

#### CITY OF WILSON

#### City Council Meeting Agenda

#### December 14, 2023 - 7:00 p.m.

#### City Council Chambers – City Hall

- 1. Invocation Pastor Damion Royal, Contending for the Faith Church
- 2. Pledge of Allegiance
- Installation of Re-Elected Mayor and City Council Members for Districts 1, 2, and 4
- 4. Election of Mayor Pro Tempore
- 5. Consent Agenda (All matters listed are considered to be routine and non-controversial by City Council and will be enacted by one motion. There will be no separate discussion unless a Council member so requests, in which case the item will be removed from the Consent Agenda and will be considered separately.):
  - 5a. Consideration of a Resolution Proposing to Dispose of Surplus Equipment by Public Auction
  - 5b. Consideration of Approval of Tax Collections Report for October 2023
  - Receive Abstract of Votes of the City of Wilson Elections Held on November 7, 2023 for Mayor and Districts 1, 2 and 4
  - 5d. Consideration of Approval to Award Bid for Steel Structures Required for the Point of Delivery #13 115 kV Transmission Line to Nucor
  - Consideration of Approval of Proposed Regular City Council Meeting Minutes of November 2, 2023 and November 16, 2023

#### <u>Public Hearings</u>

- 6. Public Hearing Items Planning & Design Review Board
  - 6a. Consideration of Approval of an Ordinance for Zoning Change Request; approximately 8.06 acres located on Forest Hills Road and Gregory Lane; Wilson County Tax Parcel # 3711-05-2510 (PIN); Present Use Vacant/Undeveloped; Present Zone RA (Rural Agricultural); Requested Zone GC (General Commercial); Requested by Bartlett Engineering & Surveying, PC on behalf of City of Wilson, Owner (Project # 23-352)

#### Public Hearing Items - Regular

- 6b. Consideration of Approval of an Ordinance Directing Demolition and that the building inspector place a notice thereon that the property is unfit for human habitation and that the same may not be occupied for the property located at 1504 Fikewood Street, East; PIN #3721-88-5208
- Consideration of Approval of Ordinance for Voluntary Annexation of 46.27 acres of land located off Westwood Avenue; Requested by Herring-Sutton & Associates, PA on behalf of FWB Development Company, Incorporated, Owners (Project # 23-373)
- Consideration of Approval of a Resolution Declaring Its Intent to Close the 300 and 400 Blocks of Moore Street, South in the City of Wilson, North Carolina (Project # 23-382)

#### Public Hearing Items - Downtown Development and Public Recreation Initiatives (Part 2)

Note: Item 6e (i) is a legally required public hearing; although not legally required, items 6e (ii) – (iv) are also being included as public hearing items due to the scope of the proposed project and significant public interest.

- 6e (i) Consideration of Resolution to Authorize entering a Downtown Development Agreement with NSV Wilson, LLC
- 6e(ii) Consideration of Resolution to Authorize entering a Use and Operating Agreement with Mudcats Baseball, LLC
- 6e(iii) Consideration of Restated Resolution Providing for the Acquisition of Interests in Real Property
- 6e(iv) Consideration of Resolution Authorizing the Filing of an Application for Approval of Special Obligation Bonds and Making a Declaration of Official Intent to Pursue Tax Exempt Financing and Reimburse Expenditures with Proceeds of a Borrowing

#### **End of Public Hearings**

- 7. Reports
- 8. Call on the Audience

#### RULES FOR PERSONS ADDRESSING CITY COUNCIL

- 1. Each speaker must sign-in with city clerk prior to start of City Council meeting.
- During the Call on the Audience portion of the agenda, the city clerk will call on individuals signed in to address Council.
- When called to speak, each speaker will identify him/herself by giving his or her name and place of residence.
- Each speaker will be limited to speaking one time on any topic. When you are finished speaking, please step away from the podium and be seated.
- Each speaker will be limited to three (3) minutes and each group's representative will be limited to a maximum of five (5) total minutes. Each group is encouraged to designate a single spokesperson for their



#### You are Cordially Invited to the City of Wilson Oath of Office Ceremony



The Honorable Michael S. Bell
The Honorable James M. Johnson, III
The Honorable Gillettia M. Morgan
The Honorable Carlton L. Stevens



Thursday, December 14, 2023

Ceremony at 7:00 p.m.



Council Chambers, City Hall 112 Goldsboro Street E., Wilson, North Carolina

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Reception prior to Ceremony (6:00 p.m) Council Chambers City Hall

#### R-055-23

#### RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILSON PROPOSING TO DISPOSE OF SURPLUS EQUIPMENT

#### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILSON:

- That the material listed below is hereby declared to be surplus property of the City
  of Wilson and no longer necessary or useful for any municipal purpose.
- That the City Manager of the City of Wilson be authorized to dispose of the following surplus material according to City Council's authorization and pursuant to North Carolina General Statutes.
- That a copy of this resolution or a notice of its contents will be published at least once and not less than ten (10) days before date of disposition.
- 4. Items will be sold by means of public auction (which includes electronic auction)
- 5. Items not sold will be donated, recycled, or discarded.

DESCRIPTION	ASSET #	MILES/HRS.	VIN/SERIAL #
2007 Garbage Truck Rear Load	17065-17065B	166879	1HTWGAZT97J406245
2001 Vermeer Chipper	15746	3321	1VRN1312211002297
2002 Conquest ATV	15876	228	V899380000CB18811
IBM Power S914 Server	N/A	N/A	781C520
1998 Dodge Ram	N/A	Unknown	3B7HC13Z2WG193749
1994 Cadillac Deville	N/A	Unknown	1G6KD52BXRU232249
1993 Freightliner CL70	11440	103,276	1FV6JLCB3RL455768
2008 Dodge Charger	17566	122,803	2B3KA43G68H214473
Vehicle Seats/Panels/Parts	N/A	N/A	N/A
Olathe Sweeper Pull Behind	N/A	N/A	Model 65
Jacobsen Mower Frame	11464	N/A	74670

## CITY OF WILSON: Cariton L. Stevens, Mayor ATTEST: Tonya A. West, City Clerk

PROGS CL2223A

Wilson County TAX COLLECTIONS REDORF ALL RCCDS BY UNIT/YEAR DEBOSIT DATE RANGE 10/01/2023 TRRU 10/31/2023 YEAR RANGE 2013 THRU 2024

REVENUE UNIT: CMI CI-WILDON

CURR TAX YEAR: 2023

DATE 11/02/23 TIME 10:58:39 USER GJOYNER

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2014 71,476.55 2013 79,283.85 TOTAL 25,925,871.60 595,004.6 CURRENT INTEREST & COLLECTORS PRES TOTAL INTEREST & COLLECTORS PRES TOTAL TAKES & INTEREST & COLLECTORS DISCOVERIES TAKES					74,480.46	155.33	1,130,45	73,350.01
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PRIOR INTEREST & COLLECTORS PRES TOTAL PRIOR YEARS TAXES TOTAL TAXES & INTEREST & COLLECTORS DISCOVERIES TAXES & INTEREST	я						6.73	
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TOTAL TAKES & INTEREST & COLLECTORS DISCOVERIES TAKES & INTEREST						20,416.90	105,076.51	# # # # # # # # # # # # # # # # # # #
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						456.55	654,30	
						1,077,293.93	4,167,710.30	
CURRENT YEAR PERCENTAGE 16.10							1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	

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Wilson County
TAX COLLECTIONS REPORT ALL RGCDS BY UNIT/YEAR
DEPOSIT DATE RANGE 10/01/2023 THRU 10/31/2023
YEAR RANGE 2013 THRU 2024

CURR TAX YEAR: 2023

DATE 11/02/23 TIME 10:58:46 USER CJOYNER ASSESSMENT CODE: MUNC ASSESSMENT FEES

YEAR	BEGINNING LEVY	ADDITIONS TO LEVY MTD	ADDITIONS YTD	RELEASES TO LEVY MTD	RELEASES YTD	ALLIUSTRD LEVY	COLLECTED MYD	COLLECTED YTD	KNDING RALANCE
2024		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	3,030.00	2 F F F F F F F F F F F F F F F F F F F	380,00	2,850,00	00,00	120.00	2,730.00
2023			16,590.00	F	3,450.00	13,140.00	180.00	2,662.61	10,477.39
2022	12,955.80					12,955.80	360.08	2,430,99	10,524,81
2021	3,498.03	1				3,498.03	162.87	362.87	3,135,16
2020	1,916.17	1		0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0		1,916,17		140,05	1,776.12
2019	1,184.21					1,184.21			1,184.21
2018	367.83					367.83			367,83
2017	390.00					390.00		30.00	360.00
2014	8.00					8.00			5.00
2013	1,005.39					1,005.39			1,005.39
TOTAL.	21,322.43		19,620.00		3,630.00	37,312.43	812.95	5,746.52	31,565.91
DISC	DISCOVERIES						90.00	120,00	
NET							722.95	5,626.52	
TOTAL	TOTAL PRIOR YEARS						542.95	2,963.91	
CORRED	CURRENT YEAR PERCENTAGE	E 20.26		# # # # # # # # # # # # # # # # # # #					

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Wilson County TAX COLLECTIONS REPORT ALL RGCDS BY UNIT/YEAR DEPOSIT DATE RANGE 10/01/2023 THRU 10/31/2023 YEAR RANGE 2013 THRU 2024

CURR TAX YEAR: 2023

DATE 11/02/23 TIME 10:58:39 USER GJOYNER REVENUE UNIT: PMU CI-MUN DIST

2024         13, 13, 14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 69         14, 72, 73         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 24         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         14, 72, 73         1	13.150   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   14.69   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.49   16.	YEAR	YEAR BECINNING LEVY	ADDITIONS TO LEVY MID	ADDITIONS YTD	RELEASES TO LEVY MTD	DISCOUNTS AND RELEASES YID	ADJUSTRD LEVY	COLLECTED MTD	COLLECTED YTD	COLLECTED YTD ENDING BALANCE
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341.55 3,379.59 0ns pres	341.55 3,379.59 3,379.59	TOTA	L INTEREST & COLLA	RCTORS PERS		;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;			61,91	610,46	
3,379.59 M. TAXES & INTEREST & COLLECTORS PRES SOVERIES TAXES & INTEREST 3,379.59	AL TAXES & INTEREST & COLLECTORS PRES  OVERIES TAXES & INTEREST  3,379.59  3,379.59	TOTA	L PRIOR VEARS TAX	RS		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1			341,55	2,230.46	
SOVERIES WARES & INTEREST	COVERIES TAKES & INTEREST 3,379.59	ATOT	I. TAXES & INTERES	T & COLLECTORS I	TRES				3,379.59	16,447.37	
3,379.59	3,379,59	DISC	OVERIES TAXES & II	NTEREST						1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
		NET							3,379,59	16,447.37	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1

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#### 2023 MUNICIPAL ELECTION 11/07/2023 **ABSTRACT OF VOTES** FOR

#### WILSON COUNTY, NORTH CAROLINA

#### INSTRUCTIONS

The county board shall prepare abstracts of all the ballot items in triplicate originals. The county board shall retain one of the triplicate originals, and shall distribute one each to the city or town clerk for the municipality and the State Board of Elections. The State Board of Elections shall forward the original abstract it receives to the Secretary of State. (GS § 163-182.6)

#### STATE OF NORTH CAROLINA COUNTY OF WILSON

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the attached is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office or referendum named, the name of each person or

choice voted for, their party affiliation (where applicable named.	), and the number of votes cast for each person or choice for the item
This is the 17th day of November, 2023.	
Board Chair  Board Speretary	Illtan W. Ifall Ja.  Board Member  Board Member  Board Member
Elections, who being duly sworn, says the abstract of vo made to said Board.	Chairman of the County Board of tes herein contained is true and correct, according to the returns
IN TESTIMONY WHEREOF, I have hereunto set my hand	d and affixed my notarial seal this the 17th day of November, 2023.
Official Signature of Notary Public	Printed/Typed Name of Notary Public
My Commission Expires: 10-7-24	(Seal)

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Results by
I Election
Municipa
2023
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Noveriber 07, 2023 Municipal Election Results by Contest	y Contest				Frida	Friday, November 17, 2023 Page 1 of 2	Page 1 of 2
Contest TOWN OF BLACK CREEK MAYOR	Choice Raloh (Mack) Smith. In	Party	Total Votes	Election Day	One Stop		Provisional
	Miscellaneous (Write-In)		00 +	50	0 0	0 0	0 (
TOWN OF BLACK CREEK TOWN COMMISSIONER	Candy Minshew		3.	27	> <	5 6	0 0
	Ellen Edmundson Dawson		29	26	* 60	0 0	0 0
	Roland W. Lucas		28	24	4	0	0
	Larry (Sam) Price		26	22	4	0	0
	Jim Varnell		25	23	2	0	0
	Miscellaneous (Write-In)		2	2	0	0	0
TOWN OF ELM CITY MAYOR	Tawanda Moore		137	103	33	-	0
TOWN OF ELM CITY TOWN COMMISSIONER	Gil Wheeler		149	122	26	•	0
	Zachary Mercer		116	87	28	-	0
	Tammie R. Atkinson		112	90	22	0	0
	Tim Bridgers		100	83	16	+	0
	<b>Bridget Wimberley</b>		77	62	14	+	0
	Vonica Carr		75	56	19	0	0
TOWN OF KENLY MAYOR	H.L. (Toole) Hales		10	6	*-	0	0
TOWN OF KENLY TOWN COUNCIL MEMBERS	LaWanda M. Neal		14	13	٠	0	0
	Keith Davis		13	12	٠	0	0
	Shirley Dupree (Write-In)		S	5	0	0	0
	Garrett Warren Stancil		2	-	-	0	0
	Jason Tedder		0	0	0	0	0
	Wade Troutman		0	0	0	0	0
TOWN OF KENLY TOWN COUNCIL MEMBER (UNEXPIRED)	Boverly Hicks Knight		9	9	0	0	0
	Miscellaneous (Write-In)		9	9	0	0	0
TOWN OF LUCAMA MAYOR	Matthew Creech (Write-In)		78	78	0	0	0
	Jeff Johnson		09	52	8	0	0
	Miscellaneous (Write-In)		2	2	0	0	0
TOWN OF LUCAMA TOWN COMMISSIONER	Kim Joyner		100	74	25	0	*
	Jody Teague		76	67	80	0	-
	Judy Mason		40	37	63	0	0
	Peggy B. Lamm		24	21	8	0	0
	Sonya Bullock (Write-In)		12	0	12	0	0
	Miscellaneous (Write-In)		٠	0	-	0	0
TOWN OF SARATOGA MAYOR	Charles Thomas (Tommy) Hawkins		24	22	2	0	0

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November 07, 2023 Municipal Election Results by	s by Contest			Frida	Friday, November 17, 2023	17, 2023
Contest					1	Page 2 of 2
	Choice	ty Total Votes	Election Day	One Stop	Abs Mail	Abs Mail Provisional
	Miscellaneous (Write-In)	*-	-	0	0	0
IOWN OF SARATOGA TOWN COMMISSIONER	Delance Ellis	23	22	٠	0	0
	Elaine Saunders	23	21	8	0	0
	Tim Shelton	22	21	٠	0	0
	Miscellaneous (Write-In)	2	2	0	0	0
TOWN OF SHARPSBURG BOARD OF COMMISSIONERS	Wilbur Etheridge	43	39	4	O	0
	Linda Virgil	04	37	e	0	0
	David Pride	39	34	ru	0	0 0
TOWN OF SIMS MAYOR	Miranda Boykin	46	43	n	0	. 0
	Earl Campbell	20	18	2	0	0
TOWN OF SIMS BOARD OF COMMISSIONERS	Helen B. Boykin	52	49	භ	0	0
	Rhonda Ruffin Payne	31	27	4	0	0 0
	Danny Howell	18	15	n	0	0
TOWN OF STANTONSBURG MAYOR	Coley Hunt Rhodes	06	82	00	0	С
	Miscellaneous (Write-In)	14	14	0	0	0
TOWN OF STANTONSBURG TOWN COUNCIL	Eartha Butler	69	9	5	0	0
	Walter Bynum	55	52	3	0	c
	Jackie Grice	55	52	6	0	0
	H. Powell Dew, Jr.	45	43	2	0	0
CITY OF WILSON MAYOR	Carlton L. Stevens	2,759	1,687	1,054	10	00
	Mahalia Witter-Merithew	1,289	703	578	5	m
	Abby Gaona	395	253	136	4	2
	Miscellaneous (Write-In)	•	*	0	0	0
CITY OF WILSON CITY COUNCIL DISTRICT 01	Gillettia Morgan	270	165	101	-	ಣ
	Ricardo Dew	145	65	79	0	5
	Kahmahl Melo Simmons	116	59	55	0	2
	Kaden Lebray	41	25	16	0	0
CITY OF WILSON CITY COUNCIL DISTRICT 02	Michael S. Bell	374	199	171	4	0
	Donta M. Chestnut	266	138	127	. **	0
CITY OF WILSON CITY COUNCIL DISTRICT 04	James M. Johnson III	510	327	181	2	0
	Davonta Ferguson	234	130	103	0	

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# November 07, 2023 Municipal Election Results by Precinct

Precinct TCTAL

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Contest	Choice	Party	Total Vote	Total Votes Election Day	One Stop	Abs Mail	Provisional	
LOWN OF BLACK CREEK MAYOR	Miscellaneous (Write-In)				0	0	0	
	Ralph (Mack) Smith, Jr.		.,,	36 30	9	0	0	
TOWN OF BLACK CREEK TOWN COMMISSIONER	Ellen Edmundson Dawson			29 26	n	0	0	
	Miscellaneous (Write-In)			2 2	0	0	0	
	Roland W. Lucas		.,	28 24	4	0	0	
	Candy Minshew			31 27	4	0	0	
	Larry (Sam) Price		.,	26 22	4	0	0	
	Jim Varnell			25 23	2	0	0	
TOWN OF ELM CITY MAYOR	Tawanda Moore		1	137 103	33		0	
TOWN OF ELM CITY TOWN COMMISSIONER	Tammie R. Atkinson		+	112 90	22	0	0	
	Tim Bridgers		10	100 83	16	*	0	
	Vonica Carr		1-	75 56	19	0	0	
	Zachary Mercer		÷	116 87	. 28	•	0	
	Gil Wheeler		1	149 122	26		0	
	<b>Bridget Wimberley</b>			77 62	4		0	
TOWN OF KENLY MAYOR	H.L. (Tooie) Hales			10 9		0	0	
TOWN OF KENLY TOWN COUNCIL MEMBERS	Keith Davis			13 12		0	0	
	Shirley Dupree (Write-In)			5 5	0	0	0	
	LaWanda M. Neal		era er	14 13		0	0	
	Garrett Warren Stancil			2	-	0	0	
	Jason Tedder			0 0	0	0	0	
	Wade Troutman			0	0	0	0	
TOWN OF KENLY TOWN COUNCIL MEMBER (UNEXPIRED)	Beverly Hicks Knight			9	0	0	0	
	Miscellaneous (Write-In)			9 9	0	0	0	
TOWN OF LUCAMA MAYOR	Jeff Johnson			60 52	2 8	0	0	
	Matthew Creech (Write-In)			78 78	0	0	0	
	Miscellaneous (Write-In)			2	2 0	0	0	
TOWN OF LUCAMA TOWN COMMISSIONER	Sonya Bullock (Write-In)			12	0 12	0	0	
	Kim Joyner		5	100 74	4 25	0	•	
	Peggy B. Lamm			24 21	1 3	0	0	2
	Miscellaneous (Write-In)				0	0	0	
	Judy Mason			40 37	7 3	0	0	
	Jody Teague			76 67	8 2	0		

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November 17,	Page
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November 07, 2023 Municipal Election Results by Precinct

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Precinct	Contest	Choice Party		Total Votes Election Day		One Stop Abs	Abs Mail Pr	Provisional
TOTAL	TOWN OF SARATOGA MAYOR	Miscellaneous (Write-In)			-	0	0	0
		Charles Thomas (Tommy) Hawkins		24	22	2	0	0
	TOWN OF SARATOGA TOWN COMMISSIONER	Delance Ellis		23	22	•	0	0
		Miscellaneous (Write-In)		2	2	0	0	0
		Elaine Saunders		23	21	2	0	0
		Tim Shelton		22	21		0	0
	TOWN OF SHARPSBURG BOARD OF COMMISSIONERS	Wilbur Etheridge		43	39	4	0	0
		David Pride		39	34	5	0	0
		Linda Virgil		40	37	60	0	0
	TOWN OF SIMS MAYOR	Miranda Boykin		46	43	60	0	0
		Earl Campbell		20	18	2	0	0
	TOWN OF SIMS BOARD OF COMMISSIONERS	Helen B. Boykin		52	49	က	0	0
		Danny Howell		18	15	က	0	0
		Rhonda Ruffin Payne		31	27	4	0	0
	TOWN OF STANTONSBURG MAYOR	Coley Hunt Rhodes		06	82	ဆ	0	0
		Miscellaneous (Write-In)		14	14	0	0	0
	TOWN OF STANTONSBURG TOWN COUNCIL	Eartha Butler		65	90	S	0	0
		Walter Bynum		55	52	8	0	0
		H. Powell Dew, Jr.		45	43	2	0	0
		Jackie Grice		55	52	6	0	0
	CITY OF WILSON MAYOR	Abby Gaona		395	253	136	4	2
		Miscellaneous (Write-In)		٠	-	0	0	0
		Carlton L. Stevens	2	2,759 1,6	1,687	1,054	10	80
		Mahalia Witter-Merithew	T.	1,289	703	578	2	89
	CITY OF WILSON CITY COUNCIL DISTRICT 01	Ricardo Dew		145	65	79	0	۳
		Kaden Lebray		14	25	16	0	0
		Gillettia Morgan		270	165	101	N.	63
		Kahmahl Melo Simmons		116	59	55	0	2
	CITY OF WILSON CITY COUNCIL DISTRICT 02	Michael S. Bell		374	199	171	4	0
		Donta M. Chestnut		266	138	127	•	0
	CITY OF WILSON CITY COUNCIL DISTRICT 04	Davonta Ferguson		234	130	103	0	
		James M. Johnson III		510	327	181	2	0
PRBL	TOWN OF BLACK CREEK MAYOR	Ralph (Mack) Smith, Jr.		36	30	9	0	0

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November 07	November 07, 2023 Municipal Election Results by Pred	Precinct			Friday,	Friday, November 17, 2023 Page 3 of 8	er 17, 2023 Page 3 of 8
Precinct	Contest	Choice	Total Votes Election Day		One Ston	Abs Mail P	Provisional
PRBL ·	TOWN OF BLACK CREEK MAYOR	Miscellaneous (Write-In)			0		0
	TOWN OF BLACK CREEK TOWN COMMISSIONER	Ellen Edmundson Dawson	29	26	ന	0	0
		Miscellaneous (Write-In)	2	2	0	0	0
		Roland W. Lucas	28	24	4	0	0
		Candy Minshew	31	27	4	0	0
		Larry (Sam) Price	56	22	4	0	0
		Jim Varnell	25	23	2	0	0
PRCR	TOWN OF LUCAMA MAYOR	Jeff Johnson	09	52	80	0	0
		Matthew Creech (Write-In)	78	78	0	0	0
		Miscellaneous (Write-In)	2	2	0	0	0
	TOWN OF LUCAMA TOWN COMMISSIONER	Kim Joyner	100	74	25	0	-
		Sonya Bullock (Write-In)	12	0	12	0	0
		Miscellaneous (Write-In)	-	0		0	0
		Peggy B. Lamm	24	21	က	0	0
		Judy Mason	40	37	3	0	0
		Jody Teague	76	29	æ	0	
PROL	TOWN OF SIMS MAYOR	Miranda Boykin	46	43	m	0	0
		Earl Campbell	20	18	2	0	0
	TOWN OF SIMS BOARD OF COMMISSIONERS	Helen B. Boykin	52	49	3	0	0
		Danny Howell	18	15	3	0	0
		Rhonda Ruffin Payne	31	27	4	0	0
	CITY OF WILSON MAYOR	Abby Gaona	7	6	2	0	0
		Miscellaneous (Write-In)	0	0	0	0	0
		Carlton L. Stevens	25	12	13	0	0
		Mahalia Witter-Merithew	12	2	10	0	0
	CITY OF WILSON CITY COUNCIL DISTRICT 04	Davonta Ferguson	0	0	0	0	0
		James M. Johnson III	0	0	0	0	0
PRSA	TOWN OF SARATOGA MAYOR	Charles Thomas (Tommy) Hawkins	24	22	2	0	0
		Miscellaneous (Write-In)	-	٠	0	0	0
	TOWN OF SARATOGA TOWN COMMISSIONER	Miscellaneous (Write-In)	8	2	0	0	0
		Delance Ellis	23	22	•	0	0
		Elaine Saunders	23	21	2	0	0
		Tim Shelton	22	21	٠	0	0

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November 07	November 07, 2023 Municipal Election Results by Prec	Precinct			Friday	Friday, November 17, 2023 Page 4 of 8	er 17, 2023	
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Precinct		Choice	otal Votes	Total Votes Election Day	One Stop	Abs Mail	Provisional	
しのだし		H.L. (100le) Hales	10	6	-	0	0	
	TOWN OF KENLY TOWN COUNCIL MEMBERS	Keith Davis	13	12	•	0	0	
		Shirley Dupree (Write-In)	2	5	0	0	0	
		LaWanda M. Neal	14	13	-	0	0	
		Garrett Warren Stancil	2	-	-	0	0	
		Jason Tedder	0	0	0	0	0	
		Wade Troutman	0	0	0	0	0	
	TOWN OF KENLY TOWN COUNCIL MEMBER (UNEXPIRED)	Miscellaneous (Write-In)	9	9	0	0	0	
		Beverly Hicks Knight	9	9	0	0	0	
PRST	TOWN OF STANTONSBURG MAYOR	Coley Hunt Rhodes	90	82	80	0	0	
		Miscellaneous (Write-In)	14	14	0	0	0	
	TOWN OF STANTONSBURG TOWN COUNCIL	Eartha Butler	65	9	5	0	0	
		Walter Bynum	55	52	60	0	0	
		H. Powell Dew, Jr.	45	43	2	0	0	
		Jackie Grice	55	52	33	0	0	
PRTA	CITY OF WILSON MAYOR	Abby Gaona	50	27	20	2	•	
		Miscellaneous (Write-In)	0	0	0	0	0	
		Carlton L. Stevens	387	230	157	0	0	
		Mahalia Witter-Merithew	190	120	68	*	+	
	CITY OF WILSON CITY COUNCIL DISTRICT 04	Davonta Ferguson	82	48	33	0	•	
		James M. Johnson III	55	29	24	2	0	
PRTO	TOWN OF ELM CITY MAYOR	Tawanda Moore	137	103	33	٠	0	
	TOWN OF ELM CITY TOWN COMMISSIONER	Tammie R. Atkinson	112	06	22	0	0	
		Tim Bridgers	100	83	16	-	0	
		Vonica Carr	75	56	19	0	0	
		Zachary Mercer	116	87	28	-	0	
		Gil Wheeler	149	122	26		0	
		BridgetWimberley	77	62	14	•	0	
	TOWN OF SHARPSBURG BOARD OF COMMISSIONERS	Wilbur Etheridge	43	39	4	0	0	
		David Pride	39	34	5	0	0	
		Linda Virgil	40	37	3	0	0	
	CITY OF WILSON MAYOR	Abby Gaona	0	0	0	0	0	
		Miscellaneous (Write-In)	0	0	0	0	0	

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Precinct	CITY OF WILSON MAYOR	Carlton L. Stevens	Party	Total Votes Election Day 0 0 0	ction Day	One Stop	Abs Mail	Provisional	
		Mahalia Witter-Menthew		0	0	0	0	0	
PRWA	CITY OF WILSON MAYOR	Abby Gaona		9	es	3	0	0	
		Miscellaneous (Write-In)		0	0	0	0	0	
		Carlton L. Stevens		64	38	26	0	0	
		Mahalia Witter-Merithew		37	20	17	0	0	
	CITY OF WILSON CITY COUNCIL DISTRICT 02	Michael S. Bell		58	35	23	0	0	
		Donta M. Chestnut		27	17	10	0	0	
PRWB	CITY OF WILSON MAYOR	Abby Gaona		5	4	-	0	0	
		Miscellaneous (Write-In)		-	-	0	0	0	
		Carlton L. Stevens		44	21	23	0	0	
		Mahalia Witter-Merithew		28	6	19	0	0	
	CITY OF WILSON CITY COUNCIL DISTRICT 01	Ricardo Dew		3	•	2	0	0	
		Kaden Lebray		0	0	0	0	0	
		Gillettia Morgan		က	•	2	0	0	
		Kahmahl Melo Simmons		0	0	0	0	0	
	CITY OF WILSON CITY COUNCIL DISTRICT 02	Michael S. Bell		0	0	0	0	0	
		Donta M. Chestnut		0	0	0	0	0	
PRWC	CITY OF WILSON MAYOR	Miscellaneous (Write-In)		0	0	0	0	0	
		Abby Gaona		20	1	6	0	0	
		Carlton L. Stevens		151	81	68	2	0	
		Mahalia Witter-Merithew		09	25	35	0	0	
	CITY OF WILSON CITY COUNCIL DISTRICT 02	Michael S. Bell		11	40	36	*	0	
		Donta M. Chestnut		78	31	46	•	0	
PRWD	CITY OF WILSON MAYOR	Abby Gaona		31	24	7	0	0	
		Miscellaneous (Write-In)		0	0	0	0	0	
		Carlton L. Stevens		165	117	47	0	*	
		Mahalia Witter-Merithew		163	112	51	0	0	
	CITY OF WILSON CITY COUNCIL DISTRICT 02	Michael S. Bell		71	42	29	0	0	
		Donta M. Chestnut		36	28	80	0	0	
PRWE	CITY OF WILSON MAYOR	Miscellaneous (Write-In)		0	0	0	0	0	02
		Abby Gaona		14	6	5	0	0	
		Carlton L. Stevens		81	49	32	0	0	
		Mahalia Witter-Merithew		23	£	12	0	0	

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November 07	November 07, 2023 Municipal Election Results by Prec	Precinct				Friday	Friday, November 17, 2023 Page 6 of 8	er 17, 2023 Page 6 of 8
Precinct	Contest	Choice	Party	Total Votes Election Day	Section Day	One Stop	Abs Mail P	Provisional
	CITY OF WILSON CITY COUNCIL DISTRICT 02	Michael S. Bell		22	13	6	0	0
		Donta M. Chestnut		26	14	12	0	0
PRWH	CITY OF WILSON MAYOR	Abby Gaona		7	60	3	0	•
		Miscellaneous (Write-In)		0	0	0	0	0
		Carlton L. Stevens		99	30	25	0	•
		Mahalia Witter-Merithew		25	13	F	0	•
	CITY OF WILSON CITY COUNCIL DISTRICT 01	Ricardo Dew		22	6	12	0	
		Kaden Lebray		5	2	3	0	0
		Gillettia Morgan		29	20	6	0	0
		Kahmahl Melo Simmons		32	14	16	0	2
PRWI	CITY OF WILSON MAYOR	Abby Gaona		13	Ø	4	0	0
		Miscellaneous (Write-In)		0	0	0	0	0
		Carlton L. Stevens		141	91	48	0	2
		Mahalia Witter-Merithew		23	7	16	0	0
	CITY OF WILSON CITY COUNCIL DISTRICT 01	Ricardo Dew		30	18	12	0	0
		Kaden Lebray		7	4	9	0	0
		Gillettia Morgan		64	47	15	0	2
		Kahmahl Melo Simmons		19	14	5	0	0
PRWJ	CITY OF WILSON MAYOR	Miscellaneous (Write-In)		0	0	0	0	0
		Abby Gaona		99	43	23	0	0
		Carlton L. Stevens		309	201	106	2	0
		Mahalia Witter-Merithew		106	99	49		0
	CITY OF WILSON CITY COUNCIL DISTRICT 01	Ricardo Dew		24	16	8	0	0
		Kaden Lebray		12	10	2	0	0
		Gillettia Morgan		53	33	20	0	0
		Kahmahl Melo Simmons		15	7	80	0	0
	CITY OF WILSON CITY COUNCIL DISTRICT 04	Davonta Ferguson		40	17	23	0	0
		James M. Johnson III		91	46	45	0	0
PRWK	CITY OF WILSON MAYOR	Miscellaneous (Write-In)		0	0	0	0	0
		Abby Gaona		47	30	17	0	0
		Carlton L. Stevens		168	121	47	0	0
		Mahalia Witter-Merithew		81	20	31	0	0
	CITY OF WILSON CITY COUNCIL DISTRICT 04	Davonta Ferguson		43	28	15	0	0

November	November 07, 2023 Municipal Election Results by Pre	Precinct				Friday	Friday, November 17, 2023 Page 7 of 8	er 17, 2023 Page 7 of 8
Precinct	Contest CITY OF WILSON CITY COUNCIL DISTRICT 04	Choice Party James M. Johnson III		Total Votes Elect	Election Day	One Stop	Abs Mail Pr	Provisional
PRWL	CITY OF WILSON MAYOR	Abby Gaona		35	32	2		0
		Miscellaneous (Write-In)		0	0	0	0	0
		Carlton L. Stevens		221	171	20	0	0
		Mahalia Witter-Merithew		93	43	49	-	0
PRWM	CITY OF WILSON MAYOR	Abby Gaona		36	18	17	-	0
		Miscellaneous (Write-In)		0	0	0	0	0
		Carlton L. Stevens		344	188	147	9	က
		Mahalia Witter-Merithew		184	98	84	-	•
	CITY OF WILSON CITY COUNCIL DISTRICT 02	Michael S. Bell		146	69	74	က	0
		Donta M. Chestnut		66	48	51	0	0
PRWN	CITY OF WILSON MAYOR	Abby Gaona		13	7	9	0	0
		Miscellaneous (Write-In)	100	0	0	0	0	0
		Carlton L. Stevens		253	126	127	0	0
		Mahalia Witter-Merithew		106	49	99	-	0
	CITY OF WILSON CITY COUNCIL DISTRICT 01	Ricardo Dew		09	18	42	0	0
		Kaden Lebray		17	6	60	0	0
		Gillettia Morgan		106	99	49	-	0
		Kahmahl Melo Simmons		44	21	23	0	0
PRWP	CITY OF WILSON MAYOR	Abby Gaona		33	21	12	0	0
		Miscellaneous (Write-In)		0	0	0	0	0
		Carlton L. Stevens		177	118	59	0	0
		Mahalia Witter-Merithew		66	59	40	0	0
	CITY OF WILSON CITY COUNCIL DISTRICT 04	Davonta Ferguson		69	37	32	0	0
		James M. Johnson III		192	136	99	0	0
PRWQ	CITY OF WILSON MAYOR	Abby Gaona		က	2	•	0	0
		Miscellaneous (Write-In)		0	0	0	0	0
		Carlton L. Stevens		51	25	25	0	٠
		Mahalia Witter-Merithew		27	16	11	0	0
	CITY OF WILSON CITY COUNCIL DISTRICT 01	Ricardo Dew		9	6	3	0	0
		Kaden Lebray		0	0	0	0	0
		Gillettia Morgan		15	60	9	0	-
		Kahmahl Melo Simmons		9	က	3	0	0
PRWR	CITY OF WILSON MAYOR	Abby Gaona		2	-	4	0	0

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Contest		Choice	Party		Total Votes Election Day	One Stop	Abs Mail	Provisional
		Miscellaneous (Write-In)			0 0	0	0	0
		Carlton L. Stevens		12	2 68	54	0	0
		Mahalia Witter-Merithew		3	2 13	19	0	0
CITY OF WILSON CIT	CITY OF WILSON CITY COUNCIL DISTRICT 02	Michael S. Bell			0 0	0	0	0
		Donta M. Chestnut		0	0 0	0	0	0



Agenda Item	5d	
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Meeting Date December 14, 2023

#### City Council Agenda Item Cover Sheet

To: Honorable Mayor, Members of City Council and City Manager

From: Ricky Wilson, Purchasing Manager

Subject: Steel Structures for POD #13

<u>Issue:</u> The need and requirement to obtain council approval for the award of Steel structures required for the point of delivery #13 - 115 kV Transmission Line.

<u>Background / Summary:</u> The demand for power has grown within the Wilson Energy grid and the City plans to build a new point of delivery from Duke Energy. These materials will be used to supply POD # 13 which will be used to serve the future load of the Campus @ 587. Based on lead times, the materials need to be ordered to maintain the construction timeline.

Fiscal or Other Impact: The cost of purchasing the Steel Structures is \$140,625.00.

<u>Recommendation:</u> Approval of the award to Nucor which is the lowest responsive, responsible bidder while meeting requirements and specifications.

Coordination: John Maclaga, Daniel Gillen, and Ricky Wilson.

Attachments: Bid Tabulation and Recommendation of Award

## WILSON, NORTH CAROLINA CITY OF WILSON

115kV TRANSMISSION LINE POD #13 TUBULAR STEEL STRUCTURES FOR THE

## TABULATION OF BIDS

BIDDERS	СНМ	Klute	MVA	Nucor³	Sabre	TAPP	Valmont
Schedule No. 1 - Total Price	\$166,242.51	3166,242,51 S218,643,21 S136,107.89 S140,625,00 S192,940.00 S115,579.00 S145,698.00	8136,107,89	8140,625.00	8192,940.00	\$115,579,00	\$145,698.00
Lead Time - Total weeks	20-22 weeks	52 weeks	22 weeks	40 weeks	37 weeks	35-36 weeks	24-26 weeks

THIS IS TO CERTIEY THAT THE BIDS TABULATED HEREIN WERE OPENED, READ, CHECKED, AND THE ABOVE TOTALS ARE CORRECT. ANY IRREGULARITIES IN BIDS RECEIVED ARE NOTED UNDER REMARKS.

### REMARKS:

- The Bid from TAPP came the day after the bid opening.
   MVA's manufacturing facility location is China.
   Nucor is the recommended Optimal Bidder.

Gracin S. Barcelt

PA Booth & Amediates



October 26, 2023

VIA ELECTRONIC MAIL

Mr. Daniel Gillen Engineering and System Planning Manager City of Wilson 1800 Herring Avenue, P.O. Box 10 Wilson, NC 27894

Subject: Steel Structures for the

POD #13 115kV Transmission Line Tabulation of Bid and Recommendation

Dear Mr. Gillen:

On behalf of City of Wilson, Booth & Associates, LLC reviewed proposals and are offering a Bid Recommendation for Schedule 1 for the above referenced project.

While reviewing the proposals submitted, primary consideration was given to the following items:

- > Adherence to Specifications
- Bid Balance
- Mathematical Accuracy
- Delivery Schedule
- Past performance with Lead Times

Based on the aforementioned evaluation criteria, we are recommending that Nucor (formerly Summit) be awarded Schedule 1 in the amount of \$140,625,00.

Sincerely.

BOOTH & ASSOCIATES, LLC

Gracyn S. Bancroft Gracyn S. Bancroft, PE, PMP

ce: Mr. David S. Huffstetler Mr. Tyler S. Libby

Enclosure P0595656-9007/141



)

Meeting Date December 14, 2023

#### City Council Agenda Item Cover Sheet

To: Honorable Mayor, Members of City Council and City Manager

From: Planning and Design Review Board, as prepared by Kathy Bangley

Subject: Zoning Change Request -Property located near Forest Hills Road and Gregory

Lane (Project# 23-352)

#### Issue:

On November 7, 2023, the Planning and Design Review Board voted to recommend approval of the requested rezone.

#### ZONING CHANGE REQUEST (PROJECT 23-352)

PROPERTY SIZE: Approximately 8.06 acres

PROPERTY ADDRESS: Forest Hills Road and Gregory Lane

SPECIFIC DESCRIPTION: 3711-05-2510 (PIN)
PRESENT USE OF PROPERTY: Vacant/Undeveloped
PRESENT ZONE: RA (Rural Agricultural)
REQUESTED ZONE: GC (General Residential)

APPLICANT: Bartlett Engineering & Surveying, PC

PROPERTY OWNER(s): City of Wilson

#### Background / Summary:

1) In Primary Growth Area and the Primary Service Area. 2) Inside city limits. 3) Located within the WS-IV NSW C Watershed Conservation Area. Development shall comply with current regulations. 4) Located within the 100-year and the 500-year flood zones. Any development within these zones shall comply with current regulations. 5) The property is described on a portion of the property conveyed to Moses B. Daniels and wife, Mary Lou Daniels by deed on April 5, 1947. During the late 1980's the property was a portion of Birchwood Place Subdivision.

Lot 2 on the survey was recorded as Birchwood Place Section III in Plat Book 28 Page 228. More recently the property was deeded to the City of Wilson on March 8, 2021. 6) The property is adjacent to a Wilson Energy Substation #5 as shown as Lot 2 on 1.50 acres. 7) The proposed General Commercial (GC) zoning is adjacent to GC (Vacant/Undeveloped and NAPA Auto Parts) to the North and East, and Open Space (OS) to the South, and Single Family Residential (SR6) to the West. 8) The City's "Future Land Use Map" in our Comprehensive Plan has this property as Medium-Density Residential and Open Space.

**Medium Density Residential** — Single-family detached subdivisions developed at a density between two to four dwelling units per acre. Some high density residential development can be included as part of a master-planned development.

Parks and Open Space – Public or quasi-public uses such as publicly-owned park space, recreational areas, golf courses, and other open lands unlikely to be developed.

The proposed zoning district would be closely related to "Commercial."

**Commercial** – Includes both large and small commercial and retail uses, with some small office development along major thoroughfares.

#### Fiscal or Other Impact:

1) The land use for the subject rezoning is unknown at the time of this report. 2) Staff is unable to determine the fiscal impact for the proposed rezone until the land use has been identified.

Recommendation: Approval

#### Planning and Design Review Board Recommendation:

The Board unanimously adopted the following recommendation for approval:

THE PROPOSED AMENDMENT IS REASONABLE DUE TO ITS CONSISTENCY WITH THE FOLLOWING COMPREHENSIVE PLAN POLICIES AND THAT IT BE APPROVED: 1.1, 1.2, 2.1, 2.2, 2.4, 2.5, 5.1, 5.2, 6.3, 7.6, 28.1, 32.1, and 47.1

#### PROPOSED COUNCIL MOTIONS:

 If you concur with the Planning and Design Review Board's recommendation, you should adopt the following statement to approve the Zoning Change Request:

THE PROPOSED AMENDMENT IS REASONABLE DUE TO ITS CONSISTENCY WITH THE

FOLLOWING COMPREHENSIVE PLAN POLICIES AND THAT IT BE APPROVED: 1.1, 1.2, 2.1, 2.2, 2.4, 2.5, 5.1, 5.2, 6.3, 7.6, 28.1, 32.1, and 47.1

OR

2) If you prefer to deny the request, adopt the following statement voting to deny:

THE PROPOSED AMENDMENT IS NOT REASONABLE DUE TO ITS INCONSISTENCY WITH THE FOLLOWING COMPREHENSIVE PLAN POLICIES AND THAT IT BE DENIED: 1.1, 1.2, 2.1, 2.5, 2.7, 5.2, 7.2, 7.3, 7.6, 7.7, 8.1, and 47.1 Coordination:

Janet Holland, AICP, Land Development Manager, 252.399.2215, <a href="mailto:jholland@wilsonnc.org">jholland@wilsonnc.org</a>. Kathy Bangley, CFM, Senior Planner, 252.206.5289, <a href="mailto:kbangley@wilsonnc.org">kbangley@wilsonnc.org</a>.

#### Attachments:

- 1) Application. 2) Comp Plan Analysis. 3) List of those receiving notice. 4) Area Zoning Map.
- 5) Future Land Use Map. 6) Aerial. 7) Survey of Property. 8) Chapter 2 Use Table.
- 9) Ordinance.

Project No. 23-352

#### APPLICATION FOR ZONING AMENDMENT

#### APPLICANT'S JUSTIFICATION FOR REZONING:

Please attach them to this application.

Since the current Zoning Map is the product of careful investigation and analysis, it is presumed to be sound in its present state, and the burden of proof of needed change falls upon the petitioners requesting such a change. Any alteration of the Zoning Map must be supported by sound and conclusive reasoning, particularly since a desirable attribute of the Zoning Map is the stability that it creates. In the spaces provided below, provide the FACTS and ARGUMENTS that justifies your request for rezoning (attach additional pages if you need to).

1. Explain why this property should be rezoned:
This request is to expand the exist. GC on the west side of the Gregory Ln. Propert
include this exist. RA Parcel.
<ol><li>Explain how this rezoning will conform to the comprehensive plan, or, it if won't, explain why the comprehensive plan should be changed to allow the rezoning:</li></ol>
The rezoning will conform to the comprehensive plan by providing similar zoning
to adjacent area.
3. Explain how you think this rezoning will affect the immediate neighborhood:
Additional traffic added to the area should be at a minimum and
should not contribute to any negative affects to the area.
4. Explain how you think this rezoning will affect the City as a whole:
This rezoning will provide an additional GC use along the Forest Hills Rd. corridor.
5. Any other facts, arguments, reasons, and/or considerations you may wish to present are welcome

#### APPLICATION FOR ZONING AMENDMENT

#### **Conditional District**

CONDITIONAL ZONING DISTRICT REQUESTS ONLY: Condition(s): In considering an application for a conditional zoning district, the Commissioners shall consider conditions or restrictions associated with the petition, where any limitation to the conditions or standards in the corresponding standard zoning district are proposed. All other requirements of the corresponding district shall be met. List all propose conditions, including site specific standards, which are proposed in the conditional zoning district request (attach additional sheets if necessary).
N/A
CONDITIONAL ZONING DISTRICT REQUESTS ONLY: Permitted Uses(s): A petition for a conditional zoning district shall specify the permitted use(s) allowable, where any limitation to the uses allowed in the corresponding standard zoning district is proposed. A conditional zoning district does not provide for additional use permissions; only permitted uses authorized in the corresponding standard zoning district are allowable. All other requirements of the corresponding district shall be met. List such permitted use below. (attach additional sheets if necessary).
N/A

#### CERTIFICATION:

I (We), request the rezoning herein described and certify that all of the information presented in this application and in its accompanying attachments is accurate to the best of my (our) knowledge, information, and belief. I (We) also understand that all legal advertisement fees will be my (our) responsibility for payment and that I (we) will be billed at a later date.

Petitioner(s): Carrie Adkins Wilkerson	10/6/23
Signature	Date
Carrie Wilkerson	
Print Name	
Signature	Date
Print Name	
Property-Owner(s):	10/6/23
Signatura	Date
Rodger H. Lentz	
Print Name	4
Signature	Date
Print Name	

#### Forest Hills Road & Gregory Lane - COMP PLAN ANALYSIS

Current land use classification:	Vacant
Requested land use classification:	Commercial
Future Land Use Map land use classification:	Medium Density Residential/Open Land

#### POLICIES THAT COULD BE INTERPRETED TO SUPPORT THE REQUEST:

- Policy 1.1: New development and redevelopment should be designed to create a compact land use pattern that efficiently uses public services and facilities, reinforces the use of multiple modes of transportation, creates greater mobility within the City, and provides better connections between adjacent developments. (See Policy 7.7.)
- Policy 1.2: As indicated on the Future Land Use map, new developments and redevelopment along major thoroughfares, within activity centers, and in the Downtown area should incorporate a mix of land uses (both vertical and horizontal) to efficiently use land, reduce commuting and vehicle trip times, and create better connections between uses.
- Policy 2.1: The Future Land Use map should be used to guide decision-makers as they take action on rezoning decisions and future capital improvement investments.
- Policy 2.2: Encourage the development and redevelopment of areas defined on the Future Land Use map as primary growth areas.
- Policy 2.4: "Leap frog" development that bypasses primary growth areas and occurs in isolation or in small clusters should be avoided.
- Policy 2.5: Development should create a neutral or, preferably, positive fiscal impact on the City.
- Policy 5.1: New development should take into consideration the existing conditions of surrounding properties and neighborhoods and create a development program that includes land uses, a site plan, and design treatments that accomplish the goals of the Comprehensive Plan and complement adjacent land uses.
- Policy 5.2: During the development review process, proposals of new developments or redevelopments should identify any potential impacts to surrounding properties and neighborhoods and identify mitigation strategies to reduce these impacts. Additionally, current and future land use type and intensity should be accounted for during review of proposed projects in order to ensure appropriate transitions are provided.

- Policy 6.3: Infill developments are encouraged as these types of developments have been shown, through study, to maximize existing services and have a lower impact on public infrastructure and service costs in comparison to new developments.
- Policy 7.6: Lands located within water supply watersheds should be developed in a manner that protects water resources through cluster development patterns that set-aside open space as a buffer to water sources. (See Policy 2.7.)
- Policy 28.1: Encourage the development of land to its highest and best use where public infrastructure currently exists.
- **Policy 32.1:** New development should be located within the primary growth area to ensure adequate provision of public safety services. Service to newly developing areas should not result in the reduction of service to existing developed areas.
- Policy 47.1: New development and redeveloped lands should incorporate vegetated landscaping for aesthetic purposes and provide natural buffers between adjacent uses.

#### POLICIES THAT COULD BE INTERPRETED TO OPPOSE THE REQUEST:

- Policy 1.1: New development and redevelopment should be designed to create a compact land use pattern that efficiently uses public services and facilities, reinforces the use of multiple modes of transportation, creates greater mobility within the City, and provides better connections between adjacent developments. (See Policy 7.7.)
- Policy 1.2: As indicated on the Future Land Use map, new developments and redevelopment along major thoroughfares, within activity centers, and in the Downtown area should incorporate a mix of land uses (both vertical and horizontal) to efficiently use land, reduce commuting and vehicle trip times, and create better connections between uses.
- Policy 2.1: The Future Land Use map should be used to guide decision-makers as they take action on rezoning decisions and future capital improvement investments.
- **Policy 2.5:** Development should create a neutral or, preferably, positive fiscal impact on the City.
- Policy 2.7: Areas located within water supply watershed protected or critical areas and within primary growth areas should be developed as clustered developments that protect open spaces and environmentally sensitive lands and provide for a more compact development form. (See Policy 7.6.)
- Policy 5.2: During the development review process, proposals of new developments or redevelopments should identify any potential impacts to surrounding properties and neighborhoods and identify mitigation strategies to reduce these impacts. Additionally, current

and future land use type and intensity should be accounted for during review of proposed projects in order to ensure appropriate transitions are provided.

- Policy 7.2: Environmentally sensitive areas should serve as either natural open spaces or passive/active recreational areas where only low-impact development is permitted.
- **Policy 7.3:** Environmentally sensitive areas should be adequately protected during the construction of new developments to ensure the integrity of these resources.
- Policy 7.6: Lands located within water supply watersheds should be developed in a manner that protects water resources through cluster development patterns that set-aside open space as a buffer to water sources. (See Policy 2.7.)
- Policy 7.7: Land development should promote the protection of air quality in Wilson through a compact development form that reduces the need for vehicular trips resulting in less air emissions from vehicles. (See Policy 1.1.)
- **Policy 8.1:** A variety of employment opportunities and new businesses are encouraged to develop in Wilson.
- **Policy 47.1:** New development and redeveloped lands should incorporate vegetated landscaping for aesthetic purposes and provide natural buffers between adjacent uses.

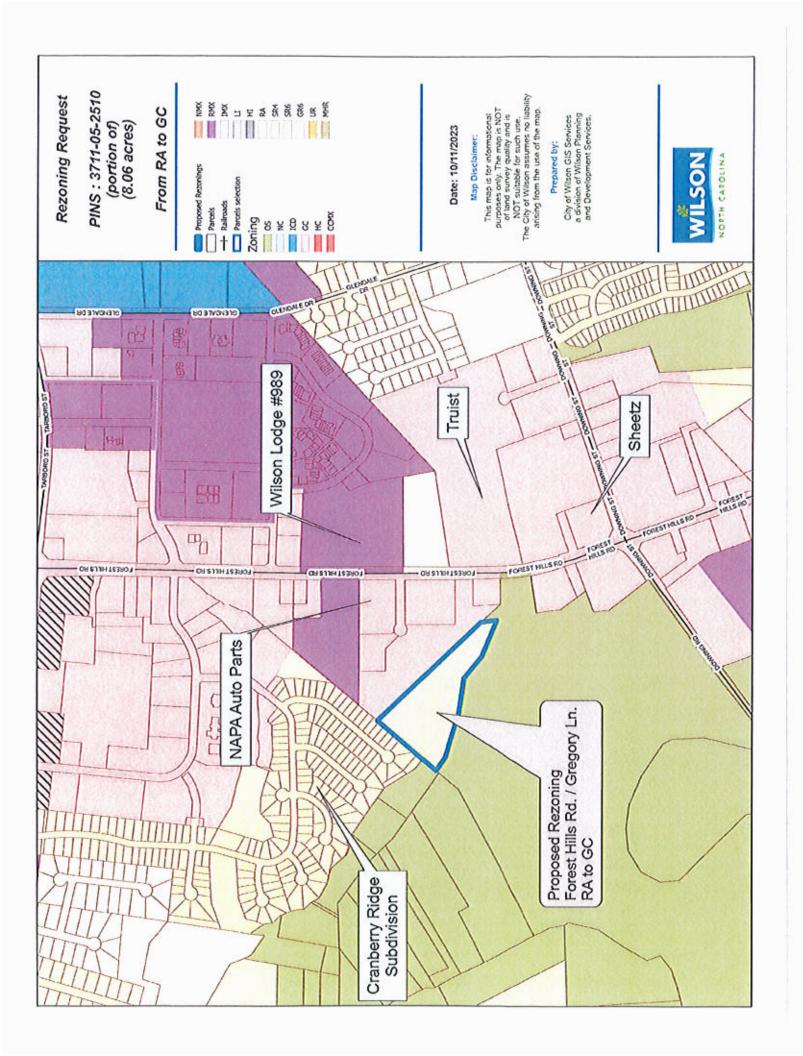
#### **Adjacent Property Owners**

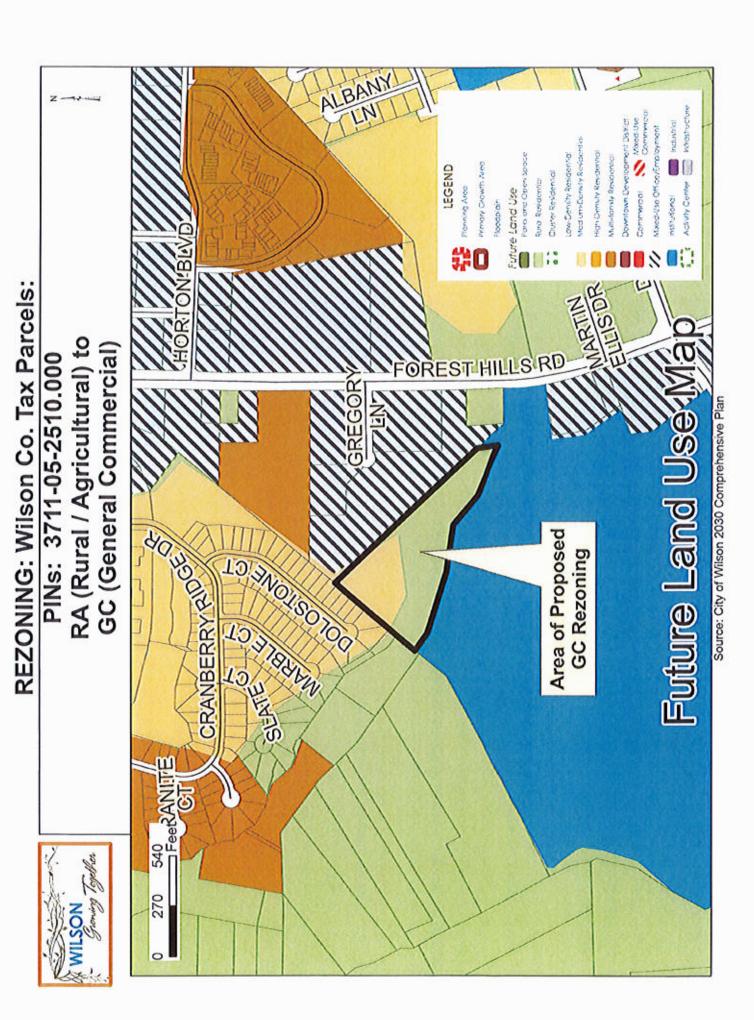
TJ INVESTMENT WILSON LLC 4330 LAKE WILSON RD WILSON NC 27896

CRANBERRY RIDGE PHASE II SECT 2&3 HOMEOWNERS ASSOCIATION INC 701 W 14TH ST GREENVILLE NC 27834-4043 FOREST HILLS MANOR C/O COFORGE BPS 2727 Lyndon B Johnson Fwy, Ste. 800 DALLAS TX 75234

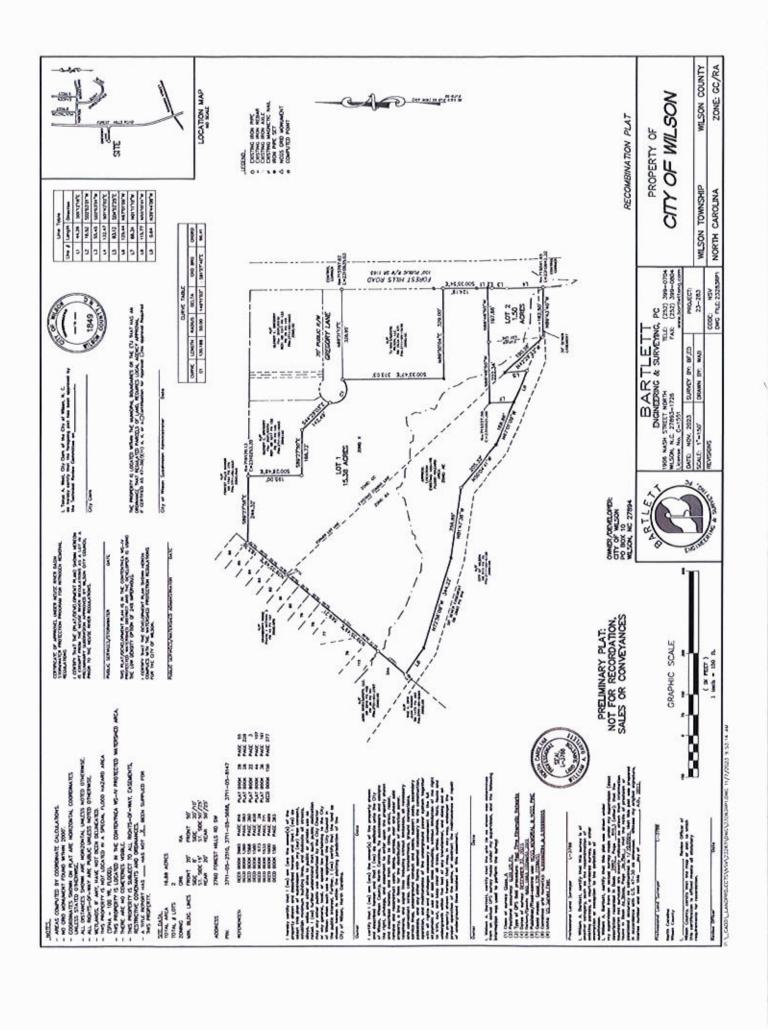
NOVAM DOMUN LLC 701 WEST 14TH STREET GREENVILLE, NC 27834 DEW RAE H & THORNE JEAN 1/3EA RUFFIN HARVEY B JR ETAL 1/3 49 LEMOYNE LN JOHNS ISLAND SC 29455

JUWA INVESTMENTS LLC PO BOX 422 WADESBORO NC 28170









		RURAL		A STATE OF	Language	A. C. Co. St.	SUBURBAN	RBAN	SECTION.	Contract of		0.48		URBAN	AN			
USE TYPES	RIA	so	MHR	SR4	SR6	NC	ဗ္ဗ	皇	9	n	Ŧ	GR6	N.	RMX	NMX	XVIII	CCMX	References
A. RESIDENTIAL	RIA	so	MHR	SR4	SR6	ž	ပ္ပ	皇	<u>0</u>	П	Ξ	GR6	s	RINX	NIMX	IMX	CCMX	References
Dwelling-Single Family	۵	1	۵.	a.	۵.	1	1	1	a.	,	1	a.	a.	a	۵	,	,	
Dwelling-Two Family	1	1	1	,	Sa	ï	1	1	۵.	1	1	PS	PS	a.	1	1	,	3.2.1
Dwelling-Townhome	I	1	1	ı	E	ı	Sd	82	a	1	1	۵	a.	a.	a	a.	α.	
Dwelling-Multifamily	1	1	1	,	ı	1	Sd	82	۵.	1	1	PS & CD	Sd	Sd	S	Sa	S.	3.2.2
Dwelling-Accessory	PS	1	S	Sd	Sd	1	PS	82	82	1	1	S	PS	Sa	Sd	Sa	PS.	3.2.3
Hafway Homes	1.	1	1	1	î	ı	SUP	,	SUP	1	ī	1	1	1	SUP	1	1	3.2.4
Live-Work Units	1	1	1	1	1	82	82	82	82	1	1	S.	Sa	S <sub>d</sub>	a	۵.	α.	3.2.5
Manufactured Housing	Sd	1	Sa	1	1	1	1	ı	т	1	1	1	ī	£	1	1	1	3.2.6
Manufactured Home Park	1	1	SUP	1	1	1	1	r	1	r	Ŧ	ı	1	1	1	1	1	3.2.6
Residential Care Facilities (more than 6 residents)	Д	1	1	1	r	82	8	82	82	1	1	S.	Sa	PS.	Sa	PS	82	3.2.7
Residential/Family Care Home (6 or fewer residents)	a	1	۵	۵	a.	1	d	۵	ď	1	1	a	a	a.	Sa	PS	S	3.2.8
						1000	Anni Contact Carton	2.0				-						
B. LODGING	RA	so	MHR	SR4	SR6	SC	ဗ္ဗ	皇	0) 1	п	Ŧ	GR6	UR.	RIMX	NMX	IIIIX	CCMX	References
Bed and Breakfast Homes (up to 8 rooms)	Ь	1	1	1	ī	۵	1	1	Ь	1	1	Ь	Д	а	a.	a.	۵	
Bed and Breakfast Inn (up to 12 rooms)	1	1	T	1	r	Ь	1	1	Ь	1	1	1	۵.	۵.	a	a.	a.	
Boarding or Rooming House	1	1	1	1	1	1	1	1	82	1	1	1	Sd	1	1	F	E	3.3.1
Campground	SUP	SUP	£	1	1	ı	r	1	1	1	ı	1	1	1	1	ı	1	3.3.2
Dormitory	ï	í	1	1	1	1	1	,	ď	1	1	1	1	1	1	1	1	
Fratemity/Sorority House	7	1	1	1	1	1	,	r	82	1	1	SUP	SUP	SUP	1	r	1	3.3.3
Hotel/Motel	1	1	1	1	1	1	α.	a.	a	,	,	1	1	1	۵.	۵	a	

OFFICE/SERVICE	RIA	so	MHR	SR4	SR6	NC	၁၀	HC	9	П	H	GR6	NR.	RIMX	MMX	XVII	CCMX	References
ATM	1	-	1	10	1	d.	d	a	۵	а	Ь		1	a	a	a.	a.	
Banks, Credit Unions, Financial Services	-	1	1	1	1	d	d	a	d	a	۵	1	1	۵.	a.	a.	a	
lusiness Support Services	-	r	1	1	-	a.	a.	a.	a.	a	۵	1	1	a	a	a.	a.	
Crematoria	Sd	Ė	1	1	1	S	82	82	1	S	Sa	1	1	,	1	1	1	3.4.1
Dry Cleaning & Laundry Services	1	r	ı	1	1	α.	α.	a	a.	a	a	,	,	a	a	a.	Ω.	
Funeral Homes	d	1	1	1	1	a	a.	۵	a	1	1	t	£	a.	a	۵.	a	
Home Occupation	Sd	ī	PS	PS	PS		a.	a.	S	1	1	Sa	Sa	Sd	Sd	PS	S	3.4.2
Kennels, Indoor	Sd	1	-	1	1	1	PS	PS	1	PS	S	1	1	S	S	S	82	3.4.3
Kennels, Outdoor	Sd	1	-	-	1	ı	1	PS	£	PS	PS	E.	13	1	1	1	1	3.4.4
Medical Clinic	1	1	-			۵	a	a	a	,	,	1	SUP	a	0.	a	a	3.4.5

P – Permitted by Right PS – Permitted with Special Standards SUP – Spo CD – Permitted as part of an Approved Conditional District Only ND – Permitte

ds SUP – Special Use Permit Required ND – Permitted in New Development Only

		RURAL		Service	Colonia (	Section 1984	SUBURBAN	BAN	the set		4			URBAN	AN	1		10
USETYPES	RIA	so	MHR	SR4	SR6	NC	29	НС	CO	п	H	GR6	UR	RMX	NIMX	XIII	CCMX	References
Personal Services	1	-	-	-	-	Ь	d	ď	a.	a.	.1	1	1	۵.	a.	a.	a	
Personal Services, Restricted	1	ï	1	1	1	1.	1	۵.	1	ī	1	1	1	1	1	1	1	
Post Office	1	1	1	1	1	Ь	a.	a.	d.	1	1	1	1	0.	ο.	a.	a.	
Professional Services	î	1	1	1	1	а	a.	d.	Ь	d.	1	1	a.	a.	a.	ď	a.	
Support Services, Commercial		,	,			,	PS	PS	,	ď	4	-	,	,	,	PS	,	3.4.6
Small Equipment Repain/Rental	-	1	1	1	1	1	α.	۵.	1	a.	a.	1	1	1	a	a.	a.	
Veterinary Clinic	Sd	1	T	1	1	PS	PS	PS	1	PS	S	1	1	PS	PS	PS	PS	3,4,3
D. COMMERCIAL/ENTERTAINMENT	RIA	So	MHR	SR4	SR6	N	ည္ဗ	맞	00	n	Ξ	GR6	N.	RMX	NIIIX	XIII	CCMX	References
Adult Establishment	1	1	1	1	1	1	1	SUP	1	1	1	1	1	1	-	-	-	3.5.1
Alcoholic Beverage Sales Store	1	1	1	1	1	1	d	d.	1	1	7	1	1	1	a.	1	a.	
Amusements, Indoor	î	1	1	1	1	1	a.	a.	1	a.	1	1	1	1	0.	α.	α.	
Amusements, Outdoor	1	1	1	1	1	1	1	PS	1	PS	1	3	1	1	1	1	1	3.5.2
Billiard/Pool Hall	1	1	1	1	1	1	1	۵.	1	1	1	1	1	1	1	1	1	
BarTavem/Night Club	1	1	1	1	1	1	SUP	SUP	1	1	1	1	1	1	1	1	SUP	3.5.3
Food Truck Court	Reference of						PS	PS.	Sd	PS					PS	Sd	Sd	3.5.13
General Commercial	1	1	1	1	1	S	PS	S	1	1	1	1	1	PS	Sd	a.	a	3.5.4
Sweepstakes Facilities/Adult Arcade	1	1	1	1	1	1	1	1	9	1	SUP	1	ı	1	1	1	1	3,5,5
Outside Sales	1	1	1	1	1	1	PS	Sd	Sd	1	1	1	a	PS	Sa	Sd	PS.	3.5.6
Outside Sales, Sidewalk Sales	1	1	1	1	1	1	ī	1	S	1	1	1	1	PS	PS	PS	PS	3.5.7
Pawmshops	1	1	1	1	ï	1	1	Sd	1	1	1	1	1	1	1	1	1	3.5.8
Racetrack	1	1	1	1	1	1	1	1	1	1	a.	1	1	1	1	1	:1	
Restaurant	1	1	1	1	1	SUP	d.	۵.	a.	1	1	1	a	Д	a.	a.	α.	3.5.9
Riding Stables	a.	d.	r	1	1	1	1	1	,	ı	1	1	1	1	1	1	1	
Shooting Range, Indoor	Sd	1	ī	1	ı	1	PS	S.	1	PS	Sd	ŧ	1	ı	1	ı	,	3.5.10
Shooting Range, Outdoor	SUP	1	1	1	ı	1	1	1	1	SUP	SUP	1	1	1	3	1	1	3.5.11
Smoke/Vape Shops							Sd	Sd										3.5.12
Theater, Indoor Movie or Live Performance	1	1	ī	1	1	1	a.	۵.	a.	1	1	1	1	1	۵	a.	a.	
Theater, Outdoor	PS	PS	1	1	1	1	1	Sa	ı	1	4	1	1	1	Sa	Sa	82	3.5.13
- 6				4							The same of							
E. CINC	RA	so	MHR	SR4	SR6	S	႘	皇	00	п	Ξ	GR6	NR N	RIIX	NMX	IMX	CCMX	References
Cemetery	PS	S	8	8	82	S.	PS	82	8	1	1	PS	PS	S	S	8	PS	3.6.1
Civic Meeting Facilities	ī	S	PS/ND	DNSA	DNSA	82	a.	a.	a.	۵.	1	SUPIND SUPIND	SUPIND	S	PS	S.	PS	3.6.2
Conference/Convention Center	1	ď	1	1	1	1	a.	a.	۵.	1	1	1	1	1	1	٥.	a.	

P – Permitted by Right PS – Permitted with Special Standards SI CD – Permitted as part of an Approved Conditional District Only ND –

Is SUP – Special Use Permit Required ND – Permitted in New Development Only

		RURAL				N. Carlot	SUBURBAN	SBAN	The same	100000				IIRRAN	MAS			
USE TYPES	RIA	so	MHR	SR4	SR6	NC	၁၀	皇	CD	n	H	GR6	an R	RMX	NMX	XVII	CCINX	References
Cultural or Community Facility	-	S			-	Sd	a.	d.	a	1	1	Sd	S	S	Sd	Sd	SA	3.6.3
Private Recreation Facilities	ï	8	1	1	-	Sd	PS	Sd	a.	Sd	1	1	10	PS	S	PS	S	3.6.4
Public Recreation Facilities	Sd	82	PS	PS	PS	PS	Sd	Sd	PS	PS	PS	PS	PS	PS	Sd	Sd	Sd	3,6.5
Government Facility/Public Safety Station	SUP	F	SUP	SUP	SUP	PS	PS	S	PS	PS	PS	PS	PS	PS	PS	PS	PS	3.6.6
Religious Institution	a.	۵	PS	PS	PS	۵	d	Д	d.	PS	1	S	PS	PS	PS	Sd	Sa	3.6.7
Sports Arena/Stadium (4,000 or more seats)	-	SUP		1	1	1	ì	SUP	SUP	SUP	ï	1	ı	1	1	SUP	1	3.6.8
F. EDUCATIONALINSTITUTIONAL	RIA	so	MHR	SR4	SR6	Š	၁၁	오	CD	-	豆	GR6	an R	RMX	NMX	XXII	CCMX	References
Child/Adult Day Care Home (8 or less persons)	82	-	82	S	PS	S	PS	S	82			82	82	82	82	S.		3,7.1
Child/Adult Day Care Center (More than 8 persons)	1	1		1	1	S	PS	S	Sd	ı	t	SUP	SUP	S	S	PS	PS	3.7.2
College/University	1		1	1	1	1	1	1	۵	1	1	1	1	1	1	۵.	a.	
Community Support Facility	1	ı	ı	1	1	f	PS	Sa	PS	ī	1	1	1	PS	8	PS	SUP	3.7.3
Correctional Institution	1	ı	ı	1	1	1	1	1	1	SUP	SUP	1	1	1	1	ı	SUP	3.7.4
Day Treatment Center	1	ť	t	1	1	E	PS	S	PS	PS	1	1	1	PS	PS	PS	1	3.7.5
Hospital	i	ı	1	1	ı	t	1	a.	o.	۵	1	1	1	1	1	1	1	
Schools - Elementary & Secondary	82	t	t	PS	Sa	PS	Sd	S	PS	1	1	PS	PS	PS	PS	PS	PS	3.7.6
Schools - Vocational/Technical	-	1	ı	1	1	d.	a	۵	Ь	Ь	Ь	1	1	d.	۵	a.	a.	
Studio - Art, dance, martial arts, music	a.	-		1	1	d	a.	а	d.	Ь	1	1	1	a.	a.	a.	a.	
		0						98	93									
G. AUTOMOTIVE	RIA	s	MHR	SR4	SR6	N <sub>C</sub>	33	皇	8	n	Ξ	GR6	æ	RINX	NIIIX	XIII	CCNIX	References
Drive-Thru/Drive-In/Pick-Up/Drop-Off Facility	-	1	1	1	1	1	Sd	PS	Sd	Sd	Sd	1	-	Sd	SUP	SUP	SUP	3.8.1
Heavy Equipment/Manufactured Home Rental/Sales/Repair		1	1	1	ı	1	1	SUP	ř	Ь	Ь	ı	1	1	1	T.	1	3.8.2
Parking Lot/Structure - Principal Use	1	1	į	1	1	1	۵	۵	۵	۵	۵	1	1	d	d	Ь	SUP	3.8.3
Theater, Drive-In	1	1	1	1	1	1	1	Sd	1	Sd	1	1	1	1	1	1	1	3,8.4
Vehicle Rental/Leasing/Sales	1	1	1	1	1	1	PS	Sa	1	Sd	1	a	1	1	82	Sd	PS	3.8.5
Vehicle Services - Minor Maintenance/Repair	10-01	ı	1	1	1	•	PS	۵	1	۵	d	1	1	1	SUP	S.	SUP	3.8.6
Vehicle Services - Major Repair/Body Work	E	1	1	1	1	1	SUP	SUP	1	a.	a.	1	1	1	1	1	1	3.8.7
H. INDUSTRYMHOLESALEISTORAGE	RIA	So	MHR	SR4	SR6	NC	8	오	8	3	Ξ	GR6	æ	RMX	NIMX	IMX	CCMX	References
Artist Studio/Light Manufacturing Workshops	Sd	1	-	1	1	1	Ь	Ь	1	۵	a.	1	1	a.	a.	ď	ď	3.9.7
Landfills and Junkyards	1	1	1	í	ī	1	-	1	1	1	PS	1	í	1	1	1	1	3.9.1
Industry, Light	1	1	1	1	1	ı	1	1	1	۵	ď	1	1	1	1	1	1	
Industry, Heavy	ľ	1	1	1	1	1	1	í	1	1	۵	1	1	1	1	7	1	
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P – Permitted by Right PS – Permitted with Special Standards CD – Permitted as part of an Approved Conditional District Only

s SUP – Special Use Permit Required ND – Permitted in New Development Only

The second secon		RURAL					SUBURBAN	RBAN						URBAN	AN			
USETYPES	RIA	so	MHR	SR4	SR6	NC	၁၅	HC	CD	п	IH	GR6	NR.	RMX	NIMX	IIIX	CCMX	( References
Materials Recovery & Waste Transfer Facilities	i	t	1	1	1	1	ı	F	-	Sd	Sd	ı	1	1	1	1	1	3.9.2
Recycling Collection Stations	1	1	1	1	1	1	1	1	1	PS.	PS	1	1	1	1	1	1	3.9.3
Research and Development Facilities	1	1	1	1	1	1	0.	a.	ı	a.	a.	1	1	1	1	a.	a	
Storage - Outdoor Storage Yard	j.	1	1	1	1	1	1	Sd	1	PS.	PS	ı	1	1	1	1	1	3.9.4
Storage - Self-Service	1	ı	ī	1	1	1	Sd	PS	1	PS	PS	1	1	4	1	1	1	3.9.5
Storage - Warehouse, Indoor Storage	ï	1	1	ı	1	1	1	1	1	d.	d.	1	1	1	1	Sd	1	3.9.6
Wholesaling and Distribution	1	1	ı	1	1	1	1	1	1	۵.	۵.	,	1	,	1	1	1	

I. AGRICULTURE	RIA	so	MHR	SR4	SR6	NC	မ္ပ	皇	8	ח	Ξ	GR6	æ	RMX	NMX	IIMX	CCMX	References
Animal Production/Possession	SUP	1	ı	ı	1	1	-	-	1	1	SUP	-	1	,	1	,	,	3.10.1
Backyard PensiCoops/Beekeeping	a.	1	Sa	Sd	PS	E	1	1	Sa	1	£	Sa	8	PS	Sd	PS	PS	3.10.2
Crop Production	a.	d	1	1	1	1	1	۵.	1	۵.	α.	,	1	,	,	,	,	
Farmer's Markets	a.	Д.	ı	1	1	a	a.	a.	a.	a.	£	1	1	α.	۵.	a.	a.	
Nurseries & Garden Centers	d.	1	1	1	1	1	a.	a.	1	۵.	a.	,	1	1	1	۵.	a	
Gardens (Community and Private)	۵.	۵	a.	۵.	a.	a.	a.	a.	a.	a.	۵.	a.	۵.	a.	a.	α.	۵.	

J. INFRASTRUCTURE	RJA	so	MHR	SR4	SR6	S	ည	皇	ICD	ū	H	GR6	UR	RIIX	NMX	IMX	CCMIX	References
Airstrip/Airport	1	1	t	1	1	1	1	1	1	1	۵	1	1	1	1	-	-	
Wireless Communications Facility	PS	PS	PS	PS	PS	Sd	PS	PS	S	Sa	S.	PS.	PS	8	Sd	82	S.	3.11.1
Utilities - Class 1	a.	a.	d.	۵.	۵	۵.	a.	a.	۵.	۵.	۵.	۵.	α.	a	a.	a	a	
Utilities - Class 2	ď	a.	d	d	d.	а	a.	۵.	a.	a	a	a	a.	a	a	۵	۵	
Utilities - Class 3	1	1	1	1	1	1	1	1	ı	Д	a.	1	1	10	1	6	1	
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K OTHER	RIA	so	MHR	SR4	SR6	NC NC	ည္ဗ	宁	<u> </u>	-	H	GR6	UR.	RINX	NIIX	IMX	CCMX	References
Temporary Uses	æ	8	S	S	S	PS	PS	S	Sa	S	S	S	Sd	Sd	Sd	PS	Sd	3.12
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P – Permitted by Right PS – Permitted with Special Standards SUP – Spec CD – Permitted as part of an Approved Conditional District Only ND – Permitted

srds SUP – Special Use Permit Required ND – Permitted in New Development Only

#### O-092-23

## AN ORDINANCE AMENDING THE ZONING ORDINANCE AND ZONING MAP OF THE CITY OF WILSON, NORTH CAROLINA

WHEREAS, a petition has been filed with the City Council of the City of Wilson requesting an amendment to the Zoning Ordinance and Zoning Map of the City of Wilson to include in the GC (General Commercial) Zone for the property described below, said property formerly being zoned RA (Rural Agricultural); and

WHEREAS, said property is owned by City of Wilson; and

WHEREAS, the Planning & Design Review Board of the City of Wilson has reviewed the proposed change(s) and made a recommendation thereupon; and

WHEREAS, notice of a public hearing to consider the proposed change was published in accordance with law in the Wilson Times, a local newspaper, as required by Section 15.3.2 of the Unified Development Ordinance of the City of Wilson and by Section 160D-601 of the NC General Statutes; and

WHEREAS, a notice of the proposed zoning classification action was mailed to the owner(s) of the parcel(s) of land involved, as shown on the County Tax Listings, and to the owners of all parcels of land abutting that (those) parcel(s) of land, as shown on the County Tax Listings, by depositing a copy of the same in the United States Mail, first class postage paid, as required by Section 15.3.3 of the Unified Development Ordinance of the City of Wilson and by Section 160D-602 of the NC General Statutes; and

WHEREAS, the said public hearing was actually conducted at 7:00 p.m. on December 14, 2023, wherein a reasonable opportunity was given to all those in attendance to speak either in favor or against the said change or to make relevant comments;

THEREFORE, after duly considering the matter, THE CITY COUNCIL OF THE CITY OF WILSON DOES HEREBY ORDAIN:

**SECTION 1.** That the Zoning Ordinance of the City of Wilson is hereby amended to include in the GC (General Commercial) Zone the following described property:

General Description: The property is generally located near Forest Hills Road and Gregory Lane and within and adjacent to Birchwood Place Subdivision.

Specific Description: Wilson County Tax Parcel (PIN): 3711-05-2510.000 as described below:

Lying and being in Wilson Township of Wilson County, and being more particularly described as follows: Beginning at an existing iron pipe on the western right-of-way of Forest Hills Road (SR 1165) and having North Carolina State Plane Grid Coordinates (NAD 83/2011 adjustment) of Northing = 715,041.95 and Easting = 2,310,942.32, said pipe being the northeast corner of the City of Wilson, Deed Book 673 Page 28, thence along the northern line of the City of Wilson, N89°43'40"W, 182.50' to an iron pipe, thence N42°29'33"W, 190.26' to a new iron pipe, the True Point of Beginning, thence continuing along the northern line of The City of Wilson the following courses and distances, \$04°52'25"E, 83.12' to an iron pipe, thence N67°01'09"W, 125.44' to a point, thence N67°01'09"W, 168.86' to a point, thence N50°04'41"W, 205.32' to an iron pipe, thence N81°47'38"W, 258.89' to a point, thence N72°56'09"W, 344.22' to a point, thence N55°10'41"W, 115.77' to a point, thence N39°44'08"W, 0.64' to a iron pipe, the westernmost corner of The City of Wilson, Deed Book 2882 Page 816, thence along the northwestern line of The City of Wilson, N39°35'49"E, 569.21' to an iron pipe, thence along the northeastern line of The City of Wilson, S42°29'33"E, 1094.45' to The True Point of Beginning, being 7.84 acres, and being all of Parcel Identification Number: 3711-05-2510.000.

**SECTION 4.** That this ordinance shall become effective immediately upon its adoption.

DULY ADOPTED this 14th day of December, 2023.

ATTEST:	Carlton L. Stevens, Mayor
Tonya A. West, City Clerk	
Project # 23-352	



Agenda Item	6b

Meeting Date December 14, 2023

## City Council Agenda Item Cover Sheet

To: Honorable Mayor, Members of City Council and City Manager

From: Rodger Lentz, Planning & Development Services Director

Subject: Demolition - 1504 Fikewood Street, East

<u>Issue:</u> Building is hazardous to the health, safety and welfare of the residents of the City due to violations of Chapter 43 of the City Code regarding minimum maintenance standards for Residential Structures. The structure is structurally unstable, open to the public and constitutes a safety hazard.

<u>Background / Summary:</u> Hearing offered with owner not in attendance, and Facts of Finding submitted to owner. Owner is not able to repair the building. This building is dilapidated and needs to be demolished.

<u>Fiscal or Other Impact:</u> May cause other surrounding properties to potentially depreciate in value.

**Recommendation:** Staff recommends demolition ordinance.

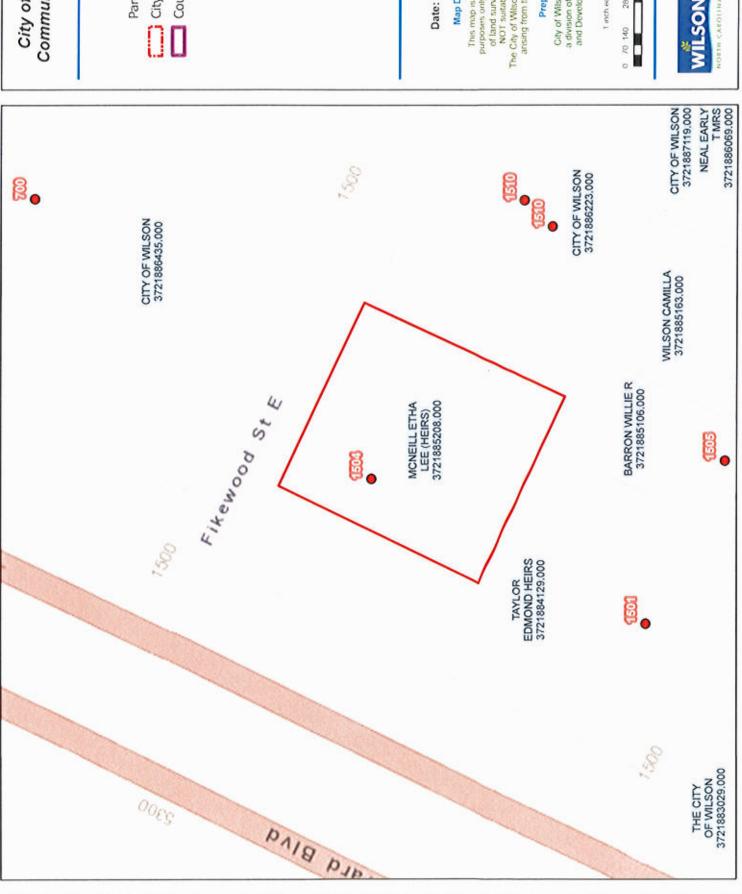
Coordination: Brian Pridgen, City Attorney (252)291-3848

Kevin O'Brien, Inspections Division Manager

Jocelyn Drawhorn, Community Improvement Specialist

(252)399-2240, jdrawhorn@wilsonnc.org

Attachments: 1) Map 2) Photos 3) Ordinance



## Community Maps City of Wilson

Parcels

City Limits

County Limits

## Date: 11/17/2023

Map Disclaimer:

of land survey quality and is NOT suitable for such use. The City of Wilson assumes no liability arising from the use of the map. This map is for informational purposes only. The map is NOT

## Prepared by:

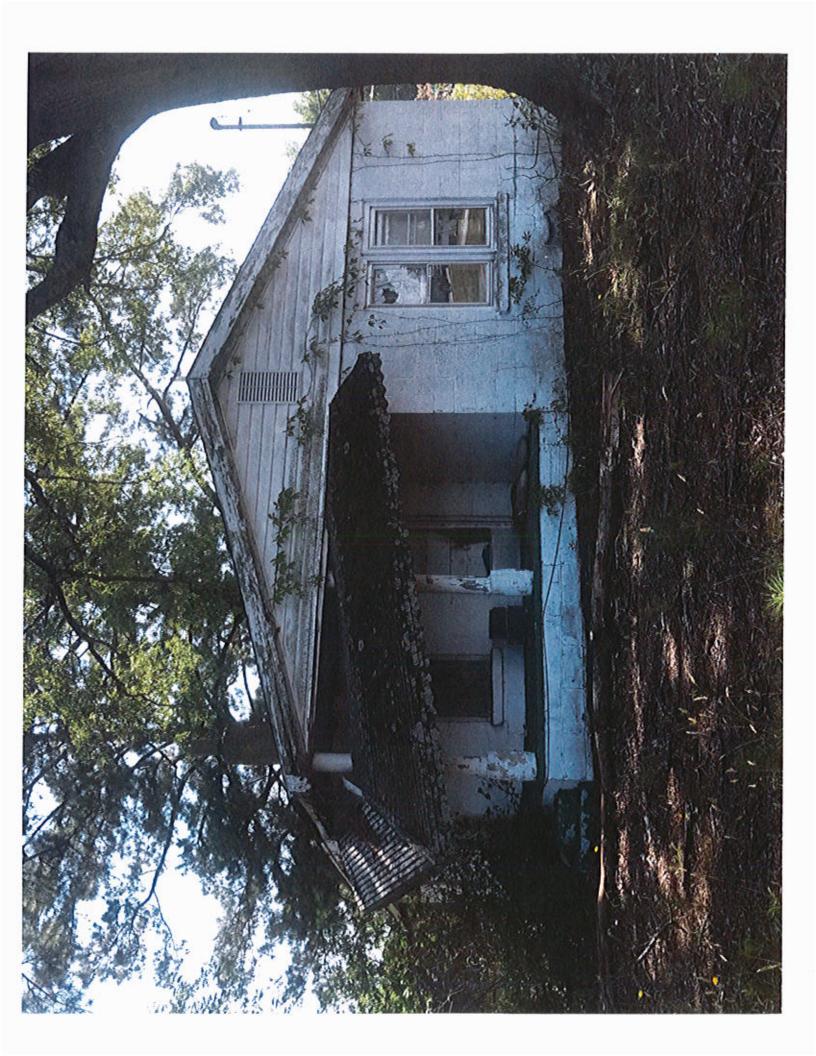
City of Wilson GIS Services a division of Wilson Planning and Development Services.

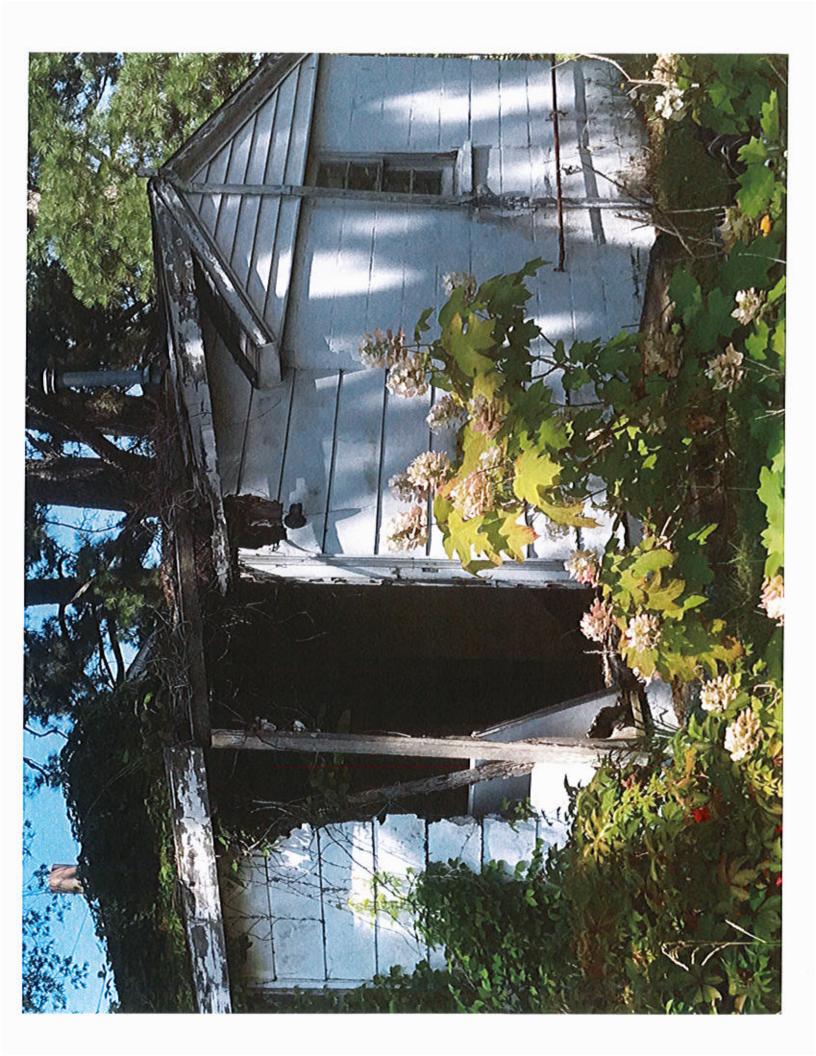
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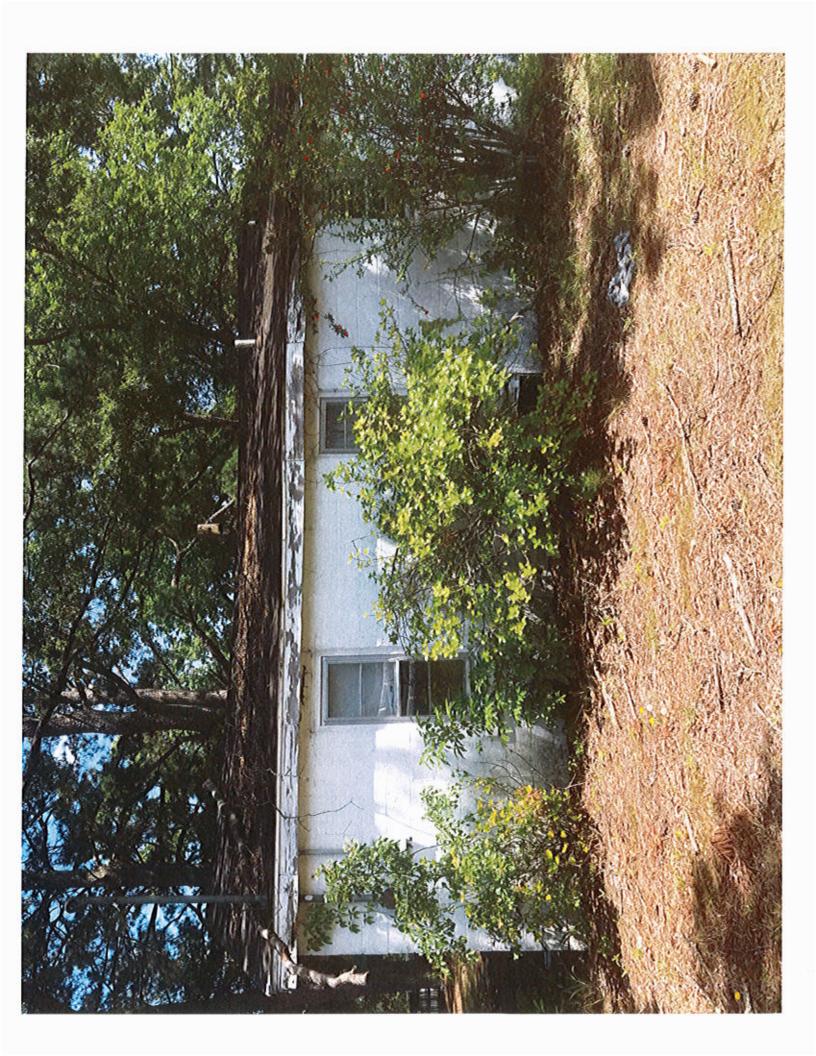
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#### O-093-23

# AN ORDINANCE DIRECTING THE BUILDING INSPECTOR TO DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED

WHEREAS, the City Council of the City of Wilson finds that the property described herein is unfit for human habitation under the City Housing Code, and that all of the provisions of the Housing Code have been complied with as a condition of the adoption of this ordinance; and

WHEREAS, said dwelling should be demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use of human habitation; and

WHEREAS, the owner of said dwelling has been given a reasonable opportunity to bring the dwelling up to the standards of the Housing Code in accordance with G.S. 160D-1203(5) pursuant to an order issued by the Building Inspector on September 13, 2023 and the owner having failed to comply with the order.

## NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILSON, that:

SECTION 1. The Building Inspector is hereby authorized and directed to place a sign containing this legend:

"This dwelling is unfit for human habitation; the use or occupancy of this dwelling for human habitation is prohibited and unlawful."

on the dwelling located at the following address: 1504 Fikewood St. E, Wilson, NC; PIN# 3721 88 5208; owned by Dorothy Lane, Georgia McNeil Hall, Daisy Inez Barnes, Mary Bell Langston, Heirs of Delores Valentine, Heirs of Eddie Gray Langston.

SECTION 2. The Building Inspector is hereby authorized and directed to proceed to demolish the above-described dwelling in accordance with his order to the owner thereof dated the 13 day of September and the Housing Code and G.S. 160D-1203.

SECTION 3. It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building therein declared to be unfit for human habitation.

SECTION 4. The City Clerk shall cause a certified copy of this ordinance to be recorded in the Office of the Register of Deeds of Wilson County and it shall be indexed in the name of the property owner in the Grantor Index.

SECTION 5. The costs of the demolition and the underlying proceedings shall be a lien against the real property upon which the costs are incurred and any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence.

SECTION 6. This ordinance shall become effective upon its adoption.

DULY ADOPTED this 14th day of December, 2023.

ATTEST:	Carlton L. Stevens, Mayor
Tonya A. West, City Clerk	
(Seal)	

### CERTIFICATION

The undersigned duly qualified and acting City Clerk of the City of Wilson does hereby certify that the above Ordinance is a true and correct copy of the Ordinance 0-093-23 as adopted at a legally convened meeting of the City Council of the City of Wilson duly held on 14th day of December, 2023, and further that such Ordinance has been fully recorded in the journal of proceedings and records in my office.

IN WITNESS WHEREOF, I have hereunto set my hand, this 14th day of December, 2023.

Tonya A. West City Clerk of the City of Wilson, North Carolina



Agenda Item	<u>6c</u>	
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Meeting Date December 14, 2023

## City Council Agenda Item Cover Sheet

To: Honorable Mayor, Members of City Council and City Manager

From: Janet Holland, AICP, Land Development Manager

Subject: Voluntary Annexation Request – Westwood Avenue

(Project# 23-373)

### Issue:

Voluntary annexation of 46.27 acres of land located off Westwood Avenue PINs: 3702-64-2188, 3702-54-2560, 3702-54-3508 and 3702-45-3693. Request by Herring-Sutton & Associates, PA on behalf of FWB Development Company, Incorporated, Owners

## Background / Summary:

- City Annexation policy requires consideration of annexation for any properties outside the Corporate Limits that are requesting City Service.
- A Resolution of Intent to annex the property was adopted by City Council on November 16, 2023.

## **Fiscal or Other Impact:**

Adoption of the Ordinance will increase the corporate city limits.

## Recommendation:

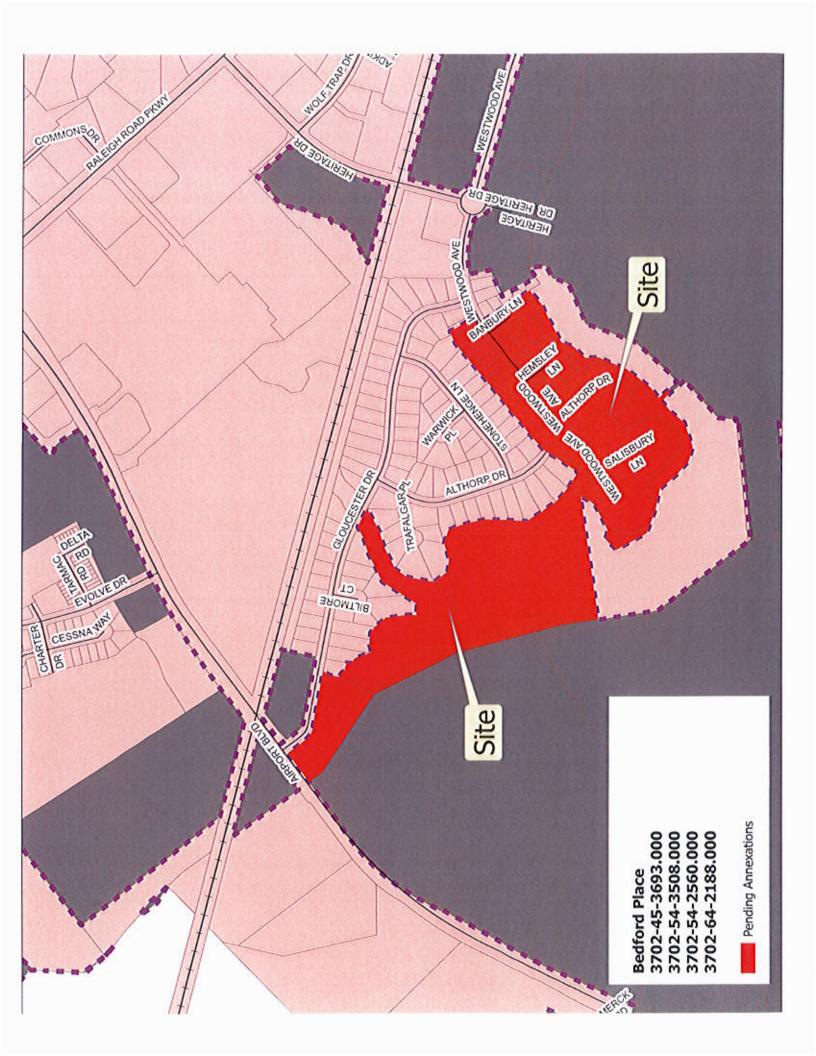
Staff recommends approval of the request.

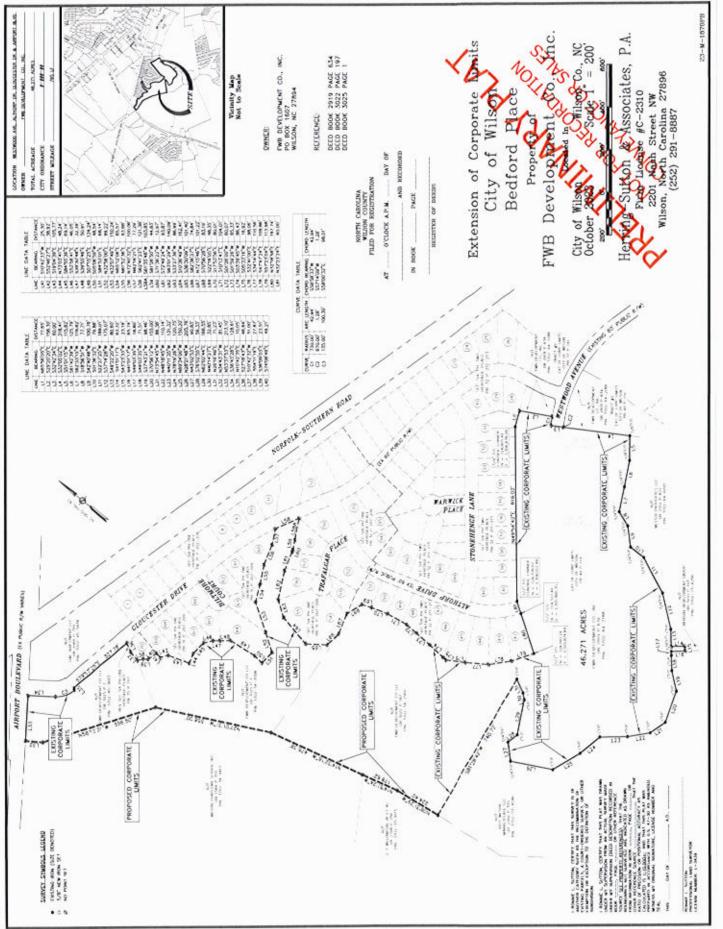
## Coordination:

Janet Holland, AICP, Land Development Manager, 252.399.2215, <a href="mailto:jholland@wilsonnc.org">jholland@wilsonnc.org</a> Kathy Bangley, CFM, Senior Planner, 252.206.5289, <a href="mailto:kbangley@wilsonnc.org">kbangley@wilsonnc.org</a>

## Attachments:

1) Location May 2) Annexation Plat 3) Annexation Request 4) Ordinance







## **Annexation Petition**

Development Services 112 Goldsboro Street E., Wilson, NC 27893 PO Box 10, Wilson, NC 27894 252-399-2220

Submittal Date: 10/27/2023		www.wiisoninc.org
To the City Council of the City of Wilson:		
I/we the undersigned owner[s] of real propert attached survey map of the property be annexed	y respectfully request that the area described her ed into the City of Wilson.	ein and as shown in the
The area to be annexed is // is not co such territory are as follows [attach or insert be	entiguous to the City of Wilson corporate limits elow a metes and bounds description with a match	and the boundaries of ning survey map]:
(see attached description)		
	hip, please provide such name and the name and tion or partnership. If in joint ownership, plea	
	fees will be my [our] responsibility for payment	and that I [We] will be
billed at a later date.	A 12	
FWB Development Co., Inc.	Thomas W Denson	10-27-23
Name	Signature	Date
Name	Signature	Date
Name	Signature	Date
Billing Address: PO Box 1607, Wilson, NC 27894		
	CLERK'S CERTIFICATE	*
NORTH CAROLINA WILSON COUNTY		
petition for annexation in accordance with N.C	rk for the City of Wilson did investigate the suffice.G.S. 160A-31[c] and I do hereby certify that the s	전 100명 이 20명이 NG 100명 111명 111명 111명 111명 111명 111명 11
This the 16th day of November	20 <u>23</u> .  100 City Clerk	West

### O-094-23

## AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILSON, NORTH CAROLINA ANNEXING PROPERTY PURSUANT TO N.C.G.S. 160A-31.

WHEREAS, the owner(s) of the hereinafter described tract of land, which is contiguous to the existing boundaries of the City and can be generally described as follows:

General Description: 46.27 acres located off Westwood Avenue of PINs: 3702-64-2188.000, 3702-54-2560.000, 3702-54-3508.000 and .000.

WHEREAS, upon receipt of said petition, the Clerk of the City of Wilson has investigated the sufficiency thereof and has certified it to be correct and sufficient in all respects; and

WHEREAS, at the regular meeting of the City Council of the City of Wilson held on the 16<sup>th</sup> day of November, 2023, upon receipt of the Clerk's certification, a resolution was adopted designating and calling for the meeting date of December 14, 2023 as the date for a public hearing upon the question of annexation of the said tract of land; and

WHEREAS, notice of the public hearing was duly advertised as required under law by publishing said notice once in the Wilson Times at least ten (10) days prior to the date of the public hearing; and

WHEREAS, the public hearing was actually held pursuant to the notice on November 16, 2023, wherein a statement by or on behalf of the City of Wilson of the purpose or reason for the proposed extension of the corporate limits was made at the beginning of the public hearing; and

WHEREAS, during the conduct of the said public hearing, a reasonable opportunity was given to all those in attendance to speak either in favor or against the said annexation, or to allege any error in the petition; and

WHEREAS, the City Council of the City of Wilson hereby finds that the petition for annexation of the hereinafter described meets the requirements of the North Carolina Statute 160A-31 and further finds that the annexation of the subject is necessary;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wilson, North Carolina:

 That the corporate limits of the City of Wilson, North Carolina, are hereby extended by annexation of, and the City of Wilson, North Carolina, does hereby annex that certain tract of land contiguous to the present corporate limits of the City of Wilson, as recorded in Plat Book \_\_\_ Page \_\_\_ and more particularly described as follows:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE WILSON TOWNSHIP, WILSON COUNTY, NORTH CAROLINA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a point on the southwesterly right-of-way of Althorp Drive and the southeasterly most corner of Lot #42, as shown on a plat entitled "Section Six Phase Two Heritage Place" (recorded in Plat Book 32 Page 211-213 of the Wilson County Registry); thence from said Point of BEGINNING across abovementioned right-of-way N 32°23'24" E 60.00' to a point; thence along the southerly property line of Lots #28, 31-39 and 41, as shown on abovementioned plat entitled "Section Six Phase Two Heritage Place" N 49°54'42" E 819.02' to a point; thence N 65°56'05" E 77.65' to a point cornering; thence along the southerly property line of Tract #2, as shown on a plat entitled "Extension of Corporate Limits City of Wilson" (recorded in Plat Book 37 Page 141 of the Wilson County Registry) S 29°20'20" E 158.30' to a point cornering; thence along the northerly right-of-way of Westwood Avenue and along a curve to the left having a radius of 730.00', an arc length of 42.94' and a chord of S 58°58'33" W 42.94' to a point of cornering; thence across said rightof-way S 32°42'34" E 60.00' to a point cornering; thence along the southerly right-of-way of the abovementioned Westwood Avenue and a curve to the left having a radius of 670.00', an arc length of 1.28', and a chord of S 57°14'09" W 1.28' to a point cornering; thence along the southerly property line of Tract #2, as shown on a plat entitled "Extension of Corporate Limits

City of Wilson" (recorded in Plat Book 40 Page 119 of the Wilson County Registry) S 32°05'02" E 318.41' to a point cornering; thence along the northerly property line of Wester Properties LLC (recorded in Deed Book 2710 Page 822 of the Wilson County Registry) S 51°01'15" W 115.82' to a point; thence S 61°42'39" W 125.79' to a point; thence S 62°33'15" W 119.82' to a point; thence S 18°56'51" W 77.71' to a point; thence S 42°40'46" W 100.76' to a point; thence S 01°36'32" E 79.88' to a point; thence S 22°37'25" W 189.01' to a point; thence S 37°14'28" W 175.07' to a point; thence S 49°22'20" W 80.60' to a point; thence S 41°01'17" E 63.32' to a point cornering; thence along the northerly property line of Benson Development Group (recorded in Deed Book 3010 Page 193 of the Wilson County Registry) S 43°23'33" W 23.19' to a point cornering; thence along the northeasterly property line of Ireit Wilson Marketplace, LLC (recorded in Deed Book 2686 Page 834 of the Wilson County Registry) N 41°01'17" W 65.74' to a point; thence S 49°03'35" W 90.31' to a point; thence S 37°43'21" W 98.46' to a point; thence S 70°56'12" W 155.00' to a point; thence N 73°54'45" W 86.38' to a point; thence N 48°18'45" W 110.14' to a point; thence N 40°11'35" W 131.32' to a point; thence N 78°19'26" W 120.75' to a point; thence N 69°34'00" W 150.20' to a point; thence N 28°21'48" W 205.76' to a point; thence N 43°03'43" E 90.83' to a point; thence S 76°02'55" E 56.33' to a point; thence N 62°02'44" E 166.56' to a point; thence N 40°14'27" E 32.85' to a point; thence N 26°16'49" E 71.23' to a point; cornering; along the northerly property line of abovementioned Ireit Wilson Marketplace, LLC S 81°28'42" W 740.72' to a point cornering; along the easterly property line of U. T. Williamson Jr. (recorded in Deed Book 2308 Page 356 of the Wilson County Registry) N 08°31'29" W 224.40' to a point; thence N 14°51'24" W 178.62' to point; thence along the easterly property line of Wilson Christian School Inc (recorded in Deed Book 1584 Page 355 of the Wilson County Registry) N 14°32'18" W 475.38' to a point; thence N 27°01'31" W 558.00' to a point; thence N 56°10'31" W 556.50' to a point; thence N 34°43'31" W 81.45' to a point cornering; thence along the southerly right-of-way of Airport Boulevard N 53°37'53" E 213.10' to a point cornering; thence along the southerly right-of-way of Gloucester Drive S 36°43'28" E 128.61' to a point; thence along a curve to the left having a radius of 135.00', an arc length of 100.30', and a chord of S 58°00'32" E 98.01' to a point; thence N 10°42'35" E 10.05' to a point; thence S 79°17'25" E 327.78' to a point cornering; thence along the westerly property line of Revised Lot #70, as shown on a plat entitled "Revised Final Plat Section Six Phase One Heritage Place" (recorded in Plat Book 35 Page 197 of the Wilson County Registry) S 27°18'43" W 46.64' to a point; thence S 10°42'32" W 51.00' to a point cornering; thence along the southerly property line of abovementioned Revised Lot #70 S 54°11'19" E 27.87' to a point; thence S 36°09'03" E 23.51' to a point; thence S 74°08'49" E 49.21' to a point; thence along the easterly property line of Lot #69 as shown on a plat entitled "Section Six Phase One Heritage Place" (recorded in Plat Book 31 Page 207-209 of the Wilson County Registry) S 10°42'33" W 25.30' to a point cornering; thence along the southerly property line of Lots #60, 63-65 and Lots # 67-69, as shown on abovementioned plat entitled "Section Six Phase One Heritage Place" S 52°46'27" E 38.92' to a point; thence S 19°04'39" E 105.77' to a point; thence N 73°03'41" E 48.24' to

a point; thence S 84°55'36" E 69.14' to a point; thence S 52°58 41' E 46.05' to a point; thence S 39°30'48" E 32.39' to a point; thence S 39°55'46" E 50.91' to a point; thence S 07°15'25" E 134.24' to a point; thence S 05°06'59" W 48.54' to a point; thence S 84°53'01" E 68.14' to a point; thence N 32°56'00" E 99.22' to a point; thence N 32°07'49" E 150.24' to a point; thence N 65°12'06" E 85.57' to a point; thence N 61°52'36" E 93.98' to a point; thence N 72°40'32" E 100.06' to a point; thence N 62°16'21" E 77.29' to a point cornering; thence along the abovementioned southerly right-of-way of Gloucester Drive S 62°41'23" E 121.38' to a point cornering; thence along the north and westerly property line of Lots #54-58, as shown on abovementioned plat entitled "Section Six Phase One Heritage Place" S 61°35'48" W 103.85' to a point; thence S 61°26'50" W 44.83' to a point; thence S 71°36'22" W 12.97' to a point; thence S 72°49'24" W 93.87' to a point; thence S 63°01'29" W 140.09' to a point; thence S 33°27'36" W 86.99' to a point; thence S 10°36'49" W 162.41' to a point; thence S 36°30'09" E 101.40' to a point; thence S 82°36'37" E 74.84' to a point cornering; thence N 72°15'46" E 101.22' to a point; thence along the westerly property line of Lots #42-51, as shown on abovementioned plat entitled "Section Six Phase Two Heritage Place" S 70°56'28" E 83.19' to a point; thence S 22°16'05" E 48.35' to a point; thence S 17°53'56" E 80.01' to a point; thence S 10°13'47" E 104.01' to a point; thence S 01°26'00" W 60.07' to a point; thence S 01°59'26"W 85.33' to a point; thence S 03°39'45" W 86.43' to a point; thence S 05°33'16" W 16.92' to a point; thence S 32°41'00" E 98.06' to a point; thence S 34°14'44" E 110.56' to a point; thence S 47°47'24" E 109.86' to a point; thence S 57°23'04" E 113.98' to a point cornering; thence along the easterly property line of Lot #42 N 32°18'58" E 197.74' to the abovementioned southwesterly right-of-way of Althorp Drive and being the Point BEGINNING and containing 46.271 acres.

- 2. That this ordinance shall become effective immediately.
- 3. That from and after the effective date of this annexation ordinance, the territory hereinabove described, and its citizens and property, shall be subject to all debts, laws, ordinances and regulations in force in the City of Wilson, North Carolina, and shall be entitled to the same privileges and benefits as other parts of the said City of Wilson.
- That a certified copy of this ordinance and an accurate map of the territory annexed herein shall be recorded in the office of the Register of Deeds for Wilson County, North Carolina and in the Office of the Secretary of State of North Carolina.

## **DULY ADOPTED** this 14<sup>th</sup> day of December, 2023

ATTEST:	Carlton L. Stevens, Mayor
Tonya A. West, City Clerk	
Project No. 23-373	

## CERTIFICATION BY RECORDING OFFICER

The undersigned, duly qualified and City Clerk of the City of Wilson, does hereby certify the above ordinance is a true and correct copy of Ordinance Number O-O94-23 as adopted at a legally convened meeting of the City Council of the City of Wilson duly held on the 14<sup>th</sup> day of December, 2023 and further that such ordinance has been fully recorded in the journal of proceedings and records in my office.

IN WI December, 20		REOF, I have	hereunto set	my hand, this 14	<sup>th</sup> day of	
Tonya A. We	est, City Clerk					



Agenda Iten	n 6d	

Meeting Date December 14, 2023

## City Council Agenda Item Cover Sheet

To: Honorable Mayor, Members of City Council and City Manager

From: Janet Holland, AICP, Land Development Manager

Subject: Street Closure Request - 300-400 Blocks of Moore Street, South

(Project# 23-382)

#### Issue:

Requesting the permanent street closure of the 300 to 400 Blocks of Moore Street, South. This is located between Stemmery and Gay Streets and west of Pender Street. Request by Bartlett Engineering & Surveying, PC

## Background/Summary:

This permanent street closure is in anticipation of the proposed Pender Crossing development. Pender Crossing is a 48-unit affordable multi-family development that has been approved for Low Income Housing Tax Credits (LIHTC) by the NC Housing Finance Agency. The development is being constructed on land leased from the City. To accommodate the site design of the proposed development, it is necessary to close this unused section of Moore Street.

## Recommendation:

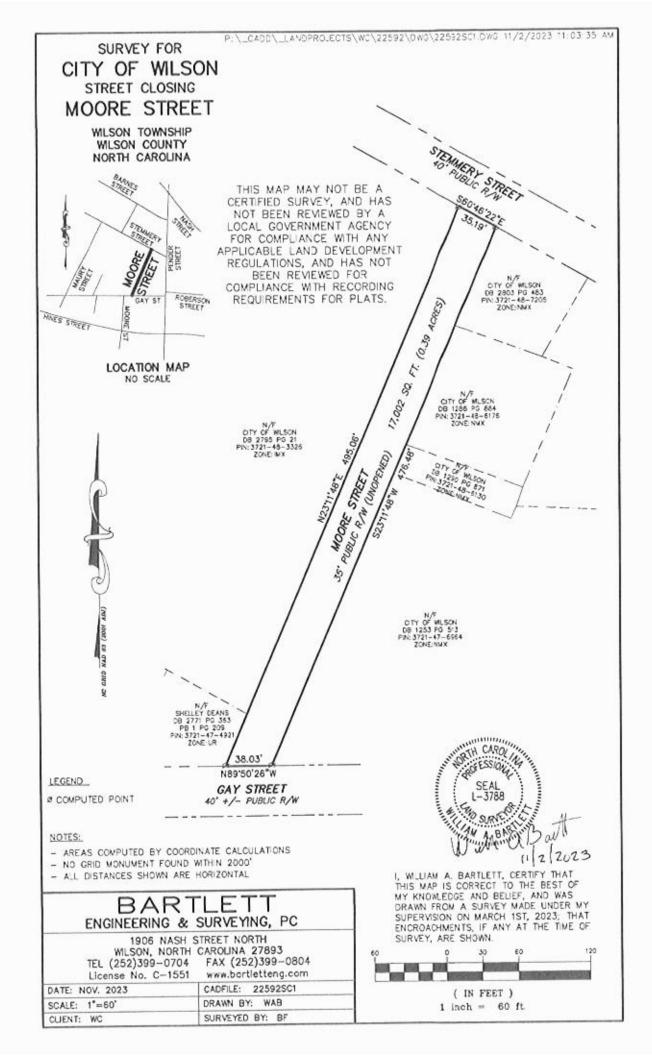
Adopt Resolution to close the right-of-way permanently.

## Coordination:

Janet Holland, Land Development Manager, 252.399.2215, jholland@wilsonnc.org
John Morck, Planning & Community Development Manager, 252.399.2227,
jmorck@wilsonnc.org

## Attachments:

- 1) Location Map
- 2) Closure Resolution



#### R-056-23

# RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILSON DECLARING ITS INTENT TO CLOSE THE 300 AND 400 BLOCKS OF MOORE STREET, S IN THE CITY OF WILSON

WHEREAS, the City Council of the City of Wilson has received a petition requesting the closing of the 300 and 400 Blocks of Moore Street, S, in the City of Wilson; and

WHEREAS, after thorough investigation and consideration, the City Council of the City of Wilson intends to close the aforesaid portion of Moore Street in accordance with the provisions of N.C.G.S. 160A-299.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILSON that it is the intent of the City Council of the City of Wilson to close the following described portions of Moore Street:

Lying and being in Wilson Township of Wilson County, and being more particularly described as follows: Beginning at a point at the intersection of the northern right-of-way of Gay street and the eastern right-of-way of Moore Street, thence along the northern right-of-way of Gay Street, N89°50'26"W, 38.03' to a point at the intersection the northern right-of-way of Gay Street and western right-of-way of Moore Street, thence along the western right-of-way of Moore Street, N23°11'48"E, 495.06' to a point at the intersection of the southern right-of-way of Stemmery Street and the western right-of-way of Moore Street, thence along the southern right-of-way of Stemmery Street, S60°46'22"E, 35.19' to a point at the intersection of the southern right-of-way of Stemmery Street and the eastern right-of-way of Moore Street, thence along the eastern right-of-way of Moore Street, S23°11'48"W, 476.48' to the point of beginning, being 17,002 square feet (0.39 acres), and being an unopened and unimproved portion of Moore Street.

BE IT FURTHER RESOLVED, that a public hearing will be held in the Council Chambers of the Municipal Building, Wilson, North Carolina, on the 14<sup>th</sup> day of December, 2023, at 7:00 p.m. to consider the advisability of closing the aforesaid 300 and 400 Blocks of Moore Street, S. At the public hearing, all objections and suggestions will be duly considered.

BE IT FURTHER RESOLVED, that a copy of this resolution be published once a week for four successive weeks in the Wilson Times, a newspaper having general circulation in the City of Wilson; that a copy of this resolution be sent by certified mail to the owners of the property adjoining the aforesaid portions of Moore Street as shown on the county tax records; that a copy of this resolution be posted in at least two places along the aforesaid portions of Stemmery and Gay Streets.

NOW THEREFORE BE IT RESOLVED, this the 14<sup>th</sup> day of December, 2023.

DULY ADOPTED this the 14th day of December, 2023.

	Carlton L. Stevens, Mayor City of Wilson	
ATTEST:		
Tonya A. West, City Clerk	-	

Project 23-382

#### R-057-23

## RESOLUTION AUTHORIZING A DOWNTOWN DEVELOPMENT AGREEMENT FOR DOWNTOWN DEVELOPMENT

Type text here

- WHEREAS, NCGS 160D-1315 authorizes cities to enter into contracts with private developers for the purposes of revitalization of the central business district of the city through a downtown development project; and
- WHEREAS, cities may acquire, construct, own, operate and convey interests in real property for the purpose of a downtown development project as authorized by NCGS 160D-1315 and NCGS 160D-1312(4); and
- WHEREAS, the City of Wilson (the "City") owns the real property identified on the attached Exhibit A, (collectively, the "Properties"); and
- WHEREAS, the City proposes to enter into a Development Agreement ("Agreement") with NSV Wilson, LLC ("Developer") substantially in the form attached hereto as Exhibit B; and
- WHEREAS, Developer desires to purchase and develop the Properties for the downtown development project in accordance with the terms of the Agreement; and
  - WHEREAS, the appraised value of the Properties are as shown on Exhibit A: and
- WHEREAS, in accordance with the terms of NCGS 160D-1315 and NCGS 160D-1312, and subject to the terms of the Agreement and further subject to the other terms and conditions hereinafter set forth, and such additional terms as the City Council may impose following a public hearing, the City desires to authorize the conveyance of the Properties described for not less than appraised value and in accordance with and on the schedule set forth in the Agreement; and
- WHEREAS, the City has determined that the downtown development project contemplated by the Agreement will have a significant effect on the revitalization of the central business district; and
- WHEREAS, the construction of the improvements on the Properties will increase the taxable property and business prospects of the City; and
- WHEREAS, based on the foregoing public benefits, the City Council of the City of Wilson desires to approve the Agreement and the conveyance of the Properties described therein; and
- WHEREAS, a public hearing on the terms of the Development Agreement has been duly noticed, advertised and held as required by NCGS 160D-1315 and NCGS 160D-1312; and
- WHEREAS, in accordance with the terms of NCGS 160D-1315 and NCGS 160D-1312, the City has confirmed through appraisals of the Property that the purchase prices set forth above equal or exceed the appraised value for said parcels and subject to payment of the purchase prices

as noted and further subject to the terms and conditions herein set forth, the City Council of the City of Wilson desires to authorize the conveyance of the Properties and the Agreement.

## NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILSON THAT:

- The City Council does hereby find that it is in the public interest to authorize the Downtown Development Agreement and, the conveyance of the Properties described therein.
- Appropriate personnel of the City of Wilson are authorized and directed to take such actions and execute such documents as are necessary to implement the terms of this Resolution.

DULY ADOPTED this 14th day of December, 2023.

ATTEST:	James M. Johnson, III, Mayor Pro Tempore
Tonya A. West, City Clerk (SEAL)	

## EXHIBIT A

PID	Address/Legal Des.	Appraised S
Subdivided Portion of: 3721-19-9282; 3721-29-0133; 3721-29-0288; 3721-29-1343; 3721-29-1193; 3721-29-1037; 3721-29-0093; 3721-28-2849; 3721-28-6932; 3721-28-4825; 3721-28-5850; 3721-28-4799	X-2 SUBDIVIDED PORTIONS OF WISE PARCELS TO BE DETERMINED	\$150,073 per acre
Subdivided Portion of: 3721-19-9282; 3721-29-0133; 3721-29-0288; 3721-29-1343; 3721-29-1193; 3721-29-1037; 3721-29-0093; 3721-28-2849; 3721-28-6932; 3721-28-5902; 3721-28-4825; 3721-28-5850; 3721-28-4799	X-3 SUBDIVIDED PORTIONS OF WISE PARCELS TO BE DETERMINED	\$150,073 per acre
3721-28-0853	503 DOUGLAS ST	\$6,000
3721-28-0789	400 HINES ST	\$6,500
3721-28-7476	510 JONES ST	\$673,000
3721-38-1386	520 JONES ST	\$13,000
3722-30-7317	227 NASH ST	\$634,000
3722-20-0972	MOSS ST	\$189,000
3722-20-4630	210 TARBORO ST	\$219,000
3721-39-8935	NASH ST S 1.00LT	Included in Z3
3721-39-8889	320 NASH ST	\$659,000
3721-39-7845	LODGE ST S 1.00LT	\$55,000
3721-49-4497	523 NASH ST	\$25,000
3721-49-5445	514 SMITH ST	\$11,000
3721-49-5401	529 NASH ST	\$15,000
3721-49-5482	516 SMITH ST	\$12,000
3721-49-5328	531 NASH ST	\$10,000
3721-49-6319	518 SMITH ST	\$8,500
3722-10-4646	112 Hines St	\$625,000
3721-39-9653	406 Barnes	103,000
3721-48-1843	500 BARNES ST	\$208,000
3721-48-3326	526 STEMMERY ST	\$293,000
3721-48-0105	403 MAURY ST	\$19,000
3721-38-8036	406 MAURY ST	\$11,000
3721-37-7985	410 MAURY ST	\$15,000
3721-38-6023	RAILROAD ST	\$33,000
3721-37-5970	607 GAY ST	\$7,000
3721-47-1976	409 GRACE ST	\$6,000

3711-05-5668 & 3711-05-2510	2760 FOREST HILLS RD & 0 GREGORY LN	\$922,000
3721-39-5902	307 BARNES ST	\$533,000
3721-39-5873	313 BARNES ST	\$154,000
3721-39-6820	315 BARNES ST	\$254,000
3721-39-7725	114 LODGE ST	\$25,000

## EXHIBIT B Downtown Development Agreement

### DOWNTOWN DEVELOPMENT AGREEMENT

THIS DOWNTOWN DEVELOPMENT AGREEMENT, (the "Agreement") made as of the \_\_\_\_ day of [\_\_\_\_\_\_], 2023 (the "Effective Date") between the City of Wilson, a body politic and corporate organized and existing under the laws of the State of North Carolina ("City") and NSV WILSON, LLC, a North Carolina limited liability company (the "Developer"). City and Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

#### RECITALS:

WHEREAS, N.C.G.S. § 160D-1315 provides that a municipality may contract with a developer for the purposes of developing and constructing a "downtown development project," defined as a capital project in the City's central business district, as that district is defined by the City council, comprising one or more buildings and including both public and private facilities;

WHEREAS, in accordance with N.C.G.S. §160D-1312 and §160D-1315, the City desires to create a downtown development project that will function as a center of economic, civic, and cultural activity in the community and invigorate downtown Wilson by (i) promoting economic development of the community, (ii) providing parking to support the needs of the surrounding community, (iii) providing connection and continuity between Main Street and other nearby redevelopment projects underway and (iv) furthering the positive impact and significant effect of the revitalization of downtown Wilson on the community;

WHEREAS, the City has defined a "central business district" as required by the statute;

WHEREAS, the City has acquired or will acquire (or will cause the Developer to acquire) certain real property and improvements located in Wilson County, North Carolina, which are more particularly described as in <a href="Exhibit A">Exhibit A</a> attached hereto and incorporated herein (collectively, the "Property") with each parcel further defined therein, for the public purpose of redevelopment, downtown development, parking, parks and recreation and other public purposes;

WHEREAS, the City has determined that the development of the Property will have a significant effect on the revitalization of the City of Wilson Municipal Service Districts, the central business district, downtown Wilson, and the City as a whole;

WHEREAS, City and Developer desire to redevelop and recombine the Property for public, residential and commercial uses including the public development of a public stadium, multipurpose sport and entertainment complex (the "WiSE Park") and certain private development as described in the Wilson Stadium and Entertainment Downtown Development Project Development Plan attached hereto as <a href="Exhibit B">Exhibit B</a> (the "Development Plan") and incorporated herein by reference (the "Project");

WHEREAS, City and Developer have agreed to redevelop the Property and to develop the Project in accordance with this Agreement;

WHEREAS, the total cost of the Project, including but not limited to all pre-development

costs, construction costs, design and planning costs, financing, and other soft costs, is projected to be Two Hundred Eighty-Two Million Five Hundred Thousand and No/100 Dollars (\$282,500,000.00) (the "Project Cost");

WHEREAS, in connection with the construction of WiSE Park, Developer and Barton Malow/Clancy & Theys (the "Project Contractor") intend to enter into an AIA Document A133 Standard Form of Agreement between Owner and Construction Manager as Constructor with a guaranteed maximum price, to be entered into on or before March 31, 2024, and in substantially the form attached hereto as <a href="Exhibit H">Exhibit H</a> (the "Project Construction Contract); and

WHEREAS, the Parties acknowledge and agree that the development, construction and operation of WiSE Park is subject to that certain Use and Operating Agreement by and between the City of Wilson and Mudcats Baseball, LLC (the "Operator") dated December 14, 2023 and attached hereto as <a href="Exhibit C">Exhibit C</a> and incorporated herein by reference (the "Use Agreement") and all capitalized terms used in this Agreement, but not defined herein, shall have the same meaning and definition provided in the Use Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, City and the Developer agree as follows:

### ARTICLE I The Developer Obligations

- Section 1.1 The Developer shall redevelop the Property into WiSE Park, residential apartments and other private uses in accordance with the Development Plan and with further approval of the City as required in Section 3.2, Section 4.8 and the Development Plan.
- Section 1.2 The Developer shall be solely responsible for the total cost of the Private Development on the Property, as identified on the Development Plan.
- Section 1.3 The Developer, its successors, assigns and grantees, shall cause to be invested a minimum investment of Two Hundred and Twelve Million and No/100 Dollars (\$212,000,000.00) (the "Minimum Investment") within the two Municipal Service Districts in the Central Business District of the City of Wilson as shown on Exhibits D-1 and D-2 attached hereto and incorporated herein by reference (the "Redevelopment Area"). Such Minimum Investment shall consist of the acquisition of certain parcels of real property needed for development, including acquisition of portions of the Property owned by the City, including the Developer Parcels (as hereinafter defined), and certain other real property located therein, and the construction and equipping thereon of the capital projects as described under "Private Development" on the Development Plan (as such Development Plan may be amended with the consent of City and, if required by Section 1.6, Operator), including all necessary infrastructure such as water and sewer lines, utilities, streets, sidewalks rights of way and streetscapes serving such private development property (collectively, the "Private Development"), and shall take place prior to December 31, 2031 (except as otherwise provided in the Development Plan or Use Agreement). To qualify as part of the Minimum Investment, Developer must provide evidence reasonably satisfactory to City of the cost of the capital project (such as a construction contract)

constituting the Private Development, together with evidence reasonably satisfactory to City that Developer has obtained financing for such construction. The Developer's obligation to make the Minimum Investment shall be secured by a Deed of Trust in favor of the City, as described below.

- 1.3.1 City Deed of Trust. Developer shall grant a Deed of Trust to the City in the form substantially similar to the form Deed of Trust attached hereto as Exhibit E to secure the Minimum Investment (the "City Deed of Trust").
- 1.3.2 Encumbered Property. The City Deed of Trust shall encumber the Developer owned parcels described in the form Deed of Trust.
- 1.3.3 Maturity Date. The Maturity Date of the City Deed of Trust shall be December 31, 2031.
- 1.3.4 Release of City Deed of Trust. Upon receipt of a term sheet from a lender for a construction loan to finance a portion of the Private Development on one or more parcels of property encumbered by the City Deed of Trust, City shall prepare a deed of release for the encumbered parcel that is subject to the construction loan financing. At the construction loan closing, the deed of release shall be recorded simultaneously with the construction loan deed of trust.
- 1.3.5 Satisfaction of City Deed of Trust. Developer shall submit proof of investment to the City for all private investment. After verification that the Minimum Investment has been met, the City shall cause a Satisfaction of Deed of Trust to be recorded in the Wilson County Registry.
- Section 1.4 All real property conveyed by City to Developer pursuant to Section 4.1 shall be subject to deed restrictions and terms of conveyance in the form attached hereto as  $\underline{Exhibit}$   $\underline{F}$  (the "Deed Restrictions"). The Developer shall abide by all Deed Restrictions in developing the Private Development.
- Section 1.5 The Developer shall design and construct the public infrastructure, including but not limited to access roads, driveways, sidewalks, water, sewer, and electric utilities, rights of way and streetscapes for the WiSE Project (the "Infrastructure"). The Developer shall submit to the City for written approval the design and budget for the Infrastructure. "Infrastructure" shall only include those items (i) contained within the WiSE Parcel, and/or (ii) solely serving WiSE Park, all of which shall be included in the Project Construction Contract.
- Section 1.6 The Development Plan has been approved by Developer, the City, and, with respect to: (i) all improvements on or directly serving the WiSE Parcel, and (ii) exterior signage located on the Property that is visible from the WiSE Parcel. Operator's written consent shall be required for any modifications or amendments to the Design Plan modifying items (i) and (ii) of this Section 1.6; such consent not to be unreasonably withheld, conditioned, or delayed with respect to any modifications affecting item (ii) of this Section 1.6.
  - Section 1.7 The obligations of Developer under this Agreement, including without

limitation the obligations contained in this Article I, shall collectively be referred to herein as the "Developer Obligations."

# ARTICLE II City Obligations

- Section 2.1 The City shall cause to be prepared at its expense a subdivision plat describing the WiSE Parcel and the X Parcels (the "Recombination Plat"). The Recombination Plat will be prepared in recordable format by a surveyor registered and licensed in the State of North Carolina. The Recombination Plat will combine the WiSE Parcel and the X Parcels in substantially similar format as shown on the project map attached hereto as Exhibit G. The City shall deliver the Recombination Plat to the Developer for the Developer's reasonable review. Within twenty (20) days of the City sending a copy of the Recombination Plat to the Developer, the Developer shall either provide any comments to the Recombination Plat or approve the Recombination Plat, which approval shall not be unreasonably withheld, conditioned, or delayed. The Developer shall cooperate with the City in the preparation of the Recombination Plat, including signing any documents reasonably necessary, and cooperating with any subdivision process or requirements. Once approved by Developer, City will not modify the final Recombination Plat without the prior consent of Developer. The Recombination Plat shall be recorded prior to any Closing contemplated in this Agreement. The Recombination Plat shall be used as the basis for the preparation of the legal descriptions to be included any Deed to be delivered by the City to the Developer at Closing for the X Parcels.
- Section 2.2 The City shall convey to the Developer certain parcels of Property in accordance with Article IV herein.
- Section 2.3 The City will provide Developer with any required design specifications to be incorporated into the designs of WiSE Park prior to the finalization of the WiSE Park Plans, including the requirements of the Use Agreement. City shall in a timely manner (i) provide information regarding requirements for the WiSE Project, (ii) promptly answer all inquiries Developer may have with respect to such information, and (iii) timely approve or disapprove any items submitted by Developer to City pursuant to this Agreement.
- Section 2.4 The City shall be responsible for the payment of the WiSE Park Costs as set forth in the Project Budget approved by the City and WiSE Park Cost increases attributable to design changes requested by the City less any cost increase to the WiSE Park Project attributable to the private development of the X1 parcel as further described in Section 4.2.6. Upon the City's review and approval of the Project Budget for the Infrastructure, the City shall pay the costs for the Infrastructure; which costs shall be included in the Project Construction Contract.
- Section 2.5 Provided that the other requirements of this Agreement are met, the City shall disburse payments (collectively, the "Payment") for the cost of design and construction of WiSE Park ("WiSE Park Costs") upon the written request of any officer, partner, manager or other person designated in writing by the Developer. As a condition to the disbursement of any Payment, Developer shall deliver to the City (i) such written forms requesting disbursement of Payment as the City may reasonably request, (ii) evidence satisfactory to the City that the Project Contractor

has completed the work with respect to the WiSE Park for which the Payment is requested, and (iii) executed lien waivers from the Project Contractor and all subcontractors and material providers who have performed any work or furnished any materials in connection with the work for which Payment is sought, with respect to such work. Such requests for Payment shall be accompanied by the documentation presented to the Developer for payment by the Project Contractor. The City requires at least ten (10) days' notice prior to disbursement of a Payment. The City shall disburse Payments directly to or at the direction of Developer.

Section 2.6 Upon request, City will promptly grant to Developer temporary construction easements reasonably necessary to complete the Project. Such easements will contain commercially reasonable provisions for like easements in North Carolina.

Section 2.7 The obligations of the City under this Agreement, including without limitation the obligations contained in this Article II, shall collectively be referred to herein as the "City Obligations."

# ARTICLE III Public Development

Section 3.1 WiSe Park. City will fund, own, maintain and operate WiSe Park in accordance with the Development Plan and the Use Agreement.

Section 3.2 WiSE Park Design Coordination. Developer will continue to work with the City, the Operator and the Project Contractor on the final design of WiSE Park, and will provide preliminary detailed plans (the "WiSE Park Plans") and detailed preliminary cost estimates for WiSE Park to the City for review no later than March 1, 2024, and provided that City promptly responds to same, Developer shall finalize the WiSE Park Plans no later than March 21, 2024. The WiSE Park Plans constitute the "Project Plans" and "Project Construction Documents" described in the Use Agreement and shall be subject to the approval of the City and the Operator consistent with the process identified in Article 3 of the Use Agreement. The WiSE Park Plans shall include a budget of all costs associated with the development of the WiSE Parcel including but not limited to construction costs, design costs, predevelopment costs and Infrastructure costs (the "Project Budget"), which Project Budget shall be finalized no later than March 21, 2024. The design and construction of WiSE Park will meet the requirements set forth for the WiSE Park in the Development Plan and for the "Project" as defined in the Use Agreement and shall be subject to Article XIV hereof in all respects. The City shall have until April 18, 2024 to review and approve or require revisions to the WiSE Park Plans other than adjustments to the Project Budget. Developer shall cooperate with City and Operator to provide prompt and timely responses to all reasonable requests for information and documents relating to the WiSE Park Plans. If Developer does not timely provide such information and documentation upon request, the City's deadline to approve the Project Plans shall be extended on a day-for-day basis to accommodate such delay. The WiSE Park Plans are subject to approval and modification by the Operator consistent with the provisions of the Use Agreement.

Section 3.3 WiSE Park Construction. The Developer agrees to construct the WiSE Park

and the Infrastructure on the WiSE Parcel in substantial conformity with the Project Construction Contract and the requirements of the Use Agreement (the "Construction Terms") for a total cost ] Million and No/100 Dollars [(\$ to the City not to exceed [ Maximum Cost"). Should the Developer achieve project savings reducing the actual construction cost below the WiSE Park Maximum Cost ("Savings"), either through their own effort or through value engineering design changes agreed to by the City and the Operator, then such Savings shall be allocated between the Developer and the City as follows: (A) first, for construction and development of the Add Alternates as defined and determined in accordance with the Use Agreement; and (B) second, any additional Savings accruing after the use contemplated by subsection (A) of this Section 3.3 shall be distributed 50% to the Developer and 50% to the City after final completion of WiSE Park and Infrastructure as required by the Use Agreement, this Agreement, and the Design Plan. Any cost overruns incurred in the construction of WiSE Park and the Infrastructure above the WiSE Park Maximum Cost shall be paid solely by Developer and the Parties agree that Developer incurring costs to complete WiSE Park and related Infrastructure shall not be a Force Majeure event or otherwise excuse Developer's obligations under this Agreement. As set forth in the Project Construction Contract attached hereto as Exhibit H, the final Construction Terms and Project Construction Contract shall include the following:

- 3.3.1 Contract documents, including the final WiSE Park Plans and Project Budget;
- 3.3.2 Infrastructure Commencement Date by May 31, 2024;
- 3.3.3 Commencement Date for the WiSe Park construction of September 3, 2024 and Substantial Completion date of February 1st, 2026;
- 3.3.4 WiSe Park Maximum Cost, which will be a guaranteed maximum price, including soft costs attributable to City and incurred since [MOU date];
- 3.3.5 Liquidated damages and remedies upon default by the Project Contractor under the Project Construction Contract;
  - 3.3.6 Progress payment schedule and process;
  - 3.3.7 Retainage;
  - 3.3.8 Final payment;
  - 3.3.9 Dispute resolution process;
  - 3.3.10 Termination or suspension;
  - 3.3.11 Payment and performance bond, with City as third party beneficiary;
- 3.3.12 Insurance requirements, including Builders Risk policy naming the City as insured or additional insured;
  - 3.3.13 Incorporation of terms of the this Agreement, as amended;

- 3.3.14 Guaranties of performance and completion by Developer;1 and
- 3.3.15 Miscellaneous terms as mutually agreed between the Parties.

Section 3.4 Collateral Assignment of WiSE Project Plans and Project Construction Contract. As further security for Developer's obligation to perform under this Development Agreement, Developer shall execute and deliver to City a Collateral Assignment of the WiSE Project Plans, a Collateral Assignment of the Project Construction Contract ("Collateral Assignment of Construction Contract"), and a collateral assignment of all warranties then held or subsequently acquired by Developer related to the WiSE Project, which will permit the City to enforce the Project Construction Contract against the Project Contractor if Developer defaults in its obligations with respect to WiSE Park under this Agreement and benefit from all warranties related thereto. Developer shall obtain the consent of Project Contractor to the Collateral Assignment of Construction Contract and any other consent required to complete the collateral assignments required by this Section 3.4.

# ARTICLE IV Private Development

### Section 4.1 Sale of Property.

- 4.1.1 Developer shall purchase from City a portion of the Property identified as the X Parcels and Y Parcels on Exhibit A attached hereto (collectively, the "Developer Parcels") at the appraised values on or before June 30, 2024 in accordance with this Article IV and shall acquire on or before such date the X Parcels, the Y Parcels and such other property shown on Exhibit A attached hereto as necessary for a minimum payment of \$2,400,000.00 in the aggregate.
- 4.1.2 All sales of any portion of the Property under this Agreement shall have a purchase price of not less than appraised value and such appraised value shall be disclosed at a legislative hearing of the City of Wilson City Council in accordance with N.C. Gen. Stat. § 160D-1312 prior to any conveyance of any of the Developer Parcels.
- 4.1.3 If Developer defaults in its obligation to acquire the Developer Parcels as required by this Article IV and fails to cure such default within the applicable cure period, the City may, at the City's sole discretion, sue Developer for specific performance for the purchase obligations under this Article IV. The City's obligation to transfer any portion of the Property to Developer under this Article IV is subject to satisfaction of the requirements of Section 4.8 hereof.
- 4.1.4 With respect to any Property that may be conveyed by the City to Developer pursuant to this Agreement, the City shall deliver to Developer, to the extent not delivered prior to the Effective Date, as soon as reasonably possible after the Effective Date, copies of all information in possession of or reasonably available to City, including but not limited

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NTD: Developer to provide City and Operator financials related to guarantee.

to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, and environmental surveys or reports. City authorizes (i) any attorney presently or previously representing City to release and disclose any title insurance policy in such attorney's file to Developer and Developer's agents and attorneys; and (ii) City's title insurer or its agent to release and disclose all materials in the City's title insurer's (or title insurer's agent's) file to Developer. All such due diligence materials existing prior to the Effective Date that were not produced in connection with the Project or this Agreement that are delivered by City, whether prior to the effective date or after the Effective Date, shall be delivered without any warranty or representation by City as to the contents, accuracy or correctness thereof except unless otherwise expressly set forth herein.

- 4.1.5 Prior to any Closing of Property to be sold by the City to Developer pursuant to this Article IV, Developer and its agents and contractors will have the right to enter onto such Property for the purpose of conducting non-invasive inspections; provided, however, that prior to conducting any invasive testing on any of the Property Developer shall notify City as to the type of testing sought, and the City shall have five (5) business days in which to establish reasonable guidelines for such testing in the context of the execution of the Project, but the right to perform such testing shall not be denied. Developer shall promptly restore any damage its inspections cause to the City's property.
- 4.1.6 Within thirty (30) days of its receipt of a written notice of Developer's intent to close on any portion of the Property from Developer (each such notice, a "Closing Notice"), the City shall convey to Developer fee simple title to the Property described in such Closing Notice, in accordance with and subject to the conditions set forth in Article IV herein.
- Section 4.1.7 Location. Each Closing will be held at the office of the Developer's counsel or such other place as mutually agreeable by City and the Developer. Closing may be conducted in escrow fashion without the physical presence of one or both of the parties.
- Section 4.2 Sale of X Parcels. Within thirty (30) days after the City's receipt of a Closing Notice for any X Parcels from Developer (to be given no later than May 30, 2024), the City shall convey to Developer under the procedures described herein subject to all Deed Restrictions and to satisfaction of the requirements of Section 4.8 the X Parcels in one of more closings as follows:
  - 4.2.1 The purchase price shall be the appraised value as set forth in Exhibit A (the "X Parcels Purchase Price"). The X Parcels Purchase Price shall be paid by Developer to City on the X Parcels Closing Date by wire delivery of funds through the Federal Reserve System to an account designated in writing by City.
  - 4.2.2 All closings for the X Parcels shall occur on or before June 30, 2024 (the "X Parcels Closing Date").
  - 4.2.3 The City shall convey the X Parcels by Special Warranty Deed free and clear of encumbrances except for the Deed Restrictions, any other restrictions or easements of record (other than Monetary Liens and interests held by any railroad company), and any

taxes for the current year. Any such deed of conveyance shall be subject to a possibility of reverter to the City as set forth in the Deed Restrictions as related to the X Parcels.

4.2.4 Taxes, Closing Costs, Etc. Taxes and assessments for the current calendar year shall be prorated at Closing. All costs associated with the conveyance of the X Parcels and closing of this transaction shall be paid as is customary in local commercial real estate transactions. Notwithstanding the preceding, the City shall pay deed preparation and excise taxes at closing if any are due upon recording of the deed. The Developer shall pay recording fees, title search fees, title insurance costs and settlement agent fees.

### 4.2.5 Closing Documents.

- (a) City's Delivery. At Closing, City shall deliver to Developer the following (such documents, collectively, the "City Closing Documents":
  - (i) An executed special warranty deed with Deed Restrictions conveying to Developer the Property described in the Closing Notice;
  - (ii) An executed affidavit regarding liens establishing that there are no lien claims of mechanics, laborers, and materialmen:
  - (iii) An executed IRS Non-foreign Owner Affidavit;
  - (iv) An executed settlement statement; and
  - (v) Evidence that the City has complied with all necessary approvals for the conveyance of the real property.
  - (vi) Any additional documentation to complete the conveyance of air rights on Parcel X1 including but not limited to a Declaration of Air Rights or a Declaration of Condominium.
- (b) Developer's Documents. At Closing, Developer shall deliver to City the following:
  - The X Parcels Purchase Price in immediately available funds;
  - (ii) Evidence of organizational approval and acceptance of this Agreement and the Property ("Organizational Approval);
  - (iii) An executed settlement statement (together with Organization Approval, the "Developer Closing Documents").
  - (iv) Any additional documentation to complete the conveyance of air rights on Parcel X1 including but not limited to a Declaration of Air Rights.
- 4.2.6 X1 Parcel Conveyance of Air Rights. The Parties contemplate the conveyance of air rights constituting the X1 Parcel for the development of a hotel in

accordance with Phase 1 of the Development Plan, which shall be located above portions of Level 1 and Level 2 of the stadium to be constructed on the WiSE Parcel as more particularly shown on Exhibit I attached hereto as follows:

- (a) City and Developer shall enter into documents to effectuate the disposition and management of the X1 Parcel by the X Parcel Closing Date describing the obligations and responsibilities of the parties for the operation, maintenance, and use of the X1 Parcel air rights and describing any common area within the parcel.
- (b) Notwithstanding anything herein to the contrary and except for the conveyance of the X1 Parcel, in no event shall the City convey, or purport to convey, air rights over WiSE Park or any portion of the "Premises" described in the Use Agreement. Any conveyance purporting to convey such air rights shall be null and void ab initio without further action by City or Developer.
- (c) All work to the external framework of the X1 Parcel shall be completed on or before April 1, 2026 as further detailed in the Development Plan.
- (d) In no event shall construction of the X1 Parcel private development interfere with or inhibit the operation of the WiSE Park and work on the X1 Parcel shall not occur on any "Game Day" contemplated under the Use Agreement.
- (e) Developer shall submit to the City for review and comparison a Project Budget contemplating the development of the X1 Parcel and a Project Budget omitting the X1 Parcel development. Developer shall pay any WiSE Park Cost increases, if any, attributable to the inclusion of the X1 Parcel development over the air rights of the WiSe Park, including, but not limited to, any additional costs for structural support or costs of any Infrastructure that may support or serve the X1 Parcel
- DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD (f) SELLER HARMLESS FROM AND AGAINST ALL COSTS, LOSSES, DAMAGES AND EXPENSES ("LOSSES") REASONABLE (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES ACTUALLY INCURRED WITH RESPECT TO SUCH LOSSES) TO THE EXTENT CAUSED BY DEVELOPER OR ITS AGENT'S OR CONTRACTOR'S (I) PRESENCE UPON THE WISE PARK DURING THE DEVELOPMENT OF THE X1 PARCEL (II) ACTS OR IN CONDUCTING THE OMISSIONS WORK CONTEMPLATED BY THIS AGREEMENT UPON THE WISE

PARK DURING THE DEVELOPMENT OF X1 PARCEL. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, DEVELOPER'S INDEMNIFICATION, DEFENSE, AND HOLD HARMLESS OBLIGATIONS SET FORTH IN THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR A PERIOD OF ONE (1) YEAR.

- 4.2.7 The Developer shall substantially complete all work on the X Parcels in accordance with the Development Plan on or before December 31, 2027.
- Section 4.3 Sale of Y Parcels. Within thirty (30) days after the City's receipt of a Closing Notice for any Y Parcel from Developer (given no later than May 30, 2024), the City shall convey to Developer under the procedures described herein subject to all Deed Restrictions and to satisfaction of the requirements of Section 4.8 the property known as the Y Parcels
  - 4.3.1 The purchase price shall be the appraised value of each parcel as set forth in Exhibit A (the "Y Parcel Purchase Price"). The Y Parcels Purchase Price shall be paid by Developer to City on the Y Parcels Closing Date by wire delivery of funds through the Federal Reserve System to an account designated in writing by City.
  - 4.3.2 Closings for all Y Parcel shall be on or before June 30, 2024 (the "Y Parcels Closing Date").
  - 4.3.3 The City shall convey each Y Parcel by Special Warranty Deed, free and clear of encumbrances except for the Deed Restrictions, any other restrictions or easements of record (other than Monetary Liens and interests held by any railroad company), and any taxes for the current year. Any such deed of conveyance shall be subject to a possibility of reverter to the City as set forth in the Deed Restrictions as related to the Y Parcels.
  - 4.3.4 Taxes, Closing Costs, Etc. Taxes and assessments for the current calendar year shall be prorated at Closing. All costs associated with the conveyance of Y Parcels and closing of this transaction shall be paid as is customary in local commercial real estate transactions. Notwithstanding the preceding, the City shall pay deed preparation and excise taxes at closing if any are due upon recording of the deed. The Developer shall pay recording fees, title search fees, title insurance costs and settlement agent fees.

#### 4.3.5 Closing Documents.

- (a) City's Delivery. At Closing, City shall deliver to Developer the City Closing Documents.
- (b) Developer's Delivery. At Closing, Developer shall deliver to the City the Y Parcel Purchase Price in immediately available funds and the Developer Closing Documents.

- 4.3.6 The Developer shall substantially complete all work on the Y Parcels in accordance with the Development Plan on or before December 31, 2028.
- Section 4.4 Option Agreement of Stemmery Parcels. The City is undergoing a master planning process that will include the Stemmery Parcels. At the conclusion of such planning process, the City intends to offer some of the Stemmery Parcels for sale. For good and valuable consideration, City does hereby grant to Developer an option to purchase the Stemmery Parcels that the City, in its sole discretion, elects to sell (each a "Selected Stemmery Parcel") upon the terms and conditions as set forth herein ("Stemmery Parcel Option").
  - 4.4.1 The purchase price of each Selected Stemmery Parcel shall be an amount equal to (i) the appraised value of such parcel as indicated on Exhibit A, plus (ii) an additional price equal to three percent (3%) of the appraised value of such parcel, per year that the City has owned such parcel, plus (iii) any out-of-pocket demolition costs actually incurred by the City prior to the sale of such Selected Stemmery Parcel (such sum, the "Stemmery Parcel Purchase Price"). For example, if the appraised value of a Selected Stemmery Parcel is \$100,000, and the City has owned such parcel for five (5) years and has incurred \$10,000 in demolition costs, the purchase price for such parcel would be \$125,000 (\$100,000 appraised value, plus 3% of appraised value each year for five years totaling \$15,000, plus \$10,000 demolition costs). The Stemmery Parcel Purchase Price for each Selected Stemmery acquired by Developer shall be paid by Developer to City on the Stemmery Parcel Closing Date by wire delivery of funds through the Federal Reserve System to an account designated in writing by City.
  - 4.4.2 Definitions. For the purposes of this Section 4.4, the following terms shall have the following meanings:
    - (a) "Stemmery Parcels Option Term" shall mean that period of time commencing on the Effective Date and terminating on October 31, 2028 unless otherwise extended as provided herein;
    - (b) "Option Exercise Date" shall mean that date, within the Stemmery Parcels Option Term, upon which the Developer shall send its written notice to City exercising its Stemmery Parcels Option;
    - (c) "Stemmery Parcel Closing Date" shall mean the date of conveyance of the Stemmery Parcel, which date shall be no later than December 31, 2028
    - (d) "Stemmery Parcels Option Extension Fee" shall mean the payment of Twenty Thousand and No/100 (\$20,000) by Developer to City due and payable at the time of any extension of the Stemmery Parcels Option Term pursuant to Section 4.4.3 herein. The Stemmery Parcels Option Extension Fee shall be nonrefundable except in the event of default by the City and shall be credited to the Purchase Price at closing.
  - 4.4.3 Exercise of Option. Developer may exercise its exclusive right to purchase the Selected Stemmery Parcels individually or collectively pursuant to the Stemmery Parcels Option, at any time during the Stemmery Parcels Option Term, by giving written

notice thereof to City at least thirty (30) days before the closing date desired for such parcels. Developer shall have a one-time right to extend the Stemmery Parcels Option Term for a period of up to twelve (12) months by giving written notice to the City and payment of the Stemmery Parcels Option Extension Fee; provided that during the original Stemmery Parcels Option Term Developer has submitted to the City a Development Plan for the Stemmery Parcels that are subject to the Stemmery Parcel Option.

- 4.4.4 The City shall convey the Selected Stemmery Parcels by Special Warranty Deed, free and clear of all encumbrances except Permitted Exceptions, but only upon satisfaction of the requirements of Section 4.8. Any such deed of conveyance shall be subject to a possibility of reverter as set forth in the Deed Restrictions as related to the Stemmery Parcels.
- 4.4.5 Taxes, Closing Costs, Etc. Taxes and assessments for the current calendar year shall be prorated at Closing. All costs associated with the conveyance of Stemmery Parcels and closing of this transaction shall be paid as is customary in local commercial real estate transactions. Notwithstanding the preceding, the City shall pay deed preparation and excise taxes at closing if any are due upon recording of the deed. The Developer shall pay recording fees, title search fees, title insurance costs and settlement agent fees.

#### 4.4.6 Closing Documents.

- (a) City's Delivery. At Closing, City shall deliver to Developer the City Closing Documents.
- (b) Developer's Delivery. At Closing, Developer shall deliver to City in immediately available funds the Stemmery Parcel Purchase Price for the Selected Stemmery Parcel or Selected Stemmery Parcels being acquired and the Developer Closing Documents.
- 4.4.7 The Developer shall complete all work required to be done on the Stemmery Parcels pursuant to the Development Plan on or before the date that is ten (10) years from the Effective Date of this Agreement or such additional reasonable period as may be mutually agreed upon in writing between the Parties.<sup>2</sup>
- Section 4.5 Option Agreement of Z Parcels. For good and valuable consideration, City does hereby grant to Developer the exclusive right and Option ("Z Parcels Option") to purchase the Z Parcels, as outlined in <a href="Exhibit A">Exhibit A</a>, upon the terms and conditions as set forth herein.
  - 4.5.1 The purchase price of each Z Parcel shall be (i) the appraised value of such parcel as indicated on Exhibit A, plus (ii) an additional price equal to three percent (3%) of the appraised value of such parcel, per year that the City has owned such parcel, plus (iii) any out-of-pocket demolition costs actually incurred by the City prior to the sale of that Z Parcel (such sum, the "Z Parcel Purchase Price"). For example, if the appraised value of a Z Parcel is \$100,000, and the City has owned such parcel for five (5) years and has incurred \$10,000 in demolition costs, the purchase price for such parcel would be

\$125,000 (\$100,000 appraised value, plus 3% of appraised value each year for five years totaling \$15,000, plus \$10,000 demolition costs). The Z Parcel Purchase Price shall be paid by Developer to City on the Z Parcels Closing Date by wire delivery of funds through the Federal Reserve System to an account designated in writing by City.

- 4.5.2 Definitions. For the purposes of this Section 4.4, the following terms shall have the following meanings:
  - (a) "Z Parcels Option Term" shall mean that period of time commencing on Effective Date 2023 and terminating on October 31, 2028 unless otherwise extended as provided herein;
  - (b) "Option Exercise Date" shall mean that date, within the Z Parcels Option Term, upon which the Developer shall send its written notice to City exercising its Z Parcels Option;
  - (c) "Z Parcel Closing Date" shall mean the date of conveyance of the Z Parcel, which date shall be no later than December 31, 2028.
  - (d) "Z Parcels Option Extension Fee" shall mean the payment of Twenty Thousand and No/100 (\$20,000) by Developer to City due and payable at the time of any extension of the Z Parcels Option Term pursuant to Section 4.5.3 herein. The Z Parcels Option Extension Fee shall be nonrefundable except in the event of default by the City and shall be credited to the Purchase Price at Closing.
- 4.5.3 Exercise of Option. Developer may exercise its exclusive right to purchase the Z Parcels individually or collectively pursuant to the Z Parcels Option, at any time during the Z Parcels Option Term, by giving written notice thereof to City at least thirty (30) days before the closing date desired for such parcels. Developer shall have a one-time right to extend the Z Parcels Option Term for a period of up to twelve (12) months by giving written notice to the City and payment of the Z Parcels Option Extension Fee; provided that during the original Z Parcels Option Term Developer has submitted to the City a Development Plan for the Z Parcels that are subject to the Z Parcel Option.
- 4.5.4 The City shall convey the Z Parcels by Special Warranty Deed, free of all liens and encumbrances except Permitted Exceptions, but only upon satisfaction of the requirements of Section 4.8. Any such deed of conveyance shall be subject to a possibility of reverter to the City as set forth in the Deed Restrictions as related to the Z Parcels.
- 4.5.5 Taxes, Closing Costs, Etc. Taxes and assessments for the current calendar year shall be prorated at Closing. All costs associated with the conveyance of Z Parcels and closing of this transaction shall be paid as is customary in local commercial real estate transactions. Notwithstanding the preceding, the City shall pay deed preparation and excise taxes at closing if any are due upon recording of the deed. The Developer shall pay recording fees, title search fees, title insurance costs and settlement agent fees.
  - 4.5.6 Closing Documents.

- (a) City's Delivery. At Closing, City shall deliver to Developer the City Closing Documents.
- (b) Developer's Delivery. At Closing, Developer shall deliver to City the Z Parcel Purchase Price for each Z Parcel being acquired in immediately available funds and the Developer Closing Documents.
- 4.5.7 The Developer shall complete all work required to be done on the Z Parcels pursuant to the Development Plan on or before the date that is ten (10) years from the Effective Date of this Agreement or such additional reasonable period as may be mutually agreed upon in writing between the Parties.

Section 4.6 No Warranty; As-Is. DEVELOPER ACCEPTS THAT X Parcels, Stemmery Parcels, Y Parcels, and Z Parcels, WILL CONVEY IN "AS IS, WHERE IS" CONDITION WITH ALL FAULTS, AND EXCEPT FOR WARRANTY OF TITLE SET FORTH IN THE DEED OF CONVEYANCE, CITY MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO THE PROPERTY OR ANY PORTION, ASPECT, OR COMPONENT THEREOF, AND EXPRESSLY DISCLAIMS THE SAME. LIKEWISE, CITY MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER. WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, WITH RESPECT TO ANY DOCUMENTS, REPORTS, OR MATERIALS PROVIDED OR MADE AVAILABLE TO PURCHASER BY CITY OR ITS AGENTS, OR THE ACCURACY OF THE INFORMATION CONTAINED THEREIN, AND EXPRESSLY DISCLAIMS THE SAME. THE FOREGOING DISCLAIMERS INCLUDE, BUT ARE NOT LIMITED TO, MATTERS OF TITLE, SURVEY, FINANCIAL PERFORMANCE, PHYSICAL CONDITION (INCLUDING WITHOUT LIMITATION ENVIRONMENTAL CONDITION OR PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES). ZONING, TAX STATUS OR CONSEQUENCES, FITNESS FOR A PARTICULAR PURPOSE OR USE, COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS, ACCESS TO THE PROPERTY, AND AVAILABILITY OF UTILITIES.

Section 4.7 Risk of Loss Prior to Closing Dates. It is understood and agreed that all risk of loss with respect to the X Parcels, Stemmery Parcels, Y Parcels, and Z Parcels except as may be caused by the acts or omissions of Developer or its employees, agents, or contractors, shall remain with the City through the respective closings for such parcels. In the event that prior to the anticipated closing date for any of the X Parcels, Stemmery Parcels, Y Parcels, or Z Parcels that Developer intends to purchase, that parcel is materially damaged, destroyed, or rendered unsuitable for building, then Developer or City may terminate this the provisions of this Article IV with respect to that parcel.

Section 4.8 Approvals and Adequate Assurances. Prior to the closings on X Parcels, Stemmery Parcels, Y Parcels, and Z Parcels as contemplated by this Article IV, Developer shall provide to City for written approval of all development plans, specifications and designs for the development and evidence of development financing in a form reasonably required by City, evidence of project capital sufficient to complete development as approved and any other such adequate assurances the City may require to ensure Developer will complete development

consistent with the downtown development project contemplated by this Agreement and the Development Plan.

- Section 4.9 Sale of Relocation Parcels. The City shall convey to Developer under the procedures described herein the property known as the Relocation Parcels as depicted on <a href="Exhibit A">Exhibit A</a> to this Agreement:
  - 4.9.1 The purchase price shall be the appraised value of each parcel as set forth in Exhibit A (the "Relocation Parcels Purchase Price"). The Relocation Parcels Purchase Price shall be paid by Developer to City on the Relocation Parcels Closing Date by wire delivery of funds through the Federal Reserve System to an account designated in writing by City.
  - 4.9.2 Closing shall be on or before December 31, 2024 (the "Relocation Parcels Closing Date").
  - 4.9.3 The City shall convey the Relocation Parcels by Special Warranty Deed free and clear of encumbrances except Monetary Liens. Any such deed of conveyance shall be subject to a possibility of reverter as set forth in the Deed Restrictions related to the Relocation Parcels.
  - 4.9.4 Taxes, Closing Costs, Etc. Taxes and assessments for the current calendar year shall be prorated at Closing. All costs associated with the conveyance of the Relocation Parcels and closing of such transaction shall be paid as is customary in local commercial real estate transactions. Notwithstanding the preceding, the City shall pay deed preparation and excise taxes at closing if any are due upon recording of the Deed. The Developer shall pay recording fees, title search fees, title insurance costs and settlement agent fees.
    - 4.9.5 Closing Documents.
    - (a) City's Delivery. At Closing, City shall deliver to Developer the City Closing Documents.
    - (b) Developer's Delivery at Closing, Developer shall deliver to the City the Relocation Parcel Purchase Price in immediately available funds and the Developer Closing Documents.
- Section 4.10 Brokers. The City and Developer each represent to the other that they have not dealt with any real estate broker in connection with the negotiations leading to this Agreement. The City and Developer each agree to indemnify and hold each other harmless from and against the claims of any other brokers or intermediaries claiming to have had any dealings, negotiations, or consultations with the indemnifying party in connection with this Agreement or the sale of the Property or any portion thereof.

# ARTICLE V Development Standards

- Section 5.1 Developer shall perform all of its work under this Agreement in accordance with the standard of care and expertise normally employed by development firms, consultants and contractors performing similar services in metropolitan areas in North Carolina, and all duties under this Agreement shall be measured and interpreted in accordance with such standard of performance.
- Section 5.2 Developer hereby warrants to City that the materials and equipment furnished in accordance with this Agreement will be of good quality, that the work will be free from defects, and that the work will conform with the requirements of the WiSE Park Plans and all other plans and specifications relating to the Project approved by City under this Agreement including, without limitation, the Use Agreement as expressly incorporated into this Agreement. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Developer hereby represents, warrants, and covenants that neither it nor its affiliates shall file a mechanic's lien, materialmen's lien, or other lien against any assets of City and shall promptly remove or bond off any such lien if filed, and hereby waives and releases any right it may have or may hereafter acquire to file a lien against the any assets of City.
- Section 5.3 Developer shall indemnify and hold harmless City from any losses, damages, and/or liabilities, to or because of a breach of this Article V.
- Section 5.4 Developer shall pay all fees levied by the City or any other governmental entity, including, but not limited to, all tap fees, water & sewer fees, and permit fees relating to the Private Development. Developer shall plan for all utility services required for the Private Development components of the Project and negotiate all necessary agreements with the appropriate municipal authorities and utility companies related to access, traffic, utilities, zoning and other design and construction elements. Developer shall obtain and pay for all construction related permits and all certificates of occupancy. City shall cooperate with Developer as is reasonably necessary for Developer to obtain such approvals, permits and certificates of occupancy.
- Section 5.5 Developer shall apply for and maintain in full force and effect any and all governmental permits and approvals required for the lawful construction of the Project and comply with all the terms and conditions applicable to the Project contained in any governmental permit or approval required or obtained for the lawful construction of the Project, or in any insurance policy affecting or covering the Project.

## Article VI Conditions Precedent

**Section 6.1** The obligations of Developer and City hereunder to consummate the transaction contemplated herein shall not become effective unless and until the following conditions are satisfied, any of which may be waived by written notice to the other Party specifically referencing this <u>Section 6.1</u>:

## 6.1.1 Conditions Precedent to the Developer Obligations:

- (a) Issuance to Developer of all governmental permits and licenses requisite for the construction of the WiSE Project in accordance with this Agreement and all plans incorporated herein;
- Approval by City of the WiSE Park Plans in accordance with this Agreement and the Use Agreement;
- (c) Approval by the Operator of the WiSE Park Plans in accordance with this Agreement and the Use Agreement;
- (d) Developer obtaining all necessary financing commitments (at a minimum with respect to Phase I of the Private Development) at rates and terms typically found in the Wilson, North Carolina market.
- (e) With respect to Developer's obligation to perform the Private Development, conveyance of all properties to be conveyed by the City to Developer in accordance with the terms of this Agreement.

#### 6.1.2 Conditions Precedent to the City Obligations:

- (a) City's acquisition of the Property:
- (b) Evidence of Developer's financing (at least with respect to Phase I of the Private Development) to the reasonable satisfaction of the City;
- (c) Approval by the City of the Recombination Plat prepared and recorded by the City;
- (d) Receipt by the City of a Collateral Assignment of Construction Contract, together with consent of the Project Contractor to such assignment in a form reasonably acceptable to City; and
- (e) Receipt of any required approval(s) of the North Carolina Local Government Commission ("LGC") with respect to the financing of the WiSE Park.
- (f) With respect to Developer's obligation to close on the X Parcels and Parcel S2, the recordation of such subdivision plats as necessary to create such parcels.
- 6.1.3 Conditions Precedent to City's Obligation to close on the conveyance to the Developer of any of the X Parcels, Stemmery Parcels, Y Parcels, and Z Parcels
  - Satisfaction of the requirements of Sections 4.2, 4.3, 4.4 and 4.5, as applicable, prior to the transfer of any such parcels to Developer;

- (b) The following shall be provided to the City with respect to such parcels, all as required by Section 4.8:
  - written approval of all development plans, specifications and designs for the development of such parcels;
  - evidence of project capital sufficient to complete development as approved, including evidence of necessary development financing in a form reasonably required by City.
- (c) any other such adequate assurances the City may require to ensure Developer will complete development of such parcels consistent with this Agreement and the Development Plan.
- 6.1.4 Duty of Good Faith and Best Efforts. The Parties agrees to pursue the satisfaction of such conditions precedent in good faith using commercial best efforts. The failure of a Party to satisfy one or more of the conditions precedent due to the failure or the other Party to act in good faith or use commercial best efforts under this Agreement shall not be a default hereunder and the Party not acting in good faith or using commercial best efforts shall be obligated to perform its obligations under this Agreement notwithstanding such failure of the applicable condition(s) precedent. Upon satisfaction of the foregoing conditions either Party may request execution of a supplement to this Agreement establishing the satisfaction of the foregoing conditions.
- 6.1.5 Notice of Anticipated Failure. In the event that either Developer or City becomes aware or reasonably anticipates that one or more of the conditions precedent identified by Section 6.1 or Section 6.2 of this Article VI is likely to be unsatisfied on or prior to February 29, 2024, such Party shall provide notice to the other Party and Operator of such expected failure of the condition and shall thereafter, from time to time upon request, provide updates to the other Party and Operator detailing the status of such condition and any outstanding requirements to satisfaction thereof.

# Article VII Representations

- Section 7.1 As additional consideration and inducement to enter into this Agreement, Developer represents as follows:
  - 7.1.1 The Developer is a duly organized and validly existing limited liability company legally registered to conduct business under the laws of North Carolina and has all requisite power and authority for the making of this Agreement.
  - 7.1.2 The execution and delivery of this Agreement, compliance with provisions hereof, and the consummation of the transaction contemplated hereby, will not result in any breach or violation of, or constitute a default under, the organizational documents of

the Developer or any agreement, contract, or other instrument to which the Developer is a party, or by which Developer is bound.

- 7.1.3 The individual(s) signing on behalf of the Developer have all necessary authority to bind the Developer to this Agreement, and no additional approvals and/or signatures are required to make this Agreement fully binding on the Developer in all respects.
- 7.1.4 The Developer and its principals are experienced in the purchase, sale, financing, and management of commercial real estate, and are fully capable of evaluating the risks and benefits of undertaking the transaction contemplated by this Agreement. The Developer has voluntarily entered into this Agreement and the transaction contemplated hereunder without relying in any manner on any representations, statements, opinions, or actions of the City or any person or entity purporting to be acting on behalf of the City except as set forth in this Agreement. The Developer has had full opportunity to investigate the Property and has obtained all information necessary for the Developer to make an informed decision with respect to the transaction contemplated by this Agreement.

# ARTICLE VIII Term; Termination

- Section 8.1 The term of this Agreement shall commence on the Effective Date of this Agreement and shall expire ten (10) years from the Effective Date of this Agreement; provided, however, if the Parties agree in writing at least ninety (90) days prior to the expiration of the term, this Agreement may be extended for additional and consecutive periods of six (6) months each.
- Section 8.2 Notwithstanding anything contained herein to the contrary, any Party hereto may terminate this Agreement upon not less than ninety (90) days written notice to each other party hereunder if all the obligations of both the Developer and City under this Agreement have been fulfilled, provided that termination of this Agreement by City shall require Operator's written consent, which shall not be unreasonably withheld in the event that Operator has approved a successor developer approved by City in accordance with the Use Agreement.

## ARTICLE IX Books and Records

The Developer, its successors, assigns and grantees, shall prepare and maintain, or cause to be prepared and maintained, in accordance with generally accepted accounting principles consistently applied, appropriate books and records, reflecting all capital reserves, money received and all money disbursed by the Developer in connection with the Project, including all infrastructure for the Project during the term of this Agreement and for a period of five years after the termination of this Agreement. City and its duly appointed representatives shall have the right to examine, audit, and copy such books and records during business hours on fifteen (15) day notice at the office of the Developer. The Developer will provide the City with an annual report on the progress of the Development Plan, including any updates to the development program

associated with this Agreement.

# ARTICLE X Force Majeure

In the event that any party to this Agreement (the "Delayed Party") is delayed or prevented from performing any of its respective obligations under this Agreement by reason of Force Majeure, not brought about by the Delayed Party, and not related to any financial liability on the part of the Delayed Party, the time for performance of the obligation shall be extended by a period of time equal to the period of such delay or prevention.

# ARTICLE XI Default and Liquidated Damages

Section 11.1 Defaults by Developer. If Developer defaults materially on the performance of its obligations to City prior to the expiration of the term of this Agreement, then Developer will have thirty (30) days after the delivery of written notice by City of such default to cure such default; however, if such default requires more than thirty (30) days to cure, Developer shall have such additional time as may be reasonably required to cure the default, provided Developer commences such cure within the initial thirty (30) day cure period and thereafter diligently prosecutes such cure to completion (not to exceed sixty (60) days after commencement of the cure). If Developer is not able to cure such material default during the applicable cure period, then City will be entitled to terminate this Agreement and City will be entitled to pursue against Developer claims for damages resulting from such breach and such termination in addition to any other remedies as may be provided by law or in equity, the right to specific performance that would require Developer to perform fully and on a timely basis all of its obligations under this Agreement

Section 11.2 Defaults by City. If City defaults materially on the performance of its obligations to Developer under this Agreement, then City will have thirty (30) days after the delivery of written notice by Developer of such default to cure such default; however, if such default requires more than thirty (30) days to cure, City shall have such additional time as may be reasonably required to cure the default, provided City commences such cure within the initial thirty (30) day cure period and thereafter diligently prosecutes such cure to completion (not to exceed sixty (60) days after the commencement of the cure). If City is not able to cure such default during the applicable cure period, then Developer will be entitled to pursue any remedy available at law or equity, including the termination of this Agreement and claims for damages resulting from such breach and such termination.

Section 11.3 Other Defaults. A Party will be in default of its obligations under this Agreement in the event that it is adjudicated bankrupt or insolvent, makes an assignment for the benefit of creditors or enters into a composition for creditors, or will file a voluntary bankruptcy petition or an answer admitting the material allegations of an involuntary bankruptcy petition; or if an order is entered appointing a receiver or trustee for that Party or for a substantial portion of the assets of that Party and the same is not vacated within sixty (60) days after entry, or if that Party applies for or consents to the appointment of any such receiver or trustee. In the event of a default specified in this Section then the other Party may immediately pursue all remedies available

to it by law or in equity, including specific performance and the termination of this Agreement.

Section 11.4 Schedule for Substantial Completion and Liquidated Damages, Developer shall cause Substantial Completion of the WiSE Park (the "Stadium Work") to occur on or before February 1, 2026 (the "Target Substantial Completion Date"). It is agreed that the time for Substantial Completion of the Stadium Work is an essential condition of this Agreement. City and Developer acknowledge and agree that because of the unique nature of the WiSE Park portion of the Project, if Substantial Completion of the Stadium Work has not occurred on or before the Target Substantial Completion Date, City will be obligated to make payments to the Operator because Operator will suffer certain damages that are difficult to determine and accurately specify, including (but not limited to) damages resulting from Operator's inability to use WiSE Park for baseball activities and other events as planned, having to host baseball activities or other events in a substitute facility (or at WiSE Park but without having full access to all improvements), losing revenues from tickets, suites, sponsorships, concessions and otherwise, effects on fan engagement, experience and attendance, fines or penalties imposed against Operator, and other factors that are difficult or impossible to quantify. Developer and City agree, therefore, if Substantial Completion has not occurred on or before the Target Substantial Completion Date, Developer shall pay City the following applicable sums as liquidated damages and not as a penalty; provided, no liquidated damages shall be payable for days of delay attributable solely to Force Majeure not the fault of, or within the control of City, Developer, Project Contractor, or any of their respective employees. agents or representatives. Developer and City agree, therefore, that the stated amounts of liquidated damages set forth below are a reasonable estimate of the damages to the City set forth in this section above:

ebruary 1 – February 28, 2026: Developer
per day for each day starting on Target
itial Completion is delayed until February
as a penalty (i.e., 28 days at
this subsection);
March 1 – March 16, 2026: In addition to
ve, Developer shall pay City the sum of ting on March 1, 2026 that Substantial
026, as liquidated damages and not as a a total maximum of
ximum under (11.4.1) and (11.4.2) of
March 17 - March 22, 2026: In addition
d 11.4.2 above, Developer shall pay City
for each day starting on March 17, 2026
til March 31, 2026, as liquidated damages
for a total maximum of
a total maximum under (11.4.1), (11.4.2),

11.4.4 Substantial Completion between March 23 – March 31, 2026: In addition to the sums set forth in Sections 11.4.1, 11.4.2, and 11.4.3 above, Developer shall pay City the sum of per day for each day starting on March 23, 2026 that Substantial Completion is delayed until March 31, 2026, as liquidated damages and not as a penalty (i.e., 9 days at maximum of under this subsection; and a total maximum under (11.4.1), (11.4.2), (11.4.3), and (11.4.4) of ( 11.4.5 Substantial Completion after March 31, 2026: In addition to the sums set forth in subparagraphs (11.4.1), (11.4.2), (11.4.3), and (11.4.4) above, Developer per day for each day starting on April 1. shall pay City the sum of 2026 that Substantial Completion is delayed until Substantial Completion is achieved, as liquidated damages and not as a penalty. In addition, Developer shall pay City the sum of per day for each date starting on April 1, 2026 that Substantial Completion is delayed and such date is scheduled for Operator to host a baseball game, as liquidated damages and not as a penalty.

Section 11.5 Developer hereby waives and releases City from, and covenants not to pursue, any claim that the liquidated damages provisions of this Article XI are unreasonable in amount or constitute a penalty and not agreed upon and reasonable liquidated damages. The parties acknowledge and agree that Substantial Completion may fail to occur on or before the Target Substantial Completion Date because of the default of Project Contractor, or their respective employees, contractors, subcontractors, or agents. Notwithstanding the foregoing, Developer acknowledges that its obligation to cause the completion of the Project and delivery of the WiSE Park to City, including without limitation, completion of the Stadium Work, as required herein, and liability to City for failure to do so, including without limitation its liability for liquidated damages under this Article XI, is absolute (but subject to Force Majeure, and this Agreement in all respects) and shall not be excused by any such "downstream" default by Project Contractor, or any of their respective employees, contractors, subcontractors, or agents.

Section 11.6 Should City request changes to the final Development Plan and Construction Schedule after Developer submits both to the City, the City acknowledges that such changes may affect the Target Substantial Completion Date. Developer will only accept such requested changes if the Parties agree to extensions commensurate to the Target Substantial Completion Date

#### ARTICLE XII Miscellaneous

Section 12.1 The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon the parties hereto and all persons who succeed to their respective rights and obligations.

Section 12.2 This Agreement cannot be changed nor can any provision of this Agreement, or any right or remedy of any party, be waived orally. Changes and waivers can only be made in writing and the change or waiver must be signed by the party against whom the change

or waiver is sought to be enforced. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

- Section 12.3 This Agreement is signed by the parties as a final expression of all of the terms, covenants, and conditions of their agreement and as a complete and exclusive statement of its terms, covenants, and conditions and is intended to supersede all prior agreements and understandings concerning the subject matter of this Agreement.
- Section 12.4 This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.
- Section 12.5 The captions contained in this Agreement were inserted for the convenience of reference only. They do not in any manner define, limit, or describe the provisions of this Agreement or the intentions of the parties.
- Section 12.6 Whenever masculine, feminine, neuter, singular, plural, conjunctive, or disjunctive terms are used in this Agreement, they shall be construed to read in whatever form is appropriate to make this Agreement applicable to all the parties and all circumstances, except where the context of this Agreement clearly dictates otherwise.
- Section 12.7 This Agreement was prepared, negotiated, and delivered in the State of North Carolina. In the event of any dispute concerning or arising out of this Agreement, the laws of the State of North Carolina shall govern and control the construction and enforcement of this Agreement.
- Section 12.8 The Developer may assign this Agreement to another developer or developers and/or its lender(s) in the form of a collateral assignment only with the written consent of the City and Operator, which consent may be withheld in such parties' sole discretion. Any assignment of this Agreement shall be made in writing and duly executed by the parties. Any such assignee shall be entitled to the same rights and be bound by the same terms and obligations to which the Developer is entitled and bound under this Agreement.
- Section 12.9 The Developer will not permit any mechanic's or materialman's liens to be placed upon the Property; provided, however, that Developer shall not be in default under this Section if Developer discharges such lien by bonding or otherwise within a reasonable period after the imposition of such lien.
- Section 12.10 Neither this Agreement nor any agreement entered into pursuant to this Agreement shall be interpreted or construed to create an association, joint venture, or partnership between Developer and City, or to impose any partnership obligation or liability upon the Parties. Neither Party 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.

Section 12.11 The Agreement is not intended to and, subject to Section 14.3, does not confer any right or benefit on any third party that is not a Party.

Section 12.12 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.

Section 12.13 If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.

Section 12.14 City and Developer acknowledge that (i) approval of this Agreement by the City of Wilson City Council is subject to the notice requirements of N.C. Gen. Stat. § 160A-457 and (ii) this Agreement is subject to disclosure under the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1 et seq. (the "Act"), except for information that is excluded from the disclosure requirements of the Act pursuant to N.C. Gen. Stat. § 132-1.2. Nothing in this Agreement precludes any Party from discussing the terms of this Agreement or its work product with its attorneys, accountants, consultants, contractors, or potential lenders or investors, or prevents the holding of public Council meetings in compliance with applicable laws.

Section 12.15 Consistent with and subject to Section 6.3 of the Use Agreement, Operator will have the right to approve all exterior signage within the Property that is visible from the WiSE Parcel that (i) advertises any Operator Naming Rights Categories (as defined in the Use Agreement), (ii) advertises any Operator Protected Categories (as defined in the Use Agreement), or (iii) has content that would constitute "ambush" advertising or is designed to facilitate such "ambush" advertising by facing towards the WiSE Parcel (and being of a size intended to be visible from the WiSE Parcel).

# ARTICLE XIII Notices

Any notice, demand, request, approval, consent, or other communication (collectively referred to as a Notice) concerning this Agreement or any matter arising in connection with this Agreement shall be in writing and addressed to the other party at the address set forth below. Any Notice shall be given by either: (i) personal delivery, in which event it shall be deemed given on the date of delivery; or (ii) certified mail return receipt requested, in which event it shall be deemed given three (3) business days after the date deposited in any post office, branch post office, or official depository. Any party may change any address for the delivery of Notice to such party, by giving Notice in accordance with the provisions of this Section. The attorneys for the parties may give any Notice. All notices shall be sent to the following:

If to CITY: City of Wilson

Attn: Grant Goings, City Manager

PO Box 10

Wilson, NC 27894

Copy to: Cauley Pridgen, P.A.

Attn: James P. Cauley, III

2500 Nash Street N Wilson, NC 27896

If to the Developer:

NSV Wilson

Attn: Andrew Holton

PO Box 650

Durham, NC 27702

#### ARTICLE XIV

Use and Operating Agreement Indemnification; Third-Party Beneficiary; and Insurance

Section 14.1 The Parties acknowledge and agree that WiSE Park is subject to that certain Use and Operating Agreement by and between the City of Wilson and Mudcats Baseball, LLC dated December 14, 2023 and attached hereto as <a href="Exhibit C">Exhibit C</a> and incorporated herein by reference (the "Use Agreement"). Developer shall be responsible for designing and constructing WiSE Park in accordance with the requirements for the improvements for WiSE Park and the Infrastructure as set forth in the Use Agreement.

#### Section 14.2 Indemnification.

14.2.1 Developer shall indemnify, defend and hold City and City's agents, employees, licensees or invitees, Operator, Operator's agents, employees, licensees, invitees, and affiliates (collectively, "City's Parties") harmless from any and all claims, losses, expenses, liabilities, actions, suits, or judgments, including those of third parties ("Losses") by reason of, resulting from, whether directly or indirectly, or arising out of or related to (i) Article III Project Development of the Use Agreement including but not limited to Section 3.5 Schedule for Substantial Completion and Liquidated Damages, Section 5.1 Beginning Conditions, 7.14 City to Provide Scoreboard, Section 7.15 City to Provide Signage, Section 7.19 Concession Improvements; (ii) otherwise related to the development, construction, completion and furnishing of WiSE Park (iii) Developer's failure to comply with its obligations under this Agreement or (iv) the gross negligence or willful misconduct of Developer or Developer's contractors, employees, officers, directors or agents. Expenses as used herein shall include, without limitation, the cost incurred by the City or the City's Parties, in connection with investigating any claim or defending any

action and shall also include attorneys' fees by reason of the assertion of any such claim against the City or the City's Parties. Notwithstanding the provisions of the preceding paragraph, Developer shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses) resulting from, arising out of or in connection with, any injury to or death of a person or any damage to property (including loss of use) to the extent of the gross negligence or willful act of City's or City's Parties or City's Parties violation of any provisions of this Agreement or any applicable Governmental Rules or deed restriction or insurance policy, now or hereafter in effect and applicable to City.

14.2.2 To the fullest extent permitted by law, City shall indemnify, defend and hold Developer and Developer's agents, employees, licensees or invitees, and third party beneficiaries to this Agreement ("Developer's Parties) harmless from any and all claims, losses, expenses, liabilities, actions, suits, or judgments, including those of third parties ("Losses") by reason of, resulting from, whether directly or indirectly, or arising out of or related to City's failure to comply with its obligations under this Agreement. Losses as used herein shall include, without limitation, the cost incurred by the Developer or the Developer's Parties, in connection with investigating any claim or defending any action and shall also include attorneys' fees by reason of the assertion of any such claim against the Developer or the Developer's Parties. Notwithstanding the provisions of the preceding paragraph, City shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses) resulting from, arising out of or in connection with, any injury to or death of a person or any damage to property (including loss of use) to the extent of the gross negligence or willful act of Developer's or Developer's Parties or Developer's Parties' violation of any provisions of this Agreement or any applicable Governmental Rules or deed restriction or insurance policy, now or hereafter in effect and applicable to City.

14.2.2 Indemnification Procedures. In case any claim shall be brought against or, to the knowledge of any indemnitee, threatened against any indemnitee in respect of which indemnity may be sought, such indemnitee shall promptly notify the other in writing; provided, however, that any failure so to notify shall not relieve the indemnitor of its obligations under this Section, as applicable, unless (i) such failure so to notify precludes investigation and defense of such claims as a matter of law, and (ii) the indemnitor does not otherwise have knowledge, either actual or constructive, of such claim. The indemnitor shall have the right (and obligation, subject to the terms below) to assume the investigation and defense of all claims, including the employment of counsel, reasonably acceptable to the indemnitee, and the payment of all fees and expenses. Each indemnitee shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such indemnitee unless (i) the employment of such counsel has been specifically authorized by indemnitor, in writing, (ii) indemnitor has failed after receipt of notice of such claim to assume the defense and to employ competent counsel, or (iii) the named parties to any such action (including any impleaded parties) include both parties, and the indemnitee, after consultation with its counsel, reasonably believes that there may be one or more legal defenses available to it which are different from or additional to those available to the indemnitor (in which case, if such indemnitee notifies the indemnitor in writing that it elects to employ separate counsel at indemnitee's expense, indemnitor shall not have the right to assume the defense of the action on behalf of such indemnitee; provided, however, that indemnitor shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the indemnitee, which firm shall be designated in writing by the indemnitee). Each indemnitee shall cooperate with the indemnitor in the defense of any action or claim. The indemnitor shall not be liable for any settlement of any action or claim without its consent, but if any such action or claim is settled with the consent of the indemnitor or there be final judgment or agreement for the plaintiff in any such action or with respect to any such claim, the indemnitor shall indemnify and hold harmless the indemnitees from and against any damages by reason of such settlement or judgment.

14.2.3 Survival Right to Enforce. The provisions of this Article XIV shall survive the termination of this Agreement. In the event of failure by an indemnitor to observe the covenants, conditions and agreements contained in this Article, any indemnitee may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the indemnitor. The obligations of the parties shall not be affected by any assignment or other transfer of its rights, titles or interests under this Agreement and will continue to inure to the benefit of the indemnitees after any such transfer.

Section 14.3 Third Party Beneficiary. Developer and the City acknowledge and agree that Mudcats Baseball, LLC (i.e. Operator), and its successors and assigns, is an express third-party beneficiary to this Agreement and shall be entitled to enforce the terms of Article III and Article XIV of this Agreement as if it were an original party hereto and, in the event of a Default by Developer hereunder, shall be entitled to enforce all provisions of this Agreement as if it were a party hereto.

Section 14.4 Insurance. Developer shall, effective as of the date that Developer or any party employed by or contracted through Developer commences Work, obtain and maintain throughout the term of this Agreement Commercial General Liability coverage including bodily injury, personal injury, property damage, and contractual liability in combined single limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate; automobile liability coverage with limits of One Million Dollar (\$1,000,000) combined single limit covering all owned, non-owned, leased and hired vehicles; umbrella or excess liability coverage with limits of at least Five Million Dollars (\$5,000,000) per occurrence and in the aggregate; and workers compensation coverage as required by applicable law. Such coverage shall be evaluated by the Parties from time to time, but no less than every fifth (5th) year during the term hereof and if the amount of coverage falls below industry standards, coverage will be increased to conform to industry standards. Developer will name City and Operator as additional insured on the commercial general liability and umbrella or excess liability policies and will provide certificates of insurance evidencing all required insurance. Insurance coverage required herein shall be placed with carriers licensed to do business in the applicable State, have a rating in the most current edition of A.M Best's Property Casualty Key Rating Guide that is reasonably acceptable to City.

14.1 Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting Developer which arise out of any of the matters relating to this Agreement or otherwise, Developer shall notify City and Operator promptly upon becoming aware of same and give City and Operator all pertinent information possessed by Developer related to such claim or proceeding and reasonably cooperate in the defense or other disposition thereof. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting City which arise out of any of the matters relating to this Agreement or otherwise, City shall notify Developer promptly upon becoming aware of same and give Developer all pertinent information possessed by City and reasonably cooperate in the defense or other disposition thereof.

#### ARTICLE XV Definitions

All capitalized terms used but not defined herein shall have the same meaning and definition provided in the Use Agreement. Otherwise, in addition to terms defined elsewhere in this Agreement, the following terms, for the purposes of this Agreement, shall have the meanings set forth below:

- (a) "City Deed of Trust" means a Deed of Trust to the City in the form substantially similar to the form Deed of Trust attached hereto as Exhibit E to secure the Minimum Investment.
- (b) "City's Parties" means City and City's agents, employees, licensees or invitees, and third-party beneficiaries to this Agreement.
- (c) "Construction Terms" means the terms that the Developer and the City agreed to for the construction of the WiSE Park pursuant to which Developer agrees to construct the WiSE Park on the WiSE Parcel in substantial conformity with City specified WiSE Park construction requirements and with the requirements of the Use Agreement including, without limitation, the requirements of Article III of the Use Agreement.
- (d) "Deed Restrictions" means all deed restrictions and terms of conveyance as shall be attached to any deed of conveyance transferring any or all portions of the Property to Developer under this Agreement in the form attached hereto as Exhibit F
- (e) "Development Plan" means the Wilson Stadium and Entertainment Downtown Development Project Development Plan attached hereto as <u>Exhibit B</u>, as the same may be amended from time to time with the consent of the City and Operator; Operator's consent not to be unreasonably withheld, conditioned, or delayed except as otherwise set forth in this Agreement.

- (f) "Force Majeure" means the occurrence of any of the following, but only for the period of time, if any, that the performance of a Party's material obligations under this Agreement are actually delayed or prevented thereby: Acts of God, including, without limitation, hurricanes, tornadoes and flooding, strikes, lockouts, or work stoppages, acts of the public enemy, orders of any governmental authority, insurrections, riots, epidemics, pandemics, fires, restraining of government and people, civil disturbances, explosions, nuclear accidents, wars, part or entire failure of utilities (only to the extent such failure is beyond the reasonable control of the party claiming inability to perform), the failure of any utility to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Property and any unforeseeable subsurface condition that prevents or hinders construction or any other cause not reasonably within the control of the party claiming inability to perform due to such cause.
- (g) "Infrastructure" means the public infrastructure including but not limited to access roads, driveways, sidewalks, water, sewer, and electric, utilities, rights of way and streetscapes for the WiSE Project.
- (h) "LGC" means the North Carolina Local Government Commission.
- (i) "Losses" means any and all claims, losses, expenses, liabilities, actions, suits, or judgments, including those of third-party beneficiaries by reason of, resulting from default under the Agreement.
- (j) "Minimum Investment" means the minimum investment in the Project that the Developer, its successors, assigns and grantees, shall cause to be invested in the amount of Two Hundred and Twelve Million and No/100 Dollars (\$212,000,000.00), as further described in Section 1.3 hereof.
- (k) "Monetary Liens" means any encumbrance that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgage or statutory liens.
- "Payment" means the City's payment of the costs of construction of WiSE Park, not to exceed the WiSE Park Maximum Cost, to Developer.
- (m)"Permitted Exceptions", with respect to any Z Parcel or Stemmery Parcel to be conveyed under this Agreement by the City to the Developer, means the following title exceptions to which a conveyance will be subject: (i) zoning ordinances affecting the property conveyed, (ii) matters that would be disclosed by a current and accurate survey of the property conveyed, (iii) ad valorem taxes for the year in which Closing occurs if imposed by State law; and (iv) the Deed Restrictions.
- (n) "Private Development" shall have the meaning given it in Section 1.3.

- (o) "Project" means the redevelopment of the Property for public, residential, and commercial uses including the WiSE Park, the Infrastructure and the Private Development, all as further described in the Development Plan.
- (p) "Project Cost" means the total cost of the Project, including but not limited to all pre-development costs, construction costs, design and planning costs, financing, infrastructure, and other soft costs, projected to be two hundred and seventy-five million dollars and NO/100 (\$275,000,000.00).
- (q) "Property" means certain real property and improvements located in Wilson County, North Carolina, which are more particularly described as in <u>Exhibit</u> A.
- (r) "Recombination Plat" means a subdivision plat describing the WiSE Parcel and the X Parcels as contemplated by Section 2.1.
- (s) "Redevelopment Area" means the two Municipal Service Districts in the Central Business District of the City of Wilson as shown on Exhibits D-1 and D-2.
- (t) "Relocation Parcels" means individual parcels of the Property further identified in Exhibit A.
- (u) "Substantial Completion", "Substantially Complete" shall have the meaning ascribed to it in Article I of the Use Agreement.
- (v) "Stemmery Parcels" means individual parcels of the Property further identified in Exhibit A.
- (w) "Stemmery Parcels Option" means the option granted in Section 4.4.
- (x) "Use Agreement" shall have the meaning ascribed to it in Section 14.1 herein.
- (y) "WiSE Parcel" means individual parcels of the Property further identified in Exhibit A.
- (z) "WiSE Park" means the public development of a public stadium, multipurpose sport and entertainment complex on the WiSE Parcel.
- (aa) "WiSE Park Costs" means the cost of design and construction of WiSE Park and related Infrastructure, as set forth in the Project Budget.
- (bb) "WiSE Park Maximum Cost" means the maximum expenditure of the City for WiSE Park and related Infrastructure, which shall not exceed Sixty-Three Million Six Hundred Fifty Thousand and No/100 Dollars (\$63,650,000.00).

- (cc)"WiSE Park Plans" means the schematic plans and detailed cost estimates for WiSE Park.
- (dd) "WiSE Project" means the acquisition, public development, and outfitting of WiSE Park to the standards and for the purposes identified in the Use Agreement.
- (ee)"X Parcels" means individual parcels of the Property further identified in Exhibit A.
- (ff) "Y Parcels" means individual parcels of the Property further identified in Exhibit A.
- (gg) "Z Parcels" means individual parcels of the Property further identified in Exhibit A.
- (hh) "Z Parcels Option" means the option granted in Section 4.5.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date set forth in the first paragraph of this Agreement.

	CITY OF WILSON
	By: Grant Goings, City Manager
	DEVELOPER
	By: NSV Wilson, LLC, a North Carolina limited liability company
	By: Michael Lemanski Authorized Signatory
PRE-AUDIT CERTIFICATION	
This instrument has been preaudited in the mand Fiscal Control Act.	nanner required by the Local Government Budget
Amy Staton, City of Wilson Chief Financial	Officer

Exhibit A

DESCRIPTION OF PROPERTY

#	PID	Address/Legal Des.	Owner as Effective Date	In MDA	Appraised S
1	3721-19- 9282	419 GOLDSBORO ST	SIX BROTHERS CORP	WiSE Parcel	\$275,000
2	3721-29- 0133	305 HINES ST	CITY OF WILSON	WiSE Parcel	Sxxx,xxx
3	3721-29- 0288	411 GOLDSBORO ST	DAVIS JAMES DOUGLAS	WiSE Parcel	\$119,000
4	3721-29- 1343	409 GOLDSBORO ST	BARRETT CHILDS DREXEL JR	WiSE Parcel	\$145,000
5	3721-29- 3323	401 GOLDSBORO ST	CITY OF WILSON	WiSE Parcel	Sxxx,xxx
6	3721-29- 1193	424 DOUGLAS ST	CITY OF WILSON	WiSE Parcel	\$40,000
7	3721-29- 1037	422 DOUGLAS ST	CITY OF WILSON	WiSE Parcel	\$19,000
8	3721-29- 0093	420 DOUGLAS ST	CITY OF WILSON	WiSE Parcel	\$18,000
9	3721-28- 2849	407 HINES ST	KIRKLAND FAMILY HOLDING LLC	WiSE Parcel	\$160,000
10	3721-29- 4051	408 JONES ST	SKINNER DARREN L	WiSE Parcel	\$872,000
11	3721-28- 6932	410 JONES ST	SKINNER DARREN L	WiSE Parcel	Included in #10
12	3721-28- 6800	406 LODGE ST	SKINNER DARREN L	WiSE Parcel	Included in #10
13	3721-28- 5902	LODGE ST S 1.00LT	SKINNER DARREN L	WiSE Parcel	Included in #10
14	3721-28- 4825	LODGE ST S 1.00LT	UNKNOWN / NONE	WiSE Parcel	\$xxx,xxx
15	3721-28- 5850	408 LODGE ST	HAMILTON PHILLIP C / HAMILTON DIANNE J	WiSE Parcel	\$7,500
16	3721-28- 4799	410 LODGE ST	SKINNER DARREN / SKINNER TORA	WiSE Parcel	\$46,000

XI	TBD	AIR RIGHTS OVER PORTIONS OF WISE PARCELS 1-16 ABOVE	CITY OF WILSON	X Parcel	Sxxx,xxx
X2	TBD	SUBDIVIDED PORTIONS OF WISE PARCELS 1-16 ABOVE	CITY OF WILSON	X Parcel	\$xxx,xxx
Х3	TBD	SUBDIVIDED PORTIONS OF WISE PARCELS 1-16 ABOVE	CITY OF WILSON	X Parcel	Sxxx,xxx
Y1	3721-28- 0853	503 DOUGLAS ST	CITY OF WILSON	Y Parcel	\$6,000
Y2	3721-28- 0789	400 HINES ST	CITY OF WILSON	Y Parcel	\$6,500
Y3	3721-28- 7476	510 JONES ST	CITY OF WILSON	Y Parcel	\$673,000
Y4	3721-38- 1386	520 JONES ST	CITY OF WILSON	Y Parcel	\$13,000
Y5		Reserved			
Y5	3722-30- 7317	227 NASH ST	CITY OF WILSON	Y Parcel	\$634,000
Y6	3722-20- 0972	MOSS ST	CITY OF WILSON	Y Parcel	\$xxx,xxx
Zl	3722-20- 4630	210 TARBORO ST	CITY OF WILSON	Z Parcel	\$219,000
Z2	3721-39- 8935	NASH ST S 1.00LT	CITY OF WILSON	Z Parcel	Included in Z3
Z3	3721-39- 8889	320 NASH ST	CITY OF WILSON	Z Parcel	\$659,000
Z4	3721-39- 7845	LODGE ST S 1.00LT	CITY OF WILSON	Z Parcel	\$55,000
Z5	3721-49- 4497	523 NASH ST	CITY OF WILSON	Z Parcel	\$25,000
Z6	3721-49- 5445	514 SMITH ST	CITY OF WILSON	Z Parcel	\$11,000
Z7	3721-49- 5401	529 NASH ST	CITY OF WILSON	Z Parcel	\$15,000
Z8	3721-49- 5482	516 SMITH ST	CITY OF WILSON	Z Parcel	\$12,000

Z9	3721-49- 5328	531 NASH ST	CITY OF WILSON	Z Parcel	\$10,000
Z10	3721-49- 6319	518 SMITH ST	CITY OF WILSON	Z Parcel	\$8,500
Z11	3722-10- 4646	112 Hines St	CITY OF WILSON	Z Parcel	Sxxx,xxx
Z12	3721-39- 9653	406 Barnes	CITY OF WILSON	Z Parcel	103,000
S1	3721-48- 1843	500 BARNES ST	CITY OF WILSON	Stemmery	\$208,000
S2	3721-48- 3326	526 STEMMERY ST	CITY OF WILSON	Stemmery	\$293,000
S3	3721-48- 0105	403 MAURY ST	CITY OF WILSON	Stemmery	\$19,000
S4	3721-38- 8036	406 MAURY ST	CITY OF WILSON	Stemmery	\$11,000
S5	3721-37- 7985	410 MAURY ST	CITY OF WILSON	Stemmery	\$15,000
S6	3721-38- 6023	RAILROAD ST	CITY OF WILSON	Stemmery	\$33,000
S7	3721-37- 5970	607 GAY ST	CITY OF WILSON	Stemmery	\$7,000
S8	3721-47- 1976	409 GRACE ST	CITY OF WILSON	Stemmery	\$6,000
R1	3711-05- 5668 & 3711-05- 2510	2760 FOREST HILLS RD & 0 GREGORY LN	CITY OF WILSON	Relocation Parcel	Sxxx,xxx
R2	3721-39- 5902	307 BARNES ST	KIRKLAND FAMILY HOLDING LLC	Relocation Parcel	Sxxx,xxx
R3	3721-39- 5873	313 BARNES ST	KIRKLAND FAMILY HOLDING LLC	Relocation Parcel	\$xxx,xxx
R4	3721-39- 6820	315 BARNES ST	KIRKLAND FAMILY HOLDING LLC	Relocation Parcel	\$xxx,xxx
R5	3721-39- 7725	114 LODGE ST	KIRKLAND FAMILY HOLDING LLC	Relocation Parcel	\$xxx,xxx

#### Exhibit B

#### DEVELOPMENT PLAN

<u>Wilson Sports & Entertainment Park (WiSE Park)</u> The Developer will oversee the construction of a sports and entertainment facility in accordance with the Development Plan, Use Agreement, and the most current and applicable MLB Player Development League (PDL) Facility Standards. WiSE Park will include site and infrastructure improvements with the following basic program requirements:<sup>3</sup>

- a) Approximately 3,500 fixed seats + berm and/or standing room only positions resulting in a total capacity of 4,500 for baseball games.
- Robust food and beverage services and guest support facilities.
- c) 10-12 private suites
- d) Ballpark Club and banquet facility to accommodate up to 250 guests.
- e) A variety of group sales and gathering areas.
- f) Artificial turf playing field.
- g) Secure parking for players and staff.
- Surface and street parking will be available within the immediate downtown area.
- i) Pedestrian concourse to be open and accessible throughout the year.
- j) Kids play area to be open and accessible throughout the year.

The Ballpark footprint is estimated to include six (6) acres within the larger mixed-use development superblock generally bounded by Goldsboro, Hines, Lodge and South (extended) streets. While the current zoning for the site is expected to be appropriate for the proposed improvements and therefore adjustment to the existing zoning is not expected, typical land-use and building permit applications and approvals are anticipated.

The WiSE Park and related Infrastructure will be located on the Property identified on Exhibit A as the "WiSE Parcel".

<u>Private Development</u> The required private development will include at least three phases within the Redevelopment Area.

Phase 1. Phase 1 will include at least one mixed-use building with retail space and a minimum of 150 multifamily residential units; a hotel with at least 80 rooms located on the X1 parcel; a townhome development with at least 80 units; and two adaptive reuse projects on Nash Street, Wilson County Parcel Identification Numbers 3722-30-2574 and 3722-30-7317. The estimated cost of Phase 1 projects is \$120 million. The target completion date for external framework on the hotel element of Phase 1 is April 2026. The target completion of the hotel finishes, the multifamily residential component, and the adaptive reuse projects is December 2026. The target completion for the townhome development is December 2027. As used in this section, "completion" means fully constructed with certificates of occupancy issued for the intended uses thereof.

Downtown Development Agreement-City of Wilson & NSV Wilson

<sup>&</sup>lt;sup>3</sup> NTD: Items (a)-(j) subject to change pending finalization of Stadium plans.

**Phase 2.** Phase 2 will include at least one mixed-use building with retail space and a minimum of 150 multifamily residential units; a second townhome development with at least 40 units; and a mixed-use building of at least 30,000 square feet, which is currently envisioned to be primarily for sale residential condominium units. The estimated cost of phase two will be \$78 million. The target completion date for Phase 2 projects is December 2028.

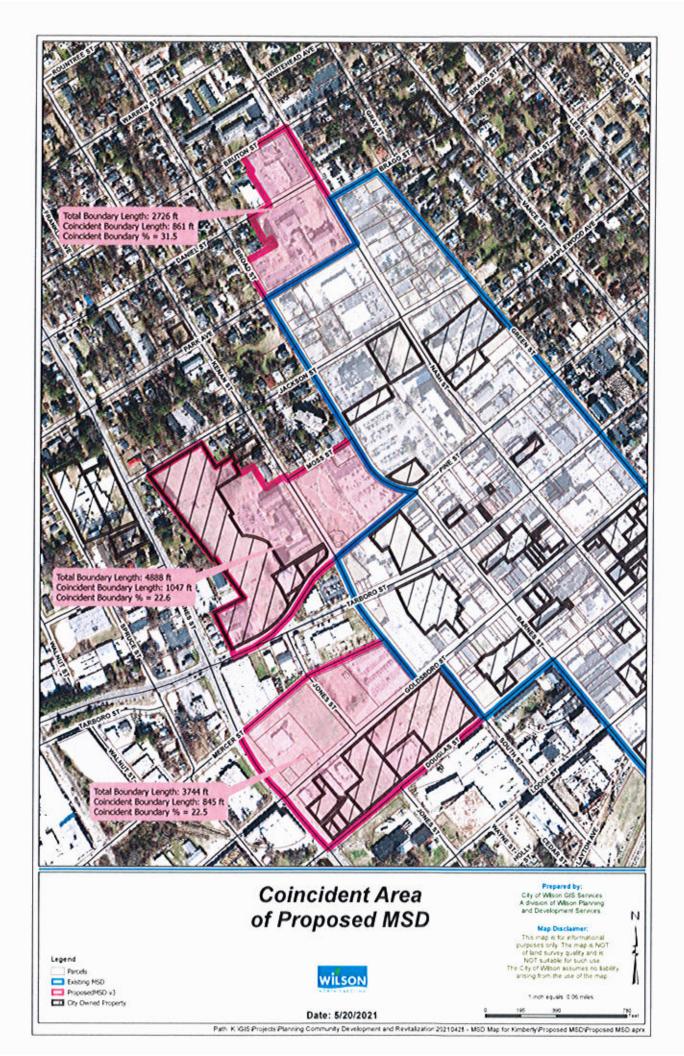
**Phase 3.** Phase 3 will include at least one mixed-use building that will respond to the market needs at the time. The estimated cost of Phase 3 is \$30 million. The target completion date for Phase 3 projects is December 2031.

On the anniversary of the execution of this Agreement, the Developer will report to the City on the status of the Private Development and provide any significant updates to the Master Development Plan. Proposed improvements are subject to zoning requirements and necessary land-use and building permit approvals.

## Exhibit C

# USE AND OPERATING AGREEMENT BY AND BETWEEN THE CITY OF WILSON AND MUDCATS BASEBALL, LLC DATED DECEMBER\_\_, 2023

[Use Agreement Available for Review in City of Wilson City Clerk's Office]

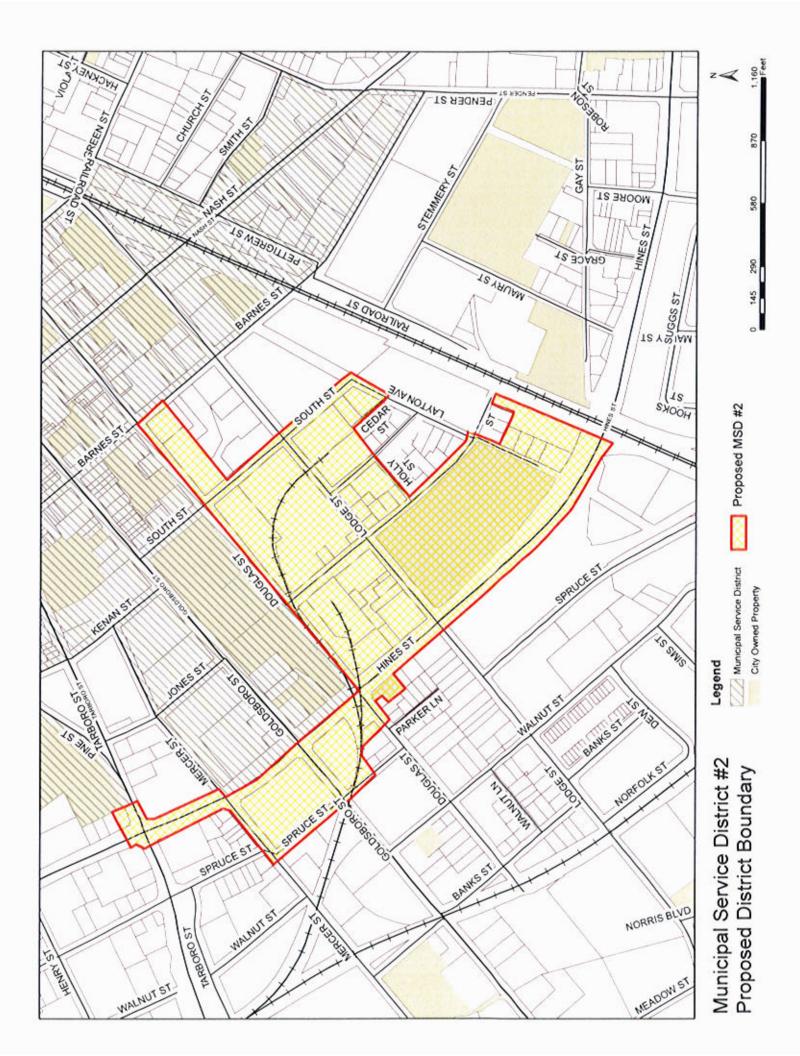


# Exhibit D-1

# MAP OF MUNICIPAL SERVICE DISTRICT 1

# Exhibit D-2

## MAP OF MUNICIPAL SERVICE DISTRICT 2



## Exhibit E

## FORM OF CITY DEED OF TRUST

## NORTH CAROLINA DEED OF TRUST

This the day of Signed:		n full.
Parcel Identifier No Verified by By:	County on the day of	, 20
Mail/Box to: _ Kelly V. Chase, Caule 27896	y Pridgen, PA, 2500 Nash St. N, Ste C, Wil	SOII, INC
27896	elly V. Chase, Cauley Pridgen, PA, 250	
This instrument was prepared by: K 27896		0 Nash St. N, Ste C, Wilson, NC
27896 This instrument was prepared by: K 27896 Brief description for the Index:	elly V. Chase, Cauley Pridgen, PA, 250	0 Nash St. N. Ste C, Wilson, NC
27896 This instrument was prepared by: K 27896 Brief description for the Index:	elly V. Chase, Cauley Pridgen, PA, 250	0 Nash St. N. Ste C, Wilson, NC
This instrument was prepared by: K 27896  Brief description for the Index:	day of October, 2023, by and between James P. Cauley, III	0 Nash St. N, Ste C, Wilson, NC en:
This instrument was prepared by: K 27896  Brief description for the Index:  THIS DEED of TRUST made this  GRANTOR	day of October, 2023, by and betwee	en:  BENEFICIARY

The designation Grantor, Trustee, and Beneficiary as used herein shall include said parties, their heirs, successors, and

The designation Grantor, Trustee, and Beneficiary as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, That whereas the Grantor is indebted to the Beneficiary in the principal sum of <u>Two Hundred Twelve Million and No/100</u> Dollars (\$212,000,000.00), as evidenced by a Development Agreement of even date herewith, the terms of which are incorporated herein by reference. The final due date for performance under the Development Agreement, is December 31, 2031.

NOW, THEREFORE, as security for said indebtedness, advancements and other sums expended by Beneficiary pursuant to this Deed of Trust and costs of collection (including attorneys fees as provided in the Development Agreement) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor has bargained, sold, given and conveyed and does by these presents bargain, sell, give, grant and convey to said Trustee, his heirs, or successors, and assigns, all of that certain lot, parcel of land or condominium unit situated in the City of Wilson,

Downtown Development Agreement-City of Wilson & NSV Wilson

Wilson Township, Wilson County, North Carolina, (the "Premises") and more particularly described by the following Property Identification Numbers: 3721293847, 3722104092, 3721199651, 3721199326, 3721380781, 3721381633, 3721382971, 3721382242, 3721382115, 3721381099, 3721383111, 3721382862, 3721382799, and 3721496739.

TO HAVE AND TO HOLD said Premises with all privileges and appurtenances thereunto belonging, to said Trustee, his heirs, successors, and assigns forever, upon the trusts, terms and conditions, and for the uses hereinafter set forth.

If the Grantor shall pay the Minimum Investment in the Development Agreement secured hereby in accordance with its terms, together with interest thereon, and any renewals or extensions thereof in whole or in part, all other sums secured hereby and shall comply with all of the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be canceled of record at the request and the expense of the Grantor.

If, however, there shall be any default (a) in the payment of any sums due under the Development Agreement, this Deed of Trust or any other instrument securing the Development Agreement and such default is not cured within ten (10) days from the due date, or (b) if there shall be default in any of the other covenants, terms or conditions of the Development Agreement secured hereby, or any failure or neglect to comply with the covenants, terms or conditions contained in this Deed of Trust or any other instrument securing the Development Agreement and such default is not cured within fifteen (15) days after written notice, then and in any of such events, without further notice, it shall be lawful for and the duty of the Trustee, upon request of the Beneficiary, to sell the land herein conveyed at public auction for cash, after having first giving such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and giving such notice and advertising the time and place of such sale in such manner as may then be provided by law, and upon such and any resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey title to the purchaser in as full and ample manner as the Trustee is empowered. The Trustee shall be authorized to retain an attorney to represent him in such proceedings.

The proceeds of the Sale shall after the Trustee retains his commission, together with reasonable attorneys fees incurred by the Trustee in such proceedings, be applied to the costs of sale, including, but not limited to, costs of collection, taxes, assessments, costs of recording, service fees and incidental expenditures, the amount due on the Development Agreement hereby secured and advancements and other sums expended by the Beneficiary according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale or the minimum sum of SNA whichever is greater, for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Grantor shall pay all expenses incurred by Trustee, including reasonable attorneys fees, and a partial commission computed on five per cent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater, in accordance with the following schedule, to-wit: one-fourth (½) thereof before the Trustee issues a notice of hearing on the right to foreclosure; one-half (½) thereof after issuance of said notice, three-fourths (½) thereof after such hearing; and the greater of the full commission or minimum sum after the initial sale.

And the said Grantor does hereby covenant and agree with the Trustee as follows:

1. INSURANCE. Grantor shall keep all improvements on said land, now or hereafter erected, constantly insured for the benefit of the Beneficiary against loss by fire, windstorm and such other casualties and contingencies, in such manner and in such companies and for such amounts, not less than that amount necessary to pay the sum secured by this Deed of Trust, and as may be satisfactory to the Beneficiary. Grantor shall purchase such insurance, pay all premiums therefor, and shall deliver to Beneficiary such policies along with evidence of premium payments as long as the Development Agreement secured hereby remains unpaid. If Grantor fails to purchase such insurance, pay premiums therefor or deliver said policies along with evidence of payment of premiums thereon, then Beneficiary, at his option, may purchase such insurance. Such amounts paid by Beneficiary shall be added to the principal of the Development Agreement secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary. All proceeds from any insurance so maintained shall at the option of Beneficiary be applied to the debt secured hereby and if payable in installments, applied in the inverse order of maturity of such installments or to the repair or reconstruction of any improvements located upon the Property.

2. TAXES, ASSESSMENTS, CHARGES. Grantor shall pay all taxes, assessments and charges as may be lawfully levied against said Premises within thirty (30) days after the same shall become due. In the event that Grantor fails to so pay all taxes, assessments and charges as herein required, then Beneficiary, at his option, may pay the same and the amounts so paid shall be added to the principal of the Development Agreement secured by this Deed of Trust, and

shall be due and payable upon demand of Beneficiary.

- 3. ASSIGNMENTS OF RENTS AND PROFITS. Grantor assigns to Beneficiary, in the event of default, all rents and profits from the land and any improvements thereon, and authorizes Beneficiary to enter upon and take possession of such land and improvements, to rent same, at any reasonable rate of rent determined by Beneficiary, and after deducting from any such rents the cost of reletting and collection, to apply the remainder to the debt secured hereby.
- 4. PARTIAL RELEASE. Grantor shall be entitled to the partial release of any of the above described property as described in the Development Agreement. In the event of a partial release provision, Grantor must strictly comply with the terms thereof. Notwithstanding anything herein contained, Grantor shall not be entitled to any release of

property unless Grantor is not in default and is in full compliance with all of the terms and provisions of the Development Agreement, this Deed of Trust, and any other instrument that may be securing said Development Agreement.

WASTE. The Grantor covenants that he will keep the Premises herein conveyed in as good order, repair and condition as they are now, reasonable wear and tear excepted, and will comply with all governmental requirements

respecting the Premises or their use, and that he will not commit or permit any waste.

6. CONDEMNATION. In the event that any or all of the Premises shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Beneficiary and Beneficiary shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages hereby is assigned to Beneficiary who shall have the discretion to apply the amount so received, or any part thereof, to the indebtedness due hereunder and if payable in installments, applied in the inverse order of maturity of such installments, or to any alteration, repair or restoration of the Premises by Grantor.

7. WARRANTIES. Grantor covenants with Trustee and Beneficiary that he is seized of the Premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that he will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions

hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

8. SUBSTITUTION OF TRUSTEE. Grantor and Trustee covenant and agree to and with Beneficiary that in case the said Trustee, or any successor trustee, shall die, become incapable of acting, renounce his trust, or for any reason the holder of the Development Agreement desires to replace said Trustee, then the holder may appoint, in writing, a trustee to take the place of the Trustee; and upon the probate and registration of the same, the trustee thus appointed

shall succeed to all rights, powers and duties of the Trustee.

- SALE OF PREMISES. Grantor agrees that if the Premises or any part thereof or interest therein is sold, assigned, transferred, conveyed or otherwise alienated by Grantor, whether voluntarily or involuntarily or by operation of law [other than: (i) the creation of a lien or other encumbrance subordinate to this Deed of Trust which does not relate to a transfer of rights of occupancy in the Premises; (ii) the creation of a purchase money security interest for household appliances; (iii) a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (iv) the grant of a leasehold interest of three (3) years or less not containing an option to purchase; (v) a transfer to a relative resulting from the death of a Grantor; (vi) a transfer where the spouse or children of the Grantor become the owner of the Premises; (vii) a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the Grantor becomes an owner of the Premises; (viii) a transfer into an inter vivos trust in which the Grantor is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Premises], without the prior written consent of Beneficiary, Beneficiary, at its own option, may declare the Development Agreement secured hereby and all other obligations hereunder to be forthwith due and payable. Any change in the legal or equitable title of the Premises or in the beneficial ownership of the Premises, including the sale, conveyance or disposition of a majority interest in the Grantor if a corporation or partnership, whether or not of record and whether or not for consideration, shall be deemed to be the transfer of an interest in the Premises.
- 10. ADVANCEMENTS. If Grantor shall fail to perform any of the covenants or obligations contained herein or in any other instrument given as additional security for the Development Agreement secured hereby, the Beneficiary may, but without obligation, make advances to perform such covenants or obligations, and all such sums so advanced shall be added to the principal sum, shall bear interest at the rate provided in the Development Agreement secured hereby for sums due after default and shall be due from Grantor on demand of the Beneficiary. No advancement or anything contained in this paragraph shall constitute a waiver by Beneficiary or prevent such failure to perform from constituting an event of default.

11. INDEMNITY. If any suit or proceeding be brought against the Trustee or Beneficiary or if any suit or proceeding be brought which may affect the value or title of the Premises, Grantor shall defend, indemnify and hold harmless and on demand reimburse Trustee or Beneficiary from any loss, cost, damage or expense and any sums expended by Trustee or Beneficiary shall bear interest as provided in the Development Agreement secured hereby for

sums due after default and shall be due and payable on demand.

12. WAIVERS. Grantor waives all rights to require marshaling of assets by the Trustee or Beneficiary. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy arising under the Development Agreement or this Deed of Trust shall be deemed a waiver of any default or acquiescence therein or shall impair or waive the exercise of such right, power or remedy by Trustee or Beneficiary of the trustee or shall impair or

waive the exercise of such right, power or remedy by Trustee or Beneficiary at any other time.

- 13. CIVIL ACTION. In the event that the Trustee is named as a party to any civil action as Trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including himself if he is a licensed attorney, to represent him in said action and the reasonable attorney's fee of the Trustee in such action shall be paid by the Beneficiary and added to the principal of the Development Agreement secured by this Deed of Trust and bear interest at the rate provided in the Development Agreement for sums due after default.
- 14. PRIOR LIENS. Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinate shall constitute default hereunder.
  - 15. OTHER TERMS.

IN WITNESS WHEREOF, written.	, the Grantor has duly ex-	ecuted the foregoing as of the day an	d year first above
NSV Wilson LLC (Entity Name)			
By:(SEAL) Title:_Managing Member	Ľ		<u></u> #
State of North Carolina - County of			
I, the undersigned Notary P	ublic of the County and	State aforesaid, certify that	eared before me this
day and acknowledged the due executand and Notarial stamp or seal this		strument for the purposes therein expr	
My Commission Expires:			
-	Notary	Public Public	
<del></del>			

## Exhibit F

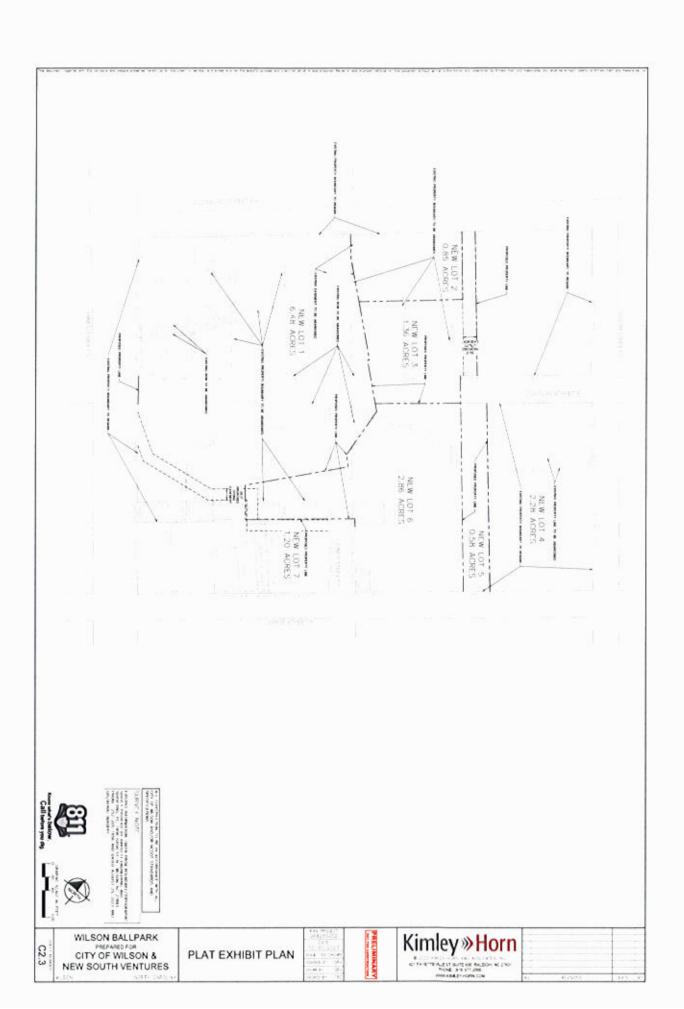
## DEED COVENANTS AND RESTRICTIONS

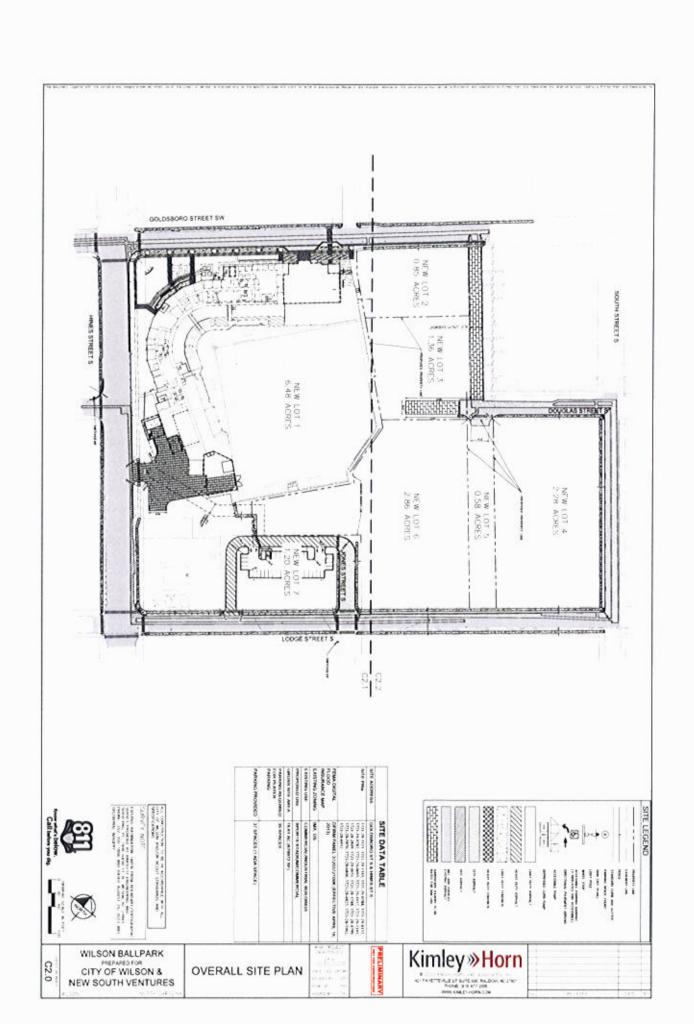
- The Property herein shall be put to the public use of revitalization of a blighted area for
  economically and socially sound redevelopment. In that the property herein is in a blighted
  area, such rehabilitation of blighted areas contributes to the economic and social stability
  of the City of Wilson Downtown Business District. Therefore, the rehabilitation of the
  subject property shall be completed to promote the health, safety, morals, prosperity, and
  welfare of the public.
- Within one year of conveyance of the Property and upon the issuance of all required building permits, Grantee, or its successor, assign or grantee, shall begin redevelopment of the Property, on the Property (the "Project"), and, shall invest a minimum investment beyond the assessed value of each parcel in the Project as assessed and valued on \_\_\_\_\_\_ in accordance with the Downtown Development Agreement dated \_\_\_\_\_\_ (the "Development Agreement").
- Grantee, or its successor, assign or grantee, shall substantially complete all redevelopment
  of the Property to obtain a Certificate of Occupancy within 48 months of conveyance of
  the Property to Grantee.
- Grantee shall at all times in using said property comply with all state and local Zoning and Building codes and comply with the City of Wilson (the "City") Ordinances, as amended from time to time.
- Grantee, at no expense to the City, will give the City such utility and drainage easements
  as the City may require; provided only that such easements shall be located in a manner so
  as not to unreasonably interfere with Grantee's intended use and enjoyment of the Property.
- 6. Grantee shall maintain the property and all improvements located thereon in a neat, attractive, and structurally sufficient manner. Grantee shall promptly address any request from the City to remedy or repair any deficiencies or conflicts with this requirement. In the event Grantee or any successor assign fails to promptly and adequately address any such deficiencies or conflicts, the City may enter onto the Property and remedy such deficiency and Grantee, or its successor or assign, shall pay City all costs incurred by City remedying such deficiency immediately upon receipt of an invoice therefor.
- 7. Grantee shall not operate any ticketed events on the Property for the purposes of viewing baseball games or events held at the City-owned baseball stadium adjacent to or in close proximity to the Property (the "Stadium"); provided that events held by the City at the Stadium shall not be subject to this restriction. For purposes of this restriction "ticketed events" means any event or gathering whereby Grantee, its successors or assigns, sells tickets or grants or conditions admittance to the Property in exchange for financial consideration.

- 8. Grantee, its successors, and its assigns agree that the Property is to be conveyed "as is" and subject to existing easements, leases and permits and other matters affecting land titles and without any recourse as against the Grantor for the environmental condition of the Property. Grantee acknowledges that the Grantor makes no representations or express or implied warranties as to the suitability of the Property for Grantee's intended uses.
- These covenants and/or agreements are to run with the land and shall be binding on all
  parties and all persons claiming under them for a period of twenty-five (25) years from the
  date these covenants are recorded.
- Enforcement shall be by proceedings at law or in equity against any person, firm or corporation violating or attempting to violate any covenant, either to restrain such violation or attempted violation or to recover damages.
- The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the remaining provisions, and all other provisions herein shall remain in full force and effect.
- 12. In the event that Grantee, or its successor, assign or grantee, should fail to comply with Paragraphs 2 or 3 above within the time periods specified therein or such additional reasonable period as may be permitted in writing by Grantor, or should Grantee fail to comply with any material covenant in the Development Agreement and such failure in not cured within the applicable cure period, if any, then Grantor may elect to execute and record a notice of the exercise of the Right of Reconveyance (the "Notice of Exercise"), and upon the recordation thereof in the Office of the Register of Deeds of Wilson County, the Property shall automatically revert to Grantor, free and clear of any claims of the Grantee or its successors, assigns, or grantees, whereupon Grantor shall have the right to re-enter and retake possession of the Property.

# Exhibit G

## DRAFT PROJECT MAP







# Standard Form of Agreement Between Owner and Construction Manager as

Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the day of in the year (In words, indicate day, month, and year.)  BETWEEN the Owner: (Name, legal status, address, and other information)	This document has important legal consequences. Consultation with an attorney is encouraged with
	an attorney is encouraged with
	respect to its completion or modification.
and the Construction Manager:	AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this
(Name, legal status, address, and other information)	document is modified.
for the following Project: (Name, location, and detailed description)	
The Architect:	
(Name, legal status, address, and other information)	

The Owner and Construction Manager agree as follows.

# Exhibit H

# DRAFT PROJECT CONSTRUCTION CONTRACT

## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

## ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

## § 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

## § 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

	ner's budget for the Guaranteed Maximum Price, as defined in Article 6: and, if known, a line item breakdown.)
§ 1.1.4 The Own	er's anticipated design and construction milestone dates:
.1 D	Design phase milestone dates, if any:
. <b>2</b> C	onstruction commencement date:
.3 S	ubstantial Completion date or dates:
. <b>4</b> O	other milestone dates:
§ 1.1.5 The Own (Identify any req	er's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below: uirements for fast-track scheduling or phased construction.)
	er's anticipated Sustainable Objective for the Project: scribe the Owner's Sustainable Objective for the Project, if any.)
incorporate AIA into this Agreem 2019 is incorpora	wher identifies a Sustainable Objective, the Owner and Construction Manager shall complete and Document E234TM_2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, ent to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234_ated into this agreement, the Owner and Construction Manager shall incorporate the completed E234_reements with the consultants and contractors performing services or Work in any way associated with Objective.
§ 1.1.7 Other Pro (Identify special	ject information: characteristics or needs of the Project not provided elsewhere.)
	er identifies the following representative in accordance with Section 4.2: ess, and other contact information.)

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  (List name, address and other contact information.)	ı
§ 1.1.10 The Owner shall retain the following consultants and contractors:  (List name, legal status, address, and other contact information.)	
.1 Geotechnical Engineer:	
.2 Civil Engineer:	
.3 Other, if any: (List any other consultants retained by the Owner, such as a Project or Program Manager.)	
§ 1.1.11 The Architect's representative: (List name, address, and other contact information.)	
§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3: (List name, address, and other contact information.)	
§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  (List any Owner-specific requirements to be included in the staffing plan.)	

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work: (List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## ARTICLE 2 GENERAL PROVISIONS

#### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

## § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

## § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201<sup>TM</sup>—2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

#### ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

## § 3.1 Preconstruction Phase

## § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

## § 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203<sup>TM</sup>—2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

## § 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

## § 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

## § 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the

cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

- § 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.
- § 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.
- § 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.
- § 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.
- § 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.
- § 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234TM-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

## § 3.1.11 Subcontractors and Suppliers

- § 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.
- § 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.
- § 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

## § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

## § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

## § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

## § 3.2 Guaranteed Maximum Price Proposal

- § 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.
- § 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.
- § 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:
  - .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
  - .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
  - A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
  - .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
  - .5 A date by which the Owner must accept the Guaranteed Maximum Price.
- § 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.
- § 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.
- § 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.
- § 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.
- § 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

## § 3.3 Construction Phase

## § 3.3.1 General

- § 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.
- § 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

## § 3.3.2 Administration

- § 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.
- § 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

## § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

## § 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

## § 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

## § 4.1 Information and Services Required of the Owner

- § 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.
- § 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.
- § 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

- § 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- § 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- § 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.
- § 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234<sup>TM</sup>-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

## § 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

## § 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133<sup>TM</sup>-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

# ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES § 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Individual or Position	Rate
Construction Manager, as required by law or co assessments and benefits and, for personnel not	n Phase services include all costs to be paid or incurred by the ollective bargaining agreements, for taxes, insurance, contributions, t covered by collective bargaining agreements, customary benefits such days, vacations and pensions, and shall remain unchanged unless the
	vered by this Agreement have not been completed within ( ) no fault of the Construction Manager, the Construction Manager's es shall be equitably adjusted.
§ 5.2 Payments § 5.2.1 Unless otherwise agreed, payments for s	services shall be made monthly in proportion to services performed.
() days after the invoice date shall	sentation of the Construction Manager's invoice. Amounts unpaid bear interest at the rate entered below, or in the absence thereof at the incipal place of business of the Construction Manager.  ed upon.)
%	
ARTICLE 6 COMPENSATION FOR CONSTRUCT	TION PHASE SERVICES
	Manager the Contract Sum in current funds for the Construction execution of the Guaranteed Maximum Price Amendment. The Contract cle 7 plus the Construction Manager's Fee.
§ 6.1.2 The Construction Manager's Fee:	
(State a lump sum, percentage of Cost of the W	ork or other provision for determining the Construction Manager's Fee.)
§ 6.1.3 The method of adjustment of the Constru	uction Manager's Fee for changes in the Work:
§ 6.1.4 Limitations, if any, on a Subcontractor's	overhead and profit for increases in the cost of its portion of the Work:

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction

Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed standard rental rate paid at the place of the Project.	percent (	%) of the
§ 6.1.6 Liquidated damages, if any: (Insert terms and conditions for liquidated damages, if any.)		

## § 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

## § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

## § 6.3 Changes in the Work

- § 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.
- § 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.
- § 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.
- § 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.
- § 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.
- § 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

## § 7.1 Costs to Be Reimbursed

- § 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.
- § 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

## § 7.2 Labor Costs

- § 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.
- § 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.
- § 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

- § 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- § 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.
- § 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

## § 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

## § 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

- § 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.
- § 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

## § 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

- § 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.
- § 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8,

shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

- § 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.
- § 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.
- § 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

## § 7.6 Miscellaneous Costs

- § 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.
- § 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.
- § 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.
- § 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.
- § 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.
- § 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.
- § 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.
- § 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.
- § 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.
- § 7.6.7 Costs of document reproductions and delivery charges.
- § 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.
- § 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.
- § 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.
- § 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

## § 7.7 Other Costs and Emergencies

- § 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.
- § 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.
- § 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.
- § 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

## § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

## § 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

## ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

## § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the	day of a month.
the Owner shall make payment of the amount certified to the Construction Manager not later than the	day of
the month. If an Application for Payment is received by the Architect after the application date	
payment of the amount certified shall be made by the Owner not later than ( ) days after th	e Architect
receives the Application for Payment.	
(Federal, state or local laws may require payment within a certain period of time.)	

Init.

- § 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.
- § 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.
- § 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.
- § 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.
- § 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.
- § 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- § 11.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- § 11.1.7.1 The amount of each progress payment shall first include:
  - .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
  - .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing:
  - .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
  - .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- § 11.1.7.2 The amount of each progress payment shall then be reduced by:
  - .1 The aggregate of any amounts previously paid by the Owner;
  - .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
  - .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
  - .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

## § 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

## § 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

## § 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation. upon Substantial Completion.)

- § 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.
- § 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.
- § 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.
- § 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

## § 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. (Insert rate of interest agreed upon, if any.)

%		
70		

## ARTICLE 12 DISPUTE RESOLUTION

## § 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the

Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

## § 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows: (Check the appropriate box.)

]	1	Arbitration pursuant to Article 15 of AIA Document A201-2017
[	1	Litigation in a court of competent jurisdiction
1	1	Other: (Specify)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 13 TERMINATION OR SUSPENSION

- § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment
- § 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.
- § 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.
- § 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.
- § 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.
- § 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:
  - .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

# § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

## § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

## § 13.2.3 Termination by the Owner for Convenience

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If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

## § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

## § 14.2 Successors and Assigns

required automobile coverage.

Coverage

- § 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- § 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

# § 14.3.1 Preconstruction Phase The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost. § 14.3.1.1 Commercial General Liability with policy limits of not less than \_\_\_\_\_\_ (S \_\_\_\_\_) for each occurrence and \_\_\_\_\_\_ (S \_\_\_\_\_\_) in the aggregate for bodily injury and property damage. § 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than \_\_\_\_\_\_ (\$ \_\_\_\_\_\_) per accident for bodily injury, death of any person, and property

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily

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§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than(\$) each accident,(\$) each employee, and(\$) policy limit.	
§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professions services, with policy limits of not less than(\$) per claim and(\$) in the aggregate	ıl
§ 14.3.1.6 Other Insurance (List below any other insurance coverage to be provided by the Construction Manager and any applicable limi	ts

Limits

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

#### § 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133<sup>TM</sup>\_2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

## ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- AIA Document A133TM\_2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133<sup>TM</sup>-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133TM-2019, Exhibit B, Insurance and Bonds
- AIA Document A201<sup>TM</sup>—2017, General Conditions of the Contract for Construction
- .5 AIA Document E203<sup>TM</sup>—2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

		-		
.6	Other	EX	hii	nits

(Check all boxes that apply.)

 AIA Document E234<sup>TM</sup>—2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below: (Insert the date of the E234-2019 incorporated into this Agreement.)

[ ]	Supplementary a	nd other Conditions of the Con	tract:	
D	ocument	Title	Date	Pages
(List Docu samp prope prope	ment A201–2017 proble forms, the Constructs of the Construction of	isted below: documents that are intended to ovides that the advertisement of action Manager's bid or propos ad other information furnished the Contract Documents unless d here only if intended to be pa	invitation to bid, Inst al, portions of Addenc by the Owner in antici cenumerated in this A	ructions to Bidders, la relating to bidding or pation of receiving bids or greement. Any such
		ay and year first written above		
OWNER (Signature)		CONSTR	UCTION MANAGER (Si	gnature)
(Printed name and	title)	(Printed	name and title)	

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# Guaranteed Maximum Price Amendment

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	to the accompanying					
	ween Owner and Co Cost of the Work Pl					
day			(the "Agreemer		ce dated the	And the state of t
	cate day, month, and		(the Agreemen	n <i>)</i>		This document has important legal consequences. Consultation with
for the followin	g PROJECT: ress or location)					an attorney is encouraged with respect to its completion or modification.
Traine and add	ess or rocurrony					Application of the second
						AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this
THE OWNER:				QUANT.	)	document is modified.
(Name, legal sta	atus, and address)				_ A	
	ction manager: atus, and address)	4		4		
TABLE OF ARTIC	CLES					
A.1 GUARA	NTEED MAXIMUM P	RICE				
A.2 DATE C	OF COMMENCEMENT	AND SUBSTAN	ITIAL COMPLET	ION		
A.3 INFORM	MATION UPON WHIC	H AMENDMENT	IS BASED			
A.4 CONST	RUCTION MANAGER	S'S CONSULTAN	ITS, CONTRACT	ORS, DES	GN PROFESSI	ONALS, AND SUPPLIERS
§ A.1.1 Guarantee Pursuant to Sect establish a Guara Price is an amou	anteed Maximum Pr	eement, the Ow rice. As agreed I Sum shall not e	by the Owner ar exceed. The Con	nd Constru ntract Sum	ction Manage consists of the	mend the Agreement to r, the Guaranteed Maximum e Construction Manager's
	ntract Sum is guarar ductions by Change					(\$ ), subject to

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement. (Provide itemized statement below or reference an attachment.) § A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement. § A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement. § A.1.1.5 Alternates § A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price: Item Price § A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.) Item Conditions for Acceptance § A.1.1.6 Unit prices, if any: (Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.) Item Units and Limitations Price per Unit (\$0.00) ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION § A.2.1 The date of commencement of the Work shall be: (Check one of the following boxes.) ☐ The date of execution of this Amendment. Established as follows: (Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

commencement of the Work. § A.2.3 Substantial Completion § A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work: (Check one of the following boxes and complete the necessary information.) Not later than \_\_\_\_\_ ( \_\_\_ ) calendar days from the date of commencement of the Work, ☐ By the following date: § A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates: Portion of Work Substantial Completion Date § A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement. ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED § A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following: § A.3.1.1 The following Supplementary and other Conditions of the Contract: Document Date Pages § A.3.1.2 The following Specifications: (Either list the Specifications here, or refer to an exhibit attached to this Amendment.) Section Title Date Pages § A.3.1.3 The following Drawings: (Either list the Drawings here, or refer to an exhibit attached to this Amendment.) Number Title Date

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of

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§ A.3.1.4 The Sustainability Plan, if	fany	if	an	Plan	lity I	Sustainabilit	The	.4	3.1	A	δ
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(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
Other identifying information:		
§ A.3.1.5 Allowances, if any, included in (Identify each allowance.)	the Guaranteed Maximum Price:	
Item	Price	
§ A.3.1.6 Assumptions and clarifications, (Identify each assumption and clarificati	if any, upon which the Guaranteed Maxion.)	ximum Price is based:
§ A.3.1.7 The Guaranteed Maximum Pric (List any other documents or information	e is based upon the following other doct n here, or refer to an exhibit attached to	uments and information: this Amendment.)
ARTICLE A.4 CONSTRUCTION MANAGER		
§ A.4.1 The Construction Manager shall ridentified below: (List name, discipline, address, and other		n professionals, and suppliers,
This Amendment to the Agreement entered	ed into as of the day and year first writte	en above.
OWNER (Signature)	CONSTRUCTION	MANAGER (Signature)
(Printed name and title)	(Printed name an	d title)

## Exhibit I X PARCEL LOCATIONS

