

Instrument Prepared By Roger W. Knight
Brief Description for Index: _____
Parcel Identification Number: _____
Parcel Identifier: BM: _____ Page: _____

Mail After Recording to: Jason Brown
Director of Development Services
Town of Knightdale
950 Steeple Square Ct.
Knightdale, NC 27545

**STATE OF NORTH CAROLINA
WAKE COUNTY**

**VILLAGE GATE MIXED USE SUBDIVISION
UTILITY ALLOCATION AGREEMENT**

THIS UTILITY ALLOCATION AGREEMENT (the "Agreement") is made effective as of the ____ day of _____ 2022 by and between the TOWN OF KNIGHTDALE, a municipal corporation existing under the laws of the State of North Carolina ("Town"), VILLAGE GATE APARTMENTS, LLC, a North Carolina limited liability company ("Apartments"), and VILLAGE GATE AT KNIGHTDALE, LLC, North Carolina limited liability company ("Village Gate" and, together with Apartments, collectively, "Mixed-Use Owner"), and WAKE KNIGHTDALE RENTAL PROPERTIES, LLC, a North Carolina limited liability company ("Single Family Owner" and, together with the Mixed-Use Owner, the "Owners").

WITNESSETH:

WHEREAS, Owners possesses legal title to real property (PINs 1753-67-8345, and 1753-87-2436) consisting of 75.86 acres, more or less, within the planning jurisdiction of the Town, as

more particularly described on Exhibit A attached hereto and incorporated herein (the "Property");

WHEREAS, Mixed-Use Owner is the owner of the portion of the Property designated as New Recombined Lot 2 ("Lot 2") as shown on the plat entitled "Recombination Plat Property of Village Gate at Knightdale, LLC, Smithfield PUD, LLC, and G&F Properties, LLC, recorded in Book of Maps 2021, Page 1601, Wake County Registry (the "Plat");

WHEREAS, Single Family Owner is the owner of the portion of the Property designated as New Recombined Lot 3 on the Plat ("Lot 3");

WHEREAS, Owners warrant that all parties having an interest in the Property have executed this Agreement except for those specifically set out on Exhibit A, that the Property is free and clear of encumbrances except for those specifically set out on Exhibit A;

WHEREAS, Owners, by executing this Agreement, assume all affirmative obligations to develop the Property and consent to develop the Property in accordance with the terms of this Agreement;

WHEREAS, the terms of this Agreement imposing obligations on the Owners shall be effective upon signing of this Agreement;

WHEREAS, Owners have received Town approval of a Master Subdivision Plan, with case number ZMA-1-21 (a copy of which is attached hereto as Exhibit B), authorizing development of the Property as a mixed use development featuring retail space, multi-family units, and attached and detached single-family lots, which shall include ancillary public and private facilities including streets, sidewalks, water and sewer lines, storm drainage improvements, and certain active and passive recreation facilities (collectively the "Project"), all to be developed pursuant to the terms of this Agreement;

WHEREAS, the Master Subdivision Plan proposes a mixed-use development of approximately 15,440 square feet of retail space; and not more than 388 multi-family units, 65 attached townhome dwelling units, and 76 detached residential dwelling units compliant with all Town ordinances and development standards, and Town has agreed to allocate utilities for the development.

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

WHEREAS, Owners have, among themselves, allocated responsibility for satisfying the obligations of the Owners under this Agreement and, pursuant to the Sitework Agreement dated December 14, 2021, between Single Family Owner and Apartments, Apartments has agreed to construct the Infrastructure located on or benefiting Lot 3 in accordance with the Master Subdivision Plan.

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

Section 1. Definitions. Whenever used in this agreement, the following terms shall have the definitions indicated hereinafter in this Section 1. Other terms may be defined elsewhere in this agreement.

A. "Infrastructure" shall mean all public and private infrastructure necessary to serve the Property including, but not limited to, police and fire protection facilities, water mains, valves, fittings, fire hydrants, service connections, service lines, shutoffs, meter boxes, sewage pumping stations, force mains, gravity sewer mains, manholes, laterals, streets, curbs, gutters, sidewalks, greenways, bikeways, transit facilities, park and recreation facilities, storm drainage facilities, and stormwater retention facilities. Infrastructure to be located within or abutting the Property shall be referred to as "Onsite" and is also referred to herein as "Community Amenities." Other Infrastructure serving the Property shall be referred to as "Off-site." Infrastructure shall either be owned by Town or other government entity (Public Infrastructure) or by Owners or the property owners association for the Project or a subassociation thereof, if applicable (each an "Owners Association") (Private Infrastructure).

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

C. "Standard Specifications" shall mean all applicable legal requirements pertaining to the development of the Property including, but not limited to, Master Subdivision Plan, applicable permits, and construction drawings required for all Infrastructure, including, without limitation, the Town's Unified Development Ordinance, Knightdale's Water Allocation Policy (Ordinance # 13-06-19-001 and Ordinance # 16-09-06-001) and Standard Specifications and Construction Details Manual. The failure of this Agreement to describe any other permit, condition, or term of restriction applicable to the Property does not relieve Owners of the necessity of complying with the same.

D. "Owners Association" shall mean a nonprofit association incorporated under North Carolina law by the Single Family Owner with respect to Lot 3. The Owners Association shall among other things have primary enforcement responsibility for subdivision restrictive covenants within the residential portion of the Project and for maintenance of Onsite Private Infrastructure provided by Owners. All future property owners within the residential portions of the Single Family Parcel shall be members of the Owners Association or a subassociation thereof.

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

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

Section 3. Owner Filings.

A. Annexation & Phasing. Owners acknowledge Project is currently within the Corporate Limits of the Town and no further petition is required. Owners acknowledge that Project will be developed in accordance with the phases shown on **Exhibit C**.

B. Master Subdivision Plan Approval Schedule. Owners have received Town approval of a Master Subdivision Plan, with case number ZMA-1-21 and Ordinance # 21-04-21-002, and subsequent extensions of vested rights. Single Family Owner intends to submit a subdivision site plan for Lot 3 for approval by Town for the Single Family Project. Subject to the allocation of obligations provided herein, Owners will construct the Project in accordance with the approved Master Subdivision Plan. At the time of approval of a subdivision site plan, the subdivision site plan shall be deemed to be a "Site Specific Development Plan" pursuant to Section 15.18 of the Unified Development Ordinance of Town entitled to the Vested Rights set forth in such ordinance. Town shall not unreasonably deny a submitted subdivision site plan that substantially conforms to the approved Master Subdivision Plan and Standard Specifications. Without limiting the generality of the foregoing, it is expressly acknowledged that Town determination as to whether Infrastructure required to be provided by Developer is sufficient to meet the requirements of any subdivision site plan, the applicable calculation shall be made based on the approved Master Subdivision Plan for the Project as a whole. However, the amount of improved open space dedicated or proposed to be dedicated by each subdivision site plan shall equal or exceed the amount of open space required to be dedicated under the terms of the UDO, taking into account the previously dedicated open space submitted for site subdivision plan approval.

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

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

B. As-Built Drawings. Owners shall provide Town a complete set of as-built drawings showing all the Infrastructure, if any, and any easements as located by a North Carolina licensed surveyor and certified by Owners' engineer of record. The as-built drawings shall be submitted in a digital format compatible with the Town's GIS system and approved by the Town Manager.

C. Contracts for Public Infrastructure. Owners will ensure that all contracts for engineering, design, construction, and/or construction management for Public Infrastructure include specific language that provides (1) that the contract does not limit any warranties provided under operation of statute or common law concerning the engineering, design, construction, adequacy, or performance of the Improvements; (2) the contract does not limit or shorten any statute of limitations provided by law regarding claims concerning the engineering, design, construction, adequacy, or performance of the Improvements; (3) the Town is named a third-party beneficiary of the contract for the purpose of making any claims regarding the engineering, design, construction, adequacy, or time of installation of the Improvements; and (4) all warranties available to the Owners under the contract are, in addition to, available and assignable to the Town. Owners shall provide or acquire all easements and/or right-of-way necessary for all Infrastructure.

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

E. Public Road Improvements. The public right-of-way dedication and street improvements required of Owners related to the Smithfield Road Mixed Use development shall be governed by this Section 4.E and, where applicable, the requirements of the North Carolina Department of Transportation, the approved Master Plan and Standard Specifications.

F. Easements. The parties acknowledge that the installation of the public infrastructure may require Owners to acquire certain easements or rights-of-way located outside the Property (the "Off-site Easements") or North Carolina Department of Transportation (NCDOT) Right-of-Way Encroachment Agreements. Owners shall acquire the Off-site Easements at its sole cost and expense; provided that if, after reasonable efforts, Owners are not able to acquire one or more of the Off-site Easements or rights-of-way, Owners may, at its discretion and by written notice to the Town, request the Town to acquire those Off-site Easements or rights-of-way through its exercise of eminent domain or similar proceedings. For each section or portion of right of way, easement, water, sewer or other public facilities, included in the written request for the Town's exercise of its powers of eminent domain, the Owners shall provide the following:

1. One or more certified appraisals including a description of the property appraised and the location in relation to the road and right of way
2. A detailed description of the reasonable efforts Owner made to acquire the portion of the right of way for that section or portion of the right of way, including the amounts of offers and counteroffers (if any).
3. The name and address and telephone number(s) of the owners.

Should the Town, in its sole discretion, determine the efforts of the Owner to acquire one or more portions of the right of way are not reasonable under the circumstances, or that the reasonableness cannot be adequately determined, the Town may decline to exercise its powers of eminent domain until such time as the Owner has conclusively established that the Owner has exhausted all reasonable

efforts to acquire the necessary right of way. At that point the Town may decide to acquire the property by right of way, may decide to omit or delay the construction of the road improvement indefinitely or may require a modification of the project to accommodate the change in the planned road and access. All expenses incurred by the Town, including the purchase price or court-awarded compensation, appraisal fees, attorneys' fees and court costs, shall be reimbursed by Owners on demand. The Off-site Easements and NCDOT Encroachment Agreements acquired by Owners shall be in a form reasonably acceptable to the Town and shall, in any event, be dedicated to the Town or another public agency designated by Town.

Section 5. Single-Family Dwelling Construction Standards. Dwellings constructed on the Property shall comply with those standards set forth on Exhibit D.

Section 6. Community Design Exceptions. Owners hereby agree that the following zoning conditions and modifications to the NMX zoning district were granted by the approved Master Subdivision Plan:

- A. The following principal uses, otherwise allowed in the NMX district, shall be prohibited uses on the property:
 - a. Cremation facilities
 - b. Drive-Thru service,
 - c. Vehicle services (maintenance, body work, repair)
 - d. Outdoor amusements
 - e. Outdoor recreation facilities, except for pool, grilling area and clubhouse, which have been specifically approved.
 - f. Neighborhood manufacturing
 - g. Public safety facility establishments that serve primarily as jails, prisons, or other types of incarceration facilities are prohibited. All other public safety facility uses otherwise allowed in the NMX district are permitted.

All other uses permitted in the NMX zoning district shall remain permitted, subject to Section 2.3.C (Use Matrix), of the UDO.

- B. All 60-foot-wide single-family lots shall be front loaded (UDO Section 2.10.B.2).
- C. Mass grading shall be permitted on some lots 60-feet or greater in width, as depicted in Exhibit E (UDO Section 6.2).
- D. A modified 10-foot Type A Buffer shall be installed along the northern border of the site, where single-family homes will be constructed adjacent to the existing Glenmere neighborhood and other compatible uses (UDO Section 8.6.A).

Section 7. Community Amenities: On-Site Recreational Amenities to be Provided by Owners. Owners acknowledge that Town requires on-site amenities for the residents of the Project for the following reasons, among others: (i) the size, scope, and location of the Project; (ii) to ensure a suitable tax base to support the increase in municipal services as a result of the Project; and (iii) to increase the desirability of the Property for residents and potential residents of Town.

All onsite recreational amenities shall be provided at the expense of Owners. Owners' proposed amenities shall include at a minimum the following, which shall be deemed Private Infrastructure unless designated otherwise below:

A. Approximately 22.8 acres of active and passive open space, consisting of a shared pool and clubhouse, public plaza, community garden, multi-purpose field, walking trails, neighborhood parks featuring play structures, and a town gateway along Smithfield Road in substantially the locations shown on the Master Subdivision Plan, and as shown on Exhibit F attached hereto.

B. Final design of all on-site amenities shall be completed and approved by the Town prior to approval of the initial Final Plat. In accordance with UDO Section 17.4, all open space infrastructure shall be installed at time of Final Plat or a surety shall be conveyed to the Town in the amount of 125% of the cost of construction and installation.

C. All on-site amenities will be owned and maintained by Owners or, with respect to Lot 3, transferred to an Owners Association, who shall be responsible for its maintenance. If an Owner or any successor in interest desires to materially change, substitute, and/or remove any community amenity included in an approved Master Subdivision Plan and/or Site Plan, Town first must consent in writing to such change or removal, such consent not to be unreasonably withheld, conditioned, or delayed.

Section 8. Reimbursements. Any reimbursements or credits available to the Owners hereunder for costs related to providing Infrastructure will be provided in accordance with Town and/or City of Raleigh policies in effect at the time of completion of such Infrastructure. Town makes no representation, expressed or implied, that any reimbursement or credit will be available to or applied for Owners' benefit.

- A. Developer shall be responsible for \$183,160.48 in Transportation Fees at time of Final Plat approval or Building Permit issuance. According to the Fiscal Year 2022 Fee Schedule adopted by Town Council; single-family residential shall pay \$400.00 per lot; multifamily and attached residential shall pay \$300.00 per unit, and retail shall pay \$1,092.00 per 1,000 square feet. Construction Drawings under review at time of drafting of this document indicates the development will feature 76 single-family lots, 453 multi-family and townhome units, and 15,440 square feet of retail space.
- B. These fees are based on the approved Fiscal 2022 Fee Schedule, and may be subject to change in future years.
- C. The Developer shall receive Transportation Fee credits not to exceed the cost to design and construct right-of-way improvements along South Smithfield Road and Mailman Road as shown on the Master Plan, potentially up to \$183,160.48 as detailed above. A civil engineer's sealed cost estimate of improvements shall be required and approved by the Town's Development Services Engineer prior to release of any credits.

Section 9. Water and Sewer Capacity Reservation, Allocation & Fees.

A. Upon Subdivision Plan approval, water and sewer allocation from the Town shall be reserved in an amount appropriate to serve approximately 15,440 square feet of retail space; and not more than 388 multi-family units, 65 attached townhome dwelling units, and 76 detached residential dwelling units. Such reserved capacity from the Town shall be allocated to new development on the Property once Owners' Master Subdivision Plan/Site Plan approved and recorded.

B. Subject to denial of approval from another superior governmental agency, the timely performance by Owners of their respective obligations set forth described in Section 8 of this Agreement, Town shall maintain the water and sewer allocation available for the Property in accordance with time periods established in the approved Schedule. The Town Development Services Department shall maintain a public list of all assigned flows and the Town's available capacity for allocation of water and sewer.

C. The amount of flow assigned for a development shall be the average flow requirement for the type of development as determined by Town and/or the City of Raleigh sufficient to support the development approved, which is currently 250 gallons per day per unit

D. Owners and Town acknowledge that the Master Subdivision Plan was submitted under the Town's Water Allocation Policy (Ordinance # 13-06-19-001) then in effect, which required a project be awarded at least 50 total points to merit water allocation. Owners and Town also acknowledge that the Town's Water Allocation Policy (Ordinance # 13-06-19-001) now in effect awards a major subdivision 15 base points and requires a project be awarded at least 50 total points to merit water allocation. Owners acknowledge that the Town has the authority to approve water allocation through a utility allocation agreement even if a project does not achieve the minimum of 50 total points. Operating under the current Water Allocation Policy, Owners acknowledge that it receives 15 base points for a single-family subdivision, and Owners acknowledge that it must achieve at least 35 bonus points. Town acknowledges that Owners achieve the minimum 35 bonus points through the provision of those project enhancements indicated on Exhibit G. The project enhancements as listed on Exhibit G shall not be changed unless approved by Town Council.

Section 10. Force Majeure. The parties hereto shall not be liable for any failure to perform hereunder as a result of an external event or events beyond the control of the party claiming force majeure, including acts of the United States of America, acts of the State of North Carolina (including the denial of or delay in granting permits that Owners or Town has, respectively, pursued in good faith), embargos, fire, flood, drought, hurricanes, tornadoes, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism, civil riots, or acts of terrorism provided, the party claiming such force majeure (i) shall notify in writing the other party promptly upon becoming aware that the performance of any duty or obligation required under this Agreement will be delayed or prevented by a force majeure and (ii) shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance and to complete performance in as timely a manner as possible. Notwithstanding the foregoing, the Town's provision of municipal services, including water and sewer, to the Property is conditioned upon Owners' timely performance of its obligations hereunder.

Section 11. Indemnification of Town.

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

B. Indemnification. To the maximum extent allowed by law, each Owner (independently and separately, and not jointly and severally) shall defend, indemnify, and save harmless Town from and against all claims for loss of life, personal injury and property damage, as well as Charges that arise with respect to such Owner in connection with its obligations under this Agreement or as a result of negligent or willful acts or omissions of such Owner or such Owner's contractors or subcontractors or anyone directly or indirectly employed by or contracting with any of them or anyone for whose acts any of them may be liable in accordance with this Section. In performing its duties under this Section, Each Owner shall, at its sole expense, defend all such claims with legal counsel reasonably acceptable to Town.

C. Other Provisions Separate. Nothing in this Section shall affect any warranties in favor of Town that are otherwise provided in or arise out of this Agreement. This Section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

D. Survival. With respect to Indemnification for which an Owner is responsible pursuant to Section 9(B), which are caused by third-parties (*i.e.*, by parties other than Town), this Section shall remain valid despite termination of this Agreement (whether by expiration of the term or otherwise) for one (1) year after expiration of the applicable statute of limitations (and for the duration of any claims brought within the time period specified above) for such third-party claims. This Section shall automatically terminate after four (4) years following the termination of this Agreement (whether by expiration of the term or otherwise) with respect to all other Charges

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

Section 12. Written Consents from Town. Where this Agreement refers to written approvals or consents to be given by Town and the person or position that may give consent is not identified, the authority to give such approvals shall be deemed to be with the Town Manager or his designee and Owners may rely on such authority and approvals. Approval required by this Agreement shall not be effective unless given in writing. Unless provided otherwise herein, the written approvals or consents required by Town shall not be unreasonably withheld, conditioned, or delayed.

Section 13. No Waiver of Governmental Authority or Discretion. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Knightdale Town Council in a manner not permitted by law. Town shall incur no liability to the Owners for any losses or damages it may incur as result of or in connection with Town's exercise or performance of its regulatory, legislative, or governmental powers or functions, or any judicial determination regarding the same.

Section 14. Miscellaneous.

A. Choice of Law and Forum. This Agreement shall be deemed made in Wake County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. Except for any cause of action for which a federal court has exclusive jurisdiction, the exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Wake County. Such actions shall neither be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

B. Waiver. No action or failure to act by either party shall be deemed to constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

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

D. No Third-Party Rights Created. This Agreement is intended for the benefit of Town and Owners and their successors and assigns as permitted under this Agreement and not for any other person, and no such persons shall enjoy any right, benefit, or entitlement under this Agreement

E. Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) the singular includes the plural and the plural, the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "includes," and "including" are to be read as if they were followed by either the phrase "without limitation" or "but not limited to." (2) References to a "Section" or "section" shall mean a section of this Agreement. (3) "Contract and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day. (9) Attorneys for all

parties have participated in the drafting of this document, and no future interpretation shall favor or disfavor one party over another on account of authorship. (10) All exhibits, attachments, or documents attached to this Agreement or referred to in this Agreement are incorporated by reference into this Agreement as if fully set forth herein.

F. Covenant of Good Faith and Fair Dealing. The Town and the Owners shall cooperate and act in good faith to perform their obligations under this Agreement and shall refrain from any action inconsistent with their contractual rights or obligations that would prejudice or injure the other party's rights to receive the benefits of this Agreement.

G. Consideration. The parties hereto agree that this Agreement is mutually beneficial in that it provides for orderly urban growth and systematic extension of municipal improvements while at the same time saving a substantial amount of money for the development by relieving it of certain infrastructure expenses for which it would otherwise have been obligated. The major subdivision, single-family dwelling construction standards and the project enhancements required pursuant to the Town's Water Allocation Policy (Ordinance # 16-09-06-001) are considered by the parties to be the minimum additions to the Town's corporate tax basis sufficient to enable the Town to finance the provision of municipal services to the Property. The parties acknowledge that these mutual benefits are sufficient to constitute good and valuable consideration in support of this contractual agreement.

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

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

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

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

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

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

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

Section 15. Term. The term of this Agreement shall be a period of seven (7) years following execution by both parties.

Section 16. Real Covenant: Delegation of Duties. This Agreement shall be recorded in the office of the Register of Deeds of Wake County, North Carolina and shall be a real covenant running with and appurtenant to the Property, and any portion thereof, as it may be subdivided or recombined, and shall apply to the development of all or any portion of the Property. An Owner may assign all or a portion of its interest in this Agreement and/or be released from all or a portion of its obligations under this Agreement only upon the assumption of all or a portion of an Owner's obligations hereunder, as applicable, by a successor in title to the Property and only with the prior written consent of Town. Town's consent shall not be unreasonably withheld, conditioned or delayed and in any event shall not be withheld if the party assuming all or a portion of such Owner's obligations possesses adequate financial resources, ownership interests and development expertise needed to complete the requirements of this Agreement being assigned, and provided such Owner delegates, and proposed assignee assumes and agrees to fulfill, in writing, all of such Owner's duties set forth in this Agreement which are being assigned.

Section 16. Consideration: Authority to Enter Agreement. The parties hereto agree that this Agreement is mutually beneficial in that it provides for orderly urban growth and systematic extension of municipal improvements while at the same time relieving Town of the expense of constructing additional infrastructure and providing for a predictable increase in the real property tax base with development of the Property as provided herein. The parties acknowledge that these mutual benefits are sufficient to constitute good and valuable consideration in support of this contractual agreement. This Agreement was ratified by the Town Council at an open meeting on _____ following any notice required by applicable law, if any. Such ratification shall be deemed to satisfy any requirements for Town Council approval of any item contained herein whether or not specifically stated in such ratification.

Section 17. Default by an Owner.

A. The Town's Land Use Administrator or his designee shall conduct an annual investigation on each anniversary date of recording this Agreement to determine if each Owner is in good faith compliance with the terms of this Agreement.

B. The following shall constitute an event of default on the part of an Owner under this Agreement: any material breach which remains uncured for a period of thirty (30) days after receipt of both (1) written notice from the Town setting forth with reasonable particularity the nature of the breach and (2) all documentary evidence supporting the finding and determination of the breach (the

"Required Notice"), or, if such failure cannot be cured within thirty(30) days, the responsible Owner fails to commence efforts to cure such breach within thirty (30) days after receipt of Required Notice and thereafter diligently pursue such cure to completion.

C. In addition to other remedies provided for in this Agreement or by law or equity, any event of default shall entitle the Town to require specific performance of the Owners' respective obligations thereunder. Furthermore, the Town may halt and enjoin further development activities on the Property by withholding the issuance of permits, map recordings, and/or utility extension or connections for any period of time within which the Project remains in material breach which is uncured for a period of thirty (30) days after receipt of written notice of non-compliance from the Town. Notwithstanding the foregoing, any withholding of permits, map recording, utility extensions, or other other halting method instituted by the Town under this Section shall only apply to the respective defaulting owner of Lot 2 or Lot 3. In other words, a default regarding Lot 2 shall not enable the Town to halt or enjoin further development on Lot 3. Any failure of the Town to exercise any right or remedy as provided for herein shall not be deemed a waiver of the Town's right to strictly enforce each Owner's respective obligations in any other instance.

D. In the event the default only relates to either Lot 2 or Lot 3, but not to both, the Owner of the non-defaulting lot shall, at the non-defaulting Owner's option, be entitled to a commercially reasonable period of time to cure the alleged default.

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

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

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

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

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

[Signature Pages Follow]

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

ATTEST:

TOWN OF KNIGHTDALE

By: _____
Heather Smith, Town Clerk

By: _____
Jessica Day, Mayor

NORTH CAROLINA WAKE COUNTY

I certify that _____, Town Clerk of the Town of Knightdale, personally appeared before me this day and certified to me under oath or by affirmation that she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed James A. Roberson sign the foregoing document, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Today's Date _____, 20__

[Notary's signature as name appears on seal]

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

Finance Director

Village Gate Apartments, LLC, a North Carolina
limited liability company

By: _____
Name: Kenyon Burnham
Title: Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the *capacity indicated*: Kenyon Burnham.

Witness my hand and official seal, this _____ day of _____, 2022.

Notary Public

Affix Seal

Printed Name of Notary

My Commission Expires: _____

Village Gate at Knightdale, LLC, a North Carolina
limited liability company

By: _____

Name: Kenyon Burnham

Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the *capacity indicated*: Kenyon Burnham.

Witness my hand and official seal, this _____ day of _____, 2022.

Notary Public

Affix Seal

Printed Name of Notary

My Commission Expires: _____

Wake Knightdale Rental Properties, LLC, a North Carolina limited liability company

By: WKRP Developer, LLC, Manager

By: WKRP BIP, LLC, Manager

By: Brown Investment Properties, Inc, Manager

By: _____
Chester H. Brown III, President

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and, in the capacity, *indicated*: Chester H. Brown, III.

Witness my hand and official seal, this _____ day of _____, 2022.

Notary Public

Affix Seal

Printed Name of Notary
My Commission Expires: _____

List of Exhibits

- | | |
|------------------|--|
| Exhibit A | Property Description |
| Exhibit B | Master Subdivision Plan/Planned Unit Development |
| Exhibit C | Phasing Schedule |
| Exhibit D | Architectural Standards & Elevations |
| Exhibit E | Mass Grading Exhibit |
| Exhibit F | On-Site Recreational Amenities |
| Exhibit G | Bonus Points - Water Allocation Policy |

Exhibit A

Property Description

All of New Recombined Lot 2 and New Recombined Lot 3 as shown on the plat entitled "Recombination Plat Property of Village Gate at Knightdale, LLC, Smithfield PUD, LLC, and G&F Properties, LLC, recorded in Book of Maps 2021, Page 1601, Wake County Registry.

Exhibit B

Planned Unit Development & Master Plan

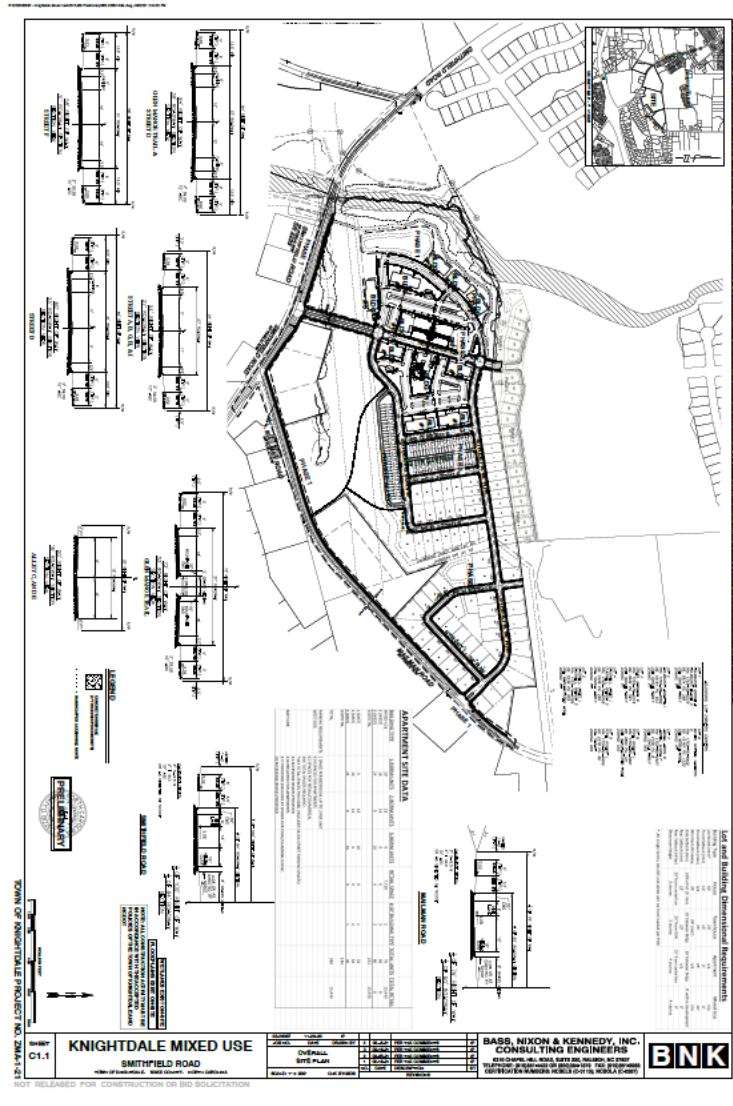


Exhibit C

Phasing Schedule

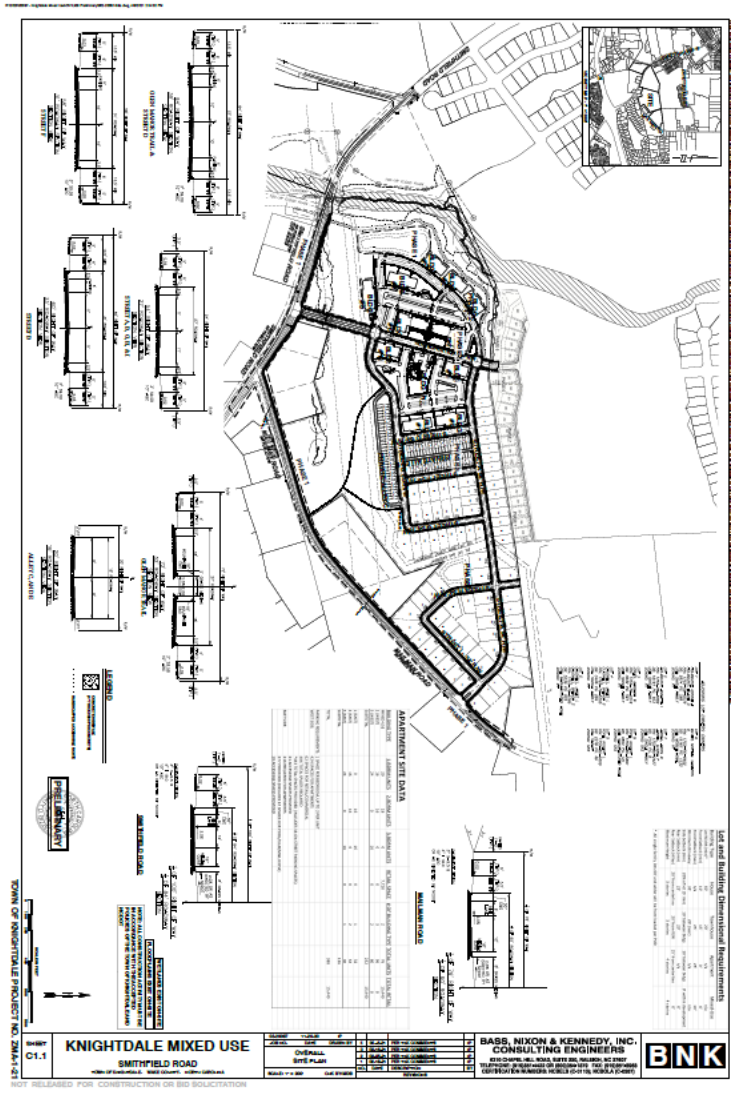


Exhibit D

Single Family Dwelling Architectural Standards

The Single Family Owner has provided actual home elevations that will be built in the subdivision (included in PUD document, together with the additional elevations, copies of which are attached to this Exhibit D, provided to and approved by Town in connection with this UAA). In addition to the elevations, the applicant agrees to the Single-Family Dwelling Architectural Standards found in UDO Ch. 5.7 and the additional conditions listed below:

1. Single-family 2-story homes built on lots at least 60-feet wide will have a minimum of 2,000 square feet and 1-story homes on such lots will be a minimum of 1,600 square feet. Lots that are at least 60-feet wide will have front-loaded two car garages.
2. Single-family homes built on lots less than 60-feet wide will have a minimum of 1,600 square feet and have front-loaded two car garages.
3. All single-family homes shall be raised from the finished grade a minimum of 18" and shall have stem wall or raised slab foundations that shall have the choice to be covered on all sides with a combination of brick or stone. Areas under porches may be enclosed with lattice.
4. All single-family homes with a crawl space will shall utilize the same foundation treatments of stem wall or slab foundation homes.
5. All single-family homes will have a combination of two or more of the following materials on the front facade (not counting the foundation): stone, brick, lap siding, fiber cement siding, shake or board and batten. All siding will be fiber cement. Vinyl may only be used for soffits, fascia, and corner boards.
6. All single-family homes will have a front porch with a minimum depth of five (5) feet. Front porch posts will be at least 6"x6". Front porches may extend into the front setback a maximum of 10'.
7. Main roof pitches (excluding porches) for 2-story homes shall be at least 7:12.
8. There shall be a 12" overhang on every gable roof end.
9. Main roof pitches for 1-story and 1.5-story homes will be at least 6:12.
10. Garages for lots that are at least 60-feet wide will not protrude more than six (6) feet from the front porch or stoop and all garage doors shall offer window inserts.
11. There shall be at least one window or door on every side elevation. Any siding break on the side of the home such as a fireplace, porch, wall offset can be used as an alternative to a window or door.
12. Garages will not exceed 50% of the front facade width or will be split into two bays.

Townhome Dwelling Architectural Standards

The Single Family Owner has provided actual townhome elevations that will be built in the subdivision (a copy of which is attached). In addition to the elevations, the applicant agrees to the Townhome Architectural Standards found in UDO Ch. 5.8 and the additional conditions listed below:

1. All townhouse units will have alley-loaded garage.
2. All townhouse units shall be raised from the finished grade a minimum of 18" and have stem wall or raised slab foundations that shall be covered on all sides with brick or stone. Areas under porches may be enclosed with lattice.
3. All townhouse units will have a combination of two or more of the following materials on the front facade (not counting the foundation): stone, brick, lap siding, fiber cement siding, shake or board and batten. All siding will be fiber cement. Vinyl may be used for soffits, fascias, and corner boards.
4. Usable front porches shall be at least forty (40) square feet in size, and shall either be recessed into the building envelope, or extend up to ten (10) feet into the front setback. If porches extend into the front setback, porches shall extend no less than 30% of the length of the primary facade.
5. To enhance aesthetic appeal, and avoid continuous "mass" roofs, every townhome unit shall be articulated at least 1' from the adjoining unit. Articulation can be achieved through either horizontal or vertical plane adjustments. No two adjacent units shall utilize the same elevation.
6. There shall be a 12" overhang on every gable roof end.
7. Townhouse building walls shall be wood clapboard, cement fiber board or shingle, wood board and batten, brick, or stone.
8. Main roofs on townhouse buildings shall have a pitch between 6:12 and 12:12.
9. A Minimum of four (4) windows shall be used on all exterior-unit townhomes' side elevations. With a minimum of one window on each floor.
10. Three Story townhomes rear elevation shall have a balcony extending the full width of the unit.
11. No two townhome units in a building shall have the same exterior paint color scheme.

Apartment Building Architectural Standards

The Mixed-Use Owner has provided actual apartment building elevations that will be built in the subdivision (included in PUD document). In addition to the elevations, the applicant agrees to the Apartment Architectural Standards found in UDO Ch. 5.9 and the additional conditions listed below:

1. All apartment buildings shall be four (4) stories.
2. All apartment buildings shall have an elevator for vertical circulation.
3. All apartment buildings shall have low-pitch roofs with parapets.
4. Roof-mounted equipment shall be screened by the building parapets.
5. The finished floor of all ground floor residential units shall be set above finished grade.
6. Architectural features of the apartment buildings are as follows:
 - a. Exterior materials shall consist of manufactured stone masonry veneer, fiber cement lap siding, and board and batten siding. Fascias, window trim, and corner boards shall also consist of fiber cement.
 - b. Non-masonry exterior claddings shall change in materiality and/or color at projections or step-backs. Cladding materials and colors shall return to the perpendicular façade.
 - c. Rooflines shall offset in correspondence to the massing of the building and utilize decorative cornices with varied profiles to provide interest.
 - d. Architectural features such as balconies and bays shall be utilized to articulate the building facades.
 - e. Vinyl windows with transparent glazing shall be used at all residential areas. Individual windows shall have vertical proportions.

Mixed-Use Building Architectural Standards

The Mixed-Use Owner has provided actual mixed-use building elevations that will be built in the subdivision (included in PUD document). In addition to the elevations, the applicant agrees to the Mixed-Use Architectural Standards found in UDO Ch. 5.10 and the additional conditions listed below:

1. All mixed-use buildings shall be three (3) stories.
2. All mixed-use buildings shall have an elevator for vertical circulation.
3. All mixed-use buildings shall have low-pitch roofs with parapets.
4. Roof-mounted equipment shall be screened by the building parapets.
5. The finished floor of all ground floor residential units shall be set above finished grade.
6. Architectural features of the mixed-use buildings are as follows:
 - a. Exterior materials shall consist of manufactured stone masonry veneer, EIFS, fiber cement lap siding, and board and batten siding. Fascias, window trim, and corner boards shall also consist of fiber cement.
 - b. Non-masonry exterior claddings shall change in materiality and/or color at projections or step-backs. Cladding materials and colors shall return to the perpendicular façade.
 - c. Rooflines shall offset in correspondence to the massing of the building and utilize decorative cornices with varied profiles to provide interest.
 - d. Architectural features such as balconies and canopies shall be utilized to articulate the building facades.
 - e. Vinyl windows with transparent glazing in a variety of sizes shall be used at all residential areas. Individual windows shall have vertical proportions.
 - f. Transparent storefront glazing shall be utilized at ground floor commercial spaces, except where opaque glazing is required for interior service/mechanical areas.

Exhibit E

Mass Grading Exhibit

[insert before recording]

EXHIBIT G On-Site Recreational Amenities



EXHIBIT G

Water Allocation Policy - Project Enhancements for Point Compliance

	Points
Base Points - Major Residential Subdivision	15
Options to Obtain additional 35 points:	
Residential Architectural Standards	15
1,000+ square foot deck/patio	1
Pool and amenities (hot tub, etc.)	2
4,000+ square foot clubhouse with meeting space and full kitchen	9
Stormwater Wet Pond with Fountain	4
Public Art	4
Conservation of a natural habitat (2 acres)	2
<i>Total Proposed Bonus Points:</i>	<i>37</i>
Total Points (50 Points Required)	52