

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

AND

THE TOWN OF CHAPEL HILL, NORTH CAROLINA

Dated as of _____, 2009

Note: This draft was prepared by the Town-University Joint Staff Work Group and is still undergoing detailed review and discussion. Several sections of this draft include options for discussion. This draft will be further revised to reflect discussions by the Town Council and University Board of Trustees, as well as on-going review and comment by citizens and Town and University staff. It is anticipated that an updated development agreement will be submitted to the Town Council in late April 2009 for formal review by Town advisory boards and the public in May and June 2009.

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STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF ORANGE

This Development Agreement (hereinafter the "Agreement") is made and entered into as of the ____ day of June 2009 (hereinafter the "Effective Date") by and between The **University of North Carolina at Chapel Hill** (hereinafter the "University"), a public entity authorized to conduct business in the State of North Carolina, and the **Town of Chapel Hill, North Carolina** (hereinafter the "Town"), a municipal corporation of the State of North Carolina.

ARTICLE 1. STATUTORY FRAMEWORK

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

ARTICLE 2. DEFINITIONS

In the construction of this Agreement and its incorporated Exhibits, the following definitions and rules of construction shall be observed, unless inconsistent with the manifest intent of the parties or the context clearly requires otherwise. Except as otherwise provided in this Agreement, terms used in the relevant portions of the North Carolina General Statutes or the Town of Chapel Hill Land Use Management Ordinance shall have the same meanings as employed in those statutes and ordinances.

- 2.1. *Agreement.* The word "Agreement" shall mean this Development Agreement by and between the Town of Chapel Hill and the University of North Carolina at Chapel Hill.
- 2.4.2.2. *Annual Report.* The words "Annual Report" shall mean the annual report required pursuant to Section G-26 of this Agreement.
- 2.2.2.3. *Carolina North.* The words "Carolina North" and "Carolina North project" shall mean the mixed used campus proposed to be developed on the ~~Horace Williams~~Carolina North tract by the University of North Carolina at Chapel Hill.
- 2.4. *Carolina North tract.* The words "Carolina North tract" shall mean the approximately 947 acre parcel of land owned by the University of North Carolina at Chapel Hill as depicted in Exhibit A.
- 2.4.2.5. *Council.* The word "Council" or "Town Council," shall mean the legislative body of the Town of Chapel Hill, which together with the mayor shall constitute the governing body of the town.
- 2.5.2.6. *Development.* *[Note: The breadth of the term "development" that will be subject to a development agreement and to land uses not involving a building is a key point of on-going discussion. The question of what it includes and where physically that definition applies will be addressed both in both the LUMO district text and the development agreement. Several options are presented here for discussion. Also, individual standards set in the development agreement can, by mutual consent, be applied to particular activities (such as roads, parking, utilities, or greenways) irrespective of the definition chosen here.]*
- [Option A] The word "development" shall mean any activity involving, requiring, or consisting of the construction or enlargement of a building, structure, road, greenway, sidewalk, parking facility, or utility infrastructure or the clearing or alteration of land as an adjunct of such construction.
- [Option B, use the development agreement statute] The word "development has the same meaning as provided in G.S. 160A-400.21(3). It includes: The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. "Development", as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.
- [Option C, use the zoning statute, GS 160A-392] The word "development" shall mean any activity involving, requiring, or consisting of the erection, construction, and use of buildings.
- 2.6.2.7. *Effective Date.* The word "Effective Date" shall mean the effective date of this Agreement, which is _____, 2009.
- 2.7.~~Horace Williams tract~~Carolina North tract. The words "~~Horace Williams tract~~Carolina North tract" shall mean the approximately 947 acre parcel of land owned by the University of North Carolina at Chapel Hill as depicted in Exhibit A.
- 2.7.2.8. *LUMO.* The term "LUMO" shall mean the Land Use Management Ordinance of the Town of Chapel Hill in effect as of the effective date of this Agreement.
- 2.8.2.9. *Manager.* The words "Manager" or "Town Manager" shall mean the Town Manager of the Town of Chapel Hill.
- 2.9.2.10. *Nontechnical and technical words.* Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
- 2.10.2.11. *Parties.* The words "Parties" shall mean the parties to this agreement, the Town of Chapel Hill and the University of North Carolina at Chapel Hill.
- 2.11.2.12. *Project.* The word "Project" and "Carolina North project" means the Carolina North development subject to this development agreement. It includes all buildings constructed at the

Carolina North Development ~~in~~ unless specifically provide otherwise in the Agreement. It does not include a public school site or building that may be sited in the future on the Carolina North tract.

2.12.2.13. Town. The words "the Town" or "this Town" shall mean the Town of Chapel Hill in the Counties of Orange and Durham and the State of North Carolina.

2.13.2.14. University. The words "the University" shall mean the University of North Carolina at Chapel Hill.

ARTICLE 3. RECITALS

- 3.1. The University is the owner of an approximately 947 acre parcel of land located on the north side of Estes Road Extension and the west side of Martin Luther King Boulevard (hereinafter referred to as the ~~"Horace Williams Tract"~~Carolina North tract). Approximately 643 acres of this parcel is located within the corporate and regulatory limits of the Town, which portion of that parcel of land is more particularly depicted on Exhibit A attached hereto and incorporated herein by reference. Approximately 228 acres of this portion of the tract within the Town's planning and regulatory jurisdiction are included within the University's long-range development plan for academic, research, medical, cultural, and related functions with supporting housing, retail, office, recreation, and open space uses (hereinafter referred to as the 'Carolina North' project), which parcel of land is more particularly depicted on Exhibit B attached hereto and incorporated herein by reference. Within the Carolina North project, the University has developed more detailed plans for the development of a phase of the project that is covered by this Agreement, which parcel of land is more particularly depicted on Exhibit C attached hereto and incorporated herein by reference.
- 3.2. The core portion of the ~~Horace Williams tract~~Carolina North tract was acquired by the University in 1940 as a bequest from Professor Horace Williams. In the ensuing years the University acquired adjoining lands. Portions of the site have been used as an airport, landfill, Town operations center, animal shelter, and open space.
- 3.3. In the mid-1990s the University commissioned several studies and reports on the future use of the site, culminating in the September, 1998 report, "Outlying Parcels Land Use Plans: Summary Report." In 2001 the University, in consultation with University faculty, administrators, and members of the community, revised and updated the land use plans for this site, culminating in a February, 2001 land use plan for the ~~Horace Williams tract~~Carolina North tract.
- 3.4. The Town formed the Horace Williams Citizens Committee in 2003 to provide advice and recommendations regarding Town review of development proposals for this parcel and the Town Council adopted the March, 2004 final report of this Citizens Committee as Town policy.
- 3.5. In May, 2004 the University adopted a new Carolina North Conceptual Draft Master Plan.
- 3.6. In early 2006 the University formed a Leadership Advisory Committee with representation from the University, Town, other local governments, community groups, and the State of North Carolina to work towards consensus principles to guide planning for the Carolina North project. A final report of that Committee's work was issued on January 19, 2007.
- 3.7. As part of the process of then updating its plans for the ~~Horace Williams tract~~Carolina North tract, the University in 2006-07 conducted extensive studies of ecological conditions on site, utility and infrastructure needs, and sustainable design options. Four public and peer review sessions of the ecological analysis were held in November and December, 2006. The work led to the production of an Ecological Assessment Report for the Carolina North site in October, 2007.
- 3.8. In 2007 the University conducted a series of seven public workshops on plan alternatives for the ~~Horace Williams tract~~Carolina North tract. The University adopted an updated Carolina North Plan in September, 2007.
- 3.9. The Town Council and representatives of the University Board of Trustees held a work session on January 13, 2008 and agreed to work cooperatively towards design of a new Town development review process for the Carolina North project. Senior staff from the Town and University subsequently

formed a Joint Staff Work Group that met regularly over the 2008-09 period to address the Carolina North development review process.

- 3.10. In June, 2008 the Town Council authorized the Town staff to develop a proposal for a new zoning district and a development agreement as the framework for the Town's review of Carolina North development proposals.
- 3.11. On September 25, 2008 the Town Council and representatives of the University Board of Trustees began a series of monthly work sessions to discuss the Carolina North project and the Town's development review process for the project. On October 15, 2008 the Town Council authorized staff to proceed with preparation of a new zoning district and potential development agreement for this project.
- 3.12. On October 31, 2008 the University submitted to the Town a request for a new zoning district for the portion of the ~~Horace Williams tract~~ Carolina North tract within the Town jurisdiction, proposed use of a development agreement, and provided plans and background studies relative to use of the property. This submission included a Carolina North 50-year plan, planning overlays for the site, schematics and draft programs for early and mid stage development of the project, the Ecological Assessment Report (October, 2007), and draft Carolina North Design Guidelines (October 30, 2008).
- 3.13. The Town conducted public information sessions were held to advise and seek public input on the proposed process and Carolina North project on November 19, 2008, January 29, 2009, February 19, 2009, March 4, 2009, and April 1, 2009, and April 14, 2009.
- 3.14. In February, 2009, the initial draft of a potential Land Use Management Ordinance (hereinafter "LUMO") text amendment and development agreement were presented to the Town Council and public for review and discussion.
- 3.15. On March 31, 2009 a proposed Land Use Management Ordinance (hereinafter "LUMO") text amendment, zoning atlas amendment, and development agreement were presented to the Town Council. In April, 2009 Town advisory boards reviewed and prepared comments on the proposed amendments and development agreement. A public hearing was conducted by the Town Council on the proposed LUMO amendments and development agreement on May __, 2009.
- 3.16. The University has developed and approved a 50-year Carolina North development plan for approximately 250 acres of the ~~Horace Williams tract~~ Carolina North tract. This plan focuses development on the previously disturbed areas of the ~~Horace Williams tract~~ Carolina North tract, with development concentrated on approximately 228 acres. This development area is adjacent to the existing adjacent major road network. The long-range development plan anticipates some 8 to 9 million sq. ft. of floor space over a fifty year period. This plan is based on an extensive ecological assessment of the site, a detailed infrastructure analysis, and a series of public workshops. The University's Long-range Plan for Carolina North contemplated as of the Effective Date is set forth as Exhibit D attached hereto and incorporated herein by reference. The University also developed design guidelines for the Carolina North project, which are set forth as Exhibit E attached hereto and incorporated herein by reference.
- 3.17. The initial phase of the Carolina North project involves the construction of approximately 3 million sq. ft. of building space on approximately 133 acres over a twenty year period. This phase of the development proposed that the site's predominant uses be public or private development for college/university, research activity, civic, hospital, clinics, cultural, and/or related or support functions with integrated supporting housing, general business, convenience business, office-type business, recreation, utility and/or open space uses. The plan for this portion of the Carolina North project contemplated as of the Effective Date, which is the development subject to this Agreement, is set forth as Exhibit F attached hereto and incorporated herein by reference.
- 3.18. The purpose of this Agreement is to facilitate the implementation of the initial phase of the Carolina North project, thereby realizing the public benefits to the Town and the University described in this Agreement. The development of Carolina North requires a major investment by the University in public facilities, substantial front-end investment in on-site and off-site improvements, participation in other programs for public benefit and purposes and substantial commitments of the resources to achieve the benefits of the Project for the University and the Town. The University will be unable to make and realize the benefits from such commitments without the assurances of a realized Project as provided

by this Agreement.

- 3.19. The general benefits to be received by the Town from the implementation of the Project include, without limitation:
- a. Implementation of the Carolina North plan and furthering the goals of securing an appropriate mix of uses and densities on the site.
 - b. Protection of natural resources within of the ~~Horace Williams tract~~ Carolina North tract beyond the area included within the ~~development agreement~~ Agreement, minimization of adverse off-site impacts, and incorporation of sustainability principles in the design and implementation of the Project.
 - c. Provision of an efficient, effective, and practical overall plan for addressing the transportation needs of the Project, including commitments to transit, bikeways, greenways, sidewalks, and road improvements.
 - d. Assurance that the Project will be undertaken in a manner that does not cause undue adverse fiscal impacts for the Town.
 - e. Establishment of integrated site plans, urban design elements, land uses, architecture, site engineering, and landscape architecture.
 - f. Provision of sufficient certainty, timeliness, and predictability to the University in the development process to induce the University to incur substantial commitments to public infrastructure and amenities.
 - g. Assurance that the University provides the herein referenced public improvements, facilities, and services.
- 3.20. The general benefits to be received by the University from the implementation of the Project include without limitation:
- a. Obtaining sufficient certainty, timeliness, and predictability in the Town's development review and approval process to justify the required substantial up-front capital investment for a project that will require multiple years to build out.
 - b. Realization of the opportunity to implement the Carolina North development plan for a mixed use campus development that is consistent with Town and University goals and needs.
 - c. Securing development rights for up to three million square feet of buildings and associated development in accordance with an approved plan of development.
 - d. Integration of site plans, urban design elements, land uses, architecture, site engineering, landscape architecture, and mitigation measures over the entire Project.
- 3.21. In exchange for providing these benefits to the Town, the University desires to receive the assurance that it may proceed with the development of the Project in accordance with any and all existing Town development regulations and conditions of approval of the Town as they exist on the Effective Date, subject to the terms, conditions, and exceptions contained herein.
- 3.22. After careful review and deliberation, the University has determined that the latitude afforded the proposed Carolina North development plan and the certainty, timeliness, and predictability regarding Town development approval afforded by this Agreement provide important benefits for long-range University planning and development and justify the provision of the mitigation measures specified by this Agreement, which the University freely and with full knowledge and consent agrees to provide.
- 3.23. The terms and conditions of this Agreement have undergone extensive review by the Town's staff, advisory boards, and the Town Council and have been found to be fair, just and reasonable. After careful review and deliberation, the Town Council has determined and concluded that:
- a. the University plans for development of the Project are consistent with the adopted plans and development ordinances of the Town.
 - b. the Project, with the terms and limitations of this Agreement, will further the Town's land use planning objectives and policies as set out in these documents and will protect the health, safety, welfare and economic well being of the Town and its citizens and will maintain the overall quality of life and of the environment within the Town.
 - c. the series of mitigation measures set forth in this Agreement are necessary to minimize the anticipated adverse impacts of the Project on the environment, on surrounding neighborhoods and the community, on the Town's traffic conditions, and on the levels of public services and facilities within the Town.
 - d. the Project as approved and conditioned by this Agreement presents a unique opportunity for the

Town to secure quality planning and growth, to protect the environment, to strengthen the tax base and to acquire those public amenities described in this Agreement through the development approval process.

e. the Project plan as approved and conditioned by this Agreement is in the best interest of the Town and its citizens.

- 3.24. The Town, by electing to enter into this Agreement in accordance with statutory procedures, acknowledges that the obligations of the Town shall survive beyond the term or terms of the present Town Council and that such action will serve to bind the Town and future councils to the obligations thereby undertaken. By approving this Agreement, the Town Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date.
- 3.25. Based on the foregoing considerations, the University and the Town desire to enter into this Agreement for the purposes of:
 - a. agreeing upon the plan, design, and density of development on the relevant parcels of land and the types of uses thereon;
 - b. coordinating the construction and provision of infrastructure that will serve the above-described development and the community at large;
 - c. confirming the dedication and/or provision of the public amenities described herein; and
 - d. providing assurances to the University that it may proceed with the development of the Project in accordance with the terms of this Agreement without encountering future changes in ordinances, regulations or policies that would affect their ability to develop the relevant parcels under the approved rezoning and the terms of this Agreement.
- 3.26. Pursuant to G.S. 160A-400.24, the Town Council conducted a public hearing on May __, 2009 to consider the approval and execution of this Agreement. The notice of public hearing specified, among other things, the location of the parcel of land subject to this Agreement, the development uses proposed on the parcels of land and a place where a copy of the proposed Agreement could be obtained.
- 3.27. On June __, 2009, the Town Council considered and approved this Agreement and the Town's execution of the same. The approval of this Agreement constitutes a legislative act of the Town Council.

ARTICLE 4. TERMS

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

- 4.1. Recitals. The parties agree the foregoing Recitals are true and correct.
- 4.2. Term. The term of this Agreement shall commence upon the Effective Date and it shall terminate twenty (20) years thereafter unless sooner terminated by the mutual consent of the parties hereto or their successors in interest or is otherwise terminated pursuant to the terms of this Agreement. This term has been established by the parties as a reasonable estimate of the time required to carry out the Project subject to this Agreement and to obtain the public benefits of the Project. The Town finds that a term of this duration is reasonably necessary to assure the Town of the realization of the public benefits from the Project.
- 4.3. Zoning of the Property. On June __, 2009, concurrently with the approval of this Agreement, the Town Council rezoned the portion of the ~~Horace Williams Tract~~ Carolina North tract located within the Town's planning and zoning jurisdiction to the University-1 (U-1) zoning district. The development allowed pursuant to this Agreement is consistent with the currently existing provisions of the U-1 zoning district and all other applicable provisions of the Town of Chapel Hill Land Use Management Ordinance (hereinafter "LUMO").
- 4.4. Development of the Property. The Project subject to this Agreement shall be developed in accordance with the terms and conditions of the LUMO in effect as of the Effective Date and with the terms and conditions of this Agreement, including all incorporated Exhibits. The maximum height, bulk, size, and

design of buildings and the placement, location, and configuration of the development sites, infrastructure, open space, streets, sidewalks and other public improvements shall be in substantial compliance with this Agreement, subject, however, to any rights the University may have to make adjustments to the same as provided in Section 3.5.5 of the LUMO. Development shall be substantially consistent with that depicted on the Long-range Plan for Carolina North, which is set forth as Exhibit D attached hereto and incorporated herein by reference. Development shall be substantially consistent with the approved Carolina North Design Guidelines, which are set forth as Exhibit E attached hereto and incorporated herein by reference. Development shall be substantially consistent with the plan for the portion of the Carolina North that is subject to this Agreement, which is set forth as Exhibit F attached hereto and incorporated herein by reference.

- 4.5. Uses. The Project shall be devoted to those uses that are allowed under Section 3-3-5 of the LUMO for the U-1 zoning district.
- 4.6. Specific standards for development. The development of the Project shall be in substantial compliance with the specific standards and mitigation measures approved by the Town and the University as set forth in Exhibit G, attached hereto and incorporated herein by reference.
- 4.7. Development Schedule. The Project shall substantially comply with the specific timetables and triggers for action set forth in Exhibit G. The parties acknowledge that, as provided in G.S. 160A-400.25(b), the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of this Agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances.
- 4.8. Law in Effect at Time of the Agreement Governs the Development. Pursuant to G.S. 160A-400.26 and except as provided in G.S. 160A-400.29(b), the Town may not apply subsequently adopted ordinances or development policies to the Project during the term of this Agreement without the written consent of the University or its successors in interest. Accordingly, the University and its successors in interest shall have a vested right to develop the Project in accordance with the terms of this Agreement and the terms of the LUMO and any applicable laws and regulations as they exist as of Effective Date during the entire term of this Agreement. This Agreement does not abrogate any rights that may vest pursuant to statutory or common law or otherwise in the absence of this Agreement. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In accordance with G.S. 160A-400.26(c), in the event State or federal law is changed after the Effective Date and the change prevents or precludes compliance with one or more provisions of this Agreement, the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the Agreement, by ordinance after notice and a hearing. A certified copy of the LUMO and any other applicable Town ordinances in effect as of the Effective Date shall be provided to and maintained on file by the Town Clerk and the University Secretary.
- 4.9. Local Development Permits. In accordance with G.S. 160A-400.25(a)(6), the local development permits approved or needed to be approved for the development of the Project are set forth as Exhibit H attached hereto and incorporated herein by reference. The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the University of the necessity of complying with their permitting requirements, conditions, terms or restrictions. The Town shall exercise reasonable diligence to expedite the processing of the required permit and approval applications for the development of the Project. The University shall in a timely manner provide the Town with all documents, applications, plans, and other information necessary for the Town to carry out its obligations hereunder.
- 4.10. Amendment. The terms of this Agreement shall be reviewed by the Town and the University every three years and it may be amended by the mutual consent of the parties hereto or their successors in interest. A major amendment of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement, as are set forth in Section 3.5.5 of the LUMO. Any amendment that substantially affects the American College and University Presidents' Climate Change Commitment shall be deemed a major amendment. A minor modification pursuant to Section 3.5.5 of the LUMO shall not be considered to be an amendment to this Agreement. All minor modifications approved by the Town shall be memorialized by letter from the Town Manager and acknowledged by the University and shall be maintained on file by the Town Clerk and University Secretary.

- 4.11. Recordation/Binding Effect. Within fourteen (14) days after the Town enters into this Agreement, the University shall record this Agreement in the Orange County Public Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto. All of the provisions of this Agreement shall be enforceable during the term as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Provided, the University's benefits under this Agreement shall inure only to those whom the University has expressly assigned them and only to the extent of the assignment. This Agreement shall be applicable to the air rights associated with land subject to the Agreement. This Agreement shall be applicable to lessees of property subject to this Agreement.
- 4.12. Annual Report. The University shall ~~on an annual basis, within thirty (30) days after each anniversary of the Effective Date, commencing with the first anniversary after the Effective Date,~~ submit a written report to the Town Manager on the development undertaken pursuant to this Agreement in the previous year. The report shall set forth all building individual site development permits issued, infrastructure installed, the status of participation by the University in the provision of or financing of public infrastructure for this Project, dedications and acquisitions of infrastructure by the University, and the projected schedule for development of the Project in the forthcoming year. This report shall include all of the information required pursuant to Section G-26 of the Agreement and shall be provided at the times specified by that Section. This report shall also include a report demonstrating good faith compliance by the University with the terms of this Agreement. Upon receipt of the report, the Town Manager shall undertake the Periodic Review as set forth in Section 4.13 of this Agreement.
- 4.13. Periodic Review. Pursuant to G.S. 160A-400.27, the Town Manager shall conduct a periodic review (the "Periodic Review") at least every twelve (12) months, at which time the University shall be required to demonstrate good faith compliance with the terms of this Agreement. The Town Manager shall promptly report the results of this review to the Town Council. If, as a result of the Periodic Review, the Town Council finds and determines that the University has committed a material breach of the terms or conditions of the Agreement, the Town Manager shall serve notice in writing, within a reasonable time after the Periodic Review, upon the University setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the defaulting Party a reasonable time in which to cure the material breach. If the University fails to cure the material breach within the time given, then the Town Council unilaterally may terminate or modify the Agreement, provided, however, that the notice of termination or modification or finding of breach may be appealed to the Town Board of Adjustment in the manner provided by G.S. 160A-388(b). Thereafter the University may pursue any other rights and remedies available at law or in equity. If the Town Council elects to unilaterally modify the Agreement, the University may elect for the Agreement to be terminated rather than accede to the Agreement with the modifications made by the Town Council. Failure of the Town to conduct this Periodic Review shall not constitute a waiver by the Town of its rights to otherwise enforce the provisions of this Agreement, nor shall the University have or assert any defense to such enforcement by reason of such failure to conduct a periodic review.
- 4.14. Mediation. In the event either Party believes the other Party is in default or is in material breach, the Parties shall make a good faith effort to negotiate and informally resolve the issues in dispute prior to terminating this Agreement.
- 4.15. Development Timing and Moratoria. The University may develop all or any portion of the Project approved pursuant to this Agreement and may carry out the development in such order and sequence as the University shall determine in its discretion, provided such does not violate an express provision of this Agreement. Phasing of the development shall be based on sound engineering practices to ensure functional and safe street circulation and utility systems at all times. Phasing shall be based in such a way that all infrastructure improvements to be constructed within the Project area will be provided when or before they are necessary for that phase of the development. Absent an imminent threat to public health or safety, neither the right to develop nor the timing of development shall be affected by a moratorium or suspension of development rights adopted by the Town except to the extent imposed by this Agreement or by supervening federal or state law, order, rule or regulation.
- 4.16. Default. Apart from the Periodic Review process set forth in Section 4.13 of this Agreement, the failure of the University or the Town to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting Party or Parties to pursue such remedies as allowed under applicable law

against the defaulting Party, provided, however, that no termination of this Agreement may be declared by the Town or the University absent its according to the defaulting Party the notice and opportunity to cure set out in Section 4.13 of this agreement. A Party believing the other Party to be in default shall provide reasonable notice of that to the other Party and shall provide that Party an opportunity to cure any default within a reasonable time.

- 4.17. Force majeure. In addition to specific provisions of this Agreement, neither the University nor the Town shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Party's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities (excluding parties to this Agreement), epidemics, wars, embargoes, fires, hurricanes, acts of God or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such Party's reasonable control, any date or times by which the parties are otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Party. If written notice of such delay is given to the other Party after the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed.
- 4.18. Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the University and the Town, or to impose any partnership obligation or liability upon such parties. Neither the University nor the Town shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 4.19. No Third Party Beneficiaries. The Agreement is not intended to and does not confer any right or benefit on any third party.
- 4.20. Legal Actions. In addition to any other rights or remedies, any Party may institute legal action against a defaulting Party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. In no event shall the Town or the University, or their respective officers, agents, or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the sole legal remedy available to the Parties for a breach or violation of this Agreement shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of North Carolina, and the Parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction. In the event that it becomes necessary for a Party to pursue a civil action against a defaulting Party, the prevailing Party in such action shall be entitled to recover its reasonable attorney fees and costs from the defaulting Party if such fees are awarded by a court of competent jurisdiction.
- 4.21. Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a signatory Party is required to or may give to another signatory Party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. Parties shall make reasonable inquiry to determine whether the names or titles of the persons listed in this Agreement should be substituted with the name of the listed person's successor.

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

Town Manager
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd.
Chapel Hill, NC 27514-5705

919-969-2063 (fax)

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

Vice Chancellor for Finance and Administration
UNC-CH
300 South Building
Chapel Hill, N.C. 27599-1000
919-962-0647 (fax)

- 4.22. Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the Town and the University relative to the Project and supersedes all previous agreements. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein or as contained in the LUMO or as expressed in the development conditions applicable to this parcel of land.
- 4.23. Construction. The parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.
- 4.24. Assignment. After notice to the Town, the University may assign its respective rights and responsibilities hereunder to subsequent land owners of all or any portion of the relevant parcels of land, provided that no assignment as to a portion of the relevant parcel of land will relieve the assigning Party of responsibility with respect to the remaining portion of the relevant parcel of land owned by the assigning Party without the written consent of the Town.
- 4.25. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.
- 4.26. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 4.27. Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each Party shall retain the right to pursue its own independent legal defense.
- 4.28. Termination. This Agreement shall terminate on the earlier of the expiration of the term specified in Section 4.2 of this Agreement, a specific termination made by operation of the provisions of this Agreement, or when the Project has been fully developed and all of the University's obligations in connection with this Project are satisfied as mutually determined by the Town and the University. Termination of this Agreement as to the University or the portion of the Carolina North property subject to this Agreement shall not affect any requirements to comply with the applicable terms and conditions of the LUMO, site development permits, approval and acceptance of infrastructure improvements, and any applicable permits, nor shall it affect any other covenants of the University specified in this Agreement to continue after termination of this Agreement.
- 4.29. No Obligation to Develop. It is understood that the University's development of the Project depends upon a number of factors including, but not limited to, the availability of financing, state appropriations, receipt funds, general economic factors, and academic and programmatic needs. Nothing in this Agreement shall be construed as requiring the University to develop the subject property and any failure to develop the subject property shall not be deemed a default by the University of its obligations set forth in this Agreement.
- 4.30. No Deemed Waiver. Failure of a Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.
- 4.31. Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The Parties

agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.

- 4.32. Authority. Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind the Town or the University.

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

Town of Chapel Hill

By: _____
Title: _____

The University of North Carolina at Chapel Hill

By: _____
Title: _____

=====
State of North Carolina
County of Orange_

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that he or she is _____ of the University of North Carolina at Chapel Hill and acknowledged, on behalf of the University of North Carolina at Chapel Hill, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the _____ day of _____, 2009.

My Commission Expires: _____
_____ Notary Public

=====
State of north Carolina
County of Orange

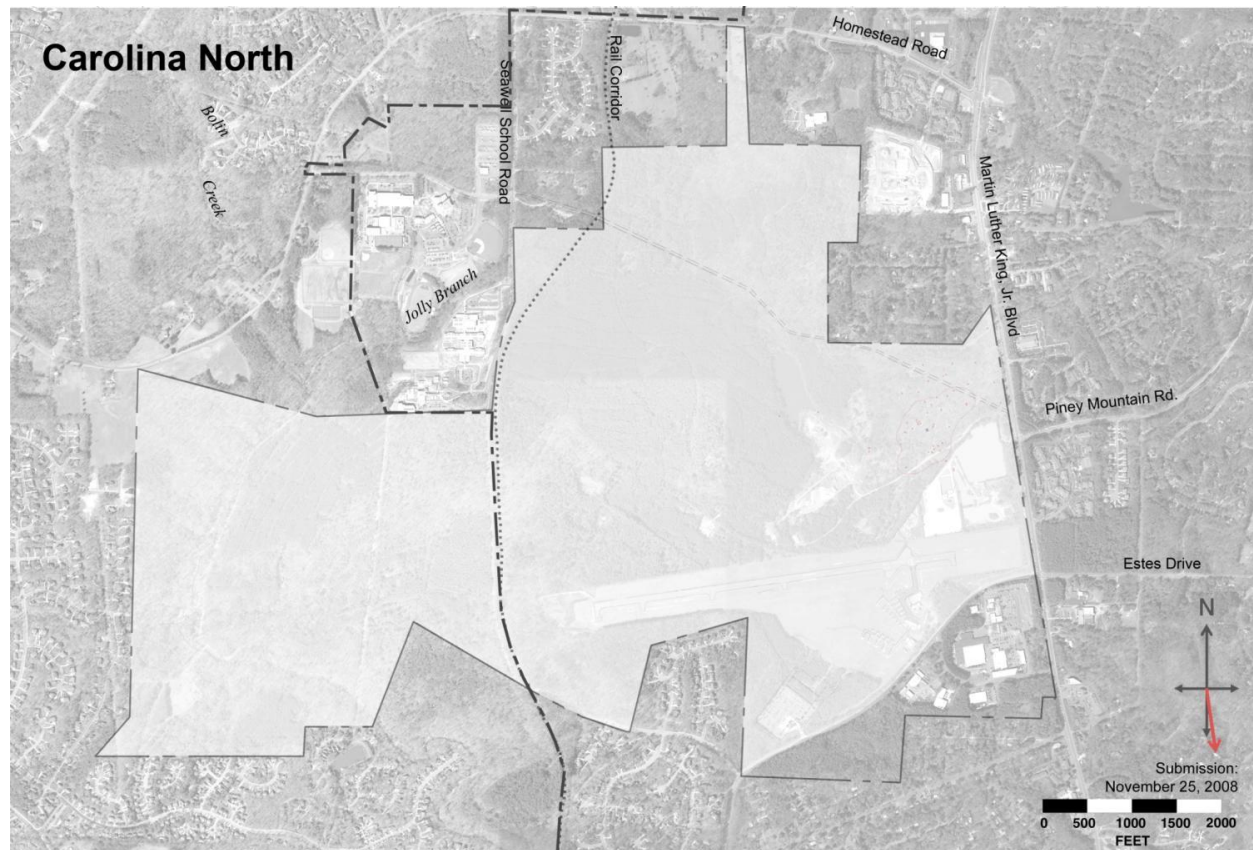
I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that he or she is _____ of the Town of Chapel Hill and acknowledged, on behalf of the Town of Chapel Hill, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the _____ day of _____, 2009.

My Commission Expires: _____
_____ Notary Public

EXHIBITS INCORPORATED BY REFERENCE

- EXHIBIT A. Map and Description of Entire ~~Horace Williams Tract~~Carolina North tract, Including depiction of the Portion of ~~Horace Williams Tract~~Carolina North tract within the Town of Chapel Hill Planning and Development Regulation Jurisdiction
- EXHIBIT B. Map and Description of the Portion of the ~~Horace Williams Tract~~Carolina North tract with the Long-Range Plan of Development for Carolina North
- EXHIBIT C. Map and Description of the Portion of the Carolina North Project Addressed by this Development Agreement
- EXHIBIT D. Long-range Plan for Carolina North
- EXHIBIT E. Design Guidelines for Carolina North
- EXHIBIT F. Plan for the Portion of Carolina North Subject to this ~~Development Agreement~~Agreement
- EXHIBIT G. Specific Standards and Mitigation Measures for the Portion of the Carolina North Development Subject to this ~~Development Agreement~~Agreement
- EXHIBIT H. Local Development Approvals and Permits Required for the Carolina North Development Subject to this ~~Development Agreement~~Agreement
- EXHIBIT I. American College and University Presidents' Climate Change Commitment

EXHIBIT A. Map and Description of Entire ~~Horace Williams Tract~~ Carolina North tract

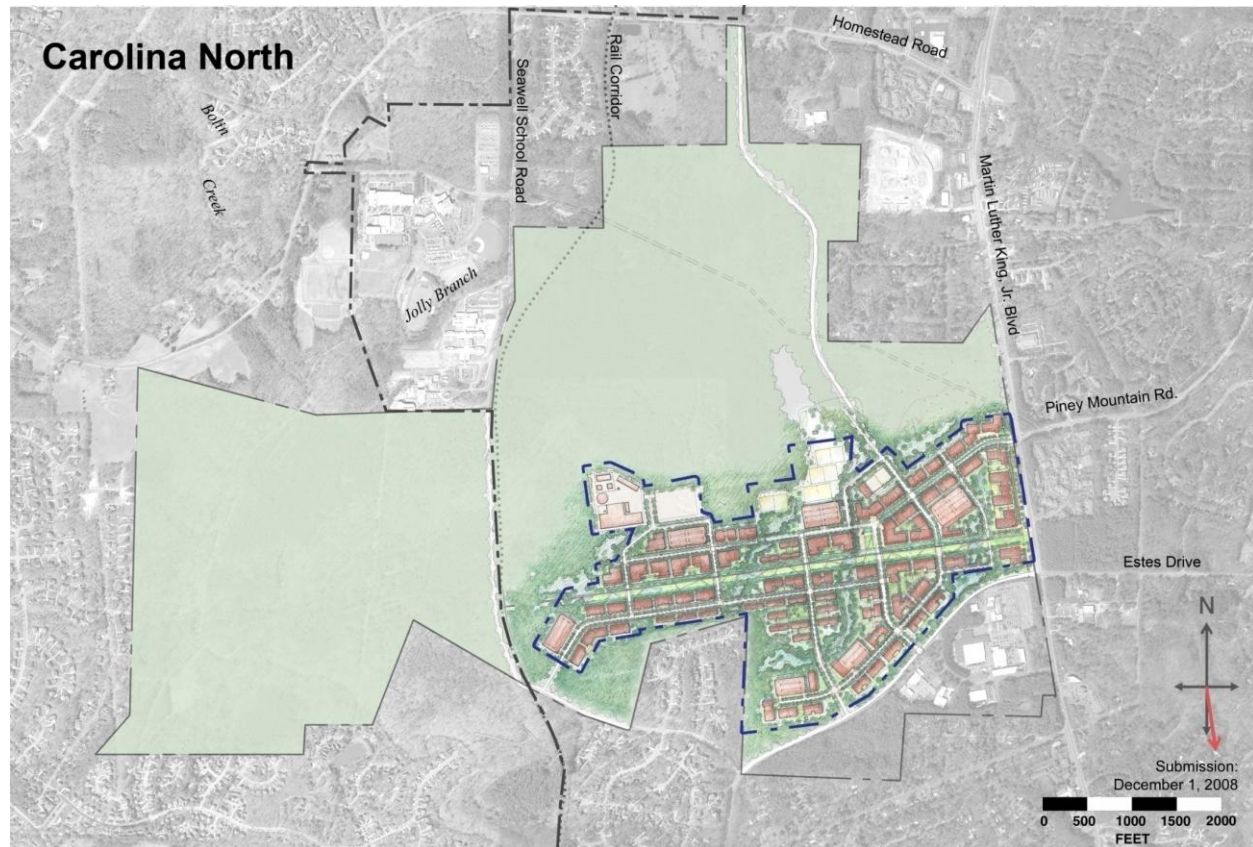


Property Boundary (approximately 947 acres)

Approximately 304 acres in Carrboro jurisdiction

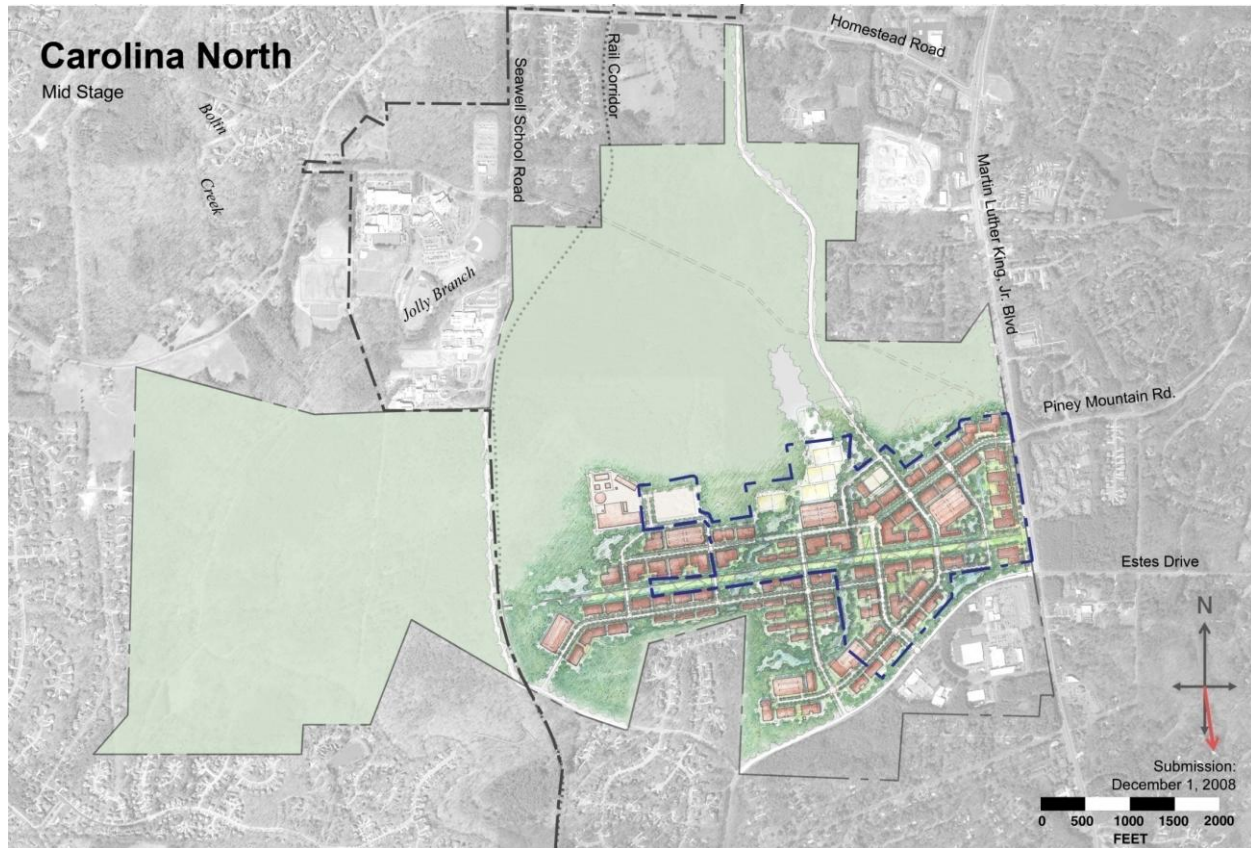
Approximately 643 acres in Chapel Hill jurisdiction

EXHIBIT B. Map and Description of the Portion of the Horace Williams Tract Carolina North tract with the Long-Range Plan of Development for Carolina North



Long-range Development Plan Showing Development Anticipated within Fifty Years
Plan Boundary (approximately 228 Acres)

EXHIBIT C. Map and Description of the Portion of the Carolina North Project Addressed by this ~~Development Agreement~~Agreement



Area Subject to ~~Development Agreement~~Agreement

Approximately 133 acres

Provides for up to three million sq. ft. building space

EXHIBIT D. Long-range Plan for Carolina North

[Insert copy of approved development plan, substantially similar to 9/26/07 BOT adopted plan as modified,]

DRAFT

EXHIBIT E. Carolina North Design Guidelines

[Insert copy of approved design guidelines, substantially similar to 10/30/08 draft, as modified.]

DRAFT

EXHIBIT F. Plan for the Portion of Carolina North Subject to this ~~Development Agreement~~Agreement

[Insert plan for the portion of the Carolina North project included within the Agreement.]

[Substantially similar to the site plan depicted within the Exhibit C boundary map.]

DRAFT

EXHIBIT G. SPECIFIC STANDARDS AND MITIGATION MEASURES FOR THE PORTION OF THE CAROLINA NORTH DEVELOPMENT SUBJECT TO THIS AGREEMENT

[Note: The standards set out below are based on discussions by the Town Council, University Board of Trustees, Town and University staff, and public comment. As with the entire agreement, they are set forth for discussion only. These provisions have not been approved by the Town Council or University Board of Trustees. It is anticipated that an updated version of these standards will be included in a proposed development agreement that will be submitted in late April 2009 for formal review by the town advisory boards and the public in May and June 2009.]

1. Scale of Development Approved

Draft Standard:

G.1.1. The development approved pursuant to this Agreement shall not exceed three million square feet of floor space on an approximately 133 acre site located in the southeast corner of the overall Carolina North tract. This development area is depicted in Exhibits C and D. Provided, the square footage and acreage limits of this section do not apply to a public school site or school building as may be undertaken by the Chapel Hill-Carrboro school district pursuant to Section 14 of this Exhibit. The development approved pursuant to this Agreement may proceed in distinct phases. This Agreement also includes specific thresholds that require specified actions prior to continuing with additional development. Development beyond a specified threshold shall only be approved upon a conclusion by the Manager that the specified conditions to proceed have been met.

2. Uses Permitted

Draft Standard:

G.2.1. The land uses permitted by this Agreement are limited to those allowed under the LUMO in the U-1 zoning district. These uses include public or private development for college/university, research activity, civic, hospital, clinics, cultural, and/or related or support functions with integrated supporting housing, general business, convenience business, office-type business, recreation, utility, and/or open space uses.

3. Mix of Uses

Draft Standard:

G.3.1. The development approved pursuant to this Agreement shall incorporate a mix of uses at all major phases of development.

4. Housing

Draft Standard:

G.4.1. A minimum of 25% of the total floor space in the Carolina North project covered by the Agreement shall be devoted to housing.

G.4.2. Once the total built square footage within the Carolina North project reaches 800,000 square feet, if the total square footage of building space devoted to housing drops to 15% or less of the built floor area, construction of non-housing space shall halt until the housing space is at least 20% of the built space. In the event a certificate of adequacy of public school facilities pursuant to the Adequate Public School Facilities section of the LUMO is not available, the provision of housing at Carolina North may be deferred until such time as a certificate is available.

G.4.3. A preference for housing availability with the Carolina North project shall be given to students and employees of the University, UNC HealthCare, and persons with an active connection to the Carolina North project (such as employees or researchers engaged in work or activity on the Carolina North site). A secondary priority shall be given to other public employees working within the Town. Prior to the approval of the first individual site development plan under this Agreement that includes housing, the University shall submit a plan for providing these preferences. The Manager shall approve that plan upon determining that it effectively addresses the requirements of this Section of this Exhibit.

G.4.4. The housing provided within the Carolina North project shall have a full range of affordability. At a minimum, the housing provided shall meet the Town affordable housing goals as set forth in the Town's comprehensive plan and ordinances in effect as of the date of this agreement. Prior to the approval of the first individual site development plan under this Agreement that includes housing, the University shall secure the Manager's approval of the measures the University will use to maintain housing affordability over time. To secure the Manager's approval, the University shall submit a report of the measures it will undertake and the Manager shall approve those measures if they are reasonably designed to meet the applicable affordability goals.

G.4.5. All housing provided within the Carolina North project shall be in the form of compact, multi-family units. All housing shall meet the energy efficiency and sustainability standards specified in Section 9 of this Exhibit.

G.4.6. The University shall provide on-site parking to support the on-site housing.

G.4.7. The University's requirements pursuant to this Section to provide employee and graduate student housing to account for population at Carolina North may be met by provision of housing on the Carolina North site or through the provision of new housing at the University Square property on Franklin Street.

5. Preservation of Open Space and Natural Areas

Draft Standard:

G.5.1. *Conservation Area.* [*Option A:* The University shall convey] [*Option B::* Subject to obtaining any required State of North Carolina approval, the University shall convey] a conservation easement in perpetuity to the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9. This conservation easement shall allow the University to undertake appropriate research and educational activities within the area covered by the easement. This conservation easement shall not preclude utility and road crossings that are consistent with the provisions of the Resource Conservation District provisions of Section 3.6.3 of the LUMO.

This conservation easement shall cover the following critical natural areas located within [*Option A*: the Carolina North tract] [*Option B*: the portion of the Carolina North tract located within the Town land use regulatory jurisdiction]. Those lands identified as Category D and Category E areas in the Land Suitability Index Category on page 10 of the Ecological Assessment report dated October 2007 (approximately xxx acres). A map generally identifying these lands is attached to the Exhibit as Map G-1.

[alternative: Those lands identified as Most Suitable for Conservation (EW) in the Weighted Analysis Land Areas by Land Suitability Index Category set forth on page 11 of the Ecological Assessment report dated October 2007 (approximately xxx acres). A map generally identifying these lands is attached to the Exhibit as Map G-1.]

A copy of the recorded conservation easement shall be submitted to the Manager prior to the issuance of the initial site development permit within the Carolina North project. Provided, this conservation easement shall not be required to be conveyed to the receiving entity prior to the issuance of a required state or federal permit for wetland alteration on the Carolina North site in order that this easement can be considered a mitigation measure for development of the Carolina North project.

G.5.2 Limited Development Area. For the land area that is not included in a conservation easement pursuant to Section G.5.1 of this Exhibit, except as specifically provided within this Agreement no development shall be constructed prior to July 1, 2059 on any portion of the Carolina North tract not included in the approximately 228 acre site included in the 50-year development plan for Carolina North as depicted in Exhibit B.

This restriction shall not be applicable to:

- (a) Uses identified as permitted uses for the U-1 zoning district (child day care or adult day care facility; community gardens; geothermal generation of heat or power; local farmers markets; recreational facility, non-profit; school, elementary or secondary; trails, greenways, and recreational land; public use facilities; solar power plants; specified radio, television, or wireless transmitting and/or receiving facilities; transit hubs; water reclamation facilities; and specified wind turbines.
- (b) Buildings, development, or activities specifically provided for in other Sections of this Exhibit.
- (c) Parking of [*specify number*] spaces or less designed to support permitted activities on the Carolina North tract (such as limited parking at trailheads or at recreational or athletic facilities).
- (d) Utilities to support development approved pursuant to this Agreement.
- (e) Public art.

G.5.3. Developed Area. For the portion of Carolina North that is subject to this Agreement, except as specifically provided within this agreement no development shall be constructed in areas identified as “open space,” “working landscapes,” or “recreational fields” on the development plan (Exhibit F). This restriction does not include minimal development associated with walking paths, stormwater management, wastewater treatment, low impact recreational opportunities (and associated support structures), shallow groundwater recharge, native plant nurseries, native habitat for targeted species, and ecological research and learning activities.

6. Stormwater Management

Draft Standard:

G.6.1. Stormwater management shall be integrated into the site, building and landscape design. Stormwater management strategies shall be coordinated and applied in a comprehensive manner across Carolina North. A conceptual stormwater management plan for the entire Carolina North project shall be submitted with the initial site development plan application.

G.6.2. The University shall identify the stormwater impacts and document on individual site development permit applications how those stormwater impacts will be mitigated. Stormwater management plans will meet agreed upon performance criteria, applicable NPDES permit requirements, applicable N.C. Division of Water of Quality rules, and applicable state law (including the Jordan Water Supply Nutrient Strategy requirements as may be adopted by rule or statute).

G.6.3. Stormwater design criteria shall address peak rates, volume, and quality (including rain harvesting, water reuse, and mitigation of off-site flooding). The design criteria to address those three areas and the requirements for stormwater submittals shall be as agreed upon by Town and University Stormwater staff and documentation shall be provided with each individual site development permit application.

G.6.4. The on-site stormwater management program shall include state of the art stormwater management.

G.6.5. The University shall be responsible for maintenance of all stormwater facilities on its property. Stormwater detention, retention, or treatment facilities shall not be located in any street rights-of-way maintained by the Town unless mutually agreed upon but may be located within rights-of-way maintained by the University. Stormwater requirements shall not contain a setback from roadways but may contain a setback from adjacent property owners.

G.6.6. Stormwater facilities shall not be located in the Resource Conservation District streamside zones established in the LUMO or as restricted by applicable Jordan Water Supply Nutrient Strategy rules or statutes.

7. Stormwater Utility

Draft Standard:

G.7.1. The University and Town acknowledge that both entities operate stormwater programs that include responsibilities pursuant to their respective NPDES Phase II stormwater permits, their stormwater infrastructure maintenance responsibilities, sustainable program practices, and other state and federal requirements. The University stormwater program includes many, but not all, services that would otherwise be provided by the Town.

G.7.2. Prior to the approval of the first individual site development plan pursuant to this Agreement, the University shall secure the Manager's approval of a cost sharing agreement for stormwater utility functions. This agreement shall document the stormwater utility services provided by the University and Town, their costs, and provisions for University financial contributions for services provided by the Town and credits for services provided by the University. The Manager shall approve the

agreement if it reasonably provides for equitable cost-sharing based on the respective duties and financial obligations of the Town and University.

8. Transportation: Transit, Parking, Streets, Sidewalks

Draft Standard:

G.8.1. The traffic and pedestrian improvements included in the special use permit issued on January 9, 2009 for the Innovation Center located on the Carolina North site are incorporated into and made a part of this agreement. These required improvements include:

- (a) Closure of Existing Curb Cut and Closure of Public Access to Property to the North: That the existing curb cut for Municipal Drive shall be closed at the intersection with the new entrance drive and the immediate area around the restored curb shall be landscaped to prevent access. The new entrance drive shall not provide direct access to the existing asphalt and gravel pavement on property adjacent to the north of the proposed Special Use Permit boundary.
- (b) New Access Drive: That the new access drive (relocated Municipal Drive) shall be designed and built to Town standards, and to accommodate transit service, with the understanding that initially the road will be owned and maintained by the University, but may later be dedicated as a public roadway. The final design of the roadway for this project shall be reviewed and approved by the Town Manager and NCDOT prior to the issuance of a Zoning Compliance Permit. The construction must be completed prior to occupancy of this building.
- (c) Sidewalk Along Martin Luther King Jr. Boulevard: That prior to occupancy of this building, a public sidewalk with a minimum width of 5 feet shall be built along the west side of Martin Luther King Jr. Boulevard from Estes Drive to the existing bus stop just north of the northern boundary of the Innovation Center development. The location and design of the sidewalk shall be consistent with the NC 86 Bicycle and Pedestrian Corridor Plan. The final design of the sidewalk plans must be reviewed and approved by the Town Manager and N.C. Department of Transportation prior to the issuance of a Zoning Compliance Permit. The University shall be responsible for the perpetual maintenance of the sidewalks. Public access shall be provided for sidewalk sections that are not located in public right-of-way.
- (d) Sidewalk Along the Entrance Drive: That prior to the occupancy of this building, a sidewalk with minimum width of 5 feet shall be built along the northern edge of the new drive (relocated Municipal Drive) from Martin Luther King Jr. Boulevard to the western boundary of this development. The final design of the sidewalk plans must be reviewed and approved by the Town Manager and N.C. Department of Transportation prior to the issuance of a Zoning Compliance Permit. The University shall be responsible for the perpetual maintenance of the sidewalks. Public access shall be provided for sidewalk sections that are not located in public right-of-way.
- (e) Bike Lane and Curb and Gutter: That prior to occupancy of this building, the applicant shall install a 5-foot bike lane and curb and gutter along the University property frontage on western side of Martin Luther King Jr. Boulevard, with the design approved by the Town Manager and NCDOT; or prior to the issuance of a Zoning Compliance Permit, the applicant shall provide a payment for the same, with the payment based on design consistent with the NC 86 Bicycle and Pedestrian Corridor Study Plan, with the design to be reviewed and approved by the Town Manager and NCDOT.

- (f) Pedestrian Refuge Island in Martin Luther King Jr. Boulevard: That prior to the issuance of Zoning Compliance Permit for this building, the applicant shall provide a payment of \$50,000 for construction of a pedestrian refuge island in Martin Luther King Jr. Boulevard between Piney Mountain Road and Estes Drive.
- (g) Street and Sidewalk Lighting Plans: That prior to occupancy of this building, the applicant shall design and install street lights along the property frontage on west side of Martin Luther King Jr. Boulevard including the intersection of Piney Mountain Road. Pedestrian lighting shall also be provided for the sidewalk at any location where conditions warrant additional illumination for the pedestrians. The design and construction must be reviewed and approved by the Town Manager, N.C. Department of Transportation, and Duke Energy. The Town shall be responsible for the operating costs of the lights installed in the public right-of-way.
- (h) Traffic Signal Improvements at Martin Luther King Jr. Boulevard and Piney Mountain Road Intersection: That prior to occupancy of this building, the applicant shall upgrade the existing traffic signals with: (1) Pedestrian amenities on all approaches of the intersection including street imprint for all crosswalks, countdown heads, and audible pedestrian signals; (2) Bicycle activated loops on side streets (Piney Mountain Road and relocated Municipal Drive); and (3) New traffic signals phasing as determined by the Town Manager and N.C. Department of Transportation. The design of the improvements shall be reviewed and approved by the Town Manager and NCDOT prior to the issuance of a Zoning Compliance Permit.
- (i) Traffic Signal Improvements at Martin Luther King Jr Boulevard and Estes Drive Intersection: That prior to occupancy of this building, the applicant upgrade the existing traffic signal with: (1) Pedestrian amenities on all approaches of the intersection including street imprint for all crosswalks, countdown heads, and audible pedestrian signals; (2) Bicycle activated loops on side streets (both legs of Estes Drive); and (3) New traffic signals phasing as determined by the Town Manager and N.C. Department of Transportation. The design of the improvements shall be reviewed and approved by the Town Manager and NCDOT prior to the issuance of a Zoning Compliance Permit.
- (j) Pedestrian and Bicycle Path: That a pedestrian and bicycle path shall be provided from the new parking lot to the bus stop on the west side of Martin Luther King Jr. Boulevard, just south of the southern boundary of the Special Use Permit for the Innovation Center. That the final design and location of this path shall be reviewed and approved by the Town Manager prior to the issuance of a Zoning Compliance Permit.
- (k) Right-of-Way Dedication: That at such time as deemed appropriate by the Town Manager, NCDOT and the Town Manager shall review and approve a plat for the purpose of the University's dedication of public right-of-way along Martin Luther King Jr. Boulevard with a width and location mutually agreed upon by the applicant, the Town, and NCDOT. That the plat shall be recorded in the Orange County Register of Deeds Office.
- (l) North Carolina Department of Transportation Approvals: Plans for improvements to State-maintained streets shall be approved by North Carolina Department of Transportation prior to issuance of a Zoning Compliance Permit or as authorized by a phasing plan approved by the Town Manager.
- (m) Payment for Martin Luther King Jr. Boulevard Signal Timing Improvements: That prior to issuance of a Zoning Compliance Permit for this building, the applicant shall make a \$7,000 payment to the Town for signal timing adjustments for signals along the section of Martin Luther King Jr. Boulevard from Piney Mountain Road to Estes Drive.

- (n) Pavement Marking Plan: That the applicant shall submit a signage and pavement marking plan to be approved by the Town Manager prior to issuance of a Zoning Compliance Permit for this building. The signs and pavement markings shall be installed by the applicant prior to occupancy of the building. The pavement marking plan may be amended in the future with authorization from the Town Manager.
- (o) Bus Stop: That prior to occupancy of this building, the applicant shall make a payment of \$25,700 to the Town for improving bus stop(s) on Martin Luther King Jr. Boulevard between Estes Drive and Timber Hollow Court.
- (p) Transportation Management Plan: A Transportation Management Plan shall be approved by the Town Manager prior to issuance of a Zoning Compliance Permit for this building. This plan shall be updated and approved annually by the Town Manager. The required components of the Transportation Management Plan shall include: (1) Provision for designation of a Transportation Coordinator; (2) Provisions for an annual Transportation Survey and Annual Report to the Town Manager; (3) Quantifiable traffic reduction goals and objectives; (4) Ridesharing incentives; (5) Public transit incentives; (6) Other measures subject to approval by the Town Manager; and (7) Lockers and showers shall be provided in the new building.
- (q) Bicycle Parking Spaces: That the applicant provide a minimum of 22 bicycle parking spaces and that the spaces comply with Class I and Class II town standards. However, if the Council adopts a text amendment creating bicycle parking standards for university use prior to approving this Special Use Permit application, the new bicycle parking standards shall apply.
- (r) Parking Lot: That the parking lot (for 214 vehicular spaces) be constructed to Town standards for pavement and design.

G.8.2. No automobile parking or external road connections shall be made on any portion of the entire Carolina North tract except as provided in this Agreement.

G.8.3. Prior to the approval of the first individual site development plan pursuant to this Agreement, the University shall submit and secure the Manager's approval of guidelines for street ownership and maintenance responsibilities within the entire Carolina North project. The University and Town shall follow all mandated procedures for offer and acceptance of any streets proposed for Town ownership or maintenance.

G.8.4. All roads and streets within the Carolina North project that may support public transit in the future shall be designed and constructed to adequately accommodate that use.

G.8.5. Prior to the approval of the first individual site development plan pursuant to this Agreement, the University shall submit and secure the Manager's approval of a cost-sharing agreement and investment plan regarding transit needs associated with the development of Carolina North. This plan shall include provisions regarding the collection and reporting of data regarding the transportation impacts of development of Carolina North.

G.8.6. The University shall provide the following transportation and traffic improvements identified by the Transportation Impact Analysis for Carolina North (date) according to the timetable and thresholds set forth:

[add improvements identified by TIA, with thresholds, timing, and parking ratios]

9. Fiscal Impacts

Draft Standard:

G.9.1. The University and Town agree that the University, the State, or Carolina North tenants shall bear the cost of Town services required by Carolina North. The Carolina North development shall be either revenue positive or revenue neutral for the Town.

G.9.2. The Fiscal Impact Analysis on Carolina North (submitted March 3, 2009) shall be used as a guide to identify the costs and the revenues associated with Carolina North.

G.9.3. The University shall conduct an annual accounting of the fiscal impacts to the Town of the Carolina North project approved pursuant to this Agreement and shall include that report in the annual report. If that report indicates there are substantial negative fiscal impacts for the Town, the Town may suspend approval of additional individual site development permits until an agreement is reached with the University regarding resolution of negative fiscal impacts to the Town. The report shall specifically address University and State payments for fire services provided by the Town, contributions for capital facilities identified in Section G-13, and transportation costs identified in Section G-8.

G.9.4. Any buildings or improvements at Carolina North that are privately owned shall be subject to ad valorem taxation per North Carolina General Statutes. In addition, in the event any such building reverts to public ownership and subsequently is transferred back to private ownership, it shall again be subject to ad valorem taxation for any periods in which it is held in private ownership.

G.9.5. For any buildings or improvements at Carolina North that are privately owned by a for-profit entity, and that entity is, under future taxation law, considered to be eligible to apply for tax-exempt status, the entity shall not apply for tax-exempt status during the term of this Agreement. The University shall inform the Manager and the Orange County Tax Assessor annually as to who owns each building at Carolina North and whether the owner is tax exempt.

10. Energy Conservation and Carbon Credits

Draft Standard:

G.10.1. The University is committed to meeting the standards in the American College and University Presidents Climate Commitment (ACUPCC). This document is attached and incorporated in this Agreement as Exhibit I. It supersedes prior Town-University carbon reduction goals and exceeds state required energy efficiency standards. This Commitment covers all sources of emissions.

G.10.2. The University has committed through the ACUPCC to carbon neutrality by the year 2050. The University is preparing a Climate Change Action Plan that will result in zero carbon emissions from campus buildings and university activities and operations by 2050. This plan will be announced by September, 2009. In order to achieve net zero emissions campus-wide, Carolina North shall eventually need to exceed carbon neutrality by generating more energy from renewable resources than it consumes.

G.10.3. The University shall maintain and update its carbon and other greenhouse gas emissions inventory (<http://acupcc.aashe.org/ghgreport.php?id=372>), and submit a report every two years (Biennial Report) to the Manager that confirms a trajectory of emissions consistent with adhering to its commitment to reduce greenhouse gas emissions to zero by the year 2050. Any increase in emissions due to the construction of new buildings, emissions generated by fossil fuels consumed by those buildings, or increased vehicle emissions resulting from transportation to and from those buildings, will be offset by energy efficiency and renewable energy generation (or as a last resort by purchasing NC-based renewable energy certificates). The Biennial Report will account for total greenhouse gas emissions and total offsets. The Biennial Report shall include a summary of actions taken and overall University progress in meeting energy conservation goals. The Biennial Report shall also include a schedule of goals (in five year increments) for progress towards meeting reductions in use of nonrenewable energy by buildings at Carolina North relative to existing comparable buildings and shall include a regularly updated estimate of the percentage reduction in non-renewable energy use for buildings at Carolina North relative to existing comparable buildings. The initial Biennial Report shall be submitted not later than two years after the date of approval of the initial site development plan pursuant to this Agreement.

G.10.4. If a central cogeneration plant is constructed at Carolina North to supply electric power and heat to buildings, it shall not use coal fuel and shall to the extent practical and feasible be energized by a renewable energy fuel that is carbon neutral.

G.10.5. All buildings at Carolina North constructed pursuant to this Agreement shall:

- (a) Be sited to maximize the renewable energy that can be collected and utilized by building-integrated energy systems and be constructed so renewable energy systems can be added at a future date without major modifications to the building structure.
- (b) At a minimum meet all applicable state-required energy efficiency standards and be designed and constructed to meet all applicable code standards, including the N.C. State Building Energy Conservation Code (which includes by reference ASHRAE 90.1).
- (c) Be constructed and equipped so that they increasingly consume less fossil fuel energy than existing comparable buildings.
- (d) Submit to the Town Planning Department for all new construction building energy performance models (pre-construction) and building commissioning reports (post-construction). Specifications for each building shall demonstrate how each building addresses the issues of energy in its design.

G. 10.6. All non-healthcare buildings at Carolina North constructed pursuant to this Agreement shall be designed to meet or exceed the minimum United States Green Building Council's Leadership in Energy and Environmental Design (USGBC LEED) Silver criteria. All healthcare buildings at Carolina North constructed pursuant to this Agreement shall be designed to meet or exceed the minimum USGBC LEED for Healthcare Green Building criteria (a separate sustainability guideline strictly for healthcare).

11. Water Use, Reuse, and Reclamation

Draft Standard:

G.11.1. A comprehensive, holistic approach shall be employed at Carolina North that includes water reclamation strategies for buildings, landscape, and all other water users on the site.

G. 11.2. The University shall comply with applicable Orange Water and Sewer Authority (OWASA) policies standards for water and sewer service in effect at the time of construction and with the Water Utility Agreement of Sale and Purchase (August 9, 1976).

G.11.3. All buildings constructed at Carolina North pursuant to this Agreement shall be designed, constructed, and operated to include water-reclamation and water-reuse. All buildings constructed at Carolina North pursuant to this Agreement shall comply with the water use standard of G.S. 143-135.37(c) regarding reduction of potable water consumption. These requirements include a 20% reduction of indoor use and a 50% reduction of outdoor use relative to water use under the 2006 N.C. State Building Code. The performance verification required by G.S. 143-135.37(d) shall be submitted to the Town for information along with all relevant permit applications for individual site development plan approval. The limitations of this water use provision shall not apply to emergency and special purpose uses of water that are consistent with applicable OWASA policy.

12. Design Standards and Public Art

Draft Design Standard:

G.12.1. Development at Carolina North shall be consistent with the University design guidelines for Carolina North set forth as Exhibit E.

G.12.2. Each individual site development permit application shall demonstrate how the project meets the design standards applicable to Carolina North in a form required by the Town Manager. The Manager shall use a U-1 Application Form substantially similar in content to the form set forth at the end of this Exhibit.

G.12.3 Any subsequent application for a development agreement on the Carolina North tract shall include updated Design Guidelines.

G.12.4 The University is committed to making public art an integral part of the Carolina North campus.

13. Police, Fire, and EMS Services and Facilities

Draft Standard:

G.13.1. The Town and University police, fire, and emergency medical service providers will provide services at Carolina North under the generally applicable arrangements for jurisdiction and operations on University-owned property. In general, for University-owned property the University provides police services, the Town provides fire services, and Orange County provides most emergency medical services. This Agreement shall not be deemed to restrict changes in these jurisdictional arrangements as may from time to time be mutually agreed to by the service providers.

G.13.2. Carolina North will require additional facilities for police, fire, and emergency management services as it develops. It is in the joint interest of the Town and University to co-locate and share these facilities to maximize response capabilities at Carolina North.

G.13.3. The University and Town (and other service providers) shall jointly fund the construction of joint police, fire, and emergency medical facilities. A formula for cost-sharing for these facilities shall be agreed to by the University and Town prior to the issuance of any individual site development permits that will bring the total building square footage for the Carolina North project to a cumulative total of 800,000 square feet or more. This agreement shall be consistent with the fiscal equity provisions of Section 9 of this Exhibit.

G.13.4. The initial facilities for police, fire, and/or emergency medical services shall be provided at Carolina North prior to the approval of any individual site development plan that would bring the cumulative total building square footage at Carolina North to 1.5 million square feet or more.

G.13.5. Additional facilities for police, fire, and/or emergency medical services shall be provided after the total square footage at Carolina North exceeds 1.5 million square feet and prior to that total square footage reaching 4.0 million square feet. Individual site development plans that would bring the cumulative total building square footage at Carolina North beyond 1.5 million square feet shall not be approved until the Town and University have entered an agreement for the location and funding of these facilities.

G.13.6. For planning purposes, it is anticipated that thereafter there will be future facility needs for police, fire, and/or emergency medical services after the total square footage at Carolina North exceeds 4.0 million square feet but prior to the total square footage reaching 8.0 million square feet.

14. Public Schools

Draft Standard:

G.14.1. Subject to obtaining any required approvals from the State of North Carolina, the University will lease to the Chapel Hill-Carrboro City Schools (or Orange County as the case may be) sufficient land within the Carolina North tract for a site for an elementary school at a rental rate of no more than one dollar (\$1) per year.

G.14.2. The University shall coordinate site selection for this school with the Chapel Hill-Carrboro City School Board to address access, school programming needs, proximity to residential areas, and connections for pedestrian and bicycle access. The University and school system shall coordinate and define the time period for site availability and communicate that schedule to the Town.

G.14.3. The location and size of the school shall be coordinated with the needs identified through the process set by the Adequate Public School Facilities section of the LUMO and the Memorandum of Understanding between Orange County, Chapel Hill, Carrboro, and the Chapel Hill/Carrboro School Board referenced in that section of the LUMO.

G.14.4. The entity responsible for construction of a public school on the Carolina North tract shall be responsible for permitting for that building, including preparation of any Transportation Impact Analysis required by the Town.

G.14.5. If the site provided for a public school is located within the area designated for development in the 50-year development plan depicted in Exhibit D, that development area may be increased by the University by an amount equivalent to the land area provided for the public school.

15. Recreation Areas

Draft Standard:

G.15.1 The University shall maintain continued public access to trails in the Carolina North tract. Trails shall be under the management and direction of the Carolina North Forestry Office.

G.15.2. The general location of trails and recreational areas at Carolina North shall be consistent with the 50-year development plan for Carolina North set forth as Exhibit D. The general location and proposed use of trails, recreation and recreation areas at Carolina North shall also be consistent with the plan for the portion of Carolina North that is subject to this Agreement as set forth in Exhibit F.

G.15.3. Recreation areas shall be developed in conjunction with the other programs and facilities at Carolina North.

G.15.4. Public access to and use of outdoor recreation areas shall be provided when these areas are not programmed for University use. The University and Town shall study the feasibility and cost-sharing options for future joint-use recreation areas at Carolina North and shall include a report of that study in the initial Annual Report required pursuant to this Agreement.

G.15.5. [*Option A.* All improvements for new recreation areas shall be submitted for review and approval as individual site development permits.] [*Option B.* All improvements for new recreation areas shall be designed in compliance with this Section. The Annual Report shall include a description of all such improvements made in the previous year and document compliance with the provisions of this Section.] The University shall identify which applicable accessibility standards were used in the design of each project. All new recreation areas shall be designed to:

- (a) minimize disturbance and provide good material and maintenance choices of recreation fields and trails;
- (b) identify and avoid regulatory floodplains and stream buffers when locating areas;
- (c) co-locate trails, pedestrian paths and other access needs in the more developed areas of campus; and,
- (d) co-locate trails, utilities and roads in the less developed areas of the property.

16. Greenways

Draft Standard:

G.16.1. The general location of greenways and paved paths for pedestrians and cyclists at Carolina North shall be consistent with the 50-year development plan for Carolina North as set forth in Exhibit D. The University shall maintain continued public access to greenways and paved paths for pedestrians and cyclists in the Carolina North tract.

G.16.2. A general plan for additional greenway locations shall be provided with the first individual site development permit application at Carolina North. This plan shall include a greenways maintenance plan that identifies maintenance routines and responsibilities and the location of site fixtures and amenities at designated trail heads (including but not limited to informational kiosk, map/locator/wayfinding device, gated access to prohibit motorized access, trash cans, water fountain/spigot, bathroom, recreational parking, and/or bicycle racks). Each Annual Report prepared

after the submission of this plan shall include information about the current status of the design and funding of greenway connections at Carolina North.

G.16.3. Installation of greenways and paths for pedestrians and cyclists shall be provided for that portion of the Carolina North project subject to this Agreement as follows:

- (a) A temporary, non-paved central trail to Homestead Road shall be provided when the airport runway is closed and deactivated. This early trail should be co-located with future disturbances so as to minimize total land disturbance.
- (b) Additional improvements shall include:
 - 1) A paved trail from Estes Drive Extension through Carolina North to Homestead Road to connect with the Town's extension of the Bolin Creek Trail from the south and the Town's Horace Williams Trail to the north;
 - 2) A paved trail through the center of the first phase campus in an east/west direction to connect with the Carrboro/Chapel Hill extension of the Bolin Creek Trail;
 - 3) A means of crossing Estes Drive extension; and
 - 4) Continued trails through the Carolina North area as a separate facility with as few road intersections as possible.
- (c) A map setting forth the general location of these greenway trails is attached as Map G-2.

G.16.4. One of the four improvements identified in Section G.16.3 shall be constructed prior to the completion of the initial 800,000 square feet of total building space within the Carolina North project constructed pursuant to this Agreement. A second of these improvements shall be constructed prior to the completion of 1.5 million square feet of total building space at the Carolina North project constructed pursuant to this Agreement. A third of these improvements shall be constructed prior to the completion of 2.25 million square feet of total building space of the Carolina North project constructed pursuant to this Agreement. The fourth of these improvements shall be constructed prior to the completion of 3.0 million square feet of total building space at the Carolina North project constructed pursuant to this Agreement.

G.16.5. [*Option A.* All improvements for greenways and paved paths for pedestrians and cyclists shall be submitted for review and approval as individual site development permits.] [*Option B.* All improvements for greenways shall be designed in compliance with this Section. The Annual Report shall include a description of all such improvements made in the previous year and document compliance with the provisions of this Section.] The University shall identify which applicable accessibility standards were used in the design of each project. All greenway and paved paths for pedestrians and cyclists shall be designed to:

- (a) minimize disturbance and provide good material and maintenance choices of greenways;
- (b) identify and avoid regulatory floodplains and stream buffers when locating facilities;
- (c) co-locate trails, greenways, pedestrian paths and other access needs in the more developed areas of campus;
- (d) co-locate trails, utilities and roads in the less developed areas of the property; and,
- (e) have a minimum ten-foot width throughout most of the site.

17. Historic and Cultural Features

Draft Standard:

G.17.1 The University shall comply with the applicable law regulating archeological resources, including but not limited to the state Archaeological Resources Protection Act, state statutes on historic cemeteries, and the National Historic Preservation Act/National Register of Historic Places.

G.17.2. The University shall manage any identified archaeological sites in coordination with the Carolina North Forestry Office. The University shall be responsible for providing appropriate interpretation and on-line information regarding archaeological sites. The University shall be responsible for relevant communications to the public.

18. Solid Waste Management

Draft Standard:

G. 18.1. Solid waste collection shall be provided by the University. The University shall consider including Orange County Solid Waste in the pre-construction conference.

G.18.2. Solid waste shall be managed by the University with appropriate reduction and recycling goals for construction and occupancy. Waste management shall support sustainability goals by focusing on reduction, reuse and recycling of materials at Carolina North and strive for innovative and flexible approaches to waste generation and disposal.

G.18.3. The University shall design projects such that construction and demolition recycling, reuse, salvage, and waste reduction are maximized.

G.18.4. Construction waste shall be managed in accordance with Town and University standards and with the Orange County Regulated Materials Ordinance.

G.18.5. Each individual site development permit shall provide clear direction on who will service each building and each building will be designed accordingly. The current system for coordinating Orange County and municipal services with University services works well and the development at Carolina North shall emulate the positive aspects of current practices.

G.18.6. The University's Department of Environment, Health, and Safety will be responsible for monitoring hazardous materials and developing a safety plan for the development; and shall report pertinent fire safety information to the Chapel Hill Fire Department on a regular basis, in accordance with current reporting policy for campus buildings.

19. Landfill Remediation

Draft Standard:

G.19.1. Development of certain areas of Carolina North may require landfill remediation consistent with the planned use. The University shall develop a remediation strategy for these areas consistent with current standards, requirements and future land use plans.

G.19.2. The landfill area shall be remediated in a manner that is consistent with safeguarding the public health, safety and welfare.

G.19.3. The landfill shall be remediated to the applicable state standards for landfill remediation at the time of remediation.

G.19.4. The University shall communicate with Orange County and the Town during landfill mitigation planning and development of the mitigation strategy.

20. Stream Buffers

Draft Standard:

G.20.1. Streams shall be buffered at Carolina North consistent with the conservation easements provided for in Section G.5.1 and the stormwater management standards of Section G-6 of this Exhibit. Development at Carolina North shall be consistent with the Resource Conservation District regulations of the Town applicable as of the date of this agreement. [*Option A.* Provided that activities designated as permitted uses or special uses in Table 3.6.3-2 of the LUMO that are consistent with this Agreement shall be reviewed by Town staff as individual site development permits.] [*Option B:* All activities designated as permitted uses or special uses in Table 3.6.3-2 of the LUMO that are consistent with this Agreement shall be designed in compliance with this Section. The Annual Report shall include a description of all such improvements made in the previous year and document compliance with the provisions of this Section.] Each individual site development permit application shall demonstrate that compliance.

G.20.2. The University and the Town shall review opportunities for (1) restoration or enhancement of riparian buffers, (2) coordination between wildlife or natural corridors along streams and essential utility lines, trails, and (3) appropriate stream access.

21. Trees and Landscaping

Draft Standard:

G.21.1. The developed area of the Carolina North project shall include significant street, landscape and natural plantings and landscaped areas and tree protection measures. Tree and landscape areas may also have a stormwater management function at Carolina North, including those located in roadways.

G.21.2. The University shall design landscape areas to support the Carolina North Design Guidelines set forth in Exhibit E. Appropriate native and non-invasive species shall be used at Carolina North. The developed area at Carolina North shall be planned to support a low maintenance, low fertilizer use landscape with 'best suited' plant materials.

G.21.3. Landscape plans for individual site development permit applications shall identify existing and proposed tree canopy mix, the hierarchy of tree planting goals (working landscapes: young age, street trees: mid-age, permanent landscapes: mature age), and the landscape irrigation hierarchies. Priorities for landscape irrigation are, in order of priority: rainwater, reclaimed water, and potable water as last resort.

22. Sedimentation

Draft Standard:

G.22.1. Construction at Carolina North shall comply with applicable soil and erosion control measures and State oversight. The University shall incorporate erosion and sediment control measures for all land-disturbing activities and all individual construction projects at Carolina North shall include erosion sedimentation control measures. The University shall be responsible for implementing erosion sedimentation control measures for all land disturbance projects.

G.22.2. The University shall develop additional construction-related soil erosion control measures (including a project inspection and reporting program) for building projects at Carolina North and provide a copy of those guidelines and reports to the Town stormwater staff.

G.22.3. An erosion sedimentation control plan shall be developed for projects between 20,000 square feet and one acre of disturbance as well as projects over one acre and all such projects shall be carried out consistently with those plans. The Town and University may coordinate to provide follow up inspections in response to any complaints generated from sites at Carolina North. Projects disturbing between 20,000 square feet and one acre of land shall fill out inspection checklists similar to those required by the NPDES construction permit for projects that disturb more than one acre. Projects with one acre or more of land disturbance shall be subject to all applicable State permit requirements.

23. Neighboring Lands, Compatibility, Buffers

Draft Standard:

G.23.1. Development at Carolina North shall strive to be compatible with existing adjacent development and will be appropriately buffered. Development near existing neighborhoods shall respect buffers, height limits, lighting and noise impacts.

G.23.2. The Perimeter Transition Area (PTA) at the borders of the Carolina North project shall be as identified on attached map G-3. *[to be provided prior to 4/22/09]*

G.23.3. The University shall conduct design workshops, with opportunity for citizen participation, and attendance by a Town staff representative; for the purpose of discussing possible design features of new facilities in designated PTAs, prior to submission of individual site development permit applications for such facilities. The areas of agreement and disagreement shall be written and signed by the University, the neighbors, and the Town before presentation to the Board of Trustees. The PTA process shall establish appropriate standards at borders of the development to minimize impacts on adjacent property. These standards shall address: (1) screening mechanical equipment; (2) exterior lighting; (3) height limits; and (4) landscaping.

24. Noise

Draft Standard:

G.24.1. The Chapel Hill Noise Ordinance shall be applicable within Carolina North during construction and occupancy of the campus.

G.24.2. Noise from construction is subject to the applicable noise ordinance. Individual site development permit applications for new construction shall demonstrate compliance with the ordinance during occupancy of the completed building.

G.24.3. The University shall take reasonable steps to apprise potential residents of housing on the Carolina North site of the potential for campus-related noise.

G.24.4. Complaints regarding compliance with the noise ordinance within the Carolina North project area shall be made to and handled by University Public Safety. *[Alternative: Complaints regarding noise ordinance violations shall be made to Town Police/Engineering through University construction management to insure procedures are in place to remediate or address legitimate complaints.]*

25. Lighting

Draft Standard:

G.25.1. Lighting at Carolina North shall not have a negative effect on adjacent users, neighborhoods, the community, or other University uses at Carolina North. Lighting shall be energy efficient and appropriate for the program requirements and times of use.

G.25.2. The Town lighting standards in effect as of the date of this agreement shall be applicable to Carolina North. Each individual site development permit application shall demonstrate no increase in lighting foot-candle levels at the adjacent property line.

G.25.3. The University shall describe in each individual site development application how lighting for that portion of the Carolina North project is designed with a basic strategy of:

- (a) A 'dark skies' approach for the Carolina North project as a whole;
- (b) Streets lit to Town or DOT standards, and
- (c) Building code requirements regarding lighting met for new buildings.

G.25.4. New lighting within Carolina North project shall comply with the following:

- (a) All lighting, including that used in and around buildings, recreation areas, parking areas, walkways, roadways, and signs, shall be designed to minimize spillover light onto property outside of the Carolina North project.
- (b) All lighting shall be designed to prevent glare that could impair vision and/or otherwise deteriorate normally accepted qualities and uses of property outside of the Carolina North project.
- (c) Outdoor lighting, except sports and athletic field lighting, shall be mounted at heights no greater than fifteen (15) feet for non-cutoff lights; and no greater than thirty-five (35) feet for most cutoff lights.
- (d) Lighting for sports and athletic fields must include glare control features and must be designed so that the primary illumination is directed onto the play area and immediate surroundings, and such that offsite illumination/glare is restricted.
- (e) Increases in illumination on property outside of the Carolina North project shall not result in lighting levels in excess of 0.3 foot-candles, measured at ground level.
- (f) For property outside of the Carolina North project where existing ambient lighting levels are in excess of 0.3 foot-candles, there shall be no increase in measurable lighting levels.

These lighting restrictions shall not apply to adjacent property outside of the Carolina North project that is in the same ownership as property within the Carolina North project.

26. Annual Report

Draft Standard:

G.26.1 The University shall submit to the Manager an annual report that includes the information required by this Agreement and that provides all necessary information for the Manager to assess the University's good faith compliance with the terms of this Agreement. This report shall form the basis for the Manager's periodic review of the Agreement as required by the LUMO and by G.S. 160A-400.27(a). This required report is generally referred to as the "annual report."

G.26.2. The initial annual report shall be filed on or before September 1, 2010 and shall report on activities from July 1, 2009 through June 30, 2010. Subsequent reports shall be filed on or before September 1 of each year and shall report on activities in the preceding fiscal year (the preceding July 1 through June 30 period).

G.26.3 The annual report shall include the specified items set forth in this section. The report may include such other items as deemed relevant by the University. The Manager may also request inclusion of other specific information, provide for inclusion in the following year's annual report.

G.26.4. The annual report shall include the following specific information:

- (a) A summary of the amount of building floor space constructed in the previous year and cumulatively pursuant to this Agreement. The report shall also identify for both the annual and cumulative totals the uses to which this space is devoted.
- (b) A summary of the number of housing units within the Carolina North project, the estimated number of residents in that housing, and the estimated number of employees working on-site within the Carolina North project area. These figures shall include a report on both the change in these numbers in the previous year and cumulative totals over the life of the Carolina North project.
- (c) The following information regarding parking, traffic, and transit: [add].
- (d) An accounting of the fiscal impacts to the Town of the Carolina North project approved pursuant to this Agreement and efforts undertaken to address any negative fiscal impacts for the Town.
- (e) A copy of information prepared pursuant to the University's American College and University Presidents Climate Commitment (ACUPCC) that has not been included in a previous annual report. This shall include the biennial reports prepared pursuant to that effort.
- (f) Information on water use, water reclamation, and progress towards meeting the goal set forth in this Exhibit.
- (g) A copy of all University Board of Trustee updates to the Carolina North Design Guidelines.
- (h) An update on current public art policy and implementation progress.
- (i) A report on all construction of greenways and trails at Carolina North and information about the current status of the design and funding of greenway connections at Carolina North.
- (j) A description of general waste-management strategies at Carolina North and the fiscal impacts on the Town resulting from any amendment of waste management strategies.

U-1 Project Permit Application

Contact:

Address:

Phone Number:

E-mail:

Project Name:

Application Number:

Submittal Date:

Project Number:

Project Location:

Project Sub-Basin:

Tax/Map/Block/Lot

(TMBL)#:

Parcel Identification

Number (PIN):

Is the Project in a Perimeter Transition Area? : Yes___ No ___

Information Requirements for Site Development Permit Applications

Each application for a Permit shall include the following information, in a format specified by the Town Manager (X copies or sets of all information unless noted below):

1. Receipt (one copy) of Permit Application Fee (\$XX).
2. Area map - Identify location of project on approved Phase Plan.
3. An Existing Site Plan.
4. A Site Plan showing building footprints, access drives, pedestrian circulation (with connections to existing pedestrian networks), parking areas, and clearing limits.
5. A Grading Plan.
6. A soil erosion control plan for projects over 20,000 square feet of disturbance
7. A copy of the erosion and sediment control permit from the NC Division of Land Resources for projects disturbing one acre or more.
8. A Utility Plan showing how all utilities will be provided to buildings and letters of approval from each applicable utility (one copy of each letter).
9. A Construction Management Plan, consistent with the University's "Construction Management Guidelines" contained in the August 7, 2001 Addendum, to be approved by the Town Manager prior to commencement of construction, indicating measures to be taken during construction in the following areas:
 - a. Traffic Management Plan:
 - i. A traffic management/control plan shall be submitted which will provide for the safe and orderly movement of motorized and non-motorized vehicles on any public streets (maintained and operated by the Town or the NCDOT) on which normal traffic flow will be disrupted (lane closures, street closures, etc.) during construction, including a detour plan as may be necessary.
 - ii. The submittal of a Site Development Plan shall include a construction traffic routing map that identifies the local street network that will be impacted by

construction traffic associated with this proposed addition. The routing plan shall minimize, and where practical, prohibit construction traffic on local streets. The plan shall also provide for the safe and continued use of bicycle and pedestrian corridors during construction.

- iii. The Traffic management plan shall be prepared in accordance with the latest version of Manual on Uniform Traffic Control Devices (MUTCD) and applicable NCDOT Standards.
- iv. All signs shall be made of high retro-reflectivity material and, if night time closures are necessary, signs shall include beacons.
- v. The traffic management plan shall be sealed by a Professional Engineer licensed in the State of North Carolina.
- vi. Lane closures on public streets will be permitted only between 9:00 AM and 4:00 PM. Any deviation from these hours must be coordinated with and approved by the Town Traffic Engineer.
- vii. The Traffic Management Plan shall state that closures and night time work on public streets must be approved by the Town Manager. Please see the attached form for Town Manager approval. This form must be completed and submitted to the Town for approval along with the relevant traffic control plan. The Contractor must notify the Town Engineering, Police, Fire, and Transportation Departments, E911, and affected residents at least 3 business days prior to the commencement of approved night work and/or approved street closure.
- viii. The University is responsible for repairing damaged pavement, markings, signs and signal equipment as necessary.
- ix. The University's contractor shall coordinate with the Town Public Works Department (968-2800) for traffic signal system underground cable conflicts.

b. Pedestrian Management Plan:

- i. A pedestrian detour plan shall be submitted which will provide for the safe and orderly movement of pedestrians if any public sidewalks and/or designated pedestrian routes on public rights-of-way and/or easements are disrupted or closed to normal pedestrian use.
- ii. The pedestrian detour plan shall be prepared in accordance with the latest version of the MUTCD and sealed by a professional engineer licensed in the State of North Carolina.
- iii. All signs shall be made of high retro-reflectivity material and if a night time detour is required, signs shall include beacons.

c. Pedestrian Safety:

- i. Detailed information on how the Pedestrian Management Plan will provide for the safe and continued use of bicycle and pedestrian corridors during construction.

d. Pedestrian Security:

- i. Detailed information on pedestrian security measures including the placement of security phones and lighting. The plan shall also include additional information on security for pedestrian bridges during evening hours.

- e. Construction Traffic Management Plan:
 - i. A construction traffic control plan shall be submitted which will provide for the safe and orderly movement of construction traffic to and from the construction site and staging area. The plan must identify the location and size of staging areas and material storage areas which would affect construction traffic routes.
 - ii. Plan shall indicate location(s) where construction equipment will be parked (if offsite) and where construction personnel will park, including a routing plan for equipment and personnel going to and from the work site.
 - iii. Plan shall indicate graphically and describe how emergency vehicle access to and around the project site will be provided both during and after completion of construction.
 - f. Construction Management Plan Enforcement:
 - i. Each Construction Management Plan shall describe how the University will enforce the requirements of the Construction Management Plan. In particular, the plan must describe how the University intends to enforce and ensure that pedestrian and bicycle corridors will remain open and safe during construction periods.
 - g. Construction Management Contact Information:
 - i. Each construction site will include visible signage listing a telephone number and a University representative available to answer questions and respond to concerns about pedestrian safety and security. A detail of the proposed sign, including number of signs and general locations, shall be submitted with each Site Development Permit application.
10. Stormwater Management: Every application for a Site Development Permit shall include:
- a. A signed and sealed letter from a Professional Engineer indicating that the stormwater management measures associated with Site Development Permit application will meet or exceed the approved Stormwater Management Performance Standards for Carolina North. Stormwater management and treatment practices shall comply with all applicable federal and State regulations, and revisions thereof.
 - b. Plans indicating grading, plantings, erosion control and stormwater runoff control best management practice(s) design and details, in accordance with the performance criteria.
 - c. A stormwater design report that includes the following
 - a) A narrative description of site considerations and proposed stormwater management measures
 - b) A summary table of pre-development and pos-development impervious cover
 - c) Maps showing the pre-development and post-development impervious cover
 - d) A table indicating the pre-development and post-development stormwater runoff volume and peak discharge (rate)
 - e) An area map indicating the drainage divides on the site and the drainage to each stormwater management measure

- f) Inspection, operations, and maintenance plans for the proposed stormwater management structures.
 - d. Maintenance access and a reservation of the location(s) for stormwater management will be shown on the plans. Stormwater management structures cannot be removed without Town review and concurrence.
- 11. Noise: Every application for a Site Development Permit shall include a signed and sealed letter from a Professional Engineer, licensed in the State of North Carolina and with demonstrable expertise in acoustical design and attenuation practices, certifying that any increase in measurable noise above existing pre-Development Plan noise levels on property outside the U-1 Zoning District will not exceed the levels allowed in the Town Noise Ordinance as established at the time each Site Development Permit application is approved by the Town. This noise restriction shall not apply to property outside of the U-1 Zoning District that is in the same ownership as property within the U-1 Zoning District.
- 12. Lighting Plan: Every application for a Site Development Permit shall include a lighting plan, sealed by a Professional Engineer licensed in the State of North Carolina and with demonstrable expertise in lighting design and mitigation strategies, that shows existing and proposed lighting fixture types and locations, and indicating by isolux contour diagram and grid points the measured and calculated pre-development and post-development foot-candles at grade on property where lighting impacts are expected. The applications shall describe how lighting meets the goals of 'dark skies' lighting and complies with the lighting standards within the Agreement.
- 13. Fire Protection and Safety:
 - a. Fire Flow Report sealed by a registered Professional Engineer (NC) demonstrating compliance with Town Standards.
 - b. A Fire Protection plan showing the following:
 - i. Location of fire hydrants, present and proposed
 - ii. Location of fire department connections to sprinkler/standpipe systems
 - iii. If building has both sprinkler and standpipe, show which FDC feeds which system
 - iv. Road access to fire protection systems
 - v. Emergency access to the structure
 - vi. Unobstructed 12 ft. emergency access lanes
 - vii. Fencing around construction site with 20 ft. swing or slide gates
 - viii. Temporary standpipe locations if building is 5 stories or higher
 - ix. Any areas which are proposed to be inaccessible during construction or demolition
 - x. Maintain compacted soil/gravel to withstand weight of fire department vehicles at 47,000 pounds single axle.
- 14. If any part of a University project lies within a Town Right-Of-Way, all documents required for an Engineering Construction Permit must be submitted as part of the Site Development Permit application process.

15. Energy and Conservation Goals:
 - a. Permit applications shall include an energy modeling report.
 - b. Permit applications shall describe how potable water consumption and reclaimed strategies are incorporated into the project
16. Landscape: Plans indicating grading, plantings. Plans should also show how the proposed project relates to the overall master plan for Carolina North.
 - a. identify planting materials, proposed irrigation and maintenance techniques for each type of landscape proposed
 - b. applications should include any proposed trails, greenways or recreation facilities and connections to adjacent related facilities to be constructed as part of the project and describe the design standards applied to those elements
17. Solid Waste: Describe the solid waste management responsibilities for the project both during the construction phase and after the building is occupied.
18. Public Art: Describe how public art has been incorporated into the project design and planning.

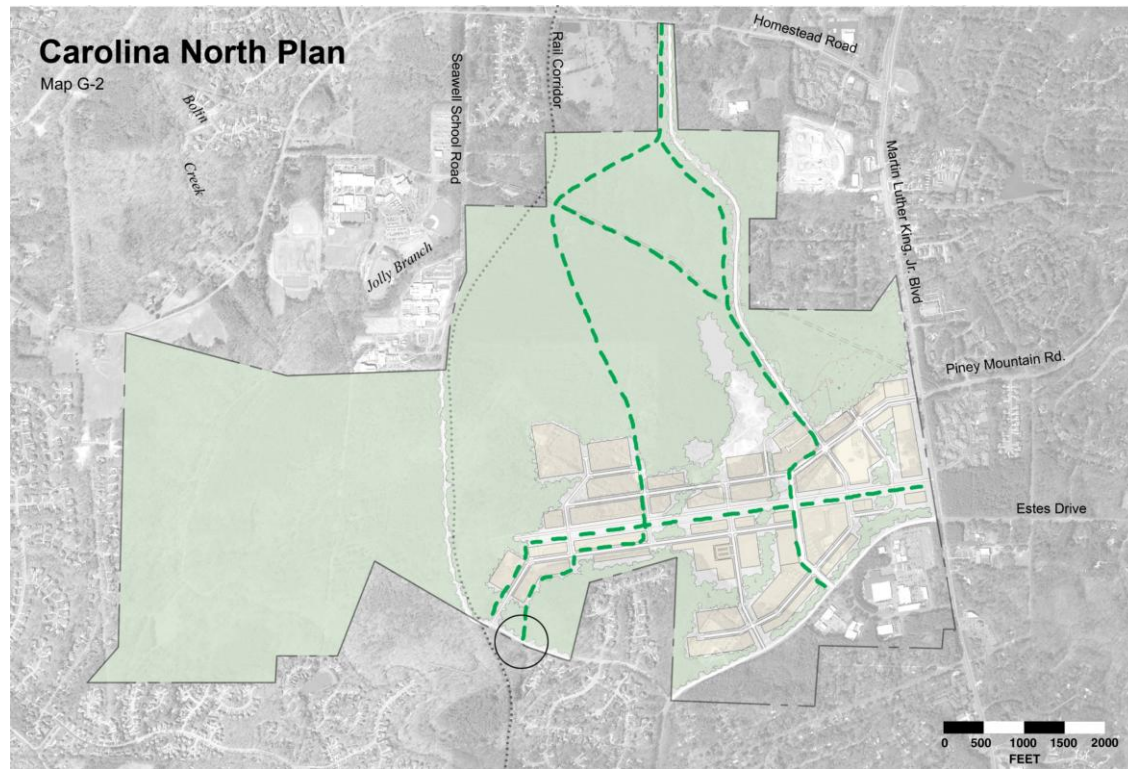
Exhibit G Maps

Map G-1

Conservation Areas [*to be added*]

Map G-2

Greenways and Paved Paths



Map G-3

Perimeter Transition Areas [*to be added*]

EXHIBIT H. Local Development Approvals and Permits Required for the Carolina North Development Subject to this Agreement

Development of the Carolina North project that is subject to this Agreement is subject to subsequent approval of the Town of the following:

1. Site development plans for each discrete building project.

[List all other applicable local permits]

EXHIBIT I. American College and University Presidents' Climate Change Commitment

[copy to be appended]