



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made and entered into this 2nd day of October, 2007, by and between the Town of Belville, North Carolina (the “Town”) and Urban Smart Growth, LLC for and on behalf of itself and such related entities as it designates (the “Developer”).

WHEREAS, the Town and the Developer have a common interest in the redevelopment of the central business district of the Town and related development on property in the general area (collectively the “Overall Development Area”); and

WHEREAS, the Town is in the process of establishing a redevelopment area (the “Redevelopment Area”) under the Article 22 of Chapter 160 of the N.C. General Statutes (the “Urban Redevelopment Law”) as a means of undertaking the activities permitted under the Urban Redevelopment Law; and

WHEREAS, the Developer owns and expects to own properties in the Redevelopment Area and also in the Overall Development Area, which the Developer expects to redevelop and develop in conjunction with the Town, but in order to make reliable plans for such redevelopment and development desires to enter into a development agreement (the “Development Agreement”) in order to provide certainty for planning and implementation in accordance with the provisions of Part 3D of Article 19 of Chapter 160A of the N.C. General Statutes (the “Municipal Development Agreement Act”); and

WHEREAS, as means of providing funding for certain activities of the Town, the Town is proceeding under the provisions of Article 6 of Chapter 159 of the N.C. General Statutes (the “Project Development Financing Act”) to provide for project development financing debt instruments and use the proceeds for the purposes specified therein in a development financing district (the “Development Financing District”) to be established under N.C. General Statutes Section 160A515.1 or 158-7.3 (the “PDF District Acts”); and

WHEREAS, the Developer has advised the Town that the Developer needs to make commitments with respect to properties and continue activities relating to the planning and development in the Overall Development Area and has requested that the Town provide it with reassurance of the Town’s intent to proceed; and

WHEREAS, the Town has concluded that it is in the best interests of the Town to provide such reassurance to the Developer and to signify the Town’s intent to proceed;

NOW THEREFORE, the parties hereto do agree to enter into this Memorandum of Understanding (the “MOU”) to set forth their undertakings and understandings in the pursuit of the common goals in accordance with the following:

1. *Intent of MOU*. This MOU is being entered into to express the understanding of the Town and the Developer. The Town intends for the Developer to rely on the Town’s willingness to proceed subject to (i) reaching final agreement with the Developer on the terms of a Development Agreement and (ii) the satisfaction of the requirements of law and obtaining (y) the consent of the Board of Commissioners of Brunswick County and (z) such approval from the Local Government Commission with respect to project development financing as is required. The Developer acknowledges that that the Town cannot guarantee

that any legislative action required by the Board of Commissioners will be taken nor can it assure the cooperation of the Board of Commissioners of Brunswick County or the approval of the Local Government Commission. The Board of Commissioners of the Town has approved this MOU and this MOU expresses the current intent of the Board of Commissioners.

2. *Development Agreement.* The parties shall negotiate the Development Agreement so that it will meet the requirements set forth in the Municipal Development Agreement Act and shall complete those negotiations promptly so that a copy of the proposed Development Agreement will be available for review prior to the public hearing which the Town has scheduled for October 22, 2007. The Town will provide for proper notification of the public hearing. At the conclusion of the public hearing, the Town expects that it will adopt a resolution to authorize the Development Agreement, conditioned upon the resolution of certain pending zoning matters.

3. *Urban Redevelopment Law.* The Town and the Developer agree that the Town will need to exercise powers under the Urban Redevelopment Law in order to achieve the goals of the Town and meet some of the obligations of the Town under the Development Agreement. Accordingly, the Town has agreed to hold the public hearing required in connection therewith on October 22. The Town expects that upon conclusion of the public hearing, the Town will adopt a resolution to proceed under the Urban Redevelopment Law.

4. *Financing.* The Town is undertaking to create a Development Financing Plan and establish a Development Financing District under the PDF District Acts and to obtain 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 improvements. The Town will work with the Developer to determine the improvements to be funded to the fullest extent possible.

5. *General Obligations of Town.* The specific obligations of the Town will be provided in the various agreements yet to be completed or approved. In general, however, the Town expects to use its best efforts to accomplish the following:

(a) Create and designate an area in which development and redevelopment may occur. This designation may be different for purposes of the Development Agreement, the Urban Redevelopment Law and the PDF District Acts. Designation of these areas will be based on a Master Development Plan the preliminary version of which has been agreed to in principal by the Town and further changes to which the Town will negotiate with the Developer. Designation of any area will be subject to the any law relating to the designation of such area under the applicable statutory provision.

(b) Adopt proceedings as outlined in section 2, 3 and 4 above. The Town and the Developer acknowledge that there is a moratorium on certain development approvals in place and that the Town is following a process to establish new zoning rules and regulations as required under the moratoria ordinances. In light of the moratorium, the final approval of a development agreement may be delayed.

(c) Cooperate with the Developer in adopting an overall plan for the development and redevelopment of the areas identified in (a) above. Where appropriate, and subject to the limits of law, the Town will consider the use of the power of eminent domain to acquire properties which are for a public use.

(d) Work with the Developer to provide adequate infrastructure to the area being developed and redeveloped.

(d) The Town will retain such advisors as are necessary to facilitate the implementation of the Master Development Plan.

In discharging its obligations, the Town will incur expenses that are not provided for in its budget. The Town can only proceed to the extent funding is made available by the Developer or through project development financing debt instruments. The Town will reimburse the Developer for any funds the Developer advances on behalf of the Town to the extent that funds are available therefor from sources related to the development and redevelopment including any grants that may become available and the proceeds of any financing pursuant to the Project Development Financing Act.

6. *General Obligations of the Developer.* Pending the completion of the Development Agreement, which will contain specific undertakings as required under the Municipal Development Agreement Act, the Developer expects to use its best efforts to do the following:

(a) Develop a Master Development Plan that encompasses the central business district of the Town and surrounding areas to be developed in concert. The Developer will work in conjunction with the Town to provide a revived urban center attractive and desirable in relation to Wilmington and complementary to the current development in Wilmington.

(b) Assist the Town in undertaking the activities necessary to achieve the Master Development Plan and cooperate with staff of the Town to that end.

(c) Provide the financial assistance for the Town as referred to in the last sentence of Section 5.

(d) Commit in the Development Agreement to a schedule for the development proposed in the Master Development Plan.

7. *Contingencies to Completion of Plan; Termination of this MOU.* The following conditions precedent:

(a) The adoption by the Town of such ordinances and resolutions as are required.

(b) The agreement by the County and the Local Government Commission relating to any project development financing.

(c) The availability of utility services.

(d) The completion of a Development Agreement acceptable to the Town and the Developer.

(e) The approval by such governmental bodies other than the Town that is required to implement any portion of the Master Development Plan.

(f) General economic conditions or changes in law that are not foreseeable at the time this MOU is executed that would make the development contemplated hereby infeasible.

The obligations of the parties hereunder may be terminated at any time by written notice of either party to the other.

8. *Costs.* In consideration of the Town pursuing its undertakings hereunder, the Developer agrees to reimburse or pay any costs incurred by the Town for (i) fees to consultants for a market study and

economic impact analysis which will be needed in connection with funding for the development if the Development Agreement is approved (ii) one-half of all legal fees and expenses incurred by the Town in connection herewith until a Development Agreement is approved and thereafter as provided in the Development Agreement and (iii) all costs for publication or other out-of-pocket expenditures of the Town.

9. *Severability.* The invalidity or unenforceability of any provision of this MOU shall not affect the other provisions hereof, and this MOU shall be construed in all respects as if such invalid and unenforceable provisions were omitted.

10. *Counterparts.* For the convenience of the parties hereto, any number of counterparts hereof may be executed and each such counterpart shall be deemed to be an original instrument.

7. *Governing Law.* This MOU shall be governed and construed in accordance with the laws of the State of North Carolina.

11. *Classification Of Headings.* Titles of the paragraphs and subparagraphs included herein have been inserted as a matter of convenience of reference only and shall not affect the meaning or construction of any of the terms or provisions hereof.

IN WITNESS WHEREOF, the Town of Belville hereto has caused this Memorandum of Understanding to be duly executed as of the 2nd of October, 2007.

TOWN OF BELVILLE

Mayor

IN WITNESS WHEREOF, the Developer has caused this Agreement to be duly executed as of the 2nd day of October, 2007.

Urban Smart Growth, LLC

INDEX OF ATTACHMENTS HERETO:

Exhibit 1 Master Development Plan

EXHIBIT 1

Master Development Plan
(to be attached)