# Application for Rezoning

Associated Annexation Petition  □ Yes  X No

Traffic Impact Study  X Yes  TAR Number: 17-TAR-422
□ No  Staff confirmation: Initials  Date

This application is deemed sufficiently complete for purposes of submittal.

Planning Staff Signature  Mary Beerman  Date  4/26/2017

Submittal deadlines incorporate sufficiency review of rezoning/land use plan amendment applications. Signature by Planning Staff is required prior to payment of fees and final acceptance of application.

STAFF USE ONLY: Circle applicable Parts: 1 2 3B1 3B2 3B3 3B4 3C1 3C2 3C3 3C4 3D 3E1a 3E1b 3E2 3F

Fees will not be accepted until the application is deemed sufficiently complete and signed by Planning Staff.

## Rezoning Fee:

□ $1,400.00 – General rezoning, or initial zoning associated with owner-initiated annexation petition, 5 acres or greater

□ $300.00 – Initial zoning associated with citizen-initiated annexation petition, less than 5 acres

□ $1,900.00 – Conditional use rezoning (per change of zoning classification requested)

X $2,500.00 – Mixed Use District Rezoning (New MXD, or major amendment to existing PDP)

□ $500.00 – Mixed Use District Rezoning (Minor amendment to existing PDP - typically less than 50% of floor area, number of units, etc.)

□ $2,500.00 – New application or major amendments to approved Major PDD

□ $1,250.00 – Minor PDD or Minor Amendment to Existing PDD

NOTE: An additional fee of $150 will be charged for each additional public hearing or neighborhood meeting required due to changes in the request made during the rezoning process.

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Eastern Cary Gateway Mixed Use Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of PDD</td>
<td>N/A</td>
</tr>
<tr>
<td>Address</td>
<td>950 W Chatham Street</td>
</tr>
<tr>
<td>General Location</td>
<td>North of Cary Towne Blvd</td>
</tr>
<tr>
<td>Jurisdiction (check one)</td>
<td>X Cary Corporate Limits □ Cary ETJ □ Wake Co.* □ Chatham Co.*</td>
</tr>
</tbody>
</table>

* Submittal of an annexation petition is required if rezoning is requested.

Updated: February 2017
### Part 1: Applicant Information

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Applicant's Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name</strong></td>
<td><strong>Name</strong></td>
</tr>
<tr>
<td>State of North Carolina</td>
<td>Glenda S Toppe</td>
</tr>
<tr>
<td><strong>Firm</strong></td>
<td><strong>Firm</strong></td>
</tr>
<tr>
<td>State Property Office</td>
<td>Glenda S Toppe &amp; Associates</td>
</tr>
<tr>
<td><strong>Address</strong></td>
<td><strong>Address</strong></td>
</tr>
<tr>
<td>116 W Jones Street</td>
<td>4139 Gardenlake Drive</td>
</tr>
<tr>
<td><strong>City, State, Zip</strong></td>
<td><strong>City, State, Zip</strong></td>
</tr>
<tr>
<td>Raleigh, NC 27603-1300</td>
<td>Raleigh, NC 27612</td>
</tr>
<tr>
<td><strong>Phone (area code)</strong></td>
<td><strong>Phone (area code)</strong></td>
</tr>
<tr>
<td></td>
<td>919-605-7390</td>
</tr>
<tr>
<td><strong>Email</strong></td>
<td><strong>Email</strong></td>
</tr>
<tr>
<td></td>
<td><a href="mailto:glenda@gstplanning.com">glenda@gstplanning.com</a></td>
</tr>
</tbody>
</table>

### Part 2: Parcel & Owner Information

**Property Owner(s)**
*Provide property owner name and address as it appears in the Wake or Chatham County Tax Records,*

<table>
<thead>
<tr>
<th>State of North Carolina State Property Office</th>
<th>County Parcel Number(s) (10 digit)</th>
<th>Real Estate ID(s)</th>
<th>Deeded Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>116 W Jones St Raleigh, NC 27603-1300</td>
<td>PIN 0774311292 (part of)</td>
<td>REID 0112863 (part of)</td>
<td>273.19 (part of)</td>
</tr>
</tbody>
</table>

**Total Acres**: 92.10

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1 A property survey showing zoning district boundaries and acreages is required if multiple zoning districts are proposed or if the proposed rezoning applies to only a portion of a parcel.
### Part 3A: Rezoning Request

**Pre-Application Conference:** X Yes  **Date:** 01/13/16

<table>
<thead>
<tr>
<th>Existing Zoning</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Base Zoning District(s)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Zoning Overlay District(s)</strong>&lt;br&gt;Check any that apply</td>
<td></td>
</tr>
<tr>
<td>☑ Mixed Use Overlay District&lt;br&gt;(Name: Eastern Cary Gateway Special Planning Area)</td>
<td></td>
</tr>
<tr>
<td>☐ Conservation Residential Overlay District</td>
<td></td>
</tr>
<tr>
<td>☐ Airport Overlay District</td>
<td></td>
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<tr>
<td>☐ Watershed Protection Overlay District&lt;br&gt;☐ Jordan Lake&lt;br&gt;☐ Jordon Lake Critical Area&lt;br&gt;☐ Swift Creek</td>
<td></td>
</tr>
<tr>
<td>☐ Historic Preservation Overlay District</td>
<td></td>
</tr>
<tr>
<td><strong>Zoning Conditions (if any)</strong></td>
<td>NONE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Proposed Zoning</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proposed Base Zoning District(s)</strong></td>
<td>Mixed Use District (MXD) with PDP</td>
</tr>
<tr>
<td><strong>Proposed Zoning Conditions</strong></td>
<td></td>
</tr>
<tr>
<td>☑ Zoning conditions are proposed and included in attached affidavit</td>
<td></td>
</tr>
<tr>
<td>☐ No zoning conditions are proposed</td>
<td></td>
</tr>
<tr>
<td><strong>Proposed Changes to Overlay Districts</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Summary of Proposed Development or Purpose of Request</strong></td>
<td>The request is to rezone the property to MXD with a Preliminary Development Plan (PDP). The proposed rezoning is in compliance with the Cary Community Plan (CCP). The PDP depicts a mixed use development with uses that include office, residential, retail, commercial, hotel and outdoor community gathering areas.</td>
</tr>
</tbody>
</table>
**Part 3B: Applicant's Rezoning Justification Statement(s)**

**Rezoning Justification Statement #1 Required for all rezoning requests**

Describe how the proposed rezoning meets the criteria listed below.

Section 3.4.1(E) of the Land Development Ordinance states that Council should consider the following criteria when reviewing all proposed rezonings:

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend, or fact;
   - **Applicant’s Comments**: The proposed rezoning meets the changing conditions and trends identified in the Cary Community Plan. The changing conditions include offering more housing choices for the changing demographics in Cary. This includes housing options for millennials and seniors. The Preliminary Development Plan also provides an area specifically designated for office development as identified in the Eastern Gateway Plan. The Preliminary Development Plan shows a vibrant destination center that offers office, residential, retail and commercial uses in a compact walkable environment.

2. The proposed rezoning is consistent with the Comprehensive Plan and the purposes set forth in Section 1.3 of this Ordinance;
   - **Applicant’s Comments**: The proposed rezoning is consistent with the Cary Community Plan. The Chapters and Policies that the proposed rezoning comply with are found in Rezoning Justification #2.

3. The Town and other service providers will be able to provide sufficient public safety, educational, recreational, transportation, and utility facilities and services to the subject property, while maintaining sufficient levels of service to existing development;
   - **Applicant’s Comments**: The property is located in the Town Limits. The adjacent properties are currently being served by the Town. The Town can provide services to this property while maintaining sufficient levels of service to existing development.

4. The proposed rezoning is unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation;
   - **Applicant’s Comments**: The proposed rezoning will not have a significant adverse impact on the natural environment. Environmentally sensitive areas are being protected. The development will comply with Town regulations for stormwater management and all other environmental regulations.

5. The proposed rezoning will not have significant adverse impacts on other property in the vicinity of the subject tract; and
   - **Applicant’s Comments**: The proposed rezoning will not have an adverse impact on the area. The rezoning will establish a successful, functional and distinctly unique and vital Destination Center as identified in the Cary Community Plan. The proposed Plan will be a catalyst in the redevelopment of the Eastern Cary Gateway Planning Area and have a positive economic benefit to the area.

6. The proposed zoning classification is suitable for the subject property.
   - **Applicant’s Comments**: The proposed rezoning classification is suitable for the subject property. The Preliminary Development Plan identifies the proposed uses for the property. The Preliminary Development Plan becomes a part of the rezoning thus providing assurances that the property will develop as envisioned by the Eastern Cary Gateway Plan.
Rezoning Justification Statement #2  Required for all rezoning requests
Describe how the proposed rezoning is consistent with or supported by the visions and policies of the Cary Community Plan. Attach additional sheet if necessary.

Growth Framework Map: The Growth Framework Map designates the Property as a Destination Center. The property is also in the Eastern Cary Special Planning Area the ("ECG Plan"). The proposed rezoning is in compliance with the Growth Framework Map and the policies outlined in the Shape Chapter. The rezoning also complies with other policies found in the Cary Community Plan as identified below.

Chapter, Policy ______

REFER TO ATTACHED PAGES FOR COMPLIANCE WITH CHAPTERS AND POLICIES OF THE CARY COMMUNITY PLAN.

Chapter, Policy ______

Chapter, Policy ______

Chapter, Policy ______
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Growth Framework Map
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CHAPTER 1. FOUNDATIONS
The first chapter of the Cary 2040 Community Plan (CCP) is Foundations. The foundations of the CCP include future fiscal options, economic policies and strategies, aging and diversifying population, limited land for development, integration of land use and transportation, neighborhood protection and housing choices, new infill and redevelopment opportunities, destination centers, transit-oriented development and demand for 21st Century Development Options.

The following analysis of the policies associated with each Chapter of the CCP describes how the proposed rezoning complies with the CCP

CHAPTER 2. LIVE CHALLENGES AND OPPORTUNITIES
The Live Chapter addresses several key elements. Cary’s population is changing. It is aging and changing in ethnicity and racial diversity. Household types and sizes are also changing.

The Chapter notes that Cary is missing millennial residents. Moving forward it is going to be important that Cary provide quality, housing options in convenient locations that can serve millennials. This means providing quality housing located in walkable neighborhoods in close proximity to shopping, dining, and employment areas with minimal property maintenance. It will also be important that this housing be in close proximity to public transportation. This type of housing is also attractive to empty nesters and young professionals.

Cary must offer a balanced mix of housing for its residents. This means both owner occupied and rental options.

The proposed rezoning complies with Policies identified below for the Live Chapter.

Policy 1: Maintain Neighborhood Character.
Recognize, preserve, and protect the quality and character of existing residential neighborhoods as they mature, and as new development occurs nearby.
The proposed rezoning will have a positive impact on the existing neighborhoods within the ECG Plan and those neighborhoods surrounding the proposed development. The nature of the proposed development will help to improve the character and desirability of the area by introducing a high quality mixed-use development into this part of Cary. This in turn will help improve property values. The property is planned to have a mix of uses that include office, retail, commercial, hotel, and residential. The proposed development will become a major destination center for this part of Cary, thus being a catalyst for the redevelopment of other sections of the ECG Plan.

**Policy 2: Provide More Housing Choices for All Residents.**
Provide high quality housing in suitable areas that can accommodate a variety of lifestyles, households, ages, cultures, market preferences, and incomes. This includes dwellings for aging seniors and empty nesters, multi-generational households, young professionals, young families, and members of the local workforce.

The proposed rezoning addresses the need for a variety of housing types to support the growing diversity of household types in Cary. The proposed housing shown in the PDP will appeal to singles, couples without children, couples with children, single-parent households, empty-nesters and seniors. It will also provide housing for young adults/millennials and young families. The housing will be walkable to shopping, dining, entertainment, employment and transit. These factors are becoming increasingly important to attract the current workforce pool. To quote directly from this policy: “The provision of such housing will help support the recruitment of young talent sought by Cary’s leading employers, and is thus important for Cary’s economic health”.

**Policy 4: Provide the Greatest Variety of Housing Options in Mixed Use Centers.**
Provide the greatest variety of housing types and densities within Destination Centers, Commercial Mixed Use Centers, and Employment Mixed Use Centers as designated by the Future Growth Framework, as well as within Downtown Cary. The mix of housing types could include apartments, condominiums, and live/work units over office and retail; separate apartment complexes and courtyard apartments; townhomes; patio homes; and small multi-family units such as fourplexes, triplexes, and duplexes.

The proposed rezoning aligns perfectly with Policy 4. The proposed development recognizes those “citizens who desire to live proximate to shopping, amenities, employment and/or transit, and arranged in a compact and walkable development environment”. By providing housing within walking distance to shopping, restaurants, office and employment opportunities, plazas and community gathering spaces and transit stops.

This community will be desirable for residents who want the convenience and lifestyle where they can live, work and play at the same location. The proposed rezoning offers this.

Housing options will include multifamily (apartments and/or condominiums) and the potential for live/work units over office and/or retail and courtyard apartments.
Policy 5: Support Residential Development on Infill and Redevelopment Sites.
Support residential development on infill and redevelopment sites designed to acknowledge the surrounding context, while supporting other LIVE policies.

Some parts of the ECG Plan are earmarked for redevelopment while others for infill development. This property is an infill site.

The policies within the ECG Plan call for the property to be developed as a Mixed Use Center and Employment Based area. The Preliminary Development Plan (PDP) identifies how the proposed development complements both existing development and future development and redevelopment of properties within ECG Plan. The mix and intensity of uses promoted a vibrant employment and commercial center which will enable existing under-utilized properties such as the Cary Town Mall, to redevelop more fully. It will also support potential expansion plans or collaboration with the soccer center to the north. Residential development is planned for the property at densities and intensities identified in this Chapter.

The proposed layout is sensitive to the adjacent and surrounding areas by providing appropriate transitions where necessary.

CHAPTER 3. WORK
CHALLENGES AND OPPORTUNITIES
This Chapter outlines the need for a strong, local, and diverse economy. The Chapter discusses the need to attract young professionals for the future growth of Cary’s economy. This means changes in workplace environments in that a large segment of the workforce wants to choose a job based on lifestyle. They no longer want to work in isolated locations in traditional suburban office parks. The present day workforce wants to work in a more urban environment that offers a mix of nearby dining, shopping, and living options in a walkable community. In order to remain a competitive location for 21st Century businesses and workers, Cary must offer the types of locations and built environments that will enable it to successfully compete for businesses that recruit a younger and more mobile workforce.

The proposed rezoning is in compliance with the policies outlined below for the Work Chapter.

Policy 2: Enhance Locational Appeal to Businesses and Workers.
Maintain or enhance Cary’s locational appeal to businesses and workers. This includes providing a quality of life and built environment that appeals to, and attracts, both businesses/employers and the workforce of tomorrow.

The proposed rezoning complies with this policy. The location of the proposed development will appeal to businesses, employers and employees. The development has excellent visibility and accessibility. The main access points are from the intersection of I-40 and Cary Towne Boulevard
and from Chatham Street along the extension of Trinity Road. Transit is currently available near the site, and plans are underway to expand transit opportunities in the area.

The design of the project creates a quality of life and built environment that appeals to and attracts both businesses and the workforce of tomorrow. This environment allows people to walk to shopping, eating, entertainment and other services. It is important for the workforce to have the opportunity to live where they work. The workforce of tomorrow wants more free time and family time. By cutting down on their commute time these goals are possible. This proposed development will appeal to businesses and workers alike.

**Policy 8: Support the Locational Needs of New and Expanding Firms.** Support new and expanding firms that have different locational needs. Provide a variety of places, including modern business park development with prime office and industrial spaces, mixed use employment centers, and Downtown Cary.

The proposed rezoning satisfies this policy. Locations for office development have evolved over the years. For many years, one could find the majority of office development in office parks solely dedicated to office use with few other users. More recently, locational needs have changed for both the office and business sectors. In particular, workers want to have many services within walking distance. The workforce wants to be able to walk to lunch, shop and potentially live where they work. It is important that Cary offers a variety of sites and locations for office and retail/commercial development. The proposed development provides for the needs of those companies wanting to be located in a mixed use environment. It also provides a mix of office products, from standalone office high-rise to vertically integrated over ground-floor retail.

**Policy 10: Reserve and Provide Employment Sites in Selected Mixed Use and Destination Centers.** Reserve and provide sites for employment and economic development opportunities within a targeted set of new or existing mixed use commercial developments and Destination Centers, as well as within Downtown Cary.

The proposed rezoning and the accompanying PDP complies with this policy. The property is located within a Destination Center. The proposed Plan offers office, retail, commercial and other service-oriented employment opportunities as identified in the ECG Plan.

### CHAPTER 4: SHOP CHALLENGES AND OPPORTUNITIES
Retail and commercial preferences are changing. Consumer preference is for a more walkable, mixed use, compact and shopping destination. The trend is for lifestyle centers that provide walkable urban environments convenient to home and work. These centers contain additional amenities, such as outdoor entertainment venues, outdoor markets, and public art and gathering spaces. These places not only
provide the opportunity to shop and dine in high quality establishments, but they also provide the opportunity to gather and interact with other people outside of work and home.

There is a demand for destination centers in Cary. For the most part Cary is comprised of suburban scale commercial centers. Cary is under-represented with high quality mixed use destination centers that draw customers from across the region to visit unique venues and shopping and dining establishments.

The proposed rezoning addresses the challenges and opportunities outlined in this Chapter. The rezoning complies with the following polices from the Shop Chapter.

**Policy 2: Focus Commercial Uses within Commercial Mixed Use Center, Destination Centers, Downtown, and Commercial Centers.** Focus commercial, retail, dining, and entertainment uses within existing and planned Commercial Mixed Use and Destination Centers, Downtown, and Commercial Centers as designated on the Future Growth Framework map.

*The Growth Framework Map identifies the property as a Destination Center. Commercial, retail, dining, and entertainment uses are planned at a mix and intensity that helps transition Cary away from traditional suburban development and fulfills the need for a thriving destination in this portion of town. As shown on the PDP, these uses are found in a walkable and compact environment.*

**Policy 3: Support the Development of a Limited Number of Destination Centers and Commercial Mixed Use Centers.**
In addition to Downtown, support the development of a limited number of Destination Centers and Commercial Mixed Use Centers that will have Cary’s highest densities and intensities of mixed use development, will be transit supportive, and will have the greatest potential to be high-functioning, premier centers.

*The proposed development is located in one of the Destination Center’s identified in the CCP. The PDP offers high quality, vibrant Destination Center. The Plan integrates a mix of uses that includes retail, commercial, office, entertainment, residential and hotel. The combination of a vertical mixed-use and significant square footages of needed office and supporting uses in this area allows for concentration of densities in a visible center adjacent to a major thoroughfare and community activity areas, including the mall and soccer park.*

*Included in the PDP are elements such as entertainment venues, gathering spaces and public art installations thus helping to create a destination center that is inviting to people during the day and night, and therefore truly offering a place for someone to live, work, shop and play.*

**CHAPTER 5: ENGAGE CHALLENGES AND OPPORTUNITIES**
Maintaining the high quality of the Parks, Recreation and Cultural Resource System with a changing and growing population. Maintaining Cary as an Amateur Sports Destination. Demand for Robust Arts and Culture Offerings. Protecting and Capitalizing on Cary’s Historic Resources.

The proposed rezoning is consistent with the 2012 Cary Public Art Master Plan included in the Engage Chapter. The vision of the Public Art Master Plan is to “Promote public art through site-specific and community-specific artworks that enhance the public realm, deepen a sense of place and civic identity, stimulate community dialogue and transform Cary’s public spaces into vibrant and meaningful places”. The intent of the Plan is to guide future policy and program decisions related to Cary’s public art program.

There are several objectives identified under the Cary Public Art Vision, and this project satisfies each.

Objective: Enhance the quality of life for every citizen of Cary by integrating public art into public spaces, including streetscapes, infrastructure, public facilities, parks, and greenways.

*The proposed rezoning meets this objective. An artist has been hired to incorporate public art into the development via an Art Walk concept. The Art Walk is a significant gateway opportunity that will be integrated with landscaped walls and paths at Cary Towne Boulevard and Trinity Road.*

*An entry feature will serve both as a gateway into Cary and a gateway into the site. This will create a sculptural environment that delivers an engaging experience for the town, the surrounding neighborhood, businesses, and vehicular traffic. This experience will highlight the crucial relationship between this development and the neighborhood it serves, becoming a landmark destination. The sculptural space will be located at the entry corner at Cary Towne Boulevard and along Trinity Road and will incorporate lighting, landscape and terraced walls into the overall design. Experienced by pedestrians and passing motorists, the installation will be designed to consider both perspectives. The experience will be visually engaging during the day and at night, and will invite multiple interpretations while exploring a range of materials. A unifying theme will be utilized throughout the development via the use of similar elements and materials. The proposed development will continue the commitment of the Town to create a community that supports the arts.*

*An environment is being created where people living, working and visiting the development can stroll through the project and be introduced to public art that meaningfully connects people with the place.*

Objective: Support economic development goals through the thoughtful inclusion of public art throughout the Town of Cary, thus promoting tourism and expanding business opportunities.
The property is located within a Destination Center. Due to its size, location, visibility, accessibility and proximity to Downtown. This property is important to the economic vitality of the Town of Cary. By placing public art within the development, economic development is promoted and the site becomes more attractive to employment opportunities. Public art is a tool used to promote economic development.

As stated in Chapter 5 Engage: “Great cities are remembered for interesting streets, lively gathering places, surprising discoveries, and pleasant strolls – physical and social environments where public art can meaningfully connect people with place. Public art thrives in public spaces that are centers of human activity and are designed as destination places.”. Public art is a key component of the planned destination center as identified in the PDP. The PDP acknowledges the importance of public art.

Objective: Engage all citizens of Cary in building community identity by encouraging civic spirit, local pride, and increased citizen involvement in community life.

The incorporation of public art will encourage civic spirit and local pride. The Art Walk will offer opportunities for citizens to interact with the landscape on a human scale, whereby the art and community become part of the site.

Objective: Promote a greater understanding and appreciation of the power of the arts for individual enjoyment and civic growth.

Art is being integrated into the proposed development in a highly visible manner and location, which will establish a unique identity and gateway for the site. This high-profile presence will represent the importance of public art for the Town.

Chapter 6. SHAPE
CHALLENGES AND OPPORTUNITIES
This Chapter discusses how Cary’s land planning context is changing. The amount of developable land has decreased over the last twenty (20) years. The Town will need to look at new development opportunities, including infill development and redevelopment. The Town will need to focus on offering more diverse housing and employment choices. This means providing locations where people can live, shop and work in a compact walkable community.

Policy 1: Distribute Commercial Centers, Commercial Mixed Use Centers, and Destination Centers Across Town.
Locate Commercial Centers, Commercial Mixed Use Centers, and Destination Centers throughout Town such that they are distributed at regular intervals, and separated geographically by about a mile or so in most cases, so as to avoid continuous retail and nonresidential “strip” development along our major roadways.
The proposed rezoning and PDP accounts for transitions both within the proposed development and between the proposed development and surrounding developments. The most intense non-residential uses and the massing thereof will occur at the front of the development near the frontage on Cary Towne Blvd. This intentional intensity recognizes the intense non-residential development directly across Cary Towne Blvd. at the existing Cary Towne Center Mall site. Within the proposed PDP, the plan delineates the step down and transition of non-residential intensity within the project through massing and height of proposed buildings and the transition from non-residential at the front of the project to mixed use non-residential and residential in the same buildings in the middle of the project and to residential uses toward the rear of the project. The PDP also recognizes transitions through street and plaza features that are incorporated into the design of the PDP. Transition planning was considered between this site and adjacent sites through the presentation of undisturbed natural drainageways that border the project and through the proposed road network connections to adjacent properties.

**Policy 8: Preserve and Maintain Cary’s Attractive Appearance and Quality of Development.**
Preserve and maintain Cary’s attractive appearance, with particular attention to the appearance of – and views from – our public spaces, while also encouraging high quality and attractive development.

Cary is a recognized leader in the region for maintaining and enhancing the visual character of the community. The proposed rezoning and PDP demonstrates the commitment to providing a visually attractive Destination Center. Public viewsbhed from thoroughfares and other public areas will find the design, massing, and location of the proposed buildings to be a welcome and enticing entrance into the Eastern Cary Gateway Special Planning Area. Landscape architectural features such as the internal “main street”, public art that is visible from thoroughfares as well as internally, and the private views from within the project will make this PDP one of the most exciting and appealing developments in the Town of Cary. Great care has been taken to screen parking and other uses less desirable features from view as users enter or pass by the site, in an effort to maintain Cary’s attractive appearance.

**Special Planning Areas: Eastern Cary Gateway Special Planning Area #1 Mixed Use Center - Employment Based**
Eastern Cary is planned to be a “destination and a gateway, forming the primary entrance into Downtown Cary from Raleigh and other cities to the east”. This part of Cary is envisioned as a Destination Center that will support “business development through high quality design and an integrated, connected mix of uses”.

The proposed rezoning complies with the vision of the ECG Plan including the vision identified for this property designated as Site #1 on the Future Growth Framework Map for the ECG Plan.
Policy 1: Foster Development of a Compact Mixed Use and High Density Destination Center.
Encourage the development of the Eastern Cary Gateway Destination Center by facilitating high
density development that mixes uses, in
a compact and walkable development pattern and that will support future regional transit service.

The proposed rezoning and PDP is in exact accordance with this policy, and it will provide a
compact and walkable destination center supportive of future transit services.

Policy 2: Improve the Visual Experiences of Gateway Corridors.
Require the use of special gateway treatments such as signage, landscaping, building form, and
other design elements to denote the entrance to Cary and provide a visually appealing experi-
ence.

The proposed rezoning and PDP will provide a well designed Destination Center that utilizes
building design and massing, topography, landscaping, and public art to provide a visually ap-
pealing entrance to the ECG Plan. Landscaping, retaining walls and other Art walk features will
also double as screening elements, focusing the view on the dynamic entry features instead.

Policy 3: Require Connectivity and Accessibility Within and Between Developments.
The transportation network in this area should maximize connectivity within and between devel-
opments, with emphasis on walkable circulation patterns

The proposed rezoning and PDP will expand the connectivity to adjacent sites via the extension
of Trinity Road to Chatham Street and improve circulation within the ECG Plan. Walkable cir-
culation patterns are established throughout the project and allow for connection to adjacent
properties.

Site #1 Mixed Use Center - Employment Based

The proposed rezoning and PDP is for the site identified on the Future Growth Framework of the
Eastern Cary Gateway as site #1. The site is identified for development as a Mixed Use Center
that is Employment Based. The PDP delineates several hundred thousand square feet of office
space to be developed, along with several hundred thousand square feet of supporting retail
space and residential uses along with hotel uses. [Update with actual $#s?]

Page 125 of the Cary Community Plan lists a series of 14 detailed design and planning goals for
this Site #1. The proposed rezoning and PDP addresses each and every one of these 14 points.

The center capitalizes on existing road connectivity and incorporates greenways into the devel-
opment by including Trinity, Quinard, and Chatham street connections in its circulation plan.
Current design plans provide for vertically mixed uses such as residential over retail and also
provide for connections to proposed stand alone retail and office uses. The plans also incorpo-
rate public plazas and other spaces and pedestrian ways to provide for excellent at grade pedestrian circulation. The residential component of the plans envisions multi-family units for rent and for sale to reach different housing market demands. The plans also incorporate hotel uses to serve visitors to the Soccer Campus as well as visitors to the office component of the development and the public at large. Parking is being sensitively handled with both parking decks and surface parking. The proposed plans include public art, thoughtful massing of the office buildings, and coherent site design ensure this site will be recognized as the most legible, visible, and vibrant entrance gateway to Cary.

It is difficult to imagine a rezoning and a PDP that would be more compatible with the general and specific policies, design, and planning objectives for this Site #1 within the Eastern Gateway Future Growth Framework.
In addition to the criteria for a general rezoning specified in Section 3.4.1(E), rezoning requests to a MXD district shall be reviewed for compliance with the following criteria contained in LDO Section 4.5.2(E), as applicable [i.e., it may not be reasonable or practical to expect that some existing or partially-built mixed use districts (formerly activity center concept plans or mixed use sketch plans) to achieve certain design standards]:

(1) **Intensity, Type, and Mix of Uses**
The preliminary development plan includes an appropriate intensity, type, and mix of land uses, as outlined by the guidelines contained in the Comprehensive Plan. This shall be assessed in relation to the scale of the Mixed Use Overlay District and the mix and relationship of existing and planned uses, including residential, commercial, office, and institutional uses;

   *Applicant's Comments: See Attached Sheet*

(2) **Site Design**
The preliminary development plan shows how the proposed development will meet or exceed Town site design guidelines and other established Town standards, including connections and linkages to immediately adjacent properties;

   *Applicant's Comments: See Attached Sheet*

(3) **Expected Land Uses**
The extent to which the proposed development provides the expected land uses, including medium- and higher-density housing, outlined by the numerical and other guidelines contained in the Comprehensive Plan;

   *Applicant's Comments: See Attached Sheet*

(4) **Public Spaces**
The preliminary development plan includes some formal outdoor space(s) for public use, such as a park, village green, or plaza; and

   *Applicant's Comments: See Attached Sheet*

(5) **Scale and Context**
The preliminary development plan demonstrates that the proposed development is appropriate for the context and location, responds to the unique conditions of the area, and provides reasonable transitions within and adjacent to the district.

   *Applicant's Comments: See Attached Sheet*
Rezoning Justification Statement #4 (Required only when rezoning to or amending the Preliminary Development Plan component of a Mixed Use District)

Describe how the proposed rezoning meets the criteria listed below.

In addition to the criteria for a general rezoning specified in Section 3.4.1(E), rezoning requests to a MXD district shall be reviewed for compliance with the following criteria contained in LDO Section 4.5.2(E), as applicable [i.e., it may not be reasonable or practical to expect that some existing or partially-built mixed use districts (formerly activity center concept plans or mixed use sketch plans) to achieve certain design standards]:

(1) **Intensity, Type, and Mix of Uses**
The preliminary development plan includes an appropriate intensity, type, and mix of land uses, as outlined by the guidelines contained in the Comprehensive Plan. This shall be assessed in relation to the scale of the Mixed Use Overlay District and the mix and relationship of existing and planned uses, including residential, commercial, office, and institutional uses;

*Applicants Comments:* The PDP includes the appropriate intensity, type and mix of land uses as identified in the Cary Community Plan (CCP). Greater intensities than what is currently found in other locations in Cary is proposed, and are depicted on the PDP. This property is within the Eastern Cary Gateway Plan (the “ECG Plan”) With regard to mix of uses, the proposed uses correspond to the mix of uses identified in ECG Plan for our property. Uses will be both vertically and horizontally mixed within the proposed project. Parking decks will be used to accommodate the higher density of development within the project, which is also in accordance with the Plan. The mix of uses include office, residential, retail, commercial office, public gathering spaces, and other supporting uses.

(2) **Site Design**
The preliminary development plan shows how the proposed development will meet or exceed Town site design guidelines and other established Town standards, including connections and linkages to immediately adjacent properties;

*Applicant’s Comments:* The PDP is consistent with Design Principles in Cary’s Site Design Standards. **Create Human Scale:** Human scale is achieved by including structures abutting the street frontage, on-street parking designed to calm traffic and protect and delineate the pedestrian realm, well-landscaped streets, community gathering spaces, and other amenities that are all within walking distance to homes, shopping, services and office uses.

**Create Sense of Place:** Within the boundaries of the ECG Plan, the proposed PDP will create a unique and vibrant entryway destination which will ultimately lead visitors to Downtown Cary. Additionally, given the proximity of the planned development to Cary Towne Center mall and other properties within the ECG Plan, the project can serve as a catalyst to energize and redevelop others parts of the special planning area. The pro-
posed development will create a distinctive sense of place not only within its own boundaries but within the entire special planning area. Access into the development from Trinity Road will be provided through a distinctive entryway feature with landscaping and pedestrian pathways, as shown on the PDP.

**Connect Uses:** The proposed design will facilitate safe, effective, and convenient pedestrian and vehicular connectivity within the site and throughout the project area. The PDP also identifies points at which additional connectivity can be extended in the future across the boundaries of the project and into existing neighborhoods as redevelopment occurs. Additionally, at a future date, extension of Trinity Road up to East Chatham Street through the Soccer Park is expected.

**Provide Transitions:** The proposed rezoning and PDP accounts for transitions both with the proposed development and between the proposed development and surrounding developments. The most intense non-residential uses and the massing thereof will occur at the front of the development near the frontage on Cary Towne Blvd. This intentional intensity recognizes the intense non-residential development directly across Cary Towne Blvd. at the existing Cary Towne Center Mall site. Within the proposed PDP, the plan delineates the step down and transition of non-residential intensity within the project through massing and height of proposed buildings and the transition from non-residential at the front of the project to mixed use non-residential and residential in the same buildings in the middle of the project and to residential uses toward the rear of the project. The PDP also illustrates transitions through street and plaza features that are incorporated into the design of the PDP. The proposed rezoning has also incorporated transition planning between this site and adjacent sites through the recognition of undisturbed natural drainageways that border the project and through the proposed road network connections to adjacent properties.

**Reduce Parking Impacts:** The impact of parking is being reduced by the use of parking decks. The use of parking decks are encouraged within the ECG Plan. This further enables the development to be built in the at the intensities identified in the Plan.

**Plan for Pedestrians, Bicyclists, and Transit Users:** The PDP takes into account alternatives to the automobile. Pedestrian use is encouraged through a significant network of sidewalks, multi-use trails, and street crossings clearly marked to increase safety and pedestrian shelter within the walkable community. The same applies to the use of bicycles. Existing public transit is in close proximity to the property and there are plans for it to expanded. Transit stops will also be provided within the proposed development. Provide Open Space: Buffers are being provided along Walnut Creek and unnamed tributary at the southwest corner of the proposed rezoning. There are also three designated greens that function as community spaces within the proposed development.

(3) **Expected Land Uses**

The extent to which the proposed development provides the expected land uses, including
medium- and higher-density housing, outlined by the numerical and other guidelines contained in the Comprehensive Plan;

Applicants Comments: The proposed development provides the expected land uses as identified in the CCP for the ECG Plan. The residential and nonresidential densities and intensity of development meet the suggested guidelines, this information is part of the PDP.

(4) Public Spaces
The preliminary development plan includes some formal outdoor space(s) for public use, such as a park, village green, or plaza; and Applicants Comments: Public spaces are included in the PDP and shown as greens with committed sizes and treatment on the Plan. Functional public space is a key component contributing to the success any well-designed development.

(5) Scale and Context
The preliminary development plan demonstrates that the proposed development is appropriate for the context and location, responds to the unique conditions of the area, and provides reasonable transitions within and adjacent to the district. Applicants Comments: The proposed development is appropriate for the context and location and responds to the unique conditions of the area. The CCP has designated the property as a Destination Center. Being part of a Destination Center means providing densities and intensities that are not found in other parts of Cary, and providing a mix of uses to engage workers, patrons, and visitor throughout the day. The location of the property makes it an ideal location for the increased densities and intensity of development. The design of the development is sensitive to the surrounding area. Appropriate transitions have been provided to ensure that the proposed development is an asset to the area.
Part 3C(5): IMMUNE SOVEREIGN – The area to be rezoned is owned by the State of North Carolina, body politic and corporate.

The State of North Carolina, as seller, entered into an Offer to Purchase Agreement dated July 13, 2015, with Columbia Development Group, LLC, a South Carolina limited liability company ("Purchaser"), for the purchase of the property that is the subject of this application for rezoning (the "Property"). Pursuant to Section 10 of said Offer to Purchase Agreement (a copy of which section is attached), the State of North Carolina agreed to cooperate with and assist Purchaser with all rezoning approvals Purchaser deemed necessary for the development of the Property. This application for rezoning is made by the State of North Carolina in furtherance of the Offer to Purchase Agreement and the zoning designation sought herein shall be applicable to the Property upon its conveyance by the State of North Carolina to the Purchaser.

In accordance with N.C. Gen. Stat. §§ 146-27(b) and 146-29(a), the North Carolina General Assembly's Joint Legislative Commission on Governmental Operations has been consulted concerning the sale of the Property and the Governor and Council of State have approved the disposition of the Property.

STATE OF NORTH CAROLINA

By: __________________________________________ Date ____________
Tim Walton, Director
State Property Office
North Carolina Department of Administration

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, ________________, a Notary Public for the County of Wake, North Carolina, do hereby certify that Tim Walton personally came before me this day and acknowledged the due execution by him of the foregoing instrument as Director of the State Property Office an agency of the North Carolina Department of Administration, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the 21st day of ____________, 2017.

______________________________
Notary Public

My Commission Expires: ____________

______________________________
Print Name: ________________
1. **Definitions.** All defined terms in this Agreement shall have the following meaning unless otherwise defined:

| a. | **Purchaser:** | COLUMBIA DEVELOPMENT GROUP, LLC  
1845 St. Julian Place  
Columbia, SC 29204  
Tel: (803)744-5900  
Fax: (919) 896-2530 |
| b. | **Copies of all notices directed to Purchaser shall also be sent in the same manner to:** | Thomas G. Drake  
Drake Commercial Properties  
P.O. Box 6327  
Raleigh, NC 27628  
l Drake@intracap.com |
| c. | **Seller:** | State of North Carolina  
State Property Office  
118 West Jones Street, Room 4055  
Raleigh, North Carolina 27603  
Tel: 919-807-4661  
Fax: 919-733-1431  
Email: jay.wompan@sapo.nc.gov |
| d. | **Copies of all notices directed to Seller shall also be sent in the same manner to:** | North Carolina Department of Justice  
Attn.: Mark Teague  
P.O. Box 829  
Raleigh, North Carolina 27602  
Tel: (919) 733-7408  
Fax: (919) 733-2947  
Email: stegue@ncdoj.gov |
| e. | **Purchaser’s Broker:** | Thomas G. Drake  
Drake Commercial Properties  
P.O. Box 6327  
Raleigh, NC 27628  
l Drake@intracap.com |
| f. | **Property Name:** | 41/2 Acres at Cary Towne Boulevard |
| g. | **Property:** | That certain tract of land containing 95 acres, more or less, located adjacent to Cary Towne Boulevard in the Town of Cary, Wake County, North Carolina, as more particularly shaded in yellow on the Illustration entitled "Cary Towne Tract: Trade Property" attached hereto as Exhibit A, together with all rights, improvements, easements, appurtenances and hereditaments appertaining thereto (the "Property"). |
| h. | **Effective Date:** | The last of the dates appearing by the signatures of Purchaser and Seller to this Agreement. |
| i. | **Inspection Period:** | A period of time starting on the Effective date and ending at 5:00 p.m. (Eastern Time) on the date that is ninety (90) days thereafter. |
| j. | **Purchase Price:** | The sum of Twenty-One Million One Hundred Fifty Thousand and No/100ths Dollars ($21,150,000.00) |
| k. | **Closing:** | Purchaser shall purchase the Property on or before that date which is thirty (30) days after the Zoning Approval and Site Plan Approval (as defined in Section 10), as provided herein (the "Closing Date"). |
| l. | **Earnest Money:** | The sum of Two Hundred Twenty Thousand and No/100ths Dollars ($220,000.00) posted in certified funds. |
2. Agreement. This is an agreement (the "Agreement") between Purchaser and Seller for Purchaser to buy, and Seller to sell, the Property, all on the terms contained in this Agreement. The consideration for the parties to enter into this Agreement is the sum of Ten Dollars ($10.00), the promises of each party contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. The Agreement is subject to and contingent upon review by the Joint Legislative Commission on Governmental Operations and approval by the Governor and Council of State.

3. Purchase Price. The Purchase Price for the Property shall be paid by Purchaser to Seller in immediately available funds at Closing.

4. Earnest Money.
   a. Delivery. Contemporaneously with the delivery of the Purchaser's offer contained in this Agreement, Purchaser shall deliver the Earnest Money to the Seller via certified checks, which shall be held in trust and deposited by Seller only after Seller has duly executed this Agreement. The Earnest Money delivered to Seller shall be returned to Purchaser as set forth in Earnest Money Credit (defined above), or disbursed as otherwise provided in this Agreement.

5. Inspection Period.
   a. Inspection. During the Inspection Period, Purchaser shall have the right to inspect the Property at any time during the period that this Agreement is in effect, through the Closing Date. The Inspection may include such boring, engineering, environmental, water, sanitary and storm water, traffic, utilities, topographic and/or other tests and investigations as Purchaser may determine to be made.
   b. Purchaser's Approval. On or before 5:00 p.m. (Eastern time) on the last day of the Inspection Period, Purchaser shall notify Seller in writing that is signed by an officer of Columbia Development Group, LLC, ("Purchaser's Notice") of (i) Purchaser's intent to purchase the Property and proceed with this transaction, whereby the Earnest Money shall be nonrefundable to Purchaser, or (ii) of Purchaser's intent to not purchase the Property. In event Purchaser's Notice is not given to Seller by such time, this Agreement shall automatically proceed with the transaction. In event the Purchaser's Notice terminates the transaction, Seller shall return the Earnest Money to Purchaser, Purchaser shall furnish Seller, without representation or warranty, express or implied, as to the terms or quality thereof, the fees paid therefor or otherwise, copies of any third party reports, surveys and materials Purchaser may have received as a result of Purchaser's investigations, and the parties shall thereafter be released from any further liability or obligation hereunder, except those that are expressly stated to survive termination of this Agreement.
   c. Inspection Indemnity. Regardless of whether or not this Agreement is subsequently terminated, Purchaser Indemnifies Seller for any and all claims, which arise directly out of Purchaser's Inspection of the Property. This Indemnification specifically includes an Indemnification for liens which may be filed by any and all persons or entities employed by Purchaser.

6. Title.
   a. Conveyance. At Closing, Seller shall convey to Purchaser, or its designee(s), fee simple title to the Property, by non-warranty deed, subject to the Permitted Exceptions (as hereinafter defined), insurable at regular rates by a title insurance company selected by Purchaser. In the event of a discrepancy between the Property description identified on the record and the description drawn from a survey of the Property obtained by Purchaser (the "Survey"), the non-
warranty deed shall reflect the description drawn from the Survey.

b. **Title Objections.** Prior to expiration of the Inspection Period, Purchaser shall obtain, at Purchaser's expense, a written commitment for issuance of a title insurance policy by a company selected by Purchaser ("Purchaser's Title Commitment"). In the event Purchaser's Title Commitment discloses title defects or any other matter concerning the Property to which Purchaser objects, Purchaser shall deliver written notice thereof ("Purchaser's Title Objection Notice") to Seller prior to expiration of the Inspection Period. Seller shall have five (5) business days after the date of receipt of such notice in which to deliver a written notice to Purchaser ("Seller's Title Response Notice") indicating whether Seller will undertake to cure the title defects and other matters identified in Purchaser's Title Objection Notice prior to Closing. If Seller fails to deliver a Seller's Title Response Notice within the required time frame, deliver a notice indicating that it is unable or unwilling to cure or eliminate one or more of such defects or objections prior to Closing, or fails to cure or eliminate one or more of such defects or objections to Purchaser's satisfaction prior to Closing, Purchaser shall have the right, at its sole option, to (i) terminate this Agreement, whereupon Seller shall immediately return the Earnest Money to Purchaser and the parties shall thereafter be released from any further liability or obligation hereunder, except those that are expressly stated to survive termination of this Agreement; or (ii) waive such objection or defects and proceed to Closing as otherwise required herein. The foregoing notwithstanding, Purchaser shall have the right to object at any time to any encumbrance on title or lien that attaches to the Property after the Effective Date without Purchaser's written consent (each an "Unpermitted Encumbrance"). In the event Purchaser objects to an Unpermitted Encumbrance and Seller is unable, unwilling or fails to cure or eliminate an Unpermitted Encumbrance to Purchaser's satisfaction prior to Closing, Purchaser shall have the right, at its sole option, to (i) terminate this Agreement, whereupon Seller shall immediately return the Earnest Money to Purchaser and the parties shall thereafter be released from any further liability or obligation hereunder, except those that are expressly stated to survive termination of this Agreement; or (ii) waive such objection or defects and proceed to Closing as otherwise required herein.

c. **Permitted Exceptions.** As used in this Agreement, the term "Permitted Exceptions" shall mean (i) the lien for real estate taxes or other governmental assessments not yet due and payable as of the date of Closing; and (ii) matters listed in Purchaser's Title Commitment, as either exceptions or exclusions to which Purchaser does not raise an objection as provided above, or, having objected, Purchaser waives in accordance with the provisions of this Section.

7. **Closing.**

a. Purchaser and Seller shall complete the Closing under the terms defined above. The foregoing and any other provisions of this Agreement notwithstanding, if Closing has not occurred on or before June 15, 2017 (the "Outside Closing Date"), and such failure is not the result of failure by either party to satisfy its obligations hereunder, either Purchaser or Seller may, by written notice to the other party, terminate this Agreement, whereupon Seller shall retain the Earnest Money, except in the event that the Town of Cary denies Zoning or Site Plan Approval, and the parties shall thereafter be released from any further liability or obligation hereunder, except those that are expressly stated to survive termination of this Agreement.

b. Closing shall take place at the office of Purchaser's attorney, at a time selected by Purchaser, with at least forty-eight (48) hours prior notice to Seller. At Closing, Seller shall deliver to Purchaser a non-warranty deed for the Property, together with all affidavits, and other documents which are customary and reasonably acceptable to Seller. Purchaser shall pay to Seller the Purchase Price for the Property in immediately available funds. Possession of the Property shall be delivered to Purchaser at the Closing. Seller shall pay for preparation of the non-warranty deed and Seller's attorneys' fees. Purchaser shall pay for all other closing costs, recording fees, filing fees and Purchaser's attorneys' fees. Seller and Purchaser shall execute and deliver all documents reasonably required to complete the sale contemplated by this Agreement.

c. Seller shall convey to Purchaser fee simple title to the Property, subject only to the Permitted Exceptions, at Closing.

d. Purchaser shall receive a credit equal to the Earnest Money Credit against the Purchase Price to be paid for the Property at Closing.
e. If requested by Purchaser, a recordable plat of the Property prepared by Purchaser and based on the Survey (the "Plat") shall be recorded in the public registry of the county in which the Property is located at Closing (recording fees to be paid by Purchaser).

8. Conditions Precedent. The obligation of Purchaser to proceed to Closing is subject to the satisfaction of each of the following conditions (collectively, the "Conditions Precedent"): 

a. Seller shall have performed all of its covenants and not be in default of any of its obligations under this Agreement.

b. Purchaser shall have performed all of its covenants and not be in default of any of its obligations under this Agreement.

c. There shall have been no material adverse change in the physical condition or status of title affecting any portion of the Property after the Effective Date (excepting only such changes to which Purchaser has consented in writing).

d. The Joint Legislative Commission on Governmental Operations and the Governor and Council of State shall have duly approved and authorized the execution of this Agreement by Seller and each of the transactions contemplated under this Agreement.

e. Purchaser's receipt Zoning Approval and Site Plan Approval from the Town of Cary.

9. Failure to Satisfy Conditions. If any of the Conditions Precedent are not satisfied as of the Closing Date, Purchaser or Seller shall have the right to (a) terminate this Agreement; or (b) waive the condition and proceed to Closing.

10. Seller's Duty to Cooperate. Seller shall cooperate with and assist Purchaser with any governmental or other third party approvals being sought by Purchaser in connection with Purchaser's intended use of the Property. Seller acknowledges that Purchaser shall have the right to apply and pursue all zoning and/or rezoning approvals it deems to be necessary for development of the Property, with terms and conditions that are acceptable to Purchaser. Such approvals may include: (a) a rezoning of the Property (the "Zoning Approval"); (b) approval of the Plat subordinating the Property from the Parent Tract; and (c) engineering drawings for the anticipated development of the Property. In connection with Seller's duty to assist Purchaser, Seller shall attend staff and/or public meetings, if needed, and Seller shall not be required to incur any out of pocket cost or expense in connection with such cooperation. The application materials for any such approvals shall be prepared by Purchaser, at its expense, with the substance thereof to be determined by Purchaser in its sole discretion. The provisions of this Section are not intended to obligate Purchaser to pursue any of the approvals identified above or any other approvals related to the Property.


a. Seller represents and warrants that Seller has not retained or engaged the services of any real estate broker or salesperson.

b. Purchaser holds Seller harmless from and against any and all liabilities, losses, costs, damages and expenses, including reasonable attorneys' fees and costs of litigation, the Seller may suffer or incur because of any claim by any broker, agent or salesperson, whether or not meritorious, for any fee, commission or other compensation with regard to this Agreement or the sale and purchase of the Property contemplated hereby, and arising out of any acts or agreements of Purchaser.

c. This Section shall survive the Closing or any termination of this Agreement.

12. Assignment. Purchaser's rights and duties pursuant to this Agreement are transferable and assignable by Purchaser to any entity or affiliate of that is controlled by Purchaser or is the successor in interest to Purchaser by merger, acquisition or operation of law. Purchaser shall have the right to assign this Agreement to any other person or entity subject to Seller's approval. Any such assignee shall assume all duties and obligations of Purchaser pursuant to this Agreement; provided, however, that any such
assignment of Purchaser's Interest in this Agreement shall not relieve the original Purchaser of any duties, obligation or liabilities hereunder. All other pledges, transfers or assignments, whether in fee simple absolute or for the purpose of security, must have Purchaser's Approval, which will not be unreasonably withheld or delayed.

13. Notices. All notices, demands, requests and other communications required or permitted to be given hereunder must be in writing and shall be deemed given upon receipt when transmitted by (a) hand-delivery with receipt; (b) certified or registered U.S. mail, postage prepaid, return receipt requested; or (c) overnight delivery service (FedEx, etc.). All notices shall be addressed as set forth in the “Definitions” Section above.


a. Purchaser's Default. In the event that Purchaser defaults in the observance or performance of its covenants and obligations hereunder, Seller shall retain the Earnest Money and pursue any available remedy Seller may have against Purchaser under law.

b. Seller's Default. In the event that Seller defaults in the observance or performance of its covenants and obligations hereunder, Purchaser may, as its sole remedies hereunder, by serving notice in writing upon Seller in the manner provided herein, either (i) elect to terminate this Agreement and to declare it null and void, receive a refund of all Earnest Money paid in connection with this Agreement and (ii) the parties hereby acknowledge that the actual damages in the event of such a default or breach of this Agreement is difficult or impossible to estimate accurately; (iii) the parties agree that it is impossible to more precisely estimate the damages to be suffered by Purchaser upon Seller's default, (iv) the parties agree that such payment of Earnest Money is intended not as a penalty, but as full liquidated damages, and (v) the parties agree and stipulate that the amount of the Earnest Money constitutes a good faith and reasonable estimate of the potential loss or damages arising from Seller's breach. The Purchaser's right to so terminate this Agreement and retain payment of the Earnest Money as full liquidated damages is Purchaser's sole and exclusive remedy in the event of default hereunder by Seller.

c. No Speculative, Special or Punitive Damages. Notwithstanding anything in this Agreement to the contrary, no event shall Purchaser be entitled to recover speculative, special or punitive damages in connection with any indemnity or the breach of any obligation under this Agreement.

d. Notice and Cure Rights. There shall not be a default under this Agreement until the non-defaulting party shall have given the defaulting party written notice of such default, specifying in reasonable detail the nature of the default, and the defaulting party shall have (i) ten (10) days in which to cure said default in the case of monetary defaults; and (ii) thirty (30) days in which to cure said default in the case of non-monetary defaults.

e. Survival. The provisions of this Section shall survive Closing and any termination of this Agreement.

15. Seller's Representations. Seller hereby represents to Purchaser that the following are true and correct as of the date of this Agreement and that the following will remain true at Closing:

a. Seller is a body politic and corporate and has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, subject to and contingent upon review by the Joint Legislative Commission on Governmental Operations and approval by the Governor and Council of State;

b. To the best of Seller's knowledge and belief, there are no pending litigations or special assessments against the Property by any governmental authority;

c. There is no pending condemnation proceeding for which Seller has received notice, and to the best of Seller's knowledge and belief, there is no threatened condemnation proceeding with respect to all or any portion of the Property; and

d. Seller has not received any notice of any violation of (nor to the best of Seller's knowledge is
there any violation of) any ordinance, regulation, law, or statute of any governmental authority
or agency pertaining to the Property.

16. Property Conveyed As Is, Where Is and With All Faults. Except as provided in this Agreement and
in the documents delivered by Seller at Closing:

a. Purchaser acknowledges that Purchaser has had and will have prior to the expiration of the
Inspection Period under this Agreement, full and adequate right and opportunity to inspect and
review the Property. The waiver of Purchaser’s right to terminate this Agreement prior to the
expiration of the Inspection Period and Purchaser’s completion of the Closing shall each
constitute conclusive evidence that Purchaser is satisfied with the condition of, and title to, the
Property. If Purchaser elects to proceed with Closing, Purchaser shall exclusively rely upon
Purchaser’s own inspections and reviews, and not upon (i) any documents that Seller may deliver
to Purchaser or (ii) any representation or warranty of Seller, or Seller’s agents or employees.

b. Purchaser understands and agrees (i) that Seller has made no representation, warranty or
guaranty, express or implied, oral or written, regarding (a) compliance of the Property with any
applicable law, regulation or ordinance, including, but not limited to, any land use, zoning or
environmental regulation or building code, or (b) any other matter regarding the condition of the
Property or title to the Property, (ii) that Seller is not obligated to alter, repair or improve the
Property in any manner, and (iii) to accept the Property in its “AS-IS, WHERE-IS AND WITH ALL
FAULTS” condition, with all present and future faults or defects, and without any representation
or warranty of Seller.

c. Purchaser (and any party claiming through or under Purchaser) hereby agrees that following the
Closing, Seller shall be fully and finally released from any and all claims or liabilities against
Seller relating to or arising under this Agreement or on account of the condition of the Property,
except as expressly set forth in this Agreement to the contrary.


a. This Agreement shall be interpreted in accordance with the laws of the State in which the
Property is located.

b. Time is of the essence in this Agreement.

c. Purchaser’s Consent or Purchaser’s Approval. Wherever used in this Agreement, “Purchaser’s
Consent” or “Purchaser’s Approval” mean a formal writing signed by an Officer of Purchaser.
As used in this Agreement, an “Officer” means a Vice President, Division President, Region
President or higher officer.

d. This Agreement may not be modified or amended except by a writing signed by the parties
hereto. Only an Officer is authorized to execute, on behalf of Purchaser, this Agreement, or any
amendment or a modification thereto, on behalf of Purchaser.

e. This Agreement constitutes the sole and entire agreement of the parties and is binding upon
and shall inure to the benefit of Seller and Purchaser, their respective heirs, successors, legal
representatives and assigns. All prior discussions, negotiations and agreements are merged
herein and have no further force or effect.

f. Except as may be otherwise specifically provided in this Agreement, all covenants, agreements,
indemnities, representations and warranties contained herein shall survive the Closing of the
transaction contemplated hereby and delivery of the deed and other documents delivered at
Closing and shall not be merged with delivery thereof. The Closing attorney is directed to
provide contract survival language in the Closing documentation.

g. In the event that the time or day for any action under this Agreement falls on a weekend or
public holiday, or in the event the day for Closing falls on a day when the office where real
property records are recorded is closed, then the day and time for doing the action shall
automatically be extended until the next business day. The term “business day” shall mean
h. This Agreement may be executed in separate counterparts. This Agreement shall be fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains all of the signatures of all the parties to this Agreement.

i. If any of the provisions of this Agreement shall be declared invalid or unenforceable by laws applicable thereto, or unenforceable as to certain parties, then the performance of said provision shall be excused by the parties hereto and the remaining provisions of this Agreement shall remain in full force and effect.

j. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, or limit the scope or content of this Agreement or any provision hereof.

k. All exhibits attached to this Agreement are incorporated by reference herein.

l. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

m. Any failure or delay of Purchaser or Seller to enforce any term, covenant or condition of this Agreement shall not constitute a waiver of such term, covenant or condition. It being explicitly agreed that such a waiver must be in writing and given pursuant to the Notice provisions of this Agreement. Any such waiver by Purchaser or Seller shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained.

IN WITNESS WHEREOF, the parties hereto have caused their respective authorized representatives to set their hands and affix their seals the day and year indicated.

Seller:

State of North Carolina (SEAL)

By: ______________________________
Print Name: Bill Daughtridge, Jr.
Title: Secretary
Date: July 13, 2015

Purchaser:

Columbia Development Group, LLC
a South Carolina limited liability company (SEAL)

By: ______________________________
Print Name: Edward C. Mann, III
Title: Managing Partner
Date: June 20, 2015
DISPOSITION BY DEED

ITEM

GRANTOR: State of North Carolina, Department of Administration, State Property Office

GRANTEE: Columbia Development Group, LLC
Edward C. Mann, III, Managing Partner

LOCATION: Cary Towne Center Blvd., Cary, Wake County

AREA: ≈95 acres

UNIT COST: ≈$5.11 sq. ft. / land

CONSIDERATION: $21,150,000.

COMMENTS: Surplus Property Sale. Property proposed for disposition was sold in accordance with Session Law 2011-145 by a negotiated sale. The offer is contingent upon a 90-day inspection period, re-zoning for mixed-use development and site plan approval. The proposed closing date is on or before June 13, 2017.

JMW

NOTIFY: Don Teeter
AG's Office

Wake County Manager
337 S. Salisbury Street
Raleigh, NC 27610

Wake County Board of Commissioners
337 S. Salisbury Street
Raleigh, NC 27601

Thomas Drake
tdrake@intrex.us

Town of Cary, City Manager
316 N. Academy Street
Cary, NC 27513
Ben.shivar@townofcary.org

Town of Cary
Town Council
316 N. Academy Street
Cary, NC 27513
STATE OF NORTH CAROLINA

COUNTY OF WAKE

AFFIDAVIT OF

Columbus Development Group, LLC

(Agent)

I/We, Columbus Development Group, LLC, being first duly sworn, hereby depose and say:

1. I am over eighteen years of age and competent to make this Affidavit. All statements made herein are based upon my personal knowledge.

2. Columbus Development Group, LLC ("the Applicant") is/are the owner(s) of certain real property located at 950 W Chatham Street, and identified as 0774311292 (part of) ("the Property").

3. On or about April 24, 2017 [insert date], the Applicant submitted to the Town of Cary an Application for a rezoning of the Property ("the Application").

4. Together with the Application, the Applicant submitted a fully executed power of attorney, or a fully executed sales contract, which remains in full force and effect, which grants me the authority to represent and bind the Applicant and execute this Affidavit.

5. I have discussed the following zoning conditions or provisions with the Applicant, and the Applicant has agreed to volunteer the following zoning conditions or provisions in support of the Rezoning:

The zoning conditions are part of the Preliminary Development Plan (PDP). Refer to the PDP for a list of the zoning conditions.

6. In addition to the zoning conditions or provisions listed above in paragraph 5, the Applicant, through counsel or otherwise, may offer or consent to at any hearing before the Town of Cary Planning and Zoning Board or Town Council certain additional conditions of approval (which additional conditions of approval, along with the zoning conditions or provisions listed in paragraph 5, are collectively referred to hereinafter as the "Conditions of Approval").
7. All Conditions of Approval that the Applicant offers in connection with the Rezoning are offered to address the conformance of the development and use of the site to Town ordinances and officially adopted comprehensive plan or other plan and to address the impacts reasonably expected to be generated by the development or use of the site.

8. I intend for the Town to rely on this Affidavit and in offering the Conditions of Approval, I hereby swear that:

   a. all zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant’s independent judgment; and

   b. the property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and

   c. the property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and

   d. the property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and

   e. the property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

Further the Affiant sayeth not.

This the 24th day of April, 2017

Name: H. Abbott Goodman Jr.
Title: Principal

Sworn and subscribed before me this the 24th day of April, 2017.

Notary Public

My commission expires: 2/26/2019

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