

DEVELOPMENT AGREEMENT

This Development Agreement, created pursuant to and in accordance with N. C. General Statutes Chapter 160A, Article 19, Part D, § 160A-400.20 *et seq.*, is entered into as of the 13th of June, 2019 by and between JBH Development LLC a North Carolina limited liability company (hereinafter referred to as “the Developer”), and the City of Locust, North Carolina, a municipal corporation of the State of North Carolina (hereinafter referred to as “the City”).

1. DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings set forth below. Capitalized terms not defined below shall have the meanings given them in Section 160A-400.21 North Carolina General Statutes.

- (a) “City” shall mean the City of Locust, North Carolina.
- (b) “Developer” shall mean JBH Development LLC, a North Carolina limited liability company.
- (c) “Approval Date” shall mean June 13, 2019, the date upon which the City Council of Locust approved the form and execution of this Agreement by the City.
- (d) “Project” shall mean the proposed residential subdivision off Elm Street in Locust NC .
- (e) “Property” shall mean the real property described in Paragraph 2 hereof..
- (f) “Standards” shall mean the standards imposed for design, construction, acceptance and/or dedication, as to a specific improvement, by City of Locust ordinances (including without limitation zoning ordinances) in effect as of the Approval Date, other applicable governmental statutes, laws or regulations, and accepted engineering standards and practices.

- (g) “Effective Date” shall mean the latter of the date upon which this Agreement has been executed by both parties.
- (h) “NCDENR” means the North Carolina Department of Environment and Natural Resources.
- (i) “NCDOT” means the North Carolina Department of Transportation.

2. THE PROPERTY

The Property is comprised of approximately 121.98 acres located along Elm Street in Locust, Stanly County, North Carolina, which is identified as Stanly County GIS tax Parcel Identification Numbers: 57504806640, 557402797828 and 557402793292. See attached Exhibit A for Legal Description of the Property and Exhibit B for Site Plan of the Project, both exhibits being incorporated herein by reference.

3. TERM

This Agreement shall commence upon the Effective Date and shall expire on the 20th anniversary of such date. In the event that the Effective Date has not occurred within one calendar year after the Approval Date, then this Agreement shall become null and void.

Notwithstanding the term set forth above, this Agreement will be subject to City of Locust Subdivision Ordinance Article 6.530, which states: “An approved preliminary plan will be valid for a period of three (3) years from the date of approval. If no work in furtherance of the plan except grading on the site has commenced within the three-year period, the preliminary plan approval will become null and void and a new application will be required to develop the site. If work on the site in furtherance of the plan has commenced, and such work involves any utility installations or street improvements except grading, the plan will remain valid and in force.”

4. PERMISSIBLE USES

Uses permitted on the property shall be limited to those permitted in the Open Space Zoning District as such district is defined by the City’s zoning ordinance in effect on the Approval Date. The proposed density of the project is hereby set at 2.20 dwelling units per acre not to exceed 268 single family units.

5. PUBLIC FACILITIES

The following Public Facilities will be installed by the Developer to serve the Project:

(a) Domestic Water System. Domestic water service will be provided by Stanly County. Developer will construct, in accordance with Stanly County Utility Standards and NCDEQ permitting requirements, a water supply system within the boundaries of the Property, including without limitation laterals and the connection of such system to the extended municipal water lines. Developer will be solely responsible for the cost of designing and constructing such water supply system. Fire Hydrants will be located no further than 400 feet apart measured by linear hose lay.

(b) Sanitary Sewer System. Sanitary sewer service will be provided by the City. Developer will construct, in accordance with City of Locust Standards and NCDEQ permitting requirements, a sanitary sewer collection system within the boundaries of the Property, including without limitation laterals, cleanouts, and the connection of such system to the extended municipal sewer lines. Developer will be solely responsible for the cost of designing, constructing such sanitary sewer collection system.

(c) Public Access. Public access will be developed and installed in accordance with the approved final plat of the Project.

(d) Streets & Sidewalks. Developer will construct *Neighborhood Street (Type 1)* streets (as per City of Locust – Land Development Ordinance Article 5 “Street Design”) with a minimum 40’ right of way. The right of way must include: two 9’ traffic lanes, one 8’ on street parking lane, minimum 4’ sidewalks on both sides, and minimum 2’ planting strip on both sides. Developer agrees to install all public utilities on the planting strip.

The City’s consulting engineer shall inspect the construction of Public Facilities as required by City ordinances prior to the connection of same to the City’s system. Inspection by the City’s consulting engineer shall not impose upon the City any liability for the inspection or construction of Public Facilities, nor shall the City’s consulting engineer or the City have any liability or responsibility with respect to the construction of the Public Facilities, the function of the City’s consulting engineer being solely for the purpose of determining whether said Public Facilities will qualify for acceptance by the City and connection to the governmental utility and street systems.

The Developer agrees that all construction contracts shall have a provision providing for customary warranties for not less than one year from completion date with respect to the work and material furnished and that said warranties may be assignable and enforceable by the City and/or the Developer. Acceptance of Public Facilities for connection to governmental street and utility systems shall not be evidence that the Public Facilities are free from defect or that the contractors constructing the same have no further liability with respect to warranties.

The Developer shall coordinate its activities with the City’s consulting engineer to permit the City’s consulting engineer to make inspection as herein provided. A pre-construction meeting with City officials (Public Works Director or his designee and the City’s

consulting engineer) is required to be held prior to any work beginning on the construction on the Project. The Developer and the contractors who will construct Public Facilities are required to be present at this meeting. The Developer's engineer is required to conduct a minimum of two (2) on-site inspections during the installation of the Public Facilities, with representatives of the City Public Works Department and the City's consulting engineer. The Developer's engineer or designated representative must be present during all testing procedures. The Developer's engineer shall provide testing reports to the City as work on Public Facilities progresses.

Upon completion of construction of Public Facilities, such Public Facilities shall be dedicated to the appropriate governmental authority in accordance with the ordinances or laws provided therefore. Easements for the Sanitary Sewer System and the Domestic Water System in the required form shall be granted, and the improvements conveyed, to the appropriate governmental authority

6. OTHER FACILITIES

In addition to the Public Facilities, Developer will construct other improvements on the Property in accordance with the Plans, including without limitation:

- (a) Storm Water Collection System. Developer will construct, in accordance with the Standards, a system to collect storm water from the Property.
- (b) Amenity Facilities. The Developer will construct, in accordance with the Plans, a minimum of one (1) playground and one (1) dog park or pocket park for the exclusive use of the community. The amenities will include appropriate vehicle parking and pedestrian access. The Developer hereby agrees that all amenities offered to the community will not be less than those proposed during the March 2019 City Council meeting.

7. CONDITIONS

- a) Pursuant to NCGS 160A-400.25, this development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement. Upon the Effective Date of this Agreement, the development schedule will be attached hereto as Exhibit C and incorporated herein by reference.
- b) The Developer agrees to install all Public Facilities referenced under Paragraph 5 hereof.
- c) The Developer agrees to perform appropriate road improvements on Elm Street as per N.C.D.O.T. Division #10 instructions.
- d) The Developer agrees to submit a development schedule indicating phases and number of houses in each phase.

- e) All lots will have a minimum width of 70 feet.
- f) All house slabs and crawl space foundations will have a minimum width of 38 feet.
- g) The Developer agrees to provide access to the Elm Street Pump Station (ESPS) for Locust Public Works to access the facilities on site.
- h) The Developer agrees to the following architectural requirements:
 - a. The front elevation of each house located in any phase of the Subdivision shall have a combination of two (2) of the following construction materials: siding, stone, stucco, and/or masonry; or incorporate a minimum of 2 architectural features from the following list:
 - i. Reverse gable, 2 or more roof planes, or a hip roof.
 - ii. Covered porch or veranda.
 - iii. At least 2 feet of relief at one or more points along the front of the face.
 - iv. Accent siding (i.e. shake or half round pattern)
 - v. Decorative front door (i.e. sidelights, window panes, etc.)
 - b. Exterior siding will be fiber-cement, beaded vinyl, board and batten vinyl, clapboard vinyl, stone, stucco, and/or masonry. No Dutchlap vinyl siding will be permitted,
 - i. Minimum thickness of vinyl siding shall be 0.042"
 - ii. Minimum warranty of vinyl siding shall be 25 years
 - c. Roofs will consist of architectural shingles or standing seam metal,
 - d. A tree is to be planted in the front yard of each developed lot, outside of the public right of way. The Developer agrees to implement restrictive covenants that require the property owner to maintain the tree.
 - e. The roof on each house located in any phase of the Subdivision shall have the following minimum overhangs: twelve (12) inches in front, twelve (12) inches in back, and if a turn gable is used it shall be eight (8) inches on the side. Gutters shall be installed on the front and rear of each home,
 - f. All decorative porch columns must be a minimum of eight (8) inches at the base,
 - g. If a home is constructed with a front-loading garage, the garage will not extend more than five (5) feet past the front façade of the structure.
 - h. Each house located in any phase of the Subdivision shall have a minimum of a two (2) car garage.

8. LOCAL DEVELOPMENT APPROVALS

- (a) Developer has obtained the following local developmental approvals:
 - (i) The property is zoned Open Space (OPS).

- (ii) The Preliminary Site-Plan is approved.
 - (iii) The Developer agrees to voluntary annex the property PIN# 557504806640 and 557402797828 to receive access to sanitary sewer services from the City,
- (b) Prior to commencement of site development work, Developer must obtain:
- (i) Approval of a Land Disturbance or Land Quality Permit from NCDENR.
 - (ii) Approval of Wetland, Water Quality, and/or stream crossing impact Permit from NCDENR, or US Army Corps of Engineers.
 - (iii) Approval of engineered site plans by the City's consulting engineer, Planning Director, and Public Works Director.
- (c) Prior to commencement of construction of a specific building, Developer must obtain:
- (i) Compliance letter from the City.
 - (ii) A Building Permit from Stanly County Central Permitting Office.

The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer of the necessity of complying with the law governing the permitting requirements, conditions, terms, or restrictions.

9. PAYMENTS, FEES AND SECURITY

In connection with the development of the Property, the Developer shall make the following payments.

- a) Tap Fees. Tap fees for connection to the sanitary sewer system shall be those in effect at the time such payment is due.
- b) System Development Fees. System Development Fees for the connection to the Sanitary Sewer System shall be those in effect at the time such payment is due. Pursuant to the Public Water and Sewer System Development Fee Act, S.L. 2017-138, the local government utility must collect the System Development Fees at the later occurrence of the following: the time of plat recordation, or when service is committed by the local government unit.
- c) Compliance Fees. The fees for the issuance of a zoning compliance letter shall be those in effect at the time of payment.
- d) Security. As security for its obligation to construct the Public Facilities described in Paragraph 5.c and 5.d of this Agreement, Developer shall provide the City a performance guarantee which complies with the provisions of NCGS § 160A-372(g). The performance guarantee may be in the form of a surety bond issued by a company licensed to do business in North Carolina, a cash deposit, a certified check, or irrevocable letters of credit issued by a bank or financial

institution licensed to do business in North Carolina. Such performance guarantee shall be placed or drawn in such a manner that the City Administrator, in case of default or failure by the Developer to construct the Public Facilities as herein provided, may draw upon the security deposit to complete the Public Facilities. In the case of an irrevocable letter of credit the same shall run for a period of not less than twelve (12) months, and it is agreed that, if, prior to the end of the twelve (12) months' period, that the Developer has not provided proof of completion and payment for the Public Facilities, then the letter of credit shall be extended by the Developer for another twelve (12) month period, such extension to be in place prior to the lapse of the first twelve (12) months' period. Failure of the Developer to obtain a letter of credit for the second twelve (12) months' period, or any other extended period, shall be a default hereunder and the City Administrator is authorized to immediately draw upon all or any part of the security. The amount of the performance guarantee shall be One Hundred Twenty Five Percent (125%) of the cost, as estimated by the Developer's engineer and verified by the City's consulting engineer, of constructing the public streets and sidewalks described in Paragraph 5 of this Agreement. The performance guarantee will be provided by the Developer to the City Administrator upon the approval and recording of the final plat of the Development and shall be returned or released or used pursuant to the provisions of NCGS § 160A-372(g).

10. COMPLIANCE

Each year during the term of this Agreement, the City Administrator shall make a determination as whether the Developer is in good faith compliance with the terms of this Agreement. At such time, the City Administrator may, by written request to Developer, require that Developer provide evidence of such compliance. The City Administrator shall provide the City Council with a written report of such determination on or before the City Council meeting which first succeeds the anniversary date of the meeting at which this Agreement was approved.

If, as a result of such review, the City finds and determines that Developer has committed a material breach of the terms or conditions of this Agreement, City shall serve notice in writing, within a reasonable time after the periodic review, upon Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing Developer a reasonable time in which to cure the material breach not to exceed ninety (90) days.

11. REMEDIES

In the event of the breach of this Agreement by either party, the non-breaching party shall have available to it all remedies available at law, or in equity, including without limitation those created by NCGS 106A-400.20, et seq.

In addition, in the event of a default under this Agreement by the Developer with respect

to the completion of the Public Facilities, then the City shall, after ten (10) days written notice, have the right to draw upon the performance guarantee and complete the Public Facilities, leave the Public Facilities as then in existence and make settlement (at the option of the City) with contractors or other persons with claims for the cost of the construction of the Public Facilities, retain the proceeds of the performance guarantee as security for the performance of Developer's obligations to construct the Public Facilities, and take any other action that may be necessary or appropriate to protect the interest of the general public in having the Project developed according to the Standards.

12. NOTICE

Notice given pursuant, or with respect to this Agreement shall be given to the City at:

The City of Locust
Attention: City Administrator
186 Ray Kennedy Drive
Locust, North Carolina 28097

And to Developer at:

J. Bart Hopper
JBH Development LLC
1616 Cleveland Avenue
Charlotte, NC 28203

In the event that a party to this Agreement desires to change its address for notice, or becomes entitled, by virtue of obtaining fee ownership of a legally subdivided portion of the Property, it may do so by providing written notice thereof to the other party (or parties) in accordance herewith, and recording a copy of such notice, referencing this Agreement by title and recording reference, in the real estate records of the Register of Deeds of Stanly County, North Carolina.

13. OTHER PROVISIONS

Within 14 days after the Effective Date, Developer shall record this Agreement with the Register of Deeds of Stanly County, North Carolina..

This Agreement may not be amended, changed, modified or altered without the express written consent of both the City and the Developer, or their heirs or assigns. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings between them, whether written or oral.

This Agreement shall be governed by and construed in accordance with the laws of the state of North Carolina. Both parties consent to the personal jurisdiction of the courts of

the State of North Carolina and Stanly County with respect to litigation of matters arising out of or related to this Agreement.

This agreement shall be a covenant running with the Property, and the burdens and benefits of this Agreement are binding upon, and shall inure to the benefit of, all successors in interest to the parties to the Agreement.

IN WITNESS WHEREOF, the forgoing Agreement has been duly executed by the parties on the dates set forth below their signatures:

JBH DEVELOPMENT L.L.C.

BY: _____
J. Bart Hopper, Manager

CITY OF LOCUST

BY: _____
Cesar Correa, City Administrator

Attested: _____
Amy Meachum, City Clerk

STATE OF NORTH CAROLINA, COUNTY OF _____.

I, _____, a Notary Public for said County and State, do hereby certify that J. Bart Hopper, Manager of JBH Development L.L.C., a limited liability company personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this ____ day of _____, 20__.

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____ (affix seal)

STATE OF NORTH CAROLINA, COUNTY OF STANLY.

I, _____ a Notary Public for said County and State, do hereby certify that Amy Meachum personally came before me this day and acknowledged that she is City Clerk of the City of Locust, a North Carolina Municipal Corporation, and that by the authority duly given and as an act of the City, the foregoing instrument was signed in its name by Cesar Correa, its City Administrator, sealed with the City's seal, and attested by herself as the City Clerk.

Witness my hand and official stamp or seal, this ____ day of _____, 20__.

NOTARY PUBLIC

Printed Name: _____

My Commission Expires: _____ (affix seal)

EXHIBIT A
Legal Description

TRACT ONE: BEGINNING at a stake in the center of N. C. SR #1137, the common corner of B. W. Drye and C. L. Drye in the old line of T. M. Hartsell estate; thence with the B. W. Drye line S. 44-27 W. 343.7 feet to a new iron pipe, common corner of B. W. Drye and C. S. Drye; thence with the C. S. Drye line N. 61-19 W. 1340.6 feet to a new iron pipe, the C. S. Drye corner; thence with the C. S. Drye line S. 22-35 W. 349.8 feet to a new iron pipe in the J. Ranzy Little line; thence N. 57-48 W. 462 feet to an existing iron pipe; thence N. 60-39 W. 832.2 feet to an existing iron pipe by a pine knot; thence N. 24-31 E. 334.2 feet to an existing iron pipe; thence N. 54-35 W. 264.2 feet to an existing iron pipe; thence N. 41-25 E. 66 feet to an existing iron pipe; thence N. 51-25 E. 537.9 feet to an existing iron pipe, the C. L. Smith estate (now or formerly); thence S. 85-24 E. 776.8 feet to an existing iron pipe; thence N. 48-01 E. 169.2 feet to a stake in the center of N. C. SR #1137; thence with the center of said N. C. SR #1137 sixteen (16) calls as follows: (1) thence S. 41-55 E. 178.6 feet to a stake in the center of said SR #1137, the Larry Barbee corner, which point is 42.7 feet West of an existing iron pipe in the East right-of-way of said N.C. Sr #1137; (2) thence S. 41-39 E. 250 feet; (3) thence S. 42-49 E. 100 feet; (4) thence S. 44-35 E. 100 feet; (5) thence S. 46-03 #. 100 feet; 96) thence S. 46-57 E. 100 feet; (7) thence S. 47-56 E. 150 feet; (8) thence S. 50-10 E. 150 feet; (9) thence. 51-35 E. 150 feet; (1) thence S. 49-25 E. 100 feet ; (11) S. 42-16 E. 100 feet; 912) thence S. 34-37 E. 100 feet; (13) thence S. 28-55 E. 100 feet; (14) thence S. 27-23 E. 100 feet; 915) thence S. 26-54 E. 100 feet; (16) thence S. 27-36 E. 274 feet to the point of Beginning and containing 59.81 acres.

LESS AND EXCEPT ANY PRIOR CONVEYANCES AND SUBJECT TO ANY RESTRICTIONS OF RECORD.

TRACT TWO: Adjoining Tract One and BEGINNING at a stake in the center of N. C. SR #1137, common corner of B. W. Drye and C. L. Drye in the old line of the T. M. Hartsell estate property and runs thence with the center of said road fifteen (15) calls as follows: (1) thence N. 27-36 W. 274 feet; (2) thence N. 26-54 W. 100 feet; (3) thence N. 27-23 W. 100 feet; (4) thence N. 28-55 W. 100 feet; (5) thence N. 34-37 W. 100 feet; (6) thence N. 42-16 W. 100 feet; (7) thence N. 49-25 W. 100 feet; (8) thence N. 51-35 W. 150 feet; (9) thence N. 50-10 W. 150 feet; (10) thence N. 47-56 W. 150 feet; (11) thence N. 46-57 feet W. 100 feet; (12) thence N. 46-03 W. 100 feet; (13) thence N. 44-35 W. 100 feet; (14) thence N. 42-49 W. 100 feet; (15) thence N. 41-39 W. 250 feet to an iron stake in the center of said N. C. SR #1137; thence S. 85-24 E. passing an existing iron pipe in the right-of-way of said N. C. SR #1137 42.7 feet and continuing for an additional 447.4 feet for a total distance of 490.1 feet to a steel tract, Larry Barbee's corner; thence with the Larry Barbee line S. 66-10 E. 1410.8 feet crossing Hartsell's Branch and then crossing Farm Road to an existing iron pipe by a cedar; a corner in the line of C.S. Drye; thence with the C. S. Drye line S. 07-11 W. 406.2 feet to a new iron pipe; thence S. 44-27 W. 667.6 feet to the point of Beginning, containing 23.43 acres, as surveyed by Dent Hall Turner, Registered Land Surveyor, August 31, 1976, and as shown on an unrecorded plat made as a result of said survey.

For back reference see deed from Earl H. Hartsell, Jr. (single) to J. Fetzner Hartsell dated September 15, 1976 and recorded in Book 296 at Page 514, Stanly County Registry.

LESS AND EXCEPT ANY PRIOR CONVEYANCES AND SUBJECT TO ANY RESTRICTIONS OF RECORD.

TRACT THREE: All of that certain tract of land designated as Tract #11 containing 53.55 acres as shown on a map entitled "Property of C. L. Smith Estate" prepared by Gerald H. Ehringer, Consulting Engineer, dated March 24, 1967, and recorded in Plat Book No. 5 on Page 198 in the Office of the Register of Deeds for Stanly County, North Carolina, to which plat reference is hereby made for a full and complete description of said tract by metes and bounds.

For back reference see deed recorded in Book 229 at Page 445, Stanly County Registry.

LESS AND EXCEPT ANY PRIOR CONVEYANCES AND SUBJECT TO ANY RESTRICTIONS OF RECORD.

AND FURTHER LESS AND EXCEPT an approximately one and a half-acres tract of land including the house located at 16042 Elm Street as shown in red on Exhibit B, which will be surveyed off and retained by the current owner.

TRACT FOUR: BEGINNING at a PK nail in the center of N.C. SR #1137 (Elm Street), which point is the common corner of the grantors named herein and Betty Poplin Connell tract, deed for which is duly recorded in Deed Book 324, Page 875, Stanly County Registry, and which point is also 100 feet Northwest from a railroad spike in the center of said road, and runs thence with the Betty Poplin Connell line N. 48-21 E. 143.78 feet to an iron in the line of the Larry Barbee tract, deed for which is duly recorded in Deed Book 229, Page 446, Stanly County Registry; thence with the Barbee line N. 85-26-46 W. 207.81 feet to a railroad spike in the center of said N.C. SR7; thence with the center of N.C. SR #1137 S. 41-39 E. 150.04 feet to the point of Beginning, and containing 0.25 acre (10,786 square feet), as surveyed by Richard Boyd Brooks, Registered Land Surveyor, and as shown on an unrecorded plat made as a result of said survey and dated November 11, 1982.

For back reference see deed recorded in Book 332, Page 157, Stanly County Registry.

LESS AND EXCEPT ANY PRIOR CONVEYANCES AND SUBJECT TO ANY RESTRICTIONS OF RECORD.

EXHIBIT B Site Plan

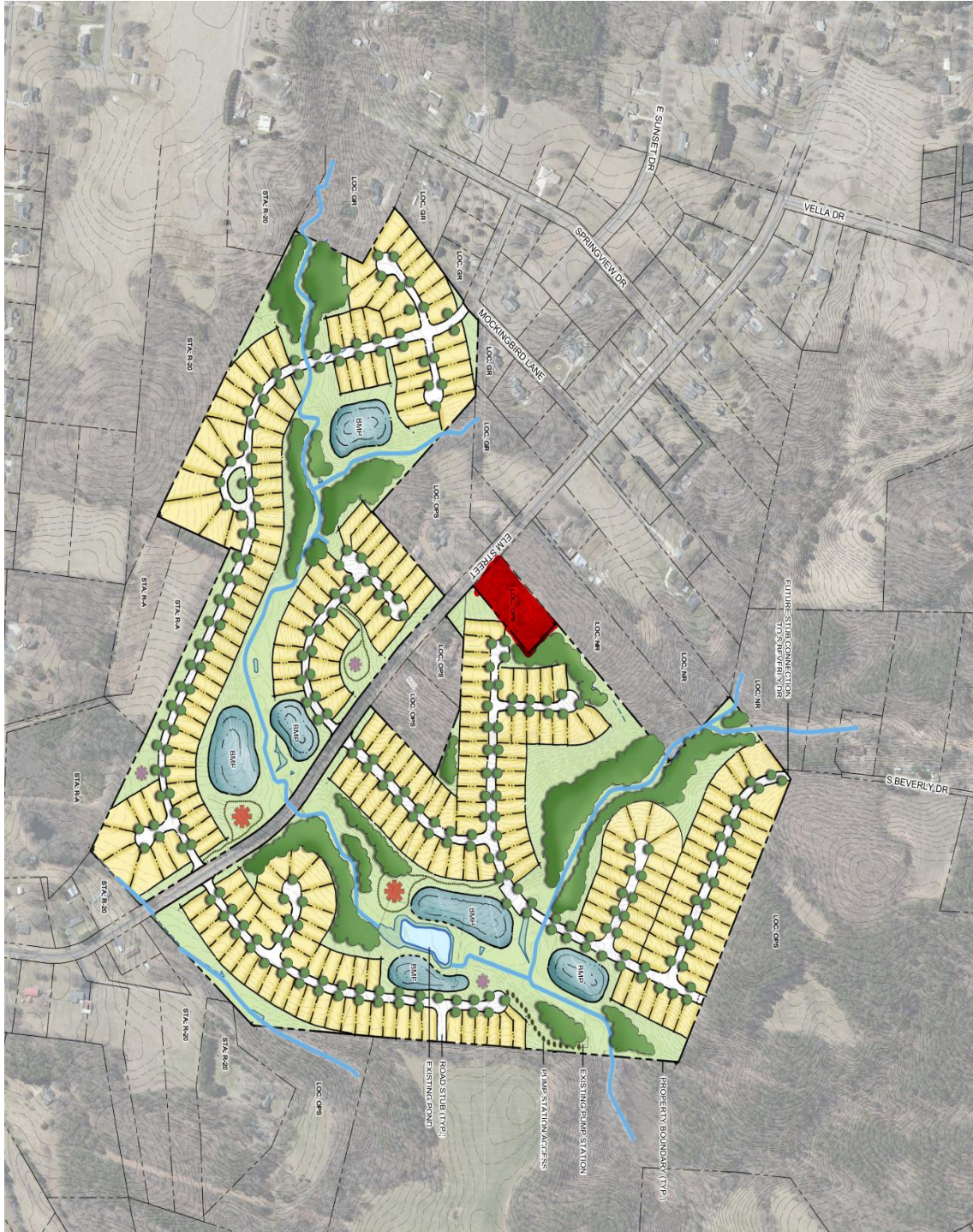


EXHIBIT C

DEVELOPMENT SCHEDULE

The following development schedule is an estimate only and is subject to market conditions. Pursuant to NCGS 160A-400.25, this development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement.

Development Schedule	Commencement/completion Dates
Entitlement Period	2019-2020
Initial phases of infrastructure development and initial phase(s) of home construction	2020-2024
Additional phases of infrastructure development and additional phase(s) of home construction	2024-2028