
Instrument prepared by: David J. Neill, Fox Rothschild LLP, PO Box 27525, Raleigh, NC 27611
Mail after recording: Town Clerk, Town of Rolesville, PO Box 250, Rolesville, NC 27571

NORTH CAROLINA

WAKE COUNTY

**DEVELOPMENT AGREEMENT
(CHANDLERS RIDGE)**

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made to be effective as of the 24 day of September 2020, by and between the **TOWN OF ROLESVILLE**, a North Carolina municipal corporation (the “**Town**”) and **WRIGHT-WHITLEY DEVELOPMENT COMPANY, LLC**, a North Carolina limited liability company (the “**Developer**”).

WITNESSETH:

WHEREAS, Developer is the owner of a recombined parcel of real property comprised of approximately 174.397 acres, a portion of which is located within the planning jurisdiction of the Town, and which is more particularly described on Exhibit A, attached hereto and incorporated herein (the “**Property**”); and

WHEREAS, Developer proposes to develop a conservation subdivision for development of a residential subdivision to be named Chandler’s Ridge (“**Chandler’s Ridge**”), the plan for which is attached hereto and incorporated herein as Exhibit B;

WHEREAS, Developer did petition and on March 17, 2020 following a public hearing, the Town did approve annexation of a portion of the Property; and

WHEREAS, on June 16, 2020, following a public hearing, the Town did approve this Agreement in accordance with Part 3D of Chapter 160A of the North Carolina General Statutes; and

WHEREAS, on June 16, 2020, following a quasi-judicial hearing before the Town Board of Commissioners, the Town did grant a Special Use Permit for a conservation subdivision including the associated preliminary subdivision plat and issue an order approving the

Subdivision on the Property a copy of which is recorded in Book 108011, Page 2658, Wake County Registry (the "SUP"); and

WHEREAS, the SUP did further contain a condition requiring final execution of this Agreement by the Town and Developer; and

WHEREAS, the Subdivision Plan (as defined below) identifies ninety-six (96) single-family detached residential lots, along with ancillary public and private facilities, including streets, sidewalks, water and sewer lines, storm drainage improvements, open space, and passive and/or active recreation facilities, all to be developed pursuant to a schedule and phasing plan setting forth a timetable for development, a copy of which is attached hereto as Exhibit C and hereby incorporated herein (the "**Phasing Schedule**"); and

WHEREAS, the SUP did include a condition requiring Developer to dedicate that certain right-of-way and construct within the Property that certain portion of the anticipated, future extension of Jones Dairy Road as shown on the Subdivision Plan (the "**Jones Dairy Road Extension**"); and

WHEREAS, the SUP did further include a condition requiring Developer to reserve for the benefit of the Town the route for certain right-of-way to be acquired as an alternative route for the extension of Jones Dairy Road as shown on the Subdivision Plan (the "**Jones Dairy Road Extension Alternative**"); and

WHEREAS, the Planning Director has previously issued an interpretation that the condition of approval requiring construction of a portion of the Jones Dairy Road Extension can be satisfied by Developer by requesting a fee in lieu of construction as per Section 9.12 of the Rolesville Unified Development Ordinance and if authorized by the Board, paying to the Town an adequate fee in lieu of construction for said road improvement; and

WHEREAS, Developer has and does hereby agree that the Phasing Schedule and performance standards are essential parts of this Agreement and that the Phasing Schedule and performance standards shall be satisfied and maintained, and that no substantive deviation to or modification of such standards or schedule shall occur without the specific written consent of the Town.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties hereto agree as follows:

1. Definitions. Whenever used in this Agreement, the following terms shall have the definitions indicated hereinafter in this Section 1. Other terms may be defined elsewhere in this Agreement.
 - a. "**Construction Documents**" shall mean the Subdivision Plan, construction drawings ("**CDs**"), and specifications that may hereafter be made a part thereof, but all of which as are contained in Town Planning Department File # S 18-02 which is incorporated herein by reference.

- b. “**Subdivision Plan**” shall mean the approved Preliminary Subdivision Plat for Chandler’s Ridge as attached hereto as Exhibit B together with all subsequent, approved modifications and amendments to the same.
 - c. “**Infrastructure**” shall mean all public and private infrastructure necessary to serve that portion of Chandler’s Ridge situated within the municipal limits of the Town including, but not limited to, police and fire protection facilities, water mains, valves, fittings, fire hydrants, service connections, service lines, shutoffs, meter boxes, sewage pumping stations, force mains, gravity sewer mains, manholes, laterals, streets, curbs, gutters, sidewalks, greenways, bikeways, transit facilities, park and recreation facilities, storm drainage facilities, stormwater retention facilities, and open space. Infrastructure to be located within or abutting the Property shall be referred to as “**Onsite**”. Other Infrastructure serving the Property shall be referred to as “**Off-site**”. Infrastructure shall either be owned by the Town (i.e. public infrastructure) or by the Owners Association (i.e. private infrastructure).
 - d. “**Standard Specifications**” shall mean all development documents necessary for approval of Chandler’s Ridge Infrastructure including, but not limited to, the SUP, Subdivision Plan, and other Construction Documents required by the State of North Carolina, Wake County, City of Raleigh and/or the Town.
 - e. “**Owners Association**” shall mean a nonprofit corporation incorporated under N.C. Gen Stat. § 47F-3-101. The Owners Association shall, among other things, have primary enforcement responsibility for any Chandler’s Ridge restrictive covenants and for maintenance of any private Onsite Infrastructure. All current and future Chandler’s Ridge property owners shall be members of the Association.
2. Town Approval of Development Covenants, Etc. The Town Attorney shall review and approve the Articles of Incorporation, Declaration of Covenants, and Bylaws for the Owners Association. Notwithstanding the foregoing or any other language in this Agreement, the Town Attorney shall represent only the Town, and his or duties shall run solely to the Town.
3. Annexation of Additional Land.
- a. In the event any portion of the Property is not within the Town corporate limits, the Developer shall first submit a petition for annexation of such applicable portion of the Property prior to or concurrent with any action to rezone, subdivide, build, otherwise develop such unincorporated portion of the Property. The Town shall review such petition for sufficiency and shall advertise the same for public hearing as required by law. The Town shall make its decision on whether to annex the Property based upon the terms of this Agreement and such other information as may be introduced at the public hearing. The Developer shall not consent to any annexation of the Property by any other municipality while this Agreement is in effect. This Agreement shall not require or guarantee annexation

of the Property, and the Town Board of Commissioners maintains its full legislative authority to review, approve, deny, or modify any such petition by the Developer.

- b. If the Town, following the required public hearings, shall annex the petitioned portion of the Property, the terms of this Agreement shall be deemed automatically amended to account for such determination by the Town. Notwithstanding the foregoing, it is acknowledged and agreed that the Developer is dedicating, as permanent open space, land adjacent to but, but outside of the Town's corporate limits to support the residential density of the Project.
 - c. If the Town, following the required public hearings, shall decline to annex any portion of the Property, except as otherwise limited by other provisions of this Agreement, the Developer may freely submit plans for development of such portions of the Property outside the Town's corporate limits for approval pursuant to the Wake County Unified Development Ordinance.
 - d. Developer proposes a residential development that is or will be within the Town's corporate limits. Developer acknowledges and agrees that, as part of its long-range plan and for the public benefit of the Town and its citizens, the Town requires minimum development standards. Developer hereby covenants and agrees that the conditions of approval incorporated into the SUP were freely and voluntarily agreed to at the time of SUP approval and that the development of the Property will comply with same as may be further described in this Agreement.
4. Infrastructure. Except where fees in lieu of construction are accepted by the Town as provided in Section 4(c), Developer shall design, construct, and install at its expense all Infrastructure in accordance with the design criteria set forth in the Standard Specifications. The plans for the Infrastructure have been prepared by a licensed engineer employed by Developer. The Town has approved the engineer who has designed the Infrastructure. Developer shall furnish all engineering and/or design plans and specifications to the Town prior to contracting for the construction of the Project. The Town has approved, in writing, such plans and specifications. Developer shall obtain, at its expense, all required permits and approvals from all governmental agencies prior to commencing construction of the Infrastructure. Upon satisfactory inspection of Infrastructure by the Town or other government authority, Developer shall do the following:
- a. Public Infrastructure.
 - i. Developer shall construct and dedicate for public use all streets, sidewalks, and water/sewer lines as required by Town-approved construction documents and otherwise necessary to serve the Property, free and clear of all liens and encumbrances, by warranty deed, deed of easement, or bill of sale, in form and substance reasonably satisfactory to the Town. Developer shall convey to the Town and its successors and assigns

perpetual easements necessary or convenient for repair and maintenance of the Public Infrastructure.

- ii. Developer shall deliver to the Town a lien waiver and release, in form and substance reasonably satisfactory to the Town, from all contractors, subcontractors, and suppliers of materials or labor who may have a right to a lien on any portion of the Public Infrastructure.
- iii. Upon final inspection of the improvements and acceptance by the Town or other governmental authority, Developer shall deliver to the Town security for Developer's one-year warranty of the Public Infrastructure as provided in the Town's Unified Development Ordinance.
- iv. Developer shall deliver to the Town all original manufacturers' warranties and/or operation manuals, if any, for the Public Infrastructure and one (1) complete set of as-built drawings showing the Infrastructure, easements, and rights-of-way as located by a North Carolina licensed surveyor and certified by Developer's engineer of record. The as-built drawings shall be submitted in a digital format compatible with the Town's GIS system and approved by the Town.

b. Private Infrastructure.

- i. Developer shall convey to the Owners Association ownership of the Onsite Private Infrastructure, free and clear of all liens and encumbrances, by warranty bill of sale or deed in form and substance reasonably satisfactory to the Town Attorney, along with any easements necessary for repair and maintenance.
- ii. Developer shall deliver to the Owners Association a lien waiver and release from all contractors, subcontractors, and suppliers of materials or labor who may have a right to a lien on any portion of the Private Infrastructure. Developer shall deliver to the Owners Association all original manufacturers' warranties and/or operation manuals, if any.
- iii. Developer shall provide both the Owners Association and the Town a complete set of as-built drawings showing all the Private Infrastructure, and any easements as located by a North Carolina licensed surveyor and certified by Developer's engineer of record. The as-built drawings shall be submitted in a digital format compatible with the Town's GIS system and approved by the Town Manager.

- c. Jones Dairy Road Extension Dedication and Fee In Lieu of Construction. As provided in the SUP, prior to or concurrent with recording any lot in Phase 2 of the Subdivision, the Developer shall dedicate the right-of-way on the Property for the Jones Dairy Road Extension, as shown on the Subdivision Plan. Prior to issuance of any building permit in Phase 2 of the Subdivision Plan, Developer shall pay to the Town a fee in lieu of construction for the Jones Dairy Road

Extension in the amount of Two Hundred Seventy-eight Thousand Six Hundred Eighty-one and 25/100 Dollars (\$278,681.25) (hereinafter the “**Fee-in-Lieu**”).

d. Conveyance of Alternative Right-of-Way & Future Park Land.

- i. Alternative Right-of-Way. Notwithstanding the provisions of Section 4(c) above, the Town is currently undertaking an update to its Thoroughfare Plan, the results of which may require that the Jones Dairy Road moved to the location of the Jones Dairy Road Extension Alternative. The updated Thoroughfare Plan is anticipated to be completed and approved by the Board of Commissioners on or before April 1, 2021. The Town shall inform Developer in writing on or before May 1, 2021 whether the routing will remain in the Jones Dairy Road Extension location or be moved to the Jones Dairy Road Extension Alternative. If the Town timely informs Developer in writing that the Jones Dairy Road route will be moved to the Jones Dairy Road Extension Alternative, the Developer shall prepare an amendment to the approved construction documents to account for the change of location of the right-of-way.
- ii. Future Park Land. In the event the Town exercises its right to acquire the Jones Dairy Road Extension Alternative, the Town shall then be deemed to have an option to purchase the entirety of the unshaded area delineated on that excerpt to the Subdivision Plan attached hereto as Exhibit D (the “**Plan Detail**”) consisting of approximately twenty-two (22) acres (the “**Additional Acreage**”). The Town shall exercise its option set forth by this subsection by notice to Developer on or before May 1, 2022.
- iii. Upon the Town’s notice regarding its election to purchase all or none of the Additional Acreage, (i) Developer shall prepare for recordation, a plat describing the Jones Dairy Road Extension Alternative and/or the Additional Acreage at Developer and Town’s shared, equal cost (the “**Plat**”); and (ii) Town and Developer shall determine the compensation to be paid by Town to Developer for the conveyance of the Jones Dairy Road Extension Alternative and/or Additional Acreage in the manner set forth on Exhibit E hereto (the “**Compensation**”). Thereafter, Developer shall dedicate or deed the Jones Dairy Road Extension Alternative and/or Additional Acreage to Town by reference to the Plat, and Town shall simultaneously pay Developer an amount equal to the Compensation at a customary, North Carolina real estate closing to occur on or before December 31, 2022.
- iv. For purposes of clarity, the Fee-in-Lieu paid for the Jones Dairy Road Extension location shall be deemed equal to any fee-in-lieu of construction otherwise necessary to account for road construction costs at the Jones Dairy Road Extension Alternative location and no further fees-in-lieu of construction relating to Jones Dairy Road shall be required in the event this right-of-way is relocated.

- e. Required Protections for Town in Developer's Contracts. Developer shall ensure that all contracts for engineering, design, construction, and/or construction management for Public Infrastructure include specific language that provides (1) that the contract does not limit any warranties provided under operation of statute or common law concerning the engineering, design, construction, adequacy, or performance of the Improvements; (2) the contract does not limit or shorten any statute of limitations provided by law regarding claims concerning the engineering, design, construction, adequacy, or performance of the Improvements; (3) the Town is named a third-party beneficiary of the contract for the purpose of making any claims regarding the engineering, design, construction, adequacy, or performance of the Improvements; and (4) all warranties available to the Developer under the contract are, in addition to, available, and assignable to the Town.
 - f. Reimbursement of Developer. Any reimbursements available to the Developer hereunder for costs related to Off-Site and/or oversized street, water, and/or sewer lines will be provided in accordance with Town and City of Raleigh policies in effect at time of project completion, if any.
 - g. Public Infrastructure Improvements by the Town. Provided Developer has met, and continues to meet, Developer's obligations hereunder, the Town shall design and construct the following improvements in accordance with the Town's design standards: the Jones Dairy Road Extension or Jones Dairy Road Extension Alternative.
 - h. Timing of Infrastructure Improvements. Infrastructure improvements shall be completed in a timely fashion to enable the development of Chandler's Ridge in accordance with the Phasing Schedule attached as Exhibit C. Any failure on the part of the Developer to comply with this Phasing Schedule shall be deemed a violation of this Agreement, and the Town, in addition to other remedies provided by law, shall have the right to withhold further approvals for the development of the Property, and/or withhold and/or terminate future utility allocations, future utility connections, and future occupancy permits. Any failure on the part of the Town to construct or install Infrastructure for which it is responsible under this Agreement shall not affect Developer's authorization to develop the Project in accordance with the Phasing Schedule. The Town reserves the right to alter the timing of the Off-Site Improvements for which it is responsible hereunder due to lack of available funds or other public policy concern.
5. Water and Sewer Capacity Allocation.
- a. Water and sewer allocation from the Town shall be assigned to new development on the Property once Developer has (i) received Subdivision Plan approval from the a Town Board of Commissioners, (ii) received Town and/or City of Raleigh approval for the increased flow, and (iii) if required, had the Property annexed into the Town. The Town development fee schedule is subject to change at any

time. The amount of fees due to the Town shall be the amount specified by the Fee Schedule in effect at the time the fees are paid.

- b. Subject to denial of approval from another superior governmental agency, force majeure delays described in Section 7, and the timely performance by Developer of its obligations under this Agreement and/or other events beyond the Town's reasonable control, the Town shall make water and sewer service available for the Property on a schedule generally appropriate to fulfill the requirements of the Phasing Schedule. The Town shall assign its available water and sewer allocation in accordance with Town policy.
- c. The amount of flow assigned for a development shall be the average flow requirement for the type of development as determined by the Town and/or the City of Raleigh. At the completion of the development of Chandler's Ridge or portions thereof, the Town will adjust the assigned allocation to coincide with actual average usage.

6. Open Space & Restrictions.

- a. Open Space Outside Corporate Limits. All those portions of the Property shown on the Subdivision Plan designated "Dedicated Protected Open Space" outside of the Town's corporate limits (the "**Restricted Open Space**"), is designated as such to provide necessary open space as required by the Town Unified Development Ordinance (the "**UDO**"). The parties acknowledge and agree that, as shown on the Subdivision Plan, a portion of the Restricted Open Space will lie within Phase 1 (the "**Phase 1 Restricted Open Space**"), and a portion of the Restricted Open Space will lie within Phase 2 (the "**Phase 2 Restricted Open Space**"). The Restricted Open Space shall be preserved as open space consistent with those restrictions and limited uses for open space as set forth in the UDO and shall not be eligible to be counted as acreage or otherwise provide support for residential density outside of the planning jurisdiction of the Town. Promptly following recordation of the plat describing the Phase 1 Restricted Open Space, the provisions of this Section shall be memorialized with respect to the Phase 1 Restricted Open Space in the form of restrictive covenants or other legal instrument provided in Section 6.3.4.5 of the UDO, which shall be recorded with the offices of the Wake County Registry (the "**Phase 1 Restrictions**"). Promptly following recordation of the plat describing the Phase 2 Restricted Open Space, the provisions of this Section shall be memorialized with respect to the Phase 2 Restricted Open Space in the form of restrictive covenants or other legal instrument provided in Section 6.3.4.5 of the UDO, which shall be recorded with the offices of the Wake County Registry (the "**Phase 2 Restrictions**"). Following recordation of the Phase 2 Restrictions if the Town has exercised its right to acquire the Jones Dairy Road Extension Alternative and/or the Additional Acreage, Developer shall, without further consideration, convey all Restricted Open Space to the east of the Jones Dairy Road Extension Alternative to the Town or to the HOA as directed by the Town in the Town's sole discretion, free

of all encumbrances and liens, except the Restrictions, utility easements, and street rights-of-way of record

- b. Land Restrictions. Notwithstanding any other provision of the Agreement to the contrary, if the Town has acquired the Additional Acreage and/or the Restricted Open Space to the east of the Jones Dairy Road Extension Alternative, until such time that the Jones Dairy Road Extension Alternative (or such other collector-level street abutting the Additional Acreage) is opened to public, motor vehicle traffic, no certificate of occupancy shall be issued for use of the Additional Acreage and/or the Restricted Open Space for any active use, including any use as a public park, playground, sports field, or other recreation nature park, center, or facility.
7. Force Majeure. The parties hereto shall not be liable for any failure to perform hereunder as a result of an external event or events beyond their respective control, including, without limitation, acts of the United States of America, acts of the State of North Carolina (including the denial of permits which have been pursued in good faith), embargos, fire, flood, drought, hurricanes, tornadoes, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism, civil riots, or pandemic. However, if any such event interferes with the performance by a party hereunder, such party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance or to complete performance in as timely a manner as is reasonably possible.
8. Indemnification of Town.
 - a. To the maximum extent allowed by law, Developer shall defend, indemnify, and hold harmless the Town from and against all Charges (as defined below) that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Developer or contractors or subcontractors or anyone directly or indirectly employed by or contracting with any of them or anyone for whose acts any of them may be liable. In performing its duties under this section, Developer shall, at its sole expense, defend all Charges with legal counsel reasonably acceptable to the Town. Notwithstanding the foregoing, this Subsection shall not require Developer to indemnify or hold harmless the Town and indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the gross negligence, in whole or in part, of the Town.
 - b. “**Charges**” shall mean claims, suits, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, interest, reasonable attorney’s fees, expenses, and amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders, including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this Agreement. In this Indemnification, “the Town” includes the Town and its officers, officials,

employees, independent contractors, and agents, which shall not be constructed to include the Developer.

- c. Nothing in this Section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.
 - d. This Section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and is not limited by any Warranty Period appearing elsewhere in the Agreement.
9. Written Consents from the Town. Where this Agreement refers to written approvals or consents to be given by the Town and the person or position that may give consent is not identified, the authority to give such approvals shall be delegated to the Town Manager or his designee. An approval required by this Agreement shall not be effective unless given in writing.
10. No Waiver of Governmental Authority or Discretion. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Town of Rolesville Board of Commissioners in a manner not permitted by law. The Town shall incur no liability to the Developer for any losses or damages it may incur as a result of or in connection with the Town's exercise or performance of its regulatory, legislative, or governmental powers or functions or any judicial determination regarding the same.
11. Miscellaneous.
- a. Choice of Law and Forum. This Agreement shall be deemed made in Wake County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Wake County, North Carolina. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.
 - b. Waiver. No action or failure to act by the Town shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
 - c. Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.
 - d. No Third-Party Rights Created. This Agreement is intended for the benefit of the Town and Developer and not for any other person, and no such persons shall enjoy any right, benefit, or entitlement under this Agreement.

- e. Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) the singular includes the plural and the plural, the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc., without limitation. (2) References to a “Section” or “section” shall mean a section of this Agreement. (3) “Contract and “Agreement,” whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement. (5) “Duties” includes obligations. (6) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word “shall” means the action is mandatory. (8) The word “day” means calendar day. (9) Attorneys for all parties have participated in the drafting of this document, and no future interpretation shall favor or disfavor one party over another on account of authorship.
- f. Construction of Agreement. In the event of a conflict or inconsistency between this Agreement and any currently existing agreement between the Town and Developer, the provisions of this Agreement shall control. In the event of a conflict or inconsistency between this Agreement and the approved Standard Specifications, the approved Standard Specifications shall control.
- g. Amendment. This Agreement shall not be modified in any manner except in writing, signed by each of the parties.
- h. Applicability of Agreement. This Agreement shall be applicable to the Property and Construction Documents as approved at the time of this Agreement, and as the same shall thereafter be amended or modified and approved by the Town.
- i. Preambles. The preambles to this Agreement are a part of the agreement of the parties set forth in this Agreement and shall be binding upon the parties in accordance with their terms.
12. Term. The term of this Agreement shall be a period of twelve (12) years following execution by both parties.
13. Real Covenant. This Agreement shall be a real covenant running with the Property, and any portion thereof, as it may be subdivided or recombined from time to time, and shall apply to the development of all or any portion of the Property, and this Agreement shall be binding upon and shall insure to the benefit of any successor in title to the Property or any portion thereof.
14. Assignment. Developer shall be released from its obligations under this Agreement only upon the assignment and assumption of Developer’s obligations hereunder by a successor

in title to the Property and only with the prior written consent of the Town. The Town's consent shall not be unreasonably withheld, conditioned, or delayed if, as reasonably determined by the Town, the proposed assignee assuming Developer's obligations possesses adequate financial resources, ownership interests and development expertise needed to complete the requirements of this Agreement. An assignee's assumption of the obligations of this Agreement shall be memorialized by an assignment and assumption agreement executed by Developer and the assignee, and joined by the Town for the sole purpose of evidencing Town's consent, in a form reasonably approved by the Town Attorney and recorded in the Wake County Registry. Without otherwise modifying the foregoing, the Town consents to D.R. Horton – Terramor, LLC, a North Carolina limited liability company, or nay wholly or partially owned subsidiary of D.R. Horton, Inc., including without limitation Forestar (USA) Real Estate Group, Inc., as a permitted assignee upon execution and recordation of the aforementioned agreement.

15. Consideration. The parties hereto agree that this Agreement is mutually beneficial in that it provides for orderly urban growth and systematic extension of municipal improvements while at the same time saving a substantial amount of money for Developer by relieving Developer of certain infrastructure expenses for which it would otherwise have been obligated.
16. Default by Developer. The Town's Planning Director or his designee shall conduct an annual investigation on each anniversary date of recording this Agreement to determine if Developer is in compliance with the schedules and construction obligations attached hereto. In addition to other remedies provided for in this Agreement or by law or equity, any material breach which remains uncured for a period of thirty (30) days after receipt of written notice from the Town of non-compliance with the Phasing Schedule shall entitle the Town to require specific performance of Developer's obligations hereunder and recover such damages as to which the Town may be entitled, plus reasonable attorneys' fees and costs of any such litigation.
17. Lender Subordination. Any existing deeds of trust, mortgages, or liens encumbering the Property, other than property tax liens for the current tax year or governmental improvement assessment liens, must be subordinated to this Agreement. Such encumbrances must be listed, and this Agreement must be executed by the beneficiary and trustee (if trustee execution is necessary per the terms of the security instrument), mortgagee, or lien holder to evidence such subordination. Grantor represents that no superior deeds of trust, mortgages, or liens (other than property tax liens for the current tax year or governmental improvement assessment liens) encumber or affect the property at the time of the execution and recording of this Agreement, or that if any of the foregoing exist, they shall be subordinate to this Agreement through the subordination language herein.
18. Effectiveness of Agreement. This Agreement shall be effective upon its recording in the offices of the Wake Register of Deeds.
19. Legal Obligations. The failure of this Agreement to describe any permit, condition, or term of restriction applicable to the Property by law does not relieve Developer of the

necessity of complying with such laws governing permitting requirements, conditions, terms or restrictions.

[Signature, Acknowledgment, & Exhibit Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed under seal on the day and year first written above:

“Town”

TOWN OF ROLESVILLE

By: Ronnie Currin
Ronnie Currin, Mayor

[municipal seal above]

Attest:

Robin Peyton
Robin Peyton, Town Clerk

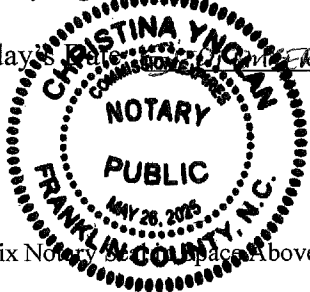
Approved as to Form:

David J. Neill
David J. Neill, Town Attorney

NORTH CAROLINA
WAKE COUNTY

I certify that Robin Peyton, Town Clerk of Rolesville, personally appeared before me this day and certified to me under oath or by affirmation that she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed Ronnie Currin, as Mayor of Rolesville, sign the foregoing document, or (ii) witnessed the principal acknowledge the principal’s signature on the already-signed document.

Today’s date is May 28, 2020.



[Affix Notary Seal in Space Above]

Christina Ynclan
[Notary’s signature as name appears on seal]
CHRISTINA YNCLAN
[Notary’s printed name as name appears on seal]

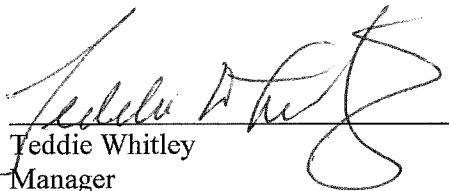
My commission expires: May 28, 2020

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

By: Amy Stevens
Amy Stevens, Town Finance Director

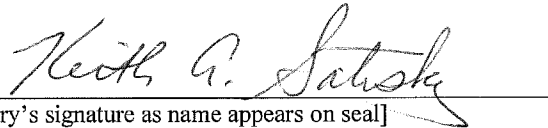
“Developer”

WRIGHT-WHITLEY DEVELOPMENT COMPANY, LLC
(SEAL)

By: 
Teddie Whitley
Manager

NORTH CAROLINA
WAKE COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Teddie Whitley as manager of Wright-Whitley Development Company, LLC.

Today's Date: 9/15/2020, _____ 
[Notary's signature as name appears on seal]

Keith A. Satsky
[Notary's printed name as name appears on seal]

My commission expires: October 8, 2020



EXHIBIT A
The "Property"

BEING all Lot 1 containing a New Area of 174.397 acres (7,596,747 square feet) more or less as shown on that certain plat of survey titled "Subdivision/Recombination Plat Lots 1-4" dated 8/19/2020 prepared by Bateman Civil Survey Company and recorded in Book of Maps 2020, Pages 1405-1407, Wake County Registry, and as more particularly shown on that certain plat of survey titled "Plat of Correction Subdivision/Recombination Plat Lots 1-4" dated 8/19/20 prepared by Bateman Civil Survey Company and re-recorded in Book of Maps 2020, Pages 1476-1478, Wake County Registry, all of which is by reference incorporated herein as part of this description.

EXHIBIT B
The “Subdivision Plan”

See Attached

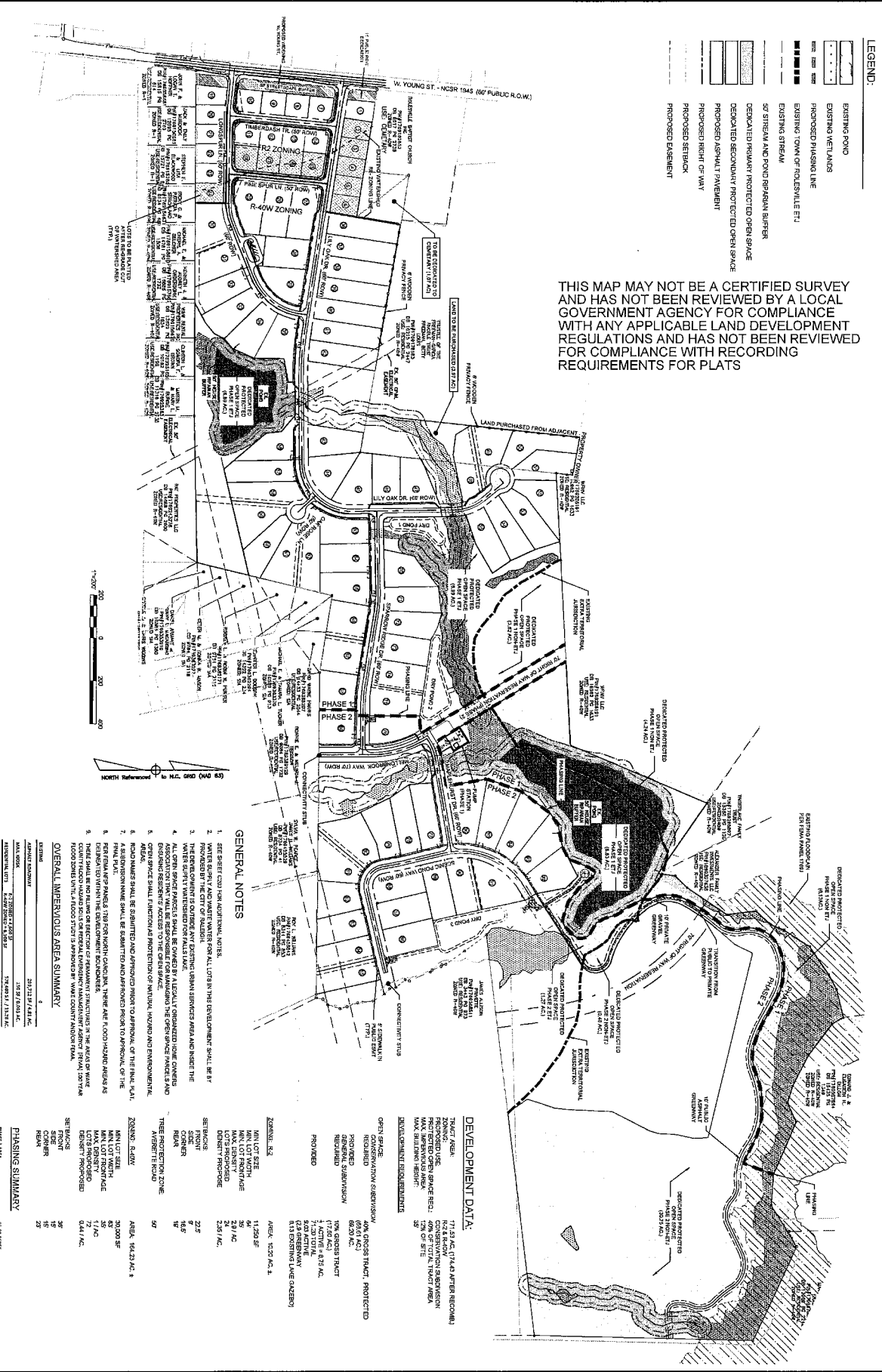
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19	CONSTRUCTION DOCUMENTS BY SUBMITTAL	
20	CONSTRUCTION DOCUMENTS BY SUBMITTAL	

DATE	2017/12/14
SCALE	AS SHOWN
DRAWN BY	TRC
CHECKED BY	TRC
DATE	2017/12/14

DATE	2017/12/14
SCALE	AS SHOWN
DRAWN BY	TRC
CHECKED BY	TRC
DATE	2017/12/14

OVERALL SITE & OPEN SPACE PLAN

C200



THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS

GENERAL NOTES

- SEE SHEET C201 FOR ADDITIONAL NOTES.
- WHERE SHOWN AND WATER MAINS FOR ALL LOTS IN THE DEVELOPMENT SHALL BE BY WATER SUPPLY MAINS AND EXISTING WATER MAINS SHALL BE MAINTAINED.
- ALL OPEN SPACE AREAS SHALL BE OWNED BY A LOCAL GOVERNMENT OR OTHER ENTITY AND SHALL BE MAINTAINED AS SUCH.
- ALL OPEN SPACE AREAS SHALL BE MAINTAINED AS SUCH AND SHALL BE MAINTAINED AS SUCH.
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DEVELOPMENT DATA:

PHASE 1 AREA	171.23 AC (17.44 AC AFTER RECORD)
PHASE 2 AREA	171.23 AC (17.44 AC AFTER RECORD)
TOTAL AREA	342.46 AC
PROPOSED USE	RESIDENTIAL
MAX. DENSITY	1.75 OF SITE
MAX. RESIDENTIAL UNITS	598
MAX. BUILDING HEIGHT	35'

OPEN SPACE:

REQUIRED	171.23 AC (17.44 AC AFTER RECORD)
PROVIDED	171.23 AC (17.44 AC AFTER RECORD)
DEFICIT	0.00 AC

ZONING:

MIN. LOT SIZE	11,250 SF
MIN. LOT FRONTAGE	50'
MAX. SETBACK	25' / AC
MIN. SETBACK	25' / AC
DENSITY PROPOSED	1.75 / AC
SETBACKS	25'
FRONT	25'
REAR	15'
CORNER	15'
MIN. PROTECTION ZONE	50'

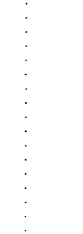
PHASING SUMMARY:

PHASE 1 AREA	171.23 AC
PHASE 2 AREA	171.23 AC
TOTAL AREA	342.46 AC

OVERALL INTERVIEWS AREA SUMMARY:

AREA	171.23 AC
PERCENT	50.00%

Bateman Civil Survey Company
 Engineers • Surveyors • Planners
 2524 Reliance Avenue, Apex, North Carolina 27539
 Phone: 919.577.1080 Fax: 919.577.1081
 NCBELS FIRM No. C-2378



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 CONSTRUCTION DOCUMENTS
 CONSERVATION SUBDIVISION
 410 W. YOUNG ST.
 ROLESVILLE, NC
 WAKE COUNTY



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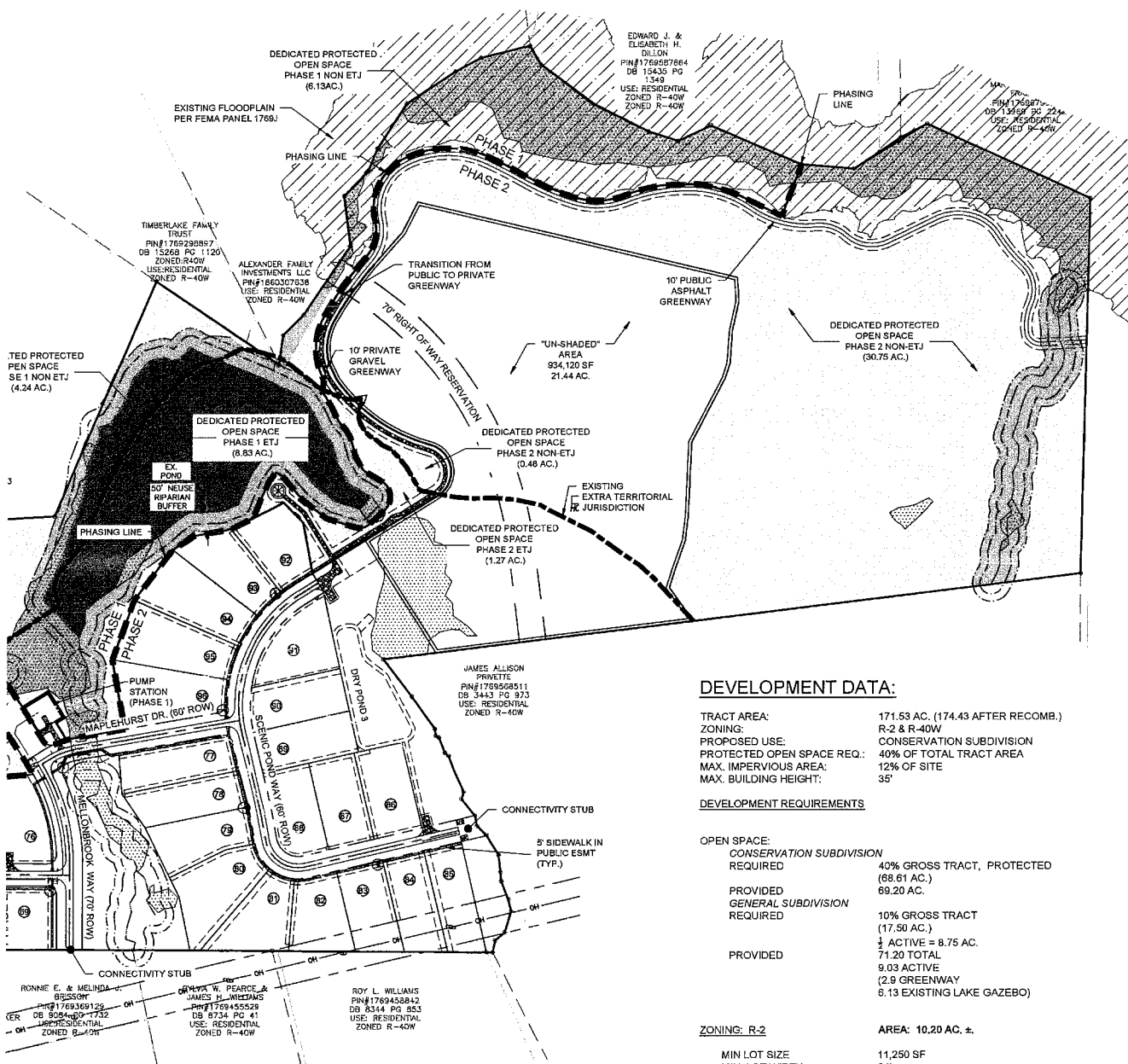
EXHIBIT C
The “Phasing Schedule”

- **Phase 1** All lots in Phase 1 must be completed and recorded no later than twenty-four (24) months after the date the Town approves Developer’s CDs.

- **Phase 2** All remaining lots must be completed and recorded no later than five (5) years after the date the Town approves Developer’s CDs.

EXHIBIT D
The “Plan Detail”

See Attached



DEVELOPMENT DATA:

TRACT AREA:	171.53 AC. (174.43 AFTER RECOMB.)
ZONING:	R-2 & R-40W
PROPOSED USE:	CONSERVATION SUBDIVISION
PROTECTED OPEN SPACE REQ.:	40% OF TOTAL TRACT AREA
MAX. IMPERVIOUS AREA:	12% OF SITE
MAX. BUILDING HEIGHT:	35'

DEVELOPMENT REQUIREMENTS

OPEN SPACE:	CONSERVATION SUBDIVISION
REQUIRED	40% GROSS TRACT, PROTECTED (68.61 AC.)
PROVIDED	69.20 AC.
GENERAL SUBDIVISION	
REQUIRED	10% GROSS TRACT (17.50 AC.)
PROVIDED	1/2 ACTIVE = 8.75 AC. 71.20 TOTAL 9.03 ACTIVE (2.9 GREENWAY 6.13 EXISTING LAKE GAZEBO)

ZONING: R-2 AREA: 10.20 AC. ±

MIN LOT SIZE	11,250 SF
MIN. LOT WIDTH	64'
MIN. LOT FRONTAGE	35'
MAX. DENSITY	2.9 / AC
LOTS PROPOSED	24
DENSITY PROPOSE	2.35 / AC.

SETBACKS:
 FRONT 22.5'
 SIDE 9'
 CORNER 16.5'
 REAR 19'

TREE PROTECTION ZONE:
 AVERETTE ROAD 50'

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ZONING: R-40W AREA: 164.23 AC. ±

MIN LOT SIZE	30,000 SF
MIN. LOT WIDTH	83'
MIN. LOT FRONTAGE	35'
MAX. DENSITY	1 / AC
LOTS PROPOSED	72
DENSITY PROPOSED	0.44 / AC.

SETBACKS:	
FRONT	38'
SIDE	15'
CORNER	15'
REAR	23'

PHASING SUMMARY

PHASE 1 AREA	91.40 ACRES
PHASE 1 OPEN SPACE	36.70 ACRES (40.15%)
PHASE 2 AREA	80.13 ACRES
PHASE 2 OPEN SPACE	32.50 ACRES (40.56%)

GENERAL NOTES

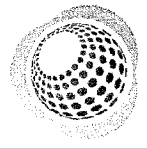
- SEE SHEET C203 FOR ADDITIONAL NOTES.
- WATER SUPPLY AND WASTE WATER FOR ALL LOTS IN THIS DEVELOPMENT SHALL BE PROVIDED BY THE CITY OF RALEIGH.
- THE DEVELOPMENT IS OUTSIDE ANY EXISTING URBAN SERVICES AREA AND INSIDE THE WATER SUPPLY WATERSHED FOR FALLS LAKE.
- ALL OPEN SPACE PARCELS SHALL BE OWNED BY A LEGALLY ORGANIZED HOME OWNERS ASSOCIATION THAT WILL BE RESPONSIBLE FOR MANAGING THE OPEN SPACE PARCELS AND ENSURING RESIDENTS' ACCESS TO THE OPEN SPACE.
- OPEN SPACE SHALL FUNCTION AS PROTECTION OF NATURAL HAZARD AND ENVIRONMENTAL AREAS.
- ROAD NAMES SHALL BE SUBMITTED AND APPROVED PRIOR TO APPROVAL OF THE FINAL PLAT.
- A SUBDIVISION NAME SHALL BE SUBMITTED AND APPROVED PRIOR TO APPROVAL OF THE FINAL PLAT.
- PER FEMA NFIP PANELS 1769 FOR NORTH CAROLINA, THERE ARE FLOOD HAZARD AREAS AS DELINEATED WITHIN THE DEVELOPMENT BOUNDARIES.
- THERE SHALL BE NO FILLING OR ERECTION OF PERMANENT STRUCTURES IN THE AREAS OF WAKE COUNTY FLOOD HAZARD SOILS OR FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) 100 YEAR FLOOD ZONES UNTIL A FLOOD STUDY IS APPROVED BY WAKE COUNTY AND/OR FEMA.

OVERALL IMPERVIOUS AREA SUMMARY

EXISTING	0
ASPHALT ROADWAY	209,712 SF / 4.81 AC.
MAIL KIOSK	150 SF / 0.003 AC.
RESIDENTIAL LOTS	R-2 ZONED = 4,600 SF R-40W ZONED = 6,500 SF
CONCRETE SIDEWALK AND CURB GUTTER	53,278 S.F. / 1.22 AC.
PUMP STATION & DRIVEWAY	6,847 S.F. / 0.16 AC.
GREENWAY	37,758 S.F. / 0.86 AC.
GRAVEL TURN-AROUNDS	5,779 S.F. / 0.13 AC.
TOTAL IMPERVIOUS AREA PROVIDED (AC)	891,924 SF / 20.48 AC.
IMPERVIOUS AREA RATIO	11.74%
MAX ALLOWED BY LITTLE RIVER WATERSHED RULES	< 12.00%



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DEVELOPER'S AGREEMENT
 EXHIBIT FROM PLAT

Project Engineer:	TSS
Designed By:	TEP
Drawn By:	TEP
Checked By:	TSS
Scale:	1" = 200'
Date:	08/03/2020
Project Number:	P170347
SHEET	
EX-DV	

EXHIBIT E
Methodology for Calculation of Compensation

The Compensation to be paid by the Town to Developer for the dedication or deed by Developer to the Town of the Jones Dairy Road Extension Alternative and/or the Additional Acreage, and abandonment of the Jones Dairy Road Extension, shall be the greater of either (i) the amount by which the fair market value of the entire Property immediately before the dedication (or deed) of the Jones Dairy Road Extension Alternative and/or the Additional Acreage, and abandonment of the Jones Dairy Road Extension, exceeds the fair market value of the remainder of the Property immediately after the dedication (or deed) of the Jones Dairy Road Extension Alternative and/or the Additional Acreage, or (ii) the fair market value of the Jones Dairy Road Extension Alternative and/or the Additional Acreage offset by the fair market value of the Jones Dairy Road Extension, in either case taking into account the highest and best use of Property, as determined by a single appraisal made by an appraiser agreed upon by the Town and Developer, which appraisal shall be final. If the parties cannot agree on a single appraiser, the Compensation shall be determined by three appraisers, one selected by the Town, one selected by Developer and the third selected by the two appraisers. In such event, the Compensation shall be determined by taking the average of the two closest appraisals, which Compensation shall be final. The costs of appraisal shall be borne equally between the Town and Developer. All such appraisers shall be MAI appraisers having at least ten-years-experience in Wake County, North Carolina.