

DEVELOPMENT AGREEMENT

**BY AND BETWEEN
THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, THE BOARD OF TRUSTEES OF
THE ENDOWMENT FUND OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, AND
THE TOWN OF CHAPEL HILL**

AND

THE TOWN OF CHAPEL HILL, NORTH CAROLINA

Effective Date: XX , 2018

Orange County Parcel Identifier Numbers:

978-924-7373

978-903-3163

The Municipal Services Center - Campus Development Agreement

Table of Contents	Page
ARTICLE 1. STATUTORY FRAMEWORK	X
ARTICLE 2. DEFINITIONS.....	X
ARTICLE 3. RECITALS	X
ARTICLE 4. TERMS	X
ARTICLE 5. SPECIFIC STANDARDS AND MITIGATION MEASURES.....	X

EXHIBITS INCORPORATED BY REFERENCE

EXHIBIT X.	Site Plan
EXHIBIT X.	Site Plan – Phase 1
EXHIBIT X.	Clearing Limits – Phase 1
EXHIBIT X.	Buffering and Landscaping – Phase 1
EXHIBIT X.	Sidewalks and Paths – Phase 1
EXHIBIT X.	Permitted Land Uses
EXHIBIT X.	Legal Description
EXHIBIT X.	Rezoning Application
EXHIBIT X.	Community Guiding Principles
EXHIBIT X.	Town Stream Determinations
EXHIBIT X.	Traffic Impact Study
EXHIBIT X	Impact Analysis on the Value of Contiguous Properties of a Proposed Municipal Services Center

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter the “Agreement”) is made and entered into as of the XX day of XX 2018 by and among The Town of Chapel Hill, a municipal corporation organized and existing under the laws of the State of North Carolina, and The University of North Carolina at Chapel Hill and the Board of Trustees of the Endowment Fund of The University of North Carolina at Chapel Hill, (collectively the “Developers”) and the Town of Chapel Hill (the Municipality).

ARTICLE 1. STATUTORY FRAMEWORK

1.1 G.S. 160A-400.20(b) and 160A-400.22 expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of G.S. 160A-400.20 through 160A-400.32, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.

1.2 In addition to any force of law conferred upon this Agreement by North Carolina law related to local governments, the terms of this Agreement are also contractual in nature, are a significant inducement and consideration to enter into this Agreement, and may be enforced as contractual terms.

ARTICLE 2. DEFINITIONS

In the construction of this Agreement and its incorporated EXHIBITS, the following capitalized terms shall have the respective meanings set forth below wherever they appear in this Agreement. Except as otherwise provided in this Agreement, terms used in the relevant portions of the North Carolina General Statutes or the Town of Chapel Hill Land Use Management Ordinance (“LUMO”) shall have the same meanings as employed in those statutes and ordinances.

- 2.1 *Agreement.* The word “Agreement” shall mean this Development Agreement.
- 2.2 *Annual Report.* The words “Annual Report” shall mean the annual report required by the Town pursuant to Section 5.XX of this Agreement.
- 2.3 *Council.* The word “Council” or “Town Council,” shall mean the legislative body of the Town of Chapel Hill, which together with the mayor of the Town shall constitute the governing body of the town.
- 2.4 *Development or Develop.* The words “Development” or “Develop” shall mean any activity on the Property involving, requiring, or consisting of: (i) the construction of a new building, and the construction or installation of other structures, roads, greenways or paved trails, sidewalks, parking lots, or utility infrastructures; (ii) the clearing or alteration of land as an adjunct of such construction; or (iii) the expansion of an existing building
- 2.5 *Developer or Developers.* The words “Developer” or “Developer” shall mean the Town of Chapel Hill, the University of North Carolina at Chapel Hill, and the Endowment of the University of North Carolina at Chapel Hill acting in the role of a developer and/or property owner.
- 2.6 *Effective Date.* The word “Effective Date” shall mean the effective date of this Agreement, which is ##, 2018.
- 2.7 *LUMO.* The term “LUMO” shall mean the Land Use Management Ordinance of the Town of Chapel Hill in effect as of the Effective Date.

- 2.8 *Manager*. The words “Manager” or “Town Manager” shall mean the Town Manager of the Town of Chapel Hill or his/her designee and anyone acting pursuant to authority vested by state statute or local ordinance to issue local permits for Development on behalf of the Town of Chapel Hill.
- 2.9 *Municipality*. “Municipality” shall mean and refer to the Town of Chapel Hill, a municipal corporation organized under the laws of the State of North Carolina when acting in its capacity as the governing municipality for this Development Agreement, site plan approval, special use permits, building permits or other required approvals under the laws, rules and regulations adopted by the Town of Chapel Hill or other governmental authority.
- 2.10 *Nontechnical and technical words*. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
- 2.11 *Party*. The word “Party” shall mean one or more of the “Parties” as may be understood based on the specific context of the reference.
- 2.12 *Parties*. The word “Parties” shall mean the Town of Chapel Hill, the University of North Carolina at Chapel Hill, and the University and the Municipality.
- 2.13 *Periodic Review*. The term “Periodic Review” shall have the meaning ascribed in Section 4.12 of this Agreement.
- 2.14 *Property*. The term “Property” shall mean that certain parcel of land, located on Estes Drive as depicted in EXHIBIT X, attached hereto. The Property also includes any public rights-of-way that may be located within the boundaries of EXHIBIT X.
- 2.15 *Registry*. The term “Registry” shall mean the Orange County Register of Deeds.
- 2.16 *Site Development Permit*, or SDP. The words “Site Development Permit” shall mean the permit issued by the Town Manager authorizing Development or portions thereof in accordance with this Agreement. A Site Development Permit required by this Agreement shall be in lieu of any Zoning Compliance Permit that might otherwise be required by Section 4.9 of the LUMO.
- 2.17 *State*. The term “State” shall mean the State of North Carolina.
- 2.18 *Town*. The word “Town” shall mean and refer to the Town of Chapel Hill, a North Carolina municipal corporation or its successor, solely in its capacity as a *participant* and not as the governing municipality.
- 2.19 *Town Attorney*. The term “Town Attorney” shall mean the attorney for the Municipality.
- 2.20 *Town Regulations*. The term “Town Regulations” shall have the meaning as described in Section 4.4.
- 2.21 *University*. The words “the University” shall mean the University of North Carolina at Chapel Hill and The Board of Trustees of the Endowment Fund of The University of North Carolina at Chapel Hill.
- 2.22 *Zoning Compliance Permit*. The term “Zoning Compliance Permit” or “ZCP” shall mean an administrative permit issued by the town manager authorizing the recipient to make use of existing buildings in accord with the requirements of the Land Use Management Ordinance as of the effective date of this Agreement.

ARTICLE 3. RECITALS

- 3.1 The University of North Carolina at Chapel Hill, through the State of North Carolina, and The Board of Trustees

of the Endowment Fund of The University of North Carolina at Chapel Hill are the owners of that certain property situated on the southern side of Estes Drive as shown on EXHIBIT X and described on EXHIBIT X. The Property is located within the corporate and regulatory limits of the Town of Chapel Hill.

- 3.2 On September 27th, 2017 the Town Council directed the Town Manager and Town Attorney to negotiate a development agreement for the redevelopment of the *Property*.
- 3.3 On May 10th, 2017 the Town created a web page on the Town of Chapel Hill website to provide information about the proposal.
- 3.4 On March 6th and September 7th, 2017, the Town hosted public information meetings to learn about the proposal.
- 3.5 On November 30th and December 13th of 2017, and January 8th, February 5th, February 15th, March 1st, and April 12th of 2018, the Town hosted public workshops to receive public input regarding specific topics about the project. The topics for these meetings were developed with interested community members following the September 7th public information meeting.
- 3.6 Residents of the Elkin Hills neighborhood participated in community meetings and developed a document consisting of Guiding Principles for the Development Agreement. The principles have served as design drivers for the site layout, and have been broadly incorporated into the program for development. Specific incorporation of Guiding Principles are in the following sections of this Agreement: 5.4, 5.5, 5.7, 5.8, 5.10, 5.17, 5.18, and 5.22.
- 3.7 An impact analysis on the value of contiguous properties was performed by a NC State-Certified General Real Estate Appraiser. This report was provided to the Town and interested residents. The report is provided as an Exhibit to the Agreement.
- 3.8 In 2018, the following development review advisory boards reviewed and provided their feedback on the development agreement:

They are: the Community Design Commission and the Transportation and Connectivity Advisory Board both met on March 27, 2018; the Environmental Stewardship Advisory Board met on April 10, 2018; and the Planning Commission met on April 17, 2018.

The Parks, Greenways, and Recreation Commission reviewed and provided feedback on April 17, 2018, and the Stormwater Management Utility Advisory Board reviewed and provided feedback on April 24, 2018.
- 3.9 The purpose of this Agreement is to facilitate the Development of the Property in a way that best realizes the public benefits to the Town of Chapel Hill and the University of North Carolina at Chapel Hill. The Development of the Property requires a major investment by the first builder, presumed to be the Town, in facilities, substantial front-end investment in infrastructure improvements, and substantial commitments of the resources to achieve the benefits of the Development for the Town, and the University. The Town will be unable to make and realize the benefits from such commitments without the assurances as provided by this Agreement.
- 3.10 The general benefits to be received by the Town of Chapel Hill from the implementation of the Development include, without limitation:
 - a) The opportunity to build a municipal services center in a desirable location for serving the needs of the entire community,
 - b) Minimization of adverse off-site impacts, and incorporation of sustainability principles in the design and implementation of the Development of the Property;
 - c) Provision of a plan for addressing the transportation needs of the Development of the Property, including commitments of sidewalks, a Greenway connection, and road improvements; and
 - d) Assurance that the long term Development of the Property will be undertaken in a manner that is compatible with the interests of the Town and the University.

- 3.11 The general benefits to be received by the University from the implementation of the Development include without limitation:
- a) Obtaining sufficient certainty, timeliness, and predictability in the Town's development review and approval process to justify the substantial up-front capital investment by the Town on University-owned property;
 - b) Integration of site plans, and uses, architecture, site engineering, landscape architecture, and mitigation measures over the entire Property;
 - c) Flexibility and alternatives to Town ordinances, standards, policies and guidelines to achieve the Development; and
 - d) Participation from the Town to achieve the public benefits necessary for the Development including stormwater management infrastructure.
- 3.12 In exchange for providing these benefits mutual benefits, both parties receive the assurance that they may proceed with the Development of the Property in accordance with any and all existing Town of Chapel Hill development regulations and conditions of approval of the Municipality as they exist on the Effective Date, subject to the terms, conditions, and exceptions contained herein and subject to periodic potential amendments to this Agreement made in accordance with this Agreement.
- 3.13 The Development as contemplated in this Agreement was reviewed by the following Town's Advisory Boards: Transportation and Connectivity Advisory Board, Environmental Stewardship Advisory Board, Community Design Commission, Parks and Greenways Commission, and Stormwater Utility Board, and reviewed by the Town's Planning Commission.
- 3.14 After careful review and deliberation, the Parties have determined that the latitude afforded the proposed Development of the Property and the certainty, timeliness, and predictability regarding Town development approval afforded by this Agreement provide important benefits and Development justifies the provision of the mitigation measures specified in Article 5 of this Agreement, which the Parties freely and with full knowledge and consent agree to provide.
- 3.15 The terms and conditions of this Agreement have undergone extensive review by the Town's staff and the Town Council and have been found to be fair, just and reasonable. After careful review and deliberation, the Town Council has determined and concluded that the Agreement meets the goals and needs of the Town and the University and complies with all statutory requirements.
- 3.16 The Town of Chapel Hill, by electing to enter into this Agreement in accordance with statutory procedures, acknowledges that the obligations of the Town of Chapel Hill shall survive beyond the term or terms of the present Town Council and that such action will serve to bind the Town of Chapel Hill and future councils to the obligations thereby undertaken. By approving this Agreement, the Municipality has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date.
- 3.17 Based on the foregoing considerations, the Parties desire to enter into this Agreement for the purposes of:
- a) agreeing upon the plan, design, and density of Development on the Property and the types of uses thereon, and promoting sustainability, reflecting consideration of economic issues;
 - b) coordinating the construction and provision of infrastructure that will serve the above-described Development of the Property and the community at large;
 - c) confirming the dedication and/or provision of the public amenities described herein; and
 - d) providing assurances to the Parties that they may proceed with the Development of the Property in accordance with the terms of this Agreement without encountering future changes in ordinances, regulations or policies that would affect their ability to Develop the Property under the terms of this Agreement;
 - e) providing certainty that the Parties can obtain permits necessary for the Development pursuant to a non-discretionary, predictable and expeditious process.

- 3.18 Pursuant to G.S. 160A-400.24, the Town Council conducted a public hearing on May 9, 2018 to consider the approval of this Agreement. The notice of public hearing specified, among other things, the location of the Property subject to this Agreement, and the development uses proposed on the Property. The initial draft of this Agreement was posted on the Town website on March 28, 2018 and was available for public inspection at Town offices and online at that time. Updates to the draft of this Agreement were posted for the May 9, 2018 public hearing.
- 3.19 On June 27, 2018 the Town Council considered and approved this Agreement and authorized the Town's execution of the same as a Party and as the Municipality. The approval of this Agreement constitutes a legislative act of the Municipality's Town Council.

ARTICLE 4. TERMS

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

- 4.1. Recitals. The Parties agree the foregoing Recitals in Article 3 are true and correct and are incorporated herein by reference.
- 4.2. Property Subject to Agreement. The real property subject to this Agreement includes all of the Property.
- 4.3. Zoning of the Property. On June 27, 2018, the Town Council rezoned the Property to University-1 (U-1) which is located within the Town's planning and zoning jurisdiction.
- 4.4. Term of Agreement: The term of this Agreement shall commence upon the Effective Date and it shall expire twenty (20) years thereafter unless sooner terminated by the mutual consent of the parties hereto or their successors in interest or is otherwise terminated pursuant to the terms of this Agreement. This twenty (20) year term has been established as the maximum lease length currently permitted by the University. The Town finds that a term of twenty (20) years is reasonably necessary to assure the Town of the realization of the public benefits from the Project. Expiration of the twenty (20) year term shall not terminate mutually agreed to obligations and commitments included within this Agreement that are expressly specified to extend beyond the term of the Agreement. The term of this Agreement may be extended at any time by mutual agreement between the Parties of this agreement.
- 4.5. Law in Effect at Time of the Agreement Governs the Development; Vested Rights. Except as provided in G.S. 160A-400.26 and G.S. 160A-400.29(b), the Municipality may not apply subsequently adopted ordinances or development policies to the Property during the term of this Agreement without the written consent of the Parties. The consent of Parcel Owners shall not be required unless the Parcel owned by the Parcel Owner is directly and adversely affected by such subsequently adopted ordinances or development policies, in which case the affected Parcel Owner must also provide written consent under this Section. Accordingly, during the term of this Agreement the Parties shall have a vested right to Develop the Property in accordance with the terms of Article 5 of this Agreement, the terms of the LUMO, and any applicable laws and regulations, all of the foregoing as they exist as of Effective Date. This Agreement does not abrogate any rights that may vest pursuant to statutory or common law or otherwise in the absence of this Agreement. The Participants agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In accordance with G.S. 160A-400.26(c), in the event State or federal law is changed after the Effective Date and the change prevents or precludes compliance with one or more provisions of this Agreement, the Town may modify the affected provisions with the consent of the Parties, upon a finding that the change in State or federal law has a fundamental effect on the Agreement, by ordinance after notice and a hearing and upon such modification the Town shall record the modification in the Registry. If the Parties fail to consent, this Agreement shall be terminated (with the any Parties retaining any rights with respect to any Site Development Permit obtained prior to termination) and said termination will be recorded in the Registry.

4.6 Development of the Property - Special Uses. In the event a proposed Development does not comply with this Agreement and applicable Town Regulations and is not considered a Minor Modification (as hereinafter defined) to this Agreement, the Party seeking to develop, in the Party's sole discretion, may:

- a) apply to the Municipality for an amendment to this Agreement as a Major Modification (as hereinafter defined), or
- b) apply for a special use permit under Section 4.5 of the LUMO to permit the proposed Development.

4.7 Development of the Property - Special Uses. In the event a proposed Development does not comply with this Agreement and applicable Town Regulations and is not considered a Minor Modification (as hereinafter defined) to this Agreement, the applicant, in the applicant's sole discretion, may:

- a) apply to the Town Council for an amendment to this Agreement as a Major Modification (as hereinafter defined), or
- b) apply for a special use permit under Section 4.5 of the LUMO to permit the proposed Development.

4.8 Local Development Permits.

- a) In accordance with G.S. 160A-400.25(a)(6), the local development permits approved or needed to be approved for the Development shall include the following: (1) Individual Site Development Permits; (2) Building and other applicable construction permits; and (3) Engineering Construction Permits, Street Cut Permits, Street Closure Permits for work in Town rights of way. Any such approvals and permits shall be consistent with the requirements of Article 5 of this Agreement. The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Parties of the necessity of complying with such permitting requirements, conditions, terms or restrictions, except as may be limited or otherwise provided in this Agreement.
- b) Application may be made for more than one type of local permit at a time, and such permit applications shall be reviewed concurrently by the Town to the extent possible. Additionally, the Municipality shall exercise reasonable diligence to expedite the processing of the required permit and approval applications for the Development of the Property. The Parties shall in a timely manner provide the Town with all documents, applications, plans, and other information necessary for the Municipality to carry out its obligations hereunder.

4.9 Development of the Property – Site Development Permit.

- a) Permit Required. A Site Development Permit shall be required prior to the commencement of any Development or construction work related to Development except as otherwise indicated in this Agreement. The Site Development Permit required by this section shall be in lieu of any Zoning Compliance Permit that might otherwise be required by Section 4.9 of the LUMO. The Parties and/or Parcel Owners intending to undertake Development of the Property (the "Applicant") shall apply for a Site Development Permit by filing the application provided for in EXHIBIT X.
- b) Schedule of Review:
 - 1) Prior to submitting an application for a Development Agreement Compliance Permit, the Party shall meet with the Municipality to review the proposed Development.
 - 2) Upon submittal of a Site Development Permit, Town projects shall be scheduled for Community Design Commission review, and University projects shall be scheduled for Design Review Committee review. The Community Design Commission shall have the option to review and provide comment on Town projects prior to Site Development Permit approval.
 - 3) Within five (5) working days following submission of an application for a Site Development Permit, the Municipality shall provide the applicant with a completeness determination.

4) The Municipality shall review the application for compliance with this Agreement and the applicable Town regulations that are not expressly superseded by this Agreement.

5) Within fifteen (15) working days following the date on which an application is deemed complete, the Town shall provide written comments to the Party regarding whether the submitted application is in compliance with this Agreement and applicable Town regulations or whether the submitted application requires revision.

6) If the application is not in compliance, the Party shall submit a revised application to the Town. Upon submitting a revised application, the Town shall process the revised application in the manner described in Section 4.8, including the fifteen (15) day time frame set forth in subsection 4) and such process shall be repeated until the application is in compliance with this Agreement and applicable Town regulations. Throughout this review period, the Party and the Municipality will strive to review and respond to information in an expeditious manner and provide updates to one another every ten (10) working days to ensure open communication and accountability.

7) The Town Manager shall approve or deny the Site Development Permit application within seventy-five (75) working days following submission of a complete application, unless (i) an extension of time is requested by the Party, or (ii) the Party submits a revised application to the Town fewer than fifteen (15) working days before the seventy-fifth (75th) day of the review period, in which case the review period shall be automatically extended by fifteen (15) working days.

i. The Town Manager shall approve the application upon finding it complies with and does not violate any term of this Agreement and the applicable Town regulations, and shall deny the application upon finding it does not comply with the terms of this Agreement and the applicable Town regulations.

8) If the application is approved, the Town shall issue the Applicant a Compliance with Development Agreement Approval Letter.

9) If the application is denied, the Town Manager shall specify the grounds for finding that it is inconsistent or in violation and refer the Party to the special use permit process described in Section 4.5 of the LUMO. Alternatively, the applicant may modify the Site Development Permit application or apply for Major Modification to this Agreement.

10) Notwithstanding anything to the contrary, a one-time change in floor area of one thousand (1,000) square feet or fewer to Development previously approved with a DACP shall not require modification or approval of another DACP. Such changes shall be reported to the Municipality in the Annual Report.

c) Construction Management Plan. Each Site Development Permit application shall include a construction management plan. The construction management plan shall, at a minimum:

1) Show how construction vehicle traffic will be managed and where the construction vehicle routes will be located.

2) Identify any impacts to bicycle, pedestrian, or Transit routes and facilities and indicate how they will be mitigated.

3) Show parking areas for on-site construction workers including plans to prohibit parking in residential neighborhoods.

4) Identify construction staging and material storage areas.

5) Identify construction trailers and other associated temporary construction management structures.

- 6) Indicate how the project construction will comply with the Town's Noise Ordinance.
- 7) Propose times and days when construction and noise from the Development are permitted.
- 8) Indicate that the construction management plan for a project will provide a phone number for noise notifications during the construction period. The Party will contact adjoining property owners directly prior to construction and will post a sign on-site, in a visible location agreeable to adjoining property owners, stating that noise issues can be reported by calling the posted phone number.
- 9) Submit written confirmation that the Party has provided information to contractors and subcontractors regarding noise mitigation requirements for Development for contractor and subcontractor review and compliance with same.

4.10 Amendment and Modification. The terms of this Agreement may be amended or modified by the mutual consent of the Parties,. A modification of this Agreement that is considered a Major Modification (as hereinafter defined) of the terms of this Agreement shall follow the same procedures as required by North Carolina law for the adoption of a development agreement. Any Party may propose a Major Modification requiring amendment or a Minor Modification (as hereinafter defined) to this Agreement. Upon receipt of a proposed modification, the Town Manager shall consider the following criteria in making the determination as to whether a proposed modification is a Major Modification or a Minor Modification to this Agreement. The following changes (a) – (g) will be considered Major Modifications under the Agreement:

- a) A substantial change in the boundaries of Property subject to this Agreement as defined as:
 - (i) any single proposed increase or decrease in the area of land subject to this Agreement of more than five (5) percent, or (ii) a cumulative increase of ten (10) percent or more in the land area subject to this Agreement.
- b) An increase in the amount of total square footage of greater than five (5) percent
- c) An increase in maximum building stories
- d) Any decrease in the proposed stormwater management standards
- e) Any encroachment into the 100' buffer other than the uses contemplated in this Agreement.
- f) Locating a building that is designated to be located internally within the site to the south or east of the internal loop road.
- g) Construction of a fire station.

All other amendments or modifications to this Agreement are considered Minor Modifications and therefore would not require the procedures for adoption of a development agreement. All Minor Modifications require notice to Town Council and shall be subject to review and approval by the Town Manager. Such approval shall be memorialized by letter from the Town Manager and acknowledged by the Parties and shall be maintained on file by the Town Clerk if applicable.

Notwithstanding the above, some proposed changes to this Agreement that do not meet the threshold to constitute a Major Modification may in the judgment of the Town Manager, because of size, perimeter location or transportation impacts, merit public review. In the event the Town Manager makes such a determination, the Town Manager may submit a proposed Minor Modification as notification to Town Council to allow an opportunity for Council review. Unless the Parties agree otherwise, such a review shall not extend the time period allowed for a decision by the Town Manager on the Minor Modification or convert the change from a Minor Modification into a Major Modification.

All proposed adjustments to this Agreement shall be publicly posted in such a manner that citizens of Chapel Hill will have the opportunity to express any concerns to the Town Council and/or the Town Manager.

- h) The Town Manager shall determine whether a proposed adjustment to this Agreement is a Major Modification or a Minor Modification within fifteen (15) working days of receipt of a proposed adjustment and shall promptly notify the Town Council and applicant

of that determination. If the proposed action is determined to be a Major Modification, the Town Manager shall require the filing of an application for approval of the amendment, following procedures outlined in Section 1.6 of this Agreement.

- i) Minor Modifications to this Agreement may be approved by the Town Manager as long as such changes continue to be in substantial compliance with the approving action of the Town Council and all other applicable requirements and result in a configuration of buildings/development that is generally consistent with this Agreement. The Town Manager shall not have the authority to approve changes that constitute a Major Modification to this Agreement.

4.11 Recordation/Binding Effect. Within fourteen (14) days after the Town of Chapel Hill and University enter into this Agreement, the Municipality shall record this Agreement in the Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the Town and its successors in interest, to the Parties and their successors and assigns in title (as defined in Section 2.4). All of the provisions of this Agreement shall be enforceable during the term as equitable servitudes and constitute covenants running with the land pursuant to applicable law.

4.12 Annual Report. The Parties or their designee shall on an annual basis for five consecutive years or until construction is completed submit a written report to the Town Manager on the Development undertaken pursuant to this Agreement in the previous year (the "Annual Report"). The Annual Report shall set forth all individual Site Development Permits issued, infrastructure installed, the status of participation by the Parties in the provision of or financing of public infrastructure for the Development, dedications and acquisitions of infrastructure by the Parties and the projected schedule for Development of the Property in the forthcoming year. The Annual Report shall include all of the information required pursuant to Section 5.20 of the Agreement and shall be provided at the times specified by that Section. The Annual Report shall also include a report demonstrating good faith compliance by the Parties with the terms of this Agreement. Upon receipt of the Annual Report, the Town Manager shall undertake the Periodic Review as set forth in Section 4.12 of this Agreement. For so long as the Town of Chapel Hill is the sole occupant of the Property, the Town of Chapel Hill agrees to prepare and submit the Annual Report, subject to the review and approval of the University prior to submission.

4.13 Periodic Compliance Review and Enforcement.

- a) Periodic Review. Pursuant to G.S. 160A-400.27, the Town Manager shall conduct a periodic compliance review (the "Periodic Review") at least every twelve (12) months for five consecutive years or until construction is completed, at which time the Parties shall be required to demonstrate good faith compliance with the terms of this Agreement. The Town Manager shall promptly report the results of this review to the Town Council. The Town Manager will use the Annual Report as the basis for preparing the Periodic Review.
- b) Periods of Inactivity If there has been no significant activity on the Property for twelve months, the Parties may submit a statement to that effect in lieu of the Annual Report.
- c) Material Breach. If, as a result of the Periodic Review, the Town Council finds and determines that any Party has committed a material breach of the terms or conditions of the Agreement (the "Breaching Owner"), the Town Manager shall serve notice in writing to the Breaching Party within fifteen (15) days after the Periodic Review setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination.
- d) Right to Cure. After Notice has been served, the Breaching Party shall have a reasonable time in which to cure the material breach (the "Breaching Owner's Cure"), but in no event shall the Breaching Party have less than thirty (30) days for the Breaching Party's Cure. Notwithstanding the foregoing, the Breaching Party, as applicable, shall be afforded an additional reasonable period of time to cure the breach if cure is commenced within the time period and thereafter diligently pursued but cannot be completed within said time frame.
- e) Termination or Modification by the Town. If the Breaching Party fails to cure the material breach under Section 4.12(a), then the Town Council may elect to terminate or modify the Agreement after complying with mediation requirements as stated in Section 4.13. Any notice of termination or modification or finding of breach by the Town may be appealed to the

Town Board of Adjustment in the manner provided by G.S. 160A-388(b1). Thereafter, the Breaching Party may pursue any other rights and remedies available at law or in equity. If after mediation the Town Council elects to unilaterally modify the Agreement, the Parties may elect for the Agreement to be terminated rather than accede to the Agreement with the modifications made by the Town Council by giving written notice to the Town within sixty (60) days after the proposed modification. In such event, Section 4.27(a) and Section 4.27(b) shall apply and the Party have the right to file a termination in the Registry. Failure of the Town to conduct this Periodic Review shall not constitute a waiver by the Town of its rights to otherwise enforce the provisions of this Agreement, nor shall the Parties have or assert any defense to such enforcement by reason of such failure to conduct a Periodic Review.

4.14 Mediation. In the event any Developer believes another Developer is in default or is in material breach, the Developers shall make a good faith effort to negotiate and informally resolve the issues in dispute prior to terminating this Agreement. In the event of an impasse between the Participants in reaching any mutual agreement mandated by this Agreement, the Developers shall make good faith efforts to negotiate and informally resolve the issue in dispute (the "Claim"). If the Developers do not resolve the Claim through negotiation within 30 days of the date of the notice of default, the Developers agree to submit the claim to mediation pursuant to the following process:

- a) The non-defaulting Developer (the "Claimant") shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services upon which the Participants may mutually agree.
- b) If Claimant does not submit the claim to mediation within thirty (30) days after notice of default, Claimant shall be deemed to have waived the claim, and the defaulting Developer (the "Respondent") shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a participant to the foregoing proceedings.
- c) If the Developers do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings. Such notice shall set forth when and where the Developers met, that the Participants are at an impasse, and the date that mediation was terminated.
- d) If settlement does not occur and mediation is terminated, the Developers may pursue any and all actions at law and equity permitted under this Agreement subject to the right to notice and cure as provided in Section 4.12.

4.15 Development Timing and Moratoria. The Parties may, but shall not be obligated to, develop the Property pursuant to this Agreement. If any Party so elects to develop a portion of the Property, such Participant shall carry out the Development of such portion of the Property in such order and sequence as the Parties determine in its discretion, provided such does not violate an express provision of this Agreement. Phasing of the Development shall be based on sound engineering to ensure functional and safe street circulation and utility systems at all times. Phasing shall be based in such a way that all infrastructure improvements to be constructed within the Property will be provided when or before they are necessary for that phase of the Development. Absent an imminent threat to public health or safety, neither the right to develop nor the timing of Development shall be affected by a moratorium or suspension of development rights adopted by the Town except to the extent imposed by this Agreement or by supervening federal or state law, order, rule or regulation.

4.16 Default. Apart from the Periodic Review process set forth in Section 4.12 of this Agreement, the failure of the Parties to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting Developer or Developers to pursue such remedies as allowed under applicable law against the defaulting party, after following mediation requirements in Section 4.13 above, provided, however, that no termination of this Agreement may be declared by the Town of Chapel Hill or the University absent its according to the Parties, the notice and opportunity to cure set out in Section 4.12 of this Agreement.

- 4.17 Force Majeure. In addition to specific provisions of this Agreement, neither the University nor the Town of Chapel Hill shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Participant's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities (excluding Participating Parties to this Agreement), epidemics, wars, embargoes, fires, hurricanes, adverse weather, acts of God, interference duly caused by any other Participant, or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such Party's reasonable control or due to interference by another Party, any date or times by which the Parties are otherwise scheduled to perform, if any, shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Participant. If written notice of such delay is given to the other Party after the commencement of such delay, an extension of time for such cause shall be deemed granted and will be agreed to by the Parties in writing for the period of the enforced delay, or longer as may be mutually agreed.
- 4.18 Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the University, the Endowment and the Municipality, or to impose any partnership obligation or liability upon such participating Parties. Neither the University nor the Town shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other Party as provided in this Agreement.
- 4.19 No Third Party Beneficiaries. The Agreement is not intended to and does not confer any right or benefit on any third party that is not a signatory to this Agreement.
- 4.20 Legal Actions. In addition to any other rights or remedies, and subject to the mediation requirements in Section 4.14, and further subject to the notice and right to cure provisions in Section 4.12, any Party may institute legal action against a defaulting Party or a defaulting Parcel Owner to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of North Carolina, and the Participating Parties hereto submit to the personal jurisdiction of such court without application of any conflicts of law's provisions of any jurisdiction. In the event that it becomes necessary for a Participant to pursue a civil action against a defaulting Participant, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs from the defaulting party if such fees are awarded by a court of competent jurisdiction.
- 4.21 Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a signatory Party is required to or may give to another signatory Party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or by email with a hard copy to be delivered by independent courier service by the next business day. The Parties shall make reasonable inquiry to determine whether the names or titles of the persons listed in this Agreement should be substituted with the name of the listed person's successor. Notice to a Parcel Owner shall be to the address designated in the deed conveying the Parcel to the Parcel Owner.

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

Planning Department
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd. Chapel Hill, NC 27514
919-969-5066 (phone)
planning@townofchapelhill.org (email)

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

Property Office
University of North Carolina at Chapel Hill
103 Airport Drive, CB #1060
Chapel Hill, NC 27599-1060
919-966-3297 (fax)
property@unc.edu (email)

Town Manager
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd. Chapel Hill, NC 27514
919-969-2063 (fax)
manager@townofchapelhill.org (email)

- 4.22 Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the Parties relative to the Property and supersedes all previous agreements. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed herein other than as set forth or as referred to in this Agreement or as contained in the LUMO as of the Effective Date.
- 4.23 Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.
- 4.24 Assignment. After notice to the Town and to the Municipality, the University may assign its respective rights and responsibilities hereunder to subsequent land owners of all or any portion of the relevant parcels of land, provided that no assignment as to a portion of the relevant parcel of land will relieve the assigning Party of responsibility with respect to the remaining portion of the relevant parcel of land owned by the assigning Party without the written consent of the Town.
- 4.25 Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.
- 4.26 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 4.27 Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Participating Parties hereby agree to cooperate in defending such action; provided, however, each Participant shall retain the right to pursue its own independent legal defense.
- 4.28 Termination. This Agreement shall terminate within 20 years of the recording of this agreement, unless both parties agree to an extension; or a specific termination made by operation of the provisions of this Agreement; or by agreement of the Parties. Any Termination other than by expiration of the term shall be recorded in the Registry. Termination of this Agreement shall not affect any of the following:
- a) any requirements to comply with the applicable terms and conditions of the LUMO, Site Development Permits, approval and acceptance of infrastructure improvements, and any applicable permits;
 - b) rights under this Agreement with respect to which a Site Development Permit has been issued by the Town Manager prior to the termination or expiration but for which construction is not completed.
 - c) In the event consideration is given to (i) suspension of this Agreement or (ii) termination of

this Agreement, the Parties (agree that each will identify appropriate representatives to meet and participate in good faith negotiations and mediation as provided in Section 4.13, aimed at resolving the issues prompting that consideration.

- 4.29 No Obligation to Develop. It is understood that the Town's and University's development of the Project depends upon a number of factors including, but not limited to, the availability of financing, state appropriations, receipt funds, general economic factors, and academic and programmatic needs. Nothing in this Agreement shall be construed as requiring the Town or University to develop the subject property and any failure to develop the subject property shall not be deemed a default by the Town or University of its obligations set forth in this agreement.
- 4.30 No Deemed Waiver. Failure of a Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.
- 4.31 Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The participating Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect. Participating parties, having voluntarily agreed to be contractually bound, for themselves and their successors and assigns, accept all of the terms of the Agreement and confirm their belief that the terms are consistent with applicable law as of the Effective Date.
- 4.32 Authority. Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind the Parties on behalf of whom they have executed this Agreement.
- 4.33 Transparency and Public Involvement. It is the intent of the participating Parties that all aspects of the implementation of this Agreement shall be carried out in an open, transparent fashion with opportunities for effective and meaningful public involvement. The Town and the University shall take reasonable steps to make information about all aspects of the implementation of this Agreement (including required studies, analysis, plans, reports, and applications which are public record) fully available for public review with the exception of any attorney-client privileged information, financing documentation, market analysis, internal financial documentation, reports, pro formas, returns or other personal information.

The Developers shall take efforts to form a committee consisting of interested residents, Town, and University staff to allow for future dialogue before and during construction efforts. Adjacent residents shall be notified of upcoming construction, in accordance with 5.22, and the Town and the University shall take reasonable steps to form a committee to discuss construction issues during periods of construction. The matters of such a committee may be continued during operations of the site.

- 4.34 Estoppel. Each of the participating Parties agree, from time to time, within twenty (20) days after request of the other Participant, to deliver to the requesting Participant or such Participant's designee, an estoppel certificate stating that this Agreement is in full force and effect, the unexpired term of this Agreement, and whether or not, to such Participant's knowledge, there are any existing defaults or matters which, with the passage of time, would become defaults under this Agreement. It is understood and agreed that the Parties' obligation to furnish such estoppel certificates in a timely fashion is a material inducement for the other's execution of this Agreement. In no event may any Party request from the other an estoppel certificate more than one (1) time in any twelve month period other than in connection with a bona fide sale or financing of the Property or portion thereof, any interests in, or any assets of, any Party.

ARTICLE 5: SPECIFIC STANDARDS AND MITIGATION MEASURES

The Parties do hereby agree to the specific standards and mitigation measures set forth in this Section.

5.1 Scale of Development and Uses Permitted.

- a) The development of the Property shall not exceed the limits in Table 1 of this Article and shall be generally consistent with the layout in Exhibit x.

Table 1: Scale of Development

Land Area	Total Floor Area	Maximum Building Height	Maximum Number of Parking Spaces
20.55 acres	200,000 s.f.	4 stories	615 spaces

- b) Land uses within the University-1 (U-1) zoning district and as further modified in Exhibit x are permitted.
- c) The Town may build and/or occupy a maximum of 100,000 s.f. of building area on the Property.
- d) The property is designed such that buildings and infrastructure are located towards Estes Drive and away from the Elkin Hills neighborhood.

5.2 Timing of Development

- a) Development of individual buildings is anticipated to occur in separate phases through the Term of the agreement.
- b) A Site Development Permit is required for each building.
- c) The following land uses and activities that do not involve the construction or use of a building shall be undertaken in a manner substantially consistent with the terms of this Agreement. and the Town and University shall include a report of all such activities undertaken in the previous year in the Annual Report required by this Agreement:
 - i. Maintenance and improvements to existing utility lines;
 - ii. Stormwater lines and improvements;
 - iii. Stormwater structures;
 - iv. Public utility lines traversing site (Duke Energy, PSNC, UNC, etc.);
 - v. Utility structures without a building (e.g., transformers);
 - vi. Alterations to utility equipment (generator, other mechanical components);
 - vii. Site storage and construction staging areas;
 - viii. Stream restoration projects;
 - ix. Greenways and other trails;
 - x. Public art.

5.3 Phasing

- a) First Phase: The Municipal Services Center is anticipated to be the first phase of development as generally illustrated in Exhibit X. Land disturbance shall be limited to the extent possible to allow earthwork where necessary for development of the building and supporting infrastructure in **Exhibit X**. The first phase shall include construction of the Municipal Services Center with ancillary infrastructure serving the building and the following improvements:

- i. Construction of an internal access road with two points of access on Estes Drive.
 - ii. Stormwater Control Measures, as specified in the Stormwater Management Report, to treat stormwater for the entire Project Area.
 - iii. Vegetative planting to provide screening and buffering of the first phase of development, and planting of additional buffer areas that would not be negatively impacted by future phases of construction.
 - iv. Vehicular and bicycle parking to serve the Municipal Services Center.
 - v. Documentation of SEPA compliance (Environmental Assessment and either Finding of No Significant Impact or Environmental Impact Study) is required for the entire plan of development.
- b) Subsequent Phases: Every building constructed after the Municipal Services Center is expected to provide its own screening, infrastructure, utilities, and parking.
- i. Each phase of subsequent development constructed by either the University or the Town shall provide infrastructure associated with building development and vegetative planting to screen the proposed use from residential properties located to the south and east.

5.4 Open Space and Natural Areas

- a) A minimum buffer of 100' along the southern and eastern boundary of the property shall remain undisturbed except for the minimum disturbance required to install a sanitary sewer connection to Hartig Street and walking paths as generally shown on conceptual site plan. The following may be permitted within the buffer area:
- i. Planting of new vegetation on the interior side of the buffer.
 - ii. Walking trails
 - iii. Forest education or other passive use of the wooded area that does not cause audial, visual, or other nuisance.
- b) A minimum 50' buffer shall be provided surrounding all intermittent streams which may be encroached only to allow road and infrastructure crossings. Encroachments shall be designed and constructed to have the minimum necessary impact on the buffer.

5.5 Stormwater Management

- a) Stormwater management shall be integrated into the site, building, and landscape design, with stormwater management strategies coordinated and applied in a comprehensive manner across the entire Project.
- b) Stormwater Control Measures calculated to treat the maximum impervious surface of the entire Property shall be submitted with the initial Site Development Permit application.
- c) The Exhibit x shows the general location of impervious surfaces in the Development.
- d) Prior to issuance of the first Site Development Permit, the Applicant must submit a Stormwater Management Plan for the Project which clearly identifies the stormwater impacts associated with the proposed new development and clearly documents how those stormwater impacts are proposed to be mitigated by the improvements proposed in the application. Stormwater Management Plans shall clearly demonstrate compliance with the design criteria specified in this Agreement, applicable NPDES permit requirement, and applicable University, Federal and State rules.
- e) The Stormwater Management Plan shall be reviewed by the Town and the University.
- f) Peak Discharge Rate Limits: The post-development stormwater runoff peak discharge rate shall be controlled such that the post-development runoff peak discharge rate at all locations where stormwater runoff exits in the Project (or at other points designated in the conceptual plan), shall not exceed the pre-development (existing conditions), stormwater runoff peak discharge rate for the local 1-year (2.88 inches), 2-year (3.60 inches), and 25-year (6.41 inches), and 50-year (6.86

inches) 24-hour duration storm events. The project aims to provide maximum stormwater volume control using bio-retention basins or similar improvements located within the proposed project area.

- g) 2-Year Volume Control: At each location where the stormwater exits the Project, the difference in the runoff volume generated by 2- year (3.60 inches) frequency, 24-hour duration storm event in the post-development conditions and runoff volume generated by the same storm event in the pre-development conditions shall be managed on-site and released over a period of 2 days to 5 days.
- h) 85% Total Suspended Solids (TSS) Removal: All post-development stormwater runoff resulting from the first one inch of precipitation shall be treated to remove 85% of total suspended solids of all new impervious surfaces resulting from development of the entire Property. Stormwater treatment facilities will be designed according to the North Carolina Department of Environment and Natural Resources (NCDENR) Stormwater Best Management Practices Manual as modified by the Town of Chapel Hill; the Town of Chapel Hill Design Manual, as amended; and any future written design guidance approved by both the Town and NCDENR.
- i) Nutrient Export Limitation per Jordan Watershed Stormwater Management for Development. Nitrogen and Phosphorus exported from the Property shall not exceed 2.2 pounds/acre/year and 0.82 pounds/acre/year respectively, The Jordan Lake new development provisions shall apply under Rule 0.0271 “Stormwater Requirements for State and Federal Entities”, including the requirements for offset payments.
- j) Upon completion of each Site Development Permit, the Municipality shall receive:
 - o The maintenance access must be shown and/or described in the Stormwater Plans. A copy of the Operations and Maintenance Plan, signed by the owner and for the stormwater management facility (ies). The Operations and Maintenance Plan must include a description of the device or structure, an inspections checklist, and operating and maintenance procedures. The plan should identify contact information, who will perform the inspections, frequency of inspections, inspections and maintenance logs, any specific equipment needs or certifications (e.g., confined space certification), action levels or thresholds (e.g., remove sediment after depth exceeds one foot), and disposal methods.
 - o Certified as-built plans, signed and sealed by a North Carolina-registered Professional Land Surveyor, showing building footprints, driveways, all other impervious surfaces, stormwater drainage/conveyance piping, and stormwater management structures. The as-built plans should be in DXF binary format using State plane coordinates and NAVD 88.
 - o Certification, signed and sealed by a North Carolina-registered Professional Engineer, that the stormwater management facility (ies) was/were constructed in accordance with the approved plans and specifications.
- k) Proposed covered parking/underground parking areas will require oil/water separator in the parking deck to collect the runoff prior to discharge into the sanitary sewer. The top level of parking areas will drain to the proposed stormwater control measures.
- l) The sumps of hydraulic elevators, if proposed, shall be connected to sanitary sewer.
- m) The development shall meet the Jordan Lake Rules in place at the time of approval of the Development Agreement.
- n) That Stormwater runoff from the site shall be reused whenever possible.
- o) Alternative rainwater collection, such as the use of cisterns, shall be encouraged and may count toward calculated stormwater volume storage requirements when the collected rainwater has a year-round use or an off-season drawdown is designed to meet the volume requirements.
- p) Stormwater facilities shall not be permitted within the 100’ buffer.
- q) The Town shall evaluate downstream stormwater conditions and opportunities for improvement.

Following construction, the Town shall monitor downstream stormwater performance following construction of the Municipal Services Center.

5.6 Stream Buffers

- a) Development shall be consistent with the Resource Conservation District regulations of the Town applicable as of the date of this Agreement. All activities designated as permitted uses or special uses in Table 3.6.3-2 of the LUMO that are consistent with this Agreement shall be designed in compliance with this Section.
- b) The Town or University may perform and use a stream determination for future development provided that the location of buildings and infrastructure is consistent with Exhibit x.
- c) Development shall comply with Sections 404 and 401 of the Clean Water Act and with the Jordan Buffer Rules. As the landowner of record, the University shall review and provide comments to the Town on all 404, 401 and Buffer Authorization permits prior to their submittal to the applicable regulatory agencies.

5.7 Tree Canopy & Landscaping:

- a) A minimum of 40% tree canopy shall be maintained.
- b) Native plant species shall be preferred in plantings. The applicant shall consult with Town staff, the UNC Botanical Garden, and other resources for appropriate species. In certain cases, such as where screening is essential, non-native, non-invasive species may be selected when the benefits are greater than those provided by strictly native species.
- c) Invasive species shall not be allowed.
- d) The Project shall be planned to support a low maintenance, low water use, low fertilizer use landscape with 'best suited' plant materials.
- e) Landscape Protection plans and Planting Plans for individual Site Development Permit applications shall identify existing and proposed tree canopy mix and percent coverage, and landscape materials. If irrigation is proposed, controls shall utilize smart technology to conserve water. Until such time as the University occupies the Property, the Town agrees to consult with UNC Grounds on all landscape design, protection, and planting plans prior to implementation.
- f) Continuous tree protection fencing shall be shown at the limits of disturbance on the demolition and grading plans. Fencing must be installed and inspected prior to any site work or clearing.
- g) A foundation buffer strip, as described in LUMO 5.9.5.c.2, may be provided in variable width.

5.8 Compatibility and Buffers:

- a) Development shall strive to be compatible with existing adjacent development and will be buffered per LUMO 5.4. Development near existing neighborhoods shall respect buffers, height limits, lighting, drainage, noise impacts.
- b) A planting mix or density is not prescribed for the southern or eastern buffer. Existing vegetation will be undisturbed but supplemental plantings may be placed adjacent to the buffer to improve screening as practical.
- c) A landscape buffer as described in the Town Design Manual is not required along Estes Drive.
- d) Noise and Lighting impacts will be regulated per Sections 5.17 and 5.18 in this agreement.

5.9 Transportation: General Improvements, Traffic Impact Study, Specific Improvements, Transit, Parking, Streets, Sidewalks, Bikeways, and Greenways

The general location of transportation-related improvements is shown in Exhibit X.

- a) General Provisions:
 - i. Exhibit X provides a plan for vehicle, bicycle, pedestrian, and bus amenities on the site. The exact location of each improvement shall be illustrated in each Site Development Permit, and be consistent with the locations shown on Exhibit X.
 - ii. The internal access road with two accesses on Estes Drive is designed to contain development in the northern portion of the site and be located away from residential properties to the south and east. Final design of the road shall reflect this consideration.
 - iii. The location of bicycle, pedestrian, and bus amenities should be coordinated with the Carolina North Development Agreement (including planning for the campus to campus connector), and Town master plans for bikes and greenways.

- b) Traffic Impact Study:
 - i. The Municipality's consultant performed a Traffic Impact Study for the first phase of development, the Municipal Services Center. Impacts associated with that building were studied and determined for this agreement and are listed in 5.9.c and 5.9.d. The Traffic Impact Study is provided as Exhibit x.
 - ii. An internal access road with two accesses on Estes Drive shall be constructed with the Municipal Services Center Phase as shown on (Exhibit x).
 - iii. A Traffic Impact Study will be performed for each subsequent Site Development Permit that results in an increase of daily trip generation of greater than 500 trips, or 250 vehicles per day, whichever is less.
 - iv. The applicant for a future Site Development Permit shall pay the cost of a required Transportation Impact Study and any necessary improvements within the site or right of way.

- c) Necessary Improvements - Due to Site Impact
Construction of the Municipal Services Center shall include these specific improvements:
 - i. Widen Estes Drive Extension along the length of site frontage to provide a consistent three-lane cross-section with exclusive westbound left-turns lane into the site at the two proposed site driveway intersections. This improvement improves operations for stop-controlled movements at both intersections and improves overall safety by removing the left-turn movements from the through traffic streams along the Estes Drive Extension.
 - ii. Provide a bus stop and amenities for transit riders along the frontage of the proposed Municipal Services Campus.

- d) Necessary Improvements – Regardless of Site Impact
 - i. The applicant shall widen Estes Drive Extension to provide exclusive westbound left-turns lanes into the site at the two proposed site driveway intersections. This (dedicated turn lane) improves operations for stop-controlled movements at both intersections and improves overall safety by removing the left-turn movements from the through traffic streams along the Estes Drive Extension corridor.

- e) General Coordination for Estes Drive Corridor:
 - i. The Town shall construct the improvements related to the project and coordinate with future NCDOT, Town, or University-funded projects to widen Estes Drive Extension between the proposed site frontage and the NC Highway 86 (Martin Luther King Jr. Blvd.) intersection to a consistent three-lane cross-section. These improvements shall be

compatible with the design of the NCDOT pedestrian and bicycle improvement project along the Estes Drive Extension corridor.

- ii. Estes Drive shall be improved to provide a separated bike lane and a multi-use or pedestrian facility, subject to review by the Town Manager.
 - iii. The applicant shall coordinate with NCDOT to install a pedestrian crossing across Estes Drive between the Property and the UNC Park & Ride. The pedestrian crossing shall utilize Rectangular Rapid Flash Beacons (RRFB), illumination, or other enhanced features to improve pedestrian safety.
- f) Roadway Improvements for future Site Development Permits:
- i. Each Site Development Permit will include information about the phasing of the appropriate connections and infrastructure to support occupancy of each building.
 - ii. When Carolina North is developed, the Town shall coordinate with NCDOT to evaluate installation of a pedestrian crossing across Estes Drive at the eastern driveway.
- g) Vehicular Parking:
- i. A maximum of 615 parking spaces shall be permitted for the entire project.
 - ii. A maximum vehicular parking ratio of 3.5 spaces per 1,000 square feet of building area shall be permitted, excluding supplemental parking for police vehicles.
 - iii. Individual Site Development Permit applications shall demonstrate an adequate amount of vehicle parking for the proposed use, including handicapped and visitor spaces.
 - iv. The applicant shall provide the minimum required handicapped parking spaces and design all handicapped parking spaces, ramps, and crosswalks, and associated infrastructure according to Americans with Disabilities Act standards, North Carolina Building Code, American National Standards Institute (ANSI) Code, and Town standard.
 - v. Prior to issuance of a Certificate of Occupancy, the Applicant shall construct the proposed surface parking lot to Town standard for dimensions and pavement design and the Applicant shall construct the proposed parking deck to National Parking Association standards or to another nationally accepted standard that may be approved by the Town Manager.
 - vi. A shared parking model may be provided with each Site Development Permit application.
 - vii. A minimum of 20% of the parking spaces approved under each Site Development Permit shall be built with conduit to allow for future electric vehicle charging.
 - i. At least 1%, or a minimum of five parking spaces, shall be DC Fast Charge capable.
- h) Bicycle Parking:
- i. The Town shall comply with LUMO bicycle parking requirements for a *public use facility*, and shall provide a mixture of Class I and Class II bicycle parking per the Engineering Design Manual.
 - ii. Bicycle parking will be located close to building entrances to allow riders easy ingress and egress. If sheltered bicycle parking is provided within the parking garage it shall be located near the building entrance.
 - iii. The University will comply with University standards for required amounts, locations, and types of bicycle parking.
 - iv. Prior to the issuance of a Site Development Permit, the Applicant shall provide the Town

with an agreed upon bicycle parking plan for the Project that addresses the quantity and locations of bicycle parking for the site.

- i) Transit
 - i. A bus shelter on Estes Drive Extension shall be constructed with the first Site Development Permit. The shelter shall contain solar lighting, and next bus information. A bus pull-off shall not be required.
 - ii. Sidewalks shall connect the bus shelter to the Municipal Services Center.
- j) Transportation Management Plan
 - i. A Transportation Management Plan (TMP) shall be submitted or updated with each Site Development Permit application. Each building is encouraged to have its own TMP Champion. The TMP shall contain the checklist items as of the Effective Date, and an annual report shall be submitted to the Town.
- k) Relationship to Carolina North improvements
 - i. During each Site Development Permit review, the Town will consider whether any improvements have been constructed in satisfaction of the Carolina North Development Agreement and whether they offset the need for separate improvements on this site. A traffic impact study considering current conditions and expected growth at the time of Site Development Permit application shall be the basis for this evaluation.
- l) Greenway:
 - i. The applicant shall construct a 10 ft. minimum width multimodal greenway connection to Hartig Street. The greenway shall be paved with a concrete surface to facilitate bicycle access.
 - ii. A greenway shall be coordinated with the Carolina North Development Agreement campus to campus connector and constructed along the property frontage and to Hartig Street in general conformance with the location shown on the general site layout plan.
 - iii. Site greenways shall be constructed with the first phase of development.
 - iv. Site greenways shall be constructed to American with Disabilities Act (ADA) standards, and shall be paved with a hard surface to facilitate bicycle access.
 - v. All pedestrian, bicycle, and greenway facilities within the Property shall be designed and constructed to meet Town standards unless otherwise approved by the Town Manager.
- m) Sidewalks:
 - i. Sidewalks shall be provided within the Project to provide connectivity between buildings, parking lots, the greenway connection, pedestrian facilities along the street frontage, transit stop, and other site amenities.
 - ii. Sidewalks shall be six feet in width, and this width may be reduced to 5' to preserve or plant adjacent trees.

5.10 Energy:

- a) Town buildings, including The Municipal Services Center, shall achieve LEED Silver certification, at a minimum.
- b) The Developers will include energy-efficient building practices and sustainable building practices in the design and construction of individual buildings and the Project as a whole.

- c) An Energy Management Plan shall be submitted with each Site Development Permit. The plan shall:
 - i. consider utilizing sustainable energy, currently defined as solar, wind, biofuels, and hydroelectric power;
 - ii. consider purchase of carbon offset credits and green power production through coordination with the NC Green Power program;
 - iii. provide for 20 percent more efficiency than the latest applicable standard for ASHRAE (e.g., 90.1) that ensures indoor air quality and adequate access to natural lighting, and allows for the proposed utilization of sustainable energy in the project;
 - iv. include on-going energy management practices, and
 - v. require that the property owner reports to the Town of Chapel Hill both the expected energy consumption as part of a model prior to issuance of a Site Development Permit and the actual energy consumption as compared to sealed engineering calculations at the time construction is completed.
- d) The goals of the Environmental Stewardship Advisory Board Development Review (provided as Exhibit X) shall be considered with each Site Development Permit application.
- e) Graywater use for reclamation and irrigation is encouraged.
- f) All building roofs shall be designed as to be “solar ready” to accommodate future photovoltaic systems unless use of another green building feature such as a green roof, presents a conflict.
- g) For a Site Development Permit that includes a parking structure, the applicant will explore the feasibility of applications to reduce the heat island and increase albedo (reflected sunlight) of the parking garage.

5.11 Design Standards

- a) Prior to Town Staff approval of a Site Development Permit, the applicant shall present final building elevations to the Community Design Commission for review and comment.
- b) The final location and design of buildings shall be reviewed by UNC Chapel Hill staff and be subject to all necessary University approvals required for University or State-owned land.
- c) Should the applicant choose to install public art, the application will present the public art to the Public Arts Commission and the appropriate University entity for their review and comment.

5.12 Utilities

- a) A sanitary sewer connection shall be permitted to Hartig Street.
- b) The University may provide utilities to University-owned buildings on the Property.
- c) The Town will be responsible for securing utilities for Town-owned buildings on the Property.

5.13 Emergency Services

- a) The Town shall be responsible for its own police, fire, and emergency medical services until the University elects to exercise its option to occupy its allocated portion of the Property. If the University occupies a portion of the Property, the Town and University shall arrange for emergency services under the generally applicable arrangements for jurisdiction and operations on University-owned property. In general, for University-owned and occupied property, the University provides police services, the Town provides fire services, and Orange County provides most emergency medical services. This Agreement shall not be deemed to restrict changes in these jurisdictional arrangements as may from time to time be mutually agreed to by the service providers.
- b) The site plan as shown in Exhibit x includes the location for a future fire station. Review and approval of any additional conditions associated with that future use shall require a major

modification of the Development Agreement at the time a station is needed.

5.14 Historic and Cultural Features

- a) An archaeological study was performed and no significant features were found. No further archaeological study is required with Site Development Permit submittals.

5.15 Construction Waste Management

- a) Construction waste shall be managed in accordance with Town standards and with the Orange County Regulated Materials Ordinance.

5.16 Solid Waste Management

- a) Construction waste shall be managed in accordance with Town standards and with the Orange County Regulated Materials Ordinance.
- b) Each individual Site Development Permit shall provide clear direction on who will provide solid waste service for each building and each building will be designed for private waste collection.
- c) Prior to issuance of a Site Development Permit, the Applicant will provide a Will-Serve letter for private solid waste and recycling collection for the office and the fire station.

5.17 Noise

- a) The Town's Noise Ordinance shall apply to the Development during construction and occupancy of the Property.
- b) Buildings shall be designed to minimize noise impacts on adjacent properties from equipment, infrastructure, vehicles, and daily operations on the Property.
- c) Noise during construction:
 - vi. As provided in Section 4.9, prior to issuance of a Site Development Permit the Applicant shall include a construction management plan that provides the following noise-mitigation information at a minimum:
 - a. Indicate how the project construction will comply with the Town's Noise Ordinance; and
 - b. Provide a phone number for noise notifications during the construction period.
 - vii. The Applicant shall post a sign on-site where the Development is to occur stating that noise issues can be reported by calling the posted telephone number.
 - viii. The location of the sign shall be indicated on the Site Development Permit application and the Town will communicate with adjacent property owners about the location.
 - ix. The Applicant will communicate directly with the neighborhood through electronic media, mailings, or face-to-face meeting to provide construction contact information for the duration of the construction of any work associated with a Site Development Permit.
 - x. Complaints regarding compliance with the noise ordinance during construction shall be handled by the Town for Town projects, and by the University for University projects.

5.18 Lighting

- a) The project shall provide sensitive lighting design that does not intrude on adjacent properties.
- b) Each individual Site Development Permit application shall describe all proposed lighting and demonstrate no increase in lighting foot-candle levels at the adjacent property line through submittal of a photometric plan.
- c) Site lighting shall be energy efficient and appropriate for the program requirements and times of use.

- d) All Town lighting standards in effect as of the Effective Date of this Agreement shall apply to the Project, including the Municipal Services Center. Future buildings shall meet or exceed those same standards.
- e) Site lighting shall be energy efficient and appropriate for the program requirements and times of use.
- f) New lighting within the Development shall comply with the following:
 - i. All lighting, including that used in and around buildings, active recreation areas, parking areas, walkways, roadways, and signs, shall be designed to minimize spillover light onto property adjacent to the Property.
 - ii. All lighting shall be designed to prevent glare that could impair vision and/or otherwise deteriorate normally accepted qualities and uses of property adjacent to the Property.
 - iii. Outdoor lighting shall be mounted at heights no greater than fifteen (15) feet for non-cutoff lights and no greater than thirty-five (35) feet for most cutoff lights.
- g) Photocell or motion sensor-activated, or other energy efficient light fixtures shall be utilized across the site except as counter-indicated for police or emergency services.
- h) Light Emitting Diode (LED) bulbs are preferred for both interior and exterior lighting.

5.19 Signs

- a) Signs shall be permitted in accordance with LUMO 5.14.

5.20 Sedimentation:

- a) Erosion and Sediment Control: Construction at the Property shall comply with applicable soil and erosion control regulations of North Carolina Department of Environmental Quality.
- b) The Town shall comply with all applicable University, State, and local soil and erosion control regulations, and shall be responsible for implementing erosion and sedimentation control measures for all land disturbing projects.
- c) The Town agrees to comply with the University's Erosion and Sedimentation Control Permit Application Process for development located on University Property (see attached process chart). As landowner of record, the University must approve of the Erosion and Sedimentation Control Plan prior to its submittal to the State for review.
- d) Discharge of dewatered water from excavated areas will require approval of Stormwater Management Division of the water quality prior to pumping into storm sewer pipes.

5.21 Construction Management Plan:

- a) The Developer shall provide a Construction Management Plan prior to issuance of a Site Development Permit. The plan shall provide for construction employee parking, construction vehicle access and routes, the location of any construction office, materials staging areas, and hours of work.
- b) The Developer shall provide a Traffic Control Plan prior to issuance of a Site Development Permit. The plan shall include, at a minimum, detour and signage for pedestrian, bicycle, and vehicular traffic during construction.

5.22 Public Notification & Participation

- a) The Developer shall conduct a meeting with opportunity for citizen participation and attendance by a Town staff representative; for the purpose of discussing possible design features of new facilities prior to submission of each individual site development permit application. The University shall distribute notice of the meeting to all property owners within 1,000 feet of the

Property.

- b) This notice shall specify the date, time, location and purpose of the meeting. This notice shall be mailed or otherwise distributed no later than two weeks prior to the meeting. Minutes of the meeting and the meeting attendance list shall be made publicly available before presentation of individual site development permit applications to the Town for approval. The public meeting shall provide an opportunity to discuss the presence of outdoor activities, if any are held, and whether mitigations are needed.
- c) Town and University staff shall be identified to serve as a liaison to interested residents before and during construction efforts.
- d) Prior to submittal of the first Site Development Permit, the Town shall contact adjacent residents to form a committee consisting of residents and Town staff to allow dialogue before and during construction efforts.

5.23 Duty to Comply with Regulations and Mitigate Environmental Releases

- a) The Town will immediately clean up any environmental releases on University-owned property that result from the Town's operations.
- b) In event of a clean-up, the Town will comply with all Federal and State regulations for cleanup, environmental investigation and remediation of all chemical releases to the environment.
- c) The Town will be responsible for all costs associated with clean up, investigation and remediation of chemical releases from Town operations.
- d) All clean up, investigative and remediation documentation and site work on University-owned land shall be reviewed by University staff.
- e) The Town shall not place any deed restrictions on the University's property.
- f) Chemicals (including fuel) shall not be stored in underground storage tanks on the Property.
- g) The Town is responsible for any fines and penalties associated with Town operations on the University's property.

5.24 Fiscal Impact

- a) Prior to submission of a University-initiated Site Development Permit, the two agencies shall draft a mutually acceptable Memorandum of Understanding or similar guidance for the following:
 - i. Joint and/or individual responsibilities for landscape maintenance
 - ii. Joint and/or individual responsibilities for infrastructure maintenance including but not limited to sidewalks, roadways, stormwater management facilities, parking areas, bicycle facilities, and greenways.
 - iii. A system for tracking costs for future-shared infrastructure (such as parking, roadways and stormwater facilities) so that the cost of full infrastructure for the Project can be shared in a pro-rata manner as each party builds structures and infrastructure on the Property.
 - a. Shared infrastructure shall include the following:
 - i. all stormwater management facilities
 - ii. the drive aisle that serves each of the buildings
 - iii. sidewalks along the drive aisle that serves each of the buildings
 - iv. greenway
 - v. sanitary sewer connection to Hartig
 - vi. transit shelter
 - vii. cost of Estes Drive Extension improvements
 - viii. lighting
- b. The costs for each of the above improvements shall be itemized and documented by the Town following the first Site Development Permit.

- b) Alternately, the above topics may be addressed in a lease document between the Town and the University.
- c) Subject to the terms and conditions of this Agreement, the Town of Chapel Hill shall be wholly responsible for all property and infrastructure maintenance (and associated costs) while it is the sole occupant of the site.
- d) Alternately, the above topics may be addressed in a lease document between the Town and the University.
- e) The Town of Chapel Hill shall be responsible for property and infrastructure maintenance while it is the sole user of the site.

5.25 Annual Report

- a) The Applicants shall submit to the Town Manager an Annual Report that includes the information required by this Agreement and that provides all necessary information for the Town Manager to assess their good faith compliance with the terms of this Agreement. This report shall form the basis for the Town Manager's periodic review of the Agreement as required by G.S. 160A-400.27(a). This required report is generally referred to as the "Annual Report."
- b) The initial Annual Report shall be filed on or before [enter date] and shall report on activities from July 1, [YEAR] through June 30, [YEAR]. Subsequent reports shall be filed on or before September 1 each year and shall report on activities in the preceding fiscal year (the preceding reporting period).
 - i. The Annual Report shall include the specified items set forth in this Agreement and listed in this Section. The failure to include in this Section an item expressly required to be included by other Sections of this Agreement shall not relieve the Applicants of the responsibility to include that item in the Annual Report. The report may include such other items as deemed relevant by the Applicant. The Town Manager may also request inclusion of other specific information or provide for its inclusion in the following year's Annual Report if such requested information reasonably relates to Development.