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Attachment 3: DRAFT Obey Creek Development Agreement

Last revised: March 20, 2015

The following document is a draft version of the Obey Creek development agreement. The purpose of this document is to provide an overview of the conversations held thus far in the Obey Creek development agreement process and to provide an outline of a development agreement document.

- This document is based upon the outline of topics that was reviewed by the Council during the Obey Creek Special Meeting on November 13, 2014. For a link to these topics, click [here](#).¹
- The Glen Lennox Development Agreement was used as a template for this document. For more information about the Glen Lennox Development Agreement, click [here](#).²
- This document is a draft version and is a living, dynamic document that will change throughout the Obey Creek development agreement process.
- For more information about the Obey Creek development agreement process, visit www.townofchapelhill.org/obeycreek

This document was last revised on: March 20, 2015

Previous revision date: March 12, 2015

Previous revision date: February 19, 2015 (third draft)

Previous revision date: February 10, 2015 (second draft)

Previous revision date: January 7, 2015 (first draft)

For previous drafts, click [here](#).³

The following articles/sections have been revised, as of March 20, 2015:

- Article 2: Definitions
- Article 3: Recitals
- Article 4: Terms
- Article 5: Specific Standards and Mitigations
 - Section 5.1: Scale of development and uses permitted – New
 - Section 5.5: Fiscal Impacts – Updated
 - Section 5.7: Public Schools - New
 - Section 5.8: Open Space and Parks – Updated
 - Section 5.10: Sidepaths and Greenways – Updated
 - Section 5.11: Pedestrian and Bicycle Bridge – Updated
 - Section 5.12: Wilson Creek Preserve – Updated
 - Section 5.13: Quarry Restoration - New
 - Section 5.14: Historic and Cultural Features – Updated
 - Section 5.22: Engineering Standard Requirements - Updated
 - Section 5.23: Annexation - New
 - Section 5.24: Fire Code Requirements - Updated

¹ Document: Outline of Obey Creek Development Agreement Topics – The second item under “November 13, 2014 – Council Special Meeting” - <http://www.townofchapelhill.org/town-hall/departments-services/planning-and-sustainability/development-development-agreement-projects/obey-creek/obey-creek-meeting-materials>

² Council Agenda Item: Glen Lennox Development Agreement (June 16, 2014) - <http://chapelhillpublic.novusagenda.com/Bluesheet.aspx?itemid=2783&meetingid=292>

For background information about the Glen Lennox development agreement process, visit www.townofchapelhill.org/glenlennox

³ Obey Creek Development Agreement – Meeting Materials webpage - <http://www.townofchapelhill.org/town-hall/departments-services/planning-and-sustainability/development-development-agreement-projects/obey-creek-/obey-creek-meeting-materials>

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DEVELOPMENT AGREEMENT

**BY AND BETWEEN
OBEY CREEK VENTURES, LLC.**

AND

THE TOWN OF CHAPEL HILL, NORTH CAROLINA

Effective Date: , 2015

Orange County Parcel Identifier Numbers: 9787-13-6437; 8787-14-0366; 9787-14-8639;
[OBEY CREEK: Insert additional PINS, as necessary]

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STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF ORANGE

This Development Agreement (hereinafter the “Agreement”) is made and entered into as of the ____ day of ____ 2015 by and among Obey Creek Ventures, LLC. (“Obey Creek Ventures”) and the Town of Chapel Hill, North Carolina, a municipal corporation of the State of North Carolina.

ARTICLE 1. STATUTORY FRAMEWORK

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

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- 1.8 In addition to any force of law conferred upon this Agreement by North Carolina law related to local governments, the terms of this Agreement are also contractual in nature, are a significant inducement and consideration to enter into this Agreement, and may be enforced as contractual terms.

ARTICLE 2. DEFINITIONS – UPDATED INFORMATION (MARCH 20, 2015)

In the construction of this Agreement and its incorporated Exhibits, the following capitalized terms shall have the respective meanings set forth below wherever they appear in this Agreement. Except as otherwise provided in this Agreement, terms used in the relevant portions of the North Carolina General Statutes or the Town of Chapel Hill Land Use Management Ordinance (“LUMO”) shall have the same meanings as employed in those statutes and ordinances.

- 2.1 *Agreement.* The word “Agreement” shall mean this Development Agreement.
- 2.2 *Annual Report.* The words “Annual Report” shall mean the annual report required by the Town pursuant to [OBEY CREEK: Reference section – former section 4.12 and Section 5.20] of this Agreement.
- 2.3 *Council.* The word “Council,” or “Town Council,” shall mean the legislative body of the Town of Chapel Hill, which together with the mayor of the Town shall constitute the governing body of the town.
- 2.4 *Developer Owner.* The term “Developer Owner” or “Developer Owners” shall mean Obey Creek Ventures, LLC. individually and collectively, and any successor in title who acquires a Parcel in fee simple from a Developer Owner whereby the transferring Developer Owner expressly assigns all of its rights and obligations as Developer Owner under this Agreement to the Person acquiring the Parcel from the Developer Owner, which assignment shall be recorded in the Registry. Any other Person who acquires a Parcel in fee simple title from a Developer Owner shall be a “Parcel Owner” and not a “Developer Owner.”
- 2.5 *Development or Develop.* The words “Development” or “Develop” shall mean any activity on the Property involving, requiring, or consisting of: (i) the construction of a new building, and the construction or installation of other structures, roads, greenways or paved trails, sidewalks, parking lots, or utility infrastructures; (ii) the clearing or alteration of land as an adjunct of such construction; or (iii) the expansion of an existing building.
- 2.6 *Development Agreement Compliance Permit.* The words “Development Agreement Compliance Permit” shall mean the permit issued by the Town Manager authorizing Development or portions thereof in accordance with this Agreement. A Development Agreement Compliance Permit required by this Agreement shall be in lieu of any Zoning Compliance Permit that might otherwise be required by Section 4.9 of the LUMO.
- 2.7 *Effective Date.* The word “Effective Date” shall mean the effective date of this Agreement, which is [REDACTED], 2015.

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- 2.8 *Housing Voucher or Voucher.* The term “Housing Voucher” or “Voucher” shall mean a direct subsidy that assists very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. Housing assistance is provided on behalf of the family or individual, which allows participants to find their own housing, including single-family homes, townhouses and apartments.
- 2.9 *LUMO.* The term “LUMO” shall mean the Land Use Management Ordinance of the Town of Chapel Hill in effect as of the Effective Date.
- 2.10 *Manager.* The words “Manager” or “Town Manager” shall mean the Town Manager of the Town of Chapel Hill or his/her designee and anyone acting pursuant to authority vested by state statute or local ordinance to issue local permits for Development on behalf of the Town of Chapel Hill.
- 2.11 *Master Owners Association.* The term “Owners Association” shall mean an organization formed for the sole purpose of managing all shared or common elements of the Property and whose members consist of the Developer Owner and Parcel Owners or their elected representatives.
- 2.12 *Median Income.* The term “Median Income” shall described income distribution that is divided into two exactly equal parts, one having incomes about the median and the other having incomes below the median.
- 2.13 *Obey Creek Area or Obey Creek.* The term “Obey Creek Area” or “Obey Creek” shall describe the area identified in Exhibit A.
- 2.14 *Parcel.* The term “Parcel” shall mean each separately subdivided tract of the Property shown on a plat recorded in the Registry after the Effective Date and conveyed in fee simple title by a Developer Owner to a Person.
- 2.15 *Parcel Owner.* The term “Parcel Owner” shall mean the Person to whom a Developer Owner conveys fee simple title to a Parcel without a transfer of the rights as Developer Owner and each said Parcel Owner’s successors and assigns in fee simple title.
- 2.16 *Participant or Participants.* The words “Participants” or “Participants” shall mean the Town, the Developer Owners, the Parcel Owners, if any, and the Developer.
- 2.17 *Party or Parties.* The words “Party” or “Parties” shall mean the Town and the Developer Owners. For purposes of this definition, a Parcel Owner is not a Party.
- 2.18 *Periodic Review.* The term “Periodic Review” shall have the meaning ascribed in [OBEY CREEK: Cross check - Section 4.13] of this Agreement.
- 2.19 *Person.* The term “Person” shall mean a natural person, a corporation, limited liability company, a partnership, joint venture, a trust, or any other legal entity.
- 2.20 *Property.* The term “Property” shall mean that certain parcel of land, located along US 15-501 South, and as depicted in Exhibit A, attached hereto. The Property also includes any public rights-of-way and private streets that may be located within the boundaries of Exhibit A.

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- 2.21 *Registry*. The term “Registry” shall mean the Orange County Register of Deeds.
- 2.22 *Representative*. The word “Representative” shall mean a Person designated by Developer Owners to act for and on behalf of the Developer Owners and Parcel Owners wherever indicated and subject to the terms of this Agreement, and the Representative’s successors and assigns. The Representative shall be responsible for coordinating and tracking the requirements of this Agreement and reporting same to the Parties herein pursuant to this Agreement to assure that the overall standards of this agreement are met by all parcel owners. As of the Effective Date, the Representative is Obey Creek Ventures, LLC. The Representative’s successors and assigns shall mean a Person designated by the Developer Owners to replace the then existing Representative. The Developer Owners shall give written notice to the Town and Parcel Owners of any such replacement.
- 2.23 *Sidewalk*. The term “Sidewalk” shall mean a multi-use path or greenway trail located adjacent to a roadway. For the purpose of this Agreement, all sidewalks shall be a minimum of 10 feet wide, built with concrete, and adhere to AASHTO standards for multi-use paths.
- 2.24 *State*. The term “State” shall mean the State of North Carolina.
- 2.25 *Town*. The words “Town” or “the Town” shall mean the Town of Chapel Hill in the Counties of Orange and Durham and the State of North Carolina and its successors in interest.
- 2.26 *Town Attorney*. The term “Town Attorney” shall mean the attorney for the Town.
- 2.27 *Town Regulations*. The term “Town Regulations” shall have the meaning ascribed in [OBEY CREEK: Cross check - Section 4.5].
- 2.28 *Zoning Compliance Permit*. The term “Zoning Compliance Permit” or “ZCP” shall mean an administrative permit issued by the town manager authorizing the recipient to make use of existing buildings in accord with the requirements of the Land Use Management Ordinance as of the effective date of this Agreement.

ARTICLE 3. RECITALS – UPDATED INFORMATION (MARCH 20, 2015)

- 3.1 Obey Creek Ventures is the fee simple owner of that certain property situated on US Highway 15-501 known as the “Obey Creek Area,” as shown on Exhibit A and described on Exhibit D.
- 3.2 Obey Creek Ventures has entered into a purchase agreement with Fredrick Mueller to acquire fee simple interest of that certain property situated on US Highway 15-501 known as the “Mueller Property,” as shown on Exhibit A and described on Exhibit D.
- 3.3 On March 12, 2010, the Town received a request from Scott Murray Land Planning, Inc. for review of a Concept Plan submittal, proposing a mixed use development at 1119 U.S. Highway 15-501 South. The site is located on the east side of U.S. Highway 15-501 South, across from the Market Street entrance to Southern Village. The 124-acre site was located in the Neighborhood Commercial (NC) and Residential-Low Density-1 (R-LD1) zoning districts, and identified as Orange County Parcel Identifier

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Numbers 9787-13-6437, 9787-14-0366, and 9787-14-8639. The Concept Plan was reviewed by the Community Design Commission on April 21, 2010, and by the Town Council on May 17, 2010. Comments were referred to the applicant.

- 3.4 On July 18, 2012, the Town Council received a request from the same applicant for review of a revised Concept Plan for the same site. The total floor area proposed was approximately 1.5 million square feet, including: 600 dwelling units; 375,000 square feet of office-commercial and civic space; a 100,000 square foot hotel (130 rooms); and 350,000 square feet of retail space. The revised Concept Plan was reviewed by the Community Design Commission on August 15, 2012, and by the Town Council on September 19, 2012. Comments were referred to the applicant.
- 3.5 On November 5, 2012, the Town Council authorized the Town Manager and Attorney to develop a new process for initiating development agreement negotiations for the Glen Lennox site and Obey Creek site.
- 3.6 On March 18, 2013, the Town Council accepted the proposed process and directed the Town Manager to engage the Obey Creek applicant to undertake the new process.
- 3.7 On May 29, 2013, the Town Council adopted a resolution establishing the Obey Creek Compass Committee, including a charge, committee composition, process, responsibilities, and timeline.
- 3.8 On July 10, 2013, the Obey Creek Compass Committee met for the first time.
- 3.9 On December 16, 2013, the Obey Creek Compass Committee concluded its work and voted to approve a report to forward to the Town Council.
- 3.10 On January 13, 2014, the Town Council received the Obey Creek Compass Committee Report and adopted a resolution authorizing the Town Manager and Town Attorney to enter into Phase 2 of the established Development Agreement Process with Obey Creek Ventures, LLC for the Obey Creek site.
- 3.11 On June 23, 2014, the Town Council adopted a resolution authorizing the Town Manager and Town Attorney to enter into the Negotiation Phase of the Development Agreement process with Obey Creek Ventures, LLC for the Obey Creek site, subject to the Council's receipt and review of comments from the NCDOT regarding the Traffic Impact Analysis, a fiscal impact report and an environmental assessment/impact report.
- 3.12 On November 3, 2014, having received and reviewed material requested on June 23, 2014, the Town Council voted to enter into the negotiation phase of the Obey Creek Development Agreement process with Obey Creek Ventures, LLC.
- 3.13 On November 13, 2014, the Town Council convened the first of a series of meetings with Obey Creek Ventures, LLC to begin negotiation regarding a Development Agreement for Obey Creek.
- 3.14 The purpose of this Agreement is to facilitate the Development of the Property in a way that best realizes the public benefits to the Town and the Developer Owners. The Development of the Property requires a major investment by the Developer Owners in

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facilities, substantial front-end investment in on-site and off-site improvements, participation in other programs for public benefit and purposes, and substantial commitments of the resources to achieve the benefits of the Development for the Developer Owners and the Town. The Developer Owners will be unable to make and realize the benefits from such commitments without the assurances provided by this Agreement.

- 3.15 The general benefits to be received by the Town from the implementation of the Development include, without limitation:
- a) Implementation of the Town's plans and furthering the goals of securing an appropriate mix of uses and densities for the Property;
 - b) Protection of natural resources within the Property, minimization of adverse offsite impacts, and incorporation of sustainability principles in the design and implementation of the Development of the Property;
 - c) Provision of an efficient, effective, and practical overall plan for addressing the transportation needs of the Development of the Property, including commitments to transit, bikeways, greenways, sidewalks, and road improvements;
 - d) Assurance that the Development of the Property will be undertaken in a manner that is at final build out revenue neutral or revenue positive in terms of fiscal impacts for the Town;
 - e) Establishment of integrated site plans, urban design elements, land uses, architecture, site engineering, and landscape architecture; and
 - f) Assurance of substantial commitments to public infrastructure and amenities as a result of sufficient certainty, timeliness and predictability for the Developer Owners.
- 3.16 The general benefits to be received by the Developer Owners from the implementation of the Development include without limitation:
- a) Obtaining sufficient certainty, timeliness, and predictability in the Town's development review and approval process to justify the required substantial upfront capital investment for a project that will require multiple years to build out;
 - b) Realization of the opportunity to implement the Development plan for a mixed use development that is consistent with Town's and the Developer Owners' goals and needs;
 - c) Integration of site plans, urban design elements, land uses, architecture, site engineering, landscape architecture, and mitigation measures over the entire Property;
 - d) Flexibility with and alternatives to Town ordinances, standards, policies and guidelines to achieve the Development; and
 - e) Participation from the Town to achieve the public benefits necessary for the Development.
- 3.17 In exchange for providing these benefits to the Town, the Developer Owners desire to receive the assurance that it may proceed with the Development of the Property in accordance with any and all existing Town development regulations and conditions of approval of the Town as they exist on the Effective Date, subject to the terms, conditions, and exceptions contained herein and subject to periodic potential amendments to this Agreement made in accordance with this Agreement.

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- 3.18 After careful review and deliberation, the Developer Owners have determined that the latitude afforded the proposed Development of the Property and the certainty, timeliness, and predictability regarding Town development approval afforded by this Agreement provide important benefits for long-range planning and Development by the Developer Owners and justify the provision of the mitigation measures specified in Article 5 of this Agreement, which the Developer Owners freely and with full knowledge and consent agree to provide.
- 3.19 The terms and conditions of this Agreement have undergone extensive review by the Town's staff and the Town Council and have been found to be fair, just and reasonable. After careful review and deliberation, the Town Council has determined and concluded that the Agreement meets the goals and needs of the Town and the Developer Owners, and complies with all statutory requirements.
- 3.20 The Town, by electing to enter into this Agreement in accordance with statutory procedures, acknowledges that the obligations of the Town shall survive beyond the term or terms of the present Town Council and that such action will serve to bind the Town and future councils to the obligations thereby undertaken. By approving this Agreement, the Town Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date.
- 3.21 Based on the foregoing considerations, the Developer Owners and the Town desire to enter into this Agreement for the purposes of:
- a) Agreeing upon the plan, design, and density of Development on the Property and the types of uses thereon, and promoting sustainability, reflecting consideration of economic, environmental and social issues;
 - b) Coordinating the construction and provision of infrastructure that will serve the above-described Development of the Property and the community at large;
 - c) Confirming the dedication and/or provision of the public amenities described herein; and
 - d) Providing assurances to the Developer Owners and the Developer Representative that they may proceed with the Development of the Property in accordance with the terms of this Agreement without encountering future changes in ordinances, regulations or policies that would affect their ability to Develop the Property under the terms of this Agreement; and
 - e) Providing certainty that the Developer Owners, Parcel Owners and Developer Representative can obtain permits necessary for the Development pursuant to a non-discretionary, predictable and expeditious process.
- 3.22 Pursuant to G.S. 160A-400.24, the Town Council conducted a public hearing on [insert date here] to consider the approval of this Agreement. The notice of public hearing specified, among other things, the location of the Property subject to this Agreement, the development uses proposed on the Property and a place where a copy of the proposed Agreement could be obtained. The initial draft of this Agreement was posted on the Town website in [insert date here] and was available for public inspection at Town offices and online at that time. Updates to the draft of this Agreement were posted for the [insert date here] public hearing.

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- 3.23 On [insert date here], the Town Council considered and approved this Agreement and authorized the Town's execution of the same. The approval of this Agreement constitutes a legislative act of the Town Council.

ARTICLE 4. TERMS – UPDATED INFORMATION (MARCH 20, 2015)

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

- 4.1 Recitals. The Parties agree the foregoing Recitals in Article 3 are true and correct and are incorporated herein by reference.
- 4.2 Term. The term of this Agreement shall commence upon the Effective Date and it shall expire twenty (20) years thereafter unless sooner terminated by the mutual consent of the Parties, or is otherwise terminated pursuant to the terms of this Agreement, it being understood that the termination of this Agreement shall not require the consent of any Parcel Owners. This twenty (20) year term has been established by the Parties as a reasonable estimate of the time required to carry out the Development of the Property subject to this Agreement and to obtain the public benefits of the Development. The Town finds that a term of twenty (20) years is reasonably necessary to assure the Town of the realization of the public benefits from the Development of the Property. All of the Development which the Developer Owners or Parcel Owners, if any, elect to commence pursuant to this Agreement which is authorized by this Agreement will be initiated by obtaining a Development Agreement Compliance Permit within the term of the Agreement, but expiration of the twenty (20) year term shall not terminate (a) mutually agreed to obligations and commitments included within this Agreement that are expressly specified to extend beyond the term of the Agreement as stated in [OBEY CREEK: Cross check - Section 4.28] of this Agreement or (b) rights and obligations that are related to Development for which a Development Agreement Compliance Permit has been issued within the twenty (20) year term but the Development of which has not been completed by the expiration of the twenty (20) year term. The term of this Agreement may be extended or renewed by the mutual consent of the Parties in accordance with state and federal law, it being understood that the consent of Parcel Owners will not be required.
- 4.3 Property Subject to Agreement. The real property subject to this Agreement includes all of the Property.
- 4.4 Zoning of the Property. The property west of Wilson Creek was zoned Development Agreement-1 (DA-1) on [insert date here] by the Town Council. The property to the east of Wilson Creek is zoned Residential Low Density-1 (R-LD1) as shown in [OBEY CREEK: Exhibit – link to map].
- 4.5 Law in Effect at Time of the Agreement Governs the Development; Vested Rights. Except as provided in G.S. 160A-400.26 and G.S. 160A-400.29(b), the Town may not apply subsequently adopted ordinances or development policies to the Property during the term of this Agreement without the written consent of the Developer Owners. The consent of Parcel Owners shall not be required unless the Parcel owned by the Parcel Owner is directly and adversely affected by such subsequently adopted ordinances or

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development policies, in which case the affected Parcel Owner must also provide written consent under this Section. Accordingly, during the term of this Agreement the Developer Owners and Parcel Owners, if any, shall have a vested right to Develop the Property in accordance with the terms of Article 5 of this Agreement, the terms of the LUMO and any applicable laws and regulations, all of the foregoing as they exist as of Effective Date. This Agreement does not abrogate any rights that may vest pursuant to statutory or common law or otherwise in the absence of this Agreement. The Participants agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In accordance with G.S. 160A-400.26(c), in the event County, State or federal law is changed after the Effective Date and the change prevents or precludes compliance with one or more provisions of this Agreement, the Town may modify the affected provisions with the consent of the Developer Owners, upon a finding that the change in County, State or federal law has a fundamental effect on the Agreement, by ordinance after notice and a hearing and upon such modification the Town shall record the modification in the Registry. If the Developer Owners fail to consent, this Agreement shall be terminated (with the Developer Owners and any Parcel Owners retaining any rights with respect to any Development Agreement Compliance Permit obtained prior to termination) and said termination will be recorded in the Registry

- 4.6 Development of the Property. Should the Developer Owners and/or any Parcel Owners develop the Property pursuant to this Agreement, then the Property shall be Developed (i) in accordance with the terms and conditions of the LUMO and any other applicable Town ordinances in effect as of the Effective Date; and (ii) in substantial compliance with the specific standards and mitigation measures approved by the Parties as set forth in Article 5 of this Agreement. Any future modifications or revisions to the LUMO or any other Town ordinances would not apply to Development on the Property. The maximum height, bulk, size, and design of buildings and the placement, location, and configuration of the development sites, infrastructure, open space, streets, sidewalks and other public improvements shall be in substantial compliance Article 5 of this Agreement. Except as limited by this Agreement or as otherwise provided in this Agreement, Development shall be substantially consistent with the Town's Design Guidelines, Design Manual, Engineering Standards and other Town standards or policies in effect as of the effective date (collectively, "Town Regulations"). Notwithstanding the foregoing, in the event of any conflict between the provisions of the Town Regulations, and the express provisions of this Agreement, the terms of the Agreement shall be controlling. A certified copy of the LUMO and any other applicable Town ordinances in effect as of the Effective Date shall be provided to and maintained on file and online by the Town Clerk, the Developer Owners and the Representative.
- 4.7 Development of the Property - Special Uses. In the event a proposed Development does not comply with this Agreement and applicable Town Regulations and is not considered a Minor Modification (as hereinafter defined) to this Agreement, the applicant, in the applicant's sole discretion, may:
- a) apply to the Town Council for an amendment to this Agreement as a Major Modification (as hereinafter defined), or
 - b) apply for a special use permit under Section 4.5 of the LUMO to permit the proposed Development.

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4.8 Local Development Permits.

- a) In accordance with G.S. 160A-400.25(a)(6), the local development permits approved or needed to be approved for the Development shall include the following: (1) Individual Development Agreement Compliance Permits; (2) Building and other applicable construction permits; and (3) Engineering Construction Permits, Street Cut Permits, Street Closure Permits for work in Town rights of way. Any such approvals and permits shall be consistent with the requirements of Article 5 of this Agreement. The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Developer Owners, the Parcel Owners or the Representative of the necessity of complying with such permitting requirements, conditions, terms or restrictions, except as may be limited or otherwise provided in this Agreement.
- b) Application may be made for more than one type of local permit at a time, and such permit applications shall be reviewed concurrently by the Town to the extent possible. Additionally, the Town shall exercise reasonable diligence to expedite the processing of the required permit and approval applications for the Development of the Property. The Developer Owners, Parcel Owners and the Representative shall in a timely manner provide the Town with all documents, applications, plans, and other information necessary for the Town to carry out its obligations hereunder.

4.9 Development of the Property – Development Agreement Compliance Permit.

- a) Permit Required. A Development Agreement Compliance Permit shall be required prior to the commencement of any Development or construction work related to Development except as otherwise indicated in this Agreement. The Development Agreement Compliance Permit required by this section shall be in lieu of any Zoning Compliance Permit that might otherwise be required by Section 4.9 of the LUMO. The Developer Owners and/or Parcel Owners intending to undertake Development of the Property (the “Applicant”) shall apply for a Development Agreement Compliance Permit by filing the application provided for in Exhibit E.
- b) Schedule of Review
 - 1) Prior to submitting an application for a Development Agreement Compliance Permit, the Applicant shall meet with the Town to review the proposed Development.
 - 2) Within ten (10) working days following submission of an application for a Development Agreement Compliance Permit, the Town shall provide the applicant with a completeness determination.
 - 3) The Town shall review the application for compliance with this Agreement and the applicable Town regulations that are not expressly superseded by this Agreement.
 - 4) Within twenty (20) working days following the date on which an application is deemed complete, the Town shall provide written comments to the Applicant regarding whether the submitted application is in compliance with this Agreement and applicable Town regulations or whether the submitted application requires revision.
 - 5) If the application is not in compliance, the Applicant shall submit a revised application to the Town. Upon submitting a revised application, the Town

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shall process the revised application in the manner described in [OBEY CREEK: Cross check - Section 4.9], including the fifteen (15) day time frame set forth in [OBEY CREEK: Cross check - subsection (b)(4)], and such process shall be repeated until the application is in compliance with this Agreement and applicable Town regulations.

- 6) Within forty-five (45) working days following the date on which an application is deemed complete, the Community Design Commission shall provide written comments to the Applicant regarding whether the submitted application is in compliance with this Agreement. If the Community Design Commission does not have a regularly scheduled meeting during that timeframe, the application should go to the Commission's next regularly scheduled meeting.
 - 7) The Town Manager shall approve or deny the Development Agreement Compliance Permit application within seventy-five (75) working days following submission of a complete application, unless (i) an extension of time is required to accommodate Community Design Commission review or (ii) is requested by the Applicant, or (iii) the Applicant submits a revised application to the Town fewer than fifteen (15) working days before the seventy-fifth (75th) day of the review period, in which case the review period shall be automatically extended by fifteen (15) working days.
 - i. The Town Manager shall approve the application upon finding it complies with and does not violate any term of this Agreement and the applicable Town regulations, and shall deny the application upon finding it does not comply with the terms of this Agreement and the applicable Town regulations.
 - 8) If the application is approved, the Town shall issue the Applicant a Compliance with Development Agreement Approval Letter.
 - 9) If the application is denied, the Town Manager shall specify the grounds for finding that it is inconsistent or in violation and refer the Applicant to the special use permit process described in Section 4.5 of the LUMO. Alternatively, the applicant may modify the Development Agreement Compliance Permit application or apply for Major Modification to this Agreement.
 - 10) Notwithstanding anything to the contrary, a one-time change in floor area of one thousand (1,000) square feet or fewer to Development previously approved with a DACP shall not require modification or approval of another DACP. Such changes shall be reported to the Town in the Annual Report.
- c) Construction Management Plan. Each Development Agreement Compliance Permit application shall include a construction management plan. The construction management plan shall, at a minimum:
- 1) Show how construction vehicle traffic will be managed and where the construction vehicle routes will be located.
 - 2) Identify any impacts to bicycle, pedestrian, or Transit routes and facilities and indicate how they will be mitigated.
 - 3) Show parking areas for on-site construction workers including plans to prohibit parking in residential neighborhoods.

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- 4) Identify construction staging and material storage areas.
- 5) Identify construction trailers and other associated temporary construction management structures.
- 6) Indicate how the project construction will comply with the Town's Noise Ordinance.
- 7) Propose times and days when construction and noise from the Development are permitted.
- 8) Indicate that the construction management plan for a project will provide a phone number for noise notifications during the construction period. The Developer Owner or the Parcel Owner will post a sign on-site stating that noise issues can be reported by calling the posted phone number.
- 9) Submit written confirmation that Representative has provided information to contractors and subcontractors regarding noise mitigation requirements for Development for contractor and subcontractor review and compliance with same.

4.10 Amendment and Modification. The terms of this Agreement may be amended or modified by the mutual consent of the Parties, it being understood that the consent of a Parcel Owner shall not be required for any amendment or modification of this Agreement unless the amendment or modification has a direct and adverse effect on the use or Development of the Parcel owned by the Parcel Owner. A modification of this Agreement that is considered a Major Modification (as hereinafter defined) of the terms of this Agreement shall follow the same procedures as required by North Carolina law for the adoption of a development agreement. Either party may propose a Major Modification requiring amendment or a Minor Modification (as hereinafter defined) to this Agreement. Upon receipt of a proposed modification, the Town Manager shall consider the following criteria in making the determination as to whether a proposed modification is a Major Modification or a Minor Modification to this Agreement. The following changes (a) – (e) will be considered Major Modifications under the Agreement:

- a) A substantial change in the boundaries of Property subject to this Agreement as defined as: (i) any single proposed increase or decrease in the area of land subject to this Agreement of more than five (5) percent, or (ii) a cumulative increase of fifteen (15) percent or more in the land area subject to this Agreement.
- b) A change in the amount of impervious surface as illustrated in Exhibit B.
- c) A change in maximum building height as illustrated in Exhibit B.
- d) A decrease by more than one (1) foot in setbacks as shown in Exhibit B.
- e) Development of the Property that would increase the total external daily vehicle trips over [OBEY CREEK: Insert trip number] trips.
- f) That unless authorized by a major modification, the cumulative total of new gross floor area shall not generate more trips than allowed section by [OBEY CREEK: Insert sections] (trip generation reports).
- g) All other amendments or modifications to this Agreement are considered Minor Modifications and therefore would not require the procedures for adoption of a development agreement. All Minor Modifications require notice to Town Council and shall be subject to review and approval by the Town Manager. Such approval shall be memorialized by letter from the Town Manager and acknowledged by the Developer Owners, the Parcel Owner, if it affects the Parcel Owner, and Representative and shall be maintained on file by the Town

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Clerk, the Representative, the Developer Owners and Parcel Owner, if applicable.

- h) Notwithstanding the above, some proposed changes to this Agreement that do not meet the threshold to constitute a Major Modification may in the judgment of the Town Manager, because of size, perimeter location or transportation impacts, merit public review. In the event the Town Manager makes such a determination, the Town Manager may submit a proposed Minor Modification as notification to Town Council to allow an opportunity for Council review. Unless the Parties agree otherwise, such a review shall not extend the time period allowed for a decision by the Town Manager on the Minor Modification or convert the change from a Minor Modification into a Major Modification.
 - i) All proposed adjustments to this Agreement shall be publicly posted in such a manner that citizens of Chapel Hill will have the opportunity to express any concerns to the Town Council and/or the Town Manager.
 - j) The Town Manager shall determine whether a proposed adjustment to this Agreement is a Major Modification or a Minor Modification within fifteen (15) working days of receipt of a proposed adjustment and shall promptly notify the Town Council and applicant of that determination. If the proposed action is determined to be a Major Modification, the Town Manager shall require the filing of an application for approval of the amendment, following procedures outlined in [OBEY CREEK: Cross check - Section 1.6] of this Agreement.
 - k) Minor Modifications to this Agreement may be approved by the Town Manager as long as such changes continue to be in substantial compliance with the approving action of the Town Council and all other applicable requirements and result in a configuration of buildings/development that is generally consistent with this Agreement. The Town Manager shall not have the authority to approve changes that constitute a Major Modification to this Agreement.
- 4.11 Recordation/Binding Effect. Within fourteen (14) days after the Town enters into this Agreement, the Developer Owners shall record this Agreement in the Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the Town and its successors in interest, to the Developer Owners and their successors and assigns in title (as defined in [OBEY CREEK: Cross check - Section 2.4]) and, to the extent provided in this Agreement, to the Parcel Owners and their successors and assigns in title (as defined in [OBEY CREEK: Cross check - Section 2.14]). All of the provisions of this Agreement shall be enforceable during the term as equitable servitudes and constitute covenants running with the land pursuant to applicable law.
- 4.12 Annual Report. The Developer Owners or their designee shall on an annual basis submit a written report to the Town Manager on the Development undertaken pursuant to this Agreement in the previous year (the “Annual Report”). The Annual Report shall set forth all individual Development Agreement Compliance Permits issued, infrastructure installed, the status of participation by the Developer Owners, the Representative and the Parcel Owners in the provision of or financing of public infrastructure for the Development, dedications and acquisitions of infrastructure by the Developer Owners, Representative and Parcel Owners, and the projected schedule for Development of the Property in the forthcoming year. The Annual Report shall include all of the information required pursuant to [OBEY CREEK: Cross check - Section 5.20] of the Agreement and shall be provided at the times specified by that Section. The Annual Report shall also include a report demonstrating good faith compliance by the

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Developer Owners, the Representative and the Parcel Owners with the terms of this Agreement. Upon receipt of the Annual Report, the Town Manager shall undertake the Periodic Review as set forth in [OBEY CREEK: Cross check - Section 4.13] of this Agreement.

4.13 Periodic Compliance Review and Enforcement.

- a) Periodic Review. Pursuant to G.S. 160A-400.27, the Town Manager shall conduct a periodic compliance review (the “Periodic Review”) at least every twelve (12) months, at which time the Developer Owners, the Parcel Owners (if any) and or by and through the Representative shall be required to demonstrate good faith compliance with the terms of this Agreement. The Town Manager shall promptly report the results of this review to the Town Council. The Town Manager will use the Annual Report as the basis for preparing the Periodic Review.
- b) Material Breach. If, as a result of the Periodic Review, the Town Council finds and determines that any Developer Owner or Parcel Owner has committed a material breach of the terms or conditions of the Agreement (the “Breaching Owner”), the Town Manager shall serve notice in writing to the Developer Owners and the Breaching Owner (the “Notice”), within fifteen (15) days after the Periodic Review setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination. A breach by a Parcel Owner shall not be deemed or considered a breach by the Developer Owners or any other Parcel Owner and a breach by any Developer Owner shall not be deemed or considered a breach by any Parcel Owners or the other Developer Owner.
- c) Right to Cure. After Notice has been served, the Breaching Owner shall have a reasonable time in which to cure the material breach (the “Breaching Owner’s Cure”), but in no event shall the Breaching Owner have less than thirty (30) days for the Breaching Owner’s Cure. If the Breaching Owner fails to cure the material breach within the time given, then the Developer Owners shall have an additional reasonable amount of time to cure the Breaching Owner’s breach (the “Developer Owner’s Cure”), but in no event shall the Developer Owners have less than an additional thirty (30) days for the Developer Owner’s Cure. Notwithstanding the foregoing, the Breaching Owner and the Developer Owners, as applicable, shall be afforded an additional reasonable period of time to cure the breach if cure is commenced within the time period and thereafter diligently pursued but cannot be completed within said time frame
- d) Termination or Modification by the Town. If the Breaching Owner or the Developer Owner fails to cure the material breach under [OBEY CREEK: Cross check - Section 4.13(c)], then the Town Council may elect to terminate or modify the Agreement after complying with mediation requirements as stated in [OBEY CREEK: Cross check - Section 4.14]. Any notice of termination or modification or finding of breach by the Town may be appealed to the Town Board of Adjustment in the manner provided by G.S. 160A-388(b1). Thereafter, the Breaching Owner and the Developer Owners may pursue any other rights and remedies available at law or in equity. If after mediation the Town Council elects to unilaterally modify the Agreement, the Developer Owners may elect for the Agreement to be terminated rather than accede to the Agreement with the modifications made by the Town Council by giving written notice to the Town within sixty (60) days after the proposed modification. In such event, [OBEY

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CREEK: Cross check - Section 4.28(a), Section 4.28(b) and Section 4.28(c)] shall apply and the Developer Owners have the right to file a termination in the Registry. Failure of the Town to conduct this Periodic Review shall not constitute a waiver by the Town of its rights to otherwise enforce the provisions of this Agreement, nor shall the Developer Owners or Parcel Owners or the Representative have or assert any defense to such enforcement by reason of such failure to conduct a Periodic Review.

4.14 Mediation. In the event any Participant believes another Participant is in default or is in material breach, the Participants shall make a good faith effort to negotiate and informally resolve the issues in dispute prior to terminating this Agreement. In the event of an impasse between the Participants in reaching any mutual agreement mandated by this Agreement, the Participants shall make good faith efforts to negotiate and informally resolve the issue in dispute (the “Claim”). If the Participants do not resolve the Claim through negotiation within 30 days of the date of the notice of default, the Participants agree to submit the claim to mediation pursuant to the following process:

- a) The non-defaulting Participant (the “Claimant”) shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services upon which the Participants may mutually agree.
- b) If Claimant does not submit the claim to mediation within thirty (30) days after notice of default, Claimant shall be deemed to have waived the claim, and the defaulting Participant (the “Respondent”) shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Participant to the foregoing proceedings.
- c) If the Participants do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings. Such notice shall set forth when and where the Participants met, that the Participants are at an impasse, and the date that mediation was terminated.
- d) If settlement does not occur and mediation is terminated, the Participants may pursue any and all actions at law and equity permitted under this Agreement subject to the right to notice and cure as provided in [OBEY CREEK: Cross check - Section 4.13].

4.15 Development Timing and Moratoria. The Developer Owners, Parcel Owners and Representative may, but shall not be obligated to, Develop the Property pursuant to this Agreement. If any such Developer Owner, Parcel Owner or Representative so elects to Develop a portion of the Property, such Participant shall carry out the Development of such portion of the Property in such order and sequence as the Developer Owners, Parcel Owners and Representative, as applicable, shall determine in its discretion, provided such does not violate an express provision of this Agreement. Phasing of the Development shall be based on sound engineering practices as determined by Developer Owners’, Parcel Owners’, if applicable, or Representative’s engineers to ensure functional and safe street circulation and utility systems at all times. Phasing shall be based in such a way that all infrastructure improvements to be constructed within the Property will be provided when or before

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they are necessary for that phase of the Development. Absent an imminent threat to public health or safety, neither the right to develop nor the timing of Development shall be affected by a moratorium or suspension of development rights adopted by the Town except to the extent imposed by this Agreement or by supervening federal or state law, order, rule or regulation.

- 4.16 Default. Apart from the Periodic Review process set forth in [OBEY CREEK: Cross check - Section 4.13] of this Agreement, the failure of the Developer Owners, a Parcel Owner, the Representative or the Town to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting Participant or Participants to pursue such remedies as allowed under applicable law against the defaulting party, after following mediation requirements in [OBEY CREEK: Cross check - Section 4.14] above, provided, however, that no termination of this Agreement may be declared by the Town or the Developer Owner absent its according to the Participant and the Developer Owners, on behalf of the defaulting Participant or a Parcel Owner, if applicable, the notice and opportunity to cure set out in [OBEY CREEK: Cross check - Section 4.13] of this Agreement. A Parcel Owner shall not have the right to terminate this Agreement. A Participant believing another Participant to be in default shall provide notice of that default to the other Participant within fifteen (15) days of such default, and shall provide the defaulting Participant and the Developer Owners on behalf of the defaulting Participant, if a Parcel Owner, an opportunity to cure any default as provided in [OBEY CREEK: Cross check - Section 4.13].
- 4.17 Force Majeure. In addition to specific provisions of this Agreement, neither the Developer Owners, Parcel Owners, the Representative nor the Town shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Participant's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities (excluding Participating Parties to this Agreement), epidemics, wars, embargoes, fires, hurricanes, adverse weather, acts of God, interference duly caused by any other Participant, or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such Participant's reasonable control or due to interference by another Participant, any date or times by which the Participating Parties are otherwise scheduled to perform, if any, shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Participant. If written notice of such delay is given to the other Participant after the commencement of such delay, an extension of time for such cause shall be deemed granted and will be agreed to by the Participating Parties in writing for the period of the enforced delay, or longer as may be mutually agreed.
- 4.18 Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Developer Owners, any Parcel Owner, the Representative and the Town, or to impose any partnership obligation or liability upon such Participating Parties. Neither the Developer Owners, the Representative, any Parcel Owners nor the Town shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other Participant except for the participation by Representative on behalf of the Developer Owners and Parcel Owners as provided in this Agreement.

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- 4.19 No Third Party Beneficiaries. The Agreement is not intended to and does not confer any right or benefit on any third party that is not a Participant.
- 4.20 Legal Actions. In addition to any other rights or remedies, and subject to the mediation requirements in [OBEY CREEK: Cross check - Section 4.14], and further subject to the notice and right to cure provisions in [OBEY CREEK: Cross check - Section 4.13], any Party may institute legal action against a defaulting Party or a defaulting Parcel Owner to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of North Carolina, and the Participating Parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction. In the event that it becomes necessary for a Participant to pursue a civil action against a defaulting Participant, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs from the defaulting party if such fees are awarded by a court of competent jurisdiction.
- 4.21 Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a signatory Party is required to or may give to another signatory Party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or by email with a hard copy to be delivered by independent courier service by the next business day. The Parties shall make reasonable inquiry to determine whether the names or titles of the persons listed in this Agreement should be substituted with the name of the listed person's successor. Notice to a Parcel Owner shall be to the address designated in the deed conveying the Parcel to the Parcel Owner.

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

Town Manager
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd.
Chapel Hill, NC 27514
919-969-2063 (fax)
manager@townofchapelhill.org (email)

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

OBEY CREEK VENTURES, LLC.
c/o East West Partners Management Company, Inc.
Attn: Benjamin Perry
1450 Environ Way
Chapel Hill, North Carolina 27517
919-967-0959 (fax)

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bperry@ewp-nc.com (email)

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

OBEY CREEK VENTURES, LLC.
c/o East West Partners Management Company, Inc.
Attn: Benjamin Perry
1450 Environ Way
Chapel Hill, North Carolina 27517
919-967-0959 (fax)
bperry@ewp-nc.com (email)

- 4.22 Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the Parties relative to the Property and supersedes all previous agreements. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed herein other than as set forth or as referred to in this Agreement or as contained in the LUMO as of the Effective Date.
- 4.23 Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.
- 4.24 Assignment. After notice to the Town, the Developer Owners may at any time and from time to time assign their respective rights and responsibilities hereunder as provided in [OBEY CREEK: Cross check - Section 2.4] to Persons as Developer Owners and as provided in [OBEY CREEK: Cross check - Section 2.14] to Persons as Parcel Owners who will also retain the right to assign their respective rights and/or responsibilities hereunder or any part of all or any portion of the Property as Developer Owners or Parcel Owners. No assignment as to a portion of the Property will relieve the assigning Developer Owners or Parcel Owners of responsibility with respect to the remaining portion of the Property owned by the assigning Developer Owner or Parcel Owner for the period prior to the transfer without the written consent of the Town. However, the assigning Developer Owner or Parcel Owner will be relieved of any further obligations or responsibilities hereunder for the portion of the Property assigned for the period after the transfer. Any violation of the terms and conditions of this Agreement occurring after said transfer will be the responsibility of the then current Developer Owner(s) or Parcel Owner(s) of said Parcel(s) in violation.
- a) In the event that the first of [OBEY CREEK: Insert property information] to transfer all of its property (the “First Developer Transferor”) transfers all of its property to Parcel Owners, then all of such First Developer Transferor’s obligations and rights as Developer Owner shall automatically transfer to and immediately vest in the other Developer Owner (“Remaining Developer Owner”), and the First Developer Transferor shall automatically be released from any and all obligations as Developer Owner.
- b) In the event that prior to the conveyance of the final Parcel from the Remaining Developer Owner, all prior conveyances have been to Parcel Owners, then the final Parcel transfer from the Remaining Developer Owner shall (i) be deemed to

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be a transfer of any remaining rights and obligations of the Remaining Developer Owner as a Developer Owner and automatically release the Remaining Developer Owner from any and all obligations as Developer Owner, and (ii) vest title the purchaser of the final Parcel as a Developer Owner.

- c) In the event that the First Developer Transferor transfers a Parcel or Parcels to a Person(s) to which the First Developer Transferor has assigned all its rights as a Developer Owner (the “Transferee Developer Owner(s)”), and the Remaining Developer Owner transfers all of its Parcels to Parcel Owners, then upon the transfer of the final Parcel the Remaining Developer Owner’s rights and obligations as Developer Owner shall be deemed to be transferred to and immediately vest in the Transferee Development Owner(s), and the Remaining Developer Owner shall automatically be released from any and all obligations as Developer Owner.
- 4.25 Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.
- 4.26 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 4.27 Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Participating Parties hereby agree to cooperate in defending such action; provided, however, each Participant shall retain the right to pursue its own independent legal defense.
- 4.28 Termination. This Agreement shall terminate on the earlier of the expiration of the term specified in [OBEY CREEK: Cross check - Section 4.2] of this Agreement or a specific termination made by operation of the provisions of this Agreement, or by agreement of the Parties. Notwithstanding the foregoing, the Developer Owners shall have the unilateral right to terminate this Agreement upon any of the following: (i) change in the Developer Owner or Representative’s plan for Development that renders this Agreement inapplicable; or (ii) there has been no Development on the Property; provided if termination is due to (i) above, Developer Owners shall complete any construction commenced pursuant to a Development Agreement Compliance Permit issued prior to the date of termination. Any Termination other than by expiration of the term shall be recorded in the Registry. Termination of this Agreement as to the Developer Owners and Parcel Owners shall not affect any of the following:
- a) any requirements to comply with the applicable terms and conditions of the LUMO, Development Agreement Compliance Permits, approval and acceptance of infrastructure improvements, and any applicable permits;
 - b) rights under this Agreement with respect to which a Development Agreement Compliance Permit has been issued by the Town Manager prior to the termination or expiration but for which construction is not completed by the expiration of the twenty (20) year term or not completed prior to termination; or
 - c) provided, if this Agreement shall have run for the entire 20 year term or if this Agreement has otherwise been extended or renewed, in accordance with the terms of this Agreement, the requirements and rights expressly specified in this

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Agreement with respect to Development Agreement Compliance Permits issued shall continue after termination of this Agreement.

In the event consideration is given to (i) suspension of this Agreement, (ii) termination of this Agreement, or (iii) suspension or termination of any approval of an individual Development Agreement Compliance Permit issued pursuant to this Agreement prior to completion of the 20 year term of this Agreement, the Parties (and the Parcel Owner, if the Development Agreement Compliance Permit was issued for its Parcel) agree that each will identify appropriate representatives to meet and participate in good faith negotiations and mediation as provided in [OBEY CREEK: Cross check - Section 4.14], aimed at resolving the issues prompting that consideration.

- 4.29 No Deemed Waiver. Failure of a Participant to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such Participant to exercise at some future time said right or any other right it may have hereunder.
- 4.30 Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The Participating Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect. Participating parties, having voluntarily agreed to be contractually bound, for themselves and their successors and assigns, accept all of the terms of the Agreement and confirm their belief that the terms are consistent with applicable law as of the Effective Date.
- 4.31 Authority. Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind the Town, the Developer Owners and the Representative.
- 4.32 Transparency and Public Involvement. It is the intent of the Participating Parties that all aspects of the implementation of this Agreement shall be carried out in an open, transparent fashion with opportunities for effective and meaningful public involvement. The Town, the Developer Owners, the Parcel Owners, if any, and the Representative shall take reasonable steps to make information about all aspects of the implementation of this Agreement (including required studies, analysis, plans, reports, and applications which are public record) fully available for public review with the exception of any attorney-client privileged information, financing documentation, market analysis, internal financial documentation, reports, pro formas, returns or other personal information.
- 4.33 Estoppe!. Each of the Participating Parties agree, from time to time, within twenty (20) days after request of the other Participant, to deliver to the requesting Participant or such Participant's designee, an estoppel certificate stating that this Agreement is in full force and effect, the unexpired term of this Agreement, and whether or not, to such Participant's knowledge, there are any existing defaults or matters which, with the passage of time, would become defaults under this Agreement. It is understood and agreed that the Parties' obligation to furnish such estoppel certificates in a timely fashion is a material inducement for the other's execution of this Agreement. In no

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event may any Party request from the other an estoppel certificate more than one (1) time in any twelve month period other than in connection with a bona fide sale or financing of the Property or portion thereof, any interests in, or any assets of, any Party.

- 4.34 Parcels and Parcel Owners. This Agreement shall apply to the Property and to all Parcels and Parcel Owners, and by acceptance of a deed of conveyance, each subsequent Developer Owner and Parcel Owner agrees to abide by the terms and conditions of this Agreement; as a Developer Owner or Parcel Owner, as applicable to their respective Parcel, any separate declaration of covenants, restrictions and conditions affecting the Property now or hereafter recorded in the Registry, or any documentation in connection with the recording of the deed conveying the Parcel to the Parcel Owner.
- 4.35 Representations and Warranties of the Developer Owners. The Developer Owners represent and warrant to the Town that:
- a) they are valid limited liability companies duly organized, validly existing and in good standing under the laws of the State of North Carolina;
 - b) they are duly qualified to do business and are in good standing in every jurisdiction in which such licensing and qualification is required;
 - c) they have the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder;
 - d) all of the Developer Owners and Parcel Owners of the Property, to the best of the Developer Owners' and Parcel Owners' knowledge, have or will execute, deliver and perform this Agreement.

ARTICLE 5. SPECIFIC STANDARDS AND MITIGATION MEASURES – UPDATED INFORMATION (MARCH 20, 2015)

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

- 5.1 Scale of Development and Uses Permitted. – Updated information (March 20, 2015)
- a) The scale of development for the Property shall be consistent with the Land Use, Height, and Density provided for in Exhibit B.
 - b) The land uses permitted by this Agreement are limited to those as listed in Exhibit B.
- 5.2 Affordable Housing.
- a) Ownership.
 - 1) The Inclusionary Zoning Ordinance as it currently exists or its successor as established by ordinance by the Town Council shall apply to the for-sale units in the Property. For each phase of development of ownership dwelling units, the required number of affordable dwelling units for that phase, according to the percentage specified in the Inclusionary Zoning Ordinance, will be provided in that phase.

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- 2) Transfer Fee for For-Sale units. Monies will be collected as a transfer fee (the “Transfer Fee”) upon the sale or resale of residential units excepting designated affordable units within the Property. The Transfer Fee will be set at a percentage of 1% of the sales price. The Transfer Fee will be put into a fund and held by the agency administering the affordable homeownership units to offset the expenses it incurs in stewarding and managing the affordable units. Management duties covered by this fee include:
 - (i) Collection of Transfer Fees and management of the Transfer Fee Fund;
 - (ii) Direct project management assistance to owners of affordable units in making major repairs and upfits to their units;
 - (iii) Technical assistance to owners of affordable units who experience financial difficulties, in order to prevent foreclosures;
 - (iv) Management of property tax assessments and bills for the affordable units, which undergo a unique process designed for leasehold properties;
 - (v) Intervention in and mitigation of any nuisance or criminal behavior that might occur in the affordable units;
 - (vi) Assistance in resolving disputes between owners of affordable units home owners association; and
 - (vii) Collection and management of fee which pays for long term, major maintenance of the units.

b) Rental.

- 1) A total of 5% of the rental units within the Property will be made available as affordable rental properties. Housing subsidy vouchers will be accepted for all affordable units.
- 2) One half of the affordable rental units will be made available to households eligible for housing vouchers (i.e. Housing Choice Vouchers, VASH Vouchers) and rented at Fair Market Rents as determined by the U.S. Department of Housing and Urban Development for the Durham-Chapel Hill MSA.
- 3) One half of the affordable rental units will be priced to be affordable to households earning between 60% and 80% of the area median income and rented for no more than 30% of total household income.
- 4) Management. Prior to receiving a Certificate of Occupancy for each residential building at the Property, the Developer Owners or Parcel Owners shall submit a management plan for review and approval by the Town Manager which includes the method of qualifying renters of the affordable units and setting the rental rates for the half of the units made available to renters at 60% - 80% of AMI.
- 5) Parking Spaces. The rental rate for each affordable rental unit will include at least one parking space associated with the unit and located within the parking area or structure serving the rest of the building.
- 6) Size of units. A combination of efficiency/studio, one bedroom, and two bedroom units will be provided as affordable rental units, with distribution

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of unit types and sizes that is relatively proportional to the full array of rental units on the site. The minimum size of affordable rental units shall be:

- (i) 450 square feet for studio apartments
- (ii) 500 square feet for one-bedroom apartments
- (iii) 750 square feet for two-bedroom apartments

- 7) Conversion of Units to For Sale. Conversion of rental units to homeownership will be considered a minor amendment to this agreement. The Developer Owners or Parcel Owners must abide by the Inclusionary Zoning Ordinance as it currently exists or its successor as established by ordinance by the Town Council for application to units that convert from rental to homeownership. Any payments in lieu made on behalf of the rental units converting to for-sale units shall be credited to the requirements upon conversion.
- 8) Term of Affordability for Rental Units. Units created under this section will be affordable for 99-years.
- 9) Loss of Vouchers/Subsidies. If vouchers and or subsidies required to maintain the affordability of the rental units established by this section shall cease to exist or cease to be available to residents of Orange County, the Developer Owners or Parcel Owners will notify the Town Manager as soon as reasonably possible. If the vouchers are lost, the units will be made available to individuals at 60-80% of AMI and the rental rate will be established at the Fair Market Rent.
- 10) Inability to Locate Tenants. In the event that a voucher-eligible unit remains unoccupied for a period of 60 days from when the previous lease ends after reasonable attempts to find a suitable tenant have been made, then the unit may be leased to a resident at 60% - 80% AMI at 30% of income for up to one year. If, after an additional 30 days, no suitable tenant is found after reasonable efforts, the unit may be leased for up to one year at market rates. Upon expiration of the initial lease, the unit shall convert back to a voucher-eligible unit or a different unit will be made voucher-eligible in the event the tenant wishes to stay beyond the initial lease. In the event a unit available for tenants between 60% and 80% AMI remains unleased for a period of 60 days and reasonable attempts to find a suitable tenant have been made, the unit may be rented at market rates for a period of up to one year. At the end of the initial lease-term, the unit shall convert back to an affordable unit at 60% - 80% AMI or a different unit shall be offered as affordable in the event the tenant wishes to stay beyond the initial lease.
- 11) Annual Report. Each year, the Developer Owners or Parcel Owners will be required to submit an annual report. The annual report will include cumulative information about the for-sale and rental affordable units in the Property, how affordability is being monitored, and data about the occupants of the rental properties including the income level and rent levels, and the total number of rental units built each year.

- c) Development Agreement Compliance Permit Submittal.

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- 1) The following information must be submitted with the Development Agreement Compliance Permit application for any phase of for-sale or rental residential units within the Property:
 - (i) The total number of market rate units and the number of affordable dwelling units in that phase, as defined in this Agreement.
 - (ii) The number of bedrooms and bathrooms in each affordable unit in that phase.
 - (iii) The approximate square footage of each affordable unit in that phase.
 - (iv) The approximate location within any subdivision of land, of each affordable unit in that phase.
 - (v) The pricing for each Affordable Dwelling Unit in that phase. The pricing or rental rate of each unit or lot shall be determined prior to issuing a Development Agreement Compliance Permit. At the time of sale, this price may be adjusted if there has been a change in the median income or a change in the formulas used in this ordinance.
 - (vi) Documentation and plans regarding the exterior appearance, materials and finishes of the development of each of the affordable units in that phase, unless it is stated that the market rate units and affordable units shall have identical exterior finishes.
 - (vii) Any and all other information that the Town Manager may require that is needed to demonstrate compliance with the Town's affordable housing policies.

5.3 Stormwater Management.

- a) Stormwater management shall be integrated into the site, building, and landscape design. Stormwater management strategies shall be coordinated and applied in a comprehensive manner across the entire Property.
 - b) Stormwater treatment facilities shall be designed according to the North Carolina Department of Environment and Natural Resources (NCDENR) Stormwater Best Management Practices Manual and the Town of Chapel Hill Design Manual standards, as amended.
 - c) The initial Development Agreement Compliance Permit application submitted for the Development of the Property shall include a Stormwater Management Plan and Report, which clearly identifies the stormwater impacts associated with the Property and clearly documents how those stormwater impacts will be mitigated by the stormwater management strategies and facilities identified in the application. The Stormwater Management Plan and Report shall clearly demonstrate compliance with the design criteria specified in this Agreement.
- 1) Peak Discharge Rate Limits. The post-development stormwater runoff peak discharge rate shall be controlled such that the post-development runoff peak discharge rate at all locations where stormwater runoff exits the Property (or at other internal points designated by the Town [OBEY CREEK: in the conceptual plan]), shall not exceed the pre-development (existing conditions) stormwater runoff peak discharge rate for the local 1-

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- year (2.88 inches), 2-year (3.60 inches), 25-year (6.41 inches) 24-hour duration storm events.
- 2) 2-Year Volume Control. At each location where the stormwater exits the Property, the difference in the runoff volume generated by 2- year (3.60 inches) frequency, 24-hour duration storm event in the post-development conditions and runoff volume generated by the same storm event in the pre-development conditions shall be managed on-site by hydrologic abstraction or reuse. If all of the volume cannot be managed on-site by hydrologic abstraction or reuse, the remaining volume shall be released over a period of 2 days to 5 days.
 - 3) 85% Total Suspended Solids (TSS) Removal Stormwater treatment shall be designed to achieve average annual eighty-five (85) per cent total suspended solids (TSS) removal and must apply to the volume of post-development runoff resulting from the first one-inch of precipitation from new impervious surfaces resulting from Development of the Property.
 - 4) Nutrient Export Limitation per Jordan Watershed Stormwater Management for Development. Nitrogen and Phosphorus exported from the Property shall not exceed 2.2 pounds/acre/year and 0.82 pounds/acre/year, respectively. All other aspects of the “Jordan Watershed Stormwater Management for New Development”, as specified in Section 5.19 of the LUMO, as amended by the Town and NCDENR, including provisions for offset payments, maintenance bond and annual inspection report shall apply to Development.
 - 5) Watershed Protection District: Construction at the Property shall comply with Section 3.6.4 of the LUMO, as of the Effective Date and all applicable State regulations, as amended.
- d) In addition to the design criteria specified in this agreement, the Stormwater Management Plan and Report shall show that the Property will comply with applicable NPDES permit requirement and all applicable Federal and State rules.
 - e) Upon completion of the construction and prior to issuance of the certificate of occupancy associated with each Development Agreement Compliance Permit, the Developer Owners, Parcel Owners or Representative shall provide to the Town of Chapel Hill, the following:
 - 1) A copy of the final plat or easement exhibit, signed and sealed by a North Carolina-registered Land Surveyor and recorded by the Orange County Register of Deeds, showing the “Stormwater Facility Easement(s)”, the stormwater management facility(ies), and the maintenance access locations. For purposes of maintenance, the maintenance access must be shown on the exhibit and extend from the “Stormwater Facility Easement” to the nearest public right-of-way (ROW). The following notes must be included on the recorded final plat or easement exhibit.
 - (i) All engineered stormwater management control, treatment, and conveyance structures located on or below the ground shall be wholly contained within an easement entitled: “Reserved Stormwater Facility Easement Hereby Dedicated” and shall be reserved from any Development which would obstruct or constrict the effective

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- management, control, and conveyance of stormwater from or across the property, other than the approved design and operation functions.
- (ii) The Reserved Stormwater Facility Easement(s) and the facilities it/they protect are considered to be private, with the sole responsibility of the Developer Owners and/or Parcel Owners to provide for all required maintenance and operations as approved by the Town Manager.
 - (iii) The Reserved Stormwater Facility Easement and the Operations and Maintenance Plan are binding on the Developer Owners and/or Parcel Owners.
- 2) A copy of the recorded maintenance covenant (“Operations and Maintenance Plan”), signed by the Developer Owners and Parcel Owners, if any, and recorded by the Orange County Register of Deeds, for the stormwater management facility(ies). The Operations and Maintenance Plan must include a description of the device(s) or structure(s), an inspections checklist, and operating and maintenance procedures. The plan should identify contact information, who will perform the inspections, frequency of inspections, inspections and maintenance logs, any specific equipment needs or certifications (e.g., confined space certification), action levels or thresholds (e.g., remove sediment after depth exceeds one foot), and disposal methods.
 - 3) Certified as-built plans, signed and sealed by a North Carolina-registered Professional Land Surveyor, showing building footprints, driveways, all other impervious surfaces, stormwater drainage/conveyance piping, and stormwater management structures. The as-built plans should be in DXF binary format using State plane coordinates and NAVD 88.
 - 4) Certification, signed and sealed by a North Carolina-registered Professional Engineer, that the stormwater management facility(ies) was/were constructed in accordance with the approved plans and specifications.
 - 5) Maintenance bond or other surety instrument satisfactory to the Town Manager, in an amount equal to one hundred twenty-five (125) percent of the construction cost of each stormwater management facility to assure maintenance, repair, or reconstruction necessary for adequate performance of the stormwater management facility or establish a stormwater maintenance (sinking fund) budget and escrow account in accordance with the requirements of Section 5.19 of the Land Use Management Ordinance.
- f) Subject to approval by the Town Manager’s designee and an encroachment agreement with the Town, only conveyance of stormwater appurtenant to site stormwater management facilities may be located in any street rights-of-way maintained by the Town. Retention, detention, and water quality treatment to meet site stormwater regulations are prohibited within the public right-of-way.

5.4 Transportation: Transit, Parking, Streets, Sidewalks, and Bikeways.

IOBEY CREEK: The Council Sub-Committee on Transportation is preparing information for this section for the Council’s review. Information from this section will be inserted as

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the revised Section 5.4, per the Council's discussion. The Sub-Committee's next meeting is scheduled for Monday, March 23, 2015.]

5.5 Fiscal Impacts. – Updated information (March 25, 2015)

- a) No portion of the developed Property normally subject to taxation shall be exempt from taxes or shall have improvements on said Property which are tax-exempt or owned by any entity that is, under federal or state taxation law, considered to have tax-exempt status. Section 5.5 (a) shall not apply to any public rights of way, publicly dedicated property, or any tax-exempt entity that provides payments in lieu of taxes owed to the Town in an amount equal to the amount of taxes that such an entity would otherwise be required to the Town pay if such an entity were not considered to be tax-exempt. Pursuant to [OBEY CREEK: Check reference - Section 5.20(d)(1) (Annual Report on tax status)] of this Agreement, the Developer Owners and Parcel Owners, if any, or the Representative on behalf of the Developer Owners and Parcel Owners, if any, shall inform the Town in the Annual Report as to whether the Developer Owner of each building located within the Property is considered to be tax-exempt.

5.6 Design Standards and Public Art.

- a) Design Standards for transparent window coverage, drive-through windows, signage (including Wayfinding signage), waste collection and loading functions, green building features, and other building and site design details shall be established in the Exhibit B.
- b) Public Art in the Property, if provided, shall be installed and maintained by the Developer Owners or Representative. Public Art installations that occur will be in a place visible by and to the public whenever possible. The Developer Owners or Representative will consult with the Town of Chapel Hill Public and Cultural Arts Office to discuss options for public art as the Development moves forward.

5.7 Public Schools. – New information (March 20, 2015)

- a) The Developer Owner or Representative shall engage in conversations with the Chapel Hill-Carrboro City School Board regarding appropriate contribution of land and/or financial support for educational purpose.
- b) The Developer Owner or Representative shall include an update on these conversations and any decisions in the first Annual Report (see OBEY CREEK: reference Annual Report.)

5.8 Open Space and Parks. – Updated information (this section focuses on the developed portion of the Property) – (March 20, 2015)

- a) The Property will incorporate open space, parks and recreation areas as an integral part of the Property. These amenities shall be coordinated and applied in a comprehensive manner across the entire Property. This section sets forth the requirements governing open space, parks and recreation areas associated with the Property.
- b) The park space within the Property shall be completed as follows:

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- 1) A linear park along Wilson Creek Drive will include all lands from Wilson Creek Drive to the Wilson Creek Preserve, hereinafter referred to as “Wilson Creek Park” and totaling approximately 3 acre, as shown in Exhibit B. Wilson Creek Park shall be completed once the overall development has reached 80% buildout.
 - 2) A neighborhood park space, hereinafter referred to as “Highland Park,” shall consist of a minimum of 1.2 acres, as shown in Exhibit B. The park shall be suitable for both passive and active recreation and shall be designed as a community gathering space. Highland Park shall be completed no later than the Development of 50% of the project.
 - 3) A paved sidepath, built to AASHTO standards, shall be provided along the property’s entire frontage of US Highway 15-501. In areas where gaps in the property lines exist the developer shall build the sidepath within NCDOT’s right of way, if NCDOT grants permission for such construction. Construction of each segment of the sidepath shall be completed at the same time as adjacent buildings. The entire sidepath must be completed prior to completion of 75% of all planned development within the Property.
- c) The Developer Owner shall provide pocket parks situated throughout the Property, as shown in Exhibit B. These pocket parks shall be completed prior to issuance of the final certificate of occupancy for the approved development.
 - d) The Developer Owner and Parcel Owners shall grant a public access easement to the Town over all parks, greenways, trails, and sidepaths. The easements shall make all such facilities available to the public; permitting public use of the parks subject to normal rules of use.

5.9 Recreation Areas.

- a) Recreation areas designed for use by residents or patrons may include indoor areas as well as active outdoor areas. Development of the side paths, greenways, sidewalks, natural surface trails, parks and open space areas, consistent with the approved Development Plan shall satisfy all Recreation Area requirements specified by the LUMO.
- b) All recreation areas on the west side of Wilson Creek shall comply with all American with Disabilities Act (ADA) guidelines for accessibility. Any recreation facility located on the east side of Wilson Creek that can be accessed via an ADA-compatible path or drive shall comply with all ADA guidelines for accessibility. However, natural surface trails and other recreation facilities that are remote from ADA parking and access paths will not be required to be ADA accessible.
- c) Recreation areas shall include dedicated site furniture including benches, trash receptacles, and lighting unique to specific spaces.

5.10 Sidepaths and Greenways. – Updated information (March 20, 2015)

- a) The location of greenways and sidepaths for pedestrians and cyclists on the Property will be generally consistent with Exhibit B.
- b) The Town shall make available all easements and permits necessary to construct greenway connections.

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- c) All greenways and sidepaths shall be built to AASHTO standards for the shared use by pedestrians and bicyclists. Alternative standards can be applied in cases where the location of the greenway requires a reduced width or design modification due to building location. The use of alternative standards must be approved by the Town Manager.
- d) The Master Owners Association will maintain the greenway and sidepath within the Property under the same operating conditions as Town-owned greenways with regards to maintenance, lighting, and hours of operation, providing that the resurfacing of the same shall be the responsibility of the Town. The Town shall own and maintain the portion of the greenway located on the west side of US Highway 15-501.
- e) The Developer Owner or Representative shall grant a public access easement to the Town over all greenways and sidepaths available to the public and permit pedestrian, bicycle, and motorized wheelchair use of the greenway or sidepath.
- f) The Town shall have the right to make emergency repairs in the event that the Town determines that the Master Owners Association has not maintained greenways, trails, and sidepaths to the extent needed to assure proper and safe functioning of the facilities.

5.11 Pedestrian and Bicycle Bridge. – Updated information (March 20, 2015)

- a) The Developer Owner or Representative shall construct a pedestrian and bicycle bridge which connects the developed Property to the Southern Village Park and Ride Lot Area, as shown in Exhibit B. The bridge shall span US Highway 15-501. The exact location of the bridge, access ramps, and trail must be approved by the Town Manager.
- b) The bridge shall be owned by the Town of Chapel Hill and maintained by the Master Owners Association.
- c) The bridge and approach ramps shall be a minimum of 12 feet wide (rub rail to rub rail). The bridge, approach ramps, and greenway trail shall be built to AASHTO standards.
- d) The Town shall provide the property needed for the west side of the bridge including access ramps and access trail.
- e) At any such time that the Southern Village Park and Ride Lot is redeveloped, an equitable sharing of costs will be negotiated with the Developer Owner, Parcel Owner, or Representative.

5.12 Wilson Creek Preserve. – Updated information (March 20, 2015)

- a) The Developer Owner shall provide an 85 acre open space tract that includes all lands on the east side of Wilson Creek, hereinafter referred to as the “Wilson Creek Preserve.” The Wilson Creek Preserve shall include the Property to the east of the westernmost Resource Conservation District, the managed use zone limits defined by Wilson Creek, shown Exhibit B. The westernmost outer limit of the “Managed Use Zone” along Wilson Creek demarks the approximate western limits of the preserve.
- b) The tract shall be owned by [Obey Creek: insert owner here]. The Town may choose to further protect all or portions of the Wilson Creek Preserve by granting a conservation easement(s) to a third party or other means approved by the Town Manager.

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- c) The Master Owners Association shall be responsible for all maintenance activities within the Wilson Creek Preserve. The Town and the Developer Owner or Representative shall enter into a formal maintenance agreement for the Preserve prior to issuance of the Property's first certificate of occupancy. The agreement shall require that the Master Owners Association be responsible for all maintenance including maintenance of trails, removal of hazard trees, maintenance of any facilities, correction of drainage and erosion problems, and other routine and long range issues related to the property.
- d) The Wilson Creek Preserve will be available to the public upon completion of the developed portion of the Property.
- e) The Developer Owner shall make minimal changes to the hardwood tree cover.
- f) The following allowable uses and activities within the Wilson Creek Preserve shall be in general keeping with Exhibit B. All uses described shall be consistent with plans and procedures approved by the Town Manager.
 - i. Restoration of the eroded slope and mining area, and disposal of topsoil;
 - ii. Natural surface trails;
 - iii. Community garden;
 - iv. Pedestrian and utility bridge;
 - v. Maintenance access ways;
 - vi. Picnic areas and support facilities;
 - vii. Forest management;
 - viii. Stormwater management;
 - ix. Invasive plant species eradication; and
 - x. Maintenance.
- g) The Developer Owner or Representative shall provide a minimum six (6) feet wide pedestrian/bicycle bridge over Wilson Creek as the access point for users of the Wilson Creek Preserve. The bridge shall be constructed of cor-ten steel or similar, have concrete decking, and shall be designed to handle light maintenance equipment. The exact location and specifications of the bridge must be approved by the Town Manager.
- h) The Developer Owner shall construct a minimum of 8,000 linear feet of natural surface trails within the Wilson Creek Preserve. The trails shall roughly conform to the trails plan in Exhibit B. The Town and Developer Owner or Representative may change the trail plan in order to maximize user enjoyment, preserve the environment, avoid trees, avoid drainage and erosion issues, and to provide a better trail plan. Trails are likely to be primarily field located. The final trail plan must be approved by the Town Manager. It is acknowledged by both parties that the natural surface trails will have limited accessibility for mobility-impaired individuals. The Town shall have the right to make emergency repairs in the event that the Town determines that the Master Owners Association has not maintained greenways and sidepaths to the extent needed to assure proper and safe functioning of the facilities.
- i) The Developer Owner or Representative shall provide appropriate signage to assist trail users and other purposes. A signage plan must be approved by the Town Manager prior to implementation.
- j) The Developer Owner or Representative shall survey and sign the boundaries of the Wilson Creek Preserve. Signs shall indicate that the property is owned by the Town for open space purposes. Upon completion of the boundary survey, Town staff shall walk the property line and approve the boundary markings prior to

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Town's acceptance of the property. The Town shall provide all necessary signs for placement by the Developer Owner or Representative.

5.13 Quarry Restoration. – New section (March 20, 2015)

- a) The site of the quarry area may be used to waste construction soils and other non-hazardous solid fill material. The sheer edges in the quarry area should be reduced to best of the Developer Owner or Representative's ability while balancing environmental needs. A restoration plan must be submitted and approved by the Town Manager prior to any land disturbance activity. The restoration plan must include:
 - 1) Grading and fill placement – Including locations of fill and grading, target slopes, acceptable fill materials, runoff management, and slope stabilization methods.
 - 2) An invasive species management plan – Including target species, methods of control, timelines and schedules, monitoring, potential adaptive management and duration, and responsible parties.
 - 3) A forest restoration plan – Including soil analysis and amendment; tree, shrub, and understory species planting schedule and details (including replanting as necessary); monitoring; potential adaptive management and duration; and responsible parties.
 - 4) Overflow/outflow management for the pond directly in the restoration area – Including determination of current outflow conditions and locations, need for stabilization of water level and outflow channels.
- f) Restoration shall be generally in keeping with Exhibit C: Restoration Area Map.

5.14 Historic and Cultural Features. – Updated information (March 20, 2015)

- a) A former structure on this site housed a motel and diner known as Watts Motel, which became historically significant during the U.S. Civil Rights movement of the 1960's. At the time that a new structure is built at the location of the former Watts Motel, the Developer Owners or Designated Representative shall create and install a historical marker, at a place convenient and accessible to the public and near the location of the former diner, with information describing events that occurred at Watts Motel on January 3, 1964 and their historical significance. In addition, the tributary on the site, east of and flowing into Wilson Creek, shall be named Klopfer Creek in honor of Professor Peter Klopfer who was a leader of 1964 events.
- b) The Developer Owner or Representative will provide an update about the status of these features in the Annual Report (OBEY Creek: see Section # - reference Annual Report).

5.15 Solid Waste Management.

- a) Solid waste collection shall be provided to all new uses within the Property by the Developer Owners or Representative or the Parcel Owners, if applicable. The Developer Owners or the Representative or the Parcel Owners, if any, shall include Orange County Solid Waste in pre-construction conferences for buildings.

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- b) Solid waste shall be managed by the Developer Owners or the Representative for all new buildings in the Property. The Developer Owners or the Representative or the Parcel Owners, if applicable, shall design projects such that construction and demolition recycling, reuse, salvage, and waste reduction are maximized.
- c) Construction waste shall be managed in accordance with Town standards and with the Orange County Regulated Materials Ordinance.
- d) Each individual Development Agreement Compliance Permit shall provide clear direction on who will provide solid waste service for each building and each building will be designed accordingly.

5.16 Stream Buffers.

- a) Development design and construction shall comply with the stream buffer requirements contained in LUMO Sections 3.6.3 Resource Conservation District and 5.18 Jordan watershed riparian buffer protection. The Developer Owners, Parcel Owners or the Representative retain the right to appeal stream classifications to a final determination.

5.17 Landscaping Standards.

- a) The Developed area of the Property shall include significant street, landscape and natural plantings and landscaped areas and tree protection measures. Native plant species will be selected for a majority of the street trees. A portion of the tree and landscape areas may also have a stormwater management function at the Property.
- b) The applicant shall include the following information in each Development Agreement Compliance Permit application:
 - 1) A plan of street landscaping and landscaped areas;
 - 2) A planting list using mostly the suggested native trees from the Town’s Design Manual for canopy trees or other approved species;
 - 3) Details for proposed tree pits and grates;
 - 4) Identification of conflicts between street trees and utilities.
- c) A tree maintenance program will be provided with the first Development Agreement Compliance Permit application.
- d) A maintenance program of best forestry management practices within the Preserve will be submitted for approval by the Town Manager.

5.18 Sediment and Erosion Control.

- a) Development design and construction shall comply with applicable state and local soil and erosion control regulations and shall incorporate erosion and sediment control measures for all land-disturbing activities. The Developer Owners, Parcel Owners or the Representative shall be responsible for implementing erosion and sedimentation control measures for all land disturbing projects.
- b) The Property will meet the following higher standards during construction:

Erosion Control	Orange County	Property’s
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Item	Requirement	Standard
Cleared Area	Unlimited	8 acres
Skimmer Basin		
- Design Storm	10 year	100 year
- Number of Baffles	3	5
- Draw down time (10-year storm)	2-5 days	2-5 days
- Basin Freeboard height	1 foot	2 feet
Temp. Diversion Ditch Capacity	10 year	25 year
Temp. Diversion Ditch Lining	2 year	10 year
Perimeter Silt Fence	Wire	Chain Link
Inspection Frequency	After storm event	Daily
Construction Sequencing	2 stages	4 stages
Temporary Seeding Time	14 days	7 days
Construction Entrance	50 feet	75 feet
Wash rack at entrance	Not required	Provided
Polyacrylamide	Not required	Provided

- c) Before starting any land-disturbing activity that results in a cumulative disturbance greater than twenty thousand (20,000) square feet, the Developer Owners, Parcel Owners, or the Representative shall obtain a grading permit from the Orange County Erosion Control Division. The Developer Owners, Parcel Owners or the Representative if any, shall include the erosion and sediment control plan in the Development Agreement Compliance Permit application.

5.19 Neighboring Lands, Compatibility, Buffers.

- a) The Property shall strive to respect existing development adjacent to the Property and shall adhere to the building and site design details established in Exhibit B.
- b) Development that occurs on the site will adhere to the buffer, lighting, drainage, and noise impact standards set forth in this Section, Sections 5.18 and 5.19 of this Agreement, and Exhibit B.
- c) Neighborhood and local streets located outside of the Property, with the exception of the existing driveway located on the Property leading from US Highway 15-501 to an existing commercial building, shall not be used for construction traffic.
- d) The Developer Owners or Representative shall provide a mailing list and postage for the Town to mail a notice to property owners within 200 feet of the Property.

5.20 Noise.

- a) The Town’s Noise Ordinance shall be applicable to the Property during construction and occupancy of the Property.
- b) As provided in Section 4.9 (Development Agreement Compliance Permit application section), prior to the Development of or construction on the Property, a Developer Owner or Representative who intends to develop or construct upon the Property shall apply for a Development Agreement Compliance Permit application, which shall

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include a construction management plan and provide the following noise-mitigation information at a minimum:

- 1) Indicate how the project construction will comply with the Town's Noise Ordinance; and
 - 2) Provide a telephone number for noise notifications during the construction period.
- c) The Developer Owner or Representative shall post a sign on-site where the Development is to occur stating that noise issues can be reported by calling the posted telephone number.

5.21 Lighting.

- a) Lighting design for the Property will be consistent with IES Standards with respect to illumination levels.
- b) NCDOT standards for light trespass will govern the frontages along US Highway 15-501 where additional lighting is desired along the sidepath provided at this location.
- c) All other external boundaries of the Property will comply with LUMO standards for light trespass.
- d) Full cut-off fixtures will be used for all area lighting. Limited building accent lighting will be shielded to minimize conflicts with adjacent residences and dark skies objectives.
- e) Additional details on lighting design can be found in Exhibit B.

5.22 Engineering Standard Requirements. – Updated information (March 20, 2015)

- a) Site design shall comply with the Town of Chapel Hill Engineering Design Manual.
- b) If there is a conflict, this Agreement's standards supersede the Town's standards.

5.23 Annexation. – New information (March 20, 2015)

- a) The Developer Owner or Representative will petition for annexation of the Property into the limits of the Town of Chapel Hill with a targeted effective date of June 30, 2016.

5.24 Fire Code Requirements. – Updated information (March 20, 2015)

- a) The Property shall fully comply and be in accordance with the North Carolina Fire Prevention Code and Appendices as adopted by the Town of Chapel Hill and any associated laws, rules, regulations and ordinances.

5.25 Annual Report.

- a) The Developer Owners and Parcel Owners, if any, or the Representative on behalf of the Developer Owners and Parcel Owners, if any, shall submit to the Town Manager an Annual Report that includes the information required by this

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Agreement and that provides all necessary information for the Town Manager to assess the Developer Owners', Parcel Owners' and the Representative's good faith compliance with the terms of this Agreement. This report shall form the basis for the Town Manager's periodic review of the Agreement as required by G.S. 160A-400.27(a). This required report is generally referred to as the "Annual Report."

- b) The initial Annual Report shall be filed on or before [OBEY CREEK: Insert date] and shall report on activities from [OBEY CREEK: Insert date "through" date]. Subsequent reports shall be filed on or before [OBEY CREEK: Insert date] each year and shall report on activities in the preceding fiscal year (the preceding reporting period).
- c) The Annual Report shall include the specified items set forth in this Agreement and listed in this Section. The failure to include in this Section an item expressly required to be included by other Sections of this Agreement shall not relieve the Developer Owners, Parcel Owners or the Representative of the responsibility to include that item in the Annual Report. The report may include such other items as deemed relevant by the Developer Owners or Parcel Owners, if any, or the Representative. The Town Manager may also request inclusion of other specific information or provide for its inclusion in the following year's Annual Report if such requested information reasonably relates to Development.
- d) The Annual Report shall include the following specific information (parenthetical cross-referenced Sections provide additional information on the contents of the information to be provided):
 - 1) The tax status of any Development or change in tax status of any property in the prior year [OBEY CREEK: Link to Fiscal Impacts section];
 - 2) Individual Development Agreement Compliance Permits issued ([OBEY CREEK: Link to Article 4, Annual report section]);
 - 3) Infrastructure installed ([OBEY CREEK: Link to Article 4, Annual report section]);
 - 4) Dedications and acquisitions of infrastructure by the Town, Developer Owners, Representative and Parcel Owners ([OBEY CREEK: Link to Article 4, Annual report section]);
 - 5) The projected schedule for Development of the Property in the forthcoming year ([OBEY CREEK: Link to Article 4, Annual report section]); and
 - 6) A trip generation table showing the following ([OBEY CREEK: Link to Transportation, Annual Trip Generation Report section]):
 - i. Land use type built and a location map of the buildings;
 - ii. Number of trips generated for each land use type using the attached trip Equivalency Matrix as provided in [OBEY CREEK: Insert Exhibit]; and
 - iii. Comparison of trip generation table with the trips generated in the TIS dated [OBEY CREEK: Insert date].
 - 7) [Obey Creek: include other items as appropriate – will complete near the end of the drafting process.]

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EXHIBITS INCORPORATED BY REFERENCE

Exhibit A: Boundary Map of the Property

Exhibit B: The Village at Obey Creek Design Guidelines

Exhibit C: Restoration Area Map

Exhibit D: Legal Description of the Property

Exhibit E: Development Compliance Permit Application