

WAKE COUNTY, NC 223
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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Prepared by and after recording return to:
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Raleigh, NC 27609

NORTH CAROLINA

WAKE COUNTY

**PARKSTONE SUBDIVISION
UTILITY ALLOCATION AGREEMENT**

THIS UTILITY ALLOCATION AGREEMENT (the "Agreement") is made effective as of the 21st day of December 2016, by and between the TOWN OF KNIGHTDALE, a municipal corporation existing under the laws of the State of North Carolina ("Town"), Jane P Suggs and Norwood O & Nancy H Hargrove Properties LP (collectively, "Owner") and Knightdale Development Ownership, LLC ("Developer"), a Delaware limited liability company.

WITNESSETH:

WHEREAS, Owner possesses legal title to real property (PIN 1744843240) consisting of 56.83 acres, more or less, within the planning jurisdiction of the Town, as more particularly described on Exhibit A attached hereto and incorporated herein (the "Property");

WHEREAS, Developer is the contract-purchaser of the Property;

WHEREAS, Developer warrants that all parties having an ownership or security interest in the Property have executed this Agreement or joined to subordinate such security interest, as the case may be, except for those specifically set out on Exhibit A;

WHEREAS, except for reimbursement of Town expenses pursuant to Section 2, Owner, by executing this Agreement assumes no affirmative obligations to develop the Property but rather consents to Developer contracting with the Town prior to taking title to the Property,

consent to the Property's annexation by Town, and acknowledge that the Property, once annexed, cannot be developed except in accordance with the terms of this Agreement.

WHEREAS, except for reimbursement of Town expenses pursuant to Section 2, the terms of this Agreement imposing obligations on the Developer shall not be effective until such time as Developer takes title to the Property. If Developer has not taken title to all of the Property by August 17, 2017, this Agreement shall be null, void and of no force and effect, unless such time period is extended by formal amendment of this Agreement;

WHEREAS, Developer has received Town approval of a Master Plan, with case number ZMA-7-16 (a copy of which is attached hereto as Exhibit B), authorizing development of the Property with a mix of uses including a shopping center and a multi-family residential community, which shall include retail, commercial, and residential uses, as well as ancillary public and private facilities including streets, sidewalks, water and sewer lines, storm drainage improvements, and certain active and passive recreation facilities (collectively the "Project" or the "Development"), all to be developed pursuant to the terms of this Agreement;

WHEREAS, the Master Plan proposes a development with a mixture of uses that complies with Town ordinances and development standards, and Town has agreed to allocate utilities for the development of the Project pursuant to the Phasing Schedule setting forth a timetable for the Project, a copy of which Phasing Schedule is included as Exhibit C to this Agreement;

WHEREAS, Owner or Developer (if Developer has taken title to the Property) will request annexation by Town to permit the Property to have access to municipal services and Owner and Developer acknowledge that with expensive and limited water and sewer capacity, park and recreation programs and facilities, and public safety personnel and equipment, the Town evaluates annexation petitions in order to determine its ability to provide for municipal services;

WHEREAS, Developer has committed to Property enhancements as shown on the Master Plan and as described in this Agreement in order to satisfy the Town's Water Allocation Policy and to supplement the tax base of the Town and contribute to the quality of life of current and future Town residents.

WHEREAS, to ensure that the Town is able to finance the necessary municipal services to the Property, Developer has and does hereby agree that the Phasing Schedule is an essential part of this Agreement and that the performance standards and schedule therein set shall be satisfied and maintained, and that no deviation from or modification of such standards or schedule shall occur without the specific written consent of the Town Manager after authorization by the Council, excepting delays caused by force majeure.

NOW, THEREFORE, in consideration of Developer's development of the Property in accordance with the terms hereof and Town's allocation of water and wastewater capacity as described herein for the same, and other mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 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. "Infrastructure" shall mean all public and private infrastructure necessary to serve the Property 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, and stormwater retention facilities. Infrastructure to be located within or abutting the Property shall be referred to as "Onsite" and is also referred to herein as "Community Amenities." Other Infrastructure serving the Property shall be referred to as "Off-site." Infrastructure shall either be owned by Town or other government entity (Public Infrastructure) or by Developer or the property owners association for the Project or a subassociation thereof, if applicable (Private Infrastructure).

B. "Master Plan" shall mean the approved plans for the applicable phase of the Project (Site Plan, Subdivision Plan, or other approval required by the Town's Unified Development Ordinance, however termed), and all subsequent modifications and amendments, construction drawings, and specifications that may hereafter be made a part thereof, but all of which will be contained in the Town Development Services Department's file for this project.

C. "Standard Specifications" shall mean all applicable legal requirements pertaining to the development of the Property including, but not limited to, Master Plan, applicable permits, and construction drawings required for all Infrastructure, including, without limitation, the Town's Unified Development Ordinance, Knightdale's Water Allocation Policy (Ordinance # 15-06-01-002) and Standard Specifications and Construction Details Manual. The failure of this Agreement to describe any other permit, condition, or term of restriction applicable to the Property does not relieve Developer of the necessity of complying with the same.

D. "Owners Association" shall mean a nonprofit association incorporated under North Carolina law by Developer. The Owners Association shall among other things have primary enforcement responsibility for subdivision restrictive covenants within the residential portion of the Project, if any, and for maintenance of Onsite Private Infrastructure provided by Developer. All future property owners within the residential portions of the Project may be members of the Owner's Association or a subassociation thereof.

E. "Phasing Schedule" shall mean a time schedule approved and from time to time amended by mutual agreement of the Parties pursuant to which the Project shall be developed, including the residential and commercial lots, dwellings, commercial buildings and recreational amenities contemplated by Town and Developer and all Infrastructure to serve and reasonably accommodate the same. The initial Phasing Schedule for the Project is found in Exhibit C to this Agreement.

Section 2. Town Approval of Development Covenants, Etc. Town's reasonable legal expenses associated with the Town Attorney's review and approval of this Agreement, any Articles of Incorporation, Declaration of Covenants, and Bylaws for any Owners Association

created, all deeds, easements, documents, plans or covenants related to the Property that affect Town's ability to enforce any part of this Agreement, shall be reimbursed to Town by Developer in a timely manner. Any requested approval or review by the Town Attorney shall not be unreasonably delayed or withheld, and legal expenses allocated to the Developer, and/or by Town shall not exceed fees charged for like services in the Research Triangle, North Carolina market area. Notwithstanding the foregoing or any other language in this Agreement, the Town Attorney shall represent only Town and his duties shall run to Town as his sole client.

Section 3. Developer Filings.

A. **Annexation Schedule.** Owner or Developer (if Developer has taken title to the Property) shall submit a petition for annexation of the Property on or before July 11, 2016. 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 on the annexation petition. Owner and Developer shall not consent to any annexation of the Property by any other municipality while this Agreement is in effect. Either Owner or Developer may unilaterally rescind and terminate this Agreement at any time prior to annexation of the Property by Town. Following annexation, this Agreement shall not be terminated by Owner or Developer without the written consent of Town. If ninety (90) days following the public hearing on the annexation petition, all of the Property has not been annexed into the Corporate Limits of the Town, this Agreement shall be null and void unless such time period is extended by formal amendment of this Agreement. The Town shall have no obligation to review or approve project construction drawings until annexation is effective.

B. **Master Plan Approval Schedule.** Developer has received Town approval of a Master Plan, with case number ZMA-7-16. Developer will construct the Project in accordance with the approved Master Plan and Phasing Schedule. At the time of approval of a subdivision site plan, the subdivision site plan shall be deemed to be a "Site Specific Development Plan" pursuant to Section 15.18 of the Unified Development Ordinance of Town entitled to the Vested Rights set forth in such ordinance. Town shall not unreasonably deny a submitted subdivision site plan that substantially conforms to the approved Master Plan, Phasing Plan and Standard Specifications. Without limiting the generality of the foregoing, it is expressly acknowledged that Town determination as to whether Infrastructure required to be provided by Developer is sufficient to meet the requirements of any subdivision site plan, the applicable calculation shall be made based on the approved Master Plan for the Project as a whole.

Section 4. Infrastructure to be Provided by Developer. Developer shall design, construct and install at its expense all required Infrastructure in accordance with the design criteria set forth in the Standard Specifications.

A. **Procedure.** The plans for Infrastructure shall be prepared by a licensed engineer employed by Developer and approved by Town, with such approval not to be unreasonably withheld. Developer shall obtain, at its expense, all required permits and approvals from all governmental agencies prior to commencing construction of the Infrastructure. Town agrees to cooperate with and reasonably assist Developer in its efforts to obtain necessary permits, approvals, or licenses from other governmental entities necessary or beneficial for the

development of the Property in accordance with this Agreement and as otherwise approved by Town.

B. As-Built Drawings. Developer shall provide Town a complete set of as-built drawings showing all the Infrastructure, if any, 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. Contracts for Public Infrastructure. Developer shall use commercially reasonable efforts to provide 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 time of installation of the Improvements; and (4) all warranties available to the Developer under the contract are, in addition to, available and assignable to the Town. Developer shall provide or acquire all easements, permissions, and/or right-of-way necessary for all Infrastructure.

D. City of Raleigh and State of North Carolina Approval of Utility Plans. Sanitary sewer lines and water distribution infrastructure to serve the Project shall be constructed at Developer's sole expense in accordance with plans approved by the State of North Carolina, City of Raleigh and Town. Town shall facilitate any discussions required with the City of Raleigh or State of North Carolina with respect to the Sewer and Water Infrastructure.

E. Public Road Improvements. The public right-of-way dedication and street improvements required of Developer related to the Master Plan shall be governed by this Section 4.E as well as by the requirements of the North Carolina Department of Transportation.

1. North-South Street and Village Park Drive. Developer shall install asphalt pavement, curb and gutter and a five feet (5') wide sidewalk in the locations shown on C2.0 of the Master Plan and consistent with the cross sections illustrated on Sheet C5.0 of the Master Plan. All required improvements may be made within existing right-of-way and additional right-of-way, if any, to be acquired by Developer. Developer's obligations for these improvements shall be set forth in the approved Master Plan.

2. Knightdale Boulevard. Developer also shall construct a third lane the length of the Property along Knightdale Boulevard and those turn lanes and tapers recommended by that Traffic Impact Analysis entitled "Revised Traffic Impact Analysis for ParkStone" dated August 19, 2016, and prepared by Kimley-Horn and Associates, Inc. for the Development.

3. Additional Improvements. In addition to those recommended improvements, Developer agrees to make the following additional improvements in accordance with TIA requirements recommended by that Traffic Impact Analysis entitled

“Revised Traffic Impact Analysis for ParkStone” dated August 19, 2016, and prepared by Kimley-Horn and Associates, Inc. for the Development: (a) re-stripe Knightdale Boulevard from its intersection with the North-South Street northward to its intersection with Smithfield Road and adjust any signal timings as necessary; (b) install signal heads at the intersection of Knightdale Boulevard and the North-South Street; (c) improvements to the north side of Knightdale Boulevard relating to the signalization of the intersection of Knightdale Boulevard and the North-South Street; and (d) improvements to the driveway entrance of the Wake Stone quarry property across Knightdale Boulevard from the Development, generally as shown on the attached Exhibit D to this document.

4. **Landscaping Maintenance.** Landscaping and trees within the public rights-of-way bordering the Property shall be maintained by the Developer and/or Owners Association.

F. **Easements.** The parties acknowledge that the installation of the public Infrastructure may require Developer to acquire certain easements or rights-of-way located outside the Property (the “Off-site Easements”) or North Carolina Department of Transportation (NCDOT) Right-of-Way Encroachment Agreements. Developer shall acquire the Off-site Easements at its sole cost and expense; provided that if, after reasonable efforts, Developer is not able to acquire one or more of the Off-site Easements or rights-of-way, Developer may, at its discretion and by written notice to the Town, request the Town to acquire those Off-site Easements or rights-of-way through its exercise of eminent domain or similar proceedings. The request shall describe the easement or right-of-way needed and include copies of offers or other evidence of unsuccessful acquisition efforts. After notice to the affected property owner and upon finding that the easement or right-of-way is needed by the Town or other public authority for extension of street, water, sewer or other public facilities, the Town may exercise its power of eminent domain to acquire the same. All expenses incurred by the Town, including the purchase price or court-awarded compensation, appraisal fees, attorneys’ fees and court costs, shall be reimbursed by Developer on demand. The Off-site Easements and NCDOT Encroachment Agreements acquired by Developer shall be in a form reasonably acceptable to the Town and shall, in any event, be dedicated to the Town or another public agency designated by Town.

Section 5. **Community Amenities: On-Site Recreational Amenities to be Provided by Developer.** Developer acknowledges that Town requires on-site amenities for the residents of the Project for the following reasons, among others: (i) the size, scope, and location of the Project; (ii) to ensure a suitable tax base to support the increase in municipal services as a result of the Project; and (iii) to increase the desirability of the Property for residents and potential residents of Town. All onsite recreational amenities shall be provided at the expense of Developer in accordance with the Phasing Plan. Developer’s proposed amenities shall include at a minimum those shown on the attached Exhibit E to this document.

A. All Onsite Amenities will be owned and maintained by Developer or transferred to an Owners Association, who shall be responsible for its maintenance. If Developer or any successor in interest desires to change, substitute, and/or remove any community amenity included in an approved Master Plan and/or Site Plan, Town first must consent in writing to such change or removal, such consent not to be unreasonably withheld, conditioned, or delayed.

Section 6. Reimbursements, Credits.

A. Reimbursement of Developer. Any reimbursements or credits available to the Developer hereunder for costs Developer reasonably incurs related to providing Infrastructure will be provided in accordance with Town and/or City of Raleigh policies in effect at the time of completion of such Infrastructure. Other than the specific credits from Section 6.B, Town makes no representation, expressed or implied, that any reimbursement or credit will be available to or applied for Developer's benefit.

B. Transportation Fees. As outlined in Section 4.E. of this Agreement, Developer has agreed to undertake significant infrastructure improvements for the Development. In consideration thereof, upon final plat approval for first phase of the Project, the Town hereby waives Developer's obligation to pay the first \$90,000.00 in transportation impact fees that would otherwise be paid to Town. For the purposes of this Section 6.B., "Developer" refers to Developer, Developer's successor in interest, or Developer's successor in title to the portion of the Property for which the foregoing waiver and exemption is sought.

Section 7. Water and Sewer Capacity Reservation, Allocation & Fees.

A. Upon annexation of the Property and following Master Plan approval, water and sewer allocation from the Town shall be reserved in an amount appropriate to serve 258,933 square feet of commercial space for the shopping center, 350 residential dwellings and the commercial uses on the outparcels. Such reserved capacity from the Town shall be allocated to new development on the Property in phases once Developer's Master Plan/Site Plan for the applicable phase of the Project has been finally approved and recorded.

B. Subject to denial of approval from another superior governmental agency, the timely performance by Developer of its obligations set forth in the Phasing Schedule for the applicable phase of the Project, subject to any force majeure delays described in Section 9 of this Agreement, Town shall maintain the water and sewer allocation available for the Property in accordance with time periods established in the approved Phasing Schedule. The Town Development Services Department shall maintain a public list of all assigned flows and the Town's available capacity for allocation of water and sewer.

C. The amount of flow assigned for a development shall be the average flow requirement for the type of development as determined by Town and/or the City of Raleigh sufficient to support the development approved.

D. Developer acknowledges that, pursuant to the Town's Water Allocation Policy (Ordinance # 15-06-01-002), the Project must be awarded at least 50 total points to merit water allocation. Developer also acknowledges that, pursuant to the Town's Water Allocation Policy, the Project may be awarded a minimum of 30 base points out of the minimum 50 total points. Developer anticipates achieving the requisite amount of bonus points through the following:

1. Mixture of Use Development (Retail/Office/Residential) -- 41 base points
2. Clubhouse with full kitchen and less than 4000 square feet of meeting space (Section 4E) -- 9 bonus points

3. Additional credits may be determined and described in more detail at a later time. Developer also reserves the right to modify the method by which it achieves 9 bonus points, with the approval of the Technical Review Committee, which shall not be unreasonably withheld.

The Town and Developer acknowledge that the methods of achieving the necessary bonus points may be altered from that set forth above so long as the minimum 50 total points are achieved.

Section 8. Reductions in Town Ordinance Requirements. In light of the mixed use character of the Development; its substantial addition to the tax base; and the improvements Developer has proposed that exceed the minimum requirements under the UDO, including for example additional buffers, landscaping, transportation improvements, and fencing; the following items are expressly approved as alternatives to UDO provisions otherwise applicable, notwithstanding any UDO provisions to the contrary:

A. Transparency and Clear Glazing:

1. All buildings shall meet the transparency requirements of Section 5.11.C.2.a., except as shown on the approved elevations attached to the Master Plan.
2. For areas used for kitchens, storage, restrooms, utility, or similar service areas, spandrel glass may be used in place of clear glass in order to satisfy the requirements of UDO Section 5.11.C.2.a.

B. Neon: Any movie theater within the development may include neon signs in excess of the limitations of Sections 12.3.D. and 12.4.K., as approved by Town Development Services staff.

C. Building materials:

1. Rear of Buildings G through J: Notwithstanding Section 5.11.C.4 of the UDO, any cementitious product may be used for the rear (east-facing) wall of buildings G through J.
2. Quick Brik or similar: Notwithstanding Section 5.11.C.4 of the UDO, buildings with a gross floor area of greater than 20,000 square feet may be permitted to include Quick Brik or a substantially similar product as an acceptable building finish in addition to those finishes contained in the UDO.

D. Flag lots: Notwithstanding the provisions of Section 4.2.K of the UDO, all Lots within the Development may be developed as shown on Sheets C2.0 and C2.1. Each lot shall meet the minimum lot width at a point not to exceed 400 feet from the right of way.

E. Setbacks:

1. Notwithstanding Section 2.11.B. of the UDO, Building K must be set back from the nearest public right-of-way generally as shown on Sheet C2.0, but in no case farther than 180 feet.

2. Notwithstanding Section 2.8.B. of the UDO, multifamily structures in the Development may be set back more than 25 feet from a public right of way.

F. Parking:

1. Off-street vehicle accommodation areas, including but not limited to parking areas, are to be located in accordance with UDO Sections 10.4.A and 10.6.A, except as shown on Sheets C2.0 and C2.1.

2. Parking areas on Lots #2 through #9 shall be permitted to be developed with parking areas divided into modules containing up to 50 parking spaces per module, generally as shown on Sheets C2.0 and C2.1, notwithstanding the provisions of Section 10.6 of the UDO related to the same.

3. On-Street Parking: Notwithstanding Section 17.3 of the UDO, on-street parking shall not be provided on roadways within the Development.

G. Park and Ride spaces: Notwithstanding §10.3.B of the UDO, park and ride parking spaces shall not be required within the Development.

H. Buffers: The Development is planned for a mix of uses and includes the North-South Street between commercial uses and adjoining property to the west. Consequently, notwithstanding Sections 2.11.B and 8.6 of the UDO, (a) no buffer or setback shall be required between the commercial (zoned HBCD) and residential (zoned RMXCD) portions of the Development, nor between the multifamily (RMXCD) portion of the development and the adjacent UR12 zoning district to the west; and (b) all other setbacks and buffers between zoning districts shall be as shown on the attached Sheets C2.0 and C2.1. Land disturbance activities are permitted within any buffer in the Development, generally as depicted in Sheets C3.0 and C3.1.

I. Bicycle parking: Notwithstanding § 10.3.C. of the UDO, the Development shall include a minimum of 50 bicycle parking spaces on the Highway Business / retail portion of the Development.

J. Signage:

1. Notwithstanding the provisions of UDO Section 12.5.B, in addition to signage otherwise permitted by the UDO, one off-premise monument sign of up to 20' in height and 200 sq. ft. in area per side shall be permitted along Knightdale Boulevard for the benefit of Lots #1 through #9.

2. Notwithstanding the provisions of UDO Section 12.5.B, in addition to signage otherwise permitted by the UDO, a project branding sign of up to 4' in height and 50 sq. ft. in area shall be permitted on a decorative wall of no more than 5' in height, which wall shall be located at the southeast corner of the intersection of Village Park Drive and the North-South Street for the benefit of Lots #1 through #9. The sign base and structure shall include architectural materials similar to the approved elevations for the Development.

K. Landscaping of Parking Areas: Notwithstanding the provisions of Section 8.8 of the UDO, no more than one shade tree shall be required to be planted within any parking island in the Development. Shade trees shall be provided as indicated on the attached Sheets L2.0, L2.1, and L5.0.

L. Street Walls and Roof Lines:

1. For any movie theater within the Development, the façade articulation requirements of UDO Section 5.4.G. shall be met by any elevation using architectural elements similar to that shown for Building D on Sheet A2.

2. All roof lines of commercial buildings within the Development shall comply with Section 5.11.C.5, except as shown on the approved elevations.

3. For any apartment building within the Development, roof pitches shall be as shown on Sheet A4, notwithstanding Section 5.9.C of the UDO.

M. Tree Protection: The tree protection provisions of the UDO shall not apply to any areas within the Property for which tree removal is consistent with a state or federal permit allowing for the impacting of jurisdictional streams, wetlands, or riparian buffer zones. Further, the standard of Section 8.5.A of the UDO shall be modified such that the standard for tree replacement in Tier 2 areas shall be that all trees greater than 15" DBH shall remain undisturbed or be replaced at a rate of 1 tree per 15" DBH.

N. Fencing: Notwithstanding Section 4.8.B of the UDO, the fence near the eastern boundary of the Development shown on Sheets C2.0 and C2.1 may be constructed of wood.

O. Recreational open space: Notwithstanding Section 7.3 of the UDO, given the proximity of the Property to the Mingo Creek Greenway, (i) Developer shall provide 148,087 SF of active open space inclusive of the credit for neighborhood amenity facilities as shown generally on Exhibit E, including a resort style pool or equivalent with a minimum of 2,500 SF in surface water, a clubhouse with a minimum of 1,500 SF, a bark park and a play area (the locations of which may be modified at the time of site plan approval). The foregoing amenities will be open to all residents of the multi-family portion of the Property and are not subject to a private membership separate from resident fees; and (ii) Developer shall also provide 133,121 SF of passive open space inclusive of the credit for neighborhood amenity facilities as shown generally on Exhibit E, including a pond with a fountain feature and a gathering place with two or more benches and one or more tables (final grading permitting).

P. Multifamily Entrances: In order to provide adequate access for disabled or handicapped residents and guests, notwithstanding Section 5.9.C.2 of the UDO, front entrances of residential structures in the Development do not need to be raised above the finished grade.

Q. Public Road Improvements and Sidewalks: Notwithstanding any requirements in the UDO to the contrary and consistent with the Comprehensive Plan Amendment relative to the North-South Street, Developer shall install asphalt pavement, curb and gutter and a five feet (5') wide sidewalk in the locations shown on C2.0 of the Master Plan and consistent with the cross sections illustrated on Sheet C5.0 of the Master Plan, and no public street connection shall be

made to Sternwheel Way south of the Property rather a public pedestrian and emergency access easement shall be provided in lieu thereof.

Section 9. 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 the control of the party claiming force majeure, including acts of the United States of America, acts of the State of North Carolina (including the denial of or delay in granting permits that Developer or Town has, respectively, 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 acts of terrorism provided, the party claiming such force majeure (i) shall notify in writing the other party promptly upon becoming aware that the performance of any duty or obligation required under this Agreement will be delayed or prevented by a force majeure and (ii) shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance and to complete performance in as timely a manner as possible.

Section 10. Indemnification of Town.

A. As used in this Section, "Charges" means claims, lawsuits, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included within "Charges" are (1) interest; (2) reasonable attorney's fees; and (3) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders, including 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, "Town" includes Town and its officers, officials, employees, independent contractors, and agents, but shall not be construed to include Developer.

B. Indemnification. To the maximum extent allowed by law, Developer shall defend, indemnify, and save harmless Town from and against all claims for loss of life, personal injury and property damage, as well as Charges that arise in connection with this Agreement or as a result of negligent or willful acts or omissions of Developer or Developer's 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 accordance with this Section. In performing its duties under this Section, Developer shall, at its sole expense, defend all claims with legal counsel reasonably acceptable to Town.

C. Other Provisions Separate. Nothing in this Section shall affect any warranties in favor of 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. Survival. With respect to Indemnification for which Developer is responsible pursuant to Section 10(B), which are caused by third-parties (*i.e.*, by parties other than Town), this Section shall remain valid despite termination of this Agreement (whether by expiration of the term or otherwise) for one (1) year after expiration of the applicable statute of limitations (and for the duration of any claims brought within the time period specified above) for such third-party claims. This Section shall automatically terminate after four (4) years following the

termination of this Agreement (whether by expiration of the term or otherwise) with respect to all other Charges.

E. Limitations of Developer's Obligation. Subsections "A" and "B" above shall not require Developer to indemnify or hold harmless Town against liability for Charges resulting from the gross negligence or willful act or omission of Town.

Section 11. Written Consents from Town. Where this Agreement refers to written approvals or consents to be given by Town and the person or position that may give consent is not identified, the authority to give such approvals shall be deemed to be with the Town Manager or his designee and Developer may rely on such authority and approvals to no detriment of its own. An approval required by this Agreement shall not be effective unless given in writing. Unless provided otherwise herein, the written approvals or consents required by Town shall not be unreasonably withheld, conditioned, or delayed.

Section 12. 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 Knightdale Town Council in a manner not permitted by law. Town shall incur no liability to the Developer for any losses or damages it may incur as a result of or in connection with Town's exercise or performance of its regulatory, legislative, or governmental powers or functions, or any judicial determination regarding the same.

Section 13. 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. Except for any cause of action for which a federal court has exclusive jurisdiction, 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. 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 either party shall be deemed to 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 hereunder, except as may be specifically agreed in writing.

C. Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable, the unenforceable provisions shall be severed from the remainder of this Agreement, which shall remain enforceable in accordance with its terms, and the severed provision shall be deemed to be replaced with an amended provision that is as near to achieving the intent of the parties hereto as the severed but is not unenforceable.

D. No Third-Party Rights Created. This Agreement is intended for the benefit of Town and Developer and their successors and assigns as permitted under this Agreement 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," "includes," and "including" are to be read as if they were followed by either the phrase "without limitation" or "but not limited to." (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" 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. (10) All exhibits, attachments, or documents attached to this Agreement or referred to in this Agreement are incorporated by reference into this Agreement as if fully set forth herein.

F. Covenant of Good Faith and Fair Dealing. The Town and Developer shall cooperate and act in good faith to perform their obligations under this Agreement and shall refrain from any action inconsistent with their contractual rights or obligations that would prejudice or injure the other party's rights to receive the benefits of this Agreement. To this end, the Town hereby agrees to consider any requests by Developer to modify or extend the Phasing Schedule in good faith and with fair dealing, including, without limitation, any request to modify or extend the Phasing Schedule to address concerns of Developer's lender or to address market conditions.

G. 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 the development by relieving it of certain infrastructure expenses for which it would otherwise have been obligated. The supplemental construction standards required pursuant to the Town's Water Allocation Policy (Ordinance #15-06-01-002) are considered by the parties to be the minimum additions to the Town's corporate tax basis sufficient to enable the Town to finance the provision of municipal services to the Property. The parties acknowledge that these mutual benefits are sufficient to constitute good and valuable consideration in support of this contractual agreement.

H. Construction of Agreement. This Agreement supersedes and replaces all prior understandings and agreements between and/or among the Town, Owner and/or Developer in their entirety with respect to the subject matter hereof. In the event of a conflict or inconsistency between this Agreement and any currently existing agreement between Town, Owner and/or Developer, the provisions of this Agreement shall control. In the event of a conflict or inconsistency between this Agreement and the Standard Specifications, the provisions of this Agreement shall control.

I. Amendment. This Agreement shall not be modified in any manner except in writing, signed by each of the parties.

J. Applicability of Agreement. This Agreement shall be applicable to the Property and Master Plan as approved by Town and as the same shall thereafter be amended or modified by agreement of the then-owner(s)/developer(s) of the Property and Town in writing.

K. Preambles. The preambles to this Agreement are a part of the agreement of the parties as set forth in this Agreement, and shall be binding upon the parties in accordance with their terms.

L. Acreages. Where specific acreages and distances are set forth herein, such amounts are subject to change based on actual conditions on the Property and necessary or desirable adjustments made during construction.

M. Further Assurances. Town and Developer shall, at the request of the other, take such further actions and enter into such further agreements as are reasonably required to effectuate the intent of this Agreement.

N. Multiple Originals and Counterparts. This Agreement may be executed in multiple originals and separate counterparts each of which shall constitute an original and all of which taken together shall constitute the whole Agreement. Facsimile signatures shall be deemed to have the same effect as originals.

Section 14. Term. The term of this Agreement shall be a period of ten (10) years following recordation of this Agreement.

Section 15. Real Covenant: Delegation of Duties. This Agreement shall be recorded in the office of the Register of Deeds of Wake County, North Carolina and shall be a real covenant running with and appurtenant to the Property, and any portion thereof, as it may be subdivided or recombined, and shall apply to the development of all or any portion of the Property. Developer may assign all or a portion of its interest in this Agreement and/or be released from all or a portion of its obligations under this Agreement only upon the assumption of all or a portion of Developers' obligations hereunder by a successor in title to the Property and only with the prior written consent of Town. Town's consent shall not be unreasonably withheld, conditioned or delayed and in any event shall not be withheld if the party assuming all or a portion of Developers' obligations possesses adequate financial resources, ownership interests and development expertise needed to complete the requirements of this Agreement being assigned, and provided Developer delegates, and proposed assignee assumes and agrees to fulfill, in writing, all of Developers' duties set forth in this Agreement which are being assigned.

Section 16. Consideration; Authority to Enter Agreement. 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 relieving Town of the expense of constructing additional infrastructure and providing for a predictable increase in the real property tax base with development of the Property as provided herein. The parties acknowledge that these mutual benefits are sufficient to constitute good and valuable consideration in support of this contractual agreement. This Agreement was ratified by the Town Council at an open meeting on September 21, 2016, following any notice required by applicable

law, if any. Such ratification shall be deemed to satisfy any requirements for Town Council approval of any item contained herein whether or not specifically stated in such ratification.

Section 17. Default by Developer. The Town's Land Use Administrator 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 Phasing Schedule and construction obligations attached hereto. Any breach of Developer's obligations to install Public Infrastructure in accordance with the Standard Specifications which remains uncured for a period of thirty (30) days after receipt of written notice from the Town of non-compliance shall entitle the Town seek and enforce as its sole and exclusive remedy an action at law for its actual damages or an action in equity for specific performance of Developer's obligations. Furthermore, the Town may halt and enjoin further development activities on the Property by withholding the issuance of permits, map recordings, and/or utility extension or connections for any period of time within which the Development remains in breach which is uncured for a period of thirty (30) days after receipt of written notice of non-compliance from the Town. For any other breach of Developer's obligations hereunder which remains uncured for a period of thirty (30) days after receipt of written notice from the Town of non-compliance the Town as its sole and exclusive remedy shall be entitled to halt and enjoin further development activities on the Property by withholding the issuance of permits, map recordings, and/or utility extension or connections for any period of time within which the Development remains in breach which is uncured for a period of thirty (30) days after receipt of written notice of non-compliance from the Town. Any failure of the Town to exercise any right or remedy as provided for herein shall not be deemed a waiver of the Town's right to strictly enforce Developer's obligations in any other instance.

Section 18. Default by Town. In the event of a default by the Town in performance of its obligations hereunder, Developer's sole relief and remedy shall be limited to a suit for specific performance of this Agreement. No monetary damages or costs shall be recoverable from Town.

Section 19. Mutual Estoppel. As consideration for entering into this Agreement, all parties certify as follows:

A. This Agreement supersedes any and all previous agreements regarding the subject matter and neither party has asserted any claims, counterclaims, rights of offset against the other, and that no circumstances exist which would justify cancellation or termination of the Agreement.

B. In consideration of the mutual promises contained herein and other good and valuable consideration, Owner and Developer on behalf of themselves and their affiliates, divisions, parents, subsidiaries, predecessors, successors, assigns, agents, employees, officers, directors, shareholders, representatives and insurers, whether named herein or not, do hereby irrevocably and unconditionally release, remise, acquit and discharge the Town, including its elected officials, employees, former employees, representatives, attorneys, contractors and insurers, whether named herein or not, from any and all claims, demands, actions or causes of action, or suits of law or in equity for damages, declaratory relief, injunctive relief, or any other form of monetary or non-monetary relief, based upon legal or equitable theory of recovery, known or unknown, past, present, or future, suspected to exist or not suspected to exist, anticipated or not anticipated, which have arisen prior to the effective date of this Agreement and

which are in any manner related to the subject matter of this Agreement.

C. In consideration of the mutual promises contained herein, and other good and valuable consideration, the Town, including its elected officials, employees, former employees, representatives, attorneys, contractors and insurers, whether named herein or not, except for past sums owed by Developer for fees, charges or reimbursements due pursuant to the Town's development fee schedule, for property taxes of general application, and/or due pursuant to applicable Sections of this Agreement, does hereby irrevocably and unconditionally release, remise, acquit and discharge Owner and Developer, their affiliates, divisions, parents, subsidiaries, predecessors, successors, assigns, agents, employees, former employees, officers, directors, shareholders, representatives, attorneys, contractors and insurers, whether named herein or not, from any and all claims, demands, actions or causes of action, or suits of law or in equity for damages, declaratory relief, injunctive relief, or any other form of monetary or non-monetary relief, based upon any legal or equitable theory of recovery, known or unknown, past, present, or future, suspected to exist or not suspected to exist, anticipated or not anticipate, which have arisen prior to the effective date of this Agreement and which are in any manner related to the subject matter of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

ATTEST:

TOWN OF KNIGHTDALE

By: *Whitney A. Ledford*
Whitney A. Ledford, Town Clerk

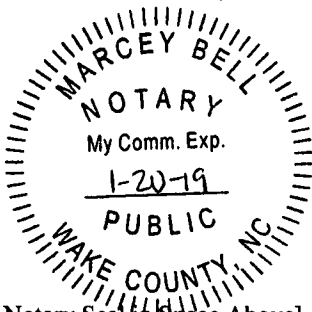
By: *James A. Roberson*
James A. Roberson, Mayor

NORTH CAROLINA

WAKE COUNTY

I certify that Whitney A. Ledford, Town Clerk of the Town of Knightdale, 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 James A. Roberson sign the foregoing document, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Today's Date September 22, 2016.



[Affix Notary Seal in Space Above]

Marcey Bell
[Notary's signature as name appears on seal]

Marcey Bell
[Notary's printed name as name appears on seal]

My commission expires: January 20, 2019

This Agreement has been found to be in compliance with the North Carolina Local Government Fiscal Control Act.

[Signature] 9.22.16
Finance Officer

JANE P. SUGGS (OWNER)

Jane P Suggs

STATE OF NORTH CAROLINA

COUNTY OF Wake

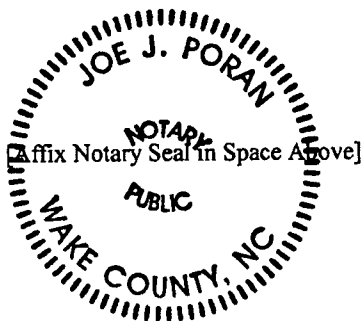
I, certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document in the capacity indicated: Jane P. Suggs.

Today's Date November 3, 2016.

[Signature]
[Notary's signature as name appears on seal]
JOE J. PORAN

[Notary's printed name as name appears on seal]

My commission expires: October 4th, 2021



NORWOOD O & NANCY H HARGROVE
PROPERTIES LP (OWNER)

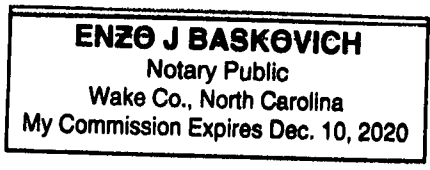
BY: Norwood O Hargrove
NAME: NORWOOD O. HARGROVE
TITLE: General Partner

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, certify that the following person personally appeared before me this day,
acknowledging to me that he or she voluntarily signed the foregoing document in the capacity
indicated: NORWOOD O. HARGROVE

Today's Date NOVEMBER 4th, 2016



[Signature]
[Notary's signature as name appears on seal]

ENZO J. BASKOVICH
[Notary's printed name as name appears on seal]

My commission expires: DEC 10th, 2020

[Affix Notary Seal in Space Above]

DEVELOPER

Knightdale Development Ownership, LLC,
a Delaware limited liability company

BY: [Signature]

NAME: Joseph R. Scuderi

TITLE: Manager

STATE OF New York

Onondaga COUNTY

I certify that Joseph R. Scuderi personally appeared before me this day and acknowledged that (s)he is Manager of Knightdale Development Ownership, LLC, a Delaware limited liability company, and that (s)he, in such capacity and being authorized to do so, executed the foregoing on behalf of said limited liability company for the purposes stated therein.

Today's Date December 21, 2016

Elizabeth A. Nagy
Notary Public - State of New York
01NA6285610
Certified in Onondaga County
Commission Expires on July 08, 2017

Elizabeth A. Nagy
[Notary's signature as name appears on seal]

Elizabeth A. Nagy
[Notary's printed name as name appears on seal]

My commission expires: July 8, 2017

[Affix Notary Seal in Space Above]

List of Exhibits

- Exhibit A** Property
- Exhibit B** Master Plan
- Exhibit C** Phasing Schedule
- Exhibit D** Wake Stone Improvements
- Exhibit E** Open Space Plan

EXHIBIT A**Property**

BEING all of that certain tract or parcel of land located in Wake County, North Carolina and being more particularly described as follows:

Beginning at a new iron pipe on the southern right of way of U.S. Highway 64, said iron being South 15° 48' 45" West 119.45 feet from NCGS monument "Finch", said monument having N.C. grid coordinates NAD 83 of N=745,987.862, E=2,148,849.931, thence from said Beginning point South 01° 46' 01" East 1736.13 feet to an existing iron pipe; thence South 01° 44' 41" East 807.06 feet to an existing iron pipe; thence South 88° 45' 06" West 181.76 feet to an existing axle; thence South 88° 46' 22" West 831.56 feet to an existing iron pipe; thence North 02° 23' 32" West 2,273.22 feet to a new iron pipe on the southern right of way of U.S. Highway 64; thence with said right of way North 73° 43' 19" East 768.06 feet to a new iron pipe; thence along a spiral curve to the right, having a center line delta of 21° 31' 00", a degree of curve of 2° 00' 00", a spiral length of 200.00 feet and a right of way chord bearing and distance of North 74° 23' 08" East 198.24 feet to a new iron pipe; thence along a curve to the right, having a radius of 2,814.79 feet, an arc length of 104.44 feet, and a chord bearing and distance of North 76° 47' 06" East 104.44 feet to the point and place of Beginning, containing 56.834 acres more or less, as shown on plat of survey entitled "ALTA Survey for Wakefield Associates, Inc., St. Matthews Township, Wake County, North Carolina" dated February 1, 2006, signed and sealed April 21, 2006 by Michael D. Goodfred, Professional Land Surveyor, of Kenneth Close, Inc.

Permitted Encumbrances:

1. Taxes for the year 2016, and subsequent years, not yet due and payable.
2. Right(s)-of-way to the North Carolina State Highway Commission recorded in Book 1526, Page 185, Wake County Registry.
3. Memorandum of Real Estate Purchase and Sale Agreement recorded in Book 15522, Page(s) 1236, Wake County Registry.
4. All matters that would be shown on a current, accurate survey of the Property including, without limitation the following matters that are shown on survey dated February 1, 2006, by Michael D. Goodfred, Registered Land Surveyor: a) gravel area

EXHIBIT B

Master Plan

The Master Plan adopted as part of Town of Knightdale Ordinance #16-08-17-001 (approving zoning application ZMA-7-16 with certain conditions), as modified from time to time by specific site plans approved by the Town. A specimen of the Master Plan is attached.

NO.	REVISIONS	DATE	BY
1	KLUB SUBMITTAL	8/17/16	
2	WASTER N.A. SUBMITTAL	8/17/16	

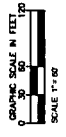
Kimley-Horn
 421 PATENTVILLE STREET, SUITE 400, RALEIGH, NC 27601
 P.O. BOX 10000, RALEIGH, NC 27619
 WWW.KIMLEY-HORN.COM
 PHONE: 919-877-2000
 FAX: 919-877-2000

PRELIMINARY
 NOT FOR CONSTRUCTION

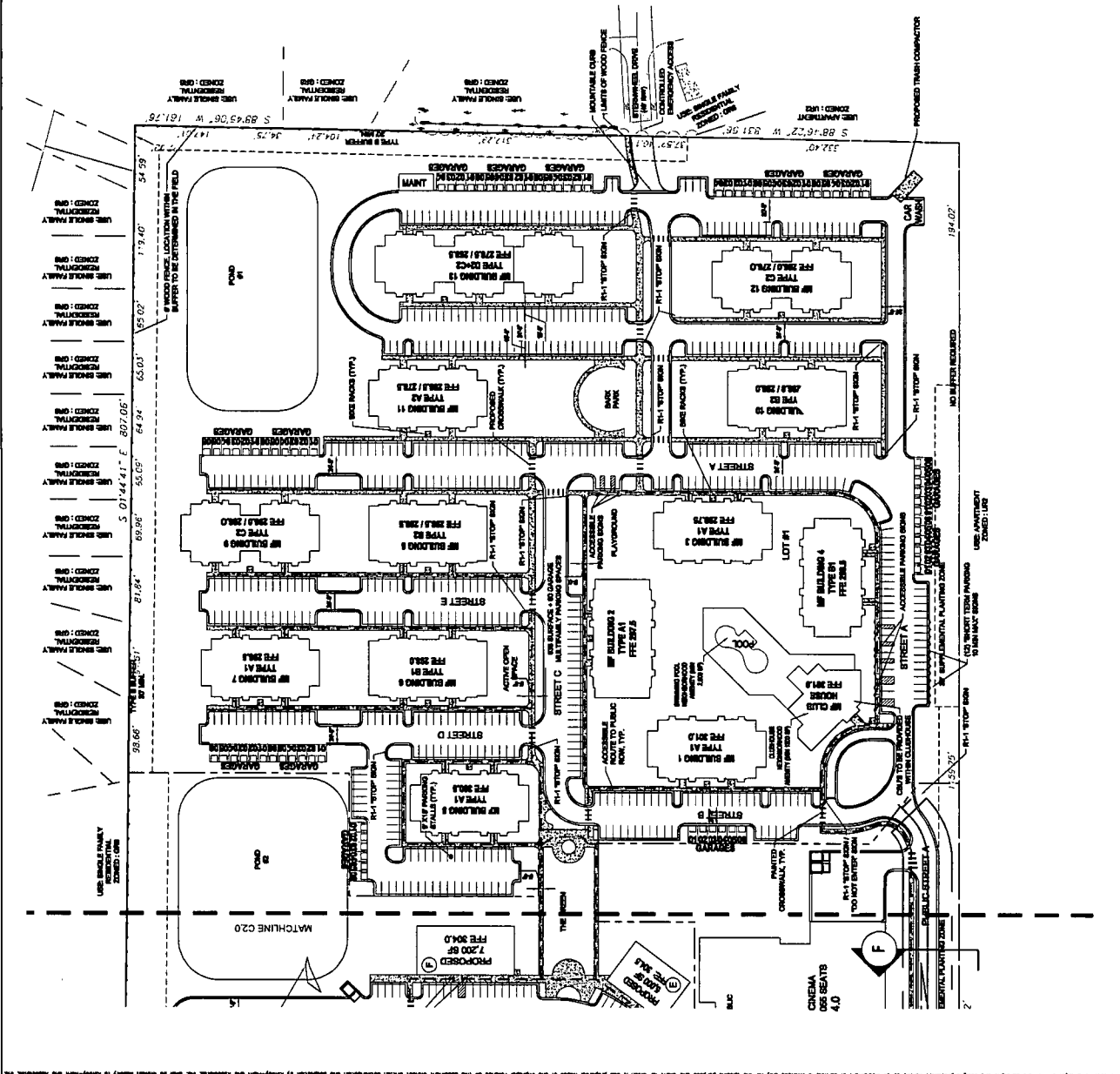
SITE AND SIGNAGE PLAN

PARKSTONE
 PREPARED FOR
WIDEWATERS
 NORTH CAROLINA

SHEET NUMBER
C2.1



"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"



Prepared by Kimley-Horn, a registered professional engineering firm, under the supervision and seal of the registered professional engineer, Kimley-Horn and Associates, Inc., License No. 14000, State of North Carolina. The engineer's seal and signature are required for the plan to be used for construction. The plan is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations. The plan is for informational purposes only and should not be used for any other purpose without the written consent of Kimley-Horn and Associates, Inc.

EXHIBIT C

Phasing Schedule

1. Petition for Annexation of the Property shall be filed on or before July 11, 2016.
2. Phase 1 of the Development shall include multifamily residential buildings, including internal streets, off-site roadway improvements required by NC DOT, and infrastructure to serve residential buildings.
 - a. Commencement of construction is estimated within two (2) years after the date Developer acquires the Property, but in no event later than August 17, 2019.
 - b. Completion of construction is estimated within six (6) years after the date Developer acquires the Property, but in no event later than August 17, 2023.
3. Phase 2 of the Development shall include the retail shops and outparcels.
 - a. Commencement of construction of Phase 2 is estimated within two (2) years after the date Developer acquires the Property, but in no event later than August 17, 2019.
 - b. Completion of construction is estimated within six (6) years after the date Developer acquires the Property, but in no event later than August 17, 2023.

EXHIBIT D

Wake Stone Improvements

See attached, as may be modified from time to time by specific site plans approved by the Town.

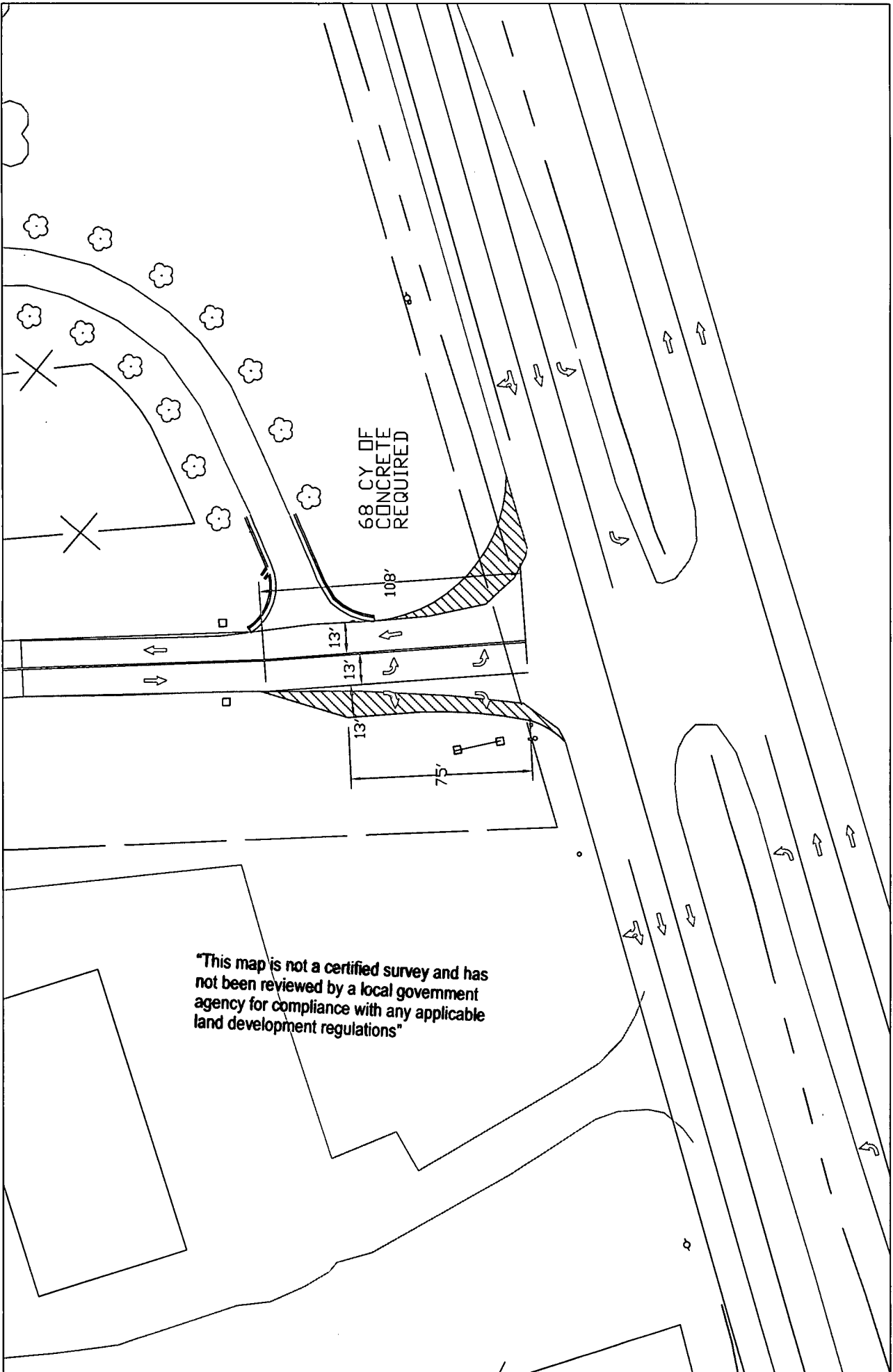
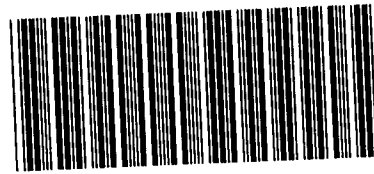


EXHIBIT E

Open Space Plan

The Open Space Plan adopted as part of Town of Knightdale Ordinance #16-08-17-001 (approving zoning application ZMA-7-16 with certain conditions), as modified from time to time by specific site plans approved by the Town. A specimen of the Open Space Plan is attached.



BOOK:016667 PAGE:02285 - 02315



Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording

Laura M. Riddick
Register of Deeds
Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

New Time Stamp

\$25 Non-Standard Fee

Additional Document Fee

Additional Reference Fee

This Customer Group

_____ # of Excessive Entities

_____ # of Time Stamps Needed

This Document

31 # of Pages

F