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For Registration Sharon A. Davis
Register of Deeds
Durham County, NC
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Instrument Number: 2017020531
DECL

Prepared by and Return to:

The Banks Law Firm, P.A. P. O. Box 14350 Durham, North Carolina 27709 Attention: Sherrod Banks

STATE OF NORTH CAROLINA COUNTY OF DURHAM

DECLARATION OF DEED RESTRICTIONS

RECITALS:

WHEREAS, DVI and the City have entered into that certain Grant Agreement dated ..., 2017 (the "Grant Agreement") wherein the City has agreed to provide DVD with a grant in the amount of Four Million One Hundred Sixty-Two Thousand and 00/100 Dollars (\$4,162,000.00) (the "Grant") for the purpose of acquiring and maintaining the Fayette Place site as described more particularly in Exhibit A attached hereto and incorporated herein by reference (the "Property");

WHEREAS, as a condition of making the Grant to DVI, the City has required and DVI has agreed to restrict the Property as set forth herein;

NOW THEREFORE, in consideration of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DVI hereby represents, covenants, warrants and agrees:

1. <u>Maintenance</u>. DVI shall maintain the Property in a good, clean, sanitary and safe condition, in accordance with all applicable governmental laws, regulations, codes and orders,

Submitted electronically by "The Banks Law Firm, P.A." in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Durham County Register of Deeds.

including but not limited to, all City ordinances and requirements. Maintenance of the Property shall include, but not be limited to mowing the grass, removing weeds, trash and debris, and repairing fencing as needed within a reasonable time after acquisition of the Property and periodically thereafter.

- 2. <u>Community Engagement Program.</u> In consultation with the City, DVI shall create and implement a community engagement program to provide meaningful opportunities for the Durham community, including but not limited to the historical Hayti community and North Carolina Central University, to contribute input to the redevelopment plans for the Property and the surrounding area.
- 3. <u>Affordable Housing.</u> The redevelopment of the Property shall include residential rental units converted to Section 8 housing as allowed by the Rental Assistance Demonstration Program ("RAD Program") of the United States Department of Housing and Urban Development ("HUD"). The number and distribution of Section 8 units shall be determined by DVI in consultation with the City and community groups as described above in paragraph 2 or as otherwise allowed by HUD.
- 4. <u>City's Consent to Develop or Sell.</u> DVI shall not sell, convey or otherwise transfer the Property, or commence construction activities to redevelop the Property, without the prior written consent of the City Manager.
- 5. <u>Market Rate Housing</u>. Nothing stated herein is intended to prohibit the development of market rate housing on the Property.
- 6. <u>Non-residential Uses</u>. Nothing stated herein is intended to prohibit the development of non-residential uses on the Property.
- 7. Term. This Declaration shall remain in full force and effect for a period of thirty (30) years beginning on the Effective Date (the "Affordability Period"). This Declaration shall be released, in whole or in part, or terminated prior to the expiration of the Affordability Period, within the sole discretion of the City, by execution of a release document duly executed by the City and recorded in the Durham County Register of Deeds; provided, however, that the City shall execute and record such a release in the event of a foreclosure or deed in lieu of foreclosure affecting the Property or a portion thereof.
- 8. Covenants to Run with the Land. The covenants, reservations and restrictions set forth herein (i) shall be deemed covenants running with the land and, subject to Section 7, shall pass to and be binding upon DVI and its successors and assigns in title to the Property and (ii) are not merely personal covenants of DVI. The benefits shall inure to the City during the term of this Declaration. DVI hereby agrees that any and all requirements of the laws of the State of North Carolina to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the Property and which touch and concern the Property shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, and that an equitable servitude in the form of a negative easement has been created to insure that these restrictions run with the Property. Subject to Section 7, each contract,

deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all such covenants, reservations and restrictions shall, subject to Section 7, run to each portion of the Property.

- 9. <u>Compliance Monitoring</u>. DVI agrees to permit, during normal business hours and upon reasonable notice, any duly authorized representative of the City to inspect any books and records of DVI regarding the Property, which pertain to compliance with this Declaration. DVI shall submit any other information, documents or certifications requested by the City, which the City shall deem reasonably necessary to substantiate DVI's continuing compliance with this Declaration.
- 10. Remedies: Enforceability. DVI and the City acknowledge that the primary purpose for requiring compliance by DVI with the restrictions provided in this Declaration is to assure compliance of the Property and DVI with the Grant Agreement. And by reason thereof, DVI in consideration for receiving the Grant for this Property hereby agrees and consents that the City shall be entitled to, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to obtain specific performance by DVI of its obligations under this Declaration in any court of competent jurisdiction. DVI hereby further specifically acknowledges that City cannot be adequately compensated by monetary damages in the event of default hereunder.

The provisions hereof are imposed upon and made applicable to the Property and, subject to Section 7, shall run with the land and shall be enforceable against DVI or any other person or entity that has or had an ownership interest in the Property at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time or times.

- 11. <u>Amendment</u>. This Declaration shall not be amended or, except as otherwise provided herein, terminated except by a written instrument, executed by the City and DVI, or their successors or assigns, which amendment shall be duly recorded in the Durham County Register of Deeds.
- 12. <u>Severability</u>. If any portion of this Declaration shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.
- 13. <u>Construction</u>. Unless the context clearly requires otherwise, as used in this Declaration words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Declaration and all the terms and provisions hereof shall be construed to effectuate the purposes set forth and to sustain the

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validity hereof.

- 14. <u>Successors and Assigns</u>. This Declaration shall be binding on DVI, its successors and assigns and shall inure to the benefit of City, its successors and assigns and may be enforced by the City or any other persons specifically given enforcement rights herein.
- 15. <u>Headings</u>. The titles and headings of the sections of this Declaration have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof, nor be considered or given any effect in construing this Declaration or any provisions hereof, or in ascertaining intent if any questions or intent shall arise.
- 16. <u>Governing Law</u>. This Declaration shall be governed by the laws of the State of North Carolina.

[Signature Page Follows]

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IN WITNESS WHEREOF, DVI has executed this Declaration by its duly authorized representatives as of the Effective Date.

> **Development Ventures Incorporated** a North Carolina nonprofit corporation

Name: Anthony Scott

Its: President

State of North Carolina

County of Durham

a Notary Public of the County and State aforesaid, certify that Anthony Scott, either being personally known to me or proven by satisfactory evidence, personally came before me this day and acknowledged that he is the President of Development Ventures Incorporated, and that he, being authorized to do so, executed the foregoing on behalf of the

Notary Public - North Carolina ALAMANCE COUNTY office al stamp or seal this January 27, 2020

(Seal-Stamp)

My Commission Expires:

EXHIBIT A LEGAL DESCRIPTION

EXHIBIT

"A"

TRACT 1

Beginning at a point in the eastern right-of-way line of Fayetteville Street, an 80 foot wide public right-of-way and at the southwest corner of Willie Lee Buckley (Durham County Registry Deed Book 2708, Page 389), said point being further described as having N.C. Grid Coordinates N:812,943.83; E:2,029,850.59 and being located S 18-37-18 W a distance of 1,642.91 feet from Durham City Monument #176 (N.C. Grid N:814,500.73; E:2,030,375.21), thence running along the southern line of Buckley; United Publishers, Inc. (Deed Book 1245, Page 190); Diane Lunsford (Deed Book 2018, Page 255); and Gail Jones (Deed Book 2018, Page 267) S 89-27-06 E a distance of 478.76 feet to a point in the western right-of-way line of Merrick Street, a 50' public right-of-way and the southeast corner of Jones, thence running along the eastern right-ofway of Merrick Street along the arc of a circular curve to the left having a radius of 2.985.83 feet, a distance of 67.48 feet, said are being defined the chord S 17-35-21 W, 67.48 feet, to a point, thence running along Merrick Street S 16-56-31 W, a distance of 259.12 feet to a point. thence running along the right-of-way line of Metrick Street along the arc of a circular curve to the right having a radius of 20.00 feet a distance of 25.53 feet, said are being defined by the chord S 53-30-15 W, 23.83 feet, to a point in the northern right-of-way line of Umstead Street, a 50' public right-of-way, thence running N 89-56-00 W a distance of 183.39 feet along the northern right-of-way line of Umstead Street to a point at the southeast corner of Edward Clemons (Durham County Registry Deed Book 1654, Page 316), thence running along the eastern line of Clemons N 00-22-30 W a distance of 48.04 feet to the northeast corner of Clemons, thence running along the northern line of Clemons S 87-12-30 W a distance of 38.25 feet to a point, thence running along the northern line of Clemons N 89-23-10 W a distance of 107.11 feet to a point in the eastern right-of-way line of Fayetteville Street, thence running along the eastern right-of-way line of Fayetteville Street along the arc of a circular curve to the left having a radius of 1,457.17 feet a distance of 285.99 feet, said arc being defined by the chord N 06-58-30 W, 285.53 feet, to the point and place of beginning, containing 2.894 acres as shown on the map entitled "ALTA/ACSM SURVEY FOR CAMPUS INVESTMENTS, L.L.C." prepared by Ronald D. Carpenter, Professional Land Surveyor L-2458, dated July 12, 2007.

TRACT 2

Beginning at a point in the northern right-of-way line of Umstead Street, a 50' public right-ofway, located S 89-56-00 E a distance of 26.97 feet from the intersection of the extended northern right-of-way line of Umstead Street with the extended eastern right-of-way line of Merrick Street, a 50' public right-of-way, said point being further described as having N.C. Grid Coordinates N:812,612.77; E:2,030,308.33, from said beginning point, thence running along the eastern right-of-way line of Merrick Street along the arc of a circular curve to the right having a radius of 20.00 feet, a distance of 37.31 feet, said are being defined by the chord N 36-29-45 W a distance of 32.13 feet to a point, thence running along the eastern right-of-way of Merrick Street N 16-56-31 E a distance of 231.82 feet to a point, thence running along the eastern right-of-way of Merrick Street along the arc of a circular curve to the right having a radius of 2,935.83 feet a distance of 195.78 feet, said are being defined by the chord N 18-51-08 E a distance of 195.74 feet, to a point, thence running along the eastern right-of-way of Merrick Street N 20-45-45 B a distance of 202.04 feet, to a point, thence running along the arc of a circular curve to the right having a radius of 261.36 feet, a distance of 144.96 feet, said arc being defined by the chord N 36-39-05 E, a distance of 143.11 feet to a point, thence running along the southern right-of-way line of Merrick Street N 52-32-25 E a distance of 236.14 feet to a point, thence running along the southern right-of-way line of Merrick Street along the arc of a circular curve to the right having a radius of 91.00 feet, a distance of 143.28 feet, said are being defined by the chord S 82-21-24 E a distance of 128.93 feet to a point, thence running along the western right-of-way line of Merrick Street S 37-15-12 E a distance of 365,22 feet to a point, thence running along the western rightof-way line of Mercick Street along the arc of a circular curve to the left having a radius of 4,860.32 feet a distance of 406.65 feet, said are being defined by the chord S 39-39-01 E a distance of 406,53 feet, to a point, thence running along the western right-of-way line of Merrick Street along the arc of a circular curve to the right having a radius of 20,00 feet a distance of 23.53 feet, said are being defined by the chord S 08-20-54 E a distance of 22.19 feet to a point in the western right-of-way line of Grant Street, a 50' public right-of-way, thence running along the western right-of-way line of Grant Street S 25-21-01 W a distance of 205.18 feet to a point,

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thence running along the western right-of-way line of Grant Street along the arc of a circular curve to the right having a radius of 20.00 feet a distance of 22.83 feet, said arc being defined by the chord S 58-02-43 W a distance of 21.61 feet to a point in the northern right-of-way line of Umstead Street, thence running along the northern right-of-way line of Umstead Street N 89-15-36 W a distance of 97.98 feet to a point, thence running along the northern right-of-way line of Umstead Street along the arc of a circular curve to the left having a radius of 1,934.86 feet, a distance of 202.55 feet, said arc being defined by the chord S 87-44-28 W a distance of 202.45 feet, to a point, thence running along the northern right-of-way line of Umstead Street S 84-44-32 W a distance of 284.74 feet to a point, thence running along the northern right-of-way line of Umstead Street along the arc of a circular curve to the right having a radius of 1,884.86 feet a distance of 175.16 feet, said arc being defined by the chord S 87-24-16 W a distance of 175.10 feet, to a point, thence running along the northern right-of-way line of Umstead Street N 89-56-00 W a distance of 202.76 feet, to the point and place of beginning, containing 14.400 acres as shown on the map entitled "ALTA/ACSM SURVEY FOR CAMPUS INVESTMENTS, L.L.C." prepared by Ronald D. Carpenter, Professional Land Surveyor L-2458, dated July 12, 2007.

TRACT 3

Beginning at a point in the northern right-of-way line of Merrick Street, a 50' Public right-ofway, and an eastern corner of the Hayti Development Subdivision(Durham County Registry Plat Book 109, Page 59), said point being further described as having N.C. Grid Coordinates N:813,343.73, E:2,030,498.97, thence running along the eastern line of the Hayti Development Subdivision N 14-50-04 W a distance of 248.78 feet to a point, thence running along the eastern line of the Hayti Development Subdivision N 21-50-26 E a distance of 124.22 feet to the southwest corner of St. Joseph's Historic Foundation, Inc. (Durham County Registry Deed Book 2574, Page 629), thence running along the southern line of St. Joseph's Historic Foundation, Inc. N 52-45-06 E a distance of 201.92 feet to a point, thence running along the southern line of St. Joseph's Historic Foundation, Inc., S 52-33-50 E a distance of 134.94 feet to a point in the southern right-of-way line of the East-West Expressway, North Carolina Highway 147, a variable width public right-of-way, thence running along the southern right-of-way line of the East-West Expressway S 37-15-12 E a distance of 263.24 feet to a point in the northern right-ofway line of Merrick Street, thence running along the northern right-of-way line of Merrick Street along the arc of a circular curve to the left having a radius of 141,00 feet a distance of 188.33 feet, said are being defined by the chord N 89-11-48 W a distance of 174.64 feet, to a point. thence running along the northern right-of-way line of Merrick Street S 52-32-25 W a distance of 236.14 feet to a point, thence running along the northern right-of-way line of Merrick Street along the arc of a circular curve to the left having a radius of 311.36 feet, a distance of 63.13 feet, said are being defined by the chord S 46-28-41 W a distance of 6302 feet, to the point and place of beginning, containing 2.453 acres as shown on the map entitled "ALTA/ACSM SURVEY FOR CAMPUS INVESTMENTS, L.L.C." prepared by Ronald D. Carpenter, Professional Land Surveyor L-2458, dated July 12, 2007.