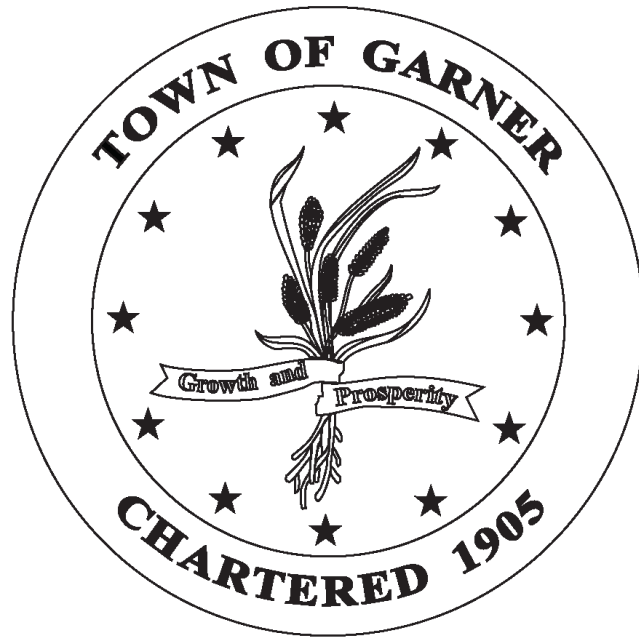


Town of Garner



Work Session Meeting
July 30, 2024

Garner Town Hall
900 7th Avenue
Garner, NC 27529

**Town of Garner
Work Session Meeting Agenda
July 30, 2024**

The Council will meet in a Work Session at 6:00 p.m. in the Ronnie S. Williams Council Chambers located at 900 7th Avenue.

- A. CALL MEETING TO ORDER/ROLL CALL: Mayor Buddy Gupton
- B. ADOPTION OF AGENDA
- C. PRESENTATIONS
- D. REPORTS

- 1. Downtown Development Project Page 4
Presenters: John Hodges, Assistant Town Manager and Terri Jones, Town Attorney

At the May 23, 2024 Budget Work Session, Council received an update from LMG, the development partner for the downtown development project. Council gave direction for staff to work with LMG to finalize a Master Development Agreement (MDA).

Action: Provide direction to staff to finalize the MDA for approval.

- 2. National Community Survey Results Page 42
Presenter: Jodi Miller, Town Manager

In spring 2024, the Town conducted the National Community Survey in partnership with Polco. This is the first time the Town has conducted a townwide resident survey. The data and information provided in the report will be used in the Town's strategic plan refresh, in the budget book, and in performance measurement efforts.

The 2024 National Community Survey Results report can be found [here](#).

An interactive Tableau dashboard of the 2024 survey results with deeper dive demographic comparisons is available [here](#).

Action: No action required. For information and discussion.

- 3. UDO Text Amendment Discussion Page 54
Presenter: Jeff Triezenberg, Planning Director and Nate Groover, Economic Development Director

On July 16, 2024, Council approved Ordinance No. (2024) 5286 adopting a number of the items recommended in Zoning Text Amendment ZTA-23-02. Several items were deferred for further discussion. The attached memo outlines the items not yet adopted.

To provide additional background and information for discussion, Nate Groover, Economic Development Director and Micheal Haley, Executive Director, Wake County

Economic Development, will present information on site readiness and unique opportunities for proactive planning.

Action: Provide direction to staff for preparation of additional amendments to the UDO.

E. DISCUSSION

F. MANAGER REPORTS

1. Pending Agenda
2. Development Update
3. Pedestrian Plan Oversight Recommendation

G. ATTORNEY REPORTS

H. COUNCIL REPORTS

I. CLOSED SESSION

Pursuant to N.C. General Statutes Section 143.318.11(a)(3) to consult with the Town Attorney regarding litigation and Section 143.318.11(a)(5) to discuss possible real estate acquisition and the Town's negotiating position regarding such real estate.

J. ADJOURN

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 30, 2024 ▼		
Subject: Downtown Development Project		
Location on Agenda: Reports		
Department: Town Manager's Office		
Contact: John Hodges, Assistant Town Manager		
Presenter: John Hodges, Assistant Town Manager, Terri Jones, Town Attorney, LMG Representatives		
<p>Brief Summary: At the May 23, 2024 Budget Work Session, Council received an update from LMG, the development partner for the downtown development project. Council gave direction for staff to work with LMG to finalize a Master Development Agreement (MDA).</p>		
<p>Recommended Motion and/or Requested Action: Provide direction to staff to finalize the MDA for approval.</p>		
<p>Detailed Notes: A request was made by Council for LMG to consider how workforce housing may be included in the project. LMG has committed that at least three of the 24 units will constitute workforce housing. See section 1.8 for details.</p>		
Funding Source:		
Cost: None	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JMH	
Finance Director:		
Town Attorney:	TJ	
Town Manager:	JM	
Town Clerk:		

MASTER DEVELOPMENT AGREEMENT

BY AND BETWEEN

LMG GARNER LLC

AND

TOWN OF GARNER, NORTH CAROLINA

EFFECTIVE DATE: July____, 2024

PARCEL IDENTIFICATION NUMBER:

PIN # 1711-62-4396

SCHEDULES & EXHIBITS:

Schedule 1.4	Property Description
Schedule 1.11a	Development Plan
Schedule 2.8	Development Schedule
Exhibit A	Purchase Agreement Draft
Exhibit B	Known Easements

This MASTER DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of ___, 2024, between LMG GARNER LLC, a Florida limited liability company (“Developer”), and the Town of Garner, a North Carolina municipal corporation (“Town”). Developer and Town are sometimes referred to in this Agreement collectively as the “Parties” and singularly as a “Party”.

1. RECITALS

- 1.1. Town is a duly organized North Carolina municipal corporation acting through its Town Council, having its principal office located at 900 7th AVENUE, GARNER, NC 27529.
- 1.2. Developer is a limited liability company having its principal offices located at 101 NE 3rd AVENUE, SUITE 1500, FORT LAUDERDALE, FL 33301, is experienced at developing real estate in North Carolina and elsewhere, within the public-private context and otherwise, and is authorized to do business in North Carolina.
- 1.3. In accordance with N.C.G.S. § 160D-1312 and 160D-1315, Town desires to create a downtown development project that will function as a center of economic, civic, and cultural activity in the community and by (i) strongly supporting increased economic development to provide additional jobs for residents of Garner and the region, (ii) to expand business within the Town, and (iii) to develop a healthy robust economy through the means of downtown redevelopment and investment.
- 1.4. Town is owner in fee simple of approximately 0.75 acres of real property in Downtown Garner, adjacent to the Garner Recreation Center, located at the corner of W. Main Street and Purvis Street, which referred to as the “the **Property**” and further described on **Schedule 1.4**.
- 1.5. On October 26, 2020, Town released a Solicitation for Development Partners (the “SDP”) soliciting proposals from real estate developers for a catalyst project that will function as the economic, civic, and cultural core of the community while invigorating the downtown.
- 1.6. On January 15, 2021, Developer submitted its response to the SDP (the “**Proposal**”) and was selected on July 31, 2021.
- 1.7. On August 31, 2023, The Town and Developer entered an Amended and Restated Memorandum of Understanding (“**MOU**”). The Developer intends to oversee construction of approximately 24 residential units and 10,000 square feet of retail space (the “**Mixed-Use Structure**” and the “**Project**”). The total cost of the Project, including pre-development costs, construction costs, design and planning costs, financing, and other soft costs is projected to be more than \$9,000,000.
- 1.8. At least three of the proposed units will constitute “**Workforce Housing**”, which is defined for the purposes of this Agreement as a unit that is attainable for rent by a household earning up to eighty percent (80%) of the “Area Median Income” as set forth and defined by the U.S. Department of Housing and Urban Development. Compliance with this provision shall be reported to the Town in accordance with a Workforce Housing Agreement to be executed by the parties in advance of the issuance of the first residential unit certificate of occupancy.
- 1.9. On __, 2024, this agreement was presented for approval by the Town Council. The Town Council adopted Resolution, (2024) ___ authorizing execution of this Agreement on __, 2024.
- 1.10. The purpose of this Agreement is to facilitate the development and construction of the Project in a way that results most effectively in the public benefits intended for the Town and the private

benefits intended for the Developer. The development and construction of the Project requires a major investment by the Developer in facilities and on-site improvements and substantial commitment of public and private resources to achieve the benefits of the Project for Developer and Town.

- 1.11. The general benefits to be received by Town from the implementation of the Project include, without limitation:
 - a. Realization and implementation of the “**Development Plan**” which is attached and incorporated into this Agreement as **Schedule 1.11(a)**;
 - b. Establishment of integrated site plans, urban design elements including uniform engineering, landscapes and architecture that contribute to the revitalization of the Property in downtown Garner;
 - c. Provision of housing opportunities in downtown Garner; and
 - d. New public on-street parking in downtown Garner within existing railroad right-of-way.
- 1.12. The general benefits to be received by Developer from the implementation of the Project include without limitation, integration of site plans, urban design elements, land uses, architecture, site engineering, landscape architecture, and mitigation measures over the Property;
- 1.13. In exchange for these benefits, the Parties desire to proceed with the Project in accordance with the terms and conditions contained in this Agreement, subject to any amendments to this Agreement made in accordance with this Agreement.

NOW, THEREFORE, based upon the terms and conditions set forth in this Agreement and in consideration of the mutual promises and assurances provided in this Agreement, Town and Developer hereby agree that the Recitals as stated above are incorporated herein and made a part of this Agreement and the following terms:

2. TERMS

2.1. Purchase of Property.

- a. Purchase Price. Subject to the terms of this Agreement and the satisfaction of the conditions precedent contained in this Agreement, the Town will sell the Property to Developer as the site of the Project and Developer will pay to Town \$100,000 or the appraised value for the Property, whichever is higher, (the “**Initial Sales Price**”) on the terms and conditions governed by the Purchase and Sale Agreement to be executed by the Town and Developer. Town intends to sell and convey fee simple title to the Property in its AS-IS, WHERE-IS condition. The Sales Price shall be paid by Developer to Town on the “Closing Date”, as defined in the subparagraph 2.1(b) immediately below, by wire delivery of funds through the Federal Reserve System to an account designated in writing by Town.
- b. Closing. Town shall convey the Property to Developer and Developer shall acquire the Property from Town in one transaction as set forth below (the "Closing"). The date for the Closing (the "**Closing Date**") shall be no later than thirty (30) days after the satisfaction of all conditions precedent for the Closing, as set forth below, but in any event no later than January 15, 2025 (the "**Out Date**"). Either party may extend the Closing Date by sixty (60) days, including an extension

beyond the Out Date. No extension of the Closing Date will, without the mutual agreement of the parties, extend any other deadlines set forth in this Agreement or the documentation to be entered into pursuant to this Agreement, at the Closing Date or otherwise. If, after the Out Date and any applicable extension above, any of the conditions precedent to the Parties' obligation to close is not fulfilled, then Developer or Town may terminate this Agreement and neither party shall have any obligation to the other hereunder except to the extent that such obligations expressly survive the expiration or other termination of this Agreement. The Closing shall be held in escrow by an Escrow Agent as mutually chosen by Developer and Town. In addition to this Agreement, Town and Developer will execute a related Purchase and Sale Agreement in a form similar to **Exhibit A**.

c. Conditions Precedent for Closing by Developer:

- i. Issuance to Developer of all governmental permits and licenses requisite for the construction of the Project in accordance with established procedures;
- ii. Approval by Town of the Development Plan and Project Design Drawings in accordance with established procedures, including:
 - 1) Schematic plans for the Mixed-Use Structure, including the retail component; and
 - 2) Schedule of additional public interest components such as public parking, public art, and kiosks.
- iii. No default by Town.

d. Conditions Precedent for Closing by Town:

- i. Approval and execution by the Developer of the Purchase and Sale Agreement described in Section 2.1(a);
- ii. Receipt of the appraisal of the Property;
- iii. Payment by Developer of the Purchase Price to Town;
- iv. Evidence of Developer's Financing to the satisfaction of the Town;
- v. Approval by Town of the Subdivision Plat prepared and recorded by Developer;
- vi. Approval by Town of the Development Plan, including:
 - 1) Schematic plans for the Mixed-Use Structure;
 - 2) Schedule of additional public interest components such as public parking, public art, and kiosks.
- vii. No default by Developer.

e. Other Closing Documents. At the Closing:

- i. Town will deliver to Developer a Special Warranty Deed for the Property on the form approved by the North Carolina Bar Association or equivalent form approved by the Town Attorney, free and clear of any mortgages, deeds of trust, or other

monetary liens and subject only to the Permitted Exceptions and certain declarations of covenants and restrictions, easements, and encroachments (the "Deed");

- ii. Town will deliver to Developer a North Carolina compliant lien and possession affidavit regarding the Property to Developer and Developer's title insurer as customarily required by title insurers in North Carolina; and
- iii. Town and Developer will deliver to each other fully executed counterparts to the Closing statement.

2.2. Mixed-Use Structure. Developer shall be solely responsible for the total cost of private development on the Property and shall cause to be invested a minimum of \$8,000,000.

2.3. Performance of Governmental Functions. The terms of this Agreement regarding the design and construction of the Project and the role of Town in the Project are independent of any obligations binding upon Town or Developer pursuant to applicable laws and ordinances. In no event will any approvals given by Town pursuant to the terms of this Agreement constitute the performance by Town of any review or issuance of any permits, approvals, or licenses that it is obligated to conduct or consider pursuant to any law, or ordinance or both. Nothing in this Agreement nor any approvals or consents by Town in connection with this Agreement will in any way stop, limit, or impair Town from exercising or performing any regulatory, policing, or other governmental function with respect to either Party, including, but not limited to, the review, approval and issuance by Town of applications, approvals, permits and licenses regarding the Project pursuant to any laws and ordinances. Town will, to the extent reasonably appropriate and permitted by applicable laws and ordinances, facilitate Developer's submissions, requests, and applications pursuant to the applicable laws and ordinances governing the Project; provided Developer's submissions, requests and applications are complete, include all necessary fees and are otherwise compliant with applicable laws and ordinances.

2.4. Property Documents. The Town represents to Developer that Town has delivered all the following documents and information regarding the Property to Developer in the Town's possession (collectively, the "**Property Documents**"):

- a. All boundary or other physical surveys;
- b. All title insurance policies with copies of exceptions;
- c. All environmental site assessments; and
- d. All other reports, appraisals, inspections and documents regarding the condition or value of the Property.

Town makes no representation or warranty regarding the currency or accuracy of any of the Property Documents. Developer acknowledges that its receipt of the Property Documents does not in any way relieve Developer from conducting its own required surveying; title examination; architectural, engineering, environmental, topographical, geological, soil, developmental, inspections and other due diligence reasonably sufficient to determine the condition of the Property (collectively, the "Inspections").

2.5. Due Diligence Regarding Property.

- a. Developer acknowledges that all necessary diligence has been previously conducted.
- b. Developer shall indemnify and hold harmless Town from any claims arising out of the negligent acts or omissions of Developer, its employees, agents, contractors, or subcontractors in making the Inspections.

2.6. Project.

- a. The Development Plan is subject to the Town’s land use and development approval process.
- b. The comprehensive development plans which are generally consistent with the description of the Town’s vision and objectives for the Project as described in the SDP and this Agreement shall include a general description of all proposed development of the Project and required infrastructure improvements, including, but not limited to, its design and construction. The Development Plan shall also include the following:
 - i. Land use programming and completion of a master plan in concert with Town’s vision;
 - ii. Preliminary plan for phased development;
 - iii. Plan for re-platting the Property boundaries;
 - iv. Financing plan;
 - v. Architectural and engineering designs;
 - vi. A list of all necessary governmental permits and approvals; and
 - vii. All construction-related requirements (such as soil conditions and environmental constraints consistent with the Development Plan).
- c. The Town, together with its duly authorized agents and employees, may inspect and monitor the Project and the work performed on the Project at any time with commercially reasonable prior notice to Developer; provided that the Town, and its duly authorized agents and employees shall follow Developer's reasonable safety regulations.
- d. Workforce housing units shall be comparable in quality to all other residential units.

2.8 Schedule and Order of Development. Developer shall administer all aspects of the development of the Project subject to all applicable laws, rules, and regulations, including the code requirements of the Town and based upon a “**Development Schedule**” set forth in **Schedule 2.8.**

Except as otherwise described and agreed to in this Agreement, Developer shall develop the Project consistent with the architecture, streetscape and the character of the adjacent area and downtown Garner and shall conform to the terms of the Development Plan. Developer will, during the design phase of the Project, develop and implement a design review process that will provide Town and its professional staff the right to review and approve, reject, or suggest modifications to the Development Plan, including regularly scheduled meetings in accordance with the construction schedule, to update Town on Developer's progress of the Project. Developer shall conduct scheduled meetings monthly to keep Town apprised of the progress of development of the Project. The meetings shall include the Developer, Town representatives and the specialty consultants. Developer shall prepare and distribute detailed, accurate minutes for all such meetings.

2.9 Development Standards.

- a. Developer shall perform the work in accordance with the standard of care and expertise normally employed by development firms, consultants and contractors performing similar services in metropolitan areas in North Carolina, and all duties under this Agreement shall be measured and interpreted in accordance with such standard of performance.
 - b. Developer hereby warrants to Town that the materials and equipment furnished in accordance with this Agreement will be of good quality, that the work will be free from defects, and that the work will conform with the requirements of the Development Plan. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If requested by Town, the Developer shall furnish satisfactory evidence as to the kind and quality of materials and equipment used in the construction of Phase 1 of the Project. Developer shall indemnify and hold harmless Town from any losses, damages, and/or liabilities, to or because of a breach of this provision.
 - c. Developer shall apply for and maintain in full force and effect any and all governmental permits and approvals required for the lawful construction of the Project and comply with all the terms and conditions applicable to the Project contained in any governmental permit or approval required or obtained for the lawful construction of the Project, or in any insurance policy affecting or covering the Project.
 - d. Developer shall prepare and distribute to Town a critical path schedule, and periodic updates thereto as necessary to reflect any material changes, but in any event not less frequently than quarterly, other design or construction cost estimates as required by Town, and financial accounting reports, including monthly progress reports on the quality, progress, and cost of construction.
 - e. During the construction and development period of the Project, Developer shall conform to all applicable Laws and Ordinances and Regulations.
 - f. The Affordable Housing units shall be made with the same quality as the rest of the units in the development.
- 2.10 Indemnity of Town. To the fullest extent permitted by law, Developer shall indemnify and hold harmless the Town, its agents, consultants, employees and any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or relating to development and construction of the Project; provided that such claim, damage, loss or expense is attributable to third-party claims for (a) bodily injury, sickness, disease or death, (b) destruction of tangible property including loss of use resulting therefrom, and (c) liens, claims or demands for payment from other contractors or suppliers to the Project. The foregoing obligations shall apply only to the extent they arise out of or are related to the grossly negligent, reckless, or willful acts or omissions of Developer, anyone directly or indirectly employed by Developer, or anyone for whose acts Developer may be liable. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described herein.
- 2.11 Indemnity of Developer. To the fullest extent permitted by law, Town shall indemnify and hold harmless the Developer, its agents, consultants, employees and any of them from and against claims, damages, losses and expenses, arising out of or relating to development and construction of the Project; provided that such claim, damage, loss or expense is attributable to third-party claims for (a) bodily injury, sickness, disease or death, (b) destruction of tangible property (other than the Project itself) including loss of use resulting therefrom, and (c) liens, claims or demands

for payment from other contractors or suppliers to the Project. The foregoing obligations shall apply only to the extent they arise out of or are related to the grossly negligent, reckless, or willful acts or omissions of Town, anyone directly or indirectly employed by Town, or anyone for whose acts Town may be liable. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described herein.

- 2.12 Construction Bond. Developer shall require its general contractor to (i) furnish bonds covering faithful performance of the contract governing construction of the Project, completion of construction of the Project and payment of obligations arising in connection with the construction of the Project and/or (ii) furnish bonds for all subcontractors with contracts over \$500,000, from a surety or sureties acceptable to the Town and duly authorized to do business in North Carolina, (the "Payment and Performance Bonds").
- 2.13 Insurance. Developer shall maintain and shall assure that its contractors who enter the Property maintain public liability and property damage insurance in agreements and in form and substance adequate to insure Developer, its agents, employees, or contractors, from claims arising out of any entry or inspections of the Property pursuant to the provisions of this Agreement, and Developer shall provide Town with evidence of this insurance coverage prior to performing any inspections of the Property. The liability insurance shall name Town as an additional insured and shall have liability limits of at least \$1,000,000 per occurrence/\$2,000,000 general aggregate.
- 2.14 Ownership of Development Plans; N.C. Public Records Act. If the Project is not constructed and provided that Developer is not in default, then Developer will retain ownership of the preliminary plans, the Development Plans and other design and construction work product relating to the Project in accordance with this Agreement; provided, however, Town shall have the right to acquire the preliminary plans, the Development Plans and all other design and construction work product relating to the Project in the event the Project is terminated for any reason after the Closing. The purchase price will be determined by the actual cost of the preliminary plans and Development Plans incurred by Developer. If the Developer is found to be in default, Town will take ownership of the preliminary plans, the Development Plans, and other design and construction work relating to the Project the extent such work is assignable, without remuneration. Developer acknowledges that its submissions to Town pursuant to this Agreement are "**Public Records**" subject to the North Carolina Public Records Act, N.C.G.S. § 132-1 et seq., except to the extent excluded from the disclosure requirements pursuant to N.C.G.S. § 132-1.2.
- 2.15 Declaration of Easements, Covenants and Restrictions.
- a. The Parties acknowledge the need to establish a declaration, easements, and encroachments over, on and across certain portions of the Project, including but not limited to the list of easements and encroachments known to be needed by the Town and the Developer as of the date of this Agreement as shown on **Exhibit B**, including:
 - i. Covenants and regulations of aesthetics as it relates to future construction or future owners of the Property;
 - ii. Access to the Mixed-Use Structure, and the walkways and plaza within Project easements for the existence of foundations and other building components, and
 - iii. Easements for maintenance, replacement, and repair of various Project components, with allocation of responsibility and for insuring various components of the Project.

- b. The parties will convey one to the other necessary easements and encroachments appurtenant to the Property for access over, on and across designated entranceways, driveways, ramps and walkways as necessary for vehicular and pedestrian access to and from the Property and the public rights-of-ways adjacent to the Project, and other easements, rights and obligations to facilitate the development, construction, existence and operation of the Project.

3. DEFAULTS

3.1. Defaults by Developer and Remedies of Town.

- a. Default Prior to Closing. If Developer materially defaults on the performance of its obligations to Town prior to the Closing Date, then Developer will have thirty (30) days after the Town's delivery of written notice to Developer of the default to cure the default; however, if the default requires more than thirty (30) days to cure, Developer shall have such additional time as may be reasonably required to cure the default, provided Developer commences the cure within the initial thirty (30) day cure period and thereafter diligently prosecutes the cure to completion (not to exceed sixty (60) days after commencement of the cure). If Developer is not able to cure the material default during the applicable cure period, then Town will be entitled to terminate this Agreement and receive all of Developer's non-confidential work product regarding the Project, including the Project Design Drawings, and Development Plan (collectively, the "**Liquidated Damages**"). The Parties hereby agree that the Liquidated Damages are intended to be and will be the full liquidated damages for the Developer's failure to perform its duties, liabilities, and obligations under this Agreement. The parties agree that Town's damages would be very difficult to ascertain, and the Liquidated Damages provided in this Section 3.1 constitutes a reasonable estimate of Town's damages and is not intended as a penalty but as fully liquidated damages.
- b. Default After Closing. If Developer defaults on the performance of its obligations to Town after the Closing Date, then it will have thirty (30) days after the delivery of written notice by Town of such default to cure such default; however, if such default requires more than thirty (30) days to cure, Developer shall have an additional thirty (30) days to cure the default, provided Developer commences such cure within the initial thirty (30) day cure period and thereafter diligently prosecutes such cure to completion. If Developer is not able to cure such default during the applicable cure period, then Town will be entitled to pursue against Developer in addition to any other remedies as may be provided by law or in equity, the right to specific performance that would require Developer to perform fully and on a timely basis all its obligations under this Agreement.
- c. Notice to Financiers and Ability to Cure. Notwithstanding anything in this Agreement to the contrary, Town shall copy Developer's lender and/or equity partner in writing (at any address provided for that purpose by Developer or its lender or equity partner) on any default notice that Town sends to Developer, and Developer's lender or equity partner shall have the same rights to cure Developer's default as Developer has under this Agreement.

- 3.2. Defaults by Town and Remedies of Developer. If Town defaults materially on the performance of its obligations to Developer under this Agreement, then Town will have thirty (30) days after the delivery of written notice by Developer of the default to cure the default; however, if the default requires more than thirty (30) days to cure, Town shall have such additional time as may be reasonably required to cure the default, provided Town commences the cure within the initial thirty (30) day cure period and then diligently prosecutes the cure to completion. If Town is not

able to cure the default during the applicable cure period, then Developer will be entitled to pursue any remedy available at law or equity, including the termination of this Agreement, and claims for damages resulting from the breach and termination(s).

- 3.3. Other Defaults. A Party will be in default of its obligations under this Agreement in the event that it is adjudicated bankrupt or insolvent, makes an assignment for the benefit of creditors or enters into a composition for creditors, or will file a voluntary bankruptcy petition or an answer admitting the material allegations of an involuntary bankruptcy petition; or if an order is entered appointing a receiver or trustee for that Party or for a substantial portion of the assets of that Party and the same is not vacated within sixty (60) days after entry, or if that Party applies for or consents to the appointment of any such receiver or trustee. In the event of a default specified in this Section 3, non-defaulting Party may immediately pursue all remedies available to it by law or in equity, including specific performance and the termination of this Agreement.

4. TOWN AND DEVELOPER MUTUAL OBLIGATIONS

- 4.1. Town Approval. The Town Council approved this Agreement by adoption of Resolution (2024) _____ on _____, 2024.
- 4.2. Exclusivity. During the term of this Agreement, Town will work exclusively with the Developer to develop the Project.
- 4.3. Force Majeure. In the event that either Party to this Agreement (the “**Delayed Party**”) is delayed or prevented from performing any of its respective obligations under this Agreement by reason of strikes, lockouts, labor problems, inability to procure materials, contractors, professionals, inability to obtain utilities or failure of utilities, laws or other governmental requirements, riots, war, governmental acts or orders, moratorium, or similar governmental restrictions, governmental closures, national or regional emergencies, or contagious illness, communicable disease, or epidemics or pandemics, including without limitation, any related quarantine, travel restrictions or embargoes, whether voluntary or mandatory, or other cause not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

5. MISCELLANEOUS

- 5.1. Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between Developer and Town, or to impose any partnership obligation or liability upon the Parties. Neither Developer nor Town shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other.
- 5.2. No Third-Party Beneficiaries. This Agreement is not intended to and does not confer any right or benefit on any third party other than the Parties.
- 5.3. Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a signatory Party is required to or may give to another signatory Party under this Agreement shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner in this Agreement prescribed. The notice or communication shall be deemed to have been given or made when communicated by personal

delivery or by independent courier service or by email with a hard copy to be delivered by independent courier service by the next business day. The Parties shall make reasonable inquiry to determine whether the names or titles of the persons listed in this Agreement should be substituted with the name of the listed person's successor.

To Town Town of Garner
Attn: John Hodges
900 7th Ave.
Garner, NC 27529
jhodges@garnernc.gov

With a copy to Terri Jones
900 7th Ave.
Garner, NC 27529
tjones@garnernc.gov

To Developer LMG Garner LLC
Attn: Lansing Melbourne Group
101 NE 3rd Ave, Suite 1500
Fort Lauderdale, FL 33301
pflotz@lmgroup.us

With a copy to Andrew Holton
PO Box 6371
Raleigh, NC 27682
aholton@lmgroup.us

- 5.4. Entire Agreement. This Agreement sets forth and incorporates by reference all the agreements, conditions, and understandings between the Parties relative to the Project and supersedes all previous agreements. There are no promises, agreements, conditions, or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed in this Agreement other than as set forth or as referred to in this Agreement or as contained the Development Plan as of the Effective Date.
- 5.5. Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.
- 5.6. Assignment.
- a. Developer shall not, prior to the issuance of a Certificate of Occupancy (or local equivalent) for the Project, assign or transfer this Agreement or delegate any of its obligations or duties under this Agreement without the prior written consent of Town, which consent may be withheld in Town's sole discretion, except that Developer may freely assign to entities within the control of the same principals as those of the Developer or for the purposes of financing or other legal requirements.
 - b. Developer shall not, after the issuance of a Certificate of Occupancy for the Project, assign or transfer this Agreement or delegate any of its obligations or duties under this Agreement without the prior written consent of Town, except that Developer may freely assign its

interest in the Agreement to entities within the control of the same principals as those of the Developer or for the purposes of financing or other legal requirements.

- c. No assignment, with or without the consent of Town, shall be effective unless each assignee shall assume and agree to perform and observe all the covenants and agreements of Developer being assigned. No assignment of this Agreement by Developer shall release or relieve the Developer of any duties, obligations, or liabilities under this Agreement and from and after any such assignment the assigning Developer shall be jointly and severally liable with the assignee for the performance of and compliance with all of Developer's duties obligations and liabilities under this Agreement.
 - d. Town may not assign, transfer, or delegate its rights, duties, and obligations under this Agreement without the consent of Developer in its reasonable discretion to any purchaser of the Property who assumes and agrees to perform and observe all the covenants and agreements of Town being assigned thereby.
 - e. No such assignment, with or without the consent of Developer, shall be effective unless each such assignee shall assume and agree to perform and observe all the covenants and agreements of Town being assigned thereby. In the event of any assignment of the interest of Town under this Agreement, Town shall be released and relieved of all liability for the performance and observance of all covenants and agreements of Town's covenants and agreements under this Agreement so assigned.
- 5.7. Terms for Consent or Approval. When this Agreement calls for one Party to seek the approval or consent of the other Party, the Party with the right to grant or deny consent or approval must exercise its reasonable discretion in doing so, unless specified otherwise by the terms of this Agreement. The requesting party must make requests for consent or approval in writing in accordance with the terms for notice in this Agreement and substantiate that request with commercially reasonable documentation unless specified otherwise by the terms of this Agreement. The Party with the right to grant or deny consent or approval shall review each such request diligently, reasonably and in good faith and deliver its decision whether to give or deny consent or approval to the requesting Party in writing in accordance with the terms for notice in this Agreement within ten (10) business days of the delivery of the other Party's request. If the reviewing Party elects to deny its consent or approval, then it must substantiate that decision with commercially reasonable documentation that enables the requesting Party to comprehend the decision and, if appropriate, modify such request and re-submit it to the reviewing Party for further review pursuant to these terms for consent or approval. A Party reviewing a request for consent to the assignment of rights and obligations by the requesting Party may consider the creditworthiness, financial wherewithal, expertise and experience of the proposed assignee when compared to the requesting Party, in the exercise of reasonable discretion whether to grant or deny consent or approval.
- 5.8. Terms for Other Response. When this Agreement calls for one Party to notify the other Party of any other election under this Agreement, then the electing Party shall notify the other party of the applicable decision no later than thirty (30) days after the electing Party was notified of its obligation to make the election.
- 5.9. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.
- 5.10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

- 5.11. Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending that action; provided, however, each Party shall retain the right to pursue its own independent legal defense.
- 5.12. No Deemed Waiver. Failure of a Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of that Party to exercise at some future time said right or any other right it may have under this Agreement.
- 5.13. Severability. If any term or provision of this Agreement shall be judicially determined to be void or of no effect, that determination shall not affect the validity of the remaining terms and provisions of this Agreement. The Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.
- 5.14. Authority. Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind Town and Developer. Notwithstanding the foregoing, with the approval of this Agreement, Town Council hereby delegates to the Town Manager the authority to execute any supplemental documents required to effectuate the purposes of this Agreement.
- 5.15. Representations and Warranties of Developer. Developer represents and warrants to Town that:
- a. Developer is a valid limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida;
 - b. Developer is duly qualified to do business and is in good standing under the laws of the State of North Carolina;
 - c. Developer has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement without contravention of any obligation on the part of Developer, whether statutory, contractual or otherwise; and
 - d. Developer will execute, deliver, and perform this Agreement in accordance with all applicable laws and ordinances.
- 5.16. Representations and Warranties of Town. Town represents and warrants to Developer that:
- a. Town has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement without contravention of any obligation on the part of Developer, whether statutory, contractual or otherwise;
 - b. Town will execute, deliver and perform this Agreement in accordance with all applicable laws and ordinances;
 - c. To the actual knowledge of the Town's Attorney, the Property is not the subject of any litigation, pending or overtly threatened, or other judicial or quasi-judicial procedure which would, if determined unfavorably to the Town, settled or otherwise resolved by the Town,

result in any financial liability on the part of Developer or interfere with the development of the Project;

- d. To the actual knowledge of the Town's Attorney, the Property is not the subject of any procedure for the taking of the Property by eminent domain, in whole or in part, pending or overtly threatened by the Town or any other governmental authority with the power of eminent domain;
 - e. To the actual knowledge of the Town's Attorney, no one has made any claim to title to the Property, in whole or in part, superior to the claim of the Town by virtue of its chain of title; and
 - f. The Town has not received any notice from any governmental agency, state, federal or local, that the Property is in violation of or the subject of an investigation regarding the potential violation of any Laws and Ordinances, including laws of the United States or the State regarding the presence, storage, transport, spillage, removal or remediation of hazardous or harmful substances on the Property, or the presence, storage, transport, spillage, removal or remediation of hazardous or harmful substances on properties adjacent to the Property as a result of their origination on or passage through the Property.
- 5.17. Continuing Obligation. From time to time after the Closing Date or the Out Date, the Parties will execute additional instruments of assignment, lease, license, conveyance, and other documents and take such other actions that are reasonably necessary to further the purposes of this Agreement.
- 5.18. Immunity Not Waived. Town does not intend to waive its sovereign immunity by reason of this Agreement; provided, however, that the Town acknowledges and agrees that by entering into this Agreement, governmental immunity shall not be a valid defense to a breach of contract claim brought under this Agreement.
- 5.19. Release of Information. Town and Developer acknowledge that this Agreement is subject to disclosure under the North Carolina Public Records Act, NCGS § 132-1 et seq., except for information that is excluded from the disclosure requirements of the Act pursuant to NCGS § 132-1.2. Nothing in this Agreement precludes either party from discussing the terms of this Agreement or its work product with its attorneys, accountants, consultants, contractors, or potential lenders or investors, or prevents the holding of public Council meetings in compliance with applicable laws.
- 5.20. Predevelopment Service Agreement. In accordance with the Predevelopment Service Agreement between the Town and the University of North Carolina at Chapel Hill School of Government, with an "Effective Date" of August 1, 2019, included as Appendix A of the SDP and incorporated by reference herein, Developer agrees to pay one percent (1%) of the total development costs to the School of Government's Development Finance Initiative, without recourse to the Town. This one percent is in addition to the Developer Fee of four percent (4%) noted in the Proposal by Developer and is calculated based on cost schedules provided to developer's lenders.
- 5.21. Representations, Warranties and Indemnity Regarding Brokers.
- a. Town represents to Developer that no real estate broker or agent has rendered a service or represented Town in connection with this Agreement or the transaction contemplated in this Agreement for which any brokerage commission or fee is due.

- b. Developer represents to Town that no real estate broker or agent has rendered a service or represented Developer in connection with this Agreement or the transaction contemplated in this Agreement for which any brokerage commission or fee is due.
 - c. Town and Developer covenant and agree, each to the other, to indemnify the other against any claims based upon or arising out of the employment or use by the indemnifying party of any real estate broker, agent, or finder in connection with the sale or leasing of the Property. This Section 5.21 shall survive Closing or any earlier termination of this Agreement.
- 5.22. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY THIRD PARTY, WHETHER OR NOT CLAIMING THROUGH THAT OTHER PARTY) FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER).
- 5.23. Non-Appropriation. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the Town within the meaning of any Constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the Town within the meaning of the Constitution of the State of North Carolina. This Agreement shall not directly or indirectly or contingently obligate the Town to make any payments beyond the amount appropriated, if any, in the sole discretion of the Town for any fiscal year in which this Agreement shall be in effect. The Town may at the end of any fiscal year terminate its future installment payment obligations under this Agreement if the Town has not appropriated sufficient funds to make the next fiscal year's scheduled installment payments; however, during each fiscal year, the Town shall exercise its best efforts to appropriate funds for installment payments due in the next fiscal year. No deficiency judgment may be rendered against the Town in any action for breach of a contractual obligation under this Agreement and the taxing power of the Town is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the Town's moneys. To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.
- 5.24. Amendment. This Agreement shall not be modified or amended in any respect except by a written instrument executed by the Parties.
- 5.25. Time of the Essence. Time is of the essence in this Agreement.
- 5.26. Survival. All representations, warranties and obligations of the Parties in this Agreement shall survive the consummation or performance of the various transactions contemplated in this Agreement for the respective terms necessary for each of the Parties to realize the benefits contemplated by this Agreement and to enforce the rights provided for in this Agreement.
- 5.27. Recitals, Schedules, and Exhibits. The Recitals of this Agreement, the Schedules and the Exhibits attached hereto are integral and essential components of this Agreement.
- 5.28. Defined Terms. All capitalized terms in this Agreement shall have the meaning ascribed to them in this Agreement unless the context clearly indicates another meaning. All terms not defined in this Agreement shall have the usual and customary meaning ascribed to them and found in any modern English dictionary.

- 5.29. E-Verify Compliance. Developer represents and covenants that the Developer and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The Town is relying on this section in entering into this Agreement.
- 5.30. Iran Divestment. Developer represents, covenants, and certifies that it and its contractors are not listed on the list of restricted companies developed and published by the North Carolina State Treasurer as required by NCGS Section 147-86.58.
- 5.31. Divestment from Companies that Boycott Israel. Developer represents, covenants, and certifies that it and its contractors are not listed on the list of restricted companies developed and published by the North Carolina State Treasurer as required by NCGS Section 147-86.81.

6. DEFINITIONS

In the construction of this Agreement, including its Exhibits, the following capitalized terms shall have the respective meanings set forth below wherever they appear in this Agreement. Except as otherwise provided in this Agreement, terms used in the relevant portions of the North Carolina General Statutes shall have the same meanings as employed in those statutes.

- 6.1. *Closing*. The term "Closing" shall have the meaning set forth in Section 2.1(b).
- 6.2. *Closing Date*. "Closing Date" shall have the meaning set forth in Section 2.1(b).
- 6.3. *Deed*. "Deed" shall have the meaning set forth in Section 2.1(e).
- 6.4. *Delayed Party*. "Delayed Party" shall have the meaning set forth in Section 4.3.
- 6.5. *Developer*. "Developer" shall mean LMG Garner, LLC or a single purpose entity formed for the purposes of the Project, as provided for in this Agreement.
- 6.6. *Development Plan*. The term "Development Plan" shall mean the comprehensive development plan which is generally consistent with the description of the City's vision and objectives for the Project as set forth in Schedule 1.11(a).
- 6.7. *Development Schedule*. "Development Schedule" shall mean the projected schedule for the development of the Project as set forth in Schedule 2.8.
- 6.8. *Diligence Period*. "Diligence Period" shall have the meaning set forth in Section 2.5.
- 6.9. *Effective Date*. "Effective Date" shall mean the effective date of this Agreement, which is ___ 2024.
- 6.10. *General Contractor*. "General Contractor" shall mean a party that Developer selects to construct the project.
- 6.11. *Laws and Ordinances*. "Laws and Ordinances" shall mean the laws, ordinances, regulations, rules, rulings, and orders of the United States, the State, Wake County, and the Town as applicable to the Property, the Project, the Town, and the Developer. Including those issued by the courts, departments, commissions, boards, and offices, any national or local Board of Fire Underwriters

or Insurance Service Offices having jurisdiction over the Project, or any other body exercising functions similar to any of the foregoing.

- 6.12. *Liquidated Damages*. “Liquidated Damages” shall have the meaning set forth in Section 3.1(a).
- 6.13. *Memorandum of Understanding (“MOU”)*. "MOU" shall mean that agreement by and between Town and LMG Garner LLC, a Florida limited liability company, dated August 31, 2023.
- 6.14. *Mixed-Use Structure*. "Mixed Use Structure" shall have the meaning set forth in Section 1.7.
- 6.15. *Out Date*. “Out Date” shall have the meaning set forth in Section 2.1(b).
- 6.16. *Party or Parties*. “Party or Parties” shall mean the Town and/or the Developer.
- 6.17. *Person*. "Person" shall mean a natural person or persons, a corporation, limited liability company, a partnership, joint venture, a trust, or any other legal entity.
- 6.18. *Project*. “Project” shall have the meaning set forth in Section 1.7.
- 6.19. *Proposal*. “Proposal” shall have the meaning set forth in Section 1.6.
- 6.20. *Property*. “Property” shall mean the approximately .75 acres located in Downtown Garner, having Tax Parcel Identification Number 1711-62-4396 and depicted on Schedule 1.4 attached hereto and made a part hereof, together with all rights and appurtenances pertaining to such parcels, including, without limitation, all cross access/reciprocal access easements and subject to any rights, easements and interests retained by the Town.
- 6.21. *Property Documents*. “Property Documents” shall have the meaning set forth in Section 2.4.
- 6.22. *Public Records*. “Public Records” shall have the meaning set forth in Section 2.15.
- 6.23. *Purchase Price*. “Purchase Price” shall have the meaning set forth in Section 2.1(a).
- 6.24. *State*. “State” shall mean the State of North Carolina.
- 6.25. *Town*. “Town” shall mean the Town of Garner, a public body corporate and politic of the State.
- 6.26. *Town Attorney*. “Town Attorney” shall mean the appointed Town Attorney.
- 6.27. *Town Council*. "Council" or "Town Council," shall mean the legislative body of the Town of Garner, which together with the Mayor of the Town shall constitute the governing body of the Town.
- 6.28. *Workforce Housing*. “Workforce Housing” shall have the meaning set forth in Section 1.8.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

TOWN:

TOWN OF GARNER, NC

BY:

NAME: Jodi M. Miller

TITLE: Town Manager

Address:

900 7th Avenue

Garner, NC 27529

Email: jhodges@garnernc.gov

tjones@garnernc.gov

Attest:

Stella Gibson, Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

David Beck, Finance Director

Approved as to form:

Terri Jones, Town Attorney

DEVELOPER:

LMG GARNER LLC

a FLORIDA limited liability company

BY:

NAME: Peter Flotz, as Manager

Address:

101 NE 3rd Avenue, Suite 1500

Fort Lauderdale, FL 33301

Email: pflotz@lmgroup.us

aholton@lmgroup.us

Schedule 1.4 – Property Description

The parcel below (PIN #1711-62-4396) represents all property owned by the Town that is intended to be a part of the Project Site. Town will subdivide the property to create a new parcel of approximately .75 acres that will be subject to purchase by Developer on the Closing Date.



Schedule 1.11(a) – Development Plan

SUMMARY OF PROJECT

Narrative Description

LMG plans for a mixed-use project containing 24 residential units with an average size of 800 square feet per unit. The unit mix will contain approximately 65% one-bedroom units, 10% studio and 25 %two-bedroom units. Additionally, the program provides for approximately 10,000 square feet of retail space. In addition, the parties have agreed that LMG will include specific elements in the project that serve the Town’s public interests. These include, public art, landscaping, and streetscaping.

Area Table

The table below shows the program specifications as of July 19,2024.

Program Location	Total (sq ft)	Retail (sq ft)	Residential (sq ft)	Resi Units	Park Units
First floor- Retail on West Main Street	10,000	10,000	0	0	
Residential	10,075		10,075	12	
Residential	10,075		10,075	12	
Totals	30,150	10,000	20,150	24	

FINANCE

Sources and Uses Table as of June 2024.

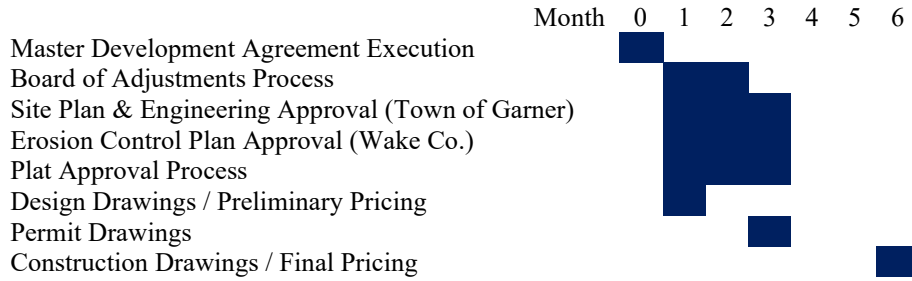
Sources	
	65% LTC
Construction Loan	\$5,850,000
Equity	\$3,150,000
Total Sources	\$9,000,000
Uses	
Acquisition	\$ 100,000 ¹
Mixed-Use Construction	\$8,900,000
Total Uses	\$9,000,000

¹ Subject to appraisal

Schedule 2.8 – Development Schedule

From the execution date of the MDA, the Project will require approximately 6 months of additional predevelopment and preconstruction work and a 12-month construction timeframe. The target date for completion is January 31, 2026.

Predevelopment Timeline



Construction Timeline

Site work: months 7-8

Construction: months 9-19

Certificate of Occupancy: month 19

Exhibit A – Purchase and Sale Agreement (*proposed*)

This Purchase and Sale Agreement (“**Agreement**”) is made and entered into as of [] (“**Effective Date**”), between LMG GARNER LLC, a Florida limited liability company (“**Seller**”), and the Town of Garner, a North Carolina municipal corporation (“**Buyer**”).

Article 1. Basic Terms

BUYER: LMG Garner LLC
101 NE 3rd Ave., Suite 1500
Fort Lauderdale, FL 33301
pflotz@lmgroup.us

With a copy to: Andrew Holton
PO Box 6371
Raleigh, NC 27682
aholton@lmgroup.us

CLOSING DATE: No later than Sixty (60) days after recordation of the exempt subdivision plat

DEPOSIT: Ten (10) percent of Purchase Price in earnest money held by Town of Garner Finance Department in accordance with Section 2.3

EFFECTIVE DATE: _____, 2025

PROPERTY: Approximately .75 acres located at 215 W. Main Street in Garner, North Carolina (a portion of PIN # 1711624396) as more particularly described on the survey/site plan and to be created by exempt subdivision plat, together with all privileges, rights, and easements appurtenant thereto.

PURCHASE PRICE: Appraised value of the Property or \$100,000, whichever is greater

SELLER: Town of Garner
Attn: John Hodges
900 7th Ave.
Garner, NC 27529
jhodges@garnernc.gov

With a copy to: Terri Jones
900 7th Ave.
Garner, NC 27529
tjones@garnernc.gov

ESCROW AGENT: Town of Garner Finance Department

Article 2. Agreement to Sell and Purchase

- 2.1. Property to Be Sold. For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Seller and Buyer, Seller agrees to sell and convey, and Buyer agrees to purchase, on the terms and conditions as are hereinafter set forth, fee simple title in the Property and any structures or other improvements located on the Property, all fixtures affixed to the Property or to those structures or other improvements, all mineral rights and subsurface rights relating to the Property, and all water and sewer rights relating to the Property (collectively, the "Property").
- 2.2. Purchase Price-Method and Time of Payment. Buyer shall pay the Purchase Price to Seller on the Closing Date by wire transfer. Wiring instructions to be provided by David Beck, Town of Garner Finance Director.
- 2.3. Deposit. Upon the Effective Date, Buyer shall deliver to Escrow Agent the Deposit. Escrow Agent shall hold and disburse the Deposit in accordance with the terms of this Agreement. At Closing, the Deposit will be applied against the Purchase Price.
- 2.4. Closing. The closing ("Closing") shall be held at a place and time mutually agreed to by the Buyer and Seller on the Closing Date.

Article 3. Downtown Development Provisions

- 3.1. Downtown Development Project. Subject to the conditions set forth in the Master Development Agreement by and between Seller as "Town" and Buyer as "Developer", and all exhibits and any amendments, Buyer shall construct a Downtown Development Project in accordance with North Carolina General Statutes §160D-1315. Failure to complete and maintain the project for five years shall be subject to a reversionary interest in the Town.

Article 4. Title and Survey

- 4.1. Title
 - 4.1.1. At Closing, Seller shall convey to Buyer good and marketable fee simple title to the Property. For the purposes of this Agreement, "good and marketable fee simple title" means fee simple ownership that is (a) free of all claims, liens and encumbrances other than the Permitted Exceptions (defined

in **Section 4.1.2**); and (b) insurable by a title insurance company reasonably acceptable to Buyer at then current standard rates under the standard form of ALTA owner's policy of title insurance (ALTA Form 2006), with the standard or printed exceptions deleted and without exception other than for the Permitted Exceptions.

4.1.2. Within thirty (30) days after recordation of an exempt subdivision plat creating the lot constituting the Property, Buyer shall obtain at its expense from a title insurance company of Buyer's choice ("Title Company") a current ALTA Commitment for Title Insurance ("Title Commitment"). Any title exceptions appearing in the Title Commitment that Buyer does not object to in writing by the end within forty-five (45) days after the Effective Date (the "Title Objection Period") will be deemed permitted exceptions to Seller's title (those exceptions not objected to, together with any other matters approved by Buyer in writing, are called "Permitted Exceptions"). Each matter affecting title to the Property that arises after the Effective Date and that is not approved in writing by Buyer will be deemed an "Unpermitted Exception." Seller shall cure (by removing from or satisfying on the public record) all Unpermitted Exceptions by Closing. If Buyer objects to any matters affecting the Property by delivering notice to Seller by the end of the Title Objection Period (each an "Objection," collectively, the "Objections"), then Seller shall either attempt to cure the Objection within ten (10) days after the Buyer's notice of Objection, or shall provide notice to buyer, within the same ten (10) day period, of its intention to not cure any given Objection. Buyer shall then have the right, within ten (10) days of receipt of Seller's Objection response, to terminate this Agreement. If Buyer does not so terminate this Agreement, any uncured Objection will become a Permitted Exception.

4.1.3. Notwithstanding the foregoing or anything herein to the contrary, Seller shall convey the Property to Buyer free and clear of all financial encumbrance such as a deed of trust, attachment, judgment, lien for delinquent taxes, mechanic's or materialman's lien, or other monetary liens outstanding.

4.2. Survey and Subdivision Plat. Buyer shall cause a survey and exempt subdivision plat of the Property to be prepared by a licensed surveyor ("Survey and Plat"). The legal description of the Property to be included in the Deed (as defined in Section 6.1.1(a)) will be derived from the Survey and Plat.

Article 5. Representations, Warranties and Covenants

5.1. Representations and Warranties of Buyer. Buyer represents and warrants to Seller that:

5.1.1. Buyer is a limited liability company, duly organized, validly existing and

in good standing under the laws of the State of Florida and registered to do business in the State of North Carolina.

- 5.1.2. Buyer has the power and authority, and has obtained all consents required, to enter into this Agreement and to consummate the sale of the Property in accordance with the terms of this Agreement.
 - 5.1.3. This Agreement has been, and all the documents to be delivered by Buyer at Closing will be, executed by an individual authorized to do so on behalf of Buyer; and this Agreement constitutes, and those documents will constitute, the valid and binding obligations of Buyer, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or reorganization laws or applicable principles of equity.
 - 5.1.4. There is no agreement, nor any judicial or administrative order or decree, to which Buyer is a party or that is binding on Buyer, which conflicts with this Agreement, or which challenges or impairs Buyer's ability to perform its obligations under this Agreement.
 - 5.1.5. There are no pending or threatened actions, suits or proceedings affecting Buyer.
 - 5.1.6. Buyer is not a “**Foreign Person**” within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder. Further, neither Buyer nor any of its affiliates, partners, members, shareholders or other equity owners, employees, officers, directors, representatives or agents is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (the “**OFAC**”), of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities. Buyer shall promptly notify Buyer of any matter which affects the accuracy of any representation and warranty under this Section 5.1.
- 5.2. Representation and Warranties of Seller. Seller represents and warrants to Buyer that:
- 5.2.1. Seller is a municipality, duly organized, validly existing and in good standing under the laws of the State of North Carolina.

- 5.2.2. Seller has the power and authority to enter into this Agreement and to consummate the purchase of the Property in accordance with the terms of this Agreement.
- 5.2.3. This Agreement has been, and all the documents to be delivered by Seller at Closing will be, executed by an individual authorized to do so on behalf of Seller; and this Agreement constitutes, and those documents will constitute, the valid and binding obligations of Seller, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or reorganization laws or applicable principles of equity.
- 5.2.4. There is no agreement, nor any judicial or administrative order or decree, to which Seller is a party or that is binding on Seller, which conflicts with this Agreement, or which challenges or impairs Seller's ability to perform its obligations under, this Agreement.
- 5.2.5. To Seller's actual knowledge,
- a. No Hazardous Materials (as defined below) are located or have been released on the Property;
 - b. There are no underground or above-ground storage tanks located on the Property;
 - c. The Property is and has followed all applicable Environmental Laws;
 - d. There are no actions, suits, claims, proceedings, or investigations pending or threatened under any Environmental Law with respect to the Property; and
 - e. Seller has not received any notice, claim or demand regarding the presence of Hazardous Materials on the Property or alleging that the Property is in violation of any Environmental Laws. **“Hazardous Materials”** means any waste, pollutant, chemical, hazardous material, hazardous substance, toxic substance, hazardous waste, special waste, solid waste, asbestos, radioactive materials, polychlorinated biphenyls, petroleum or petroleum-derived substance or waste and any other pollutant, material, substance, or waste regulated under or as defined by any Environmental Laws. **“Environmental Laws”** means all present and future federal, state, and local laws, statutes, regulations, rules, ordinances and common law, and all judgments, decrees, orders, agreements or permits, issued, promulgated, approved, or entered thereunder by any government authority relating to pollution or Hazardous Materials or protection of human health or the environment, including the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA), as amended.

- 5.2.6. Seller has no actual knowledge of any violation or potential violation of, any Applicable Laws, or any private restrictive covenants affecting the Property.
 - 5.2.7. Seller has no actual knowledge of any pending, threatened, or contemplated condemnation actions involving all or any portion of the Property.
 - 5.2.8. There are no parties (other than Buyer) in possession of, nor any leases or other agreements for the use, occupancy, or possession of, all or any portion of the Property.
- 5.3. Seller's Covenants. Between the Effective Date and the Closing Date, Seller shall
- 5.3.1. Pay all taxes and assessments assessed against the Property and all expenses incurred in the operation of the Property;
 - 5.3.2. Maintain the Property in compliance with all federal, state or local laws, statutes, regulations, rules, ordinances, orders or injunctions, including those related to zoning, subdivision and construction (collectively, "Applicable Laws");
 - 5.3.3. Not alter, or permit waste to occur on, the Property;
 - 5.3.4. Not permit any action to be taken which will cause any of the representations or warranties in Section 5.2 to be inaccurate on the Closing Date;
 - 5.3.5. Not enter into any lease or other agreement for the use, occupancy, or possession of any portion of the Property;
 - 5.3.6. Not enter any management, maintenance, service, or other agreement with respect to the Property;
 - 5.3.7. Not permit the Property to be encumbered with any easement, restriction, lien, covenant, plat, or other matter of record, except for those specifically approved by both the Buyer and Seller; and
 - 5.3.8. Not transfer or dispose of any part of the Property or any interest therein, nor consent to, approve, or otherwise take any action with respect to zoning or any other governmental rules or regulations applicable to any part of the Property except as necessary to construct the project.

Article 6. Closing

- 6.1. Proceedings at Closing. On the Closing Date, the Closing shall take place as follows:
- 6.1.1. Seller shall deliver to Buyer the following documents and instruments, in form and content reasonably satisfactory to Buyer, duly executed by Seller:
 - a. A Special Warranty Deed conveying the Property, in form acceptable to Buyer ("Deed");
 - b. A Seller's affidavit and indemnity agreement permitting the Title Company to insure title to the Property without exception for contractor's and materialmen's liens on the Property, parties in possession of the Property, or any broker's lien on the Property, all in a form acceptable to Buyer and the Title Company;
 - c. If Seller is not a Foreign Person, a Certificate and Affidavit of Non-Foreign Status;
 - d. A completed Form 1099-S;
 - e. Certificates and resolutions satisfactory to Buyer and the Title Company that Seller has taken all necessary company action and has the power and authority to enter into this Agreement and to perform Seller's obligations under this Agreement;
 - f. A certification that the representations and warranties of Seller in this Agreement are accurate as of the Closing Date; and
 - 6.1.2. Buyer shall deliver to Seller an executed Closing Statement.
 - 6.1.3. Buyer shall pay the remainder of the Purchase Price, after crediting the Earnest Money and making the adjustments provided for in this Agreement, to Seller.
- 6.2. Taxes and Assessments.
- 6.2.1. The Purchase Price is as set forth in Article 1.
 - 6.2.2. Buyer shall be responsible for listing the Property with Wake County pursuant to North Carolina General Statutes §105-285 and paying all taxes and assessments then due or becoming due.
 - 6.2.3. Except as expressly provided in this Agreement, Buyer shall not assume any liability or obligation of Seller, and Seller shall pay and perform

those liabilities and obligations not assumed.

- 6.3. Costs of Closing. Seller shall pay all recording costs and other costs relating to any title clearance matters, and Seller's attorneys' fees. Buyer shall pay all recording costs relating to the purchase of the Property, the cost of the Survey and Exempt Subdivision Plat, the premium and costs related to for the title policy issued in favor of Buyer, and Buyer's attorneys' fees. Except as otherwise provided in this Agreement, all other expenses shall be paid by the party incurring the expense.
- 6.4. Conditions to Buyer's Obligations. Buyer's obligation to close on the Property is subject to the satisfaction of each of the following conditions as of Closing (or any earlier date as set forth below), any of which may be waived in writing by Buyer:
- 6.4.1. Seller shall have fully performed its obligations under this Agreement.
- 6.4.2. Each of Seller's representations and warranties in this Agreement shall be accurate (without regard to whether the representation and warranty is limited to Seller's knowledge), and certified by Seller to Buyer as accurate, on the Closing Date.
- 6.4.3. The Title Company is unconditionally prepared to issue an owner's policy of title insurance in the condition required by Section 4.1.
- 6.4.4. No adverse changes have occurred with respect to the Property, except as set forth in this Agreement.
- 6.4.5. If any of the above conditions are not satisfied by Closing or if Buyer reasonably determines prior to Closing that any of above conditions are not going to be satisfied by Closing, then Buyer may, on notice to Seller: (a) terminate this Agreement, in which event Escrow Agent shall refund the Earnest Money to Buyer immediately upon request, and all rights and obligations of Seller and Buyer under this Agreement shall terminate (other than those that expressly survive termination of this Agreement); except that if the unfulfilled condition is a result of Seller's breach of this Agreement, then Buyer may also pursue any rights and remedies available to Buyer pursuant to Section 7.2; (b) close the transaction and waive such condition; or (c) extend Closing for a reasonable period of time (not to exceed ninety (90) days) to permit the condition to be met, and if the condition is still not met at the end of that extension, then elect to pursue either option (a) or (b) above.
- 6.5. Possession at Closing. Seller shall surrender possession of the Property to Buyer at Closing.

Article 7. Default/Remedies

- 7.1. Buyer's Default. If Buyer fails to perform any of its obligations under this Agreement or breaches any representation or warranty under this Agreement, then Seller shall notify Buyer of such default. If Buyer fails to cure that default within thirty (30) days after receipt of that notice, then Seller may, as its sole and exclusive remedy, terminate this Agreement by giving notice to Buyer in which event Escrow Agent shall deliver to Seller the Deposit as full liquidated damages, and all rights and obligations of Seller and Buyer under this Agreement shall terminate (other than those that expressly survive termination of this Agreement). Buyer and Seller have agreed that the Deposit is a reasonable estimate of the damages that would be suffered by Seller and that any other measure of damages is speculative and uncertain.
- 7.2. Seller's Default. If Seller fails to perform any of its obligations under this Agreement or if Seller breaches any representation or warranty under this Agreement, then Buyer may notify Seller of such default. If Seller fails to cure that default within ten (10) days after receipt of that notice (except that if Seller's default is the failure to close on the sale of the Property on the Closing Date, then Seller shall have no cure period for such default), then Buyer may: (a) terminate this Agreement, in which event Escrow Agent shall return the Earnest Money to Buyer; (b) obtain specific performance of any provision of this Agreement; or (c) proceed to Closing without waiving that failure or breach.

Article 8. Indemnification

- 8.1. Seller's Indemnity. To the extent allowed by law, Seller shall indemnify, defend, and hold Buyer harmless from and against all actions, suits, claims, judgments, liens, proceedings, investigations liabilities, damages, costs (including reasonable attorney fees), fines or penalties, arising out of, or in any way related to (a) the ownership or operation of the Property prior to Closing; and (b) any breach by Seller of any representation or warranty under this Agreement.
- 8.2. Buyer's Indemnity. Buyer shall indemnify, defend, and hold Seller harmless from and against all actions, suits, claims, judgments, liens, proceedings, investigations liabilities, damages, costs (including reasonable attorney fees), fines or penalties, arising out of, or in any way related to (a) the ownership or operation of the Property after the Closing; and (b) any breach by Buyer of any representation or warranty under this Agreement.

Article 9. Risk of Loss and Condemnation

- 9.1. Risk of Loss and Insurance. Between the Effective Date and Closing, the risks and obligations of ownership and loss of the Property belong to Seller. If any portion of the Property is damaged or destroyed prior to Closing, then Seller shall promptly notify Buyer and Buyer may terminate this Agreement by giving notice to Seller within ten (10) days of receiving notice from Seller, but in any event prior to Closing, in which event Escrow Agent shall return the Earnest Money to Buyer immediately upon request, and all rights and obligations of Seller and Buyer under

this Agreement shall terminate (other than those that expressly survive termination of this Agreement). If Buyer does not so terminate this Agreement, then the Purchase Price shall be reduced by the total of any insurance proceeds received by Seller prior to Closing by reason of the damage or destruction and by the amount of any deductible applicable to the insurance policy, and, at Closing, Seller shall assign to Buyer all insurance proceeds payable after Closing by reason of the damage or destruction.

- 9.2. Condemnation. If all or any part of the Property is taken by eminent domain proceedings, or if eminent domain proceedings are commenced or threatened, then Seller shall promptly notify Buyer, and Buyer may terminate this Agreement by giving notice to Seller within ten (10) days of receiving notice from Seller, but in any event prior to Closing, in which event Escrow Agent shall return the Earnest Money to Buyer immediately upon request, and all rights and obligations of Seller and Buyer under this Agreement shall terminate (other than those that expressly survive termination of this Agreement). If Buyer does not so terminate this Agreement, then the Purchase Price shall be reduced by the total of any awards or other proceeds received by Seller prior to Closing with respect to any taking, and, at Closing, Seller shall assign to Buyer all rights of Seller in any awards payable after Closing by reason of any taking. Seller shall notify Buyer of eminent domain proceedings within 5 days after Seller learns of those proceedings.

Article 10. Brokerage Commission

- 10.1. Brokerage Commission. Seller and Buyer each represent and warrant to the other that no broker or real estate agent was involved in this transaction. To the extent allowed by law, Seller and Buyer shall each indemnify and hold harmless the other from and against any losses arising out of any alleged brokerage commission, fee or other compensation with respect to the Property based upon an agreement alleged to have been made or other action alleged to have been taken by the indemnifying party. The obligations of the parties under this Section **10.1** shall survive Closing or the termination of this Agreement.

Article 11. Miscellaneous

- 11.1. Assignment. This Agreement may be assigned by Buyer, in whole or in part, to any affiliate of Buyer, but any such assignment shall not relieve Buyer of any liability for the performance of Buyer's obligations under this Agreement. This Agreement may not be assigned by Seller without Buyer's prior, written consent.
- 11.2. Binding Effect. This Agreement is binding on and inures to the benefit of Buyer and Seller and their respective successors and assigns.
- 11.3. Further Assurances. At Closing, and from time to time thereafter, Seller shall perform any additional acts, and shall execute and deliver any additional documents, as may reasonably be required to vest in Buyer full title to the Property and otherwise to

effectuate the purchase and sale of the Property as contemplated by this Agreement.

- 11.4. Survival. Except as otherwise expressly provided in this Agreement, all the provisions of this Agreement shall survive Closing. Except for the provisions of Section 2.3, Article 8, and Article 10, none of the provisions of this Agreement shall survive the termination of this Agreement.
- 11.5. Entire Agreement. This Agreement and the MDA contains the entire understanding and agreement between Buyer and Seller and all prior or contemporaneous oral or written agreements or instruments are merged in this Agreement.
- 11.6. Amendment. This Agreement may not be amended except by an instrument in writing executed by Seller and Buyer.
- 11.7. Applicable Law. This Agreement is governed by and construed in accordance with the laws of the State of North Carolina. Venue for any dispute shall lie in Wake County, North Carolina.
- 11.8. Business Days. If any time or deadline in this Agreement falls on a Saturday, Sunday or federal banking holiday, that time period or deadline shall be extended until the next succeeding business day.
- 11.9. Interpretation. Except as otherwise specified in this Agreement: (a) "includes" and "including" mean includes or including by way of illustration and not by way of limitation; (b) references to Exhibits, Sections or subsections are to those attached to or included in this Agreement; (c) the section and other headings in this Agreement are for convenience only and do not limit or expand any provisions of this Agreement; and (d) no interpretive presumption shall be drawn against either party by virtue of its role in drafting this Agreement.
- 11.10. Severability. If any provision of this Agreement is held to be invalid or unenforceable, then such provision will be fully severable from this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected thereby. Furthermore, in lieu of such invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be reasonably possible.
- 11.11. Counterparts. If this Agreement is executed in counterparts, then all those counterparts together constitute one and the same instrument. An executed counterpart delivered by facsimile or e mail constitutes an original.
- 11.12. Notices. Any notice contemplated by this Agreement must be in writing, addressed as set forth in **Article 1** and shall be either (a) sent by United States Mail, postage prepaid, registered or certified mail, return receipt requested, in which case the notice will be deemed delivered two business days after being deposited in the United States

mail; (b) sent by overnight delivery using a nationally recognized overnight courier, in which case the notice shall be deemed delivered one business day after deposit with the courier; or (c) sent by personal delivery, in which case the notice will be deemed delivered on the date of delivery. Any notice to Buyer must also be delivered to Buyer's Counsel. Any notice to Seller must also be delivered to Seller's counsel if identified in **Article 1**. Buyer's counsel may deliver on behalf of Buyer, any notice contemplated by this Agreement. Seller's counsel may deliver on behalf of Seller, any notice contemplated by this Agreement. Either party may change its address by giving the other party five days advance written notice of that change.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

TOWN:

TOWN OF GARNER, NC

	BY:
	NAME: Jodi M. Miller
	TITLE: Town Manager

Address:
900 7th Avenue
Garner, NC 27529
Email: jhodes@garnernc.gov
tjones@garnernc.gov

Attest: _____
Stella Gibson, Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

David Beck, Finance Director

Approved as to form:

Terri Jones, Town Attorney

DEVELOPER:

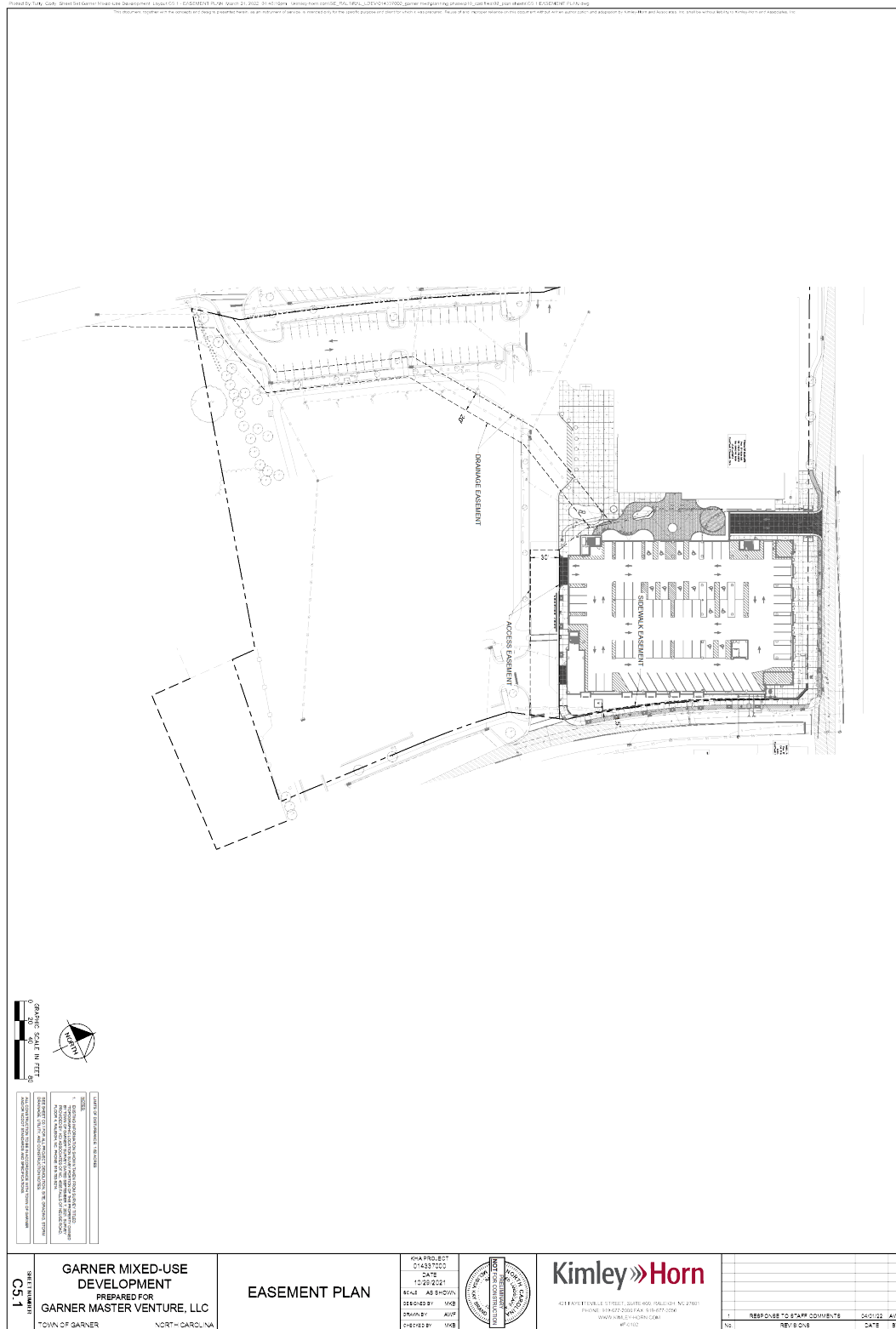
LMG GARNER LLC
a FLORIDA limited liability company

	BY:
	NAME: Peter Flotz, as Manager

Address:
101 NE 3rd Avenue, Suite 1500
Fort Lauderdale, FL 33301
Email: pflotz@lmgroup.us
aholton@lmgroup.us

Exhibit B – Known Easements

There are no existing easements.



RESOLUTION AUTHORIZING A MASTER DEVELOPMENT AGREEMENT WITH LMG GARNER, LLC FOR THE DOWNTOWN DEVELOPMENT PROJECT

WHEREAS, the Town of Garner owns real property located at the corner of West Main Street and Purvis Street and known as the Garner Recreation Center Site; and

WHEREAS, the Town intends to subdivide a portion of the site for a downtown development project pursuant to North Carolina General Statutes Section 160D-1315; and

WHEREAS, the Town issued a Solicitation for Development Partners on October 26, 2020, soliciting proposals from real estate developers for a catalyst project that will function as the economic, civic, and cultural core of the community while invigorating Garner’s downtown central business district; and

WHEREAS, Lansing Melbourne Group (LMG) submitted a proposal on January 15, 2021, which has subsequently been amended or revised and now includes 24 residential apartments above 10,000 square feet of retail space; and

WHEREAS, the Town proposes to construct additional on-street parking to support the LMG project and other downtown businesses; and

WHEREAS, the Town and LMG entered into an Amended and Restated Memorandum of Understanding on August 31, 2023, for the preparation of a comprehensive development plan and estimated budget for the project; and

WHEREAS, a Master Development Agreement is necessary to create binding obligations on the Town and LMG to complete the construction of the project.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Garner, North Carolina:

The Master Development Agreement by and between LMG Garner LLC and the Town of Garner is hereby approved and the Town Manager is authorized to execute the Agreement and any other documents specifically referenced in or reasonably necessary for the implementation of the Agreement, including but not limited to, the subdivision and conveyance of a portion of the property.

Duly adopted this ___ day of _____, 2024.

Buddy Gupton, Mayor

ATTEST: _____
Stella Gibson, Town Clerk

Approved as to form: _____
Terri Jones, Town Attorney

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 30, 2024 ▼		
Subject: National Community Survey Results		
Location on Agenda: Reports		
Department: Town Manager's Office		
Contact: Jodi Miller, Town Manager, Rick Mercier, Communications Director		
Presenter: Jodi Miller, Town Manager		
<p>Brief Summary: In spring 2024, the Town conducted the National Community Survey in partnership with Polco. This is the first time the Town has conducted a townwide resident survey. The data and information provided in the report will be used in the Town's strategic plan refresh, in the budget book, and in performance measurement efforts.</p> <p>An interactive Tableau dashboard of the 2024 survey results with deeper dive demographic comparisons is available at https://public.tableau.com/app/profile/polco.nrc/viz/TheNCSReport-GarnerNCNCS2024/InteractiveDashboard.</p>		
<p>Recommended Motion and/or Requested Action: No action required. For information and discussion.</p>		
<p>Detailed Notes: The National Community Survey Results Report can be found here. (we will add the link)</p>		
<p>Funding Source: Operating budget</p>		
Cost: None	One Time: <input checked="" type="radio"/>	Annual: <input type="radio"/> No Cost: <input type="radio"/>
<p>Manager's Comments and Recommendations:</p>		
<p>Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/></p>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:		
Finance Director:		
Town Attorney:		
Town Manager:	JM	
Town Clerk:		



The National Community Survey

2024 Results

GARNER
MANAGER'S OFFICE

The National Community Survey



- Developed by experts from the National Research Center at Polco in partnership with ICMA
- Conducted in over 500 communities across the country
 - Used as a strategic planning tool
 - Guides data-informed decision-making for fast-growing communities
- Garner's first-ever participation
 - Provides essential baseline data

Examples of Participating NC Communities

- Raleigh
- Durham
- Chapel Hill
- Morrisville
- Asheville
- Davidson
- Wilmington

GARNER
MANAGER'S OFFICE



NCS Methodology



- NCS surveyed randomly selected households
- Data collection open for 6 weeks
- In second phase, open participation responses accepted

Developing a Representative Sample

- Responses weighted to produce statistically valid & representative sample
- Ensures results match community demographics
- **246 residents participated, 7% response rate**

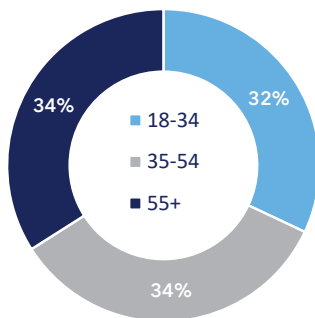
Evaluating Results

- Percentage of positive responses (excellent or good) reported for each question
- Open-ended comments provide additional context

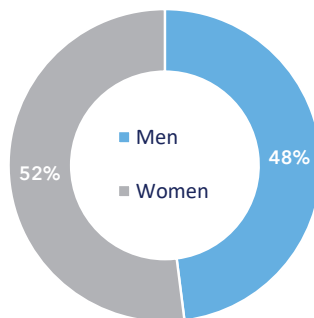


Survey Sample Demographics

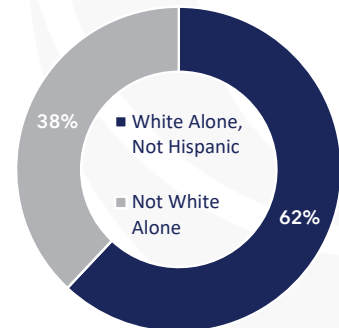
Age



Gender



Race & Hispanic Origin



Housing Tenure



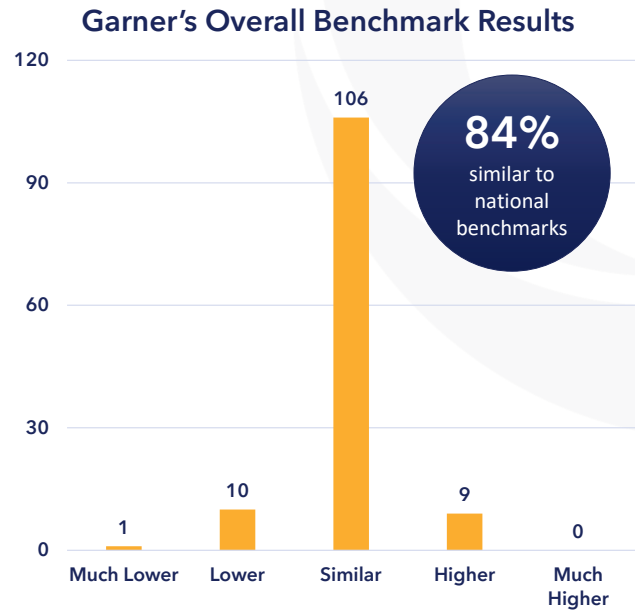
Housing Type





Benchmarking

- Garner’s results were compared to benchmark data from over 500 communities nationwide
- NCS Benchmark Criteria
 - Similar – Positive responses within 10 percentage points above or below benchmark
 - Higher/Lower – More than 10 points different from benchmark
 - Much Higher/Lower – More than 20 points different from benchmark
- Results grouped by Quality of Life, Governance and 10 facets of livability



Quality of Life

Highest Positive Rating

- 85% responded they are very/somewhat likely to remain in Garner for the next 5 years

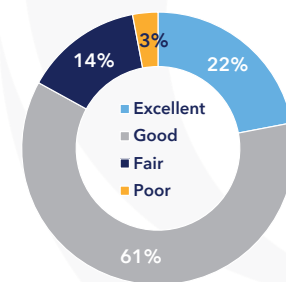
Lowest Positive Rating

- 59% rated Garner’s overall image or reputation as good/excellent

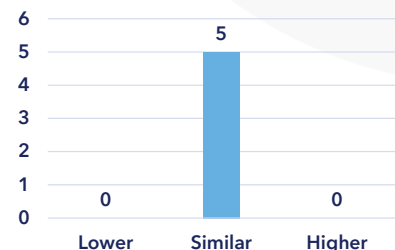
Benchmarking

- All measures of quality of life meet national benchmarking standards

Overall Quality of Life Rating



Comparison to National Benchmarks





Governance

Highest Positive Rating

- 80% rated overall customer service by Garner employees as good/excellent

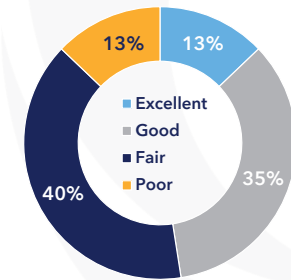
Lowest Positive Rating

- 47% responded that the Town is good/excellent at informing residents about issues facing the community

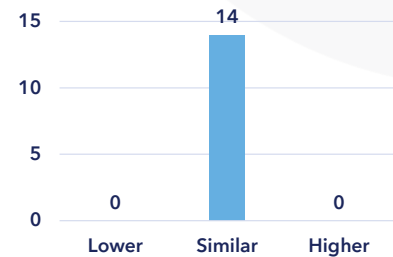
Benchmarking

- All measures of governance meet national benchmarking standards

Overall Governance Rating



Comparison to National Benchmarks



Economy

Higher than Benchmark

- Shopping opportunities
- Cost of living in Garner
- Positive impact of economy on family income

Similar to Benchmark

- Overall economic health of Garner
- Overall quality of business & service establishments
- Garner as a place to work

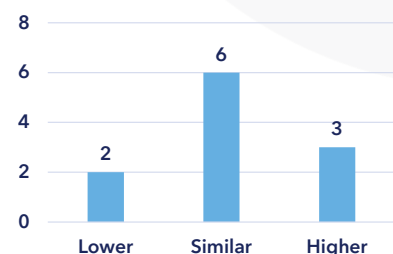
Lower than Benchmark

- Garner as a place to visit
- Vibrancy of downtown and/or commercial area

Overall Economy Rating



Comparison to National Benchmarks





Mobility

Higher than Benchmark

- Ease of public parking

Similar to Benchmark

- Ease of travel by car
- Quality of snow removal, street lighting, street cleaning, sidewalk maintenance & other services

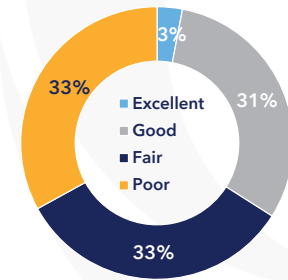
Lower than Benchmark

- Overall quality of transportation system
- Ease of walking
- People who walk or bike instead of driving
- People who carpool instead of driving alone

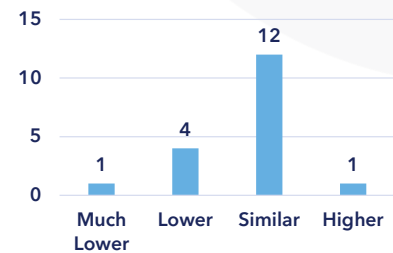
Much Lower than Benchmark

- Ease of travel by bicycle in Garner

Overall Mobility Rating



Comparison to National Benchmarks



Community Design

Highest Positive Rating

- 87% rated their neighborhood as a good or excellent place to live

Lowest Positive Rating

- 39% responded that availability of affordable quality housing is good or excellent

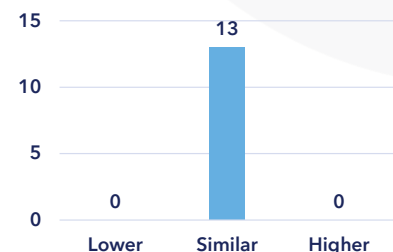
Benchmarking

- All measures of community design meet national benchmarking standards

Overall Community Design Rating



Comparison to National Benchmarks





Utilities

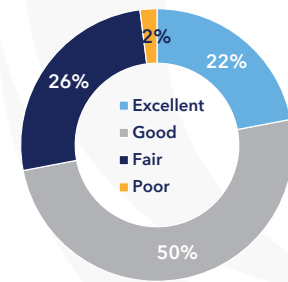
Higher than Benchmark

- Garbage collection
- Stormwater management
- Affordable high-speed internet

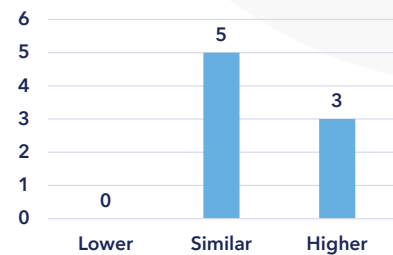
Similar to Benchmark

- Overall quality of the utility infrastructure in Garner (water, sewer, stormwater, electric/gas, broadband)

Overall Utilities Rating



Comparison to National Benchmarks



Safety

Highest Positive Rating

- 95% responded that they feel very or somewhat safe in their neighborhood during the day

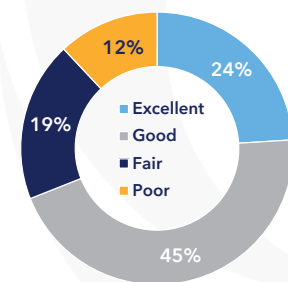
Safety Service Ratings

- 89% rated Fire services as good/excellent
- 86% rated Police services as good/excellent
- 84% rated Emergency Medical services as good/excellent

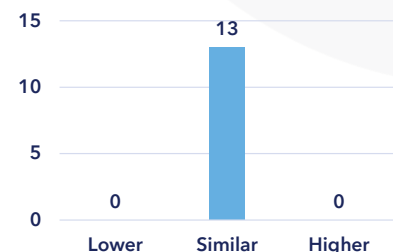
Benchmarking

- Safety was listed as the top priority for the Town over the next two years, and all safety ratings were on par with comparison communities across the nation.

Overall Safety Rating



Comparison to National Benchmarks





Natural Environment

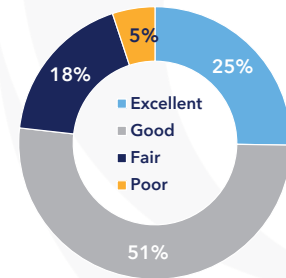
Higher than Benchmark

- Recycling

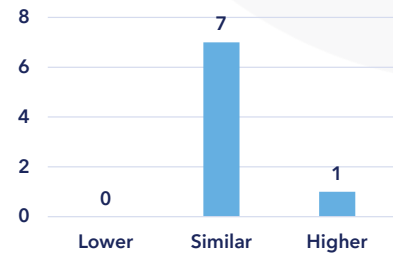
Similar to Benchmark

- Overall quality of the natural environment
- Cleanliness of Garner
- Air & water **resources**
- Yard waste pickup
- Open space & preservation of natural areas

Overall Natural Environment Rating



Comparison to National Benchmarks



Parks & Recreation

Highest Positive Rating

- 84% rated recreation centers and **83% Town** parks as good or excellent

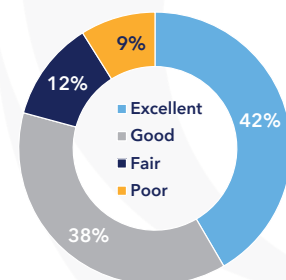
Lowest Positive Rating

- 63% rated availability of paths and walking trails as good or excellent

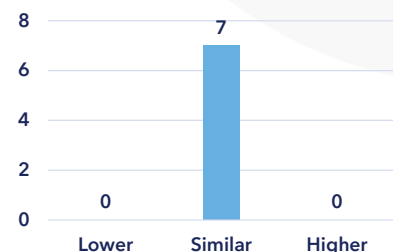
Benchmarking

- All measures of parks & recreation meet national benchmarking standards

Overall Parks & Recreation Rating



Comparison to National Benchmarks





Health & Wellness

Highest Positive Rating

- 75% rated health services as good or excellent

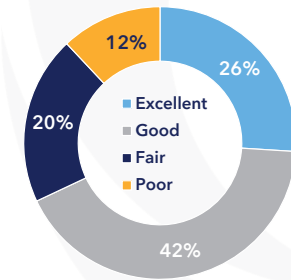
Lowest Positive Rating

- 38% rated availability of affordable quality mental health care as good or excellent

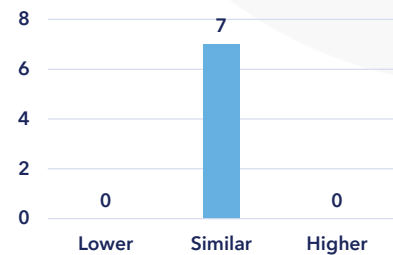
Benchmarking

- All measures of health & wellness meet national benchmarking standards

Overall Health & Wellness Rating



Comparison to National Benchmarks



Education, Arts & Culture

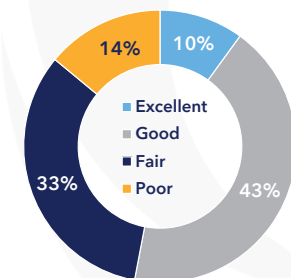
Similar to Benchmark

- Overall opportunities for education, culture, and the arts
- Community support for the arts
- Opportunities to attend cultural/arts/music activities
- Public libraries
- Availability of affordable quality childcare/preschool

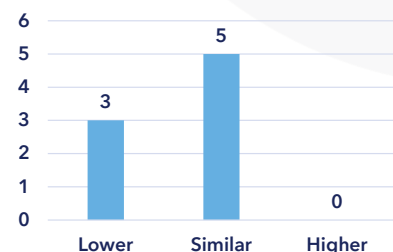
Lower than Benchmark

- Opportunities to attend special events & festivals
- K-12 education
- Adult educational opportunities

Overall Education Arts & Culture Rating



Comparison to National Benchmarks





Inclusivity & Engagement

Higher than Benchmark

- Attracting people from diverse backgrounds

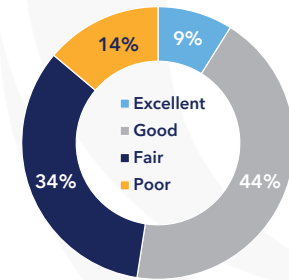
Similar to Benchmark

- Garner as a place to raise children
- Garner as a place to retire
- Residents' connections and engagement with their community
- Making all residents feel welcome
- Taking care of vulnerable residents

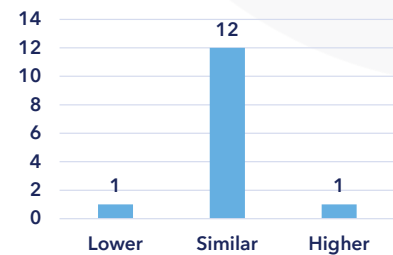
Lower than Benchmark

- Opportunities to volunteer

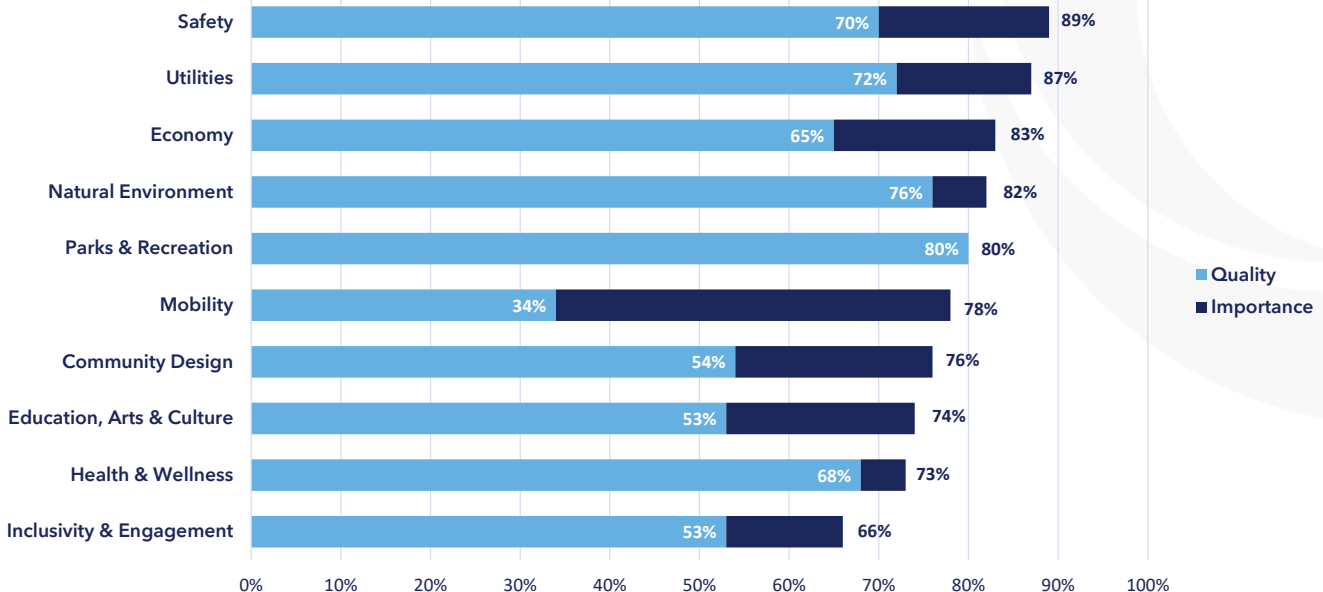
Overall Inclusivity & Engagement Rating



Comparison to National Benchmarks



Quality/Importance Gap Analysis



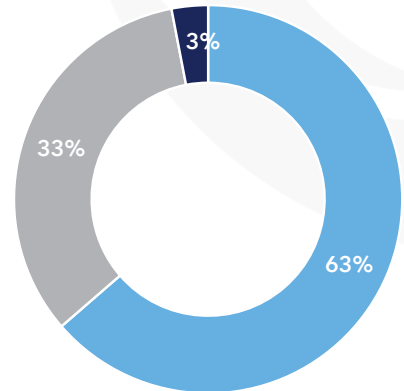


Custom Questions

To what extent are you satisfied with the Spring and Fall solid waste pick-up services in Garner?

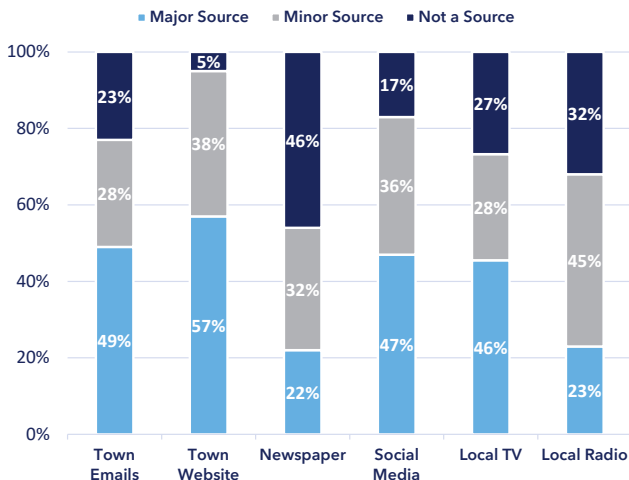


- Very Satisfied
- Somewhat Satisfied
- Somewhat Dissatisfied

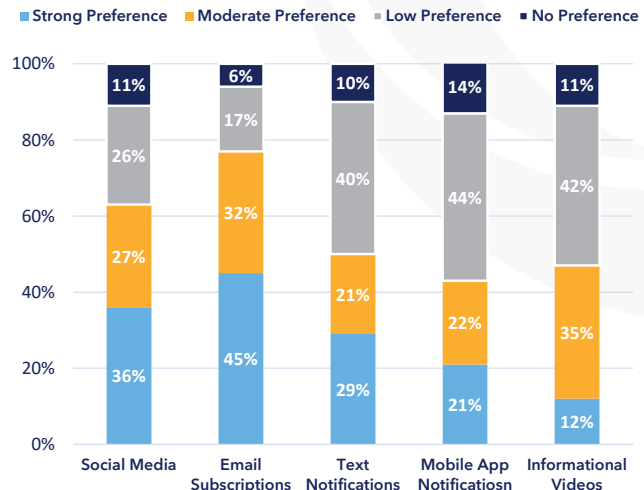


Custom Questions

How much of a source do you consider the following to be for obtaining information about news and events in the community?



How much do you prefer the following methods for obtaining information about news and events in the community?



Next Steps

- Survey results to be published on website at garnernc.gov/NCS
- Town leadership use information to evaluate service delivery and inform departmental goals
- Prepare for strategic planning refresh process in FY25
- Use data to create outcome goals in FY26 Budget Book



Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 30, 2024 <input type="button" value="v"/>		
Subject: Zoning Text Amendment ZTA-23-02 - Items Not Yet Adopted		
Location on Agenda: Reports		
Department: Planning		
Contact: Jeff Triezenberg, Planning Director		
Presenter: Jeff Triezenberg, Planning Director, Nate Groover, Economic Development Director		
Brief Summary: On July 16, 2024, Council approved Ordinance No. (2024)5286 adopting a number of the items recommended in Zoning Text Amendment ZTA-23-02. Several items were deferred for further discussion. The attached memo outlines the items not yet adopted.		
Recommended Motion and/or Requested Action: Provide direction to staff for preparation of additional amendments to the UDO		
Detailed Notes: Several of the outstanding items in the text amendment have been proposed to help achieve goals from the Garner Forward Comprehensive Plan and to ensure Garner's competitiveness for economic development opportunities. To provide additional background and information for discussion, Nate Groover, Economic Development Director and Micheal Haley, Executive Director, Wake County Economic Development, will present information on site readiness and unique opportunities for proactive planning.		
Funding Source:		
Cost: None	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	JT/JMH	
Finance Director:		
Town Attorney:	TJ	
Town Manager:	JM	
Town Clerk:		



PLANNING MEMORANDUM

DATE: July 30, 2024
TO: Honorable Mayor Gupton and Town Council Members
FROM: Jeff Triezenberg, AICP, GISP; Planning Director
SUBJECT: Zoning Text Amendment # ZTA-23-02 – Items Not Yet Adopted, Garner Forward Implementation

I. BACKGROUND

This memo sets out proposals for the remaining pieces of the first round of text amendments to the UDO aimed at better implementing the goals and objectives of the 2023 Garner Forward Comprehensive Plan that were not adopted at the regular meeting of July 16, 2024.

The comprehensive planning project began in earnest in July of 2022, with the contracted consulting team committing to 172 +/- hours of face-to-face engagement with the community as well as producing a project website and online engagement tools for broader outreach. A Steering Committee made up of the entire Garner Town Council and Planning Commission memberships met five (5) times over the course of the project, and select members also participated (along with interested citizens and Town staff) in more focused discussions as part of three (3) strategic advisory groups. Those groups provided specific input and assistance related to public outreach, community character and future land use scenario planning.

A draft of the full plan was first released on February 27, 2023, as the consultant's draft. During the remainder of 2023, the draft was reviewed extensively by the public, Planning Commission and the Town Council. This review culminated in a final draft being adopted on November 21, 2023, with an effective date of February 16, 2024.

II. PROPOSED UDO TEXT CHANGES (REMAINING)

...

4.7.4. Special Use Permit

Special use permits, as defined in G.S. § 160D-102(30) and described in G.S. § 160D-705(c), are required for uses which in an unmitigated state may create negative impacts to neighboring properties or uses. This process allows each proposed use to be evaluated by its merits and conditions specific to each site.

A. Applicability



Except for those uses listed in subsection 3, in addition to the other special uses listed in the use table in *Article 6. Use Regulations*, the following development types have significant city-wide impacts and require special use permits:

1. Any nonresidential or mixed-use development with an individual building(s) encompassing 100,000 or more square feet of gross floor area or more, except that this threshold shall be 250,000 square feet of gross floor or more for:
 - a. development within the Activity Center (AC) zoning district; or
 - b. development on a tract already within the corporate limits of the Town of Garner at the time of site-specific development application.
2. Any residential development or subdivision involving 200 dwelling units or more, except that this requirement shall not apply to Upper-Story Residential uses.
3. The following development types do not require a special use permit due to their recognized substantial economic and social benefits to the Town:
 - a. Research & Development
 - b. Hospital
 - c. Ambulatory Health & Emergency Care Facility

...

5.9.1. Nonresidential Development Standards

...

- C. Nonresidential and mixed-use buildings (including those with upper story residential use as noted in Figure 5.9-A) in the CMX district may exceed the designated height limit via a special use permit, provided the depth of the required front, rear and side yards shall be increased by a minimum of 0.5 feet for each foot, or fraction thereof, of building height exceeding the standard, or that the building may be designed with a stepped profile to achieve the same outcome.

...

6.1. USE TABLES

TABLE OF PERMITTED USES														
P = PERMITTED BY-RIGHT; SEE ADDITIONAL STANDARDS LISTED IN ARTICLE 5.; S = SPECIAL USE PERMIT														
SPECIFIC USE	RESIDENTIAL DISTRICTS							NONRESIDENTIAL AND MIXED USE DISTRICTS						NOTES
	RA	R2	R4	R8	RMH	MF-A	MF-B	NMX	CMX	TBD	AC	LI	HI	
RESIDENTIAL USE CATEGORY														
...														
Two-Family <u>Two- to Four-Family</u> Dwelling (2 to 4 dwelling units per structure, aka Duplex/Triplex/Quadplex)		P	P	P		P								6.4.4.B.
Townhouse (3- or 2 to 4 2 to 4 dwelling units per structure)				P		P	P	P						6.4.4.C.

Townhouse (>4 dwelling units per structure)							P	P	S	P						6.4.4.D.
...																
Multifamily (>4 units per structure or over 2,500 sq ft footprint)							P	P	S	P S						6.4.4.D.
...																
CIVIC AND INSTITUTIONAL USE CATEGORY																
...																
Higher Education	S							<u>P</u>		P			P	P		Includes Business School/Satellite; 6.5.4.E.
...																
RECREATIONAL AND ENTERTAINMENT USE CATEGORY																
...																
Indoor Athletic or Entertainment Facility (not theater)								<u>P</u>	S	P	S	P	P			Including Gym, Spa, Indoor Pool, etc.; 6.6.4.E.
...																
COMMERCIAL, OFFICE, RETAIL, SERVICE USE CATEGORY																
...																
Other Office Uses Not Listed								<u>P</u>	P	P	P	P	P			6.8.4.A.
Medical Office								<u>P</u>	S	P	P	P	P			Includes Medical Clinic or Urgent Care Clinic; 6.8.4.B.
...																
Restaurant, Sit-down Establishment								<u>P</u>	P	P	P	P	P			6.8.4.D.
...																
Day Care Center								<u>P</u>	P	P			P			Includes Adult and Child Day Care, Family Child Day Care; 6.8.4.H.
Gym, Spa or Pool, <u>Private</u>								<u>P</u>	P	P	P	P				SF max for TBD; 6.8.4.I.
...																
Personal or Professional Services (up to 5,000 sqft ground floor footprint)								<u>P</u>	P	P	P	P	P			Including Hair Salons, art studio, dance studio (excludes commercial greenhouses or any use with outdoor operations; 6.8.4.L.
...																



Sales . Retail (no outdoor operations)							<u>P</u>	S	P	P	P	P		6.8.4.N.
...														

All uses added to the MF-B district above would have the following standards added to their respective sections identified in the Notes column:

- In the MF-B district, use is only permitted in buildings with an Upper-Story Residential use.

...

6.1.3. Uses not Listed

The Planning Director shall determine whether or not an unlisted use is part of an existing use category defined in or is substantially similar to an already defined use, using the criteria in Section 6.2. Use Categories.

(Table of Permitted Uses begins on next page)

TABLE OF PERMITTED USES (pages 6-2 through 6-7):

Add the following uses as “P” in the Activity Center (AC) district:

- Hospital
- Ambulatory Health & Emergency Care Facility
- Banks or Financial Institution, with Drive-thru or Vehicular ATM

Remove the following use from the “Flex Space, Other Light Industrial, Manufacturing, Warehousing, or Transportation Uses Not Listed” specific use and add as a permitted (“P”) separate and distinct specific use in the CMX, LI and HI districts with a note referring users to subsection 6.9.5.O.:

- Research and Development

...

6.4.4. Specific Uses

...

B. ~~Two-family~~ Two- to Four-Family Dwelling Unit (Duplex/Triplex/Quadplex)

1. Defined

Two to four dwelling units in a single structure on a single lot ~~or on two lots where the dwelling units share a wall.~~

1. Use Standards

(None)

C. Townhouse (Townhome, ~~Rowhome~~ Rowhouse)

1. Defined

A form of single-family attached dwelling in which ~~three~~ two or more units share common side walls and are often designed in rows and have individual entrances on the ground floor. Units are purchased on a fee-simple basis on small individual parcels of land fronting on either a public or private street, and have parking located on each lot or attached to each dwelling unit, although

garages may be separated from the dwelling. Yards are typically small or shared, and privacy requires careful protection. ~~A townhouse with only two units is classified as a duplex.~~

...

6.9.5. Specific Uses

...

O. Research and Development

1. Defined

An establishment primarily engaged in nanotechnology and biotechnology research and experimental development, or in conducting research and experimental development in the physical, engineering, cognitive and life sciences, such as agriculture, electronics, ecology, biology, botany, computers, chemistry, food, fisheries, forests, geology, health, mathematics, medicine, oceanography, pharmacy, physics, veterinary and other allied subjects.

2. Use Standards

(None)

...

9.3.5. Off-Street Parking Requirement

...

TABLE OF PARKING REQUIREMENTS	
USE	MINIMUM NUMBER OF VEHICLE SPACES
...	
INDUSTRIAL, MANUFACTURING, WAREHOUSING, WASTE SERVICES, AND TRANSPORTATION USE CATEGORY	
...	
<u>Research and Development</u>	<u>1.0 spaces per 1,000 square feet of gross floor area</u>
...	

...

Throughout the UDO – correction of any errors in cross-references, citations, etc. in sections of the original adopted UDO brought about by the amendments within this case.

III. PLAN CONSISTENCY

Following a public hearing and when considering a text amendment request, the Planning Commission is required by state statute to make a written recommendation regarding the consistency of the proposal with the Town’s current Comprehensive Plan and other applicable adopted plans. Specifically, a comprehensive plan is only advisory in nature and has no independent regulatory effect; nor does it expand, diminish or alter the scope of the Town of Garner UDO. A determination of inconsistency with the Plan does not preclude a request from being found to be reasonable. In those cases where the request is deemed inconsistent yet reasonable, an amendment to the Comprehensive Plan is automatically made upon approval of the request.

Staff offers that the Planning Commission shall review consistency with the following plans:

- 2023 Garner Forward Comprehensive Plan



PLANNING COMMISSION MEETING: The Planning Commission conducted a consistency review of the case at their meeting on Monday, June 10, 2024.

Meeting video may be found: (<https://www.youtube.com/watch?v=MW5EckRrIbc>). The staff presentation begins at the 1:53:30 mark of the video with some discussion happening throughout, but formally beginning at the 2:29:35 mark. There were no members of the public present to speak on this matter.

Questions and comments from the Planning Commission consisted of:

- Clarifying the revised special use permit thresholds and how they apply to certain non-residential scenarios.
- Stating a desire to keep looking at some of the left-over spaces at the edges between development and required conservation areas.
- Noting the comprehensiveness and good work done.

Consistency Statement: We, the Planning Commission, find that ZTA-23-02 directly responds to various needs to align the Unified Development Ordinance with the recommendations of the Town's Comprehensive Plan, and therefore, this request to amend the Unified Development Ordinance is consistent with the Town's adopted land use plans.

Motion: I move that the Planning Commission accept the Consistency Statement drafted herein as our own written recommendation regarding the consistency of the request with the Town's adopted land use plans and recommend approval of Case # ZTA-23-02 to the Town Council as appropriate and in the public interest.

Motion made by Commission Member Carson and seconded by Commission Vice-Chair Jefferson. Motion passed unanimously.

IV. REASONABLENESS

For zoning text amendments, § 160D-605. Governing board statement - does not require the Council to make a statement on reasonableness; only a statement on plan consistency is required.

V. RECOMMENDATION

Provide direction to staff on these remaining amendments associated with ZTA-23-02.

Reports



MANAGER'S OFFICE

MEMORANDUM

DATE: July 30, 2024
TO: Mayor and Town Council
FROM: Jodi Miller, Town Manager
SUBJECT: August Pending Agenda Items

The following items are currently planned for the August Council Meetings. These items are subject to change.

Tuesday, August 6 - Regular Meeting

Presentations

None at this time.

Consent

- ANX-24-007, 3412 Benson Road – Set Public Hearing
- ANX-24-006, 1951 Highway 70 – Set Public Hearing

Public Hearings

- ANX-24-002, 2311 Parkway Drive

Old/New Business

- Introduction of Assistant Finance Director and Resolution appointing position as Deputy Finance Officer
- CZ-SB-20-09, Wilmington Place
- Zoning Text Amendment #ZTA-23-02 – Garner Forward Implementation - Continuation

Reports

- None at this time.



Tuesday, August 20 - Regular Meeting

Presentations

- None at this time.

Consent

- Budget Amendment - PRCR Acceptance of Sponsorships and Grants

Public Hearings

- CZ-MP-23-07, Bethel Green
- CZ-MP-23-06, Poole Drive Fuel Sales

Old/New Business

- None at this time.

Reports

- None at this time.

Tuesday, August 27, 2024 – Work Session

Discussion

- Code of Conduct and Ethics
- Quarterly Economic Development Report

Reports

- None at this time.