

DEVELOPMENT AGREEMENT

by and between

Town of Belville

and

Urban Smart Growth, LLC

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DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is made and entered into as of the 31st day of October, 2007, by and among URBAN SMART GROWTH, LLC, a Nevada limited liability company directly and as representative of certain other entities referenced herein (the "Master Developer") and the TOWN OF BELVILLE, a North Carolina municipal corporation (the "Town").

WITNESSETH:

WHEREAS, Part 3D of Article 19 of Chapter 160A of the General Statutes of the State of North Carolina (the "Act") provides authorization for municipalities to enter into development agreements; and

WHEREAS, Section 160A-400.20(a)(1) of the Act recognizes that "[l]arge-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources"; and

WHEREAS, Section 160A-400.20(a)(2) of the Act recognizes that "[s]uch large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes"; and

WHEREAS, Section 160A-400.20(a)(3) of the Act recognizes that "[b]ecause of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development"; and

WHEREAS, Section 160A-400.20(a)(4) of the Act recognizes that "[b]ecause of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development"; and

WHEREAS, Section 160A-400.20(a)(6) of the Act recognizes that "[t]o better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments"; and

WHEREAS, Section 160A-400.20(b) of the Act provides that "[l]ocal governments and agencies may enter into development agreements with developers, subject to the procedures and requirements of this Part. In entering into such agreements, a local government may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law"; and

WHEREAS, the Town has held certain public meetings and as a result has concluded that it is in the best interests of the Town and its citizens to redevelop its riverfront downtown area into a multi-use planned development; and

WHEREAS, the Master Developer wishes to undertake the development of a revitalization project as described in the Master Redevelopment Plan (as hereinafter defined) that is a large-scale mixed use development to be constructed in multiple phases extending over a period of 20 years, and which may include multi-family homes and/or other residential uses; parking; marina and river walk; restaurants; retail storefronts; commercial office and professional space; recreational and/or entertainment events park; and, a multi-purpose municipal building that will include a gathering hall and administrative offices; and

WHEREAS, the Master Developer owns various tracts of Development Agreement Property (as hereinafter defined) consisting of real property containing in the aggregate greater than 25 acres of land located in the Town; and

WHEREAS, this Agreement is being made and entered into between the Master Developer and the Town, under the terms of the Act, for the purpose of providing assurances to the Master Developer that it may proceed with its development of the Development Agreement Property under the terms of its present development plan and approvals, as herein defined and described, without encountering future changes of law which would adversely affect its ability to so develop the Development Agreement Property or the costs of future development of the Development Agreement Property; and

WHEREAS, pursuant to the Act, the parties hereto have agreed to enter into this Agreement to memorialize their agreements and understandings and to set forth the terms and conditions governing the development of the Property.

NOW, THEREFORE, in consideration of the foregoing, all of which is incorporated in this Agreement by reference, the mutual covenants of the parties contained in this Agreement, and pursuant to the Act, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I
RECITALS; DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1.01. RECITALS. The recitals stated in this Agreement are true and correct.

SECTION 1.02. DEFINED TERMS. Any capitalized term not otherwise defined in this Agreement shall have the meaning ascribed to such term in the Act. The terms defined below shall have the following meanings unless another meaning is plainly intended herein:

“Act” means Part 3D of Article 19 of Chapter 160A of the General Statutes.

“Acquisition Properties” means the properties identified on Exhibit C attached hereto.

“Amended Zoning Ordinance” means the ordinance to be adopted by the Town to implement new zoning controls, which is expected to be adopted during December of 2007.

“Board” means the Board of Commissioners of the Town.

“CAMA” means Article 7 of Chapter 113A of the General Statutes, commonly known as the Coastal Area Management Act.

“County” means Brunswick County, North Carolina.

“Development Agreement Property” means the property described in section 2.04.

“Development Schedule” means the schedule attached as Exhibit E hereto, as such may be amended from time to time.

“DOT” means the North Carolina Department of Transportation.

“Effective Date” has the meaning provided therefor in Section 6.02.

“Exchanged Property” means the property designated in accordance with Section 2.07 hereof.

“Fair Market Value” has the meaning provided therefor in Section 2.07(c).

“General Statutes” means the General Statutes of the State of North Carolina as the same may be amended from time to time.

“Industry Standards” with respect to design and construction are those standards in accordance with then-existing commonly-accepted and adopted standards in the engineering industry, as evidenced by standards published by the American Society of Civil Engineers or other similar organizations of national repute.

“Infrastructure Improvements” has the meaning provided therefor in Section 3.02.

“Infrastructure Improvement Costs” means all costs and expenses incurred by the Master Developer in planning, designing, permitting and constructing any and all Infrastructure Improvements and off-site Infrastructure Improvements as contemplated in this Agreement.

“Master Developer” means Urban Smart Growth, LLC, a Nevada limited liability company qualified to do business in the State, Santa Rosa Marathon Corporation, a California corporation and Urban Smart Growth Belville, LLC, a North Carolina limited liability company to be formed to which the foregoing entities intend to contribute property owned by them as described herein together with any entity hereafter created which shall be majority owned and controlled by any of the foregoing. Urban Smart Growth, LLC, shall remain obligated to perform the duties of Master Developer under this Agreement, so long as Urban Smart Growth, LLC, holds a controlling interest in such entity.

“Master Developer’s Appraiser” has the meaning provided therefor in Section 2.07(c)(i).

“Master Redevelopment Plan” means the comprehensive redevelopment plan for the Acquisition Properties, the Public Facilities Properties and the Owned Properties, all as more fully described in Exhibit A attached hereto.

“Municipal Building Costs” has the meaning provided therefor in Section 3.04(d).

“Old Site” has the meaning provided therefor in Section 3.04(a).

“Owned Property” means the Development Agreement Property currently owned by the Master Developer and identified on Exhibit B attached hereto.

“Project Development Financing Act” means Article 6 of Chapter 159 of the General Statutes.

“Project Development Financing District” means the district determined by the Town under the provisions of Section 158-7.3 of the General Statutes and as preliminarily described in Exhibit G attached hereto.

“Public Facilities Properties” means the properties identified on Exhibit D attached hereto.

“Redevelopment Area” means the area designated as such by the Town in Resolution No. R07-18, as such area may be hereafter modified.

“State” means the State of North Carolina.

“Term” means the period specified in Section 6.02

“Total Project” means all of the undertakings of the Town and the Master Developer under the Urban Redevelopment Law, the Project Development Financing District Act and the Development Agreement Act.

“Total Project Area” means the Redevelopment Area, the Project Development Financing District and the area affected by this Development Agreement.

“Town” means the Town of Belville, North Carolina, and any successor thereto.

“Town’s Appraiser” has the meaning provided therefor in Section 2.07(c)(ii).

“Town Hall” has the meaning provided therefor in Section 3.04(c).

“Urban Redevelopment Law” means Article 22 of Chapter 160 of the General Statutes.

SECTION 1.03. RULES OF CONSTRUCTION. (a) Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the General Statutes of North Carolina, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; *provided* that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Town or the Master

Developer under this Agreement or any other instrument or document entered into in connection herewith.

(b) Unless the context indicates otherwise, words implying the singular number include the plural number, and vice versa. The terms "hereof," "hereby," "herein," "hereto," "hereunder," "hereinafter" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

References to sections, articles or exhibits, unless otherwise indicated, are to sections and articles of or exhibits to this Agreement.

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE II DEVELOPMENT

SECTION 2.01. SCOPE OF DEVELOPMENT. The Town is undertaking the revitalization of the area described in the Master Redevelopment Plan as set forth in Exhibit A attached hereto. In that regard, the Town has taken steps under the Urban Redevelopment Law to define a Redevelopment Area. The Town is also pursuing financing for part of the cost of infrastructure relating to the Total Project Area under the Project Development Financing Act. This Agreement with the Master Developer is a component of the Town's overall plan for the Total Project Area.

SECTION 2.02. ZONING. The Town has in place a moratorium on new development pending the adoption of the Amended Zoning Ordinance. The zoning for the Total Project Area will be consistent with the Master Redevelopment Plan and the Amended Zoning Ordinance as inspired by the Belville Vision 2020 Plan.

SECTION 2.03. PURPOSE OF THIS AGREEMENT. The purpose of this Agreement is to enlist the aid of the Master Developer in the Town's plans for the Total Project Area by providing (a) entitlements, standards, guidelines and conditions which will apply to the development of the Development Agreement Property throughout the Term; (b) establish the terms and conditions on which the Town will assist the Master Developer in the Master Developer's plans through actions under the Urban Redevelopment Law and the Project Development Financing Act with the goal of providing a more desirable environment and improving the quality of life for residents of the Town. The standards and provisions set forth in this Agreement are intended to permit the flexibility necessary to accomplish the development of the Development Agreement Property contemplated by the Master Developer, to the extent allowed by the Act and other applicable law.

SECTION 2.04. DEVELOPMENT AGREEMENT PROPERTY. The Development Agreement Property consists of (a) the Owned Properties as set forth on Exhibit B attached

hereto, (b) the Acquisition Properties as set forth on Exhibit C attached hereto, (c) the Public Facilities Properties as set forth on Exhibit D attached hereto, and (d) the Exchanged Properties when any such properties are acquired by the Master Developer.

SECTION 2.05. ACQUISITION PROPERTIES The Master Developer intends to acquire certain other tracts or parcels of land described in Exhibit C attached hereto located in the Town, with the intent that any portion of the Acquisition Properties may be used for the purpose of development of the Total Project Area.

SECTION 2.06. PUBLIC FACILITIES PROPERTIES. The Town intends to acquire by purchase or by any available means otherwise necessary and as allowed by N.C. General Statutes Section 160A-500, *et seq*, ancillary properties described in Exhibit D attached hereto, with the intent that any portion of the Public Facilities Properties may be used for the purpose of development of the Infrastructure Improvements.

SECTION 2.07. EXCHANGED PROPERTY. (a) In accordance with Section 160A-271 of the General Statutes, excess portions of the Public Facilities Properties acquired for Infrastructure Improvements in the Redevelopment Project may, upon the Master Developer's election, be conveyed to the Master Developer in exchange for property, said property being acceptable to the Town, which the Master Developer owns (the "Exchanged Property"). The portions of the Public Facilities Property so exchanged shall constitute Development Agreement Property hereunder upon acquisition by the Master Developer. The conveyance by the Master Developer of Exchanged Property shall not excuse the Master Developer from its obligation to provide Infrastructure Improvements within such Exchanged Property in accordance with Section 3.02.

(b) The value of any property being exchanged shall be determined on the basis of Fair Market Value as described in (c) below and the Town and Master Developer shall execute such documents, affidavits and certificates as are customarily executed in the State in connection with the exchange and transfer of real property.

(c) For purposes of this Agreement, the term "Fair Market Value" shall mean the price that a ready and willing purchaser would pay as the purchase price to a ready and willing seller of property comparable to the property or portion thereof being appraised if such property were available for sale on the open market for a reasonable period of time and taking into account all the purposes for which such property may be used as may be provided in the Master Redevelopment Plan. Fair market value for any portion of the property as contemplated in this Agreement shall be determined as follows:

(i) The Master Developer shall retain an MAI appraiser (the "Master Developer's Appraiser") for a determination of the Fair Market Value of the applicable portion of the property. The Master Developer shall bear the fees of such appraiser.

(ii) If the Town is unwilling to accept or approve the Master Developer's appraisal, then the Town shall retain a second MAI appraiser (the "Town's Appraiser") to independently determine the Fair Market Value of the subject property. The Town shall bear the fees of such appraiser.

(iii) If the Master Developer is unwilling to accept or approve the Town's appraisal, the Fair Market Value of the subject property shall be the arithmetic average of the two appraisals.

(iv) The determination of the Fair Market Value in accordance with this Section shall be binding on the Master Developer and the Town.

(v) In all events, when determining the Fair Market Value of property acquired from the Master Developer for use as Public Facilities Properties pursuant to this Agreement, any appraiser shall take into account the proposed uses and related densities and intensities as set forth in the Master Redevelopment Plan.

(vi) In the event the Master Developer owes the Town a net sum after all such exchanges are completed, the Master Developer shall pay the Town such sums in cash. In the event the Town owes the Master Developer a net sum, the Town may either pay such amounts from project development financing not utilized for other purposes, or may transfer rights to the Master Developer to use various public facilities, such as parking spaces, air rights or leases of portions of the Public Facilities Properties in satisfaction of such sums as agreed by the parties, and any such rights shall be valued in the same manner as provided herein for Exchanged Property and in accordance with Section 160A.271 of the Act. The Master Developer and the Town agree that the Town Auditor shall have the responsibility of determining any amounts that are due to the Town or the Master Developer after netting all such exchanges.

(d) The Master Developer shall pay all reasonable costs and expenses related to the transfer and conveyance of the Exchanged Property as contemplated in this Section, including without limitation, reasonable attorney's fees, transfer taxes, premiums for title insurance policies, surveying expenses and recording costs.

SECTION 2.08. PROPERTY AFFECTED BY THIS AGREEMENT. The benefits and burdens of this Agreement affect only the Development Agreement Property and the provisions of this Agreement shall have no legal effect on the Acquisition Properties, the Public Facilities Properties or the Exchanged Properties until such time as such properties are acquired by the Master Developer or the Town. As the Master Developer acquires certain portions of or interest in the Acquisition Properties or the Town acquires certain portions of or interest in the Public Facilities Properties or the Exchanged Properties, such acquired properties shall become part of the Development Agreement Property and the terms of this Agreement and the Master Redevelopment Plan shall apply automatically to such properties in the same manner as the other Development Agreement Property.

SECTION 2.09. MASTER REDEVELOPMENT PLAN. (a) In order to encourage a commitment to comprehensive planning and sound capital improvement, the Town agrees, pursuant to the Act, that the Master Developer may develop the Development Agreement Property throughout the Term on a phased basis extending over a period of 20 years, according to the Master Redevelopment Plan with the Town and any required approval processes under the Amended Zoning Ordinance and other applicable laws.

(b) Notwithstanding the foregoing, but subject to the Amended Zoning Ordinance and the Master Redevelopment Plan, the Master Developer reserves the right to develop the Development Agreement Property in phases in its sole discretion as market, land ownership and other forces dictate; *provided, however*, such phases shall be developed with commencement dates and interim completion dates in accordance with Section 3.01, beginning upon the approval of appropriate financing as described in Section 7 hereunder. The Master Developer shall, in its sole discretion and in accordance with the Redevelopment Overlay District Zoning and the Master Redevelopment Plan, have the right to redistribute uses and intensities throughout the Development Agreement Property that is encumbered by the Master Redevelopment Plan so long as such redistributions are consistent and comply with the requirements of the Amended Zoning Ordinance and the Master Redevelopment Plan.

ARTICLE III REQUIREMENTS AND CONDITIONS ON DEVELOPER FOR RIGHTS

SECTION 3.01. DEVELOPMENT SCHEDULE. The Master Developer shall develop the Development Agreement Property in phases with commencement dates and interim completion dates at no greater than five year intervals as contemplated in Section 160A.400.25(b) of the Act, and as set forth in the Development Schedule in Exhibit E attached hereto. The Master Developer shall continue conceptual development of the Development Agreement Property and begin physical construction as soon as reasonably possible after the acquisition of property from the DOT and as based upon then existing economic and market conditions. The Development Schedule shall be modified to reflect changes in the start date of the physical construction if there are delays in the Master Developer's acquisition of the property from DOT. If the Master Developer requests a substantial modification to the dates shown in the Development Schedule in addition to the modification described in the foregoing sentence, and is able to demonstrate and establish that there is a good cause to modify those dates, those dates must be modified by the Town, subject to any requirement under Section 160A-400.25(b) for public hearing and public notice.

SECTION 3.02. INFRASTRUCTURE IMPROVEMENTS. The Master Developer shall be responsible for the construction of the various Infrastructure Improvements within the Total Project Area, as more particularly described on Exhibit F attached hereto and the Municipal Building as described in Section 3.04.

(a) The construction of any and all Infrastructure Improvements, including without limitation, both on-site and off-site Infrastructure Improvements, shall be constructed in compliance with the regulations of North Carolina Departments of Environment and Natural Resources and Insurance, and any other applicable laws and regulations.

(b) The Master Developer shall provide to the Town one set of reproducible as-built drawings (in a form reasonably acceptable to the Town) for the water, sanitary sewer, storm water drainage and street improvements constructed by the Master Developer within the Total Project Area. The Master Developer also shall provide the Town with itemized construction and engineering costs for such improvements.

(c) As to each particular tract of the Development Agreement Property, the Master Developer (i) shall assume the entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury or alleged injury (including death) to any person or damage or alleged damage to property of the Town or any other party sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the construction of the Infrastructure Improvements by the Master Developer's contractors, subcontractors, agents and employees, including losses, expenses or damages sustained by the Town, (ii) agrees to indemnify and hold harmless the Town, its officials, employees and volunteers from any and all such losses, expenses, damages, demands and claims, (iii) agrees to defend any suit or action brought against any of them, based on any such alleged injury or damage, and (iv) agrees to pay all damages, costs and expenses in connection therewith or resulting therefrom until the date on which the Town or any other public utility or governmental body accepts the dedication of such Infrastructure Improvements. As an integral part of this undertaking, the Master Developer shall cause each person who contracts with the Master Developer for the construction of the Infrastructure Improvements to purchase and maintain, during the life of the construction contract, contractual liability insurance in the amount required in the general liability insurance requirements of the relevant construction contract and to furnish proper evidence thereof to the Town if and as requested by the Town. The Town shall be named as co-insured on all policies of such contractual liability insurance obtained by the Master Developer, or any contractor of the Master Developer's, as the case may be, pursuant to this Section. The foregoing provisions shall not be construed to relieve the Town from any liability it may incur for acts by the Town or its employees that are willful or arise from gross negligence or from other causes as would void insurance applicable to such loss or harm.

(d) With respect to the Infrastructure Improvements to be constructed by the Master Developer within the Total Project Area which the Master Developer intends to dedicate to the Town and which the Town shall hereafter agree to accept, the Master Developer or the contractor responsible for constructing such improvements shall provide to the Town, for a period of two years, beginning upon written acceptance by the Town (*provided* that such written acceptance occurs promptly following the Master Developer's offer of dedication to the Town), a warranty as to the fitness and soundness of all work done and materials and equipment put in place under the relevant construction contract. Neither the final certificate of payment nor any provision in the construction contract documents nor use of such Infrastructure Improvements shall constitute an acceptance of work not done in accordance with the construction contract documents or relieve the Master Developer's contractor from liability in respect to any express warranties or responsibility for faulty materials and workmanship. The Master Developer's contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within the foregoing two year period. The Town will give written notice to the Master Developer and the contractor of observed defects with reasonable promptness. Nothing in this Section shall limit the right of the Town to enforce any available remedies (if any) it might have under statutory or common law as to Infrastructure Improvements upon expiration of the warranty period provided herein.

(e) In addition to and subject to the terms set forth in this Section 3.02, after the Infrastructure Improvements are completed and placed in service, and a certificate of completion or equivalent thereof has been issued by the Town or the applicable governmental agency having

jurisdiction thereover, the Master Developer may convey the same to the Town by special warranty deed, together with all necessary utility easements as may be required by Town policies. The form of the special warranty deed and utility easements shall be reasonably mutually acceptable to the Parties. Upon completion of the Infrastructure Improvements, the Town shall accept said conveyance and shall maintain the Infrastructure Improvements in the same manner that all similar public and related facilities are maintained within the corporate limits of the Town.

(f) To the extent that the Master Developer is responsible for the design and construction of these facilities, the Master Developer will comply with the requirements of the laws of the State applicable to such procurement and will provide the Town with information concerning any contracts for such purposes prior to the acceptance of such contracts.

(g) The Town shall provide the Total Project Area and its owners, occupants, and tenants from time to time with the public services (except with respect to water and sewer service, which is addressed in Section 4.06 in this Agreement) then provided by the Town to other areas within the Town's limits and in a manner consistent with or greater than the quality and level of such public services provided by the Town to such other areas from time to time. The Town acknowledges and agrees that it may be necessary for the Town to hire additional employees and/or third-party contractors or consultants, to purchase additional supplies and equipment and otherwise to incur additional expenses to enable the Town to fulfill its obligations to provide municipal services to the Total Project Area as contemplated in this Agreement, and the Town agrees to act promptly from time to time as required to fulfill its obligations in that regard, subject to the general law of the State regarding municipal budgeting, appropriations and the imposition of taxes and service charges.

SECTION 3.03. MUNICIPAL BUILDING. (a) The Town and the Master Developer hereby acknowledge that the Town's current Town Hall property (the "Old Site") is located within the Total Project Area, and that the former Town Hall structure has been condemned and demolished. The Town does not have another structure with sufficient capacity to handle the municipal requirements of the Town. Accordingly, a new municipal building that will serve as Town Hall is needed to handle the municipal needs of the Town.

(b) In the event the Town Hall is not built on the Old Site or another site provided by the Town, the Master Developer may provide a new site in exchange for the Old Site or other Public Facilities Property that becomes available for exchange in accordance with and under the provisions of Section 2.07. Any such exchange shall be on the basis of the Fair Market Value as provided in Section 2.07. If and at the time the Master Developer provides property for the Town Hall, the Fair Market Value of such property shall be determined and such value may be used for exchanges under Section 2.07.

(c) On or before the third year after completion of the street grid and Infrastructure Improvements for the Total Project, the Master Developer, at its sole cost and expense, shall plan, design, permit and construct a new municipal building as may be necessary to handle the increase in municipal services by the development of the Total Project (the "Town Hall"). The location and design of the Town Hall will be as mutually agreed upon by the Town and the Master Developer and in a location designated in the Master Redevelopment Plan.

(i) The Town Hall shall be built to a reasonable public building standard, shall not exceed 10,000 square feet of usable space, and generally shall contain a multi-purpose meeting hall suitable for seating of up to 100 people as well as executive and administrative offices, as contemplated in the Master Redevelopment Plan. The budget for the proposed Municipal Building shall not exceed \$1,500,000.

(ii) The Town Hall shall be constructed in compliance with the regulations of the County, the North Carolina Department of Insurance, and any other applicable laws and regulations.

(iii) The costs of construction of the Town Hall, in addition to the value of the property built upon (the value of the improved property), if provided by the Master Developer, may be used in exchange for any property that constitutes part of the Public Facilities Properties or other Town property.

(c) Subsequent to the completion of the Town Hall and after a certificate of completion or the equivalent thereof has been issued by the Town or the applicable governmental agency having jurisdiction thereto, the Master Developer shall convey marketable fee simple title to the Town Hall to the Town by special warranty deed, together with necessary utility easements and related facilities as may be required by statute of Town policies, free and clear of any liens and financial encumbrances.

(i) The form of the special warranty deed and the utility easements shall be mutually acceptable to the parties.

(ii) The Town and the Master Developer shall execute such other documents, affidavits and certificates as are customarily executed in the State in connection with the exchange and transfer of real property.

(d) All costs and expenses incurred by the Master Developer in planning, designing, permitting, relocating and constructing the Municipal Building, related facilities, and infrastructure improvements, (collectively, the "Municipal Building Costs") shall not exceed the budgeted amount of \$1,500,000, *provided* that any costs that exceed the budgeted amount may be taken as a credit by the Master Developer in any exchange for Public Facilities Property under Section 2.07.

(e) Upon completion of the Municipal Building, the Town shall accept the conveyance thereof and shall maintain the Municipal Building in the same manner that all other Infrastructure Improvements and related facilities are maintained within the corporate limits of the Town.

ARTICLE IV
UNDERTAKINGS OF TOWN

SECTION 4.01. GRANTS. (a) The Town either has made application for or will make application for a grant in the maximum amount available from the North Carolina Clean Water Management Trust Fund in order to fund the construction of stormwater management systems, including, without limitation, all drainage and control projects which may include storm sewer collection, treatment and disposal systems, flood control facilities including levies, dikes, diversionary channels, drains, catch basins, and other facilities for storm water drainage as contemplated in Master Redevelopment Plan.

(b) In addition to the grant identified in (a) above, the Town will apply for additional grants from the North Carolina Clean Water Management Trust Fund, the Environmental Protection Agency, the Rural Center, and any other appropriate funding agency in order to fund some, if not all, of the Infrastructure Improvement Costs. The Master Developer hereby agrees to assist the Town in preparing and submitting any applications necessary for the grants. To the extent that funds from the grants are made available to the Town, the Town will apply the proceeds of such grants to reimburse the Master Developer for all Infrastructure Improvement Costs incurred by the Master Developer which qualify for reimbursement and/or payment under the terms of the grants. Subject to and in accordance with the terms of the grants, the Town shall reimburse the Master Developer from the grants within 30 days following receipt by the Town of the request for reimbursement. The Town and the Master Developer hereby agree that in the event that funding under any of the grants is conditioned upon the Town performing some or all of the contemplated improvements as set forth in this Agreement as a condition precedent to receiving the funds from any of the grants, the Town and the Master Developer shall enter into an amendment to this Agreement for the purpose of reallocating such responsibilities, it being the intent of the Town and the Master Developer to maximize the use of the funding available from the grants.

(c) In the event the Town is eligible for a grant that requires matching funds and the Town does not have available funds from other financing sources, the Master Developer may elect to assist the Town in establishing a not for profit entity and providing funding to such entity to meet any matching fund requirement.

SECTION 4.02. PROJECT DEVELOPMENT FINANCING DISTRICT. (a) The Town will proceed under Section 158-73 of the General Statutes to define the Project Development Financing District. The Development Financing District will be defined to include those portions of the Town's downtown area and central business district, including certain parcels of land fronting N.C. Hwy. 133 and Blackwell Road shown in Exhibit G attached hereto.

(b) Within 30 days of the date of this Agreement, or as soon thereafter as is practicable, the Town will seek approval for project development financing debt instruments under the Project Development Financing Act. If such efforts are successful, the Town will apply the proceeds of any project development financing debt instruments to the payment of costs of Infrastructure Improvements. The Town will work with the Master Developer to determine the improvements to be funded to the fullest extent possible.

SECTION 4.03. ZONING. As part of the Amended Zoning Ordinance, the Town will provide for one or more overlay districts (as provided in the Master Redevelopment Plan) satisfactory to both parties which establishes standards and a process for approving mixed use development applications within the Total Project Area.

SECTION 4.04. TRAFFIC AND ROADWAY CHANGES. The Town will adopt a U.S. Highway 17/NC Highway 133 Corridor Overlay Plan satisfactory to both parties which establishes standards for the re-direction of Blackwell Road and relocation of Main Street to create signaled intersection with NC Highway 133; the widening of NC Highway 133, construction of medians and turn lanes as indicated on the Corridor Plan as prepared for the North Carolina Department of Transportation by Kimley Horne & Associates and in accordance with the Master Redevelopment Plan; construction of new interchanges controlling North and South Bound access U.S. Highway 17; and, other traffic control and roadway improvements. The Town shall assist the Master Developer in obtaining a design of proposed improvements to U.S. Highway 17/NC Highway 133, Blackwell Road, Main Street and Old River Road within the corporate limits of the Town in order to achieve the U.S. Highway 17/NC Highway 133 Corridor Overlay Plan. The Town shall use its best efforts to close, and to seek abandonment where appropriate, of streets, roads and other rights of way or easements within the Total Project Area as required by any site specific development plan submitted and approved in accordance with state and local procedures.

SECTION 4.05. STORMWATER. The Town shall propose a resolution for the formation of municipal stormwater regulations consistent with North Carolina Phase II Stormwater Management laws and regulations, including Session Law 2006-246, and a CAMA land use plan consistent with the Master Redevelopment Plan.

SECTION 4.06. WATER AND SEWER. The Town shall work in good faith with the Master Developer to secure water and sewer capacity for the Total Project Area, by using its best efforts to obtain a commitment by agreement from North Brunswick Water and Sewer District to provide water and sewer service to the Development Agreement Property. To the extent it is able, the Town shall reserve to the Master Developer the sewer capacity required to serve the Development Agreement Property, as set forth in the Master Redevelopment Plan.

SECTION 4.07. URBAN WATERFRONT DESIGNATION. The Town shall use its best efforts to have the Town's waterfront area designated as Urban Waterfront by the Division of Coastal Management as defined in Section 113A-120.2 of the General Statutes, and to apply to the Division, the United States Army Corps of Engineers, and all other appropriate regulatory agencies for permits for channel and harbor dredging and for the construction of all water dependant and non-water dependant public development.

SECTION 4.08. MUNICIPAL SERVICES. The Town shall provide ordinary and customary municipal services as available to the Master Developer and to residents, occupants, guests and any owners of any portion of the Total Project Area on the same basis and cost as provided to other property owners and residents of the Town. Subject to the contemplated improvements to the Total Project Area and related facilities as set forth in this Agreement, the Town hereby warrants and represents that all such municipal services will be available to the Property at such time as a certificate of completion or the equivalent thereof has been issued by

the Town or other applicable governmental agency having jurisdiction thereto with respect to any development on the Property.

SECTION 4.09. PERMITS AND APPROVALS. The Town and the Master Developer shall undertake all acts necessary to implement the Master Development Plan. In furtherance thereof, the Town Hall or the Master Developer, as applicable, will cause the appropriate party to apply for and use their best efforts to obtain all required permits and approvals for construction and operation of the Infrastructure Improvements.

ARTICLE V RIGHTS AND OBLIGATIONS OF MASTER DEVELOPER

SECTION 5.01. CERTAIN RIGHTS. (a) From and after the Effective Date, to the fullest extent provided under the Development Agreement Act, all laws in effect relating to the development of the Development Agreement Property shall continue to apply to the Development Agreement Property notwithstanding any subsequent action by the Town. Except as provided in Section 160A-400.26 of the Act, the Town may not apply any subsequently adopted ordinance or development policy to the Development Agreement Property during the term of this Agreement.

(b) Except as provided in Section 160A-400.26 of the Act, the terms and provisions in the Master Redevelopment Plan, in accordance with the Amended Zoning Ordinance, shall govern and control the development of the Development Agreement Property, notwithstanding any zoning or rezoning ordinances, regulations or land development regulations (as defined in Section 160A-400.21(6) of the Act) or local or other development laws, rules, regulations or ordinances regarding development standards or land use restrictions to the contrary now existing or modified (except with respect to the Amended Zoning Ordinance) or enacted after the Effective Date.

SECTION 5.02. VESTED RIGHTS. (a) The Town agrees that the Master Developer may acquire vested rights under the provisions of Section 160A-385.1 of the General Statutes as in effect on the effective date of this Agreement. No change, amendment, or modification of Section 160A-385.1 shall adversely affect the ability of the Master Developer or any other owner of Development Agreement Property to acquire such rights. Upon the approval by the Town from time to time of a phased development plan or a site specific plan for portions of the Development Agreement Property, the Master Developer's rights to proceed with development relative to such lots shall be deemed vested on an on-going basis, regardless of when the construction of improvements on such lots is actually commenced and/or completed, up to the period provided for in Section 160A-385.1; *provided, however*, that if there is an option under such law for a period in excess of two years, the Town will take the steps necessary to provide the longer period of five years from the date of vesting. The vesting rights granted hereunder shall be in addition to any rights granted under the Act.

(b) Notwithstanding anything in Section 5.02(a) to the contrary, if the Master Developer has not commenced any actual development, be it conceptual or physical of any Development Agreement Property by the end of the vesting period, then the Master Developer shall no longer

have any vested rights under the provisions of Section 160A-385.1 of the General Statutes as in effect on the effective date of this Agreement.

SECTION 5.03. SPECIFIC OBLIGATIONS. Without limiting the generality of any provisions of this Agreement with respect to the Master Developer's obligations hereunder, specific obligations of the Master Developer shall include, but not be limited to, the following activities:

(a) The Master Developer shall subsidize or supplement funding of the Infrastructure Improvement Costs as contemplated in this Agreement, only if and when funds are not available as described in Article VII and where such costs are incurred as the result of good engineering and construction practices, subject to market conditions and economic feasibility.

(b) The Master Developer shall assist the Town in the formation of a non-profit entity that will provide grants or other financing to property owners and the Town for improvements to both public and private property for the beautification of the U.S. Highway 17/NC Highway 133 Corridor Overlay Plan.

(c) The Master Developer shall pay for any reasonable design costs, engineering costs, consulting and permit application fees incurred by the Town that are necessary to review and permit Infrastructure Improvements contemplated by the Agreement.

(d) The Master Developer shall assist the Town with applying for any grants available for infrastructure needs, including providing all or a portion of local matching funds for such grants, in the sole discretion of the Master Developer.

(e) The Master Developer shall assist the Town with applying for any financing under the Project Development Financing Act, any other financing that may be available which does not require a pledge of the taxing power of the Town, grants available for Infrastructure Improvements, including providing all or a portion of local matching funds for such financing, in the sole discretion of the Master Developer.

(f) The Master Developer shall assist the Town with developing overlay district ordinances to accomplish the U.S. Highway 17/NC Highway 133 Corridor Overlay Plan, as contemplated by Section 7.A.1. above, and with obtaining a design of proposed improvements to U.S. Highway 17/NC Highway 133, Blackwell Road, Main Street and Old River Road within the corporate limits of the Town in order to achieve the U.S. Highway 17/NC Highway 133 Corridor Overlay Plan.

(g) The Master Developer shall preserve wetlands and other Areas of Environmental Concern, and any other environmentally sensitive property, as required in the CAMA and any other federal, State or local law, in such a way as to maintain the integrity and permanent protection of such lands through the use of conservation easements or similar instruments. Any such reservation or dedication of land shall be depicted in site specific development plans.

As set forth in Section 9.01, The Master Developer's obligations under this Section are conditioned upon the Town's formation of the Development Financing District and enactment of

supporting legislation; its receipt of the necessary approvals for project development financing and other appropriate financing as required by the State and contemplated by Article VII; and, the approval, establishment and implementation of the Master Redevelopment Plan and supporting zoning ordinances, design and technical standards required for implementation of the Master Redevelopment Plan. Such conditions are for the benefit of the Master Developer, and such conditions may be waived individually and need not be waived collectively by election of the Master Developer.

ARTICLE VI DEVELOPMENT AGREEMENT ACT REQUIREMENTS

SECTION 6.01. DESCRIPTION OF DEVELOPMENT AGREEMENT PROPERTY. Exhibit H attached hereto contains a legal description of the Development Agreement Property and the names of legal and equitable owners thereof as of the date of this Agreement.

SECTION 6.02. DURATION OF AGREEMENT. This Agreement will be deemed to have been accepted on the date this Agreement is approved by the Board but it shall not become effective until the date of adoption of the Amended Zoning Ordinance (the "Effective Date"). This Agreement shall be in full force and effect for a period of 20 years from the Effective Date. This Agreement may be extended by agreement of the parties hereto to the extent permitted by the Act.

SECTION 6.03. DEVELOPMENT USES. The development uses permitted on the Development Agreement Property, including population densities and building types, intensities, placement on the site and design are set forth in the Master Redevelopment Plan.

SECTION 6.04. PUBLIC FACILITIES. A description of public facilities that will service the Total Project, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development is set forth in the Master Redevelopment Plan.

SECTION 6.05. RESERVATIONS AND DEDICATIONS FOR PUBLIC USE. All Development Agreement Property that is to be reserved for public purposes or dedicated for public purposes and any provisions to protect environmentally sensitive property are set forth in the Master Redevelopment Plan.

SECTION 6.06. REQUIRED PERMITS. A description of all local development permits approved or needed to be approved for the development of the Development Agreement Property are set forth in Exhibit I attached hereto. The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Master Developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.

SECTION 6.07. MATTERS AFFECTING PUBLIC HEALTH SAFETY AND WELFARE. (a) Other than as set forth in the Master Redevelopment Plan, there are no

conditions, terms, restrictions, or other requirements determined to be necessary by the Town for the public health, safety, or welfare of its citizens.

(b) The Master Developer shall comply with all environmental laws in its development of the Development Agreement Property. Any Public Facilities Property or Exchange Properties conveyed by the Master Developer to the Town shall have been brought into compliance with applicable environmental laws prior to its being so conveyed and evidence thereof shall be provided the Town prior to conveyance. The Master Developer agrees to indemnify the Town to the extent that the Town incurs any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), directly or indirectly resulting from or based upon (a) violation of any environmental law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any hazardous materials, (c) exposure to any hazardous materials, (d) the release or threatened release of any hazardous materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing on any Public Facilities Property or Exchanged Properties conveyed to the Town by the Master Developer.

(c) Prior to the Town acquiring title to any Public Facilities Property or Exchanged Properties, the Town or Master Developer on its behalf shall have Phase 1 and Phase 2 environmental reports required to assess items of environmental concern or action prepared by qualified parties for the review and approval of the Town and the Master Developer and for submission to any appraiser charged with determining the Fair Market Value of the property to be acquired. The Master Developer, on behalf of the Town shall cause a remedial action plan complying with law to be prepared for such property and the Master Developer shall be obligated to undertake the actions to bring the property into legal compliance following the Town's acquisition. The costs of remediation shall be paid for from the Project Development Financing, or failing that, by the Town from funds advanced by the Master Developer. In the event the Master Developer does not proceed with the development of such property under the Master Plan or this Agreement is terminated, then at the Town's election, the Master Developer shall purchase any of the Public Facilities Properties or Exchanged Properties at the Town's original acquisition cost, plus reasonable and direct expenses related to the ownership and development of such property to the date of purchase.

SECTION 6.08. HISTORIC STRUCTURES. In view of the absence of historic structures in the Total Project Area, no provisions are required hereunder for the preservation and restoration of historic structures.

SECTION 6.09. DEVELOPMENT SCHEDULE. The Development Schedule includes commencement dates and interim completion dates at no greater than five-year intervals for the Development Agreement Property. The failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of this Agreement.

ARTICLE VII
FINANCING

SECTION 7.01. SOURCES OF FINANCING. The Town does not expect to incur obligations other than under the Project Development Financing Act or as permitted under the Urban Redevelopment Law to pay the costs of Infrastructure Improvements. To the extent that the Town obtains funds from these sources or from grants that may be made related to the Total Project, it will undertake to pay or reimburse the Master Developer in accordance with the following provisions. In no event shall the Town be obligated to levy and collect taxes to pay or reimburse any costs, all payments shall be contingent upon the receipt of funds from the sources of financing described herein and lawful appropriations by the Board and the obligations shall not constitute a pledge of the full faith and credit or taxing power of the Town.

SECTION 7.02. REIMBURSEMENT OR PAYMENTS TO MASTER DEVELOPER. (a) The Master Developer shall be entitled to be reimbursed by the Town for all Infrastructure Improvements Costs incurred, including, without limitation, the costs of Infrastructure Improvements and Municipal Building Costs, including but not limited to the Master Developer's overhead fees and expenses, interest on loans and advances pursuant to the terms of this Agreement but only from and to the extent of the sources set forth in this Section 7.02.

(b) To the extent that improvements to the Town's infrastructure are required to provide ordinary and customary municipal services to the Development Agreement Property, the Master Developer, in its sole discretion, may assist the Town with funding for such improvements. All costs and expenses incurred by the Master Developer in planning, designing, permitting and constructing any and all Infrastructure Improvements and off-site Infrastructure Improvements as contemplated in this Agreement, shall be credited or reimbursed to Master Developer pursuant to the provisions set forth in this Section 7.02.

(c) At the time that each phase of the Redevelopment Project is developed and in connection with such development, the Master Developer may cause, at its expense, on behalf of the Town, but reimbursable to the extent of funds available as provided in Section 7.01, the design, permitting and construction of the Infrastructure Improvements for the provision of municipal services, as contemplated by the Master Redevelopment Plan and in accordance with applicable laws and the Amended Zoning Ordinance. The Master Developer may contract for engineering, design, landscape, architectural and all other usual and customary services, as required to execute all infrastructure improvements, at competitive rates, on behalf of the Town, consistent with site plans approved as part of the Master Redevelopment Plan or as mutually agreed to by the Master Developer and the Town.

(d) The Master Developer hereby agrees to assist the Town in preparing and submitting any applications necessary for project development financing or an other financing that may be available to the Town with respect to the Total Project. If such financing is obtained, the Town shall reimburse the Master Developer from the proceeds of such financing within 30 days following receipt by the Town of a written request for reimbursement to the extent that such expenses are submitted in the manner required and otherwise qualify for reimbursement and/or payment under terms of such financing.

(e) The Town and Master Developer hereby agree that in the event that the funding from any source is conditioned upon the Town performing some or all of the contemplated improvements as set forth in this Agreement as a condition precedent to receiving such funding, the Town and Master Developer shall enter into an amendment to this Agreement for the purpose of reallocating such responsibilities, it being the intent of the Town and Master Developer to maximize the use of any source of funding that may be available to pay Infrastructure Improvement Costs or other costs related thereto.

(f) As a condition of any reimbursement, the Master Developer agrees to document all of the Infrastructure Improvement Costs as required by the Town and provide such documentation to the Town to be used in determining the reimbursement or credit due the Master Developer.

(g) The Master Developer shall be entitled, following written notice to the Town, to assign the right to receive reimbursement or any credits from the Town as contemplated in this Section to purchasers of the Development Agreement Property or portions thereof, at the Master Developer's sole discretion.

ARTICLE VIII AGREEMENT DETAILS

SECTION 8.01. DEFAULT AND TERMINATION. Either party may terminate this Agreement upon written notice to the other party if a material breach of the Agreement occurs which is not cured by the breaching party within 120 days of receiving written notice thereof or a longer time period as mutually agreed upon by the parties or determined by a court upon petition of either party; *provided, however*, if the breach is of a type that cannot be cured within such 120 day period, the breaching party shall not be deemed to be in default under this Agreement and the non-breaching party shall not have the right to terminate this Agreement pursuant to the terms set forth herein, if the breaching party has commenced to cure the breach within the 120 day period and is continuing to diligently pursue actions to cure the breach.

SECTION 8.02. AMENDMENTS. Pursuant to the Development Agreement Act and any applicable requirements for notice and public hearing, this Agreement may be modified, amended or cancelled by mutual consent of the parties hereto, evidenced by a written agreement signed by all parties and recorded in the real estate records of the County. In furtherance thereof, the Town and the Master Developer agree to negotiate in good faith as to any proposed amendments, but neither party shall be obligated to agree to any proposed amendment, subject, in all events, however, to the terms and provisions of the Act

SECTION 8.03. BENEFITS AND BURDENS. In accordance with the Development Agreement Act, the burdens of this Agreement shall be binding on, and the benefits of this Agreement shall inure to, all successors in interest and assigns of all parties hereto. In the event the Master Developer shall convey any parcel of the Property or portion thereof, the Master Developer shall, within 14 days following such conveyance, deliver to the Town a written acknowledgement of the party to whom such parcel or portion thereof was conveyed whereby such party accepts the assignment of and assumes the obligations of the Master Developer hereunder with respect to such conveyed parcel or portion thereof. Such party shall, as of the

effective date of such conveyance, be deemed the Master Developer under this Agreement relative to the portion of the Property acquired by such party.

SECTION 8.04. REVIEW. (a) Once every 12 months during the Term, the Town shall review the progress of the development of the Property. In order to assist in such review, the Master Developer shall, once every 12 months during the Term, provide the Town with a report setting forth in reasonable detail progress with respect to development of the Property, including both Infrastructure Improvements and other buildings and improvements, during the previous 12 months or since the most recent report submitted by the Master Developer pursuant to this Section 8.04. In conjunction with such periodic reports, the Master Developer shall also provide any additional information with respect to the development reasonably requested by the Town.

(b) If, as a result of such periodic review, the Town finds and determines that the Master Developer has committed a material breach of the terms or conditions of this Agreement, the Town shall serve notice in writing upon the Master Developer, within a reasonable time after the periodic review, setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination and providing the Master Developer a reasonable period in which to cure the material breach.

(c) If the Master Developer fails to cure the material breach within a reasonable period after the notice of default is given by the Town, then the Town unilaterally may terminate or modify this Agreement, in whole or in part, in accordance with any applicable requirements for notice and public hearings, *provided* that the Town has first given the Master Developer the opportunity:

(i) to rebut the finding and determination;

(ii) to consent to amend this Agreement to meet to the concerns of the Town with respect to the findings and determinations; or

(iii) the matter has been referred to a mediator and if necessary, an arbitrator pursuant to Section 8.05.

SECTION 8.05. MEDIATION; ARBITRATION. (a) The parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of dispute and the relief requested. The recipient of such notice will respond in writing within 10 days with a statement of its position on and recommended solution to the dispute.

(b) If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority will meet (or confer by teleconference) at a mutually agreeable time and place within 30 days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the dispute is not resolved by these negotiations, the matter shall be resolved by arbitration in accordance with the Rules of the American Arbitration Association. The arbitrator will be chosen as mutually agreed by the Master Developer and the Town. If the Master Developer and the Town are unable to reach agreement

with respect to the choice of an arbitrator, such arbitrator will be appointed by a superior court judge. The arbitrator shall determine if the party is in default, whereupon the defaulted party may cure such default, or begin the process by which such default may be cured within 120 days of such determination, and the arbitrator shall retain jurisdiction to supervise such cure. If the defaulted party fails or refuses to cure or undertake to cure the default, the other party may elect to terminate the agreement as herein provided. Such arbitration shall be conducted by a single arbitrator and shall be held in Brunswick County, North Carolina, unless another location is mutually agreed upon by all parties to such arbitration. The determination or award rendered by the arbitrator shall be binding and conclusive upon the parties and judgment may be entered thereon in accordance with applicable law and any court having jurisdiction.

SECTION 8.06. INDEMNIFICATION. (a) The Master Developer hereby warrants to protect, defend, indemnify and hold the Town harmless from and against any and all claims, damages, liabilities or expenses for physical damages or personal injury resulting from or caused by (i) any material breach or default of the Agreement by the Master Developer or (ii) any loss of life, personal injury and/or damage to property resulting from or caused by any negligent act or omission of the Master Developer, its employees, agents, contractors, representatives, licensees, assignees and successors in interest.

(b) The Town hereby warrants to protect, defend, indemnify and hold the Master Developer harmless from and against any and all claims, damages, liabilities or expenses for physical damage or personal injury resulting from or caused by (i) any material breach or default of the Agreement by the Town or (ii) any loss of life, personal injury and/or damage to property resulting from or caused by any negligent act or omission of the Town, its employees, agents and representatives.

(c) Each of the Town and the Master Developer agrees to use its best efforts to have the other party named as an additional insured or loss payee under the insurance procured to cover the applicable claims described in Sections 8.06(a) and (b) above, and each party agrees to exhaust all insurance proceeds available for such claims prior to pursuing any other remedies.

ARTICLE IX MISCELLANEOUS

SECTION 9.01. CONDITIONS TO OBLIGATIONS. (a) Notwithstanding anything to the contrary in this Agreement, the Town's and the Master Developer's obligations hereunder are expressly conditioned upon: (i) the formation and approval of the Development Financing District(s) and enactment of supporting legislation; (ii) the Town's receipt of the necessary approvals for project development financing; (iii) that the amount of funding from the project development financing is sufficient to cover the Infrastructure Improvements Costs and (iv) the approval, establishment and implementation of the Master Redevelopment Plan and the Amended Zoning Ordinance supporting required for implementation of the Master Redevelopment Plan. The Town's obligations to provide Infrastructure Improvements are conditioned upon the commencement of construction as provided in Section 3.01.

(b) Notwithstanding any other provision or obligation to the contrary set forth in this Agreement, it is understood and agreed by the parties hereto that the Town shall at all times be

required to operate and administer its obligations hereunder in accordance with the procedures and requirements set forth in the Project Development Financing Act, unless excepted by some other provision of law.

SECTION 9.02. GOVERNING LAWS. (a) The provisions of this Agreement shall be governed by, and construed in accordance with, the laws of the State. As provided in the Development Agreement Act, the laws applicable to the development of the Development Agreement Property shall be those in force on the Effective Date, and no future changes, after the Effective Date, in or amendments to local land development ordinances, laws, rules or regulations shall apply to the Development Agreement Property, and no other future legislative enactments of the Town shall apply to the Development Agreement Property, the development thereof or this Agreement except as contemplated in the Act.

(b) The development of the Development Agreement Property must comply with the North Carolina Building Code as regulated by the North Carolina Department of Insurance.

(c) If any state or federal laws or regulations that are enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, the provisions of this Agreement must be modified or suspended as necessary to comply with the state or federal laws or regulations.

SECTION 9.03. RECORDING. The Master Developer shall record this Agreement in the real estate records of the County within 14 days of the Effective Date.

SECTION 9.04. SEVERABILITY. If any provision in this Agreement or the application of any provision in this Agreement is held invalid, such invalidity shall apply only to such invalid provision, and the remaining provisions of this Agreement, and the application of this Agreement or any other provision of this Agreement shall remain in full force and effect.

SECTION 9.05. NOTICES. Unless otherwise specified in this Agreement, wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered within three days following deposit in the United States mail, postage prepaid, Certified or Registered Mail, Return Receipt Requested, addressed to the parties hereto at the respective addresses set out below, or at such other addresses as they may have hereafter specified by written notice. Additionally, delivery by hand or by recognized overnight carrier (such as Federal Express) to the address set out below shall be deemed to satisfy the notice requirements of this Agreement (effective upon the date of receipt or refusal of delivery).

If to Master Developer: Lance Jay Robbins, Principal
Urban Smart Growth
P.O. Box 3660
Hollywood, CA 90078
Telephone: 323-372-1300
E-mail: lancer@urbansmartgrowth.net

Copy to: Michael White, Developer

Five Points Development
1550 Point Harbor Road
Wilmington, NC 28401
Telephone: 910-254-2096
E-mail: mw@5pointsdevelopment.com

If to Town: Tracie Davis, Town Administrator
117-G Village Road
Leland, NC 28451
Telephone: 910-371-2456
E-mail: traciedavis@townofbelville.com

Copy to: Jim Eldridge, Town Attorney
201 North Front Street, Suite 906
Wilmington, NC 28401
Telephone: 910-815-0107
E-mail: jec@ec.rr.com

SECTION 9.06. BINDING EFFECT; ASSIGNMENT. This Agreement shall run with the land and bind the Development Agreement Property and shall be binding upon and inure to the benefit of the successors and assigns of the Master Developer as to all or any portion of the Property. The Master Developer shall be entitled to assign its right, title and interest in and to this Agreement, in whole or in part, to any entity which controls Master Developer, which is under common control with Master Developer, or which Master Developer controls or to any entity or party which owns any portion of the Property. Except for the successors and assigns of the Master Developer, the Parties hereto do not intend to benefit any third parties by reason of the provisions or undertakings hereof.

SECTION 9.07. INTEGRATION. This Agreement and the exhibits referred to herein contain the whole agreement between the parties relating to the transactions contemplated by this Agreement and supersede all previous understandings and agreements between the parties relating to these transactions. Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and the exhibits hereto) made by or on behalf of any other party or any other person whatsoever before the Agreement Date. Each party waives all rights and remedies which, but for this Section 9.07, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance, *provided* that nothing in this Section 9.07 shall limit or exclude any liability for willful misconduct or fraud.

SECTION 9.08. COUNTERPARTS. This Agreement may be executed in two or more counterparts and shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of each of the parties hereto (although it shall not be necessary that any single counterpart be signed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute but one and the same instrument), and shall have been delivered by each of the parties to the other. Delivery of an executed


counterpart of a signature page of this Agreement by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

[Signatures Begin on Following Page]

IN TESTIMONY WHEREOF, the Town has caused this instrument to be executed as its act and deed by the Mayor, and its corporate seal to be hereunto affixed, and attested by its Town Clerk, all by the authority of its Board of Commissioners; and the Master Developer has executed or caused this document to be executed by them, all as of the day and year first above written.

TOWN OF BELVILLE

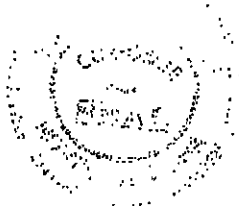
By:


Mayor

ATTEST:

Tracie K. Davis

Town Clerk
Town of Belville, North Carolina



This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Chris Sammons

Name: Chris Sammons
Finance Officer, Town of Belville, North Carolina

[Signature Page to Development Agreement]

URBAN SMART GROWTH, LLC
A Limited Liability Company

(SEAL)

By:


Individual Manager

_____ COUNTY, _____ STATE

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____
_____ (insert name(s) of signer(s)).

Date _____

Signature of Notary Public

My commission expires: _____

(Official Seal)

see attached certificate

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

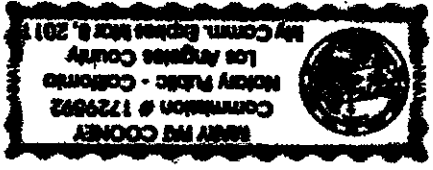
State of California

County of Los Angeles

On October 26, 2007 before me, Mary Pat Cooney, Notary Public

personally appeared Lance Jay Robbins

- personally known to me
 (or proved to me on the basis of satisfactory evidence)



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature Mary Pat Cooney
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: (Copy of 4) Development Agreement - CSX & USG, LLC

Document Date: not dated Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

- Signer's Name: _____
Individual
Corporate Officer — Title(s): _____
Partner — Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other: _____



Signer is Representing: _____

- Signer's Name: _____
Individual
Corporate Officer — Title(s): _____
Partner — Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other: _____



Signer is Representing: _____