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The Use of Development Agreements to Manage Large-Scale Development: The Law and Practice in North Carolina

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Contents

Introduction	1
Summary of the Law	2
Basic Provisions Regarding Adoption	3
Enabling Authority	3
Process for Adoption	4
Legislative Decision	5
Jurisdiction	5
Parties	6
Mandatory Contents of Agreements	7
Property Description	7
Duration	7
Development Plan	7
Public Facilities	8
Dedications	8
Permits Required	8
Conditions	8
Development Schedule	9
Coordination	9
Limitations on Agreements	9
Size of Development Area	9
Taxes and Fees	9
Building Codes	11
Current Laws	11
Post Agreement Provisions	12
Recordation	12
Periodic Review	12
Amendment	12
Breach and Appeals	13
Enforcement	14
Change in Ownership or Jurisdiction	14
Early Experience of North Carolina Cities and Counties	14
Survey	14
Summary of Survey Responses on Development Agreements	16
Adoption of Development Agreements	16
Scale of Adopted Development Agreements	17
Selected Examples of Early Use in North Carolina	20
Catawba County—Crescent Resources/Key Harbor	20
Chapel Hill—University of North Carolina at Chapel Hill	21
Wilmington—Newland Communities	23
Conclusions	24
Appendix 1. Applicable Portion of Survey Instrument	25
Appendix 2. Responding Jurisdictions	27

The Use of Development Agreements to Manage Large-Scale Development: The Law and Practice in North Carolina

David W. Owens

Introduction

North Carolina has seen an increasing number of large, complex development projects in recent years. These developments usually involve construction of hundreds of new homes. They often include large quantities of new commercial buildings and office space.

Development at this scale poses several challenges. First, significant improvements to roads, water, sewer, schools, and other public services are usually necessary to adequately serve the new development. Many of these proposed developments involve substantial commitments from a developer, local government, or both for long-term infrastructure investments associated with the planned development, with concomitant serious negotiation about the appropriate public–private cost sharing to pay for these improvements. Second, there is typically a lengthy period of time between initial project approval and completion of the development. The scale and complexity of these projects often means that there is a delay of a year or two between project approval and initiation of substantial construction. Many of these projects are built in multiple phases. The entire project can take decades to complete.

These two dimensions of large, complex development projects—the commitments to substantial infrastructure investment and the lengthy build-out periods—raise several questions of great importance for both developers and local governments.

- To what extent can both the landowner and the local government expect that the type, intensity, and design of the development will be maintained over a lengthy period?
- Can a new city council elected five years into a ten-year development schedule revoke or substantially alter the original city approval?
- If portions of the project are sold to new owners, are those owners legally obligated to pay for a sewer line upgrade or park improvement that the original owner promised ten or fifteen years earlier?
- How do the local government, the developer, and the public keep track of the many obligations that have been made and assess progress toward meeting them over time?

Prior to 2006 there was not a ready answer to these questions in North Carolina. While the laws on vested rights provided some answers, the law had limited application to large, phased developments that take more than five years to build out. In 2006 the North Carolina General Assembly authorized the use of development agreements as a way of addressing these concerns. This report summarizes the legal requirements for development agreements and examines their early use in the state.

Summary of the Law

Beginning with California in 1979¹ and Hawaii in 1985,² a number of states enacted statutes that expressly authorize cities and counties to enter into formal contractual agreements with landowners that lock in existing local ordinances affecting a project for an extended period. Among the states with these statutes—several of which are substantially similar—are Arizona, California, Colorado, Florida, Hawaii, Idaho, Louisiana, Maryland, Nevada, New Jersey, Oregon, South Carolina, Texas, Virginia, and Washington.³ Apparently the actual use of these statutory

1. The California statute, codified at Cal. Gov't Code §§ 65864–65869.5 (West 2009), was adopted largely in reaction to the impacts of the state's common law late vesting rule on large, multiphase projects. A leading case, *Avco Community Developers, Inc. v. South Coast Regional Commission*, 553 P.2d 546 (Cal. 1976), is illustrative of the need. The landowner was developing an 8,000-acre planned community. The company obtained subdivision and grading permits and had spent some \$2.7 million in construction of infrastructure when the California Coastal Act became effective. The court held that the company had no vested rights as final building permits had not been issued; there had been no detrimental reliance on the final approval and the developer was compelled to redesign the project to comply with new permitting requirements. See generally Daniel J. Curtin Jr. & Scott A. Edelstein, *Development Agreement Practice in California and Other States*, 22 STETSON L. REV. 761 (1993).

2. Hawaii case law, like that of California, had a late vesting, providing that a project is not vested prior to the last discretionary approval having been secured. *County of Kauai v. Pacific Standard Life Ins. Co.*, 653 P.2d 766 (Ha. 1982). Even though a permit had been issued and over \$3.5 million had subsequently been spent, the authorizing ordinance was repealed by referendum and the court held that no vesting could occur before that vote). See generally Kenneth R. Kupchak, Gregory W. Kugle, & Robert H. Thomas, *Arrow of Time: Vested Rights, Zoning Estoppel, and Development Agreements in Hawaii*, 27 U. HA. L. REV. 17 (2004).

3. Ariz. Rev. Stat. Ann. § 9-500.05 (2009); Cal. Gov't Code §§ 65864–65869.5 (West 2009); Colo. Rev. Stat. Ann. § 24-68-104(2) (West 2009); Fla. Stat. Ann. §§ 163.3220–163.3243 (West 2009); Haw. Rev. Stat. §§ 46-121–46-131 (2009); Idaho Code § 67-6511A (2009); La. Rev. Stat. Ann. §§ 33:4780.21–33:4780.33 (2009); Md. Code Ann., Land Use, § 66B-13.01 (West 2009); Nev. Rev. Stat. Ann. §§ 278.0201–278.0207 (West 2009); N.J. Stat. Ann. § 40:55D-45.2 (West 2009); Or. Rev. Stat. Ann. §§ 94.504–95.528 (West 2009); S.C. Code Ann. § 6-31-10–6-31-160 (2009); Va. Code Ann. § 15.2-2303.1 (West 2009); Wash. Rev. Code Ann. § 36.70B.170–36.70B.210

authorizations varies widely among the states, from widespread application in California to rare use in Hawaii.

For the most part the courts have upheld the use of these development agreements, especially where they are expressly authorized by statute.⁴ For the purposes of this report, the term “development agreement” refers to a contract that vests the rights to develop a specific project for an extended period of time subject to the terms and conditions specified in the agreement.⁵ The principal legal concern has

(West 2003). Development agreements are sometimes used in other states despite the lack of explicit statutory authorization. See, e.g., *Save Elkhart Lake, Inc. v. Village of Elkhart Lake*, 512 N.W.2d 202 (Wis. App. 1993). For a discussion of the need for a development agreement enabling statute for Georgia, see Michael B. Kent Jr., *Forming a Tie that Binds: Development Agreements in Georgia and the Need for Legislative Clarity*, 30 ENVIRONS ENV'T L & POL'Y J. 1 (2006).

4. For general background information on development agreements, see DAVID L. CALLIES, DANIEL J. CURTIN JR. & JULIE A. TAPPENDORF, *BARGAINING FOR DEVELOPMENT* (2003); DAVID J. LARSEN, *DEVELOPMENT AGREEMENT MANUAL* (INSTITUTE FOR LOCAL SELF GOVERNMENT 2002); *MANAGING DEVELOPMENT THROUGH PUBLIC/PRIVATE NEGOTIATIONS* (Rachelle L. Levitt & John J. Kirilin, eds, 1985); David L. Callies, *Developers' Agreements and Planning Gain*, 17 URB. LAW. 599 (1985); Daniel J. Curtin Jr. & Jonathan D. Witten, *Windfalls, Wipe-outs, Givings, and Takings in Dramatic Redevelopment Projects: Bargaining for Better Zoning on Density, Views, and Public Access*, 32 B.C. ENV'T L. REV. 325 (2005); John J. Delaney, *Development Agreements: The Road from Prohibition to "Let's Make a Deal,"* 25 URB. LAW. 49 (1993); Shelby D. Green, *Development Agreements: Bargain-for Zoning That Is Neither Illegal Contract Nor Conditional Zoning*, 33 CAP. U. L. REV. 383 (2004); Robert M. Kessler, *The Development Agreement and Its Use in Resolving Large Scale, Multi-party Development Problems: A Look at the Tool and Suggestions for its Application*, 1 J. LAND USE & ENVT'L L. 451 (1985); Barry R. Knight & Susan P. Schoettle, *Current Issues Related to Vested Rights and Development Agreements*, 25 URB. LAW. 779 (1993); Brad K. Schwartz, Note, *Development Agreements: Contracting for Vested Rights*, 28 B.C. ENVT'L AFF. L. REV. 719 (2001); Judith W. Wegner, *Moving toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals*, 65 N.C. L. REV. 957 (1987).

5. There are a variety of other contractual agreements between land owners and local governments that are sometimes referred to as development agreements but are not addressed in this report. For example, it is common in some communities to enter into contractual agree-

been whether an agreement that fixes the current local development regulations in place for an extended period of time unlawfully bargains away the police power or impermissibly restricts the discretion of future elected boards to amend the ordinances. Courts have reasoned that these agreements do not do so; rather, they vest rights in the existing regulations applicable to a specific parcel to the mutual benefit of the landowner and the public.⁶

In 2005 the General Assembly added authorization for these agreements to the North Carolina General Statutes (hereinafter G.S.).⁷ The

ments or performance guarantees for provision of public improvements or other exactions required as part of a subdivision or zoning approval or to enter into contracts relative to construction of a joint public–private venture. These contractual obligations are sometimes also referred to as development agreements.

6. The California statute was upheld in *Santa Margarita Area Residents Together (“SMART”) v. County of San Luis Obispo*, 84 Cal. App. 4th 221 (2000). See also *Tancas Property Owners Ass’n v. City of Malibu*, 41 Cal. Rptr. 3d 200 (Cal. Ct. App. 2006) (agreement that does not follow statutorily mandated procedures for adoption is invalid); *City of West Hollywood v. Beverly Towers, Inc.* 52 Cal.3d 1184 (1991) (noting use and purpose of development agreements). The Louisiana statute was upheld in *Azalea Lakes Partnership v. Parish of St. Tammany*, 859 So. 2d 57, 62 (La. App. 2003) and the Nebraska statute was upheld in *Giger v. City of Omaha*, 442 N.W.2d 182 (1989).

7. S.L. 2005-426, sec. 9. The impetus for legislative interest in development agreements was largely the increasing frequency of proposals for development projects far larger in scope and with longer build-out periods than previously seen in North Carolina. Several legislators, particularly those in the Charlotte area, were familiar with the use of development agreements in South Carolina (Tega Cay and Hilton Head were offered as examples in the legislative discussions). These legislators suggested that negotiated development agreements might be mutually advantageous to developers and local governments as these large projects were considered, particularly where there were substantial public–private agreements for infrastructure improvements associated with the planning and regulatory issues. While the development community did not originate the proposal to add this to the statutes, once it was presented they were very supportive. The lobbyists for the development community (particularly the state Homebuilders and Realtors Associations) noted that there are major risks when committing substantial funds to large, long-term projects without adequate assurance that local development standards will not become more demanding over the course of build-out. Local governments and the planning community—who likewise did

development agreement provisions are codified at G.S. 160A-400.20–160A-400.32 for cities and G.S. 153A-379.1–153A-379.13 for counties.

The statutes limit the use of development agreements to relatively large projects by setting a minimum amount of developable land that must be included. Development agreements can only be used for projects that have moved beyond the conceptual stage to a relatively detailed plan that sets out the specific land uses proposed, where buildings will be sited, how structures will be designed, and the timing and financing of public facilities needed to serve the development. The planning and legal costs of producing a development agreement can also be substantial, further limiting the use of such agreements to projects that warrant the investment of time and money on the part of the landowner and the local government. The scale of many proposed development agreements is such that they are likely to raise considerable neighborhood and public interest in the details of the agreement, thereby necessitating careful consideration of the process used to negotiate and approve the development agreement. However, even with these limitations, local governments in North Carolina are finding this to be a useful tool for collaboratively addressing major development proposals.

Basic Provisions Regarding Adoption

Enabling Authority

State law mandates the availability of some vested rights under local development regulation, most notably for projects with building permits and site-specific development plans. Unlike those earlier provisions, however, the development agreement statute is enabling rather than a mandate.⁸ A local government can choose not to use this approach at all.

If a city or county wants to use development agreements, it can adopt an ordinance specifying eligibility, local requirements and procedures, and other specifications for how these are done. Alternatively, a city or county can adopt individual development agreements without the necessity of having

not originate the proposal to authorize development agreements and had significant reservations about the concept—expressed an interest in an enhanced ability to address the off-site impacts and public facility implications of such large projects.

8. N.C. GEN. STAT. (hereinafter G.S.) § 153A-379.3; 160A-400.22.

previously made explicit provision for them in its development ordinances.

Process for Adoption

While development agreements closely resemble negotiated contracts in both form and substance, each individual development agreement must be approved by ordinance of the governing board.⁹ In adopting that ordinance, the local government must follow the same standard hearing with published notice procedure that is required for zoning text amendments.¹⁰ The mandated published notice of the public hearing on a proposed development agreement is two newspaper advertisements, with the first at least ten but not more than twenty-five days prior to the hearing and each notice in a separate calendar week. The notice must specify the location of the property involved and describe the land uses proposed. The draft agreement should be complete and available for inspection at the time of publication of the notice of the hearing.¹¹

The statute does not mandate referral of a proposed development agreement to the planning board for review and comment. While the development agreement statutes do provide that agreements are to be adopted “following the procedures” applicable to zoning ordinances,¹² a close reading clarifies that this requirement pertains only to the public hearing and hearing notice requirements, not to planning board referral, statements of plan consistency, and other provisions applicable to zoning ordinance

amendments.¹³ If there is a rezoning associated with a development agreement—and this is often the

13. The caption for G.S. 153A-349.5 and 160A-400.24 is “Public hearings,” a clear indication of the limited scope of the procedures being mandated.

In addition, the organization of the local government statutes confirms that this requirement applies to hearings with published notice only. The authority for cities to undertake planning and regulation of development is provided in Article 19 of G.S. Chapter 160A (the county statutes have the same comparable organization as Article 18 of G.S. Chapter 153A). Part 1 of each of those articles includes provisions that apply to all of the parts within the article. These common requirements in Part 1 include the referenced requirement of G.S. 153A-323 and 160A-364 for a public hearing with two published notices prior to adoption or amendment of any ordinance authorized within these articles. Thus zoning, subdivision, historic district, development agreement, building and housing code, and similar ordinances (all authorized by separate parts within these articles) are subject to the requirement of a public hearing with published notice.

Other procedural requirements that are part-specific are included within the individual parts of Articles 18 and 19. For example, in Part 3, which authorizes zoning, are provisions for mailed and posted notice of hearings on rezonings, protest petitions on zoning map amendments, and planning board review of proposed zoning amendments. In addition, many of the part-specific procedural requirements are expressly applicable to specific actions authorized by that part. For example, the required referral to a planning board in G.S. 160A-387 is applicable to adoption of a “proposed zoning ordinance” and to proposed amendments to “the zoning ordinance or zoning map.”

In most instances an individual development agreement (as opposed to an ordinance text amendment establishing procedures for review of development agreements) is not adopted as part of the zoning ordinance but is authorized by a separate ordinance. Therefore, unless the local government is codifying the development agreement as a section of its zoning ordinance, the mandated procedures for adoption of a development agreement are those included in Part 1 (which is applicable to all of Articles 18 and 19) and the development agreement-specific procedures in the parts authorizing development agreements. So the local government must hold a hearing with published notice of the hearing, but as is the case with a subdivision ordinance or housing code amendment, referral to the planning board is not mandated.

An individual local government is free to mandate planning board referral, mailed notices, or plan consistency statements as part of the procedures for development agreement consideration that it sets under G.S. 153A-349.3 and 160A-400.22. That would, however, be a choice of the local government, not a state mandate.

9. The standard practice is for the board to adopt an ordinance authorizing the execution of a specified development agreement for a specified project. The ordinance does not include the text of the agreement, but it refers to a specific agreement.

10. G.S. 153A-379.5; 160A-400.24.

11. Much like any other hearing on a land use regulation, amendments may be made to the proposed agreement in response to statements and discussion at the hearing. It is likely that additional hearings are not required unless the changes made to the agreement at or after the hearing are substantial. *Heaton v. City of Charlotte*, 277 N.C. 506, 518, 178 S.E.2d 352, 359–60 (1971).

12. G.S. 153A-349.5 and 160A-400.24 provide that prior to adoption of a development agreement, “a local government shall conduct a public hearing on the proposed agreement following the procedures set forth” in G.S. 153A-323 and 160A-364, respectively.

case—the rezoning must go to the planning board prior to governing board consideration. It would be prudent in these situations to concurrently secure planning board comment on the proposed development agreement.

Legislative Decision

The decision whether or not to approve—or even consider—a development agreement is left to the good judgment and discretion of the local elected governing board.¹⁴ This choice is a legislative decision, much like the decision on whether to rezone a parcel of land.¹⁵

While the procedural safeguards applicable to all land use ordinances (a mandatory hearing with published notice) apply, the limitations of quasi-judicial decision-making do not apply. Unlike a hearing for a special or conditional use permit, the hearing on a proposed development agreement is not limited to presentation of evidence by witnesses under oath and subject to cross-examination. Citizens are free to present their opinions as to whether the proposed agreement is or is not a good idea. Board members are not prohibited from discussing the matter outside of the hearing, but they are obligated to refrain from voting on it if they have a financial conflict of interest.¹⁶ Formal findings of fact are not required.

14. This is likewise the case with the statutory schemes in most other states. *See, e.g.,* Price v. Payette County Bd. of County Comm’rs, 958 P.2d 583, 588 (Id. 1998).

15. Unlike the North Carolina statute, the California development agreement statute explicitly provides that adoption is a legislative act that must be approved by ordinance and is subject to referendum and a mandatory finding of plan consistency. Cal. Gov’t Code § 65867.5 (West 2009). The North Carolina statute simply specifies that the agreement be approved by ordinance (G.S. 153A-349.3; 160A-400.22). Further indicators of the legislative nature of the decision to approve a development agreement are the use of the public hearing and hearing notice requirements applicable to other legislative land use decisions (G.S. 153A-349.5; 160A-400.24), the requirement for approval by the elected governing board, and the lack of legislative or mandated local guiding standards for the decisions.

16. While the development agreement statutes do not include a specific conflict of interest standard, it is likely that the same general standard applicable to governing boards and advisory boards on legislative zoning decisions would apply. G.S. 153A-340(g) and 160A-381(d) prohibit members of those boards from voting on matters if the outcome would have a “direct, substantial, and

Rather, much like in a rezoning, the issue is whether the proposed agreement is in the best public interest for the community, not whether predetermined standards for approval have been met.

Jurisdiction

Development agreements deal only with regulatory approval for development and cannot, in and of themselves, affect a local government’s jurisdiction. A development agreement can only be adopted by a local government with jurisdiction for the area affected by the agreement. Cities can adopt development agreements within their corporate limits and their extraterritorial areas; counties may do so in unincorporated areas outside of city extraterritorial jurisdiction.¹⁷

In some instances the discussions about development approval will involve a shift in jurisdiction. For example, a landowner in the unincorporated area of a county may enter into negotiations with an adjacent municipality regarding extension of city utilities and city regulations to the property. It is entirely appropriate for potential annexation of the land by the city to be a part of the negotiations, but that cannot be accomplished through a development agreement. All of the usual statutory procedures for annexation would have to be completed before the city could execute a development agreement affecting that land.¹⁸

readily identifiable financial impact” on the member. Also note that the North Carolina Supreme Court has indicated that this standard is generally applicable to legislative land use decisions on constitutional grounds as well. County of Lancaster v. Mecklenburg County, 334 N.C. 496, 511, 434 S.E.2d 604, 614 (1993).

17. G.S. 160A-360 establishes the territorial jurisdiction for municipal authority for planning and regulation of development that is included in Article 19 of G.S. Chapter 160A, which includes the authority to enter development agreements. G.S. 153A-320 provides county jurisdiction in unincorporated areas outside of municipal regulatory authority.

18. For example, the landowner could agree to seek voluntary annexation pursuant to G.S. 160A-31. That annexation would, however, have to be completed before the city would have jurisdiction to adopt a development agreement for the site. There are also separate statutes that allow two or more cities to enter agreements regarding future annexation areas. G.S. 160A-58.21 through -58.28. These agreements, termed “annexation agreements” by the statutes, should not be confused with development agreements. Also, cities and counties may enter into contractual agreements with developers

If multiple local governments are parties to a development agreement, the agreement must specify which local government is to be responsible for overall administration of the agreement.¹⁹

Parties

The parties to a development agreement are the developer of the property and the local government with land use regulatory jurisdiction for that land.²⁰ To qualify as a developer who may enter into a development agreement, the entity²¹ must be one who both intends to undertake development and who has a legal or equitable interest in the property.²² “Development” is defined very broadly for the purposes of this statute. It includes the planning for building activity, material changes in the use or appearance of structures or property, and land subdivision.²³ The

regarding installation of public enterprise improvements. G.S. 160A-320; 153A-320. These contracts should likewise be distinguished from the development agreements discussed in this report.

19. G.S. 153A-349.6(c); 160A-400.25(c).

20. G.S. 153A-349.1(b); 160A-400.20(b).

21. Individuals, corporations, estates, trusts, partnerships, associations, and state agencies are all “persons” who may be “developers” under this statute. G.S. 153A-349.2(10); 160A-400.21(10).

22. G.S. 153A-349.2(2); 160A-400.21(2). The court in *National Parks and Conservation Ass’n v. County of Riverside*, 50 Cal. Rptr. 2d 339, 349–51 (Cal. Ct. App. 1996), addressed the question of whether a party to a development agreement had sufficient legal or equitable interest in the property to qualify as a party. Kaiser Steel owned and operated a very large open pit iron ore mine 200 miles east of Los Angeles. After ceasing mining operations, the company (along with a separate mine reclamation company) in 1988 proposed to operate the nation’s largest sanitary landfill at the site. The landfill project required a land exchange with the federal government. The company entered into the development agreement with the county for the project, with a condition that the agreement not be effective or recorded until and unless the company had fee title to the land subject to the proposed land exchange with the federal government. As the agreement was not effective until the company acquired fee title, the court ruled that the company had a sufficiently defined and adequate interest in the property to permit it to be a party to the agreement. Given the numerous lawsuits and the changing nature of landfill needs, as of 2009 the landfill project was still not operational.

23. G.S. 153A-349.2(3); 160A-400.21(3).

local government is the city or county with land use regulatory jurisdiction.²⁴

In some instances utility services for a development subject to a development agreement may be provided by a third party, such as a separate water or sewer utility that is not a unit of the local government that is a party to the agreement. This raises the question of whether that utility can be a party to the development agreement. The statute is somewhat ambiguous on this point. Most of the statutory provisions in the development agreement statutes are clearly limited to city and county governments. The definitions specify that “local governments” are city and county governments. The subsequent provisions consistently refer to local governments when setting the requirements for adoption and implementation of development agreements. However, G.S. 153A-349.1(b) and 160A-400.20(b) provide that “Local governments *and agencies* may enter into development agreements with developers” (emphasis added). While this is the only place in the development agreement statute that the undefined term “agencies” is used, it does raise the question of whether the term is broad enough to include an independent water or sewer authority created pursuant to G.S. Chapter 162A. Since these authorities have independent boards, it is unlikely that they are agencies of local governments. These authorities generally have the contractual authority to enter into agreements with developers and local governments on allocation of capacity,²⁵ and a development agreement could certainly include references to such contracts and contingencies based upon implementation of those contracts.

24. G.S. 153A-349.2(8); 160A-400.21(8).

25. *See, e.g.*, G.S. 162A-6(11). Similarly, a project subject to a development agreement may include road improvements that require the approval (or participation) of the North Carolina Department of Transportation (NCDOT). While NCDOT cannot be a party to the development agreement, the agreement can include references to or be contingent upon NCDOT action. *See* the Chapel Hill and Wilmington development agreements summarized below for examples of how utility and transportation agreements can be addressed.

Mandatory Contents of Agreements

The mandatory contents of a development agreement are specified by statute.²⁶ Each agreement must contain each of these provisions.

Property Description

The agreement must include a legal description of the property covered by the agreement and the names of its legal and equitable owners.

Duration

Each development agreement must explicitly specify the duration of the agreement.

The maximum term of an agreement is twenty years.²⁷ A city or county may elect to enter into an agreement with a shorter duration. This was one of the few aspects of the statute that was actively debated during the legislative process. Many in the planning and local government community proposed a shorter maximum duration, such as ten or fifteen years. The concern was that a lengthy period increased the likelihood of adverse unanticipated events or changing physical conditions, as well as inappropriately limiting the ability of future local elected officials to apply new regulations deemed

26. G.S. 153A-379.6; 160A-400.25. These mandatory requirements apply to all formal development agreements adopted pursuant to this statute. Other forms of development approvals, such as site plans, special and conditional use permits, and subdivision plats often also include conditions that are negotiated between the developer/land owner and local government. These other agreements, however, are not development agreements as defined by this statute and discussed in this report. For a case distinguishing development agreements from agreements in other development approvals, see *Povey v. City of Mosier*, 188 P.3d 321 (Or. Ct. App. 2008) (agreement to construct road as condition of subdivision approval need not include all statutorily mandated content of a development agreement).

27. G.S. 153A-379.4; 160A-400.23. Virtually all of the development agreement statutes in other states require inclusion of an express duration within each agreement, but many do not set a maximum term. Among those that do, Florida limits agreements to twenty years, Oregon to fifteen years in cities and seven years in counties, and Virginia to fifteen years with ten-year extensions. South Carolina uses a sliding scale that relates maximum duration to the size of the project, limiting projects with under 250 acres to five years, projects with 250 to 1,000 acres to ten years, projects with 1,000 to 2,000 acres to twenty years, and setting no limits on those with over 2,000 acres.

necessary to address changing public needs. The development community contended that the period should match the build-out period of large, complex, multiphased projects. The ultimate resolution was to leave the maximum period at twenty years but to allow each local government the option of using a shorter period as they deemed appropriate on a case-by-case basis.

In the event a local government and developer want a longer period, they are explicitly authorized to enter subsequent development agreements that extend the original duration period.²⁸ Each such extension, however, is a separate development agreement that must be separately noticed and adopted. Each individual agreement is subject to the maximum twenty-year term.

The statutes also address the impact of a change in jurisdiction on the continuation of a development agreement. During the legislative debate, for example, cities expressed concern that a county might approve a very lengthy development agreement with development standards considerably different than municipal standards, leaving the city to deal with long-term substandard development if the property were annexed midway through the project development. The resolution of this concern was the inclusion of a provision stating that where there is a change in local jurisdiction for the property subject to a development agreement (such as through annexation or extension of an extraterritorial boundary), the agreement is valid for the duration of the agreement or eight years from the date of change in jurisdiction, whichever is earlier.²⁹

Development Plan

The development agreement must describe the proposed development of the property in some detail. The level of detail required is substantially greater than that required for a rezoning petition and, in some respects, the information required is more detailed than the information often required for a special or conditional use permit application.

The development agreement must address the types of land uses, population density, building types, intensity of uses, placement of buildings on the site, and building designs.³⁰ This will often

28. G.S. 153A-379.6(a)(2); 160A-400.25(a)(2).

29. G.S. 153A-379.10; 160A-400.29.

30. G.S. 153A-349.6(3); 160A-400.25(3).

involve use of exhibits or attachments, such as site plans or sample building elevations. These exhibits need to be explicitly referenced and incorporated into the agreement. Given the duration of these agreements and the reasonable likelihood that those directly involved in development agreement approval may not be available to resolve questions in the latter stages of the development, careful attention to specificity and record keeping on this point is important for practical as well as legal reasons.

Public Facilities

Cost sharing on infrastructure provision is often an essential aspect of the negotiations, and the provisions for cost sharing must be explicitly set forth in the development agreement. The agreement must include a description of any new public facilities that will serve the development, a specification of who will provide them, and a schedule of when they will be provided to ensure that they will be available concurrently with the impacts of the development.³¹ The last point is of particular interest to those local governments with adequate public facility regulatory requirements.

The statute broadly defines the “public facilities” that must be addressed. They include “major capital improvements” for transportation, water, sewer, solid waste, drainage, schools, parks and recreation, and health systems and facilities.³²

If the local government is to provide infrastructure improvements to support the development, the agreement must specify that the delivery date of the public facilities will be tied to the successful performance of the developer, such as successfully meeting projected development schedules.³³

If the obligation of the local government to provide infrastructure constitutes debt, the city or county must comply with all constitutional and statutory provisions regarding debts at the time of the obligation to incur the debt.³⁴ It is relatively rare that a development agreement in and of itself will constitute a debt and thereby trigger this requirement. In most instances, if the agreement includes a promise of the local government to provide infrastructure and provision of that infrastructure requires debt

financing, the local government will issue the debt as a separate transaction at the time it provides the infrastructure. The development agreement can be conditioned upon the local government successfully following all legally required steps to accomplish this.

Where there are phased cost-sharing agreements, the development agreement can detail when payments will be made, when improvements will be installed, reimbursement for excess capacity, and similar practical issues. These provisions can also address issues such as allocation of utility capacity.

Dedications

If there is to be any dedication or reservation of land for public purposes, it must be set out in the agreement.³⁵ Street and utility rights-of-way, park and open space dedications, greenways, and school sites need to be addressed as applicable. Similarly, any provisions to protect environmentally sensitive lands are required to be included. This would include buffers, stormwater provisions, and the like.

Permits Required

The agreement must also include a list of all local regulatory approvals required.³⁶ The list is to include those approvals already secured and those yet to be secured. However, the failure to include a permit on this list does not relieve the developer of the necessity of securing it or of complying with the regulation omitted. This listing requirement is therefore largely educational in nature and serves to ensure that the parties have a common understanding of the additional local regulatory approvals required.

Conditions

The agreement must explicitly include any conditions, terms, or restrictions on the development.³⁷ The authority to impose conditions is broad. Conditions can be imposed if the city or county deems them necessary to protect the public health, safety, and welfare. The statute specifically mentions authority to impose provisions for preservation and restoration of historic structures. There are, however, important statutory limitations on conditions, as noted below.

31. G.S. 153A-349.6(4); 160A-400.25(4).

32. G.S. 153A-379.2(12); 160A-400.21(12).

33. G.S. 153A-379.5; 160A-400.24.

34. G.S. 153A-379.12; 160A-400.31.

35. G.S. 153A-379.6(a)(5); 160A-400.25(a)(5).

36. G.S. 153A-379.6(a)(6); 160A-400.25(a)(6).

37. G.S. 153A-379.6(a)(7); 160A-400.25(a)(7).

Development Schedule

The agreement must include a development schedule, including commencement and interim completion dates at five-year (or more frequent) intervals.³⁸ The agreement may also include phases for the development and other defined performance standards to be met by the developer.

Coordination

If more than one local government is a party to the agreement, the agreement must specify which local government is responsible for overall administration of the agreement.³⁹

Limitations on Agreements

Size of Development Area

A project must have a minimum land area of 25 developable acres to be considered for a development agreement.⁴⁰ Wetlands, mandatory buffers, unbuildable slopes, and other portions of the property precluded from the development at the time of application are not to be considered in establishing the minimum acreage. A review of federal, state, and local regulatory programs applicable to the particular site at the time of application is necessary to make this determination.

Taxes and Fees

The agreement cannot impose any tax or fee not otherwise authorized by law.⁴¹ This limitation also specifies that an agreement does not expand local regulatory authority or authorize any local commitments other than those otherwise authorized by law.

38. G.S. 153A-379.6(b); 160A-400.25(b). Failure to meet a commencement or completion date may not, in and of itself, be deemed a material breach of the agreement. Such a failure is to be judged on the “totality of the circumstances” to determine whether it constitutes a breach.

39. G.S. 153A-379.6(c); 160A-400.25(c).

40. G.S. 153A-379.4; 160A-400.23. One proposed amendment that has already been suggested for the statute is a reduction in the minimum acreage to allow the substantial impacts of dense, complex urban projects with smaller footprints to be managed with a development agreement. Thomas E. Terrell Jr., *Development Agreements: Time to Improve the Legislation*, LAND USE QUARTERLY, Sept. 2009, at 1, 7. Most of the other state development agreement statutes do not include a minimum size. South Carolina does require a minimum of 25 acres of high ground.

41. G.S. 153A-379.1(b); 160A-400.20(b).

This provision was included to address the development community’s concerns that local governments might use a potential development agreement as leverage to secure financial contributions or commitments for undertakings beyond those currently authorized by the statutes. Not surprisingly, there was a specific desire that local governments not be allowed to trade development agreement approval for new impact fees.⁴²

A fundamental question concerns the impact of this limitation on matters voluntarily offered by the developer.⁴³ The ability to negotiate and make

42. An example is school impact fees. While several counties have secured authority to impose impact fees for school construction, there is not statewide authority to do so. In *Durham Land Owners Ass’n v. County of Durham*, 177 N.C. App. 629, 630 S.E.2d 607, *review denied*, 360 N.C. 532, 633 S.E.2d 678 (2006), the court held that the county had no implied authority to impose a school impact fee. It has long been common, however, for developers to voluntarily make contributions of land or funds for schools, particularly in association with review of large residential developments where a nearby new school is often considered mutually beneficial for the developer and the government. Another example is the scope of off-site road improvements. In *Buckland v. Town of Haw River*, 141 N.C. App. 460, 541 S.E.2d 497 (2000), the court held that the subdivision enabling statute (G.S. 160A-372) allows collection of fees for street construction outside of the bounds of the subdivision but does not allow mandates for construction of a street outside of the land area included within the subdivision.

43. The question of how “voluntary” a commitment is in these negotiations is always present. A more appropriate question is whether there was unlawful duress in securing the commitment. In *Meredith v. Talbot County*, 560 A.2d 599 (Md. App. 1989), the developer of a subdivision agreed to forgo development of specified lots within a proposed subdivision to protect a bald eagle nesting area in return for prompt approval of the subdivision. The court held that the agreement was not made under duress and the owner could not subsequently challenge the condition. *See also* *McClung & Tapps Brewing v. City of Sumner*, 549 F.3d 1219 (9th Cir. 2008) (developer’s agreement to provide oversized drainage pipe in return for waiver of facilities fee upheld under state contract law, not an unconstitutional exaction).

Unlike other land use regulatory provisions, a development agreement is not a permit, determination, or adjudication but is rather a negotiated contract with benefits and burdens for both parties. Several factors militate against undue duress in these situations. Generally the property can be developed for some reasonable use (though perhaps less desirable or profitable for the owner)

voluntary yet binding agreements about the scope of developer and governmental cost sharing on public improvements—without being bound by the limitations of formally imposed regulatory exactions⁴⁴—is nationally considered one of the principal reasons for the parties to use a development agreement.⁴⁵ The North Carolina development agreement statutes acknowledge this basis for development agreements. The findings section of the statute notes that these

without a development agreement. Either party is free to withdraw from the negotiation for any reason at any time. The conditions must address and payments must be devoted to lawful public purposes. The terms of the agreement, including all conditions and payments, must be subject to a public hearing and approval by an elected governing board. These, however, are policy and process considerations that reduce the potential for undue duress and have modest influence on the underlying statutory interpretation question.

44. In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the Court held that regulatory exactions are constitutionally limited to those that are reasonably related to the impacts of the development and are roughly proportional in degree to those impacts. However, the Court in *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005), held that these constitutional limitations apply only to adjudicative land use exactions, which would not affect development agreements. See generally David L. Callies & Julie A. Tappendorf, *Unconstitutional Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities After Nollan and Dolan*, 51 CASE WESTERN RESERVE L. REV. 663 (2001); Michael H. Crew, *Development Agreements After Nollan v. California Coastal Commission*, 22 URB. LAW. 23 (1990); Catherine Lockhard, Note, *Gaining Access to Private Property: The Zoning Process and Development Agreements*, 79 NOTRE DAME L. REV. 765 (2004).

45. The California statutes expressly exempt fees set in development agreements from the landowner protections relative to development exactions in the state's Mitigation Fee Act. Cal. Gov't Code §§ 66000 and 66020 (West 2009). By contrast, the Washington statutes expressly provide that the development agreement statutes do not authorize imposition of impact fees, inspection fees, dedications, or any other financial contribution or mitigation measure unless expressly authorized by other provision of law. Wash. Rev. Code Ann. § 36.70B.210 (West 2009). In *Nolte v. City of Olympia*, 982 P.2d 659 (Wash. Ct. App. 1999), the court held that this statute prevented the city from including impact fees in a utility extension agreement (which had also been adopted as a development agreement) for an extraterritorial parcel because state law only authorized the city to apply impact fees within its corporate limits.

projects “often create potential community impacts . . . that are difficult or impossible to accommodate within traditional zoning processes.”⁴⁶

One possible resolution to this dilemma is the following provision in the development agreement statutes: “The development agreement also may cover any other matter not inconsistent with this Part.”⁴⁷

A number of developers and local governments have concluded that this provides adequate authority to fully negotiate voluntary cost-sharing arrangements in development agreements. The rationale is that voluntary payments are not a “tax or fee not authorized by law” and that cooperatively addressing the costs of public improvements to deal with the impacts of approved development is consistent with the express purposes of the statute. Any voluntary payment incorporated into a development agreement is limited to what the parties in good faith find to be mutually agreeable, in the public interest, and not contrary to express restrictions of state law.⁴⁸ It may

46. G.S. 153A-349.1; 160A-400.20(a). The statutory findings also note the need to integrate public capital facilities planning and construction with the phasing of private development and the need to better structure and manage development approvals to ensure the integration of those approvals into local capital facilities programming through flexible negotiation. *Id.*

47. G.S. 153A-379.6(d); 160A-400.25(d). Also, one reading of G.S. 153A-379.1(b) and 160A-400.20(b) is that they limit the *types* of taxes and fees that may be imposed to those authorized by law but are silent as to negotiated cost-sharing agreements.

48. Several courts have held that promises (and agreements to pay fees) voluntarily entered into in good faith and with consideration cannot be subsequently challenged as an unconstitutional taking. In *Leroy Land Development Corp. v. Tahoe Regional Planning Agency*, 939 F.2d 696, 698 (9th Cir. 1991), the Ninth Circuit held that the developer of a condominium project along Lake Tahoe who had agreed to off-site mitigation measures could not subsequently bring a takings challenge to the agreed-upon condition. In *Xenia Rural Water Ass'n v. Dallas County*, 445 N.W.2d 785 (Iowa 1989), the court held that a setback requirement negotiated by the parties could not be a taking. In *Rischon Development Corp. v. City of Kellor*, 242 S.W.3d 161 (Tex. App. 2007), the court held that a developer cannot consent to a development agreement provision and then challenge that provision as a takings under the state constitution.

However, the New Jersey court in *Toll Bros., Inc. v. Board of Chosen Freeholders*, 944 A.2d 1 (N.J. 2008), held that state law limiting a developer's liability for off-site improvements to those necessitated by the development and to

also allow the local government and developer latitude to negotiate and address the full range of development issues that typically arise—traffic, utilities, neighborhood and environmental impacts—as well as issues where the traditional regulatory regime is less certain, such as affordable housing, school construction, off-site improvements, and the like.

If these cost-sharing arrangements are critical to the agreement, the parties should consider expressly addressing the possible invalidation of that portion of their agreement until the legal uncertainty about the extent to which they can be enforced is resolved. For example, rather than the typical severability

no more than the pro rata share of those costs limited the extent to which a development agreement could bind an owner to pay for costs beyond a project's proportional share. In this case a subsequent purchaser of a large mixed use development entered a development agreement that incorporated the prior owner's commitments (that were included in conditions for approval of various prior subdivision and zoning permits) for off-site road improvements. Upon substantially reducing the size of the proposed project, the owner sought a modification of the off-site road improvement conditions in the development agreement. The county refused, contending that even though no longer tied to the impacts of the projects, the development agreement was a binding contract that could not be modified without county consent (which was withheld). New Jersey statutes did not provide explicit authorization for development agreements other than within the zoning enabling statute. Therefore, the court held that development agreements were ancillary to zoning authority and thus subject to the same limits on off-site street improvements. In *Douglas County Contractors Ass'n v. Douglas County*, 929 P.2d 253 (Nev. 1996), the county attempted to apply an ordinance requiring payment of fees to support school construction to a subdivision that had a previously approved development agreement. The court held the fee ordinance to be a tax subject to and not permitted by the state's impact fee legislation. The court then held that the provision in the state's development agreement statute allowing application of subsequently adopted nonconflicting ordinances did not provide independent authority to impose this tax.

In North Carolina there is explicit authority for development agreements independent of the zoning enabling statute and no comparable statutory provision on off-site transportation costs. Also note that in North Carolina a landowner cannot accept the benefits of a regulatory approval and subsequently challenge the terms of that approval. *River Birch Assocs. v. City of Raleigh*, 326 N.C. 100, 118–19, 388 S.E.2d 538, 548–49 (1990); *Convent of Sisters of St. Joseph v. City of Winston-Salem*, 243 N.C. 316, 90 S.E.2d 879 (1956).

clause, the agreement could include a provision that the judicial invalidation of any of the agreed-upon cost-sharing provisions shall invalidate the entire agreement.⁴⁹

Building Codes

The agreement may not exempt the developer from the building code or any local housing code that is not part of the local government's development ordinances.⁵⁰

Current Laws

The development agreement must be consistent with the local laws in effect at the time of agreement approval.⁵¹ A development agreement cannot permit a use not allowed by the applicable zoning.⁵² While some states allow a development agreement to modify the underlying zoning, that is not the case in North Carolina.⁵³ Thus it is important for the development described and authorized in the agreement to be permissible under the local development

49. The parties are well-advised to explicitly discuss the implications of potential financial difficulties (including potential insolvency, bankruptcy, and similar contingencies) that may limit the ability of any party to meet its financial obligations under the agreement and to specify what the consequences of such an occurrence are to be.

50. G.S. 153A-379.13; 160A-400.32.

51. G.S. 153A-379.7; 160A-400.26.

52. See *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 68 Cal. Rptr. 3d 882 (Cal. Ct. App. 2007). In this case a landowner sought approval to open a business hosting weddings and similar events on a vineyard located in an exclusively agricultural zoning district. The county refused to amend the text of the zoning ordinance to allow this as a permitted or conditional use in the district, but it did enter a development agreement allowing the use. The court affirmed a ruling that the agreement was *ultra vires* and *void ab initio* because it violated the statutory requirement for uniformity of regulations within a zoning district. North Carolina has a similar uniformity requirement. G.S. 153A-342(c), 160A-382(c).

53. A local government should also take care not to promise an amendment to the ordinances in return for developer concessions in the agreement. Such a quid pro quo would raise serious concern about illegal contract zoning. *Morgan Co., Inc. v. Orange County*, 818 So. 2d 640 (Fla. App. 2002). If an ordinance amendment is needed, it must precede rather than follow a development agreement.

regulations in effect at the time of adoption of the agreement.

There is, however, no provision in this statute that prohibits a local government from negotiating with a landowner, rezoning the property to an appropriate zoning district, and then entering into a development agreement to lock in that rezoning.⁵⁴ Though the rezoning and development agreement are legally separate actions, if they are made in concert and essentially concurrently (albeit with the rezoning being a separate and initial vote), the practical effect is for all involved to view the legally distinct actions as a package deal. Given that the General Assembly and the courts have both explicitly authorized use of conditional zoning with site-specific development requirements, incorporation of a development agreement into that mix is not a legally significant difference. The early practice suggests that such rezoning-development agreement packages may become common.⁵⁵

Post Agreement Provisions

Recordation

A development agreement must be recorded with the register of deeds in the county in which the property is located within fourteen days of approval.⁵⁶ The agreement is binding on all successors in interest to the parties of the agreement, including subsequent purchasers of the land.

Periodic Review

The local government must undertake a periodic review of the project (at least once a year) to verify compliance with the agreement.⁵⁷

54. Concurrent consideration of rezoning a parcel and a development agreement for a project on that site is a relatively common practice. *See, e.g.,* Smith v. City of Papillion, 705 S.W.2d 584, 596 (Neb. 2005).

55. If the property is rezoned as part of the development agreement discussion, the parties should give some consideration to the consequences should the project authorized by the agreement fail to come to fruition. For example, the rezoning may authorize some residual uses of the property that can be undertaken without a development agreement. An alternative is to mandate initiation of a process to again rezone the property should the authorized development not be initiated within a specified time.

56. G.S. 153A-379.11; 160A-400.30.

57. G.S. 153A-379.8; 160A-400.27.

Amendment

The statute makes provision for amendment, extension, and cancellation of the agreement. The parties may modify or cancel the agreement at any time by mutual consent.⁵⁸ Any major modification to a development agreement requires the same notice and hearing as required for initial approval.⁵⁹ While any individual agreement has a maximum term of twenty years, the parties may enter subsequent agreements that extend the original duration period.⁶⁰

The local ordinances in effect at the time of the agreement generally are to remain in effect for the life of the agreement, with specified exceptions. The exception is that subsequently enacted local ordinances and ordinance amendments can be applied for the same grounds applicable to permissible mandated amendment of site-specific and phased development plans.⁶¹ There are three types of changes that can be the basis for such a modification. First are those that have either landowner approval or that make the landowner financially whole. The landowner's consent must be in writing and, for the compensation option, the landowner must be compensated for the full costs of change (excluding reductions in property value). Second are those situations where there have been either inaccurate or material misrepresentations in the application or there are emergent serious threats to the public health, safety, and welfare. In both of these instances the grounds for amendment or revocation must be established by notice and hearing. Third is the enactment of a category of general regulations not specifically aimed at the applicable property. This includes zoning rules that impose additional requirements but that do not affect the type or intensity of use at the site and the enactment of local regulations that are "general in nature and are applicable to all property subject to land-use regulation" by the jurisdiction.⁶²

Subsequently enacted state and federal law may more readily be incorporated into a development agreement. If a state or federal law or regulation

58. G.S. 153A-379.9; 160A-400.28.

59. G.S. 153A-379.6(b); 160A-400.25(b).

60. G.S. 153A-379.6(a)(2); 160A-400.25(a)(2).

61. G.S. 153A-379.7(b) and 160A-400.26(b) incorporate by reference the standards in G.S. 153A-344.1(e) and 160A-385.1(e) for permissible modification of rules applicable to approved site-specific development plans.

62. G.S. 153A-344.1(e)(2) and 160A-385.1(e)(2).

precludes the anticipated development, the local government is specifically authorized to unilaterally modify the agreement to incorporate changes needed to secure compliance with state and federal regulatory changes. Examples would include changes needed for compliance with stormwater rules, erosion and sedimentation control, wetland protection, and the like.

Breach and Appeals

If a local government review indicates that the developer is in material breach⁶³ of the agreement, the local government must within a reasonable time provide notice of the breach (describing and documenting its nature with reasonable particularity) and provide the developer a reasonable time to cure the breach.⁶⁴ If the breach is not cured, the local government may unilaterally terminate or modify the agreement. The local government decision to do so may be appealed to the board of adjustment under the normal zoning appeals provisions.⁶⁵ The statutes do not expressly address an alleged breach by the local government.

The statute does not specify how other appeals regarding a development agreement, such as a disagreement among the parties as to its interpretation,⁶⁶ are to be handled. In all likelihood, the

63. In *Bollech v. Charles County*, 69 Fed. Appx. 178, 181 (4th Cir. 2003), the court held that the developer's failure to build the approved development and failure to install the required utility improvements by the time specified in the development agreement discharged the county from any enforceable contractual obligations. In *Leon County v. Gluesenkamp*, 873 So. 2d 460 (Fla. App. 2004), the court held that the county's refusal to issue building permits pursuant to a development agreement was not a breach where a court injunction had directed a moratorium on these permits.

64. G.S. 153A-379.8(b); 160A-400.27(b). The court in *Legacy Group v. City of Wasco*, 131 Cal. Rptr. 2d 460 (Cal. App. 2003), held that the statute of limitations applicable to contract disputes applies to an alleged breach of a development agreement.

65. G.S. 153A-379.8(c); 160A-400.27(c).

66. For an example of a dispute regarding interpretation of the terms of a development agreement, see *Building Industry Ass'n of Central California v. City of Patterson*, 90 Cal. Rptr. 3d 63 (Cal. Ct. App. 2009). The agreement required the developer of a subdivision to pay an in-lieu fee for affordable housing. The fee at the time the agreement was approved in 2003 was \$734 per housing unit, due upon

appropriate process is to follow the standard approach used for zoning. That is, the local government administrator charged with implementation of the development agreement would make a formal, binding written interpretation, which could then be appealed to the board of adjustment and thereafter to judicial review in superior court.⁶⁷ The statutes, however, are not explicit on this point, so the question of whether an appeal to the board of adjustment is a necessary step to exhaust administrative remedies prior to judicial review is an open question. Thus it would be prudent for a local government that adopts an ordinance setting procedures for development agreements to specifically address the process for administrative appeals in that ordinance.⁶⁸ It is

issuance of each building permit for a nonaffordable unit. However, the city was in the process of preparing an updated analysis of its affordable housing fee and the parties stipulated in the agreement that the developer would be bound by the revised fee schedule, "providing the same is reasonably justified." Following a new study of affordable housing needs that used a different model for allocation of costs, the city in 2006 adopted a new fee schedule that increased the per unit affordable housing fee to \$20,946. The court held that an interpretation of the development agreement's term that the fee be "reasonably justified" was a question of law subject to the ordinary rules of contract interpretation. The court held that an objectively reasonable person would read the term to mean any increase in the fee would conform to existing law. The court then held that the fee increase did not meet the standards in California law for such fees. *See also* *Sprenger, Grubb & Assoc., Inc. v. City of Hailey*, 903 P.2d 741 (Id. 1995) (dispute as to amount of commercial development allowed by development agreement for property that was subsequently downzoned).

67. In *Queen Anne's Conservation, Inc. v. County Commissioners of Queen Anne's County*, 855 A.2d 325, 327 (Md. 2004), the court held that a third party challenging a development agreement must first appeal to the board of adjustment to exhaust administrative remedies prior to seeking judicial review. Under Maryland law, the court held that the decision of the county to enact an ordinance allowing and providing for development agreements was legislative but the decision under those adopted ordinances to approve an individual agreement was an administrative decision. There is a substantial body of law in North Carolina regarding zoning appeals, board of adjustment review, exhaustion of administrative remedies, and subsequent judicial review. *See* DAVID W. OWENS, *LAND USE LAW IN NORTH CAROLINA* 137-42, 265-75 (2006).

68. G.S. 153A-322(d) and 160A-363(d) specifically allow counties and cities to adopt procedures and employ

also not uncommon for the terms of each development agreement to address the process for resolving disputes, such as mandated mediation in the event of a disagreement regarding interpretation of the agreement.

Disputes over interpretation of agreements should, however, be distinguished from challenges to the validity of the agreement. As the decision on adoption of the agreement is legislative in nature, a board of adjustment would have no jurisdiction to hear that matter and those appeals would lie directly with the courts.⁶⁹

Enforcement

Unlike statutes in some other states,⁷⁰ the North Carolina development agreement statute does not contain provisions on mechanisms for enforcement and remedies beyond the provisions regarding a breach of the agreement. Therefore it is important that these issues be addressed in detail in the agreement itself.

Many agreements in other states provide for specific performance and many limit monetary damages for breach. Agreements often also include express provisions regarding payment of attorneys' fees in the event of a conflict.

Given the consequences for all parties, the agreement should define what constitutes a material breach and the remedies available to both parties in the event of breach.

Change in Ownership or Jurisdiction

Given the duration of development agreements, the original parties to the agreement may be supplanted due to changes in ownership or local government jurisdiction. The land owner who negotiates and executes the agreement may well sell all or part of the

organizational structures authorized by law to all aspects of their development regulations.

69. The declaratory judgment statute, G.S. 1-253 through 1-267, is the appropriate vehicle to challenge the constitutionality, validity, or construction of ordinances. As the decision to adopt a development agreement is made by ordinance, this would be the route to challenge the constitutionality or validity of an agreement. That is to be distinguished from interpretation of the terms of the agreement (which is not an ordinance).

70. See, e.g., Cal. Gov't Code § 65865.4 (West 2009); Fla. Stat. Ann. § 163.3243 (West 2009); Haw. Rev. Stat. § 46-127(a) (2009); La. Rev. Stat. Ann. § 33:4780.26 (2009); Md. Code Ann., Land Use, § 66B-13.01(l) (West 2009).

property during the term of the agreement. Local jurisdiction can shift due to annexation or extension of municipal extraterritorial jurisdiction. For the most part these changes in ownership or jurisdiction do not affect the rights or obligations contained in the agreement. The law specifically provides that the "burdens of the agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement."⁷¹

The statute also provides for limited modification if local government jurisdiction for the property subject to the agreement changes.⁷² The local government assuming jurisdiction may modify or suspend the agreement if needed to protect the residents of the area within the agreement or elsewhere in the jurisdiction from a condition dangerous to health or safety.

Early Experience of North Carolina Cities and Counties Survey

The School of Government periodically surveys cities and counties in North Carolina regarding zoning practices. In 2002 we asked about experience with zoning variances.⁷³ In 2004 we asked about ordinances adopted,⁷⁴ experience with special use permits,⁷⁵ and municipal extraterritorial jurisdiction.

71. G.S. 153A-349.11; 160A-400.30. In *Home Builders Ass'n of Central Arizona v. City of Maricopa*, 158 P.3d 869 (Ariz. 2007), the court held that a similar provision in Arizona law precluded imposition of additional fees by a newly incorporated city that assumed jurisdiction of property subject to a prior county development agreement where the agreement expressly provided that no additional fees would be imposed. See also *Alachua County v. Florida Rock Indus.*, 834 So. 2d 370 (Fla. Dist. Ct. App. 3003) (city annexing property subject to development agreement is successor in interest to county)

72. G.S. 153A-379.10(b); 160A-400.29(b).

73. DAVID OWENS AND ADAM BRUEGGEMANN, A SURVEY OF EXPERIENCE WITH ZONING VARIANCES (Chapel Hill: School of Government Special Series No. 18, Feb. 2004).

74. DAVID W. OWENS AND NATHAN BRANSCOME, AN INVENTORY OF LOCAL GOVERNMENT LAND USE ORDINANCES IN NORTH CAROLINA (Chapel Hill: School of Government Special Series No. 21, 2006).

75. DAVID W. OWENS, SPECIAL USE PERMITS IN NORTH CAROLINA ZONING (Chapel Hill: School of

Table 1. Survey Response by Jurisdiction Population

Population	Number of Jurisdictions	Total Responding	Response Rate
Municipalities	547	270	49%
1–999	224	74	33%
1,000–9,999	248	140	56%
10,000–24,999	41	27	66%
> 25,000	33	29	88%
Counties	100	77	77%
1,000–24,999	37	24	65%
> 25,000	63	53	84%
All Jurisdictions	647	347	54%

tion.⁷⁶ In 2006 we surveyed North Carolina local governments about zoning amendments,⁷⁷ the number and type of zoning districts in ordinances, use of design standards, and experience with traditional neighborhood design projects.⁷⁸

The 2008 survey of practices in land development regulations focused on three topics. We asked about the current experience the state's cities and counties had with comprehensive planning, development moratoria, and development agreements.⁷⁹ Requests to complete the survey were distributed to all of North Carolina's 547 municipalities and all 100 counties. The request was sent to each jurisdiction's planning director if such a person could be identified. For jurisdictions without a planning director, the request was mailed to (in order of priority) the zoning administrator, the manager or administrator, the clerk, or the chief elected official. Each jurisdiction was asked to have the survey completed by the person within the jurisdiction who most directly

works with the jurisdiction's land development regulations.

A new aspect of the survey in 2008 was the provision of an online option for survey responses. We posted the survey online and sent postcards to each jurisdiction in November 2008 with instructions on how to log in and complete the survey. Local governments were also given the option of requesting a paper copy of the survey. In December 2008 an e-mail reminder was sent to all jurisdictions that had not responded and for which e-mail addresses could be found. In January 2009 a paper copy was mailed to all nonresponding jurisdictions. A final call for responses was e-mailed or faxed to nonresponding jurisdictions in February 2009.

The response rate was relatively high and represents a strong cross-section of cities and counties in the state.⁸⁰ In all, responses were received from 347 of the cities and counties in the state.⁸¹ A breakdown of the response rate by city and county and jurisdiction population size is provided in table 1.

The overall response rate was 54 percent of all of the local governments in the state. The largest group of nonrespondents was cities with populations under 1,000. Given that these small towns have historically not had development regulation programs of their own, their failure to respond is not surprising. Responses from counties and from jurisdictions with larger populations were particularly strong. Eighty-eight percent of the cities with populations over 25,000 responded, including all of the cities with populations over 100,000. Prior surveys indicate that just over 500 cities and counties in the state have adopted zoning.⁸² Thus this survey captures responses from a substantial majority—likely on the order of 70 percent—of those cities and counties that are actively engaged in land development regulation.

Government Special Series No. 22, 2007).

76. DAVID W. OWENS, *THE NORTH CAROLINA EXPERIENCE WITH MUNICIPAL EXTRATERRITORIAL PLANNING JURISDICTION* (Chapel Hill: School of Government Special Series No. 20, 2006).

77. DAVID W. OWENS, *ZONING AMENDMENTS IN NORTH CAROLINA* (Chapel Hill: School of Government Special Series No. 24, 2008).

78. DAVID W. OWENS AND ANDREW STEVENSON, *AN OVERVIEW OF ZONING DISTRICTS, DESIGN STANDARDS, AND TRADITIONAL NEIGHBORHOOD DEVELOPMENT IN NORTH CAROLINA ZONING ORDINANCES* (Chapel Hill: School of Government Special Series No. 23, 2007)

79. A copy of the relevant portion of the survey instrument is attached as appendix 1.

80. A list of responding jurisdictions is set out in appendix 2.

81. An additional four jurisdictions (all municipalities with populations under 10,000) opened the online survey but made no responses beyond the name of the jurisdiction and person responding. As these four jurisdictions made no substantive responses to survey questions, they were deleted from the data and counted as nonrespondents.

82. The 2006 survey reported that 433 municipalities and 76 counties in the state had adopted zoning ordinances. DAVID W. OWENS, *ZONING AMENDMENTS IN NORTH CAROLINA 3* (Chapel Hill: School of Government Special Series No. 24, 2008).

Table 2. Population of Responding Jurisdictions

	Total 2007 Population	Population of Responding Jurisdictions	Percent Responding
Municipalities	4,962,027	4,180,543	84%
Counties (unincorporated areas)	4,107,371	3,304,593	80%
Total	9,069,398	7,485,136	83%

The combined 2007 population of all responding jurisdictions totaled nearly 7.5 million, some 83 percent of the state's total population. The population of responding jurisdictions is set out in table 2. This number modestly understates the population of responding areas, as municipal extraterritorial areas are not included in the population figures used for municipalities, but those jurisdictions included reports of surveyed activity within their extraterritorial jurisdiction.

Several jurisdictions in North Carolina have combined city-county planning departments. Four sets of these jurisdictions submitted a single survey response that included consolidated data for the city and county involved (Chowan County and Edenton; Durham County and Durham; Forsyth County and Winston-Salem; and Lee County and Sanford). In addition, Charlotte included data for the small portion of Mecklenburg County that is not included within the extraterritorial jurisdiction of one of the county's municipalities. The responses of these five combined surveys are reported in the analysis below as municipal responses.

The percentages set out in the data reports below are based on the number of jurisdictions responding to a particular survey question.⁸³ Since all respondents did not answer every question, the indicated number of those actually responding to a particular query is noted in each table (indicated by $n=x$).

It is also important to note that the survey is based on the responses of the city or county staff person who most directly works with development regulations in each jurisdiction. While the survey

83. The initial data summary tables were prepared by D'Anna Wade, a graduate student in public administration at the University of North Carolina at Chapel Hill. She also coded the responses from those jurisdictions that chose to submit a paper survey response.

questions deal with objective measures, this insider perspective should be kept in mind regarding those responses.

Summary of Survey Responses on Development Agreements

Adoption of Development Agreements

Prior to 2006 there was no explicit statutory authority in North Carolina to use development agreements. Nonetheless, 10 percent of the responding jurisdictions (35 of 335 respondents) reported adoption of a development agreement prior to January 1, 2006. It is reasonable to assume that some of these agreements were not true "development agreements" as they are defined by the statutes (and therefore not the type of development agreements that are the subject of this report).

While consideration of use of the tool accelerated in the three years after adoption of the legislation authorizing these agreements, to date only a modest number of jurisdictions in the state have actually taken advantage of this opportunity. Thirty-two jurisdictions⁸⁴ reported adoption of a development agreement after January 1, 2006, and an additional thirty-nine reported that an agreement had been proposed but not yet adopted as of submission of the survey response. Ten percent of the responding jurisdictions used this tool in the first three years after its authorization. Another 12 percent had considered it but had not yet used it. These responses are shown in tables 3 and 4.

There is not a significant difference in the early use of development agreements between cities and counties, but there are substantial differences based on the populations of municipalities. While no mu-

84. While there is no way to be certain that all of the development agreements reported to have been adopted after January 1, 2006, were in fact "development agreements" as defined in this report, most appear to have been so given the additional information reported about the content of the agreements. Thirty-two jurisdictions reported adoption of a development agreement after January 1, 2006. The municipalities reporting adoption were Aberdeen, Apex, Benson, Concord, Conover, Cornelius, Davidson, Edenton, Fuquay-Varina, Garner, Holly Springs, Huntersville, Kannapolis, Kernersville, Knightdale, Locust, Louisburg, Mount Pleasant, Rolesville, Shalotte, Statesville, Washington, Wendell, and Wilmington. The counties reporting adoption of a development agreement were Bertie, Catawba, Harnett, Henderson, Jackson, Polk, and Swain.

Table 3. Number of Jurisdictions Adopting or Considering a Development Agreement after January 1, 2006 (N=335)

Jurisdiction Type by Population	Adopted	Proposed but Not Adopted	Neither Proposed nor Adopted
Municipalities	25	29	209
< 1,000	0	6	65
1,000–9,999	13	12	112
10,000–24,999	5	2	20
> 25,000	7	9	12
Counties	7	10	55
1,000–24,999	3	3	17
> 25,000	4	7	38
All Jurisdictions	32	39	264

municipalities with populations under 1,000 reported adoption of a development agreement, 25 percent of the cities with populations over 25,000 have already done so. There is a similar pattern with active consideration of future development agreements. Only 8 percent of cities with populations under 1,000 reported that a development agreement had been proposed but not yet adopted, while 32 percent of cities with populations over 25,000 reported this.⁸⁵

Of the city and county jurisdictions adopting development agreements, most—66 percent—have only adopted a single agreement. Four jurisdictions reported adoption of two agreements, three reported adoption of three agreements, and five reported adoption of four or more. Four of the five jurisdictions reporting adoption of four or more development agreements were cities with populations over 25,000.

85. Thirty-nine jurisdictions reported that they had considered but had not yet adopted a development agreement after January 1, 2006. The municipalities reporting consideration were Asheville, Atlantic Beach, Black Mountain, Blowing Rock, Bridgeton, Burlington, Chapel Hill, Clayton, Elkin, Faith, Foxfire Village, Gastonia, Halifax, Harrisburg, Havelock, Hertford, Hillsborough, Jacksonville, Long View, Marshall, Monroe, New Bern, North Wilkesboro, Princeville, Randleman, Sanford, Seaboard, Swansboro, and Wilson. The counties reporting consideration were Alexander, Brunswick, Camden, Duplin, Lincoln, Montgomery, Orange, Pender, Perquimans, and Union.

Table 4. Percentage of Jurisdictions Adopting or Considering a Development Agreement after January 1, 2006 (N=335)

Jurisdiction Population	Percent Adopted	Percent Proposed but Not Adopted
All Municipalities	10%	11%
< 1,000	0%	8%
1,000–9,999	9%	9%
10,000–24,999	19%	7%
> 25,000	25%	32%
All Counties	10%	14%
1,000–24,999	13%	13%
> 25,000	8%	14%
All Jurisdictions	10%	12%

The use of development agreements is gradually increasing as cities, counties, and landowners become familiar with the tool. Of the local governments reporting adoption of development agreements in the 2006 through 2008 period, four reported that their most recent agreement was adopted in 2006, nine reported their most recent agreement in 2007, and eleven reported their most recent agreement in 2008.⁸⁶ This trend to more recent adoption is especially the case with those jurisdictions reporting adoption of multiple agreements. Eight of the eleven responding jurisdictions with multiple development agreements reported that their most recent agreement had been adopted in 2008 or early 2009.

Scale of Adopted Development Agreements

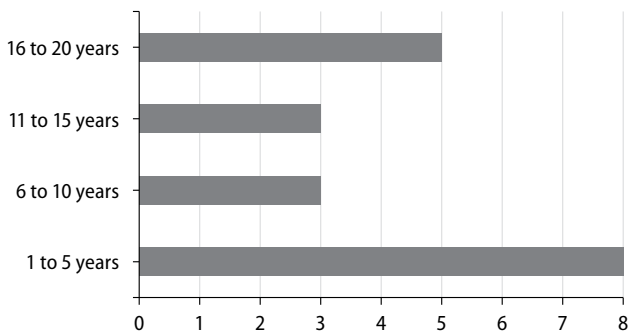
Term. Cities and counties appear to be linking the duration of the adopted development agreement to the scale of the particular project involved rather than simply using the maximum twenty-year term allowed by the statutes. Of the nineteen jurisdictions reporting the duration of their most recently adopted development agreement, eight reported a term of five years or less, three a term between six and ten years, three a term between eleven and fifteen years, and five a term between sixteen and twenty years. These responses are illustrated in figure 1.

86. While most of the survey responses were received in November–December 2008, some responses were received in January–February 2009. Two jurisdictions reported adoption of their most recent agreement in January 2009.

Table 5. Acres Included in Most Recent Development Agreement (N=29)

Number of Acres Included	Municipalities	Counties	Total	Percentage
25 to 49	6	1	7	24%
50 to 99	3	1	4	14%
100 to 499	8	2	10	34%
500 to 999	3	0	3	10%
1,000 or more	1	4	5	17%

Figure 1. Length of Most Recent Agreement

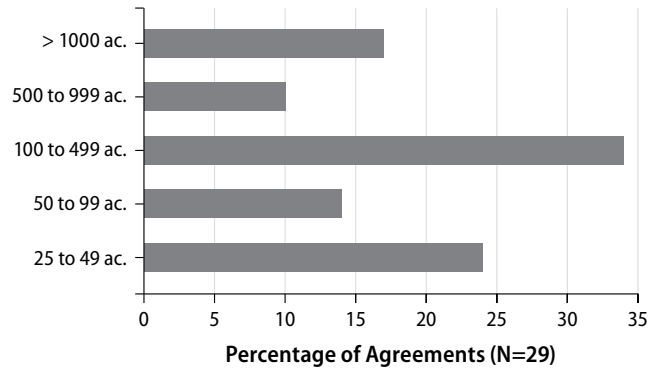


Acreage. The amount of land included with adopted development agreements varies significantly. When asked about the amount of land included within their most recently adopted development agreement, the most common response—from about one-third of the twenty-nine responding cities and counties—was 100 to 499 acres. But there was considerable variation on this question. A quarter of the jurisdictions reported that their most recent agreement covered 25 to 49 acres, while at the other end of the spectrum, 17 percent reported that the agreement was for a project of 1,000 acres or more. As might be expected, cities were more likely to use agreements for smaller areas, while counties were more likely to have projects over large land areas. Six of the seven agreements for less than 50 acres were in cities, while four of the five agreements covering 1,000 acres or more were in counties. These results are summarized in table 5 and figure 2.

Land Uses. Thirty-one jurisdictions reported the land uses authorized within their most recently adopted development agreement. Over 80 percent included residential development.⁸⁷ Half included

87. Fifty-five percent reported residential development and another 26 percent reported mixed use development that included a residential component.

Figure 2. Amount of Land Included



commercial land uses.⁸⁸ The third most common authorized use was office/institutional, which was included in about a third of the agreements.⁸⁹ Only one of the agreements included industrial development. Among the other land uses approved within development agreements were recreational facilities (golf courses, parks, and greenways); lodges; parking decks; places of worship; and utilities. Half of the agreements included at least two separate land uses and a quarter of the agreements authorized mixed use developments.⁹⁰

The amount of development included within approved agreements varied significantly, though very few small projects were involved. Of the agreements including residential uses, only a quarter of the agreements authorized fewer than 100 residential units. Half had more than 500 units (and a quarter had more than 1,000 units). Of the jurisdictions reporting the amount of commercial and office space included, only one reported that it authorized less than 100,000 square feet of space, with the remainder all authorizing 400,000 square feet or more (and two authorizing over a million square feet of commercial/office space).

88. Twenty-nine percent reported commercial development and another 26 percent reported mixed-use development that included a commercial component.

89. Sixteen percent reported office and institutional use and another 23 percent reported mixed use development that included an office/institutional component.

90. Of the jurisdictions reporting mixed use development, all of the mixed use developments included residential and commercial uses. All but one also included office uses. Among the “other” uses specified in approved mixed use developments were recreational facilities (golf courses, marina, and parks), civic uses, and hotels.

Table 6. Type of Public Facilities Provided by Developer (N=28)

Type of Public Facility or Improvement	Percentage
Construction of sewer capacity or lines	68%
Construction of water supply or lines	64%
Construction of roads or intersection improvements	64%
Land for sidewalks, greenways, bikeways	57%
Construction of sidewalks, greenways, bikeways	57%
Land for utility rights-of-way	54%
Land for road rights-of-way	50%
Land for park, recreation, or open space	46%
Construction of park or recreation facilities	21%
Land for other public facilities (fire, police, library, etc.)	18%
Land for transit (bus stops or other transit)	14%
Voluntary fee payment for public facilities	14%
Land for schools	7%
Construction of other public facilities (fire, police, library, etc.)	7%
Construction for transit (bus stops, pullouts, or other transit)	4%
Provision of affordable housing	4%
Construction of school buildings	0%
Other	7%

Improvements. One of the reasons for considering a development agreement is that the land owner, the local government, or both, are required to make substantial infrastructure investments to accommodate the planned development and both parties want assurances that both the development and the improvements will proceed at a mutually agreed-upon schedule. Survey respondents confirmed that this is the case in the early North Carolina experience with development agreements.

When asked if their most recently adopted development agreement required the developer to provide or contribute to public facilities to serve the development, 88 percent of the responding jurisdictions with approved development agreements indicated that this was the case. The improvements most frequently required to be provided by developers were water and sewer capacity or lines and road improvements, all of which were required by about two-thirds of the respondents. Provisions for sidewalks,

Table 7. Type of Public Facilities Provided by Unit of Government (N=9)

Type of Public Facility or Improvement	Percentage
Construction of water supply or lines	44%
Land for park, recreation, or open space	44%
Land for road rights-of-way	33%
Construction of sewer capacity or lines	33%
Construction of roads or intersection improvements	33%
Construction of sidewalks, greenways, bikeways	33%
Land for utility rights of way	33%
Construction of park or recreation facilities	22%
Land for sidewalks, greenways, bikeways	11%
Land for other public facilities (fire, police, library, etc.)	11%
Construction of other public facilities (fire, police, library, etc.)	11%
Land for transit (bus stops or other transit)	0%
Construction for transit (bus stops, pullouts, or other transit)	0%
Provision of affordable housing	0%
Land for schools	0%
Construction of school buildings	0%
Other	22%

greenways, and bikeways were also very common, as were provisions for utilities, roads, and parks, recreation facilities, and open space. Table 6 summarizes the frequency of various types of improvements and contributions required to be made by the developer.

It is far less common, but not rare, for the local government to also commit in a development agreement to provide specified public facilities needed to support the authorized development. Twenty-eight percent of the jurisdictions reporting adoption of a development agreement indicated that their most recent agreement included provisions requiring the unit of government to provide public facilities. Table 7 summarizes the frequency of various types of improvements and contributions required to be made by the unit of government.

Legal Assistance. Legal assistance to the local government in preparing and reviewing development agreements is most commonly provided by the city or county attorney. Eighty-two percent of

the jurisdictions responding indicated that their city or county attorney provided these legal services, 11 percent used outside counsel, and 7 percent reported some other arrangement.

Selected Examples of Early Use in North Carolina

Below are three brief case summaries of early use of development agreements for large-scale developments in North Carolina. The first is a 2007 agreement for a mixed use project on more than 2,000 acres in Catawba County. The second is a 2009 agreement for a satellite mixed use university campus on a 1,000-acre site in Chapel Hill.⁹¹ The third is for a largely residential mixed use project on a 1,400-acre site in Wilmington.

Catawba County—Crescent Resources/Key Harbor

One of the first North Carolina uses of a development agreement for a large mixed use project is an April 2007 agreement between Catawba County and Crescent Resources/Key Harbor.

In 2003 Catawba County completed a small area plan for the Sherrills Ford area of the county.⁹² Crescent Resources⁹³ was one of the largest landowners in the area covered by this plan. The county staff and Crescent began discussions about future long-term development of some 2,000 acres the company

owned in this area. The property was in four non-contiguous parcels. After these discussions began, one of the parcels (the 700-acre Island Point Road area, subsequently referred to as the Key Harbor site) was sold to a separate development group. That group continued in the coordinated discussions about long-term development. In 2006 the parties reached an interim agreement and in 2007 Catawba County, Crescent Resources, and Key Harbor entered into a formal development agreement for this project. The development agreement took well over a year to plan and negotiate.

The agreement⁹⁴ covered proposed development of a mixed use project on a 2,126.5-acre area. The approved development included up to 1,950 dwelling units and a village center with retail, office, medical center, governmental, educational, and service uses. The term of the agreement was twenty years. The development agreement, exclusive of a number of attached and incorporated exhibits, ran thirty pages. The county concurrently considered and adopted a major text amendment to allow conditional district zoning, conditional rezoning, and the development agreement.

The principal residential development in the agreement, the Key Harbor project, allowed 1,400 single-family units in a clustered subdivision along Lake Norman. This in itself was the largest single residential project in the county's history. A separate residential area allowed a low-density conservation-style development of 100 homes on a 630-acre tract. The approved Village Center included single-family, multifamily, and senior housing, more than 400,000 square feet of retail space, and more than 100,000 square feet in office space. The Village Center included a medical center, an elementary school, a YMCA, and a community services center.

The landowners agreed to a number of undertakings. Transportation needs were addressed by an agreement to provide specified off-site highway improvements (based on a traffic impact analysis produced for each project), installation of a bike path and sidewalks, and school parking lot improvements. Public open space and recreation needs were

91. The Town of Chapel Hill–University of North Carolina and Wilmington development agreements were adopted after the survey discussed above was completed.

92. Facts for this summary are taken from an April 16, 2007, memo from the Catawba County Planning Board and Planning Director Jacky Eubanks to the Catawba County Board of Commissioners, the development agreement itself, and discussions with Greensboro attorney Tom Terrell, who represented the county in negotiating and drafting the development agreement.

93. Crescent Resources, LLC was formed in 1969 as a joint venture between Duke Power Company and the Morgan Stanley Real Estate Fund. Given Duke Power's substantial land holdings around several lakes associated with electrical power development, Crescent is a major developer in North Carolina and throughout the southeastern United States. The company has a particularly strong presence along Lake Norman. Lake Norman was created in 1967 by Duke Power on the Catawba River north of Charlotte. It is the largest freshwater lake in the state.

94. The adopted development agreement is recorded at Book 2833, Page 286, Catawba County registry. A copy is online at www.catawbarod.org/BookViewVW.in.asp?DocumentType=Deed&Instrument=28330286&NextInstrument=28330365.

addressed through the dedication of a park site.⁹⁵ Community needs were addressed by an agreement to donate a site for a nonprofit community center, to make a good faith effort to acquire and relocate a historic structure, to dedicate a county service center site and donate funds for its construction, and to reserve sites for a future YMCA, a county medical center, and a school. Utility needs were addressed by an agreement to dedicate pump station sites and line easements for the county sewer system.

The county agreed to a schedule for provision of county water and sewer lines to the area and agreed to make utility capacity reservations. The parties also agreed on utility fees.

As of September 2009, the project is as yet undeveloped, in large part due to the national housing and development slump of 2008–9. The Key Harbor development is listed for sale (with a \$29.5 million list price).

Chapel Hill—University of North Carolina at Chapel Hill

The Town of Chapel Hill and the University of North Carolina at Chapel Hill in June 2009 adopted a development agreement⁹⁶ for the University's proposed Carolina North project, an academic/research mixed use development. The project site is a 950-acre area about two miles north of main campus. While the long-term plan is to develop some 228 acres of the site, the development agreement deals with the first large phase of the proposed development, some three million square feet of development on 133 acres. The fact that the negotiations here were

between two public entities presented unique challenges and opportunities.⁹⁷

The University and Town actively discussed the future development of this site for over a decade prior to entering negotiations on the development agreement. The University had developed several plans for the site during this period. A new mixed use zoning district for the site was proposed in the mid-1990s but was not adopted by the Town. In reaction to a second development plan for the site, in 2003–4 a Town-sponsored citizens committee developed policy recommendations regarding the site, which were adopted by the Town but not agreed to by the University. A broad University–Community leadership committee spent 2006 discussing the development, reaching consensus on some points and identifying other key interests that potentially conflicted and were unresolved. These early efforts identified and clarified the interests of the parties and the community but also underscored the difficulty in reaching a binding agreement on such a large and controversial project.

The adopted agreement approved a development of three million square feet of floor space on a 133-acre portion of the tract. The agreement has a twenty-year term. The development agreement, exclusive of a number of attached and incorporated exhibits, runs forty-six pages. In addition to the development agreement, the Town concurrently adopted a text amendment to its Land Use Management Ordinance to create a new zoning district allowing college/mixed use development pursuant to a development agreement and rezoned the entire tract into this new district.

A key aspect of reaching ultimate agreement was the discussion and adoption by the Town and University at the beginning of the negotiation process of a detailed, open, deliberative process. That process included a detailed schedule of anticipated tasks

95. The agreement provides for dedication of a 22-acre park. Another 600-acre parcel was identified for future park use, with the developer committing to assist in fund-raising for its purchase. Should the fund-raising not be successful, the developer agreed to donate 300 acres of this land for a park and develop the remainder with low-density single-family residences.

96. The adopted development agreement includes a summary of the history of discussions on the project and a detailed accounting of the process followed in considering the agreement. The agreement is recorded at Book RB 4785, Page 1, Orange County registry. A copy is online at <http://web.co.orange.nc.us/WebInquiry/DocDescMain.aspx?sk=20090715000174000&ref=d0d56de2-2b75-4fa2-b923-7e897ec714b3>. Both the Town and University websites have pages devoted to the Carolina North project, with links to copies of all of the supporting reports and studies.

97. Interestingly, Florida statutes recognize the unique challenges posed by integrating public university campus planning into that state's mandatory local planning system. Fla. Stat. Ann. § 1013.30 (West 2009) mandates university campus master plans, local government participation in the review of those plans, and preparation of a development agreement to address implementation of the plan and actions to mitigate the impacts of campus development.

that ran from September 2008 to June 2009.⁹⁸ The agreed-upon process called for monthly public negotiating sessions between the full Town council and the University trustees, monthly public input sessions, weekly coordinating meetings between senior staff from the Town and the University, and regular joint meetings of Town and University subject-matter staff (including staff responsible for transit, stormwater, parks and recreation, utilities, and public safety) to jointly develop proposed standards and conditions for the agreement. Time was also allocated for review and comment on near-final drafts of the agreement by all eleven of the Town's advisory boards and the public at three public hearings.

The University committed the resources to undertake several large technical studies that the earlier community discussions on this issue indicated were needed—a detailed ecological assessment of the site, a fiscal impact analysis of the project, and a broad transportation impact analysis that addressed traffic, public transit, bike, and pedestrian impacts. The town hired outside counsel to assist in managing the process and staffing the joint staff and council-trustee work sessions. The Town also secured outside staff to track and document public comments and suggestions and to post those on the Web in near-real time. The Town tracked all of its staff and contractual expenses for the project over the course of this year-long effort and included all of those in the fee it charged the University for the development agreement.⁹⁹

The agreement addressed several critical issues that had been identified in the earlier community discussions. First, substantial on-site housing was required. The agreement requires that 25 percent of the total building space be devoted to housing. The housing must provide a priority for occupancy by University employees and those with an active connection to work on the site and must meet Town affordability policies,¹⁰⁰ be compact, and be energy

efficient. Second, the University made a substantial commitment to natural area and open space protection. The University agreed to cluster development on 228 acres of previously disturbed land¹⁰¹ on the site and to donate a permanent conservation easement for 311 acres of the most ecologically sensitive and important areas on the tract. The University further agreed not to place any buildings within fifty years on the 408 acres not included in the conservation area or the long-term building area and not to develop a 53-acre area adjacent to the conservation area for a 100-year period. The University agreed to a variety of other environmental objectives, including requirements for substantial carbon reduction goals, construction of only LEED Silver or equivalent buildings, substantial water reclamation, stormwater management, stream buffer protection, solid waste reduction, tree protection, landscape design standards, and lighting and noise restrictions. Third, the parties agreed that the development would be fiscally neutral for the Town, with regularly updated fiscal plans and cost-sharing agreements to ensure this neutrality. Development on the site would be suspended should agreement not be reached on these periodic cost-sharing updates.

Addressing transportation impacts was a particularly important and difficult portion of the agreement. Increased traffic impact was perhaps the main public concern with the project, along with concern about how best to support public transit and bike/pedestrian alternatives. Another critical transportation consideration was how to adapt over the twenty-year life of the agreement to an evolving transit system and transportation needs and impacts. The solution was agreement on general principles to be followed, specific improvements required with the initial 800,000 square feet of development, and commitment to a rolling series of future mandatory transportation impact analyses, short-range transit plans, and transportation management plans. Parking ratios and cost-sharing agreements must be mutually agreed upon for each iteration of this rolling analysis and plan preparation. Development

98. The detailed schedule was regularly updated, distributed at each monthly negotiating session, and posted on the town website so that all participants could track progress and expectations for future activity.

99. At the conclusion of the process the Town assessed the University a \$300,000 fee for processing the development agreement. The University also paid a \$30,000 fee for its rezoning petition.

100. The Town's land use plan includes a goal that 15 percent of new housing included in large developments

will be "affordable."

101. Most of the development area is located on the portion of the site previously used as a University-owned airport and an adjacent area previously leased by the University to the Town for an operations center (primarily used for transit system buses, solid waste collection vehicles, and an animal shelter).

on the site will be suspended should agreement not be reached on these periodic cost-sharing updates. The University also agreed to maintain its current partnership in funding the transit system for the life of the agreement and to otherwise limit parking on the entire tract. Provision of future greenways and development of a system for joint funding of greenways, bikeways, and pedestrian paths was also incorporated into the agreement.

As of September 2009, work was underway to address the initial required staff updates and analysis. The University does not anticipate seeking the initial site development permit for building on-site before 2011.¹⁰²

Wilmington—Newland Communities

The City of Wilmington and Newland Communities¹⁰³ in May 2009 adopted a development agreement¹⁰⁴ for the RiverLights project, a largely residential mixed use project on a 1,400-acre site along a nearly three-mile stretch of the Cape Fear River.¹⁰⁵ The approved project anticipates nearly 2,300 housing units and one million square feet of retail, office, and institutional space. The project also includes a proposed 112 slip marina. The negotiations included annexation of the site into the city and relocation of a state road that traversed the site.

102. One building on the site (for a public-private innovation center) was approved by the Town by special use permit prior to approval of the development agreement. The University's current plan is for the first building under the development agreement to be a new facility for the law school, but it is anticipated that plans for that building will not be submitted for several years.

103. Newland Communities, headquartered in San Diego, California, is one of the largest community development companies in the country, with offices in fourteen states and more than forty projects underway. The company is developing a mixed use project, Briar Chapel, on 1,600 acres in Chatham County that includes commercial areas, schools, and nearly 2,400 homes.

104. The adopted agreement is recorded at Book 5415, page 2124 of the New Hanover County registry. A copy is available online at <http://srvrodweb.nhcgov.com/imgcache/opr2009021704-1-76.pdf>.

105. Facts for this summary are taken from a November 24, 2008, memo to the city's Technical Review Committee by planning manager Ron Satterfield, the minutes of the meeting in which the agreement was approved, the development agreement itself, conversations with staff and attorneys for the developer and the city, and news accounts of the process.

The project site adjoins the southern city boundary and is located along the Cape Fear River. The vacant site was largely wooded and contained substantial wetland areas. The county had approved a large planned development with a golf course on the site a decade earlier. Newland acquired the site in 2006 for a reported \$72-million purchase price and redesigned the project. The developer preferred to develop according to city development standards, particularly by using city rather than NCDOT street standards. The developer and city began discussions in 2007–8 regarding annexation, utility service, and development standards for the project.

A key aspect of the new development plan was the relocation of River Road, a two-lane state road immediately adjacent to the Cape Fear River (and to several large wetland areas adjoining the river). The developer proposed to relocate the road to the landward side of the property, thereby creating a large area between the relocated road and the river that would be attractive for development. The development agreement provided for relocation of the road (subject to NCDOT approval), with the developer providing the right-of-way for a four-lane road and agreeing to pay for construction of a two-lane road within that right-of-way (along with other specified traffic improvements to be phased in as needed as development progresses). The city agreed that once the relocated road was completed, it would initiate procedures to consider abandonment of the existing right-of-way for the original River Road, anticipating that title would vest in the developer once the road was abandoned. The developer agreed to a payment of \$2.75 million for transportation improvements upon abandonment of the road. The developer estimated that the overall roadway improvements would cost \$23 million. In addition to the road relocation and improvements, the developer also agreed to provision of bike paths and sidewalks according to city plans.

The agreement provides for several other public service dedications as well. The developer agreed to either dedicate up to two acres of land for a new fire station or, at the city's election, to pay a fire service fee of \$406,000. The developer agreed to donate up to two acres of land for a new water tower. The developer entered a separate agreement with the Cape Fear Public Utility Authority for water and sewer capacity, service lines, pump stations, and cost-sharing for these improvements. The developer agreed

to donate specified land for two city parks on the site, with the parks to be used for passive recreation, and to provide a public access to a 27-acre lake to be built within the project. The developer agreed to reserve a site for an elementary school and to dedicate that site should the county and school board agree to place a school within the project area within twenty years and if the parties agree to an acceptable location. The city agreed to relocate an outdoor city shooting range that is presently adjacent to the project (or to enclose the existing range). The city also agreed to designate a senior-level city planner to be the primary contact for the project and to exert its best efforts to use the same planner for these duties over the development of the project in order to provide continuity and consistency.

Utility and site preparation are underway on the site, but the economic downturn has pushed the planned availability of lots for sale to 2011.

Conclusions

The development agreement is a powerful tool that gives North Carolina cities and counties a new option for dealing with large-scale developments. Such agreements are particularly useful where developments require substantial investments in supporting infrastructure and will take a lengthy period of time to complete. A development agreement allows the landowner and local government to make legally binding commitments that will be applicable throughout the life of the agreement. These commitments can address the type, intensity, and design of development; the timing and payment for supporting infrastructure; and the local regulations that will apply to the project.

Development agreements should be used judiciously. They are not legally or practically useful for smaller projects with a relatively quick build-out. By law projects must include at least 25 developable acres to even qualify for consideration. The engineering, environmental, planning, and legal support necessary for formulating a development agreement are substantial. It is common for the negotiation of a development agreement for a complex project to take a year or more to complete. Only relatively large and complex projects will generally be deemed worth the time, cost, and effort needed for a development agreement.

Developers considering a development agreement must commit to a substantial effort. They must have a detailed site plan and development schedule. Environmental, traffic, utility, and neighborhood impacts must be quantified over the life of the project. Most of the costs of preparing these studies are likely to fall to the landowner, as are substantial financial commitments for providing long-term mitigation measures. Therefore developers must have solid information on what they want to have approved, the impacts of that development, and how cost-sharing for dealing with those impacts is to be addressed.

The successful use of this tool also imposes demands on the local government. A development agreement is considerably more complex and time-consuming than a zoning permit, a special or conditional use permit, or a rezoning and should not be used as a substitute for any of those in routine situations. To make effective use of development agreements, a clear land use plan that places the project in context and addresses the impacts of development well into the future is needed, as is a clear sense of how potential impacts of a large-scale development should be addressed over time. The supporting public facilities must be identified and must have a financing plan and a schedule for completion. The commitment of time and effort on the part of the local government's staff, advisory boards, and elected officials can be substantial. The scale of the projects undergoing this review will often generate considerable public interest, so development and implementation of a process for effective public participation is also an important local government responsibility.

That said, there are situations where a development agreement offers a unique and valuable opportunity of mutual benefit for the developers and local government. It allows open, careful negotiation on matters of significant public and private concern. The parties can collaboratively consider creative ways to address mutual concerns about the design and impacts of substantial projects. It also allows the agreements reached through that negotiation to be preserved and enforced for up to twenty years. This predictability and certainty can be of substantial value for both the landowner and the local government.

Appendix 1. Applicable Portion of Survey Instrument

Part Three: Development Agreements

In 2005 the General Assembly adopted legislation regarding development agreements. This legislation, effective January 1, 2006, allows a landowner and a jurisdiction to mutually agree to a proposed development and associated improvements and to vest rights in the development plan for up to twenty years.

17. Had your jurisdiction ever adopted a development agreement prior to January 1, 2006?

- a. Yes
 b. No

18. In the time since January 1, 2006, which of the following applies to your jurisdiction:

- a. No development agreements have been proposed
 b. Development agreements have been proposed or discussed, but not adopted
 c. Development agreements have been adopted

If no development agreements have been adopted in your jurisdiction since January 1, 2006, please proceed to Question 27.

19. If your jurisdiction has adopted a development agreement since January 1, 2006, how many different agreements have been adopted?

- a. One
 b. Two
 c. Three
 d. Four or more

If your jurisdiction has adopted a development agreement since January 1, 2006, please answer the following questions about the most recently adopted agreement.

20. When was the development agreement adopted?

_____ Date

21. What is the duration of the development agreement?

_____ (specify length in years)

22. How many acres of developable property were included in the area subject to the agreement?

- a. 25 to 49 acres
 b. 50 to 99 acres
 c. 100 to 499 acres
 d. 500 to 999 acres
 e. 1,000 or more acres

23. What types of development were the subjects of the agreement? Check all that apply.

- a. Residential development
 b. Commercial development
 c. Industrial development
 d. Office or institutional development
 e. Mixed used development. Specify uses included: _____
 f. Traditional neighborhood design project
 g. Other. Please specify: _____

24. How large was the development subject to the agreement?

- a. Number of residential units
- b. Sq. ft. of commercial, industrial, office, or institutional uses

25. Did the development agreement provide for provision of or contributions to public facilities by the developer?

If so, specify type: (check all that apply)

- (1) Land for schools
- (2) Construction of school buildings
- (3) Land for road rights of way
- (4) Construction of roads or intersection improvements
- (5) Land for sidewalks, greenways, bikeways
- (6) Construction of sidewalks, greenways, bikeways
- (7) Land for transit (bus stops or other transit)
- (8) Construction for transit (bus stops, pullouts, or other transit)
- (9) Land for utility rights of way
- (10) Construction of water supply or lines
- (11) Construction of sewer capacity or lines
- (12) Land for park, recreation, or open space
- (13) Construction of park or recreation facilities
- (14) Land for other public facilities (fire, police, library, etc.)
- (15) Construction of other public facilities (fire, police, library, etc.)
- (16) Voluntary fee payment for public facilities
- (17) Provision of affordable housing
- (18) Other. Please list: _____

26. Did the development agreement provide for provision of or contributions to public facilities by the jurisdiction?

If so, specify type: (check all that apply)

- (1) Land for schools
- (2) Construction of school buildings
- (3) Land for road rights of way
- (4) Construction of roads or intersection improvements
- (5) Land for sidewalks, greenways, bikeways
- (6) Construction of sidewalks, greenways, bikeways
- (7) Land for transit (bus stops or other transit)
- (8) Construction for transit (bus stops, pullouts, or other transit)
- (9) Land for utility rights of way
- (10) Construction of water supply or lines
- (11) Construction of sewer capacity or lines
- (12) Land for park, recreation, or open space
- (13) Construction of park or recreation facilities
- (14) Land for other public facilities (fire, police, library, etc.)
- (15) Construction of other public facilities (fire, police, library, etc.)
- (16) Voluntary fee payment for public facilities
- (17) Provision of affordable housing
- (18) Other. Please list: _____

27. Legal services for your jurisdiction regarding preparing and reviewing the development agreement were provided by:

- (a) Your jurisdiction's city or county attorney
- (b) Outside legal assistance
- (c) Other. Please specify: _____

Appendix 2. Responding Jurisdictions

Counties	McDowell County	Badin	Conway
Alexander County	Mecklenburg County	Bald Head Island	Cornelius
Alleghany County	Mitchell County	Banner Elk	Cove City
Anson County	Montgomery County	Beaufort	Crossnore
Ashe County	Nash County	Belmont	Dallas
Bertie County	Onslow County	Belville	Davidson
Bladen County	Orange County	Belwood	Denton
Brunswick County	Pasquotank County	Benson	Dillsboro
Buncombe County	Pender County	Bessemer City	Dortches
Burke County	Perquimans County	Bethania	Duck
Cabarrus County	Person County	Bethel	Dunn
Camden County	Pitt County	Biltmore Forest	Durham
Carteret County	Polk County	Black Creek	Earl
Catawba County	Randolph County	Black Mountain	East Spencer
Chatham County	Richmond County	Blowing Rock	Eden
Cherokee County	Robeson County	Bogue	Edenton
Chowan County	Rockingham County	Boling Spring Lakes	Elizabeth City
Cleveland County	Rutherford County	Bolivia	Elizabethtown
Craven County	Stanly County	Boone	Elk Park
Currituck County	Stokes County	Boonville	Elkin
Dare County	Surry County	Bridgeton	Emerald Isle
Davie County	Swain County	Brunswick	Fair Bluff
Duplin County	Transylvania County	Burgaw	Fairmont
Durham County	Union County	Burlington	Faith
Edgecombe County	Vance County	Cajah's Mountain	Falcon
Forsyth County	Wake County	Canton	Falkland
Franklin County	Warren County	Cape Carteret	Farmville
Gaston County	Washington County	Carolina Shores	Fayetteville
Gates County	Watauga County	Carrboro	Flat Rock
Graham County	Wayne County	Carthage	Fletcher
Granville County	Wilkes County	Cary	Forest Hills
Greene County	Yadkin County	Chadbourne	Four Oaks
Guilford County		Chapel Hill	Foxfire Village
Halifax County	Municipalities	Charlotte	Franklin
Harnett County	Aberdeen	Cherryville	Fuquay-Varina
Henderson County	Ahoskie	Chimney Rock Village	Gamewell
Hertford County	Albemarle	China Grove	Garner
Hoke County	Alliance	Clayton	Gastonia
Iredell County	Apex	Clinton	Gibsonville
Jackson County	Archdale	Colerain	Graham
Johnston County	Asheville	Columbia	Granite Falls
Lee County	Atkinson	Columbus	Greensboro
Lenoir County	Atlantic Beach	Como	Greenville
Lincoln County	Aulander	Concord	Grimesland
Madison County	Aurora	Connelly Springs	Halifax
Martin County	Autryville	Conover	Hamlet

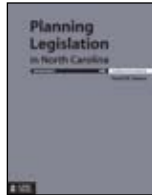
Harrellsville	Lumberton	River Bend	Wallace
Harrisburg	Manteo	Roanoke Rapids	Walnut Creek
Havelock	Marion	Robersonville	Walstonburg
Haw River	Mars Hill	Rockingham	Warrenton
Hayesville	Marshall	Rolesville	Warsaw
Hemby Bridge	Marshville	Rowland	Washington
Hendersonville	Marvin	Roxboro	Weaverville
Hertford	Matthews	Roxobel	Weldon
Hickory	Mebane	Rutherford College	Wendell
High Point	Middlesex	Salemburg	Wesley Chapel
Highlands	Monroe	Salisbury	West Jefferson
Hildebran	Morehead City	Sanford	Whispering Pines
Hillsborough	Morganton	Saratoga	White Lake
Hoffman	Morrisville	Seaboard	Williamston
Holly Springs	Morven	Selma	Wilmington
Hudson	Mount Airy	Seven Springs	Wilson
Huntersville	Mount Olive	Shallotte	Wilson's Mills
Indian Beach	Mount Pleasant	Sharpsburg	Windsor
Jackson	Murfreesboro	Siler City	Winston-Salem
Jacksonville	Navassa	Simpson	Woodland
Jamestown	New Bern	Smithfield	Youngsville
Jefferson	Newton Grove	Southport	Zebulon
Jonesville	North Wilkesboro	Spencer	
Kannapolis	Northwest	Spring Hope	
Kernersville	Oak City	St. James	
Kill Devil Hills	Oak Island	St. Pauls	
King	Ocean Isle Beach	Stanley	
Kinston	Oriental	Statesville	
Kittrell	Orrum	Stokesdale	
Kitty Hawk	Oxford	Stoneville	
Knightdale	Pantego	Sugar Mountain	
La Grange	Peachland	Summerfield	
Lake Park	Pine Knoll Shores	Sunset Beach	
Lake Waccamaw	Pinebluff	Swansboro	
Landis	Pinehurst	Swepsonville	
Lansing	Pinetops	Tabor City	
Lattimore	Pineville	Tar Heel	
Laurel Park	Pink Hill	Tarboro	
Laurinburg	Pleasant Garden	Taylorsville	
Leland	Polkville	Thomasville	
Lexington	Powellsville	Topsail Beach	
Liberty	Princeville	Troutman	
Lillington	Raeford	Turkey	
Lincolnton	Raleigh	Valdese	
Linden	Ramsuer	Wade	
Locust	Randleman	Wagram	
Long View	Red Springs	Wake Forest	
Louisburg	Rich Square	Walkertown	

About the Author

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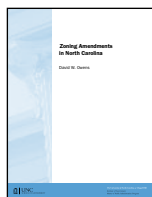
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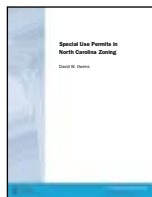
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DEVELOPMENT AGREEMENT

BY AND AMONG

**CRESCENT RESOURCES, LLC, CAROLINA CENTERS, LLC
KEY HARBOR COMMUNITIES, LLC, KEY HARBOR HOLDINGS, LLC**

AND

CATAWBA COUNTY, NORTH CAROLINA

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF PURPOSE	1
BACKGROUND	2
TERMS	5
1. Public Hearing	5
2. Term.....	5
3. Development of the Property	6
A. Key Harbor Property	6
B. Village Center Property	6
C. Terrapin Creek Property	7
D. Mountain Creek Property.....	7
4. Permitted Uses/Maximum Density/Placement and Types of Buildings.....	7
A. Key Harbor Property	7
B. Village Center Property	7
C. Terrapin Creek Property	8
D. Mountain Creek Property.....	8
5. Development Schedule	8
A. Key Harbor Property Development Schedule.....	9
B. Village Center Property Development Schedule	9
C. Terrapin Creek Development Schedule	10
D. Mountain Creek Development Schedule	10
6. Law in Effect at Time of the Agreement Governs the Development of Each Relevant Parcel	10
A. Key Harbor Property	10
B. Village Center Property	10
C. Terrapin Creek Property and Mountain Creek Property	11
7. Transportation Improvements	11
A. Key Harbor Property	11
B. Village Center Property	12
8. Condemnation of Right of Way for Off-Site Transportation Improvements.....	12
A. Key Harbor Property	12
B. Village Center Property	13
C. Authority to Condemn	13
9. Reservations or Dedications of Land for Public Purposes/Public Improvements by Key Harbor and Crescent	13
A. Key Harbor	13
(i) Bike Path	13
(ii) Sherrills Ford Elementary School Improvements	14

	(iii)	Park Site	14
	(iv)	Terrell General Store	14
	(v)	Public Sidewalks	15
	(vi)	Amenity	15
B.		Crescent	15
	(i)	School Site	15
	(ii)	Service Center	16
	(iii)	YMCA Site	17
	(iv)	Catawba County Medical Center	17
	(v)	Pump Stations	18
10.		Key Harbor Restrictive Covenants	18
11.		Public Sewer and Water	18
	A.	Sewer	18
	B.	Water	20
12.		Water and Sewer Capital Fees	20
13.		Water and Sewer Capacity Reservation	21
14.		Connection to the County's Sewer and Water System	21
15.		Local Development Permits	21
16.		Amendment	22
17.		Recordation/Binding Effect	22
18.		Periodic Review	22
19.		Default	22
20.		Notices	24
21.		Entire Agreement	26
22.		Construction	26
23.		Assignment	26
24.		Governing Law	26
25.		Counterparts	27
26.		Agreement to Cooperate	27
27.		Agreements to Run with the Land	27
28.		Severability	27
29.		Authority	27

STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF CATAWBA

This Development Agreement (the "Agreement") is made and entered into this 16th day of April, 2007 by and among **Crescent Resources, LLC** ("Crescent"), a Georgia limited liability company authorized to conduct business in the State of North Carolina, **Carolina Centers, LLC** ("Carolina Centers"), a North Carolina limited liability company, **Key Harbor Communities, LLC** ("Communities"), a Georgia limited liability company authorized to conduct business in the State of North Carolina, **Key Harbor Holdings, LLC** ("Holdings"), a Georgia limited liability company authorized to conduct business in the State of North Carolina, and **Catawba County, North Carolina** (the "County"), a political subdivision of the State of North Carolina.

Key Harbor Communities and Key Harbor Holdings are referred to herein collectively as "Key Harbor".

STATEMENT OF PURPOSE

1. Section 153A-349.1(a)(1) of the North Carolina General Statutes provides that "large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources."
2. Section 153A-349.1(a)(3) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development."
3. Section 153A-349.1(a)(4) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development."
4. Section 153A-349.1(a)(5) of the North Carolina General Statutes provides that "because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas."
5. Section 153A-349.1(a)(6) of the North Carolina General Statutes provides that "to better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments."
6. In view of the foregoing, Sections 153A-349.1(b) and 153A-349.3 of the North Carolina General Statutes expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of Sections 153A-

349.1 through 153A-349.13 of the North Carolina General Statutes, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.

7. Section 153A-349.4 of the North Carolina General Statutes restricts the use of a development agreement to “property that contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of the application).” N.C.G.S. 153A-349.4 further provides that “development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years.”

BACKGROUND

1. Key Harbor Communities and Key Harbor Holdings are the owners of an approximately 704 acre parcel of land located on the north side of Island Point Road approximately 1/2 mile east of the intersection of Island Point Road and Sherrills Ford Road (hereinafter referred to as the “Key Harbor Property”), which parcel of land is more particularly described on Exhibit A attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B attached hereto and incorporated herein by reference.

2. Carolina Centers is the owner of an approximately 192 acre parcel of land located east of the intersection of Highway 150 and Slanting Bridge Road (hereinafter referred to as the “Village Center Property”), which parcel of land is more particularly described on Exhibit C attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B.

3. Carolina Centers is the owner of an approximately 630.50 acre parcel of land located approximately 1/2 mile north of the intersection of Molly’s Backbone Road and Sherrills Ford Road (hereinafter referred to as the “Terrapin Creek Property”), which parcel of land is more particularly described on Exhibit D attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B.

4. Carolina Centers is the owner of an approximately 600 acre parcel of land located approximately two miles northwest of the intersection of Highway 150 and Little Mountain Road (hereinafter referred to as the “Mountain Creek Property”), which parcel of land is more particularly described on Exhibit E attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B.

5. The Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property are located in the southeastern portion of Catawba County in an area known as Sherrills Ford. The Sherrills Ford area is bounded by Lake Norman and the Catawba River to the east, the Catawba County - Lincoln County line to the south, N.C. Highway 16, Buffalo Shoals Road and Murray Hills Road to the west and U.S. Highway 10, the Town of Catawba’s Extraterritorial Jurisdiction and the Catawba River to the north.

6. Beginning in 2000, the County and the Sherrills Ford Small Area Plan Committee engaged in land use studies and comprehensive planning for the Sherrills Ford area for the purpose of developing a small area plan for this portion of the County. The result of these

efforts was the drafting of the Sherrills Ford Small Area Plan (the "Small Area Plan") that was adopted by the Catawba County Board of Commissioners (the "Board of Commissioners") on February 17, 2003. The guiding principles of the Small Area Plan include, among other things, balanced land uses with a mixture of housing, shopping and employment; pedestrian oriented development; well planned retail development with varying sizes and functions; and flexibility in regulations.

7. As outlined in the Small Area Plan, and as a result of changing conditions relating to sewer availability and the desire to maximize development opportunities along the utility corridors, the County has endorsed a development vision for the Sherrills Ford area that proposes (a) to provide for lower developable population densities on the Terrapin Creek Property and the Mountain Creek Property and higher densities on the Village Center Property and the Key Harbor Property; (b) the development of a mixed use project on the Village Center Property that would contain, among other things, retail and office uses as well as single family detached homes and attached single family homes; and (c) to transfer the costs of the development of certain amenities and improvements from public resources to the private developments described herein. The County's development vision also contemplates low density and conservation development of the Terrapin Creek Property, and conservation and/or recreational uses on portions of the Mountain Creek Property.

8. The County approved a new zoning ordinance known as the Unified Development Ordinance (the "UDO") on February 5, 2007 that contains new zoning districts and regulations that allow greater development flexibility than was previously allowed under the County's former zoning ordinance. The UDO provides the County with the tools to implement the Small Area Plan.

9. Crescent agrees that it will work diligently and in good faith to secure funding from public, private and/or not-for-profit sources to enable the County to acquire the Mountain Creek Property as contemplated in the Comprehensive Relicensing Agreement for the Catawba-Wateree Project (FERC No. 2232) (the "Relicensing Agreement"). Crescent's efforts will include (i) sponsoring and funding the accumulation of baseline data and information; (ii) preparing a perennial stream channel and wetlands delineation and buffer surveys; and (iii) applying to the NC Clean Water Management Trust Fund and other entities to fund the acquisition for the County. The proposed purchase price shall be based on the appraised market value of the Mountain Creek Property as if it were zoned for the development of a single family residential community with a density of one lot per two acres, and one lot per .75 acres within 1,000 feet of the Lake Norman Project Boundary, less the reduction in value which would result from the application of perennial stream channel and wetlands conservation easements, and less the value of up to thirty (30) acres of land within the Mountain Creek Property proposed by Duke Energy for a recreation area as described in the Relicensing Agreement, but with total density not exceeding one hundred and fifty (150) homes. Duke Energy's acquisition support funding, as proposed above, shall be credited towards the "match" required by the NC Clean Water Management Trust Fund.

In the event that the applications for funding are denied or the funding is not granted prior to August 1, 2009 or the closing of the acquisition is not consummated by December 31, 2009, then, unless the dates specified herein are not extended, Crescent's obligation to assist in

the acquisition of the Mountain Creek Property for the County shall expire, and Crescent shall develop using Catawba's County's cluster option a single family residential community on one-half of the Mountain Creek Property (one-half of the Mountain Creek Property being determined after deducting up 30 acres that are set aside for the recreation area described in the Relicensing Agreement) in accordance with the density described above, namely, one lot per two acres, and one lot per .75 acres within 1,000 feet of the Lake Norman Project Boundary, provided that Crescent shall also dedicate the perennial stream channel and the wetlands conservation easements as proposed above, with the easement areas not being counted towards the eligible development area, and with total density not exceeding one hundred and fifty (150) homes. Furthermore, Crescent may utilize the County's "cluster provision" in planning this development, which will allow the eligible density to be placed on lots as small as one-half acre. The one-half portion of the Mountain Creek Property that may be developed by Crescent (approximately 300 acres of the remaining 600 acres after the 20 to 30 acres are set aside for the recreation area as provided in the Relicensing Agreement) is identified on Exhibit F. The balance of the Mountain Creek Property not being developed by Crescent (including the conservation easements) totals approximately 300 acres, and this land shall be donated to the County as open space.

10. Key Harbor desires to develop a multi-year, multi-phased residential subdivision on the Key Harbor Property that will contain single family detached homes on lots of various sizes, attached single family homes and certain amenities (the "Key Harbor Subdivision"). More specifically, the Key Harbor Subdivision will contain a maximum of 1,500 dwelling units, of which a minimum of 40 dwelling units and a maximum of 100 dwelling units shall be attached single family homes. Attached hereto as Exhibit G and incorporated herein by reference is a schematic site plan of the Key Harbor Subdivision. To develop the Key Harbor Subdivision in accordance with the attached schematic site plan, public sewer must be made available to the Key Harbor Property by the County as provided in this Agreement.

11. A subdivision sketch plan for a portion of the Key Harbor Property was approved by the Catawba County Subdivision Review Board on March 31, 2006 (the "Approved Sketch Plan"). The Approved Sketch Plan provides for the development of a residential subdivision on a portion of the Key Harbor Property containing a maximum 212 single family lots (the "212 Lot Subdivision"). The 212 Lot Subdivision complies with the former and existing zoning of the Key Harbor Property. The schematic site plan of the Key Harbor Subdivision attached hereto as Exhibit G includes and incorporates the 212 Lot Subdivision. Preliminary subdivision approval of the 212 Lot Subdivision was granted on June 27, 2006 by the Catawba County Subdivision Review Board.

12. In the event that public sewer is not made available to the Key Harbor Property as provided herein, then Key Harbor may develop a 355 lot single family residential subdivision on the Key Harbor Property, subject to the approval of a preliminary plat by the Catawba County Subdivision Review Board (the "355 Lot Subdivision"). The 355 Lot Subdivision would include and incorporate the 212 Lot Subdivision, and it may be developed with septic systems.

13. Crescent desires to develop a mixed use project on the Village Center Property that could contain retail, office, governmental, educational, service and residential uses (the "Village Center Project"). A schematic site plan of the Village Center Project is attached hereto as

Exhibit H and incorporated herein by reference. To develop the Village Center Project in accordance with the attached schematic site plan, public sewer must be made available to the Village Center Property by the County as provided in this Agreement.

14. Crescent desires to develop the Terrapin Creek Property as a low density conservation subdivision containing a maximum of 100 single family lots as more particularly described herein (the "Terrapin Creek Subdivision"). The Terrapin Creek Subdivision must be reviewed and approved by the Catawba County Subdivision Review Board.

15. After careful review and deliberation, the County has determined that the above described subdivisions and developments are consistent with the adopted Small Area Plan and the UDO, and that they would further the County's land use planning objectives and policies as set out in these documents, as well as the health, safety, welfare and economic well being of the County.

16. The County has also determined that the above-described subdivisions and developments present a unique opportunity for the County to secure quality planning and growth, to protect the environment, to strengthen the tax base and to acquire public amenities through the development approval process.

Accordingly, Crescent, Carolina Centers, Key Harbor and the County desire to enter into this Agreement for the purposes of (a) agreeing upon the maximum density of development on the relevant parcels of land and the types of uses thereon; (b) coordinating the construction of infrastructure that will serve the above-described subdivisions and developments and the community at large; (c) confirming the dedication and/or provision of the public amenities described herein by Crescent and Key Harbor; and (d) providing assurances to Key Harbor and Crescent that they may proceed with the development of their relevant parcels of land in accordance with the approved conditional rezoning plans described below and the terms of this Agreement without encountering future changes in ordinances, regulations or policies that would affect their ability to develop the relevant parcels under the approved conditional rezoning plans and the terms hereof.

TERMS

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties do hereby agree as follows:

1. Public Hearing. Pursuant to Section 153A-349.5 of the North Carolina General Statutes, the Board of Commissioners conducted a public hearing on April 16, 2007 to consider the approval and execution of this Agreement in accordance with the procedures in N.C.G.S. 153A-323. The notice of public hearing specified, among other things, the location of the parcels of land subject to this Agreement, the development uses proposed on the parcels of land and a place where a copy of the Agreement can be obtained. The Board of Commissioners approved this Agreement and the County's execution of the same.

2. Term. The term of this Agreement shall commence on the date that all parties hereto have executed the Agreement and it shall terminate twenty (20) years thereafter unless sooner

terminated by the mutual consent of the parties hereto or their successors in interest, or unless extended by the mutual consent of the parties hereto or their successors in interest.

3. Development of the Property.

A. Key Harbor Property

On April 16, 2007, the Board of Commissioners rezoned the Key Harbor Property to the Planned Development zoning district to permit the development of the Key Harbor Subdivision. The Key Harbor Property shall be developed in accordance with the terms and conditions of the conditional rezoning plan approved by the Board of Commissioners in connection with the rezoning of the Key Harbor Property (the "Approved Key Harbor Plan"). The sizes, placements and configurations of the lots, common open space, streets, sidewalks and other improvements planned for the Key Harbor Subdivision shall be as depicted on the Approved Key Harbor Plan or as described in the development standards set out on the Approved Key Harbor Plan subject, however, to any rights Key Harbor may have to make adjustments to the same as provided on the Approved Key Harbor Plan, and to Key Harbor's right to seek minor amendments to the Approved Key Harbor Plan pursuant to Section 44-327(k) of the UDO.

As provided on the Approved Key Harbor Plan, the minimum front and rear yard setbacks for dwelling units located within the Key Harbor Subdivision shall be twenty (20) feet. Side yard setbacks for dwelling units located within Key Harbor on lots with a width of sixty four (64) feet or less shall be zero (0) feet, provided, however, that the minimum building separation shall be seven and one-half (7.5) feet. Side yard setbacks for dwelling units located within Key Harbor on lots with a width of sixty five (65) feet to eighty four (84) feet shall be zero (0) feet, provided, however, that the minimum building separation shall be ten (10) feet. Side yard setbacks for dwelling units located on lots with a width of eighty five (85) feet or greater shall be ten (10) feet, and there shall be no minimum building separation other than the side yard setback requirement.

In the event of a conflict between the UDO and the Approved Key Harbor Plan, the terms of the Approved Key Harbor Plan shall govern.

B. Village Center Property

On April 16, 2007, the Board of Commissioners rezoned the Village Center Property to the Planned Development zoning district to permit the development of the Village Center Project. The Village Center Property shall be developed in accordance with the terms and conditions of the conditional rezoning plan approved by the Board of Commissioners in connection with the rezoning of the Village Center Property (the "Approved Village Center Plan"). The configurations, placements and sizes of the lots, buildings, open space, parking areas, streets and other improvements planned for the Village Center Project shall be as depicted on the Approved Village Center Plan or as described in the development standards set out on the Approved Village Center Plan subject, however, to any rights Crescent may have to make adjustments to the same as provided on the Approved Village Center Plan, and to

Crescent’s right to seek minor amendments to the Approved Village Center Plan pursuant to Section 44-327(k) of the UDO.

In the event of a conflict between the UDO and the Approved Village Center Plan, the terms of the Approved Village Center Plan shall govern.

C. Terrapin Creek Property

The Terrapin Creek Property shall be developed as a low density conservation subdivision containing a maximum of 100 single family lots. The Terrapin Creek Subdivision shall be developed in accordance with and shall satisfy the standards and requirements of the UDO. The Terrapin Creek Subdivision must be reviewed and approved by the Catawba County Subdivision Review Board. Attached hereto as Exhibit I and incorporated herein by reference is a site plan for concept purposes only illustrating the type of development to be allowed on the Terrapin Creek Property.

D. Mountain Creek Property

The Mountain Creek Property shall be utilized and/or developed as provided in Section 9 under “Background”.

4. Permitted Uses/Maximum Density/Placement and Types of Buildings.

A. Key Harbor Property

The Key Harbor Property shall be devoted to single family detached homes, attached single family homes and related amenities together with any incidental or accessory uses associated therewith which are permitted under the UDO in the Planned Development zoning district. As more particularly depicted on the Approved Key Harbor Plan, a maximum of 1,500 dwelling units may be developed on the Key Harbor Property, of which a minimum of 40 dwelling units and a maximum of 100 dwelling units may be attached single family homes.

B. Village Center Property

The Village Center Property may be devoted to retail, office, governmental, educational and service uses and to single family detached or attached residential uses or multi-family attached residential uses together with any incidental or accessory uses associated therewith which are permitted under the UDO in the Planned Development District zoning district. As more particularly provided on the Approved Village Center Plan, the maximum floor area for the retail/service and office uses and the maximum number of residential units that may be developed on the Village Center Property are as follows:

- | | | |
|-------|-------------------------|----------------------|
| (i) | Retail/service: | 500,000 square feet; |
| (ii) | Office: | 300,000 square feet; |
| (iii) | Single family detached: | 250 dwelling units; |

- (iv) Attached single family
(i.e. townhomes): 200 dwelling units; and
- (v) Multi-family
(i.e. apartments and condominiums): 400 dwelling units.

Subject to the approval of the Catawba County Planning Staff (the 'Staff'), which approval shall not be unreasonably withheld or delayed, Crescent may shift allowed floor area from retail/service uses to office uses, and from office uses to retail/service uses provided that any such shift of floor area is neutral from a traffic impact standpoint. Subject to the approval of the Staff, which approval shall not be unreasonably withheld or delayed, Crescent may also shift allowed residential units between the various types of allowed residential uses provided that such shift is neutral from a traffic impact standpoint.

The placement of the buildings on the Village Center Property and the types of buildings are more particularly depicted on the Approved Village Center Plan.

C. Terrapin Creek Property

The Terrapin Creek Property shall be devoted to single family detached homes together with any incidental or accessory uses associated therewith which are permitted under the UDO, and to conservation and open space. A maximum of 100 single family detached homes on individual lots may be developed on the Terrapin Creek Property. The Terrapin Creek Subdivision shall be developed in accordance with and shall satisfy the standards and requirements of the UDO. The Terrapin Creek Subdivision must be reviewed and approved by the Catawba County Subdivision Review Board.

D. Mountain Creek Property

The Mountain Creek Property shall be utilized and/or developed in accordance with the densities and uses described above in Section 9 under "Background".

5. Development Schedule. The Key Harbor Property and the Village Center Property shall be developed in accordance with the development schedules set out in subsections 5.A. and 5.B. below, or as may be amended by the agreement of the parties to reflect actual market absorption. The Terrapin Creek Property and the Mountain Creek Property shall not be subject to any development schedule, and shall be developed at a schedule to be determined in the discretion of the developer. Pursuant to N.C.G.S. 153A-349.6(b) of the North Carolina General Statutes, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of this Agreement pursuant to N.C.G.S. 153A-349.8 but must be judged based upon the totality of the circumstances, including, but not limited to, Key Harbor's and/or Crescent's good faith efforts to attain compliance with the relevant development schedule. The development schedule is a budget planning tool and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace of development if market conditions support a faster pace. Periodic adjustments to the relevant development schedule by Key Harbor shall not be considered to be a material amendment or breach of this Agreement as long as (1) Key Harbor, or its successor in interest, pays the water and sewer

capital fees in accordance with the required schedule as set out in Section 12 hereof, and (2) the entire 1,500 lots are developed within the twenty (20) year period described below.

A. Key Harbor Property Development Schedule

(i) Within five (5) years of the Sewer Availability Date (the Sewer Availability Date being defined in Paragraph 11.A.(i) below), Key Harbor shall have completed the development of at least 375 lots;

(ii) Within ten (10) years of the Sewer Availability Date, Key Harbor shall have completed the development of at least 750 lots;

(iii) Within fifteen (15) years of the Sewer Availability Date, Key Harbor shall have completed the development of at least 1,125 lots; and

(iv) Within twenty (20) years of the Sewer Availability Date, Key Harbor shall have completed the development of at least 1,500 lots.

Notwithstanding anything contained herein to the contrary, Key Harbor may develop lots at a faster pace than the pace provided above in subparagraphs (i) through (iv). The failure of Key Harbor to meet the minimum development schedule set out above in subparagraphs (i) through (iv) shall not constitute a breach of this Agreement provided that Key Harbor pays the water and sewer capital fees required under Section 12 of this Agreement in accordance with the schedule set out therein and develops 1,500 lots within twenty (20) years of the Sewer Availability Date.

B. Village Center Property Development Schedule

(i) Within four (4) years and two (2) months of the Sewer Availability Date, Crescent shall complete the development of at least 125,000 square feet of the retail component of the Village Center Project;

(ii) Within six (6) years and two (2) months of the Sewer Availability Date, Crescent shall complete the development of the remaining portion of the retail component of the Village Center Project;

(iii) Within six (6) years and two (2) months of the Sewer Availability Date, Crescent shall commence the development of the medical office component of the Village Center Project, and the development of the medical office component of the Village Center Project shall be completed within nine (9) years and two (2) months of the Sewer Availability Date; and

(iv) Within four (4) years and two (2) months of the Sewer Availability Date, Crescent shall commence the development of the residential component of the Village Center Project, and the development of the residential component of the Village Center Project shall be completed within nine (9) years and two (2) months of the Sewer Availability Date. From and after the commencement of the construction of the first residential unit in the residential

component of the Village Center Project, a minimum of thirty (30) residential units shall be constructed during each subsequent twelve (12) month period.

C. Terrapin Creek Property Development Schedule

The Terrapin Creek Property shall not be required to develop according to a schedule.

D. Mountain Creek Property Development Schedule

The Mountain Creek Property retained by Crescent shall not be developed according to a schedule.

6. Law in Effect at Time of the Agreement Governs the Development of Each Relevant Parcel.

A. Key Harbor Property

The laws applicable to the development of the Key Harbor Property and the Key Harbor Subdivision are those in force as of the date of this Agreement. Accordingly, Key Harbor and its successors in interest shall have a vested right to develop the Key Harbor Property and the Key Harbor Subdivision in accordance with the Approved Key Harbor Plan, the terms of this Agreement, and the terms of the UDO and any applicable laws and regulations as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. 153A-349.7(b) and except as provided in N.C.G.S. 153A-344.1(e), the County may not apply subsequently adopted ordinances or development policies to the Key Harbor Property or to the Key Harbor Subdivision during the term of this Agreement without the written consent of Key Harbor or its successors in interest. Additionally, no future development moratoria or development impact fees shall apply to the Key Harbor Property or to the Key Harbor Subdivision without the written consent of Key Harbor or its successors in interest. This Agreement does not abrogate any rights preserved by N.C.G.S. 153A-344 or N.C.G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

B. Village Center Property

The laws applicable to the development of the Village Center Property and the Village Center Project are those in force as of the date of this Agreement. Accordingly, Crescent and its successors in interest shall have a vested right to develop the Village Center Property and the Village Center Project in accordance with the Approved Village Center Plan, the terms of this Agreement, and the terms of the UDO and any applicable laws and regulations as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. 153A-349.7(b) and except as provided in N.C.G.S. 153A-344.1(e), the County may not apply subsequently adopted ordinances or development policies to the Village Center Property or to the Village Center Project during the term of this Agreement without the written consent of Crescent or its successors in interest. Additionally, no future development moratoria or development impact fees shall apply to the Village Center Property or to the Village Center Project without the written consent of Crescent or its successors in interest. This Agreement does not abrogate any

rights preserved by N.C.G.S. 153A-344 or N.C.G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

C. Terrapin Creek Property and Mountain Creek Property

The laws applicable to the development of the Terrapin Creek Property and the Mountain Creek Property are those in force as of the date of this Agreement. Accordingly, Crescent and its successors in interest shall have a vested right to develop the Terrapin Creek Property and the Mountain Creek Property in general conformity with the provisions and terms of this Agreement, and the terms of the UDO and any applicable laws and regulations as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. 153A-349.7(b) and except as provided in N.C.G.S. 153A-344.1(e), the County may not apply subsequently adopted ordinances or development policies to the Terrapin Creek Property or to the Mountain Creek Property during the term of this Agreement without the written consent of Crescent or its successors in interest. Additionally, no future development moratoria shall apply to the Terrapin Creek Property or to the Mountain Creek Property without the written consent of Crescent or its successors in interest. Notwithstanding the foregoing, the Terrapin Creek Property and the Mountain Creek Property shall be subject to future development impact fees if legally adopted by the Board of Commissioners and provided that such development impact fees apply on a county wide basis. This Agreement does not abrogate any rights preserved by N.C.G.S. 153A-344 or N.C.G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

7. Transportation Improvements.

A. Key Harbor Property

Subject to the approval of the North Carolina Department of Transportation (“NCDOT”), Key Harbor, or its successor in interest, shall, at its sole cost and expense, install all of the off-site transportation improvements that are recommended to be installed by the developer of the Key Harbor Property in a Traffic Impact Analysis Technical Addendum dated March 3, 2006 prepared by Chas. H. Sells, Inc. (the “Key Harbor TIA”). The Key Harbor TIA has been reviewed and approved by NCDOT. The off-site transportation improvements to be installed by the developer of the Key Harbor Property shall include the following:

- (i) Dedicated turn lanes and re-configured signal timing at the intersection of Highway 150 and Sherrills Ford Road;
- (ii) Dedicated turn lanes and signal installation at the intersection of Sherrills Ford Road and Island Point Road;
- (iii) Signal installation and dedicated turn lanes at the intersection of Sherrills Ford Road and Slanting Bridge Road;
- (iv) Signal installation and dedicated turn lanes at the intersection of Sherrills Ford Road and Molly’s Backbone Road; and

(v) Dedicated turn lanes and re-configured signal timing at the intersection of Highway 150 and Slanting Bridge Road.

The off-site transportation improvements described above in subparagraphs (i) through (v) and any other off-site transportation improvements required by NCDOT shall be installed in accordance with the schedule set out in the phasing analysis approved by NCDOT, and such off-site transportation improvements shall be installed in accordance with the specifications of NCDOT. If Key Harbor, or its successor in interest, fails to install any of the required off-site transportation improvements in accordance with the terms of the approved phasing analysis, then the County may, at its option, 1) withhold the issuance of any further building permits for homes within Key Harbor and/or 2) withhold the issuance of certificates of occupancy for any homes within Key Harbor that have not been purchased or have not been placed under contract for sale until such time as the delinquent off-site transportation improvements are completed. Subsequently placing a home under contract shall not remove the hold on its certificate of occupancy.

Catawba County hereby agrees to request NCDOT to consider lower speed limits on Island Point Road, Azalea Road and Molly's Backbone Road.

B. Village Center Property

(i) Crescent has caused to be prepared by Kubilins Transportation Group, Inc. a Traffic Impact Analysis for the Village Center Project (the "Crescent TIA"). The Crescent TIA is currently being reviewed by NCDOT and is subject to its approval. Crescent, or its successor in interest, shall, at its sole cost and expense, install all of the off-site transportation improvements that are recommended to be installed by the developer of the Village Center Project in the Crescent TIA as approved by NCDOT. The off-site transportation improvements that are recommended to be installed by the developer of the Village Center Project shall be installed in accordance with the schedule set out in the phasing analysis recommended by the Crescent TIA as approved by NCDOT, and such off-site transportation improvements shall be installed in accordance with the specifications of NCDOT. If Crescent, or its successor in interest, fails to install any of the required off-site transportation improvements in accordance with the terms of the approved phasing analysis, then the County may, at its option, withhold the issuance of any further building permits or certificates of occupancy for the Village Center Property until such time as the delinquent off-site transportation improvements are completed.

(ii) Within thirty (30) days of the date of the approval of the Crescent TIA by NCDOT, Crescent shall dedicate right of way to NCDOT for the widening of Highway 150, which right of way area is more particularly depicted on Exhibit J.

8. Condemnation of Right of Way for Off-Site Transportation Improvements.

A. Key Harbor Property

Key Harbor shall exert reasonable and good faith efforts to obtain from the relevant property owners, at its sole cost and expense, the right of way necessary to construct and install the required off-site transportation improvements described above. In the event that Key Harbor is unable to obtain any of the required right of way after exerting reasonable, good faith

efforts to do so, the County will obtain the required right of way by purchasing the same or through eminent domain proceedings. In the event that the County purchases any required right of way, Key Harbor shall reimburse the County for the purchase price and any expenses related thereto. In the event that the County acquires any required right of way through eminent domain proceedings, Key Harbor shall reimburse the County for any award of just compensation and/or damages (as determined through settlement or verdict), including interest, that the County is required to pay, and for appraisal fees, attorney's fees and other costs and expenses incurred by the County in connection therewith. Key Harbor shall not be liable, however, for payments through settlement in excess of appraised value unless it has given its prior consent.

B. Village Center Property

Crescent shall exert reasonable and good faith efforts to obtain from the relevant property owners, at its sole cost and expense, the right of way necessary to construct and install the required off-site transportation improvements described above. In the event that Crescent is unable to obtain any of the required right of way after exerting reasonable, good faith efforts to do so, the County will obtain the required right of way by purchasing the same or through eminent domain proceedings. In the event that the County purchases any required right of way, Crescent shall reimburse the County for the purchase price and any expenses related thereto. In the event that the County acquires any required right of way through eminent domain proceedings, Crescent shall reimburse the County for any award of just compensation and/or damages (as determined through settlement or verdict), including interest, that the County is required to pay, and for appraisal fees, attorney's fees and other costs and expenses incurred by the County in connection therewith. Crescent shall not be liable, however, for payments through settlement in excess of appraised value unless it has given its prior consent.

C. Authority to Condemn

The County represents and warrants that it has the legal authority to acquire the right of way areas described above through eminent domain proceedings in accordance with the terms of this Agreement pursuant to 1989 N.C. General Assembly Session Laws, Senate Bill 620.

9. Reservations or Dedications of Land for Public Purposes/Public Improvements by Key Harbor and Crescent.

A. Key Harbor

(i) Bike Path. Within three (3) years of the date on which the Key Harbor Property is rezoned to the Planned Development zoning district and subject to the approval of NCDOT and the availability of right of way, Key Harbor shall install, at its sole cost and expense, a paved bike path along the northern side of Island Point Road extending from the intersection of Island Point Road and Sherrill's Ford Road to the easternmost edge of the Key Harbor Subdivision's frontage on Island Point Road (the "Bike Path"). The Bike Path shall vary in width from 5 feet to 8 feet, and it may meander at the discretion of Key Harbor to save trees. In the event that NCDOT fails to approve the Bike Path, then Key Harbor shall have no obligation to install the Bike Path. Additionally, Key Harbor shall have no obligation to install any portion

of the Bike Path where there is no existing right of way to accommodate such portion of the Bike Path.

(ii) Sherrills Ford Elementary School Improvements. In the event that the Key Harbor Property is rezoned to the Planned Development zoning district to permit the development of the Key Harbor Subdivision on or before April 17, 2007, then Key Harbor, at its sole cost and expense, shall re-configure and improve the Sherrills Ford Elementary School parking area prior to July 31, 2007 as described in the Key Harbor TIA and as depicted on Exhibit K attached hereto and incorporated herein by reference. Key Harbor shall coordinate the installation of these improvements with the Catawba County Board of Education (the "Board of Education") so as to minimize any inconvenience to Sherrills Ford Elementary School during the construction process. In the event that the Key Harbor Property is rezoned after April 17, 2007, then the improvements to the Sherrills Ford Elementary School shall be completed on a schedule mutually agreed upon among the Board of Education, Sherrills Ford Elementary School and Key Harbor, but in no event later than July 31, 2008.

(iii) Park Site. On or before May 15, 2007, Key Harbor shall acquire an approximately 22 acre parcel of land located adjacent to the northern boundary line of the Key Harbor Subdivision (the "Key Harbor Park Site"). The Key Harbor Park Site is more particularly depicted on the Approved Key Harbor Plan. On or before May 18, 2008, Key Harbor shall donate and convey to the Sherrills Ford Optimist Club the Key Harbor Park Site for use as a public park. Key Harbor shall not be required to construct or to fund any of the park's internal improvements or amenities. The deed of conveyance from Key Harbor to the Sherrills Ford Optimist Club shall restrict the use of the Key Harbor Park Site to park and recreational purposes. The County shall provide a letter to Key Harbor confirming the donation of the Key Harbor Park Site for tax purposes. Key Harbor shall lease the Key Harbor Park Site to the Sherrills Ford Optimist Club beginning on May 15, 2007 until the date title is conveyed at a sum not to exceed \$10 per year, provided that the Sherrills Ford Optimist Club agrees to hold Key Harbor harmless from and against any and all causes of action and liabilities arising in tort.

(iv) Terrell General Store. Key Harbor shall exert reasonable and good faith efforts to obtain from the relevant property owner(s), at its sole cost and expense, the parcel or parcels of land on which the Terrell General Store is currently located (the "Terrell General Store Site"). In the event that Key Harbor is able to acquire the Terrell General Store Site, then Key Harbor shall make reasonable and good faith efforts to relocate the Terrell General Store building from its present location on the Terrell General Store Site to another suitable location on the Terrell General Store Site. Such suitable location cannot interfere with any required off-site transportation improvements. In the event that a suitable location is found for the relocation of the Terrell General Store building, then Key Harbor shall relocate the Terrell General Store building to the suitable location at its sole cost and expense. Key Harbor will then be entitled to pursue the commercial rezoning and development of the Terrell General Store Site.

In the event that a suitable location on the Terrell General Store Site for the relocation of the Terrell General Store building cannot be located, then Key Harbor shall offer the Terrell General Store building to the County at no charge, and if the County accepts such offer, the County shall relocate the Terrell General Store building to another location at its sole cost and expense within a reasonable period of time. If the County does not accept such offer, then Key

Harbor may dispose of the Terrell General Store building. In either event, Key Harbor may then pursue the commercial rezoning and development of the Terrell General Store Site.

In the event that Key Harbor is unable to acquire the Terrell General Store Site after exerting reasonable and good faith efforts to do so, then Key Harbor shall have satisfied its obligations hereunder.

(v) Public Sidewalks. Key Harbor shall construct a 5 foot public sidewalk on at least one side of each public street located within the Key Harbor Subdivision. This sidewalk system shall connect to the Bike Path on Island Point Road. More specifically, a public sidewalk shall be constructed on both sides of any portion of a public street where dwelling units are located on each side of the public street, and a public sidewalk shall be constructed only on the dwelling unit side of a portion of any public street where dwelling units are located on only one side of the public street. With respect to the open space areas within the Key Harbor Subdivision, a public sidewalk shall be constructed on only one side of any public street located in these areas. Key Harbor shall construct a public sidewalk adjacent to each lot after the dwelling unit is constructed thereon to prevent damage to the public sidewalk during the construction of the dwelling unit, and Key Harbor shall construct public sidewalks in the open space areas at such times as these areas are developed.

The internal trail system to be constructed within the Key Harbor Subdivision shall be constructed of pervious materials, which materials shall consist of mulch, gravel or stone at Key Harbor's discretion, but subject to Planning Staff approval, such approval not to be unreasonably withheld.

(vi) Amenity. Key Harbor shall construct at least two swimming pools and at least two clubhouses within the Key Harbor Subdivision.

B. Crescent

(i) School Site. Crescent shall reserve an approximately 25 acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for a public school site (the "School Site"). Unless extended as provided below, the School Site shall be reserved for a public school for a period of thirteen (13) years, with such thirteen (13) year period commencing on the date that the Village Center Property is rezoned to accommodate the Village Center Project and expiring thirteen (13) years thereafter (the "School Reservation Period"). During the School Reservation Period, the School Site may not be used for any purpose that is inconsistent with the reservation thereof for a public school. The School Site may be used, however, as a construction staging area or other use approved by the County.

If the Board of Education approves the School Site for a public school within the School Reservation Period, then Crescent shall donate and convey to the Board of Education as much of the School Site that is required to accommodate a public school as determined by the Board of Education within ninety (90) days of Crescent's receipt of written notice of the County's approval of the School Site. The deed of conveyance shall restrict the use of the School Site to a public school. Any portion of the School Site that is not required for the public school, as determined by the Board of Education, shall be retained by Crescent free and clear of the

reservation, and Crescent may pursue the rezoning and development of the relevant portion of the School Site.

If the Board of Education fails to approve the School Site for a public school within the School Reservation Period, then the reservation shall expire and Crescent may pursue the rezoning and development of the School Site.

At any time during the School Reservation Period, the Board of Education may extend the School Reservation Period for an additional three (3) years upon written notice to Crescent provided that the public school proposed for the School Site is approved for construction during the 2019-2023 funding cycle.

If the Board of Education approves a public school site in another location in the Sherrills Ford area within the School Reservation Period and releases the School Site from the reservation, then Crescent shall contribute to the County an amount equal to the fair market value of the School Site as rezoned to the Planned Development zoning district as of the date of the rezoning of the Village Center Property to accommodate the development of the school at the alternate site. Crescent and the County agree that the fair market value of the School Site based upon the Approved Village Center Plan and as rezoned as of the date of the rezoning of the Village Center Property shall be determined by employing two separate appraisers with MAI credentials to conduct separate “blind” appraisals. Crescent and the County shall each select one appraiser, but the costs of each appraisal shall be paid by Crescent. The higher appraisal shall determine the amount of the School Payment. The School Payment shall be paid by Crescent to the County within one hundred and twenty (120) days of Crescent’s receipt of written notice of the Board of Education’s approval of the alternate site for a public school in the Sherrills Ford area and the release of the School Site from the reservation. Crescent shall then be permitted to pursue the rezoning and development of the School Site.

If the Board of Education approves the School Site for a public school within the School Reservation Period and Crescent fails to donate and convey to the County the School Site as described above, or, alternatively, if Crescent fails to pay the School Payment as described above, then the County may, in its discretion, withhold any or all building permits and/or certificates of occupancy for the Village Center Project until Crescent donates and conveys to the County the School Site or, alternatively, pays to the County the School Payment in full. Additionally, the County may sue Crescent for the specific performance of these obligations.

In no event shall Crescent be responsible for the construction of any improvements required for access to the School Site or for the development and use of the School Site or for any costs related thereto.

(ii) Service Center. Crescent shall donate and convey to the County an approximately two (2) acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for a satellite service center for County services, including, but not limited to, the Catawba County Sheriff’s Department, Catawba County Emergency Services, the Catawba County Public Library or other County services (the “Service Center Site”). The deed of conveyance shall restrict the use of the Service Center Site to County services. The Service Center Site shall be donated and conveyed to the County prior to that date which is four (4) years and two (2) months after the Sewer Availability

Date (the Sewer Availability Date being defined in Paragraph 11.A.(i) below). Crescent shall also donate and contribute to the County the sum of \$750,000 to be utilized for construction costs and/or the purchase of emergency services equipment prior to that date which is four (4) years and two (2) months after the Sewer Availability Date.

If Crescent fails to donate and convey to the County the Service Center Site or to pay to the County the full sum of \$750,000 as described above, then the County may, in its discretion, withhold any or all building permits and/or certificates of occupancy for the Village Center Project until Crescent donates and conveys to the County the Service Center Site and pays the \$750,000 in full. Additionally, the County may sue Crescent for the specific performance of these obligations.

In no event shall Crescent be responsible for the construction of any improvements required for access to the Service Center Site or for the development and use of the Service Center Site or for any costs related thereto.

(iii) YMCA Site. Crescent shall reserve an approximately ten (10) acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for purchase by the YMCA (the "YMCA Site"). The YMCA Site shall be reserved for purchase by the YMCA for a period of three (3) years, with such three (3) year period commencing on the date of the issuance of the first building permit for the Village Center Property and expiring three (3) years thereafter (the "YMCA Reservation Period"). To exercise its option to purchase the YMCA Site, the YMCA must notify Crescent in writing that it will purchase the YMCA Site and the parties must enter into a written contract for the same within the YMCA Reservation Period. Should the YMCA fail to exercise its option to purchase the YMCA Site within the YMCA Reservation Period, then the reservation shall expire and Crescent may pursue the rezoning and development of the YMCA Site.

The purchase price for the YMCA Site shall be the lesser of (i) the fair market value of the YMCA Site as of the date that the YMCA exercises its option to purchase the same as determined by a third party appraisal procured by Crescent or (ii) \$50,000 per acre.

The purchase contract between Crescent and the YMCA shall contain a provision that provides that in the event that the YMCA does not begin construction of its facility on the YMCA Site within five (5) years of the date that it acquires the YMCA Site, then Crescent may purchase the YMCA Site from the YMCA for the purchase price paid by the YMCA. In this event, Crescent may pursue the rezoning and development of the YMCA Site.

In no event shall Crescent be responsible for the construction of any improvements required for access to the YMCA Site or for the development and use of the YMCA Site or for any costs related thereto.

(iv) Catawba County Medical Center. Crescent shall reserve an approximately ten (10) acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for purchase by the Catawba County Medical Center (the "Medical Center Site"). The Medical Center Site shall be reserved for purchase by the Catawba County Medical Center for a period of three (3) years, with such three (3) year period commencing on the date of the issuance of the first building permit for the Village Center

Property and expiring three (3) years thereafter (the “Medical Center Reservation Period”). To exercise its option to purchase the Medical Center Site, the Catawba County Medical Center must notify Crescent in writing that it will purchase the Medical Center Site and the parties must enter into a written contract for the same within the Medical Center Reservation Period. Should the Catawba County Medical Center fail to exercise its option to purchase the Medical Center Site within the Medical Center Reservation Period, then the reservation shall expire and Crescent may pursue the rezoning and development of the Medical Center Site.

The purchase price for the Medical Center Site shall be the lesser of (i) the fair market value of the Medical Center Site as of the date that the Catawba County Medical Center exercises its option to purchase the same as determined by a third party appraisal procured by Crescent or (ii) \$50,000 per acre.

The purchase contract between Crescent and the Catawba County Medical Center shall contain a provision that provides that in the event that the Catawba County Medical Center does not begin construction of its facility within five (5) years of the date that it acquires the Medical Center Site, then Crescent may purchase the Medical Center Site from the Catawba County Medical Center for the purchase price paid by the Catawba County Medical Center. In this event, Crescent may pursue the rezoning and development of the Medical Center Site.

In no event shall Crescent be responsible for the construction of any improvements required for access to the Medical Center Site or for the development and use of the Medical Center Site or for any costs related thereto.

(v) Pump Stations. If suitable locations can be located on any of its parcels of land, Crescent shall donate and convey the relevant portions of these parcels of land to the County for the construction, operation and maintenance of any pump stations that are required to serve the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property. Crescent shall also dedicate any easements over and across its parcels of land that are required to install and maintain sewer lines from the pump stations to the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property. To the extent that it is legally permissible and physically feasible to locate a sewer pump station on land owned by Duke Power in Iredell County, Crescent shall request Duke Power to donate land in Iredell County for this purpose. It is understood by the parties hereto that the decision to donate such land or not is entirely within the discretion of Duke Power, and Duke Power’s refusal to donate such land shall not be deemed to be a breach of this Agreement by Crescent. All costs and expenses associated with or relating to the installation, maintenance and use of the pump stations described above and any related sewer lines shall be borne solely by the County.

10. Key Harbor Restrictive Covenants. Key Harbor shall impose on the Key Harbor Subdivision restrictive covenants that are not less restrictive than the restrictive covenants of record as of the date hereof that are imposed against the Northview Harbor Subdivision.

11. Public Sewer and Water.

A. Sewer

(i) The County shall, at its sole cost and expense, provide public sewer to the Key Harbor Property and the Village Center Property on or before that date which is ten (10) months after the date on which all parties execute this Agreement and the rezoning of the Key Harbor Property and the Village Center Property are approved by the Board of Commissioners (such date being hereinafter referred to as the "Sewer Availability Date"), and the County warrants and represents that public sewer will be available to the Key Harbor Property and the Village Center Property on or before the Sewer Availability Date.

(ii) In connection with the provision of public sewer to the Key Harbor Property and the Village Center Property, the County shall, at its sole cost and expense, construct, install and maintain a pump station and a force main of sufficient size and capacity necessary to provide gravity sewer to the entire Key Harbor Property. Additionally, the County shall, at its sole cost and expense, construct, install and maintain a pump station and a force main of sufficient size and capacity necessary to provide gravity sewer to the entire Village Center Property.

(iii) In the event that lots are developed within the Key Harbor Subdivision and homes are constructed thereon and ready for occupancy prior to the Sewer Availability Date, then the County agrees, at its sole cost and expense, to pump and haul sewage for each such home from a central location on the Key Harbor Property that is mutually agreed upon by the County and Key Harbor and that is provided by Key Harbor until such time as public sewer is actually available. Pump and haul arrangements shall be subject to all superseding state and federal laws and regulations. All required permits and approvals shall be the responsibility of the County to obtain and the County will diligently pursue the issuance of all required permits and approvals.

(iv) The County shall approve plats, issue land disturbing, building and other permits, authorize water and sewer taps and issue certificates of occupancy for homes in Key Harbor that are constructed prior to the availability of public sewer. The issuance of permits and certificates of occupancy shall be in accordance with State law but shall not be withheld because of any pump and haul arrangement.

(v) In the event that the County does not actually provide public sewer to the Key Harbor Property by the Sewer Availability Date, then the County agrees thereafter, at its sole cost and expense, to pump and haul sewage from the Key Harbor Property from a central location on the Key Harbor Property that is mutually agreed upon by the County and Key Harbor for any and all homes located or to be located within the Key Harbor Property until such time as public sewer is actually available to the Key Harbor Property.

(vi) The sewer systems for the Key Harbor Property and the Village Center Property shall be designed to the City of Hickory's specifications and subject to the City of Hickory connection charges.

(vii) The sewer systems for the Key Harbor Property and the Village Center Property shall be approved by the County, the City of Hickory and NCDENR.

(viii) With respect to any public utility lines required to be installed by Key Harbor or Crescent, the County agrees to exercise its power of eminent domain to acquire any easements required for such public utilities to serve the Key Harbor Property and/or the Village Center

Property if Key Harbor and/or Crescent are unable to acquire the same after having exercised reasonable and good faith efforts to do so. The procedures described in Paragraph 8 above shall be followed in connection with the County's exercise of its power of eminent domain.

B. Water

(i) The County represents and warrants that public water is currently available to the Key Harbor Property and the Village Center Property. Public water can be made available at Crescent's expense to the Terrapin Creek Property and the Mountain Creek Property.

(ii) The water systems shall be designed to the City of Hickory's specifications and subject to the City of Hickory connection charges.

(iii) The water systems shall be approved by the County, the City of Hickory and NCDENR.

12. Water and Sewer Capital Fees. The County's fiscal year runs from July 1 through June 30. Commencing with the County's fiscal year in which the Sewer Availability Date occurs and in accordance with the schedule set out below and on Exhibit L attached hereto and incorporated herein by reference, Key Harbor shall pay to the County the standard per lot water and sewer capital fees charged by the County for each of the 1,500 lots planned to be developed on the Key Harbor Property.

Specifically, commencing in the County's fiscal year in which the Sewer Availability Date occurs and continuing thereafter during each County fiscal year until such time as the water and sewer capital fees are paid for each of the 1,500 lots planned to be developed on the Key Harbor Property, Key Harbor shall pay water and sewer capital fees to the County based upon the actual number of lots developed and permitted on the Key Harbor Property during each County fiscal year or based upon one hundred and fifty (150) lots per County fiscal year, whichever is greater. During each County fiscal year, water and sewer capital fees shall be paid on an approved lot basis at the time of the issuance of a building permit for each lot.

If Key Harbor does not develop and obtain a building permit for at least one hundred and fifty (150) lots in any County fiscal year prior to the payment of the per lot water and sewer capital fees for each of the 1,500 lots planned to be developed on the Key Harbor Property, then Key Harbor shall pay to the County the shortfall in water and sewer capital fees within thirty (30) days after June 30, the end of the County fiscal year. Within fifteen (15) days of the end of each County fiscal year, Key Harbor and the County shall reconcile their records to determine what, if any, shortfall actually exists. If Key Harbor develops and permits more than one hundred and fifty (150) lots in any County fiscal year, then the number of developed and permitted lots in excess of one hundred and fifty (150) shall be credited to future County fiscal year lot requirements. The initial per lot water capital fee shall be \$1,000 and the initial per lot sewer capital fee shall be \$3,000. Water and sewer capital fee rates shall be subject to the water and sewer rate schedules adopted annually by the Board of Commissioners.

Notwithstanding the foregoing, planned lots for which water and sewer capital fees are required to be paid pursuant to the schedule set out above but for which building permits have not been issued prior to June 30 of the relevant County fiscal year shall be subject to higher

water and sewer capital fee payments as set out on the schedule attached hereto as Exhibit L. For example, in fiscal year 1, the sewer capital fee for a planned lot for which a building permit has not been issued prior to June 30 shall be \$750 more than the standard sewer capital fee, and the water capital fee for such planned lot shall be \$250 more than the standard water capital fee. In fiscal year 4, the sewer capital fee for a planned lot for which a building permit has not been issued prior to June 30 shall be \$1,000 more than the standard sewer capital fee, and the water capital fee for such planned lot shall be \$500 more than the standard water capital fee. For the purposes of determining the amount of capital fee payments only, building permit issuance prior to June 30th of the relevant County fiscal year shall trigger the standard capital fee payments only if actual construction is begun within forty-five (45) days. Requesting building permits for lots not ready for home construction for the purpose of acquiring more favorable capital fee rates shall be considered a material breach of this Agreement.

13. Water and Sewer Capacity Reservation. In making plans for maintaining, upgrading and expanding the County's water and sewer systems in order to provide sufficient water treatment capacity and sewage treatment capacity for citizens of the County, the County shall take into account the homes and amenities planned for the Key Harbor Subdivision shown on the Approved Key Harbor Plan, and the commercial and residential development planned for the Village Center Project shown on the Approved Village Center Plan and shall reserve sufficient water treatment capacity and sewer treatment capacity within its water and sewer systems to supply adequate quantities of public water and sewer treatment services to the Key Harbor Subdivision and the Village Center Project to the extent necessary for Key Harbor and Crescent to construct and obtain certificates of occupancy for each of the homes, non-residential buildings and amenities planned for the Key Harbor Subdivision and the Village Center Project (the "Guaranteed Capacity"). The County shall maintain the Guaranteed Capacity for the term of this Agreement, unless this Agreement is terminated earlier pursuant to its terms.

14. Connection to the County's Sewer and Water System. Upon the request of Key Harbor or Crescent, the County agrees to permit the physical connection of the Key Harbor Property and the Village Center Property to the County's sewer system. Upon the request of Key Harbor or Crescent, the County agrees to permit the physical connection of the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property to the County's water system.

15. Local Development Permits. In accordance with N.C.G.S. 153A-349.6(b), the following is a description or list of the local development permits approved or needed to be approved for the development of the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property:

- Zoning Authorization Permits
- Soil Erosion Sedimentation Control Permits
- Septic Tank/Well Permits
- DOT Driveway Permits
- DOT Encroachment Agreements
- Building Permits.

The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Key Harbor or Crescent of the necessity of complying with their permitting requirements, conditions, terms or restrictions.

16. Amendment. The terms of this Agreement may be amended by the mutual consent of the parties hereto or their successors in interest. A major modification of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement, which procedures shall include a public hearing. A minor amendment to the Approved Key Harbor Plan or to the Approved Village Center Plan pursuant to Section 44-327(k) of the UDO shall not be considered to be an amendment to this Agreement.

17. Recordation/Binding Effect. Within fourteen (14) days after the County enters into this Agreement, Key Harbor or Crescent shall record this Agreement in the Catawba County Public Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto.

18. Periodic Review.

(i) Pursuant to N.C.G.S. 153A-349.8, the Planning Director or other County Manager designee shall conduct a periodic review (the "Periodic Review") at least every 12 months, at which time Key Harbor or Crescent shall be required to demonstrate good faith compliance with the terms of this Agreement.

(ii) If, as a result of the Periodic Review, the County finds and determines that either Key Harbor or Crescent has committed a material breach of the terms or conditions of the Agreement, the County shall serve notice in writing, within a reasonable time after the Periodic Review, upon the defaulting party setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the defaulting party a reasonable time in which to cure the material breach.

(iii) If the defaulting party fails to cure the material breach within the time given, then the County unilaterally may terminate or modify the Agreement as to the defaulting party only, provided, however, that the notice of termination or modification or finding of breach may be appealed to the Catawba County Board of Adjustment in the manner provided by N.C.G.S. 153A-345(b).

19. Default.

(i) The failure of Key Harbor, Crescent or the County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party or parties to pursue such remedies as allowed under applicable law against the defaulting party only, provided, however, that no termination of this Agreement may be declared by the County as to a defaulting party absent its according to the defaulting party the notice and opportunity to cure set out in N.C.G.S. 153A-349.8. In addition to any other rights or remedies, any party may institute legal action against a defaulting party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of the

County of Catawba, State of North Carolina, and the parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction.

(ii) The covenants, commitments and obligations of Key Harbor and Crescent under the terms of this Agreement are independent obligations, such that Key Harbor is not responsible or liable for the performance of Crescent's covenants, commitments and obligations under this Agreement, and Crescent is not responsible or liable for the performance of Key Harbor's covenants, commitments and obligations under this Agreement. Accordingly, in the event that Crescent fails to perform any of its covenants, commitments or obligations hereunder, Key Harbor shall not be deemed to be in default under this Agreement, the County may not pursue any legal or equitable action against Key Harbor for Crescent's failure to perform and the County may not terminate this Agreement as to Key Harbor. In the event that Key Harbor fails to perform any of its covenants, commitments or obligations hereunder, Crescent shall not be deemed to be in default under this Agreement, the County may not pursue any legal or equitable action against Crescent for Key Harbor's failure to perform and the County may not terminate this Agreement as to Crescent.

(iii) In no event shall Carolina Centers have any responsibility or liability for the performance of Key Harbors' or Crescent's covenants, commitments and obligations hereunder, or liability for the nonperformance of Key Harbor's or Crescent's covenants, commitments and obligations hereunder. However, Carolina Centers shall be obligated to take all necessary steps, as the owner of the Village Center Property, the Mountain Creek Property and the Terrapin Creek Property to enable Crescent to meet all affirmative obligations hereunder.

(iv) In the event that Key Harbor fails to perform any of its covenants, commitments and obligations hereunder after notice and an opportunity to cure, the County may, until such default is cured, withhold the issuance of any further building permits for homes within Key Harbor or withhold the issuance of certificates of occupancy for any homes within Key Harbor that have not been purchased or have not been placed under contract for sale. The County may not withhold the issuance of any further building permits or certificates of occupancy for the Village Center Property, the Terrapin Creek Property or the Mountain Creek Property in the event that Key Harbor fails to perform any of its covenants, commitments or obligations hereunder.

(v) In the event that Crescent fails to perform any of its covenants, commitments and obligations hereunder after notice and an opportunity to cure, the County may withhold the issuance of any further building permits or certificates of occupancy for the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property until such default is cured. The County may not withhold the issuance of any further building permits or certificates of occupancy for the Key Harbor Property in the event that Crescent fails to perform any of its covenants, commitments or obligations hereunder.

(vi) In the event that it becomes necessary for the County to pursue a civil action against a defaulting party and the County is the prevailing party in such action, then the County shall be entitled to recover its reasonable attorneys fee from the defaulting party.

(vii) Unless otherwise clearly indicated, Key Harbor' duties and liabilities under this Agreement shall be joint and several as to each of Key Harbor Communities and Key Harbor Holdings.

20. Notices. Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder 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 herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. Parties shall make reasonable inquiry to determine whether the names of the persons listed in this Agreement should be substituted with the name of the listed person's successor. All notices, demands, requests, consents, approvals or communications to the County shall be addressed to:

Mr. Tom Lundy
Catawba County Manager
P.O. Box 389
Newton, NC 28658
828-465-8392 (fax)
tlundy@catawbacountync.com

with copies to:

Mr. Jacky Eubanks
Catawba County Planning Department
P.O. Box 389
Newton, NC 28658
828-465-8484 (fax)
jeubanks@catawbacountync.com

Thomas E. Terrell, Jr.
Smith Moore, LLP
P.O. Box 21927
Greensboro, NC 27420
336-433-7482 (fax)
tom.terrell@smithmoorelaw.com

to Key Harbor at:

Doug Adams
Key Harbor Communities, LLC
2010 Industrial Parkway
Suite 400
McDonough, GA 30253
770-507-8499 (fax)

asproperties@bellsouth.net

Doug Adams
Key Harbor Holdings, LLC
2010 Industrial Parkway
Suite 400
McDonough, GA 30253
770-507-8499 (fax)
asproperties@bellsouth.net

with copies to:

John Carmichael
Kennedy Covington Lobdell & Hickman
214 North Tryon Street, 47th Floor
Charlotte, NC 28202
704-353-3209 (fax)
jcarmichael@kennedycovington.com

Allan McClellan
2725 Westinghouse Boulevard, Suite 100
Charlotte, NC 28273
704-587-4556 (fax)
Allan@magdevelopment.com

to Crescent at:

Phil Hayes
Crescent Resources
400 South Tryon Street, Suite 1300
Charlotte, NC 28201
980-373-5829 (fax)
pmhayes@duke-energy.com

with copies to:

John Carmichael
Kennedy Covington Lobdell & Hickman
214 North Tryon Street, 47th Floor
Charlotte, NC 28202
704-353-3209 (fax)
jcarmichael@kennedycovington.com

to Carolina Centers at:

Phil Hayes
Crescent Resources
400 South Tryon Street, Suite 1300
Charlotte, NC 28201
980-373-5829 (fax)
pmhayes@duke-energy.com

with copies to:

John Carmichael
Kennedy Covington Lobdell & Hickman
214 North Tryon Street, 47th Floor
Charlotte, NC 28202
704-353-3209 (fax)
jcarmichael@kennedycovington.com

21. Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between Crescent, Carolina Centers, Key Harbor and the County relative to the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein or as contained in the Catawba County UDO or as expressed in the development conditions applicable to these parcels of land.

22. 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 hereto.

23. Assignment. After notice to the County, Key Harbor, Crescent or Carolina Centers may assign its respective rights and responsibilities hereunder to subsequent land owners of all or any portion of the relevant parcels of land, provided that no assignment as to a portion of the relevant parcel of land will relieve the assigning party of responsibility with respect to the remaining portion of the relevant parcel of land owned by the assigning party without the written consent of the County. Subject to the provisions of N.C.G.S. § 39-23, in the event that Crescent, Carolina Centers or Key Harbor sells all of its relevant parcel or parcels of land and assigns its respective rights and responsibilities to a subsequent land owner, then such selling party shall be relieved of all of its covenants, commitments and obligations hereunder.

24. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

25. 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.

26. 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 such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

27. Agreements to Run with the Land. This Agreement shall be recorded in the Catawba County Registry. The Agreements contained herein shall be deemed to be a lien upon, binding upon and run with the land and shall be binding upon and an obligation of all successors in the ownership of the relevant parcels of land.

28. Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions.

29. Authority. Each party represents that it has undertaken all actions necessary for corporate or public approval of this Agreement, and that the person signing this Agreement has the authority to bind the company or the County.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Crescent Resources, LLC

By: _____
Title: _____

Carolina Centers, LLC

By: _____
Title: _____

Key Harbor Communities, LLC

By: _____
Title: _____

Key Harbor Holdings, LLC

By: _____
Title: _____

Catawba County

By: _____
Title: _____

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

Catawba County Finance Director

State of _____
County of _____

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _____, Managing Partner of Crescent Resources, LLC, a _____ Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company. Witness my hand and official stamp or seal, this the ____ day of _____, 2006.

My Commission Expires: _____

Notary Public
=====

State of _____
County of _____

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _____, Managing Partner of Carolina Centers, LLC, a _____ Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company. Witness my hand and official stamp or seal, this the ____ day of _____, 2006.

My Commission Expires: _____

Notary Public
=====

State of _____
County of _____

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _____, Managing Partner of Key Harbor Communities, LLC, a _____ Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company. Witness my hand and official stamp or seal, this the ____ day of _____, 2006.

My Commission Expires: _____

Notary Public
=====

State of _____
County of _____

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _____, Managing Partner of Key Harbor Holdings, LLC, a _____ Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company. Witness my hand and official stamp or seal, this the ____ day of _____, 2006.

My Commission Expires: _____
_____ Notary Public

=====

State of _____
County of _____

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that he is _____ of Catawba County and acknowledged, on behalf of Catawba County, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the ____ day of _____, 2006.

My Commission Expires: _____
_____ Notary Public

DB

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MR



FILED Joyce H. Pearson
Register of Deeds, Orange Co, NC
Recording Fee: \$368.00
NC Real Estate TX: \$.00

DB

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Bk: RB4785 Pg: 1
07/15/2009 03:44:49 PM 1/119

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
AND
THE TOWN OF CHAPEL HILL, NORTH CAROLINA
Effective Date: July 1, 2009

Orange County Parcel Identifier Numbers: 9779-88-6375
9789-15-0184
9779-89-5194
9880-00-0680

PLANNING ST JH

Return to: Rebecca Ashburn
103 Airport Dr., CB #1060
Chapel Hill, NC 27599-1060



TABLE OF CONTENTS

	Page
ARTICLE 1. STATUTORY FRAMEWORK	1
ARTICLE 2. DEFINITIONS	1
ARTICLE 3. RECITALS	2
ARTICLE 4. TERMS	8
ARTICLE 5. SPECIFIC STANDARDS AND MITIGATION MEASURES	14
1. Scale of Development Approved	14
2. Uses Permitted	14
3. Mix of Uses	14
4. Housing	15
5. Preservation of Open Space and Natural Areas	16
6. Stormwater Management	19
7. Stormwater Utility	21
8. Transportation: Transit, Parking, Streets, Sidewalks, Bikeways, and Greenways	21
9. Fiscal Impacts	27
10. Energy	28
11. Water Use, Reuse, and Reclamation and Utility Siting	30
12. Design Standards and Public Art	30
13. Police, Fire, Emergency Medical Services and Facilities	32
14. Public Schools	33
15. Recreation Areas	33
16. Greenways	34
17. Historic and Cultural Features	36
18. Solid Waste Management	37
19. Landfill and Other Remediation	37
20. Stream Buffers	38
21. Trees and Landscaping in Developed Areas	38
22. Sedimentation	38
23. Neighboring Lands, Compatibility, Buffers	39
24. Noise	39



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25. Lighting	40
26. Existing Conditions	40
27. Annual Report	41
28. Schedule of Triggers and Thresholds for Actions	42
SIGNATURES	46
EXHIBITS INCORPORATED BY REFERENCE	47
EXHIBIT A. Boundary Map of the Carolina North Tract,	48
EXHIBIT B. Boundary Map of the Portion of the Carolina North Tract within the Long-Range Plan of Development for Carolina North	49
EXHIBIT C. Boundary Map of the Portion of the Carolina North Project with Buildings Permitted by this Agreement	50
EXHIBIT D. Site Plan for the Portion of Carolina North Project Proposed for Building Development Pursuant to this Agreement	51
EXHIBIT E. Map: – Conservation Areas	52
EXHIBIT F. Map: – General Location of Greenways and Paved Paths	53
EXHIBIT G. Map: – Perimeter Transition Areas	54
EXHIBIT H. Maps – 1. Existing Conditions on Chapel Hill Portion of Carolina North Tract 2. Existing Trails on the Carolina North Tract	55
EXHIBIT I. Map: – Utility Plant and Line Siting	57
EXHIBIT J. U-1 Site Development Permit Application	58
EXHIBIT K. American College and University Presidents' Climate Change Commitment	63
EXHIBIT L. Design Guidelines for Carolina North	65



STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF ORANGE

This Development Agreement (hereinafter the "Agreement") is made and entered into as of the 1st day of July 2009 by and between **The University of North Carolina at Chapel Hill** (hereinafter the "University"), a public entity authorized to conduct business in the State of North Carolina, and the **Town of Chapel Hill, North Carolina** (hereinafter the "Town"), a municipal corporation of the State of North Carolina.

ARTICLE 1. STATUTORY FRAMEWORK

- 1.1. North Carolina General Statutes (hereinafter "G.S.") 160A-400.20(a)(1) provides that "large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources."
- 1.2. G.S. 160A-400.20(a)(3) provides that "because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development."
- 1.3. G.S. 160A-400.20(a)(4) provides that "because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development."
- 1.4. G.S. 160A-400.20(a)(5) provides that "because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas."
- 1.5. G.S. 160A-400.20(a)(6) provides that "to better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments."
- 1.6. In view of the foregoing, G.S. 160A-400.20(b) and 160A-400.22 expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of G.S. 160A-400.20 through 160A-400.32, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.
- 1.7. G.S. 160A-400.23 restricts the use of a development agreement to "property that contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of the application)." G.S. 160A-400.23 further provides that "development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

ARTICLE 2. DEFINITIONS

In the construction of this Agreement and its incorporated Exhibits, the following definitions and rules of construction shall be observed, unless inconsistent with the manifest intent of the parties or the context clearly requires otherwise. Except as otherwise provided in this Agreement, terms used in the relevant portions of the North Carolina General Statutes or the Town of Chapel Hill Land Use Management Ordinance shall have the same meanings as employed in those statutes and ordinances.



- 2.1. *Agreement.* The word "Agreement" shall mean this Development Agreement by and between the Town of Chapel Hill and The University of North Carolina at Chapel Hill.
- 2.2. *Annual Report.* The words "Annual Report" shall mean the annual report required pursuant to Section 5.27 of this Agreement.
- 2.3. *Carolina North.* The words "Carolina North" shall mean the mixed used campus proposed to be developed on the Carolina North Tract by The University of North Carolina at Chapel Hill.
- 2.4. *Carolina North Tract.* The words "Carolina North Tract" shall mean the approximately 947 acre parcel of land owned by The University of North Carolina at Chapel Hill as depicted in Exhibit A.
- 2.5. *Council.* The word "Council" or "Town Council," shall mean the legislative body of the Town of Chapel Hill, which together with the mayor shall constitute the governing body of the town.
- 2.6. *Development.* The word "development" shall mean any activity involving, requiring, or consisting of the construction or enlargement of a building, structure, road, greenway or paved trail, sidewalk, parking lot, or utility infrastructure or the clearing or alteration of land as an adjunct of such construction. This Agreement shall be applicable to development that does not involve the construction or use of a building only as set forth in Section 5.5 of this Agreement.
- 2.7. *Effective Date.* The word "Effective Date" shall mean the effective date of this Agreement, which is July 1, 2009.
- 2.8. *LUMO.* The term "LUMO" shall mean the Land Use Management Ordinance of the Town of Chapel Hill in effect as of the effective date of this Agreement.
- 2.9. *Manager.* The words "Manager" or "Town Manager" shall mean the Town Manager of the Town of Chapel Hill.
- 2.10. *Nontechnical and technical words.* Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
- 2.11. *Parties.* The words "Parties" shall mean the parties to this Agreement, the Town of Chapel Hill and The University of North Carolina at Chapel Hill.
- 2.12. *Project.* The word "Project" and "Carolina North Project" means the Carolina North development subject to this Agreement. It includes all buildings constructed on the Carolina North Tract and its supporting infrastructure unless specifically provided otherwise in the Agreement. It does not include a public school site or building that may be sited in the future on the Carolina North Tract.
- 2.13. *Town.* The words "the Town" or "this Town" shall mean the Town of Chapel Hill in the Counties of Orange and Durham and the State of North Carolina.
- 2.14. *University.* The words "the University" shall mean The University of North Carolina at Chapel Hill.

ARTICLE 3. RECITALS

- 3.1. The University is the owner of an approximately 947 acres of land located on the north side of Estes Road Extension and the west side of Martin Luther King, Jr. Boulevard (hereinafter referred to as the "Carolina North Tract"). Approximately 643 acres of this land is located within the corporate and regulatory limits of the Town, which portion of that land is more particularly depicted on Exhibit A attached hereto and incorporated herein by reference. Approximately 228 acres of this portion of the tract within the Town's planning and regulatory jurisdiction are included within the University's long-range development plan for academic, research, medical, cultural, and related functions with supporting housing, retail, office, recreation, and open space uses (hereinafter referred to as the "Carolina North Project"), which area of land is more particularly depicted on Exhibit B attached hereto and incorporated herein by reference. Within the Carolina North Project, the University has developed more detailed plans for the development of a phase



of the project that is covered by this Agreement, which area of land is approximately 133 acres and is more particularly depicted on Exhibit C attached hereto and incorporated herein by reference.

- 3.2. The core portion of the Carolina North Tract was acquired by the University in 1940 as a bequest from Professor Horace Williams. In the ensuing years the University acquired adjoining lands. Portions of the site have been used as an airport, landfill, Town operations center, animal shelter, and open space.
- 3.3. In the mid-1990s the University commissioned several studies and reports on the future use of the site, culminating in the September, 1998 report, Outlying Parcels Land Use Plans: Summary Report. In 2001 the University, in consultation with University faculty, administrators, and members of the community, revised and updated the land use plans for this site, culminating in a February, 2001 land use plan for the Carolina North Tract.
- 3.4. The Town formed the Horace Williams Citizens Committee in 2003 to provide advice and recommendations regarding Town review of development proposals for this parcel and the Town Council adopted the March, 2004 final report of this Citizens Committee as Town policy.
- 3.5. In May, 2004 the University adopted a new Carolina North Conceptual Draft Master Plan.
- 3.6. In early 2006 the University formed a Leadership Advisory Committee with representation from the University, Town, other local governments, community groups, and the State of North Carolina to work towards consensus principles to guide planning for the Carolina North Project. A final report of that Committee's work was issued on January 19, 2007.
- 3.7. As part of the process of then updating its plans for the Carolina North Tract, the University in 2006-07 conducted extensive studies of ecological conditions on site, utility and infrastructure needs, and sustainable design options. Four public and peer review sessions of the ecological analysis were held in November and December, 2006. The work led to the production of the report, Ecological Assessment Report: Carolina North (October, 2007).
- 3.8. In 2007 the University conducted a series of seven public workshops on plan alternatives for the Carolina North Tract. The University adopted an updated Carolina North Plan in September, 2007.
- 3.9. The Town Council and representatives of the University Board of Trustees held a work session on January 13, 2008 and agreed to work cooperatively towards design of a new Town development review process for the Carolina North Project. Senior staff from the Town and University subsequently formed a Joint Staff Work Group (JSWG) that met regularly throughout 2008 and 2009 to address the Carolina North development review process.
- 3.10. In June, 2008 the Town Council authorized the Town staff to develop a proposal for a new zoning district and a development agreement as the framework for the Town's review of Carolina North development proposals.
- 3.11. On September 25, 2008 the Town Council and representatives of the University Board of Trustees began a series of monthly work sessions to discuss the Carolina North Project and the Town's development review process for the project. Joint work sessions between the Council and Board of Trustee members were conducted on October 22, 2008, November 18, 2008, December 3, 2008, January 14, 2009, February 11, 2009, March 11, 2009, April 22, 2009, May 21, 2009, and June 16, 2009. All ten of these joint work sessions were duly advertised public meetings and included public comment periods. All of these sessions were broadcast on local cable television and were posted for later viewing on the Town website.
- 3.12. On October 15, 2008 the Town Council authorized staff to proceed with preparation of a new zoning district and potential development agreement for this project.
- 3.13. On October 31, 2008 the University submitted to the Town a request for a new zoning district for the portion of the Carolina North Tract within the Town jurisdiction, proposed use of a development agreement, and provided plans and background studies relative to use of the property. This submission included a Carolina North 50-year plan, planning overlays for the site,



schematics and draft programs for early and mid stage development of the project, the Ecological Assessment Report: Carolina North (October, 2007), and draft Carolina North Design Guidelines (October 30, 2008).

- 3.14. On November 19, 2008 the University Board of Trustees adopted the Carolina North Design Guidelines 2008.
- 3.15. The Town conducted duly advertised public information sessions to seek public input on the proposed process and Carolina North Project on November 19, 2008, January 29, 2009, February 19, 2009, March 4, 2009, April 1, 2009, April 16, 2009, May 7, 2009, and June 11, 2009. All eight of these sessions were broadcast on local cable television and were posted for later viewing on the Town website.
- 3.16. On January 10, 2009 the Town Council conducted a work session to discuss long-range transportation planning and the Carolina North Project. Additional Town Council work sessions to discuss the Carolina North Project were held on April 8, 2009, April 15, 2009, and June 8, 2009. All of these sessions were broadcast on local cable television and were posted for later viewing on the Town website.
- 3.17. On January 26, 2009 the Town approved a special use permit for the UNC Innovation Center, a project located within the boundary of the development area of the Carolina North Project (as that area is defined by Section 5.5.3 of this Agreement and is set forth in Exhibit C of this Agreement).
- 3.18. In February, 2009, the initial draft of a potential Land Use Management Ordinance (hereinafter "LUMO") text amendment that would create a new U-1 zoning district and a draft development agreement for the Carolina North Project were presented to the Town Council and public for review and discussion.
- 3.19. On March 3, 2009 a fiscal impact analysis of the Carolina North Project was submitted to the Town and University by the TichlerBise consulting firm (Fiscal Impact Analysis: Phase I of Carolina North). The report was posted on March 3, 2009 on the Town and University web sites. The consultants presented this fiscal impact analysis report to the Town Council, University staff, and representatives from other affected local governments in a duly advertised public information session on March 31, 2009. The consultants met with the Town Council on April 1, 2009 to further discuss the contents of the report and its analytic foundation and methodology. The April 1 meeting was broadcast on local cable television and posted for later viewing on the Town website.
- 3.20. On March 31, 2009 an updated proposed LUMO text amendment creating a new U-1 zoning district, a zoning atlas amendment for the Carolina North Tract, and a draft development agreement for the Carolina North Project were presented to the Town for review and discussion and were posted on the Town web site for public review and comment.
- 3.21. In April and May, 2009 Town advisory boards reviewed and prepared comments on the proposed LUMO amendments and development agreement. These meetings and discussions were held by the Active Living by Design Committee (May 14), the Bicycle and Pedestrian Advisory Board (April 28, May 19), the Community Design Commission (April 22, May 20), the Greenways Commission (April 22, June 8, June 10), the Historic District Commission (May 5), the Parks and Recreation Commission (April 22, May 5), the Planning Board (April 21, May 5, May 12, June 2, and June 9), the Public Arts Commission (April 23), the Stormwater Management Utility Advisory Board (April 28, May 26), the Sustainability Commission (May 5), and the Transportation Board (April 23, May 7, May 28).
- 3.22. On April 22, 2009, at the conclusion of a joint work session with the representatives of the University Board of Trustees, the Town Council agreed to proceed with formal public hearings on the proposed LUMO text amendment, a zoning atlas amendment to be submitted by the University, and a proposed development agreement for the Carolina North Project and directed staff to proceed with advertisement of a public hearing on these matters and the initiation of the amendment process mandated by Section 4.4 of the LUMO.
- 3.23. On April 26, 2009 the initial notice of a public hearing to be held on May 11, 2009 on the LUMO



text amendment, zoning atlas amendment, and proposed development agreement for the Carolina North Project was published pursuant to G.S. 160A-364. The second notice of this public hearing was published on May 3, 2009. Notices of the hearing were also mailed to adjacent owners pursuant to G.S. 160A-384(a) on April 30, 2009. Nine signs providing notice of the hearing were posted on the site pursuant to G.S. 160A-384(c) on April 28, 2009. The location, type, and intensity of the proposed development were not changed after these initial notices of public hearing.

- 3.24. On April 29, 2009 a zoning atlas amendment and proposed development agreement for the Carolina North Project were submitted to the Town by the University and a LUMO text amendment creating the U-1 zoning district was submitted by the Town staff. The University also submitted additional supporting materials related to the proposed rezoning and development agreement. These supporting materials included: an existing conditions map and chart for the portion of the Carolina North Tract within the Town's regulatory jurisdiction; Design Guidelines for Carolina North 2008 (November 19, 2008) that had been approved by the University Board of Trustees; an updated long-range development plan for the entire Carolina North Project (April 2009); the Carolina North Plan (September 26, 2007) that had been approved by the University Board of Trustees; overlay diagrams for Carolina North depicting transportation, connections, open space, and utilities; and, the Ecological Assessment Report: Carolina North (October 2007). The University's application for a zoning map amendment was accompanied by a complete application form, an area map, a list of all property owners within 1,000 feet of the property proposed for rezoning, and an application fee of \$35,786.00. The proposed text amendment, development agreement, zoning map amendment, and all supporting materials were posted on the Town and University web sites on May 6, 2009.
- 3.25. On May 1, 2009 the Draft Executive Summary of Transportation Impact Analysis and the Draft Transportation Impact Analysis for the Carolina North Project were submitted by the Vannese Hangen Brustlin, Inc. consulting firm. These documents were posted on the Town web site on May 5, 2009 and were distributed to the Town Council on May 6, 2009. A summary of these reports was presented by Town staff and the consultants at a public information meeting on May 7, 2009 and at the Town Council's public hearing on May 11, 2009.
- 3.26. On May 11, 2009 the Town Council conducted a public hearing on the proposed LUMO amendments, zoning atlas amendment, and development agreement for the Carolina North Project. At the conclusion of presentations from the Town staff and consultant regarding the materials submitted for hearing, from the University regarding its application, from the Town staff and consultant regarding the transportation impact analysis, and receipt of comments and questions from the public and the Council, the hearing was recessed until June 15, 2009.
- 3.27. On May 19, 2009 an updated LUMO text amendment, zoning atlas amendment, and development agreement were submitted to the Town that incorporated public comments and further discussion between the Town Council and University.
- 3.28. On May 31, 2009 notice of a second public hearing to be held on June 15, 2009 on the LUMO text amendment, zoning atlas amendment, and proposed development agreement for the Carolina North Project (and the continuation of the May 11 public hearing) was published. A second notice of this additional public hearing was published on June 7, 2009. The signs posted on the site advertising the initial public hearing remained in place for this notice of a second public hearing.
- 3.29. On June 3, 2009 the final Transportation Impact Analysis for the Carolina North Project, the final Executive Summary of that report, and Addendum 1: Additional Parking and Mode Share Sensitivity Analysis were submitted to the Town by the Vannese Hangen Brustlin, Inc. consulting firm. These documents were posted on the Town web site on June 3, 2009 and were concurrently distributed to the Town Council.
- 3.30. On June 15, 2009 the Town Council conducted a second public hearing and a continuation of the May 11 public hearing on the proposed LUMO text amendment, zoning atlas amendment, and development agreement for the Carolina North Project. At the conclusion of receipt of all



comments on June 15, the Town Council continued the hearing to June 22, 2009.

- 3.31. On June 22, 2009 the Town Council conducted a continuation of the May 11 and June 15 public hearings on the proposed LUMO text amendment, zoning atlas amendment, and development agreement for the Carolina North Project. At the conclusion of receipt of public comments, the Council closed these hearings and moved to deliberation and determination of these three matters.
- 3.32. The University has developed and approved a 50-year Carolina North development plan for approximately 250 acres of the Carolina North Tract. This plan focuses development on the previously disturbed areas of the Carolina North Tract, with development concentrated on approximately 228 acres. This development area is adjacent to the existing adjacent major road network. The long-range development plan anticipates some 8 to 9 million sq. ft. of floor space over a fifty year period. This plan is based on an extensive ecological assessment of the site, a detailed infrastructure analysis, and a series of public workshops. The University's long-range plan for Carolina North contemplated as of the Effective Date was submitted to the Town on April 29, 2009 as background material for the proposed rezoning and development agreement. The University also adopted Carolina North Design Guidelines 2008 (November 19, 2008) for the Carolina North Project, which are set forth as Exhibit L attached hereto and incorporated herein by reference.
- 3.33. The initial phase of the Carolina North Project involves the construction of approximately 3 million sq. ft. of building space on approximately 133 acres over a twenty year period. This phase of the development proposed that the site's predominant uses be public or private development for college/university, research activity, civic, hospital, clinics, cultural, and/or related or support functions with integrated supporting housing, general business, convenience business, office-type business, recreation, utility and/or open space uses. The site plan for this portion of the Carolina North Project contemplated as of the Effective Date, which is the development subject to this Agreement, is set forth as Exhibit D attached hereto and incorporated herein by reference.
- 3.34. The purpose of this Agreement is to facilitate the implementation of the initial phase of the Carolina North Project, thereby realizing the public benefits to the Town and the University described in this Agreement. The development of Carolina North requires a major investment by the University in public facilities, substantial front-end investment in on-site and off-site improvements, participation in other programs for public benefit and purposes and substantial commitments of the resources to achieve the benefits of the Project for the University and the Town. The University will be unable to make and realize the benefits from such commitments without the assurances of a realized Project as provided by this Agreement.
- 3.35. The general benefits to be received by the Town from the implementation of the Project include, without limitation:
 - 1) Implementation of the Carolina North plan and furthering the goals of securing an appropriate mix of uses and densities on the site.
 - 2) Protection of natural resources within the Carolina North Tract beyond the development area included within the Agreement, minimization of adverse off-site impacts, and incorporation of sustainability principles in the design and implementation of the Project.
 - 3) Provision of an efficient, effective, and practical overall plan for addressing the transportation needs of the Project, including commitments to transit, bikeways, greenways, sidewalks, and road improvements.
 - 4) Assurance that the Project will be undertaken in a manner that is revenue neutral or revenue positive in terms of fiscal impacts for the Town.
 - 5) Establishment of integrated site plans, urban design elements, land uses, architecture, site engineering, and landscape architecture.
 - 6) Assurance of substantial commitments to public infrastructure and amenities as a result of sufficient certainty, timelines and predictability for the University.
 - 7) Assurance that the University provides the herein referenced public improvements, facilities, and services.
- 3.36. The general benefits to be received by the University from the implementation of the Project



include without limitation:

- 1) Obtaining sufficient certainty, timeliness, and predictability in the Town's development review and approval process to justify the required substantial up-front capital investment for a project that will require multiple years to build out.
 - 2) Realization of the opportunity to implement the Carolina North development plan for a mixed use campus development that is consistent with Town and University goals and needs.
 - 3) Securing development rights for up to three million square feet of buildings and associated development in accordance with an approved plan of development.
 - 4) Integration of site plans, urban design elements, land uses, architecture, site engineering, landscape architecture, and mitigation measures over the entire Project.
- 3.37. In exchange for providing these benefits to the Town, the University desires to receive the assurance that it may proceed with the development of the Project in accordance with any and all existing Town development regulations and conditions of approval of the Town as they exist on the Effective Date, subject to the terms, conditions, and exceptions contained herein and subject to periodic potential amendments to this Agreement.
- 3.38. After careful review and deliberation, the University has determined that the latitude afforded the proposed Carolina North development plan and the certainty, timeliness, and predictability regarding Town development approval afforded by this Agreement provide important benefits for long-range University planning and development and justify the provision of the mitigation measures specified by this Agreement, which the University freely and with full knowledge and consent agrees to provide.
- 3.39. The terms and conditions of this Agreement have undergone extensive review by the Town's staff, advisory boards, and the Town Council and have been found to be fair, just and reasonable. After careful review and deliberation, the Town Council has determined and concluded that:
- 1) the University plans for development of the Project are consistent with the adopted plans and development ordinances of the Town.
 - 2) the Project, with the terms and limitations of this Agreement, will further the Town's land use planning objectives and policies as set out in these documents and will protect the health, safety, welfare and economic well being of the Town and its citizens and will maintain the overall quality of life and of the environment within the Town.
 - 3) the series of mitigation measures set forth in this Agreement are necessary to minimize the anticipated adverse impacts of the Project on the environment, on surrounding neighborhoods and the community, on the Town's traffic conditions, and on the levels of public services and facilities within the Town.
 - 4) the Project as approved and conditioned by this Agreement presents a unique opportunity for the Town to secure quality planning and growth, to protect the environment, to strengthen the tax base and to acquire those public amenities described in this Agreement through the development approval process.
 - 5) the Project plan as approved and conditioned by this Agreement is in the best interest of the Town and its citizens.
- 3.40. The Town, by electing to enter into this Agreement in accordance with statutory procedures, acknowledges that the obligations of the Town shall survive beyond the term or terms of the present Town Council and that such action will serve to bind the Town and future councils to the obligations thereby undertaken. By approving this Agreement, the Town Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date.
- 3.41. Based on the foregoing considerations, the University and the Town desire to enter into this Agreement for the purposes of:
- 1) agreeing upon the plan, design, and density of development on the relevant parcels of land and the types of uses thereon, and promoting sustainability, reflecting consideration of economic, environmental and social issues;
 - 2) coordinating the construction and provision of infrastructure that will serve the above-



- described development and the community at large;
- 3) confirming the dedication and/or provision of the public amenities described herein; and
 - 4) providing assurances to the University that it may proceed with the development of the Project in accordance with the terms of this Agreement without encountering future changes in ordinances, regulations or policies that would affect its ability to develop the relevant parcels under the approved rezoning and the terms of this Agreement.
- 3.42. Pursuant to G.S. 160A-400.24, the Town Council conducted public hearings on May 11, 2009, June 15, 2009, and June 22, 2009 to consider the approval of this Agreement. The notice of public hearing specified, among other things, the location of the parcel of land subject to this Agreement, the development uses proposed on the parcels of land, and a place where a copy of the proposed Agreement could be obtained. The initial draft of this Agreement was posted on the Town website in January, 2009 and was available for public inspection at Town offices at that time. Updates to the draft Agreement were posted at regular intervals thereafter and were available for public review throughout the January through June, 2009 period.
- 3.43. On June 22, 2009, the Town Council considered and unanimously approved this Agreement and authorized the Town's execution of the same. The approval of this Agreement constitutes a legislative act of the Town Council.
- 3.44. On June 25, 2009, the University Board of Trustees considered and unanimously approved this Agreement and authorized the University's execution of the same.

ARTICLE 4. TERMS

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties do hereby agree as follows:

- 4.1. Recitals. The parties agree the foregoing Recitals are true and correct.
- 4.2. Term. The term of this Agreement shall commence upon the Effective Date and it shall expire twenty (20) years thereafter unless sooner terminated by the mutual consent of the parties hereto or their successors in interest or is otherwise terminated pursuant to the terms of this Agreement. This twenty (20) year term has been established by the parties as a reasonable estimate of the time required to carry out the Project subject to this Agreement and to obtain the public benefits of the Project. The Town finds that a term of twenty (20) years is reasonably necessary to assure the Town of the realization of the public benefits from the Project. All of the development authorized by this Agreement must be initiated within the term of the Agreement, but expiration of the twenty (20) year term shall not terminate mutually agreed to obligations and commitments included within this Agreement that are expressly specified to extend beyond the term of the Agreement.
- 4.3. Property subject to Agreement. The property subject to this Agreement includes all of the approximately 643 acres of the Carolina North Tract included within the corporate limits of the Town as depicted in Exhibit A. All of the property subject to this Agreement is owned by the State of North Carolina for the use and benefit of the University. This Agreement limits development of buildings within the Carolina North Tract to that 133 acre portion of this land area depicted in Exhibit C. Future development agreements may address additional development within the Carolina North Tract, such as subsequent phases of the long-term development depicted in the University's long-range development plan for Carolina North.
- 4.4. Zoning of the Property. On June 22, 2009, concurrently with the approval of this Agreement, the Town Council rezoned the portion of the Carolina North Tract located within the Town's planning and zoning jurisdiction to the University-1 (U-1) zoning district. The development allowed pursuant to this Agreement is consistent with the currently existing provisions of the U-1 zoning district and all other applicable provisions of the Town of Chapel Hill Land Use Management Ordinance (hereinafter "LUMO").
- 4.5. Development of the Property. The Project subject to this Agreement shall be developed in



accordance with the terms and conditions of the LUMO in effect as of the Effective Date and with the terms and conditions of this Agreement, including all incorporated Exhibits. The maximum height, bulk, size, and design of buildings and the placement, location, and configuration of the development sites, infrastructure, open space, streets, sidewalks and other public improvements shall be in substantial compliance with this Agreement, subject, however, to any rights the University may have to make adjustments to the same as provided in Section 3.5.5 of the LUMO. Development shall be substantially consistent with that depicted on the long-range plan for Carolina North. Except as limited by Section 5.12.1 of this Agreement, development shall be substantially consistent with the approved Carolina North Design Guidelines 2008, which are set forth as Exhibit L attached hereto and incorporated herein by reference. Development shall be substantially consistent with the site plan for the portion of the Carolina North Project that is subject to this Agreement, which is set forth as Exhibit D attached hereto and incorporated herein by reference. Provided, however, that in the event of any conflict between the provisions of these Exhibits and the express provisions of this Agreement, the terms of the Agreement shall be controlling.

- 4.6. Uses. The Project shall be devoted to those uses that are allowed under Section 3.3.5 of the LUMO for the U-1 zoning district.
- 4.7. Specific standards for development. The development of the Project shall be in substantial compliance with the specific standards and mitigation measures approved by the Town and the University as set forth in Article 5 of this Agreement.
- 4.8. Innovation Center SUP. The approval, terms and conditions of the special use permit issued on January 26, 2009 by the Town for the Innovation Center within the Carolina North Project (recorded in book RB 4733, page 325, Orange County Register of Deeds) are hereby incorporated into this Agreement. The development of that project shall be consistent with the terms of that permit and that approval shall not be deemed to be the initial site development permit under this Agreement.
- 4.9. Development Schedule. The Project shall substantially comply with the specific timetables and triggers for action set forth in Article 5 of this Agreement. The parties acknowledge that, as provided in G.S. 160A-400.25(b), the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of this Agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances.
- 4.10. Law in Effect at Time of the Agreement Governs the Development. Pursuant to G.S. 160A-400.26 and except as provided in G.S. 160A-400.29(b), the Town may not apply subsequently adopted ordinances or development policies to the Project during the term of this Agreement without the written consent of the University or its successors in interest. Accordingly, the University and its successors in interest shall have a vested right to develop the Project in accordance with the terms of this Agreement and the terms of the LUMO and any applicable laws and regulations as they exist as of Effective Date during the entire term of this Agreement. This Agreement does not abrogate any rights that may vest pursuant to statutory or common law or otherwise in the absence of this Agreement. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In accordance with G.S. 160A-400.26(c), in the event State or federal law is changed after the Effective Date and the change prevents or precludes compliance with one or more provisions of this Agreement, the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the Agreement, by ordinance after notice and a hearing. A certified copy of the LUMO and any other applicable Town ordinances in effect as of the Effective Date shall be provided to and maintained on file by the Town Clerk and the University Secretary.
- 4.11. Local Development Permits. In accordance with G.S. 160A-400.25(a)(6), the local development permits approved or needed to be approved for the development of the Project are set forth in Section 4.36 of this Agreement. The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the University of the necessity of complying with their permitting requirements, conditions, terms or restrictions. The Town shall exercise



reasonable diligence to expedite the processing of the required permit and approval applications for the development of the Project. The University shall in a timely manner provide the Town with all documents, applications, plans, and other information necessary for the Town to carry out its obligations hereunder.

- 4.12. Amendment. The terms of this Agreement may be amended by the mutual consent of the parties hereto or their successors in interest. A major amendment of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement, as are set forth in Section 3.5.5 of the LUMO. Any amendment that substantially affects the American College and University Presidents' Climate Change Commitment (Exhibit K) shall be deemed a major amendment. A minor modification pursuant to Section 3.5.5 of the LUMO shall not be considered to be an amendment to this Agreement. All minor modifications approved by the Town shall be memorialized by letter from the Town Manager and acknowledged by the University and shall be maintained on file by the Town Clerk and University Secretary.
- 4.13. Recordation/Binding Effect. Within fourteen (14) days after the Town enters into this Agreement, the University shall record this Agreement in the Orange County Public Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto. All of the provisions of this Agreement shall be enforceable during the term as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Provided, the University's benefits under this Agreement shall inure only to those whom the University has expressly assigned them and only to the extent of the assignment. This Agreement shall be applicable to the air rights associated with land subject to the Agreement. This Agreement shall be applicable to lessees of property subject to this Agreement.
- 4.14. Annual Report. The University shall on an annual basis submit a written report to the Town Manager on the development undertaken pursuant to this Agreement in the previous year. The report shall set forth all individual site development permits issued, infrastructure installed, the status of participation by the University in the provision of or financing of public infrastructure for this Project, dedications and acquisitions of infrastructure by the University, and the projected schedule for development of the Project in the forthcoming year. This report shall include all of the information required pursuant to Section 5.27 of this Agreement and shall be provided at the times specified by that Section. This report shall include sufficient information to demonstrate good faith compliance by the University with the terms of this Agreement. Upon receipt of the report, the Town Manager shall undertake the Periodic Review as set forth in Section 4.15 of this Agreement.
- 4.15. Periodic Compliance Review and Enforcement. Pursuant to G.S. 160A-400.27, the Town Manager shall conduct a periodic compliance review (the "Periodic Review") at least every twelve (12) months, at which time the University shall be required to demonstrate good faith compliance with the terms of this Agreement. The Town Manager shall promptly report the results of this review to the Town Council. If, as a result of the Periodic Review, the Town Council finds and determines that the University has committed a material breach of the terms or conditions of the Agreement, the Town Manager shall serve notice in writing, within a reasonable time after the Periodic Review, upon the University setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the defaulting Party a reasonable time in which to cure the material breach. If the University fails to cure the material breach within the time given, then the Town Council unilaterally may terminate or modify the Agreement, provided, however, that the notice of termination or modification or finding of breach may be appealed to the Town Board of Adjustment in the manner provided by G.S. 160A-388(b). Thereafter the University may pursue any other rights and remedies available at law or in equity. If the Town Council elects to unilaterally modify the Agreement, the University may elect for the Agreement to be terminated rather than accede to the Agreement with the modifications made by the Town Council. Failure of the Town to conduct this Periodic Review shall not constitute a waiver by the Town of its rights to otherwise enforce the provisions of this Agreement, nor shall the University have or assert any defense to such enforcement by reason of such failure to conduct a periodic review



- 4.16. Periodic Assessments. The Parties shall at periodic intervals undertake an assessment of the overall effectiveness on this Agreement. This assessment shall examine and consider, among any other factors deemed relevant and useful by the Parties: (1) the Parties' experience with the Agreement; (2) the degree to which the Agreement and its implementation is consistent with the intent of the Parties; and (3) whether the Agreement is effectively addressing each Parties' objectives and interests. This process for conducting the assessment shall be mutually agreed upon by the Parties and shall include active solicitation of broad public participation. Either Party may recommend modifications to or termination of this Agreement as a result of these assessments. The first assessment pursuant to this Section shall be conducted within three years of the Effective Date of this Agreement. The initial assessment and each subsequent assessment shall include an agreed upon date for the next assessment.
- 4.17. Mediation. In the event either Party believes the other Party is in default or is in material breach, the Parties shall make a good faith effort to negotiate and informally resolve the issues in dispute prior to terminating this Agreement. In the event of an impasse between the Parties in reaching any mutual agreement mandated by this Agreement, the Parties shall make good faith efforts to negotiate and informally resolve the issue in dispute.
- 4.18. Development Timing and Moratoria. The University may develop all or any portion of the Project approved pursuant to this Agreement and may carry out the development in such order and sequence as the University shall determine in its discretion, provided such does not violate an express provision of this Agreement. Phasing of the development shall be based on sound engineering practices to ensure functional and safe street circulation and utility systems at all times. Phasing shall be based in such a way that all infrastructure improvements to be constructed within the Project area will be provided when or before they are necessary for that phase of the development. Absent an imminent threat to public health or safety, neither the right to develop nor the timing of development shall be affected by a moratorium or suspension of development rights adopted by the Town except to the extent imposed by this Agreement or by supervening federal or state law, order, rule or regulation.
- 4.19. Default. Apart from the Periodic Review process set forth in Section 4.15 of this Agreement, the failure of the University or the Town to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting Party or Parties to pursue such remedies as allowed under applicable law against the defaulting Party, provided, however, that no termination of this Agreement may be declared by the Town or the University absent its according to the defaulting Party the notice and opportunity to cure set out in Section 4.15 of this Agreement. A Party believing the other Party to be in default shall provide reasonable notice of that to the other Party and shall provide that Party an opportunity to cure any default within a reasonable time.
- 4.20. Force majeure. In addition to specific provisions of this Agreement, neither the University nor the Town shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Party's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities (excluding parties to this Agreement), epidemics, wars, embargoes, fires, hurricanes, acts of God or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such Party's reasonable control, any date or times by which the parties are otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Party. If written notice of such delay is given to the other Party after the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed.
- 4.21. Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the University and the Town, or to impose any partnership obligation or liability upon such parties. Neither the University nor the 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 of representative of, or to otherwise bind, the other Party.



- 4.22. No Third Party Beneficiaries. The Agreement is not intended to and does not confer any right or benefit on any third party.
- 4.23. Legal Actions. In addition to any other rights or remedies, any Party may institute legal action against a defaulting Party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. In no event shall the Town or the University, or their respective officers, agents, or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the sole legal remedy available to the Parties for a breach or violation of this Agreement shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of North Carolina, and the Parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction. In the event that it becomes necessary for a Party to pursue a civil action against a defaulting Party, the prevailing Party in such action shall be entitled to recover its reasonable attorney fees and costs from the defaulting Party if such fees are awarded by a court of competent jurisdiction.
- 4.24. 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 hereunder 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 herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. 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.

All notices, demands, requests, consents, approvals or communications to the Town shall be addressed to:

Town Manager
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd.
Chapel Hill, NC 27514-5705
919-969-2063 (fax)

All notices, demands, requests, consents, approvals or communications to the University shall be addressed to:

Vice Chancellor for Finance and Administration
UNC-CH
300 South Building
Chapel Hill, N.C. 27599-1000
919-962-0647 (fax)

- 4.25. Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the Town and the University relative to the Project and supersedes all previous agreements. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these Parties relative to the matters addressed herein other than as set forth or as referred to herein or as contained in the LUMO or as expressed in the development conditions applicable to this parcel of land.
- 4.26. 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 hereto.

- 4.27. Assignment. After notice to the Town, the University may assign its respective rights and responsibilities hereunder to subsequent land owners of all or any portion of the relevant parcels of land, provided that no assignment as to a portion of the relevant parcel of land will relieve the assigning Party of responsibility with respect to the remaining portion of the relevant parcel of land owned by the assigning Party without the written consent of the Town.
- 4.28. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.
- 4.29. 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.
- 4.30. 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 such action; provided, however, each Party shall retain the right to pursue its own independent legal defense.
- 4.31. Termination. This Agreement shall terminate on the earlier of the expiration of the term specified in Section 4.2 of this Agreement or a specific termination made by operation of the provisions of this Agreement. Termination of this Agreement as to the University or the portion of the Carolina North property subject to this Agreement shall not affect any of the following:
- 1) any requirements to comply with the applicable terms and conditions of the LUMO, site development permits, approval and acceptance of infrastructure improvements, and any applicable permits; or
 - 2) provided, if this Agreement shall have run for the entire twenty (20) year term or if the University has completed construction of three (3) million square feet of building floor area or if this Agreement has otherwise been extended or renewed, those covenants of the University expressly specified in this Agreement to continue after termination of this Agreement.
- In the event consideration is given to (i) suspension of this Agreement, (ii) termination of this Agreement, or (iii) suspension or termination of any approval of an individual site development permit issued pursuant to this Agreement prior to completion of the twenty (20) year term of this Agreement or prior to the completion of construction of three (3) million square feet of building floor area, the Parties agree that each will identify appropriate representatives to meet and participate in good faith negotiations, as provided in Section 4.17, aimed at resolving the issues prompting that consideration.
- 4.32. No Obligation to Develop. It is understood that the University's development of the Project depends upon a number of factors including, but not limited to, the availability of financing, state appropriations, receipt funds, general economic factors, and academic and programmatic needs. Nothing in this Agreement shall be construed as requiring the University to develop the subject property and any failure to develop the subject property shall not be deemed a default by the University of its obligations set forth in this Agreement.
- 4.33. 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 such Party to exercise at some future time said right or any other right it may have hereunder.
- 4.34. Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. 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.
- 4.35. 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 the Town or the University.
- 4.36. Other Local Permits. Development of the Carolina North Project that is subject to this Agreement



is subject to subsequent approval of the Town of the following: (1) Individual site development permits for specific buildings proposed within the physical boundaries covered by this Agreement; (2) Building and other applicable construction permits for non-State development; (3) Engineering construction permits for work in Town rights of way; and (4) such other Town approvals for development that does not involve a building as determined by the Town Manager.

4.37. **Transparency and Public Involvement.** It is the intent of the Parties that all aspects of the implementation of this Agreement shall be carried out in an open, transparent fashion with opportunities for effective and meaningful public involvement. The Town and University shall take reasonable steps to make information about all aspects of the implementation of this Agreement (including required studies, analysis, plans, reports, and applications) fully available for public review. The Town and University shall take appropriate steps to secure effective and appropriate public involvement in the implementation of this Agreement.

ARTICLE 5. SPECIFIC STANDARDS AND MITIGATION MEASURES

The Parties do hereby agree to the specific standards and mitigation measures set forth in this Section.

1. Scale of Development Approved

5.1.1. The development approved pursuant to this Agreement shall not exceed three million square feet of floor space on an approximately 133 acre site located in the southeast corner of the overall Carolina North Tract. This development area is depicted in Exhibit C and the site plan for this development is depicted in Exhibit D. Provided, the square footage and acreage limits of this section do not apply to a public school site or school building as may be undertaken by the Chapel Hill-Carrboro school district pursuant to Section 5.14 of this Agreement. The development approved pursuant to this Agreement may proceed in distinct phases. This Agreement also includes specific thresholds that require specified actions prior to continuing with additional development. Development beyond a specified threshold shall only be approved upon a conclusion by the Manager that the specified conditions to proceed have been met.

2. Uses Permitted

5.2.1. The land uses permitted by this Agreement are limited to those allowed under the LUMO in the U-1 zoning district. These uses include public or private development for college/university, research activity, civic, hospital, clinics, cultural, and/or related or support functions with integrated supporting housing, general business, convenience business, office-type business, recreation, daycare, utility, and/or open space uses.

3. Mix of Uses

5.3.1. The development approved pursuant to this Agreement shall incorporate a mix of college/university, research activity, civic, hospital, clinic, and cultural uses, with supporting housing, business, recreation, and open space uses at all major phases of development.

5.3.2. The University's projected land uses in the initial 800,000 square feet of building development for the Carolina North Project are as set forth in this Section. The development of the initial 800,000 square feet of building development undertaken pursuant to this Agreement shall be in substantial compliance with this general allocation of uses. Any modification of this allocation of uses that would result in substantial changes in parking or traffic generation (as defined in Section 3.5.5(j) of the LUMO) shall be deemed to be a major amendment of this Agreement.

Land Use	Amount
Academic	410,000 sf
Private Research and Development	180,000 sf

Civic/Retail	10,000 sf
Recreation Fields	n/a
Housing	200,000 sf
Health Care	0 sf
TOTAL	800,000 sf



4. Housing

- 5.4.1. A minimum of 25% of the total floor space in the Carolina North Project covered by the Agreement shall be devoted to housing. Of the three million total square feet of building space authorized by this Agreement, no less than 750,000 square feet of building space shall be devoted to housing. Subject to the availability of a certificate of adequacy of public school facilities, at least 200,000 square feet of housing shall be included in the initial 800,000 square feet of total building space in the Carolina North Project.
- 5.4.2. After the total built square footage within the Carolina North Project reaches 800,000 square feet, if the total square footage of building space devoted to housing drops to 15% or less of the built floor area, construction of non-housing space shall halt until the housing space is at least 20% of the built space. The Annual Report shall provide data for the number of residents and full time equivalent employees within the Carolina North Project. In the event a certificate of adequacy of public school facilities pursuant to the Adequate Public School Facilities section of the LUMO is not available, the provision of housing at Carolina North may be deferred until such time as a certificate is available.
- 5.4.3. A preference for housing availability within the Carolina North Project shall be given to students and employees of the University, UNC HealthCare, and persons with an active connection to the Carolina North Project (such as employees or researchers engaged in work or activity on the Carolina North Tract). A secondary priority shall be given to other public employees working within the Town. Prior to the approval of the first individual site development permit under this Agreement that includes housing, the University shall submit a plan for providing these preferences. The Manager shall approve that plan upon determining that it effectively addresses the requirements of this Section. This section shall be applicable to all housing within the Carolina North Project, whether owner-occupied or rental and whether publicly or privately owned.
- 5.4.4. The housing provided within the Carolina North Project shall have a full range of affordability. While the University may provide housing opportunities at Carolina North for the full income range of those employed on the Carolina North Tract, a primary emphasis shall be in provision of housing that is affordable for those working on the site and that is not otherwise available in the Chapel Hill housing market. At a minimum, the housing provided shall meet the Town affordable housing goals as set forth in the Town's comprehensive plan and ordinances in effect as of the Effective Date of this Agreement. Affordable housing units shall be integrated within the full range of housing provided within the Carolina North Project. Prior to the approval of the first individual site development permit under this Agreement that includes housing, the University shall secure the Manager's approval of the measures the University will use to maintain housing affordability over time. To secure the Manager's approval, the University shall submit a report of the measures it will undertake and the Manager shall approve those measures if they are reasonably designed to meet the applicable permanent affordability goals. This section shall be applicable to all non-student housing within the Carolina North Project, whether owner-occupied or rental and whether publicly or privately owned.
- 5.4.5. All housing provided within the Carolina North Project shall be in the form of compact, multi-family units. All housing shall meet the energy efficiency and sustainability standards specified in Section 5.10 of this Agreement.



5. Preservation of Open Space and Natural Areas

5.5.1. *Conservation Area.*

- a. Subject to obtaining any required State of North Carolina approval, the University shall convey one or more conservation easements for the areas described in this Section to the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. The conservation area required by this section comprises approximately 311 acres.
- b. It is the intent of the Town and University that the conservation easement(s) shall constitute a "conservation agreement" as defined by G.S. 121-35(1) in that the conservation easement(s) shall serve to retain the applicable land and water areas predominantly in their natural, scenic or open condition. In general, the conservation easement(s) shall forbid or limit any or all (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (iii) removal or destruction of healthy native trees, shrubs or other vegetation, unless done as a component of an established forest management plan, (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (v) surface use except for forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (vi) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (vii) other acts or uses detrimental to such retention of land or water areas. The conservation easement(s) shall allow the University to undertake appropriate research and educational activities within the area covered by the easement. The conservation easement(s) may allow for continued sustainable trail maintenance. Maintenance shall be deemed to include minor repair, restoration, or relocation of existing trails. A map of existing trails as of the Effective Date of this Agreement is set forth on Map 2 in Exhibit H. All trail work shall adhere to the guidelines for sustainable single track as set forth by the International Mountain Bike Association. The conservation easement(s) shall not allow construction of new trails (except for potential greenways and paths that are located and approved by the Town Council pursuant to Section 5.16 of this Agreement). The conservation easement(s) shall not automatically preclude trail and road crossings that are consistent with the provisions of the Resource Conservation District provisions of Section 3.6.3 of the LUMO and the terms of this Agreement. The conservation easement(s) shall identify and allocate maintenance and enforcement responsibilities for the area covered and specify how that activity will be funded.
- c. This conservation easement(s) shall cover the following critical natural areas located within the Carolina North Tract: those six areas labeled areas 1, 2, 3, 4, 5, and 6A within the Carolina North Tract set forth on Exhibit E (approximately 311 acres). These six areas include all of those lands identified as Most Suitable for Conservation (EW) in the Weighted Analysis Land Areas by Land Suitability Index Category, as set forth on page 11 of the Ecological Assessment Report: Carolina North (October 2007) along with additional surrounding lands. This weighted analysis in the Ecological Assessment Report: Carolina North particularly emphasizes Landscape Ecology metric classification values. It emphasizes wildlife corridor regional importance, width, and structural integrity, as well as forest patch and forest interior patch sizes. It encompasses critical ecological attributes that are not afforded regulatory protections comparable to floodplains and stream buffers, input received from stakeholders, and the best professional judgment of the consulting team that prepared the Ecological Assessment Report: Carolina North.
- d. The conservation easement(s) shall run in perpetuity.
- e. The draft conservation easement(s) shall be submitted to the Manager for review and approval prior to recordation. A copy of the recorded conservation easement(s) shall be submitted to the Manager upon recordation. Provided that the easement is recorded prior to the initiation of construction pursuant to a site development permit issued pursuant to this Agreement, the conservation easement(s) shall not be required to be conveyed to the receiving entity prior to the issuance of a required state or federal permit for wetland alteration on the Carolina North Tract in order that the easement(s) can be considered a mitigation measure for development of the Carolina North Project.



5.5.2 *Limited Development Area.*

- a. Land within the Carolina North Tract that is not included in either a conservation area defined by Section 5.5.1 of this Agreement or within the long-term development area defined by Section 5.5.3 of this Agreement is designated as a "limited development area." The limited development area comprises approximately 408 acres.
- b. Except as specifically provided within this Agreement no development that involves the construction or use of a building shall be undertaken prior to July 1, 2059 within the limited development area. In addition, except as specifically provided within this Agreement, no development that involves the construction or use of a building shall be undertaken within the area identified as Area 6B (approximately 53 acres) in Exhibit E prior to July 1, 2109. This restriction on development within the limited development area shall not be applicable to uses identified as permitted uses for the U-1 zoning district. For the purposes of this section, the term "building" includes all structures or edifices covering a space of land, usually covered by a roof, more or less completely enclosed by walls, and used for habitation, shelter, storage, trade, manufacture, religion, business, education, or the like.
- c. Notwithstanding Section 4.31 of this Agreement, in the event this Agreement is terminated prior to its twenty (20) year term or prior to the completion of construction of three (3) million square feet of building floor area, then the restrictions identified in Section 5.5.2 of this Agreement for the limited development area shall extend for two and one-half (2.5) years for each year this Agreement was in effect. Notwithstanding Section 4.31 of the Agreement, in the event this Agreement is terminated prior to its twenty (20) year term or prior to the completion of construction of three (3) million square feet of building floor area, the restrictions identified in Section 5.5.2 of this Agreement for the area identified as Area 6B in Exhibit E shall extend for five (5) years for every year this Agreement was in effect.

Alternatively, in the event of such early termination, the restrictions identified in Section 5.5.2 of this Agreement for the limited development area shall be extended according to the following schedule:

- 1) After completion of 750,000 total square feet of building floor area for the Project, the restrictions on the limited development area shall extend for 12.5 years and the restrictions within the area identified as Area 6B shall extend for 25 years.
- 2) After completion of 1,500,000 total square feet of building floor area for the Project, the restrictions on the limited development area shall extend for 25 years and the restrictions within the area identified as Area 6B shall extend for 50 years.
- 3) After completion of 2,250,000 total square feet of building floor area for the Project, the restrictions on the limited development area shall extend for 37.5 years and the restrictions within the area identified as Area 6B shall extend for 75 years.
- 4) After completion of 3,000,000 total square feet of building floor area for the Project, the restrictions on the limited development area shall extend for 50 years and the restrictions within the area identified as Area 6B shall extend for 100 years.

The application of the restrictions provided for in Section 5.5.2 of this Agreement shall apply according to whichever of the two alternative schedules set forth in this Subsection results in the longest duration of the restrictions applicable in the limited development area. The time periods referenced in this Section regarding the length of time this Agreement is in effect and the length of time development within the limited development area is restricted all run from the Effective Date of this Agreement.

- d. The following land uses and activities within the limited development area that do not involve the construction or use of a building shall be subject to Town review and approval by the Manager (using the appropriate form for approval acceptable to the Town Manager) and shall only be undertaken in a manner consistent with the terms of this Agreement:
 - 1) Roads with exterior connections (construction);
 - 2) Roads with exterior connections (operation);
 - 3) Work in any public right of way;
 - 4) Surface parking areas with greater than 50 spaces; and,



- 5) Any work in a Resource Conservation District (as defined by the LUMO) that is not within a conservation area as defined by Section 5.5.1 of this Agreement.
- In addition, within the Area identified as Area 6B in Exhibit E, the land uses and activities undertaken prior to July 1, 2109 shall be consistent with those permissible under the conservation easement(s) provided for in Section 5.5.1 of this Agreement.
- e. The following land uses and activities within the limited development area that do not involve the construction or use of a building shall be undertaken in a manner substantially consistent with the terms of this Agreement. The University shall include a report of all such activities undertaken in the previous year in the Annual Report required by this Agreement:
- 1) University chilled water, steam, electric duct bank, water, and telecommunication lines;
 - 2) University reclaimed water line;
 - 3) Maintenance and improvements to existing utility lines;
 - 4) Stormwater lines and improvements;
 - 5) Stormwater structures;
 - 6) Public utility lines traversing site (e.g., Duke Energy, PSNC);
 - 7) Utility structures without a building (e.g., electrical substation);
 - 8) Alterations to utility equipment (e.g., generator, other mechanical components);
 - 9) Site storage and construction staging areas;
 - 10) Stream restoration projects;
 - 11) Greenways and other paved trails;
 - 12) Public art; and,
 - 13) Site clearing for any other purpose, provided there is no more than one acre of clearing for any individual project and the total amount of cumulative clearing over the life of this Agreement is consistent with the maintenance of tree canopy coverage for the Carolina North Tract as provided in Section 5.21.1 of this Agreement.
- f. The land uses and activities in the limited development area that are listed below and that do not involve the construction or use of a building are not subject to this Agreement, provided any individual undertaking of the activity does not involve land clearing or grading of more than 20,000 square feet and the total amount of cumulative clearing over the life of this Agreement is consistent with the maintenance of tree canopy coverage for the Carolina North Tract as provided in Section 5.21.1 of this Agreement. The University shall include a report on all such activities undertaken on the Carolina North Tract in the previous year in the Annual Report required by this Agreement.
- 1) Conditions existing as of date of this Agreement (which are generally depicted on Map 1 in Exhibit H);
 - 2) Alterations (but not expansion) in existing parking lots, including repaving, replanting for stormwater mitigation, or changing impervious to pervious pavement;
 - 3) Roads, internal service without exterior connections and not designed for vehicular circulation to serve buildings within the developed area of Carolina North;
 - 4) Exterior tennis and basketball courts;
 - 5) Athletic facilities and events that are not buildings and that do not involved land clearing or grading of more than 20,000 square feet;
 - 6) Gazebos and other open air shelters, parks, children's play areas, passive recreation features, and park site furnishings;
 - 7) Unpaved trail construction/maintenance (e.g., volunteer work on paths, harvesting);
 - 8) Memorial gardens;
 - 9) Kiosks and benches;
 - 10) Incidental parking areas, provided each such parking area includes no more than 50 spaces, the cumulative number of parking places in the limited development area does not exceed 300 parking places, and all such parking is consistent with the provisions of Section 5.8 of this Agreement;
 - 11) Site furnishings (e.g., recycle containers, fixtures, blue lights);
 - 12) Support facilities for special events (e.g., Tar Heel town, concerts);
 - 13) Demolitions;
 - 14) Landscaping activities; and,
 - 15) Community gardens.



g. An elementary school provided pursuant to Section 5.14 of this Agreement may be sited within the limited development area provided the entity responsible for construction of the school secures a conditional use permit from the Council. The Council shall issue such permit upon finding the school meets the following standards:

- 1) That the use is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
- 2) That the use is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use is a public necessity;
- 3) That the use conforms with the general plans for the physical development of the Town as embodied in the Comprehensive Plan; and
- 4) That the use conforms with the applicable terms of this Agreement.

The process established by Section 4.5.3 of the LUMO shall be followed in the consideration of this conditional use permit and Sections 4.5.4 and 4.5.5 of the LUMO shall apply to modification, expiration, and revocation of this conditional use permit.

5.5.3. *Development Area.*

- a. The "development area" includes that portion of the Carolina North Tract identified as the long-term development area set forth in Exhibit B of this Agreement. The development area designated by this section comprises approximately 228 acres.
- b. Except as specifically provided within this Agreement, no development shall be undertaken in the development area in areas identified as "open space," "working landscapes," or "recreational fields" on the site plan for the portion of the Carolina North Project subject to building development pursuant to this Agreement (Exhibit D). This restriction does not include development associated with walking paths, stormwater management, wastewater treatment, low impact recreational opportunities (and associated support structures), public art, community gardens, shallow groundwater recharge, native plant nurseries, native habitat for targeted species, and ecological research and learning activities.
- c. The following land uses and activities within the development area that do not involve the construction or use of a building shall be subject to Town review and approval by the Manager (using the appropriate form for approval acceptable to the Town Manager) and shall only be undertaken in a manner consistent with the site plans set forth in this Agreement and any other applicable terms of this Agreement:
 - 1) Roads with exterior connections (construction);
 - 2) Roads with exterior connections (operation);
 - 3) Work in any public right of way;
 - 4) Surface parking areas with greater than 50 spaces; and,
 - 5) Any work in a Resource Conservation District (as defined by the LUMO) that is not within a conservation area as defined by Section 5.5.1 of this Agreement.
- d. The land uses and activities set forth in Section 5.5.2(e) of this Agreement that do not involve the construction or use of a building may be undertaken within the development area in a manner substantially consistent with the site plans set forth in this Agreement and any other applicable terms of this Agreement. The University shall include a report of all such activities undertaken in the previous year in the Annual Report required by this Agreement.
- e. The land uses and activities set forth in Section 5.5.2(f) in the development area that do not involve the construction or use of a building are not subject to this Agreement, provided any individual undertaking of the activity does not involve land clearing or grading of more than 20,000 square feet.
- f. An elementary school provided pursuant to Section 5.14 of this Agreement may be sited within the development area provided the entity responsible for construction of the school secures a conditional use permit from the Council pursuant to Section 5.5.2 of this Agreement.

6. **Stormwater Management**

- 5.6.1. Stormwater management shall be integrated into the site, building, and landscape design. Stormwater management strategies shall be coordinated and applied in a comprehensive manner across Carolina North.



- 5.6.2. A conceptual stormwater management plan for the entire Carolina North Project shall be submitted with the initial site development permit application. The conceptual stormwater management plan shall include hydrologic analyses of the existing conditions (pre-development) and the undeveloped conditions (meadow). At a minimum, the proposed conditions hydrology will not exceed the pre-development (existing) conditions as specified in this Agreement. Additionally, the University will strive to make the proposed conditions hydrology match the undeveloped (meadow) conditions to the maximum extent practicable. The conceptual stormwater management plan will identify the discharge points from the development area and the limited development area that will be analyzed with each site development permit application.
- 5.6.3. The University shall identify the stormwater impacts and document on individual site development permit applications how those stormwater impacts will be mitigated. Stormwater management plans will meet the design criteria specified in this Agreement, applicable NPDES permit requirements, applicable federal and state rules, and applicable federal and state laws (including the Jordan Water Supply Nutrient Strategy requirements as may be adopted by rule or statute).
- 5.6.4. The stormwater design criteria shall address peak rates, volume, and quality as follows:
- 1) The post-development stormwater runoff peak discharge rate shall be controlled such that the post-development runoff peak discharge rate at all locations where stormwater runoff exits the development area (or at other points designated in the conceptual plan) shall not exceed the pre-development (existing conditions) stormwater runoff peak discharge rate for the local 1-year (2.88 inches), 2-year (3.60 inches), 10-year (5.38 inches), 25-year (6.41 inches), and 50-year (7.21 inches) frequency, 24-hour duration storm events.
 - 2) The post-development stormwater runoff volume shall be controlled such that the post-development runoff volume, at all locations where stormwater runoff exits the development area (or at other points designated in the conceptual plan) shall not exceed the pre-development (existing conditions) runoff volume for the local 2-year (3.60 inches) frequency, 24-hour duration storm event.
 - 3) All post-development stormwater runoff resulting from the first one inch of precipitation shall be treated to remove 85% of total suspended solids prior to entering waters of the State and prior to exiting Carolina North Tract. Stormwater treatment facilities shall be designed according to: (1) the NCDENR Stormwater Best Management Practices Manual as modified by the Town of Chapel Hill; (2) the Town of Chapel Hill Design Manual, as amended; (3) the UNC Design and Construction Guidelines, as amended; and. (4) any future written design guidance approved by both the Town and the University stormwater engineers.
 - 4) Stormwater runoff shall be treated as required by current and future federal or state rules, including the Jordan Water Supply Nutrient Strategy requirements as may be adopted by rule or statute.
- 5.6.5. Upon completion of construction, the University shall provide a copy of as-built drawings to the Town, signed and sealed by a North Carolina-registered Professional Land Surveyor, showing building footprints, driveways, stormwater drainage/conveyance piping, stormwater management structures, and all other impervious surfaces and totals.
- 5.6.6. Upon completion of construction, the University shall provide a copy of a certification, signed and sealed by a North Carolina-registered Professional Engineer, that the stormwater management facility(ies) was/were constructed in accordance with the approved plans and specifications.
- 5.6.7. The University shall be responsible for the maintenance of all stormwater facilities on its property.
- 5.6.8. Stormwater management facilities shall not be located in any street rights-of-way maintained by the Town unless mutually agreed upon but may be located within rights-of-way maintained by the University. Stormwater management facility outlets shall be located a minimum of 30 feet from



adjacent private property boundaries, and facility discharges toward private property shall be in a sheet flow condition.

- 5.6.9. Stormwater facilities shall not be located in the Resource Conservation District streamside zones established in the LUMO or in stream buffers as restricted by applicable Jordan Water Supply Nutrient Strategy rules or statutes.

7. Stormwater Utility

- 5.7.1. The University and Town acknowledge that both entities operate stormwater programs that include responsibilities pursuant to their respective NPDES Phase II stormwater permits, their stormwater infrastructure maintenance responsibilities, sustainable program practices, and other state and federal requirements. The University stormwater program includes many, but not all, services that would otherwise be provided by the Town.
- 5.7.2. The Town and University shall prepare and regularly update (at three year intervals) a cost sharing agreement for stormwater utility functions. This agreement shall document the stormwater utility services provided by the University and Town, their costs, and provisions for University financial contributions for services provided by the Town and credits for services provided by the University. The Manager shall approve the agreement if it reasonably provides for equitable cost-sharing based on the respective duties and financial obligations of the Town and University.
- 5.7.3. The initial cost-sharing agreement for stormwater utility functions shall be based on the analysis prepared by Town and University staff and submitted to the Manager on April 22, 2009. The stormwater utility cost-sharing for the 2009-2010 fiscal year shall be 24% of the fee that would be charged based on the impervious surface coverage on the Carolina North Tract existing as of the Effective Date of this Agreement. This rate shall remain in effect for three years and may thereafter be adjusted based on the updated agreements required by Section 5.7.2 of this Agreement. The initial updated agreement shall include a provision for equitable cost-sharing in capital projects or funds based on the respective duties and financial obligations of the Town and University.

8. Transportation: Transit, Parking, Streets, Sidewalks, Bikeways, and Greenways

Section 5.8.A. General Provisions

- 5.8.1. No automobile parking or external road connections shall be made on any portion of the entire Carolina North Tract except as provided in this Agreement.
- 5.8.2. All roads and streets within the Carolina North Project that may support public transit in the future shall be designed and constructed to meet Town standards for roads that support such use unless otherwise approved by the Town Manager. All pedestrian, bicycle, and greenway facilities within the Carolina North Project shall be designed and constructed to meet minimum Town standards unless otherwise approved by the Town Manager. The design of these facilities and roads shall consider the issues identified in Section 4.2 -- Preliminary Evaluation of the Carolina North Site Plan, Transportation Impact Analysis for the Carolina North Project (June 3, 2009).
- 5.8.3. Prior to the approval of the first individual site development permit pursuant to this Agreement, the University shall submit and secure the Manager's approval of guidelines for ownership and maintenance responsibilities of streets, bicycle, pedestrian, and greenway facilities within the entire Carolina North Project. The University and Town shall follow all mandated procedures for offer and acceptance of any streets, bicycle, pedestrian, or greenway facilities proposed for Town ownership or maintenance.



- 5.8.4. Transit stops, transit passenger amenities, bus turnouts, and other transit facilities necessary to support the provision of safe, accessible and efficient public transit shall be incorporated into the design and construction of all applicable new roads within the Carolina North Project. Appropriate parking restrictions shall be applied and enforced within bus stops. Transit stop design shall be consistent with the standards of the Chapel Hill Transit System or as approved by the Town Manager.
- 5.8.5. The University shall maintain its current role as a partner in the Chapel Hill Transit System for the full twenty (20) year term of this Agreement. The University, Town, and the Town of Carrboro are currently partners in the Chapel Hill Transit System and share in the System's capital and operating costs. After deducting revenues, including federal and state funding, the remaining System costs are shared as follows. The University is solely responsible for the costs of routes defined as University exclusive routes. The remaining costs are then allocated on a proportional basis to the University, Town, and Town of Carrboro. The amount of each entity's share of that remaining cost is determined by the relative size of: (1) the total University student and employee (including UNC HealthCare employees) population; (2) the Town's population; and (3) the Town of Carrboro's population. It is the intent of the Parties to continue this general cost-sharing partnership.
- 5.8.6. The University shall take all reasonable and prudent steps to maintain the existing rail corridor that traverses the Carolina North Tract for potential long-term future transportation uses.
- 5.8.7. Parking.
- a. Development undertaken within the initial 800,000 square feet (sf) of total building space in the Carolina North Project. The baseline and constrained parking ratios set forth in this Section are derived from the Transportation Impact Analysis for the Carolina North Development: Addendum 1, Additional Parking and Mode Share Sensitivity Analysis (June 3, 2009). When applied to the University's projected uses of the initial 800,000 square feet of total building space in the Carolina North Project as set forth in Section 5.3.2 of this Agreement, the baseline ratio yields a potential total of 1,525 spaces for the initial phase of development. This shall be the maximum number of new parking spaces provided in this initial phase of the Carolina North Project.
- The Annual Report shall show how the development in this phase of the Carolina North Project that has been undertaken to that date and that is anticipated within the next year provides an amount of parking that is at or below that which is allowed through the application of the baseline parking ratios set forth in this Section. The University shall make a good faith effort to limit parking spaces provided within the Carolina North Project in this initial phase of development to the constrained parking ratios set forth in this Section. The Parties acknowledge that provision of parking, particularly when parking structures are provided, can occur in increments that do not precisely match building construction rates. Therefore, some reasonable latitude in the timing of provision of parking shall be allowed to accommodate that fact, provided the spirit and intent of the limitations of this Section are observed.
- As an incentive to achieving greater parking reductions, if the University achieves more than a 10% reduction in the baseline parking ratios at 800,000 square feet of total building space in the Carolina North Project or a comparable reduction in the number of single-occupancy vehicle trips generated by that development, the traffic and roadway mitigation measures that would otherwise be required by future Transportation Impact Analysis (TIA) updates mandated by Section 5.8.9 of this Agreement will be reduced commensurate with the reduction in need for those measures (as documented by the TIA updates) that is produced by the greater constraints.
- Each individual site development permit application shall demonstrate that the total number of parking spaces provided does not exceed the baseline number of parking spaces for 800,000 square feet of total building space in the Carolina North Project.
- The baseline and constrained parking ratios to be applied in this initial phase of development are:



Land Use	Baseline Parking Ratios	Constrained Parking Ratios (-10%)
University – Employees	0.50 per employee	0.45 per employee
University – Commuting Students	0.25 per student	0.23 per student
University – Visitors	0.20 per 1,000 sf	0.18 per 1,000 sf
Private R&D	2.50 per 1,000 sf	2.25 per 1,000 sf
Housing	1.25 per 1,000 sf	1.15 per 1,000 sf
Civic/Retail	1.50 per 1,000 sf	1.35 per 1,000 sf
UNC Healthcare – Employee	0.50 per employee	0.45 per employee
UNC Healthcare – Patient/Visitor	2.50 per 1,000 sf	2.25 per 1,000 sf
Fields	35 per field	20 per field

- b. Development undertaken subsequent to the initial 800,000 square feet of total building space in the Carolina North Project. Development subsequent to the initial phase of the Carolina North Project shall comply with the total number of parking spaces as determined by parking ratios mutually agreed upon by the Parties. These subsequent parking ratios shall be based on consideration of the Transportation Impact Analysis updates mandated by Section 5.8.9.c of this Agreement and the updated Short Range Transit Plans and Transportation Management Plans mandated by this Agreement. It is the intent of the Parties that parking ratios at the Carolina North Project will be reduced over time as transit, pedestrian, bicycle, and greenway alternatives are enhanced. The Parties have discussed the feasibility of reducing the parking ratios for future phases of the Carolina North Project by 20% or 30% below the current baseline ratios and are committed to further discussions with a goal of achieving the maximum feasible reductions in the future.

The Manager may suspend approval of individual site development permits for projects that would exceed 800,000 square feet of total building space in the Carolina North Project pending mutual agreement of the Parties on updated parking ratios. Unless otherwise mutually agreed by the parties, this Agreement shall be deemed terminated by mutual consent of the parties if the suspension of individual site development permits continues for twelve (12) months in duration.

- c. Allocation of parking. The parking ratios in this Section shall be used to establish the maximum total number of new parking spaces that may be provided at the Carolina North Project. The University shall retain the discretion to allocate this total maximum number of parking spaces to individual buildings and projects within the Project.
- d. Parking for on-site uses. It is the intent of the Parties that all new parking provided at the Carolina North Project shall be for the principal purpose of serving development and uses on the Carolina North Tract.

Section 5.8.B. Required Future Analysis and Planning

- 5.8.8. The University and the Town shall work together to cooperatively plan for increased transit and alternate transportation to the Carolina North Project through the Transportation Impact Analysis, Traffic Management Plan, and Short Range Transportation Plan process identified in this



Agreement. Planning for increased transit will include a complete analysis of the transportation system, housing, connections with other providers, and changes in technology and growth patterns. The Parties agree that the plans and policies for reduced reliance on automobile transportation to serve the Carolina North Project shall be integrated with Town efforts to similarly reduce reliance on automobile transportation overall within the Town.

5.8.9. Transportation Impact Analyses.

- a. Production and contents. Each Transportation Impact Analysis (TIA) required by this Agreement shall be conducted according to the Guidelines and Procedures used in the June 2009 Carolina North TIA and the Town's Traffic Impact Analysis Guidelines (TIA Guidelines) in effect at the time of preparation of the TIA. The cost of preparation of the TIA and subsequent updates shall be borne by the University and shall be conducted by an entity mutually agreed to by the Town and the University. The number of intersections requiring analysis may increase or decrease depending on whether the intersections meet the analysis criteria established in the TIA Guidelines. New traffic and transportation data shall be collected in September/October of the applicable year for each TIA update, beginning with the first update in 2009. Each TIA shall include an executive summary. To the extent feasible, projected construction traffic at the Carolina North Project shall be considered in each TIA. Each TIA shall consider transit, traffic, bicycle, pedestrian, and greenway transportation and shall address the accuracy of the projections and assumptions in previous TIAs for this Project.
- b. Initial update. An updated Transportation Impact Analysis (TIA) for the Carolina North Project shall be submitted by the University in December 2009.
- c. Subsequent updates. An updated TIA shall be submitted in December 2015 or when the total built square footage with the Carolina North Project reaches 800,000 square feet of total building floor space, whichever occurs first. Thereafter, additional TIA updates shall be submitted upon a schedule mutually agreed upon by the Town and University, provided that an update shall be submitted no less frequently than every five years. If there has not been substantial development on the Carolina North Project in the period since the previously completed TIA, the University may request that the Manager approve a revised schedule or a modification in the scope of the TIA.

5.8.10. Short Range Transit Plans.

- a. A Short Range Transit Plan (SRTP) for the Chapel Hill Transit service area affected by the Carolina North Project shall be prepared by the Town and updated in response to the results of each TIA update, commencing with the December 2009 TIA update. Each SRTP shall merge Chapel Hill Transit planning with plans for development at the Carolina North Project and shall consider issues of internal circulation, transit hubs, and policies necessary to maximize transit use as outlined in the Town's SRTP Guidelines in effect at the time of the plan.
- b. The University shall participate in the SRTP process and include in its Annual Report to the Town Manager updated information on the current status of transit planning for the Carolina North Project and coordination with the SRTP process.
- c. Services that are implemented as a direct result of the Carolina North Project shall be funded on a prorated basis as determined appropriate by the partners engaged in Chapel Hill Transit. The provision of dedicated services to the Carolina North Project shall not take precedence over the priority of maintaining existing services to the community (see Section 5.9.3, regarding fiscal impacts).
- d. The Manager may suspend approval of all individual site development permits pursuant to this Agreement if a mutually satisfactory updated cost sharing agreement is not agreed to by the University and Town within twelve months of the completion of each updated SRTP prepared pursuant to this Agreement. Unless otherwise mutually agreed by the parties, this Agreement shall be deemed terminated by mutual consent of the parties if the suspension of individual site development permits continues for twelve (12) months in duration.
- e. An appropriate facility for transit service shall be provided at the intersection of Martin Luther King Jr. Blvd. and the Central Green Way within the Carolina North Project, as identified in the SRTP and approved by the Town Manager.



5.8.11. Transportation Management Plans.

- a. A Transportation Management Plan (TMP) for the Carolina North Project shall be submitted with the first individual site development permit application and it shall set forth overall recommendations for Carolina North, according to the Carolina North TMP Guidelines.
- b. In the Annual Report to the Town Manager, the University shall include an update of how development is coordinated with the Carolina North Project TMP.
- c. A mode split survey of employees, students, residents, and visitors to the Carolina North Project and a parking utilization survey of employees, students, residents, and visitors to the Carolina North Project shall be conducted with the first 400,000 square feet of development or in conjunction with a TIA, as mutually agreed to by the Parties. The proposed schedule for mode split surveys shall be included in the proposed schedule for TIA updates to be approved by the Town Manager.

5.8.12. Public Notice and Participation. The Town Manager shall take reasonable steps to broadly publicize and provide opportunities for public consultation and participation in all of the transportation analyses and plans mandated by this Agreement.

Section 5.8.C. Specific Improvements

5.8.13. Innovation Center Improvements. The traffic and pedestrian improvements included in the special use permit issued for the Innovation Center located on the Carolina North Tract (recorded in book RB 4733 page 325, Orange County Register of Deeds) are incorporated into and made a part of this Agreement.

5.8.14. Cost and Schedule for Specific Improvements in Initial Phase of Development.

- a. Section 5.8.C of this Agreement identifies the transportation improvements that the Transportation Impact Analysis for the Carolina North Project (June 3, 2009) identified as needed to address the impacts of the initial 800,000 square feet of building development within the Carolina North Project. The TIA update scheduled for December 2009 may refine and update the improvements needed for this initial phase of development.
- b. The University shall either design and install or reimburse the Town for all customary costs of providing the transportation and traffic improvements set forth in Section 5.8.C of this Agreement. If the University chooses to reimburse the Town the total cost shall include actual design and construction costs and staff time for administration of the design and construction contracts.
- c. In determining the schedule and responsibility for the improvements required by Section 5.8.C of this Agreement, the Town Manager shall take account of future non-University development that contributes to the need for some of these improvements and that may proportionally share in the cost of providing them.
- d. The schedule for making the improvements set forth in Section 5.8.C of this Agreement shall be determined by mutual agreement of the Parties and shall be consistent with the provisions of this Section 5.8.C of this Agreement. The schedule shall provide that improvements are made prior to occupancy of the building development that generates the need for those improvements. The TIA update scheduled for December 2009 shall include an analysis of the timing of the need for these specific improvements based on the programming for uses at Carolina North set forth in Section 5.3.2 of this Agreement. That analysis shall guide the Parties in setting the schedule of improvements.
- e. Each individual site development permit issued pursuant to this Agreement shall contain conditions that require installation of or payment for those improvements set forth in Section 5.8.C of this Agreement that are needed as a result of that development prior to occupancy of that permitted building.
- f. Each TIA update shall include a review of additional information and proposed additional improvements or adjustments to mitigation measures to address adverse impacts of growth from the Carolina North Project. The Parties intend that TIA updates prepared subsequent to the December 2009 update will identify the set of specific improvements that will be required for the next phase of development beyond the 800,000 square feet of building development addressed by Section 5.8.C of this Agreement. The Parties will by mutual agreement determine the schedule



for the installation of the improvements needed for each subsequent phase of development of the Carolina North Project. The subsequent schedules shall provide that identified improvements are made prior to occupancy of the building development that generates the need for those improvements.

- g. Final design and construction details for all of the improvements required pursuant to Section 5.8.C of this Agreement are subject to Town Manager approval for Town roads and North Carolina Department of Transportation approval on State roads. The University may provide performance guarantees (provided such guarantees are acceptable to the Town Manager) for completion of required improvements if necessary to allow occupancy of buildings prior to the completion of required improvements.
- 5.8.15. Traffic Calming Improvements. The exact location, design, and construction details of traffic calming devices must be reviewed with area residents. The Town Manager may modify or revise the proposed traffic calming devices based on updated findings of each TIA update. Streets identified for traffic calming measures are:
- 1) Piney Mountain Road;
 - 2) Hillsborough Street;
 - 3) Seawell School Road;
 - 4) North Elliott Road/Curtis Road/Caswell Road;
 - 5) Northwoods Road;
 - 6) North Lakeshore Drive;
 - 7) Barclay Road; and
 - 8) Airport Drive for improvements to the existing speed table.
- 5.8.16. NC 86/Martin Luther King Jr Boulevard Pedestrian and Bicycle Study Recommendations. The University shall be responsible for the bus shelter, bus pullouts, mid-block pedestrian crossings and crosswalk improvements on Martin Luther King Jr. Blvd between Airport Drive and Homestead Road as identified by the NC 86 / Martin Luther King, Jr. Boulevard Corridor and Town-Wide Pedestrian Safety Evaluation Study (February 2007) conducted by the Town.
- 5.8.17. Sidewalk Improvements. Sidewalks shall be built in existing right-of-way or on University property. Sidewalks shall be provided for the following locations. The locations are:
- 1) On west side of Martin Luther King Jr. Blvd from Airport Drive to Homestead Road;
 - 2) On both sides of Estes Drive from Martin Luther King Jr. Blvd. to Seawell School Road;
 - 3) On the north side of Estes Drive from Caswell Road to Martin Luther King Jr. Blvd.
 - 4) On one side of Airport Drive from Martin Luther King Jr. Blvd to Estes Drive; and
 - 5) On one side of Seawell School Road between Estes Drive and Homestead Road.
- 5.8.18. Bicycle Improvements. Bicycle facilities shall be built in existing right-of-way or on University property. Bicycle facilities shall be provided on the following streets. The locations are:
- 1) Both sides of Estes Drive from Martin Luther King Jr. Blvd. to Seawell School Road; and
 - 2) Both sides of Seawell School Road between Estes Drive and Homestead Road.
- 5.8.19. Greenway Connection to Main Campus. The Town and the University shall work cooperatively to expeditiously identify a greenway/bicycle connection between the Carolina North Tract and the University's central campus. This work shall be undertaken pursuant to Section 5.16 of this Agreement.
- 5.8.20. Pedestrian Island on Piney Mountain Road. Prior to the issuance of the first individual site development permit, the University shall provide a payment of \$50,000 for construction of a pedestrian refuge island on Piney Mountain Road near the bus stop crossings east of Martin Luther King Jr. Blvd.
- 5.8.21. Traffic Signal System Improvements. Traffic Signal System improvements shall include the following:



- 1) Traffic signal system timing plans for progression shall be studied, revised, and implemented in the Town system as necessary at all intersections that are analyzed for level of service criteria. Additional traffic signal system timing plans shall be updated following the same schedule as the updated TIAs until development pursuant to this Agreement is substantially complete or until a new development agreement is approved.
- 2) Traffic Signal Improvements at Estes Drive and Seawell School Road Intersection. The University shall upgrade the existing traffic signals with:
 - i. Pedestrian amenities on all approaches of the intersection including street imprint for all crosswalks, countdown heads, and audible pedestrian signals;
 - ii. Bicycle activated loops; and
 - iii. New traffic signals phasing as determined by the Town Manager and approved by NCDOT.
- 3) New traffic signal controls: Traffic signal control must be designed and constructed at the intersections listed in this subsection when the associated new road connections are made from Carolina North. The signal plans must include pedestrian amenities and phasing, marked crosswalks with street imprint, bicycle activated loops, audible pedestrian signals, required handicapped ramps, and "countdown" heads on all approaches.
 - i. Estes Drive and Airport Drive,
 - ii. Martin Luther King Jr. Blvd and Airport Drive.

5.8.22. Roadway Improvements. Roadway improvements shall include the following:

- 1) Right-turn lane on southbound Martin Luther King Jr. Blvd at the main site entrance (to be completed prior to the occupancy of the first building pursuant to this Agreement other than the Innovation Center);
- 2) Right-turn lane on northbound Martin Luther King Jr. Blvd at Estes Drive.
- 3) A new street connection on Estes Drive and Airport Drive. The design of this improvement shall reflect the following:
 - i. New street entrance aligned with Airport Drive;
 - ii. A three lane cross-section at the intersection of Estes Dr and Airport Drive; and
 - iii. Appropriate turning lanes (left and right) on Estes Drive and Airport.

5.8.23. Park and Ride Spaces. The University shall provide at a minimum the number of park and ride spaces identified in the June 2009 TIA for Carolina North. The University, Town and Public Transit Committee shall work together to identify a funding formula for associated studies, service and capital costs. Park and ride spaces shall be provided in a manner consistent with the SRTP and shall be located in an appropriate service area to serve the Carolina North Project.

9. Fiscal Impacts

- 5.9.1. The University and Town agree that the University, the State, or Carolina North Project tenants shall bear the cost of Town services required by the Carolina North Project. The Carolina North Project shall be either revenue positive or revenue neutral for the Town.
- 5.9.2. The Fiscal Impact Analysis: Phase I of Carolina North (March 3, 2009) shall be used as a guide to identify the costs and the revenues associated with the Carolina North Project.
- 5.9.3. Short Range Fiscal Plans
 - a. The Town and University shall collaboratively undertake and regularly update Short Range Fiscal Plans (SRFP) that assess and address the fiscal impacts of the Carolina North Project on the Town. Each plan shall include an analysis of anticipated fiscal impacts and shall include agreements on how any adverse fiscal impacts on the Town are to be addressed. The report shall specifically address: (1) University and State payments for fire services provided by the Town; (2) contributions for capital facilities for police, fire, and emergency medical services identified in Section 5.13; and, (3) transportation costs identified in Section 5.8.



- b. The fiscal impact analysis mandated by this Section shall build upon the model used for the March 3, 2009 fiscal impact analysis for Carolina North and shall use a mutually agreed upon methodology and process for updates to that analysis.
 - c. The Manager may suspend approval of all individual site development permits pursuant to this Agreement if a mutually satisfactory means by which negative fiscal impacts on the Town resulting from the Carolina North Project are to be addressed is not agreed to by the University and Town within twelve months of the completion of each updated SRFP prepared pursuant to this Agreement. Unless otherwise mutually agreed by the parties, this Agreement shall be deemed terminated by mutual consent of the parties if the suspension of individual site development permits continues for twelve (12) months in duration. In the event the Parties have not mutually agreed on a means for addressing negative fiscal impacts with twelve (12) months of completion of a SRFP, the Parties shall initiate good faith efforts to resolve this matter, including potential use of facilitators, mediators, or other alternate dispute resolution techniques.
 - d. The initial SRFP shall be completed in conjunction with issuance of the initial site development permit for the Carolina North Project and shall address how the Parties will manage the fiscal impacts on the Town generated by that development. Unless otherwise agreed by the Parties, the SRFP shall be updated annually thereafter and each update shall address the fiscal impacts of the development constructed and approved at the time of that update.
 - e. A summary of the activity taken in the previous year to address the recommendations of the most recent SRFP shall be included in each Annual Report mandated by this Agreement.
- 5.9.4. Any portion of buildings, improvements, or personal property at the Carolina North Project that are privately owned shall be subject to ad valorem taxation per North Carolina General Statutes. In addition, in the event any such building reverts to public ownership and subsequently is transferred back to private ownership, it shall again be subject to ad valorem taxation for any periods in which it is held in private ownership.
- 5.9.5. For any portion of buildings, improvements, or personal property at the Carolina North Project that is privately owned by a for-profit entity, and that entity is, under future taxation law, considered to be eligible to apply for tax-exempt status, the entity shall not apply for tax-exempt status during the term of this Agreement. The University shall inform the Manager and the Orange County Tax Assessor annually as to who owns each building at the Carolina North Project and whether the owner is tax exempt.
- 5.9.6. Any portion of buildings or improvements at the Carolina North Project that is privately owned shall be subject to Town fire and building permitting and inspection fees.

10. Energy

- 5.10.1. The University is committed to meeting the standards in the American College and University Presidents Climate Commitment (ACUPCC). This document is attached and incorporated in this Agreement as Exhibit K. It supersedes prior Town-University carbon reduction goals and exceeds state required energy efficiency standards. This Commitment covers all sources of emissions.
- 5.10.2. The University has committed through the ACUPCC to carbon neutrality by the year 2050. The University is preparing a Climate Change Action Plan that will result in zero carbon emissions from campus buildings and university activities and operations by 2050. This plan will be announced by September, 2009. In order to achieve net zero emissions campus-wide, the Carolina North Project shall eventually need to exceed carbon neutrality by generating more energy from renewable resources than it consumes.
- 5.10.3. The University shall maintain and update its carbon and other greenhouse gas emissions inventory (<http://acupcc.aashe.org/ghgreport.php?id=372>), and submit a report every two years (Biennial Report) to the Manager that confirms a trajectory of emissions consistent with adhering to its commitment to reduce greenhouse gas emissions to zero by the year 2050. Any increase in emissions due to the construction of new buildings, emissions generated by fossil fuels



consumed by those buildings, or increased vehicle emissions resulting from transportation to and from those buildings, will be offset by energy efficiency and renewable energy generation (or as a last resort by purchasing NC-based renewable energy certificates). The Biennial Report will account for total greenhouse gas emissions and total offsets. The Biennial Report shall include a summary of actions taken and overall University progress in meeting energy conservation goals. The Biennial Report shall also include a schedule of goals (in five year increments) for progress Project towards meeting reductions in use of nonrenewable energy by buildings at the Carolina North Project relative to existing comparable buildings and shall include a regularly updated estimate of the percentage reduction in non-renewable energy use for buildings at the Carolina North Project relative to existing comparable buildings. The initial Biennial Report shall be submitted not later than two years after the date of approval of the initial site development permit pursuant to this Agreement.

5.10.4. Central Cogeneration/utility plants.

- a. Any central cogeneration/utility plant that is constructed at the Carolina North Project to supply steam, heat, electric power, chilled water, or cooling to buildings shall not use coal fuel and shall to the extent practical and feasible be energized by a renewable energy fuel that is carbon neutral.
- b. A large central cogeneration/utility plant shall not be included within the initial 800,000 total square feet of building development at the Carolina North Project.
- c. A large central cogeneration/utility plant within the Carolina North Tract shall only be authorized upon issuance of a conditional use permit by the Council. The Council shall issue such permit upon finding the plant meets the following standards:
 - 1) That the use is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
 - 2) That the use is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use is a public necessity;
 - 3) That the use conforms with the general plans for the physical development of the Town as embodied in the Comprehensive Plan; and
 - 4) That the use conforms with the applicable terms of this Agreement.The process established by Section 4.5.3 of the LUMO shall be followed in the consideration of this conditional use permit and Sections 4.5.4 and 4.5.5 of the LUMO shall apply to modification, expiration, and revocation of this conditional use permit.
- d. For the purposes of this section, a "large central cogeneration/utility plant" includes any facility designed to produce steam, heat, electric power, chilled water, or cooling for other buildings and that is designed to or has the capacity to serve more than two million square feet of building space.
- e. A small central utility plant to provide heating or cooling for buildings within the Carolina North Project may be included within the initial 800,000 total square feet of building development at the Carolina North Project. Such a facility may be authorized by an individual site development permit provided it is below the threshold for a "large central cogeneration/utility plant" set by Section 5.10.4(d) of this Agreement. It is the intent of the parties that such a small central plant be no larger in scale or impact than the University's current Manning Drive steam plant or Cobb chiller plant.

5.10.5. All buildings at the Carolina North Project constructed pursuant to this Agreement shall:

- 1) Be sited to maximize the renewable energy that can be collected and utilized by building-integrated energy systems and be constructed so renewable energy systems can be added at a future date without major modifications to the building structure.
- 2) At a minimum meet all applicable state-required energy efficiency standards and be designed and constructed to meet all applicable code standards in effect at the time of building design, including the N.C. State Building Energy Conservation Code (which includes by reference ASHRAE 90.1).
- 3) Be constructed and equipped so that they increasingly consume less fossil fuel energy than existing comparable buildings.



The University shall for all new construction submit to the Town Planning Department building energy performance models (pre-construction) and building commissioning reports (post-construction). Specifications for each building shall demonstrate how each building addresses the issues of energy in its design.

- 5.10.6. All non-healthcare buildings at the Carolina North Project constructed pursuant to this Agreement shall be designed to meet or exceed the minimum United States Green Building Council's Leadership in Energy and Environmental Design (USGBC LEED) Silver criteria. All healthcare buildings at the Carolina North Project constructed pursuant to this Agreement shall be designed to meet or exceed the minimum USGBC LEED for Healthcare Green Building criteria (a separate sustainability guideline strictly for healthcare).

11. Water Use, Reuse, and Reclamation and Utility Siting

- 5.11.1. A comprehensive, holistic approach shall be employed at the Carolina North Project that includes water reclamation strategies for buildings, landscape, and all other water users on the site.
- 5.11.2. The University shall comply with applicable Orange Water and Sewer Authority (OWASA) policies standards for water and sewer service in effect at the time of construction and with the Water Utility Agreement of Sale and Purchase (August 9, 1976).
- 5.11.3. All buildings constructed at the Carolina North Project pursuant to this Agreement shall be designed, constructed, and operated to include water-reclamation and water-reuse. All buildings constructed at the Carolina North Project pursuant to this Agreement shall comply with the water use standard of G.S. 143-135.37(c) regarding reduction of potable water consumption. These requirements include a 20% reduction of indoor use and a 50% reduction of outdoor use relative to water use under the 2006 N.C. State Building Code. The performance verification required by G.S. 143-135.37(d) shall be submitted to the Town for information along with all relevant permit applications for individual site development permit approval. The limitations of this water use provision shall not apply to emergency and special purpose uses of water that are consistent with applicable OWASA policy.
- 5.11.4. Any reclaimed water facility or central cogeneration/utility plant shall be located within the interior of the Carolina North Project on sites identified for such uses in the long-range development plan (submitted April 29, 2009), site plan for the initial phase of the Carolina North Project (Exhibit D), and the Carolina North Design Guidelines 2008 (Exhibit L). The utility transmission lines supporting the Carolina North Project with natural gas, sewer, reclaimed water, utility tunnels, and internal utility distribution shall be located substantially as set forth in Exhibit I. The exact alignment of the utilities may be adjusted by mutual agreement of the Parties as necessary to avoid environmentally sensitive areas.
- 5.11.5 All utility work that is located outside of the Carolina North Project development area as identified by Section 5.5.3 of this Agreement and that is required to service development in that area shall be located underground to the extent practical and feasible.

12. Design Standards and Public Art

- 5.12.1. Except as provided in this Section, development at the Carolina North Project shall be substantially consistent with the University's Carolina North Design Guidelines 2008, set forth as Exhibit L. These guidelines address, among other provisions, building height, building setbacks, building stepbacks, entry and street level design, and building massing. The guidelines have specific provisions relative to the main entry drive, the Central Green Way, working landscapes, individual plat parcels within the developed area of the Carolina North Tract, the mix and location of land uses, and building design guidelines.

In the event of any conflict between the specific provisions or maps of the Carolina North Design Guidelines 2008 and the specific provisions of this Agreement (including maps attached



as Exhibits), the terms of this Agreement shall be controlling. The following specific provisions in the University's Carolina North Design Guidelines 2008, along with any other provisions of those guidelines that are contrary to the specific provisions of this Agreement, are expressly not incorporated within the terms of this Agreement:

- 1) The road running from the Carolina North Project to Homestead Rd. that is depicted in whole or in part on the maps on pages 4, 5, 9, 26, 27, 30, 35, 41 of the Carolina North Design Guidelines 2008 and any other provisions regarding external road connections that are contrary to the terms of Section 5.8 of this Agreement;
 - 2) Any building heights that exceed or building setbacks that are less than the provisions of Section 5.12 of this Agreement;
 - 3) Any entry road design provisions that are contrary to Section 5.8 of this Agreement;
 - 4) Any landscape design or plantings that are contrary to Section 5.21.2 of this Agreement;
 - 5) The greenway and bike path locations depicted on the map on page 27 of the Carolina North Design Guidelines 2008 to the extent of any inconsistency with Section 5.16 and Exhibit F of this Agreement; and
 - 6) Any provisions of the Carolina North Design Guidelines 2008 for development beyond the scale and term authorized by this Agreement, which are provided in the Guidelines for context and information only.
- 5.12.2. Buildings within the Carolina North Project that are adjacent to Martin Luther King, Jr. Blvd. and within perimeter transition areas shall not have a primary height that exceeds four to six stories above grade on the side of the building facing Martin Luther King, Jr. Blvd. Such buildings may have a secondary height that does not exceed eight stories, provided that the portion of the building exceeding four to six stories is on the campus or interior side of the building and that any portion of the building that exceeds four to six stories has an appropriate stepback from the lower portion of the building that faces Martin Luther King, Jr. Blvd. These height limitations do not apply to mechanical and ventilation equipment, elevator, antennae and communication equipment, solar collectors, roof gardens, and similar incidental equipment or structures that are customarily located on the roofs of similar buildings.
- 5.12.3. Buildings within the Carolina North Project that are adjacent to Martin Luther King, Jr. Blvd. and within perimeter transition areas shall be setback a minimum of 100 feet from the road right of way in place as of the Effective Date of this Agreement.
- 5.12.4. The design of buildings within the Carolina North Project shall include appropriate variation in architectural styles as the project is developed over time in order to secure architectural heterogeneity while maintaining a campus identity with a sense of evolution and continuity.
- 5.12.5. Low stone walls and brick sidewalks shall be integrated into the landscape of the Carolina North Project in order to repeat the outdoor visual themes of the University's central campus.
- 5.12.6. Underground parking shall be used where practicable within the Carolina North Project to reduce the extent of above ground parking. Parking decks shall be of such scale so as to not dominate the streetscape.
- 5.12.7. Each individual site development permit application shall demonstrate how the project meets the design standards applicable to the Carolina North Project in a form required by the Town Manager. The Manager shall use a U-1 site development application form substantially similar in content to the form set forth as Exhibit J. The Manager shall take appropriate steps to notify the Council and the public upon initiation of Town staff review of each individual site development permit application.
- 5.12.8. Any subsequent application for a development agreement on the Carolina North Tract shall include the Design Guidelines most recently approved by the University Board of Trustees.
- 5.12.9. The University is committed to making art, including public art, an integral part of the Carolina



North Project. The Carolina North Design Guidelines 2008 set forth as Exhibit L shall be updated to incorporate a specific section addressing provision of public art. This specific section shall include a comprehensive public arts program that contains the basic guidelines and procedures of implementation in a standard public art plan. These provisions shall broadly identify opportunities for integrating public art into the context of the built and natural environments of the Carolina North Project, including early involvement of artists in determining contextually appropriate public art locations overall and for individual project plans. The provisions shall also address options and sources of funding for implementation of the public art program.

- 5.12.10 The Town Manager may designate a staff liaison to the University's Campus Art Advisory Committee.
- 5.12.11 The Annual Report shall include a description of public art activities undertaken on the Carolina North Tract in the previous year and planned for the forthcoming year.

13. Police, Fire, and Emergency Medical Services and Facilities

- 5.13.1. The Town and University police, fire, and emergency medical service providers will provide services at the Carolina North Project under the generally applicable arrangements for jurisdiction and operations on University-owned property. In general, for University-owned property the University provides police services, the Town provides fire services, and Orange County provides most emergency medical services. This Agreement shall not be deemed to restrict changes in these jurisdictional arrangements as may from time to time be mutually agreed to by the service providers.
- 5.13.2. The Carolina North Project will require additional facilities for police, fire, and emergency medical services as it develops. It is in the joint interest of the Town and University to co-locate and share these facilities to maximize response capabilities at Carolina North.
- 5.13.3. The University and Town (and other service providers) shall jointly fund the construction of joint police, fire, and emergency medical facilities. A formula for cost-sharing for these facilities shall be agreed to by the University and Town prior to the issuance of any individual site development permits that will bring the total building square footage for the Carolina North Project to a cumulative total of 800,000 square feet or more. This agreement shall be consistent with the fiscal equity provisions of Section 5.9 of this Agreement.
- 5.13.4. The initial facilities for police, fire, and/or emergency medical services shall be provided at the Carolina North Project prior to the approval of any individual site development permit that would bring the cumulative total building square footage at the Carolina North Project to 1.5 million square feet or more.
- 5.13.5. Additional facilities for police, fire, and/or emergency medical services shall be provided after the total square footage at the Carolina North Project exceeds 1.5 million square feet and prior to that total square footage reaching 4.0 million square feet. Individual site development permits that would bring the cumulative total building square footage at the Carolina North Project beyond 1.5 million square feet shall not be approved until the Town and University have entered an agreement for the location and funding of these facilities.
- 5.13.6. For planning purposes, it is anticipated that thereafter there will be future facility needs for police, fire, and/or emergency medical services after the total square footage at the Carolina North Project exceeds 4.0 million square feet but prior to the total square footage reaching 8.0 million square feet.



14. Public Schools

- 5.14.1. Subject to obtaining any required approvals from the State of North Carolina, the University will lease to the Chapel Hill-Carrboro City Schools (or Orange County as the case may be) sufficient land within the Carolina North Tract for a site for an elementary school at a rental rate of no more than one dollar (\$1) per year.
- 5.14.2. The University shall coordinate site selection for this school with the Chapel Hill-Carrboro City School Board to address access, school programming needs, proximity to residential areas, and connections for pedestrian, bicycle, and greenway access. The University and school system shall coordinate and define the time period for site availability and communicate that schedule to the Town. The site selection shall be consistent with the provisions of Section 5.5 of this Agreement.
- 5.14.3. The location and size of the school shall be coordinated with the needs identified through the process set by the Adequate Public School Facilities section of the LUMO and the Memorandum of Understanding between Orange County, Chapel Hill, Carrboro, and the Chapel Hill/Carrboro School Board referenced in that section of the LUMO.
- 5.14.4. The entity responsible for construction of a public school on the Carolina North Tract shall secure a conditional use permit for the school prior to construction. The entity responsible for construction of a public school on the Carolina North Tract shall be responsible for permitting for that building, including preparation of any Transportation Impact Analysis required by the Town and implementation of any mitigation required by such analysis.
- 5.14.5. The amount of the school's building floor area shall not be included for purposes of this Agreement in the total building development square footage at the Carolina North Project, and the development impacts resulting from the construction and operation of this school are not intended to be factored into the mitigation measures that the University would otherwise be required to perform under this Agreement for development at the Carolina North Project.
- 5.14.6. If the site provided for a public school is located within the area designated for development in the 50-year development plan depicted in Exhibit B, that development area may be increased by the University by an amount equivalent to the land area provided for the public school. Any adjustment to Exhibit B to incorporate such an increase shall be submitted to and approved by the Town Manager as a minor modification to this Agreement.

15. Recreation Areas

- 5.15.1. The University shall maintain continued free public access to trails in the Carolina North Tract. Trails shall be under the management and direction of the Carolina North Office of Forestry Management or its successor.
- 5.15.2. The general location of trails and recreational areas on the Carolina North Tract shall be consistent with the 50-year development plan for Carolina North. The general location and proposed use of trails and recreation areas at the Carolina North Project shall also be consistent with the site plan for the portion of the Carolina North Project that is set forth in Exhibit D. The locations of trails existing on the Carolina North Tract as of the Effective Date of this Agreement are set out on Map 2 in Exhibit H.
- 5.15.3. Recreation areas shall be developed in conjunction with the other programs and facilities at Carolina North.
- 5.15.4. Public access to and use of outdoor recreation areas shall be provided when these areas are not programmed for University use. The University and Town shall study the feasibility and cost-sharing options for future joint-use recreation areas at the Carolina North Project and shall include a report of that study in the initial Annual Report required pursuant to this Agreement.



This report shall address future Town and University cooperation on the provision of passive recreation areas, public fora such as amphitheater and performance spaces, basketball courts, children's play areas, gymnasium or recreation centers, community gardens, farmers' markets, and natural parks.

- 5.15.5. All improvements of new recreation areas shall be designed in compliance with this Section. The Annual Report shall include a description of all such improvements made in the previous year and document compliance with the provisions of this Section. The University shall identify which applicable accessibility standards were used in the design of each project. All new recreation areas shall be designed to:
- 1) minimize disturbance and provide good material and maintenance choices of recreation fields and trails;
 - 2) identify and avoid regulatory floodways and stream buffers when locating recreation areas (except for the use of cleared and active utility easements to reduce the need for additional forest clearing);
 - 3) co-locate trails, pedestrian paths and other access needs in the more developed areas of campus; and,
 - 4) co-locate trails, utilities and roads in the less developed areas of the property.

16. Greenways

- 5.16.1. Greenway Planning and Partnership.
- a. The Town and University shall collaboratively examine the feasibility and form of a new partnership for planning and funding a program to address common interests in an effective system of bicycle, pedestrian, and greenway pathways. It is in the interest of the Town and University to establish such a system as an effective additional alternative to automobile and public transit.
 - b. This examination shall consider a model comparable to the partnership that has been established to address the Town and University interests in public transit. This examination shall, among other appropriate topics, review: (1) potential funding sources for implementation of the system, including state and federal funding; (2) institutional mechanisms for on-going or continued planning and implementation of the program; and (3) appropriate cost-sharing agreements among the partners. Appropriate Town advisory boards, University students, the Town of Carrboro, and the public shall be consulted in this examination. A report on this examination and recommendations for implementing action shall be submitted with the first Annual Report mandated by this Agreement.
 - c. The plans and improvements mandated by Section 5.16 of this Agreement shall be undertaken in conformance with the recommendations of this examination, provided that any adjustments to mandated improvements or the schedule for their completion must be mutually agreed upon by the Town Manager and University and promptly reported to the Town Council.
- 5.16.2. Consistent with Section 5.8.19 of this Agreement, the Town and University shall expeditiously explore the location and funding for a greenway and bike path connection between the Carolina North Project and main campus. This exploration shall seek a pathway that is not located within the Martin Luther King, Jr. Blvd. roadway, that avoids steep grades where feasible, and that is consistent with the planning process and other specific improvements mandated by Section 5.16 of this Agreement. The route could include existing or planned greenways for a portion of the route. A report on the potential location and funding alternatives for implementation of this connection shall be included in the first Annual Report mandated by this Agreement. This production of this report shall be coordinated to the extent feasible with the examination mandated by Section 5.16.1 of this Agreement.
- 5.16.3. The general location of greenways and paved paths for pedestrians and cyclists on the Carolina North Tract shall be consistent with the 50-year development plan for Carolina North. The University shall maintain continued public access to greenways and paved paths for pedestrians and cyclists in the Carolina North Tract. Greenways on the Carolina North Tract not within the



development area identified in Section 5.5.3 of this Agreement shall be under the management and direction of the Carolina North Office of Forestry Management or its successor.

- 5.16.4. A general plan for additional greenway locations shall be provided with the first individual site development permit application at Carolina North. The production of this plan shall be undertaken in a manner consistent with the recommendations of the examination mandated by Section 5.16.1 of this Agreement. This plan shall include a greenways maintenance plan that identifies maintenance routines and responsibilities and the location of site fixtures and amenities at designated trail heads (which may include but are not limited to informational kiosk, map/locator/wayfinding device, gated access to prohibit motorized access, trash cans, recreational parking, and/or bicycle racks). Each Annual Report prepared after the submission of this plan shall include information about the current status of the design and funding of greenway connections at Carolina North.
- 5.16.5. The Town plans to build a major paved greenway trail to the edges of the Carolina North Project from both the south and the north. The University and Town shall cooperate to assure that the trail systems are built in a logical manner such that non-motorized vehicle transportation and recreation are enhanced in the most efficient manner possible. The University and Town shall work to link the north-south trail corridor to other trails in the Town and University system and to eventually provide continuous access south to the Town's Bolin Creek Trail and north to the Town Operations Center.
- 5.16.6. All greenways shall be built to AASHTO or Town standards for multi-use pedestrian and bicycle trails.
- 5.16.7. The University shall maintain all greenways built by the University under the terms of this Agreement.
- 5.16.8. The public shall be permitted to use all greenways on the Carolina North Tract without charge.
- 5.16.9. Installation of greenways and paths for pedestrians and cyclists within the Chapel Hill portion of the Carolina North Tract shall be provided as follows:
 - 1) A temporary, non-paved central trail from Estes Drive Extension to Homestead Road shall be provided within one year of the closing and deactivation of the airport runway.
 - 2) Additional improvements shall include:
 - i. A paved trail from Estes Drive Extension to connect with the Town's extension of the Bolin Creek Trail from the south and running to or through the development area identified in Section 5.5.3 of this Agreement, with an appropriate connection to Martin Luther King, Jr. Blvd.;
 - ii. A paved trail from the development area identified in Section 5.5.3 of this Agreement running northward to Homestead Road to connect with the Town's Horace Williams Trail to the north;
 - iii. A paved trail in an east/west direction through the center of the development area identified in Section 5.5.3 of this Agreement to connect with the Carrboro/Chapel Hill extension of the Bolin Creek Trail; and
 - iv. A means of crossing Estes Drive extension.
 - 3) A map setting forth the potential general location of these greenways is attached as Exhibit F. The exact alignment of the greenways may be adjusted by mutual agreement of the Town and University as necessary to avoid environmentally sensitive areas, coordinate with connecting greenways, and coordinate with the transit, traffic, pedestrian, bicycle, and greenway plans required by Section 5.8 of this Agreement.
 - 4) One of the four improvements identified in Subsection 5.16.9(2) shall be constructed prior to the completion of the initial 800,000 square feet of total building space within the Carolina North Project constructed pursuant to this Agreement. A second of these improvements shall be constructed prior to the completion of 1.5 million square feet of total building space at the Carolina North Project constructed pursuant to this Agreement.



A third of these improvements shall be constructed prior to the completion of 2.25 million square feet of total building space of the Carolina North Project constructed pursuant to this Agreement. The fourth of these improvements shall be constructed prior to the completion of 3.0 million square feet of total building space at the Carolina North Project constructed pursuant to this Agreement. The Town shall provide the University with the priority order for these improvements. The Town shall provide the University with these priorities with sufficient lead time to allow timely completion of the projects consistent with the schedule set by this Section.

- 5.16.10. The University shall construct a greenway along Martin Luther King Jr Blvd. in conjunction with any frontage improvements related to the first building that fronts Martin Luther King Jr Blvd.
- 5.16.11. Additional greenways may be provided upon mutual agreement of the Town and University.
- 5.16.12. The University shall continue to show the greenway along the existing rail line on the Carolina North Tract for potential development in the future.
- 5.16.13. The University shall use the stormwater management "working landscapes" within the 50 year development area to locate access trails connecting to the major greenway corridors where appropriate and feasible.
- 5.16.14. All improvements for greenways shall be designed in compliance with this Section. The Annual Report shall include a description of all such improvements made in the previous year and document compliance with the provisions of this Section. The University shall identify which applicable accessibility standards were used in the design of each project. All greenway and paved paths for pedestrians and cyclists shall be designed to:
 - 1) Minimize disturbance and provide good material and maintenance choices of greenways;
 - 2) Be consistent with the terms of the conservation easement(s) required by Section 5.5.1 of this Agreement and any other applicable resource protection terms of this Agreement;
 - 3) Co-locate greenways, pedestrian paths and other access needs in the more developed areas of campus;
 - 4) Co-locate greenways, utilities and roads in the less developed areas of the property;
 - 5) Make use of cleared and active utility easements, even in floodways, floodplains and stream buffers, in order to avoid additional forest clearing;
 - 6) Integrate cyclists safely back into the flow of car traffic using appropriate traffic signaling or signage at locations where greenways and roadways cross or come together; and
 - 7) Avoid undisturbed regulatory floodplains and stream buffers to the maximum extent possible.
- 5.16.15. The parties shall periodically consider the need for, location, design, and feasibility of pedestrian connections between the Carolina North Project and adjacent residential neighborhoods. This consideration shall be conducted concurrently with the production of each Transportation Impact Analysis update mandated by Section 5.8.9 of this Agreement and a report of that consideration shall be included in the Annual Report that follows that consideration. The University and Town shall work with neighborhoods to determine if neighborhoods want paved connectors, non-paved connectors, or no direct trail connection to the University's trail system. Neighborhoods that should be approached include Glen Heights, Ironwoods, North Haven, Elkin Hills, and Homestead Village. If neighborhoods prefer paved connector trails these should be provided.

17. Historic and Cultural Features

- 5.17.1 The University shall comply with the applicable law regulating archeological resources, including, but not limited to, the state Archaeological Resources Protection Act, state statutes on historic cemeteries, and the National Historic Preservation Act/National Register of Historic Places.



- 5.17.2. The University shall manage any identified archaeological sites in coordination with the Carolina North Office of Forestry Management or its successor. The University shall be responsible for providing appropriate interpretation and on-line information regarding archaeological sites. The University shall be responsible for relevant communications to the public.

18. Solid Waste Management

- 5.18.1. Solid waste collection shall be provided to all buildings within the Carolina North Project by the University. The University shall consider including Orange County Solid Waste in pre-construction conferences for buildings.
- 5.18.2. Solid waste shall be managed by the University with reduction and recycling goals for construction and occupancy based on studies of best practices. Waste management shall support sustainability goals by focusing on reduction, reuse and recycling of materials at the Carolina North Project and shall strive for innovative and flexible approaches to managing waste generation and disposal.
- 5.18.3. The University shall design projects such that construction and demolition, recycling, reuse, salvage, and waste reduction are maximized.
- 5.18.4. Construction waste shall be managed in accordance with Town and University standards and with the Orange County Regulated Materials Ordinance.
- 5.18.5. Each individual site development permit shall provide clear direction on who will provide solid waste service for each building and each building will be designed accordingly. The current system for coordinating Orange County and municipal services with University services works well and the development at Carolina North shall emulate the positive aspects of current practices.
- 5.18.6. The University's Department of Environment, Health, and Safety will be responsible for monitoring hazardous materials and developing a safety plan for the development and shall report pertinent fire safety information to the Chapel Hill Fire Department on a regular basis (in accordance with current reporting policy for campus buildings).

19. Landfill and Other Remediation

- 5.19.1. Development of certain areas of the Carolina North Project may require landfill remediation consistent with the planned use. The University shall develop a remediation strategy for these areas consistent with current standards, regulatory requirements and future land use plans.
- 5.19.2. The landfill area shall be remediated in a manner that is consistent with safeguarding the public health, safety and welfare.
- 5.19.3. The landfill shall be remediated to the applicable state standards for landfill remediation at the time of remediation.
- 5.19.4. The University shall communicate with Orange County and the Town during landfill mitigation planning and development of the mitigation strategy.
- 5.19.5. After cessation of airport activities, the University shall assess the environmental impacts of airport operations at any area at the airport that is planned for redevelopment. Such assessment(s) will determine if and to what extent environmental remediation may be required under applicable state and federal laws. The University shall report the results of any such assessment in the next Annual Report required pursuant to this Agreement. Any such report(s) shall identify regulatory agency required and approved remediation plans for environmentally impacted areas. Nothing in this section shall operate to prevent the use of existing buildings



and/or other facilities located at the airport for other purposes after cessation of airport operations, as provided in section 3.5.5 (h) of LUMO.

20. Stream Buffers

- 5.20.1. Streams shall be buffered on the Carolina North Tract consistent with the conservation easements provided for in Section 5.5.1 and the stormwater management standards of Section 5.6 of this Agreement. Development at the Carolina North Project shall be consistent with the Resource Conservation District regulations of the Town applicable as of the date of this Agreement. All activities designated as permitted uses or special uses in Table 3.6.3-2 of the LUMO that are consistent with this Agreement shall be designed in compliance with this Section. The Annual Report shall include a description of all such improvements made in the previous year and document compliance with the provisions of this Section. Each individual site development permit application shall demonstrate that compliance.
- 5.20.2. The University and the Town shall review opportunities for: (1) restoration or enhancement of riparian buffers; (2) coordination between wildlife or natural corridors along streams and essential utility lines, greenways; and (3) appropriate stream access.

21. Trees and Landscaping in Developed Areas

- 5.21.1. The developed area of the Carolina North Project shall include significant street, landscape and natural plantings and landscaped areas and tree protection measures. A portion of the tree and landscape areas may also have a stormwater management function at the Carolina North Project, including those located in roadways. The University shall use its best efforts throughout the development of the Carolina North Project to maintain or increase the total amount of tree canopy coverage on the Carolina North Tract.
- 5.21.2. The University shall design landscape areas to support the Carolina North Design Guidelines 2008 set forth in Exhibit L. Appropriate native and non-invasive species shall be used at the Carolina North Project. The developed area at the Carolina North Project shall be planned to support a low maintenance, low water use, low fertilizer use landscape with 'best suited' plant materials.
- 5.21.3. Landscape plans for individual site development permit applications shall identify existing and proposed tree canopy mix and percent coverage, the hierarchy of tree planting goals (working landscapes: young age, street trees: mid-age, permanent landscapes: mature age), and the landscape irrigation hierarchies. Priorities for landscape irrigation are, in order of priority: rainwater, reclaimed water, and potable water as last resort. Any use of potable water for landscape irrigation shall be consistent with applicable OWASA policies.

22. Sedimentation

- 5.22.1. Construction at the Carolina North Project shall comply with applicable soil and erosion control regulations and State oversight. The University shall incorporate erosion and sediment control measures for all land-disturbing activities. All individual construction projects at the Carolina North Project shall include erosion and sedimentation control measures. The University shall be responsible for implementing erosion and sedimentation control measures for all land disturbing projects.
- 5.22.2. The University shall develop a construction site inspection program and guidelines for sedimentation and erosion control at the Carolina North Project. The University shall provide a copy of the Carolina North Project erosion and sedimentation control guidelines to the Town's stormwater staff and shall provide site inspection checklist(s) for Carolina North Project construction projects to the Town's stormwater staff upon request. The guidelines shall provide



for appropriate regular monitoring and inspections based on the level of activity and weather conditions.

- 5.22.3. An erosion and sedimentation control plan shall be developed for projects between 20,000 square feet and one acre of disturbance as well as projects over one acre. All such projects shall be undertaken in a manner consistent with those plans. The Town and University may coordinate to provide follow up inspections in response to any complaints generated from sites at the Carolina North Project. Inspection checklists similar to those required by the NPDES construction permit for projects that disturb more than one acre shall be completed for projects disturbing between 20,000 square feet and one acre of land. Projects with one acre or more of land disturbance shall be subject to all applicable State permit requirements. The University shall provide to the Town's stormwater staff a courtesy copy of erosion and sedimentation control plans for projects at the Carolina North Project.
- 5.22.4. In response to erosion and sediment control complaints generated by the Carolina North Project, Town staff or its agents shall perform a cursory field inspection to confirm whether a problem exists. Town staff or its agent shall not enter the active construction site unless accompanied by University staff. If it appears that a problem exists, the Town staff shall notify the University. The Town and University will coordinate follow-up inspections to resolve identified problems.

23. Neighboring Lands, Compatibility, Buffers

- 5.23.1. Development at the Carolina North Project shall strive to be compatible with existing adjacent development and will be appropriately buffered. Development near existing neighborhoods shall respect buffers, height limits, lighting, drainage, noise impacts, and signage associated with private or corporate development.
- 5.23.2. The Perimeter Transition Area (PTA) at the borders of the Carolina North Project for the portion of the Project with buildings permitted by this Agreement shall be as identified in Exhibit G. Additional PTAs shall be established within any future development agreements that authorize building development adjacent to any additional existing neighborhoods.
- 5.23.3. The University shall conduct a meeting with opportunity for citizen participation and attendance by a Town staff representative for the purpose of discussing possible design features of new facilities prior to submission of each individual site development permit application for facilities in designated PTAs. The University shall distribute notice of the meeting to the Chair of the Town's Community Design Commission and to all property owners within 1,000 feet of the PTA. This notice shall specify the date, time, location and purpose of the meeting. This notice shall be mailed or otherwise distributed no later than two weeks prior to the meeting. Minutes of the meeting and the meeting attendance list shall be made publicly available before presentation of individual site development permit applications in the PTA to the Town for approval. The PTA process shall establish appropriate standards at borders of the development to minimize impacts on adjacent property. These standards shall address: (1) screening mechanical equipment; (2) exterior lighting; (3) height limits; and (4) landscaping.

24. Noise

- 5.24.1. The Chapel Hill Noise Ordinance shall be applicable to the Carolina North Project during construction and occupancy of the Project.
- 5.24.2. Noise from construction is subject to the applicable noise ordinance. Individual site development permit applications for new construction shall demonstrate compliance with the ordinance during occupancy of the completed building.
- 5.24.3. The University shall take reasonable steps to apprise potential residents of housing within the Carolina North Project of the potential for campus-related noise.



- 5.24.4. Complaints regarding compliance with the noise ordinance within the Carolina North Project area shall be made to and handled by University Public Safety.

25. Lighting

- 5.25.1. Lighting at the Carolina North Project shall not have a negative effect on adjacent users, neighborhoods, the community, or other University uses of the Carolina North Tract. Lighting shall be energy efficient and appropriate for the program requirements and times of use.
- 5.25.2. The Town lighting standards in effect as of the Effective Date of this Agreement shall be applicable to the Carolina North Project. Each individual site development permit application shall demonstrate no increase in lighting foot-candle levels at the adjacent property line.
- 5.25.3. The University shall describe in each individual site development application how lighting for that portion of the Carolina North Project is designed with a basic strategy of:
- 1) A 'dark skies' approach for the Carolina North Project as a whole;
 - 2) Streets lit to Town or DOT standards; and
 - 3) Building code requirements regarding lighting met for new buildings.
- 5.25.4. New lighting within the Carolina North Project shall comply with the following:
- 1) All lighting, including that used in and around buildings, recreation areas, parking areas, walkways, roadways, and signs, shall be designed to minimize spillover light onto property outside of the Carolina North Project.
 - 2) All lighting shall be designed to prevent glare that could impair vision and/or otherwise deteriorate normally accepted qualities and uses of property outside of the Carolina North Project.
 - 3) Outdoor lighting, except sports and athletic field lighting, shall be mounted at heights no greater than fifteen (15) feet for non-cutoff lights; and no greater than thirty-five (35) feet for most cutoff lights.
 - 4) Lighting for sports and athletic fields must include glare control features and must be designed so that the primary illumination is directed onto the play area and immediate surroundings, and such that offsite illumination/glare is restricted.
 - 5) Increases in illumination on property outside of the Carolina North Project shall not result in lighting levels in excess of 0.3 foot-candles, measured at ground level.
 - 6) For property outside of the Carolina North Project where existing ambient lighting levels are in excess of 0.3 foot-candles, there shall be no increase in measurable lighting levels.

These lighting restrictions shall not apply to adjacent property outside of the Carolina North Project that is in the same ownership as property within the Carolina North Project.

26. Existing Conditions

- 5.26.1. Existing conditions on the Carolina North Tract as of the Effective Date of this Agreement are depicted in Exhibit H. Map 1 in Exhibit H depicts existing conditions on the Chapel Hill portion of the Carolina North Tract. Map 2 in Exhibit H depicts the existing trails on the Carolina North Tract. All existing uses of land that do not involve the use of a building can be continued as they exist as of the Effective Date of this Agreement and can be changed to any use permitted by this Agreement. Any existing building within the U-1 district can be used for the use in effect as of the effective date the property is zoned U-1 and can be changed to any use permitted pursuant to a development agreement as authorized by Section 3.5.5(f)(1) of the LUMO. Any existing building being used for a use permitted in this Agreement may be expanded to the extent that expansion is exempt from the Transportation Impact Analysis requirements of Section 5.8(g) of the LUMO. Any new construction, development, or site improvements associated with continuation of existing conditions shall be consistent with the terms of this Agreement.



27. Annual Report

- 5.27.1 The University shall submit to the Manager an Annual Report that includes the information required by this Agreement and that provides all necessary information for the Manager to assess the University's good faith compliance with the terms of this Agreement. This report shall form the basis for the Manager's periodic review of the Agreement as required by the LUMO and by G.S. 160A-400.27(a). This required report is generally referred to as the "Annual Report."
- 5.27.2. The initial Annual Report shall be filed on or before September 1, 2010 and shall report on activities from July 1, 2009 through June 30, 2010. Subsequent reports shall be filed on or before September 1 of each year and shall report on activities in the preceding fiscal year (the preceding July 1 through June 30 period).
- 5.27.3 The Annual Report shall include the specified items set forth in this Agreement and listed in this Section. The failure to include in this Section an item expressly required to be included by other sections of this Agreement shall not relieve the University of the responsibility to include that item in the Annual Report. The report may include such other items as deemed relevant by the University. The Manager may also request inclusion of other specific information or provide for its inclusion in the following year's Annual Report.
- 5.27.4. The Annual Report shall include the following specific information (parenthetical cross-referenced sections provide additional information on the contents of the information to be provided).
- a. A summary of the amount of building floor space constructed in the previous year and cumulatively pursuant to this Agreement, all related infrastructure installed in the previous year, the status of University participation in the provision or financing of related public infrastructure, dedications and acquisitions of related infrastructure by the University, and a projected schedule for Project development in the forthcoming year. The report shall also identify for both the annual and cumulative totals the uses to which this space is devoted. (Section 4.14).
 - b. A summary of the number of housing units within the Carolina North Project, the estimated number of residents in that housing, and the estimated number of full time equivalent employees working on-site within the Carolina North Project area. These figures shall include a report on both the change in these numbers in the previous year and cumulative totals over the life of the Carolina North Project. (Section 5.4.2).
 - c. Any updated stormwater utility cost-sharing agreements. (Section 5.7).
 - d. The following information regarding parking, traffic, and transit: (1) Current status of transit planning; (2) coordination of development with transportation management plan; (3) a report on parking provided. (Sections 5.8.7, 5.8.10, 5.8.11).
 - e. An update of actions taken to address each Short Range Fiscal Plan. (Section 5.9.3).
 - f. A description of land uses and activities initiated within the limited development area that do not include the construction or use of a building (Section 5.5.2).
 - g. A description of land uses and activities initiated within the development area that do not include the construction or use of a building (Section 5.5.3).
 - h. A copy the biennial reports and any related information prepared pursuant to the University's American College and University Presidents Climate Commitment (ACUPCC) that has not been included in a previous Annual Report. (Section 5.10).
 - i. Information on water use, water reclamation, and progress towards meeting the goal set forth in this Agreement, as set forth in individual site development permit applications in the previous year. (Section 5.11.3).
 - j. An informational copy of any University Board of Trustee updates to the Carolina North Design Guidelines, with the most recently approved guidelines to be included in any subsequent application for a development agreement. (Section 5.12).
 - k. An update on public art policies, plans, activities, and implementation progress. (Section 5.12.11).



- l. A report on all construction of greenways and trails at Carolina North, information about the current status of the design and funding of greenway connections at Carolina North, and periodic reports on pedestrian connections to adjacent neighborhoods.(Sections 5.16.1, 5.16.2, 5.16.4. 5.16.14, 5.16.15).
- m. A description of general waste-management strategies at Carolina North consistent with Section 5.18 and the fiscal impacts on the Town resulting from any amendment of waste management strategies.
- n. A description of all improvements made within stream buffers in the previous year. (Section 5.20.1).
- o. A description of all improvements for new recreation areas. (Sections 5.15.4, 5.15.5).
- p. An assessment of the environment impacts associated with the closing of the airport (Section 5.19.5).

5.27.5. The Manager shall take reasonable steps to make the Annual Report available to the public, including posting the report on the Town web site, holding a public information meeting on the report, and such other steps as may be useful in assuring the full and broad dissemination of the report. The Manager shall also take similar reasonable steps in securing full and adequate public comment in the preparation of the Periodic Compliance Report to the Council.

28. Schedule of Triggers and Thresholds for Actions

5.28.1. This section includes a listing of the triggers and thresholds for University submissions, reports, and mandated actions that are included within this Agreement. If a requirement does not appear in the schedule below, but is required elsewhere in this Agreement, the absence of the requirement in the schedule shall not relieve the University or the Town, as applicable, of the obligation to comply with that requirement.

5.28.2. The table included within this section lists the specific times, levels of development, or actions that trigger specific obligations or requirements under this Agreement. For each threshold, the table lists the action that is required and cross-references the section of this Agreement that establishes that obligation.

Date/Trigger/Threshold	Item	Agreement Section
1. September 2009	a. Carbon reduction plan to be submitted by University	5.10.2
2. December 2009	a. Initial TIA update required, with SRTP, TMP, and cost-sharing agreement to follow	5.8.9, 5.8.10
3. Annually from Effective Date	a. Annual Report by University to Town required	4.14, 5.27
	b. Periodic Compliance Review by Town required	4.15
	c. Report on land uses not involving buildings in limited development area and development area	5.5.2, 5.5.3
	d. Short range fiscal plan required, with cost-sharing agreement	5.9.3
	e. Report on feasibility and cost-sharing for joint recreation areas at Carolina North (with initial Annual Report)	5.15.4
	f. Report on examination of model for addressing greenway/pedestrian paths (with initial Annual Report)	5.16.1
	g. Report on Carolina North-Main campus greenway/bike path connection (with initial Annual Report)	5.16.2



4. Biennial from Effective Date	a. Carbon reduction report required (initial report within two years of initial site development permit)	5.10.3
5. Three years from Effective Date	a. Updated stormwater utility cost-sharing required, with capital component to be added with initial update (and updated every three years thereafter)	5.7.2
	b. Periodic assessment of overall effectiveness of Agreement (with mutually agreed upon schedule for subsequent assessments)	4.16
6. Innovation Center zoning compliance permit or occupancy	a. Various specified transportation improvements required	5.8.13
7. Prior to initial site development permit approval (SDP)	a. Record conservation easement (prior to initiation of construction under initial SDP)	5.5.1
	b. Submit overall stormwater management concept plan (submitted with application for initial SDP)	5.6.2
	c. Guidelines for internal street, bicycle, pedestrian, and greenway ownership and maintenance required (prior to approval of initial SDP)	5.8.3
	d. Transportation management plan (submitted with application for initial SDP)	5.8.11
	e. Identification and installation of individual transportation improvements necessitated by that development (included as condition on each SDP)	5.8.14
	f. \$50,000 for pedestrian island on Piney Mtn. Rd. (prior to issuance of initial SDP)	5.8.20
	g. Right turn lanes at Carolina North entrance (prior to occupancy of building with initial SDP)	5.8.22
	h. Formula for police-fire-EMS facility cost-sharing required (prior to issuance of initial SDP)	5. 13.3
	i. General plan for additional greenways, with maintenance plan to be submitted (submitted with application for initial SDP)	5.16.4
	j. Submission of as-built surveys regarding construction and stormwater management (at completion of each building)	5.6.5, 5.6.6
8. Prior to initial site development permit approval with housing	a. Plan for providing housing preferences required	5.4.3
	b. Plan for maintenance of housing affordability required	5.4.4
9. Concurrent with initial building on Martin Luther King, Jr. Blvd.	a. Install greenway along Martin Luther King, Jr. Blvd	5.16.10



10. Prior to individual site development permit application in Perimeter Transition Area	a. Meetings regarding screening mechanical equipment, lighting, height limits, and landscaping	5.23.3
11. Airport deactivation	a. Temporary trail from Estes Dr. Extension to Homestead Rd. required (within one year of deactivation)	5.16.9(a)
	b. Assess environmental impacts and remediation needs (and report in next Annual Report)	5.19.5
12. To be determined	a. Elementary school site to be provided per agreement with school system	5.14.2
13. 400,000 SF of total building floor space at Carolina North	a. Transportation mode split survey (or with TIA updates)	5.8.11
14. 800,000 SF of total building floor space at Carolina North	a. Housing must meet and maintain specified percentage of total floor space at Carolina North	5.4.1, 5.4.2
	b. No large cogeneration/utility plant may be built prior to this point	5.10.4
	c. First greenway improvement required	5.16.9
	d. TIA update (or Dec. 2015, whichever is first) required, with subsequent updates at mutually agreed schedule	5.8.9
	e. Short range transit plan and transportation management plan required (after each TIA update)	5.8.10
	f. Updated cost-sharing and investment plan for transit required (within 12 mo. of SRTP update)	5.8.10
	g. Various specific transportation improvements	5.8.14 to 5.8.23
	h. Specified mix of uses	5.3.2
	i. Cost sharing agreement re joint facility for police, fire, and emergency management	5.13.3
15. 1.5 M SF of total building floor space at Carolina North	a. Initial facility for police, fire, EMS required	5.13.4
	b. Second greenway improvement required	5. 16.9
16. 2 M SF of total building floor space at Carolina North	a. Maximum floor area at Carolina North that can be served by small utility plant	5.10.4(e)
17. 2.25 M SF of total building floor space at Carolina	a. Third greenway improvement required	5.16.9



North		
18. 3 M SF of total building floor space at Carolina North	a. Maximum floor space at Carolina North without a new development agreement	5.1.1
	b. Fourth greenway improvement to be made	5.16.9
19. 4 M SF of total building floor space at Carolina North	b. Projection for additional fire, police, EMS facility required	5.13.5
20. 2050	a. Achieve carbon neutrality for Carolina North Project by this date	5.10.2
21. 7/1/2059	a. No buildings in limited development area prior to this date	5.5.2(b)
22. 7/1/2109	a. No buildings in area 6B (on Exhibit E) prior to this date	5.5.2(b)



IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Town of Chapel Hill
By: [Signature] RDK
Title: TOWN MANAGER

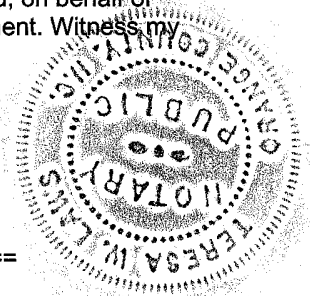
The University of North Carolina at Chapel Hill

By: [Signature]
Title: Chancellor

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State of North Carolina
County of Orange

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that H. HOLDEN THORP personally came before me this day and acknowledged that he or she is Chancellor of The University of North Carolina at Chapel Hill and acknowledged, on behalf of The University of North Carolina at Chapel Hill, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 9th day of July, 2009.

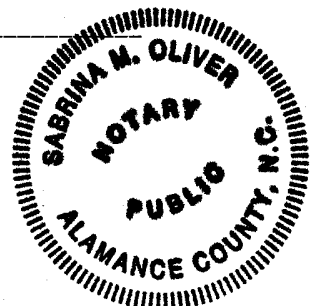
My Commission Expires: 8/20/2011
[Signature] Notary Public



=====
State of North Carolina
County of ~~Orange~~ Alamance

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that ROGER L. STANCIL personally came before me this day and acknowledged that he or she is MANAGER of the Town of Chapel Hill and acknowledged, on behalf of the Town of Chapel Hill, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 9th day of JULY, 2009.

My Commission Expires: OCTOBER 11, 2011
[Signature] Notary Public



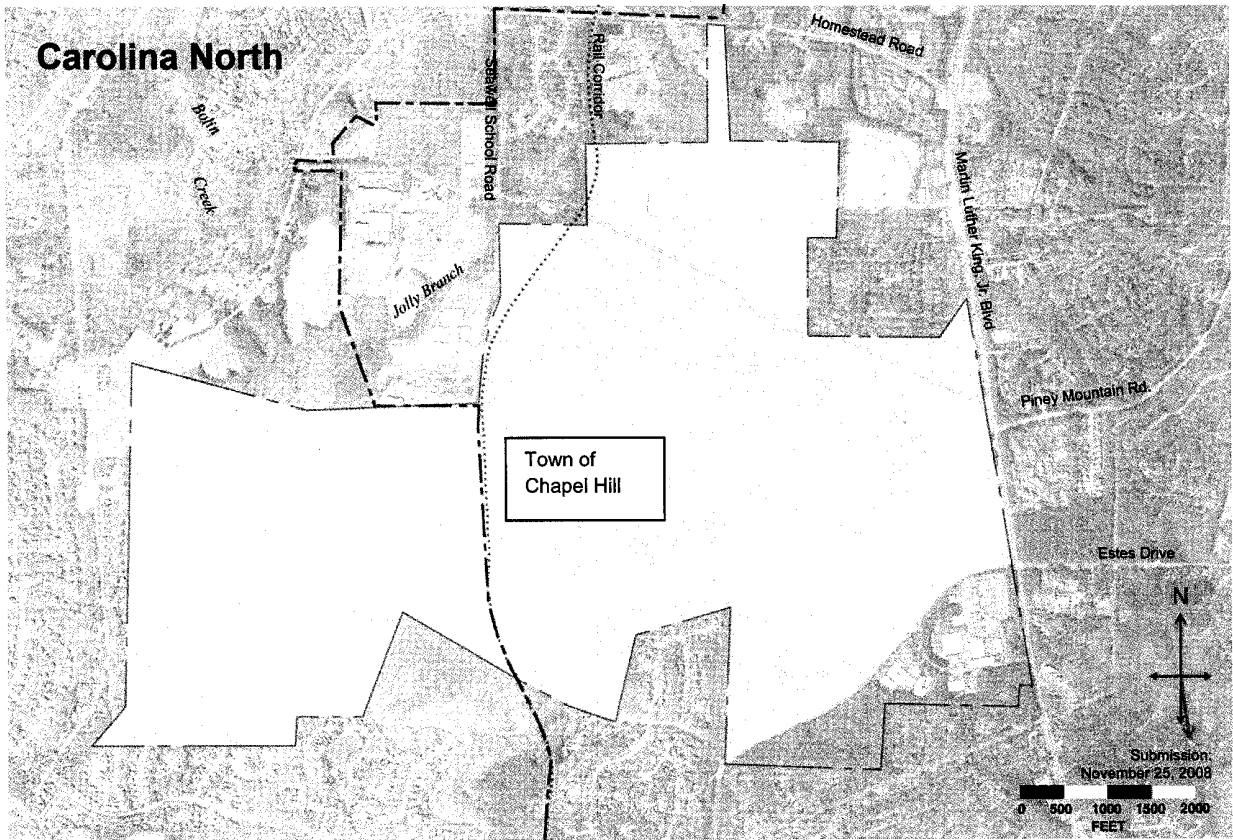
EXHIBITS INCORPORATED BY REFERENCE



- EXHIBIT A. Boundary Map of the Carolina North Tract
- EXHIBIT B. Boundary Map of the Portion of the Carolina North Tract within the Long-Range Plan of Development for Carolina North
- EXHIBIT C. Boundary Map of the Portion of the Carolina North Project with Buildings Permitted by this Agreement
- EXHIBIT D. Site Plan for the Portion of the Carolina North Project Proposed for Development Pursuant to this Agreement
- EXHIBIT E. Map: Conservation Areas
- EXHIBIT F. Map: General Location of Greenways and Paved Paths
- EXHIBIT G. Map: Perimeter Transition Areas
- EXHIBIT H. Map: A. Existing Conditions on the Chapel Hill Portion of the Carolina North Tract
B. Existing Trails on the Carolina North Tract
- EXHIBIT I. Map: Utility Plant and Lines Siting
- EXHIBIT J. U-1 Site Development Permit Application
- EXHIBIT K. American College and University Presidents' Climate Commitment
- EXHIBIT L. Design Guidelines for Carolina North



EXHIBIT A. Boundary Map of the Carolina North Tract



Carolina North Tract (approximately 947 acres)

Approximately 304 acres in Carrboro jurisdiction (area west of dashed line)

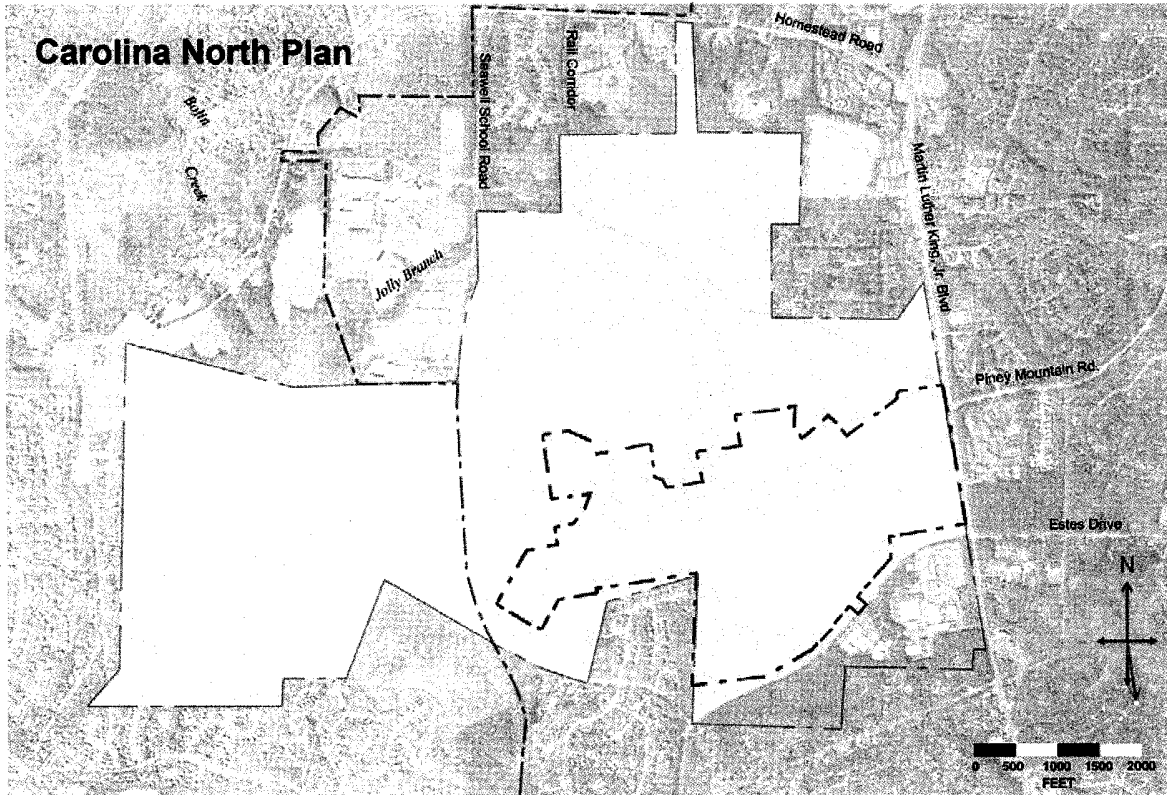
Approximately 643 acres in Chapel Hill jurisdiction (area east of dashed line)

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



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RB4785 52 52/119

EXHIBIT B. Boundary Map of the Portion of the Carolina North Tract within the Long-Range Plan of Development for Carolina North



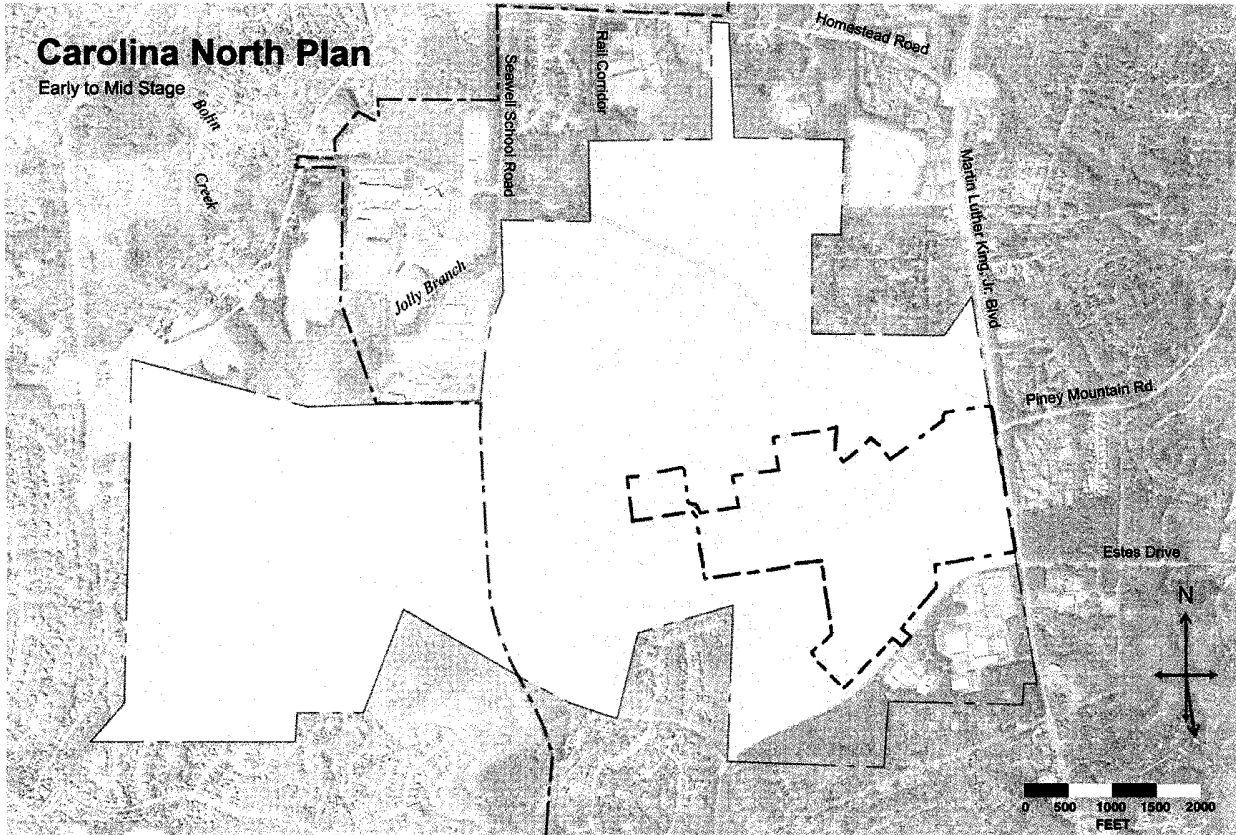
Boundary of Area within the Carolina North Tract Showing Location of Building Development Anticipated within Fifty Years

Approximately 228 Acres

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



EXHIBIT C. Boundary Map of the Portion of the Carolina North Project with Buildings Permitted by this Agreement



Boundary of Area Proposed for Building Development Pursuant to this Agreement

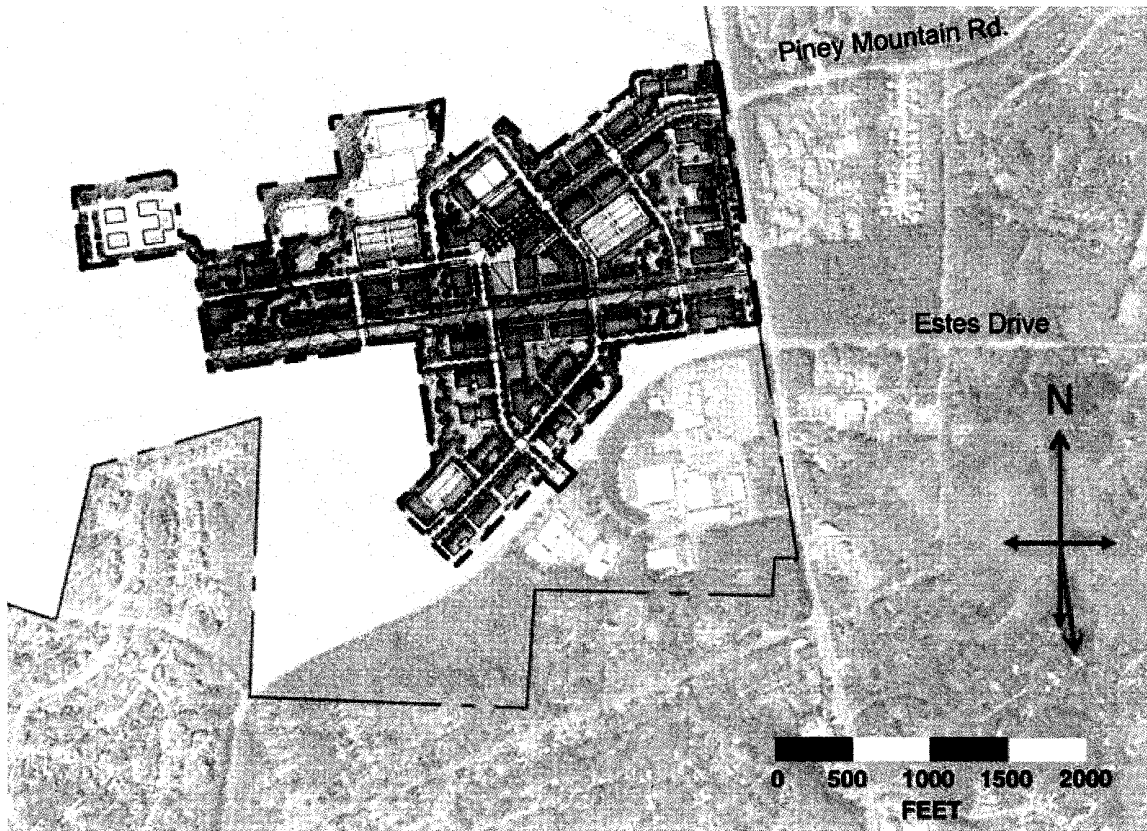
Approximately 133 acres

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



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RB4785 54 547119

EXHIBIT D. Site Plan for the Portion of the Carolina North Project Proposed for Building Development Pursuant to this Agreement



Site Plan for Initial Phase of Carolina North Project

Up to three million square feet of building development on approximately 133 acres

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



EXHIBIT E. Map: Conservation Areas



Note: Composite Map – Weighted Analysis from Ecological Assessment, with smoothed boundaries and upland hardwood borders

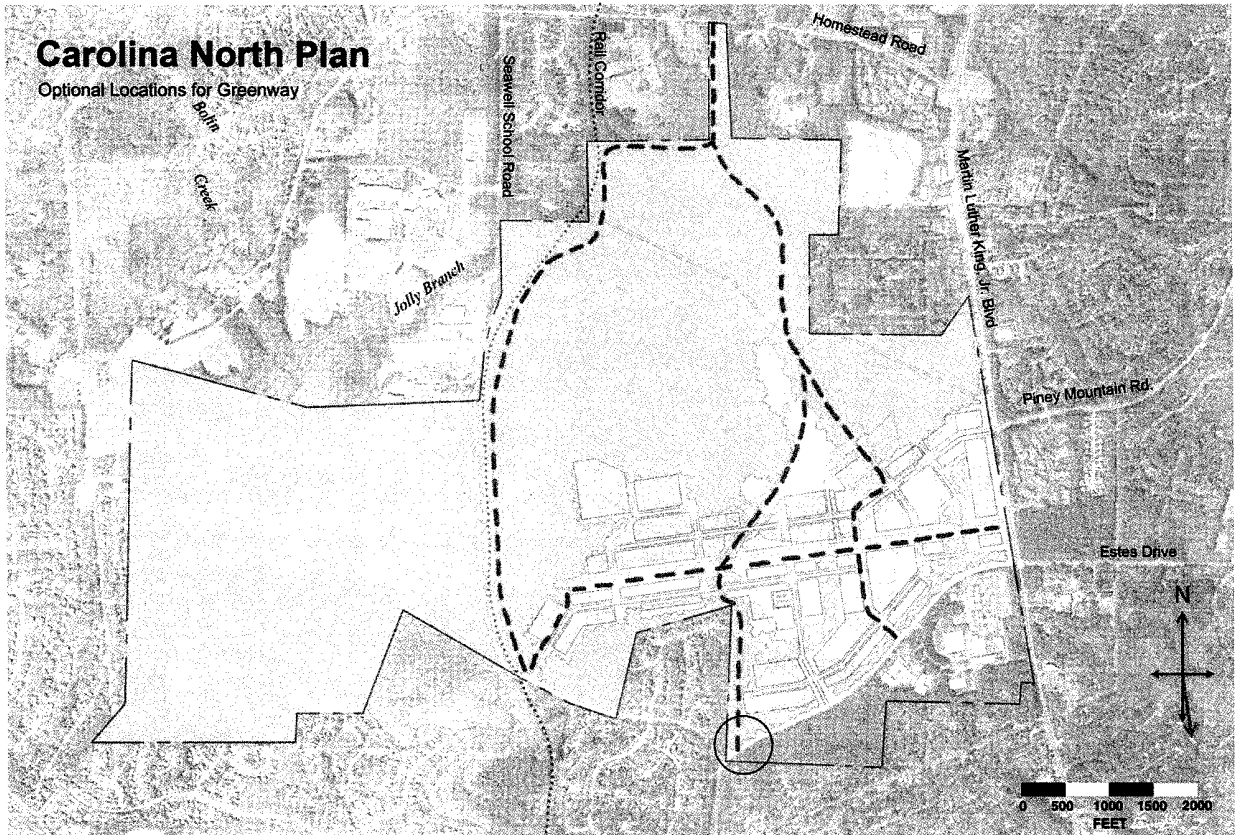
Approximate acreage:

Area	1	2	3	4	5	6A	(6B)
Acres	12	42	19	24	9	205	(53)

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



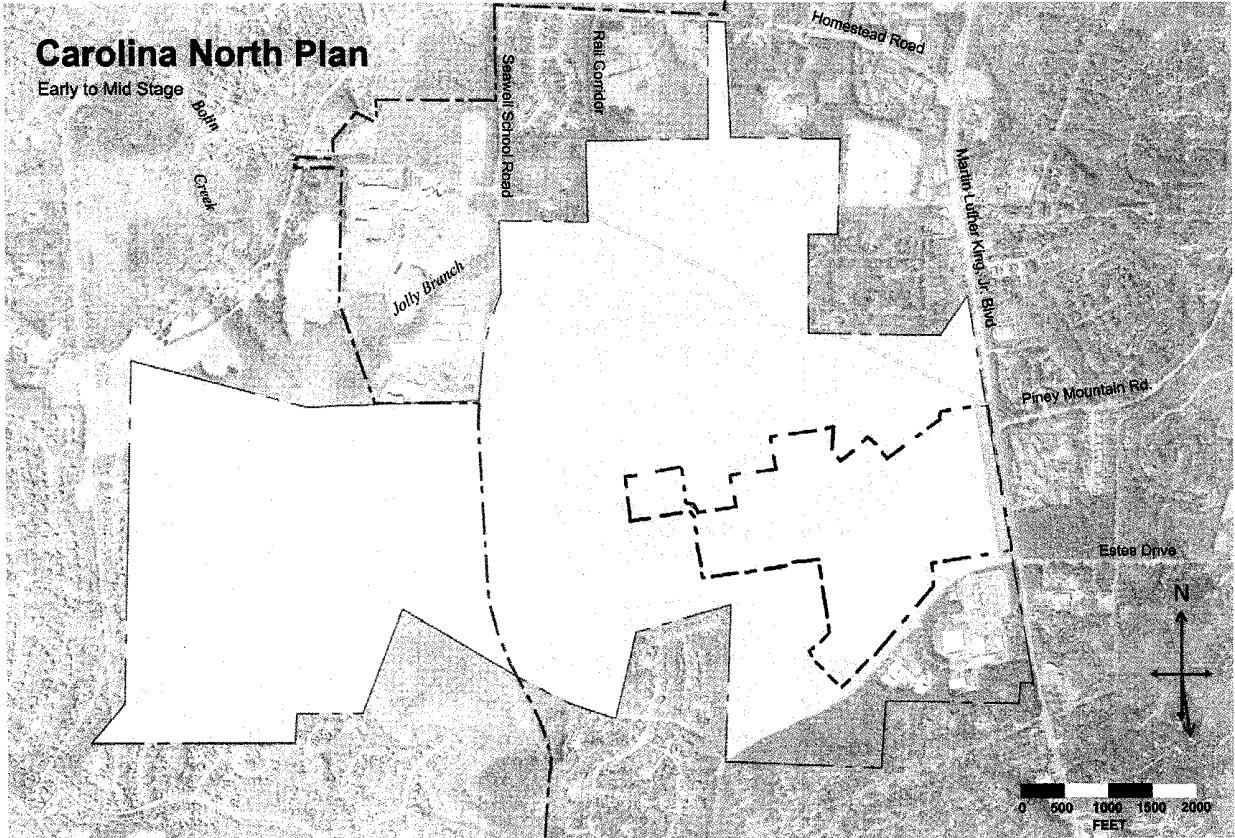
EXHIBIT F. Map: General Location of Greenways and Paved Paths




Note: The dashed lines indicate the general location of potential greenways. The circled area indicates the general location of a crossing. All will require future field study.

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

EXHIBIT G. Map: Perimeter Transition Areas



 Perimeter Transition Area: 100' from property line toward building face, projects must demonstrate compliance with Carolina North Design Guidelines, screen mechanical and service areas, and comply with applicable standards from the Development Agreement.

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



EXHIBIT H. Map 1. Existing Conditions on the Chapel Hill Portion of the Carolina North Tract

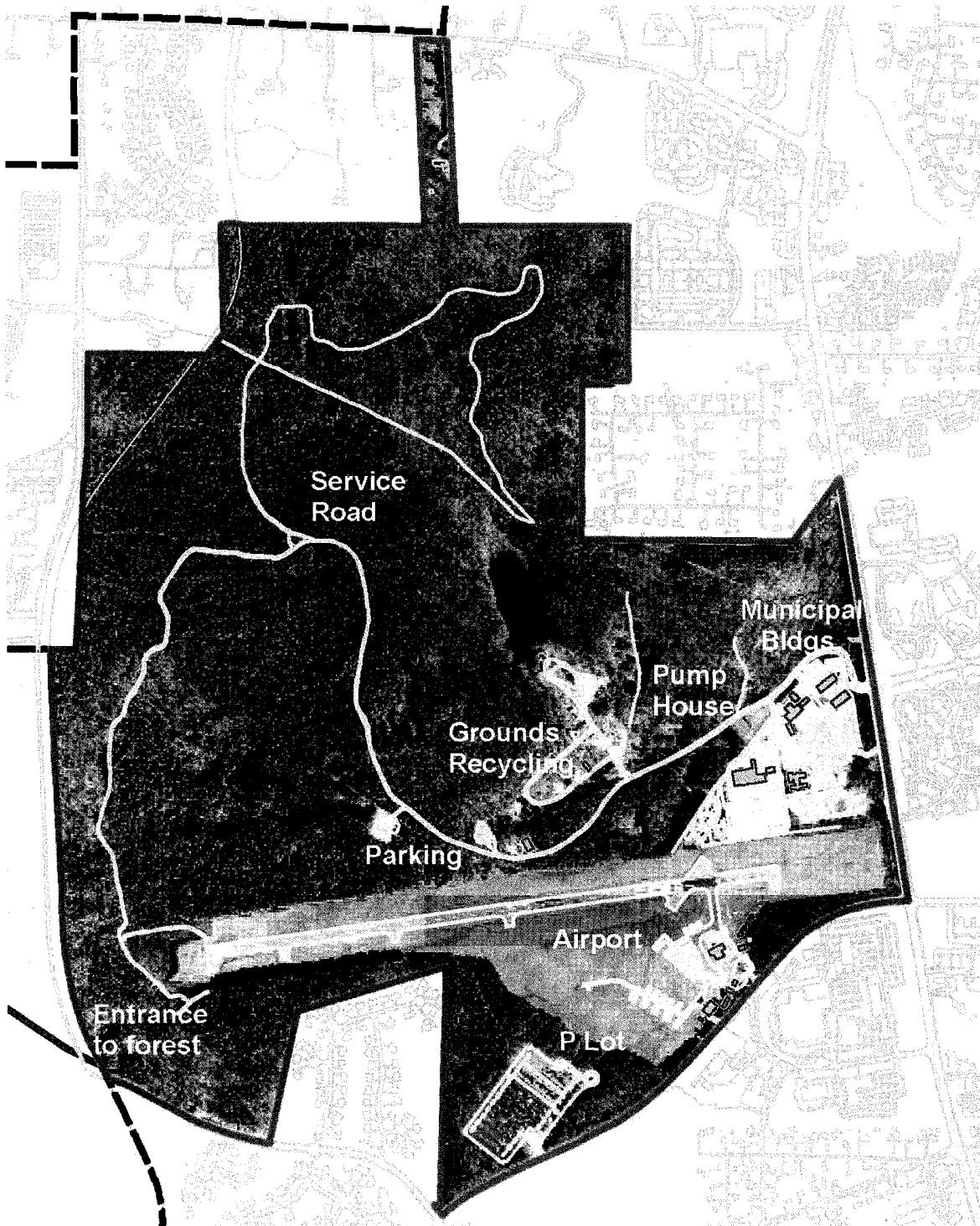
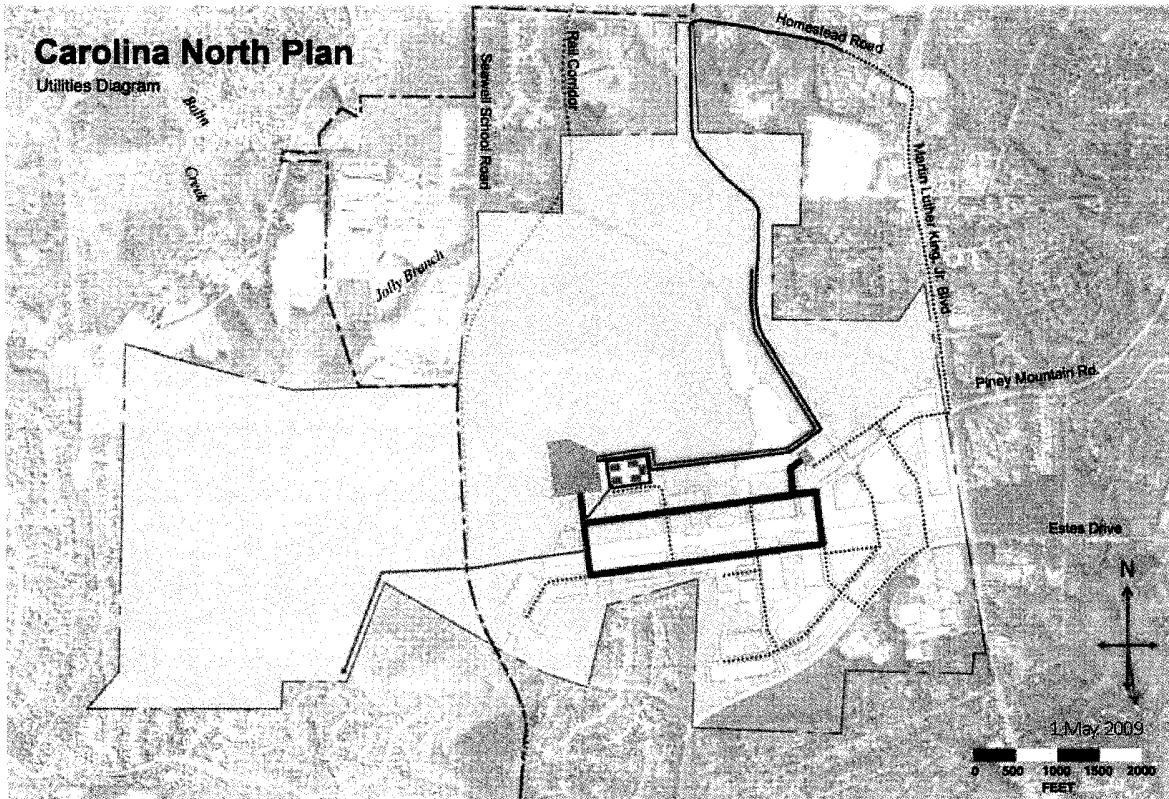


EXHIBIT I. Map: Utility Plant and Line Siting



- | | | | |
|--------------------------------|------------------|--------------------------|----------------|
| Utility Duct Bank | Utility Tunnel | Utility Plant Site | Sewer Corridor |
| Utility Duct Bank Study Option | Utility Corridor | Reclaimed Water Facility | Natural Gas |

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



EXHIBIT J. U-1 Site Development Permit Application

Contact:
Address:
Phone Number:
E-mail:
Project Name:
Application Number:
Submittal Date:
Project Number:
Project Location:
Project Sub-Basin:
Tax/Map/Block/Lot
(TMBL)#:
Parcel Identification
Number (PIN):
Land Use:
Is the Project in a Perimeter Transition Area? : Yes___ No ___
If yes, include PTA meeting minutes and copy of notice map and mailing list with application

Information Requirements for Site Development Permit Applications

Each application for a Permit shall include the following information, in a format specified by the Town Manager (X copies or sets of all information unless noted below):

1. Receipt (one copy) of Permit Application Fee (\$XX).
2. Area map - Identify location of project on approved Phase Plan.
3. An Existing Site Plan.
4. A Site Plan showing building footprints, access drives, pedestrian circulation (with connections to existing pedestrian networks), parking areas, and clearing limits.
5. A Grading Plan.
6. A soil erosion control plan for projects over 20,000 square feet of disturbance
7. A copy of the erosion and sediment control permit from the NC Division of Land Resources for projects disturbing one acre or more.
8. A courtesy copy of erosion/sedimentation control plans
9. A Utility Plan showing how all utilities will be provided to buildings and letters of approval from each applicable utility (one copy of each letter).
10. A Construction Management Plan, consistent with the University's "Construction Management Guidelines" contained in the August 7, 2001 Addendum, to be approved by the Town Manager prior to commencement of construction, indicating measures to be taken during construction in the following areas:
 - a. Traffic Management/Control Plan:
 - i. A traffic management/control plan shall be submitted which will provide for the safe and orderly movement of motorized and non-motorized vehicles on any public streets (maintained and operated by the Town or the NCDOT) on which normal traffic flow will be disrupted (lane closures, street closures, sidewalk closures, etc.) during construction, including a detour plan as may be necessary.
 - ii. The submittal of a Site Development Plan shall include a construction traffic routing map that identifies the local street network that will be impacted by construction traffic associated with this proposed addition. The routing plan shall minimize, and where practical, prohibit construction traffic on local streets. The plan shall also provide for the safe and continued use of bicycle, pedestrian, and greenway corridors during construction.



- iii. The Traffic management plan shall be prepared in accordance with the latest version of Manual on Uniform Traffic Control Devices (MUTCD) and applicable NCDOT Standards.
 - iv. All signs shall be made of high retro-reflectivity material and, if night time closures are necessary, signs shall include beacons.
 - v. The traffic management plan shall be sealed by a Professional Engineer licensed in the State of North Carolina.
 - vi. A permit must be obtained from the Town Manager for land closures, sidewalk closures, and street closures.
 - vii. The Traffic Management Plan shall state that closures and night time work on public streets must be approved by the Town Manager. This form must be completed and submitted to the Town for approval along with the relevant traffic control plan. The Contractor must notify the Town Engineering, Public Works, Police, Fire, and Transportation Departments, E911, and affected residents at least 3 business days prior to the commencement of approved night work and/or approved street closure.
 - viii. The University is responsible for repairing damaged pavement, markings, signs and signal equipment as necessary.
 - ix. The University's contractor shall coordinate with the Town Public Works Department (969-5100) for traffic signal system underground cable conflicts.
- b. Pedestrian Management Plan:
- i. A pedestrian detour plan shall be submitted which will provide for the safe and orderly movement of pedestrians if any public sidewalks and/or designated pedestrian routes on public rights-of-way and/or easements are disrupted or closed to normal pedestrian use.
 - ii. The pedestrian detour plan shall be prepared in accordance with the latest version of the MUTCD and sealed by a professional engineer licensed in the State of North Carolina.
 - iii. All signs shall be made of high retro-reflectivity material and if a night time detour is required, signs shall include beacons.
- c. Pedestrian Safety:
- i. Detailed information on how the Pedestrian Management Plan will provide for the safe and continued use of bicycle, pedestrian, and greenway corridors during construction.
- d. Pedestrian Security:
- i. Detailed information on pedestrian security measures including the placement of security phones and lighting. The plan shall also include additional information on security for pedestrian bridges during evening hours.
- e. Construction Traffic Management Plan:
- i. A construction traffic control plan shall be submitted which will provide for the safe and orderly movement of construction traffic to and from the construction site and staging area. The plan must identify the location and size of staging areas and material storage areas which would affect construction traffic routes.
 - ii. The plan shall indicate location(s) where construction equipment will be parked (if offsite) and where construction personnel will park, including a routing plan for equipment and personnel going to and from the work site.
 - iii. The plan shall indicate graphically and describe how emergency vehicle access to and around the project site will be provided both during and after completion of construction.
 - iv. The plan shall include measures to minimize construction traffic impacts on school bus traffic and access to schools in the vicinity of the project.
- f. Construction Management Plan Enforcement:
- i. Each Construction Management Plan shall describe how the University will enforce the requirements of the Construction Management Plan. In particular, the plan must describe how the University intends to enforce and ensure that pedestrian, bicycle, and greenway corridors will remain open and safe during construction periods.



- g. Construction Management Contact Information:
- i. Each construction site will include visible signage listing a telephone number and a University representative available to answer questions and respond to concerns about pedestrian safety and security. A detail of the proposed sign, including number of signs and general locations, shall be submitted with each Site Development Permit application.
10. Stormwater Management:
Every application for a Site Development Permit shall include:
- a. A signed and sealed letter from a Professional Engineer, licensed in North Carolina, certifying that the stormwater management measures associated with the Site Development Permit application meet or exceed the approved stormwater management performance standards for Carolina North. Stormwater management and treatment practices shall comply with all applicable federal and State regulations, and revisions thereof.
 - b. Plans, signed and sealed by a North Carolina licensed Professional Engineer, showing grading, regulatory floodplains, stream buffers and RCDs, plantings, erosion control, and stormwater runoff control best management practice(s) designs and details, in accordance with the performance criteria.
 - c. A stormwater design report, signed and sealed by a North Carolina licensed Professional Engineer, that includes the following
 1. A narrative description of existing and proposed site conditions, stormwater impacts, and proposed stormwater management measures
 2. A summary table of pre-development and post-development impervious cover by drainage area
 3. Maps showing the pre-development and post-development impervious cover
 4. A table indicating the stormwater runoff volumes and peak discharge (rates) for the specified design storms at the following three conditions: pre-development; post-development without stormwater management; and post-development with stormwater management
 5. Copies of all hydrologic and hydraulic calculations and routings
 6. Maps indicating the existing and proposed drainage divides on the site and the drainage to each stormwater management measure
 7. Inspection, operations, and maintenance plans for the proposed stormwater management structures.
 - d. A note indicating the University is responsible for maintenance of stormwater facilities as agreed upon in the Carolina North Development Agreement for facilities on University-owned property.
11. Noise: Every application for a Site Development Permit shall include a signed and sealed letter from a Professional Engineer, licensed in the State of North Carolina and with demonstrable expertise in acoustical design and attenuation practices, certifying that any increase in measurable noise above existing pre-Development Plan noise levels on property outside the U-1 Zoning District will not exceed the levels allowed in the Town Noise Ordinance as established at the time each Site Development Permit application is approved by the Town. This noise restriction shall not apply to property outside of the U-1 Zoning District that is in the same ownership as property within the U-1 Zoning District.
12. Lighting Plan: Every application for a Site Development Permit shall include a lighting plan, sealed by a Professional Engineer licensed in the State of North Carolina and with demonstrable expertise in lighting design and mitigation strategies, that shows the following:
- a. existing and proposed lighting fixture types and locations
 - b. isolux contour diagram and grid points with the measured and calculated pre-development and post-development foot-candles at grade on property where lighting impacts are expected.
 - c. a description of how lighting meets the goals of 'dark skies' lighting and complies with the lighting standards of the Development Agreement.



- d. A demonstration that there is no increase in lighting foot-candle levels at the adjacent property line as a result of the project.
- e. Demonstration that increases in illumination on property outside of the Carolina North Project do not result in lighting levels in excess of 0.3 foot-candles, measured at ground level.
- f. Confirmation that, for property outside of the Carolina North Project where existing ambient lighting levels are in excess of 0.3 foot-candles, there is no increase in measurable lighting levels.

These lighting restrictions shall not apply to adjacent property outside of the Carolina North Project that is in the same ownership as property within the Carolina North Project.

13. Fire Protection and Safety:

- a. Fire Flow Report sealed by a registered Professional Engineer (NC) demonstrating compliance with Town Standards.
- b. A Fire Protection plan showing the following:
 - i. Location of fire hydrants, present and proposed
 - ii. Location of fire department connections to sprinkler/standpipe systems
 - iii. If building has both sprinkler and standpipe, show which FDC feeds which system
 - iv. Road access to fire protection systems
 - v. Emergency access to the structure on at least two sides
 - vi. Unobstructed 20 ft. emergency access lanes
 - vii. Fencing around construction site with 20 ft. opening swing or slide gates
 - viii. Temporary standpipe locations if building is 40 feet or higher
 - ix. Any areas which are proposed to be inaccessible during construction or demolition
 - x. Maintain compacted soil/gravel to withstand weight of fire department vehicles at 75,000 pounds vehicle, all weather road standards.

14. Engineering Construction Permit. If any part of a University project lies within a public right-of-way on Town streets, all documents required for an Engineering Construction Permit (ECP) must be submitted as part of the Site Development Permit application process. An ECP must be obtained from the Town prior to start of work on the right-of-way.

15. Energy and Conservation Goals:

- a. Permit applications shall include energy performance models and the LEED checklist with projected points to qualify at Silver level.
- b. Permit applications shall describe how potable water consumption and reclaimed strategies are incorporated into the project

16. Landscape: Plans indicating grading, and limits of construction, existing and proposed tree canopy mix and percent coverage, and other proposed plantings. Plans should also show how the proposed project relates to the overall master plan for Carolina North.

- a. identify planting materials, proposed irrigation and maintenance techniques for each type of landscape proposed
- b. applications should include any proposed trails, greenways or recreation facilities and connections to adjacent related facilities to be constructed as part of the project and describe the design standards applied to those elements

17. Solid Waste: Describe the solid waste management responsibilities for the project both during the construction phase and after the building is occupied.

18. Design Guidelines: Describe how the project meets the design standards applicable to Carolina North

Post-Construction: Upon completion of construction, the University shall provide commissioning reports, as-built drawings to the Town, signed and sealed by a North Carolina-registered Professional Land

Surveyor, showing building footprints, driveways, stormwater drainage/conveyance piping, stormwater management structures, and all other impervious surfaces and totals.



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EXHIBIT K. American College and University Presidents' Climate Commitment



AMERICAN COLLEGE & UNIVERSITY
PRESIDENTS CLIMATE COMMITMENT



AMERICAN COLLEGE & UNIVERSITY PRESIDENTS CLIMATE COMMITMENT

We, the undersigned presidents and chancellors of colleges and universities, are deeply concerned about the unprecedented scale and speed of global warming and its potential for large-scale, adverse health, social, economic and ecological effects. We recognize the scientific consensus that global warming is real and is largely being caused by humans. We further recognize the need to reduce the global emission of greenhouse gases by 80% by mid-century at the latest, in order to avert the worst impacts of global warming and to reestablish the more stable climatic conditions that have made human progress over the last 10,000 years possible.

While we understand that there might be short-term challenges associated with this effort, we believe that there will be great short-, medium-, and long-term economic, health, social and environmental benefits, including achieving energy independence for the U.S. as quickly as possible.

We believe colleges and universities must exercise leadership in their communities and throughout society by modeling ways to minimize global warming emissions, and by providing the knowledge and the educated graduates to achieve climate neutrality. Campuses that address the climate challenge by reducing global warming emissions and by integrating sustainability into their curriculum will better serve their students and meet their social mandate to help create a thriving, ethical and civil society. These colleges and universities will be providing students with the knowledge and skills needed to address the critical, systemic challenges faced by the world in this new century and enable them to benefit from the economic opportunities that will arise as a result of solutions they develop.

We further believe that colleges and universities that exert leadership in addressing climate change will stabilize and reduce their long-term energy costs, attract excellent students and faculty, attract new sources of funding, and increase the support of alumni and local communities.

Accordingly, we commit our institutions to taking the following steps in pursuit of climate neutrality:

- I. Initiate the development of a comprehensive plan to achieve climate neutrality as soon as possible.
 - a. Within two months of signing this document, create institutional structures to guide the development and implementation of the plan.
 - b. Within one year of signing this document, complete a comprehensive inventory of all greenhouse gas emissions (including emissions from electricity, heating, commuting, and air travel) and update the inventory every other year thereafter.

(continued...)



- c. Within two years of signing this document, develop an institutional action plan for becoming climate neutral, which will include:
 - i. A target date for achieving climate neutrality as soon as possible.
 - ii. Interim targets for goals and actions that will lead to climate neutrality.
 - iii. Actions to make climate neutrality and sustainability a part of the curriculum and other educational experience for all students.
 - iv. Actions to expand research or other efforts necessary to achieve climate neutrality.
 - v. Mechanisms for tracking progress on goals and actions.

2. Initiate two or more of the following tangible actions to reduce greenhouse gases while the more comprehensive plan is being developed.

- a. Establish a policy that all new campus construction will be built to at least the U.S. Green Building Council's LEED Silver standard or equivalent.
- b. Adopt an energy-efficient appliance purchasing policy requiring purchase of ENERGY STAR certified products in all areas for which such ratings exist.
- c. Establish a policy of offsetting all greenhouse gas emissions generated by air travel paid for by our institution.
- d. Encourage use of and provide access to public transportation for all faculty, staff, students and visitors at our institution
- e. Within one year of signing this document, begin purchasing or producing at least 15% of our institution's electricity consumption from renewable sources.

3. Make the action plan, inventory, and periodic progress reports publicly available by providing them to the Association for the Advancement of Sustainability in Higher Education (AASHE) for posting and dissemination.

In recognition of the need to build support for this effort among college and university administrations across America, we will encourage other presidents to join this effort and become signatories to this commitment.

Signed,



 President /Chancellor Signature



 President /Chancellor Name

 College or University

 Date

*UNC
Chapel Hill*



EXHIBIT L. Carolina North Design Guidelines



The Carolina North Design Guidelines 2008 were adopted by The University of North Carolina at Chapel Hill Board of Trustees on November 19, 2008. The Guidelines are reprinted beginning on the following page.



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL



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CAROLINA NORTH DESIGN GUIDELINES 2008



November 19, 2008



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

CAROLINA NORTH DESIGN GUIDELINES 2008

TABLE OF CONTENTS

Introduction 3

Purpose 5

Campus-wide Design Guidelines 9

Building Design Guidelines 37

Process 49

November 19, 2008



Aerial photograph of the easternmost part of the existing site

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



Introduction

Carolina North will serve the mission of the University of North Carolina at Chapel Hill by creating a world-class research and learning campus in the heart of Chapel Hill. It affords a unique opportunity to expand the on-campus graduate student experience, as well as new options for public-private partnerships. The 2007 Carolina North Plan identifies a 250-acre footprint for University growth over the next fifty years.

These guidelines advocate for the continued evolution of the best of Carolina's building traditions. The following topics should be addressed and integrated in the design of each individual project: performance and sustainability, orientation, height, massing, composition, materials, and site furnishings.

By definition, a campus is a collection of interrelated buildings and supporting facilities arranged around an open space network. Establishing an open space network immediately creates distinct places in the early phases of development. The open space network supports campus-wide design issues such as identity, open space hierarchy and variety, connectivity and accessibility, and integrated site planning for

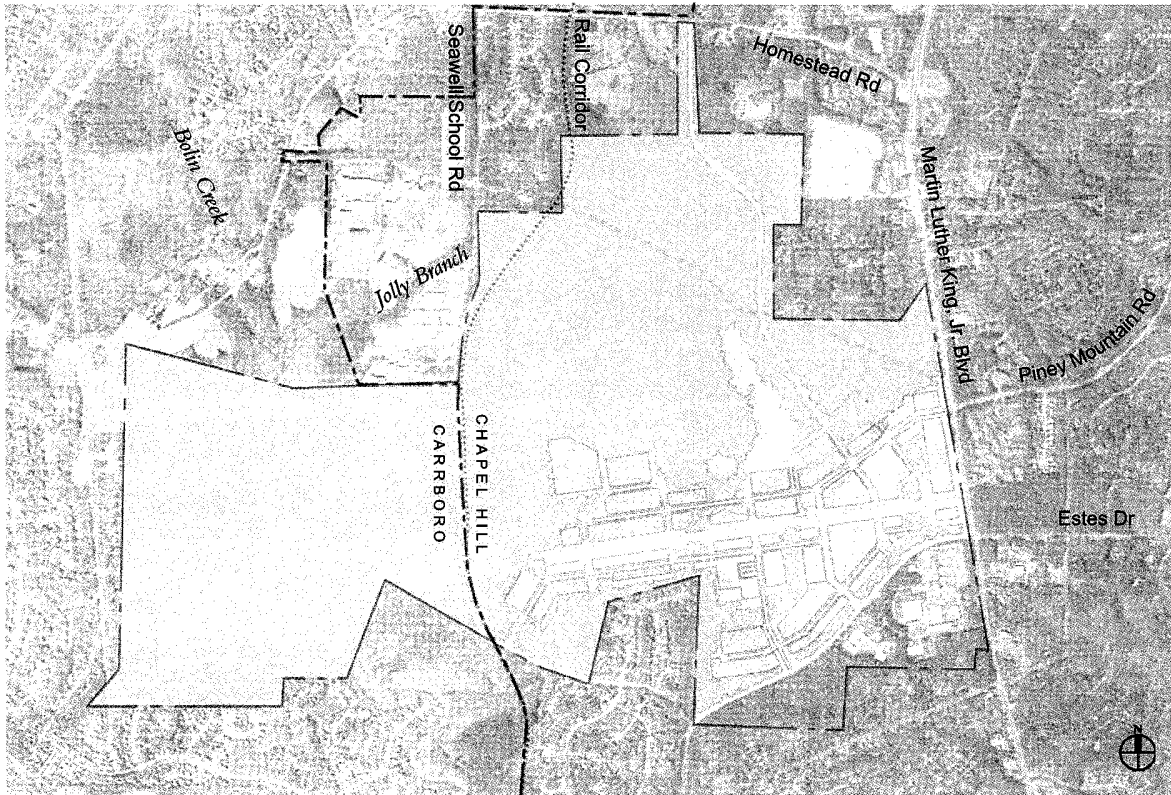
infrastructure. The open space network defines four campus districts:

- Campus Frontage – establishes identity with a stone wall, trees, and green areas
- Entry Drive – brings the community into campus
- Central Green Way – connects town and campus to the forest
- Working Landscape – integrates open space with surrounding forest and supports sustainability goals

Building at Carolina North will happen over generations, much the way it has on main campus, but initially, decisions about development of the campus will be made within the context of the open space network. Each new building will be subject to extensive review and judged on its own merits, Carolina traditions, the evolving context at Carolina North, and its ability to meet program needs and performance goals. The result will be much like the main campus, a rich architectural palette unified by the brick walks, low stone walls, and consistent appearance of the grounds.



Photograph of existing Horace Williams Airport runway



Carolina North Parcel Boundaries

Parcel boundaries define discrete areas within the 250 acres planned for development

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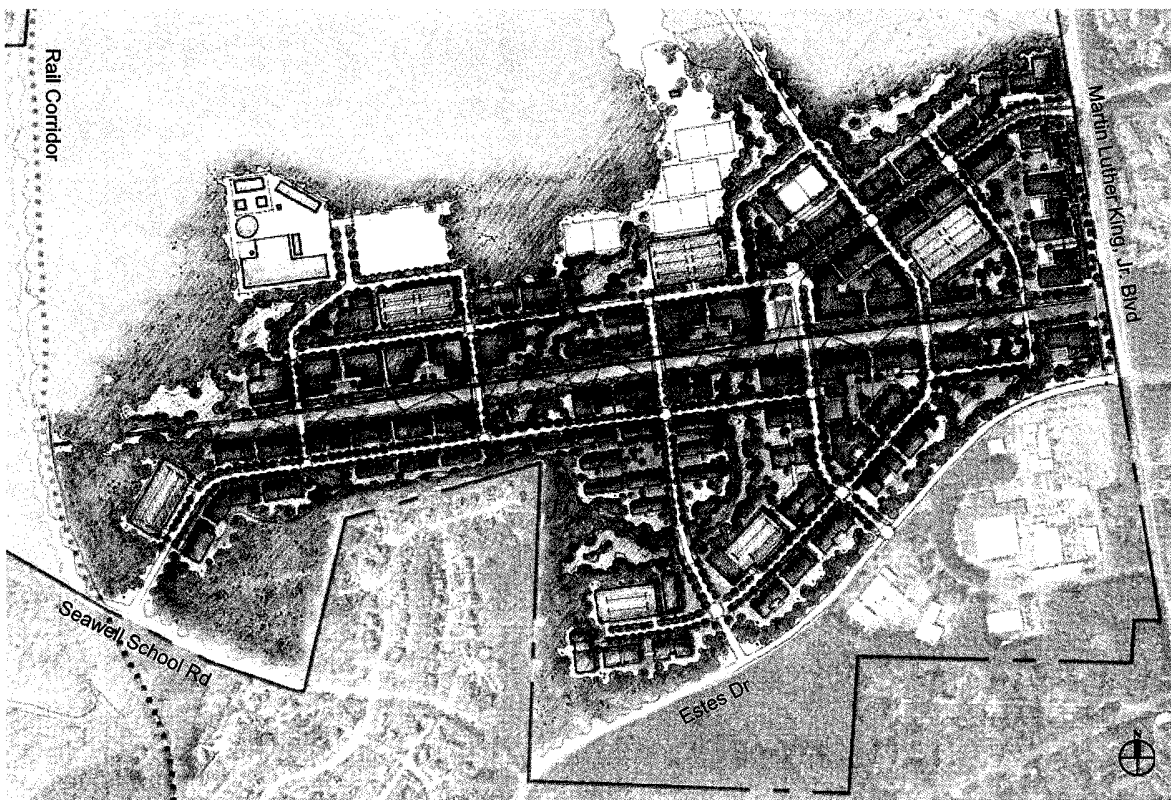
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Purpose

Carolina North will serve the mission of the University of North Carolina at Chapel Hill by creating a world-class research and learning campus in the heart of Chapel Hill. It affords a unique opportunity to expand the on-campus graduate student experience, as well as new options for public-private partnerships. The implementation of this campus is a timely response to the surge in main campus development in the last decade, and reflects a trend toward public-private partnerships and economic development related to University

research efforts and innovations. The plan identifies a 250-acre footprint for University growth and development over the next fifty years.



Carolina North Plan

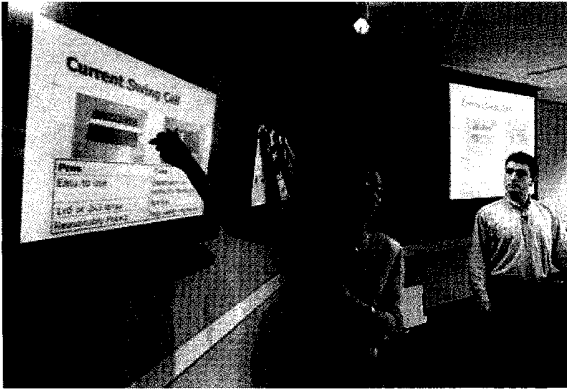
The plan identifies a 250-acre footprint for University growth and development over the next fifty years

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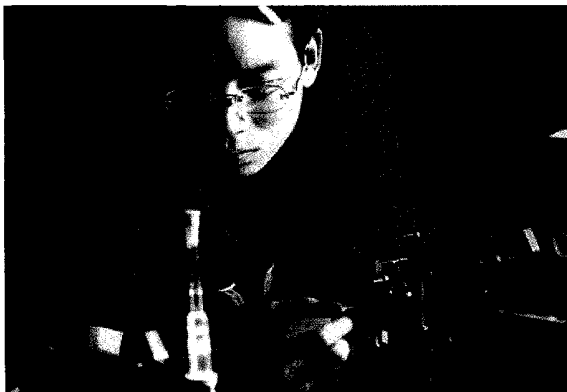
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Carolina North will support the mission of the University

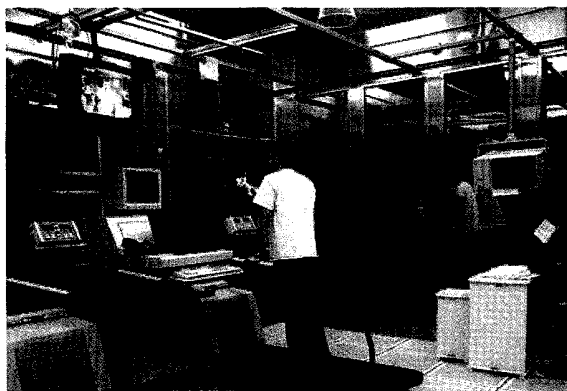


Facilitate new collaborations inside the University
As Carolina North takes shape, existing University programs will migrate to the new campus and additional programs will be established there. Facilities at Carolina North will include innovative prototypes, create additional opportunities for on-going efforts, and establish new adjacencies that are expected to be the catalyst for groundbreaking interdisciplinary collaborations.



Create and strengthen strategic relationships outside the University

Carolina North also presents a unique opportunity for partnerships outside the University. The interaction between the University and the private sector is a growing source of research funding, collaboration, and innovation. The University will be able to attract new funding sources, stimulate economic growth, and create jobs for North Carolina by providing a setting to encourage public-private partnerships that spur innovation and economic growth.



Provide new space for research and education

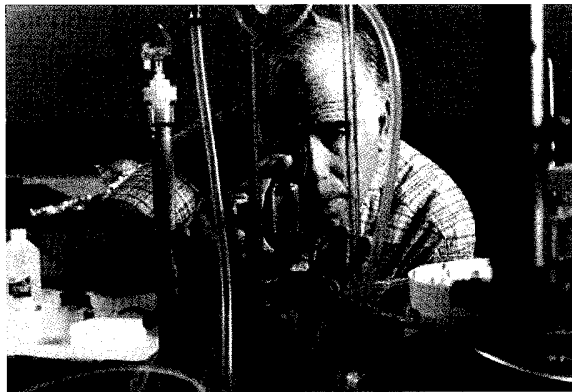
Main campus is nearing its responsible capacity, and its few remaining building sites are constrained by existing development. As a result, Carolina North is expected to accommodate uses with complex or extensive programs needs, such as corporate partnerships or wet lab based research, and respond to enrollment growth.



Carolina North will respond to changing needs



Site selection considers the value of programmatic adjacencies. Certain programs benefit from being near to each other and certain uses are more compatible. For example, programs that rely on technical space, such as wet labs, might find benefit in a shared facility so that specialized equipment can be efficiently utilized and redundancy avoided.



At the same time, it is important to leave opportunities for future program growth. As an example, Polk Place was already well-defined by a number of buildings in the early 1900's, but it was not complete until Dey Hall was built in 1962. Similarly, building sites across the Carolina North campus will remain undeveloped in anticipation of needs that can only be imagined today.



Carolina North must maintain flexibility to respond to changing needs. The plans for the campus are not expected to be fully realized for at least fifty years. In that time, pedagogy and technology will change substantially. Similarly, there is the possibility that the University might incorporate additional or new disciplines into its academic programs.



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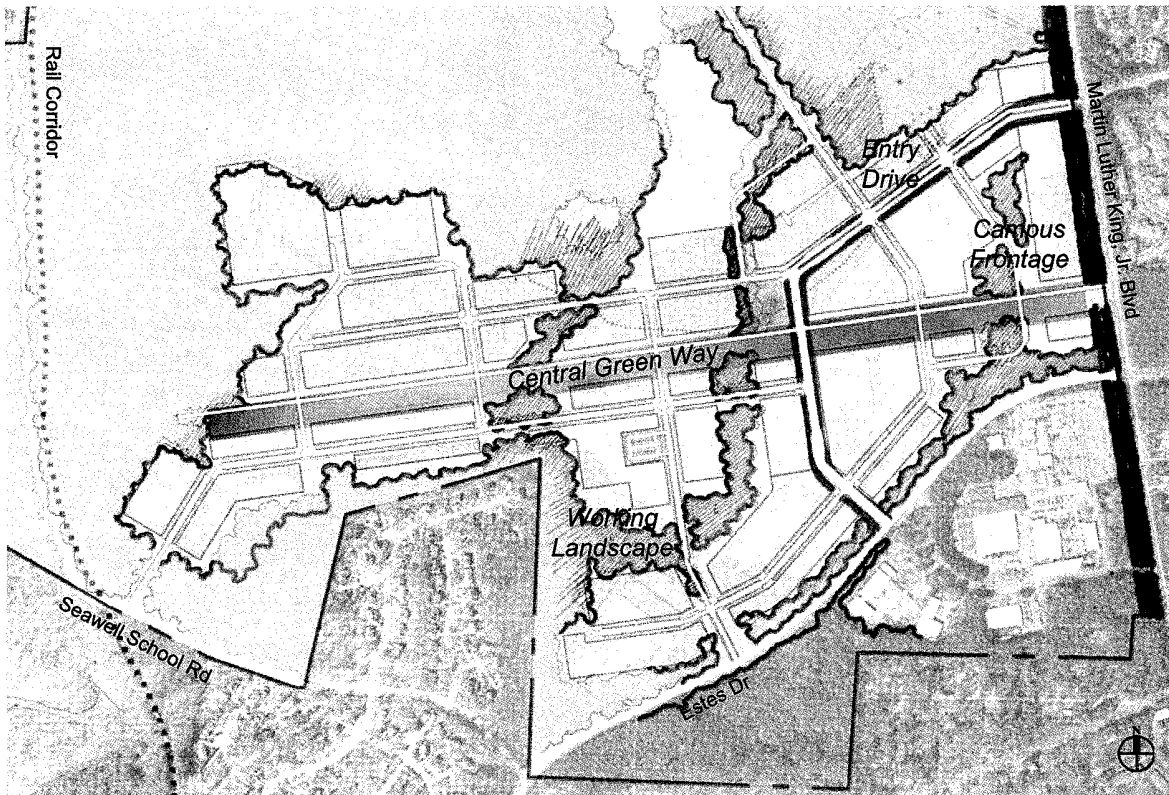


Campus-wide Design Guidelines

DESIGN GUIDELINES BY LANDSCAPE DISTRICT

Building at Carolina North will happen over generations, much the way it has on main campus. At the outset, establishing a landscape structure immediately creates distinct places in the early phases of development. The open space network defines four distinct campus districts:

- Campus Frontage – establishes identity with a stone wall, trees, and green areas
- Entry Drive – brings the community into campus
- Central Green Way – connects town and campus to the forest
- Working Landscape – integrates open space with surrounding forest and supports sustainability goals



Open Space Network

The open space network defines four distinct campus districts: Campus Frontage, Entry Drive, Central Green Way, and Working Landscape

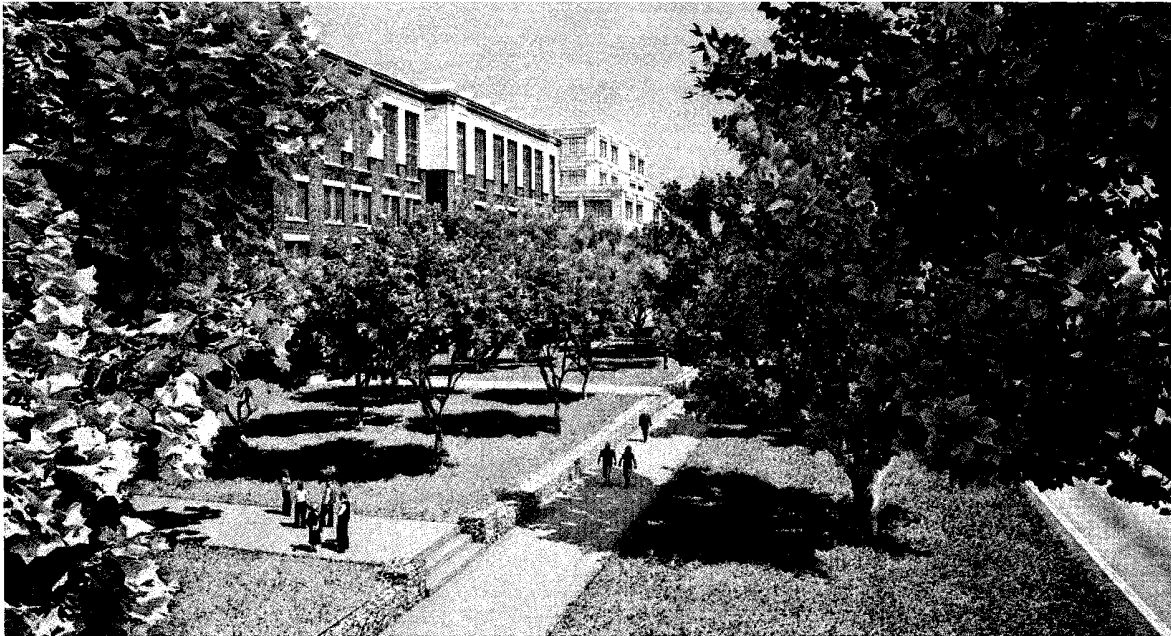
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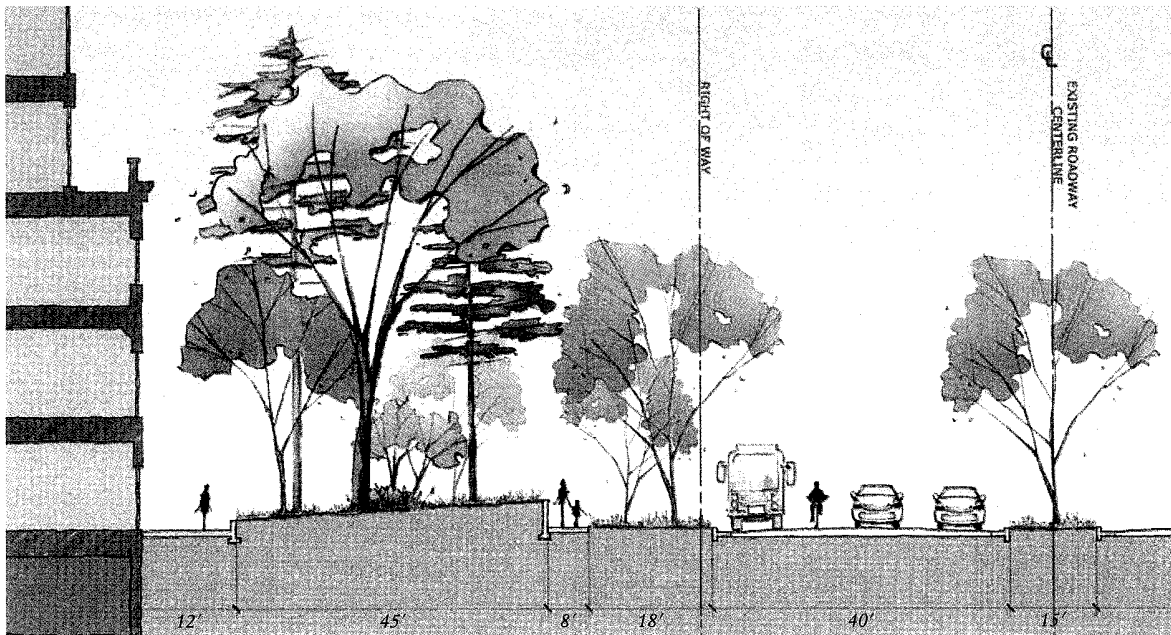
Campus Frontage

Carolina North will rely on touchstone elements from the main campus and the Chapel Hill region to establish a strong, visible presence on Martin Luther King, Jr. Boulevard. The most striking of these will be the Chatham-stone wall common on campus and around town. The stone wall will be complemented by a brick sidewalk on the east side and a double row of canopy trees typical of the main campus. All three will run parallel to Martin Luther King, Jr. Boulevard from Municipal Drive south to Airport Drive. A parkway (landscaped area between the sidewalk and street) will be planted with non-turf grass and canopy shade trees to buffer pedestrians from the traffic.

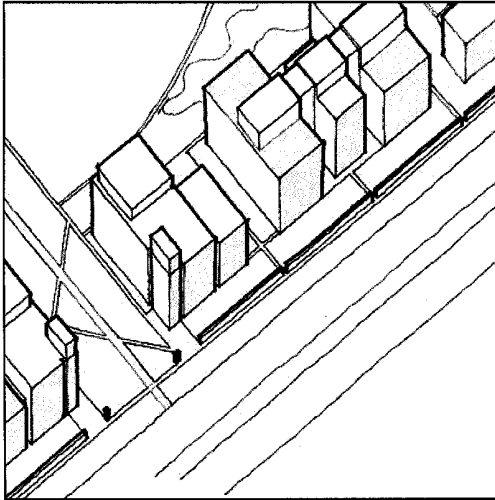
Improvements to Martin Luther King, Jr. Boulevard could also include a central planted median where the continuous turn lane is today. The median would offer traffic-calming benefits and a midpoint landing for pedestrian crossings. The improvements will allow for the possible addition of transit and bicycle lanes. The parkway and median (if implemented) will be planted with a diverse mix of indigenous deciduous trees, including ornamental species for seasonal color and interest. Trees will be irregularly placed to create a natural feel. The parkway and the median will be low maintenance and require no irrigation. To the extent possible, both areas will capture stormwater run-off from nearby impervious surfaces. The combination of these simple elements will create an elegant public identity for the campus.



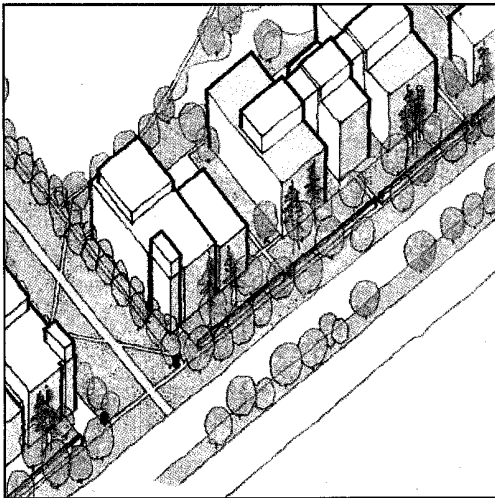
Carolina North will rely on elements from main campus and Chapel Hill to establish a strong presence on Martin Luther King, Jr. Boulevard



Cross-section of Campus Frontage



Diagrammatic Massing of Campus Frontage
Building massing and geometry will be straightforward and address the street and the community



Diagrammatic Massing of Campus Frontage with Landscape
Building setbacks provide sun and views into midblock areas

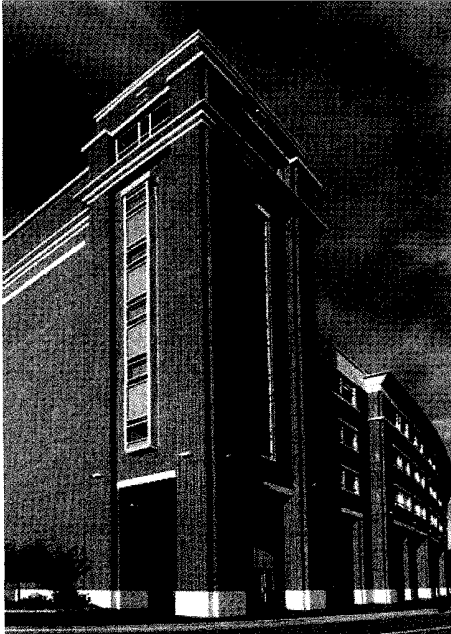
Campus buildings along Martin Luther King, Jr. Boulevard will be densely developed and include mixed-use activities to support interaction between campus and town:

- **Building height** will be approximately six stories. Height should be balanced with appropriate massing, texture, and articulation of the first two to four stories to establish a rich pedestrian experience and human scale at the street level.
- **A major campus crossroads** will be created at the intersection of Martin Luther King, Jr. Boulevard and the Central Green Way; design and height (approximately eight stories) of adjacent buildings should respond to this prominent location.
- **Building massing and geometry** will be straightforward and address the street and the community.
- **Building setbacks** will be uniform from Martin Luther King, Jr. Boulevard with approximately 85% of the street facing elevations built to the parcel boundary.
- **Building setbacks** will be integrated to provide sun and views into midblock areas, and allow for green roofs, roof gardens, and solar energy collection.



Campus Frontage Precedents

These examples illustrate design elements, such as height, massing, setbacks, stepbacks, and streetscape, that will define the character of the Campus Frontage.



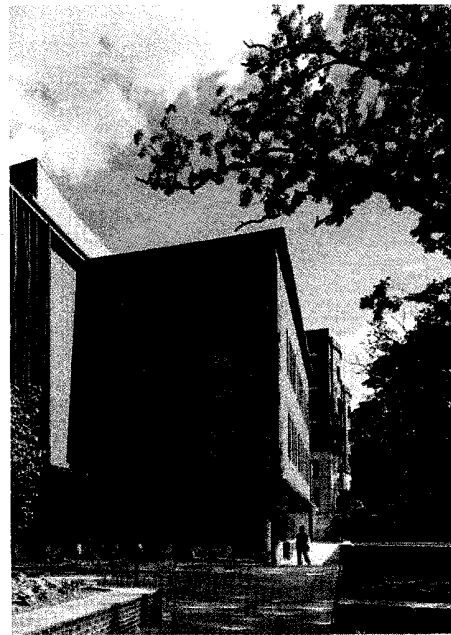
*Carrington Hall,
University of North Carolina at Chapel Hill*



Johns Hopkins University



George Washington University



*FedEx Global Education Center,
University of North Carolina at Chapel Hill*



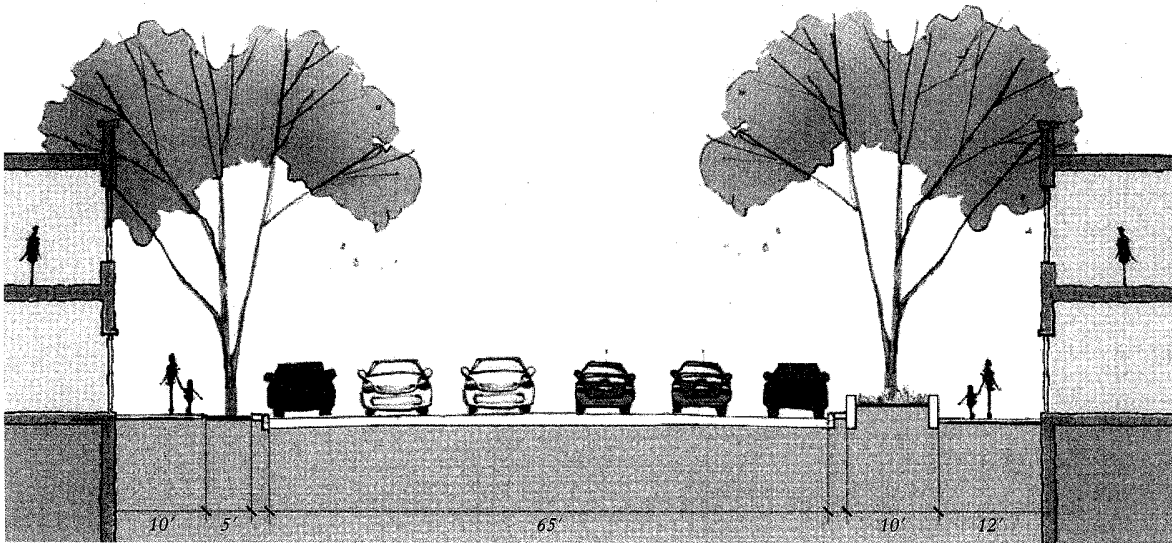
Entry Drive

The Entry Drive will be an especially active part of the campus. The streetscape will include larger active outdoor areas on the southern facing sidewalk, making it usable for a greater number of days throughout the spring, fall, and winter. This extra room will accommodate outdoor seating and gathering spaces. The northern facing sidewalk will be more modest, but will comfortably accommodate a heavy volume of pedestrian activity.

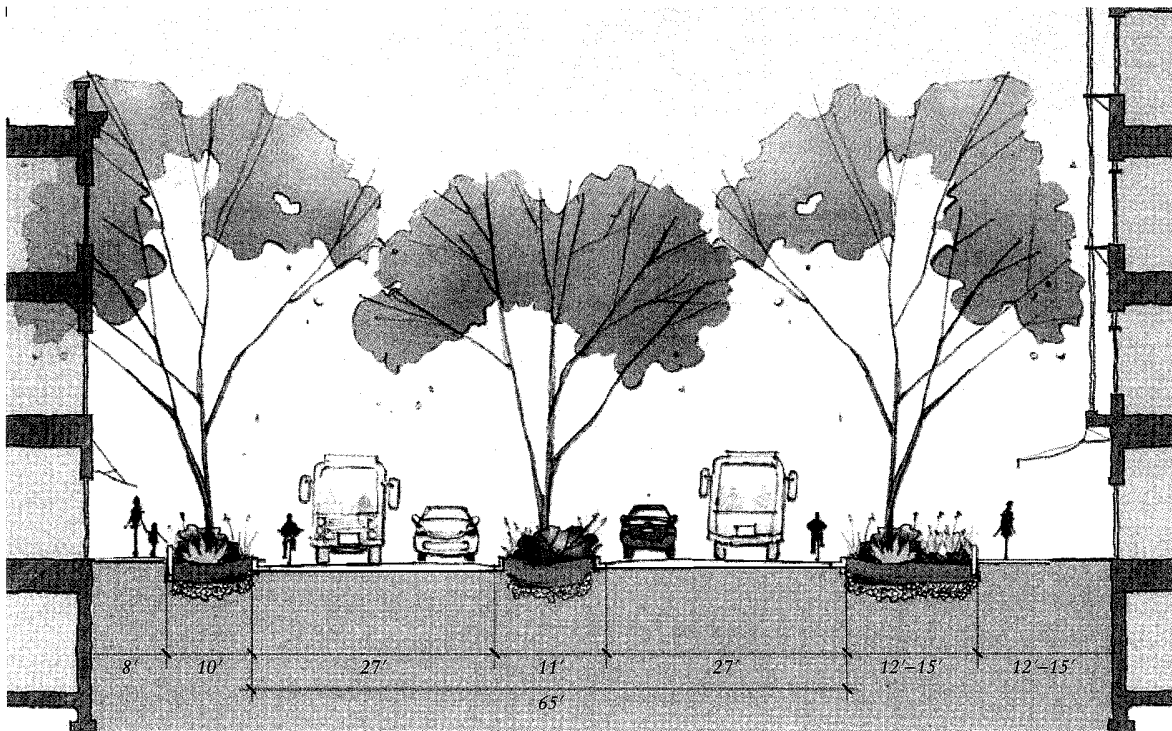
The landscape will incorporate stormwater management features to capture run-off from adjacent impervious surfaces. These features will be planted with low-maintenance, native species that not only contribute to the quality of the streetscape, but also support stormwater management goals. While the function of these features will be consistent, the aesthetic detail of these features will vary in response to the design of surrounding buildings.



The Entry Drive will be an especially active part of the campus



Cross-section of Franklin Street in downtown Chapel Hill



Cross-section of the Entry Drive at Carolina North

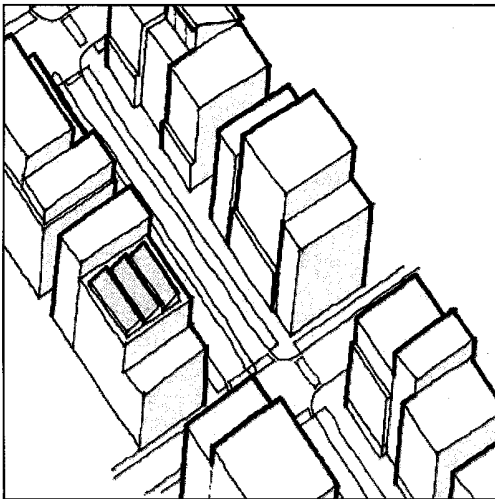


A median will be included for the first several hundred feet at the north and south ends of the Entry Drive. The median will encourage incoming traffic to slow down and organize outgoing traffic. Planted with street trees, it will allow pedestrians a place to stand if unable to cross all lanes of traffic at once.

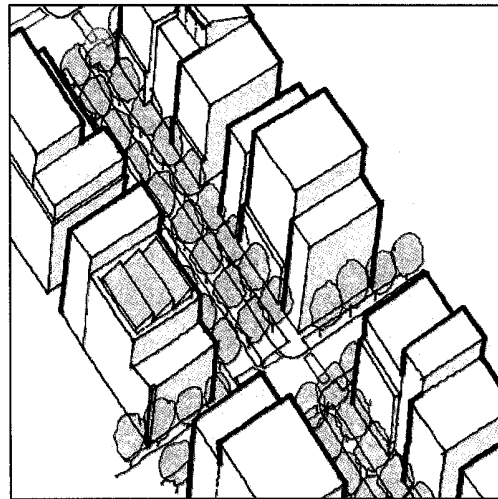
The entry drive will be a transit route with a prominent stop near the intersection with the Central Green Way. A plaza at this intersection will be a natural campus gathering place; adjacent buildings should respond directly to this space and its prominence.

Campus buildings along the Entry Drive will be densely developed to support a vibrant, mixed-use campus center:

- **Building height** will be approximately eight stories. Height should be balanced with appropriate massing, texture, and articulation of the first two to four stories to establish a rich pedestrian experience and human scale at the street level.
- **Building setbacks** will be uniform with approximately 85% of the street facing elevations built to the parcel boundary
- **Building setbacks** will be integrated to provide sun and views into midblock areas, and allow for green roofs, roof gardens, and solar energy collection.
- **Entries and street level design** will reinforce pedestrian activity and visual interest. Building programs will include active uses such as retail services, cafes, galleries, and recreation on the ground level to create a lively and pedestrian-oriented street environment. Windows and doors will face the street and be visually open. Multiple entrances will promote interaction. Canopies, colonnades, and archways should be integrated to support retail services and amenities. Buildings may have multiple primary entries; primary entries must accommodate universal access. Doors should be wood or metal with glazing.



Diagrammatic Massing of Entry Drive
Buildings along the Entry Drive will support a vibrant, mixed-use campus center

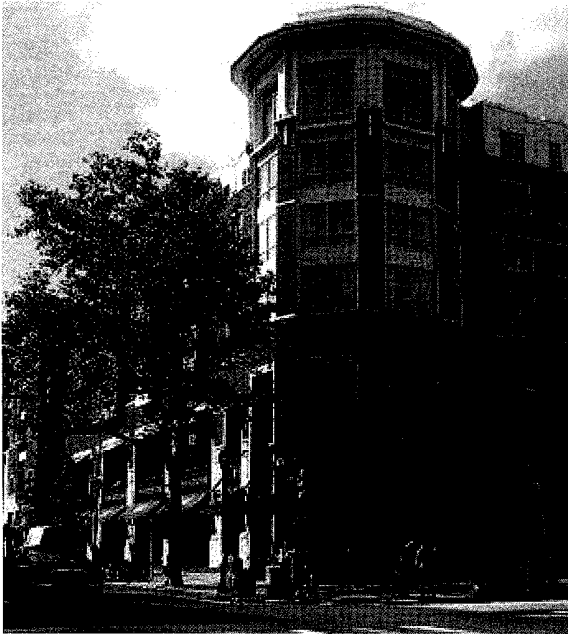


Diagrammatic Massing of Entry Drive with Landscape
Street level design will reinforce pedestrian activity

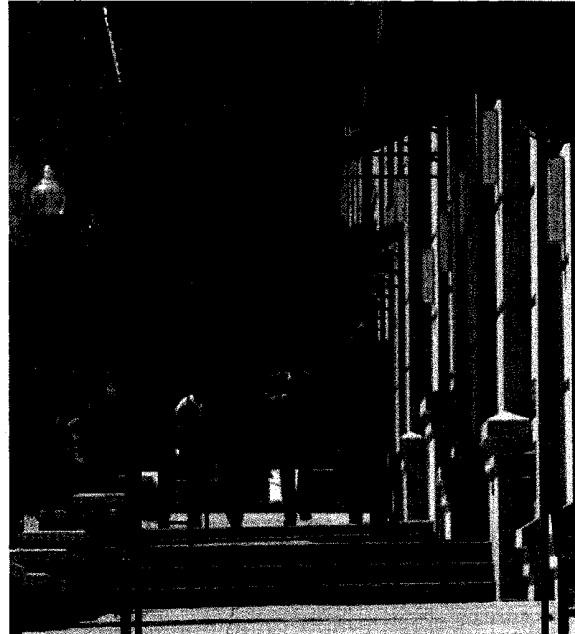


Entry Drive Precedents

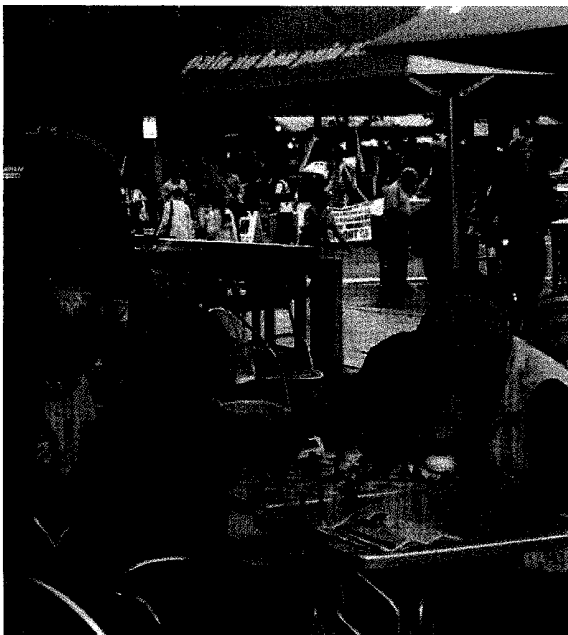
These examples illustrate street level design elements that will support a vibrant, mixed-use campus center.



University of Pennsylvania



Johns Hopkins University



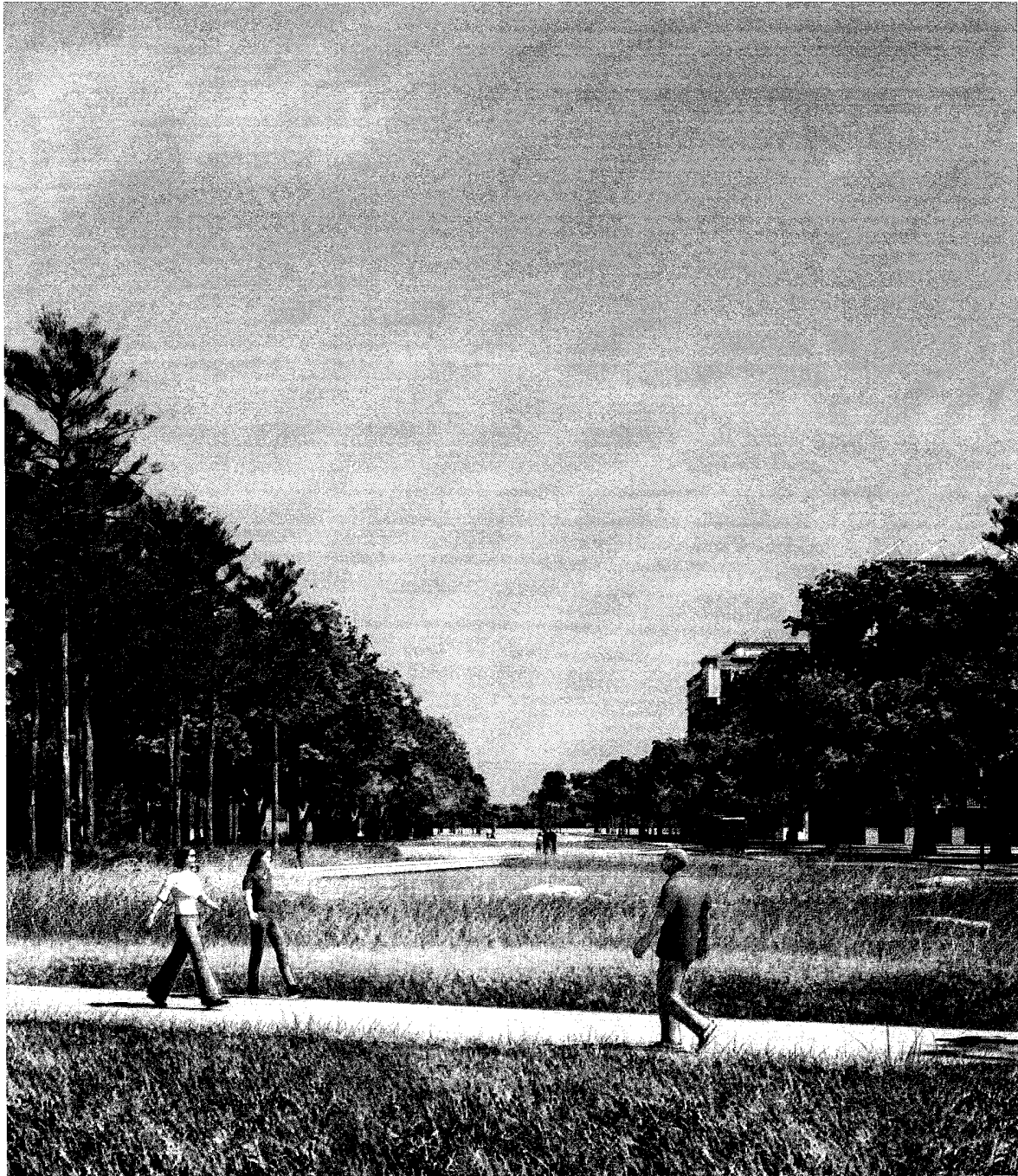
Harvard Square



The Pit, University of North Carolina at Chapel Hill



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The Central Green Way will be the largest and most dramatic open space at Carolina North



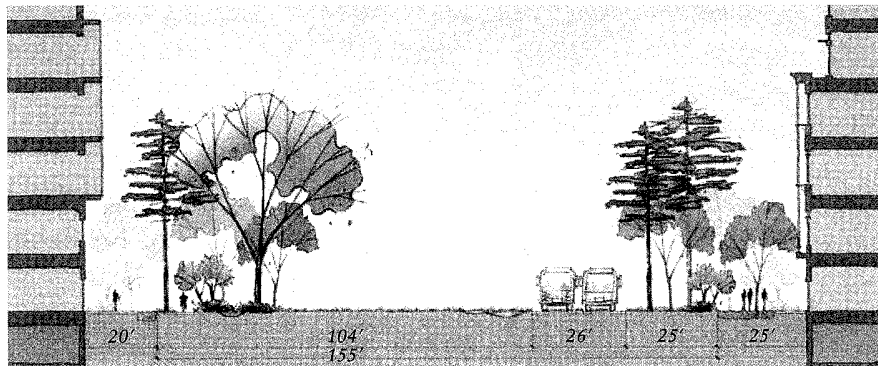
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Central Green Way

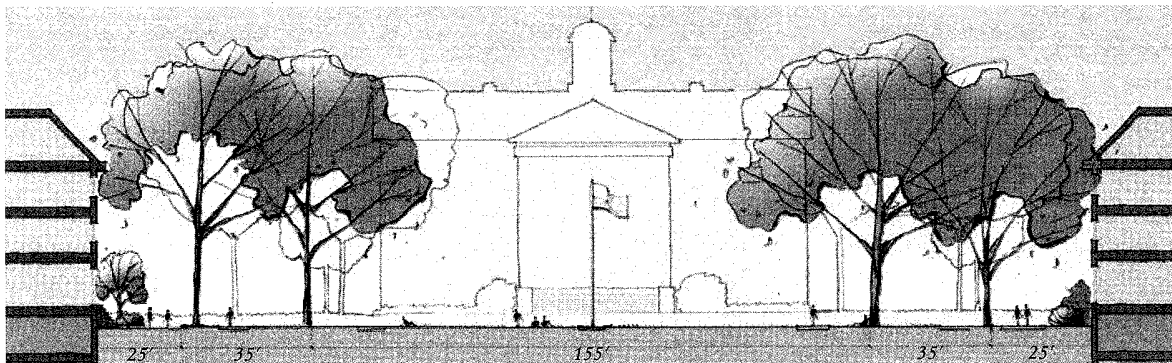
The Central Green Way will be the largest and most dramatic open space at Carolina North. Because of its scale and unusual character, the Central Green Way will be a landmark campus space.

The north and south edges of the Central Green Way will be defined by canopy shade trees. A clear view will be maintained the length of the Central

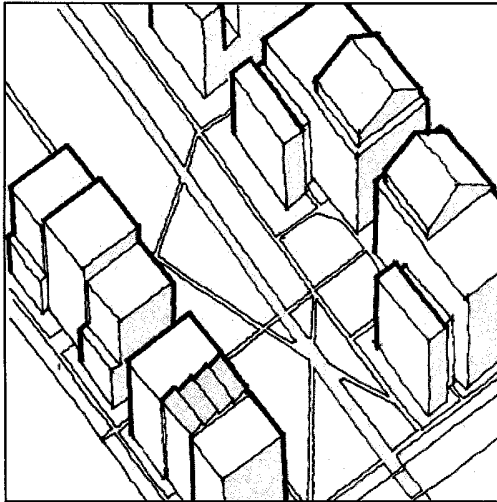
Green Way from Martin Luther King, Jr. Boulevard in the east to the Carolina North Forest in the west. Other landscape features will include: lawns to accommodate uses such as recreation, areas of Working Landscape (see following section) that will contribute to holistic stormwater management for the site, and smaller courtyards and gardens near buildings. The Central Green Way will also serve as a transit corridor for east-west movement.



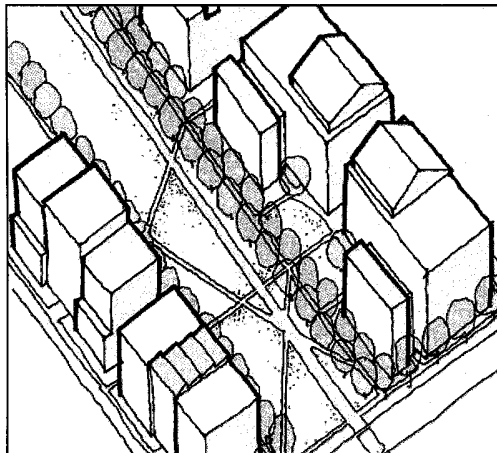
Cross-section of Central Green Way



Cross-section of Polk Place



Diagrammatic Massing of Central Green Way
Building setbacks will vary on the north side of the Central Green Way



Diagrammatic Massing of Central Green Way with Landscape
This landscape will accommodate such uses as informal recreation, areas of Working Landscape that contribute to holistic stormwater management for the site, and smaller courtyards and gardens near buildings

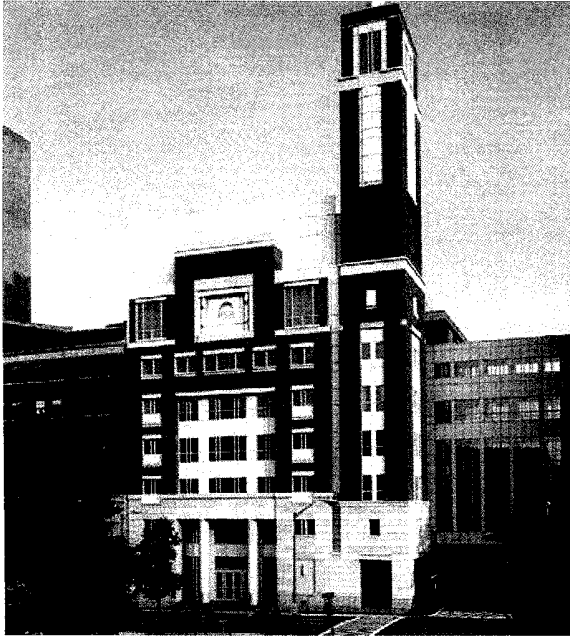
The buildings that define the Central Green Way will have direct access to transit and will be densely developed to create a critical mass of activity and interdisciplinary adjacencies:

- **Building height** will be approximately eight stories with the tallest buildings along the transit corridor. Height should be balanced with appropriate massing, details, and articulation at the street level.
- **Building setbacks** on the south side of the Central Green Way will be uniform with approximately 85% of the street facing elevations built to the parcel boundary. Building setbacks will be more varied on the north side of the Central Green Way with approximately 70% of the street-facing elevations built to the parcel boundary; massing will incorporate courtyards and gardens to maximize the benefits of solar exposure.
- **Building step backs** will be integrated to provide sun and views into the Central Green Way and midblock areas, and allow for green roofs, roof gardens, and solar energy collection.
- **Bridges** may be needed to provide necessary connectivity between buildings, but should reinforce the open space network. Bridges between buildings will not cross the Central Green Way or campus streets.



Central Green Way Precedents

These examples illustrate design elements, such as height, massing, setbacks, and stepbacks, that will define the character of the Central Green Way.



University of Maryland, Baltimore



Caudill Laboratories, University of North Carolina at Chapel Hill



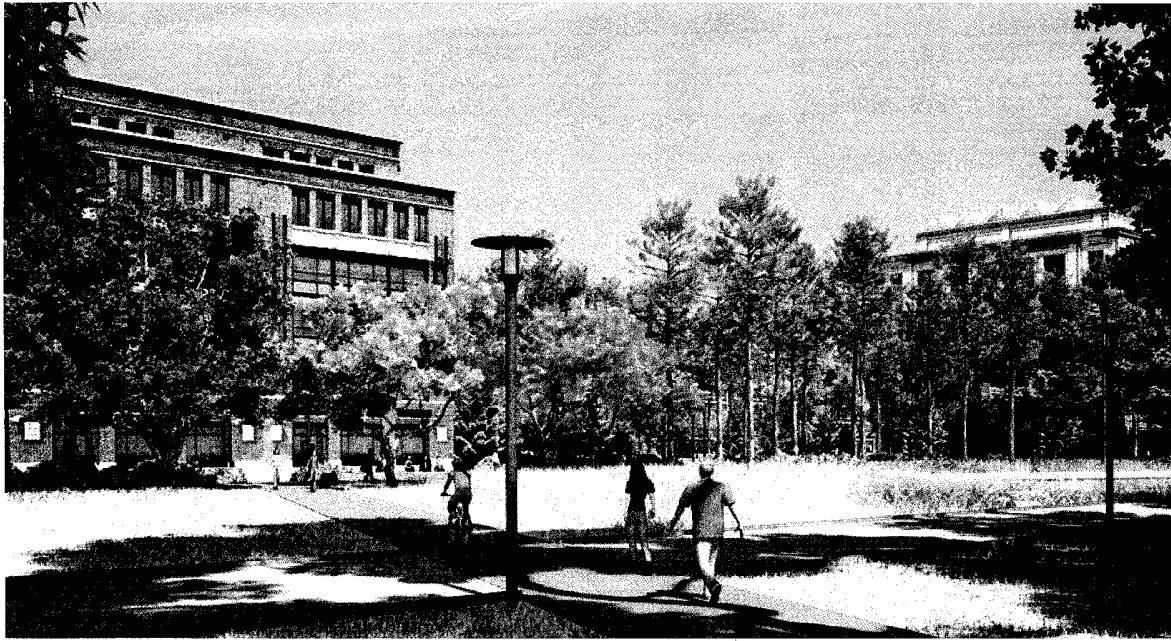
George Washington University



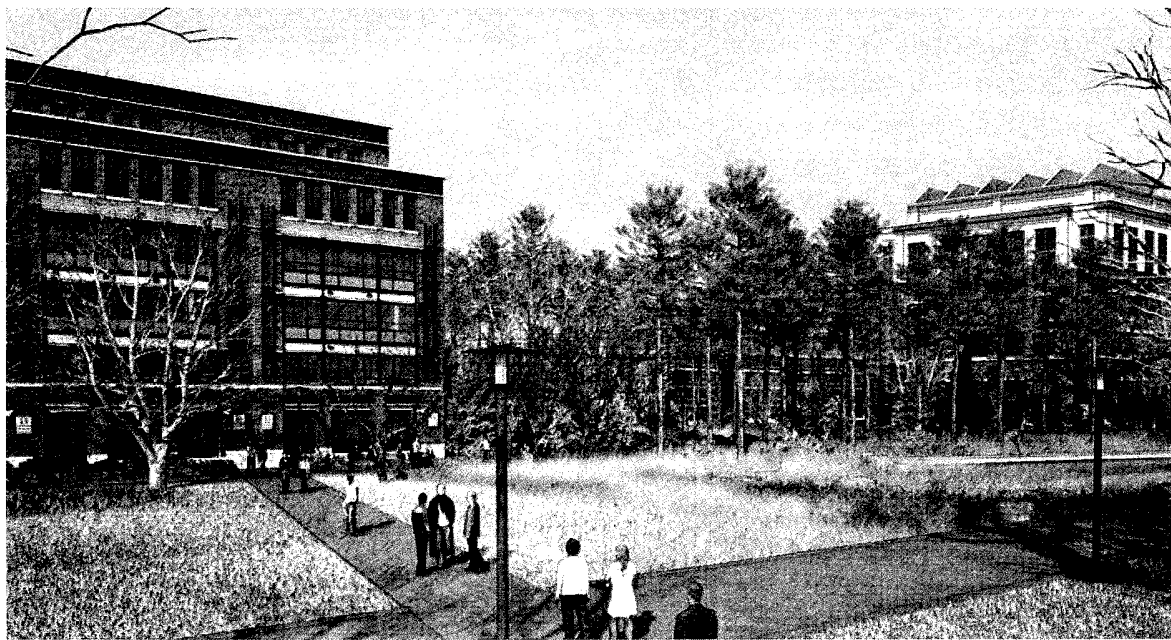
Johns Hopkins University



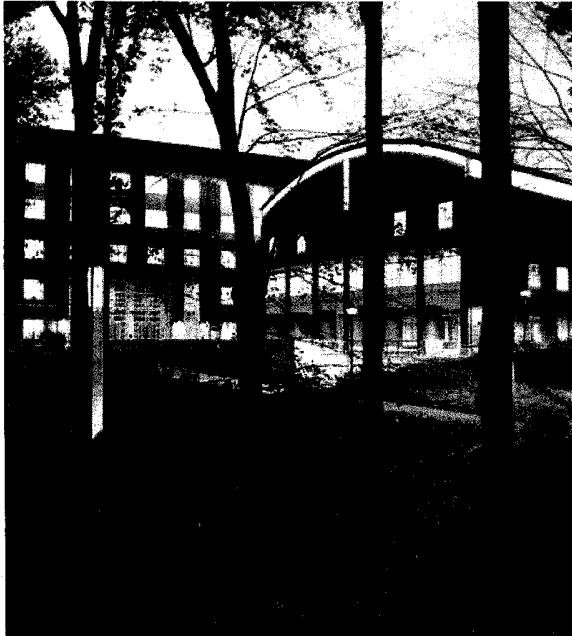
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Working Landscapes connect the existing natural areas to the developed area of the campus



Color and texture will vary with the seasons

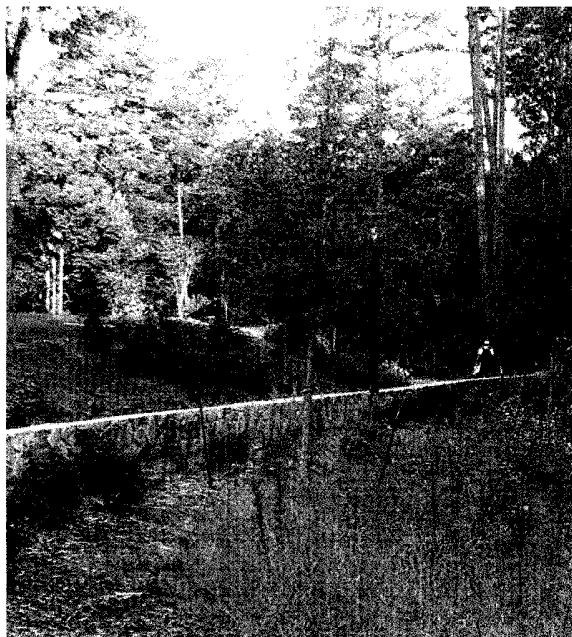


Johns Hopkins University

Working Landscapes

The master plan prioritizes already disturbed land for the development of Carolina North; this area is adjacent to existing natural areas including the Carolina North Forest. The plan takes advantage of this relationship by building landscapes that connect the existing natural areas with the developed area of the campus.

Many of the larger natural areas internal to the site and along its edges are characterized as Working Landscapes. They provide utilitarian functions beyond the aesthetic and social benefits of open space and landscaping. These functions may include stormwater, shallow groundwater recharge, native plant nurseries, native habitat for targeted species, and ecological research and learning opportunities. Carolina North's commitment to sustainability offers a unique opportunity to feature Working Landscapes as a prominent and defining element of public space.



*Near Morrison Residence Hall,
University of North Carolina at Chapel Hill*

- **Character** will be rustic with native grasses and other native plants.
- **Seasonal variety** will be emphasized in this area. While color and texture will vary with the seasons, quality of the overall appearance will be consistent.
- **Scale** of campus development will step down near Working Landscapes. Adjacent buildings and grounds will include elements that support the functions of these areas.
- **Built structures** within Working Landscapes will be limited, but might include support facilities (pump houses, research stations, etc.) and simple bridges or boardwalks for circulation and observation.



*Franklin Street at McCorle Place,
University of North Carolina at Chapel Hill*

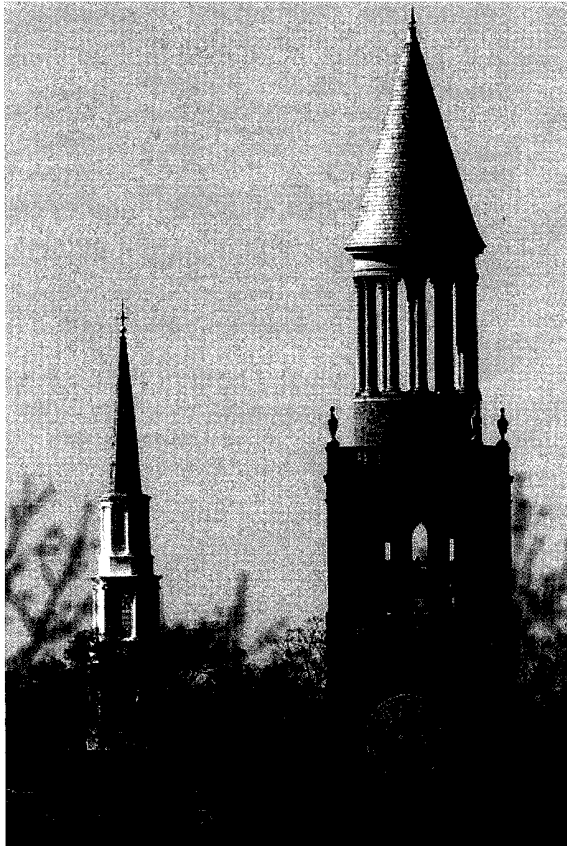
Campus Identity

The campus is expected to exhibit the character of Carolina and Chapel Hill while having its own personality. To accomplish this, the campus will employ touchstone features of the main campus and incorporate new elements to define it.

Campus sidewalks will be paved with brick. Low stone walls will also be a typical campus feature. These simple elements can be combined to establish a unique identity for the campus that is rooted in the local culture and values of Carolina.

Seasonal changes in the landscape are expected of a high-performance campus. The landscape will be dominated by native plants that will vary in color and texture, but quality will be consistent throughout the year.

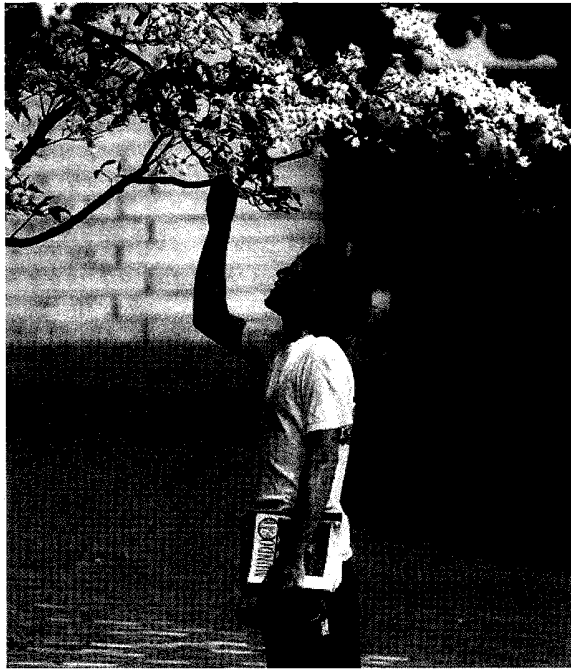
As the campus develops over time, sites will be identified as appropriate for other landmarks, such as iconic indoor and outdoor spaces, gathering areas, signature buildings, and public art.



*Morehead-Patterson Bell Tower,
University of North Carolina at Chapel Hill*



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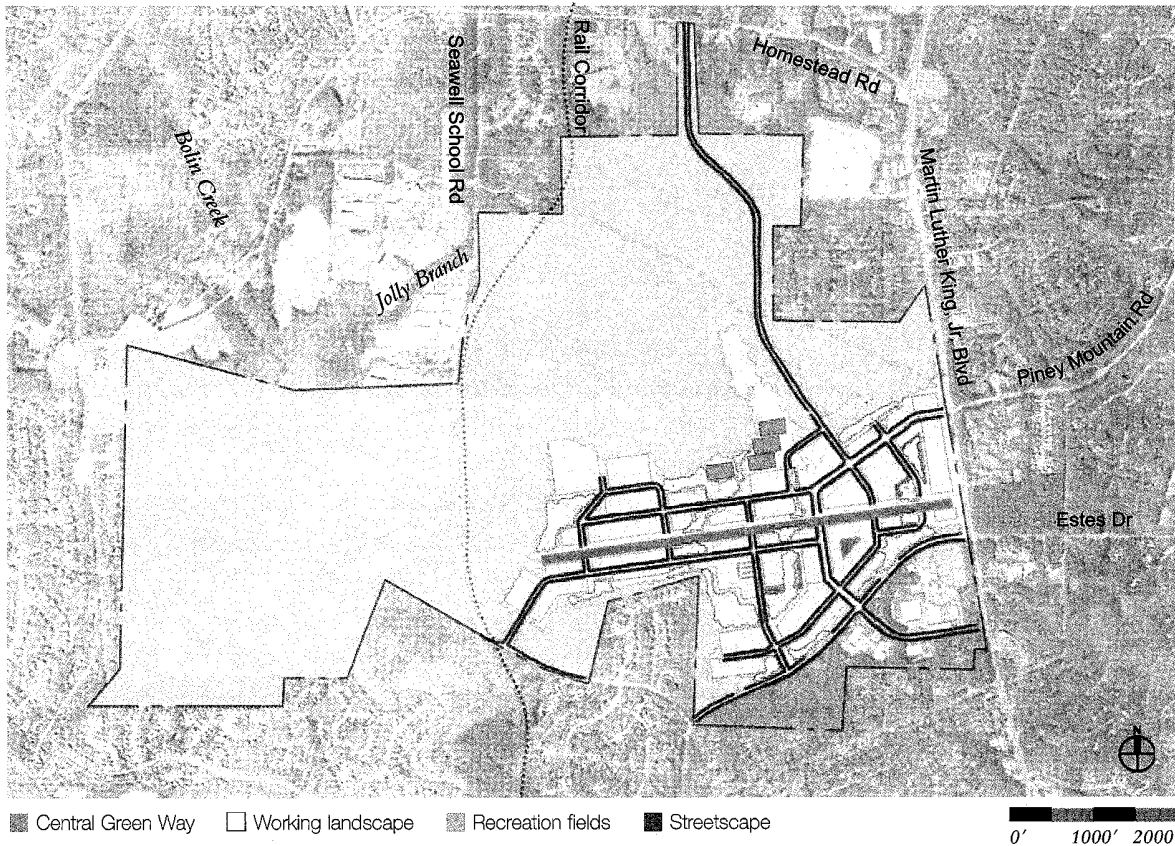
Seasonal changes in the landscape are expected of a high-performance campus



Open Space Hierarchy and Variety

The open space network will encompass a number of other outdoor spaces. These spaces will vary in character, scale, and function. They will accommodate informal play and organized recreation as a part of daily life. The range of open spaces will accommodate an event of several hundred people as easily as an impromptu gathering of a few. The open space network will create connectivity between destinations on and adjacent to the campus.

Campus Open Space



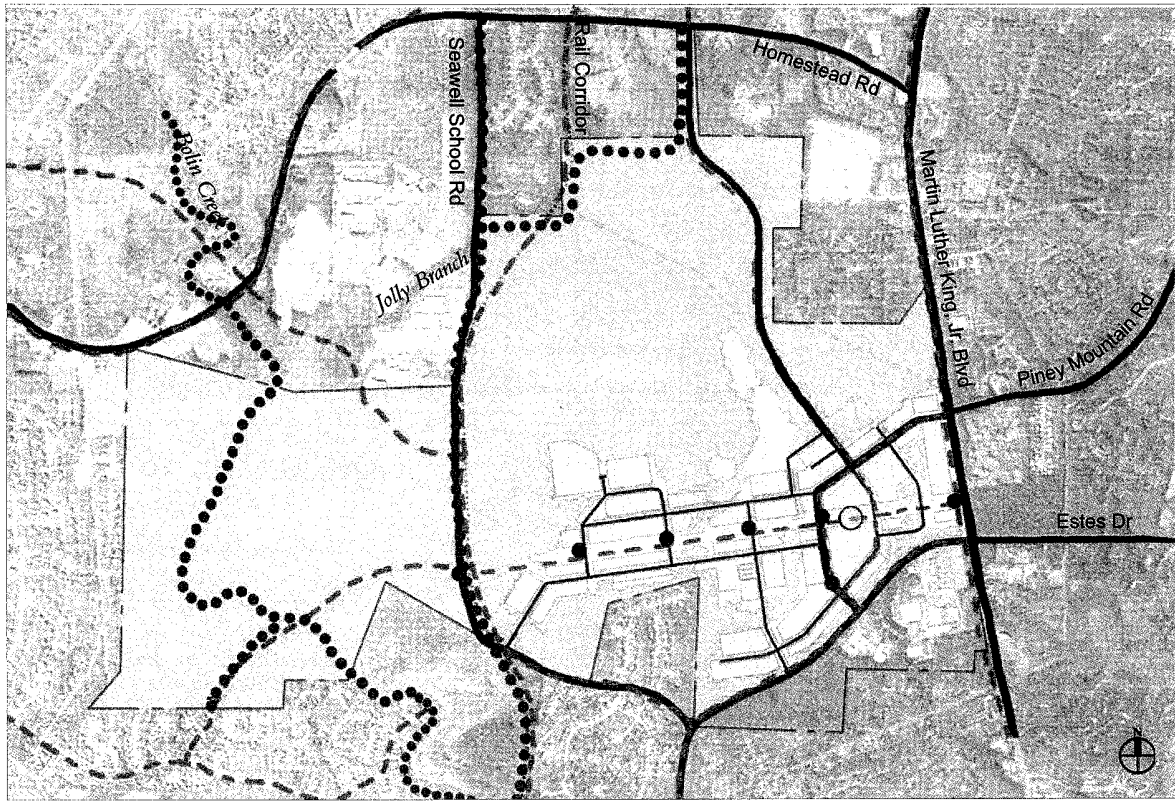
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Connectivity and Accessibility

The open space network will be an integrated component of campus infrastructure. The open space network and streets will support the community's transportation network for pedestrians, bicycles, and transit. It also will make connections with the recreational trails and natural areas of the Carolina North Forest and local greenways.

Campus Connections



●●● Municipal Green Way ■■■ Bike path ○ Potential bike facility ● Potential transit stop — Local streets 0' 1000' 2000'

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Clarity of route is an essential quality of a successful pedestrian campus. Paths should follow direct and desire-based routes. The University is committed to making all buildings and areas physically accessible to all faculty, staff, students, and visitors. Regulatory compliance with the latest editions of the Americans with Disabilities Act (ADA) and the North Carolina State Building Code will be required as a minimum goal. Universal design principles that provide equal access to building entrances will be encouraged.



Generally, the campus streets will be organized in a grid pattern. Campus streets will be pedestrian-oriented, as narrow as possible, and designed to include shade trees. They will provide access for daily users in addition to service access for building maintenance, deliveries, and other essential functions. Campus streets will also incorporate stormwater management features that can accommodate run-off from adjacent impervious surfaces.



The open space network will support the community's multi-modal transportation network



Integration

The open space network has been planned in concert with utilities infrastructure. Buildings, open space, transit, parking, stormwater management, utility infrastructure, and energy technologies were integrated at a conceptual level. The location and alignment of utility corridors have been considered in light of the open space network to eliminate conflict and increase ease of access.

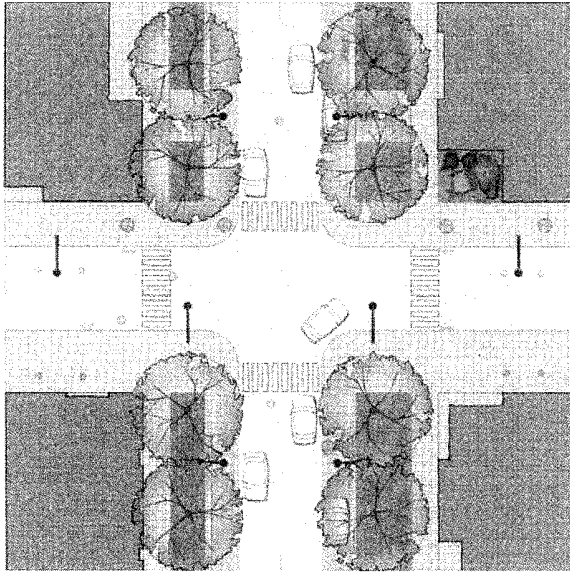


Diagram of Typical Campus Intersection
Above ground infrastructure

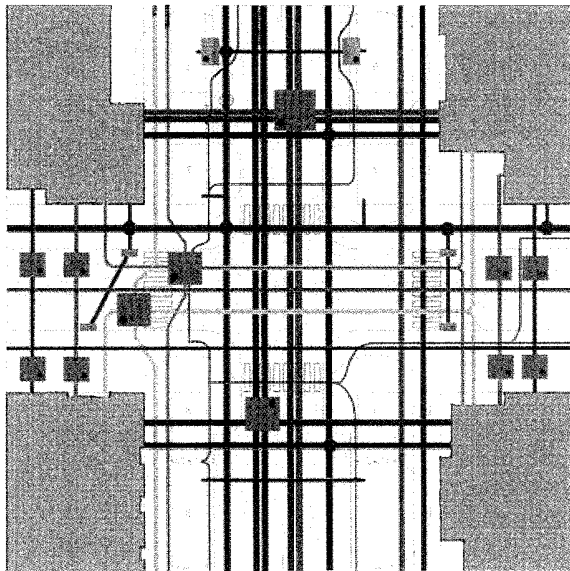


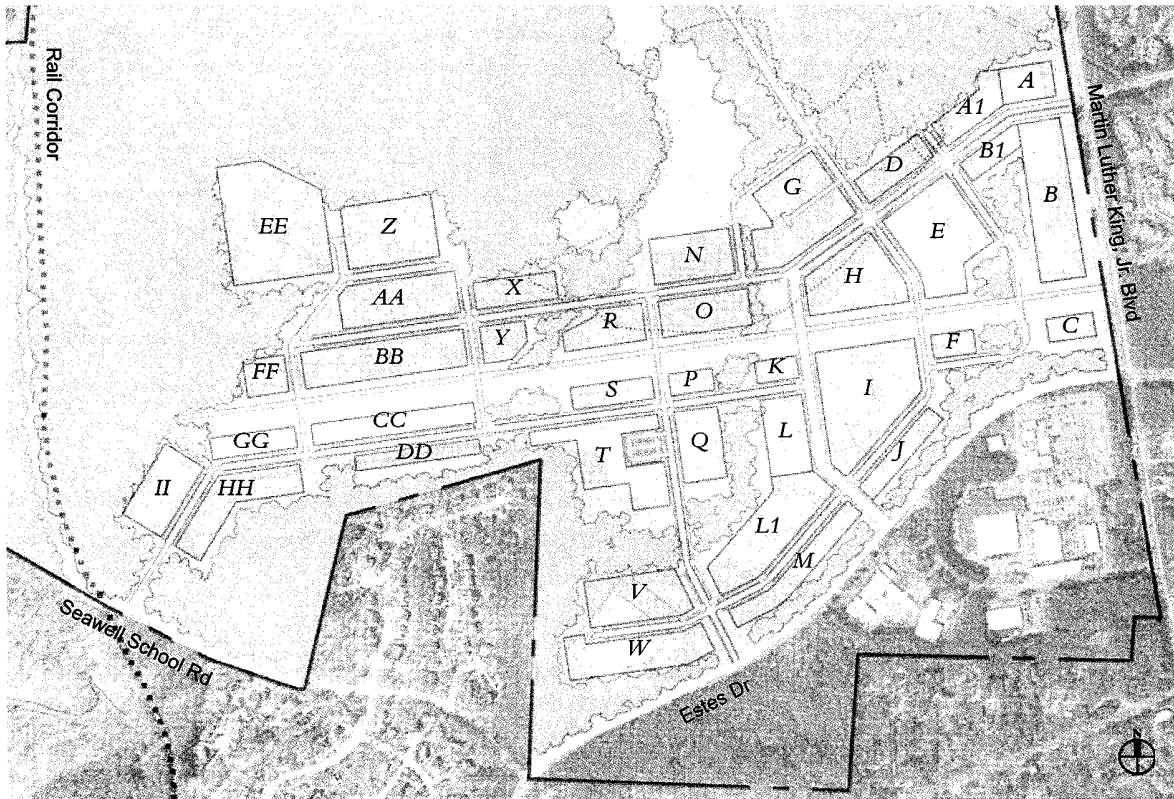
Diagram of Typical Intersection
Below ground infrastructure

- Non-potable water
- Domestic water
- Sanitary sewer
- Steam
- Hot water
- Chilled water
- Storm drain
- Electric
- Telecom



Parcel Boundaries

Parcel boundaries define discrete areas within the 250 acres planned for development. These parcels do not represent building footprints, but rather potential building sites. Development in each parcel should include all of the support functions and activities that buildings will require, such as open space, building entry and service, and site specific infrastructure.



Parcel Boundaries

Development in each parcel should include all of the support functions and activities that buildings will require

0' 500' 1000'

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Parcel ID	TECHNICAL DATA		PROGRAM	Jordan Lake Determination (Redev./New)	CHARACTER	
	Acres	Bldg Height Range	Potential Land Use		Site Features	Challenges
A	1.27	4-6	Partnerships Retail Academic	R	Visible from MLK Retail street section North side adjacent to natural habitat/wetlands/streams	
A1	1.64	4-6	Partnerships Retail Academic	R	Retail street section North side adjacent to natural habitat/wetlands/streams	West side included in chemical site Need to be mindful of permanent monitoring wells Portion of site within chemical plume mapping
B	4.82	6-8	Partnerships Academic Retail Housing	R	Visible from MLK North parcel on retail street section Working Landscape on western edge South parcel on transit/Central Green Way	On municipal yard site Includes main transit entrance/exit
B1	0.98	6-8	Partnerships Academic Retail Housing	R	North parcel on retail street section Working Landscape on western edge	On municipal yard site
C	0.78	4-6	Academic Partnerships	R / N	Visible from MLK West/south sides adjacent to Working Landscape North side on Central Green Way	
D	1.49	6-8	Retail Partnerships Academic	N	Retail street section North side adjacent to natural habitat	Majority of site on landfill Portion of site on chemical site Need to be mindful of permanent monitoring wells Portion of site within chemical plume mapping
E	5.09	4-8	Partnerships Housing Retail Civic	R	North Side along retail street section South side adjacent to transit / Central Green Way and Working Landscape	On existing municipal yard site
F	0.69	4-6	Academic Partnerships	R / N	South and East side adjacent to Working Landscape North Side adjacent to transit / Central Green Way	
G	4.77	2-6	Utility Retail Academic Partnerships Recreation Support Housing	N	Retail street section along south side North side adjacent to Working Landscape Southwest parcel adjacent to Plaza	Entire site on landfill



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Parcel ID	TECHNICAL DATA		PROGRAM		CHARACTER	
	Acres	Bldg Height Range	Potential Land Use	Jordan Lake Determination (Redev./New)	Site Features	Challenges
H	3.76	6-8	Academic Partnerships Retail Civic	R / N	Retail street section on north side East side adjacent to Plaza South parcel adjacent to transit/ Central Green Way	North side on landfill
I	6.51	6-8	Academic Retail Housing	R / N	North Side adjacent to transit / Central Green Way	Parcel is on existing airport tie-downs
J	1.42	2-4	Partnerships Academic	R / N	Visibility from Estes Dr. Ext. Marks entrance to Carolina North from Estes Dr. Ext. South side adjacent to Working Landscape	Portion of site on existing airport tie-down area
K	0.63	4-6	Academic Civic	R / N	North side adjacent to Central Green Way West side adjacent to Working Landscape	
L	2.28	4-6	Academic Partnerships Housing	R / N	Visible from entrance off of Estes Dr. Ext. West side adjacent to Working Landscape Portion of side on existing airport tie-down area	Coordinate with realignment of Airport Drive
L1	4.46	4-6	Academic Partnerships	R / N	Visible from entrance off of Estes Dr. Ext. West side adjacent to Working Landscape Portion of site on existing airport tie-down area	Coordinate with realignment of Airport Drive
M	2.21	2-4	Partnerships Academic	R / N	Visibility from Estes Dr. Ext. Marks entrance to Carolina North from Estes Dr. Ext. South side adjacent to Working Landscape	Portion of site on existing airport tie-down area Coordinate with realignment of Airport Drive
N	2.53	6-8	Partnerships Academic Housing	N	East side adjacent to Working Landscape North side adjacent to recreational fields West side adjacent to Working Landscape Site expansion potential beyond 50 years	
O	2.27	6-8	Academic Partnerships	N	East side adjacent to Working Landscape South side adjacent to transit/ Central Green Way	Majority of site located on landfill Preserve green edge



Parcel ID	TECHNICAL DATA		PROGRAM		CHARACTER	
	Acres	Bldg Height Range	Potential Land Use	Jordan Lake Determination (Redev./New)	Site Features	Challenges
P	0.65	4-6	Academic Partnerships	R / N	East side adjacent to Working Landscape North side adjacent to Central Green Way	
Q	2.18	6-8	Academic Housing	N	East & South side adjacent to Working Landscape	
R	1.78	6-8	Academic Civic	N	West side adjacent to Working Landscape South side adjacent to transit/ Central Green Way	Portion of side on existing landfill Preserve green edge
S	1.24	4-6	Academic Housing	R / N	West side adjacent to Working Landscape North side adjacent to Central Green Way	
T	4.05	2-4	Housing	N	East side adjacent to natural habitat West side adjacent to natural habitat South side adjacent to Working Landscape	
V	3.18	4-6	Civic Partnerships Academic School	R	North side adjacent to Working Landscape West side adjacent to existing habitat Suitable for public facing programs	Parcel located on existing University storage parking lot Coordinate with realignment of Airport Drive
W	3.37	4-6	Civic Partnerships Academic School	R	West side adjacent to existing natural habitat South side adjacent to Working Landscape Suitable for public facing programs	Parcel located on existing University storage parking lot Coordinate with realignment of Airport Drive
X	1.56	4-6	Partnership Academic Housing	N	North side adjacent to natural habitat East side adjacent to Working Landscape Site expansion potential beyond 50 years	Portion of parcel on existing landfill
Y	1.05	4-6	Academic Partnerships	N	East side adjacent to Working Landscape South side adjacent to transit/ Central Green Way	Preserve green edge
Z	3.90	2-4	Utility Partnerships	N	North and east sides adjacent to natural habitat Site expansion potential beyond 50 years	



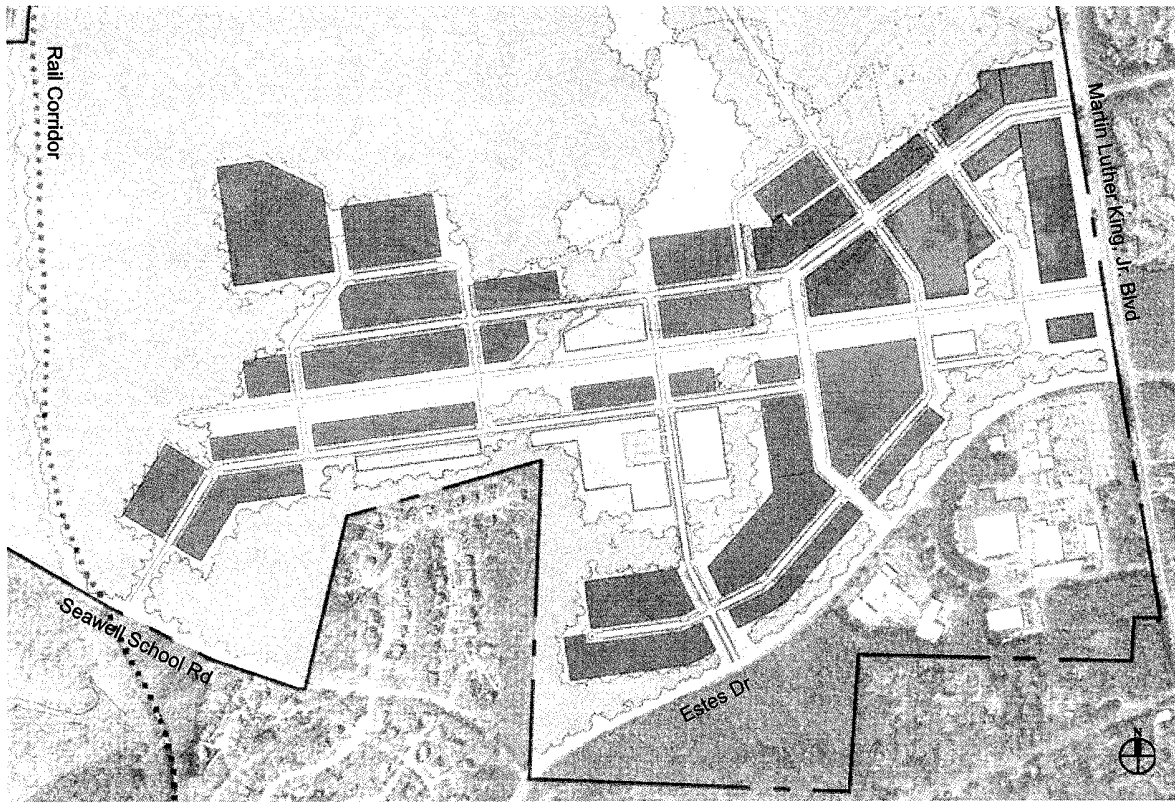
Parcel ID	TECHNICAL DATA		PROGRAM		CHARACTER	
	Acres	Bldg Height Range	Potential Land Use	Jordan Lake Determination (Redev./New)	Site Features	Challenges
AA	3.36	4-6	Partnerships Academic Housing	N		
BB	4.16	4-6	Academic Partnerships	N	South side adjacent to transit/ Central Greenway	Preserve green edge
CC	2.47	4-6	Academic Partnerships Housing	R / N	North side adjacent to Central Greenway	Mindful of relationship to neighbors
DD	1.27	2-4	Housing	N	West/south sides adjacent to natural habitat East side adjacent to Working Landscape	Parcel adjacent to existing neighborhood
EE	7.52	2-4	Utility	N	North, west, and south sides adjacent to natural habitat Site expansion potential beyond 50 years	
FF	1.06	2-4	Academic Civic Housing	N	North and west sides adjacent to natural habitat South side adjacent to transit/ Central Greenway	Preserve green edge
GG	1.29	4-6	Partnerships Academic	R / N	West side adjacent to Working Landscape North side adjacent to Central Greenway	
HH	3.00	2-4	Civic Partnerships School	N	East and South sides adjacent to existing natural habitat Parcel just off entrance from Seawell School Road Suitable for public facing programs	Severe topography Mindful of relationship to neighbors
II	2.58	4-6	Civic Partnerships School	N	North, west, and south sides adjacent to natural habitat Parcel just off entrance from Seawell School Road Suitable for public facing programs	Severe topography



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Land Use

The combination of University programs and supporting activities will result in a transit-oriented, mixed-use campus. Multiple uses across the campus create a dynamic environment; the mix of uses will be realized as the campus develops over time. Housing for graduate students, researchers, and faculty will be located across the campus; on-campus residents will help reduce traffic trips and promote 24-hour activity.



Potential Campus Land Use

- Academic
- Partnerships
- Housing
- Mixed-use
- Support

0' 500' 1000'

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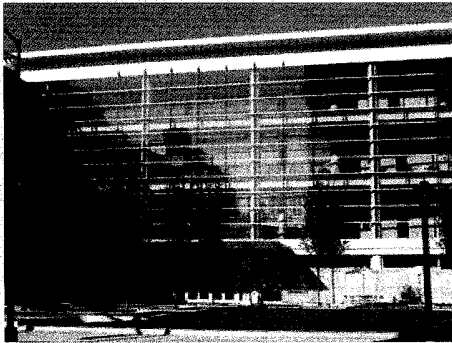
Caudill Laboratories, University of North Carolina at Chapel Hill



Building Design Guidelines

While the main campus is an important touchstone, these guidelines do not advocate replicating historic buildings and open spaces. Rather, they suggest the continued evolution of the best of Carolina's traditions. The following set of topics should be addressed and integrated in the design of any individual project on the Carolina North campus.

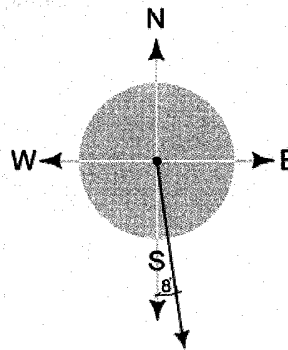
Definition of Terms



Georgia Institute of Technology

High-Performance Buildings

A high-performance building is defined by the US Department of Energy as a building with energy, economic, and environmental performance that is substantially better than standard practice. Because it is energy efficient, it saves money and natural resources. It is a healthy place for its occupants to live and work and has a relatively low impact on the environment.



Solar South

Solar south is different from magnetic south. Magnetic south can be determined with a compass. Solar south is dictated by the geographic location and latitude of a site. The solar south angle takes into consideration the sun's path from sunrise to sunset and is the alignment that allows the full potential of the sun's energy and position to be used. At Carolina North, solar south is 8 degrees east of magnetic south.

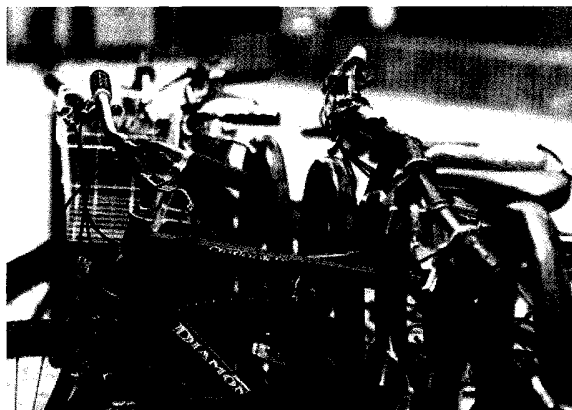


Design and Operations Performance

The campus as a whole and its composite elements are expected to achieve a high level of design and operations performance. The following is a synopsis of the site development recommendations and high-performance building standards for Carolina North:



Climate, Culture, and Place



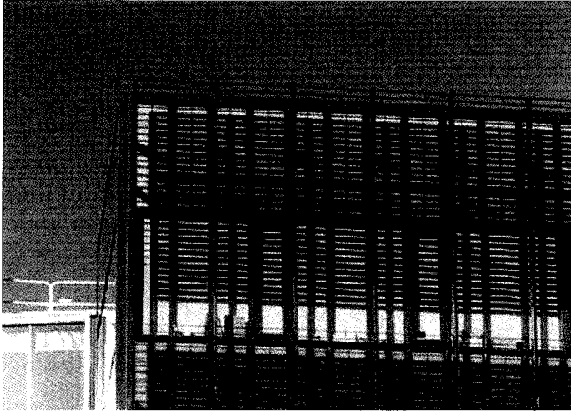
Carbon Footprint Reduction

1. Climate, Culture, and Place

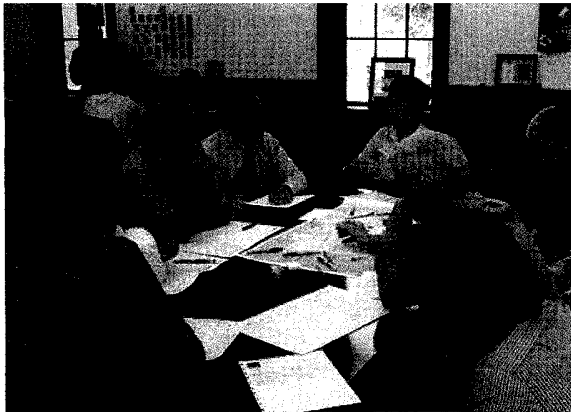
- Respond to climate, culture, and place in planning and building
- Sustain, restore, and mimic the structure, function, and beauty of an indigenous North Carolina Piedmont forest in areas identified for conservation and development
- Account for existing and potential natural capital of the site to inform the design process and associated conservation and development strategies
- Respect surrounding neighborhoods

2. Carbon Footprint Reduction

- Design, construct, maintain, and operate Carolina North in pursuit of carbon neutrality
- Coordinate with American College and University Presidents Climate Commitment action plan and other University initiatives



Conservation, Efficiency, and Reliability



Collaboration, Education, and Outreach

3. Conservation, Efficiency, and Reliability

- Provide highly efficient buildings and distribution systems
- Optimize operations
- Provide reliability and functionality of systems
- Treat waste as a resource

4. Collaboration, Education, and Outreach

- Increase human potential
- Encourage collaboration
- Provide campus-wide information regarding individual building energy use, distribution system energy flows, and general performance
- Provide education and training on central systems, building systems, and transportation for employees and campus users
- Integrate research, education, and outreach in both built and non-built conditions



Orientation



McColl Building, University of North Carolina at Chapel Hill

Building orientation impacts performance characteristics, and should be integrated into the overall form and design aesthetic. For example, sun shading and screening respond to the angle and direction of the sun, resulting in distinct elevations with consistent elements to unify design. Building orientation should also address other aspects of performance, such as incorporating daylight into the interior lighting plan.

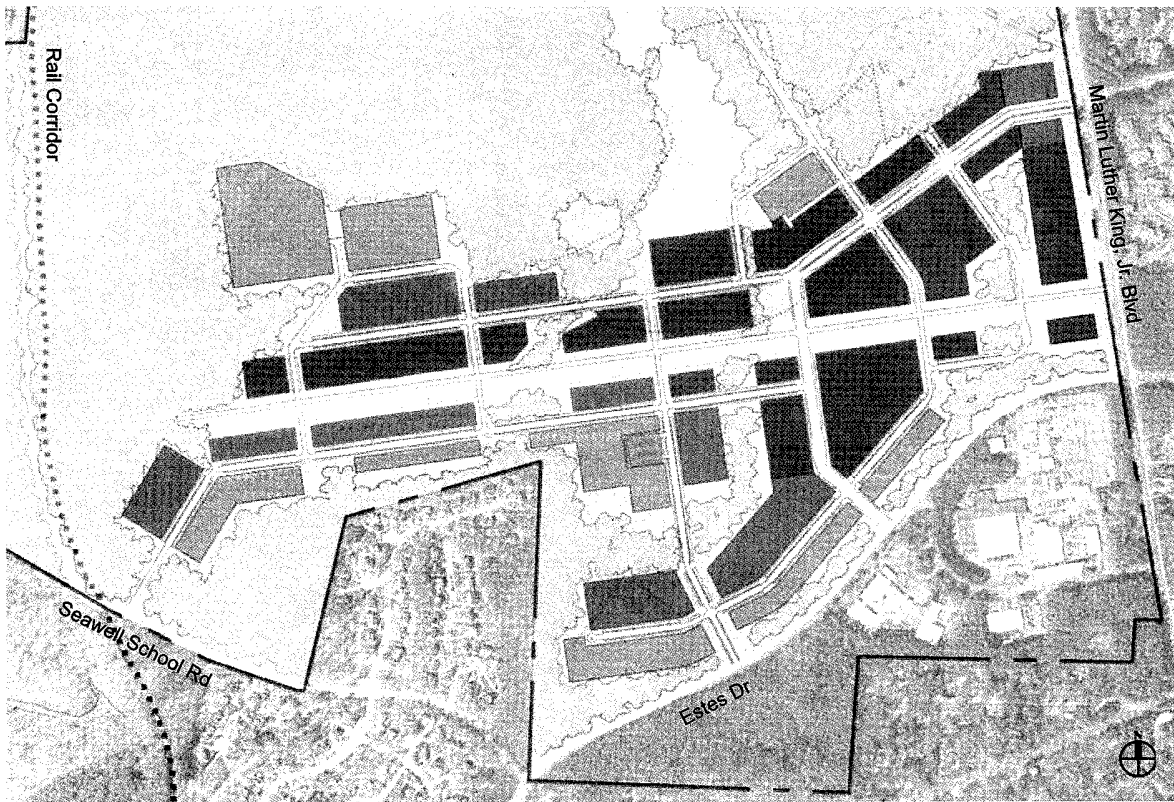
A building's relationship to the adjacent streets and open space is just as important. Buildings should be sited to create outdoor spaces. Generally, all buildings should be sited perpendicular or parallel to the spaces they define.

Building entry and arrival require particular attention. With extensive variety in the open space network, the design of each building's elevations will vary in kind. Many buildings will have multiple entry points. Service access should be considered in the context of building orientation. Where possible, buildings should share mid-block service points.



Height

Building height at Carolina North will range from approximately two to eight stories. Building height will vary in response to program and site capacity. In general, buildings with fewer stories will be located at the perimeter of the site to maintain a scale similar to that of the closest residential neighbors. Along the thoroughfares that border the campus there will be mid-size buildings that respect the scale and character of existing development in Chapel Hill. The tallest buildings will be in the campus core where there is direct access to transit. The campus core will be densely developed to create a critical mass of activity and interdisciplinary adjacencies.



Campus Building Height

Low Medium High

0' 500' 1000'

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Massing

A building's massing is defined by a combination of its footprint, height, and overall shape (stepbacks, setbacks, roof form). Massing reflects and reinforces the overall scale of the open space that a building fronts and steps up or steps down to adjust to context and topography.

Generally, building footprints will be simple, efficient, and rectangular; they will respond to the street network and east-west textured blocks which maximize southern exposure. To accommodate a wide range of program needs, the parcel boundaries provide room for a variety of building footprint sizes. The massing of extremely large buildings should be broken down into a composition of well-scaled parts.

By articulating the lower portion of a building's vertical surface, such that it appears to be distinct from the rest of the building, the perceived scale of a building can be made more comfortable. Building

design should be clearly articulated in the first two to four stories to establish human scale at the street level. The number of stories before a building's first stepback will vary with the composition of the building, including the total number of stories.

Buildings will have a variety of roof forms – pitched or flat. Buildings with small footprints and the fewest number of stories are most appropriate to have pitched roofs, while larger, taller buildings are more apt to have flat roofs. High-performance features such as green roofs and solar collectors should be carefully integrated.

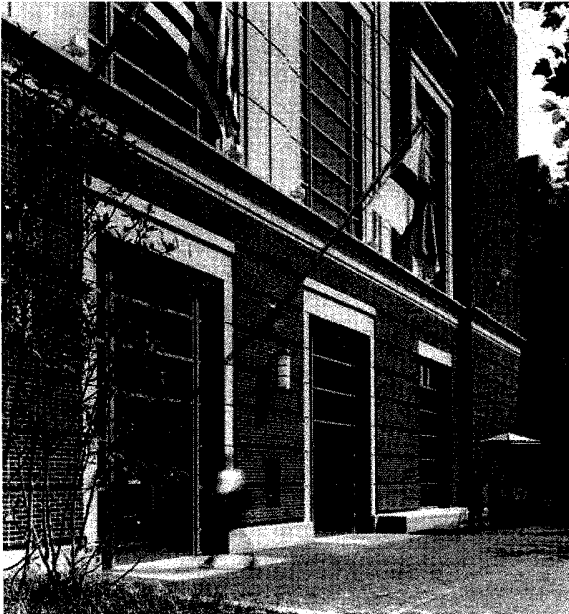
Articulating a building's roofline helps to provide a visual termination to an elevation and further helps to control its overall scale. Buildings should incorporate clearly articulated eaves, cornices, or parapets into their design. This can be achieved by a change in plane and/or a change in material.



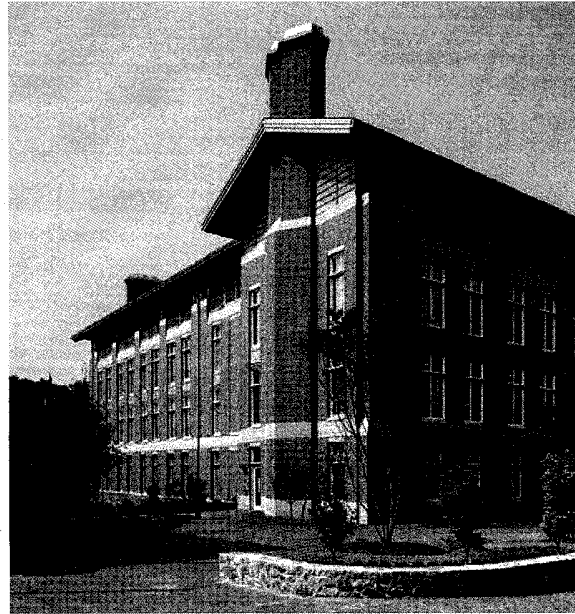
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Massing Precedents

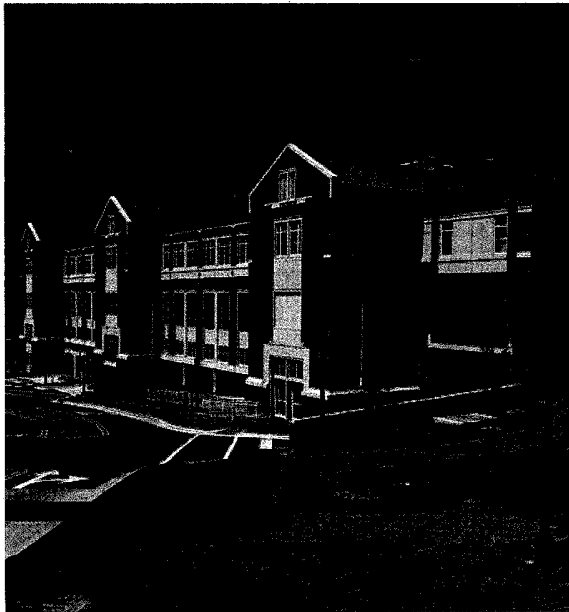
These examples illustrate overall massing elements including scale, roof form, and street level design features.



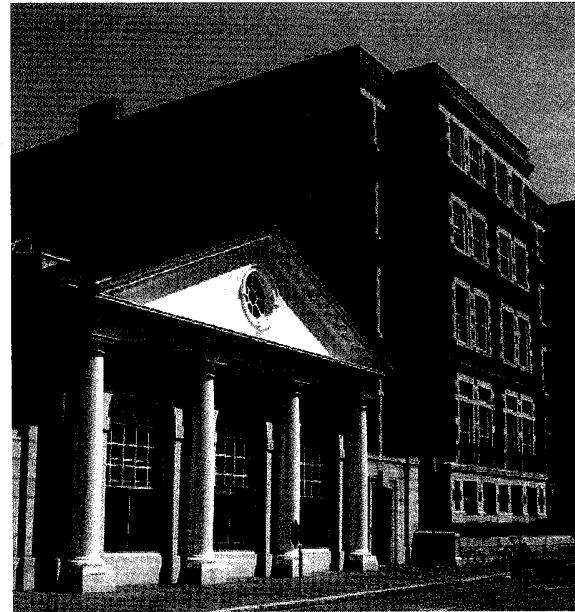
George Washington University



Caudill Laboratories, University of North Carolina at Chapel Hill



Rams Head Center, University of North Carolina at Chapel Hill

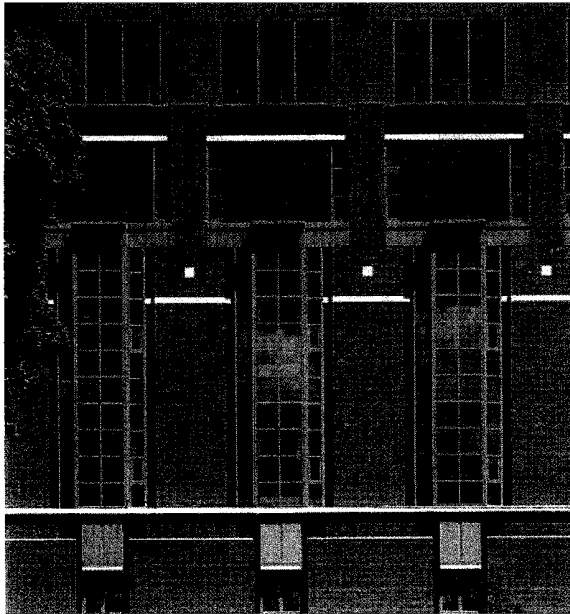


Cambridge, Massachusetts

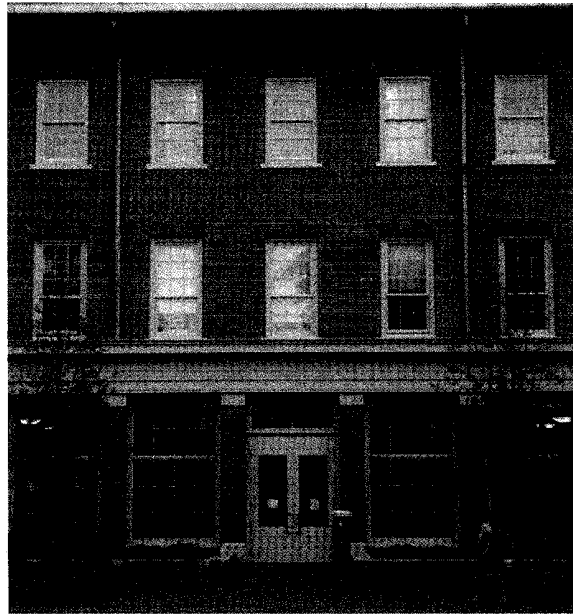


Composition Precedents

Examples illustrate the integration of individual architectural features into the overall proportion and composition of building elevations.



Syracuse University



*Student Academic Services Buildings,
University of North Carolina at Chapel Hill*



*Carrington Hall,
University of North Carolina at Chapel Hill*



University Park at Massachusetts Institute of Technology



Composition

To accommodate program demands, many of the buildings at Carolina North will be tall in height, large in footprint, and consequently, large in scale. The scale of these buildings can be controlled with thoughtful composition and proportions.

Well designed elevations have hierarchical patterns and rhythms that are visually stimulating and contribute to the liveliness of a street or open space. Openings (doors, windows, loggia) can help to reduce the perceived scale of a building by dividing a continuous wall surface into smaller, more comprehensible parts.

Program needs and design and operations performance should be integrated into building design but never at the expense of beauty. Proportion of the overall building, the elevation, or an individual component such as a sunscreen, window, door, or cornice, should be fully integrated.

Component elements of building elevations should be legible. Building elements should balance

innovation and function. Building efficiency or style should not be achieved at the expense of practical concerns such as maintenance and renovation.

Entries will be clearly expressed and created by a hierarchy of openings. Terraces, porches, and other transitional devices should be considered. Main entrances will be proportional to the entire elevation. Consideration should be given to shade and overhead cover. Buildings may have multiple primary entries; primary entries must accommodate universal access. Doors should be wood or metal with glazing.

Windows should be operable where technically feasible and integrated into the building's energy strategy. Window frames should be wood or metal, colored to be compatible with other exterior materials. Clear glass will be preferred; any use of colored glass should be subtle. No reflective glass should be used.

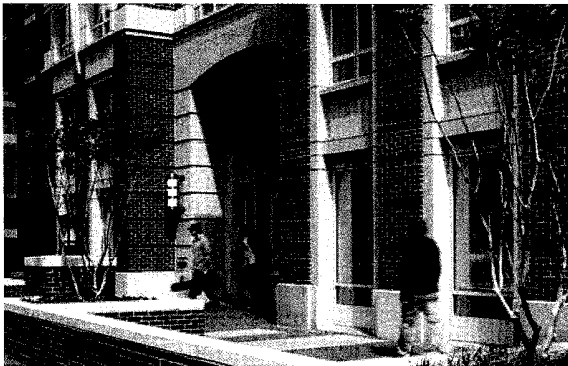


Materials

The campus will incorporate a variety of materials as it strives to be “a new model of sustainable community.” Buildings and the open spaces that they define will rely heavily on natural materials, such as brick, stone, and glass. The campus will incorporate high-performance materials and components that will be chosen because of their innovation, efficiency, or composition from renewable resources. Use of locally-sourced materials will support the sustainability goals of the campus and incorporate cultural and vernacular influences into the design of the campus.

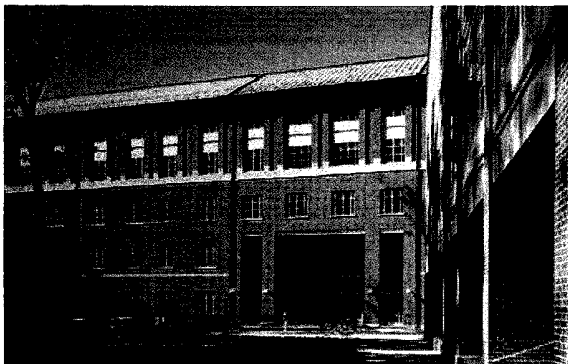


Duke University



George Washington University

Building form will be innovative to achieve high-performance goals. For example, buildings will employ screening and shading to optimize solar benefits. Familiar materials will be assembled and detailed in new ways, creating a rich texture that is reminiscent of the main campus.



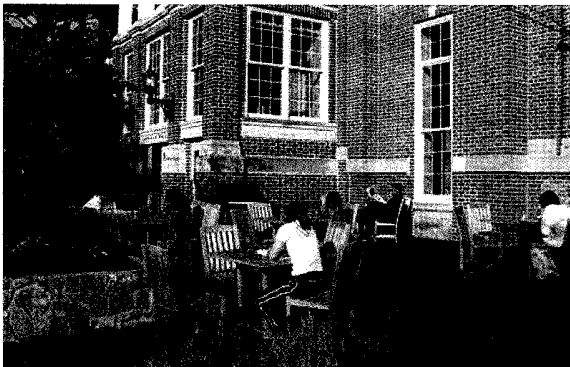
Johns Hopkins University



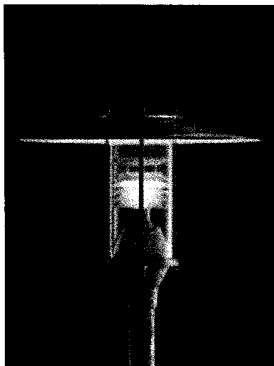
Site Furnishings

Generally, site furnishings at Carolina North will be in keeping with those used on the main campus. The existing University signage standards will be used to provide building and parking information to campus visitors. Other site furnishings that will be consistent across the University include benches, trash receptacles, and bicycle storage racks.

Site furnishings will deviate from the current University standards when it is necessary to realize design and/or operations performance efficiencies. For example, alternate lighting standards have been identified for Carolina North. The fixture recommended for Carolina North is similar to the main campus fixture in color and scale. This fixture is preferred for its simple style, ease and versatility of installation, simplicity of maintenance, ready availability, and performance efficiency. This fixture uses less energy than the main campus standard and minimizes light pollution.



Lenoir Dining Hall, University of North Carolina at Chapel Hill



Light Fixture



Bench



Trash Receptacles



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Process

The University has a long-established design review and approval process that will guide development at Carolina North. This thorough process evaluates site selection, designer selection, and project design. The process engages individuals from across the University, including:

- Board of Trustees
- Board of Trustees Building and Grounds Committee
- Chancellor's Buildings and Grounds Committee
- Facilities Planning & Construction
- Design Review Committee
- Project User Group

The design process for any building or open space on campus should start with a comprehensive look at campus context and Carolina traditions. This first step should include an analysis of the site: its history, views and vistas, topography, vegetation, massing, architectural character, pedestrian and vehicular traffic, infrastructure, and service. This analysis should lead to a primary goal of all building projects creating clear, simple open spaces and quadrangles that connect to other existing or proposed spaces.



ACKNOWLEDGEMENTS

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

Carolina North Steering Committee

Board of Trustees

Board of Trustees Building and Grounds Committee

Chancellor's Buildings and Grounds Committee

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DEVELOPMENT AGREEMENT

NNP-IV CAPE FEAR RIVER, LLC,

AND

**CITY OF WILMINGTON,
NORTH CAROLINA**

RETURN TO: SMITH MOORE LEATHERWOOD LLP

I.	STATEMENT OF PURPOSE	6
II.	DEFINITIONS.	7
A	CONSTRUCTION	7
B	DEFINITIONS	7
1)	<i>Cape Fear Public Utility Authority</i>	7
2)	<i>City Manager</i>	7
3)	<i>City of Wilmington</i>	7
4)	<i>Community Boating Facility</i>	7
5)	<i>CAMA</i>	7
6)	<i>Conservation Parcels</i>	8
7)	<i>Date of Adoption</i>	8
8)	<i>Date of Approval</i>	8
9)	<i>Dedicated Planner</i>	8
10)	<i>Development Agreement</i>	8
11)	<i>Development</i>	8
12)	<i>Land Development Code ("LDC")</i>	8
13)	<i>Laws</i>	9
14)	<i>LEED</i>	9
15)	<i>Major Amendments</i>	9
16)	<i>Master Plan</i>	9
17)	<i>Minor Revisions</i>	9
18)	<i>Newland</i>	10
19)	<i>NCDOT</i>	10
20)	<i>Private Streets</i>	10
21)	<i>Public Streets</i>	10
22)	<i>River Road</i>	10
23)	<i>RiverLights</i>	10
24)	<i>Utility Authority Development Agreement</i>	10
25)	<i>Wetlands</i>	10
26)	<i>Wilmington Metropolitan Planning Organization ("WMPO")</i>	10
III.	BACKGROUND	11
IV.	ADOPTION, DURATION AND DEVELOPMENT.....	12
A	PUBLIC HEARING	12
B	DURATION	12
C	DEVELOPMENT OF RIVER LIGHTS	12
1)	<i>Approved Master Plan</i>	12
2)	<i>Single Master Planned Community</i>	12
3)	<i>Conflict with Land Development Code and Other Laws</i>	13
D	FUTURE CHANGES AND MODIFICATIONS	13
V.	ANNEXATION.....	13
A	AREAS ANNEXED	13
B	DESCRIPTION OF ANNEXATION BOUNDARIES	14
C	MARINA	14
1)	<i>Marina Village Includes Public Access Community Boating Facility</i>	14
2)	<i>Annexation of Marina</i>	14
VI.	ZONING AND DENSITIES	14
A	CONSISTENCY WITH ORIGINAL ZONING	14
B	MAXIMUM DENSITIES	14
1)	<i>Total Residential Units</i>	14
2)	<i>Tract Allocations</i>	14

3)	<i>Non-Residential Densities</i>	15
C	ZONING	15
1)	<i>General</i>	15
2)	<i>MX-CD District</i>	15
a)	Location and Size	15
b)	Permitted Uses	15
c)	Dimensional Requirements	15
d)	Architectural and Design	16
e)	Marina	16
f)	Master Plan to Include Marina	16
g)	Private Usage May Extend to Ownership of Conservation Parcels	16
3)	<i>R7-CD District</i>	16
a)	Location and Size	16
b)	Permitted Uses	17
c)	Multi-Family Component	17
d)	Perimeter Setbacks	17
4)	<i>Placement of Improvements</i>	17
VII.	ARCHITECTURAL AND DESIGN STANDARDS.....	17
A	GENERAL APPEARANCE	17
B	COMMON DESIGN	17
C	DESIGN STANDARDS	18
D	SIGNAGE	18
1)	<i>Common Signage Plan</i>	18
2)	<i>Development Entrance Signage</i>	18
3)	<i>MX-CD District Signage</i>	18
4)	<i>Light Beacons and Architectural Elements</i>	18
5)	<i>Regulatory Signage</i>	19
VIII.	TRANSPORTATION.....	19
A	GENERAL	19
1)	<i>Traffic Impact Analysis</i>	19
2)	<i>NC DOT Approvals</i>	19
B	DEVELOPMENT ACCESS	20
1)	<i>Primary Access</i>	20
a)	Location of Primary Accesses	20
b)	Barnards Creek Bridge Upgrades	20
2)	<i>Secondary Access</i>	20
a)	Lorraine Drive Connection	20
b)	Wilderness Road Connection	20
c)	Arnold Road Connection	20
d)	Permits	21
C	DEDICATIONS AND MAINTENANCE	21
D	RIVER ROAD	21
1)	<i>Realignment</i>	21
2)	<i>Widening</i>	21
3)	<i>Maintenance of River Road, Abandonment of Old River Road by NCDOT</i>	21
4)	<i>Abandonment of Old River Road by the City</i>	22
5)	<i>Road Payment</i>	22
6)	<i>Application of Road Payment</i>	23
7)	<i>Payment for Old River Road Abandonment</i>	23
3)	<i>Design</i>	23
E	PARKING	24
F	METERING	24
G	BIKE PATHS AND SIDEWALKS	24
1)	<i>Connections to Existing Neighborhoods</i>	24
2)	<i>Bike Paths</i>	24

3) Sidewalks	24
H ROAD STANDARDS	25
I TRAFFIC SIGNALS	25
J CONDEMNATION OF RIGHT OF WAY FOR OFF-SITE TRANSPORTATION IMPROVEMENTS	25
1) Acquisition of Right of Way	25
2) Authority to Condemn	26
IX. WATER AND SEWER	26
A AGREEMENT WITH CAPE FEAR PUBLIC UTILITY AUTHORITY	26
B ENFORCEMENT AND INTERPRETATION OF UTILITY AUTHORITY AGREEMENT	26
C EASEMENTS AND ACCESS	26
D OWNERSHIP OF PUMP STATION TRACT	27
E COMMENCEMENT OF CONSTRUCTION	27
X. ENVIRONMENTAL.....	27
A OPEN SPACE	27
1) Tree Inventory	27
2) Landscaping Plan	27
3) Tree Removal and Mitigation	27
B INFRASTRUCTURE	27
1) Storm Water and Environmental	27
2) LEED Certification	28
C ENVIRONMENTALLY SENSITIVE PROPERTY	28
XI. DEDICATIONS, RESERVATIONS AND PUBLIC AMENITIES.....	28
A FIRE PROTECTION SERVICES	28
B WATER TOWER	29
C PARKS	29
1) Dedication	29
a) Park Tracts	29
b) Multi-use Paths	29
2) Development and Maintenance	29
3) Limitation on Use	29
4) Nondevelopment of Parks	30
D SCHOOL SYSTEM	30
E PUBLIC ACCESS	30
1) Lake Access	30
2) Public Water Access	31
F FIRING RANGE	31
XII. DEVELOPMENT SCHEDULE AND PHASING.....	31
A DEVELOPMENT SCHEDULE	31
1) Road and Utility Infrastructure	31
2) Within Five Years of Adoption	32
3) Within Ten Years of Adoption	32
4) Failure to Meet Schedule not a Material Breach	32
B DEVELOPMENT PHASING	32
1) First Building Permit	32
2) First Certificate of Occupancy	32
3) Miscellaneous	33
Secondary Access	33
b) Off-site Water and Sewer Improvements	33
c) Stormwater Infrastructure	33
d) Public Parks	33
e) Road Payment	33
f) Transportation Improvements	33
C PERMITS REQUIRED	33

XIII. ADMINISTRATION	34
A. REVIEW PROCESS	34
1) <i>Dedicated Planner</i>	34
2) <i>Review Timelines</i>	34
B. LAW AND PERMITS IN EFFECT AT TIME OF THE AGREEMENT GOVERN DEVELOPMENT	34
1) <i>Laws, Regulations and Ordinances</i>	34
2) <i>Permits</i>	35
3) <i>Common Law Vesting</i>	35
C. AMENDMENT	35
1) <i>Amendments by Newland</i>	35
2) <i>Amendments by the City of Wilmington</i>	36
3) <i>Amendments to Correct Typographical or Other Error</i>	36
D. BINDING EFFECT	36
E. PERIODIC REVIEW	37
1) <i>Determination of Compliance</i>	37
2) <i>Notice of Breach</i>	37
3) <i>Remedies for Breach</i>	37
a) <i>Material and Minor Breach Defined</i>	37
b) <i>Remedies Available Only for Material Breach</i>	38
c) <i>Remedies Available for Minor Breach</i>	38
d) <i>Appeal of Determination of Material Breach</i>	38
F. EXCULPATION OF NONRECOURSE PARTIES	38
G. DEFAULT	39
1) <i>Legal Remedies</i>	39
2) <i>Administrative Remedies</i>	39
H. NOTICES	39
I. ENTIRE AGREEMENT	41
J. CONSTRUCTION	41
K. ASSIGNMENT	42
L. GOVERNING LAW	42
M. NO PLEDGE OF TAXING POWER OR GOVERNMENTAL AUTHORITY	42
N. COUNTERPARTS	42
O. SEVERABILITY	42
P. AUTHORITY	43
Q. APPROVAL AND RECORDATION	43

STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF NEW HANOVER

This Development Agreement (the "Agreement") is made and entered into this 10th day of June, 2009 by and between **NNP-IV CAPE FEAR RIVER, LLC** ("Newland"), a Delaware limited liability company authorized to conduct business in the State of North Carolina, and the **City of Wilmington**, North Carolina ("Wilmington" or "City").

I. STATEMENT OF PURPOSE

Newland has applied for original zoning and annexation of a multi-phased, mixed use commercial and residential project (hereinafter referred to as "RiverLights," the "Development," or the "Project") contiguous with the City's territorial jurisdiction. RiverLights is an innovative and exciting project that the City welcomes for the multitude of commercial, residential and environmental benefits that the Project offers the residents of Wilmington.

RiverLights is a project of such magnitude and complexity that the Project development details – comprised of legal, engineering, design, architectural, traffic, environmental and density elements – can more adequately and efficiently be reviewed, discussed and agreed upon between Newland and the City with a development agreement that (1) more clearly defines the process and details of the Project's development in initial and later phases, (2) establishes the reservations, dedications, amenities and benefits to the public, and (3) provides statutory protections to Newland against later changes in ordinances, regulations, policies, technical standards and moratoria.

This Agreement is subject to review and approval by the City of Wilmington City Council (the "City Council") at a public hearing. The City Council reserves its rights to modify or change any term herein or to deny the Agreement in whole or in part until the Agreement is approved by the City Council. Adoption of this Agreement by the City shall not create binding obligations upon Newland until Newland executes and records the Agreement.

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties do hereby agree as follows:

II. DEFINITIONS

A. Construction

The words and definitions contained in this Agreement shall be used and interpreted as defined herein, provided that words previously defined by the Land Development Code or the General Statutes of the State of North Carolina shall be interpreted consistent with existing and prevailing law. Words and definitions used herein may contain additional or more specific or restrictive meanings not inconsistent with existing or prevailing law. Words not defined herein shall be given their ordinary meaning and shall be interpreted within the context of the broader document. Technical terms not otherwise defined herein shall be interpreted according to trade custom or usage.

B. Definitions

The words and terms listed below shall have the following meanings:

- 1) Cape Fear Public Utility Authority (“Utility Authority”) – The Cape Fear Public Utility Authority refers to that body politic of the State of North Carolina created July 2, 2007, pursuant to Chapter 162A of the North Carolina General Statutes to own and operate water and sewer utilities in New Hanover County and the City of Wilmington, North Carolina. References to the Utility Authority include any decisions or actions made by the Utility Authority in its corporate capacity or when acting through agents, consultants or employees.
- 2) City Manager – The person who serves in the position as city manager for the City of Wilmington and any person or group of persons designated to act in his or her stead, temporarily or permanently, to make administrative decisions or to perform administrative duties related to this Agreement. City manager also includes any person serving in that capacity on an interim basis.
- 3) City of Wilmington – As used herein, references to the City of Wilmington shall include the City acting in its sovereign or corporate capacity through its elected body, the City acting through its appointed boards or agencies, and the City acting through its employees, agents and consultants where the duties or prerogatives may be so delegated.
- 4) Community Boating Facility – The Community Boating Facility shall refer to that facility more fully described in Sections V C and VI C of this Agreement and shall include the land-based and water-based components described therein. Where contextually appropriate, the term “marina” may be used interchangeably.
- 5) CAMA – CAMA shall mean the Coastal Area Management Act of 1974, N.C. Gen. Stat. §113A -100 et seq., any regulations promulgated thereunder, and the persons and agencies responsible for the oversight and implementation of the aforementioned statutes and regulations.

6) Conservation Parcels – Conservation parcels shall be interpreted exclusively as defined in Section VI.C(2)(g) of this Agreement and in any other or future documents adopted by Newland, including, but not limited to, Master Declarations and Covenants, Property Owners' Association By-Laws, or any other internal rules or regulations adopted by Newland from time to time

7) Date of Adoption – The date of adoption shall be the date that Newland has signified its acceptance of the terms approved by the City of Wilmington in this Agreement through its execution and recordation of this Agreement in the New Hanover County Register of Deeds. It shall be the date from which future extension and expiration dates shall be calculated.

8) Date of Approval – The date of approval shall be that original date that the City of Wilmington votes to approve this Development Agreement or any modification thereof by ordinance. Major modifications of this Agreement that require the vote and approval of the City of Wilmington shall be referred to as dates of modification

9) Dedicated Planner – Dedicated planner shall mean that person employed by the City of Wilmington in its Development Services Department as provided in Section XIII A below. It shall also include any departmental assistant working under that person's supervision, any interim designated planner, and future persons fulfilling that function in the Development Services Department or successor department

10) Development Agreement – Development Agreement shall mean this Agreement approved pursuant to N.C. Gen. Stat. § 160A-400.20 et seq. and any future modifications of this original Agreement that pertain to the approximately 1,358 acre RiverLights development described herein. The Development Agreement shall not apply to or control use or development of the approximately 55 acre tract currently owned by Progress Energy or the small tract owned or to be owned by the Cape Fear Public Utility Authority to support a waste water pump station. Descriptions of the entire area owned by Newland, plus the areas owned by Progress Energy and the Utility Authority and the portion of the Cape Fear River supporting the approximately 112 boat slip community boating facility are described in this Agreement collectively as an approximately 1,419 acre development.

11) Development – Development, as used herein to describe a specific economic development project, shall mean that project described in Section I above and Section II below, and any expansions, portions, sections, subdivisions, parcels and phases and any infrastructure or buildings constructed as part of its Master Plan. It may be used synonymously with "Project" or "RiverLights," and it shall include all areas annexed simultaneously with land owned by Newland, including, specifically, portions of the Cape Fear River where a planned 112 boat community boating facility will be located

12) Land Development Code ("LDC") – The LDC means the City of Wilmington's unified development code which consolidates all land development and land use regulations. References herein to LDC requirements are those requirements that exist on

the Date of Adoption, unless later requirements are accepted in writing by an authorized officer of Newland in its sole discretion.

13) Laws – When referring to laws enacted by or under the authority of the City of Wilmington, laws shall be interpreted inclusive of all locally adopted ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies and rules affecting the development of this Development. The term “laws” shall also mean laws governing permitted uses of the Development, density, design, and improvements. To the extent that Newland shall have a vested right to proceed under existing laws, “laws” shall be interpreted to mean the law as it existed on the Date of Adoption. If Newland secures additional vested rights pursuant to common law and subsequently loses its statutorily vested rights under this Agreement, then “laws” shall mean those ordinances, regulations, policies, etc that existed on the date that Newland became vested as to those ordinances, regulations and policies under common law

14) LEED – LEED shall mean the U S Green Building Council’s Certification Criteria for Leadership, Energy and Environmental Design or a similar rating. Inasmuch as this standard is voluntarily adopted by Newland and is not a standard mandated by state or federal law, Newland shall have a right to develop the Project according to the standards that exist on the Date of Adoption and shall not be required to modify such standards upon later adoption of more stringent standards by the U S Green Building Council or its successor entities

15) Major Amendments – Major Amendments shall be amendments or modifications to this Agreement or the Master Plan that require action and approval by the City of Wilmington City Council, consistent with LDC Section 18-89. Major amendments shall be interpreted consistently with “material terms,” as that term is defined in Section XIII E below. An additional operative distinction between major amendments and minor revisions is that major amendments shall refer to those rights and requirements under this Agreement that are created by this Agreement and were separately negotiated in the course of this Agreement’s adoption. They are to be distinguished from minor revisions, which include technical requirements that are routinely made at staff, Technical Review Committee or Subdivision Review Board levels and from decisions that have no substantive effect upon the City, density, traffic or other similar matters that would have an impact upon the City or broader community. By way of example only, changes in nomenclature within the Development or of the Development itself or its ownership shall not be considered major amendments

16) Master Plan – The Master Plan refers to the comprehensive plan approved by the City Council attached to this Agreement as Exhibit C, and any future changes to the Master Plan initiated by Newland. The Master Plan is a conceptual document that provides the framework within which other more detailed plans shall be reviewed for consistency

17) Minor Revisions – Minor revisions shall be any revisions not considered a “major modification” or “major amendment” and which do not change the basic design and development concepts of this Agreement or the Master Plan. Minor revisions may be

approved by the City Manager unless the LDC requires approval by the Technical Review Committee.

18) Newland – Newland shall refer to NNP-IV Cape Fear River, LLC, a Delaware limited liability company, and its successors and assigns or transferees in title. Where appropriate to the context, it shall also include property owners' associations established to exercise any of the duties of managing any portion or portions of RiverLights.

19) NCDOT – NCDOT shall refer to the North Carolina Department of Transportation whether acting through the State of North Carolina Board of Transportation or its Division or Division Engineer or his or her designee.

20) Private Streets – A private street is any portion of the Development dedicated to vehicular traffic, including but not limited to parking areas, alleys and streets, which is owned and maintained exclusively by Newland or a property owners' association.

21) Public Streets – A public street is any portion of the Development dedicated to vehicular traffic, including but not limited to parking areas, alleys and streets, which is owned and maintained by the City of Wilmington, the State of North Carolina or other governmental entity.

22) River Road – River Road shall refer to State Road 1100 and its rights of way. As described in Section VIII D. below, River Road shall also refer to that portion of the Development consisting of the newly constructed and realigned River Road. This Agreement presumes future NCDOT or City of Wilmington approval of the realigned and dedicated River Road and abandonment by all applicable municipal and state agencies of what is anticipated to become the former River Road right of way.

23) RiverLights – RiverLights is the commercial name assigned to the master-planned, 1419 acre development along River Road that is the subject of this Development Agreement. It also refers to any of the development amenities, parts or subparts within the annexed property and any aspect of the Development for which Newland has a right to control the image, marketing or sales.

24) Utility Authority Development Agreement – The Utility Authority Development Agreement shall mean that agreement entered into by and between Newland and the Utility Authority for the construction and maintenance of certain public water and sanitary sewer services. It shall also include any future amendments or modifications to the Utility Authority Development Agreement.

25) Wetlands – Wetlands shall refer to those portions of the Development that have been delineated as wetlands for purposes of permitting under Section 404 of the Clean Water Act or that have been delineated as wetlands by the U.S. Army Corps of Engineers on maps officially and previously adopted by the Corps of Engineers.

26) Wilmington Metropolitan Planning Organization (“WMPO”) – The WMPO refers to the Wilmington Metropolitan Planning Organization acting in its governmental or

quasi-governmental capacity or through its staff or board or agents as any of them are authorized in fact to speak for or represent the WMPO

III. BACKGROUND

A Newland is the owner of an approximately 1,340 acre parcel of land (New Hanover County PIN RO7000-006-009-000) located on River Road in New Hanover County (the "Property") and proposed to be the site of a mixed-use commercial and residential project known as RiverLights. An additional 18.7 acre area lying within the Cape Fear River adjacent to this parcel of land is included in Newland's annexation petition so that the approximately 112 boat community boating facility, which is planned for construction within the 18.7 acre area, is governed by this Development Agreement. The Property is more particularly described on Exhibit A, attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B, attached hereto and incorporated herein by reference. An approximately 55 acre tract owned by Progress Energy and a small tract owned or to be owned by the Utility Authority lie within the outer boundaries of the Newland tract, creating an approximately 1,400 total acreage site.

B The Project was originally approved by the New Hanover County Board of Commissioners in 1999 as a Planned Development District pursuant to a comprehensive plan that governed all phases of the Project (the "County Master Plan"). New Hanover County modified the County Master Plan on April 4, 2007, with two additional staff level modifications on September 14, 2007, and May 21, 2008.

C. After careful review and deliberation, the City has determined that the Project is consistent with both (1) the LDC and (2) the City's Future Land Use Plan, which identifies the City's plans pertaining to future land use. The City firmly believes that the Project will further the City's land use planning objectives and policies as articulated in these documents, as well as enhance and secure the health, safety, welfare and economic well being of residents of and visitors to the City.

D The City has also determined that the development approval process summarized in this Agreement presents a unique opportunity for the City to secure quality planning and growth, to protect the environment, to strengthen the tax base and to mitigate the impacts of large-scale development.

E. The Utility Authority has or will enter into a separate Development Agreement with Newland for matters pertaining to the construction and maintenance of water and sewer infrastructure in RiverLights.

F. Newland and the City enter into this Agreement for the purpose of (1) establishing the development phasing sequences, (2) agreeing upon the maximum densities and dimensional standards for each section and phase of development and the types of uses and design standards thereon, (3) coordinating the construction and design

of infrastructure that will serve the Development and the community at large, (4) confirming the dedication and/or provision of public amenities by Newland as described herein, and (5) providing assurances to Newland that it may proceed with the Development in accordance with the approved original zoning and the terms of this Agreement without encountering future changes in ordinances, regulations, technical standards or policies that would affect its ability to develop the relevant parcels under the approved zoning and the terms hereof

IV. ADOPTION, DURATION AND DEVELOPMENT

A. Public Hearing.

The City Council conducted a public hearing on May 19, 2009 to consider the approval and execution of this Agreement. The notice of public hearing specified, among other things, the location of the Development, the development uses proposed in the Development and a place where a copy of the Agreement could be obtained. The City Council approved this Agreement and the City's execution of the same, along with the Development's annexation and original zoning.

B. Duration.

The term of this Agreement shall commence on the Date of Adoption. Subject to any subsequent agreements extending the original duration as provided by N.C. Gen. Stat. §160A-400.25, this Agreement shall expire twenty years from the Date of Adoption.

C. Development of RiverLights.

1) Approved Master Plan

RiverLights shall be developed in accordance with the terms and conditions of (1) the Master Plan, attached hereto as Exhibit C and incorporated herein by reference, (2) provisions of the LDC, as those terms and provisions exist on the Date of Adoption, (3) adopted policies and regulations of the Utility Authority as those policies and regulations exist on the date that Newland enters into a Development Agreement with the Utility Authority, (4) the Development Agreement between Newland and the Utility Authority, and (5) this Agreement. The Master Plan shall be subject, however, to any rights Newland may have to make adjustments to the same as provided on the Master Plan, and to Newland's right to seek amendments to the Master Plan.

2) Single Master-Planned Community

RiverLights shall be developed as a single, master-planned community and considered one comprehensive project. Calculations regarding density, open space and other similar matters shall be made in relationship to the entire Development and not on a phase-by-phase basis as each phase or parcel is presented for Subdivision Review Board approval. The terms of this Agreement are binding upon the entire Development.

As shown on the Master Plan attached, RiverLights contains thirteen (13) separate and identifiable areas ("tracts"), which tracts presently are identified as Tracts 1A, 1B, 1C 2A, 2B, G, H, J, K, L, M, Q, and R. Within the Master Plan and this Agreement, these tract designations shall be for identification purposes only. Newland reserves the right to modify or amend the manner in which each phase or parcel is identified on the Master Plan.

In order to create a seamless, master-planned community with common design elements and common infrastructure, Newland shall be allowed to incorporate and adopt the MX-CD District street standards (as defined in Section VIII.H) and MX-CD District signage (as defined in Section VII D) in the R7-CD District.

3) Conflict with Land Development Code and Other Laws

The terms of this Agreement shall be in addition to and not inconsistent with the LDC and other local, state and federal statutes and regulations, including the regulations and policies of the Utility Authority. In the event of a conflict between the LDC and this Agreement, then the stricter document (as determined by the City Manager or his designee) shall control. However, the foregoing shall not apply (a) where the terms of this Agreement were consistent with the LDC or City policies on the Date of Adoption and the LDC or the City policies changed, or (b) where the original terms of the Master Plan or this Agreement were established within the authority of the City staff or Technical Review Committee or Subdivision Review Board to grant exceptions, waivers, variances or modifications to existing ordinances and policies.

D. Future Changes and Modifications

It is understood and agreed that a development of this magnitude and complexity shall be developed over many years and in market conditions that cannot accurately be predicted or anticipated. In keeping with the underlying statutory goals that development agreements are allowed by law to provide flexibility and creativity for large-scale, multi-phased projects, and provided that the overall densities do not increase, it shall not be considered a breach of the terms or spirit of this Agreement if Newland seeks future changes to the Master Plan or to this Agreement. In its consideration of requested changes, the City shall consider, among other things, the reasons for the request, the qualitative results, the benefits to the public, the impacts upon the environment, and the hardships and impracticalities upon Newland. Minor changes to the Master Plan may be approved as provided in paragraph XIII C below.

V. ANNEXATION

A. Areas Annexed

Concurrent with the adoption of this Agreement, Newland shall petition and the City shall consider for voluntary annexation and original zoning the entirety of the RiverLights Development, including all of the wetlands and open spaces, the entirety of

River Road that lies within the Development boundaries, and the Community Boating Facility (as discussed in Section V C below). If approved for annexation and zoning, the terms of this Agreement shall apply as provided herein to all portions of the Development annexed

B. Description of Annexation Boundaries

The total area petitioned for annexation concurrent with the adoption of this Agreement is described in Exhibit A, attached hereto and incorporated herein by reference, and more fully described on the maps submitted to and approved by the Technical Review Committee.

C. Marina

1) Marina Village Includes Public Access Community Boating Facility

The Marina Village and Community Boating Facility referenced in this Section V C are more fully described in paragraphs VI.C.2(e) and (f) below. As further described in Section VI C 2(e) and (f), the Community Boating Facility is referred to generally, and solely for purposes of this Agreement, as the "Marina "

2) Annexation of Marina

Newland shall submit an annexation map that includes the Marina and a reasonable area surrounding the Marina within the Cape Fear River, which approximately 18.7 acre area shall be partially determined by and follow the Barnards Creek channel as it flows into the Cape Fear River

VI. ZONING AND DENSITIES

A. Consistency with Original Zoning

This Section VI is subject to and contingent upon the City's approval of original zoning of the property in the Development consistent with subsections VI B and VI C. below. Subsections B and C below shall not be interpreted in a manner inconsistent with the original zoning approved by the City but each subsection may include and provide conditions and restrictions that are in addition to the original zoning approved by the City

B. Maximum Densities

1) Total Residential Units

The maximum combined number of single family and multi-family residential dwelling units shall not exceed 2,290 units

2) Tract Allocations

Notwithstanding the provisions in paragraph IV.C.2 (“Single Planned Community”), no individual tract shall be allowed a greater number of residential units than the maximum number allowed under the LDC for each tract if it were evaluated as a stand-alone development. Newland may, however, increase or decrease the number of units within each tract by up to 25% and shift the difference to other tracts, so long as the total number of residential units in RiverLights does not exceed the maximum allowed by this Agreement and the maximum number of units allowed under the LDC per tract is not exceeded in any single tract. Increases or decreases in residential units per tract as described herein shall require Technical Review Committee and Subdivision Review Board review and approval, but such shifting of units shall not be considered a major modification of this Agreement.

3) Non-Residential Densities

Non-residential densities in the MX-CD District (as defined in Section V.C.2) shall be controlled by the existing MX district standards in the LDC. Privately owned, non-residential buildings shall not exceed 10 million square feet of office, institutional and retail use. Notwithstanding the foregoing, the Marina and the floor areas of any general public use buildings and structures, including, but not limited to, fire stations, schools, utility facilities and police substations shall not be included or considered in determining the 10 million square foot limit.

C. Zoning

1) General

RiverLights shall consist of two zoning categories: MX-CD District and R7-CD District.

2) MX-CD District

a) Location and Size

Newland shall petition the City to rezone 184.7 acres as MX-CD, as shown on the Master Plan. The MX-CD District is described on the Master Plan as Tract 1B and includes the Marina Village and areas to be dedicated to the City of Wilmington as park space, including land on the east side of River Road adjacent to the Marina Village and the River Road Multi-Use Path (defined in Section VIII.G.2).

b) Permitted Uses

The MX-CD District may, at Newland’s election, include any of the uses allowed by the LDC in MX districts.

c) Dimensional Requirements

Dimensional requirements shall be consistent with MX district standards on the date of this Agreement’s adoption.

d) Architectural and Design Standards

Consistent with Section VII below and the minimum standards of the LDC, all architectural and design standards for each phase or parcel shall be determined by Newland in its sole discretion

e) Marina

RiverLights is a river-oriented community designed to provide active and passive access to the water for community residents. The "Marina Village" is a mixed-use component of the overall community in which residents, businesses and amenities exist in close proximity as a miniature river village. A key component of the Marina Village is a private, non-commercial, approximately 112 boat slip community boating facility that is referred to herein and classified by the City as a "marina" for purposes of consistency with definitions in the LDC. Notwithstanding that designation, Newland shall impose whatever restrictions on the marina are needed in order for the Marina to comply with CAMA standards for community boating facilities. The Marina shall include all reasonable accessory uses, including the access pier and wet staging dock, but it shall not include the commercial dry stack, a land-based building located within the Marina Village intended for sales to outside residents for the enjoyment of RiverLights. Notwithstanding the foregoing, Newland may determine appropriate mechanisms for allowing dry stack owners to use the wet staging dock and access pier.

f) Master Plan to Include Marina

The City shall review and approve the Master Plan, including all Marina Village components, as though an approximately 112 slip marina will be approved concurrently with or within a reasonable time following the annexation and rezoning of RiverLights.

g) Private Usage May Extend to Ownership of Conservation Parcels

Newland may, at its option, sell "conservation parcels" within the Development. Conservation parcels shall be subject to definitions, standards and restrictions as may from time to time be adopted or amended by Newland in its sole discretion, provided conservation parcels shall not include developed single family or multi-family residential units or lots. Conservation parcels shall not establish rights or conditions that would otherwise be inconsistent with or abrogate the terms of this Agreement. Conservation parcels may, however, create an alternate and separate class of ownership entitling its owners access to the Marina and any other rights and privileges as determined by Newland in its sole discretion. Conservation parcels may be created on built upon areas, including, but not limited to parking areas, or be created upon or within non-built upon areas, including, but not limited to, private parks, ponds, streams and dedicated open spaces. Conservation parcels may be of any size determined by Newland in its sole discretion.

3) R7-CD District

a) Location and Size

Newland shall petition the City to rezone the remaining 1,155 605 acres of RiverLights to R7-CD ("R7-CD District"). Each parcel and phase shall be submitted to the Subdivision Review Board for review and approval as a cluster subdivision as each parcel or phase is developed

b) Permitted Uses

Upon rezoning approval, the R7-CD District may, at Newland's election, include any of the uses allowed by the LDC in R7 districts. Uses, however, shall not be inconsistent with the Master Plan

c) Multi-Family Component

Newland shall be allowed to develop up to one hundred (100) acres within the R7-CD District for multi-family use as permitted in the LDC, to be located at Newland's election among any of the parcels within the R7-CD District

d) Perimeter Setbacks

The R7-CD District perimeter setbacks shall be 25 feet

4) Placement of Improvements

Newland agrees to develop RiverLights according to the Master Plan, which plan shows the general location of the development parcels, wetlands, primary road system and access points, parks, ponds, fringe area and other matters generally depicted on the Master Plan. Subject to future major or minor modifications as defined by this Agreement, no construction, renovations, expansions or changes shall be made inconsistent with the Master Plan

Notwithstanding the foregoing, construction, renovations, expansions and changes to internal spaces may be made in Newland's sole discretion without review by staff or the Technical Review Committee or the City except as to compliance with the N.C. State Building Code. Internal space shall be defined as any areas of a building that are fully or partially enclosed by exterior walls and a ceiling, building roof tops, and any open courtyards

VII. ARCHITECTURAL AND DESIGN STANDARDS

A. General Appearance

Newland shall (1) create a uniform and generally consistent appearance of buildings and signage within the Project, and (2) create design and architectural guidelines that encourage functional integration of various uses, pedestrian friendly areas and public use of common areas

B. Common Design

All buildings within each phase or parcel shall reflect either a common design or a common motif and shall reflect distinctive architectural styles, as determined in Section VII.C below

C. Design Standards

The building height and setback standards in the LDC shall be minimum standards governing the Development, unless specifically waived by the City. Where design standards in the LDC are superseded by this Agreement, design standards contained in this Agreement control. The recorded covenants and restrictions adopted for each phase or parcel shall contain or incorporate by reference architectural and design standards for that phase or parcel. Subject to minimum standards contained in the LDC and Section VII B above, no part of this Agreement shall be interpreted as a limitation upon Newland to establish, in its sole discretion, the architectural and design standards for each phase or parcel and the mechanisms for design standard enforcement.

D. Signage

1) Common Signage Plan

Subject to the standards of the LDC, Newland shall develop a common signage plan. The plan shall include business signage, parking signage and directional signage. At Newland's election, MX-CD District signage standards may be adopted and incorporated into the common signage plan for the R7-CD District.

2) Development Entrance Signage

Primary signage for the entire Development shall be allowed in the approximate vicinity of River Road where it crosses Barnards Creek and in the approximate vicinity of River Road where it crosses Motts Creek. Subject to the standards of the common signage plan, each separate phase and parcel within the R7-CD District shall be allowed its own signage as though it is a stand-alone development.

3) MX-CD District Signage

For purposes of signage, the main entrance to the MX-CD District as provided in LDC Section 18-185(d)(10) shall be deemed to be located on River Road at a location other than its intersection with Barnards Creek. The secondary entrance to the MX-CD District shall be on River Road in the location indicated on the final plans submitted to the Technical Review Committee for approval.

4) Light Beacons and Architectural Elements

Light beacons used at or near primary or secondary entrances shall be considered decorative accessory structures and not signage. Any illumination, either internal or external, shall not be distracting to drivers and shall not shine directly onto or into adjacent property. Architectural elements separate and distinct from primary or secondary entrance signage shall not be considered part of the entrance signage.

5) Regulatory Signage

Newland shall be allowed to install decorative regulatory signage consistent with other signage in the Development. Regulatory signage shall include but not be limited to stop signs, parking signs, street name signs, speed limit signs, directional signs, bus stop signs, and signs controlling or signaling turns, bike lanes, pedestrian crossings and any other information necessary to control or direct vehicular or non-vehicular traffic. Any signage shall satisfy Federal Highway Administration requirements for break away signage.

If Newland elects to install decorative posts, poles, back plates, painted surfaces or brackets, after the City accepts the signs for maintenance, the City shall be responsible only for that portion of the sign's cost that is equal to the cost of a standard sign typically used and installed by the City, and Newland shall be responsible for the additional cost of the sign itself and any installation costs over and above standard installation costs. Newland shall also be responsible for maintaining any decorative elements that are in addition to or different than standard City poles and signs.

VIII. TRANSPORTATION

A. General

1) Traffic Impact Analysis

The City of Wilmington hereby accepts the Traffic Impact Analysis ("TIA") prepared by Kimley-Horn and Associates, Inc. dated June 2007 and which is on file with the City of Wilmington Transportation Department and the North Carolina Department of Transportation ("NCDOT"). Newland's onsite and offsite transportation and traffic mitigation improvements shall not be inconsistent with the TIA recommendations. Additionally, unless specifically agreed to herein, the City shall not require transportation improvements or traffic mitigation measures greater than or in addition to what is set forth in Exhibit F. Notwithstanding the foregoing, (a) changes or modifications to the lengths of deceleration lanes or storage depths in turn lanes and (b) modifications to turning radii shall not be considered major or minor modifications to this Agreement so long as the changes and modifications are recommended by a professional engineer and approved by Newland and the City or NCDOT.

2) NCDOT Approvals

Newland and the City agree that all roads owned, managed and maintained by the State of North Carolina are subject to permits and approvals of NCDOT. No part of this Agreement shall be deemed binding upon NCDOT.

B. Development Access

1) Primary Access

a) Location of Primary Accesses

The Development shall have two (2) primary and three (3) secondary access points. Primary access shall be through River Road where it enters the Development at its northern boundary along Barnards Creek and where the re-aligned River Road enters the Development at Motts Creek.

b) Barnards Creek Bridge Upgrades

Barnards Creek Bridge is on the state's Transportation Improvement Plan for widening and upgrades to accommodate greater traffic volumes. The City agrees to formally request and encourage NCDOT to advance the upgrade of Barnards Creek Bridge on the Transportation Improvement Plan and to communicate regularly with Newland about its efforts.

2) Secondary Access

Secondary access points shall be provided at three locations along the Development's eastern boundary and connect to Wilderness Road, N. Lorraine Drive and Arnold Road. Access to each of these connections shall be conveyed by driveway permit, and the necessary right-of-way shall be conveyed to the City by recorded plat. The portions of these three streets that lie within the Development's boundary shall be dedicated to the City.

a) Lorraine Drive Connection

Newland shall construct a road connection to N. Lorraine Drive from the southern most roundabout on River Road. In addition to constructing a sidewalk on the north side of the connection, Newland shall extend the sidewalk connection to the intersection of N. Lorraine and Wilderness Road. The section of the Lorraine Drive connection extending from the River Road roundabout to the Development's eastern boundary shall be dedicated to the City.

b) Wilderness Road Connection

Newland shall construct a road from River Road to the Wilderness Road stub where Wilderness Road abuts the Development on the Development's eastern boundary. Newland shall not be required to construct the Wilderness Road extension until Phase 1A is developed. The section of the Wilderness Road connection extending from River Road to the eastern boundary of the Development shall be dedicated to the City.

c) Arnold Road Connection

Newland shall construct a road that connects River Road with Arnold Road where Arnold Road is planned to abut the Development's eastern boundary. Newland shall not be required to construct the Arnold Road extension until Parcel R is developed. The Arnold Road extension from River Road to the Development's eastern boundary shall be dedicated to the City.

d) Permits

The City shall cooperate with Newland in obtaining any and all permits required by NCDOT for connections to any state system roads, including but not limited to the Lorraine Drive Connection, Wilderness Road Connection and Arnold Road Connection. In the event that NCDOT requires or conditions any necessary permits for such connections on Newland making any improvements not listed on Exhibit F and the collective cost of such requirements or conditions collectively exceeds \$100,000, then Newland may elect to reduce the amount of any outstanding Road Payment due under Section VIII D (5) below by the amount of such excess cost.

C. Dedications and Maintenance

With the exception of (1) non-residential parking areas and (2) certain alleyways, as determined by Newland in its sole discretion, and (3) certain streets in the Marina Village, which shall be private and maintained at the expense of the property owners' association established for each separate Parcel or Phase encompassing the non-residential parking area or alleyway, all streets and roads shall remain or become publicly dedicated and maintained. Private streets in the Marina Village may, at Newland's election, have adjacent gravel parking areas.

D. River Road

1) Realignment

Newland shall construct and realign River Road (SR 1100) at its expense beginning at a point generally southwest of the Progress Energy tract, following a new alignment towards the Development's eastern boundary and southward to the Development's southern boundary at Motts Creek. The location of the realigned River Road shall be as shown on the Master Plan.

2) Widening

Except as set forth herein, Newland does not by this Agreement agree to widen River Road to four lanes or to accept responsibility for the cost of widening River Road to four lanes to handle future regional traffic. Newland shall, however, dedicate land to accommodate two additional traffic lanes on River Road from Barnards Creek to Motts Creek. Newland shall widen River Road to four lanes between Independence Boulevard and the traffic circle southwest of the Progress Energy tract.

3) Maintenance of River Road, Abandonment of Old River Road by NCDOT

The City has adopted a resolution requesting that NCDOT transfer control and maintenance responsibility to the City for the existing portion of River Road extending from the southern line of Independence Boulevard to the southern boundary of RiverLights. Newland shall assign (to the extent assignable) its NCDOT River Road Abandonment Application to the City. The City shall accept the assignment and pursue with NCDOT the abandonment of the road and right-of-way for that existing portion of River Road (the "Old River Road") that will be replaced by the future River Road alignment. It is intended that the existing River Road and right-of-way through RiverLights as modified by the alignment of River Road shall become a part of the City's street network under City traffic control and maintenance. As part of the assignment of the Abandonment Application, Newland shall retain responsibility for all obligations and conditions set forth in NCDOT's abandonment order related to construction of the realigned River Road and wetlands mitigation outlined by NCDOT as of the Date of Adoption, but Newland shall not retain responsibility for payment of any NCDOT fees for such abandonment (including, but not limited to, any enhancement fees) except for the Road Payment as provided in Sections VIII.D 4, D 5 and D 6 below. The City shall determine in its sole discretion whether it shall seek substitution as the party-in-interest of any appeals or challenges heretofore filed by Newland to challenge the imposition or the amount of any enhancement fees

4) Abandonment of Old River Road by the City

Upon Newland's petition, in accordance with G.S. 160A-299, the City shall consider the closure and abandonment of Old River Road (the "Road Closure") at such time as the River Road realignment has been completed and as-built plans have been approved by the City. If the City approves the closure and abandonment of Old River Road, it shall obtain the consent of NCDOT as to the same prior to the Road Closure taking effect if NCDOT has not previously recorded with the New Hanover County Registry a Declaration of Abandonment ("Declaration"). Upon closure of Old River Road, title to the right-of-way shall vest in Newland, as the property owner adjacent to the right-of-way, by operation of law, pursuant to G S 160A-299

5) Road Payment

If the City determines that the Old River Road right-of-way should be closed and abandoned pursuant to G S 160A-299, and NCDOT has either recorded the Declaration or consented to the Road Closure as provided in subsection 4 above, then Newland shall pay the City the sum of two million seven hundred fifty thousand dollars (\$2,750,000) (the "Road Payment") as a contribution towards any NCDOT imposed enhancement fee for the abandoned Old River Road and as payment-in-lieu of other transportation improvements desired by the City or the WMPO or NCDOT but not set forth in Exhibit F. The Road Payment shall be made in three installments of \$916,666.67. The first payment shall be made upon Newland's receipt of its first building permit for a residential unit or January 1, 2011, whichever is later. The second and third payments shall be made on the first and second anniversary date after the first payment became due

Newland and the City understand and agree that the abandonment and closure of Old River Road is an important condition of the completion of the Master Plan and the failure of such condition will require a revision to the Master Plan and this Agreement. Notwithstanding anything contained in this Agreement to the contrary, Newland shall not be obligated to make the transportation improvements listed in Exhibit F and in Section VIII A.1 nor make the Road Payment unless NCDOT has either recorded the Declaration or consented to the Road Closure as provided in subsection 4 above, and the Old River Road right-of-way is closed and abandoned pursuant to G.S. 160A-299, thereby resulting in title to the right-of-way vesting in Newland by operation of law.

6) Application of Road Payment

The City shall apply the Road Payment to any offsite transportation or road improvements identified in the Wilmington Metropolitan Planning Organization ("WMPO") River Road Small Area Plan dated March 2007 that is not listed in Exhibit F as an improvement Newland is required to make, or to any other road improvement jointly agreed upon between the City and NCDOT. In the event that NCDOT and/or the WMPO determine that the transportation improvements made with the Road Payment are not sufficient to mitigate Newland's impact to the road network and either or both NCDOT or the WMPO refuse to approve RiverLights' driveway or other permits until additional transportation payments or improvements are made, then Newland reserves the right in such instance to challenge NCDOT's and the WMPO's legal and factual bases for requiring any improvements to the transportation system other than those set forth in Exhibit F and previously accepted by NCDOT. Except as provided in Section VIII B (2) (d) and paragraph 5 above and paragraph 7 below, Newland shall be required to make the Road Payment to the City regardless of the decision of a trial or appellate court regarding Newland's obligation to make offsite transportation improvements. If Newland obtains a judgment that no offsite improvements other than improvements specifically listed in Exhibit F shall be required to offset RiverLights' impact on the transportation system, then the City may apply the Road Payment to any transportation improvements within the City it deems appropriate. If by judgment or mediated settlement some offsite improvements shall be required but they can be made for less than \$2.75 million, then the City may use the remainder of the Road Payment for any other expenses it deems appropriate, including legal expenses incurred in Newland's lawsuit.

7) Payment for Old River Road Abandonment

If either before or after completion and approval of the River Road realignment, NCDOT attempts to abandon and/or transfer title to Old River Road to the City for a fee, then the City and Newland may jointly agree to withhold any or all payments towards offsite improvements until title to the Old River Road right-of-way is resolved. If Newland is required to pay any sum to NCDOT as an "enhancement fee," then that amount shall be deducted from the Road Payment to the City.

8) Design

River Road upgrades and realignment shall be subject exclusively to the engineering and design requirements of the NCDOT unless a different standard is allowed by the City as determined to be in the best interest of the City. The City has reviewed and hereby accepts the street and road sections attached as Exhibit D.

E. Parking

Parking for the Development shall be as depicted on the Master Plan. Where feasible and in Newland's sole discretion as to materials used, Newland shall incorporate pervious materials in its parking lots. "Head in" or "angled head in" parking shall be allowed on all streets in Newland's sole discretion, provided that it meets or is not inconsistent with existing City of Wilmington parking standards.

F. Metering

Nothing herein shall prevent the City, acting in its sovereign capacity, from erecting metering for parking along streets dedicated to the City. Notwithstanding the foregoing, the City acknowledges (1) that Newland has prepared a high quality and attractive streetscape design that does not include metered parking and that Newland contends metered parking would detract from the streetscape aesthetics and function, and (2) that the City has no existing plans or needs to erect or maintain metered parking on RiverLights streets that are dedicated to the City.

G. Bike Paths and Sidewalks

1) Connections to Existing Neighborhoods

Sidewalks and pedestrian access interconnections to the neighborhoods to the east shall be provided in accordance with the recommendations of the River Road Small Area Plan.

2) Bike Paths

All bike paths shall be constructed as shown on the Master Plan attached as Exhibit C. Bike paths may be referred to in plan submittal documents as "multi-use paths." Newland reserves the right to modify all bike path alignments to accommodate topography, existing trees, landscaping and other features and such modifications shall be considered minor revisions. As described in Section XI C below, the multi-use path running along River Road (the "River Road Multi-Use Path"), shown on the Master Plan and other exhibits, shall be dedicated to the City as park space to be owned and maintained by the City and used by the public. The River Road Multi-Use Path shall be incorporated into the Cross-city Trail. All multi-use paths other than the River Road Multi-Use Path shall be owned and maintained by Newland.

3) Sidewalks

All internal streets shall have sidewalks as shown on the street and road sections attached hereto as Exhibit D and as depicted on the Master Plan. Upon Newland's

request and approval by the Technical Review Committee, Newland shall be permitted to construct some streets with sidewalks on one side only

H. Road Standards

Publicly dedicated road and street cross-sections and private road and street cross sections shall be allowed with dimensions as depicted on Exhibit D attached for the following types of streets River Road, Main Street, Village Street I, Village Street II, Village One Way Parking, Village Street One Way, Old River Road I, Old River Road II, Alley 1, Alley 2 and Alley 3 Alternative shoulder assemblies shall be allowed with dimensions as depicted in Exhibit D for Alternate Shoulder Types 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10. Newland may, at its option, construct any of the above-described streets with broader or larger dimensions than provided Additional types of street sections may be approved by the Technical Review Committee as minor amendments to this Agreement Horizontal dimensions for public and private street corner curb radii and parking island radii shall be allowed as depicted on Exhibit E The graphic depictions in Exhibit D and Exhibit E are incorporated into this Agreement as both (1) illustrative designs to be used in the development of RiverLights and the administration of this Agreement, and (2) standards unique to the Development which shall operate the same as any other law, regulation or technical standard under which Newland shall have vested rights pursuant to section XIII B below.

I. Traffic Signals

Newland shall maintain the right to purchase, construct and install traffic signals consistent with its design standards, subject to the approval of the traffic signal design by the City for safety, function and compliance with the Manual on Uniform Traffic Control Devices only Traffic signals purchased and installed by Newland on roads dedicated to the City shall become the property of the City upon installation

J. Condemnation of Right of Way for Off-Site Transportation Improvements

1) Acquisition of Right of Way

If acquisition of right of way is necessary to meet any of the requirements of this Agreement, Newland shall exert reasonable and good faith efforts to obtain from the relevant property owners, at its sole cost and expense, the right-of-way necessary to construct and install the required off-site transportation improvements described above in this Section VIII In the event that Newland is unable to obtain any of the required right-of-way after exerting reasonable, good faith efforts to do so, and the City, in the exercise of its discretion to open streets, has determined that certain property is needed for a public purpose and has made the independent determination that eminent domain is necessary, then the City shall obtain the required right-of-way by purchasing the same or through eminent domain proceedings In the event that the City purchases any required right-of-way, Newland shall reimburse the City for the reasonable purchase price and any reasonable expenses related thereto. In the event that the City acquires any required right-of-way through eminent domain proceedings, Newland shall reimburse the City for

any award of just compensation and/or damages (as determined through settlement or verdict), including interest, that the City is required to pay, and for appraisal fees, reasonable attorney's fees and other reasonable costs and expenses incurred by the City in connection therewith. Newland shall be entitled to select condemnation counsel. Newland shall not be liable, however, for payments through settlement in excess of appraised value unless it has given its prior consent.

2) Authority to Condemn

The City represents and warrants that it has the legal authority to acquire the right of way areas described above through eminent domain proceedings in accordance with the terms of this Agreement.

IX. WATER AND SEWER

A. Agreement with Cape Fear Public Utility Authority

Newland has or may enter into the Utility Authority Development Agreement that defines (1) the relationships between Newland and the Utility Authority and (2) Newland's and the Utility Authority's obligations on all matters related to water and sewer.

B. Enforcement and Interpretation of Utility Authority Agreement

The Utility Authority Development Agreement or other substitute agreement shall be interpreted and enforced according to its own terms and provisions. Newland's failure to meet obligations contained solely in the Utility Authority Development Agreement shall not grant the City rights to withhold building or other permits or to declare or exercise default remedies in this Agreement.

This Agreement and the Utility Authority Development Agreement shall be considered separate but parallel agreements governing the same Development. As such, this Agreement shall be interpreted and enforced to the extent possible to allow Newland to fulfill and meet all requirements of the Utility Authority Development Agreement. To the extent that the enforcement of this Agreement would cause Newland to become out of compliance with its obligations under the Utility Authority Development Agreement, the City agrees to cooperate with Newland and the Utility Authority to provide a reasonable time to coordinate and adopt Master Plan, Agreement or Utility Authority Development Agreement revisions or modifications so that Newland can fulfill obligations under this Agreement and the Utility Authority Development Agreement.

C. Easements and Access

The City shall grant Newland and/or the Authority at no charge such temporary or permanent access and construction easements as are necessary for Newland to fulfill its obligations under its Utility Authority Development Agreement.

D. Ownership of Pump Station Tract

Title to the pump station tract adjacent to the MX-CD District shall be transferred to the Utility Authority as provided in the Utility Authority Development Agreement. Utility Authority ownership shall be reflected in the Master Plan and related plans

E. Commencement of Construction

The City agrees that, subject to approval by the Utility Authority, Newland shall not be required to begin construction of the 20" force main and interim pump station upgrades until January 3, 2011. Notwithstanding the foregoing, Newland shall submit to the appropriate local or state agency by January 31, 2010 all applications for required permits for utility construction

X. ENVIRONMENTAL

A. Open Space

1) Tree Inventory

The City agrees that the RiverLights tree survey submitted by McKim & Creed on behalf of Newland on October 17, 2008 complies with the City's ordinances and requirements and that no further surveys shall be required in the approval, subdivision or site plan review processes.

2) Landscaping Plan

The landscaping plan for each phase and parcel shall be submitted to the City at the time of submittal of preliminary plats for each such phase or parcel. To the extent that the City's landscaping requirements require street trees, Newland shall be allowed to landscape streets with variable spacing and species selection and to vary placement so that some street sections have trees only on one side, so long as the total number of street trees remains the same as otherwise required.

3) Tree Removal and Mitigation

The City agrees to work with Newland in good faith to allow flexibility in the design and construction of a sustainable development, including the retention of existing trees and removal or mitigation of trees when necessary. The primary stormwater pond shall be considered an essential site improvement, and regulated trees within the area delineated for the pond shall be considered exempt from mitigation in accordance with the requirements of LDC Section 18-461 (b)

B. Infrastructure

1) Storm Water and Environmental

Newland shall (i) design and construct all stormwater systems for a ten-year design storm and (ii) provide the City with an analysis of stormwater capacity during a fifty-year storm. Open channels conveying offsite stormwater shall be analyzed for the hundred-year storm. Newland shall also provide and dedicate all drainage maintenance and stormwater utility easements as required by the Technical Review Committee at the time of plat approval for each Phase or Parcel.

2) LEED Certification

All buildings constructed by Newland within the Development shall be certified to meet the requirements of LEED or, at Newland's election, a similar or comparable rating.

C. Environmentally Sensitive Property

The City finds that Newland's Master Plan protects environmentally sensitive areas of the Development by, among other things, relocating River Road so that the impact on three prominent and environmentally fragile sand dunes is minimized; densities that otherwise might be allowed are limited; land reserved for parks and open space is maximized, existing trees have been surveyed and marked for protection; drought resistance vegetation is used wherever possible; and wetlands areas are protected.

XI. DEDICATIONS, RESERVATIONS AND PUBLIC AMENITIES

A. Fire Protection Services

In order to assist the City in its delivery of fire protection services, Newland shall either dedicate land for a new fire station or pay the City a fire service fee. If the City elects to receive a fire service fee, the fee shall be the sum of Four Hundred Six Thousand Dollars (\$406,000). One-half of the fee shall be paid no later than the issuance of the first certificate of occupancy for any building located in the MX-CD District. The remaining fees shall be paid no later than the issuance of the first certificate of occupancy for any dwelling located in any of the single family residential phases.

If the City elects dedication of land for a new fire station, then the land shall consist of not more than two acres at or near the southeast quadrant of the River Road and Lorraine Drive intersection, with the exact location to be determined in Newland's sole discretion, provided, however, Newland shall work reasonably with the City to accommodate location needs satisfactory to the City's Fire Services Department. Additionally, Newland reserves the right to review and approve the fire station's architectural design to insure architectural compatibility with the RiverLights community, which approval shall not be unreasonably withheld. The City agrees on its behalf to instruct its architects and designers to work cooperatively and proactively with Newland in the fire station's design. Fire station placement and ingress and egress shall conform with Newland's Master Plan requirements.

B. Water Tower

Newland shall dedicate to the Utility Authority up to two acres and appropriate access easements at the southeast quadrant of the River Road and Lorraine Drive intersection for the construction of a water tower. Newland shall not be required to fund tower construction. If the City elects to receive land instead of the fire service fee, then the water tower and fire station tracts may either be combined as one tract or developed as adjacent tracts.

C. Parks

1) Dedication

a) Park Tracts

As shown on the Master Plan, Newland shall reserve and publicly dedicate two tracts (the "Park Tracts") for the City's use as public parks. Newland's obligation to donate and dedicate the Park Tracts for public use shall not extend to development, construction or maintenance of the tracts for park use. Newland shall, however, dedicate any easements necessary to provide temporary or permanent access to the park areas for maintenance, development and public use consistent with this Agreement.

b) Multi-use Paths

All multi-use paths, including those within the Park Tracts, shall be designed and constructed at Newland's expense. After dedication of the River Road Multi-Use Path to the City for public use, the City shall maintain the River Road Multi-Use Path and incorporate it into the City's Cross-city Trail.

2) Development and Maintenance

Except for the portion of the Park Tracts developed for the multi-use paths stated above, Newland's dedication to the City of the Park Tracts shall not create a duty on the part of the City to develop either of the tracts for public park space. To the extent that the City elects to develop either of the tracts for public use, the City agrees that it shall regularly maintain the buildings, infrastructure, lawns and landscaping of the developed tracts. For the purposes of this paragraph only, "develop" shall mean any disturbance of land, landscaping, modification of topography, construction of buildings or addition of infrastructure or equipment to accommodate the use of the park(s) by the public. To the extent that the City elects not to develop any or all of the tracts for public park space, it shall, at a minimum, be responsible for cleaning and removal of trash and debris and clearing and removal of dead or diseased trees and shrubs, removal of weeds and overgrowth, and maintenance of a generally acceptable appearance not inconsistent with surrounding properties' use and enjoyment.

3) Limitation on Use

The City shall not use the Park Tracts for any purpose other than passive public parks without Newland's written permission. Further, the City shall not design, develop or use any of the park areas in a manner that disrupts or interferes with the use, enjoyment, quiet enjoyment of any of the developed sections of RiverLights. All parks shall be subject to Newland's approval as to use and design of buildings, landscaping, lighting and access, which approval shall not be unreasonably withheld. The City agrees that it shall not donate or sell the Park Tracts to other profit or not-for profit entities without the express permission of Newland, nor shall the City use the Park Tracts for commercial purposes. If the City transfers management of any of the Park Tracts to another governmental, quasi-governmental or nongovernmental entity, the obligations of this Agreement shall be binding upon that entity. The provisions of this subsection 3 shall be recorded along with the dedication of the Park Tracts to the City.

4) Nondevelopment of Parks

If the City elects not to develop the Park Tracts subsequent to public dedication, then it shall nonetheless adequately maintain the Park Tracts in a manner jointly agreed upon with Newland. If any of the publicly dedicated Park Tracts are not developed prior to the end of twenty (20) years from the Date of Adoption, then title shall revert to Newland for use or uses not inconsistent with this Agreement. The provisions of this subsection 4 shall be recorded along with the dedication of the Park Tracts to the City.

D. School System

Newland shall reserve a site of no less than fifteen (15) acres in size for an elementary school (the "School Reservation"). The School Reservation need not be located or identified on the Master Plan. If New Hanover County and the New Hanover County Schools decide within the first twenty year term of this Agreement that an elementary school located within RiverLights could adequately serve the needs of this section of the County, and provided that a suitable location within RiverLights can be agreed upon, then Newland shall dedicate that tract to New Hanover County in fee simple along with other necessary easements for utilities and access. The school building shall be subject to reasonable architectural controls as determined by the relevant and appropriate RiverLights regulations and guidelines. If New Hanover County and the New Hanover County Schools have not decided prior to the end of the first twenty year term of this Agreement that a new elementary school is needed to serve RiverLights and the surrounding areas, or, if New Hanover County and the New Hanover County Schools determine that another site in the region outside the RiverLights development is better situated to serve RiverLights and the surrounding areas, then upon either event the School Reservation shall become void.

E. Public Access

1) Lake Access

Newland shall provide a location within the town center of the MX-CD District for public access to the lakes that abut and serve the MX-CD District, as shown on the

Master Plan. Access shall not constitute public dedication. Public use shall be subject to reasonable rules and regulations as determined from time to time by the Master Declarations and Covenants recorded by Newland as to the Development.

2) Public Water Access

The City shall pursue all applicable permits for a public boat ramp or ramps to the Cape Fear River, at least one of which shall be located in the MX-CD District. If more than one boat ramp is permitted by the applicable government agencies and authorities, then the City, at its election, may assign the permit for one of the ramps to Newland for exclusive use by its property owners. Any ramp or ramps deeded to Newland for exclusive use of its owners shall be maintained at Newland's expense. Newland shall cooperate with the City in applying to the State of North Carolina for a public water access location to be developed in the MX-CD District.

F. Firing Range

The City owns and operates an outdoor firing range in the vicinity of RiverLights, located north of Barnards Creek adjacent to the South Side Wastewater Treatment Plant. Newland contends and the City agrees that a firing range in this location would create substantially contrasting and conflicting uses and that the shooting range would prevent or deter the development of the MX-CD District and impede the quiet enjoyment of its use. Newland and the City agree that each will search for an alternate location at least four miles from RiverLights, and that said search shall begin upon the Date of Adoption. Each party shall use commercially reasonable efforts to find an alternate location and each party shall coordinate its search efforts with the other. The City further agrees that it shall take all necessary steps to either (1) complete the search and construction of a replacement firing or (2) close the firing range by such date that Newland applies for and receives its first certificate of occupancy for any building in the MX-CD District or R7-CD District phases.

As an alternative to removing and replacing the existing outdoor firing range, the City may fully enclose the existing firing range with sufficient sound attenuation technology so that noise from the range shall not be heard from RiverLights.

XII. DEVELOPMENT SCHEDULE AND PHASING

A. Development Schedule

1) Road and Utility Infrastructure

The River Road realignment shall be completed prior to the first certificate of occupancy issued for any of the phases or parcels within the Development. All other transportation and traffic mitigation improvements shall be completed in accordance with the schedule set forth in Exhibit F. Upgrades to pump stations and force mains shall be completed as specified in the Utility Authority Development Agreement, but in any event

prior to the issuance of the first certificate of occupancy issued for any phase or parcel within the Development and served by the force main or pump stations

2) Within Five Years of Adoption

Within five years of the Date of Adoption, Newland shall have commenced and partially completed the MX-CD District, and Phases 1A and 1C.

3) Within Ten Years of Adoption

Within ten years of the adoption of this Agreement, Newland shall have commenced and substantially completed the MX-CD District and commenced development of at least half of the remaining areas.

4) Failure to Meet Schedule not a Material Breach

The above-described and statutorily-required commencement and completion schedules are for general planning purposes only and do not constitute performance guarantees on Newland's behalf Pursuant to N C G.S Sec. 160A-400 25(b), the failure to meet the commencement or completion dates identified above shall not, in and of themselves, constitute a material breach of this Agreement. Whether the failure to meet any of the timelines identified above constitutes a material breach shall be considered in the context of good faith efforts to develop RiverLights, unanticipated regulatory or other land development issues, and difficulties or impediments arising out of national or international economic circumstances which create economic obstacles to meeting these general timelines

B. Development Phasing

1) First Building Permit

Prior to the issuance of the first building permit for any of the commercial or residential buildings in the Development, Newland shall have completed all water and sewer interim upgrades required by the Utility Authority Development Agreement

2) First Certificate of Occupancy

Prior to the issuance of the first certificate of occupancy for any (i) commercial building or (ii) residential building used for purposes other than as a model to attract and display housing options for prospective buyers, Newland shall make the following improvements or payments

a) Realignment, construction and dedication of River Road;

b) The fire service fee payments required in Section XI A or, alternatively, dedicate land for a fire station, provided the City has elected that option, and the site plans showing the dedication have been approved by the Technical Review Committee and the Subdivision Review Board

3) Miscellaneous

a) Secondary Access

Secondary access points to Lorraine Drive, Wilderness Road and Arnold Road and accompanying sidewalk improvements shall be completed prior to the issuance of the first certificate of occupancy within the development phase that includes each of these respective secondary access points. If the secondary access points involve more than one development phase, then the connection shall not be required prior to the issuance of the first certificate of occupancy for the phase contiguous with the adjoining subdivision to the east of the development.

b) Off-site Water and Sewer Improvements

Off-site water and sewer improvements shall be completed as required by the Utility Authority Development Agreement.

c) Stormwater Infrastructure

Stormwater infrastructure shall be completed prior to the issuance of the first building permit for the separate phase or parcel the infrastructure serves.

d) Public Parks

Dedication of land for the Park Tract in the MX-CD District shall be effected with the submittal of plats for the MX-CD District. The public park at River Road and Motts Creek shall be dedicated upon completion and dedication of the realigned River Road.

e) Road Payment

The Road Payment shall be made as required in Section VIII D above.

f) Transportation Improvements

Phase 1 and 2 transportation improvements shall be completed as specified in Exhibit F.

C. Permits Required

The following permits are required by local, state and federal laws.

- 1) N C State Building Code permits for all matters within State Building Code purview
- 2) 401 (state) and 404 (federal) permits
- 3) Sedimentation and Erosion Control permits
- 4) City of Wilmington Stormwater Permits

- 5) NC DENR Stormwater Permit
- 6) NC DENR PWS Permit
- 7) NCDOT Access and Encroachment Permits
- 8) NC DENR Sanitary Sewer Permits

The failure of this Agreement to address a particular permit, condition term or restriction does not relieve Newland from complying with the permitting requirements, conditions, terms or restrictions.

XIII. ADMINISTRATION

A. Review Process

1) Dedicated Planner

The City shall designate one member of the Development Services Department or successor department to serve as a "Designated Planner" who shall be involved in all aspects of the planning, approval and permitting processes and who shall be the primary contact on all matters controlled or administered by the Department of Development Services. The City shall use best efforts to maintain the same designated planner on a long-term basis for purposes of continuity and consistency. The City further agrees to assign this duty to a senior level departmental employee.

2) Review Timelines

The City shall, not inconsistent with times prescribed by law, expeditiously consider and review for approval or disapproval all plans, plats, drawings and permit requests related to RiverLights. Disapprovals and denials shall be accompanied with full explanations regarding the disapproval or denial so that inadequacies in the plans, plats, drawings or permit application can be expeditiously remedied or addressed.

B. Law and Permits in Effect at Time of the Agreement Govern Development

1) Laws, Regulations and Ordinances

Unless specifically and otherwise noted herein, the laws, resolutions, comprehensive plans, regulations, technical standards, policies, rules and ordinances of the City applicable to the Development are those in force as of the Date of Adoption. Accordingly, Newland and its successors in interest shall, for the duration of this Agreement, have a vested right to develop RiverLights in accordance with the Master Plan, the terms of this Agreement, the terms of the LDC and any applicable laws, resolutions, comprehensive plans, regulations, technical standards, policies, rules and ordinances as they exist as of the Date of Adoption during the entire term of this

Agreement Except as specifically referenced herein, the City may not apply subsequently adopted ordinances or development policies to the Development during the term of this Agreement without the written consent of Newland or its successors in interest. Approved major and minor modifications shall have no effect on Newland's vested rights established herein, except to the limited extent that the requested modification(s) incorporates laws or regulations adopted subsequent to the date of this Agreement's adoption. To the extent that Newland's requested modification(s) incorporates laws or regulations adopted subsequent to the date of this Agreement's adoption, Newland shall become vested as to those laws and regulations as though they existed at the time of this Agreement's adoption. If Newland adopts or incorporates later-enacted laws, regulations or technical standards that do not require modifications to the Master Plan or this Agreement, then Newland shall become vested as to those laws, regulations or technical standards as though they existed at the time of this Agreement's adoption. Additionally, no future City development moratoria or City development impact fees shall apply to the Development without the written consent of Newland or its successors in interest. Each of Newland and the City shall, for the duration of this Agreement, retain on file master copies of the LDC and all other applicable regulations and technical standards as they exist on the Date of Adoption.

2) Permits

To the extent permitted by G S 160A-360(i) and other applicable law, permits or approvals previously received from New Hanover County and any other local or state agencies are hereby recognized by the City of Wilmington and vested pursuant to this Development Agreement, except as those permits or approvals are modified or abandoned by Newland. Specifically recognized as a nonconforming use is the sand mining on the property pursuant to state permit. It is agreed that sand mining, by its nature, is not specifically confined to one location or locations and that any changes in location or volumes mined pursuant to existing permits shall not constitute the expansion of a nonconforming use.

3) Common Law Vesting

The vesting of rights and privileges described in subparagraphs (1) and (2) above shall not preclude Newland from establishing permanent vested rights according to the doctrines and principles of common law.

C. Amendment

1) Amendments by Newland

As discussed herein, "major revisions" shall be interpreted consistently with "material terms" as "material terms" is defined in Section XIII E below. Major revisions shall also include any change or amendment requiring approval by the City Council, and shall not include changes to this Agreement or the Master Plan that are categorized herein or under the LDC as "minor revisions."

As discussed herein, "minor revisions" shall be interpreted consistently with the definition of a minor revision as provided for in Section 18-89 of the LDC on the date of this Agreement's adoption and with Section XIII E below. Minor revisions and mere technical revisions to the Master Plan (collectively, "Minor Revisions") shall not require public hearings and review by the Planning Commission or City Council but may be approved administratively by the City Manager or other person designated by the City Manager or by the Technical Review Committee if Technical Review Committee review and approval is otherwise required by the LDC or this Agreement. Minor revisions shall include, but not be limited to, changes in the following: exterior building materials, building footprint location, utility placement, roadway designs, parking configurations and any change in the outer boundaries of any Phase or Parcel so long as the size of the MX-CD District is not increased and overall densities are not increased.

Changes allowed by City staff or approved by the City shall become incorporated into a revised Master Plan, which revised plan shall become incorporated into this Agreement automatically without further action by the City. The City shall develop a system for maintaining electronic, paper and other records necessary to reflect up-to-date modifications and amendments to the Master Plan.

Newland may change or modify the designation of each tract without such change or modification being considered a change or modification to the Master Plan or this Agreement. A change in the physical boundaries of any tract shall be considered a modification of the Master Plan and this Agreement. However, changes in the physical boundaries of any tract shall be considered a minor change to the Master Plan, if such changes meet the requirements of minor changes described above.

2) Amendments by the City of Wilmington

Pursuant to N.C. Gen. Stat. § 160A-400 26(c), the City may, after notice and public hearing, adopt an ordinance amending this Agreement if newly adopted State or Federal laws prevent or preclude compliance with this Agreement. The City agrees that in such future circumstances that it shall take all appropriate measures to adopt modifications and amendments to this Agreement that are as close as possible to this original Agreement without violating newly enacted State or Federal laws.

3) Amendments to Correct Typographical or Other Error

Amendments to correct typographical errors, incorrect internal references or other clerical matters that are necessary for clarity or interpretation and that do not affect the obligations or responsibilities of either party may be made upon written consent of Newland and the City. A revised copy of the Agreement shall be recorded in the Office of the Register of Deeds of New Hanover County.

D. Binding Effect

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto.

E. Periodic Review

1) Determination of Compliance

The City Manager shall conduct a periodic review at least every twelve (12) months (the "Periodic Review"), at which time Newland shall be required to demonstrate good faith compliance with the terms of this Agreement. Failure by the City to detect noncompliance upon inspection shall not constitute waiver of any breach or noncompliance detected upon later inspection

The Utility Authority Development Agreement shall govern all matters related to development, payment, dedication, construction and maintenance of water and sewer infrastructure, and it shall be enforced according to its own terms. Inconsistencies between the interpretation of this Agreement and the Utility Authority Development Agreement or the obligations established in each development agreement shall first be attempted through discussion and negotiation among all parties, as further provided in Section IX B above. Secondly, any party may seek a Declaratory Judgment regarding conflicts between the two agreements in New Hanover County Superior Court. The City Manager or his designee shall consult with the Executive Director of the Utility Authority on matters related to compliance with construction and maintenance of water and sewer utilities

2) Notice of Breach

If, as a result of the Periodic Review or other review, the City finds and determines that Newland has committed a material breach of the terms or conditions of the Agreement, the City shall serve notice upon Newland in writing, within a reasonable time but not later than ninety (90) days after the determination of breach setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing Newland a reasonable time in which to cure the material breach, which time shall not be less than sixty (60) days. If, as a result of the Periodic Review or other review, the City finds and determines that Newland has committed a minor breach of the terms or conditions of the Agreement or Master Plan or the LDC, then the City shall provide notice as provided in Section 18-52(a) of the LDC

3) Remedies for Breach

a) Material and Minor Breach Defined

A "material breach" is defined as a failure to meet or comply with any of the negotiated terms or provisions herein that would require City Council action to amend or change those terms or provisions. The aforementioned negotiated terms and provisions shall be referred to as "material terms." Included among the material terms of this Agreement are all dedications and amenities described in Section XI above

A "minor breach" is defined as a failure to meet or comply with any of the terms of provisions herein that can be changed by the City Manager or Technical Review Committee. A minor breach shall also include any violations of requirements of the N.C

State Building Code and violations of any term or provision of the LDC or other local law or regulation that applies generally to all developments within the City jurisdiction and that is not a negotiated term of this Agreement

b) Remedies Available Only for Material Breach

Termination or modification of this Agreement shall be available remedies only for violations that constitute a material breach. Specifically, failure to comply with terms of the N C. State Building Code or any terms of the LDC or other local regulations shall not give rise to termination or modification of this Agreement.

c) Remedies Available for Minor Breach

Upon determination that a minor breach exists, only the penalties and remedies of LDC Section 18-52 shall be available

d) Appeal of Determination of Material Breach

If Newland fails to cure a material breach within the time given, then the City may unilaterally terminate or modify the Agreement, provided, however, that the notice of termination or modification or finding of breach may be appealed to the City of Wilmington Board of Adjustment (the "Board of Adjustment"). The rights of the City to terminate or modify this Agreement as provided in this paragraph shall be suspended during the time Newland is either (a) appealing the finding of breach to the Board of Adjustment or, subsequently, to the General Court of Justice, or (b) is making good faith and reasonable attempts to cure the alleged default

F. Exculpation of Nonrecourse Parties

As used herein, the term "Nonrecourse Parties" shall mean, collectively, The State of California Public Employees' Retirement System, NNP IV Investors, LLC, a Delaware limited liability company, and any director, indirect partner, shareholder, member, officer, director, trustee, agent, or employee thereof. No Nonrecourse Party shall be liable in any manner or to any extent under or in connection with this Agreement or the Project, and neither the City nor any successor, assignee, partner, officer, director, or employee of the City shall have any recourse to any assets of a Nonrecourse Party other than such party's interest in Newland's RiverLights development to satisfy any liability, judgment or claim that may be obtained or made against any such Nonrecourse Party under this Agreement or in connection with the RiverLights development. The City agrees it shall look solely to the assets of Newland in Newland's RiverLights development for the enforcement of any claims arising hereunder or related to this Agreement or the development, and it hereby waives any claim or claims against each of the Nonrecourse Parties, irrespective of the compliance or noncompliance now or in the future with any requirements relating to the limitation of liability of members of limited liability companies, shareholders of corporations or limited partners of limited partnerships. The terms of this section are a material consideration and inducement to Newland to enter into this Agreement, and but for the inclusion of such provision in this Agreement, Newland would not enter into this Agreement. The limitation of liability

provided in this Section is in addition to, and not in limitation of, any limitation on liability applicable to a Nonrecourse Party provided by law or by this Agreement or any other contract, agreement or instrument

G. Default

1) Legal Remedies

The failure of Newland or the City to comply with the material terms of this Agreement shall constitute a default, entitling the non-defaulting party or parties to pursue such remedies as allowed under applicable law against the defaulting party only, provided, however, that no termination of this Agreement may be declared by the City without first granting Newland notice and sixty (60) days opportunity to cure, or such longer period as may reasonably be necessary to complete such cure as long as the breaching party commences such cure promptly after its receipt of the default notice and diligently pursues such cure to completion. In addition to any other rights or remedies, any party may institute legal action against a defaulting party to cure, correct, or remedy any default or material breach; to specifically enforce any covenants or agreements set forth in the Agreement, to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of New Hanover County, State of North Carolina, and the parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction

2) Administrative Remedies

In the event that Newland fails to perform any of its material covenants, commitments and obligations hereunder after reasonable written notice and an opportunity to cure, the City may, until such default is cured, withhold the issuance of any further building permits for buildings or renovations owned by Newland or upfitting sponsored by Newland within the Development or withhold the issuance of certificates of occupancy for any building owned by Newland within the Development that has not been purchased or has not been placed under contract for sale. Appeal to the Board of Adjustment or to the General Court of Justice on appeal of the Board of Adjustment's decision regarding the City's allegation of breach of this Agreement shall stay all further proceedings

Administrative remedies for minor breaches shall be governed by LDC Section 18-52

H. Notices

Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder 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 herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by any reasonable and reliable electronic

method, by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. Electronic communications shall be confirmed by U S Mail or independent courier delivery Parties shall make reasonable inquiry to determine whether the names of the persons listed in this Agreement should be substituted with the name of the listed person's successor Notwithstanding the foregoing, it is not the intent of this section that formal notice be made for regular or routine communications between the City and Newland concerning permit requests, site plan reviews or other daily matters related to the development of the project

All notices, demands, requests, consents, approvals or communications shall be addressed:

To the City at:

City of Wilmington
Post Office Box 1810
102 N. Third Street
Wilmington, NC 28402-1810
Attn Sterling B Cheatham
City Manager
Telephone. (910) 341-7836
Fax (910) 341-5924
Email: sterling.cheatham@wilmingtonnc.gov

with copies to

City of Wilmington
Post Office Box 1810
305 Chestnut Street
Wilmington, NC 28402-1810
Attn Thomas C Pollard
Legal Department
Telephone (910) 341-7820
Fax (910) 341-5824
Email: tom_pollard@wilmingtonnc.gov

To Newland at:

Richard L Croteau
NNP IV-Cape Fear River, LLC
c/o Newland Communities
228 N Front Street
Suite 101
Wilmington, N C 28401
Telephone (910) 442-2840

Fax: (910) 442-2850
Email rcroteau@newlandcommunities.com

Keith Hurand
NNP IV-Cape Fear River, LLC
c/o Newland Communities, LLC
228 N Front Street
Suite 101
Wilmington, NC 28401
Telephone (910) 442-2840
Fax (910) 442-2850
Email khurand@newlandcommunities.com

Sharon W Koplán
Regional General Counsel
Newland Communities, LLC
Two Galleria Tower, Suite 1000
Dallas, Texas 75240
Phone (972) 778-8241
Fax (972) 851-7868
Email skoplan@newlandcommunities.com

with copies to

Michael V Lee
Smith Moore Leatherwood LLP
300 North 3rd Street, Suite 301
Wilmington, North Carolina 28401
Telephone: (910) 815-7100
Fax. (910) 815-7200
Email michael.lee@smithmoorelaw.com

I. Entire Agreement

Except as contained in or provided for in any conditions contained in the Master Plan for the Development or any approved drawings or plats of record, as the Master Plan or drawings or plats may be modified from time to time, this Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between Newland and the City related to the Development, and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties related to the matters addressed herein other than as set forth or as referred to herein or as contained in the LDC or as expressed in the development conditions applicable to these parcels of land

J. 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 hereto

Unless referenced as a decision to be made by City staff or the Subdivision Review Board or Technical Review Committee, all references herein to decisions made by the City shall be decisions made by the City Council

K. Assignment

After notice to the City, Newland may assign its rights and responsibilities hereunder to subsequent landowners or successors in interest of all or any portion of the relevant parcels of land, provided that no assignment as to a portion of the relevant parcel of land shall relieve the assigning party of responsibility with respect to the remaining portion of the relevant parcel or parcels of land owned by the assigning party without the written consent of the City, which consent shall not be unreasonably withheld. Subject to the provisions of N C G S § 39-23.4, in the event that Newland sells all of its relevant parcel or parcels of land and assigns its respective rights and responsibilities to a subsequent landowner or other successor in interest, then such selling or assigning party shall be relieved of all of its covenants, commitments and obligations hereunder

L. Governing Law

This Agreement shall be governed by the laws of the State of North Carolina,

M. No Pledge of Taxing Power or Governmental Authority

No provision of this Agreement shall be construed or interpreted as (1) creating a pledge of the faith and credit of the City within the meaning of any constitutional debt limitation, (2) delegating governmental powers, or (3) a donation or a lending of the credit of the City within the meaning of the Constitution of the State of North Carolina. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of City monies, or operate beyond its intended scope so as to restrict, to any extent prohibited by law, any future action or right of action on the part of the Wilmington City Council. To the extent of any conflict between this section and any other provision of this Agreement, this section shall take priority. The City has had this Agreement, and the obligations contemplated hereunder, pre-audited to ensure compliance with the budgetary accounting requirements (if any) that apply. This Agreement is conditioned upon, and shall not become operative until, any required pre-audited certification is supplied.

N. 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

O. Severability

If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions

P. Authority

Each party represents that it has undertaken all actions necessary for corporate or public approval of this Agreement, and that the person signing this Agreement has the authority to bind Newland or the City

Q. Approval and Recordation

This Agreement shall be executed by each of the City and Newland and recorded by Newland within fourteen (14) days of the City's execution. Failure to record within fourteen days shall not be deemed a material breach of this Agreement enabling the City to modify or terminate this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

NNP-IV CAPE FEAR RIVER, LLC

By: [Signature]

Title Senior Vice President

Adopted by the City of Wilmington City Council this the 19th day of May, 2009



[Signature]
Bill Saffo, Mayor

Attest: [Signature]
City Clerk

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

By [Signature]
City of Wilmington Finance Director

* No appropriation has been made and based on the advice of the City Attorney, there is no requirement to do so

APPROVED AS TO FORM

[Signature]
City Attorney

New Hanover County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated Keith Hurand, Senior Vice President of NNP-IV Cape Fear River, LLC (name(s) of principals)

Date 6-10-09

Mandy Dunnigan

[Notary's Signature]

MANDY DUNNIGAN
NOTARY PUBLIC
BRUNSWICK COUNTY, NC
My Commission Expires 10-11-2012

[Official Seal]

Mandy Dunnigan

[Notary's Printed or Typed Name]

My Commission Expires 10-11-2012

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, the undersigned Notary Public, do hereby certify that Penelope Spicer-Sidbury personally appeared before me, and who being duly sworn, says that she know the common seal of the City of Wilmington and is acquainted with Bill Saffo, Mayor, of the city of Wilmington, and that Penelope Spicer-Sidbury is Clerk of the city of Wilmington and saw the said Bill Saffo, Mayor, of the City of Wilmington, sign the foregoing instrument, and saw the common seal of said City of Wilmington affixed to said instrument by said Mayor that she, the said Penelope Spicer-Sidbury, Clerk as aforesaid, signed her name in attestation of the due execution of said instrument in the presence of said Mayor of the City of Wilmington. I certify that Penelope Spicer-Sidbury personally appeared before me this day and I have personal knowledge of the identity of Penelope Spicer-Sidbury

Witness my hand and notarial seal, this the 5th day of June, 2009

My Commission Expires.

10-19-09

Diane E. Dayton

Notary Public

Printed Name

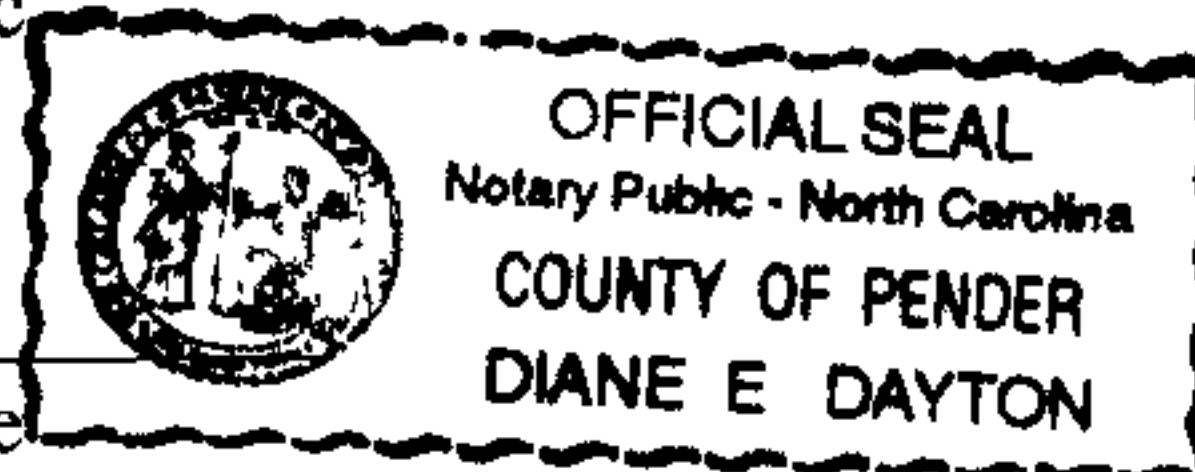


EXHIBIT A

PROPERTY DESCRIPTION
ENTIRE PARCEL

That certain parcel or parcels of land located in Masonboro Township, New Hanover County, North Carolina and being a portion of the parcel as described in Deed Book 5038 Page 428 and recorded in the New Hanover County Register of Deeds Office

Commencing at a point, said point being in the centerline of Barnards Creek at the bridge over said creek, from a map by Hanover Design Services titled "ALTA/ACSM Land Title Survey For Newland Communities LLC and Chicago Title Insurance Company" dated August 2005, said point having NC GRID NAD 83(2001) coordinates of North 150478 7691 and East 2321328 7394, said point being the true **Point of Beginning**,

Thence from the **Point of Beginning**, and with said creek South 53°09'26" East, a distance of 53 97 feet, thence South 53°09'26" East, a distance of 79 85 feet, thence South 69°49'35" East, a distance of 49.87 feet, thence North 84°21'17" East, a distance of 60 56 feet, thence North 73°25'44" East, a distance of 180 56 feet, thence South 84°45'14" East, a distance of 37 85 feet, thence South 58°35'29" East, a distance of 55 13 feet, thence South 43°33'44" East, a distance of 103 24 feet, thence South 43°33'44" East, a distance of 156 52 feet, thence South 38°25'36" East, a distance of 44 15 feet, thence North 86°46'10" East, a distance of 50 17 feet, thence North 53°58'43" East, a distance of 103 84 feet, thence North 28°05'54" East, a distance of 48.72 feet, thence North 00°17'59" West, a distance of 52 93 feet, thence North 20°59'30" West, a distance of 186 75 feet; thence North 05°34'12" East, a distance of 79 51 feet, thence North 33°14'38" East, a distance of 75 14 feet, thence North 54°42'03" East, a distance of 83 72 feet, thence South 86°19'49" East, a distance of 38 65 feet, thence South 43°26'39" East, a distance of 137 89 feet, thence South 53°06'19" East, a distance of 38 97 feet, thence North 66°33'16" East, a distance of 34 13 feet, thence North 21°43'36" East, a distance of 136.04 feet, thence North 32°42'37" East, a distance of 74 96 feet, thence North 84°38'23" East, a distance of 110 64 feet, thence South 57°37'55" East, a distance of 44 02 feet, thence South 11°45'00" East, a distance of 95 82 feet, thence South 09°37'07" East, a distance of 45 12 feet, thence South 33°10'39" East, a distance of 66 74 feet, thence South 67°14'04" East, a distance of 90 00 feet, thence South 69°53'34" East, a distance of 124 31 feet; thence North 80°50'48" East, a distance of 95.14 feet, thence North 77°48'28" East, a distance of 163 54 feet, thence North 55°33'32" East,

a distance of 169 56 feet, thence North 69°11'10" East, a distance of 113 41 feet, thence North 89°05'18" East, a distance of 174 73 feet, thence North 85°36'07" East, a distance of 87 04 feet, thence North 73°38'17" East, a distance of 139 01 feet, thence South 79°46'10" East, a distance of 163 44 feet, thence North 88°05'18" East, a distance of 300 68 feet, thence South 34°40'05" East, a distance of 72 23 feet, thence South 57°31'44" East, a distance of 73 71 feet, thence South 80°41'20" East, a distance of 112 54 feet; thence South 68°03'35" East, a distance of 78 46 feet, thence South 43°06'00" East, a distance of 69.15 feet, thence South 75°03'40" East, a distance of 125 28 feet, thence South 52°18'53" East, a distance of 139 11 feet, thence South 52°17'33" East, a distance of 131 74 feet, thence South 61°49'55" East, a distance of 239 34 feet, thence North 87°04'03" East, a distance of 121 02 feet, thence South 44°07'45" East, a distance of 140 66 feet, thence South 48°40'31" East, a distance of 412 15 feet, thence leaving said creek and with the northern line of a 70 foot Carolina and Power Light easement South 08°15'38" East, a distance of 6258 84 feet, thence South 49°19'26" East, a distance of 669 96 feet, thence South 49°11'31" East, a distance of 1664 35 feet, thence South 49°19'27" East, a distance of 500 21 feet, thence South 34°05'06" West, a distance of 756 59 feet, thence South 55°54'54" East, a distance of 653 10 feet to a point in the centerline of Motts Creek, thence with said creek South 50°33'49" West, a distance of 23 30 feet, thence South 85°33'53" West, a distance of 48 39 feet, thence North 89°33'01" West, a distance of 44 90 feet, thence South 61°39'03" West, a distance of 37 96 feet, thence South 07°08'33" West, a distance of 44 93 feet, thence South 40°12'39" West, a distance of 31 59 feet, thence South 69°42'28" West, a distance of 25 12 feet, thence South 28°40'33" West, a distance of 26 48 feet; thence South 41°01'26" East, a distance of 27 39 feet; thence South 28°50'02" East, a distance of 28 83 feet, thence South 24°59'05" West, a distance of 21 63 feet, thence South 73°43'39" West, a distance of 37 10 feet, thence South 54°02'37" West, a distance of 30 46 feet, thence South 21°00'30" West, a distance of 35.82 feet, thence South 06°43'13" West, a distance of 35 25 feet, thence South 15°56'21" West, a distance of 49 61 feet, thence South 31°28'37" West, a distance of 117 89 feet, thence South 31°55'55" West, a distance of 86 02 feet, thence South 44°20'44" West, a distance of 58 61 feet, thence South 83°55'45" West, a distance of 22 92 feet, thence North 58°43'17" West, a distance of 35 66 feet, thence North 78°35'09" West, a distance of 35 15 feet, thence South 78°40'47" West, a distance of 40 80 feet, thence South 49°52'47" West, a distance of 51 07 feet, thence South 16°59'35" West, a distance of 83 53 feet, thence South 09°10'15" West, a distance of 40 73 feet, thence South 07°14'42" East, a distance of 36 50 feet, thence South 20°16'00" West, a distance of 28 79 feet, thence South 59°57'27" West, a distance of 36 27 feet, thence South 60°49'10" West, a distance of 54 79 feet, thence South 15°47'31" West, a distance of 32 16 feet, thence South 21°12'58" East, a distance of 51 44 feet, thence South 07°07'06" West,

a distance of 26 79 feet, thence South 49°00'57" West, a distance of 62 00 feet, thence South 59°08'02" West, a distance of 29 83 feet, thence South 59°08'02" West, a distance of 51 03 feet, thence South 38°50'21" West, a distance of 50 88 feet, thence South 38°50'21" West, a distance of 8 23 feet, thence South 16°37'29" West, a distance of 79 73 feet, thence South 20°23'04" West, a distance of 89 30 feet, thence South 58°09'16" West, a distance of 67 02 feet, thence South 36°23'22" West, a distance of 58 24 feet, thence South 10°15'04" West, a distance of 96 68 feet, thence South 27°46'35" West, a distance of 63 48 feet, thence South 03°42'22" West, a distance of 45 01 feet, thence South 09°42'28" East, a distance of 54 90 feet, thence South 46°54'17" West, a distance of 44 53 feet; thence South 84°05'59" West, a distance of 74 13 feet, thence South 26°13'45" West, a distance of 56 55 feet, thence South 25°24'56" East, a distance of 42 02 feet, thence South 14°25'33" East, a distance of 35 61 feet, thence South 39°18'41" West, a distance of 65 81 feet, thence South 18°16'00" West, a distance of 76 11 feet, thence South 23°33'13" West, a distance of 103 29 feet, thence South 61°52'57" West, a distance of 67 84 feet; thence North 69°31'29" West, a distance of 86 75 feet; thence North 84°02'33" West, a distance of 63 41 feet, thence South 37°16'14" West, a distance of 60 30 feet, thence South 21°14'54" West, a distance of 85 36 feet, thence South 77°53'58" West, a distance of 31 72 feet, thence South 62°25'46" West, a distance of 99 31 feet, thence South 53°13'07" West, a distance of 38 31 feet, thence South 70°45'40" West, a distance of 95 77 feet, thence South 30°07'24" West, a distance of 57 77 feet, thence South 24°11'46" West, a distance of 56 40 feet, thence South 46°28'29" West, a distance of 60 12 feet, thence North 56°18'35" West, a distance of 41 30 feet, thence North 69°33'21" West, a distance of 35 52 feet, thence South 52°21'30" West, a distance of 104 69 feet, thence South 44°44'56" West, a distance of 128 98 feet, thence South 87°24'27" West, a distance of 150 48 feet, thence South 64°41'40" West, a distance of 80 37 feet, thence South 11°20'37" West, a distance of 74 45 feet, thence South 00°51'16" East, a distance of 72 77 feet, thence South 04°30'42" West, a distance of 50 85 feet, thence South 71°49'25" West, a distance of 47 74 feet, thence North 75°25'20" West, a distance of 44 60 feet, thence South 66°51'30" West, a distance of 52.46 feet, thence South 39°43'19" West, a distance of 80 73 feet, thence South 65°58'27" West, a distance of 49 01 feet, thence North 59°33'58" West, a distance of 41 57 feet, thence North 34°24'20" West, a distance of 84 92 feet, thence North 88°10'20" West, a distance of 48 29 feet, thence South 37°38'19" West, a distance of 66 89 feet, thence North 84°06'24" West, a distance of 47.86 feet, thence North 25°33'03" West, a distance of 59 11 feet, thence North 30°21'52" West, a distance of 48 05 feet, thence North 77°22'48" West, a distance of 167 99 feet, thence South 53°13'02" West, a distance of 51 44 feet, thence South 11°09'00" West, a distance of 101 98 feet, thence South 47°17'10" West, a distance of 58 00 feet, thence South 80°20'00" West, a distance of 124 01 feet; thence South

65°21'50" West, a distance of 74 26 feet, thence South 20°41'21" West, a distance of 96 85 feet, thence South 53°21'07" West, a distance of 55 49 feet, thence North 56°22'50" West, a distance of 64 12 feet, thence North 25°14'15" West, a distance of 92 43 feet, thence North 62°05'43" West, a distance of 92.91 feet, thence South 81°50'24" West, a distance of 52 82 feet to a point on the eastern bank of the Cape Fear River, the high water line, thence with said line North 10°47'39" West, a distance of 294 43 feet, thence North 24°26'42" East, a distance of 127 71 feet, thence North 15°08'34" East, a distance of 306 12 feet, thence North 50°40'57" East, a distance of 115 62 feet; thence North 12°39'11" West, a distance of 238 73 feet, thence North 49°50'53" West, a distance of 122 88 feet, thence North 06°47'12" West, a distance of 393 49 feet, thence North 27°49'23" West, a distance of 193 73 feet, thence North 25°55'22" West, a distance of 357.60 feet, thence North 29°56'05" West, a distance of 341 18 feet, thence North 58°44'18" West, a distance of 241 69 feet, thence North 39°40'47" West, a distance of 299 58 feet, thence North 23°05'07" West, a distance of 164 14 feet, thence North 04°11'35" West, a distance of 227 14 feet, thence North 05°28'54" East, a distance of 67 77 feet, thence North 38°09'49" West, a distance of 38 23 feet, thence North 18°17'15" West, a distance of 42 04 feet, thence North 20°52'13" West, a distance of 47 85 feet, thence North 36°13'18" West, a distance of 68 65 feet, thence North 22°08'25" West, a distance of 38 31 feet, thence North 43°14'20" West, a distance of 87 49 feet, thence North 45°48'07" West, a distance of 81 26 feet, thence North 63°59'07" West, a distance of 51 35 feet, thence North 53°43'11" West, a distance of 80 34 feet, thence North 46°03'10" West, a distance of 66 80 feet, thence North 46°18'57" West, a distance of 80 04 feet; thence North 47°05'20" West, a distance of 52 40 feet, thence North 51°02'09" West, a distance of 75 58 feet, thence North 52°40'52" West, a distance of 68 78 feet, thence North 55°13'26" West, a distance of 137 37 feet, thence North 45°49'54" West, a distance of 71 80 feet; thence North 49°19'58" West, a distance of 53 51 feet, thence North 54°14'57" West, a distance of 73 51 feet, thence North 57°09'03" West, a distance of 67 42 feet, thence North 55°27'26" West, a distance of 96 66 feet, thence North 61°56'21" West, a distance of 57 50 feet, thence North 57°22'16" West, a distance of 58 05 feet, thence North 50°25'00" West, a distance of 24 44 feet, thence North 69°47'16" West, a distance of 41.32 feet, thence North 57°19'20" West, a distance of 48 74 feet, thence North 47°03'41" West, a distance of 69 03 feet, thence North 29°15'25" West, a distance of 32 03 feet, thence North 56°12'41" West, a distance of 50 69 feet, thence North 47°03'23" West, a distance of 23 16 feet, thence North 61°53'41" West, a distance of 26 02 feet, thence North 39°57'17" West, a distance of 68 60 feet, thence North 42°17'32" West, a distance of 59.33 feet, thence North 51°28'45" West, a distance of 101 25 feet, thence North 67°28'21" West, a distance of 105 95 feet, thence North 13°02'03" West, a distance of 57 15 feet, thence North 52°12'56" West, a distance of

51 52 feet, thence North 50°48'54" West, a distance of 51 76 feet, thence North 38°04'23" West, a distance of 101 79 feet, thence North 47°11'36" West, a distance of 73 81 feet, thence North 61°37'24" West, a distance of 51 51 feet, thence North 19°05'20" West, a distance of 78 77 feet, thence North 65°54'31" West, a distance of 57 95 feet, thence North 78°54'50" West, a distance of 70 94 feet, thence North 65°53'27" West, a distance of 80 96 feet, thence North 69°25'17" West, a distance of 72 14 feet, thence North 07°13'25" East, a distance of 109 30 feet, thence North 18°31'13" West, a distance of 67 85 feet, thence North 19°44'00" West, a distance of 66 10 feet, thence North 06°20'43" West, a distance of 54 94 feet, thence North 32°28'39" West, a distance of 44 32 feet, thence North 43°33'06" West, a distance of 50 27 feet, thence North 50°02'53" West, a distance of 57 03 feet; thence North 75°59'17" West, a distance of 58 27 feet, thence South 89°54'05" West, a distance of 64 44 feet, thence North 54°08'13" West, a distance of 69 41 feet, thence North 28°04'27" West, a distance of 59 17 feet, thence North 69°22'55" West, a distance of 57 43 feet, thence North 22°01'35" East, a distance of 67 64 feet, thence North 60°16'31" East, a distance of 99 58 feet, thence North 15°40'02" East, a distance of 91 16 feet, thence North 49°47'16" West, a distance of 106 65 feet, thence North 59°40'12" East, a distance of 59 98 feet, thence North 80°56'28" East, a distance of 85 01 feet, thence North 00°47'50" West, a distance of 69 39 feet, thence North 08°02'51" West, a distance of 58 61 feet, thence North 42°13'30" West, a distance of 96 84 feet, thence North 65°32'38" West, a distance of 122 24 feet, thence North 59°46'35" West, a distance of 111 72 feet, thence North 50°51'17" West, a distance of 187 96 feet; thence North 37°20'41" West, a distance of 68 67 feet, thence North 45°12'33" West, a distance of 144 40 feet, thence North 51°54'46" West, a distance of 102 48 feet, thence North 59°57'38" West, a distance of 92 21 feet, thence North 59°57'38" West, a distance of 22 90 feet, thence North 59°16'39" West, a distance of 113 19 feet, thence North 56°13'34" West, a distance of 96 41 feet, thence North 62°33'26" West, a distance of 62 95 feet, thence North 51°27'50" West, a distance of 55 89 feet, thence North 59°38'33" West, a distance of 76 78 feet, thence North 84°03'53" West, a distance of 84 10 feet, thence North 62°33'37" West, a distance of 65 23 feet, thence North 35°44'02" East, a distance of 59.47 feet, thence North 28°44'37" East, a distance of 65 03 feet, thence North 02°36'34" West, a distance of 55 93 feet, thence North 04°54'52" East, a distance of 33 56 feet, thence North 40°22'38" West, a distance of 67 78 feet, thence North 12°49'50" West, a distance of 18 11 feet, thence North 01°40'15" West, a distance of 25 40 feet, thence North 22°53'05" West, a distance of 57 72 feet, thence North 08°44'15" West, a distance of 63 43 feet, thence North 27°19'38" West, a distance of 27 67 feet, thence North 49°45'44" West, a distance of 42 89 feet, thence North 57°00'14" West, a distance of 17 95 feet, thence North 01°01'24" East, a distance of 52 11 feet, thence North 06°09'25" West, a distance of 51 90 feet, thence North 15°48'38" West, a distance of

36 29 feet, thence North 24°41'19" West, a distance of 38 70 feet, thence North 15° 29'29" East, a distance of 45 29 feet, thence North 15°25'25" East, a distance of 34 31 feet, thence North 01°34'20" East, a distance of 31 23 feet, thence North 14°35'22" West, a distance of 43.83 feet, thence North 04°51'36" West, a distance of 23 42 feet; thence North 32°03'17" West, a distance of 26 38 feet, thence North 07°52'00" West, a distance of 37.02 feet, thence North 47°51'10" West, a distance of 44 97 feet; thence North 77°26'37" West, a distance of 46 78 feet, thence North 37°57'59" West, a distance of 102 17 feet, thence North 21°57'24" West, a distance of 47 22 feet, thence North 28°03'51" West, a distance of 52 07 feet, thence North 17°52'41" West, a distance of 65 26 feet, thence North 35°21'56" West, a distance of 41 09 feet, thence North 38°09'41" West, a distance of 83 10 feet; thence North 10°58'31" East, a distance of 60 29 feet, thence North 12°05'15" West, a distance of 68 25 feet, thence North 28°23'09" West, a distance of 40.71 feet, thence North 24°44'41" West, a distance of 70 39 feet, thence North 25°10'18" West, a distance of 92 34 feet, thence North 29°10'35" West, a distance of 100 02 feet, thence North 32°50'51" West, a distance of 87 73 feet, thence North 39°01'46" West, a distance of 93 62 feet, thence North 41°04'19" West, a distance of 104 46 feet, thence North 39°11'51" West, a distance of 107 25 feet, thence North 35°23'28" West, a distance of 44 90 feet, thence North 27°16'48" West, a distance of 47 93 feet, thence North 25°09'14" West, a distance of 51.72 feet, thence North 17°31'39" East, a distance of 58 47 feet, thence North 04°50'48" East, a distance of 24 20 feet, thence North 05°46'20" East, a distance of 135 73 feet, thence North 14°14'42" West, a distance of 63 59 feet, thence North 00°33'00" East, a distance of 45 94 feet, thence North 05°15'27" West, a distance of 114 47 feet, thence North 09°53'40" West, a distance of 84 27 feet, thence North 03°17'03" West, a distance of 65 92 feet, thence North 21°29'12" West, a distance of 70 84 feet, thence North 10°49'21" West, a distance of 79 57 feet, thence North 12°30'11" West, a distance of 65 20 feet, thence North 00°22'47" East, a distance of 41 01 feet, thence North 09°20'54" West, a distance of 68 69 feet, thence North 09°54'12" East, a distance of 47 15 feet, thence North 14°25'37" West, a distance of 89 12 feet, thence North 25°52'19" West, a distance of 61 70 feet, thence North 04°30'35" East, a distance of 49 60 feet, thence North 20°17'51" West, a distance of 83 07 feet, thence North 06°48'54" West, a distance of 32 46 feet, thence South 62°39'42" West, a distance of 437 21 feet, thence North 19°24'54" West, a distance of 689 51 feet, thence North 00°00'00" East, a distance of 346 17 feet, thence North 17°27'36" East, a distance of 809 06 feet; thence North 62°39'42" East, a distance of 423 34 feet to a point in the centerline of Bernards Creek, thence with said centerline North 67°04'48" East, a distance of 105 56 feet, thence North 56°57'36" East, a distance of 96 77 feet, thence North 46°53'59" East, a distance of 128.65 feet; thence North 38°46'13" East, a distance of 90 40 feet, thence North 67°48'01" East, a distance of 82 52 feet, thence South 82°26'46" East,

a distance of 91 34 feet, thence South 71°38'12" East, a distance of 116 93 feet, thence North 70°45'57" East, a distance of 76 97 feet, thence North 39°33'42" East, a distance of 167 94 feet, thence North 48°26'54" East, a distance of 164 55 feet, thence North 41°10'59" East, a distance of 116.16 feet, thence North 41°10'59" East, a distance of 58 24 feet, thence North 36°53'18" East, a distance of 178 77 feet, thence North 63°10'24" East, a distance of 61 00 feet, thence South 88°17'31" East, a distance of 111 84 feet, thence South 72°56'56" East, a distance of 121 92 feet, thence South 70°35'32" East, a distance of 118 01 feet, thence South 58°41'53" East, a distance of 80 58 feet to the **Point of Beginning** Containing 61,611,361 Sq Ft or 1,414 402 Acres, more or less and excepting from the above description the following two parcels

PARCEL 1

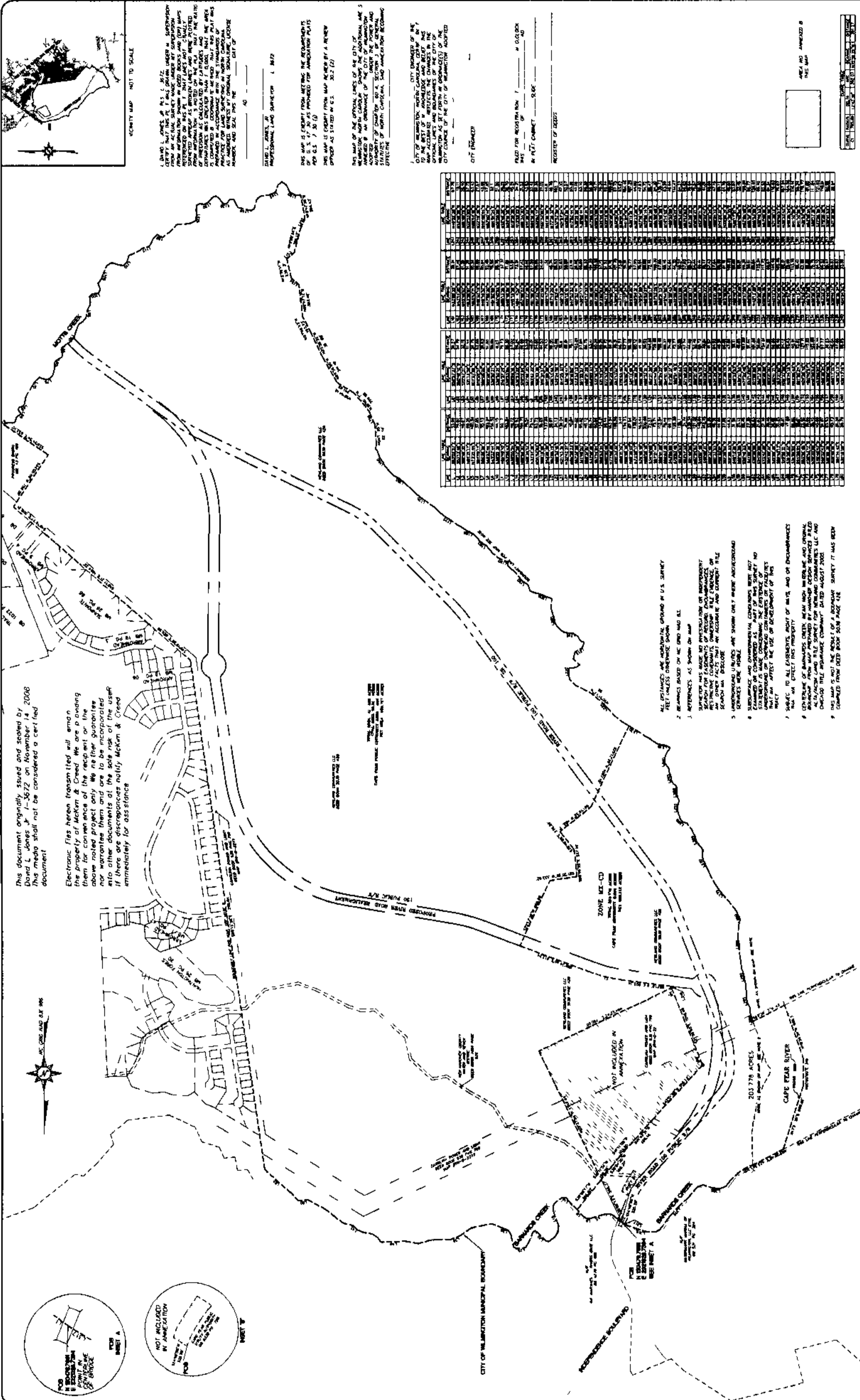
Commencing at the aforesaid point on the bridge over Bernards Creek with the previously listed coordinates, thence South 26°02'13" East a distance of 566 37 feet to a point on the common property line between Carolina Power and Light (Deed Book 938 Page 799 and Map #RW-D-2277) and Newland Communities LLC (Deed Book 5038 Page 428) the northeastern corner, said point being the **Point of Beginning**, thence with said line South 25°37'04" East, a distance of 1747 44 feet to an iron pipe, thence South 64°22'42" West, a distance of 1790 00 feet to an iron pipe, thence North 21°38'50" West, a distance of 1018 48 feet to an iron pipe, thence North 42°01'08" East, a distance of 916.13 feet, thence North 41°43'21" East, a distance of 485 16 feet, thence North 41°11'05" East, a distance of 103 95 feet, thence North 39°04'25" East, a distance of 165 37 feet, and North 39°11'51" East, a distance of 198 35 feet to the **Point of Beginning** Containing 2,396,631 94 Sq Ft or 55.019 Acres more or less

PARCEL 2

Commencing at the aforesaid point on the bridge over Bernards Creek with the previously listed coordinates, thence South 14°26'52" West a distance of 321 91 feet to a iron pipe near the existing right of way of River Road on the common property line between Cape Fear Public Utility Authority (Deed Book 5330 Page 1728) and Newland Communities LLC (Deed Book 5038 Page 428) the northeastern corner, the **Point of Beginning**; thence South 56°51'46" East, a distance of 100 00 feet, thence South 19°00'40" West, a distance of 52 06 feet to an iron pipe, thence South 30°00'24" West, a distance of 100 00 feet to an iron pipe, thence South 34°14'11" West, a distance of 140 00 feet to an iron pipe; thence North 57°03'25" West, a distance of 104 17 feet to an iron pipe near the aforesaid

right of way, thence North 39°18'56" East, a distance of 46 75 feet, thence North 36°06'59" East, a distance of 53 51 feet, thence North 32°30'55" East, a distance of 76 30 feet, thence North 27°45'09" East, a distance of 53 68 feet, thence North 20°52'36" East, a distance of 62 43 feet to the **Point of Beginning** Containing 29,005 Sq Ft or 0 666 Acres

Notwithstanding the foregoing, NNP IV-Cape Fear River, LLC, a Delaware limited liability company ("NNP IV"), does not represent, warrant or otherwise claim any portion of the Property not owned by NNP IV, including but not limited to any portions of the above described property located below the mean high water line or deemed to be public trust waters



This document, originally saved and sealed by David L. Jones, P.E. 1-16-72 on November 14, 2008. This media shall not be considered a certified document.

Electronic files herein transmitted will remain the property of McKim & Creed. We are providing them for convenience of the recipient or the above noted project only. We neither guarantee nor warrant them and are to be incorporated into other documents at the sole risk of the user. If there are discrepancies notify McKim & Creed immediately for assistance.



NOT INCLUDED IN ANNEXATION

NOT INCLUDED IN ANNEXATION

THIS MAP IS NOT A CERTIFIED SURVEY AND SHALL NOT BE USED FOR ANY PURPOSES THAT REQUIRE A CERTIFIED SURVEY. THIS MAP HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

MCKIM & CREED
 243 NORTH TROTT STREET
 WILMINGTON, NORTH CAROLINA 28401
 TEL: (910) 251-6665
 FAX: (910) 794-1114

MAP SHOWING AREA ANNEXED TO THE CITY OF WILMINGTON
 1358 717 ACRES
 MASONBORO TOWNSHIP - NEW HANOVER COUNTY - NORTH CAROLINA
 SHEET 1 OF 1
 DATE: NOVEMBER 14, 2008
 DWG #

PROJECT #
 PROJ. NAME
 DRAWN BY
 CHECKED BY
 COMP. FILE
 SHEET 1 OF 1
 DWG #

BLK	LOT	ACRES	OWNER	REMARKS
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1	100

CITY OF WILMINGTON, NORTH CAROLINA, DESIRING TO ANNEX TO THE CITY OF WILMINGTON THE AREA SHOWN ON THIS MAP, AND BEING THE OFFICIAL LINES AND BOUNDARIES OF THE CITY OF WILMINGTON AS SET FORTH IN ORDINANCE NO. 100, AS AMENDED, AND THE CHARTERS AND STATUTES OF NORTH CAROLINA, DO HEREBY RESOLVE AS FOLLOWS:

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CITY ENGINEER

FILED FOR RECORDATION 7: 40:00 AM
 IN PVT. COMB. 3008
 REGISTRY OF DEEDS

Exhibit B

ZONES	ACREAGE
MX-CD MIXED-USE	184.7
R7-CD CLUSTER	1,156.6
ZONING ACREAGE	1,341.3
PROGRESS ENERGY PARCEL	55
CPFLA PUMP STATION	0.7
OVERALL ACREAGE	1,396

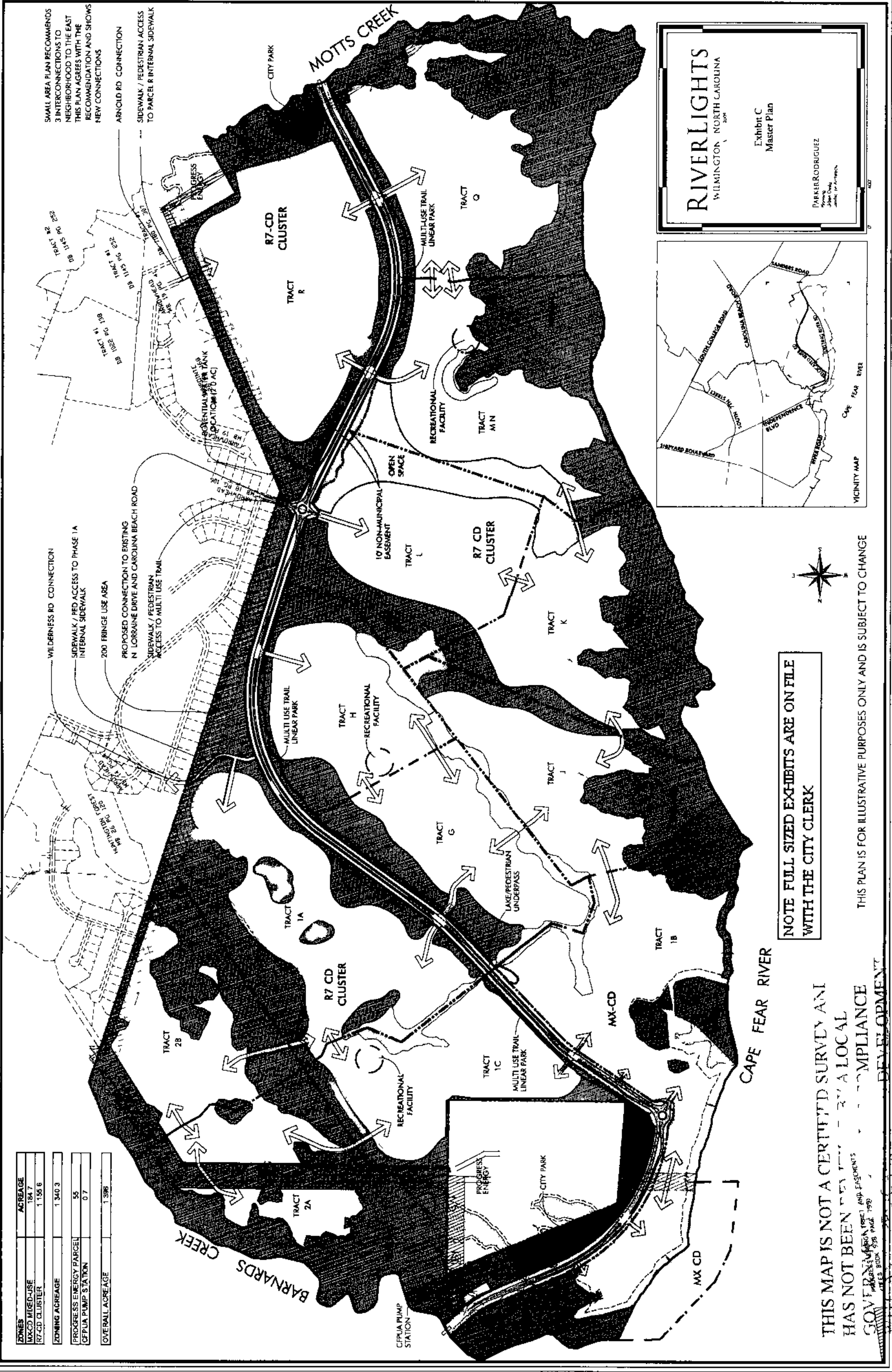
SMALL AREA PLAN RECOMMENDS 3 INTERCONNECTIONS TO NEIGHBORHOOD TO THE EAST THIS PLAN AGREES WITH THE RECOMMENDATION AND SHOWS NEW CONNECTIONS

ARNOLD RD CONNECTION SIDEWALK / PEDESTRIAN ACCESS TO PARCEL R INTERNAL SIDEWALK

WILDERNESS RD CONNECTION SIDEWALK / PED ACCESS TO PHASE 1A INTERNAL SIDEWALK

200 FRINGE USE AREA

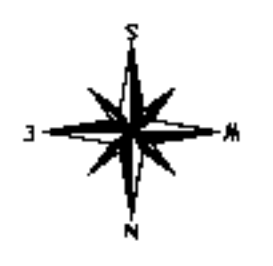
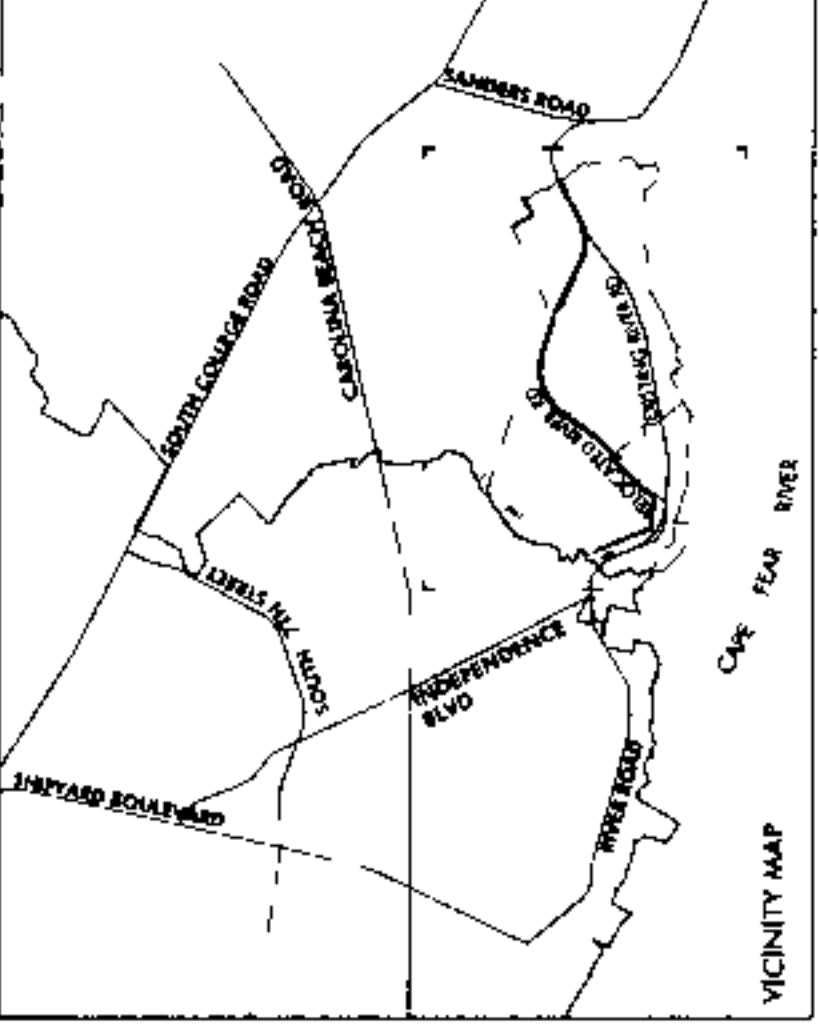
PROPOSED CONNECTION TO EXISTING N LORRAINE DRIVE AND CAROLINA BEACH ROAD SIDEWALK / PEDESTRIAN ACCESS TO MULTI USE TRAIL



RIVERLIGHTS
WILMINGTON, NORTH CAROLINA

Exhibit C
Master Plan

PARKER RODRIGUEZ
Urban Design
Architecture & Interiors



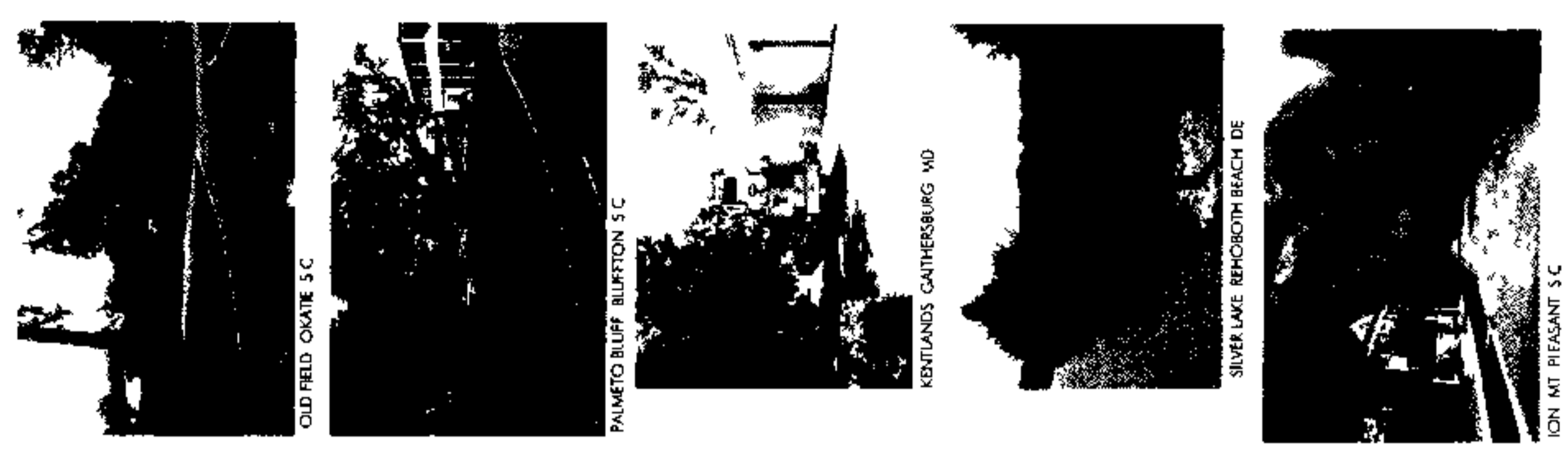
NOTE FULL SIZED EXHIBITS ARE ON FILE WITH THE CITY CLERK

THIS PLAN IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS SUBJECT TO CHANGE

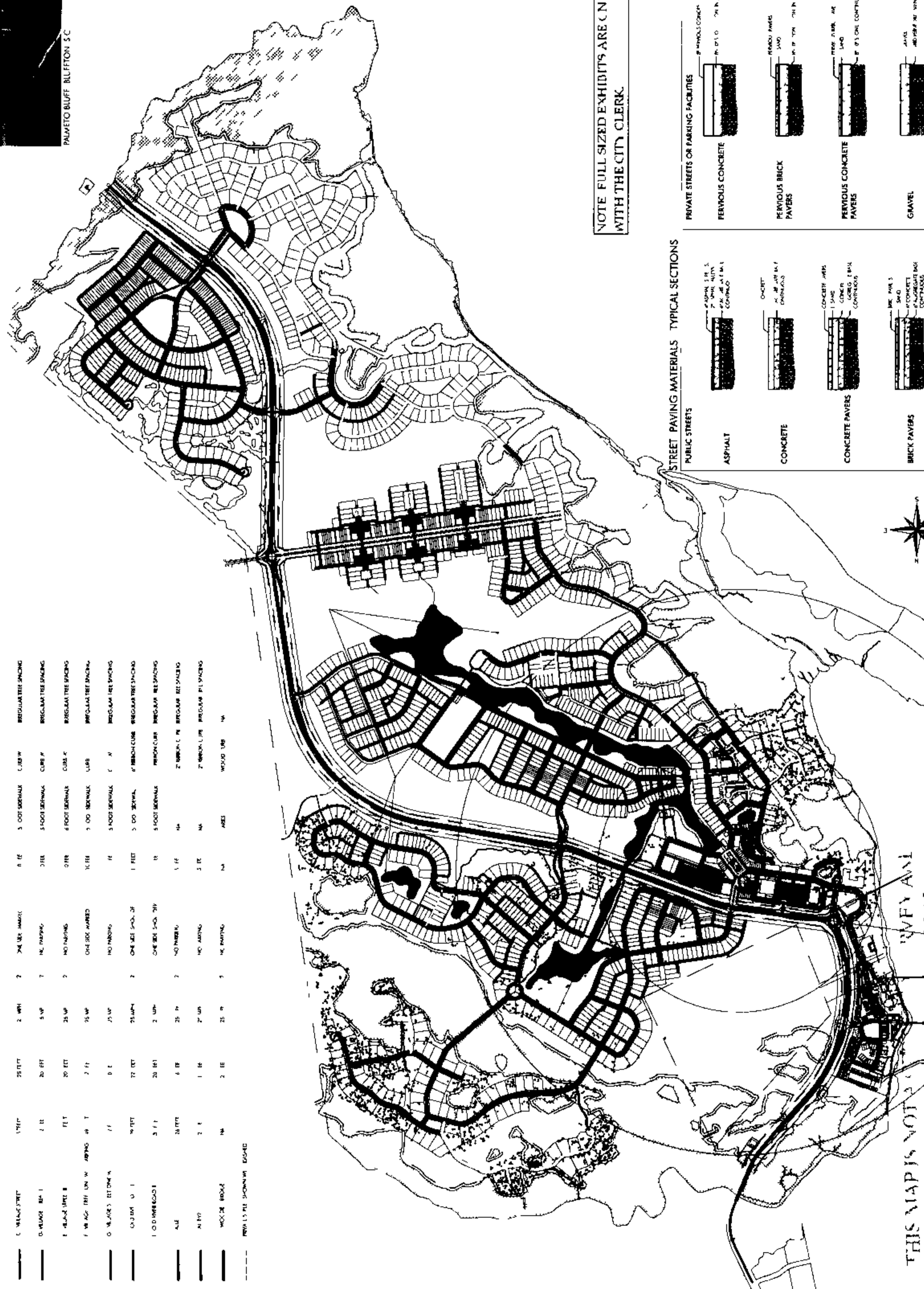
THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT FOR COMPLIANCE WITH DEVELOPMENT

STREET STANDARDS

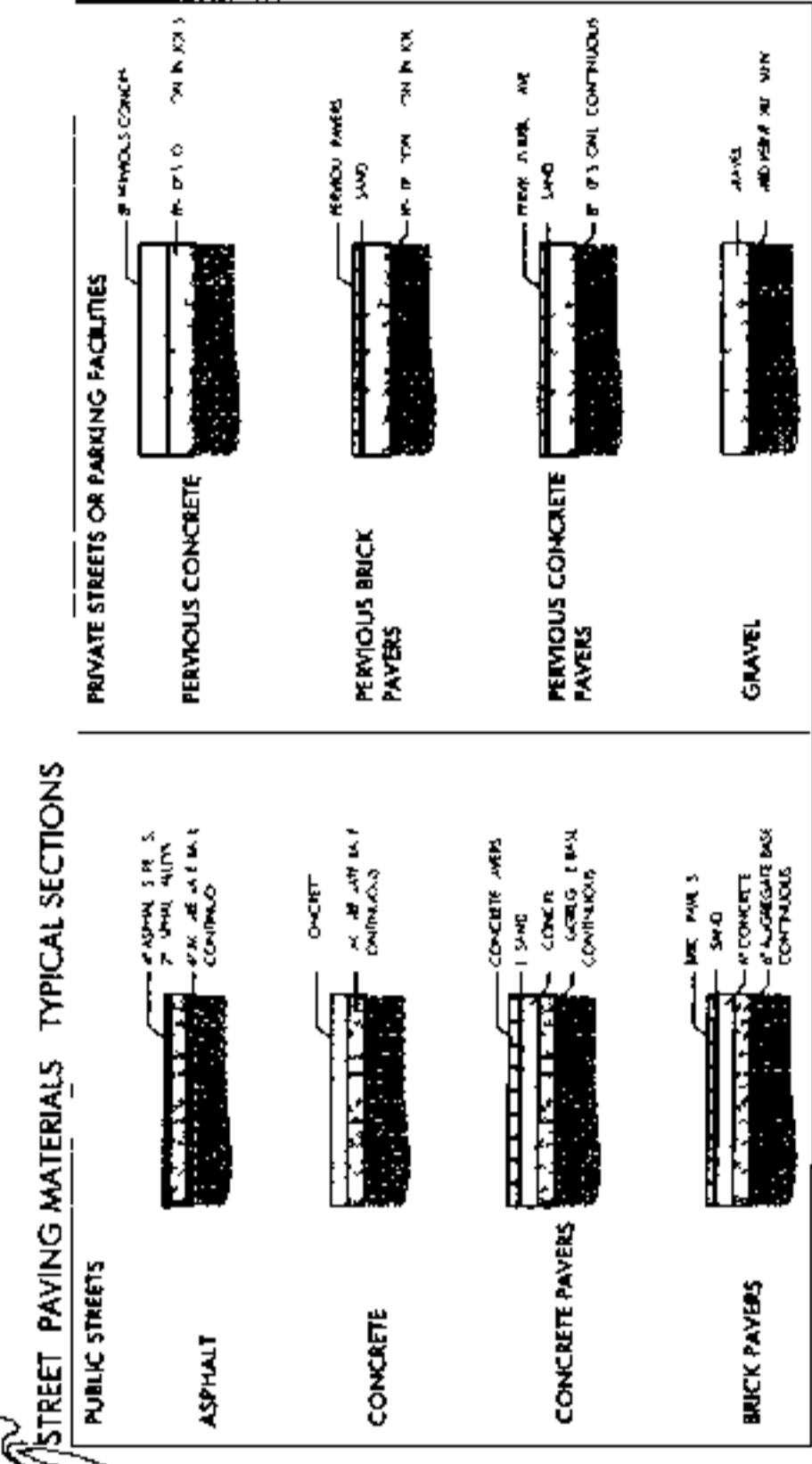
STREET TYPE	R.O.W. WIDTH	ASPHALT WIDTH	DESIRED SPEED LIMIT	TRAFFIC LANE	PARKING LANE	CURB RADIUS	WALKWAY TYPE	CURB TYPE	LANDSCAPE TYPE
A. HWY SHO	50 FT	36 FT	55 MPH	2 LANE	NO PARKING	10 FT	NO PARKING	---	---
B. HWY RT	40 FT	30 FT	35 MPH	2 LANE	TWO SIDES PARKING	5 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR RELANDSCAPING
C. MAINTENANCE	15 FT	15 FT	25 MPH	2 LANE	NO PARKING	8 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
D. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	NO PARKING	5 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
E. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	NO PARKING	5 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
F. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
G. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	NO PARKING	5 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
H. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
I. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
J. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
K. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
L. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
M. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
N. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
O. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
P. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
Q. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
R. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
S. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
T. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
U. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
V. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
W. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
X. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
Y. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING
Z. MAJOR RT	30 FT	24 FT	30 MPH	2 LANE	ONE SIDE PARKING	10 FT	5 FOOT SIDEWALK	C 3/4" X	IRREGULAR TREE SPACING



OLD FIELD OKATEE S.C.
 PALMETO BLUFF BLUFFTON S.C.
 PALMETO BLUFF BLUFFTON S.C.
 KENTLANDS CANTHERSBURG MD.
 SILVERLAKE REHOBOTH BEACH DE.
 ION MT PLEASANT S.C.



NOTE FULL SIZED EXHIBITS ARE ON FILE WITH THE CITY CLERK.

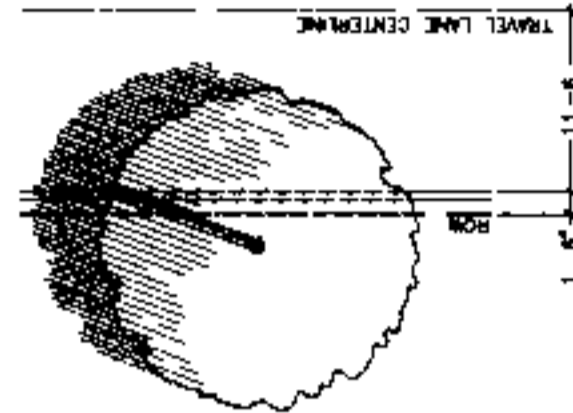
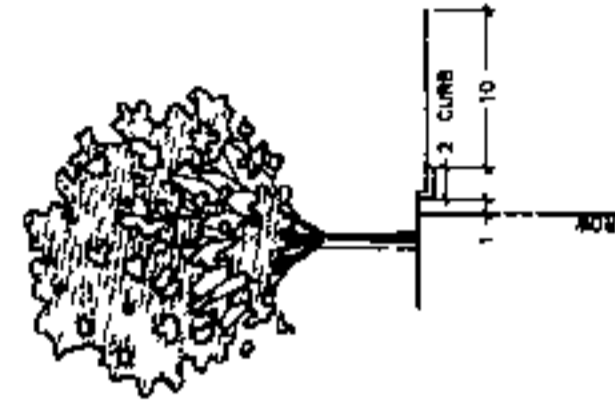


THIS PLAN IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS SUBJECT TO CHANGE

RIVERLIGHTS
 WILMINGTON, NORTH CAROLINA
 EXHIBIT D
 STREET TYPFS
 MASTER PLAN
 PARKER RODRIGUEZ
 Planning
 Landscape Architecture, PC
 Newland
 COMMUNITIES

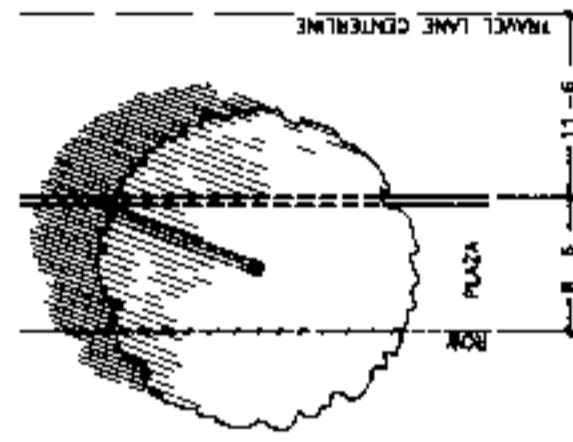
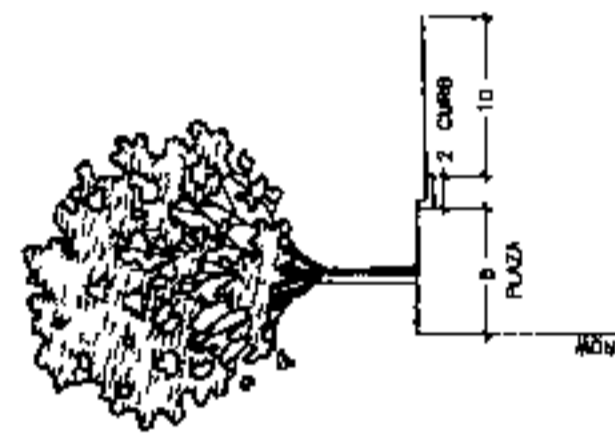
THIS MAP IS NOT TO BE USED FOR DEVELOPMENT WITHOUT THE APPROVAL OF THE LOCAL GOVERNMENT AND THE STATE DEPARTMENT OF TRANSPORTATION AND PUBLIC SAFETY.

GENERAL NOTES
 1. STREET TREES SHALL MAINTAIN
 13.5' CLEAR HEIGHT AT TRAVEL LANES



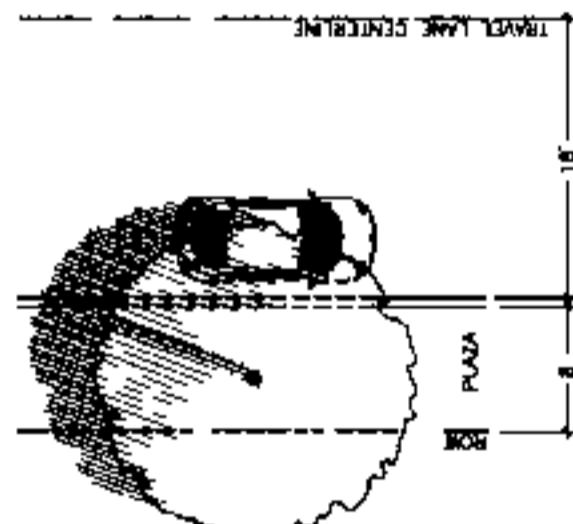
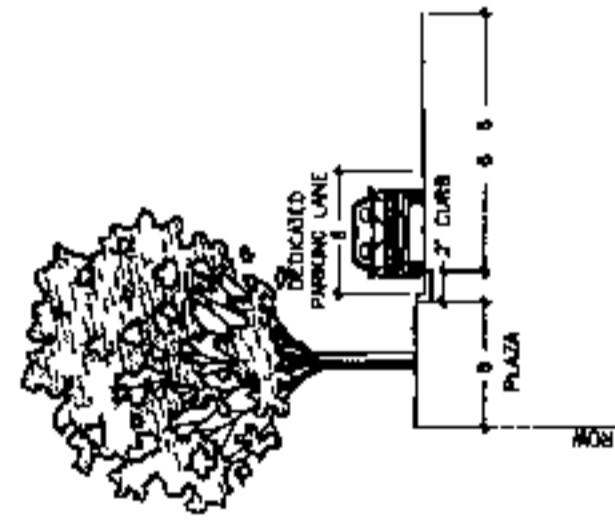
ALTERNATE SHOULDER - TYPE 4

PROVIDE ADDITIONAL STREET TREES ON OPPOSITE SIDE
 OF STREET FOR THIS SHOULDER TYPE



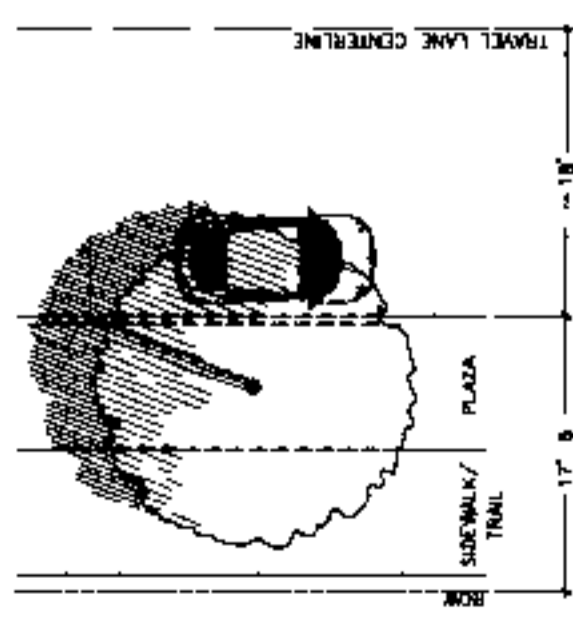
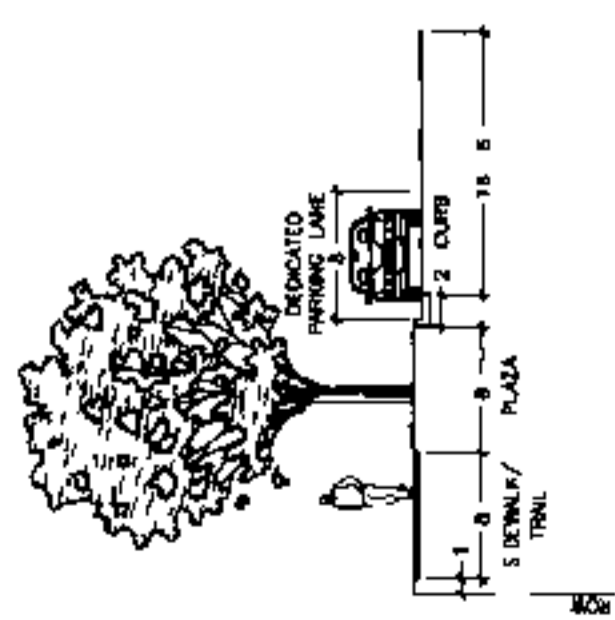
ALTERNATE SHOULDER - TYPE 3

PROVIDE ADDITIONAL STREET TREES ON OPPOSITE SIDE
 OF STREET FOR THIS SHOULDER TYPE



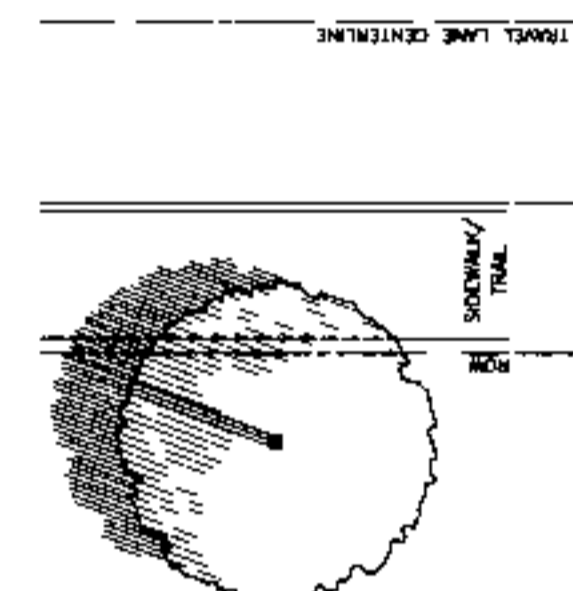
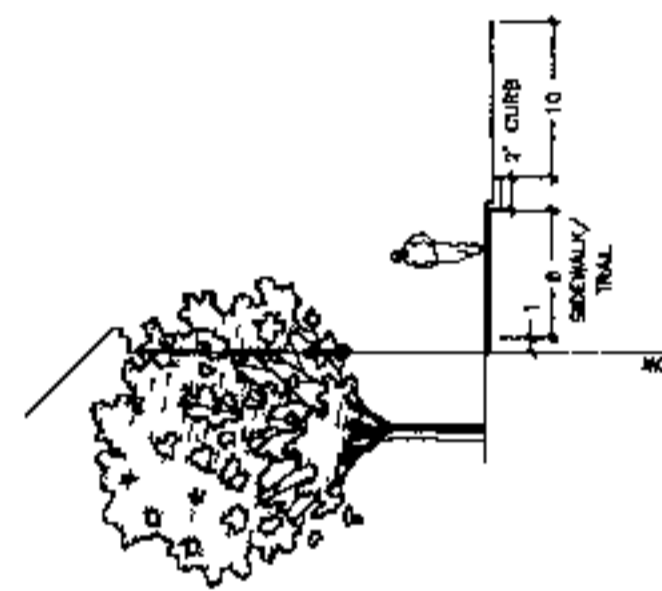
ALTERNATE SHOULDER - TYPE 2

PROVIDE ADDITIONAL STREET TREES ON OPPOSITE SIDE
 OF STREET FOR THIS SHOULDER TYPE



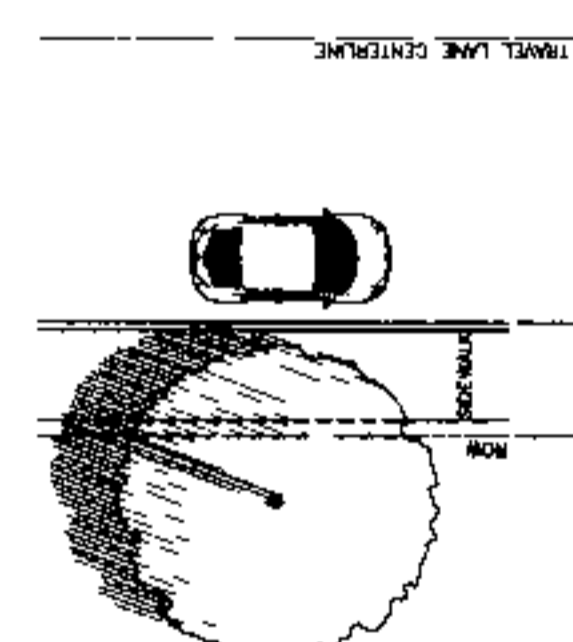
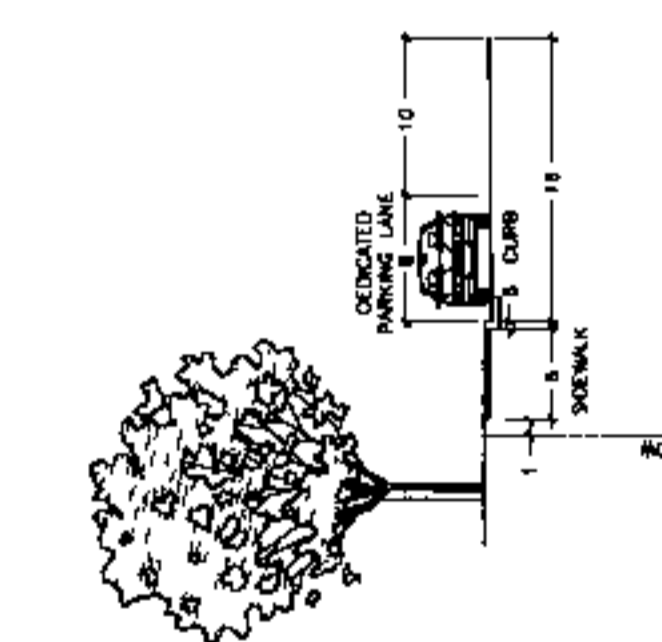
ALTERNATE SHOULDER - TYPE 1

PROVIDE ADDITIONAL STREET TREES ON OPPOSITE SIDE
 OF STREET FOR THIS SHOULDER TYPE



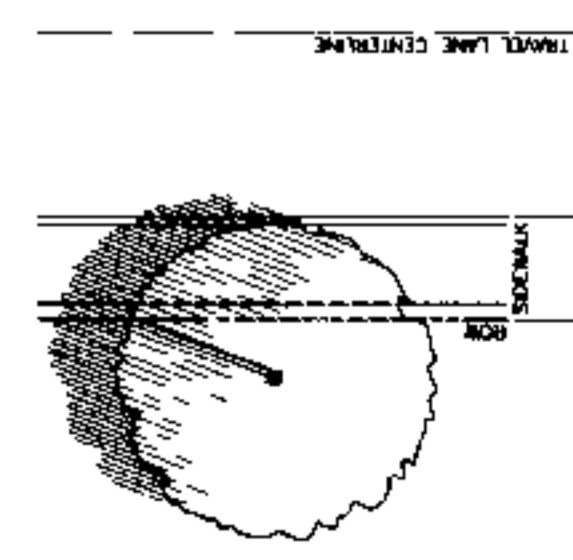
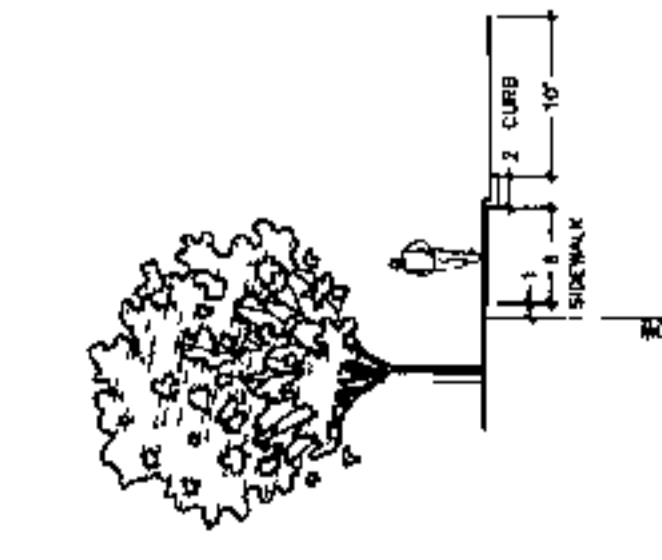
ALTERNATE SHOULDER - TYPE 7

PROVIDE ADDITIONAL STREET TREES ON OPPOSITE SIDE
 OF STREET FOR THIS SHOULDER TYPE



ALTERNATE SHOULDER - TYPE 6

PROVIDE ADDITIONAL STREET TREES ON OPPOSITE SIDE
 OF STREET FOR THIS SHOULDER TYPE



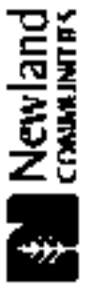
ALTERNATE SHOULDER - TYPE 5

PROVIDE ADDITIONAL STREET TREES ON OPPOSITE SIDE
 OF STREET FOR THIS SHOULDER TYPE

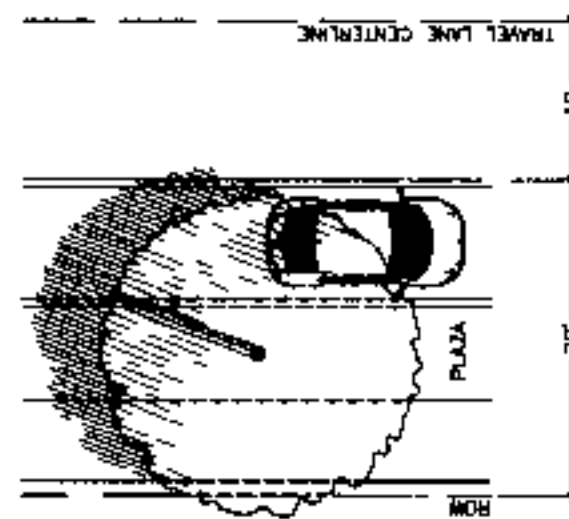
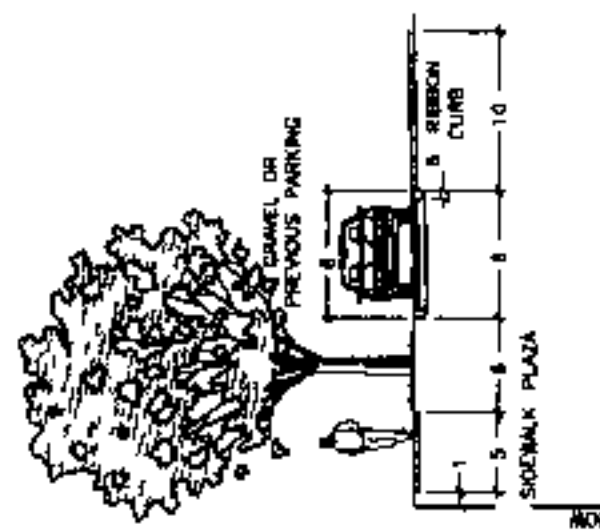
NOTE: FULL-SIZED EXHIBITS ARE ON FILE
 WITH THE CITY CLERK.

RIVERLIGHTS
 WILMINGTON, NORTH CAROLINA
1118 A, 2 1/2 1/2

EXHIBIT D
 Road Standards
 Alternative Shoulder Assemblies

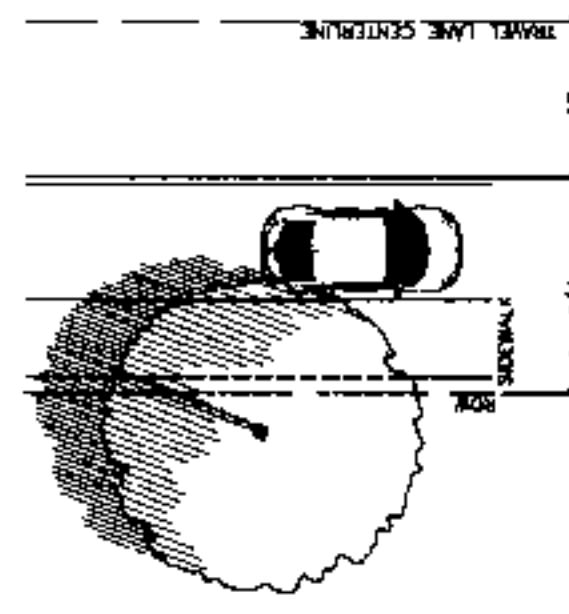
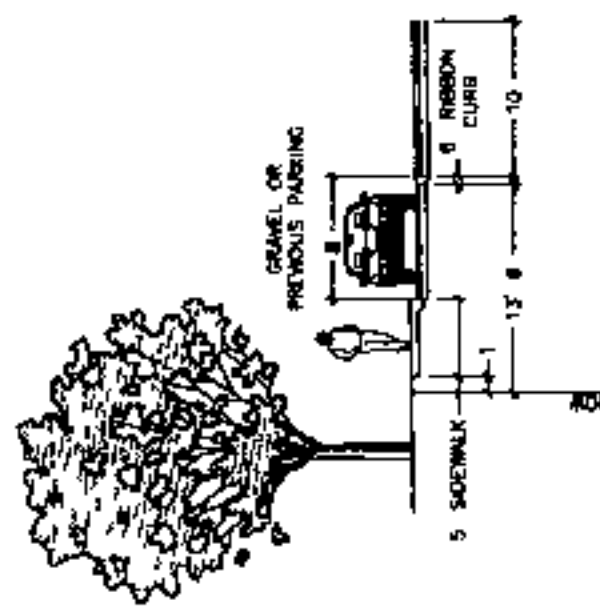

Newland
 CONSULTANTS
PARKER RODRIGUEZ
 Planning
 10000 University
 Charlotte, NC 28226

THIS PLAN IS FOR ILLUSTRATIVE PURPOSES ONLY AND IS SUBJECT TO CHANGE



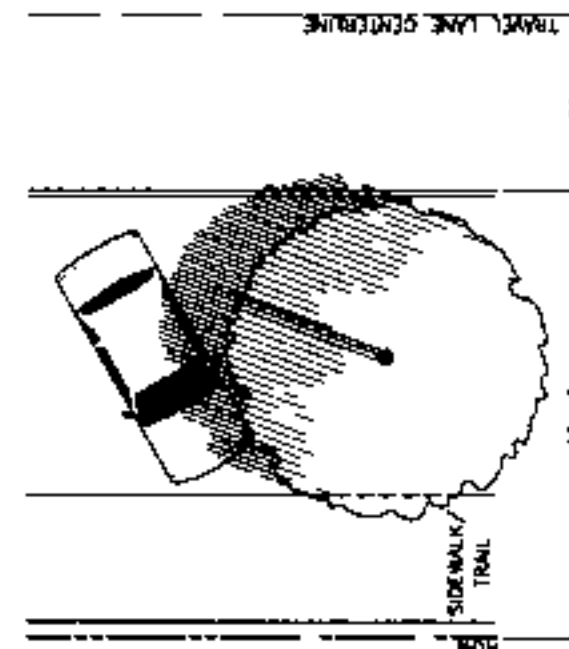
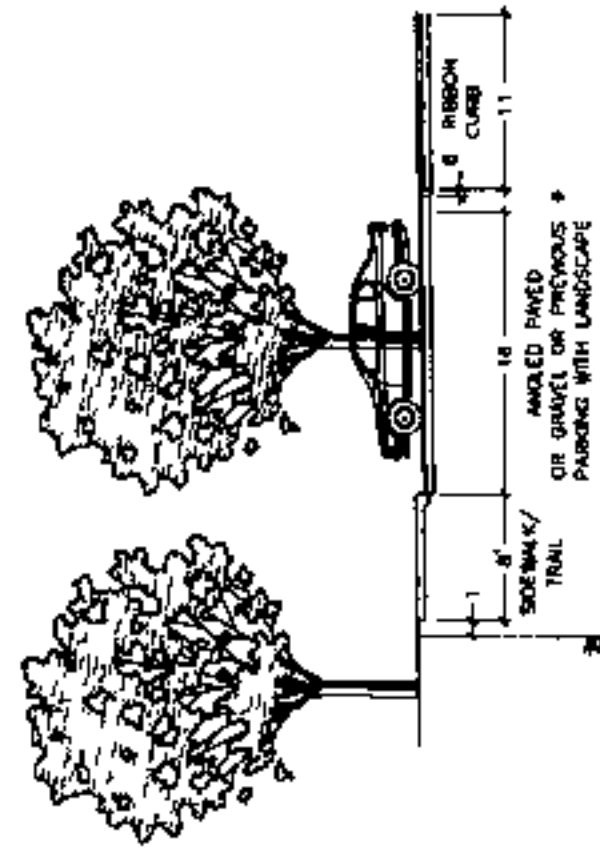
ALTERNATE SHOULDER - TYPE 8

*PRIVATE STREET ONLY UNLESS APPROVED BY CITY OF WILMINGTON



ALTERNATE SHOULDER - TYPE 9

*PRIVATE STREET ONLY UNLESS APPROVED BY CITY OF WILMINGTON



ALTERNATE SHOULDER - TYPE 10

*PARKING SPACES MAY BE ASSIGNED TO A PRIVATE ENTITY
*PRIVATE STREET ONLY UNLESS APPROVED BY CITY OF WILMINGTON

NOTE FULL-SIZED EXHIBITS ARE ON FILE WITH THE CITY CLERK.

RIVERLIGHTS
WILMINGTON, NORTH CAROLINA 27901

EXHIBIT D
Road Standards
Alternative Shoulder Assemblies

PARKER RODRIGUEZ
Planning
1-800-444-1494

Newland
COMMUNITIES

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ALMETTO BLUFF B UFFTON SC



WILMINGTON, NC



ION MT PLEASANT SC



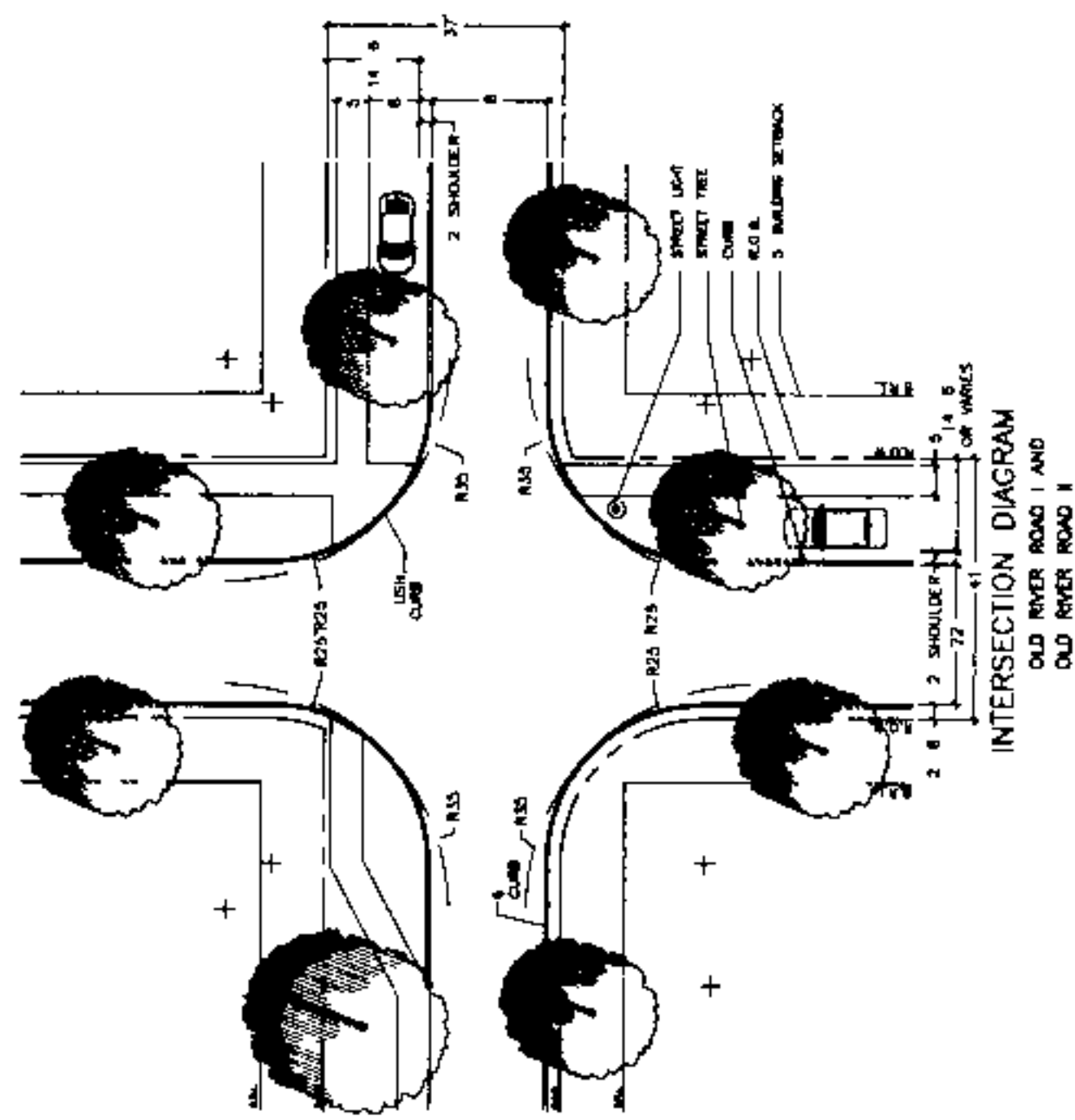
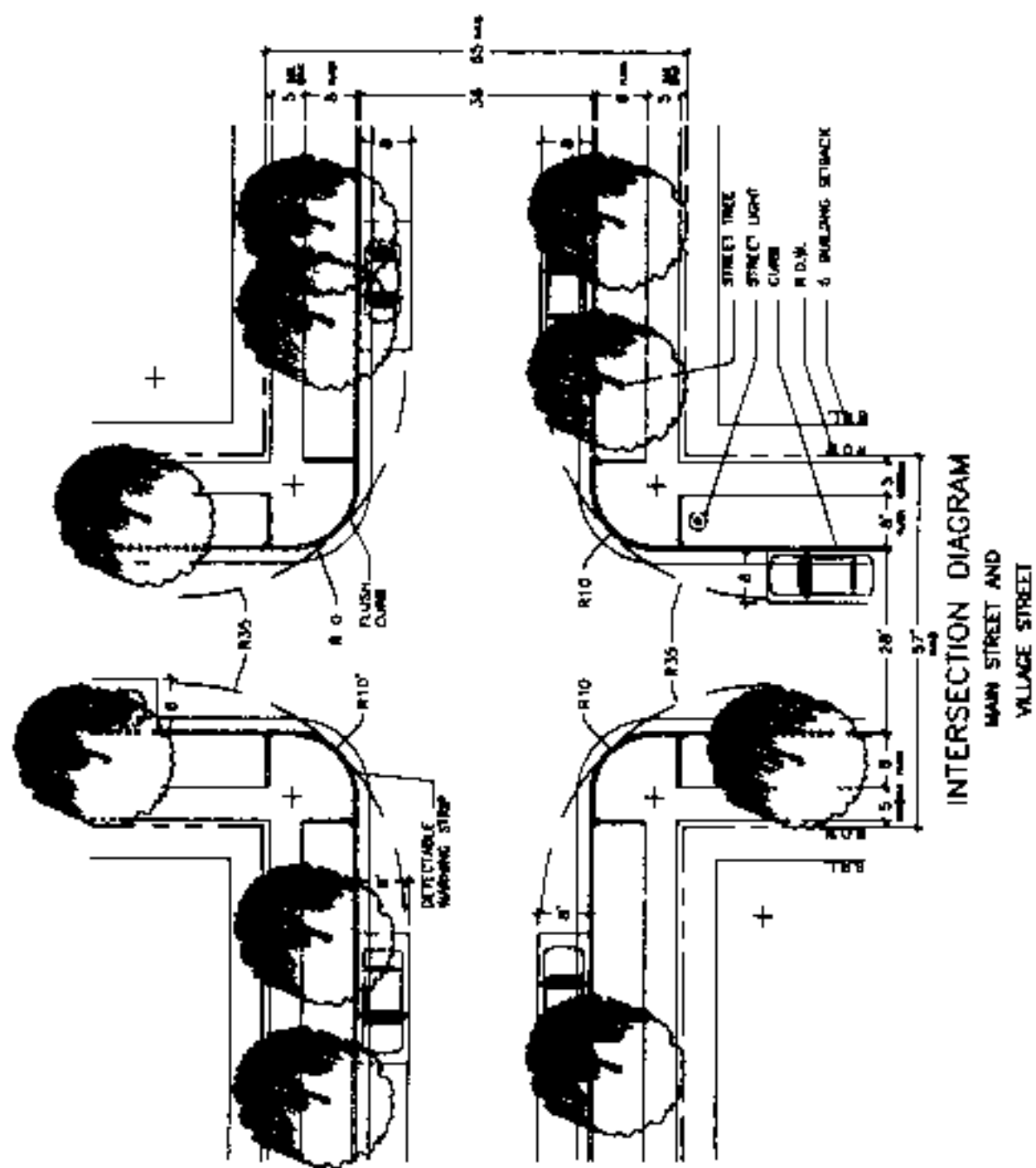
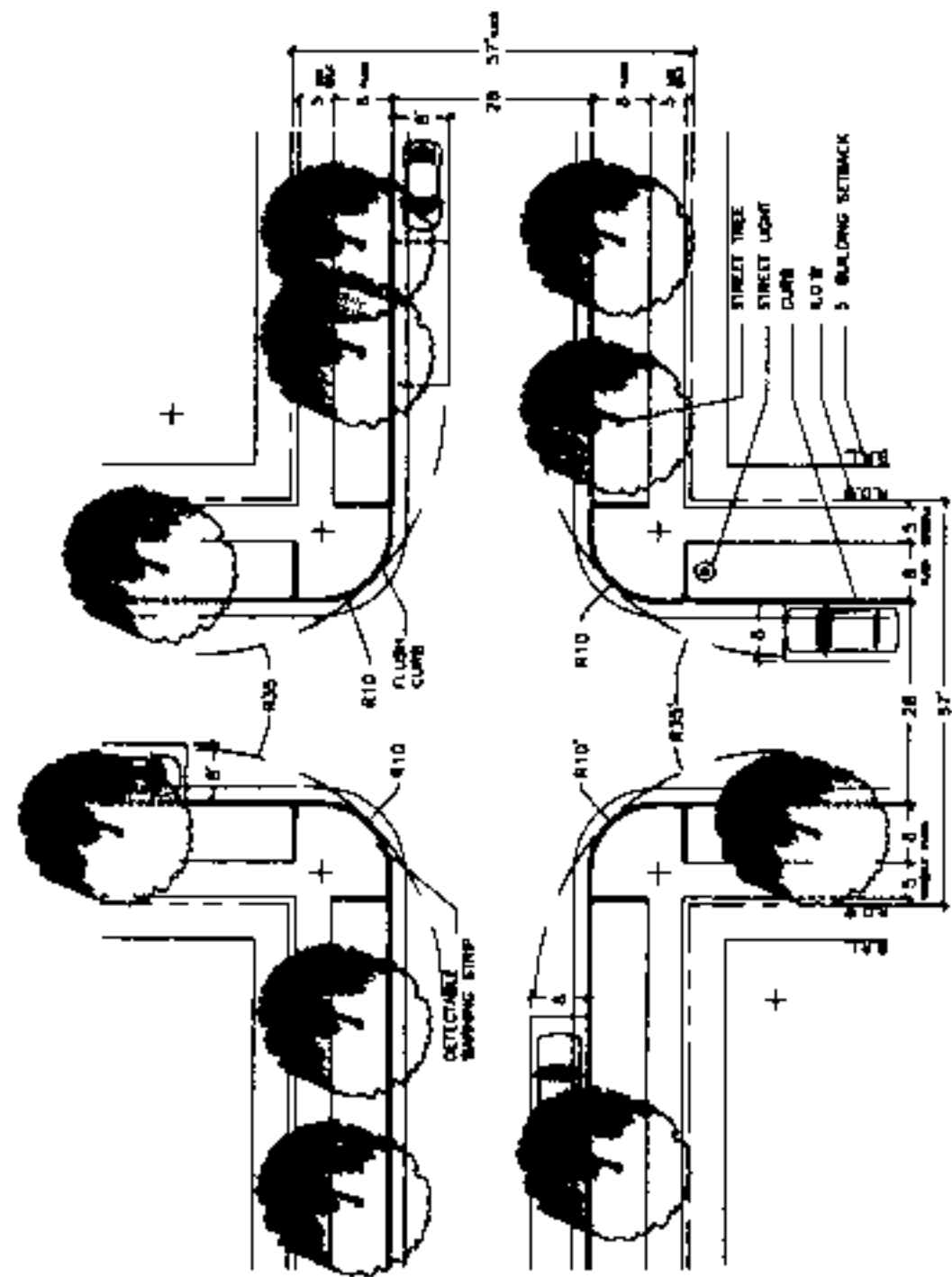
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RIVERLIGHTS
WILMINGTON NORTH CAROLINA

EXHIBIT F
Proposed Technical
Standards Alternatives for
Intersections

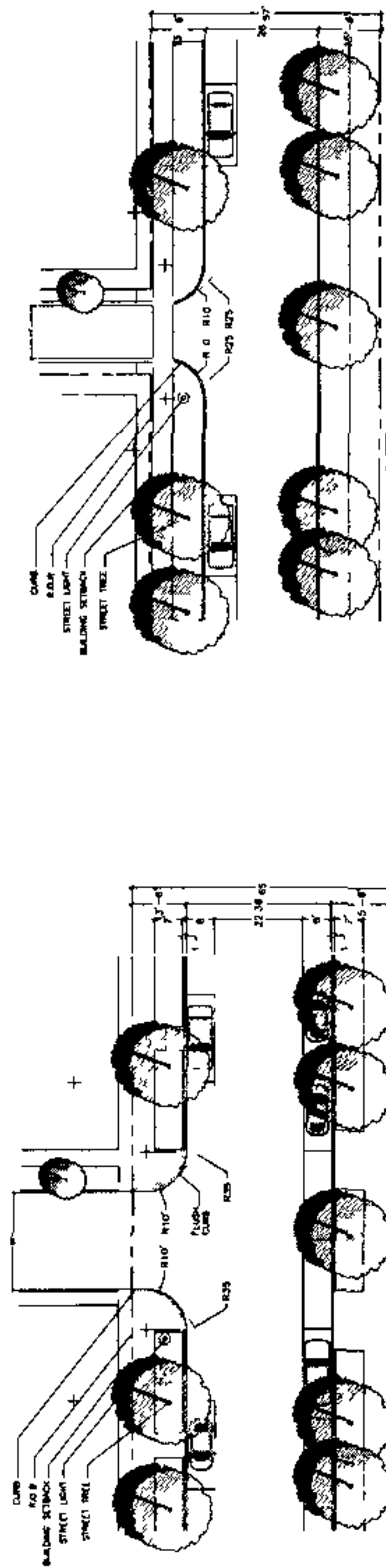
PARER RODRIGUEZ
Urban Design
Landscape Architecture

Newland
COMMUNITIES



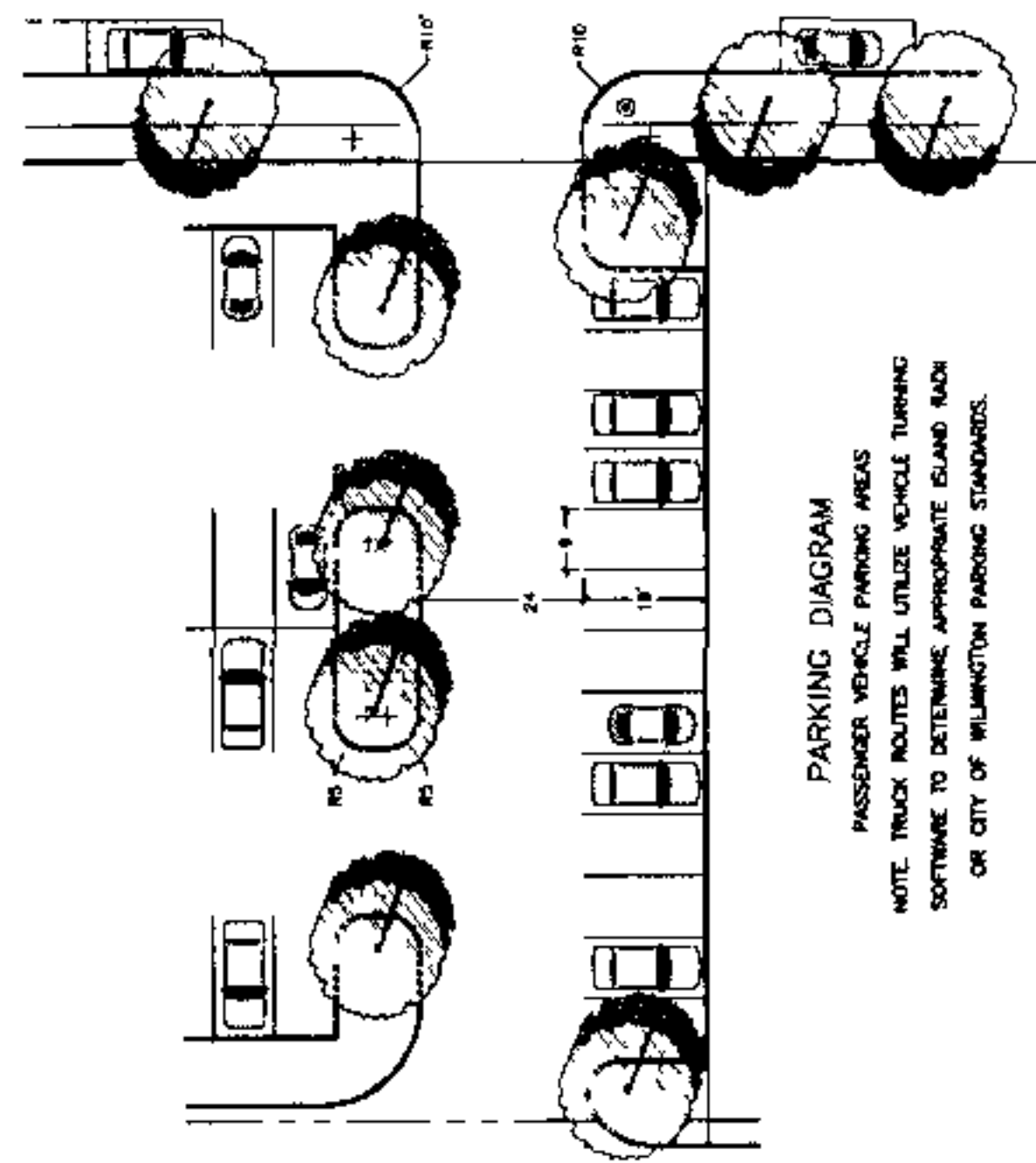
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INTERSECTION DIAGRAM
VILLAGE (RESIDENTIAL)
AND ALLEY #

INTERSECTION DIAGRAM
MAIN STREET (COMMERCIAL)
AND PRIVATE STREET (PARKING ACCESS)



PARKING DIAGRAM
PASSENGER VEHICLE PARKING AREAS
NOTE: TRUCK ROUTES WILL UTILIZE VEHICLE TURNING
SOFTWARE TO DETERMINE APPROPRIATE ISLAND RACK
OR CITY OF WILMINGTON PARKING STANDARDS.

RIVERLIGHTS
WILMINGTON, NORTH CAROLINA

EXHIBIT F
Proposed Technical
Standards Alternatives for
Intersections

PARKER RODRIGUEZ
Landscape Architecture

New Land
Landscape Architecture

NOTE: FULL-SIZED EXHIBITS ARE ON FILE
WITH THE IT'S CLERK.

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EXHIBIT "F"

Proposed Phase 1 Transportation Improvements on SR 1100 (River Road) Wilmington, New Hanover County

1. **US 421 (Carolina Beach Road) and SR 1209 (Independence Boulevard) Intersection (Signalized)**

Eastbound SR 1209 (Independence Boulevard)

- Provide dual left-turn lanes and a combination through/right-turn lane
- Extend the dual left-turn lanes to provide 375 feet (minimum) of full storage and appropriate transitional taper
- Extend the combination through/right-turn lane to provide 325 feet (minimum) of full storage and appropriate deceleration taper

2. **US 421 (Carolina Beach Road) and SR 1197 (Silver Lake Road) Intersection (Signalized)**

- Install a traffic signal and fiber optic cable to provide a closed loop communication system from Silver Lake Road to Antoinette Drive

Eastbound SR 1197 (Silver Lake Road)

- Provide an exclusive left-turn lane with 375 feet (minimum) of full storage and appropriate transitional taper
- Provide an exclusive right-turn lane with 350 feet (minimum) of full storage and appropriate deceleration taper

Northbound US 421 (Carolina Beach Road)

- Extend the exclusive left-turn lane to provide 575 feet (minimum) of full storage and appropriate transitional taper

3. **US 421 (Carolina Beach Road) and SR 1187 (Sanders Road) Intersection (Signalized)**

- Convert intersection to superstreet design This improvement shall be implemented by the end of Phase 1 and prior to beginning of construction of Phase 2 of the development

Northbound US 421 (Carolina Beach Road)

- Provide an exclusive left-turn lane with 1,000 feet (minimum) of full storage

Southbound US 421 (Carolina Beach Road)

- Provide an exclusive right-turn lane with 1,000 feet (minimum) of full storage

- Provide dual left-turn lanes at the Southbound U-Turn point with full storage to SR1187 (Sanders Road)

Eastbound SR 1187 (Sanders Road)

- Provide triple right-turn lanes with 900 feet (minimum) of full storage

4. SR 1100 (River Road) and SR 1187 (Sanders Road) Intersection (Signalized)

- Reconfigure/realign to eliminate the Northbound right-turn slip lane
- Install traffic signal

Westbound SR 1187 (Sanders Road)

- Provide an exclusive left-turn lane with 225 feet (minimum) of full storage and appropriate transitional taper

Northbound SR 1100 (River Road)

- Provide an exclusive right-turn lane with 150 feet (minimum) of full storage and appropriate deceleration taper

Southbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 200 feet (minimum) of full storage and appropriate transitional taper

5. SR 1100 (River Road) and SR 1209 (Independence Boulevard) Intersection (Signalized)

- Install traffic signal

Westbound SR 1209 (Independence Boulevard)

- Provide an exclusive left-turn lane with 450 feet (minimum) of full storage and appropriate transitional taper

Northbound SR 1100 (River Road)

- Provide an exclusive right-turn lane with 300 feet (minimum) of full storage and appropriate transitional taper

6. SR 1100 (River Road) and Proposed Driveway 1 (Unsignalized)

Eastbound Proposed Driveway 1

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left turn lane and an exclusive right-turn lane, and should provide 200 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed.

Northbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper.

Southbound SR 1100 (River Road)

- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper.

7. SR 1100 (River Road) and Proposed Driveway 2 (Roundabout)

- Construct a single lane roundabout.
- Provide an exclusive left-turn lane and an exclusive right-turn bypass lane with 150 feet of full width storage on the Eastbound approach.
- Provide an exclusive left turn lane and an exclusive right-turn bypass lane with 100 feet of full width storage on the Northbound approach with 1200 feet of departure distance for merging on River Road.
- Provide an exclusive Southbound right-turn bypass lane with 175 feet of full width storage on River Road.

8. SR 1100 (River Road) and Proposed Driveway 3A & 3B (Unsignalized)

Lastbound Proposed Driveway 3A

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and a combination through/right-turn lane, and provide 300 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed.

Westbound Proposed Driveway 3B

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and a combination through/right-turn lane, and provide 100 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed.

Northbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 150 feet (minimum) of full storage and appropriate transitional taper
- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper

Southbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper
- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper

9. SR 1100 (River Road) and Proposed Driveway 4A & 4B (Unsignalized)

Eastbound Proposed Driveway 4A

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and a combination through/right-turn lane, and provide 100 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed

Westbound Proposed Driveway 4B

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and a combination through/right-turn lane, and provide 200 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed

Northbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper
- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper

Southbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper
- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper

10. SR 1100 (River Road) and Proposed Driveway 5 (Unsignalized)

Eastbound Proposed Driveway 5

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and an exclusive right-turn lane, and should provide 100 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed.

Northbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper.

Southbound SR 1100 (River Road)

- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper.

11. SR 1100 (River Road) and Proposed Driveway 6/SR 2300 (Lorraine Drive) (Roundabout)

- Design a roundabout with a diameter that will work for a 2 lane roundabout in the future and with a larger truck apron so that it can operate as a 1 lane roundabout in the interim.

12. SR 1100 (River Road) and Proposed Driveway 7A & 7B (Unsignalized)

Eastbound Proposed Driveway 7A

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and a combination through/right-turn lane, and provide 100 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed.

Westbound Proposed Driveway 7B

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and a combination through/right-turn lane, and provide 100 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed.

Northbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper
- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper

Southbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper
- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper

13. SR 1100 (River Road) and Proposed Driveway 8 (Unsignalized)

Eastbound Proposed Driveway 8

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and an exclusive right-turn lane, and provide 100 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed

Northbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper

Southbound SR 1100 (River Road)

- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper

14. SR 1100 (River Road) and Proposed Driveway 9A & 9B (Unsignalized)

Eastbound Proposed Driveway 9A

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and a combination through/right-turn lane, and provide 100 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed

Westbound Proposed Driveway 9B

- Provide a three-lane cross-section consisting of one ingress lane and two egress lanes. The egress lanes should consist of an exclusive left-turn lane and a combination through/right-turn lane, and provide 100 feet (minimum) of internal protected storage before crossing maneuvers and parking should be allowed.

Northbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper.
- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper.

Southbound SR 1100 (River Road)

- Provide an exclusive left-turn lane with 100 feet (minimum) of full storage and appropriate transitional taper.
- Provide an exclusive right-turn lane with 100 feet (minimum) of full storage and appropriate deceleration taper.
-

Proposed Phase 2 Transportation Improvements on SR 1100 (River Road) Wilmington, New Hanover County

1. SR 1100 (River Road)

- Provide a 4 lane divided cross-section on SR 1100 (River Road) from SR 1209 (Independence Boulevard) Intersection to Proposed Driveway 2 (Roundabout).

2. SR 1100 (River Road) and SR 1209 (Independence Boulevard) Intersection (Signalized)

Westbound SR 1209 (Independence Boulevard)

- Provide an exclusive left-turn lane with 450 feet (minimum) of full storage and appropriate transitional taper and maintaining the combination left/through/right-turn movement on the existing lane.
- Provide dual receiving lanes on the Southbound SR 1100 (River Road) departure.
- Widen SR1100 (River Road) to a 4 lane divided cross-section from Independence Boulevard to the Proposed Driveway 2.

Northbound SR 1100 (River Road)

- Provide an exclusive right-turn lane, however, this will be provided by the requirement that River Road be widened to a 4 lane divided cross-section from Independence Boulevard to the Proposed Driveway 2. The outside through-lane can terminate as a right turn lane at this intersection.

3. SR 1100 (River Road) and SR 1187 (Sanders Road) Intersection (Signalized)

Westbound SR 1187 (Sanders Road)

- Extend the exclusive left turn lane to provide 300 feet (minimum) of full storage and appropriate transitional taper.

Northbound SR 1100 (River Road)

- Extend the exclusive right-turn lane to provide 300 feet (minimum) of full storage and appropriate deceleration taper.

Southbound SR 1100 (River Road)

- Extend the exclusive left turn lane to provide 450 feet (minimum) of full storage and appropriate transitional taper.

4. SR 1100 (River Road) and Proposed Driveway 1 (Unsignalized)

Northbound SR 1100 (River Road)

- Construct an additional Northbound through-lane on River Road.

Southbound SR 1100 (River Road)

- Construct an additional Southbound through-lane on River Road.
- Construct an exclusive Southbound right turn lane to provide 100' of full storage and appropriate transitional taper.

5. SR 1100 (River Road) and Proposed Driveway 2 (Roundabout)

- Extend the exclusive Southbound right turn bypass lane to become a lane drop from the outside Southbound through-lane on River Road.

A pictorial representation of selected Phase 1 and Phase 2 improvements are attached hereto

For purposes of the timing of the commencement, completion and sequencing of traffic improvements set forth on this Exhibit F, the following sets forth the relevant Phase defining events

Phase 1

- Completion Date(s)
 - Newland must complete all Phase 1 off-site improvements prior to (i) the issuance of the final certificate of occupancy for the commercial components of RiverLights as described in the TIA and (ii) the issuance of the certificate of occupancy for the nine hundredth (900th) residential dwelling unit (whether single or multi-family) "
 - Notwithstanding the foregoing, Newland shall complete all Phase 1 improvements along or connecting the re-aligned River Road between Barnards Creek and Motts Creek (defined in this Exhibit F) in conjunction with completion of construction of the re-aligned River Road. Construction of the re-aligned River Road is anticipated to commence in January 2011 and be completed by May 2012.
 - Notwithstanding the foregoing, Newland shall complete that portion of the Phase 1 improvements relating to the connection of re-aligned River Road and Wilderness Road in conjunction with the completion of the Phase 1A subdivision.
 - Notwithstanding the foregoing, Newland shall complete that portion of the Phase 1 improvements relating to the connection of re-aligned River Road and Arnold Road in conjunction with the completion of the subdivision adjacent to such access point.
- Sequencing Newland shall determine in its sole discretion the sequence in which it completes the Phase 1 off-site improvements between the commencement and completion dates referenced above. Newland may elect to construct all such Phase 1 improvements on the same schedule.

Phase 2

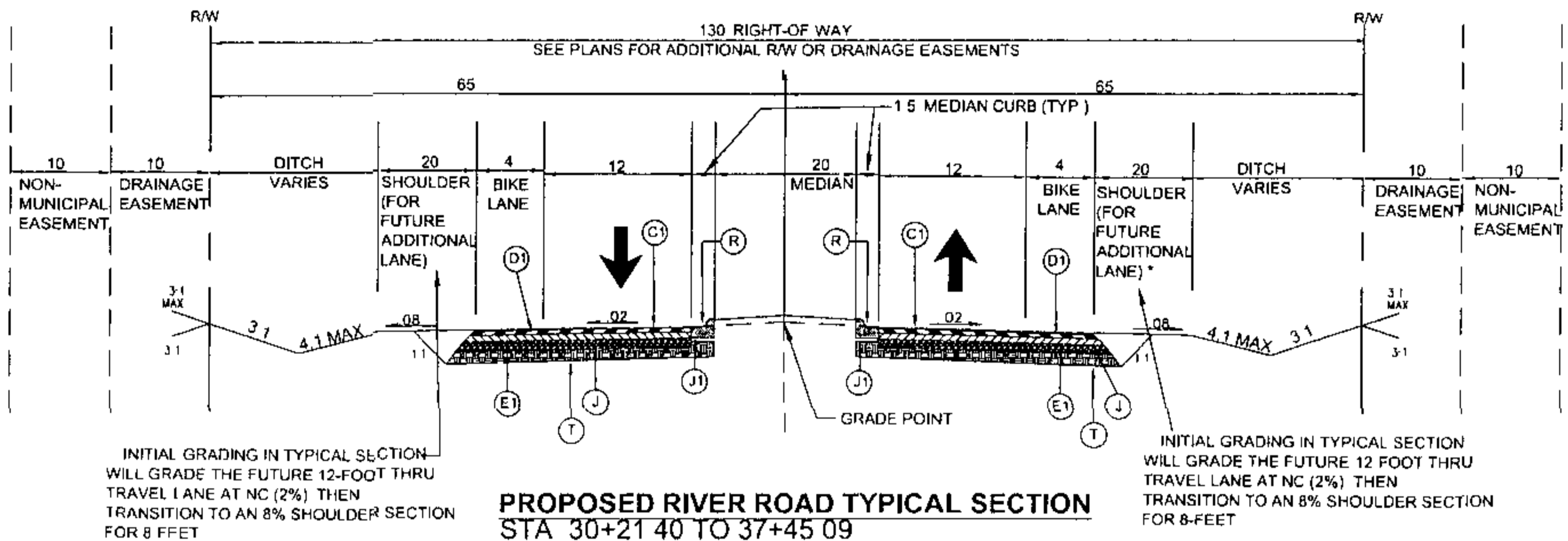
- Completion Date Newland must complete all Phase 2 off-site improvements prior to the recording of the final plat for the last residential dwelling unit in RiverLights.
- Sequencing Newland may determine in its sole discretion the sequence in which it completes the Phase 2 off-site improvements. Newland may elect to construct all such Phase 2 improvements on the same schedule.

Phase 1 and Phase 2

- Newland may determine in its sole discretion to simultaneously construct off-site improvements characterized as either Phase 1 or Phase 2 in the event those improvements occur in the same location

WIL MINGTON 24701 8

FAST TRACK DEVELOPMENT
 GOVERNMENT AGENCY FOR COMPLIANCE
 WITH ANY APPLICABLE LAND DEVELOPMENT
 REGULATIONS



PROJECT NAME	RIVER ROAD
PROJECT NO	2735-0007
DATE	05/11/09
DRAWN BY	TVC
CHECKED BY	RMC

PROPOSED RIVER ROAD TYPICAL SECTION
EXHIBIT F

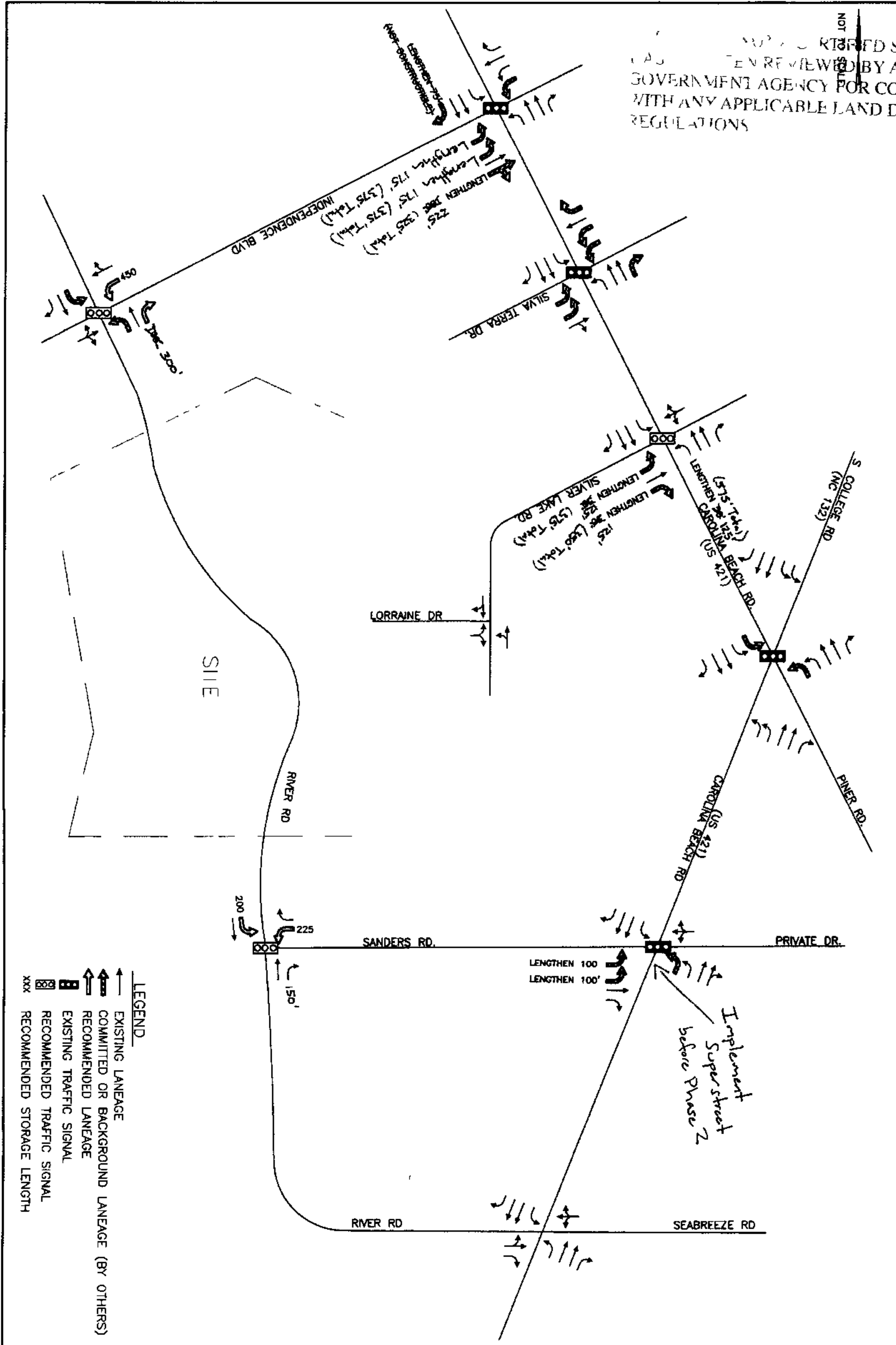
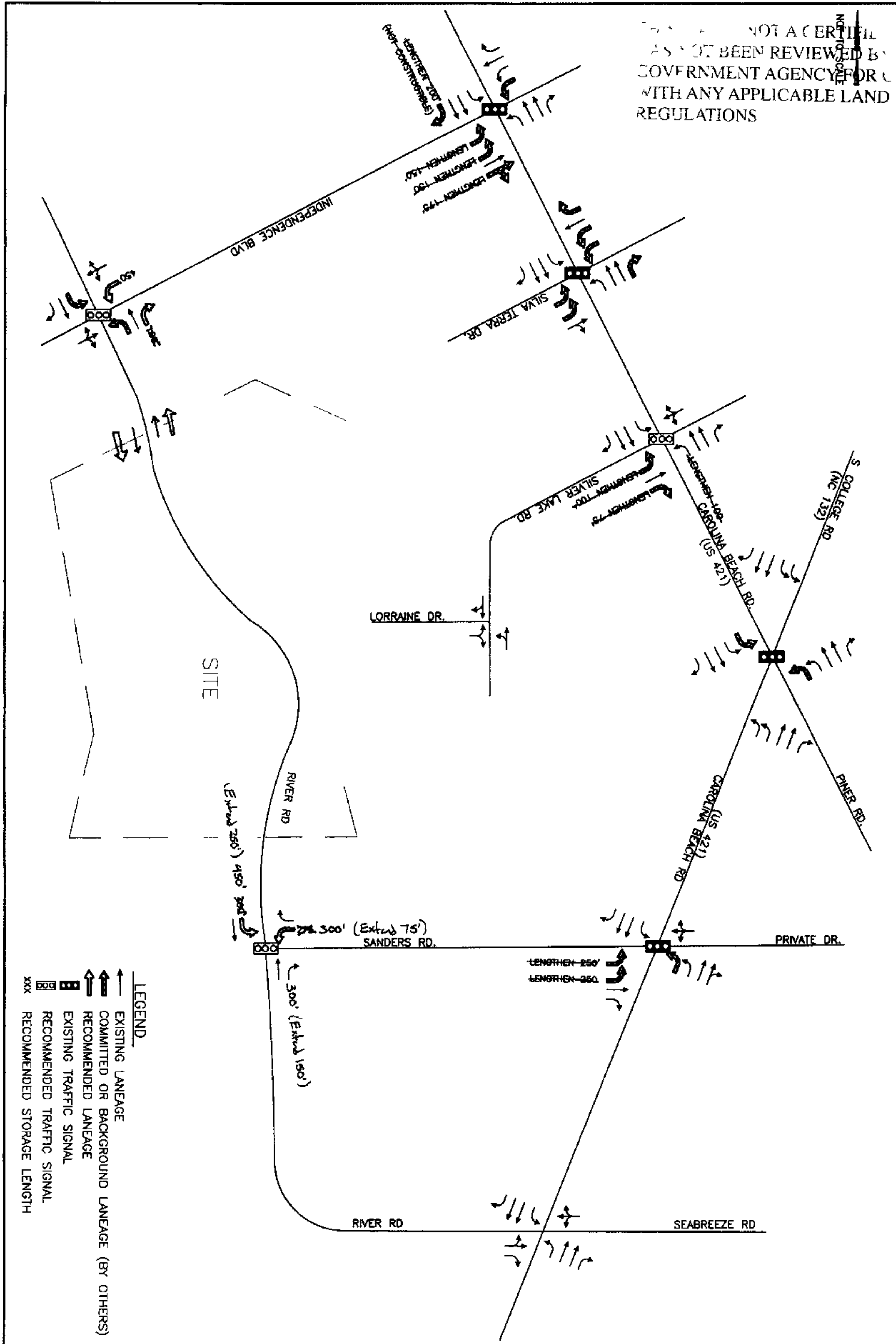


Exhibit F

<p>Kimley-Horn and Associates Inc.</p>	<p>RIVER ROAD DEVELOPMENT TRAFFIC IMPACT ANALYSIS</p>	<p>RECOMMENDED ROADWAY LANEAGE - PHASE 1</p>	<p>FIGURE 21</p>
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THIS DOCUMENT, TOGETHER WITH THE CONCEPTS AND DESIGNS PRESENTED HEREIN AS AN INSTRUMENT OF SERVICE IS INTENDED ONLY FOR THE PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. REUSE OF AND IMPROPER RELIANCE ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND ADAPTATION BY KIMLEY-HORN AND ASSOCIATES, INC SHALL BE WITHOUT LIABILITY TO KIMLEY-HORN AND ASSOCIATES, INC

THIS PLAN IS NOT A CERTIFIED PLAN AND HAS NOT BEEN REVIEWED BY ANY GOVERNMENT AGENCY FOR CONFORMANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS



LEGEND
 ↑↑↑ EXISTING LANEAGE
 ↑↑↑ COMMITTED OR BACKGROUND LANEAGE (BY OTHERS)
 ↑↑↑ RECOMMENDED LANEAGE
 ⊕ EXISTING TRAFFIC SIGNAL
 ⊕ RECOMMENDED TRAFFIC SIGNAL
 xxx RECOMMENDED STORAGE LENGTH

Exhibit F

	<p>RIVER ROAD DEVELOPMENT TRAFFIC IMPACT ANALYSIS</p>	<p>RECOMMENDED ROADWAY LANEAGE - PHASE 2</p>	<p>FIGURE 23</p>
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REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration 06/15/2009 04:28:11 PM
Book: RE 5415 Page 2124-2199
Document No.: 2009021704
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Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

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