

**DEVELOPMENT AGREEMENT**

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

**AND**

**THE TOWN OF CHAPEL HILL, NORTH CAROLINA**

**Effective Date: July 1, 2015**

Orange County Parcel Identifier Numbers:  
9787-13-0667; 9787-24-1209;  
9787-14-4852; 9787-14-1770

The following articles/sections have been revised, with the approval on June 15, 2015, of this Agreement. Revisions are highlighted in grey in the body of the document.

- Cover page
- Section 2.10: Definition of “Effective Date”
- Sections 3.17, 3.19, 3.20, 3.21, 3.22, and 3.32: Recitals [Background information about public hearings and approvals]
- Section 4.4: Zoning of the Property
- Article 5: Specific Standards and Mitigation Measures
  - Section 5.4: Transportation
  - Section 5.8: Open Spaces and Parks
  - Section 5.22: Specific Site Development Standards
  - Section 5.26: Annual Report

**Table of Contents**

	<b>Page</b>
<b>ARTICLE 1. STATUTORY FRAMEWORK.....</b>	<b>3</b>
<b>ARTICLE 2. DEFINITIONS.....</b>	<b>4</b>
<b>ARTICLE 3. RECITALS.....</b>	<b>7</b>
<b>ARTICLE 4. TERMS.....</b>	<b>12</b>
<b>ARTICLE 5. SPECIFIC STANDARDS AND MITIGATION MEASURES.....</b>	<b>25</b>
<b>EXHIBITS INCORPORATED BY REFERENCE</b>	

Exhibit A: Obey Creek Map: Land Parcel Areas

Exhibit B: Boundary Map of the Developed Property

Exhibit C: Boundary Map of the Entire Property

Exhibit D: Legal Description of the Developed Property

Exhibit E: Legal Description of the Entire Property

Exhibit F: Boundary Map of the Town-Owned Property

Exhibit G: Legal Description of the Town-Owned Property

Exhibit H: Obey Creek Site Map

Exhibit I: Development Agreement Compliance Permit Application

Exhibit J: The Village at Obey Creek Design Guidelines

Exhibit K: Traffic Impact Study

Exhibit L: Summary of Trip Generation Data

Exhibit M: Diagram of South Columbia/US 15-501 Fordham Boulevard Interchange Restriping

Exhibit N: Proposed Crossing for Oteys Road

Exhibit O: Wilson Creek Preserve Boundary

Exhibit P: Restoration Area Map

## COUNTY OF ORANGE

This Development Agreement (hereinafter the "Agreement") is made and entered into as of the 1<sup>st</sup> day of July, 2015 by and between 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."

- 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

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 Section 4.12 and Section 5.26 of this Agreement.
- 2.3 *Crime Prevention Through Environmental Design.* The term “Crime Prevention Through Environmental Design” or “CPTED” shall describe the approach to deterring certain behaviors through the physical design of public and private areas.
- 2.4 *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.
- 2.5 *Design Guidelines.* The term “Design Guidelines,” unless otherwise referenced, refers to Exhibit J: The Village at Obey Creek Design Guidelines, a binding Exhibit to the Development Agreement.
- 2.6 *Developed Property.* The term “Developed Property” shall mean those certain parcels of land, located along US 15-501 South and west of Wilson Creek, and as depicted in Exhibit A, Exhibit B, and Exhibit H. The Developed Property includes the developed portion of the Property, any public right-of-way and private streets that may be located within the boundaries described in Exhibit B and Exhibit H, and excludes the Wilson Creek Preserve (see Section 5.12).
- 2.7 *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.”
- 2.8 *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.

- 2.9 *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.
- 2.10 *Effective Date.* The word “Effective Date” shall mean the effective date of this Agreement, which is July 1, 2015.
- 2.11 *Free soil.* The term “Free soil” shall mean on-site or imported soil amended to incorporate compost with a maximum compaction of 85%.
- 2.12 *Housing Voucher or Voucher.* The term “Housing Voucher” or “Voucher” shall mean a direct subsidy that assists very low-income families, the elderly, veterans, 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.
- 2.13 *LUMO.* The term “LUMO” shall mean the Land Use Management Ordinance of the Town of Chapel Hill in effect as of the Effective Date.
- 2.14 *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.
- 2.15 *Master Owners Association.* The term “Master 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.
- 2.16 *Median Income or Area Median Income.* The term “Median Income” or “Area Median Income” shall describe the midpoint of income distribution that is divided into two exactly equal parts, one having incomes about the median and the other having incomes below the median as adjusted and published annually by the U.S. Department of Housing and Urban Development (HUD) for the Durham-Chapel Hill Metropolitan Statistical Area.
- 2.17 *National Association of City Transportation Officials or NACTO.* The term “National Association of City Transportation Officials” or “NACTO” shall describe the organization’s guidelines as described in its publications *Urban Bikeway Design Guide* and *Urban Streets Design Guide*.
- 2.18 *Obey Creek Area or Obey Creek.* The term “Obey Creek Area” or “Obey Creek” shall describe the area identified in Exhibit B and Exhibit H.

- 2.19 *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.
- 2.20 *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.
- 2.21 *Participant or Participants*. The words “Participant” or “Participants” shall mean the Town, the Developer Owners, the Parcel Owners, if any, and the Representative.
- 2.22 *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.
- 2.23 *Periodic Review*. The term “Periodic Review” shall have the meaning ascribed in Section 4.13 of this Agreement.
- 2.24 *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.
- 2.25 *Property*. The term “Property” shall mean those certain parcels of land, located along US 15-501 South, and as depicted in Exhibit B and Exhibit H attached hereto. The Property also includes any public right-of-way and private streets that may be located within the boundaries of Exhibit B.
- 2.26 *Registry*. The term “Registry” shall mean the Orange County Register of Deeds.
- 2.27 *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.
- 2.28 *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 or NACTO standards for multi-use paths.
- 2.29 *State*. The term “State” shall mean the State of North Carolina.
- 2.30 *Structural soil*. The term “Structural soil” shall mean soil and aggregate mix of approximately 80%/20% ratio designed for supporting tree growth in urban conditions.

- 2.31 *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.
- 2.32 *Town Attorney.* The term “Town Attorney” shall mean the attorney for the Town.
- 2.33 *Town Regulations.* The term “Town Regulations” shall have the meaning ascribed in Section 4.5.
- 2.34 *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

- 3.1 Obey Creek Ventures is the fee simple owner of those certain properties situated on US Highway 15-501 known as the “Obey Creek Area,” as shown on Exhibit B and Exhibit C and described on Exhibit D and Exhibit E. The Town of Chapel Hill is the fee simple owner of that certain property situated in the Obey Creek Area, as shown on Exhibit F and described on Exhibit G.
- 3.2 Obey Creek Ventures has entered into a purchase agreement with the Mueller Partnership to acquire fee simple interest of that certain property situated on US Highway 15-501 known as the “Mueller Property,” as shown on Exhibit B and C and described on Exhibit D and E.
- 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 Numbers 9787-13-0667; 9787-23-8844; 9787-24-1209; 9787-24-4637; 9787-14-4852; 9787-14-1770. 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 Town Attorney to develop a new process for initiating development agreement negotiations.
- 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 North Carolina Department of Transportation (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 Town Council held negotiation sessions with Obey Creek Ventures, LLC on the following dates: November 13, December 8, 2014, February 12, February 26, March 12, and March 25, 2015. An informational meeting was held on January 8, 2015; a facilitated discussion was held on January 23, 2015; and a work session was held on April 8, 2015. A review session with Town Advisory Boards and Commissions, the Town Council, and Obey Creek Ventures, LLC was held on April 30, 2015. Opportunity for public comment was provided at the beginning and end of each meeting.
- 3.15 On March 3, 2015, East West Partners Management Co., Inc. submitted a Zoning Atlas Amendment Application to rezone the western 43 acres of the Obey Creek site, including the land owned by the Mueller Partnership as Exhibit B and C and described on Exhibit D and the land owned by the Town of Chapel Hill as shown on Exhibit F and described on Exhibit G. The Zoning Atlas Amendment Application requested that these parcels be rezoned to the new Development Agreement-1 (DA-1) zoning district. Town staff drafted the language for the new Development Agreement-1 (DA-1) zoning district.
- 3.16 The Town conducted duly advertised public information sessions to provide an overview of the development agreement and to respond to questions on December 4, 2014, March 11, and May 14, 2015. All sessions were posted for later viewing on the Town website.



- 3.17 In March, April, May, and June 2015, Town Advisory Boards and Commission reviewed and prepared comments on the proposed LUMO text amendment, zoning atlas amendment, and development agreement. These meetings and discussions were held by the following Boards/Commissions: Community Design Commission; Environmental Stewardship Advisory Board; Parks, Greenways, and Recreation Commission; Planning Commission; Stormwater Management Utility Advisory Board; and Transportation and Connectivity Advisory Board.
- 3.18 On April 26, 2015, the initial notice of a public hearing to be held on May 18, 2015 on the LUMO text amendment, zoning atlas amendment, and development agreement for the Obey Creek site was published pursuant to G.S. 160A-364. The second notice of this public hearing was posted on May 3, 2015. Notices of the public hearing were also mailed to adjacent owners pursuant to G.S. 160A-384(a) on April 24, 2015. The location, type, and intensity of the proposed development were not changed after these initial notices of public hearing.
- 3.19 On May 5, 2015 and June 2, 2015, the Planning Commission reviewed the draft LUMO text amendment and recommended that the Council enact an ordinance to create the Development Agreement-1 (DA-1) zoning district.
- 3.20 On March 17, 2015, the Planning Commission was asked to provide a recommendation to the Council on the proposed Zoning Atlas Amendment. During the June 2, 2015 Planning Commission meeting, the Commission failed to pass a motion to recommend approval by a 3-4 vote.
- 3.21 On May 18, 2015, the Town Council opened the public hearings on the proposed Development Agreement-1 (DA-1) zoning district, the proposed rezoning of the western 44-acre portion of the Obey Creek site, this proposed Agreement, and the proposed land exchange. The public hearings were continued to June 8, 2015 and June 15, 2015.
- 3.22 On June 15, 2015, the Town Council closed the public hearings and enacted the Ordinance to establish the new Development Agreement-1 (DA-1) zoning district; enacted the Ordinance to rezone the 44-acre portion of the Obey Creek site from Residential Low Density-1 (R-LD1) and Neighborhood Commercial (NC) to Development Agreement-1 (DA-1); enacted the Ordinance to approve this Agreement with an effective date of July 1, 2015; and adopted the Resolution authorizing an exchange of Town-owned property within the Obey Creek site for the Wilson Creek Preserve property owned by Obey Creek Ventures, LLC.
- 3.23 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 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.

- 3.24 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 Developed 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 Developed Property, including commitments to transit, bikeways, greenways, sidewalks, and road improvements;
  - d) Assurance that the Development of the Developed 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 from the Developer Owners.
- 3.25 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.
- 3.26 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.
- 3.27 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 specific standards and mitigation

measures specified in Article 5 of this Agreement, which the Developer Owners freely and with full knowledge and consent agree to provide.

- 3.28 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.
- 3.29 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.
- 3.30 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 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 Representative can obtain permits necessary for the Development pursuant to a non-discretionary, predictable and expeditious process.
- 3.31 Pursuant to G.S. 160A-400.24, the Town Council conducted a public hearing on May 18, 2015 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 January of 2015 and was available for public inspection at Town offices and online at that time. Updates to the draft Agreement were posted at regular intervals thereafter and were available for public review throughout the January through June 2015 period.
- 3.32 On June 15, 2015, the Town Council considered and approved this Agreement and authorized the Town's execution of the same with an effective date of July 1, 2015. The approval of this Agreement constitutes a legislative act of the Town Council.

## ARTICLE 4. TERMS

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the 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.
- a) 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 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.
  - b) Certain provisions of this Agreement shall continue beyond the expiration of this Agreement, and in perpetuity or as long as allowed by law, including those specified in Sections 5.8, 5.10, 5.11, and 5.12.
- 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 Developed Property west of Wilson Creek was zoned Development Agreement-1 (DA-1) on June 15, 2015, by the Town Council. The property to the east of Wilson Creek is zoned Residential Low Density-1 (R-LD1) as shown in Exhibit B and H.
- 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 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 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 with 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.

For this Agreement, Table 3-7.1 of the Land Use Management Ordinance is hereby modified to delete from the table of permitted uses the following: Cemetery, College or University, Fraternity or Sorority dwelling, single-family homes, and rooming houses.

- 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.

#### 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, and Street Closure Permits for work in Town right-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) Applications 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 I.
- 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 shall process the revised application in the manner described in Section 4.9, including the twenty (20) day time frame set forth in subsection (b)(4), and such process shall be repeated until the application is in compliance with this Agreement and applicable Town regulations.
  - 6) Once an application has been deemed complete, it shall be promptly forwarded to the Community Design Commission for its review of compliance of building materials and elevations with Exhibit J of this Agreement. The seventy-five (75) working day review period being sufficient for two (2) meetings of the Community Design Commission, any comments from the Community Design Commission shall be forwarded to the Town Manager in a timely fashion, to be considered as a part of his/her review.
  - 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, or (i) an extension of time is requested by the Applicant, or (ii) 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 Development Agreement Compliance Permit Approval Letter.
  - 9) If the application is denied, the Town Manager shall specify the grounds for finding that it is inconsistent or in violation with this Agreement or associated regulations and refer the Applicant to the special use permit process described in Section 4.5 of the LUMO. Alternatively, the applicant may submit a new 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 any structure or building previously approved with a Development Agreement Compliance Permit shall not require modification or approval of another Development Agreement Compliance Permit. Such changes shall be reported to the Town in the Annual Report.
- c) Construction Management Plan. See Section 5.4(b) for information regarding the Construction Management Plan.

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.

- a) The following changes will be considered Major Modifications under the Agreement:
  - 1) 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, provided, however, that any expansion of land subject to this Agreement would require rezoning of the added property.
  - 2) A modification of the stormwater management design criteria listed in Section 5.3 of this Agreement.
  - 3) A change in maximum building height as illustrated in Exhibit J, Building Heights.
  - 4) A decrease by more than one (1) foot in setbacks as shown in Exhibit J.
  - 5) A change in the approved development of the Developed Property that would increase the total external daily vehicle trips as stated in Section 5.4(c)(3).
  - 6) A change in the development of the Developed Property that would increase the cumulative total of new gross floor area at the Developed Property in a way that would increase trip generation projections beyond those calculated in the Traffic Impact Study dated April 2014.
  - 7) A substantial change in the affordable housing agreement in Article 5.2 of this Agreement.
  - 8) A change in the Design Guidelines that would substantially change the location, size, form, style and appearance of principal and/or accessory structures or open spaces and amenities as shown in Exhibit J: Design Guidelines approved with this Agreement.
  - 9) A change to the scale, timing and mix of uses allowed in Article 5.1 of this Agreement.
  
- b) 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 10 days prior notice to Town Council and shall be subject to review and approval by the Town Manager. Notice shall also be posted on the Town's website when it is provided to the



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

- c) 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.
- d) All proposed amendments or modifications to this Agreement shall be publicly posted and reported to Advisory Boards and Commissions in such a manner that all Town Advisory Boards, Commission, and residents of Chapel Hill will have the opportunity to express any concerns to the Town Council and/or the Town Manager.
- e) The Town Manager shall determine whether a proposed amendment or modification 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 Section 1.6 of this Agreement.
- f) 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 make a decision on the proposed minor amendment within one hundred twenty (120) calendar days of the date of the Town Manager's determination that a complete application was submitted or such further time as mutually agreed to by the applicant and the Town. 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 Section 2.7 and, to the extent provided in this Agreement, to the Parcel Owners and their successors and assigns in title as defined in Section 2.20. 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 Section 5.26 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 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 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. Nothing in this Agreement shall limit the Town's authority to pursue other remedies as allowed by law.
- d) Termination or Modification by the Town. If the Breaching Owner or the Developer Owner fails to cure the material breach under Section 4.13(c), then the Town Council may elect to terminate or modify the Agreement after complying with mediation requirements as stated in Section 4.14. Any notice of

termination or modification or finding by the Town of a breach 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, 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 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 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 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 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 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 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.

- 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 Section 4.14, and further subject to the notice and right to cure provisions in 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)  
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.
- a) 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 Section 2.7 to Persons as Developer Owners and as provided in Section 2.20 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.
  - b) The Developer Owners shall create a Master Owners Association to which some of the requirements of the Agreement shall be assigned. The responsibilities of the Master Owners Association shall continue after the expiration of this Agreement. In the event the Master Owners Association shall fail to fulfill its

obligations under this Agreement, its responsibilities shall be assumed by the Developer Owners or Representative, in which case said responsibilities shall be binding upon the Developer Owners and their successors and assigns, enforceable in accordance with the provisions of Section 4.11 of this Agreement.

- 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 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 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 twenty (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 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 or Obey Creek Ventures.
- 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 Estoppel. Each of the Participating Parties agrees, 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 event may any Party request from the other an estoppel certificate more than one (1) time in any twelve (12) 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

The Parties do hereby agree to the specific standards and mitigation measures set forth in this Article. As provided in Section 3.25 of this Agreement, all of the buildings, roadways and other facilities proposed and required under this Article shall, unless specifically stated otherwise, be provided by the Developer Owners and not the Town.

5.1 Scale of Development and Uses Permitted.

- a) The Development shall occur in the Development Area within the Property zoned Development Agreement-1 as shown in Exhibit A.
- b) All buildings, development, green spaces, and Wilson Creek Preserve (see Section 5.12) must comply with Exhibit B and Exhibit J.
- c) The scale of development for the Developed Property shall be consistent with the Land Use, Building Heights, Sections, and Density provided for in Exhibit J.
- d) The placement of buildings on the Developed Property shall be generally consistent with Exhibit H.
- e) The floor areas and land uses permitted land uses at the Developed Property are limited to those as listed in the following chart and shall exclude Cemetery, College or University, Fraternity or Sorority dwelling, single-family homes (not including townhomes), and rooming houses:

Use and Floor Area					
	Total Floor Area	Residential Units	Retail Square Footage	Office Square Footage	Hotel Rooms
Minimum level of development	600,000	0 - 350	100,000 - 300,000	0 - 300,000	0 - 200
	1,400,000	250 - 650	225,000 - 475,000	150,000 - 500,000	0 - 300

Maximum level of development	1,600,000	250 - 700	225,000 - 475,000	150,000 - 600,000	0 - 400
------------------------------	-----------	-----------	-------------------	-------------------	---------

- f) Individual buildings shall comply with Exhibit J this Agreement and shall be reviewed and approved as described in Section 4.9 of this Agreement.
- g) Upon completion, a minimum of half of the rental residential units (excluding for-sale residential units) shall be age restricted to 55+ or 62+ years of age. Additionally, no more than 200,000 square feet of heated space shall be built as residential in the Developed Property without any non-residential uses.
- h) When the Development reaches 600,000 square feet, no more than 65% of the heated square footage shall be residential, and the Development shall maintain at least 35% of the square footage as non-residential uses. The heated area of the residential uses shall not exceed 390,000 square feet until non-residential uses reach a minimum of 210,000 square feet.
- i) When the Development reaches 1,400,000 square feet, no more than 60% of the heated square footage shall be residential uses, and the Development shall maintain at least 40% of the space as non-residential uses. The heated area of the residential uses shall not exceed 840,000 square feet until non-residential uses reach a minimum of 560,000 square feet.
- j) In order to be built to 1,600,000 square feet, the Development must have at least 45% non-residential uses. The heated square footage of the residential uses at the Development shall not be allowed to exceed 880,000 square feet or 700 residential units.
- k) Total PM peak vehicle trips shall not exceed the benchmark, as per Section 5.4 (c) 3 of this Agreement.

5.2 Affordable Housing.

- a) Ownership.
  - 1) The Inclusionary Zoning Ordinance (Section 3.10 of the LUMO) as of the Effective Date or its successor as established by ordinance by the Town Council shall apply to the for-sale units in the Developed Property; provided, however, for purposes of the density bonus available under the Inclusionary Zoning Ordinance, the Town and the Developer Owner agree that sufficient bonus is granted through this Agreement. 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.
  - 2) Transfer Fee for For-Sale units. As a condition of the approval of this Agreement, the Developer Owner agrees that there shall be a transfer fee (the "Transfer Fee") imposed by the Town upon the sale or resale of residential units excepting designated affordable units within the Developed Property. The Transfer Fee shall be 1% of the sales price. Notice of the Transfer Fee shall be put in the chain of title for all for-sale units and the fee shall 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 up-fits 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 and the 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 Developed Property shall be made available as affordable rental properties. Housing subsidy vouchers shall be accepted for all affordable units.
- 2) One-half of the affordable rental units shall be made available to households eligible for housing vouchers (i.e. Housing Choice Vouchers; Veterans Affairs Supportive Housing Vouchers) and rented at Fair Market Rents as determined by the U.S. Department of Housing and Urban Development for the Durham-Chapel Hill Metropolitan Statistical Area (MSA).
- 3) One-half of the affordable rental units shall be priced to be affordable to households earning between 60% and 80% of the area median income (AMI) and rented for no more than 30% of total household income.
- 4) The Developer Owner or Representative shall notify the Orange County Affordable Housing Coalition and the Office of Housing and Community at the Town of Chapel Hill, or their successors, about the availability of affordable units at the time that the units become available.
- 5) Management. Prior to receiving a Certificate of Occupancy for each residential building at the Developed 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 earning between 60% and 80% of AMI.
- 6) Parking Spaces. The rental rate for each affordable rental unit shall include at least one parking space associated with the unit and located within the parking area or structure serving the building where the affordable unit is located.
- 7) Size of units. A combination of efficiency/studio, one bedroom, and two bedroom units shall be provided as affordable rental units, with

distribution of unit types and sizes 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

8) Conversion of Units to For Sale.

- i. Conversion of rental units to homeownership will be considered a minor amendment to this agreement.
- ii. When any market rate rental units are converted to for-sale units, the converted units must provide a percentage of affordable units equal to the percentage required under the Inclusionary Zoning Ordinance or other affordable housing policy in effect at the time of conversion.
- iii. Any affordable rental units which are converted to for-sale units must remain affordable. Affordable rental units converted to for-sale units may count toward meeting the overall percentage of affordable units required under the Inclusionary Zoning Ordinance or other affordable housing policy in effect at the time of conversion.
- iv. All units converted to for-sale units which are required to be affordable units shall be affordable to the income levels as established by the Inclusionary Zoning Ordinance or other affordable housing policy in effect at the time of conversion.
- v. All units converted to for-sale units which are required to be affordable units shall be restricted to owner-occupancy.
- vi. For purposes of the density bonus available under the Inclusionary Zoning Ordinance, the parties agree that sufficient bonus is granted through this Agreement.
- vii. Any payments in lieu made on behalf of the rental units converting to for-sale units shall be credited to the requirements upon conversion.
- viii. All units converted to for-sale units which are required to be affordable shall remain subject to the applicable Inclusionary Zoning Ordinance provisions for a period of at least ninety-nine (99) years or as long as permissible by law; provided that said time period shall be reduced by any period during which said unit or units were provided as affordable rental units prior to conversion.

9) Term of Affordability for Rental Units. Units created under this section will be affordable for ninety-nine (99) years.

10) 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 earning between 60 and 80% of AMI and the rental rate will be established at the Fair Market Rent.

- 11) Inability to Locate Tenants. In the event that a voucher-eligible unit remains unoccupied for a period of sixty (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 earning between 60% and 80% AMI for no more than 30% of total household income for up to one year. If, after an additional thirty (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 earning between 60% and 80% AMI remains unleased for a period of sixty (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 for individuals earning between 60% and 80% AMI or a different unit shall be offered as affordable in the event the tenant wishes to stay beyond the initial lease.
- 12) 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 Developed Property, how affordability is being monitored, 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.

- 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 Developed 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) Nothing in this Agreement is intended to preclude the use of new or innovative stormwater technologies in the Development of the Property. In order to meet the design criteria of this Agreement the 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. If the specifications or guidelines of either design manual are more restrictive or apply a higher standard than the other, or other laws or regulations, the more restrictive specifications or guidelines shall prevail.
- c) The initial Development Agreement Compliance Permit application submitted for the Development of the Developed 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 a treatment subbasin west of Wilson Creek and the Developed Property shall not exceed the pre-development (existing conditions) stormwater runoff peak discharge rate for the local 1-year (2.88 inches), 2-year (3.60 inches), 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 Developed 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 and annual inspection report shall apply to Development and shall include a summary of maintenance and inspection expenditures. Inspection must be performed by a North Carolina-registered Professional Engineer.

- 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 the Low Impact Development practices specified in Section 5.3(j) of this Agreement. Additionally, the Stormwater Management Plan and Report and the Developed Property must comply with the applicable NPDES requirements and all applicable Federal and State and local stormwater and environmental rules.
- e) Upon completion of the construction of stormwater management facilities for any sub-basin identified in the Stormwater Management Plan and prior to issuance of a certificate of occupancy for the first building completed within that sub-basin, 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. 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 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 shall 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 shall 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 right-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.
  - g) All stormwater runoff from the Property will be detained and treated prior to entering or crossing the RCD Managed Zone or Stream Zone. No stormwater from the west side of Wilson Creek will be diverted to the east side of Wilson Creek. Stormwater treatment facilities may be constructed in Wilson Creek Preserve only for treatment of stormwater runoff generated from approved uses in the Preserve.
  - h) Monitoring of Wilson Creek will be conducted throughout the Wilson Creek Preserve for the purpose of documenting any changes (or lack thereof) in geomorphology and in-stream sediment and erosion conditions on Wilson Creek. Initial measurements shall be taken prior to any land clearing. Once Development begins, monitoring should occur annually at the same time each year and shall continue for five (5) years after construction is complete. The Developer Owner or Representative shall pay for the monitoring of Wilson Creek.
  - i) Geomorphic monitoring of Wilson Creek will be conducted throughout the Wilson Creek Preserve for the purpose of documenting any changes (or lack thereof) in geomorphology and in-stream sediment and erosion conditions on Wilson Creek. Initial measurements shall be taken previous to the occurrence of any land



clearing. Once Development begins, monitoring should occur annually at the same time each year and shall continue for five (5) years after construction is complete.

- j) The monitoring will utilize three cross-section locations. The most upstream cross-section will act as a “control” for the other two cross-sections to detect whether changes in those cross-sections are due to local conditions or wider watershed conditions. Additionally, the monitoring and cross-sections will comply with the following criteria:
- 1) Three cross-sections will be located on Wilson Creek at the following locations:
    - i. North of the southernmost boundary of the Property and north of the road culvert to be replaced;
    - ii. South of the northernmost boundary of the Property;
    - iii. At an intermediate point between the two locations identified above in (a) and (b).
    - iv. The monitoring stations will be located at riffle areas; if suitable riffles are not available near to the aforementioned points, stations will be located at runs.
  - 2) Both ends of the cross-sections shall be semi-permanently marked such that these ends can be easily found each year. Cross-section endpoints shall be located at the far edges of the floodplain or lowest terrace.
  - 3) Cross-section surveys shall measure bank and bed elevations at no greater than a one-foot interval apart in the bank and channel areas (including high banks above natural bankfull) in order to capture fine-scale changes in the channel. Measurement locations above the high bank can be made at breakpoints as available.
  - 4) A pebble count shall be conducted at each cross-section at the time of monitoring. If materials are too fine, a sieve analysis shall be done.
  - 5) Photographs shall be taken at each cross-section end at the time of monitoring, including a minimum of one facing upstream and one facing downstream on each bank.
  - 6) Three additional semi-permanently-marked photography points shall be established downstream of the points where treated stormwater would enter Wilson Creek. These points shall be placed such that upstream shots capture the confluence area.
- k) Ecological monitoring of Wilson Creek and its major tributary in the Wilson Creek Preserve will be conducted for the purpose of documenting any changes (or lack thereof) in benthic community composition and abundance. An initial assessment in early 2016, and a final assessment five years (or at an alternate time determined by Town staff) after completion of construction, will be conducted at two sites – one on Wilson Creek and another on the major eastern tributary in Wilson Creek Preserve. The assessments will be conducted by Town staff or assigns using DENR biological protocols in coordination with other biological monitoring conducted by the Town. Prior to issuance of the first Development Agreement Compliance Permit the Developer shall submit a \$2,000 payment-in-lieu to cover the total cost of sampling and organism

identification for the two sites and two sampling times. A summary of monitoring activities should be included in each Annual Report.

- l) The Developed Property will be designed to incorporate the following Low-Impact Development (LID) practices in order to provide stormwater infiltration and facilitate stormwater reuse. These LID practices are supplemental to the design criteria requirements of Section 5.3(c), and are stipulated to provide stormwater mitigation results beyond the current Town of Chapel Hill stormwater treatment requirement.
  - 1) Tree planter/infiltration zones will be located along all internal streets where planted within 12' or wider sidewalks. These zones shall be designed to capture and route excess stormwater runoff through permeable soils and will provide additional water detention and filtration beyond that required by current standards. A minimum of 125 tree planter/infiltration zones, each with a minimum of 300 cubic feet (CF) of free soil or structural soil, will provide for infiltration equal to or exceeding 5% of the sidewalk areas in which they are located.
  - 2) Tree planter/infiltration zones may utilize any combination of tree grates, areas of free soil open to the air, or areas of suspended permeable pavers. Impervious sidewalk pavement suspended over free soil may also be used provided it is designed to accept the requisite volume of stormwater for which it is intended. The design for the tree planter/infiltration zones will include an underdrain to keep the soils from becoming oversaturated. The soil will have a minimum permeability of 2 inches/hour.
  - 3) Level spreaders and vegetated filter strips will be incorporated into the final stormwater management design in order to reduce the bypass and increase infiltration at each storm water outlet. Preliminary design analysis indicates four locations will be needed to balance dispersion objectives and to minimize impact to the RCD. Designs shall provide for increased performance over baseline standards by spreading the runoff from at least the first 2 inches of rainfall on the site (as compared to the standard of the first inch of rainfall as is normal from the discharge of a stormwater facility). This would provide effective pollutant removal and infiltration for approximately 95% of all rainfall events.
  - 4) Regenerative Conveyances will be incorporated in the final designs provided site conditions within the RCD are suitable for their use. A site analysis will be provided as a part of the preliminary design for evaluation by Town Staff. Regenerative conveyances will be used where practical to provide conveyance from the site stormwater discharge points to Wilson Creek.
  - 5) High efficiency irrigation which utilizes captured stormwater or other non-potable reclaimed water (e.g. Orange Water and Sewer Authority (OWASA) reclaimed water) for primary irrigation needs will be provided. Irrigation storage capacity will be provided in addition to that required for detention of the design storm. Storage volumes will be provided during final design once plant species and areas are able to be quantified.

## 5.4 Transportation.

### a) General Provisions.

- 1) All roads and streets within the Developed Property that may support public transit in the future shall be designed and constructed to meet Town standards for such use unless otherwise approved by the Town Manager. All improvements on US Highway 15-501 shall be designed according to the Urban/Suburban Boulevard guidelines in the July 2012 NCDOT *Complete Streets Planning and Design Guidelines*, subject to NCDOT approval. All pedestrian, bicycle, and greenway facilities within the Developed Property shall be designed and constructed to meet Town standards unless otherwise approved by the Town Manager. For all sidewalk, bicycle, and greenway facilities, easements will be granted to the Town and the public for public use.
- 2) Transit stops, transit passenger amenities, bus turnouts, or other transit facilities necessary to support the provision of safe, accessible and efficient public transit shall be incorporated into the design and construction of all applicable new roads within the Developed Property. Appropriate parking restrictions shall be applied and enforced within bus stops. Transit stop design shall be consistent with Town standards or unless otherwise approved by the Town Manager.
- 3) Each Development Agreement Compliance Permit application will include information about the phasing of the appropriate roadway network connections and infrastructure to support occupancy of each building.
- 4) Layout of roads shall be generally consistent with Exhibit H. If improvements are proposed to circulation within the Developed Property, those improvements shall preserve an appropriate balance between bicycle, pedestrian, and vehicular traffic.
- 5) Sidewalks in the Developed Property shall be built to standards required under the Americans with Disabilities Act including where the sidewalks cross driveways. A sidewalk shall not be required to be altered if there is no Development adjacent to the sidewalk.
- 6) Pedestrian refuge islands shall be provided in crosswalks, subject to NCDOT approval where necessary, for all crossings of 6 lanes or more.
- 7) The Representative will be responsible for repairing roads damaged by construction of the Developed Property.
- 8) All roads and streets within the Developed Property, while privately owned, are public vehicular areas and subject to all applicable State and Town laws and ordinances.
- 9) Roads and amenities along the US 15-501 frontage shall be extended to the northern-most and southern-most property lines to provide connectivity. Final design is subject to NCDOT and Town approval.
- 10) Wilson Creek Lane shall be extended to the southern-most property line or RCD boundary to provide connectivity. Final design is subject to Town approval.

### b) Construction Management Plan.

- 1) Each Development Agreement Compliance Permit application shall include a construction management plan. The construction management plan shall, at a minimum:
  - i. Demonstrate how construction vehicle traffic will be managed and where the construction vehicle routes will be located.
  - ii. Identify any impacts to bicycle, pedestrian, vehicular, or Transit routes and/or facilities and indicate how these impacts will be mitigated.
  - iii. Show parking areas for on-site construction workers including plans to prohibit parking in residential neighborhoods.
  - iv. Identify construction staging and material storage areas.
  - v. Identify construction trailers and other associated temporary construction management structures.
  - vi. Indicate how Development will comply with the Town's Noise Ordinance (see Section 5.20 of this Agreement).
  - vii. Propose times and days when construction and noise from the Development are permitted.
  - viii. Indicate that the construction management plan 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.
  - ix. 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.

c) Traffic Impact Study (TIS).

- 1) Benchmark Set: The TIS for the Developed Property (see Exhibit K) was prepared and submitted in April 2014. Several Amendments to April 2014 TIS were prepared (see Exhibit K). The Benchmark is within +100 trips of PM peak hour trips (see Exhibit L).
- 2) Each Development Agreement Compliance Permit shall include a calculation of the cumulative trips generated by the Developed Property. Development that exceeds the Benchmark set above shall not be approved without a Major Modification.
- 3) Annual Trip Generation Report: Each Annual Report shall include a trip generation table using the 9<sup>th</sup> edition of the I.T.E. Manual showing the following:
  - i. Land use type built and a location map of the buildings;
  - ii. Land use type and location for buildings anticipated to begin construction in the next year;
  - iii. Comparison of trip generation table with the trips generated in the TIS dated April 2014.
- 4) Subsequent TIS updates:

- i. If the Annual Report projects trips in excess of benchmark set above, the Developer Owner may choose to conduct a subsequent TIS to reflect future conditions, using current traffic counts.
- ii. An updated TIS shall be conducted according to the Guidelines and Procedures used in the April 2014 TIS and the Town's Traffic Impact Study Guidelines.
- iii. The cost of preparation of the TIS and subsequent updates shall be borne by the Developer Owner or Representative and shall be conducted by the Town's TIS Consultant.
- iv. Each TIS shall consider transit, traffic, bicycle, pedestrian, and greenway transportation and shall address the accuracy of the projections and assumptions in the April 2014 TIS for the Developed Property.
- v. If an updated TIS shows that proposed development continues to be below the trip benchmark and does not exceed the other standards set forth in this Agreement, development may proceed.

5) Three times, at three year intervals, beginning three years after the opening of the first fully signalized intersection on US Highway 15-501 for the Developed Property, the Developer Owner or Representative shall conduct traffic counts at each of the Developed Property's driveways to establish Average Daily Traffic Volumes for weekdays and weekends (24/7). These counts will be provided to the Town for information.

d) Specific Roadway Improvements.

- 1) All designs and construction details are subject to NCDOT and Town approval. All design plans are subject to approval by the Town Manager prior to the issuance of a permit for each phase of the construction. All roadway improvements including traffic signal upgrades and signal system improvements must be completed prior to issuance of the first Certificate of Occupancy.
- 2) Traffic Signal System Improvements. Traffic Signal System improvements shall include the following, subject to the approval by the Town Manager and NCDOT, and shall be done in conjunction with the corresponding roadway improvements:
  - i. Traffic signal system timing plans for progression shall be studied, revised, and implemented in the Town system at all traffic signals on US 15/501 from Dogwood Acres Drive to NC 54 Westbound Off-Ramp.
- 3) Traffic signal upgrades on US 15/501 at the intersections with Market Street and Sumac Road shall be completed (including upgrades traffic signal and turn lanes) per terms of the April 2015 Traffic Impact Study Amendment and/or other design alternatives as required and approved by NCDOT and Town Manager. These improvements shall include the following:

- i. High visibility thermo-plastic pedestrian crosswalks and pedestrian signals on all approaches at Market Street/US Highway 15-501 and Sumac Road/US Highway 15-501 intersections;
  - ii. Incorporation of APS Equipment to all traffic signal upgrades.
  - iii. Bicycle activated loops on all approaches to the side streets at Market Street/US Highway 15-501 and Sumac Road/US Highway 15-501 intersections.
  
- 4) Improvements to be made prior to the issuance of the first Certificate of Occupancy of any building south of Sumac Road include:
  - i. Slip street to be constructed;
  - ii. All remaining on-site roads and bicycle/pedestrian facilities to be completed;
  - iii. All remaining frontage improvements along US 15/501 not previously constructed, including turn lanes for any secondary entrances or exits, to be completed.
  
- 5) Slip Road.
  - i. If the slip road is allowed by NCDOT to connect to Sumac Road, there shall not be a left-turn movement onto US Highway 15/501 and Sumac Road from the slip road.
  - ii. If the slip road is not allowed by NCDOT for the full length between Middle Street and Sumac Road, it shall be allowed to divide the block between Middle Street and Sumac Road and onto Main Street.
  
- 6) The Developer Owner or Representative shall construct on-site roads and bicycle and pedestrian facilities along US 15/501 between Market Street and Sumac Road which shall include the following:
  - i. Construction of sidewalks across the Developed Property frontage and continue along the Developed Property currently owned/occupied by Strata Solar, provided there is adequate width in the NCDOT right-of-way;
  - ii. Install Thermo-Plastic Sharrow Markings on all interior streets that do not have designated bike lanes;
  - iii. Install bike lanes on Market Street and Sumac Road between US Highway 15-501 and Main Street;
  - iv. Pedestrian walkways on both sides of every street as designated in Exhibit J;
  - v. No changes are proposed by the Developer to the existing bike lanes in US Highway 15/501.
  
- 7) Improvements at US 15/501/Market Street/Site Driveway.
  - i. Construction of southbound left turn lane(s) with NCDOT required full storage length and appropriate tapers on US 15/501.

- ii. Construction of a second exclusive westbound left turn lane with appropriate tapers on Market Street if right-of-way permits and if required by NCDOT.
  - iii. Construction of an exclusive northbound right turn lane with NCDOT required full storage length and appropriate deceleration taper on US 15-501.
  - iv. Construction of dual ingress lanes and three egress lanes consisting of one exclusive left turn lane, an exclusive through lane, and an exclusive right turn lane, each with NCDOT required full storage length on the site access.
  - v. If required by NCDOT, provision of a minimum 300' protected internal driveway stem length prohibiting all turning and parking maneuvers on the site access.
- 8) Improvements at US 15/501/Sumac Road/Site Driveway.
- i. Full access at Sumac Road, generally consistent with the site map (see Exhibit H), subject to NCDOT approval of final design and driveway permits.
  - ii. Construction of an exclusive southbound left turn lane with NCDOT required full storage length and appropriate deceleration taper on US 15/501.
  - iii. Construction of an exclusive northbound left turn lane with NCDOT required full storage length and appropriate deceleration tapers on US 15/501.
  - iv. Construction of an exclusive northbound right turn lane with NCDOT required full storage length and appropriate deceleration taper on US 15-501.
  - v. Construction of two ingress lanes and two egress lanes with NCDOT required full storage on the site access.
  - vi. Provision of a minimum of 300' of protected internal driveway stem length prohibiting all turning and parking maneuvers on the site access, if required by NCDOT.
  - vii. Additional right-of-way requirements on property owned by others shall not be required of the Developer Owner for this Property.
- 9) US 15-501/Service Lane (south driveway).
- i. Shall be constructed to right-in only from US 15-501.
  - ii. West-bound traffic on the service lane shall turn right onto the frontage road and shall not enter US 15-501.
- 10) Middle Street.
- i. Shall have a right-turn from the Frontage Road to 15-501.
  - ii. Shall not have a right-turn in from US 15-501.
- 11) US 15-501/Culbreth Road/Mt. Carmel Church Road.



- i. Restripe existing westbound Mt. Carmel Church Road approach for a shared left-turn/through lane and dual right-turn lanes.
- ii. Upgrade traffic signal plan as required by NCDOT and Town.

e) Transit Improvements.

- 1) The Developer Owner or Representative shall make an annual contribution of \$0.02 per square foot of completed heated building area to help fund transit service to the Property and Southern Village area. This contribution shall be made for the term of this Agreement and shall be adjusted each year on July 1<sup>st</sup> for any new buildings completed in the past twelve (12) months. The payment shall be made no later than September 1<sup>st</sup> of each year.
  - i. The first payment shall be made upon issuance of the first Certificate of Occupancy;
  - ii. The \$0.02 contribution shall be adjusted annually with the Consumer Price Index (CPI) category "all urban consumers";
  - iii. All payments made from three years after the Effective Date of this Agreement, provided a Certificate of Occupancy for the Developed Property has been issued, shall be no less than \$10,000.
- 2) A bus pull-out shall be constructed between Sumac Road and Market Street along the northbound lanes of US 15-501, in a location to be agreed upon with Chapel Hill Transit and the Town Manager.
- 3) Bus facilities shall be built to the standard required by Chapel Hill Transit and shall accommodate any future design related to the implementation of bus rapid transit service.
- 4) If desired by Chapel Hill Transit, a second bus pull-out along the northbound side of US 15-501 shall be constructed near the southern boundary of the Developed Property prior to issuance of the Certificate of Occupancy for the southern-most building in the project.

f) Other Transportation-Related Contributions.

- 1) A contribution of \$250,000 shall be made to the Town, with 50% of the payment prior to the approval of the first Development Agreement Compliance Permit and the second 50% paid or at the time of design or installation of a project identified by the Town Council, as described below or prior to approval of the third Development Agreement Compliance Permit, whichever comes first.
- 2) The Council may choose to use the funds for the following improvements:
  - i. South Columbia Street and US 15-501/NC 54 Westbound Interchange.
    - (i) Extend the storage lengths of the existing dual left turns of the off-ramp as required by NCDOT.



- (ii) Restripe the existing South Columbia and US 15-501 Fordham Blvd. interchange, from Purefoy Road to Mt. Carmel Church Road as shown in Exhibit M.
- ii. A traffic study and/or installation of traffic calming measures on Dogwood Acres Drive provided that:
  - (i) State statute and NCDOT requirements have been met for formation by the property owners on and around Dogwood Acres Drive of a legal entity to do the following:
    - a. Petition NCDOT for traffic calming;
    - b. Maintain the traffic calming improvements.
- iii. Design and install a pedestrian and bicycle crossing of US 15-501/Fordham Blvd. at Oteys Road, including the provision of a HAWK signal, as shown in Exhibit N.
- iv. At a future date, the Council may make a determination on which improvements to fund and at what level.

#### 5.5 Fiscal Impacts.

No more than 20% of the square footage of buildings on the Developed Property shall be committed to a tax-exempt use and none of the buildings on the Developed Property shall be committed to a tax-exempt use other than a Town Council-approved tax-exempt use. This Section shall not apply to any public rights of way, property dedicated to and accepted by the Town of Chapel Hill, or any tax-exempt entity that provides payments in lieu of ad valorem property taxes owed to the Town and County in an amount equal to the amount of taxes that such an entity would otherwise be required to pay to the Town and County if such an entity were not considered to be tax-exempt. Pursuant to Section 5.26 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 Developed 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 are detailed in the Exhibit J.
- b) Public Art in the Developed 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 or its successor to discuss options for public art as the Development moves forward. Additional information included in Exhibit J.

#### 5.7 Public Schools.

- a) The Schools Adequate Public Facilities Ordinance (SAPFO) shall apply to the Developed Property and a summary of impact fees shall be included in the Annual Report.
- b) 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 purposes.
- c) The Developer Owner or Representative shall include an update on these conversations and any decisions in the first Annual Report (see Section 5.26).

#### 5.8 Open Space and Parks.

- 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. Additional details for the open spaces are provided in Exhibit J to this Agreement. This section sets forth the requirements governing open space, parks and recreation areas associated with the Property. The Developer Owner shall make the parks available in a condition that protects the general safety and welfare of the public.
- b) Designated parks shall remain parks and not be developed for other uses.
- c) The design for individual parks shall be approved by the Town Manager prior to the construction of the parks and open spaces. The plans for the parks shall include information regarding amenities, utilities, hardscape, stormwater management facilities, plantings, bicycle parking, signage, lighting, and additional information as appropriate.
  - 1) Wilson Creek Preserve (see (2)(i-iii) below), which contains the Quarry, shall be preserved in perpetuity through a deed to the Town of Chapel Hill for preservation and recreation and additional conservation measures that are taken by the Town of Chapel Hill upon receipt of said deed.
  - 2) The Wilson Creek Preserve shall exclude the following:
    - i. Approximately 2.9 acres of isolated property north of the parcel with the Parcel Identifier Number 9787243925 and east of Wilson Creek Managed Use Zone;
    - ii. A 100 foot buffer strip extending from the western limits of (2)(i) above to 15-501
    - iii. A 100 foot buffer along the southern boundary west of Wilson Creek common to the parcel with the Parcel Identifier Number 9787028120 and extending to US Highway 15-501.
  - 3) A linear park along Wilson Creek Lane will include all lands from Wilson Creek Lane to the Wilson Creek Preserve, hereinafter referred to as "Wilson Creek Park" and totaling approximately 3 acres, as shown in Exhibit J.
  - 4) Overlook Park shall be located along Wilson Creek Lane.
  - 5) A neighborhood park space, hereinafter referred to as "Highland Park," shall consist of a minimum of 1.2 acres, as shown in Exhibit J. The park shall be suitable for both passive and active recreation and shall be designed as a community gathering space. Highland Park shall include a water feature, and public-access restrooms shall be provided adjacent or accessible to Highland Park with appropriate signage. The restrooms

shall be maintained by the Developer Owner or Representative for the term of this Agreement and beyond the expiration of this Agreement. The Parks, Greenways, and Recreation Commission shall be consulted on the design of the water feature at Highland Park.

- 6) Wilson Creek Preserve, the Quarry in Wilson Creek Preserve, Overlook Park, and Highland Park shall be open to the public at the issuance of the Certificate of Occupancy for the first free-standing building on the Developed Property.
  - 7) Prior to issuance of the Certificate of Occupancy for the first free-standing building on the Developed Property, the following conditions shall be met:
    - i. Town approval of the park plan;
    - ii. The single pedestrian/maintenance bridge over Wilson Creek is constructed;
    - iii. The quarry restoration is complete;
    - iv. At least one trail to the quarry has been constructed;
    - v. A deed for the Wilson Creek Preserve has been submitted to the Town.
  - 8) The Developer Owner or Representative shall maintain the pedestrian/maintenance bridge over Wilson Creek beyond the expiration of this Agreement.
  - 9) The Wilson Creek Linear Park shall be available to the public as immediately adjacent townhouse buildings are issued Certificates of Occupancy.
  - 10) The paved sidepath, built to AASHTO or NACTO standards, shall be provided along the Developed 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.
- 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 the Town's normal rules of use. Park identification signage shall include language indicating that public access to the park is permitted.
  - e) The Developer Owner or Representative shall maintain the open space and parks for the term of this Agreement and beyond the expiration of this Agreement.

#### 5.9 Recreation Areas.

- a) Recreation space requirements as required in the LUMO are satisfied by the provision of the Wilson Creek Preserve (see Section 5.12) and parks proposed as illustrated in Exhibit J.
- b) Recreation areas designed for use by residents or patrons may include indoor areas as well as active outdoor areas.
- c) Recreation areas shall include dedicated site furniture including benches, trash receptacles, and lighting unique to specific spaces.

- d) All recreation areas on the west side of Wilson Creek shall comply with all American with Disabilities Act (ADA) guidelines for accessibility. This includes the path from Overlook Park to the pedestrian bridge in the Wilson Creek Preserve. 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.

#### 5.10 Greenways and Sidepaths.

- a) The location of greenways and sidepaths for pedestrians and cyclists on the Property will be generally consistent with Exhibit J.
- b) The Town shall make available all easements and permits necessary to construct greenway connections.
- c) All greenways and sidepaths shall be built to AASHTO or NACTO 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. Public restrooms shall be provided and shall be accessible to Highland Park and Overlook Park. A water feature in Overlook Park shall be allowable.
- d) All greenways and sidepaths shall be constructed of concrete and not asphalt.
- e) The Master Owners Association will maintain the greenways 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 replacement of severely damaged concrete sections 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.
- f) 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.
- g) The Town shall have the right to make emergency repairs and charge the cost of those repairs to the Developer Owner or Representative 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.
- h) The Developer Owner or Representative shall maintain the greenways and sidepaths beyond the expiration of this Agreement.

#### 5.11 Pedestrian and Bicycle Bridge Across US Highway 15-501.

- 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 J. 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) Upon completion and opening of the bridge, the title shall be transferred to the Town and maintenance shall continue to be the responsibility of the Master Owners Association. The bridge shall be maintained to standards acceptable to the Town of Chapel Hill and NCDOT.

- c) The bicycle and pedestrian bridge over US 15-501 shall be completed prior to the earlier of:
  - 1) The opening of any single retail tenant over 50,000 square feet;
  - 2) The issuance of a Certificate of Occupancy for the building that takes the development over 600,000 square feet of heated space; or
  - 3) Issuance of the Certificate of Occupancy for the 350<sup>th</sup> residential unit.
- d) 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 or NACTO standards.
- e) The Town shall provide the property needed for the western landing of the bridge including access ramps and access trail.
- f) At any such time that the Southern Village Park and Ride Lot is redeveloped, an equitable sharing of maintenance costs will be negotiated with the Developer Owner, Parcel Owner, or Representative.
- g) The Town shall have the right to make emergency repairs and charge the cost of those repairs to the Developer Owner or Representative in the event that the Town determines that the Master Owners Association has not maintained the pedestrian and bicycle bridge to the extent needed to assure proper and safe functioning of the bridge.
- h) The location, design, and construction of the pedestrian and bicycle bridge are subject to NCDOT approval.
- i) The Developer Owner or Representative shall develop a maintenance and inspection plan and perform inspections of the structure at least once every two years by a qualified bridge inspection firm based on National Bridge Inspection Standards and shall provide NCDOT copies of the inspection reports.
- j) NCDOT reserves the require repair, replacement, reconstruction or demolition of any partially or wholly completed bridge that is determined to be unsafe or substandard in design, construction or condition.
- k) The Developer Owner or Representative shall be required to post sufficient continuing bonds and liability insurance for maintenance and repair of the bridge.
- l) The Developer Owner or Representative shall maintain the pedestrian and bicycle bridge beyond the expiration of this Agreement.
- m) The Developer Owner or Representative shall consult with the Chapel Hill Public Arts Commission to invite comments on the appearance of structural components of the bridge and shall explore opportunities for public art to be incorporated into bridge design.

#### 5.12 Wilson Creek Preserve.

- a) The Developer Owner shall provide an 85 acre open space tract that includes all lands as shown on Exhibit A and Exhibit O. hereinafter referred to as the “Wilson Creek Preserve,” including a portion of property owned by the Town of Chapel Hill (see Exhibits M and O). The Wilson Creek Preserve shall extend from the outer limit of the managed use zone of the Resource Conservation District on the west side of Wilson Creek to the eastern property limits of the Property and shall include a buffer strip along the southern boundary west of Wilson Creek.
- b) The tract shall be owned by the Town of Chapel Hill. The Town shall 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. Once it is decided, any further trails or development in the Preserve shall be identified and paid for by the Town, consistent with the terms of any conservation easements. The Developer Owner shall be obligated to maintain only the trails that are agreed to as part of the Agreement.

- c) The Master Owners Association shall be responsible for all maintenance activities within the Wilson Creek Preserve.
- d) The Developer Owner shall make minimal changes to the hardwood tree cover.
- e) The following allowable uses and activities within the Wilson Creek Preserve shall be in general keeping with Exhibit J. All uses described shall be consistent with plans and procedures approved by the Town Manager.
  - i. Grading and restoration of the quarry area using clean soil, sand, gravel and stone from the development site;
  - ii. Natural surface trails;
  - iii. One pedestrian bridge;
  - iv. Maintenance access ways;
  - v. Picnic shelters, areas and support facilities;
  - vi. Forest management;
  - vii. Stormwater management associated with approved uses in the Preserve;
  - viii. Invasive plant species management;
  - ix. Maintenance; and
  - x. Other uses as approved by the Town Manager.
- f) The Developer Owner or Representative shall provide a minimum six (6)-foot-wide pedestrian bridge over Wilson Creek as the access point for users of the Wilson Creek Preserve. A maximum of one (1) bridge is allowed, and 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.
- g) The Developer Owner shall construct a minimum of 8,000 linear feet of natural and/or gravel surface trails within the Wilson Creek Preserve. The trails shall roughly conform to the trails plan in Exhibit J. The Town and Developer Owner or Representative may change the trail plan in order to maximize user enjoyment, expand the trail system, preserve the environment, avoid trees, avoid drainage and erosion issues, and to provide a better trail plan. Trails will be primarily field located. The natural surface trails will have limited accessibility for mobility-impaired individuals.
- h) The final trail plans must be approved by the Town Manager. The trail plan will likely evolve with time with resultant changes to the trail system to promote user and environmental benefits. The Town shall have the right to make emergency repairs and charge the cost of those repairs to the Developer Owner or Representative 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 post appropriate signage to assist trail users and other purposes. A signage plan must be approved by the Town Manager prior to implementation. No signs shall be mounted directly on trees.
- 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 and shall be placed approximately every 100 feet along the Property line. Upon completion of the boundary survey, Town staff



shall walk the property line and approve the boundary markings prior to Town's acceptance of the property.

- k) The Town shall exchange a portion of the Town-owned property surrounded by the Developed Property (see Exhibits M and O) for the dedication of the Wilson Creek Preserve which provides a greater recreation benefit to the Town of Chapel Hill than the portion of land to be exchanged. Furthermore, the additional benefits accrued to the Town through this exchange and this Agreement provide a substantial increase in overall benefits, including recreation, to the Town and its residents. The exchange also provides an increased benefit to surrounding property owners not in the Town, consistent with and in expansion of the original intent met through dedication of this property to the Town as recreation space when those subdivisions were approved.
- l) Roads, utilities, sidewalks, bicycle facilities, and other support facilities shall be allowed within the strip of land that is adjacent to US Highway 15-501 and lies west of Wilson Creek and along the southern border of the Developed Property. This strip shall be considered a buffer area, but not a preservation area.
- m) The Developer Owner or Representative shall maintain the Wilson Creek Preserve beyond the expiration of this Agreement.

#### 5.13 Quarry Restoration.

- a) Clean soil, sand, gravel and stone from the Developed Property site may be used as fill in the restoration of the quarry area.
- b) The fill material must be placed in a stable manner, have a final layer of top soil and a final slope of 3:1 or less unless design includes a slope stability analysis, which confirms and documents that a steeper slope will be stable. In no condition, however, can any fill slope be steeper than 2:1. Large stone (stone that cannot be used as fill material) from the Developed Property site may be placed in the quarry area in a manner consistent with the approved uses, restoration plan and function of the public area.
- c) The sheer edges in the quarry area shall be reduced to best of the Developer Owner or Representative's ability while balancing environmental needs.
- d) A restoration plan must be submitted and approved by the Town Manager prior to any land disturbance activity. The restoration plan must include:
  - 1) Proposed grading plan – Including locations of fill and lift depth, final 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.
- e) Restoration shall be generally in keeping with Exhibit P.

- f) The Quarry shall not be opened to the public until such time as remediation efforts have made the area safe for public use.

#### 5.14 Historic and Cultural Features.

- 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.
- b) The tributary on the site, east of and flowing into Wilson Creek, shall be named Klopfer Creek in honor of Professor Peter Klopfer whose name is on the historic Court decision arising from the 1964 events. The creek may be renamed after execution of the Agreement.
- c) The Developer Owner or Representative will provide an update about the status of these features pursuant to the requirements in Section 5.26.

#### 5.15 Solid Waste Management.

- a) Solid waste collection shall be provided to all new uses within the Developed 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.
- b) Solid waste shall be managed by the Developer Owners or the Representative for all new buildings in the Developed 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.

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 in accordance with the Town's appeal process to a final determination. Relocation of Wilson Creek Lane into the Wilson Creek Resource Conservation District would require Town Council approval.

#### 5.17 Landscaping Standards.

- a) The Developed Property shall include significant street, landscape and natural plantings and landscaped areas and tree protection measures. 60% of the street

trees will be native plant species or drought-tolerant species. Landscaping shall be non-invasive. A portion of the tree and landscape areas may also have a stormwater management function at the Developed Property.

- b) A street tree planting plan that provides for shading of sidewalk and street pavement areas shall be incorporated into the Developed Property. Due to the preservation of Wilson Creek Preserve (see Section 5.12), no tree canopy requirements are applicable on the Developed Property.
- c) The applicant shall include the following information in each Development Agreement Compliance Permit application:
  - 1) A plan of street landscaping and landscaped areas and associated irrigation;
  - 2) A planting list using at least 60% native or drought-tolerant 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.
- d) A tree maintenance program will be provided with the first Development Agreement Compliance Permit application.
- e) A maintenance program of best forestry management practices within the Preserve will be submitted for approval by the Town Manager.
- f) See Exhibit J for landscape standards for specific site areas.

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:

<b>Erosion Control Item</b>	<b>Orange County Requirement</b>	<b>Property’s Standard</b>
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.
- d) 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 respect existing development adjacent to the Property.
- b) Development that occurs on the site will adhere to the buffer, lighting, drainage, and noise impact standards set forth in this Agreement and Exhibit J.
- 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 1,000 feet of the Property prior to the issuance of the first Development Agreement Compliance Permit.

5.20 Noise.

- a) 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 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.
- b) 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 are in Exhibit J.

5.22 Specific Site Development Standards.

- a) Site design shall comply with the Town of Chapel Hill Engineering Design Manual and the LUMO unless otherwise stated in this document.
- b) If there is a conflict, this Agreement's standards supersede the Town's standards.
- c) No burning of construction debris is permitted on-site.
- d) Where alternate development standards (i.e. curb radii, parking stall sizes, etc.) can be demonstrated to be equal or greater with regard to protecting the public health, safety and welfare, then they may be permitted within the bounds of the Developed Property subject to Town Manager approval.
- e) The following are exceptions to the Town's Land Use Management Ordinance, Town's Design Manual, and Standard Details which are allowable at the Property.

1) Section 3.8 - Zoning District Uses and Dimensional Standards

- i. No interior buffers or 15-501 buffers or setbacks are required. Open space buffers to neighboring properties are illustrated in Exhibit J.
- ii. Land Use Intensities, heights, setbacks, floor area lot sizes and widths, recreations space, impervious surface limitations and other dimensional standards are specified in this Agreement and Exhibit J. The Town's Land Use Intensities and Dimensional Standards are not applicable. No setbacks shall be required internal to the Developed Property other than those proposed by the NC Building Code or NC Fire Code.
- iii. Individual parcels may be subdivided and not subject to Land Use Intensities Standards for setbacks, lot widths, impervious surface and other dimensional standards.

2) Section 5.6 - Landscape, Screening and Buffering

- i. Allowable sidewalk materials and prescribed widths are enumerated in Exhibit J. Any of the proposed materials may be used throughout the Developed Property subject to ADA requirements for accessibility.
- ii. Street tree minimum sizes and spacing in the Developed Property are defined in Exhibit J which supersedes the Town's LUMO Section 5.6 and Design Manual Section 3 Standards for Planting and Screening. On-street parking shall not be required to be screened. Where required site triangles prevent normal placement of street trees within 5' of the back of curb, these zones will not be included in the total length of street calculation for tree spacing.
- iii. The separation and/or screening of sidewalk dining areas as required by the LUMO are not applicable to the Developed

Property. Where delineation of dining areas is desired, it may be achieved through alternate means (i.e. furniture placement and orientation, planters, roping, transparent screens, etc.). In all cases a minimum 5' unobstructed clear zone will be demonstrated where other uses (dining) are allowed to encroach on sidewalk areas.

iv. Where sidewalk paving abuts building facades along storefronts, entranceways or solid building walls less than 25 ft. in length, no minimum planting areas shall be required.

3) Section 5.9.6: Parking and Loading (applies to surface parking)

i. While the Developed Property is designed to limit surface parking to on-street parking along private streets, some situations may include small areas of off-street surface parking to serve convenience or valet services or to satisfy ADA requirements for locating parking adjacent to building entrances. Where these situations occur (i.e. age-restricted housing, hotel and office lobbies, etc.) and are limited to 10 spaces or less, the requirements of Section 5.9.6 of the LUMO shall not be applicable.

4) Section 5.9.7: Minimum and Maximum Off-Street Parking Space Requirements (Specifies parking space ratios to building areas)

i. Parking Requirements. The Developed Property shall conform to the parking requirements of Town Center-1 subject to the following modifications:

(i) Section 5.9.7 - Parking Table (Town Center Zoning District requirements)

<b>Use</b>	<b>Minimum</b>	<b>Maximum</b>
Bank	N/A	1 per 250 sq. ft. of floor area
Business, general (retail)	N/A	1 per 250 sq. ft. of floor area
Business, office type	N/A	1 per 333 sq. ft. of floor area
Clinic	N/A	1 per 333 sq. ft. of floor area
Residential	N/A	1 per bedroom and/or 2 max per unit
Hotel	N/A	1 per lodging unit

ii. The Developer Owner or Representative shall report on parking in each Development Agreement Compliance Permit and in the Annual Report to provide information to Town staff. Shared parking is encouraged across the Developed Property.

iii. Bicycle Parking. Bicycle parking shall be in compliance with the LUMO Minimum and Maximum Off-Street Parking Space Requirements (Section 5.9.7) and shall be demonstrated for each Development Agreement Compliance Permit.



- iv. The bicycle parking design must comply with the Spring 2010 Association of Pedestrian and Bicycle Professionals Guidelines, and the Class I and Class II bicycle parking standards required by the Town Design Manual.
  - v. Five years after the receipt of the first Certificate of Occupancy, the Developer Owner or Representative shall conduct an evaluation of the amount of bicycle parking that is provided at the Developed Property and provide additional bicycle parking if necessary.
- 5) Section 5.9.8: Loading Space Design Standards is modified as follows:
- i. Loading spaces shall be designed to accommodate the specific vehicles for which their use is intended and may be configured to require a dual maneuver for access.
  - ii. Loading spaces may make use of private streets for maneuvering.
  - iii. Loading spaces shall be planned and designed to minimize nuisance impacts to adjacent land uses by screening, orientation or location; however, screening is not required where it is demonstrated that nuisance impacts are otherwise mitigated.
- 6) Section 5.9.10 - Minimum Off-Street Loading Space Requirements
- i. These standards shall serve as a guide; however, where it can be demonstrated that the specific tenants to be served (1) demand fewer service areas, (2) can utilize combined service areas, (3) can stagger service hours or (4) can be served effectively from on-street facilities, an alternate to the Standards of Section 5.9.10 may be approved by the Town Manager.
- f) The following are exceptions to the Town of Chapel Hill Design Manual and Standard Details which are allowable at the Property.
- 1) Section 4 - Access and Circulation - Appendix 4-A - Street Classifications and Standards
- i. Streets within the project will be classified as "local" streets which shall be privately maintained, and shall meet the standards of Table 4-A-1 and Table 4-A-2 with the following exceptions:
  - ii. Table 4-A-1
    - (i) Design speed - 15 mph or 20 mph
    - (ii) Bike Lanes – provided on main streets intersecting US Highway 15-501 only. Sharrow bicycle pavement markings shall be provided through-out other local streets.
    - (iii) On Street Parking - Allowed on both sides of streets
    - (iv) Intersection Spacing - 100' minimum.
    - (v) Access Control - Non-residential access to local street is allowed.
  - iii. Table 4-A-2

- (i) Street Grade (%) - Maximum 18%
  - (ii) Minimum Horizontal Centerline Radius - 50'
  - (iii) Minimum Street Corner Radius - 10'
- 2) Section 4.e – Structural Standards - Pavement Materials and Sections (8" or 10" CABC (stone base) & 3" asphalt surface depending on type of street and location)
  - 3) Pavement sections for streets on site will be in accordance with the site specific recommendations of a geotechnical engineer based on a through site soils investigation.
  - 4) GrassPave2, or alternate, stabilized turf, as designed by the geotechnical engineer, may be used for fire access or other temporary use vehicular drives as a pavement type.
  - 5) Permeable pavements, or pavers, as designed by the geotechnical engineer, may be used in selected locations.
  - 6) Concrete, stamped concrete, imprinted asphalt or brick pavers may be used along with grooved detectable warning strips for pedestrian crossings as allowed by ADA Standards for private streets.
  - 7) Section 4.13 - Bicycle Paths - All sidepaths and greenways shall comply with AASHTO or NACTO standards; however, the following exceptions are permitted, subject to Town Manager approval:
    - i. 3-foot shoulders may not be required if there are demonstrable site constraints that would make 3-foot shoulders impractical
    - ii. A 15 mph design speed may be allowed.
    - iii. Alternate design solutions may be approved by the Town Manager where strict compliance to AASHTO standards is impractical and the alternate meets the intent of the standards.
  - 8) Section 4.2.8 - Sight Line Triangles
    - i. Internal sight line triangles will be based on AASHTO Stopping Sight Distance for the posted speed limit (15'x80' for 15 mph and 15'x115' for 20 mph)
    - ii. NCDOT standards will be applied for sight distance triangles at the Developed Property driveway connections to 15-501.
  - 9) Section 5 - Parking and Loading Standards
    - i. There shall be no limit on the number of contiguous on-street parking spaces.
    - ii. On-street parallel parking may be reduced to 8' x 21'.
    - iii. Diagonal on-street parking shall include a 2' bumper overhang of the curb/sidewalk area for calculating total stall depth.
    - iv. The maximum number of compact spaces shall not be limited.
    - v. Off-street loading and maneuvering spaces may make use of adjacent street area and may require dual maneuvers. The design of each loading space shall minimize the required number of maneuvers and shall be appropriate for the intended use and frequency of use.

10) Section 7.7 - Easements –Sharing of Utility Easements and Allowed Encroachments

- i. Alternate Standard: Subject to approval of Orange Water and Sewer Authority (OWASA), OWASA Easements - 20' easement, 10' off centerline of proposed sewer line or water line for a combined easement of 30' wide may be permitted. Plantings may be allowed in the outer 5' of the easement. Stormwater conveyance piping and structures are allowed within the OWASA easements with adequate horizontal or vertical relationships to allow for required maintenance. OWASA easements may overlap with other easements as long as actual lines are outside the OWASA easement. Any proposed revisions to easements for infrastructure maintained by the Town of Chapel Hill are subject to approval of the Town Manager.
- ii. "Dry" (gas, power, lighting, communications) utility easements – Subject to appropriate approvals by the utility providers, varying width blanket easements following installed lines, or duct bank, or maximum 5' off utility line may be permitted. Plantings may be allowed in outer 1/2 of the easements.

11) Section 8 - Lighting Levels

- i. Street lighting shall be limited to the internal streets of the Developed Property and connecting intersections, except for pedestrian-level lighting that may be necessary in the public right-of-way frontage along the project frontage. Design standards shall be in accordance with IESNA, with consideration for high-risk areas as defined by Crime Prevention Through Environmental Design. Light trespass along US Highway 15-501 right of way shall be allowed pursuant to NCDOT Standards and limitations.

g) The following are exceptions to the Standard Details which are allowable at the Property.

- 1) SD-1 thru SD-10 Town standard stormwater drainage details shall be superseded by the following standards;
  - i. NCDOT standard catch basin with bicycle compliant grates, drop inlet, junction box or other structures may be used.
  - ii. Alternate grates or curb inlets may be used to match profile of proposed alternative curb and gutter sections.
- 2) ST-1C, ST-1D, ST-1E and ST-1F Town standard street cross-section shall be superseded by the following standards;
  - i. 18' edge-of-pavement to edge-of-pavement typical section.
  - ii. 26' face-to-face (w/o parking) for aerial fire apparatus access. Street section may include alternate curb design and Grass Pave 2.

- iii. 34' face-to-face (parking one side) 42' face-to-face (parking both sides) for fire apparatus access.
  - iv. 16' face-to-face one-way street
  - v. 16' face-to-face public alley
- 3) ST-4 Town standard detail for sidewalks shall be superseded by the following standards specified in Exhibit J.
- 4) ST-14 and ST-15 Town standard detail for Traffic Control Devices shall be superseded by Exhibit J and the following standards:
- i. Street name signs at entrance intersections with 15-501 will meet ST-14 requirements.
  - ii. Internal street signs for private streets may be decorative, unique to the project and are not required to meet the ST-14 standard.
  - iii. Signs at entrance intersections with 15-501 will meet ST-15 requirements.
  - iv. Signs within the 15-501 right-of-way will meet NCDOT signage standards.
  - v. Internal signs for private streets may be decorative, unique to the project and are not required to meet the ST-15 standard.
  - vi. Decorative sign posts may be utilized for all signage. Replacement, if required by the Town or NCDOT may utilize standard u-channel posts. U-channel posts may be replaced with decorative posts by the Developer Owner.
  - vii. Regulatory signs such as: Stop, Yield, Do Not Enter, Wrong Way and Speed Limit, Advance Warning shall be in accordance with the Manual on Uniform Traffic Control Devices (MUTCD).
- 5) TC-1 thru TC-8 Town standard details may be supplemented as follows:
- i. Advanced traffic calming signage may not be required on 15 mph and 20 mph streets.
  - ii. Raised intersections, similar to a raised crosswalk, may be used. Design and construction details to be developed with Final Plans.
  - iii. Posted Speed Limits
  - iv. Local private streets may be posted at 15 mph or 20 mph.
- 6) Truck Access
- i. Truck and emergency access routes will be identified and tested utilizing AutoTurn software. Some sweeping of vehicular movement across opposing traffic lanes, or dragging of rear wheels across heavy duty sidewalk / ramps / corners will be allowed.

### 5.23 Annexation.

- a) Upon execution of this agreement and prior to recordation, the Developer Owner or Representative will submit a valid and binding petition for annexation of the entire Property into the limits of the Town of Chapel Hill. The Developer may identify a preferred targeted effective date of June 30, 2016 for said annexation.

The parties agree that the effective date of annexation shall be determined by the Town within the parameters of State Law (G.S. Sec. 160A-31(d)).

5.24 Fire Code Requirements.

- 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.
- b) The appropriate owner(s) or association will be responsible for ensuring that all buildings in the Developed Property have working sprinklers and will be responsible for the ongoing maintenance of the systems. Additional information will be required by the Development Agreement Compliance Permit.






5.25 Historically Underutilized Businesses.

- a) The Developer Owner or Representative is committed to providing the entire contracting community access to building projects. The policy of the Developer Owner or Representative is to provide Historically Underutilized Businesses equal access and opportunity to participate fully in all aspects of the Development; to prohibit discrimination against businesses on the basis of race, color, national origin, or gender; to promote and encourage full and open competition; and to promote equal access to contracting opportunities among the various contractors and vendors that do business at the Property.
- b) The goal of this policy is to ensure and promote equal and increased opportunities for all segments of the design and construction community to participate in the Development of the Property. The Developer Owner or Representative seeks to include those businesses owned by minorities that have been historically underutilized and excluded from the design, prime contractor, and subcontractor markets. The Developer Owner or Representative encourages all those associated with the development and construction on the Property to commit to this goal through a good faith effort.
- c) The Annual Report shall include an overview of the number of Historically Underutilized Businesses that submitted proposals and the number and contact information of the Historically Underutilized Businesses that were hired.










5.26 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 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 September 1, 2016, and shall report on activities from July 1, 2015 through June 30, 2016. Subsequent reports shall be filed on or before September 1<sup>st</sup> 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:

Number (for reference)	Section	Item	To be included in the first Annual Report	To be included in all Annual Reports
1	4.9(b)(10)	A one-time change in floor area of one thousand (1,000) square feet or fewer to any structure or building previously approved with a Development Agreement Compliance Permit		
2	4.12	Information regarding all individual Development Agreement Compliance Permits issued		
3	4.12	Infrastructure installed		
4	4.12	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		
5	4.12	Dedications and acquisitions of infrastructure by the Developer Owners, Representative and Parcel Owners		



Number (for reference)	Section	Item	To be included in the first Annual Report	To be included in all Annual Reports
6	4.12	Projected schedule for Development of the Property in the forthcoming year		
7	4.12	Report demonstrating good faith compliance by the Developer Owners, the Representative and the Parcel Owners with the terms of this Agreement		
8	5.2(b)(12)	Cumulative information about the for-sale and rental affordable units in the Developed Property		
9	5.2(b)(12)	How housing affordability is being monitored		
10	5.2(b)(12)	Data about the occupants of the rental properties including the income level and rent levels		
11	5.2(b)(12)	Total number of rental units built each year		
12	5.3	Annual stormwater BMP inspection report including maintenance and inspection expenditures. Inspection must be performed by a North Carolina-registered Professional Engineer.		
13	5.3	Wilson Creek monitoring report		
14	5.4(c)(4)	Trip generation table which includes items i, ii, and iii outlined in Section 5.4(c)(4)		

Number (for reference)	Section	Item	To be included in the first Annual Report	To be included in all Annual Reports
15	5.5	Whether the Developer Owner of each building located within the Developed Property is considered to be tax-exempt		<input checked="" type="checkbox"/>
16	5.7	Summary of Public Schools impact fees		<input checked="" type="checkbox"/>
17	5.7	Update on Developer Owner/Representative conversations with the Public Schools	<input checked="" type="checkbox"/>	
18	5.14	Status of Historic and Cultural Features		<input checked="" type="checkbox"/>
19	5.22(e)(4)(ii)	Provide an update on the total number of parking		<input checked="" type="checkbox"/>
20	5.25(c)	Update on Historically Underutilized Businesses		<input checked="" type="checkbox"/>
21	DA-1 Zoning District Requirement	Estimate of the number of employees and residents at the Developed Property		<input checked="" type="checkbox"/>

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

TOWN OF CHAPEL HILL

By: \_\_\_\_\_

Title: \_\_\_\_\_

=====  
State of North Carolina

County of Orange

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he or she is \_\_\_\_\_ of the Town of Chapel Hill and acknowledged, on behalf of the Town of Chapel Hill, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

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

OBEY CREEK VENTURES, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

=====

State of North Carolina

County of Orange

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he or she is \_\_\_\_\_ of Obey Creek Ventures, LLC, and acknowledged, on behalf of Obey Creek Ventures, LLC, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

## **EXHIBITS INCORPORATED BY REFERENCE**

Exhibit A: Obey Creek Map: Land Parcel Areas

Exhibit B: Boundary Map of the Developed Property

Exhibit C: Boundary Map of the Entire Property

Exhibit D: Legal Description of the Developed Property

Exhibit E: Legal Description of the Entire Property

Exhibit F: Boundary Map of the Town-Owned Property

Exhibit G: Legal Description of the Town-Owned Property

Exhibit H: Obey Creek Site Map

Exhibit I: Development Agreement Compliance Permit Application

Exhibit J: The Village at Obey Creek Design Guidelines

Exhibit K: Traffic Impact Study

Exhibit L: Summary of Trip Generation Data

Exhibit M: Diagram of South Columbia/US 15-501 Fordham Boulevard Interchange Restriping

Exhibit N: Proposed Crossing for Oteys Road

Exhibit O: Wilson Creek Preserve Boundary

Exhibit P: Restoration Area Map