wheeler and Lealer Wheeler and AirTouch Cellular of Georgia, dated as of October 3, 1997, tiled for record October 9, 1997 and recorded in Deed Book 14845, Page 160, aforesaid records, as further amended by unrecorded Second Amendment to Ground Lease Agreement between Ether Wheeler and Lealer Wheeler and Verizon Wireless (VA W) LLC, a Delaware limited liability company, dated as of August 1, 2003, as further affected by that certain Assignment of Ground Lease Agreement and Short Form of Ground Lease Agreement between Frances Sims, as Executor of the Estate of Ether Wheeler, deceased, Lealer Wheeler and Roberts Properties Peachtree Parkway, L.P., dated June 9, 2004, filed for record June 15, 2004 and recorded in Deed Book 38692, Page 1, aforesaid records, as further assigned as to an 18% undivided interest by that certain Assignment of Ground Lease Agreement and Short Form of Ground Lease Agreement to Georgianna Jean K. Valentino, dated November 1, 2004, recorded in Deed Book 41186, Page 224, aforesaid records, as further assigned as to the remaining 82% undivided interest by that certain Assignment of Ground Lease Agreement and Short Form of Ground Lease Agreement to Roberts Properties Residential, L.P., dated December 29, 2004, recorded in Deed Book 41186, Page 227, aforesaid records, as further assigned as to an 18%

undivided interest by that certain Assignment of Ground Lease Agreement and Short Form of Ground Lease Agreement from Georgianna Jean K. Valentino to Roberts Properties Residential, L.P., dated December 6, 2006, filed for record December 12, 2006 and recorded in Deed Book 47355, Page 734, aforesaid records, as further assigned by that certain Assignment of Ground Lease Agreement and Short Form of Ground Lease Agreement from Roberts Properties Residential, L.P. to LMI Peachtree Corners, LLC dated February 7, 2013, filed February 8, 2013, recorded in Deed Book 52000, Page 663, aforesaid records, and as further assigned by that certain Assignment of Ground Lease Agreement and Short Form of Ground Lease Agreement from LMI Peachtree Corners, LLC to LMI Cell Tower Investors, LLC dated February 8, 2013, and recorded April 8, 2013 in Deed Book 52140, Page 110, aforesaid records, as re-recorded on April 16, 2013 in Deed Book 52161, Page 610, aforesaid records, as further assigned to Downtown Development Authority of Peachtree Corners by Assignment of Ground Lease Agreement, dated May 13, 2013 and recorded May 14, 2013 in Deed Book 52224, Page 244, aforesaid records.

1.4 Cell Tower Permittees. "Cell Tower Permittees" shall mean the owner, tenants and licensees of the cell tower located on the Residential Tract, pursuant to the terms of the Cell Tower Agreement, and their agents, contractors, subcontractors, visitors, guests and invitees and concessionaires.

1.5 Creek and Trail Area. "Creek and Trail Area" shall mean those portions of the DDA Tract depicted as "Creek and Trail Area" on the Site Plan.

1.6 DDA's Parking Proportionate Share. "DDA's Parking Proportionate Share" shall equal _____% (_____ DDA Spaces/_____total Parking Spaces).

1.7 DDA Spaces. "DDA Spaces" means all Parking Spaces in the Parking Facility which are not Retail Spaces.

1.8 HOA. "HOA" shall mean the Georgia not-for-profit corporation formed by Wieland to serve as the homeowners' association of the Residential Tract.

1.9 Improvements. "Improvements" shall mean any Building and related landscaping, storefront and freestanding signage (if applicable), driveways and parking lots (including parking lot lighting) constructed on each tract.

1.10 Laws. "Laws" shall mean laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof with appropriate jurisdiction over the Project.

1.11 Parking Facility. "Parking Facility" shall mean the multi-level parking deck to be constructed on the DDA Tract in the location depicted as "Parking Facility" on the Site Plan.

1.12 Parking Facility Utility Costs. The "Parking Facility Utility Costs" shall mean all water and electricity service costs incurred in the operation of the Parking Facility, including but not limited to lighting of the Parking Facility.

1.13 Parking Spaces. "Parking Spaces" shall mean the parking spaces located within the Parking Facility.

1.14 Permittee. "Permittee" shall mean the officers, directors, employees, agents, contractors, subcontractors, tenants, subtenants, patrons, customers, visitors, guests, invitees, licensees and concessionaires of an Owner of a Tract.

1.15 Owner. "Owner" shall mean, as of any time, and individually or collectively, the owner(s) or ground lessee(s) of all or any portion of a Tract and the successors, assigns and successors-in-title of same. Prior to the sale of any portion of the Residential Tract to an individual homeowner, the Owner of the Residential Tract shall form the HOA, and upon the formation of such HOA, the Owner of the Residential Tract shall be deemed to be the HOA.

1.16 Park. "Park" shall mean that portion of the DDA Tract depicted as "Park" on the Site Plan.

1.17 Residential Spaces. "Residential Spaces" shall mean parking spaces located on the Residential Tract.

1.18 Retail Parking Proportionate Share. "Retail Parking Proportionate Share" shall equal _____% (_____ Retail Spaces/_____total Parking Spaces).

1.19 Retail Spaces. "Retail Spaces" shall have the meaning set forth in Section 2.1(a).

1.20 Road Facilities. "Road Facilities" shall have the meaning set forth in Section 4.2.

1.21 Special Event. "Special Event" shall mean an event, performance or display on, including without limitation educational, cultural, entertainment, promotional, sporting or social events, performances or displays expected to draw increased vehicle, bicycle and pedestrian traffic to, the Park Area.

1.22 Tract. "Tract" shall mean, as applicable, the Retail Tract, the Residential Tract, the City Tract and/or the DDA Tract.

ARTICLE II
PARKING FACILITY

2.1 Easements for Use of Parking Facility. Subject to the terms and conditions of this Agreement, DDA hereby grants and conveys to and for the benefit of Fuqua, its successors-in-title and its Permittees, and as an appurtenance to the Retail Tract, the following perpetual, irrevocable easements and rights-of-way for ingress, egress and use of, to, from, or otherwise with respect to the Parking Facility:

(a) the exclusive right to use, 24 hours per day, 365 days per year (but excluding the second Saturday and Sunday in June and July 4th annually, during which time the Parking Spaces shall be open to the public on a first-come, first-served basis), not less than 500

Parking Spaces (the "**Retail Spaces**") for purposes of parking passenger vehicles (including parking by valet services), bicycles and motorcycles;

(b) the non-exclusive right of entry upon and passage by foot and any automobiles, motorcycles and bicycles through the entrances and exits of the Parking Facility as required to provide ingress and egress to the Retail Spaces; and

(c) the non-exclusive right to use the roadways, aisles, ramps, entrances, exits, elevators, stairs, stairwells and lobbies, automated access and exit devices, and other facilities and components of the Parking Facility as necessary or convenient for the use and enjoyment of the Retail Spaces.

2.2 Retail Spaces.

(a) Fuqua shall have the right, at its sole cost and expense, to install signage on the walls in front of the Retail Spaces or on the surface of the Retail Spaces stating that the Retail Spaces are for the exclusive use by the Fuqua and its Permittees (including the right to designate use of certain Retail Spaces to a particular tenant of Fuqua). Subject to applicable Laws, Fuqua shall have the right, at its sole cost, expense and risk, to police the Retail Spaces to insure no unauthorized use exists and to take measures such as towing and booting offending vehicles or taking such other appropriate actions as may be reasonably necessary to cause any such unauthorized use to cease.

(b) The Retail Spaces shall be located as follows: [**ADD PARKING DIAGRAM**]. Fuqua shall use commercially reasonable efforts to cause employees of its Permittees to park on the top level of the Parking Facility, including without limitation designating such Parking Spaces as for employees and making this requirement a provision of the Leases for the Retail Spaces. In such event, the Retail Spaces shall include such spaces located on the top floor of the Parking Facility and the number of Retail Spaces located elsewhere in the Parking Facility shall be reduced commensurately.

2.3 No Charge for Use of Retail Spaces. The use of the Retail Spaces by Fuqua and its Permittees shall be free of charge unless the parties mutually agree otherwise. The DDA may, in its sole discretion, elect to charge its Permittees for the use of the DDA Spaces, provided, that: (a) any validation or other system installed by the DDA may not interfere with any such system installed by Fuqua; and (b) the DDA may not charge Fuqua or any of its Permittees for access to or use of the Parking Facility and may not install any barricade or similar obstruction limited access by Fuqua or its Permittees through the ramps, driveways or accessways of the Parking Facility. Conversely, Fuqua may, in its sole discretion, elect to charge its Permittees for the use of the Retail Spaces, provided, that: (a) any validation or other system installed by Fuqua may not interfere with any such system installed by DDA; and (b) Fuqua may not charge DDA or any of its Permittees for access to or use of the Parking Facility and may not install any barricade or similar obstruction limiting access by DDA or its Permittees through the ramps, driveways or accessways of the Parking Facility.

2.4 Manner of Use. Fuqua will not occupy or use the Retail Spaces, or permit any portion of the Parking Facility to be occupied or used, for any purpose which is unlawful in part or in whole or deemed to be disreputable in any manner or extra hazardous. Each of Fuqua and the DDA hereby covenant and agree not to occupy or use the Parking Spaces or permit any portion of the Parking Facility to be occupied or used for overnight parking. Each of Fuqua and DDA will conduct itself and will direct each of its respective Permittees to conduct itself in such a manner as not to create any nuisance, nor unreasonably interfere with, annoy or disturb DDA, Fuqua or their Permittees. Notwithstanding any provision contained in this Agreement to the contrary, (a) DDA shall have no obligation to keep unauthorized persons from using the Parking Spaces in the Parking Facility, to remove violator's vehicles or to police or direct traffic; and (b) DDA shall not be construed to be a bailee of any vehicle or the contents thereof.

2.5 Rights of DDA. DDA, its Permittees, and such other persons as DDA may from time to time elect to permit to use the Parking Facility, shall have the right to use the Parking Facility (other than the Retail Spaces) for such purposes and in such manner as DDA may deem appropriate. Without limiting the foregoing, and notwithstanding any provision contained in this Agreement to the contrary, DDA reserves the right to (a) grant to such parties as DDA deems reasonably appropriate easements, licenses and other rights of use with respect to the Parking Facility (other than the Retail Spaces); (b) take such actions as DDA may deem reasonably appropriate to discourage unauthorized parking in the DDA Spaces, although DDA shall have no obligation to do so; (c) close temporarily all or any portion of the Parking Spaces for the purpose of making repairs, alterations, additions or improvements thereto (it being agreed that reasonable access shall at all times be provided to the Residential Spaces), and (d) take such actions as may be required to comply with DDA's obligations under this Agreement.

2.6 Rights of Fuqua. Fuqua reserves the right to (a) grant to such parties as Fuqua deems reasonably appropriate easements, licenses and other rights of use with respect to the Retail Spaces; (b) take such actions as Fuqua may deem reasonably appropriate to discourage unauthorized parking in the Retail Spaces, although Fuqua shall have no obligation to do so; (c) close temporarily all or any portion of the Parking Spaces for the purpose of making repairs, alterations, additions or improvements thereto (it being agreed that reasonable access shall at all times be provided to the Residential Spaces), and (d) take such actions as may be required to comply with Fuqua's obligations under this Agreement.

2.7 Alterations. Neither the DDA nor the Fuqua may construct or make any alterations, additions or improvements of any nature to the Parking Facility, except that the DDA, as to the DDA Spaces, and Fuqua, as to the Retail Spaces, may install signs, lighting and striping without the consent of the other party. For avoidance of doubt, the DDA may restripe the DDA Spaces and Fuqua may restripe the Retail Spaces to create compact and/or handicap parking spaces, thereby increasing or decreasing the total number of Retail Parking Spaces or DDA Parking Spaces, as the case may be.

2.8 Rules and Regulations. Fuqua will comply, and will cause all of Fuqua's Permittees, and any employees, customers, invitees, or licensees of any such persons or entities to comply, with all rules and regulations of the Parking Facility now or hereafter jointly adopted

by the Fuqua and the DDA, including but not limited to the rules and regulations which are set forth on **Exhibit F** attached hereto and incorporated herein by reference for all purposes.

2.9 Repair, Maintenance and Operation of Parking Facility. Fuqua shall maintain, operate and repair (including required replacements), the Parking Facility in a manner consistent with comparable parking facilities in the vicinity of the Parking Facility. Such responsibilities shall include, without limitation, providing electricity and power for lighting, elevators and all equipment in the Parking Facility, landscaping the areas located outside and adjacent to the Parking Facility, maintaining and repairing all elevators and other equipment locating in the Parking Facility, keeping the Parking Facility and the grounds surrounding the Parking Facility free from debris and trash, power washing on a periodic basis the surfaces of the Parking Spaces and ramps and driveways, and restriping the Parking Spaces periodically and cleaning and keeping the exterior of the Parking Facility free from graffiti and the like and making all repairs and replacements necessary to comply with any applicable Laws. When performing any maintenance, repairs or replacement as provided herein, Fuqua shall use reasonable efforts to minimize interference with the DDA's use of the Parking Facility and shall require such work to be performed in a good and workmanlike manner and diligently prosecuted to completion. All costs incurred by Fuqua in performing its obligations under this Section including the Parking Facility Utility Costs (the "**Parking Facility Maintenance Costs**") shall be paid by Fuqua; provided, however, the DDA shall be responsible for the entire cost of Capital Repairs and alterations and replacements including without limitation, Capital Repairs and alterations to and replacements of elevators, lighting and other utility systems and Capital Repairs and alterations to and replacement of the structure of the Parking Facility.

2.10 Access to Parking Facility. Access to the Parking Facility may be regulated by an attendant or equipped with mechanical, electrical or other automatic means, or by a combination thereof, as determined jointly by the DDA and Fuqua.

2.11 Insurance.

(a) Property Insurance. [**SUBJECT TO FUQUA'S INSURANCE PROVIDER'S REVIEW**]

(i) During the initial construction of the Parking Facility and during any periods of restoration or reconstruction of the Parking Facility, Fuqua shall carry or cause its contractor to carry builder's risk insurance (including both property and commercial general liability insurance coverage meeting the requirements of Section 2.13) in an amount sufficient to cover replacement cost of the Parking Facility.

(ii) At all other times, Fuqua shall keep and maintain, or cause to be kept and maintained, a policy or policies of insurance on the Parking Facility against loss or damage by a Casualty and against loss or damage by other risks now embraced by the Causes of Loss – "Special Form" Property Insurance Policy (including Ordinance and Law coverage and expediting expenses coverage) in an amount equal to the full insurable value of the Parking Facility. The term "full insurable value" means 100% of the cost of replacing the Parking Facility, exclusive of the cost of non-insurable portions thereof,

such as excavation, foundations and footings, using contemporary building materials and technology, without deduction for depreciation. The policy or policies of property insurance covering the Parking Facility against physical loss or damage may contain a deductible which is usual and customary for an exposure of this size and type.

(iii) The policy or policies of property insurance (including builders' risk coverage) maintained by Fuqua shall name the DDA and the City as additional insureds.

(b) Commercial General Liability Insurance. Fuqua shall keep and maintain, or cause to be kept and maintained, a policy or policies of commercial general liability insurance (broadest form available) naming Fuqua as a named insured and naming the DDA and the City as additional insured parties against liability for bodily injury, death and property damage occurring upon or in the Parking Facility with each such policy to afford protection with a combined single limit annual aggregate with respect to bodily injury, death and property damage in such amounts as from time to time are carried by prudent owners of modern, first-class structured garages in the Atlanta, Georgia metropolitan area, but not less than $5,000,000. Provided such coverage is available on commercially reasonable terms, such insurance must be issued on an occurrence basis and a commercial liability form, and shall contain a "severability of interest" endorsement.

(c) Automobile Liability Insurance. Fuqua shall keep and maintain, or cause to be kept and maintained, a policy or policies of automobile liability insurance with coverage for owned or hired automobiles naming Fuqua as a named insured and naming the DDA and the City as additional insured parties against liability for bodily injury, death and property damage occurring upon or in the Parking Facility with each such policy to afford protection with a combined single limit annual aggregate with respect to bodily injury, death and property damage in such amounts as from time to time are carried by prudent owners of modern, first-class structured garages in the Atlanta, Georgia metropolitan area, but not less than $1,000,000.

(d) Worker's Compensation Insurance. Fuqua shall keep and maintain, or cause to be kept and maintained, a policy or policies of worker's compensation liability insurance with coverage in accordance with State of Georgia requirements.

(e) Insurance Requirements. All insurance required to be maintained by this Section 2.11 must be written as primary insurance and not contributing with or in excess of coverage which may carry. All policies of insurance obtained pursuant to this Section 2.12 must be issued by a company or companies licensed or authorized by law to do business in the State of Georgia and rated A or better (and are in a Financial Size Category of Class VIII or higher) by *Best's Key Rating Guide*, or which have an equivalent financial rating from a comparable insurance rating organization. Each policy of insurance obtained pursuant to this Section 2.11 shall provide that it may not be cancelled, reduced or substantially modified without at least thirty (30) days' prior written notice to all insureds named therein and all Persons named as additional insureds.

(f) Evidence of Insurance. Fuqua shall promptly give written notice to the DDA of the procurement of each insurance policy obtained by it pursuant to this Section 2.11 and of any subsequent changes therein or the termination thereof. Promptly following full execution and delivery of this Agreement, and thereafter at least ten (10) days before the expiration of the then-current policy or policies, Fuqua shall deliver to the DDA and the City, and to each Mortgagee of the DDA and the City, a certificate of, or binders evidencing, the insurance maintained pursuant to Section 2.11(a) - 2.11(d), together with a copy of each such policy and evidence of payment of the applicable premium for a period of at least one year.

(g) Blanket Policy. Fuqua has the right to comply with and to satisfy its obligations under Sections 2.11(a) - 2.11(d) by means of any so-called blanket policy or policies of insurance covering this and other liability and locations of the person obtaining such insurance, and the liabilities to be insured hereunder in an amount at least equal to the amount of insurance required to be carried pursuant to this Section 2.11 so that the proceeds available from such insurance are an amount at least equal to the amount of proceeds that would be available if the insuring party were insured under a single policy.

(h) Limitation on Liability. Notwithstanding any other provision herein to the contrary, neither party shall be responsible to the other party or its agents, representatives or employees for money, jewelry, electronics, automobiles or other personal property lost or stolen from the Parking Facility, regardless of whether such loss or theft occurs when the Parking Facility or other areas therein are locked or otherwise secured against entry, or liable for any loss, injury or damage to persons using the Parking Facility or automobiles or other property therein.

(i) Indemnity. Fuqua hereby indemnifies the City and the DDA, and their respective agents, employees and contractors, against, and agrees to defend (with counsel reasonably satisfactory to the City and the DDA), protect and hold them harmless from, any and all liability, loss, expense (including Reasonable attorneys' fees and costs), damage, claim and cause of action (collectively, "**Claims**") arising out of or resulting from or in connection with (i) any default or breach by Fuqua as to its obligations under this Agreement which is not cured within the notice and cure period provided for herein, or (ii) the gross negligence or willful misconduct of Fuqua, its agents, employees and contractors. Any successor of the DDA (but not the City of Peachtree Corners) hereby indemnifies Fuqua and its agents, employees and contractors, against, and agrees to defend (with counsel reasonably satisfactory to Fuqua), protect and hold them harmless from, any and all Claims arising out of or resulting from or in connection with (i) any default or breach by DDA as to its obligations under this Agreement which is not cured within the notice and cure period provided for herein, or (ii) the gross negligence or willful misconduct of DDA, its agents, employees and contractors.

(j) Allocation of Cost of Insurance Premiums. The premiums paid by Fuqua ("**Parking Facility Insurance Costs**") shall be borne as follows: Fuqua shall pay the Fuqua's Proportionate Parking Share of such expenses, and the DDA shall pay the DDA's Proportionate Parking Share of such expenses.

2.12 Taxes. At such time, if ever, as the DDA Tract is subject to the imposition of ad valorem taxes and assessments, the DDA shall pay, when due, all ad valorem taxes and assessments of every kind and nature, if any, due as to or in connection with the Parking Facility.

ARTICLE III
PARKING FACILITY CASUALTY AND CONDEMNATION

3.1 Repair and Restoration.

(a) If the Parking Facility, or any part thereof, is damaged or destroyed by a fire or other casualty (a "Casualty") (including any Casualty for which insurance coverage was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (and as often as the Parking Facility is so damaged or destroyed by a Casualty), or if all or a portion of the Parking Facility is subject to a taking by eminent domain or condemnation (a "Taking"), then Fuqua shall proceed promptly and with reasonable diligence to repair, restore, replace and rebuild the Parking Facility to the extent required to provide not less than the number of Parking Spaces located in the Parking Facility prior to such Casualty or Taking; provided, however, if then applicable Laws do not allow the such number of Parking Spaces to be restored, then Fuqua shall restore the Parking Facility so as to include the maximum number of Parking Spaces then permitted by applicable Laws and such Parking Spaces shall be allocated between the DDA and the Fuqua as follows: the DDA shall be entitled to a number of Parking Spaces equal to the product of the total number of Parking Spaces and the DDA's Parking Proportionate Share; the Fuqua shall be entitled to a number of Parking Spaces equal to the product of the total number of Parking Spaces and the Retail Parking Proportionate Share.

(b) Fuqua shall be entitled to adjust and settle on a commercially reasonable basis all claims as to property insurance proceeds related to such Casualty and the amount of condemnation award payable in connection with a Taking, and all insurance proceeds and condemnation awards shall be made available to Fuqua to pay all costs of restoration and rebuilding, Fuqua shall keep the DDA apprised as to the status of discussions with the insurance company and/or condemning authority, and the DDA may provide suggestions or recommendations to Fuqua in connection with any such settlement. Notwithstanding the immediately preceding two sentences:

(c) If a Taking or a Casualty results in insurance proceeds or a condemnation award in excess of the cost to restore the Parking Facility ("**Excess Proceeds/Award**") and if then applicable Laws do not allow the required number of Parking Spaces to be restored and thus the entire number of Parking Spaces are not rebuilt or restored, the DDA shall be entitled to receive the Excess Proceeds/Award. If a Taking or a Casualty results in insurance proceeds or a condemnation award which are less than the cost to restore the Parking Facility ("**Proceeds/Award Shortfall**"), then the DDA shall be obligated to pay to Fuqua 100% of the amount of the Proceeds/Award Shortfall.

(d) Notwithstanding any provision contained herein to the contrary, the DDA acknowledges and agrees that access to the Parking Facility and/or any surface Parking Spaces

may be limited or curtailed during periods of demolition, repair or reconstruction of the Parking Facility and/or surface parking area, and Fuqua shall not be in default hereunder as a result thereof; however, subject to Fuqua's receipt of any casualty insurance proceeds or condemnation award, as applicable, and receipt from the DDA of the Proceeds/Award Shortfall, Fuqua agrees to use commercially reasonable efforts to expedite restoration of the Parking Facility in order to minimize the extent and duration of such limitation or curtailment.

(e) Notwithstanding any provision to the contrary, the obligations of Fuqua under this Article VII are subject to the receipt by Fuqua of insurance proceeds or condemnation awards, as the case may be (but this provision shall not affect the priority of this Agreement over all deeds to secure debt, mortgages and other liens encumbering the DDA Tract). Fuqua shall use commercially reasonable efforts to expedite the receipt of such insurance proceeds or condemnation awards.

ARTICLE IV
OTHER EASEMENTS

4.1 No Cross-Parking. Except for parking by Fuqua and its Permittees in the Parking Facility, which shall be governed by Article II above, there shall be no cross-parking between and among the Tracts. Except as to the Parking Facility, Fuqua and its Permittees shall have no right to park on the City Tract, DDA Tract or the Residential Tract. The Owner of the Residential Tract, owners of residences in the Residential Tract and their respective Permittees shall have no right to park in the Retail Tract, the City Tract or the DDA Tract. Permittees of the DDA shall park only in the DDA Spaces or in public spaces located on or adjacent to the Road Facilities. Notwithstanding the foregoing, the parallel parking spaces located within the Road Facilities depicted on the Site Plan as "Street Spaces" shall be open to the public on a first-come, first-served basis.

4.2 Access.

(a) Fuqua and Wieland, and their respective Permittees, and the Cell Tower Permittees shall have a perpetual non-exclusive easement for the passage of vehicles and for the passage and accommodation of pedestrians over, across and through the roadways depicted as _____ and _____ on the Site Plan **[NOTE TO DRAFT: INCLUDE DRIVEWAY TO PARKING FACILITY**] and the related sidewalks (hereinafter collectively referred to as "**Road Facilities**"). It is contemplated that the City shall dedicate the Road Facilities as public roads. If all or any portion of the Road Facilities shall be dedicated to public use, the easements granted hereinabove over the dedicated portion of the Road Facilities shall automatically expire.

(b) The Owner of the DDA Tract and its Permittees shall have a perpetual, non-exclusive easement over and across that portion of the Retail Tract depicted as "**Pedestrian Accessway**" on the Site Plan for the purpose of utilizing an elevated walkway spanning Peachtree Parkway at such time as such elevated walkway is constructed. The DDA shall be solely responsible for any damage to the Fuqua Tract caused by the use of its Permittees of such Pedestrian Accessway. DDA hereby indemnifies Fuqua and its agents,

employees and contractors, against, and agrees to defend (with counsel reasonably satisfactory to Fuqua), protect and hold them harmless from, any and all Claims arising out of or resulting from or in connection with the use by Permittees of the DDA of the Pedestrian Accessway.

(c) Irrespective of whether the Road Facilities are dedicated to the City, (i) the City shall be responsible for Capital Repairs and alterations to and replacements of the Road Facilities and the street lighting as to such Road Facilities, and all Capital Repairs and alterations to and replacements as to the landscaping in the shoulders and medians of the Road Facilities (other than the replacement of annual flowers), subject to that obligations of the City and DDA under that certain Site Development Agreement of even date herewith by and among Fuqua, the DDA and the City (the "**Site Development Agreement**"), and (ii) Fuqua shall be responsible for all other repairs and maintenance to the Road Facilities, for providing and maintaining the street lighting as to such Road Facilities, for providing, maintaining and repairing all the benches, bicycle racks and trash receptacles located in or adjacent to the Road Facilities and all landscaping in the shoulders and medians of the Road Facilities (including the replacement of annual flowers). Fuqua shall pay the cost of providing electricity in connection with the operation of the street lighting. For avoidance of doubt, the City shall be responsible for repairs, patching, sealing and restriping the roads that are part of the Road Facilities.

4.3 Utilities.

(a) Fuqua, Wieland, Cell Tower Permittees and the DDA [**NOTE TO DRAFT: DETERMINE WHETHER WIELAND REQUIRES]** and their respective Permittees shall have a perpetual non-exclusive easement over, under, along and across the Road Facilities [**NOTE TO DRAFT: WILL ALL TRUNK/MAIN LINES BE LOCATED IN THE ROAD FACILITIES?**] for the purpose of operation, flow, passage, use, maintenance, connection, repair, relocation and removal of sanitary sewer, water (fire and domestic), gas, electrical, telephone and communication lines and other similar facilities (the "**Utility Facilities**") located in the Road Facilities. All such connection work shall be performed in compliance with applicable Laws. If all or any portion of the Utility Facilities shall be dedicated to public use, the easements granted hereinabove over the dedicated portion of the Utility Facilities shall automatically expire. Until such time as the dedication of the Utility Facilities is accepted by the applicable utility suppliers (and thus such Utility Facility is repaired and maintained by such utility supplier), (i) Fuqua shall be responsible for construction, alterations and replacements of the Utility Facilities, subject to the obligations of the City and the DDA under the Site Development Agreement, (ii) Fuqua shall be responsible for all other repairs and maintenance to the Utility Facilities, and (iii) Fuqua shall be responsible for all Capital Repairs, other than Capital Repairs as to Utilities Facilities serving the Parking Facility or the Park Area, which shall be borne by DDA.

(b) Fuqua hereby grants and conveys to DDA, as to the Park Area and the Parking Facility, non-exclusive, perpetual easements in, to, over, under, along and across those portions of the Retail Tract (exclusive of any portion improved with a Building) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of _____ [**water, sanitary sewer, electricity and data**] utility lines serving the grantee's Tract (hereinafter referred to as a "**Separate Utility Line**"). The location of any such

Separate Utility Line shall be subject to the prior written approval of Fuqua. Such easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility company or five (5) feet on each side of the centerline if the easement is granted to a private party. Once constructed, the Owner of the Tract served thereby shall repair and maintain the Separate Utility Line in a safe, clean and good state of repair and condition, and in compliance with all Laws, as quickly as possible and after normal business hours whenever possible. Such Owner shall perform such work in compliance with all Laws, as quickly as possible and after normal business hours whenever possible. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, such maintenance shall not be performed during the months of November and December. If any such maintenance and repair shall require any excavation to be performed on the Retail Tract or any other activity which would adversely affect retail operations, such maintenance shall be performed by a contractor approved by Fuqua pursuant to plans and specifications and a construction schedule approved by Fuqua. All Utility Facilities and Separate Utility Lines shall be underground except (i) ground-mounted electrical transformers; (ii) as may be necessary during periods of construction, reconstruction, repair or temporary service; (iii) as may be required by Law; (iv) as may be required by the provider of such utility service; and (v) fire hydrants.

4.4 Signage. Fuqua and its Permittees shall have a perpetual non-exclusive easement for the purpose of installing, accessing, maintaining, repairing and replacing monument and directional signage as depicted on the sign renderings attached as **Exhibit G**, in the location(s) depicted on the Site Plan, all in accordance with applicable Laws (the "**Project Signs**"); provided that the City or the DDA (as applicable depending on which Tract the Project Sign(s) is located) shall have reasonable approval rights over any relocation or modifications to the size of such Project Signs. The failure by the DDA or (as applicable) the City (in its capacity as owner) to respond to such request for relocation or modification within ten (10) days of receipt of the same shall be deemed an approval of such request. The easements granted by this Section 4.4 shall include the right to install underground power lines to provide power to such signs. Fuqua shall repair, maintain and replace when necessary the Project Signs, except that the owner of each panel on such Project Signs shall be responsible for the repair and maintenance of its sign panel. The cost of maintaining each of the Project Signs shall be allocated among the Owners having sign panels on each such Project Signs on a pro rata basis relative to the area of such sign panels. The cost of providing electricity to each of such Project Signs shall be borne 100% by Fuqua.

4.5 Detention Facility. Fuqua, Wieland, the City and the DDA and their respective Permittees shall have a perpetual non-exclusive easement over, under, along and across the Retail Tract and the DDA Tract for the purpose of connecting to and using the storm water drainage lines and facilities ("**Detention Facilities**"), including the right to use and impound storm water within the underground detention vaults located on the Retail Tenant and the DDA Tract in the locations generally depicted on the Site Plan as "**Underground Vault**," for the sole purpose of collecting and draining storm water and related surface water run-off from such Tracts, as the same may be thereafter improved. Fuqua shall be responsible for the cost to maintain, repair and operate the Detention Facilities. The costs of maintaining, repairing and operating the Detention Facilities (the "**Detention Facility Maintenance Costs**") shall be borne

as follows: the net amount of such costs after deducting sums received by Fuqua from parties under the Access Easement and Landscaping Agreement between Roberts Properties Residential, L.P. and Piedmont Five, LLC, dated September 27, 2012, filed October 1, 2012, recorded in Deed Book 51679, Page 671, Gwinnett County, Georgia, as amended, shall be borne as follows: [**BASED UPON SQ FT IN EACH PARCEL?**] _____% by the Owner of the Retail Tract; ____% by the Owner of the Residential Tract; and _____% by the DDA.

4.6 Temporary Construction Easement. Fuqua shall have a temporary construction easement over, under, along and across the DDA Tract and the City Tract for the purpose of performing all work to be performed by Fuqua pursuant to the Site Development Agreement. The temporary construction easement shall terminate upon completion of such work.

ARTICLE V
RESTRICTIONS

5.1 Zoning Conditions. Each Owner shall comply, for all purposes, as applicable, with the Zoning Conditions established for the Project by the City of Peachtree Corners City Council as part of Ordinance No.: 2014-11-35 as modified by Ordinance No.: 2015-06-49, a copy of which is attached hereto as **Exhibit H** (subject to any modification thereof or variances granted as to such Zoning Conditions). Notwithstanding the foregoing sentence, DDA shall not have responsibility for construction of any improvements and amenities required by the Zoning Conditions, other than the construction of the restroom facilities to be located in the Park Area, which shall be constructed by Fuqua at the expense of the DDA pursuant to the Site Development Agreement.

5.2 DDA Tract. The Creek and Trail Area and Park Area shall be developed and used as public trails, creek access and park facilities and the Parking Facility shall be used solely for the operation of the Parking Facility. The DDA shall cause a Parking Facility to be located at all times in the location shown on the Site Plan.

5.3 Residential Tracts. The Residential Tract shall be used solely for residential use (including typical amenities such as swimming pool, clubhouse and tennis courts).

ARTICLE VI
MAINTENANCE AND REPAIR

6.1 General Standards. The Improvements shall at all times be maintained in a safe, clean, sightly, good and functional first-class condition and state of repair, and in compliance with all applicable Laws and the provisions of this Agreement. The operation, maintenance and repair obligations shall include but not be limited to the following:

(i) General maintenance and repair of all Buildings, utility facilities, loading docks, lighting and paved surfaces, including all driveways, roadways, sidewalks and parking areas, and all curbing related thereto, in good order and repair and in a safe condition, patching, restriping, repairing, and resurfacing such paved or hardscaped areas when appropriate;

(ii) Removing papers, debris, refuse, ice and snow to the extent necessary to keep them in a first-class, clean and orderly condition;

(iii) Placing, keeping in repair, and replacing all signs on each tract, including, without limitation, appropriate traffic directional signs and markers; and

(iv) Maintaining, repairing, and replacing all landscaped areas (including bulb replacement and weeding), and promptly removing and replacing diseased or dead shrubs, trees and other landscaping as necessary, and keeping any grassed areas neatly mowed and all such areas in a sightly and attractive condition free of underbrush and overgrown vegetation.

Except as set forth in Section 6.3 and Section 6.4, the Improvements located on the Retail Tract, the DDA Tract and the City Tract shall be maintained by Fuqua, at Fuqua's sole cost and expense; provided, however the City and the DDA shall each bear the cost of any Capital Expense reasonably required in connection with the maintenance and repair of their respective Tracts. The Improvements located on the Residential Tract shall be maintained by Wieland, at Wieland's sole cost and expense.

6.2 Shared Improvements. The Parking Facility, Road Facilities (including the street lighting, benches, bicycle racks and trash receptacles and landscaping of all shoulders and medians of such Road Facilities), Utility Facilities, Project Signs and Detention Facilities shall be maintained as set forth above.

6.3 Maintenance of Creek and Trail Area and Park Area. The DDA shall be responsible for maintaining the Creek and Trail Area and Park Area. Such maintenance obligations shall include the maintaining, repair and replacement of all landscaped areas, removing and replacing diseased or dead shrubs, trees, weeding and other landscaping as necessary, litter removal and keeping any grassed areas neatly mowed and all such areas in a sightly and attractive condition, free of underbrush and overgrown vegetation. Fuqua shall be responsible for reimbursing the DDA for ___% of the costs incurred under this Section 6.3 as to the Park Area only (for avoidance of doubt, Fuqua shall not be responsible for any costs incurred by the DDA as to the Creek and Trail Area); provided, however, the DDA shall be responsible for the entire cost of (i) Capital Repairs and the cost of replacements to trees, plants and landscaping other than the planting of annual and seasonal flowers, (ii) any additional maintenance and clean-up costs required in connection with any City sponsored festival or other Special Events, and (iii) maintenance and repair of the restroom facilities located in the Park Area.[1]

ARTICLE VII
INSURANCE

7.1 In addition to insurance as to the Parking Facility which shall be governed by Section 2.11, Fuqua and DDA shall maintain or cause to be maintained in full force and effect

1 Site Development Agreement to be modified to provide that the City / DDA pays for 100% of construction of restroom facilities.

commercial general liability insurance with a financially responsible insurance company or companies licensed to do business in the State of Georgia insuring against claims on account of loss of life, bodily injury, or property damage that may arise from, or be occasioned by the condition, use or occupancy of its property or the improvements located thereon; such insurance to provide for a limit of not less than One Million Dollars ($1,000,000.00) for each occurrence and Two Million Dollars ($2,000,000.00) aggregate for bodily injury and property damage combined, plus "umbrella" coverage of at least an additional Five Million Dollars ($5,000,000.00) of liability insurance. Such insurance shall extend to the contractual obligation of the insured party arising out of the indemnification obligations set forth in this Agreement. Upon request, each party shall furnish to the other evidence that the insurance required to be carried by this Section 7.1 is in full force and effect. All policies of insurance shall name the other party and its mortgagee as additional insureds.

7.2 The DDA (or City) shall maintain or cause to be maintained in full force and effect special event liability insurance with a financially responsible insurance company or companies licensed to do business in the State of Georgia insuring against claims on account of loss of life, bodily injury, or property damage that may arise from, or be occasioned by the condition, use or occupancy of its property or the improvements located thereon during Special Events; such insurance to provide for a limit of not less than One Million Dollars ($1,000,000.00) for each occurrence and Two Million Dollars ($2,000,000.00) aggregate for bodily injury and property damage combined, plus "umbrella" coverage of at least an additional Five Million Dollars ($5,000,000.00) of liability insurance. Such insurance shall extend to the contractual obligation of the DDA arising out of the indemnification obligations set forth in this Agreement. Upon request, the DDA shall furnish to Fuqua evidence that the insurance required to be carried by this Section 7.2 is in full force and effect. All policies of insurance shall name Fuqua and its mortgagee as additional insureds.

ARTICLE VIII
SHARED EXPENSES

8.1 All sums due each party hereunder shall be due and payable within thirty (30) days of the receipt of an invoice therefor. Any sums not paid as and when due shall accrue Interest. If such reimbursement is not paid within the thirty (30) day period, together with Interest thereon, and collection is required, the delinquent party shall reimburse the requesting party for its reasonable attorneys' fees and costs of collection.

8.2 Costs, expenses and Interest accruing and/or assessed pursuant to Section 8.1 above shall constitute a lien against the City Tract, the Residential Tract or DDA Tract. Such lien shall attach and take effect only upon recordation of a claim of lien in the Gwinnett County, Georgia Real Estate Records. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of Georgia. The claim of lien shall include the following: (i) the name of the lien claimant; (ii) a statement concerning the basis

for the claim of lien; (iii) an identification of the owner of the City Tract, the DDA Tract, the Fuqua Tract or interest therein against which the lien is claimed; (iv) a description of the applicable City Tract, the DDA Tract or the Fuqua Tract; (v) a description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and (vi) a statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date and document number of recordation hereof. The notice of lien claim shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the owner of the City Tract, the DDA Tract or the owner of the Fuqua Tract by (a) personal service, (b) nationally recognized overnight delivery service, or (c) certified mail, return receipt requested. Notwithstanding the foregoing, no lien rights shall exist as to the City Tract during such time as the City Tract is owned by the City of Peachtree Corners, nor as to the DDA Tract during such time as the DDA Tract is owned by the City of Peachtree Corners Downtown Development Authority. In the alternative, during such times when the City Tract is owned by the City of Peachtree Corners and/or the DDA Tract is owned by the City of Peachtree Corners Downtown Development Authority, in lieu of such lien rights, in the event that the City and/or the DDA fails to make a payment as and when due, then the rights of the City or DDA, as applicable, to use the Parking Facility shall be suspended until such time as such payment is made.

Notwithstanding anything in the above section, any lien rights shall be and are subordinate to any lien created by mortgage, deed of trust or deed to secure debt encumbering the City Tract, the DDA Tract, Fuqua Tract or the Residential Tract.

ARTICLE IX
DEFAULT

9.1 Default.

(a) If any Owner fails to comply or fails to cause any Occupant of its tract to comply with any provision herein (the "**Defaulting Owner**"), then following delivery of the written notices discussed below the non-defaulting Owner ("**Non-Defaulting Owner**") at its option and in addition to any other remedies it may have at law or equity may proceed to perform such defaulted obligation on behalf of Defaulting Owner (and shall have a license to do so) by the payment of money or other action for the account of Defaulting Owner. Before exercising any remedy, the Non-Defaulting Owner shall first notify the Defaulting Owner in writing at least thirty (30) days in advance. The foregoing right of the Non-Defaulting Owner to cure shall not be exercised if within the notice period (i) Defaulting Owner cures the default, or (ii) if the default is a non-monetary default and cannot be reasonably cured within that time period, but Defaulting Owner begins to cure such default within such time period and diligently pursues such action to completion. The thirty (30) day notice period shall not be required if an emergency exists that poses an immediate threat to life or property or if such default causes interference with the construction, operation or use of all or any portion of the Land which requires immediate attention; and in such event, the Non-Defaulting Owner shall give whatever notice to Defaulting Owner as is Reasonable under the circumstances.

(b) Within ten (10) days of written demand therefor (including providing copies of invoices reflecting costs) Defaulting Owner shall reimburse the Non-Defaulting Owner for any sum actually and reasonably expended by Non-Defaulting Owner due to the

default or in correcting the same, and, if such reimbursement is not paid within said thirty (30) days, together with Interest thereon, and if collection is required, Non-Defaulting Owner's Reasonable attorney's fees and costs of collection.

9.2 Remedies Cumulative. Any remedies provided for in Section 6.1 are cumulative and shall be deemed additional to any and all other remedies to which any party may be entitled in law or in equity and shall include the right to restrain by injunction any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Agreement and by decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for any breach of any such term, covenant, or condition is not adequate.

ARTICLE X
TERM

This Agreement and each term, covenant, restriction and undertaking of this Agreement, excluding Article V hereof, shall run with and bind the Land and remain in effect perpetually. Article V of this Agreement shall continue in full force and effect until 11:59 P.M. EST on the twentieth (20th) anniversary of the Effective Date of this Agreement; provided, however, the applicable term shall be automatically renewed for three (3) separate and successive periods of twenty (20) years each or the longest period permitted by applicable Law, unless all Owners agree to terminate Article V and file, not later than ninety (90) days prior to the expiration of the then current term or renewal term, a notice to such effect in the Gwinnett County, Georgia Real Estate Records.

ARTICLE XI
MISCELLANEOUS

11.1 Interest. Wherever in this Agreement it is provided that any party is to pay to any other party a sum of money with "**Interest**," the amount of interest to be paid shall be calculated upon the sum advanced or due from the time advanced or due until the time paid at the lesser of:

(a) The highest rate permitted by law to be paid on such type of obligation; or

(b) The per annum rate equal to two percentage (2%) points in excess of the "prime rate" of interest from time to time publicly announced by Wells Fargo, N.A. or its successors or assigns.

11.2 Estoppel Certificates. Upon written request from time to time by any Owner, each party shall issue to such requesting party an estoppel certificate stating:

(a) Whether the party to whom the request has been directed has given any notice to the requesting party of any default by such requesting party under this Agreement which remains uncured, and if there are such defaults of which notice has been given and which remain uncured, specifying the nature thereof;

(b) Whether to such party's knowledge this Agreement has been supplemented, modified or amended in any way (and if it has, then stating the nature thereof);

(c) That to such party's knowledge this Agreement as of that date is in full force and effect; and

(d) The amount of Parking Facility Maintenance Costs, Parking Facility Insurance Costs and Detention Facility Maintenance Costs for the previous four (4) quarters.

11.3 Singular and Plural. Whenever required by the context of this Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

11.4 Negation of Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

11.5 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Land to the general public, or for any public use or purpose whatsoever.

11.6 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

11.7 Amendments. This Agreement may not be amended in whole or in part except by the written consent of Fuqua, the DDA, the City and (i) prior to the formation of the HOA, Wieland, and (ii) after the formation of the HOA, the HOA, which written agreement shall be deemed effective only when recorded in the land records of Gwinnett County, Georgia. Notwithstanding the foregoing, Fuqua, the DDA and the City together may modify this Agreement without the written consent of Wieland or the HOA so long as such modification has no material adverse effect on the Residential Tract.

11.8 Captions and Capitalized Terms. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of the Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

11.9 Agreement Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or, remedies which a party may have hereunder by reason of any such breach.

11.10 Time. Time is of the essence of this Agreement.

11.11 Non-Waiver. The failure of any-party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies

which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

11.12 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Georgia.

11.13 Covenants Run With Land. Each and every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed by any party to this Agreement is made by such party not only for the benefit of the other party hereto but also as owner of a tract and shall be an equitable servitude on the tract owned by such party appurtenant to and for the benefit of the tract owned by the other party. Every obligation of this Agreement shall run with the land and shall be binding upon the party making or assuming such obligation and such party's successors and assigns and shall inure to the benefit of the other party hereto and its successors and assigns. Upon formation of the HOA, the rights and remedies of the Owner of the Residential Tract shall be exercised solely by the HOA and no homeowner of any portion of the Residential Tract shall be entitled to exercise any such right or remedy. Any transferee of any part of the Land shall automatically be deemed, by acceptance of the title to such parcel, or portion thereof, to have assumed all obligations contained in this Agreement relating thereto, and to have agreed with the then owner or owners of all other portions of the Land to execute any and all instruments and do any and all things reasonably required to carry out the intention of the provisions hereof. The transferor of any such part of the Land shall, upon the completion of such transfer, be relieved of all further liability hereunder except for such liability as may have arisen during the transferor's period of ownership of such part of the Land so conveyed and which remains unsatisfied. Any reference to Fuqua, the DDA, the City and Wieland in this Agreement shall include such party’s successors in title and assigns.

11.14 Permits. For avoidance of doubt, Fuqua agrees that any approval granted by the City hereunder shall not replace or supersede any building, development or other permit required under City ordinances or regulations.

11.15 Notices. Any notice required or permitted to be delivered hereunder shall be in writing, signed by the party giving such notice or its attorney at law and shall be deemed to be delivered, whether or not actually received, (a) when the same has been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the party to whom such notice is sent, (b) when deposited for overnight delivery with a nationally recognized express mail carrier service such as FedEx or DHL, or (c) when personally delivered by commercial courier service or other messenger. For purposes of delivering notice, the addresses of the parties shall be as follows:

City:	City of Peachtree Corners 147 Technology Parkway, Suite 200 Peachtree Corners, GA 30092 Attention: Julian Jackson, City Manager
and	City Attorney

	Riley McClendon, LLC 315 Washington, Ave. Marietta, GA 30060 Attention: William F. Riley, Esq.
DDA:	City of Peachtree Corners Downtown Development Authority 147 Technology Parkway, Suite 200 Peachtree Corners, GA 30092 Attention: Diana Wheeler, Community Development Director
and	Baker, Donelson, Bearman, Caldwell and Berkowitz, PC Monarch Plaza, Suite 1600 3414 Peachtree Road NE Atlanta GA 30326 Attention: Jed S. Beardsley Esq.
Fuqua:	15 Piedmont Center 3575 Piedmont Road NE, Suite 800 Atlanta, GA 30305 Attention: Jeffrey S. Fuqua
with a copy to:	Sutherland Asbill & Brennan LLP 999 Peachtree Street, NE, Suite 2300 Atlanta, GA 30309-3996 Attention: James B. Jordan, Esq.
Wieland:	_____ _____ _____ _____ Attention: _____
with a copy to:	_____ _____ _____ Attention: _____

Any Owner shall have the right to amend its addresses for notice, by delivering written notice of such change to the other Owners at the addresses set forth above.

[*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON FOLLOWING PAGE*]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement under seal to be effective as of the Effective Date.

Fuqua:

Signed, sealed and delivered in the presence of:

FUQUA _____, LLC, a Georgia limited liability company

_____
Unofficial Witness

By:_____
Name: _____
Title: _____

_____
Notary Public

My Commission Expires:

[Notarial Seal or Stamp]

DDA:

Signed, sealed and delivered in the presence of:

THE CITY OF PEACHTREE CORNERS DOWNTOWN DEVELOPMENT AUTHORITY, public body corporate and politic

_____
Unofficial Witness

By:_____
Name: _____
Title: _____

_____
Notary Public

My Commission Expires:

[Notarial Seal or Stamp]

City:

Signed, sealed and delivered in the presence of:

CITY OF PEACHTREE CORNERS,
a public body corporate and politic

_____
Unofficial Witness

By:_____
Name: _____
Title: _____

_____
Notary Public

My Commission Expires:

[Notarial Seal or Stamp]

Attest: _____
Kym Chereck, City Clerk

Approved as to form:

_____
City Attorney

Wieland:

Signed, sealed and delivered in the presence of:

JWH ACQUISITIONS, LLC,
a Delaware limited liability company

_____
Unofficial Witness

By:_____
Name: _____
Title: _____

_____
Notary Public

My Commission Expires:

[Notarial Seal or Stamp]

CONSENT AND SUBORDINATION TO GRANT OF INGRESS, EGRESS AND RECIPROCAL EASEMENTS AND RESTRICTIONS

The [_____], a [_____], is Lender under that certain Deed to Secure Debt, Security Agreement and Fixture Filing dated as of _____ and recorded in the Real property records of Gwinnett County, Georgia in **Deed Book ____, page ___** (the "**Mortgage**"). By executing this instrument, the undersigned hereby consents to the execution, delivery and recordation of the Grant of Ingress, Egress and Reciprocal Easements and Restrictions (the "**Declaration**") to which this instrument is attached and confirms the subordination of the lien of the Mortgage, and the debt and any fixtures secured thereby, to the Declaration.

IN WITNESS WHEREOF, the undersigned have executed and delivered this release, this ____ day of _____, 2015.

Signed, sealed and delivered in the presence of:

_____
Unofficial Witness

_____
Notary Public
My Commission Expires:

[NOTARIAL SEAL]

[_____], a [_____],

By:_____
Name: _____
Title: _____

[CORPORATE SEAL]

Exhibits

A – Retail Tract Legal Description

B – Residential Tract Legal Description

C - City Tract Legal Description

D – DDA Tract Legal Description

E - Site Plan

F - Parking Facilities Rules and Regulations

G - Project Signs

H - Zoning Conditions

<u>Exhibit A</u>

Retail Tract Legal Description

<u>Exhibit B</u>

Residential Tract Legal Description

<u>Exhibit C</u>

City Tract Legal Description

<u>Exhibit D</u>

DDA Tract Legal Description

Exhibit E

Site Plan

Include:

Residential Tract
Retail Tract
City Tract
DDA Tract
Park Area
Trails and Creek Area
Parking Facility
Road Facilities
Locations of Project Signs (monument and directional)
Detention Area
Pedestrian Accessway

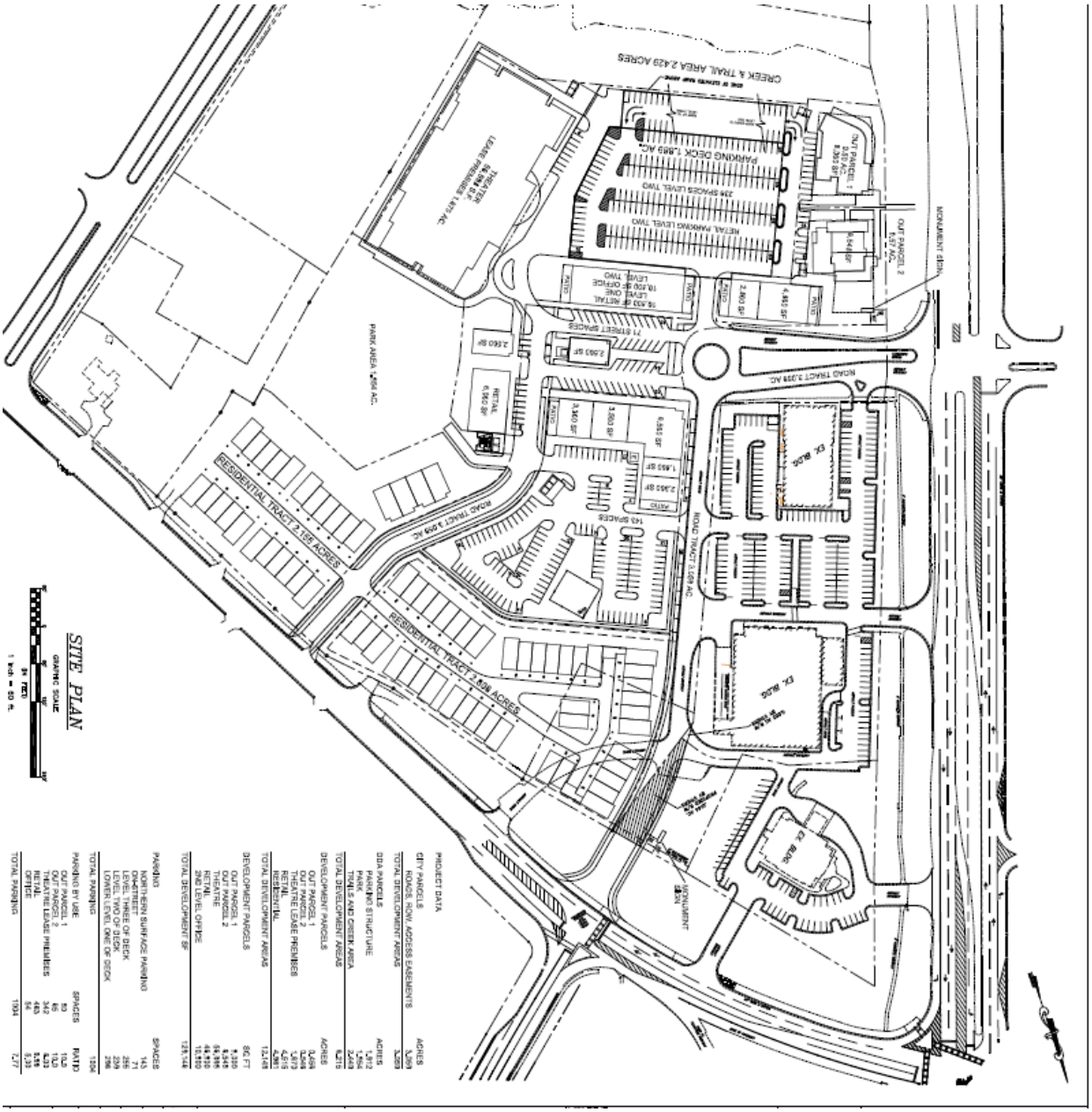
<u>Exhibit F</u>

Parking Facilities Rules and Regulations

Exhibit G

Renderings of Project Signs [showing location of Residential and DDA Parcels]

28133670.8
A JSB2 2930498 v2
2925925-000001
28133670.11
A JSB2 2930498 v4
2925925-000001 12/11/2015
28133670.14
A JSB2 2930498 v6
2925925-000001 12/30/2015



28133670.8
A JSB2 2930498 v2
2925925-000001
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A JSB2 2930498 v4
2925925-000001 12/11/2015
28133670.14
A JSB2 2930498 v6
2925925-000001 12/30/2015

<u>Exhibit H</u>

Zoning Conditions