

Planning Commission Members

District 1: Alan Patterson
District 2: T. Yokima Cureton
District 3: Charles Deese, Chair
District 4: Judianna Tinklenberg
District 5: James Barnett, Vice-Chair
District 6: Sheila Hinson
District 7: Ben Levine

**County Attorney**

Ginny L. Merck-Dupont

Clerk to Planning Commission

Jennifer Bryan

Development Services Director

Allison Hardin

January 4, 2024

5:00 PM

**101 North Main Street
Lancaster, SC 29720**

**LANCASTER COUNTY PLANNING COMMISSION
Council Chambers, Lancaster County Administration
Building, 101 N. Main Street**

WORKSHOP AGENDA

1. Call to Order Regular Meeting and Roll Call Vote

2. New Business

a. SD-2023-0161 Edgewater Phase 11

SD-2023-0161 Edgewater Phase 11: Application by True Homes LLC on behalf of owners Lancaster County Forfeited Land Commission and B & C Landholdings LLC, for a Preliminary Plat encompassing 47.08 acres at and adjacent to Edgewater Parkway and Gateway Drive (p/o TM #s 0106-00-003.02 and 0106-00-003.00) for the development of 104 detached single-family homes and 49 townhomes.

b. SD-2023-1136 Asbury Site

Application by Landworks Design and Empire Communities for a Preliminary plat for approximately 90.7 acres located at Asbury Lane in Indian Land (TM#s 0007-00-022.00, 0007-00-022.01, 0007-00-022.02, 0007-00-022.03, 0007-00-022.04, 0007-00-022.05 & 0007-00-022.06) for a subdivision of 78 single-family lots.

c. Other

3. Adjourn

Agenda Item Summary

Ordinance # / Resolution #: SD-2023-0161 Edgewater Phase 11

Contact Person / Sponsor: A. Davis

Department: Planning

Date Requested to be on Agenda: 1/4/2024

Points to Consider:

- Per Planning Commission's Conditional Approval all outstanding comments were to be resolved prior to August 19th, 2023 (60 days from the PC meeting date);
- Revised Preliminary Plat was submitted on November 19, 2023 for staff review;
- There are still outstanding TRC comments ,
- Planning staff has not been provided with any form of approval from Lancaster County Water and Sewer for this phase.
- TRC comments were distributed to the applicant on November 19th, 2023. Staff has received no revised plan or response to comments at this time (January 3, 2024).

ATTACHMENTS:

Description	Upload Date	Type
Application	10/30/2023	Exhibit
Location Map	10/30/2023	Exhibit
Preliminary Plat Revised November 2023	1/3/2024	Exhibit
Review Comments November 2023	1/3/2024	Exhibit
Bond Letter	1/3/2024	Exhibit



Planning Department
P.O. Box 1809, 101 N. Main Street, Lancaster, SC 29721
Phone: 803.285.6005, planning@lanastercountysc.net
www.mylanastersc.org

MAJOR SUBDIVISION PRELIMINARY PLAT

WHEN TO USE THIS PROCESS:

Use the attached checklist for subdivisions that

- Create 6 or more lots for any type of development; or
- Create new streets or alleys; or
- Increase the number of lots in a major subdivision previously approved by Lancaster County

APPLICATION AND APPROVAL PROCESS

- **Sketch Plan Application:** Complete the Sketch Plan review process prior to submission of a Major Subdivision Preliminary Plat. Sketch Plans are usually a one-sheet conceptual drawing. Refer to the **Sketch Plan Checklist** for additional information.
- **Required Pre-Application Conference:** Please call to schedule a Pre-Application Conference prior to submitting a Preliminary Plat application. The conference will be used to provide an overview of applicable standards and the approval process, as well as additional feedback on your sketch.
- **Traffic Impact Analysis:** Submit a TIA to County and SCDOT for review and Approval. This process is initiated by submitting a scoping request to County and SCDOT for approval prior to TIA preparation. Please note TIAs are reviewed on behalf of the County by consulting traffic engineers. Applicants are responsible for payment of consultant's fees prior to TIA review, based on an estimate prepared by County Engineering staff.

Prepare the Preliminary Plat using the attached checklist (see below) and the current UDO available on our website. Project can be submitted online by creating an account at <https://evolvepublic.infovisionsoftware.com/lanaster/?portal=project>

SUBMIT THE FOLLOWING ITEMS FOR PLAN REVIEW:

- Application with contact and project information (see p. 2)
- Fees: After submitting documents, you will receive an email with fees due and forms of payment accepted, along with a link to online payment portal. Plans will not be routed for review until payment and hard copies are received (if needed- see below).
- Two (2) paper copies of Preliminary Plat and Supporting Data is required for all submittals over 10 pages.

Plans will be reviewed by County staff and a notice of revision, if required, will be sent to the designated contact person. Prior to the Planning Commission meeting, staff will review the plan with the Technical Review Committee. After Planning Commission approves the plat, you will receive a notification that you can print the stamped digital set from Evolve Project Portal. Upon the approval of a Preliminary Plat, detailed plans for street construction, utility line installations, and similar approvals shall be included in detailed **Civil Construction Plans**.

PROJECT INFORMATION

Project Address/Location: Intersection of Gateway Drive and Serendipity Drive

Tax Map ID/Parcel No.: 0106-00-003.02, 0106-00-003.00

Project Description: Edgewater Phase 11

Applicant Name: True Homes, LLC.

Address: 2649 Brekonridge Centre Drive, Monroe, NC 28110

Phone: 704-560-6217 Email: kfenn@truehomesusa.com

Property Owner Name: B&C Land Holdings, LLC.

Address: 2627 Brekonridge Centre Drive, Monroe, NC 28110

Phone: 704-560-6217 Email: kfenn@truehomesusa.com

Other Project Contacts

Name: Keith Fenn

Address: 2649 Brekonridge Centre Drive, Monroe, NC 28110

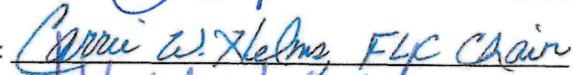
Phone: 704-560-6217 Email: kfenn@truehomesusa.com

Name: Vince Keene, PE

Address: 730 Windsor Oak Court, Charlotte, NC 28273

Phone: 704-556-1990 Email: vincek@y-wh.com

Applicant Signature:  Date: 5/8/23

Owner Signature:  Date: 04/18/2023

Owner Signature:  Date: 4-21-2023

(For additional owners, attach copies of this page with required signatures)

PRELIMINARY PLAT CHECKLIST

The following identifies information required on Preliminary Plat drawings; however, this checklist should not be used as a substitute to reviewing the UDO.

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Project Description: Edgewater Phase 11

Applicant Name: True Homes, LLC.

Address: 2649 Brekonridge Centre Drive, Monroe, NC 28110

Phone: 704-560-6217 Email: kfenn@truehomesusa.com

Property Owner Name: Lancaster County Forfeited Land Commission

Address: 101 N Main Street, Lancaster, SC 29720

Phone: 803-416-9335 Email: _____

Other Project Contacts

Name: Keith Fenn

Address: 2649 Brekonridge Centre Drive, Monroe, NC 28110

Phone: 704-560-6217 Email: kfenn@truehomesusa.com

Name: Vince Keene, PE

Address: 730 Windsor Oak Court, Charlotte, NC 28273

Phone: 704-556-1990 Email: vincek@y-wh.com

Applicant Signature: [Signature] Date: 5/5/03

Owner Signature: Carrie W. Helms, FLC Chair Date: 04/18/2023

Owner Signature: [Signature] Date: 4-21-2023

(For additional owners, attach copies of this page with required signatures)

PRELIMINARY PLAT CHECKLIST

The following identifies information required on Preliminary Plat drawings; however, this checklist should not be used as a substitute to reviewing the UDO.

GENERAL PROJECT INFORMATION:

Please identify the following general information on the site plan drawing either within a notes section or on the plat drawing itself, as appropriate.

1. Proposed name of project.
2. Name, mailing address, email address, and phone number of the owner and/or developer and designer of the site plan.
3. Map scale using appropriate engineer's scale, north arrow, and date.
4. Vicinity map (1" = 1 mile min. scale).
5. Total acreage to be developed.
6. Boundaries of the tract to be developed with all bearings and distances. At least two points of the survey must be tied to SC geodetic control points [See State Plane Coordinate Checklist]
7. Proposed use of all lots to be used. See "zoning considerations" section above. Be sure to designate any lots proposed to be used for uses other than single-family residential.
8. Tax map number.
9. Zoning district classification and, if applicable, overlay zone(s).
10. Land use, zoning district classification, and tax map number of adjacent properties, names of adjacent developments, and owners of adjoining parcels.
11. Total number of lots and layout of all lots, including building setback lines, scaled dimensions, area in square feet, lot numbers (if multiple lots), and utility easements with width and use.
12. Location and dimensions of all proposed buildings including number of stories and total square footage by use.
13. Building setbacks and proposed impervious surface calculation.
14. In case of re-subdivision, submit a copy of existing plat.

EXISTING CONDITIONS:

Please identify the following existing conditions on the plan drawing that may be located on the subject property or adjacent areas.

1. Topography by contours at vertical intervals of not more than five feet. All elevations shall refer to Mean Sea Level Datum (if available).
2. Show location and right-of-way of existing streets, curb cuts, and driveways within 300 feet of the site.
3. Show location and footprint of existing buildings on adjacent parcels.
4. Show location of railroads and utility lines either on or adjacent to the property to be developed. Specify whether utility lines are in easements or rights-of-way and show location of poles/towers.
5. Size and location of existing sewers, water mains, storm drains, culverts or other underground facilities within the street or within the right-of-way of streets or roads

adjoining the tract. Show ditches, swales, and drainage easements adjacent to the proposed project.

6. Location, size, and use of any existing structures on the subject property that will remain on the site
7. Location of city limit lines, if adjacent to subject property.
8. Show location of nearest hydrant. Spacing should be 500 feet single-family residential (this distance is measured in the direction of fire truck travel).
9. The Fire Department will need access to within 150 feet of all points of the building.
10. Location of land subject to flooding and nearest 100-year flood zone and elevation.
11. Location of existing or planned public parks, schools, greenways, trails, or other major public amenity located within ½ mile of the development site.

ENVIRONMENTAL CONSIDERATIONS:

ENVIRONMENTALLY SENSITIVE LANDS

1. Depict any water resources subject to the UDO Chapter 8, Natural Resources Protection, and comply with all requirements laid out in the aforementioned section.
2. Depict any prohibitive/severe steep slope areas (greater than or equal to 3H:1V) and take into account the limitations on disturbance when designing the project.
3. Depict stormwater management areas.

TREE RETENTION

1. Identify tree canopy retention areas.
2. Show trees that require protection.

LANDSCAPING

- Show landscaping for required site landscaping areas.

OPEN SPACE

1. Indicate if all or a portion of the site has been designated as an Open Space.
2. Calculate required common open space acreage.
3. Show any trails and greenways on the Lancaster County Carolina Thread Trail Master Plan that developer is required to construct.
4. Show all existing or planned public parks, schools, greenways, existing trails, or other major public amenities within ½ mile of the site, and pedestrian connections provided by the developer to those areas.

INFRASTRUCTURE CONSIDERATIONS:

GRADING, STORMWATER, AND UTILITY SYSTEM

Please identify the following proposed grading, stormwater, and utility system improvements.

1. Preliminary plan for sanitary sewers showing the location of manholes and points of discharge. Indicate direction of flow.
2. Preliminary plan for storm sewer system showing the location of outlets and direction of flow.
3. Preliminary plan of water supply system
4. All proposed easements.
5. Submit written verification to serve from all non-county utility service providers (gas, telephone, cable, and water and sewer district).
6. Proposed major contour changes in areas where substantial cut and/or fill is to be done.

Roads, Bridges, and Public Ways (UDO 6.13, pg. 21)

General design criteria are explained in two primary places in the UDO—Chapter 6 and Appendix C. Please refer to both when designing the community. The below is a brief summary of some of the “big picture” points, but those two sections in the Zoning Ordinance have many other requirements to which you will need to refer.

1. Connectivity is required within the neighborhood, and between the neighborhood and adjacent neighborhoods or other lands. Additionally, a second entrance is required for more than 100 units.
2. Traffic calming measures such as minimum street widths, short block lengths, on-street parking, controlled intersections, and roundabouts should be used per the UDO.
3. Sidewalks are required both internally, and in some cases, externally to the development and must be at least five feet wide.
4. Street trees are required to be planted in accordance with the UDO.
5. See Chapter 6: Subdivision and Infrastructure Standards and Appendix C – Manual of Specifications and Standard Details (MSSD), generally for road specifications, cross sections, and other important information. For example:
 - a. Cul-de-sacs should be avoided except as described in the UDO.
 - b. Gated communities have additional requirements as laid out in the UDO.
 - c. Curb and gutter requirements are applicable in some districts as designated in the UDO.
6. Traffic Impact Analysis, refer to Chapter 6, Subdivision and Infrastructure Standards.

LOT DESIGN

Identify a lot configuration that complies with the following standards.

1. Lot designed to comply with the UDO design requirements
 - a. Lots cannot be divided by City limit lines or zoning districts.
 - b. Through lots are prohibited.

- c. Flag lots are prohibited except where they are necessary to eliminate access onto arterial or collector roadways.
- d. Side lot lines must be at right angles to straight street lines and radial to curved sidewalk and street lines.

USE-SPECIFIC STANDARDS

The UDO has standards associated with specific uses in order to minimize negative impacts and/or to help shape the design of a specific use. Design the proposed site plan in compliance with any applicable use-specific standards.

OVERLAY DISTRICTS

If an overlay district exists, be sure to address the applicable standards for it in the site design.

- ☐ **McWhirter Field Aviation Overlay** Please refer to the UDO for allowed uses and associated development criteria.
- ☐ **Carolina Heelsplitter Overlay**
- ☐ **Carolina Thread Trail Overlay**
- ☐ **Highway Corridor Overlay**
- ☐ **Equestrian Oriented Subdivision Overlay**

SD-2023-0161 Edgewater Phase 11



Lancaster
County
South Carolina

Proposal:
Preliminary Plat

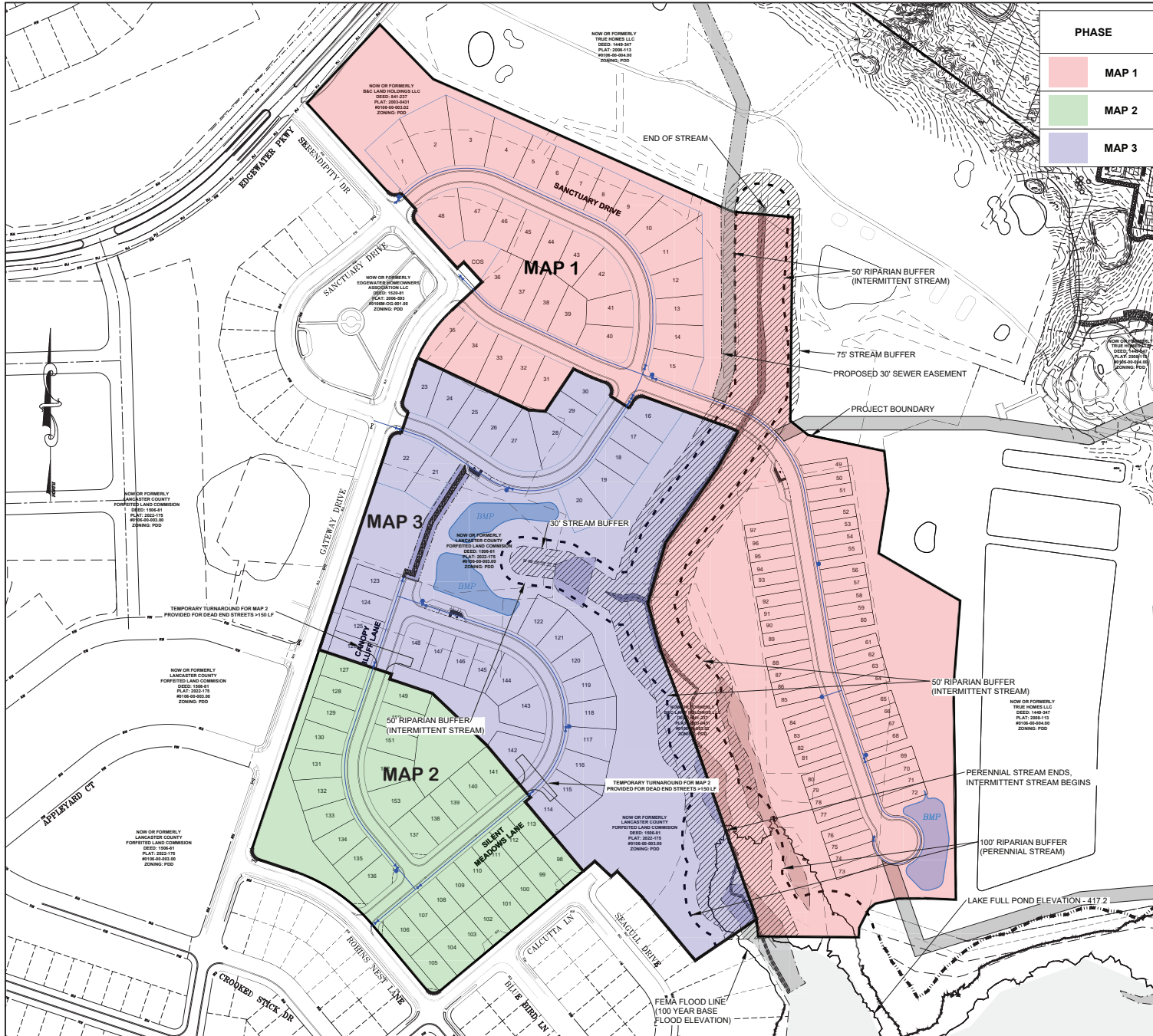
 Subject Property



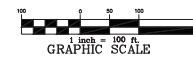
Bear Creek Inlet

Catawba River

Edgewater (Undeveloped)



PHASE	MED. DEN. 52' SF	MED. DEN. 57' SF	26' TOWN- HOMES	TOTAL
MAP 1	0	33	49	82
MAP 2	36	0	0	36
MAP 3	20	15	0	35



PHASING PLAN

PROJECT: EDGEWATER PHASE 11
CANE CREEK TWP., LANCASTER CO., SC

CLIENT: TRUE HOMES, LLC.

TrueHomes
IT'S ALL ABOUT U

1/18/23

REGISTERED PROFESSIONAL ENGINEER
STATE OF SOUTH CAROLINA
No. 1007
JAMES W. WILLIAMS, INC.

REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF SOUTH CAROLINA
No. 1007
JAMES W. WILLIAMS, INC.

PHASE

MAP 1

MAP 2

MAP 3

MED. DEN.

52' SF

57' SF

26' TOWN-HOMES

TOTAL

NO. 1

DATE

REVISION

NO. 2

DATE

REVISION

PROJECT NO.

1007

DATE

1/18/23

DESIGNED BY

JWW

CHECKED BY

JWW

DRAWING NO.

5

OF

10

SHTS

11/18/2023	Response to 2nd Comments	
	EDGWATER Phase 11 Preliminary Plat	
	E911 Address	Reply
1	Updated: 10/09/23 - Road names have been submitted and vetted. I am working with Keith Fenn to come to a final approval list. A CAD file was received previously, but due to changes in the plans a new file will be needed at the Civil Phase	Understood. New CAD file will be provided at Civil Phase. Added street names per client.
	Fire Marshal	Reply
1	Plan does not show fire hydrants on both sides of the street for the area that has one access as required.	Fire Hydrant added across the street near lot 85
3	Phasing plan Street A will be longer than 150 feet in length and will need an approved turnaround in Map 2.	Silent Meadows Lane and Canopy Bluff Lane will have temporary turnaround in Map 2. Turnaround depicted on Phasing Map. Greater detail to be provided in civil plans.
4	Phasing plans, it appears that a section of Map 2 will be more than 500 feet from a fire hydrant.	Note: Map 2 and 3 swapped (streets will have to be built for Map 2 first). In Map 2, it is 490 If from the FH at Silent Meadows lane and Canopy Bluff Lane to the rear of lot 127 and 400 If to the rear of lot 113. Added additional fire hydrant in Map 3
	Planning	Reply
1	Provide documentation from Bond holders acknowledging the change in configuration and number of lots	Developer has requested letter from Bond holders (11/06/23). Will upload letter once received.
2	Sidewalk connection where road was previously is not clearly depicted on all sheets, please revise sheets 1 and 5 to more clearly depict sidewalk	Sidewalks not originally shown on Sheets 1 or 5 to reduce cluttering on sheets. Sidewalk connection between streets added to sheets per comments.
Advisory	Staff recommends tying Calcutta Ln to Street A to avoid a permanent dead end on Calcutta. Original bond plans depicted a tie in to Phase 11 in this location	See existing conditions plans. Significant slopes prohibit us from tying to Calcutta Lane. There would be no sewer to serve lots fronting this street as well as significant retaining walls to grade in the proposed street.
	Additional Notes:	Reply
1	Pump Station/Forcemain	Pump Station to be built separately from Phase 11. Forcemain to run up Catawba Ridge Blvd. LCWSD has approved the concept and is currently reviewing sketch plans for revised layout

**HAYNSWORTH
SINKLER BOYD**

HAYNSWORTH SINKLER BOYD, P.A.
1201 MAIN STREET, 22ND FLOOR (29201-3226)
P.O. BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
MAIN 803.779.3080
FAX 803.765.1243
www.hsblawfirm.com

STEVE A. MATTHEWS
DIRECT 803.540.7827
smatthews@hsblawfirm.com

November 20, 2023

VIA USPS FIRST CLASS MAIL

Lancaster County Planning Department
Administration Building
101 N. Main Street
Lancaster, SC 29720

Re: Lancaster County Forfeited Land Commission / Edgewater II Development
HSB File No. 35926.0001

Dear Sir/Madam:

Any change in the number of lots actually platted in any Phase of the Edgewater II development has no effect on the total amount to be paid for lot purchases under the Multi-Party Agreement by True Homes, LLC to the Lancaster County Forfeited Land Commission (and through the LCFLC to the Bond trustee for the Edgewater II Bondholders). For each Phase, True Homes is obligated to pay, at the contractually-set prices, for the number of lots originally set for that Phase, regardless of whether that number is higher or lower than the actual final lot count. Consequently, the total amount that the Bondholders are entitled to get from purchase prices under the Multi-Party Agreement does not depend on whether the number of actual lots varies, up or down, from the originally-planned number of lots.

Thank you for your attention to this matter. Please call if you have any questions. With best regards, I remain

yours truly,



Steve A. Matthews
Counsel for Lancaster County Forfeited Land Commission

Agenda Item Summary

Ordinance # / Resolution #: SD-2023-1136 Asbury Site

Contact Person / Sponsor: M. Blaszyk

Department: Planning

Date Requested to be on Agenda: 1/4/2024

Points to Consider:

TRC Review comments not yet available. They will be attached to the agenda for the regular meeting.

ATTACHMENTS:

Description	Upload Date	Type
Application	12/8/2023	Exhibit
Preliminary Plat	12/8/2023	Exhibit
Covenants & Restrictions	1/3/2024	Exhibit
TIA Memo	1/3/2024	Exhibit



Planning Department

P.O. Box 1809, 101 N. Main Street, Lancaster, SC 29721

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PROJECT INFORMATION

Project Address/Location: _____

Tax Map ID/Parcel No.: 0007-00-022.00, 0007-00-022.01, 0007-00-022.02, 0007-00-022.03,
0007-00-022.04, 0007-00-022.05, 0007-00-022.06

Project Description: 78 LOT SINGLE FAMILY SUBDIVISION

Applicant Name: LANDWORKS DESIGN GROUP, PA

Address: 1230 WEST MOREHEAD STREET, SUITE 304, CHARLOTTE, NC, 28208

Phone: 704-841-1604 X 717 Email: STUART.JOHNSON@LANDWORKSPA.COM

Property Owner Name: SEE ADDITIONAL SHEETS

Address: _____

Phone: _____ Email: _____

Other Project Contacts

Name: EMPIRE COMMUNITIES

Address: 8008 CORPORATE CENTER DRIVE, CHARLOTTE, NC 28226

Phone: 704-602-3322 Email: DROBERTSON@EMPIRECOMMUNITIES.COM

Name: _____

Address: _____

Phone: _____ Email: _____

Applicant Signature: _____

Date: 12-8-23

Owner Signature: SEE ADDITIONAL SHEETS

Date: _____

Owner Signature: _____

Date: _____

(For additional owners, attach copies of this page with required signatures)

PRELIMINARY PLAT CHECKLIST

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10. Land use, zoning district classification, and tax map number of adjacent properties, names of adjacent developments, and owners of adjoining parcels.
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14. In case of re-subdivision, submit a copy of existing plat.

EXISTING CONDITIONS:

Please identify the following existing conditions on the plan drawing that may be located on the subject property or adjacent areas.

1. Topography by contours at vertical intervals of not more than five feet. All elevations shall refer to Mean Sea Level Datum (if available).
2. Show location and right-of-way of existing streets, curb cuts, and driveways within 300 feet of the site.
3. Show location and footprint of existing buildings on adjacent parcels.
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5. Size and location of existing sewers, water mains, storm drains, culverts or other underground facilities within the street or within the right-of-way of streets or roads

adjoining the tract. Show ditches, swales, and drainage easements adjacent to the proposed project.

6. Location, size, and use of any existing structures on the subject property that will remain on the site
7. Location of city limit lines, if adjacent to subject property.
8. Show location of nearest hydrant. Spacing should be 500 feet single-family residential (this distance is measured in the direction of fire truck travel).
9. The Fire Department will need access to within 150 feet of all points of the building.
10. Location of land subject to flooding and nearest 100-year flood zone and elevation.
11. Location of existing or planned public parks, schools, greenways, trails, or other major public amenity located within ½ mile of the development site.

ENVIRONMENTAL CONSIDERATIONS:

ENVIRONMENTALLY SENSITIVE LANDS

1. Depict any water resources subject to the UDO Chapter 8, Natural Resources Protection, and comply with all requirements laid out in the aforementioned section.
2. Depict any prohibitive/severe steep slope areas (greater than or equal to 3H:1V) and take into account the limitations on disturbance when designing the project.
3. Depict stormwater management areas.

TREE RETENTION

1. Identify tree canopy retention areas.
2. Show trees that require protection.

LANDSCAPING

- Show landscaping for required site landscaping areas.

OPEN SPACE

1. Indicate if all or a portion of the site has been designated as an Open Space.
2. Calculate required common open space acreage.
3. Show any trails and greenways on the Lancaster County Carolina Thread Trail Master Plan that developer is required to construct.
4. Show all existing or planned public parks, schools, greenways, existing trails, or other major public amenities within ½ mile of the site, and pedestrian connections provided by the developer to those areas.

INFRASTRUCTURE CONSIDERATIONS:

GRADING, STORMWATER, AND UTILITY SYSTEM

Please identify the following proposed grading, stormwater, and utility system improvements.

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Roads, Bridges, and Public Ways (UDO 6.13, pg. 21)

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3. Sidewalks are required both internally, and in some cases, externally to the development and must be at least five feet wide.
4. Street trees are required to be planted in accordance with the UDO.
5. See Chapter 6: Subdivision and Infrastructure Standards and Appendix C – Manual of Specifications and Standard Details (MSSD), generally for road specifications, cross sections, and other important information. For example:
 - a. Cul-de-sacs should be avoided except as described in the UDO.
 - b. Gated communities have additional requirements as laid out in the UDO.
 - c. Curb and gutter requirements are applicable in some districts as designated in the UDO.
6. Traffic Impact Analysis, refer to Chapter 6, Subdivision and Infrastructure Standards.

LOT DESIGN

Identify a lot configuration that complies with the following standards.

1. Lot designed to comply with the UDO design requirements
 - a. Lots cannot be divided by City limit lines or zoning districts.
 - b. Through lots are prohibited.

- c. Flag lots are prohibited except where they are necessary to eliminate access onto arterial or collector roadways.
- d. Side lot lines must be at right angles to straight street lines and radial to curved sidewalk and street lines.

USE-SPECIFIC STANDARDS

The UDO has standards associated with specific uses in order to minimize negative impacts and/or to help shape the design of a specific use. Design the proposed site plan in compliance with any applicable use-specific standards.

OVERLAY DISTRICTS

If an overlay district exists, be sure to address the applicable standards for it in the site design.

- ☐ **McWhirter Field Aviation Overlay** Please refer to the UDO for allowed uses and associated development criteria.
- ☐ **Carolina Heelsplitter Overlay**
- ☐ **Carolina Thread Trail Overlay**
- ☐ **Highway Corridor Overlay**
- ☐ **Equestrian Oriented Subdivision Overlay**

PROPERTY OWNERS

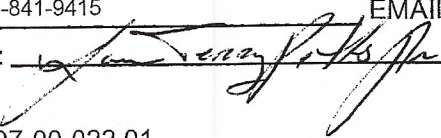
PARCEL: 0007-00-022.00

PROPERTY OWNER: LAWRENCE TERRY POTTS JR., PERSONAL REPRESENTATIVE FOR THE ESTATE OF LAWRENCE TERRY POTTS SR.

ADDRESS: 9246 OLD BAILES RD, INDIAN LAND, SC 29707

PHONE: 704-841-9415

EMAIL: Lpotts_25@yahoo.com

SIGNATURE: 

DATE: June 8, 2023

PARCEL: 0007-00-022.01

PROPERTY OWNER: DONNA SIGWART MCAFEE, EXECUTRIX FOR THE ESTATE OF SARAH SIGWART

ADDRESS: 7001 VALLEY HAVEN DR, CHARLOTTE, NC 28211

PHONE: _____

EMAIL: _____

SIGNATURE: _____

DATE: _____

PARCEL: 0007-00-022.02

PROPERTY OWNER: WILLIAM M HAYES

ADDRESS: 9284 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____

EMAIL: _____

SIGNATURE: _____

DATE: _____

PARCEL: 0007-00-022.03

PROPERTY OWNER: WILLIAM TROY & ANGELA P ENNIS

ADDRESS: 9280 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____

EMAIL: _____

SIGNATURE: _____

DATE: _____

PARCEL: 0007-00-022.04

PROPERTY OWNER: MARJORIE POTTS MOORE

ADDRESS: 9322 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____

EMAIL: _____

SIGNATURE: _____

DATE: _____

PARCEL: 0007-00-022.05

PROPERTY OWNER: CHARLES THOMAS MOORE

ADDRESS: 7518 KARLEY CT, INDIAN LAND, SC 29707

PHONE: _____

EMAIL: _____

SIGNATURE: _____

DATE: _____

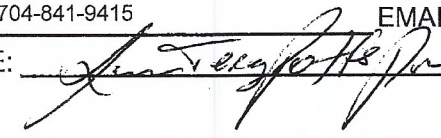
PARCEL: 0007-00-023.06

PROPERTY OWNER: EDITH POTTS JONES & LAWRENCE TERRY POTTS JR.

ADDRESS: 6393 HWY 55, CLOVER, SC 29710

PHONE: 704-841-9415

EMAIL: Lpotts_25@yahoo.com

SIGNATURE: 

DATE: June 8, 2023

PROPERTY OWNERS

PARCEL: 0007-00-022.00

PROPERTY OWNER: LAWRENCE TERRY POTTS JR., PERSONAL REPRESENTATIVE FOR THE ESTATE OF LAWRENCE TERRY POTTS SR.

ADDRESS: 9246 OLD BAILES RD, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.01

PROPERTY OWNER: DONNA SIGWART MCAFEE, EXECUTRIX FOR THE ESTATE OF SARAH SIGWART

ADDRESS: 7001 VALLEY HAVEN DR, CHARLOTTE, NC 28211

PHONE: 704-366-5709 EMAIL: mcafee-donna@yahoo.com

SIGNATURE: Donna Sigwart McAfee DATE: June 7, 2023

PARCEL: 0007-00-022.02

PROPERTY OWNER: WILLIAM M HAYES

ADDRESS: 9284 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.03

PROPERTY OWNER: WILLIAM TROY & ANGELA P ENNIS

ADDRESS: 9280 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.04

PROPERTY OWNER: MARJORIE POTTS MOORE

ADDRESS: 9322 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.05

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ADDRESS: 7518 KARLEY CT, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-023.06

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ADDRESS: 6393 HWY 55, CLOVER, SC 29710

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

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PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.01

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ADDRESS: 7001 VALLEY HAVEN DR, CHARLOTTE, NC 28211

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.02

PROPERTY OWNER: WILLIAM M HAYES

ADDRESS: 9284 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: William M. Hayes DATE: 6-8-23

PARCEL: 0007-00-022.03

PROPERTY OWNER: WILLIAM TROY & ANGELA P ENNIS

ADDRESS: 9280 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.04

PROPERTY OWNER: MARJORIE POTTS MOORE

ADDRESS: 9322 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.05

PROPERTY OWNER: CHARLES THOMAS MOORE

ADDRESS: 7518 KARLEY CT, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

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ADDRESS: 9284 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.03

PROPERTY OWNER: WILLIAM TROY & ANGELA P ENNIS

ADDRESS: 9280 ASBURY LN, INDIAN LAND, SC 29707

PHONE: 803-242-1375 EMAIL: pottsandpans@hotmail.com

SIGNATURE: William Troy Ennis / Angela P Ennis DATE: 6/8/23

PARCEL: 0007-00-022.04

PROPERTY OWNER: MARJORIE POTTS MOORE

ADDRESS: 9322 ASBURY LN, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.05

PROPERTY OWNER: CHARLES THOMAS MOORE

ADDRESS: 7518 KARLEY CT, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-023.06

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ADDRESS: 6393 HWY 55, CLOVER, SC 29710

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

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DATE:

SIGNATURE:

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PROPERTY OWNER: WILLIAM TROY & ANGELA P ENNIS

ADDRESS: 9280 ASBURY LN, INDIAN LAND, SC 29707

PHONE:

EMAIL:

DATE:

SIGNATURE:

PARCEL: 0007-00-022.04

PROPERTY OWNER: MARJORIE POTTS MOORE

ADDRESS: 9322 ASBURY LN, INDIAN LAND, SC 29707

PHONE: 803-242-3378

EMAIL: margiepmoore@live.com

SIGNATURE: *Marjorie Potts Moore*

DATE: 06/09/23

PARCEL: 0007-00-022.05

PROPERTY OWNER: CHARLES THOMAS MOORE

ADDRESS: 7518 KARLEY CT, INDIAN LAND, SC 29707

PHONE:

EMAIL:

DATE:

SIGNATURE:

PARCEL: 0007-00-023.06

PROPERTY OWNER: EDITH POTTS JONES & LAWRENCE TERRY POTTS JR.

ADDRESS: 6393 HWY 55, CLOVER, SC 29710

PHONE:

EMAIL:

DATE:

SIGNATURE:

PARCEL: 0007-00-022.00

PROPERTY OWNER: LAWRENCE TERRY POTTS JR., PERSONAL REPRESENTATIVE FOR THE ESTATE OF LAWRENCE TERRY POTTS SR.

ADDRESS: 9246 OLD BAILES RD. INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.01

PROPERTY OWNER: DONNA SIGWART MCAFEE, EXECUTRIX FOR THE ESTATE OF SARAH SIGWART

ADDRESS: 7801 VALLEY HAVEN DR. CHARLOTTE, NC 28211

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.02

PROPERTY OWNER: WILLIAM M HAYES

ADDRESS: 9284 ASBURY LN. INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.03

PROPERTY OWNER: WILLIAM TROY & ANGELA P ENNIS

ADDRESS: 9280 ASBURY LN. INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.04

PROPERTY OWNER: MARJORIE POTTS MOORE

ADDRESS: 9322 ASBURY LN. INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PARCEL: 0007-00-022.05

PROPERTY OWNER: CHARLES THOMAS MOORE

ADDRESS: 7518 KARLEY CT. INDIAN LAND, SC 29707

PHONE: 704 841-9415 EMAIL: _____

SIGNATURE: *Charles Thomas Moore* DATE: 6-13-2023

PARCEL: 0007-00-023.06

PROPERTY OWNER: EDITH POTTS JONES & LAWRENCE TERRY POTTS JR.

ADDRESS: 6393 HWY 55, CLOVER, SC 29710

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

PROPERTY OWNERS

PARCEL: 0007-00-022.00

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SIGNATURE: _____ DATE: _____

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PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

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SIGNATURE: _____ DATE: _____

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PROPERTY OWNER: WILLIAM TROY & ANGELA P ENNIS

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PROPERTY OWNER: MARJORIE POTTS MOORE

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PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

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PROPERTY OWNER: CHARLES THOMAS MOORE

ADDRESS: 7518 KARLEY CT, INDIAN LAND, SC 29707

PHONE: _____ EMAIL: _____

SIGNATURE: _____ DATE: _____

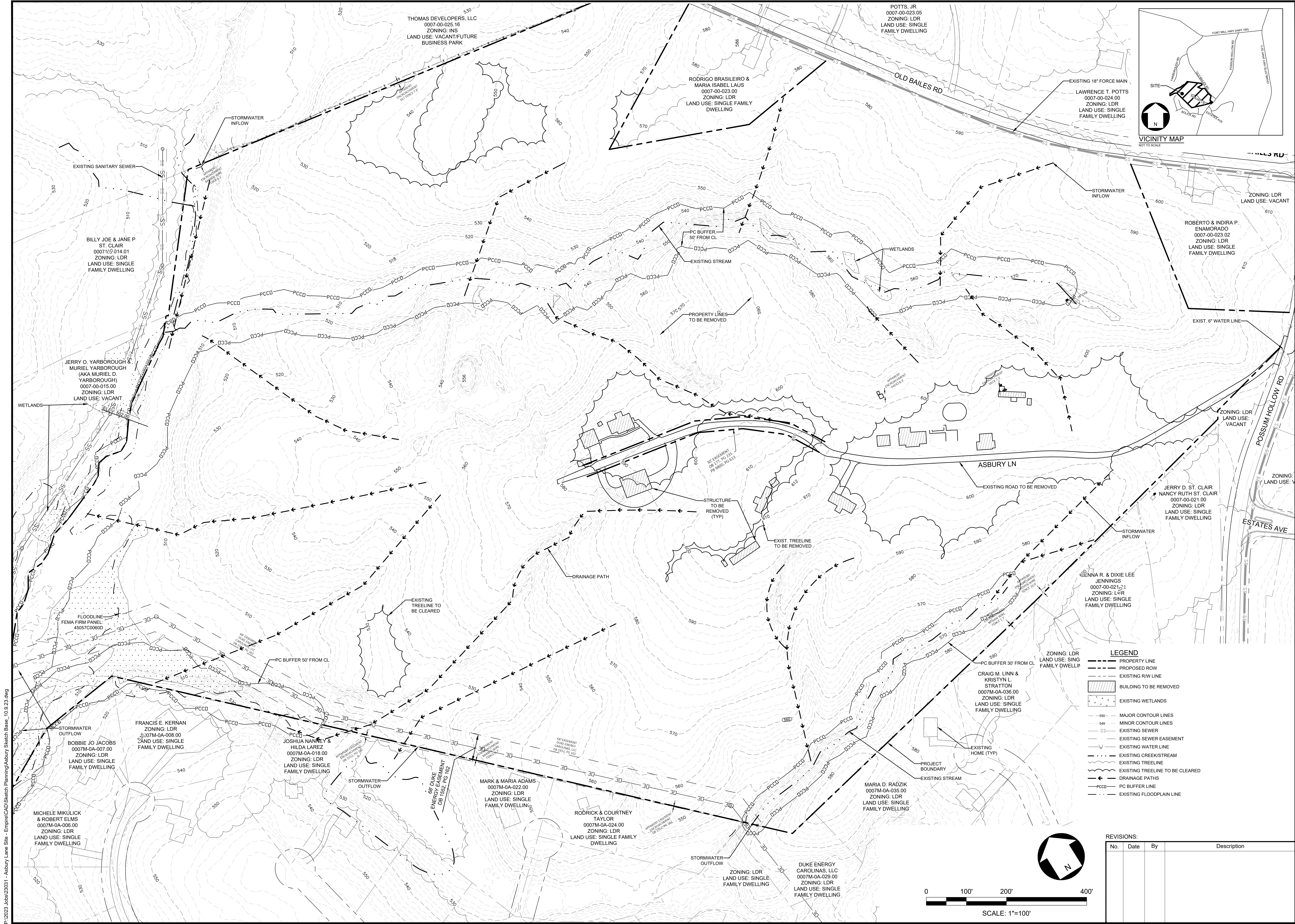
PARCEL: 0007-00-023.06

PROPERTY OWNER: EDITH POTTS JONES & LAWRENCE TERRY POTTS JR.

Corrected ADDRESS: 6393 HWY 55, CLOVER, SC 29710 6393 Hwy 55 East, Clover, S.C. 29710

PHONE: 803-831-8100 EMAIL: Yourself@ACL.Com

SIGNATURE: Edith Potts Jones DATE: 6-7-2023



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ASBURY SITE
INDIAN LAND, SC
EMPIRE COMMUNITIES
CHARLOTTE, NC

EXISTING
CONDITIONS



CORPORATE CERTIFICATIONS
NC PE: C-2530 NC LA: C-253
SC ENG: NO. 3599 SC LA: NO. 211

Project Manager: MDL

Drawn By: SCJ

Checked By: MDL

Date: 12/08/2023

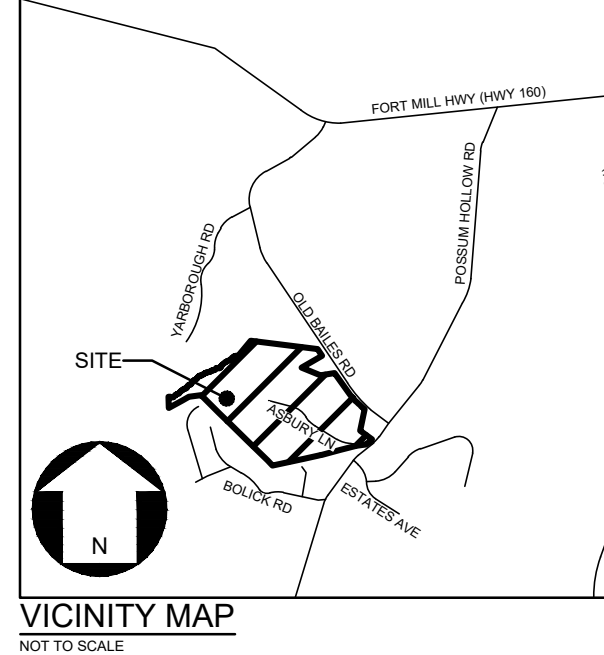
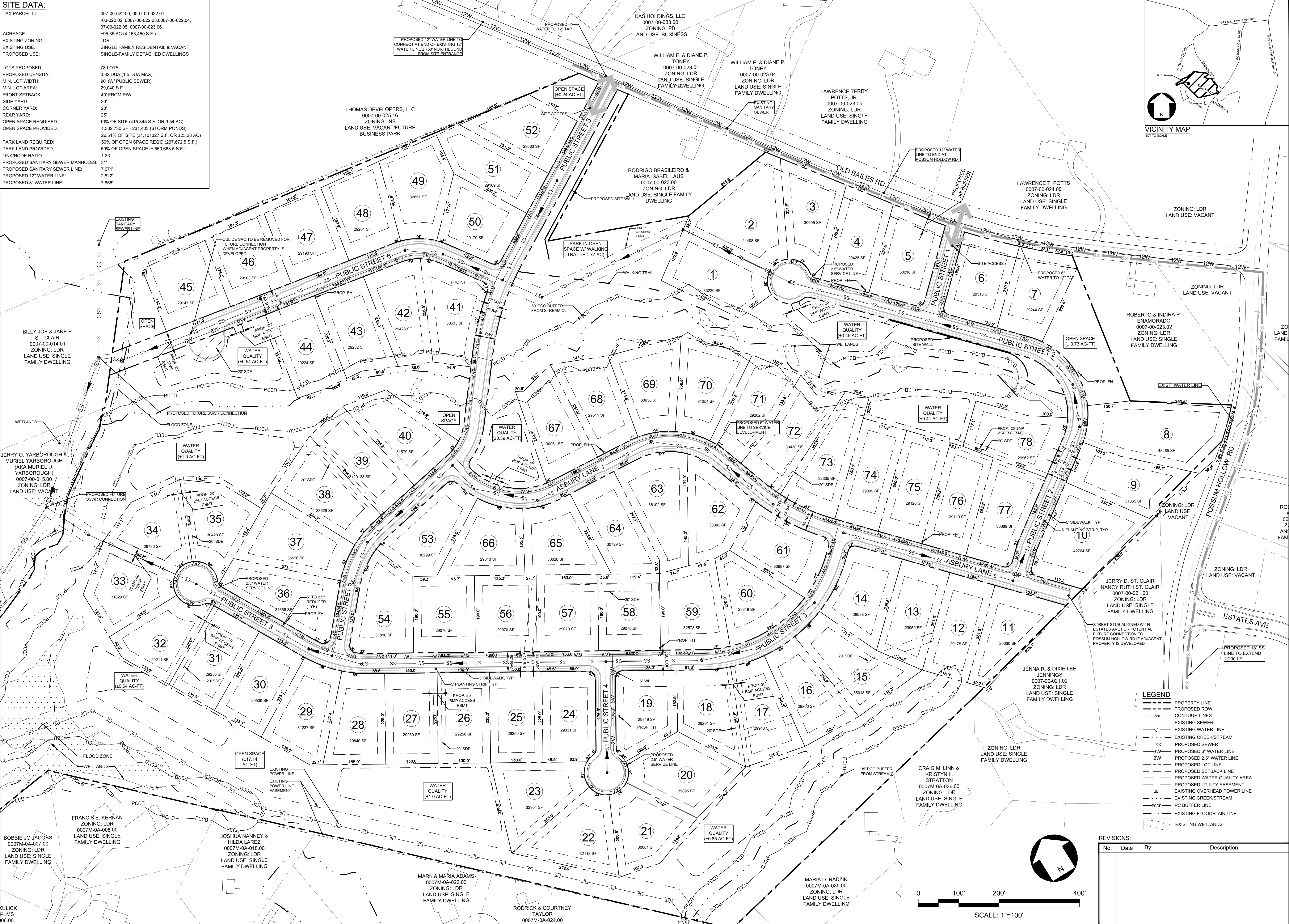
Project Number: 23031

Sheet Number:

L-002

SITE DATA:
TAX PARCEL ID: 0007-00-022.00, 0007-00-022.01,
-00-022.02, 0007-00-022.03, 0007-00-022.04,
07-00-022.05, 0007-00-023.06
ACREAGE: ±96.35 AC (4,153,450 S.F.)
EXISTING ZONING: LDR
EXISTING USE: SINGLE FAMILY RESIDENTIAL & VACANT
PROPOSED USE: SINGLE-FAMILY DETACHED DWELLINGS

LOTS PROPOSED: 78 LOTS
PROPOSED DENSITY: 0.82 DUA (1.5 DUA MAX)
MIN. LOT WIDTH: 90' (W/ PUBLIC SEWER)
MIN. LOT AREA: 29,040 S.F.
FRONT SETBACK: 40' FROM RW
SIDE YARD: 20'
CORNER YARD: 20'
REAR YARD: 25'
OPEN SPACE REQUIRED: 10% OF SITE (±15,345 S.F. OR 9.54 AC)
OPEN SPACE PROVIDED: 1,332,730 SF - 231,403 (STORM PONDS) = 26.51% OF SITE (±1,101,327 S.F. OR ±26.28 AC)
PARK LAND REQUIRED: 50% OF OPEN SPACE REQ'D (207,672.5 S.F.)
PARK LAND PROVIDED: 50% OF OPEN SPACE (±550,663.5 S.F.)
LINK/NODE RATIO: 1.33
PROPOSED SANITARY SEWER MANHOLES: 31'
PROPOSED SANITARY SEWER LINE: 7,671'
PROPOSED 12" WATER LINE: 2,522'
PROPOSED 8" WATER LINE: 7,856'



- LEGEND**
- PROPERTY LINE
 - PROPOSED ROW
 - CONTOUR LINES
 - EXISTING SEWER
 - EXISTING WATER LINE
 - EXISTING CREEK/STREAM
 - PROPOSED SEWER
 - PROPOSED 6" WATER LINE
 - PROPOSED 2.5" WATER LINE
 - PROPOSED LOT LINE
 - PROPOSED SETBACK LINE
 - PROPOSED WATER QUALITY AREA
 - PROPOSED UTILITY EASEMENT
 - EXISTING OVERHEAD POWER LINE
 - EXISTING CREEK/STREAM
 - PC BUFFER LINE
 - EXISTING FLOODPLAIN LINE
 - EXISTING WETLANDS

REVISIONS:

No.	Date	By	Description

Landworks
Design Group, PA
CREATING SPACES TO LIVE, WORK AND PLAY
1230 West Morehead Street, Suite 304
Charlotte, NC 28208
tel: 704-941-1604
fax: 704-941-1604

ASBURY SITE
INDIAN LAND, SC
EMPIRE COMMUNITIES
CHARLOTTE, NC

SITE & UTILITY PLAN

North Carolina
C-253
Professional Engineer
Matthew D. Kingston

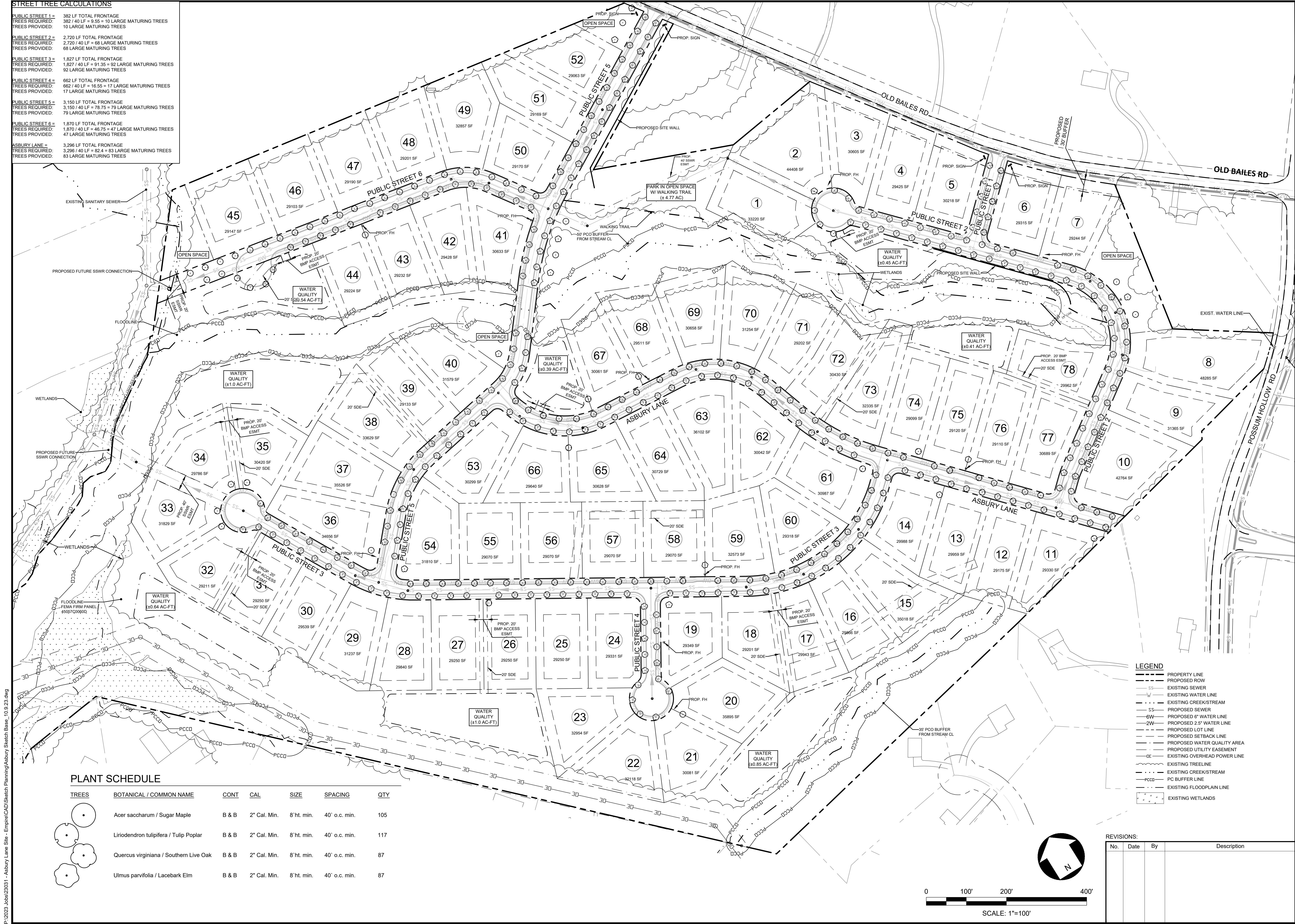
South Carolina
1233
Professional Engineer
Matthew D. Kingston

CORPORATE CERTIFICATIONS
NC PE: C-2630 NC LA: C-263
SC ENG: NO. 3599 SC LA: NO. 211

Project Manager: MDL
Drawn By: SCJ
Checked By: MDL
Date: 12/08/2023
Project Number: 23031
Sheet Number:

STREET TREE CALCULATIONS

PUBLIC STREET 1 =	382 LF TOTAL FRONTAGE
TREES REQUIRED:	382 / 40 LF = 9.55 = 10 LARGE MATURING TREES
TREES PROVIDED:	10 LARGE MATURING TREES
PUBLIC STREET 2 =	2,720 LF TOTAL FRONTAGE
TREES REQUIRED:	2,720 / 40 LF = 68 LARGE MATURING TREES
TREES PROVIDED:	68 LARGE MATURING TREES
PUBLIC STREET 3 =	1,827 LF TOTAL FRONTAGE
TREES REQUIRED:	1,827 / 40 LF = 45.68 = 46 LARGE MATURING TREES
TREES PROVIDED:	46 LARGE MATURING TREES
PUBLIC STREET 4 =	662 LF TOTAL FRONTAGE
TREES REQUIRED:	662 / 40 LF = 16.55 = 17 LARGE MATURING TREES
TREES PROVIDED:	17 LARGE MATURING TREES
PUBLIC STREET 5 =	3,150 LF TOTAL FRONTAGE
TREES REQUIRED:	3,150 / 40 LF = 78.75 = 79 LARGE MATURING TREES
TREES PROVIDED:	79 LARGE MATURING TREES
PUBLIC STREET 6 =	1,870 LF TOTAL FRONTAGE
TREES REQUIRED:	1,870 / 40 LF = 46.75 = 47 LARGE MATURING TREES
TREES PROVIDED:	47 LARGE MATURING TREES
ASBURY LANE =	3,296 LF TOTAL FRONTAGE
TREES REQUIRED:	3,296 / 40 LF = 82.4 = 83 LARGE MATURING TREES
TREES PROVIDED:	83 LARGE MATURING TREES



PLANT SCHEDULE

TREES	BOTANICAL / COMMON NAME	CONT	CAL	SIZE	SPACING	QTY
	Acer saccharum / Sugar Maple	B & B	2" Cal. Min.	8'ht. min.	40' o.c. min.	105
	Liriodendron tulipifera / Tulip Poplar	B & B	2" Cal. Min.	8'ht. min.	40' o.c. min.	117
	Quercus virginiana / Southern Live Oak	B & B	2" Cal. Min.	8'ht. min.	40' o.c. min.	87
	Ulmus parvifolia / Lacebark Elm	B & B	2" Cal. Min.	8'ht. min.	40' o.c. min.	87

LEGEND

- PROPERTY LINE
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- EXISTING CREEK/STREAM
- PROPOSED SEWER
- PROPOSED 6" WATER LINE
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REVISIONS:

No.	Date	By	Description

Landworks
Design Group, PA
CREATING SPACES TO LIVE, WORK AND PLAY
tel: 704-941-1604
fac: 704-941-1604
1230 West Morehead Street, Suite 304
Charlotte, NC 28208

ASBURY SITE
INDIAN LAND, SC
EMPIRE COMMUNITIES
CHARLOTTE, NC

STREET
TREE PLAN

NORTH CAROLINA
C-253
Professional Engineer
Matthew D. Livingston
1233
CORPORATE CERTIFICATIONS
NC PE: C-2530 NC LA: C-253
SC ENG: NO. 3599 SC LA: NO. 211

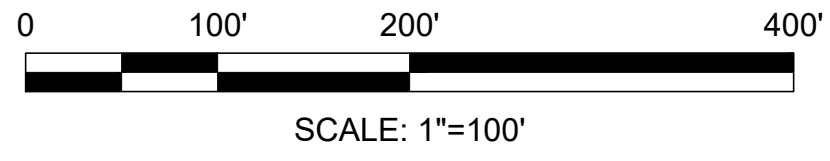
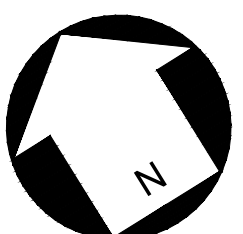
Project Manager: MDL
Drawn By: SCJ
Checked By: MDL
Date: 12/04/2023
Project Number: 23031
Sheet Number:

L-004

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This Plan Is A
Preliminary Design.
NOT Released For
Construction.



- LEGEND**
- PROPERTY LINE
 - - - PROPOSED ROW
 - - - EXISTING SEWER
 - - - EXISTING WATER LINE
 - - - MAJOR EXISTING CONTOUR LINES
 - - - MINOR EXISTING CONTOUR LINES
 - - - MAJOR PROPOSED CONTOUR LINES
 - - - MINOR PROPOSED CONTOUR LINES
 - - - EXISTING CREEK/STREAM
 - - - PROPOSED SEWER
 - - - PROPOSED 6\"/>

REVISIONS:

No.	Date	By	Description

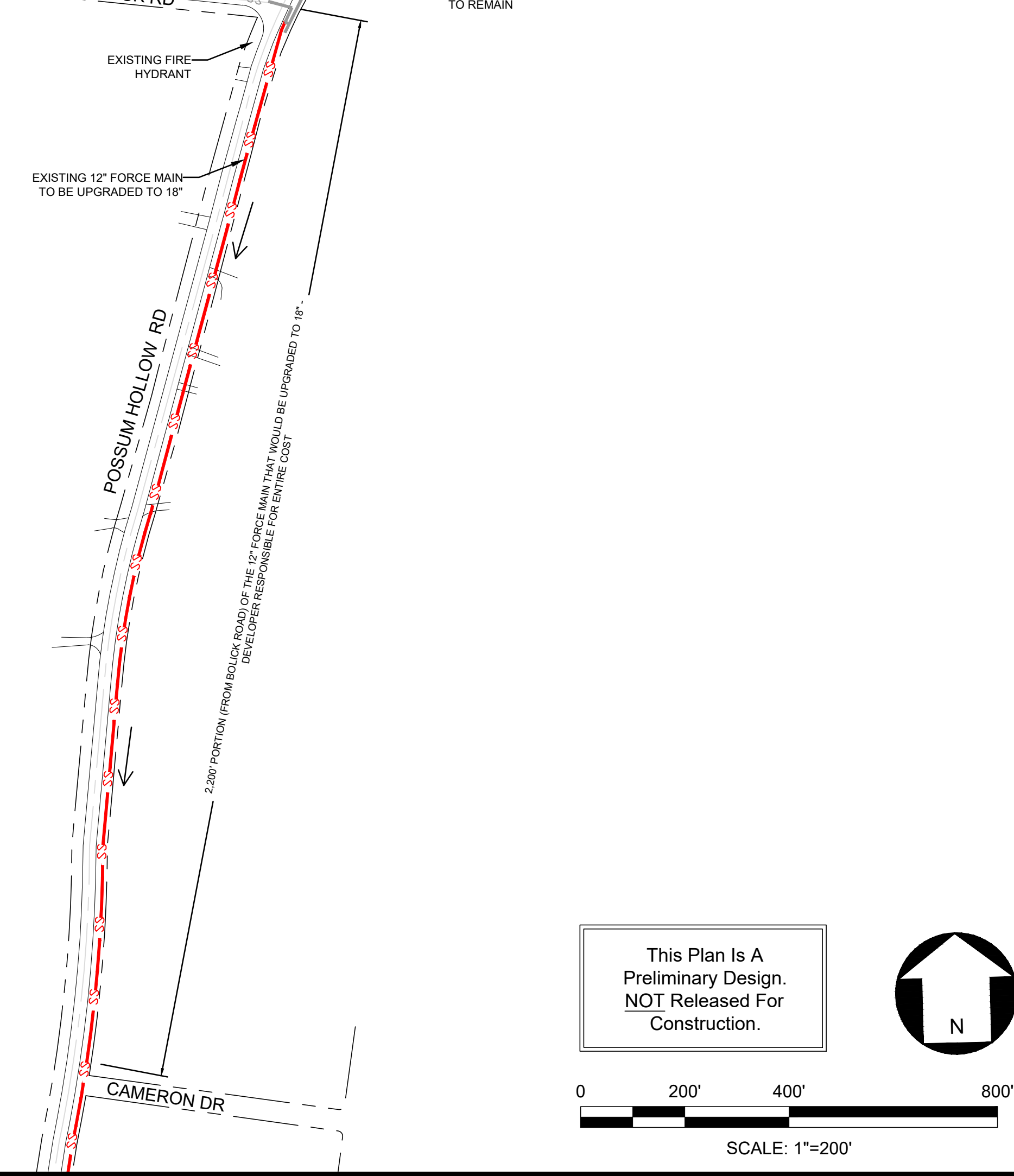
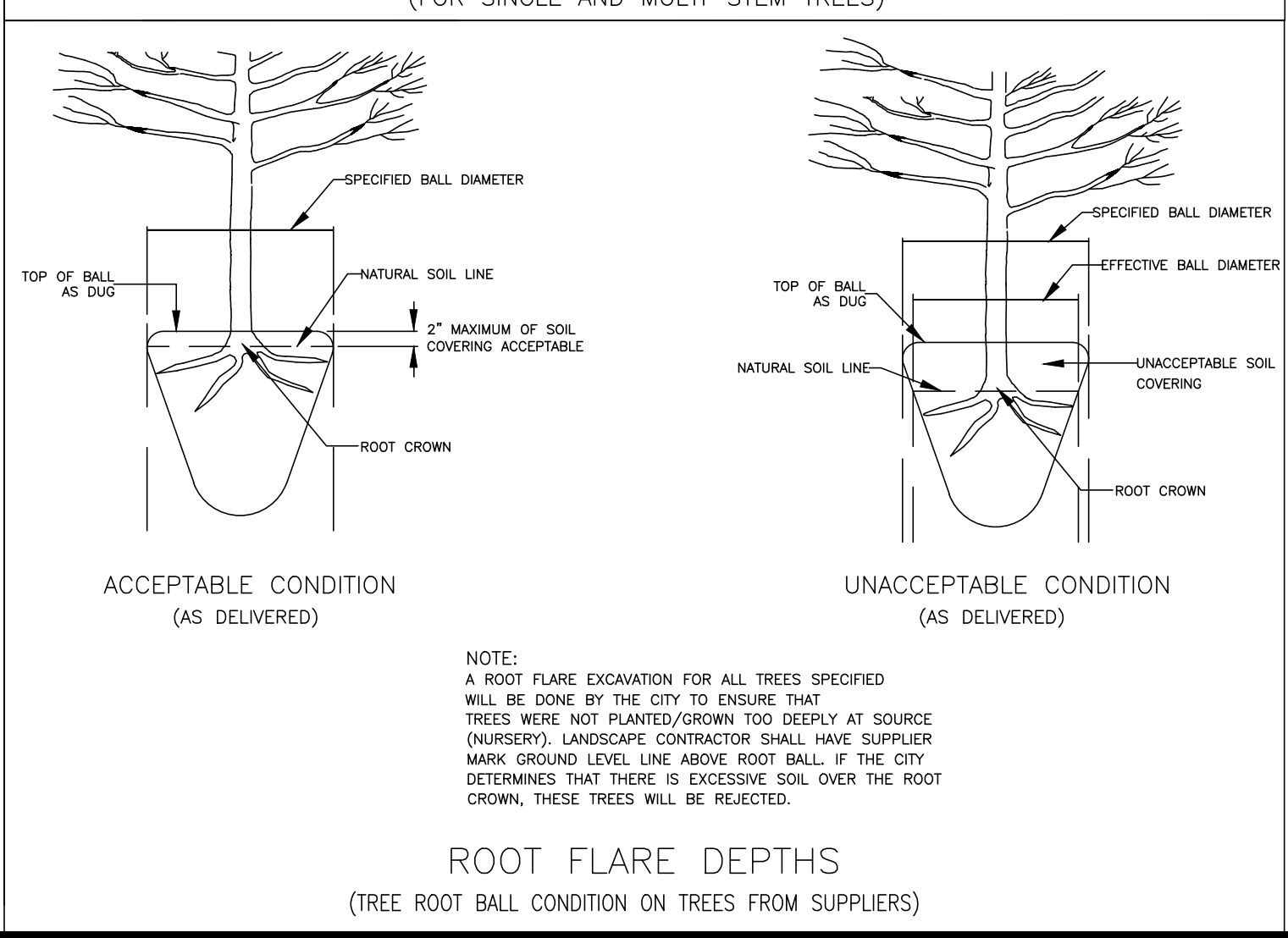
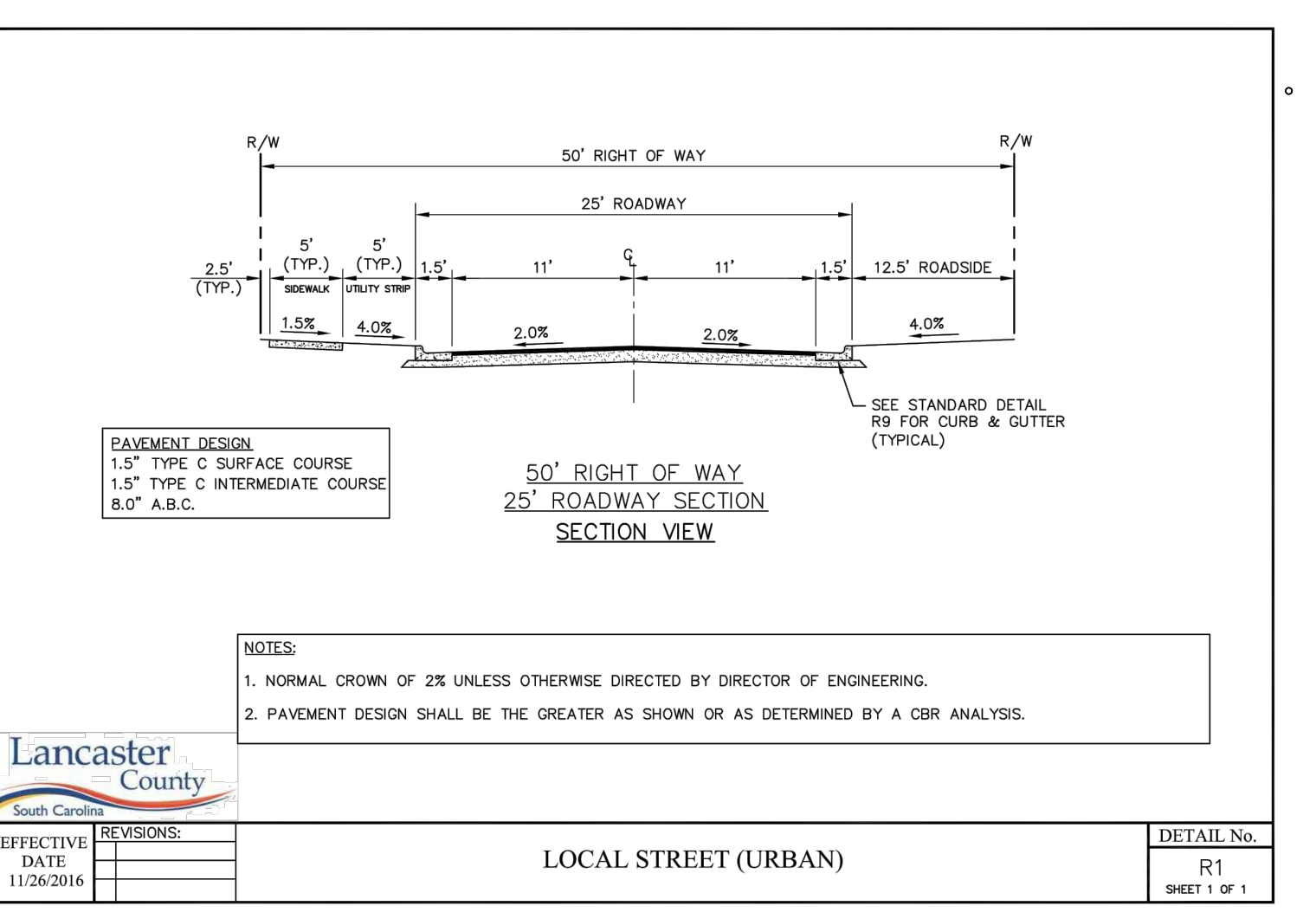
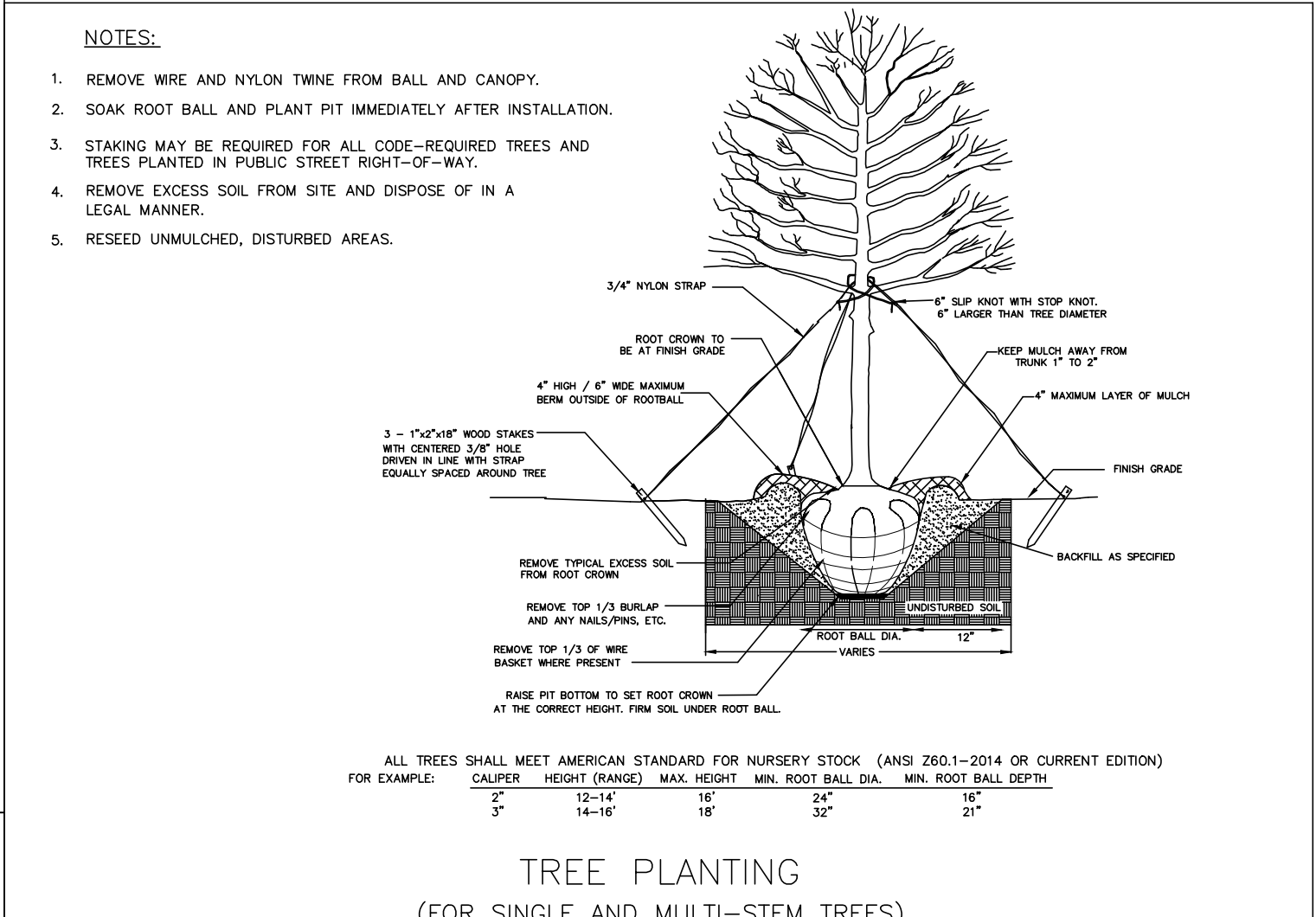
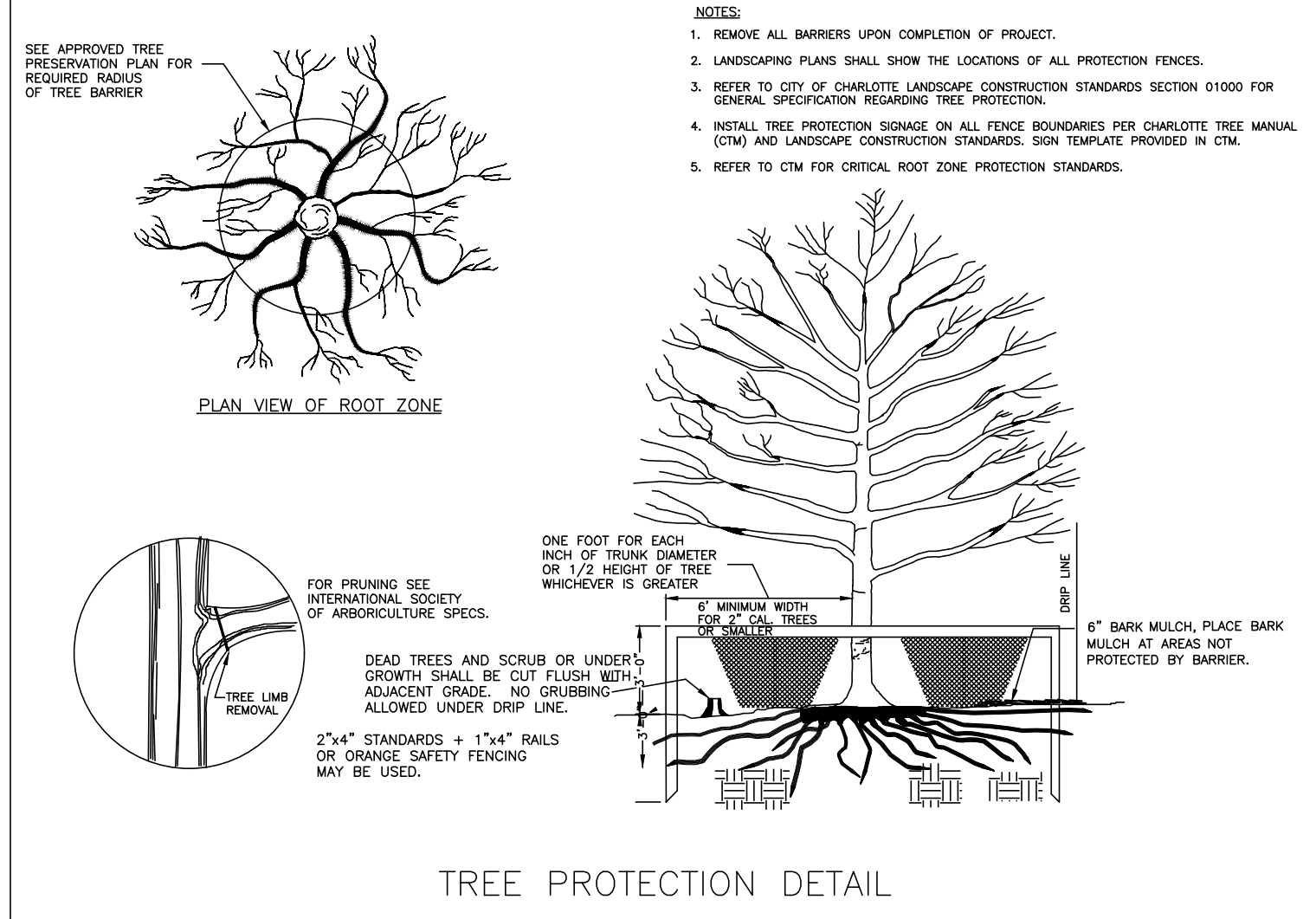
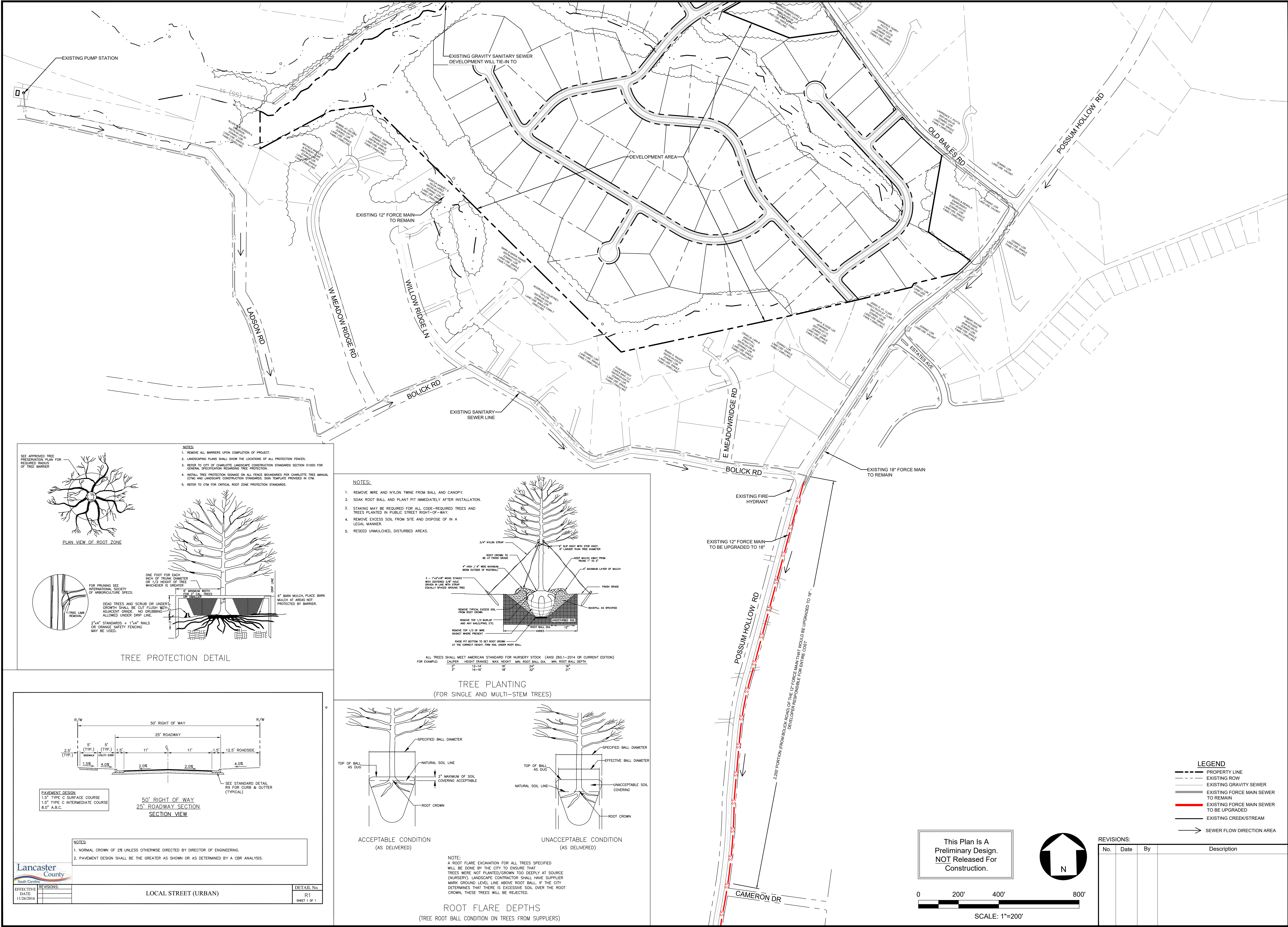
ASBURY SITE
INDIAN LAND, SC
EMPIRE COMMUNITIES
CHARLOTTE, NC

**GRADING &
DRAINAGE
PLAN**

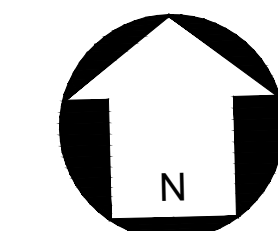
North Carolina Professional Engineer Seal
C-253
Matthew D. Angstrom
1233
CORPORATE CERTIFICATIONS
NC PE: C-2530 NC LA: C-253
SC ENG: NO. 3599 SCLA: NO. 211

Project Manager: MDL
Drawn By: SCJ
Checked By: MDL
Date: 12/04/2023
Project Number: 23031
Sheet Number:

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This Plan is A Preliminary Design. NOT Released For Construction.



LEGEND

- PROPERTY LINE
- - - EXISTING ROW
- - - EXISTING GRAVITY SEWER
- - - EXISTING FORCE MAIN SEWER TO REMAIN
- - - EXISTING FORCE MAIN SEWER TO BE UPGRADED
- - - EXISTING CREEK/STREAM
- - - SEWER FLOW DIRECTION AREA

REVISIONS:

No.	Date	By	Description

Landworks Design Group, PA
CREATING SPACES TO LIVE, WORK AND PLAY
1230 West Morehead Street, Suite 304 Charlotte, NC 28208
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ASBURY SITE
INDIAN LAND, SC
EMPIRE COMMUNITIES
CHARLOTTE, NC

EXHIBIT: SEWER FORCE MAIN UPGRADES

CORPORATE CERTIFICATIONS
NC PE: C-2530 NC LA: C-253
SC ENG: NO. 3599 SC LA: NO. 211

Project Manager: MDL
Drawn By: SCJ
Checked By: MDL
Date: 12/08/2023
Project Number: 23031
Sheet Number:

L-006

SHEET # 6 OF 6

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ASBURY SUBDIVISION

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF
POLITICAL SIGNS

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR XXXXXXXXXX (“Declaration”) is made as of the ____ day of _____, 2023, by **EHC HOMES LP**, a Delaware limited partnership (“Declarant”).

STATEMENT OF PURPOSE

Declarant is the developer and owner of certain real property located in Town of XXXX in XXXXX County, North Carolina (the “Property”, as further defined herein). Declarant desires to create on the Property a residential community of single-family homes to be named “XXXXXXX” (“Subdivision”).

Declarant desires to maximize the attractiveness of the Subdivision, to prevent any future impairment thereof, to prevent nuisances and enhance the value of all properties within the Subdivision. Furthermore, Declarant desires to provide for the construction, maintenance and upkeep of any Common Areas and related easements within the Subdivision (whether in an improved or unimproved state) all for the common use and benefit of all Owners.

Declarant desires to provide for a system whereby all Owners will pay for the maintenance and upkeep of any Common Areas, in accordance with an established budget set by the Board.

Declarant desires to develop the Property in accordance with the North Carolina Planned Community Act, §47F-1-101, *et seq.* (the “Act”) and to subject the Property to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which are for the benefit of the Property and each Owner.

Declarant further desires to form, or has formed, a North Carolina non-profit corporation to be known as XXXXXXXXX Homeowners Association, Inc., to which will be delegated and assigned the powers of owning, maintaining and administering the Common Areas, administering and enforcing the covenants and restrictions, and collecting and disbursing the Assessments, in order to efficiently preserve, protect and enhance the value of the Subdivision, to ensure, for the benefit of each Owner, the specific rights, privileges and easements in the Common Areas, and to provide for the maintenance and upkeep of the Common Areas, as provided in this Declaration and the Bylaws.

NOW, THEREFORE, Declarant declares that all of the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the Property and be binding on and inure to the benefit of all parties owning any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

All capitalized terms used in this Declaration shall have the meanings set forth in ARTICLE I and/or the Statement of Purpose.

Section 1.1 “Additional Property” shall mean and refer to (i) any additional real estate adjacent or contiguous to the Property shown on the Plat recorded in Plat Book 95 at Pages 87-91 in the Registry, including, without limitation, the Real Property described on **Exhibit A** attached hereto, or (ii) any property located within one (1) mile of any boundary of the Property shown on the Plat or described on **Exhibit A**, all or a portion of which may be made subject to the terms of this Declaration in accordance with the provisions of **Section 2.2**.

Section 1.2 “Amenity Area(s)” shall mean all real property and interests in real property, together with any Improvements situated thereon, intended for the common use and benefit of the Association and the Owners of the Property and designated as an “Amenity Area” (or similar terms) in the Declaration, on a Plat or on another document recorded in the Registry.

Section 1.3 “Annual Assessment” shall mean and refer to the amount to be levied annually by the Association against each Lot, as set forth in **Section 6.3**.

Section 1.4 “Architectural Control Committee” or “ACC” shall mean and refer to the committee that oversees the development and enforcement of the Guidelines and performs certain other functions described in ARTICLE IX.

Section 1.5 “Articles of Incorporation” or “Articles” shall mean and refer to the Articles of Incorporation for the Association attached as **Exhibit B**.

Section 1.6 “Assessments” shall mean and refer to the Annual Assessments, Supplemental Annual Assessments, Special Assessments, and Special Individual Assessments applicable to a Lot.

Section 1.7 “Association” shall mean and refer to **XXXXXXXXXX** HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 1.8 “Board,” “Board of Directors,” and/or “Directors” shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 1.9 “Building Envelope” shall mean the portion of each Lot behind the front, side and rear building setback or yard lines, as applicable, as noted on the Plat.

Section 1.10 “Bylaws” shall mean and refer to the Bylaws for the Association, substantially in the form attached as **Exhibit C**, as amended, from time to time.

Section 1.11 “Common Area” or “Common Areas” shall mean all real property and interests in real property, together with any Improvements situated thereon, intended for the

common use and benefit of the Association and the Owners of the Property and designated as a “Common Area” or “Common Space” (or similar terms) in the Declaration, on a Plat or on another document recorded in the Registry. Common Areas may be owned or leased by the Association or dedicated to the Association on a Plat or they may be owned by another person with the Association having a right or easement therein. Common Areas shall include all and refer collectively to all Entrance Monument Easement Area(s), the Amenity Area(s), Street Lights, cluster mailboxes, Landscape Easement Area(s), Public Roads (prior to their acceptance for maintenance by the NCDOT or other governmental entity), and any other property or easements designated on the Plat as “COS,” “Common Area Open Space”, or other similar designation, all other property located outside of the Lots, except for public utility easements and Public Roads after their acceptance for maintenance by the NCDOT or other governmental entity. The listing and description of the components of the Common Areas are illustrative of Declarant’s present plans only and do not constitute a guaranty by Declarant or the Association that all or any part of such components will be constructed or installed by Declarant or the Association at any future time. Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Subdivision. No portion of the Property designated “Future Development” on the Plat shall be deemed to be a Common Area unless and until it is declared to be a Common Area in a Supplemental Declaration.

Section 1.12 “CPI” shall mean and refer to the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) issued by the U.S. Bureau of Labor Statistics, as amended from time to time, for the most recent 12-month period for which the CPI is available.

Section 1.13 “Declarant” shall mean and refer to EHC HOMES LP, a Delaware limited partnership, and such of its successors and assigns to whom the rights of Declarant, in whole or in part, are transferred by written instrument recorded in the Registry in accordance with **Section 12.5**.

Section 1.14 “Declarant Control Period” shall mean the period of time from the date of recordation of this Declaration in the Registry through and including the date that the first of the following to occur: (i) the date that is fifty (50) years following the date of recordation of this Declaration in the Registry; or (ii) the date Declarant extinguishes the Declarant Control Period by giving the Association written notice of termination.

Section 1.15 “Entrance Monument(s)” shall mean any entrance monuments and entrance signs located in the Entrance Monument Easement Area(s), together with lighting, irrigation system, landscaping and other Improvements which may be constructed in such Entrance Monument Easement Area(s).

Section 1.16 “Entrance Monument Easement Area(s)” shall mean and refer to one or more easement areas reserved and granted by Declarant in **Section 7.8**, over portions of the Common Area, to be used as one or more entryways for the Subdivision or specific neighborhoods therein or other locations designated by Declarant.

Section 1.17 “Guidelines” shall mean and refer to the Architectural Guidelines published by the ACC, as set forth in **Section 9.3**.

Section 1.18 “Impervious Surfaces” shall mean and refer to any Improvements which cannot be penetrated by surface water, as determined under applicable governmental regulations.

Section 1.19 “Improvement” or “Improvements” shall mean and refer to any and all man-made changes or additions to any portion of the Property.

Section 1.20 “Initial Property” shall mean and refer to the property shown on the Plat recorded in Plat Book 95, Pages 87-91 in the Registry, including the Lots, Public Roads and Common Areas.

Section 1.21 “Landscape Easement Area” shall mean and refer to the landscape easement now or hereafter granted by Declarant along both sides of the main entrance road into the Subdivision and any other such areas designated as a landscape easement, landscape or right of way buffer, sign easement, or other similar designation on the Plat, all of which shall be maintained by the Association, as more particularly set forth in Section 7.8.

Section 1.22 “Lot” or “Lots” shall mean and refer to the separately numbered parcels depicted on the Plat.

Section 1.23 “Maximum Annual Assessment” shall mean and refer to the maximum Annual Assessment that may be charged in a calendar year, as set forth in Section 6.4.1.

Section 1.24 “Member” shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.25 “Mortgage” shall mean and refer to any mortgage constituting a first lien on a Lot.

Section 1.26 “Mortgagee” shall mean and refer to the owner and holder of a Mortgage on a Lot.

Section 1.27 “NCDOT” shall mean and refer to the North Carolina Department of Transportation.

Section 1.28 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot within the Subdivision, including the Declarant if it owns any Lot, but excluding any Mortgagee.

Section 1.29 “Parking Area(s)” shall mean and refer to the parking lot or lots which may be constructed over the Amenity Area(s) and/or other Common Areas for the common use, benefit and enjoyment of the Owners, their families, guests and invitees.

Section 1.30 “Plat” shall mean and refer to (i) the plat of the Subdivision recorded in Plat Book 95, Pages 87-91, in the Registry, (ii) any plats of any portions of the Additional Property which are subjected to this Declaration, and (iii) any revisions of such plat or plats recorded in the Registry.

Section 1.31 “Property” shall mean and refer to the Initial Property, together with any leasehold interest or easement which the Association has or may hereafter acquire in any property adjacent to the Subdivision, together with any Additional Property, if any, that is subsequently made subject to this Declaration pursuant to **Section 2.2**.

Section 1.32 “Public Roads” shall mean and refer to all roads and cul-de-sacs in the Subdivision and shown on the Plat as “Public R/W” or other similar designation, all to be maintained by the Association as more particularly set forth in **Section 4.6** until dedicated and accepted by the NCDOT or other governmental entity.

Section 1.33 “Registry” shall mean the Register of Deeds for **XXXXXX** County, North Carolina.

Section 1.34 “Reserve Fund” shall mean and refer to the portion of the Annual Assessment to be used for the purposes set forth in **Section 4.7**.

Section 1.35 “Special Assessment” shall mean and refer to the amount levied by the Association for the purposes set forth in **Section 6.5**

Section 1.36 “Special Individual Assessment” shall mean and refer to the amount levied by the Association for the purposes set forth in **Section 6.6**.

Section 1.37 “Street Lights” shall mean and refer to those certain street lights that may be constructed upon, within and over the rights-of-way of the roadways and leased from Duke Energy.

Section 1.38 “Supplemental Annual Assessment” shall mean and refer to an amount levied by the Board in addition to the Annual Assessment, as set forth in **Section 6.4**.

Section 1.39 “Supplemental Declaration” means an instrument recorded in the Registry that subjects Additional Property to this Declaration and complementary additions to the covenants and restrictions as contemplated in **Section 2.2**, deems portions of the Property to be Common Area as set forth in **Section 1.10** or otherwise modifies this Declaration as permitted by the terms of this Declaration.

Section 1.40 “Water and Sewer System” shall mean and refer to the water and sewer system infrastructure constructed by Declarant in order to provide water and sewer services for the Subdivision and which shall be dedicated and accepted for public maintenance.

Section 1.41 “Working Capital Assessment” shall mean and refer to the amount to be levied at the initial sale of a Lot, as set forth in **Section 6.8**

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 2.1 Property. The real property, which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, is located in the Town of XXXX, XXXX County, North Carolina, as more particularly described and shown on the Plat.

Section 2.2 Additions to the Property.

- 2.2.1 Declarant may cause any portion of the Additional Property to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Registry executed by Declarant and the owner(s) of the property being annexed and containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property.
- 2.2.2 Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. No Supplemental Declaration shall revoke or modify the covenants and restrictions contained herein with respect to the Property, nor revoke or modify the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in **Section 12.3**. Notwithstanding the foregoing, Declarant or the Association shall have the right, without meeting the requirements for amendment set forth in **Section 12.3**, to amend this Declaration to reconfigure the Common Areas and/or the Amenity Area(s) to reflect the actual final configuration of such areas.

ARTICLE III

PROPERTY RIGHTS

Section 3.1 Ownership of Common Areas. From time to time before, and no later than, the expiration or termination of the Declarant Control Period, Declarant shall provide for the conveyance of fee simple title by special warranty deed to the Common Areas and any easements thereon to the Association, to be owned and maintained by the Association, which the Association shall be obligated to accept, without reservation. Declarant reserves the right, at any time prior to the expiration or termination of the Declarant Control Period, to construct, and establish easements therefor (including easements within the Common Area), (i) Entrance Monument(s); (ii) appropriate landscaping in any Entrance Monument Easement Area(s), Landscape Easement Area(s), and Common Areas; (iii) the Public Roads, as reflected on the Plat; (iv) pathways, trails, landscaped areas, and other improvements to the Common Areas deemed reasonable and necessary by Declarant; (v) the Water and Sewer System, (vi) stormwater drainage infrastructure, (vii) power, communications and utility easements, (viii) the Amenity Area(s); and (ix) any other common improvements and related easements established in the Subdivision in accordance with

the Plat, and applicable laws. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and benefit of the public (with the exception of the Public Roads, which will eventually be dedicated and accepted for public maintenance by the NCDOT and the water and sewer system, which will be dedicated and accepted for maintenance by the applicable governmental entity).

Section 3.2 Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- 3.2.1 the right of the Association to promulgate and enforce reasonable rules and regulations governing the use of the Common Areas;
- 3.2.2 the right of the Association to charge reasonable admission and other fees for the use of the Amenity Area(s);
- 3.2.3 the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use the Amenity Area(s) by an Owner for any period during which any Assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any violation or infraction of its published rules and regulations;
- 3.2.4 the right of the Declarant or the Association to grant utility, drainage and other easements across the Common Areas;
- 3.2.5 the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by Members representing at least eighty percent (80%) of all votes entitled to be cast by all classes of Members;
- 3.2.6 the right of the Association, in accordance with the Articles of Incorporation and the Bylaws to borrow money secured by a lien on the Common Areas for the purposes of improving the Common Areas and the Improvements;
- 3.2.7 the right of Declarant to use the Common Areas for marketing purposes, including sales offices and/or showrooms, signage, and events, so long as Declarant's use does not unreasonably interfere with the use of the Amenity Area(s) by the other Owners and their families, guests and invitees;
- 3.2.8 the right of Declarant to use the Common Areas for the parking and staging of construction equipment, materials, and a construction trailer during the development of the Subdivision and the construction of homes therein, so long as Declarant's use does not unreasonably interfere with the use of the Amenity Area(s) by the other Owners and their families, guests and invitees; and

3.2.9 the provisions of ARTICLE VII.

Section 3.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right of enjoyment to the Common Areas and facilities located thereon to the members of the Owner's family and his guests, tenants, or invitees.

Section 3.4 Parking Area(s). Association shall maintain, repair and, if destroyed, replace as a common expense of the Association, any paved Parking Area(s) constructed by Declarant and located on the Common Areas. The Parking Area(s) shall be constructed and maintained in order to provide parking for the Owners, and may be used by Declarant and its assigns and the Owners, their families, guests and invitees, in connection with their use of the Amenity Area(s). No Parking Area(s) may be used for the storage of vehicles or for parking which is not in connection with the then current use of the Amenity Area(s) by Declarant and the Owners, their families, guests, and invitees. Notwithstanding the foregoing, during the Declarant Control Period, Declarant may use the Parking Area(s) for marketing purposes (including sales offices and/or showrooms, signage, and events) and parking and staging of construction equipment, materials, and a construction trailer during the development of the Subdivision and the construction of homes therein, so long as Declarant's use does not unreasonably interfere with the use of the Amenity Area(s) by the other Owners and their families, guests and invitees.

ARTICLE IV

THE ASSOCIATION

Section 4.1 Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws.

Section 4.2 Classes of Membership and Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Members with respect to voting rights:

4.2.1 Class A Members. Each Owner of a Lot shall be Class A Member, except Class B Members (as defined below). Each Class A Member will be entitled to one (1) vote for each Lot owned by such Class A Member. When more than one person owns an interest (other than a leasehold, security interest or mortgage) in any Lot, all such persons shall be Class A Members and their appurtenant voting rights shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

4.2.2 Class B Members. Declarant shall be a Class B Member. A Class B Member will be entitled to four (4) votes for each Lot owned by the Class B Member. Regardless of the foregoing voting power held by Class A Members, Declarant shall retain all rights reserved and granted to Declarant under this Declaration during and after the expiration of the Declarant Control Period and Class B Membership period.

Section 4.3 Turnover Date. The Class B Membership shall cease and be converted to Class A Membership on the first to occur of the following events:

4.3.1 upon the expiration of the Declarant Control Period; or

4.3.2 upon the election of Declarant, in its sole discretion, to terminate the Class B Membership, at which point all Class B Membership rights shall be converted automatically to Class A Membership rights. Any such election, to be effective, must be in writing and recorded in the Registry.

Section 4.4 Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Subdivision as well as its own books, records, and financial statements which will be available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours.

Section 4.5 Management Contracts. The Association is authorized to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform any or all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by mutual agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association, with or without cause, upon ninety (90) days prior written notice to the manager, without payment of a termination fee.

Section 4.6 Maintenance. Prior to their acceptance for public maintenance, the Association shall maintain the Public Roads, provided that Declarant, in its sole discretion, has the right to reimburse the Association for maintenance costs until the NCDOT or other governmental entity accepts the Public Roads for maintenance. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the Public Roads shall conform to the standard of maintenance (if one is ascertainable) that would be required by the NCDOT or other governmental entity before it would accept such Public Roads for maintenance.

The Common Areas shall be maintained as more particularly described below:

4.6.1 Maintenance of the Entrance Monument(s) shall include maintenance, repair and reconstruction, when necessary, of the Entrance Monument(s), signage, irrigation, planters and lighting located within the Entrance Monument Easement Area(s) and Landscape Easement Area(s), and providing and paying for landscaping and utility charges for irrigating and lighting the monuments and signage located thereon (if applicable).

4.6.2 The Amenity Area(s) and all other Common Areas (and all associated Improvements) shall be kept clean and free from debris and maintained in an orderly condition consistent with their intended use, including any repair and replacement of any landscaping, utilities, or Improvements located thereon.

4.6.3 The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the Improvements within the boundaries thereof, with the exception of the Entrance Monument Easement Area(s) or Landscape Easement Area(s) if located on any Lot.

Section 4.7 Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the following purposes:

- 4.7.1 the periodic maintenance, repair, reconstruction and replacement of the Common Areas and any Improvements located on such Common Areas (including, but not limited to the Public Roads prior to acceptance for public maintenance) which the Association is obligated to maintain;
- 4.7.2 to fund unanticipated expenses of the Association; and/or
- 4.7.3 to acquire equipment or services deemed necessary or desirable by the Board, from time to time, in its discretion.

The Reserve Fund shall be collected and maintained out of the Annual Assessment as set forth in Section 6.2. The amount of the Reserve Fund shall be determined, from time to time, by the Board.

Section 4.8 Rules and Regulations. The Association shall have the power to adopt, amend and enforce rules and regulations applicable to the Property and to implement the provisions of this Declaration, the Bylaws, or Articles of Incorporation, including rules and regulations to prevent disorder and disturbances of the peace; to regulate parking; to regulate animals; to regulate signs; to regulate use of all Improvements on Common Areas to assure fullest enjoyment of use by the persons entitled to enjoy and use the same; to promote the general health, safety and welfare of persons within the Property; and to protect and preserve the Property, property values and property rights. All rules and regulations adopted by the Association shall be reasonable and shall be uniformly applied, except such rules may differentiate depending on whether they are being applied to Owners, their families, guests, or invitees. Notwithstanding the foregoing provisions of this Section, the Association shall not have the right or power to amend the Declaration or impose rules and regulations which limit or interfere with the rights of Declarant under the Declaration. A copy of the rules and regulations, as they may from time to time be adopted, amended or repealed shall be furnished to the Owners, or if applicable published on the Association's website, at least thirty (30) days before such rules and regulations become effective. Upon such effective date, the rules and regulations shall have the same force and effect as if they were set forth herein; provided, however, that the rules and regulations shall be enforceable only to the extent that they are not inconsistent with the Declaration, the Bylaws, or Articles of Incorporation, and may not be used to amend any of such documents. If any Owner has actual knowledge of any rules and regulations, such rules and regulations shall be enforceable against such Owner as though notice had been given.

ARTICLE V GENERAL ASSESSMENT PROVISIONS

Section 5.1 Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.2 Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment (or installment thereof) not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been established by the Board to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot and the right to use the Common Areas, and interest, late payment charges, costs and reasonable attorneys' fees related to such action or foreclosure shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments by not using the Common Areas, or by abandoning his Lot.

Section 5.3 Subordination of the Lien to Mortgages. The lien of the Assessments provided for in ARTICLE VI shall be subordinate to the lien of any first Mortgage on a Lot. Sale or transfer of any Lot shall not affect the Assessment lien. The sale or transfer of any Lot pursuant to Mortgage foreclosure, or any proceeding in lieu thereof, however, shall extinguish the lien of such Assessments as to payments that became due prior to such sale or transfer. Provided, however, that the Board may, in its sole discretion, determine that such unpaid Assessments should be collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners, notwithstanding the fact that such pro rata portions may cause the applicable Assessment (as applicable), to be in excess of the applicable Maximum Annual Assessment amount permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any Mortgage as above provided.

ARTICLE VI COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 6.1 Creation of the Lien and Personal Obligation for Assessments. Upon the conveyance of any Lot from the Declarant to an Owner, an Owner of any Lot covenants and agrees to pay Assessments to the Association levied upon the Lots which it owns. Any such Assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment is due or levied. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed. The Declarant shall not be responsible for the payment of Assessments.

Section 6.2 Purpose of Annual Assessment. The Annual Assessment shall be used as follows:

- 6.2.1 to repair, maintain, reconstruct (when necessary), keep clean and free from debris consistent with their intended use, the Common Areas, as more particularly set forth in Section 4.6;
- 6.2.2 to maintain and repair the Public Roads, as more particularly set forth in Section 4.6;

- 6.2.3 to pay all costs associated with the lease of the Street Lights, including but not limited to, monthly lease payments and utility costs;
- 6.2.4 to maintain and repair the Entrance Monument(s) and Entrance Monument Easement Area(s), Landscape Easement Area(s), Amenity Area(s) and any improvements within the Common Areas;
- 6.2.5 to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;
- 6.2.6 to pay all legal, accounting, architectural, engineering, and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and
- 6.2.7 to maintain the Reserve Fund, as set forth in **Section 4.7**.
- 6.2.8 to operate any facility or amenity constructed in the Common Area for the common use and enjoyment of all Owners.
- 6.2.9 to maintain cluster mailboxes.

Section 6.3 **Payment of Annual Assessment; Due Dates.** The Annual Assessment shall commence as to each Lot on the date hereof, except as provided in **Section 6.7.2**. The Declarant shall set the amount and frequency of installments of the initial Annual Assessment prior to the conveyance of the first Lot to an Owner. The Board shall set the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1st of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the installment due, to each Owner on or before January 1st of such calendar year. The failure of the Association to send, or of an Owner to receive, such notice shall not relieve any Owner of its obligation to pay the Annual Assessment. Notwithstanding the foregoing, the Board may alter the dates of the fiscal year for setting the Annual Assessment and may increase or decrease the frequency of collection of Annual Assessment installments in any reasonable manner.

Section 6.4 **Maximum Annual Assessment; Supplemental Annual Assessment.**

- 6.4.1 For each year following the initial Annual Assessment, the Board has the authority to increase the Annual Assessment each year by a maximum amount equal to the previous year's Annual Assessment times the greater of the following: (i) ten percent (10%); or (ii) the annual percentage increase in the CPI (the "Maximum Annual Assessment"). (If the CPI is discontinued, the Board shall use the index most similar to the CPI that is published by the United States Government indicating changes in the cost of living.) If the Annual Assessment is not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessment may be increased by that amount in a future year, in addition to the maximum increase permitted under

the terms of the preceding sentence for such future year, by a vote of the Board, and without a vote of the Members.

6.4.2 After the initial Annual Assessment, the Maximum Annual Assessment may be increased above the maximum amount set forth in Section 6.4.1 by a vote of no less than two-thirds (2/3) of the eligible Members who are voting in person or by proxy at the annual meeting or at a special meeting duly called for this purpose, in accordance with the Bylaws.

6.4.3 The Board may set the Annual Assessment at an amount not in excess of the Maximum Annual Assessment. If the Board sets less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determines that such lesser Annual Assessment cannot fund important and essential functions of the Association, the Board may, without a vote of the Members, levy a Supplemental Annual Assessment in accordance with the Bylaws. In no event shall the sum of the Annual Assessment and Supplemental Annual Assessment for any year exceed the applicable Maximum Annual Assessment for such year, other than as set forth in Section 6.4.2.

Section 6.5 Special Assessment. In addition to the Annual Assessment authorized above, the Association may levy, in any calendar year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area Improvements which are not originally constructed by Declarant; (ii) the reconstruction, repair or replacement of the Common Areas, including all Improvements located thereon, and including fixtures and personal property related thereto; or (iii) any other extraordinary, unanticipated cost which cannot otherwise be funded through the established Assessments for that current year.

Section 6.6 Special Individual Assessment. In addition to the Annual Assessments, Supplemental Annual Assessments, and Special Assessments authorized above, the Board shall have the power to levy a Special Individual Assessment applicable to any particular Owner (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and/or any Improvements located thereon, caused by any act or omission of such Owner(s), members of such Owner's family, or such Owner's agents, guests, tenants, employees, or invitees and not the result of ordinary wear and tear; or (ii) for payment of liquidated damages, reimbursement amounts, fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, the Guidelines or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws. Provided, however, that Declarant shall not be obligated to pay any Special Individual Assessment, except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 6.6 shall be fixed in the Board's resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 6.7 Assessment Rate.

6.7.1 Subject to the exceptions set forth in **Section 6.7.2**, the Annual Assessments must be fixed at a uniform rate for all Lots; and

6.7.2 Until such time as Declarant conveys a Lot with a completed home on such Lot to the first Owner, or such earlier date as Declarant shall elect, the applicable Lot shall not be subject to an Annual Assessment, Supplemental Annual Assessment, Special Assessment, Special Individual Assessment, or any other assessment due and payable under this Declaration; provided, during any such period that such assessments on some or all of the Lots in the Subdivision are not being paid in accordance with the foregoing exemption, Declarant shall fund all annual operating budget deficits, if any, caused by a shortfall between the assessments collected and the expenses of the Association. Declarant's deficit funding obligation may be satisfied with in-kind payments of services or materials. Declarant's deficit funding obligation does not include any expenses the Association is unable to meet because of nonpayment of any assessment by Owners, or because of unusual or extraordinary expenses not included in the annual operating budget.

Section 6.8 Working Capital Assessment. In addition to the Annual Assessments, Supplemental Annual Assessments, Special Assessments, Special Individual Assessment, and all other assessments due and payable under this Declaration with respect to each Lot, the first Owner who acquires title to a Lot with a completed home on the Lot shall pay to the Association at the time of the closing of the purchase a Working Capital Assessment in an amount not to exceed the then current Annual Assessment. The purpose of the Working Capital Assessment is to provide necessary working capital and initial funding for general reserves for the Association. The Working Capital Assessment may be enforced and collected, and shall constitute an assessment lien, in the same manner as annual and special assessments against the first Owner and the Lot. It is the express intention of this Section that only one Working Capital Assessment shall be assessed against each Lot. During the Declarant Control Period, Declarant may, without the consent or approval of any other person or entity, amend this Declaration to decrease the Working Capital Assessment.

ARTICLE VII
RESTRICTIONS

Section 7.1 Land Use, Building Type and Residential Restriction. All Lots in the Subdivision shall be used only for private residential and recreational purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single family residential dwelling, unless otherwise provided herein, and only one single-family residential dwelling not exceeding three (3) stories in height above ground shall be erected or permitted to remain upon any Lot. No log cabin (or structure resembling a log cabin, or having the architectural characteristics of a log cabin), mobile home, modular home or shell home may be erected or permitted to remain on any Lot. A private garage, outbuildings, incidental to the residential use of the Lot are permitted, upon the condition that they are not rented, leased nor otherwise used for remuneration, subject to the other covenants and restrictions contained herein. No detached garage or outbuildings shall at any time be used as a residence. Any ownership or leasing arrangement

for a Lot having the characteristics of a vacation time-sharing ownership plan, a vacation time-sharing lease plan, or any other form of interval, sequential or shared ownership is expressly prohibited.

Section 7.2 Building Construction and Quality. All Improvements, buildings and outbuildings erected upon any Lot shall be constructed of new material of good grade, quality and appearance and shall be constructed in a proper, workmanlike manner. No building shall be erected unless it is completely underpinned with a solid brick, brick or stone-covered block or stucco foundation. No exterior surface of any building shall be asbestos shingle siding, imitation brick or stone-roll siding, or exposed concrete or cement blocks. The exterior surface of any garage, outbuilding or appurtenant structure or building erected on or located on any Lot shall be architecturally compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located on the Lot. All buildings shall have roofs (except for dormers, porches and bay windows) of not less than six (6) vertical by twelve (12) horizontal pitch, and not less than twelve (12) inch overhang, covered with slate, cedar shakes, tile, composition (fiberglass), or architectural (sculpted) shingles.

Section 7.3 Temporary Structures; Structure Materials. No dwelling or building of a temporary nature shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic, vinyl or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic, vinyl or canvas structure shall be placed on any Lot or attached to any dwelling. Provided, however, that Declarant reserves the right to erect or move temporary buildings or trailers onto the Lots owned by Declarant or in the Parking Areas, to be used for marketing purposes, including sales offices and/or showrooms, signage, and events, and for the parking and staging of construction equipment, materials, and a construction trailer during the development of the Subdivision and the construction of homes therein.

Section 7.4 Building Setback Lines. No building on any Lot (including any stoops, porches, or decks) shall be erected or permitted to remain outside the Building Envelope. The foregoing notwithstanding, outbuildings (as set forth in Section 7.16) or similar minor aesthetic Improvements may encroach into the rear setback, provided that they: (i) are single story; (ii) contain less than one hundred fifty (150) square feet; and (iii) are not enclosed by walls or other surfaces unless such surfaces meet the openness test established for perimeter fencing in Section 7.10.

If any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot prescribes greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall be governed by the greater setbacks. No structures or Improvements may be constructed or placed within the right-of-way of any of the Public Roads (so as to prevent such Public Roads from being accepted for maintenance by the NCDOT or other applicable governmental entity). If an Owner violates this provision, the Owner of the nonconforming Lot shall reimburse Declarant, the Association or the ACC (as applicable) within five (5) business days following the submission of an invoice for any costs or expenses incurred by Declarant, the Association or the ACC for delaying the acceptance for maintenance of the Public Roads and such fines as may be levied by the Board. The Association shall have the authority but not the obligation, in its sole discretion, to levy a Special Individual Assessment against an Owner who

fails to abide by the terms of this **Section 7.4**, to recoup the expenses incurred by Declarant and/or the Association in seeking to cure any such violation and/or any fine, and shall be subject to the Association's Assessment collection remedies as specified in ARTICLE V of this Declaration.

Section 7.5 Minor Setback Violations. In the event of the unintentional violation of any of the building setback restrictions, in the amount of ten percent (10%) or less of the applicable setback restriction, Declarant reserves the right, during the Declarant Control Period, and thereafter the Board reserves the right, but is not obligated, to waive in writing such violation of the setback restrictions upon agreement of the Owner of the Lot upon which the violation occurs and the Owner of any Lot adjoining the violated setback, provided that such change is not in violation of any zoning or subdivision ordinance or other applicable law or regulation or, if in violation, only if a variance or other similar approval has been received from the appropriate governmental authority.

Section 7.6 Combination or Subdivision of Lots. Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Plat. However, an Owner may combine one Lot with contiguous Lot(s) so long as the parcel or parcels which result from such combination do not violate any applicable zoning ordinance, subdivision ordinance or other applicable law or regulation. In the event that two or more Lots are completely combined so as to create one parcel, the resulting parcel shall be considered as one Lot for the purposes of this ARTICLE VII, but shall continue to be considered as two or more Lots for all other purposes (including voting and Assessments). Furthermore, the Owner of any Lot which combines with all or a portion of contiguous Lot(s) shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots still owned by Declarant or for any reason and any Lot or Lots which result from such change by Declarant shall not be subject to any additional Assessment.

Section 7.7 Reserved Easements. Declarant hereby reserves easements for the installation and maintenance of utilities (water and sewer system, electricity, gas, telephone, storm drainage, cable television, etc.) and drainage facilities over the Common Area, the portion of each Lot outside the Building Envelope and as may otherwise be shown on a Plat. Additional easements for the installation and maintenance of storm drainage facilities and utilities and other purposes deemed necessary or appropriate by Declarant or applicable governmental agencies (e.g., sight triangles, fire hydrants, entry signage, temporary construction easements, etc.) are reserved as more particularly shown and delineated on the Plat and in other recorded easement documents. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, which may interfere with drainage and the flow of water within the easement areas or which may interfere with the purpose for which such easement was granted. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority or utility company. All utility meters must be located at the rear of the dwellings. Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for the installation and maintenance of roads, drainage, utilities, fire hydrants, sight triangles, entry signage and any other purposes deemed necessary or appropriate by Declarant by the recording of appropriate instruments, and such easements shall not be construed to invalidate any of these

covenants. Declarant reserves an easement over the Common Area for the purposes of enjoyment, use, access and development of the Additional Property whether or not that Additional Property is made subject to this Declaration. This easement includes a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities. Declarant shall be responsible for any damage caused to the Common Area as a result of its respective actions in connection with development of that Additional Property. If the easement is exercised for permanent access to that Additional Property and that Additional Property or any portion thereof benefiting from the easement is not made subject to this Declaration, then Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of any maintenance the Association provides to or along any roadway providing access to that Additional Property.

Section 7.8 Entrance Monument Easement Area(s) and Landscape Easement Area(s). Declarant hereby grants, establishes, creates and reserves for the benefit of Declarant and the Association, and their successors and assigns, non-exclusive perpetual easements for the purpose of landscaping and maintaining the entryway and erecting and maintaining the Entrance Monument(s) for the Subdivision. Declarant or the Association shall have the right to enter, landscape and maintain the Entrance Monument Easement Area(s) as an entryway to the Subdivision. Further, Declarant or the Association may erect and maintain one or more stone monuments, with an entrance sign bearing the name of the Subdivision and Declarant and may erect and maintain lighting for the Entrance Monument(s), planters and other Improvements typically used for an entryway. Declarant further hereby grants, establishes, creates and reserves for the benefit of Declarant and the Association, and their successors and assigns, non-exclusive perpetual easements for the purpose of landscaping and maintaining the property adjacent to the main entry road(s) for the Subdivision.

Section 7.9 Stormwater Drainage Easement. Declarant reserves over the Common Areas an easement for installing, maintaining, repairing, and replacing facilities for the drainage of stormwater runoff from the Lots and Public Roads within the Subdivision.

Section 7.10 Fences and Walls. No fence or wall of any kind may be constructed on any Lot unless and until the ACC has given its prior written approval of the color, size, design, materials and location for such fence or wall. Without limiting the foregoing sentence, (a) all fences shall be constructed of black wrought iron or aluminum, provided, that, stone or brick columns supporting fence sections may be permitted; (b) no chain link or stockade style fences are permitted; (c) no wood or picket fences are permitted; (d) no fence or support column shall be over five (5) feet high; and (e) no fence, screening or wall shall be erected, placed or maintained on any Lot nearer to any roadway fronting such lot than the rear building corner of the main structure constructed on such lot unless otherwise approved in writing by the ACC. Any fence to be positioned within easements and/or public rights of way, located on any lot, may be removed by those agencies at any time, and without prior notification, to access their easements and/or public rights of way for required maintenance. Replacement costs of any removed fencing will be the responsibility of the Owner. Provided, however, that the restrictions described in this **Section 7.10** shall not apply to any Improvements originally installed by Declarant on any Common Area. Additional restrictions and requirements may apply as established in the Guidelines.

Section 7.11 Signs. No signs of any kind may shall be displayed to the public view on any Common Area, other than the Entrance Monument(s), as set forth in **Section 7.8**. No signs of any kind may be displayed to the public view on any Lot, with the following exceptions which may not exceed five (5) square feet in size: (a) one sign (on the Lot only) advertising the Property for sale or rent; (b) one sign on the Lot only used to advertise the Lot during the construction and sales period; and (c) temporary political signs. These restrictions shall never apply to permanent Entrance Monument(s) or to temporary entry signs or advertising by Declarant, or for sale signs installed by Declarant or its agents prior to the sellout of the Subdivision.

Section 7.12 Antennas; Satellite Dishes or Discs. No radio or television transmission or reception towers, antenna, satellite dishes or discs shall be erected or maintained on any Lot, except that: (i) a satellite dish designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or (ii) a satellite dish designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or (iii) an antenna that is designed to receive television broadcast signals shall be permitted on Lots, subject to ACC approval and such reasonable requirements as to location and screening as may be set forth in the Guidelines, consistent with applicable zoning ordinance, subdivision ordinance or other applicable law or regulation, to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish or other apparatus for a master antenna, cable or other communication system for the benefit of all or a portion of the Property, should any master system or systems be utilized by the Association and require such exterior apparatus.

Section 7.13 Basketball Goals. Permanent basketball goals shall not be installed on any Lot unless and until the ACC has given its prior written approval of its appearance and location. Basketball goals must not be used on or to create an obstacle to use of common areas, sidewalks, or streets. The base to any non-permanent basketball goal must be filled with sand or water. The placing of heavy materials on top of the base of a non-permanent basketball goal to improve stability is unsightly and not allowed. Non-permanent basketball goals are not intended to be permanent or semi-permanent and should be stored out of sight of the street if not in weekly use.

Section 7.14 Play Equipment. Children's play equipment, swing sets, or trampolines shall not be installed on any Lot unless and until the ACC has given its prior written approval of its appearance and location. Such play equipment should be located to have minimal visual impact on adjacent Lots and streets and the ACC may require landscape screening in its sole discretion. The equipment must be manufactured of natural wood and all accessories should be of a solid earth-tone color. Metal swing sets are not permitted.

Section 7.15 Outbuildings and Accessory Structures. The construction and location of outbuildings (gazebos, potting sheds, storage sheds, statues, play houses, etc.) shall be subject to the review and approval of the ACC. Outbuildings shall be placed behind the footprint of the home, their openings shall not face the street and, except as set forth in **Section 7.4**, shall be within the Building Envelope. The ACC may require landscape screening of these structures in its sole discretion.

Section 7.16 Pool, Therapy Pools and Spas. ACC approval is required for the installation of any outdoor hot tub, Jacuzzi, sauna or spa (collectively “spas”) and swimming pools and related equipment. Plans for proposed swimming pools, spas, surrounding decks, fencing and screening must be approved by the ACC before any clearing, grading or construction is commenced. Spas shall be located in the rear yard only, shall be installed in such a way that it is not immediately visible to adjacent property owners and shall not create an unreasonable level of noise for adjacent property owners. Any spa shall be an integral part of the deck or patio area and/or the rear yard landscaping. Owners are required to install safety features such as locks or covers for spas when such are not in use. Pools shall be an integral part of the deck or patio area and/or rear yard landscaping. Any pool shall be located in the rear yard, shall be installed in such a way that it is not immediately visible to adjacent property owners, and shall not create an unreasonable level of noise for adjacent property owners. Pools shall be fenced for safety purposes and Owners may be required to install safety features such as locks or covers for these items when they are not in use. Pools, decks and related equipment will not be allowed outside of the Building Envelope. Above ground pools are prohibited.

Section 7.17 Lot Maintenance; Trash Disposal. Each Owner shall keep his Lot in a clean and orderly condition and shall keep the Improvements thereon in a suitable state of painting and repair, promptly repairing any damage caused by fire or other casualty. No clothes line may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of trash of any character whatsoever. No trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending removal by trash collection authorities or companies. All trash enclosures must be submitted to the ACC and approved prior to installation. Trash containers may be placed outside of an enclosed area only between the hours of 6:00 PM the day preceding trash collection and 6:00 PM the day of trash collection.

Section 7.18 Parking. No truck or commercial vehicle in excess of one-ton load capacity, or any vehicle under repair, wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot, Common Area, or other portion of the Property. No trailer, mobile home, recreational vehicle, camper or boat shall be used as a residence, either temporarily or permanently. No trailer, mobile home, recreational vehicle, camper or boat shall be parked upon or be permitted to remain on any Lot for a period exceeding twenty-four (24) hours, unless it is parked off the Public Roads and not within the front or side yard of the Lot. All automobiles, trucks, trailers, campers, motor homes and recreational vehicles must have a current license plate affixed and all such vehicles must be parked in a carport, enclosed garage, or on a concrete or asphalt driveway.

Section 7.19 Public Water and Sewer System. Declarant shall construct the public Water and Sewer System. All pipes and other equipment necessary for the operation and maintenance of the Water and Sewer System shall be located within the utility easements described in Section 7.7, or within Public Road rights-of-way. Upon its completion, the Water and Sewer System and all mains, pipes, equipment and other personal property which is part thereof, shall become the property of XXXXX County. The Water and Sewer System shall be the sole source of potable water for the Subdivision, and no well may be dug or constructed on any Lot for the purpose of providing a domestic water supply; provided, however, the construction or installation of a well for irrigation purposes is permitted, provided, that the housing for the well pump be screened as determined by the ACC.

Section 7.20 Nuisances. No noxious or offensive trade or activity shall be carried on or upon any Lot or Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing or material shall be kept upon any Lot or Common Area that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or Common Area with the exception of dogs, cats, or other household pets, which may be kept or maintained provided they are not kept, bred, or maintained for commercial purposes. No more than three (3) household pets shall be kept or maintained per Lot, except for newborn offspring of such household pets that are under nine (9) months in age.

Section 7.21 Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot or Common Area, except during such reasonable time period as is necessary for completion. The exterior of all houses and other structures must be completed within one (1) year from the date of commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or natural calamities. No construction materials of any kind may be stored within the right-of-way of any Public Roads. The responsible Owner shall repair any damage to any Public Roads, curb or sidewalk or any part of any Common Area or any utility system caused by their negligence. If such responsible party fails to repair such damage, Declarant or the Association may make or provide for such repairs, and the responsible Owner shall immediately reimburse the repairing party for its reasonable out-of-pocket expenses in making such repairs. The Owner of each Lot shall at all times keep contiguous public and private areas reasonably free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements on the Lots, Public Roads, and any Common Areas. Declarant or the Association may provide for the cleaning of public and private areas due to the activities of the responsible party and may assess the responsible party a reasonable charge not to exceed the actual cost for such cleaning. Declarant and each Owner shall, consistent with standard construction practices, keep all portions of the Lots, Public Roads, and Common Areas free of unsightly construction debris and shall at all times during construction either provide dumpsites for the containment of garbage, trash or other debris which is caused by construction of Improvements on a Lot or Common Areas, or take other measures consistent with standard construction practices necessary to keep the Lot, Public Roads, and all Common Areas free of such garbage, trash, or other debris. Each Owner shall be responsible for erosion control protection during any grading, site preparation or earth-disturbing operation, as described and defined in the Guidelines.

Section 7.22 Mail and Newspaper Boxes.

- 7.22.1 Declarant is required by the United States Postal Service to install cluster mailboxes within Common Areas or on Lots within the Subdivision. Mail will not be delivered to any other location, and no Owner shall have the right to install any other mailbox or receptacle for the receipt of mail, newspapers, packages, or similarly delivered items on a Lot without the prior written approval of the ACC, which approval may be withheld in the ACC's sole discretion. Declarant hereby reserves for the benefit of itself, the Association, the Owners, and the United States Postal Service and its successors and assigns easements for access to and the

installation, use, maintenance, repair, and replacement of cluster mailboxes and mailbox shelters over the Common Areas and Lots. Within such easements, no structure, planting or other materials shall be placed by any Owner or permitted to remain which may damage or interfere with the installation and maintenance of the mailboxes or mailbox shelters or which may interfere with the purpose for which such easement was granted. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein, provided the cluster mailboxes and mailbox shelters (and pads) shall be maintained by the Association. Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for the installation and maintenance of additional cluster mailboxes and mailbox shelters.

- 7.22.2 If, at any time in the future, the cluster mailboxes and mailbox shelters provided for above are removed or replaced with individual mailboxes in accordance with applicable law, the ACC shall have the right to approve the location, color, size, design, lettering, and all other design aspects of mailboxes and receptacles for the receipt of mail, newspapers, packages, or similarly delivered items as well as Lot identification markers. The ACC shall have the right to require uniform mailboxes utilized in the Subdivision. If a mailbox and/or post is damaged, the Owner must install the same color, style, and material of post and box that was first installed. If the Owner does not replace the damaged mailbox and/or post within thirty (30) days after its damage or destruction, the Association may replace the damaged item and assess the Owner for the cost thereof.

Section 7.23 Lawn Furniture and Statues. No lawn furniture or decorative items, such as statuettes or renderings of animate or inanimate objects, shall be maintained in the front or side yards of any Lot unless shielded from view by landscaping, a fence or a wall approved in advance in writing by the ACC.

Section 7.24 Non-Waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy with respect to a violation of any provision contained in or referred to in this Declaration shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of the violation or the occurrence of a different violation.

Section 7.25 Removal of Mature Trees; Landscaping. Except for trees removed by Declarant, any "street trees" installed by Declarant and any "mature trees" may not be cut down or otherwise removed without the specific written approval of the Declarant or the ACC. For purposes of this Declaration, the term "mature trees" shall mean all evergreen or deciduous trees with a caliper of four (4) inches or greater, measured at a point which is twelve inches (12") from ground level. Furthermore, in the event that trees, shrubs or ground cover are completely removed (as opposed to thinned) in connection with the improvement of any Lot, such cleared portions of the Lot shall be covered with grass or shall be landscaped with plants, shrubs, trees, mulch, wood chips, pine needles and/or similar landscaping Improvements. Landscape rocks are not permitted in street tree beds or front yard planting beds that are within view from the street.

Declarant hereby reserves the right and easement benefiting Declarant, the Association, and/or the ACC to go upon any Lot or other portion of the Property to replant or order the

replanting of any “street trees” or “mature trees” removed within the Subdivision in violation of the terms of this **Section 7.22**. If Declarant, the Association, and/or the ACC exercises its easement rights pursuant to the terms of this **Section 7.22**, the Owner of the nonconforming Lot shall reimburse Declarant, the Association, and/or the ACC (as applicable) within five (5) business days following the submission of an invoice for any costs or expenses incurred. The exercise or non-exercise of the easement rights contained in this **Section 7.22**, shall be subject to the discretion of the Declarant, the Association, and/or the ACC, provided that Declarant, the Association, and/or the ACC shall not have the obligation to exercise such rights. Declarant, the Association and/or the ACC shall have the authority to levy a Special Individual Assessment against an Owner who cuts, damages, or removes any “street trees” or “mature trees” on any part of the Common Areas, their Lot or any other Lot in violation of the above provisions or the Guidelines.

Section 7.26 Impervious Surfaces. The construction of Impervious Surfaces on each Lot (including, but not limited to, the home, driveways, patios, and outbuildings) shall not exceed any maximum allocated Impervious Surfaces for such Lot as designated on the Plat. Any sidewalk located within the sidewalk easements designated on the Plat shall be expressly excluded from the Impervious Surface calculation for each Lot. Notwithstanding the foregoing, during the Declarant Control Period, Declarant may unilaterally alter the Impervious Surface limitation on a per Lot basis so long as such new allocation does not violate any applicable zoning ordinance, subdivision ordinance or other applicable law or regulation.

Section 7.27 Additional Use Restrictions. The Board may adopt such additional use restrictions, rules or regulations, applicable to all or any portion of the Property as permitted by applicable law. The Board may waive or modify application of those use restrictions that it has authority to enforce with respect to any Lot(s) as the Board deems appropriate.

Section 7.28 Long Term Rental of Lots. Each Lot may be leased to a third party provided that the following conditions are met: (a) not less than the entire Lot is being leased, (b) the term of such lease is not less than twelve (12) months; and (c) the Lot is not being rented for transient or hotel purposes, which shall be defined as any rental if the occupants of the Lot are provided customary hotel services such as room service for food and beverage, maid service and furnishing of laundry and linen. For purposes of clarification, subsection (a) of the first sentence of this **Section 7.28** shall not be deemed to prohibit the Owner of a Lot from leasing its Lot for occupancy by a roommate or roommates and the Owner of the Lot. All leases of any Lot shall be in writing. All such leases shall provide that they are subject to all of the provisions of the Declaration and the Bylaws (including any rules or regulations adopted by the Association pursuant to this Declaration) and that any failure by the lessee to comply with any of such provisions shall constitute a default under the lease. A copy of each such lease shall be given to the Declarant and the President of the Association immediately after it is executed. The Owner of any Lot being leased will be responsible for any violations of this Declaration or the Bylaws (including any rules or regulations adopted by the Association pursuant to this Declaration) by its tenant.

ARTICLE VIII INSURANCE

Section 8.1 Types of Insurance Required. The Board shall obtain and maintain at all times the following types of insurance if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

- 8.1.1 Fire and Casualty. The Board shall obtain and maintain blanket property insurance covering “risks of direct physical loss” for all insurable improvements on the Common Area. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements. All such policies shall provide that the Board and the insurance company shall approve adjustment of loss. In addition to the provisions and endorsements set forth in Section 8.3 and Section 8.4, the fire and casualty insurance described herein shall contain the following provisions: (i) waiver of subrogation by the insurer as to any claims against the Association, any officer, Director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and (ii) provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.
- 8.1.2 Public Liability. The Board shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use to any Common Areas, and customary for the activities and obligations of property owners’ associations for projects similar to the Subdivision, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and out of the activities of the Association; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Association and/or the Owners as a group to a single Owner. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims for bodily injury and property damage.
- 8.1.3 Fidelity Coverage. The Board shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, Directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association, in an amount determined by the Board in its discretion. An appropriate endorsement to the policy to cover any

persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

- 8.1.4 Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine, from time to time, to be necessary or desirable.

Section 8.2 Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Owners pursuant to ARTICLE VI.

Section 8.3 Special Endorsements. The Board shall make diligent effort to secure insurance policies that will provide for the following:

- 8.3.1 recognition of any insurance trust agreement entered into by the Association;
- 8.3.2 coverage that may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least forty-five (45) days prior written notice to the named insured, any insurance trustee and all Mortgagees; and
- 8.3.3 coverage that cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or any Mortgagee.

Section 8.4 General Guidelines. All insurance policies purchased by the Board shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A-VII" or better by the current issue of A.M. Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of, and provide that all proceeds thereof shall be payable to, the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance. The property and public liability insurance policies shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, the Owners or the Mortgagees; (2) loss payments are contingent upon action by the carriers, Directors, policy holders or Members; or (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

ARTICLE IX ARCHITECTURAL CONTROL COMMITTEE

Section 9.1 General. Notwithstanding anything contained in this Declaration to the contrary, no construction activity of any type, including, without limitation, grading or site preparation on any Lot, erection of Improvements or exterior additions, no structures or fences, alterations or painting of the exterior surface with a color or shade of color different than that

originally painted to any Improvement situated upon the Property, or any cutting of “mature trees” on any Lot, shall be commenced, erected or maintained, until all the following conditions have been satisfied: (a) an application for approval has been submitted to the ACC; (b) the ACC has given written approval for the plans and specifications for the Improvements, the location of such Improvements, and the commencement of construction, all in accordance with the terms and requirements in the Guidelines; and (c) the fees set forth in or contemplated by this ARTICLE IX have been paid in full by the Owner. The provisions of this ARTICLE IX shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas. Declarant and/or the Association may delegate to the ACC any powers or authority reserved or granted to it under this ARTICLE IX.

Section 9.2 Composition of ACC. During the Declarant Control Period, Declarant shall appoint the members of the ACC. Upon the expiration or the termination by Declarant of the Declarant Control Period or at such earlier date as Declarant releases its right to appoint the members of the ACC, the Board shall thereafter appoint the members of the ACC. The three (3) members of the ACC shall be appointed annually. The members of the ACC need not be Owners and may be members of the Board. In the event of the death or resignation of any member of the ACC, the party or body then having the authority to appoint members to the ACC shall have full authority to designate and appoint a successor. Members of the ACC may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. The ACC shall have the right, power and authority to employ and/or use the services of any architects, engineers or other professionals as it deems necessary or advisable, in its sole discretion, to carry out its duties and obligations as described in this ARTICLE IX.

Section 9.3 Architectural Guidelines.

9.3.1 The ACC may, from time to time, publish, promulgate and amend the Guidelines. The Guidelines shall be explanatory and illustrative of the general intent of the ACC with respect to the construction of certain Improvements on Lots and are intended as a guide to assist the ACC in reviewing plans and specifications for Improvements. The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of Improvements) to the ACC and the fees to be imposed by the ACC, as more specifically described in Section 9.7. In any event, the Guidelines shall not be binding upon the ACC, may be revised and amended at any time by the ACC, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of Improvements) submitted to the ACC for approval. The ACC may issue and amend the Guidelines, from time to time, and may publish and promulgate different Guidelines for different phases, sections or portions of the Property.

Section 9.4 Enforcement.

9.4.1 It is Declarant’s intent that the architectural control provisions of this Declaration and any Supplemental Declarations are to permit control of the architectural design and to establish quality standards for construction in the Subdivision and to help

preserve values of properties in the Subdivision. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners in the Subdivision and to Declarant, and to the values of their respective properties in the Subdivision, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this ARTICLE IX by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants to the ACC, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determining whether any construction of any Improvement violates any approval by the ACC, the Guidelines, this Declaration or any Supplemental Declaration, as amended.

- 9.4.2 The Association may require any Owner to remove or restore nonconforming or unapproved Improvements if such Improvements were commenced or constructed in violation of this ARTICLE IX. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and/or to levy fines for such nonconforming or unapproved improvement to levy the cost and/or fine as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine whether any constructed Improvement was approved or conforms to the Guidelines, to remove any unapproved Improvement, or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, reasonable attorneys' fees and expenses incurred by the Association and/or the ACC, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot upon which such Improvement was commenced or constructed.

Section 9.5 Failure of the ACC to Act. If the ACC fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements of the Guidelines and this Declaration or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittal was a full and complete submittal, in accordance with the Guidelines, of all items that were to have been submitted to the ACC, the Owner shall give written notice to the ACC asking it to act on the submittal. If the ACC shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) days after receipt of the Owner's written request, the ACC shall be deemed to have approved such conforming plans and specifications and other submittals; provided that the ACC has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration or any Supplemental Declaration. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance.

Section 9.6 Variances. Upon submission of a written request, the ACC may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Supplemental Declaration from which a variance is permitted. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the ACC has not expressly approved such request in writing within thirty (30) days of the submission of such request. No member of the ACC shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the ACC's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Supplemental Declaration against any other Owner.

Section 9.7 Fees Required by the ACC. The ACC, in its sole discretion, may require that each Owner submitting plans and specifications for Improvements pay one or more fees to the ACC or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof shall be established by, and may be increased, from time to time, by the ACC and shall be set forth in the Guidelines.

Section 9.8 No Construction Without Payment of Fees. Plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the ACC to be paid in connection with such Improvements, as provided in Section 9.7, shall have been paid to the ACC or Declarant, as required by the Guidelines.

Section 9.9 Notices and Submittals. Notices and submittals to the ACC shall be in accordance with the notice provisions set forth, from time to time, in the Guidelines.

Section 9.10 Limitation of Liability. No member of the ACC shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this ARTICLE IX. Neither the ACC, the members thereof, the Association, Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the ACC shall not be deemed or construed as a representation or warranty of the ACC, Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations; (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and/or (iii) any responsibility or liability therefor is expressly hereby disclaimed. Every Owner who submits plans and specifications agrees to not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, members, employees,

agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 9.11 Miscellaneous. Members of the ACC may be compensated for their services, in the sole discretion of Declarant or the Board. The Association shall reimburse members of the ACC for reasonable out-of-pocket expenses associated with their services. All costs, expenses and reasonable attorneys' fees of the ACC, including those incurred in connection with the exercise of their enforcement powers, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, reasonable attorneys' fees and expenses in accordance with Section 9.4.

ARTICLE X RIGHTS OF MORTGAGEES

Section 10.1 Approval of Mortgagees. Unless at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots located within the Subdivision then subject to the full application of this Declaration have given their prior written approval, the Association shall not:

- 10.1.1 except as otherwise specifically provided herein, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or Improvements thereon which are owned, directly or indirectly, by the Association; provided, however, the granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this provision;
- 10.1.2 except as otherwise specifically provided herein, change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
- 10.1.3 fail to maintain fire and extended coverage insurance on insurable Improvements in any Common Areas in the Subdivision (with the exception of Public Roads) on a current replacement cost basis in an amount not less than 100% of the insurable value as set forth in ARTICLE VIII; or
- 10.1.4 use the proceeds of any hazard insurance policy covering losses to any part of any Common Area for a purpose other than the repair, replacement or reconstruction of the damaged Common Areas.

Section 10.2 Additional Rights. Provided that a Mortgagee has given written notice to the Association as hereafter provided, a Mortgagee shall have the following rights:

- 10.2.1 to be furnished at least one copy of the annual financial statement and report of the Association within ninety (90) days following the end of each fiscal year;

- 10.2.2 to be given notice by the Association of any meeting of the Association's membership, and to designate a representative to attend all such meetings;
- 10.2.3 to be given prompt written notice of default under the Declaration, the Bylaws or any rules and regulations promulgated by the Association by any Owner owning a Lot encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of the Mortgagee or the place which it designates in writing;
- 10.2.4 to be given prompt written notice of any casualty loss to the Common Areas, or loss by eminent domain, condemnation or other taking of (i) the Common Areas or (ii) any Lot encumbered by a Mortgage held by the Mortgagee;
- 10.2.5 to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 10.2.6 to be given prompt written notice of any action which requires the consent of any or all of the Mortgagees as specified herein.

Whenever any Mortgagee desires the provisions of this **Section 10.2** to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address, identifying the Lot or Lots upon which any such Mortgagee holds any Mortgage or identifying any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee. In the event a Mortgagee fails to give written notice, as provided in the immediately preceding sentence, the Mortgage shall not be entitled to the benefits of this **Section 10.2**.

Section 10.3 **Failure to Respond Deemed Approval.** The failure of any Mortgagee to respond within sixty (60) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to this Declaration wherever Mortgagee approval is required shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 10.4 **Books and Records.** Any Mortgagee will have the right to examine the books and records of the Association during any reasonable business hours.

Section 10.5 **Payment of Taxes and Insurance Premiums.** The Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be promptly reimbursed by the Association.

ARTICLE XI CONDEMNATION

Section 11.1 **Partial Taking: Without Direct Effect on Lots.** If part of the Property shall be taken or condemned by any authority having the power of eminent domain, such that no Lot is

taken, all compensation and damages for and on account of the taking of the Common Areas, exclusive of compensation for consequential damages to certain affected Lots, shall be paid to the Board in trust for all Owners and their Mortgagees according to the loss or damages to their respective interests in such Common Areas. The Association, acting through the Board, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Areas, without limitation on the right of the Owners to represent their own interests. Each Owner, by acceptance of a deed to a Lot, hereby appoints the Board as attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Areas. Such proceeds shall be used to restore the Common Areas with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Owners whose Lots are specifically affected by the taking or condemnation shall not be prevented from joining in the condemnation proceedings and petitioning on their own behalf for consequential damage relating to loss of value of the affected Lots or Improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Areas. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Association, as their interests may appear, by the Board, in its sole discretion.

Section 11.2 Partial or Total Taking: Directly Affecting Lots. If part or all of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area as provided in **Section 11.1** and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of anyone or more of the Lots or Improvements, fixtures or personal property thereon, shall be paid to the Owners of the affected Lots and their Mortgagees, as their interests may appear. If all of the Property shall be taken such that the Association no longer has reason to exist and shall thereafter be dissolved and/or liquidated, all compensation and damages for and on account of the taking of the Common Areas shall be distributed with the other assets of the Association in accordance with the Articles of Incorporation.

Section 11.3 Notice to Mortgagees. A notice of any eminent domain or condemnation proceeding shall be sent to all Mortgagees who have served written notice upon the Association in accordance with **Section 10.2**.

ARTICLE XII GENERAL PROVISIONS

Section 12.1 Enforcement. By recording this Declaration, Declarant is confirming its desire to maintain a high standard in the appearance and quality of the Subdivision. Although damages would be difficult to measure, the failure of any of the Owners or the Association to abide by the terms, covenants and restrictions contained in this Declaration would result in irreparable damage to Declarant and its reputation. Accordingly, Declarant, during the term of this Declaration as set forth in **Section 12.4**, as well as the Association or any Owner or Owners, shall have the right, but not the obligation, to enforce any or all of the restrictions, conditions, covenants,

reservations, liens and charges now or hereafter imposed by the provisions of this Declaration by proceeding at law or in equity against any person or persons violating or attempting to violate any such restriction, condition, covenant, reservation, lien or charge, either to restrain violation thereof or to recover damages therefor. Declarant, the Association and each Owner shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the Bylaws and any duly authorized rules and regulations governing the Subdivision.

In addition, the Association and the Owners hereby mutually covenant and agree that they shall exercise their power of enforcement hereunder in order to maintain a first class subdivision in appearance and quality, and that they shall, upon the request of Declarant, enforce any restriction, condition, covenant or reservation contained in this Declaration deemed by Declarant, in its sole discretion, to have been violated, using all remedies available to them at law or in equity. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so at any time thereafter. Declarant hereby reserves the right and easement, but not the obligation, to go upon any portion of the Common Areas at any time in order to repair and maintain such Common Areas where needed, in Declarant's sole discretion, to bring such Common Areas within the standards required by Declarant. If Declarant goes upon the Common Areas to perform maintenance and/or repairs for such purpose, the Association hereby agrees to reimburse Declarant in full for the cost of such maintenance and/or repairs, upon receipt of a statement for such costs from Declarant, for maintenance and/or repair of the Common Areas.

Section 12.2 Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall not affect any other provisions of this Declaration, which shall remain in full force and effect.

Section 12.3 Amendment.

12.3.1 Amendment by Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant unilaterally may amend this Declaration for any purpose.

12.3.2 Amendment by Owner. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of (a) Members entitled to cast at least 67% of the total votes in the Association and (b) during the Declarant Control Period, Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

12.3.3 Validity and Effective Date. No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of that amendment. Any amendment shall become effective upon recording, unless a later effective date

is specified in the amendment. Any procedural challenge to an amendment must be made within one year after its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 12.4 Term. The covenants and restrictions of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty (20) years from the date this Declaration is recorded; after which time, covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then current Owners of the Lots, plus Declarant, has been recorded, agreeing to terminate said covenants and restrictions in whole or in part. Provided, however, that the residential use restrictions set forth in Section 7.1 shall run with the land and shall be binding upon all parties and all persons claiming under them in perpetuity.

Section 12.5 Declarant Rights. Declarant specifically reserves the right, in its sole discretion, at any time and from time to time, to temporarily or permanently assign some or all of its rights, privileges and powers under this Declaration or any Supplemental Declaration or under the Act (collectively, "Declarant Rights") to a third party in connection with the development of the Property, whether or not any, all, or part of the Property is conveyed to such party. Any such assignment shall specifically identify Declarant Rights being assigned, and no Declarant Rights assigned may be broader than the rights created in this Declaration. The assignment shall be recorded in the Registry and may be terminable at will by Declarant. Each assignee shall sign and expressly assume the assigned Declarant Rights in the recorded instrument. Declarant also may expressly and separately reserve some or all of its Declarant Rights in connection with the sale or conveyance of all or part of the Property to a third party, which reservation shall be expressly and separately stated in an instrument evidencing the conveyance of all or part of the Property to such party. Notwithstanding anything to the contrary in this Declaration or in the Act (to the extent allowed by law), unless Declarant expressly and separately conveys Declarant Rights, in whole or in part, to a third party in any instrument of conveyance or otherwise recorded in the Registry, Declarant shall be deemed not to have conveyed any Declarant Rights to such party.

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer as of the day and year first above written.

EHF HOMES LP,
a Delaware limited partnership

By: _____(SEAL)
Michael Shea
Regional Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____, a Notary Public of Mecklenburg County and State of North Carolina, do hereby certify that Michael Shea, Regional Vice President of **EHF HOMES LP**, a Delaware limited partnership, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the limited partnership.

Witness my hand and official stamp or seal this _____ day of _____, 2023.

Notary Public

My Commission Expires

[SEAL]

EXHIBIT A
TO
DECLARATION
FOR

XXXXXXX

ADDITIONAL PROPERTY

Parcel 1:

Lying and being situate in XXXXXXXXXX and being more particularly described as follows:

BEING approximately XXXX acres shown as “XXXXXXXXXXXX” on the Plat entitled “XXXXXXXX” recorded in Plat Book XX Page XX, XXXXXX County Register of Deeds.

EXHIBIT B
TO
DECLARATION
FOR
XXXXXXXXXX

STATE OF NORTH CAROLINA

DEPARTMENT OF THE SECRETARY OF STATE

ARTICLES OF INCORPORATION

NONPROFIT CORPORATION

XXXXXXXXXXXXXXXXX HOMEOWNERS ASSOCIATION, INC.

The undersigned natural person of the age of eighteen (18) years or more does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit corporation under, and by virtue of, the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled “Non-Profit Corporation Act,” and the several amendments thereto, and to that end does hereby set forth:

1. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions for **XXXXXXXXXX** together with all supplements or amendments thereto (the “Declaration”), which Declaration is recorded or shall be recorded in the **XXXXXX** County Public Registry.
2. The name of the Corporation is **XXXXXXXXX HOMEOWNERS ASSOCIATION, INC.** (hereinafter referred to as the “Association”).
3. The period of duration of the Association is: perpetual
4. The purposes for which the Association is organized are:
 - (a) to manage, maintain, operate, care for and administer the Common Areas, including but not limited to, any Entrance Monument Easement Area(s), Landscape Easement Area(s), Amenity Area(s), and to maintain the Public Roads in the Subdivision prior to acceptance for maintenance by governmental authorities, as more particularly set forth in the Declaration;
 - (b) to enforce the covenants, restrictions, easements, charges and liens as provided in the Declaration and to fix, levy, assess, collect, enforce and disburse the charges and assessments created under the Declaration, all in the manner set forth in and subject to the provisions of the Declaration;
 - (c) to exercise all powers and privileges and perform all duties and obligations of the Association as set forth in the Declaration;

- (d) to do any and all other lawful things and acts that the Association from time to time, in its discretion, may deem to be for the benefit of the Subdivision and the Owners and inhabitants thereof or advisable, proper or convenient for the promotion of the peace, health, comfort, safety and general welfare of the Owners and inhabitants thereof; and
- (e) to exercise all powers provided in Chapter 55A and 47F of the General Statutes of North Carolina in furtherance of the above-stated purposes.

5. The Association is not organized for pecuniary profit, nor shall it have any power to issue certificates of stock or pay dividends. No part of the net assets or earnings of the Association shall inure to the benefit of any private individual, firm or corporation.

6. The Association shall have Members which may be divided into such-classes as shall be provided in the Bylaws and/or Declaration.

All Members shall be accepted, appointed, elected or designated in the manner provided in the Bylaws and/or Declaration.

7. The address of the initial registered office is 8008 Corporate Center Drive, Suite 300, Charlotte, NC 28226, Mecklenburg County, and the initial registered agent of the Association at such address is **Michael P. Shea**.

8. The initial address of the principal office of the Association is 8008 Corporate Center Drive, Suite 300, Charlotte, NC 28226, Mecklenburg County,

9. The business and conduct of the Association shall be regulated by a Board of Directors who shall be elected in the manner and for the terms provided in the Bylaws. The number of directors constituting the initial Board of Directors shall be four and the names and addresses of the persons who are to serve as the initial Directors are:

<u>NAME:</u>	<u>Address:</u>
Michael P. Shea	8008 Corporate Center Drive, Suite 300 Charlotte, NC 28226
Kevin Roth	8008 Corporate Center Drive, Suite 300 Charlotte, NC 28226
Nathaniel Petrie	8008 Corporate Center Drive, Suite 300 Charlotte, NC 28226
Susan Lamb	8008 Corporate Center Drive, Suite 300 Charlotte, NC 28226

10. The incorporator of this Association is **Susan Lamb** and her address is 8008 Corporate Center Drive, Suite 300 Charlotte, NC 28226, Mecklenburg County.

11. In the event of a dissolution and/or liquidation of the Association, all of the residual assets of the Association shall be distributed to such organizations that are exempt under §501(c)(3) of the Internal Revenue Code of 1986 or corresponding sections of any prior or future Internal

Revenue Code at the time of dissolution as shall, in the judgment of the Directors, be most likely to fulfill the purposes of the Association.

12. To the extent permitted by law, no director shall be personally liable for monetary damages arising out of an action whether by or in the right of the Corporation or otherwise for breach of any duty as a Director. Further, to the extent permitted by law, the Corporation shall indemnify a director against personal liability.

EXHIBIT C
TO
DECLARATION
FOR

XXXXXXXXXX

BYLAWS OF
XXXXXXXXXXXXXXXXXX HOMEOWNERS ASSOCIATION, INC.

ARTICLE 1

Section 1.1 Name. The name of the non-profit corporation is **XXXXXXXX** HOMEOWNERS ASSOCIATION, INC. (the “Association”).

Section 1.2 Location. The principal office of the Association shall initially be located in Mecklenburg County, North Carolina at 8008 Corporate Center Drive, Suite 300, Charlotte, NC 28226. The registered office of the Association may be, but need not be, identical with the principal office.

ARTICLE 2

DEFINITIONS

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for **XXXXXXXX** executed by EHC Homes LP, and duly recorded in the **XXXXX** County Public Registry (as supplemented and amended, from time to time, the “Declaration”).

ARTICLE 3

MEETINGS OF MEMBERS

Section 3.1 Annual Meetings. The first annual meeting of the Members shall be held sometime during or before December, 2023, as determined by a vote of the Board of Directors, and each subsequent regular annual meeting of the Members shall be held on or about the anniversary date of the first annual meeting, at a time to be determined by the Board. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 3.2 Special Meetings. Special meetings of the Members may be called at any time by the President of the Association, by the Board of Directors, or upon the written request of the Members who are entitled to vote at least ten percent (10%) of all of the votes appurtenant to the Lots.

Section 3.3 Place of Meetings. All meetings of the Members shall be held at such place within **XXXXXX** County, North Carolina, as determined by the Board of Directors.

Section 3.4 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of the Secretary of the Association or other person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 3.5 Classes of Membership and Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Members with respect to voting rights:

(a) Class A Members. Each Owner of a Lot shall be Class A Member, except Class B Members (as defined below). Each Class A Member will be entitled to one (1) vote for each Lot owned by such Class A Member. When more than one person owns an interest (other than a leasehold, security interest or mortgage) in any Lot, all such persons shall be Class A Members and their appurtenant voting rights shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B Members. The Class B Membership shall consist of Declarant and its successors and assigns. A Class B Member will be entitled to four (4) votes for each Lot owned by such Class B Member. Regardless of the foregoing and the voting power held by other Class A Members, Declarant shall retain all rights reserved and granted to Declarant under this Declaration during and after the expiration of the Declarant Control Period and Class B Membership period.

Section 3.6 Turnover Date. The Class B Membership shall cease and be converted to Class A Membership on the first to occur of the following events:

- (a) upon the expiration of the Declarant Control Period; or
- (b) upon the election of Declarant, in its sole discretion, to terminate its Class B Membership, at which point all Class B Membership rights shall be converted automatically to Class A Membership rights. Any such election, to be effective, must be in writing and recorded in the Registry.

Section 3.7 Quorum. The presence at any meeting of Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes appurtenant to the Lots shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws or applicable law. If however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.8 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every

proxy shall be revocable and shall automatically cease upon conveyance of the applicable Member's Lot.

Section 3.9 Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a vote of a majority of all votes entitled to be cast by all classes of Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be regarded as the act of the Members. Notwithstanding any term or provision herein, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by all classes of Members shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Subdivision or any part thereof, or (2) assert a claim against or sue Declarant.

Section 3.10 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members, shall constitute a waiver of notice by such Member of the time and place thereof except where such Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all of the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

ARTICLE 4

BOARD OF DIRECTORS

Section 4.1 Number. The business and affairs of the Association shall be managed by a Board of four (4) Directors, who shall be appointed by Declarant and who need not be Members of the Association. At the first annual meeting of the Members following the expiration or termination by Declarant of the Declarant Control Period, a Board of five (5) Directors shall be elected in accordance with Section 4.4.

Section 4.2 Initial Directors. The initial Board of Directors shall be appointed by Declarant. The Board of Directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Registry until such time as their successors are duly appointed in accordance with Section 4.1, or duly elected and qualified, as described in Section 4.4.

The names of the persons who shall serve on the initial Board of Directors are as follows:

<u>Name</u>	<u>Address</u>
Michael P. Shea	8008 Corporate Center Drive, Suite 300 Charlotte, NC 28226
Kevin Roth	8008 Corporate Center Drive, Suite 300 Charlotte, NC 28226
Nathaniel Petrie	8008 Corporate Center Drive, Suite 300 Charlotte, NC 28226
Susan Lamb	8008 Corporate Center Drive, Suite 300 Charlotte, NC 28226

Section 4.3 Nomination. Subject to Section 4.1, nominations for the first election of the Board of Directors shall be made from the floor at a meeting of the Members. After such first election of Directors, nominations for election to the Board of Directors shall be made by a Nominating Committee or may be made from the floor at the annual meeting. Subject to Section 4.1, the Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to the annual meeting following the first election of Directors and each annual meeting of the Members thereafter, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4.4 Election. Except as otherwise provided herein, the Board of Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation, these Bylaws and the Declaration. Subject to the terms of this Article 4, the persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4.5 Term of Office. Each Director shall hold office for the term for which such Director was elected, or until his or her death, resignation, retirement, removal, disqualification or until his or her successor is elected and qualified. Subject to Section 4.1, at the first election of Directors, the Members shall elect two (2) Owners as members of the Board of Directors for terms of three (3) years, who shall be Owners receiving the largest number of votes. Members shall also elect two (2) Owners as members of the Board of Directors for terms of two (2) years, who shall be the Owners receiving the second largest number of votes. Finally, Members shall elect one (1) Owner as a member of the Board of Directors for a term of one (1) year, who shall be the Owner receiving the next largest number of votes. At all annual elections thereafter, Director(s) shall be elected for three (3) year terms to succeed any Director(s) whose term(s) then expire(s). Nothing herein contained shall be construed to prevent the election of a Director to succeed himself. Votes shall be tallied at the meeting where they are so cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting.

Section 4.6 Removal. Subject to Section 4.1, any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, such Director's successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the remaining members of the Board.

Section 4.7 Compensation. No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for his or her actual expenses incurred in performing duties as a Director.

ARTICLE 5

MEETINGS OF DIRECTORS

Section 5.1 Regular Meetings. Meetings of the Board of Directors shall be held on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed, from time to time, by resolution of the Board. If a scheduled meeting falls upon a legal holiday, then that meeting shall be held at the same time on the next business day which is not a legal holiday.

Section 5.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days' notice to each Director.

Section 5.3 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.4 Informal Action by Directors. Action taken by a majority of the Directors without a meeting constitutes Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.5 Chairman. A Chairman of the Board of Directors shall be elected by the Directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors and shall serve until a new President is elected.

Section 5.6 Liability of the Board. The members of the Board of Directors shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Members shall indemnify and hold harmless each of the Directors against all contractual liability to others arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Directors shall have

no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are also Owners and Members.

ARTICLE 6

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1 Powers. The Board of Directors, for the benefit of the Members, shall have the following specific powers and rights (without limitation of other powers and rights the Board may have):

(a) To adopt and publish rules and regulations applicable to all or any portion of the Property as permitted by applicable law and waive or modify application of those use restrictions that it is has authority to enforce with respect to any Lot(s) the Board deems appropriate;

(b) To suspend any Member's voting rights and right to use the Common Areas, during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended (after notice and hearing) for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) To declare the office of a member of the Board of Directors to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(e) To employ a manager, management company, an independent contractor, or such other employee(s) as the Board of Directors deems necessary, and prescribe their duties;

(f) To grant all necessary easements and rights-of-way upon, over, under and across the Common Areas when the Board of Directors deems such action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sanitary sewer and other utilities or drainage facilities; provided, however, during the Declarant Control Period, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;

(g) To appoint and remove all officers, agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient;

(h) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas and/or the Association;

(i) To retain the services of legal, accounting and other professional firms;

(j) To employ or retain the services of architects or other qualified persons to serve on or advise the Board on architectural, landscaping, or land use planning issues;

(k) To maintain contingency reserves for the purposes set forth in the Declaration;

(l) To enforce the provisions of the Declaration and any Additional or Supplemental Declaration and any rules or regulations made hereunder or thereunder;

(m) To levy Assessments as more particularly set forth in the Declaration; and

(n) To take any and all other actions, and to enter into any and all other agreements, as may be necessary for the fulfillment of its obligations under the Declaration or these Bylaws.

Section 6.2 Duties. The Board, for the benefit of the Members, shall have the following specific duties (without limitation of other duties the Board may have):

(a) To maintain current copies of the Declaration, these Bylaws and other rules concerning the Subdivision, as well as Association books, records and financial statements, available for inspection upon reasonable notice and during normal business hours by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots;

(b) To supervise all officers, agents and employees of the Association to ensure that their duties are properly performed;

(c) As more fully provided in the Declaration:

(1) To fix the amount of the Assessments;

(2) To send written notice of Assessments to every Owner before its due date; and

(3) To foreclose the lien against any Lot for which Assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same;

(d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid, which certificate shall be conclusive evidence of such payment;

(e) To procure and maintain adequate liability insurance covering the Association, the Directors and officers, and adequate hazard insurance on the property owned by the Association, all in accordance with the Declaration;

(f) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, all in accordance with the Declaration;

(g) To maintain or cause to be maintained the Common Areas (including the upkeep and maintenance of associated improvements) in accordance with the Declaration;

(h) Until accepted for maintenance by the North Carolina Department of Transportation or other governmental authority, to own and maintain or cause to be maintained the Public Roads (including any swales and medians) to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental authority, as the case may be, before it would accept such Public Roads for maintenance; and

(i) To maintain or cause to be maintained any sidewalks in the Subdivision to the extent not maintained by a governmental authority.

ARTICLE 7

OFFICERS AND THEIR DUTIES

Section 7.1 Officers. The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may, from time to time, create by resolution.

Section 7.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 7.3 Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his or her death, resignation, retirement, removal, disqualification, or his or her successor is elected and qualifies.

Section 7.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 7.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 7.4.

Section 7.8 Compensation. No officer shall receive any compensation from the Association, but may be reimbursed for his or her actual expenses in performing his or her duties as an officer.

Section 7.9 Duties. The duties of the officers are as follows:

(a) President. The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

(b) Vice President. The Vice President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring a corporate seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all funds of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account; shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at each annual meeting.

ARTICLE 8

COMMITTEES

Subject to Section 4.1, the Board shall appoint a Nominating Committee. In addition, the Board shall appoint other committees as it deems appropriate in carrying out its purposes.

ARTICLE 9

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, upon reasonable notice and during reasonable business hours, be subject to inspection by any Member. The Declaration,

the Articles of Incorporation and these Bylaws shall be available for inspection by any Member at the principal office of the Association.

ARTICLE 10

ASSESSMENTS

As more particularly described in, and subject in all respects to, the Declaration, each Member is obligated to pay Assessments to the Association. Any Assessments which are not paid when due shall be delinquent. If an Assessment is not paid by its due date as set forth in the Declaration, the Assessment shall bear interest as provided therein. Any late charges, costs of collection and reasonable attorneys' fees related to any such delinquent Assessment may be added to the amount of such Assessment. No Member may waive or otherwise escape liability for the Assessments provided for herein by non-use of his or her Lot or the Property.

ARTICLE 11

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words, XXXXXXXXXX HOMEOWNERS ASSOCIATION, INC.

ARTICLE 12

AMENDMENTS

Section 12.1 Procedures for Amendment. Subject to the limitations hereinafter contained, the Articles of Incorporation and these Bylaws may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) or more of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if sixty-seven percent (67%) or more of all votes entitled to be cast by the Members cannot be obtained at such a meeting, then the Articles of Incorporation and these Bylaws may be amended by obtaining the vote of sixty-seven percent (67%) or more of all votes present at a duly held meeting of the Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Members holding a sufficient number of votes to comprise, along with such voting Members, sixty-seven percent (67%) or more of all votes entitled to be cast by the Members. Further provided, that any amendment or modification to the Articles of Incorporation and these Bylaws must be consented to by Declarant during the Declarant Control Period, which consent Declarant may grant or withhold in its sole discretion. In addition, Declarant, without obtaining the approval of any other Member or any other Owner or Owners, may unilaterally make amendments or modifications to the Articles of Incorporation and these Bylaws during the Declarant Control Period.

Section 12.2 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE 13

MISCELLANEOUS

The fiscal year of the Association shall be the calendar year and shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE 14

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board of Directors, nor the Association, nor any officers, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their Directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall to the extent permitted by applicable law, indemnify, defend and hold harmless all Directors from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify, defend and hold harmless any Director or officer or former Director or officer of the Association or any person who may have served at the request of the Association as a Director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such Director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of Members or any disinterested Directors or otherwise and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the respective heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnification of any person who is or was a Director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association, or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article 14, or elsewhere in these Bylaws, shall operate to indemnify any Director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

TRANSPORTATION TECHNICAL MEMORANDUM (TTM)

Date: December 20, 2023

To: Stephen Blackwelder
Environmental Compliance Manager
Lancaster County Government

From: Michael Wickline, PE
Principal
Design Resource Group, PA (COA-2370)

Subject: **Asbury Lane Site – Updated Site Plan and Traffic Evaluation (972-002)**



Summary

Per the request of Lancaster County Staff, the purpose of this memorandum is to provide a traffic evaluation for the updated Asbury Lane site to address the change in access, reduction in density, and validate the Asbury Lane Traffic Impact Analysis that was previously completed by BGE and approved by SCDOT and Lancaster County staff.

Original and Updated Proposed Access

According to the rezoning plan included in the approved TIA (See RZ-1), access to the development was expected to occur via three access locations:

- Proposed Access "A" (Full Movement) – unsignalized access located on Old Bailes Road approximately 740 feet west of Possum Hollow Road
- Proposed Access "B" (Full Movement) – unsignalized access located on Old Bailes Road approximately 1,675 feet west of Possum Hollow Road
- Asbury Lane/Proposed Access "C" (Full Movement) – unsignalized access on Possum Hollow Road located at existing Asbury Lane

According to the updated site/sketch plan (See L-003), access to the development is expected to occur via two access locations:

- Proposed Access "A" (Full Movement) – unsignalized access located on Old Bailes Road approximately 600 feet west of Possum Hollow Road
- Proposed Access "B" (Full Movement) – unsignalized access located on Old Bailes Road approximately 1,600 feet west of Possum Hollow Road



Based on feedback and requests from Lancaster County Staff, the existing Asbury Lane has been shifted internally on site to stub at the property line and align opposite Estate Avenue for desired future connectivity.

Original and Updated Proposed Development Projected Traffic

The daily and peak-hour trip generation data for the site is presented in the table below for the original and updated single family development. Values derived for the anticipated trips generated by the site are obtained from the Institute of Transportation Engineers, Trip Generation Manual, 11th Edition, 2021.

Trip Generation Table

Land Use [ITE Code]			Weekday Daily	AM Peak Hour			PM Peak Hour		
				Enter	Exit	Total	Enter	Exit	Total
Original Plan/Approved TIA									
Single Family Homes [210]	170	DUs	1644	31	90	121	103	61	164
Updated Plan									
Single Family Homes [210]	78	DUs	803	15	44	59	50	29	79

Reference:

Trip Generation, 11th Edition, Institute of Transportation Engineers, Washington, DC. 2021.

The approved TIA was completed with the assumption of 170 total single-family homes and estimated peak hour trip generations for the AM (121 total trips) and PM (164 total trips) peak hours were analyzed across the required study area.

The updated plan is now only proposing 78 single family homes for development which is anticipated to generate 59 AM peak and 79 PM peak hour trips, which is a reduction of 62 trips in the AM peak hour and 85 trips in the PM peak hour.

BGE's approved TIA provided analysis results for seven existing intersections as well as the three proposed access locations (see Figure 1 Project Location exhibit from BGE's TIA). Per the results and recommendations, the only suggested improvement required for the development was a westbound right turn lane on Possum Hollow Road at US 521 with 100 feet of storage.

Based on this approved analysis and the anticipated decrease in site trips, the analysis recommendations should still be considered acceptable for all intersections previously studied. In coordination with Lancaster County staff, an agreement has been made to organize a proportionate monetary contribution from the development to be used in the county in lieu of this specific improvement, since this intersection is already set to be significantly improved by offsite developments in the area.

It is our professional opinion that the approved TIA should still be considered acceptable, and an updated TIA should not be required for the development due to the significant reduction in density. In coordination with Lancaster County staff, agreement to the validity of the approved TIA for use in the development of the updated site has been confirmed.



Lancaster County staff's only concern was understanding the potential impacts associated with the removal of the site access to Possum Hollow Road specifically to the intersection of Possum Hollow Road and Old Bailes Road, due all of the proposed site traffic now using Old Bailes Road instead of the additional distribution of traffic the Possum Hollow Road access (Asbury Lane) provided.

To address this concern, the above estimated trip generation for the updated site plan was assigned to the network to show the anticipated trips expected to travel to/from and through the Possum Hollow Road and Old Bailes Road intersection.

The overall directional distribution from the approved traffic study was used to determine the appropriate expectation of travel options available. Both the distribution from the approved TIA as well as the updated distribution are shown on Figure 1 for comparison.

The estimated trip generation was assigned to the intersection using the percentages shown on Figure 1. Figure 2 shows the approved TIA's estimated site trip assignment that was used in the traffic analysis as well as the updated developments anticipated site trip assignment.

Based on the analysis and the comparison shown on Figure 2, the following total traffic by direction is shown below:

Eastbound Old Bailes Road:

Original TIA

- 41 AM peak trips
- 27 PM peak trips

Updated Site Plan

- 28 AM peak trips
- 19 PM peak trips

Northbound Possum Hollow Road:

Original TIA

- 8 AM peak trips
- 13 PM peak trips

Updated Site Plan

- 4 AM peak trips
- 13 PM peak trips



Southbound Possum Hollow Road:

Original TIA

- 13 AM peak trips
- 41 PM peak trips

Updated Site Plan

- 6 AM peak trips
- 20 PM peak trips

Conclusion

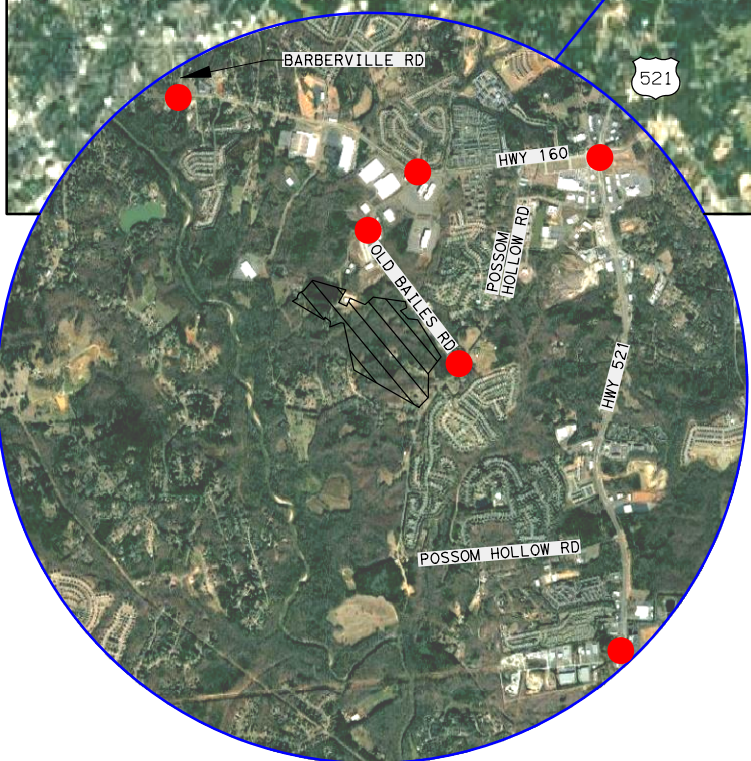
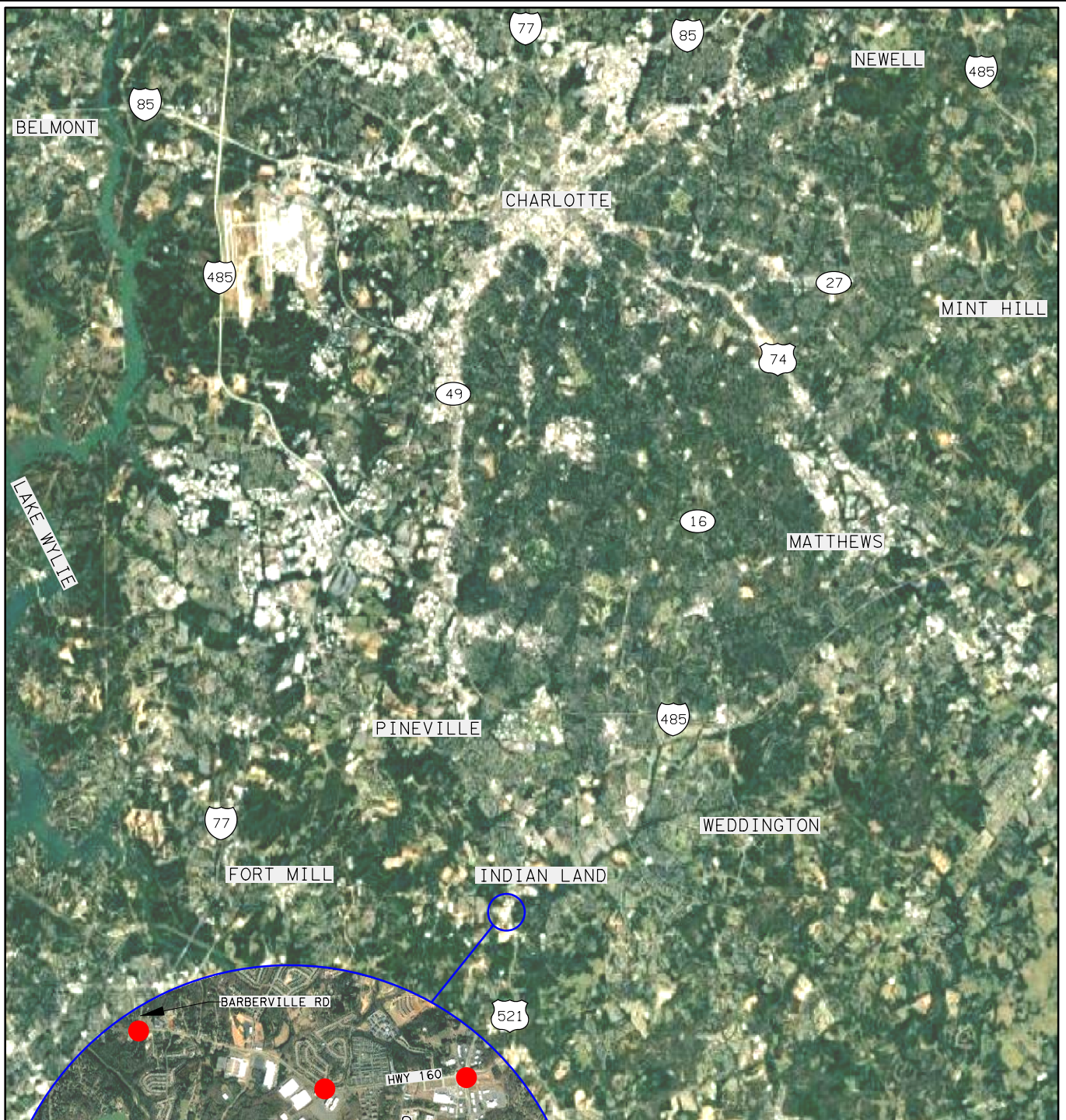
It is our professional opinion that the approved TIA should still be considered acceptable, and an updated TIA should not be required for the development due to the significant reduction in density. Based on the traffic analysis and site trip assignment comparison, the removal of the Possum Hollow Road Access does not materially impact the approved analysis results or cause any additional concerns at the intersection of Possum Hollow Road and Old Bailes Road especially considering the reduction in density.

Please contact us should you have any questions or need any additional information.

Attachments: RZ-1 – Original Rezoning Plan (from TIA)
L-003 – Updated Sketch Plan
Figure 1 - Project Location Exhibit (from TIA)
Figure 1 – Site Directional Distribution Comparison
Figure 2 – Site Trip Assignment Comparison

cc: File

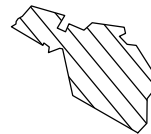
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LEGEND



STUDY INTERSECTION



PROJECT LOCATION



N. T. S.



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PROJECT LOCATION

**ASBURY LANE TIA
FORT MILL, SC**

DATE: JUNE 2021	FIGURE: 1	PAGE: 3
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LEGEND

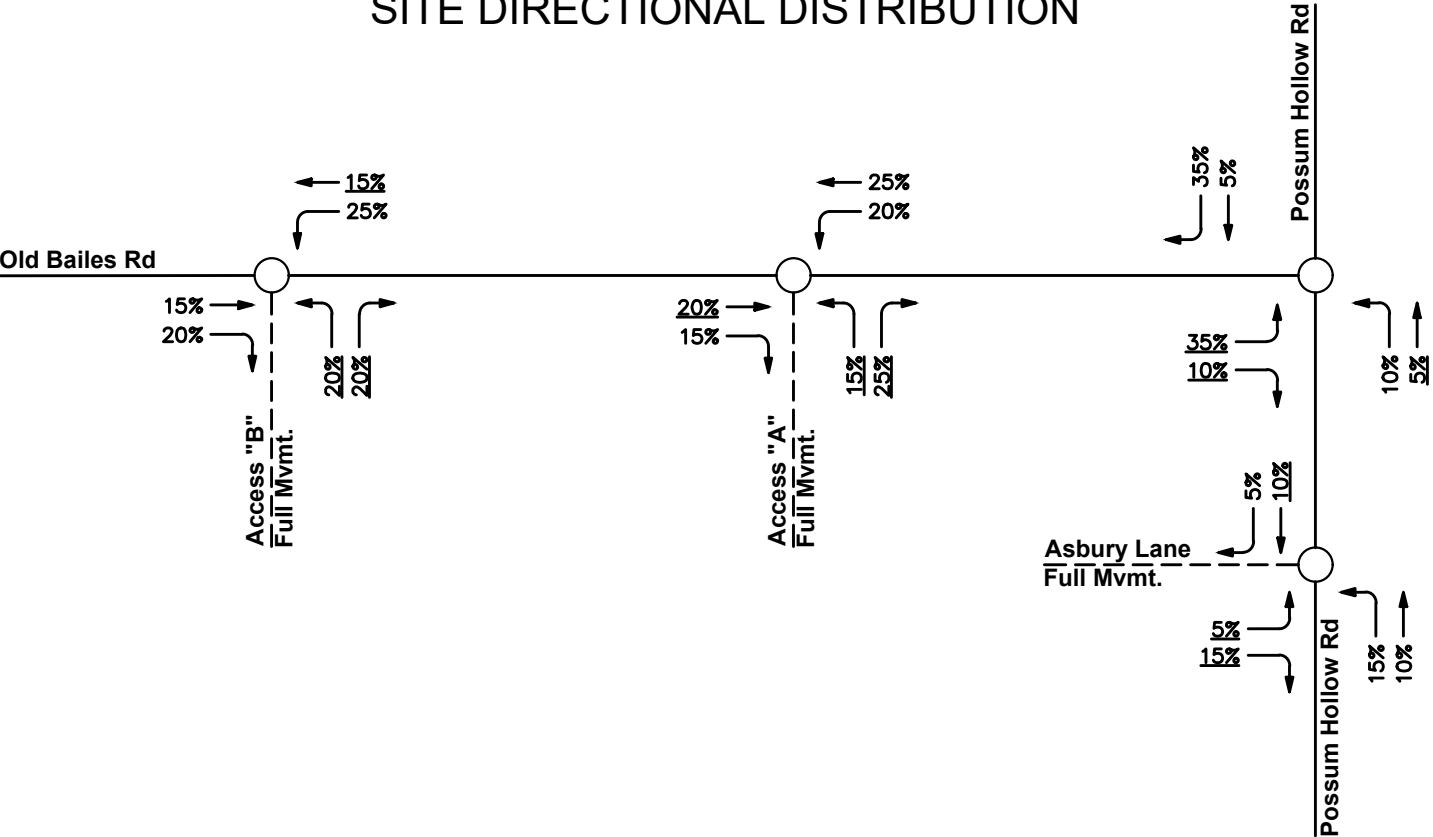
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➔ Directional Movement

xx%/xx% Enter/Exit Distribution Percentage

ORIGINAL TIA

SITE DIRECTIONAL DISTRIBUTION



LEGEND

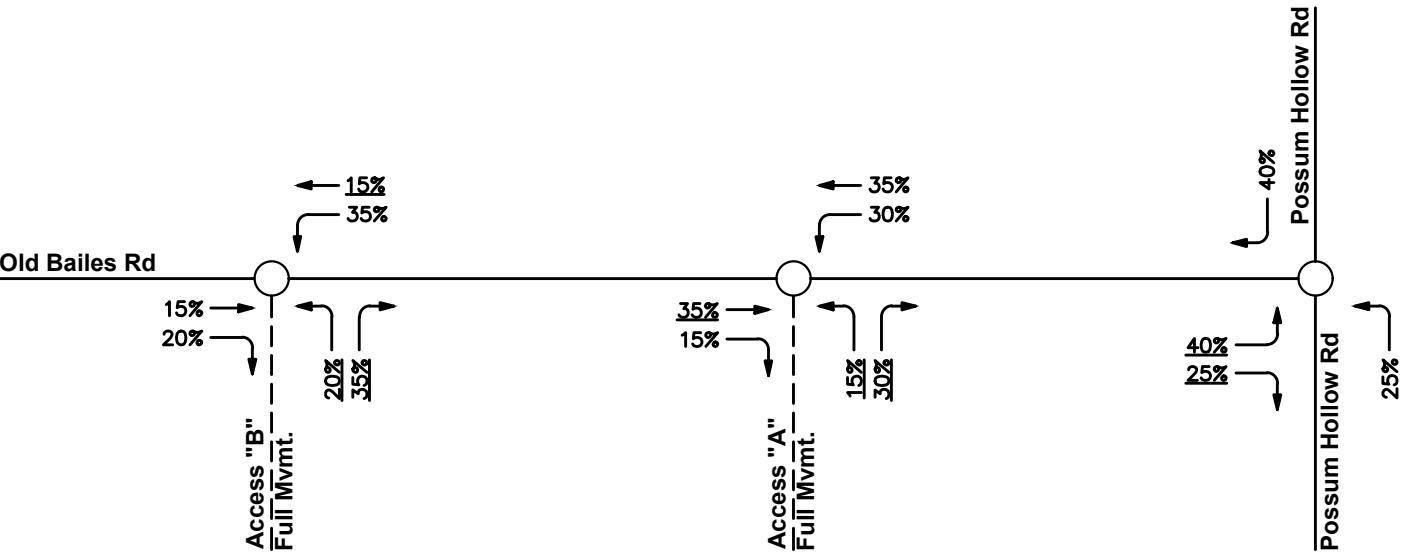
○ Stop Sign Control

➔ Directional Movement

xx%/xx% Enter/Exit Distribution Percentage

UPDATED SITE PLAN

SITE DIRECTIONAL DISTRIBUTION



ASBURY LANE TES

FORT MILL, SC

D.R. HORTON

8001 ARROWRIDGE BOULEVARD

CHARLOTTE, NC 28273

SITE
DIRECTIONAL
DISTRIBUTION

0 XX' XX' N

SCALE: NTS

PROJECT #: 972-002

DRAWN BY: PAH

CHECKED BY: MWW

DECEMBER 2023

REVISIONS:

1.

Figure 1

0 XX' XX'

SCALE: NTS

N

DECEMBER 2023

REVISIONS:

