

Instrument Prepared By Roger W. Knight  
Brief Description for Index: Forestville Village Development Agreement  
Parcel Identification Number: 1754-68-7818  
Parcel Identifier: BM: 2021 Page: 599

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**

**FORESTVILLE YARD SUBDIVISION  
UTILITY ALLOCATION AGREEMENT**

THIS UTILITY ALLOCATION AGREEMENT (the "Agreement") is made effective as of the 15<sup>th</sup> day of March, 2023 by and between the TOWN OF KNIGHTDALE, a municipal corporation existing under the laws of the State of North Carolina ("Town") and **Envision Homes, LLC** ("Owner and "Developer"), a North Carolina limited liability company.

WITNESSETH:

WHEREAS, Owner possesses legal title to real property (PIN 1754-68-7812) consisting of 26.609 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, Developer is the **contractor** of the Property;

WHEREAS, Owner warrants 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, and that Developer shall warrant and defend the Property against the claims of all persons whomsoever;

WHEREAS, Owner, by executing this Agreement, assumes all affirmative obligations to develop the Property and consents to develop the Property in accordance with the terms of this Agreement;

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

WHEREAS, Owner has received Town approval of a Master Subdivision Plan, with case number ZMA-12-20 (a copy of which is attached hereto as Exhibit B), authorizing development of the Property as a detached single-family residential subdivision, which shall include residential uses and 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 residential subdivision of not more than 137 residential dwelling units compliant with all Town ordinances and development standards, to be built within one phase, and Town has agreed to allocate utilities for the development.

WHEREAS, Developer has 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.

NOW, THEREFORE, in consideration of Owner's 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 Developer 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 Developer of the necessity of complying with the same.

D. "Owners Association" shall mean a nonprofit association incorporated under North Carolina law by Developers. 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 Developer. All future property owners within the residential portions of the Project shall be members of the Owner's 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 Developer 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 Developer, 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. Developer Filings.

A. Annexation & Phasing. **Developer acknowledges Project is currently within Corporate Town Limits. Developer acknowledges that Project will be developed within three phases and it accordance with the Phasing Schedule set forth on Exhibit C.**

B. Master Subdivision Plan Approval Schedule. Developer has received Town approval of a Master Subdivision Plan, with case number ZMA-12-20 and Ordinance # 22-02-16-003,

and subsequent extensions of vested rights. Developer intends to develop the Project, submitting a subdivision site plan for approval by Town for the Project. Developer 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 Developer. Except as set forth in this Agreement, Developer 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 Developer and approved by Town, with such approval not to be unreasonably withheld. Developer shall obtain, at its 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 Developer in its 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. Developer 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 Developer's 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. Developer 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 Developer under the contract are, in addition to, available and assignable to the Town. Developer 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 Developer's 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.

E. Public Road Improvements. The public right-of-way dedication and street improvements required of Developer related to Forestville Yard 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 Developer 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. Developer shall acquire the Off-site Easements at its sole cost and expense; provided that if, after reasonable efforts, Developer is not able to acquire one or more of the Off-site Easements or rights-of-way, Developer 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. The request shall describe the easement or right-of-way needed and include copies of offers or other evidence of unsuccessful acquisition efforts. After notice to the affected property owner and upon finding that the easement or right-of-way is needed by the Town or other public authority for extension of street, water, sewer or other public facilities, the Town may exercise its power of eminent domain to acquire the same. 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 Developer on demand. The Off-site Easements and NCDOT Encroachment Agreements acquired by Developer 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. Residential Construction Standards. Dwellings constructed on the Property shall comply with those standards set forth on Exhibit D.

Section 6. Community Design Exceptions. Developer hereby agrees that the following zoning conditions were granted by the approved Master Subdivision Plan:

1. All single-family rear-loaded dwellings shall be served by driveways measuring 20-foot long from the edge of the right-of-way.
2. Approximately 57 single-family rear-loaded units shall be a minimum of 26-feet in width at the front setback line.
3. A 20-foot-wide Type B Buffer shall be provided along the northern and eastern project boundaries, adjacent to parcels currently zoned Rural Transition.
4. The private, recorded legal documents governing the subdivision shall obligate the homeowner's association to maintain the landscaping on all lots

Section 7. Community Amenities: On-Site Recreational Amenities to be Provided by Developer. Developer acknowledges 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 Developer. Developer's proposed amenities shall include at a minimum the following, which shall be deemed Private Infrastructure unless designated otherwise below:

A. Approximately 4.57 acres of active and passive open space, consisting of a central park with play structures, a pavilion, gathering areas and bicycle racks; private walking trails; a pool and clubhouse; pickleball courts, seating; and lawn games in substantially the locations shown on the Master Subdivision Plan.

B. All Onsite Amenities will be owned and maintained by Developer or transferred to an Owners Association, who shall be responsible for its maintenance. If Developer 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 Developer 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 Developer's benefit.

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 137 residential dwellings. Such reserved capacity from the Town shall be allocated to new development on the Property once Developer's Master Subdivision Plan/Site Plan approved and recorded.

B. Subject to denial of approval from another superior governmental agency, the timely performance by Developer of its 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. Developer 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. Developer 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. Developer acknowledges 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, Developer acknowledges that it receives 15 base points for a single-family subdivision, and Developer acknowledges that it must achieve at least 35 bonus points. Town acknowledges that Developer achieves the minimum 35 bonus points through the provision of those project enhancements indicated on Exhibit E. The project enhancements as listed on Exhibit E 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 Developer 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 Developer's 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 Developer.

B. Indemnification. To the maximum extent allowed by law, Developer 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 in connection with this Agreement or as a result of negligent or willful acts or omissions of Developer or Developer'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, Developer shall, at its sole expense, defend all 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 Developer 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 Developer's Obligation. Subsections "A" and "B" above shall not require Developer 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 Developer may rely on such authority and approvals to no detriment of their own. 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 Developer 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 Developer 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 Developer 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, Owner and Developer 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, Owner and Developer, 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, except that Owner shall not be required to join in any amendment once Owner no longer owns the Property.

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 Developer 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. Developer 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 Developers' obligations hereunder 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 Developers' obligations possesses adequate financial resources, ownership interests and development expertise needed to complete the requirements of this Agreement being assigned, and provided Developer delegates, and proposed assignee assumes and agrees to fulfill, in writing, all of Developers' 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 March 15, 2023 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 Developer. 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 Developer is in compliance with the construction obligations attached hereto. In addition to other remedies provided for in this Agreement or by law or equity, any material breach which remains uncured for a period of thirty (30) days after receipt of written notice from the Town of non-compliance shall entitle the Town to require specific performance of Developer's obligations thereunder and recover such damages as to which the Town may be entitled, plus reasonable attorneys' fees and costs of any such litigation. 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 Development 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. 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 Developer's obligations in any other instance.

Section 18. Default by Town. In the event of a default by the Town in performance of its obligations hereunder, Developer's 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, Owner and Developer 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 Developer 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 Owner and Developer, 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]

— [Notary's printed name as name appears on seal]

My commission expires:\_\_\_\_\_

[Affix Notary Seal in Space Above]

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

\_\_\_\_\_  
Finance Director

OWNER/DEVELOPER

Envision Homes, LLC  
Josh Swindell  
Managing Member

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

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, certify that the following person personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document in the capacity indicated: \_\_\_\_\_.

Today's Date \_\_\_\_\_, 20\_\_\_\_

[Notary's signature as name appears on seal]

[Notary's printed name as name appears on seal]

My commission expires: \_\_\_\_\_

[Affix Notary Seal in Space Above]

## **List of Exhibits**

- |                  |                                                  |
|------------------|--------------------------------------------------|
| <b>Exhibit A</b> | Property Description                             |
| <b>Exhibit B</b> | Master Subdivision Plan/Planned Unit Development |
| <b>Exhibit C</b> | Phasing Schedule                                 |
| <b>Exhibit D</b> | Residential Construction Standards & Elevations  |
| <b>Exhibit E</b> | Bonus Points - Water Allocation Policy           |

## Exhibit A

### Property Description

Being all of that tract of land located in St. Matthews Township, Wake County, North Carolina, and more particularly described as:

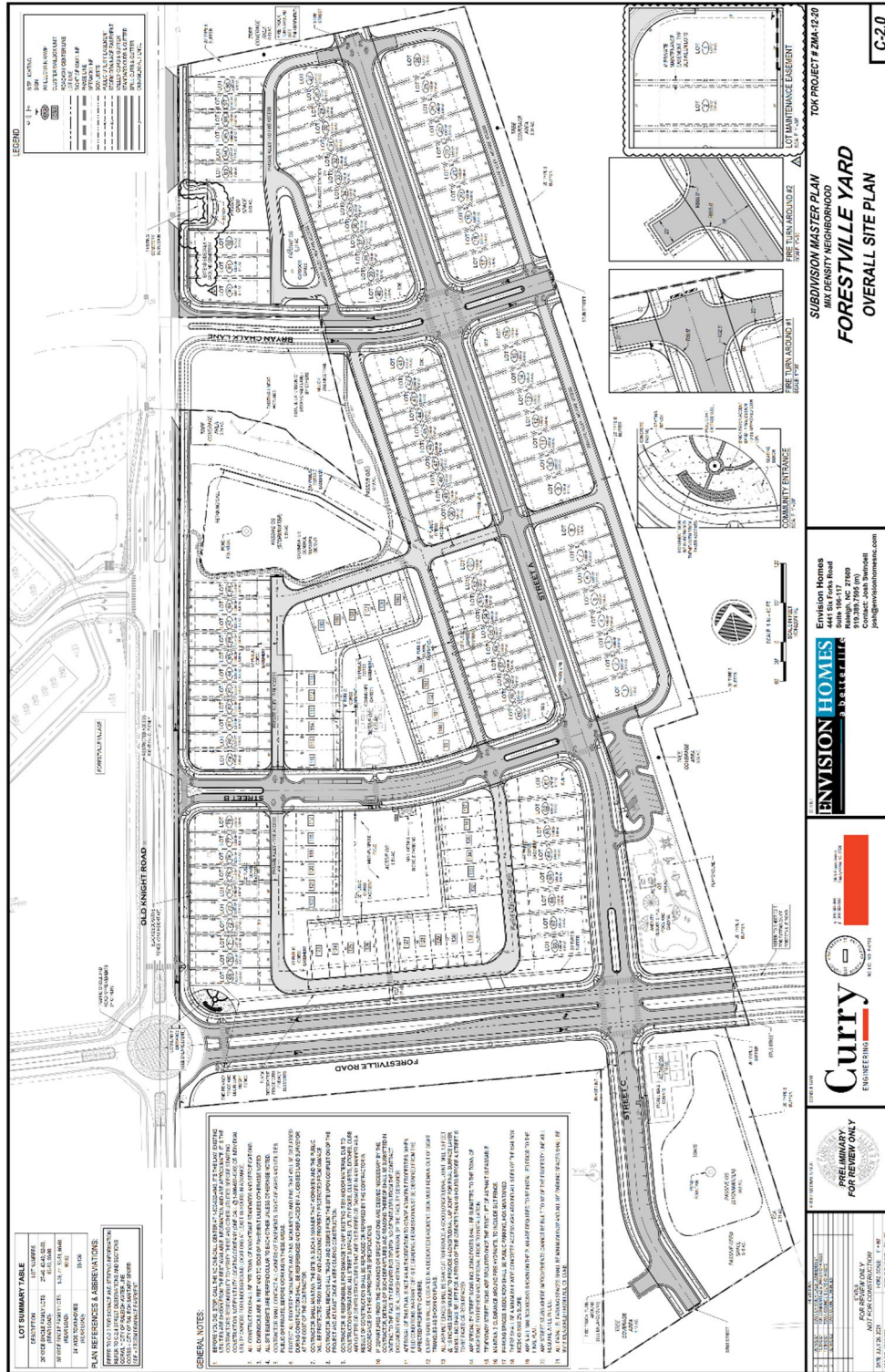
Beginning at an iron pipe found, said beginning point located in the eastern right of way of Old Knight Road (S.R. 2232), and said beginning point having N.C. Grid Coordinates (NAD'83 -2001) of N= 748,248.64 and E= 2,156,192.19, and said beginning point located S 23°18'50" W 121.79 feet from N.C. Grid monument "Knight" thence, crossing to the western right of way of Old Knight Road, North 83°14'07" West 60.15 feet to a computed point, thence, along the western right of way of Old Knight Road, North 11°35'16" East 165.29 feet to a computed point, thence North 12°06'03" East 50.47 feet to a computed point, thence North 11°56'53" East 50.04 feet to a computed point, thence North 11°31'40" East 50.06 feet to a computed point, thence North 11°38'39" East 201.28 feet to a computed point, thence North 11°41'54" East 100.93 feet to a computed point, thence North 12°18'13" East 458.86 feet to a computed point, thence, leaving the western right of way of Old Knight Road, South 78°28'29" East 30.00 feet to a computed point, South 75°57'01" East 25.28 feet to a nail found, and South 76°40'03" East 4.74 feet to an iron pipe found in the eastern right of way of Old Knight Road, thence South 76°40'03" East 55.90 feet along a ditchline, thence South 72°38'43" East 22.36 feet along a ditchline, thence South 46°28'18" East 15.02 feet along a ditchline, thence South 65°18'15" East 45.58 feet along a ditchline, thence South 60°11'34" East 27.72 feet along a ditchline, thence South 33°18'48" East 23.79 feet along a ditchline, thence South 45°48'39" East 41.69 feet along a ditchline, thence South 39°49'54" East 66.35 feet along a ditchline, thence South 33°53'21" East 15.75 feet to an iron stake found, thence North 01°46'04" West 272.72 feet to an iron stake found, thence North 01°46'04" West 419.26 feet to a point in the southern line of the Wake County Board of Education property, thence South 89°38'50" East 239.91 feet to a rebar found, thence South 89°38'50" East 89.65 feet to a rebar found, thence, along the line of the Garrett Winston Pair property, South 06°16'41" East 1,141.99 feet to a rebar found,



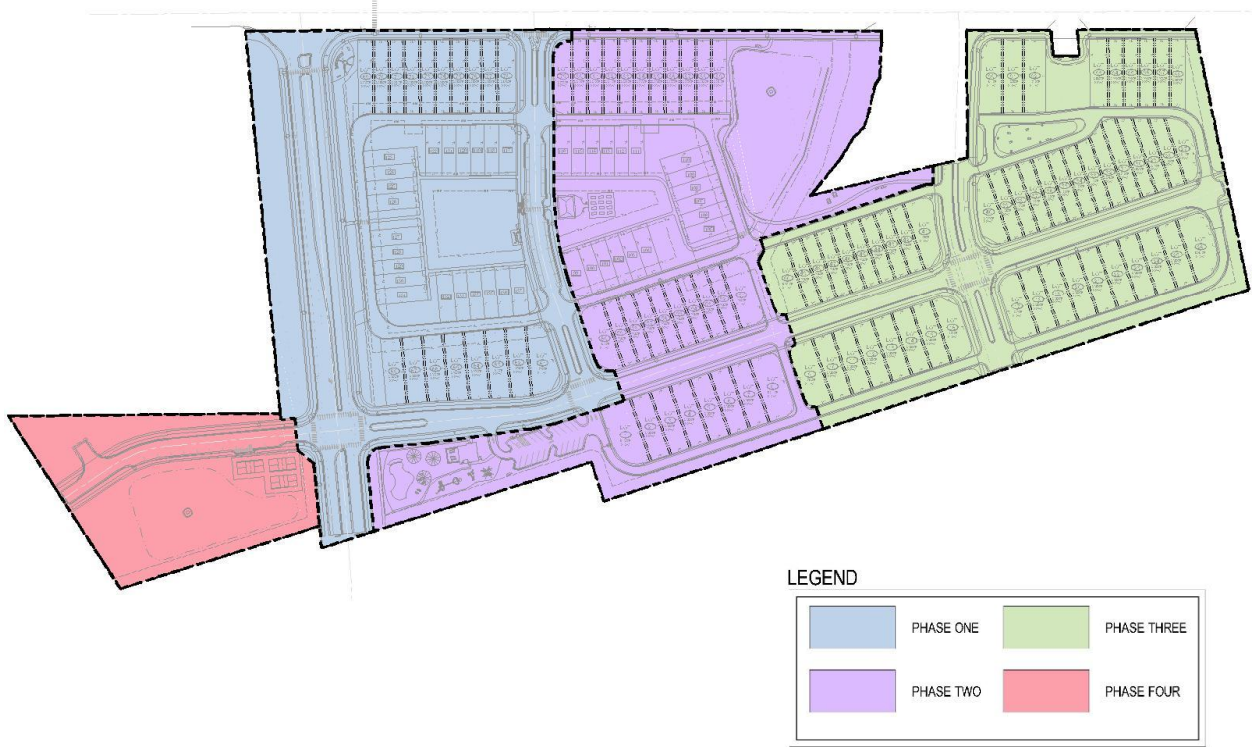
South 83°43'19" West 69.41 feet to a rebar found,  
South 05°44'47" East 476.11 feet to a rebar found,  
North 83°14'58" West 37.13 feet to a rebar found,  
and South 05°32'13" East 351.52 feet to an iron pipe found,  
thence South 68°59'00" West 346.92 feet to an iron pipe found,  
thence, along the Carriage Funeral Holdings, Inc. property line,  
North 11°21'11" East 457.68 feet to an iron pipe found,  
thence North 83°14'07" West 647.71 feet to an iron pipe found,  
the point and place of Beginning, being the Watson Tract and  
a portion of the adjacent right of way of Old Knight Road  
containing 26.609 Acres more or less.

# Exhibit B

## Planned Unit Development & Master Plan



**Exhibit C**  
**Phasing Schedule**



## Exhibit D

### Single Family Dwelling Architectural Standards

The Developer has provided actual home elevations that will be built in the subdivision (included in PUD document). 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. All single-family homes shall have a minimum 1,800 square feet of heated gross floor area.
2. All single-family homes shall have a two-car garage.
3. Vinyl siding is not permitted; however, vinyl windows, decorative elements and trim are permitted.
4. All homes shall have a minimum foundation height of 18 inches. Foundations shall contain 18 inches of brick/stone veneer on front and sides.
5. Raised front entries with hipped and gable roofs per elevation.
6. All homes shall have 30-year architectural shingles.
7. Covered rear entries with direct home access.
8. Full porches per elevation including metal roofs, decorative gable vents, and custom bracketry.
9. Garage doors must contain windows, decorative details, or carriage-style adornments.
10. Multiple design window grill patterns and columns for diversity and individual appeal.
11. Exterior adornments including four-sided wrapped windows, columns, stone, board/batten, and metal roofs.
12. A varied color palette shall be utilized on homes throughout the subdivision to include a minimum of three-color families for siding and shall include varied trim, shutter, and accent colors complimenting the siding color.
13. The visible side of a home on a corner lot facing the public street shall contain at least two (2) decorative elements such as, but not limited to, the following:
  - a. Windows
  - b. Bay Windows
  - c. Recessed Windows
  - d. Decorative Windows
  - e. Trim around the Windows
  - f. Wrap Around or Side Porches
  - g. Two or More Building Materials
  - h. Decorative Brick/Stone
  - i. Decorative Trim
  - j. Decorative Shake
  - k. Decorative Air Vents on Gable
  - l. Decorative Gable
  - m. Decorative Cornice
  - n. Column
  - o. Portico
  - p. Balcony
  - q. Dormer
14. Front porches, when provided, shall be at least six (6) feet deep and 50% of the front facade.
15. Eaves shall project between 8-12 inches from the wall of the structure.

## Townhome Dwelling Architectural Standards

The Developer has provided actual home elevations that will be built in the subdivision (included in PUD document). In addition to the elevations, the applicant agrees to the Townhome Dwelling Architectural Standards found in UDO Ch. 5.8 and the additional conditions listed below:

1. All townhome units shall be raised from the finished grade a minimum of 12 inches and shall 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 (vinyl or painted wood).
2. Vinyl siding is not permitted; however, vinyl windows, decorative elements and trim are permitted.
3. Raised covered front entries with stained craftsman door and large glass.
4. Exterior adornments including four sided wrapped windows, columns, stone, and metal roofs.
5. Minimum 6:12 roof pitches with architectural shingles and dormers, per elevations.
6. Garage doors must contain windows, decorative details, or carriage-style adornments.
7. Design criteria such as, but not limited to, the following elements:
  - a. Offsets of 16' between townhome units
  - b. Front Porches shall be at least six (6) feet deep
  - c. Trim around windows and doors
  - d. Two or more building materials per townhome
  - e. Decorative Brick/Stone
  - f. Decorative Shake
  - g. Decorative Brackets and Columns
  - h. Decorative Gable and Dormer Roofs with 12' Soffit

## EXHIBIT E

### 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
IPEMA Certified Playground Equipment	4
Resort Style Pool	2
Provision of On-Street Public Parking	4
Enhanced Roadside Landscaping	2
Stormwater Wet Pond with Fountain	4
Multi-Use Hard Surfaced Courts (Pickle Ball)	5
<i>Total Proposed Bonus Points:</i>	<i>37</i>
<b>Total Points (50 Points Required)</b>	<b>52</b>