

**NORTH CAROLINA
ORANGE COUNTY**

**MEMORANDUM OF UNDERSTANDING
REGARDING THE CONSTRUCTION OF THE SOUTH ELLIOTT ROAD EXTENSION**

This MEMORANDUM OF UNDERSTANDING REGARDING THE CONSTRUCTION OF THE SOUTH ELLIOTT ROAD EXTENSION (this "Memorandum of Understanding") is entered into this 31st day of AUGUST, 2018 by and between the TOWN OF CHAPEL HILL (the "Town of Chapel Hill" or "Town") and BR CHAPEL HILL, LLC, a duly existing limited liability company, authorized to do business in the State of North Carolina, with its principal offices located in New York, NY ("BR Chapel Hill, LLC").

RECITALS

A. BR Chapel Hill, LLC is the owner of certain real property located inside the city limits of the Town of Chapel Hill with the street address 1250 Ephesus Church Road within Orange County, North Carolina parcel identifier number 9799346446, said property being more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the "Property") and is planning to redevelop the Property in phases as a residential rental apartment community containing approximately 750 units (the "Project").

B. The Property is located in the Town's Blue Hill District under the Town's Land Use Management Ordinance ("LUMO"), where approval of development applications has been delegated to the Town Manager.

C. On January 23rd, 2017, the Town Council of the Town of Chapel Hill (the "Town Council") approved the 25% level construction design plans (the "Initial Plans") for the extension of South Elliott Road from Fordham Boulevard to Ephesus Church Road (such extension being referred to herein as the "Road") prepared by Kimley-Horn and Associates. A general depiction of the proposed Road is attached hereto as **Exhibit B**.

D. On April 25th, 2018, the Town Council adopted the resolution attached hereto as **Exhibit C**, which provided, among other things, as follows:

1. BR Chapel Hill, LLC will dedicate any rights-of-way and easements, both temporary and permanent, located on the Property that are necessary for construction of the Road, which dedication is valued at approximately \$3 million;
2. BR Chapel Hill, LLC will pay the greater of \$38,000 or the actual increased cost of the Road design and construction resulting from BR Chapel Hill, LLC's proposed modifications, as shown in the agenda materials for the April 25, 2018 Town Council meeting and as approved by the Town Council. Said design and construction shall include markings and signage for bicycles and pedestrians at the internal Road crossing;

3. BR Chapel Hill, LLC will pay a \$1,500,000.00 payment-in-lieu to the Town of Chapel Hill for affordable housing prior to issuance of the first building permit for construction of a building on the Property;
4. The plans for the Public Improvements and Private Improvements will be reviewed for conformance with the requirements of the LUMO and the Blue Hill Design Guidelines (adopted by the Town Council on May 23, 2018);
5. The Town Manager will provide an update on the status of the stormwater plans for the Road to the Town Council. This will be included with a general update on the "Public Improvements" (as defined below) at the 70% review stage and other points based on a schedule of critical steps in the project review; and
6. The resolution also authorized the Town Manager to work with BR Chapel Hill, LLC to refine a plan for provision of rental units to serve households between 80% and 120% of the Area Median Income.

NOW, THEREFORE, in consideration of the above-stated premises and the mutual promises and conditions set forth below, the Town and BR Chapel Hill, LLC agree as follows:

1. The parties agree that the Public Improvements (as defined in Section 5) will be designed and constructed in accordance with this Memorandum of Understanding. The Town will continue to procure and coordinate the design services for the Public Improvements as contemplated by and required under Section 5. BR Chapel Hill, LLC will cause the Public Improvements to be constructed in accordance with the Final Plans (as defined in Section 4) contemporaneously with the redevelopment of the Property as contemplated by and required under Section 5 and subject to the limitations set forth therein.

2. The Public Improvements will be constructed on multiple tax parcels. The Town shall be responsible at its expense for obtaining the necessary right-of-way over the tax parcel(s) that BR Chapel Hill, LLC does not own. Furthermore, the Town will be responsible for obtaining and providing BR Chapel Hill, LLC with all easements necessary for BR Chapel Hill, LLC to construct the Public Improvements on such parcels (including temporary construction easements). The Town agrees that it will obtain such necessary right-of-way and easements on or before December 31, 2018, and BR Chapel Hill, LLC shall have no obligation to construct (or cause to be constructed) any of the Public Improvements located on property over which the Town does not obtain such necessary rights of way and easements.

3. Upon satisfactory completion of the Public Improvements pursuant to the Final Plans, the parties agree that BR Chapel Hill, LLC will convey the portion of the Road (and all other Public Improvements related thereto) located on the Property to the Town, and the Town will accept same and add such portion of the Road to the Town's public road system and assume future maintenance responsibilities consistent with its standards for maintaining other Town roads and rights-of-way. BR Chapel Hill, LLC or its contractor shall supply a one-year warranty bond for all Public Improvements upon Town approval at completion.

4. The Town will continue to procure and coordinate the design services for the Public Improvements, including the continued development of the Initial Plans, with Kimley-Horn and

Associates. The plans for the Public Improvements will be submitted to BR Chapel Hill, LLC for review and approval, which such approval shall not be unreasonably withheld, conditioned, or delayed. The final approved plans for the Public Improvements are referred to herein as the "Final Plans." The Town acknowledges that BR Chapel Hill, LLC has requested changes (the "BR Changes") to the design of the Road in the Initial Plans which will result in higher construction costs for the Public Improvements. An amount equal to the greater of (i) \$38,000 or (ii) the increased construction costs resulting from the BR Changes that relate to the Road (such greater amount being referred to as the "Excluded Costs") will not be subject to payment by the Town under Section 7 and will be borne by BR Chapel Hill, LLC.

(a) The Town will ensure the Final Plans conform to the requirements of the Town's development guidelines. The Town Manager will update the Town Council on the status of the Final Plans in accordance with the schedule.

(b) The Town agrees (i) plans for the Project shall not be subject to any amendments to the LUMO and the Blue Hill Design Guidelines enacted after May 23, 2018 and (ii) applications for permits for the Project are to be reviewed and permits are to be issued pursuant to the LUMO and the Blue Hill Design Guidelines in effect as of May 23, 2018, except that the Project shall be subject to the Mass requirements of LUMO Sec. 3.11.2.3.3 and Sec. 3.11.2.4.3 in effect immediately prior to May 23, 2018 and shall not be required to comply with the amendments enacted for these Sections on May 23, 2018 regarding building step back, module offset, and floor plate area.

(c) The Town shall be responsible for obtaining all necessary local, state and federal permits and permissions needed for the design and installation of the Public Improvements prior to the bidding phase. Further, the Town will be responsible, at its sole cost, for any mitigation payments, fees, bonds, or related expenses incurred in connection with the stream, buffer, or wetland impacts.

(d) BR Chapel Hill, LLC will pay a \$1,500,000.00 payment-in-lieu to the Town for affordable housing prior to issuance of the first building permit needed for BR Chapel Hill, LLC's redevelopment of the Property.

5. BR Chapel Hill, LLC agrees to cause to be constructed (i) the Road and the necessary sidewalks, protected bike lanes, and the stormwater facilities (described in Section 6 (b) below) (collectively, the "Public Improvements"), which shall be constructed in accordance with the Final Plans, and (ii) the recreational/green space and the stormwater facilities (described in Section 6 (a) below) (collectively, the "Private Improvements"; the Public Improvements and the Private Improvements are sometimes referred to herein collectively as the "Improvements").

(a) Once the Town has obtained all permits and permissions in accordance with Section 4(c), BR Chapel Hill, LLC will coordinate all activities related to the construction of the Public Improvements with the Town's partner agencies (*i.e.*, Orange Water and Sewer Authority, NC Department of Environmental Quality / Division of Water Resources, US Army Corps of Engineers, and NCDOT).¹ Prior to the commencement of construction

¹ Town to confirm whether land disturbance permit will come from NCDET or Orange County.

of the Public Improvements, the Town and BR Chapel Hill, LLC will develop and implement a public communications plan.

(b) In connection with construction of the Public Improvements, BR Chapel Hill, LLC shall develop a construction contract proposal relating only to the Public Improvements that will be advertised for bids. The proposal shall comply with the North Carolina Department of Transportation ("NCDOT") Specifications and Standard Drawings as applicable to the Public Improvements. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, compliance with FHWA 1273 (excluding Davis-Bacon Act compliance), Buy America, Non-discrimination, DBE Assurances, and Contractor Certification regarding suspension and debarment. All contractors submitting bids on the Public Improvements shall be pre-qualified by NCDOT.

(c) BR Chapel Hill, LLC shall donate the right-of-way for the Public Improvements on the Property so that the Town will be in compliance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at <http://www.ncleg.net/gascripts/Statutes/Statutes.asp>; and the North Carolina Department of Transportation Right of Way Manual. Town will be responsible for insuring such compliance with respect to the right-of-way on the tax parcels that BR Chapel Hill, LLC does not own.

6. BR Chapel Hill, LLC will cause to be constructed the storm sewer detention and treatment facilities described in this Section 6 in accordance with the Final Plans.

(a) BR Chapel Hill, LLC will construct the following storm sewer detention and treatment facilities and connection lines on the Property: (i) storm detention and treatment facilities of sufficient capacity to detain and treat stormwater runoff from the Road, (to the extent that the topography and other relevant conditions allow such runoff to be economically handled by a facility located on the Property of a customary size and capacity as would be typically created in connection with a development similar in size and scope to the Project), (ii) storm detention and treatment facilities of sufficient capacity to detain and treat stormwater runoff from the Project (iii) storm drainage connection lines necessary for that portion of the Road located on the Property; and (iv) storm drainage connection lines necessary for the Project.

(b) Provided that the Town, at no expense to BR Chapel Hill, acquires all property and easements as may be necessary or appropriate to allow the construction of such facilities, BR Chapel Hill, LLC will construct (i) storm sewer detention and treatment facilities on the real estate designated by the Town that is not part of the Property of sufficient capacity to detain and treat stormwater runoff from the Road that due to topography or other relevant conditions cannot be economically handled by the facilities described in subsection (a), and (ii) storm drainage connection lines necessary for that portion of the Road located outside of the Property.

(c) The Town shall be solely responsible for all construction costs related to all of the facilities described in subsection (b) and will reimburse BR Chapel Hill, LLC for such costs in accordance with Section 7 and shall be responsible for all maintenance costs for such facilities.

(d) BR Chapel Hill, LLC shall be solely responsible for all construction and maintenance costs related to all of the facilities described in subsection (a).

7. Except as otherwise provided in Sections 4 and 6, the Town will pay for the construction costs of the Public Improvements. Final projected costs received by a bid of the project and expected to be reimbursed by the Town, shall be authorized by the Town prior to commencement of work. The Town will pay the invoices (pay applications) submitted by BR Chapel Hill, LLC for the construction costs of the Public Improvements on a monthly basis; provided, however, BR Chapel Hill, LLC is required to first provide the Town with all supporting documentation for such costs as well as lien waivers and other documentation as may be reasonably requested by the Town. Additionally, the Town has a right to access and inspect the Public Improvements as construction progresses to verify that work is performed in accordance with the Final Plans. BR Chapel Hill, LLC shall facilitate and coordinate such access and inspection by the Town or its designated representative(s). BR Chapel Hill, LLC is responsible for any increased construction costs that relate to the requested modifications.

8. BR Chapel Hill, LLC, on behalf of itself and its successors and assigns, agrees and acknowledges that the payments it is providing to the Town, and all other non-monetary value provided to the Town, are negotiated and provided to the Town voluntarily and are the result of a mutually-agreed to contractual exchange for which there has been sufficient consideration provided by the Town and that said benefits to the Town provided by BR Chapel Hill, LLC do not and shall not be considered an exaction. Provided final approval is received to complete the Public Improvements and the Project, BR Chapel Hill, LLC, for itself and its successors and assigns, hereby waives any claim to a return of said payments and contributions.

9. BR Chapel Hill, LLC, and/or its contractor or agent, at no liability to the Town, shall relocate, adjust, relay, change or repair all utilities located on the Property which are in conflict with the Public Improvements. The Town shall be responsible for relocating, adjusting, relaying, changing and/or repairing all utilities located outside of the Property which are in conflict with the Public Improvements without cost to BR Chapel Hill, LLC or its contractors or agents. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to beginning construction of the Road. This Memorandum of Understanding does not modify or supersede any existing utility encroachment agreements that may be in place.

10. BR Chapel Hill, LLC may terminate this Memorandum of Understanding at any time upon sixty (60) days prior written notice to the Town following its good faith determination that either (i) any condition imposed by the Town in order to obtain any permit or approval to proceed with the Project or the Private Improvements will have a material adverse effect on the development of the Project or its economic feasibility; or (ii) if the economic feasibility of the Project in the Town has materially declined due to market forces.

In the event BR Chapel Hill, LLC exercises its rights to terminate this Memorandum of Understanding, then any approvals, waivers or exceptions that have been issued by the Town for the Project in reliance on the execution of this Memorandum of Understanding, including the those contemplated by the provisions of Section 4 (b) hereof, shall be deemed withdrawn; provided, however that such withdrawal shall not prevent BR Chapel Hill, LLC from proceeding with any development that would be allowed on the Property as a matter of right based on the then applicable provisions of the LUMO.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Town of Chapel Hill and BR Chapel Hill, LLC have executed this Memorandum of Understanding the day and year first above written.

BR CHAPEL HILL, LLC

BY: [Signature]
Name: Jordan Pickens
Title: Authorized Signatory

9/6/2018
Date

STATE OF New York
COUNTY OF New York

I, a Notary Public of the State of New York and County of New York, certify that Jordan Pickens personally came before me this day and acknowledged that he/she is the authorized signatory of BR Chapel Hill, LLC, and that he/she as authorized signatory of BR Chapel Hill, LLC, being authorized to do so, executed the foregoing on behalf of the company.

WITNESS my hand and official stamp (or seal) this 9th day of September, 2018.

[NOTARIAL SEAL]

Dale Pozzi (Seal)
Notary Public

DALE POZZI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PO6275397
Qualified in New York County
My Commission Expires 01-28-2021

Dale Pozzi
Notary's Name, Printed or Typed
My commission expires: _____

IN WITNESS WHEREOF, the Town of Chapel Hill and BR Chapel Hill, LLC have executed this Memorandum of Understanding the day and year first above written.

TOWN OF CHAPEL HILL



BY: _____

Roger L. Stancil, Town Manager

RSK

August 31, 2018
Date

ATTEST

[Signature]
Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature]
Finance Director

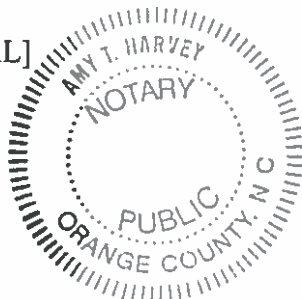
August 31, 2018
Date

NORTH CAROLINA
ORANGE COUNTY

I, Amy T. Harvey, a Notary Public of Orange County, North Carolina, certify that Sabrina M. Oliver personally came before me this day and acknowledged that she is the ~~(acting)~~ Town Clerk of the Town of Chapel Hill, a North Carolina municipal corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Roger L. Stancil, its Town Manager, sealed with its corporate seal and attested by her as its ~~(acting)~~ Town Clerk.

WITNESS my hand and official stamp (or seal) this 31 day of August, 2018.

[NOTARIAL SEAL]



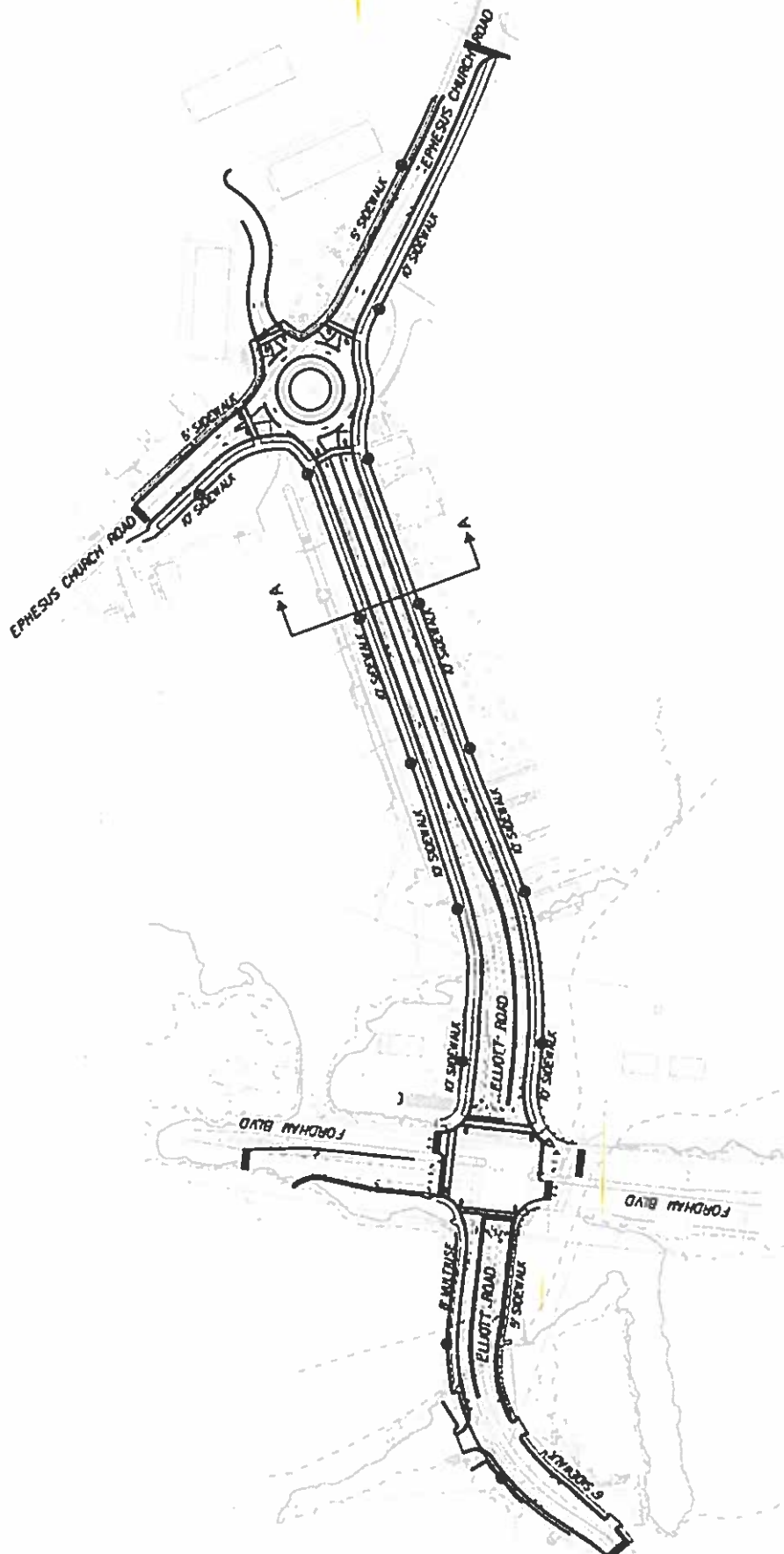
Amy T. Harvey (Seal)
Notary Public

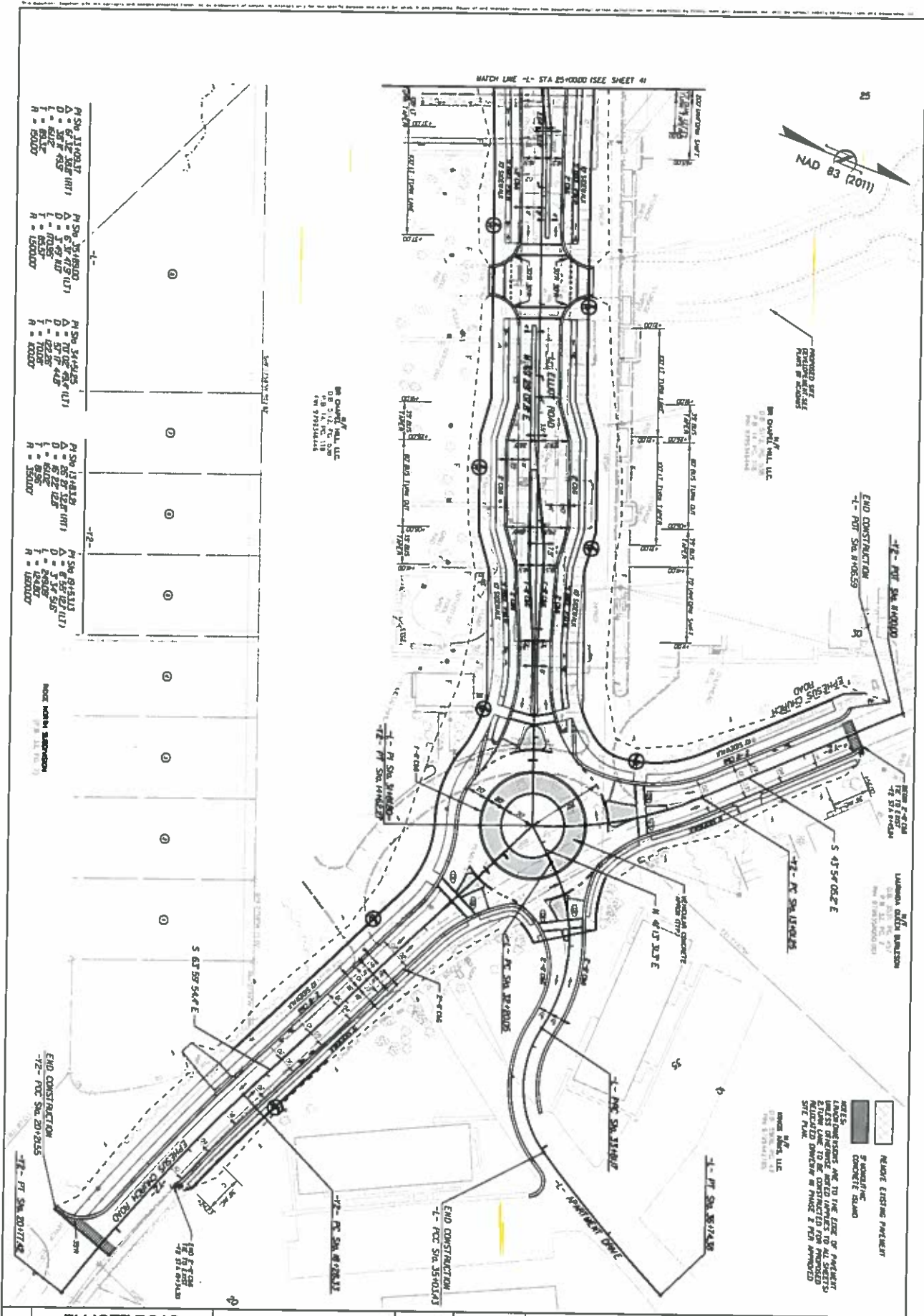
Amy T. Harvey
Notary's Name, Printed or Typed
My commission expires: May 15, 2020

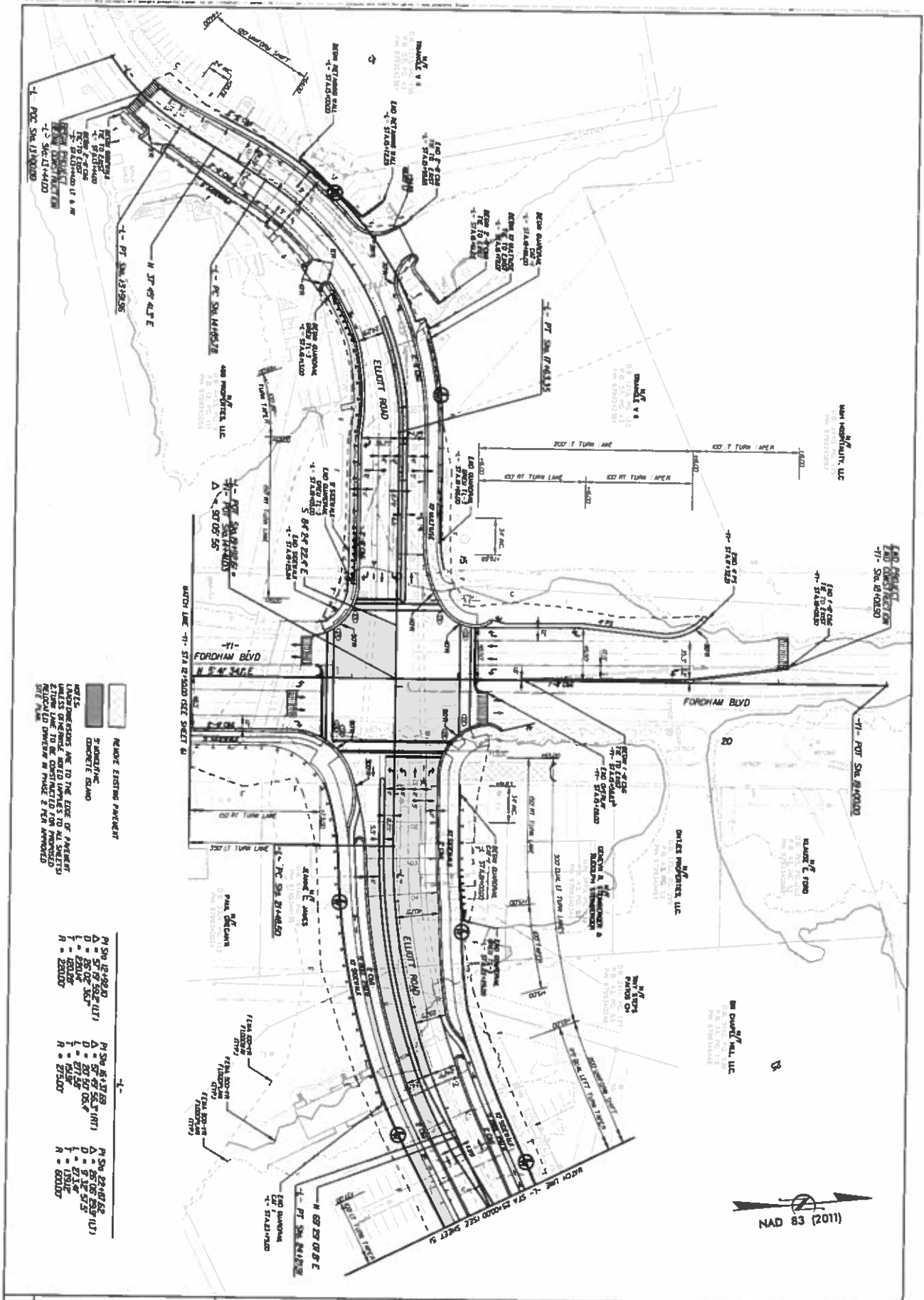
EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY



Exhibit B







<p>ELLIOTT ROAD EXTENSION</p> <p>PREPARED FOR TOWN OF CHAPEL HILL, NC</p> <p>NORTH CAROLINA</p>	<p>PLAN VIEW</p>	<p>Kimley»Horn</p> <p>© 2018 KIMLEY-HORN AND ASSOCIATES, INC. 300 WEST WILSON STREET, SUITE 1000, DURHAM, NC 27701 PHONE: 919-683-3843 WWW.KIMLEY-HORN.COM NC LICENSE # 0-0502</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>BY</th> <th>DATE</th> <th>REVISION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	BY	DATE	REVISION									
BY	DATE	REVISION													

EXHIBIT C
TOWN CONCIL RESOLUTION

I, Amy T. Harvey, Deputy Town Clerk of the Town of Chapel Hill, North Carolina, hereby certify that the attached is a true and correct copy of (2018-04-25/R-10) adopted, as amended, by the Chapel Hill Town Council on April 25, 2018.

This the 26th day of April, 2018.

Amy T. Harvey

**Amy T. Harvey
Deputy Town Clerk**



A RESOLUTION APPROVING THE PROPOSED MODIFICATIONS TO ELLIOTT ROAD EXTENSION 25% DESIGN AND AUTHORIZING THE TOWN MANAGER TO PROCEED WITH FINAL DESIGN AND CONSTRUCTION (2018-04-25/R-10)

WHEREAS, the Ephesus-Fordham Small Area Plan recommends extending S. Elliott Road east from Fordham Blvd. to Ephesus Church Road; and

WHEREAS, this new roadway, in combination with the other transportation projects recommended in the Small Area Plan, are designed to improve mobility and better distribute vehicle trips throughout the Blue Hill District; and

WHEREAS, Council approved the 25% plans for Elliott Road Extension in January 2017; and

WHEREAS, Bluerock Real Estate, LLC, the owners of the Park Apartments, will provide significant right of way for this new roadway when they submit their Form District Permit application; and

WHEREAS, Bluerock is requesting modifications to the roadway 25% plans to provide better overall site access functionality; and

WHEREAS, Town staff recommends approval of the proposed modifications with several conditions.

NOW, THEREFORE BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council approves the proposed modifications and conditions as described in the staff recommendation found in the Staff Memorandum included in these agenda materials for the April 25, 2018 Council meeting.

BE IT FURTHER RESOLVED that the Council authorizes the Town Manager to proceed with final design and construction of Elliott Road Extension, provided that Bluerock Real Estate, LLC meet the following provisions at no cost to the Town:

- dedicate the required right-of-way to accommodate the roadway in its final design, valued at approximately \$3 million, and
- pay the greater of \$38,000 or the actual increased cost of the roadway design and construction resulting from their proposed modifications, as modified by Council on April 25, 2018, which will include markings and signage for bicycles and pedestrians at the internal road crossing and
- provide a \$1.5 million payment-in-lieu for affordable housing at issuance of building permits, and
- build necessary sidewalks, protected bike lanes, recreational/green space, and stormwater facilities as part of the development. Stormwater plans will be reviewed by staff for conformance with requirement of the LUMO as now provided;
- The project will be reviewed for conformance with the requirements of LUMO as now provided and the design guidelines scheduled for approval by the Town Council this spring; Council will be updated on the status of the stormwater plans and an update will be provided at the 70% review stage and other points based on a schedule to be adopted based on critical steps in the project review.

BE IT FURTHER RESOLVED that the Council authorizes the Town Manager to continue to work with Bluerock Real Estate, LLC to refine a plan for provision of rental units to serve households earning between 80% and 120% of the Area Median Income as proposed.

The Council also authorizes the Town Manager to make minor changes to these stated provisions given that any revisions meet the same purpose and intent.

This the 25th day of April, 2018.

C-FAPEL HILL NC
3-01-18 REVISED AS PER TOC-1 COMMENTS - 2-26-18
3-16-18 PHASE 1B ADDED

3-01-18 REVISED AS PER TOC-1 COMMENTS - 2-26-18
3-16-18 PHASE 1B ADDED

3-16-8 PHASE 1B ADDED



W'