

WAKE COUNTY, NC 474
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
03/04/2009 AT 16:39:23

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Return to: Ammons Development Group, PO Box 1615, Wake Forest, NC 27588

Averette Farms Development Agreement

Town of Rolesville and Ammons Development Group

January 8, 2008

NORTH CAROLINA

DEVELOPMENT AGREEMENT

WAKE COUNTY

This DEVELOPMENT AGREEMENT entered into this 8th day of January, ²⁰⁰⁸~~2007~~, by and between the TOWN OF ROLESVILLE, a municipal corporation existing under the laws of the State of North Carolina (the "Town") and AMMONS DEVELOPMENT GROUP, INC., a North Carolina corporation with a mailing address of Post Office Box 1615, Wake Forest, North Carolina 27588, and assigns subject to the terms of Section 13 Real Covenant; Delegation of Duties, regarding assignment (referred to herein as the "Developer" and "Owner"):

WITNESSETH:

WHEREAS, the Owner has purchased or contracted to purchase property containing 345± acres and located on Averette Road within the Town of Rolesville; and

WHEREAS, the Town has approved a Master Plan known as the Averette Farms Master Plan the approved plan for the property; and

WHEREAS, concurrent with the Master Plan, the Town approved a special use permit with various conditions governing development of the Property; and

WHEREAS, the Master Plan will include a maximum of 831 residential building lots and mixed use commercial area totaling 23.4± acres along with ancillary public and private facilities including streets, sidewalks, water and sewer lines, storm drainage improvements, walking trails and other recreational facilities to be developed pursuant to the approved Master Plan;

WHEREAS, the Master Plan and Special Use Permit require that Developer install certain improvements designed to mitigate the impact of the Development on the Town; and

WHEREAS, the Town and Developer agree that a public community recreational facility is designed to provide recreational facilities for the entire community and that the cost of the community recreational facility should not be borne entirely by Developer; and

WHEREAS, the Developer agrees to advance the cost necessary to design and construct the community recreational facility in accordance with Town standards so that the facility may benefit the entire community; and

WHEREAS, the Town has in effect policies and ordinances governing and regulating the installation of oversized infrastructure and the reimbursement to persons installing such infrastructure of a portion of the cost thereof from fees collected by the Town at a time after the installation of such infrastructure; and

WHEREAS, the Town and Developer agree to a policy for the allocation of utilities to serve the proposed development; and

WHEREAS, the Developer agrees to abide by all the conditions of the approval.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties hereto agree as follows:

Section 1. Definitions.

Whenever used in this Agreement the following terms shall have the following definitions indicated hereafter in this Section I. Other terms may be defined elsewhere in this Agreement.

A. "Master Plan" shall mean the approved Master Plan, which is attached hereto as Exhibit B and incorporated herein as if fully set out, for the project and all subsequent modification and amendments, construction drawings and specification which may hereafter be

made a part thereof, but all of which area contained in the Town Planning Department File MA07-07 herein as if fully set out.

B. "Infrastructure" shall mean all public and private infrastructure that is necessary to serve the Property, including, but not limited to, water mains, valves, fittings, fire hydrants, service connections, service lines, shutoffs, meter boxes, sewage pumping stations, force mains, gravity sewer mains, manholes, laterals, streets, curbs, gutters, sidewalks, greenways, bikeways, transit facilities, park and recreation facilities (except for private recreational amenities), storm drainage facilities and stormwater retention facilities. Infrastructure shall either be owned or otherwise controlled by the Town, City of Raleigh or North Carolina Department of Transportation (Public Infrastructure) or by a nonprofit homeowners association (Private Infrastructure).

C. "Property" and "Development" shall mean the land comprised of 345± acres within the Town or its extra-territorial planning jurisdiction and more particularly described in **Exhibit A**, attached hereto.

D. "Community Recreational Facility" shall mean all public greenway trails, park and recreational area shown on the Master Plan, including the planned parking area, playground equipment, walking trails and other improvements subsequently approved by the Board of Commissioners as a part of the master plan for the Community Recreational Facility and contained in the Planning Department file for the Averette Farms Development, but not privately owned home owner amenities.

E. "Owners Association" shall mean a nonprofit association incorporated under North Carolina law. The Owners Association shall, among other things, have primary enforcement responsibility for any subdivision restrictive covenants and for maintenance of any

private Onsite Infrastructure. All current and future Property owners shall be members of the Association at any time during which they hold an ownership interest in any part of the property.

F. "Project" shall mean the development contemplated by the Master Plan.

Section 2. Town Approval of Development Covenants, Etc.

The Town Attorney has reviewed and approved the form of this Development Agreement and shall review and approve this Agreement as well as the Articles of Incorporation, Declaration of Covenants, and Bylaws for the Owners Association(s) prior to implementation or recording. The Declaration of Covenants for the Owners Association shall contain all of the provisions of the Special Use Permit (MA07-07) relative to home design, size, construction and architectural features, maintenance of private streets and shared private utilities, if any, for the Development, and shall reflect the setbacks approved for residential and mixed use development set out below. Building setback requirements for the Project shall be those setbacks set out below

	Front Setback	Side Setback	Rear Setback
Single-family detached dwelling	Minimum of 10 feet from right-of-way for lots providing on-street parking and/or rear parking serviced by an alley; minimum 25 feet from right-of-way for all others.	Minimum of 0 feet with a minimum of 10 feet aggregate between dwelling units. Corner lots will have a minimum of 10 feet side setback on the any side fronting a public street.	Minimum of 25 feet for lots no serviced by alleys. Building setback from alleys and lanes, including accessory buildings, is 15 feet from center line of alley.
Townhouse	Minimum 15 feet from right-of-way	Maximum of 8 units per structure	Minimum of 15 feet from rear property line
Mixed Use Area	Minimum of 0 feet and maximum of 15 feet	Minimum of 0 feet	Minimum of 48 feet except building that abut alleys where 0 foot setback are permitted.

Section 3. Infrastructure. Developer shall design, construct and install at its expense all Infrastructure in accordance with the design criteria set forth in the standard specifications of the approving authority. Plans for the Infrastructure shall be prepared by a licensed engineer employed by Developer. Developer shall furnish all engineering and/or design plans and specifications to the Town prior to contracting for the construction of the Project. The Town may disapprove, in writing, such plans or specifications in its reasonable discretion. If the plans are disapproved, the Town shall provide written explanation of the reasons for disapproval. Developer shall obtain, at its expense, all required permits and approvals from all governmental agencies subject to the reimbursement provisions of Section 5. Reimbursement for Installation of Community Recreational Facilities, prior to commencing construction of the Infrastructure. Upon satisfactory inspection of Infrastructure by the Town or other government authority, Developer shall do the following:

A. Public Infrastructure.

1. Developer shall construct and dedicate (or provide security for construction under the Unified Development Ordinance and dedicate) for public use all streets and sidewalks, water and sewer lines pursuant to Town ordinances and as approved by the Town in writing at least as shown on **Exhibit B** attached hereto that are necessary to serve the Property, free and clear of all liens and encumbrances, by warranty deed, deed of easement or bill of sale, in form and substance reasonably satisfactory to the Town. Developer shall convey to the Town and its successors and assigns, perpetual easements necessary or convenient for repair and maintenance of the Public Infrastructure.

2. Developer shall deliver to the Town a lien waiver and release, in form and substance reasonably satisfactory to the Town, from all contractors, subcontractors and suppliers

of materials or labor who may have a right to a lien on any portion of the Public Infrastructure or the property on which such Public Infrastructure is located.

3. Upon final inspection of the improvements and acceptance by the Town or other governmental authority, Developer shall deliver to the Town a one-year warranty of the Public Infrastructure as provided in the Town's Unified Development Ordinance.

4. Developer shall deliver to the Town all original manufacturers' warranties and/or operation manuals, if any, for the Public Infrastructure and one (1) complete set of as-built drawings showing the Infrastructure, easements and rights-of-way as located by a North Carolina licensed surveyor and certified by Developers' engineer of record. The as-built drawings shall be submitted in a digital format compatible with Wake County's GIS system and approved by the Town Manager.

5. Required Public Infrastructure.

(a) Developer is responsible for expenses associated with: (1) necessary right-of-way and easement acquisition and (2) construction of necessary Public Infrastructure, subject to the reimbursement provisions of Section 5. Reimbursement for Installation of Community Recreational Facilities. In order to provide funds for Infrastructure related to the Project hereafter desired by the Town and not required by the Master Plan or the Special use Permit issued for the Project, the Developer shall pay the Town the amount of \$100.00 when a building permit is issued for each lot in the Development.

(b) Community Recreation Facilities. The Developer shall design, engineer, survey, permit (as necessary through State and Federal process) and construct and dedicate to the Town the recreational park in accordance with Exhibit B and the master plan reviewed and approved by the Board of Commissioners subsequent to this document.

B. Private Infrastructure.

1. Developer shall convey to the Owners Association(s) ownership of all Onsite Private Infrastructure, free and clear of all liens and encumbrances, by warranty bill of sale, in form and substance reasonably satisfactory to the Town Attorney, along with any easements necessary for repair and maintenance.

2. Developer shall deliver to the Owners Association a lien waiver and release from all contractors, subcontractors and suppliers of materials or labor who may have a right to a lien on any portion of the Private Infrastructure. Developer shall deliver to the Owners Association all original manufacturers' warranties and/or operation manuals, if any.

3. Developer shall provide both the Owners Association and the Town a complete set of as-built drawings showing all the Private Infrastructure, and any easements as located by a North Carolina licensed surveyor and certified by Developer's engineer of record. The as-built drawings shall be submitted in a digital format compatible with the Town's GIS system and approved by the Town Manager.

4. The Town agrees to cooperate with and reasonably assist the Developer in its efforts to obtain necessary permits, approvals, or licenses from other governmental entities necessary or beneficial for the development as approved by the Town, including without limitation the Department of Transportation and Wake County.

Section 4. Required Protections for Town in Developer's Contracts.

Developer will ensure that all contracts for engineering, design, construction, and/or construction management for Public Infrastructure include specific language that provides (1) that the contract does not limit any warranties provided under operation of statute or common law concerning the engineering, design, construction, adequacy, or performance of the

Improvements; (2) the contract does not limit or shorten any statute of limitations provided by law regarding claims concerning the engineering, design, construction, adequacy, or performance of the Improvements; (3) the Town is named a third-party beneficiary of the contract for the purpose of making any claims regarding the engineering, design, construction, adequacy, or performance of the Improvements; and (4) all warranties available to the Developer under the contract are, in addition to Developer, made to, available, and assignable to the Town.

Section 5. Reimbursement for Installation of Community Recreational Facilities.

The Town and Developer acknowledge that installation of the Community Recreational Facilities in accordance with the Master Plan exceeds the requirements necessary to serve this development. The Developer agrees to advance the funds necessary to install the Community Recreational Facilities as contemplated by the Master Plan and the Town agrees to compensate Developer for such oversized improvements as follows:

1. A master plan showing all of the public recreational facilities shall be reviewed and approved by the Board of Commissioners prior to construction. It is the intent of both parties to approve a master plan and construct the recreational facilities within a budget of \$800,000.00.

2. All construction shall be performed by a contractor or contractors licensed to perform this type of work in the State of North Carolina. All work shall be subject to inspection by the Town. Inspection shall be provided according to Town policy. Subject to the reimbursement provision contained herein, Developer shall pay all costs and expenses incurred in connection with the design and construction of the Community Recreational Facilities, including, but not limited to, planning, engineering and design fees, easement acquisition costs, construction costs, professional management fees, inspection costs, appraisals and legal

expenses, and all other costs associated with the installation of the Community Recreational Facilities including the cost of the greenway trail on the western side of Rogers Road, parking area, playground equipment, picnic shelter and other amenities (“Community Recreational Facility Costs”).

4. In return for constructing the Community Recreational Facilities, all recreation impact fees collected by the Town from other developers/owners in the Development shall be reimbursed by the Town to Developer to offset the costs for installation of the Community Recreational Facilities as provided below. Developer expressly elects to be reimbursed from recreation fees paid by the purchasers of lots in each of the Developments after such fees are paid. The Town reserves the right, in its sole discretion, to pre-pay all or part of the amount due Developer at any time.

5. The Town shall reimburse the Developer only from recreation impact fees collected during the term of this Contract from the Development for Community Recreational Facility Costs up in accordance with the reimbursement procedure described herein. Developer shall submit copies of paid invoices to the Town for Community Recreational Facilities Costs which shall be paid by the Town to Developer from recreation fees collected from the Development within thirty (30) days of submission to the Town by Developer, if the funds are available. Developer acknowledges that recreation fees collected from the Development may not be available when requested by Developer. In that case, funds will be paid to the Developer within fifteen (15) days of receipt of such funds by the Town. Developer acknowledges that recreation fees collected for the Development may not cover the cost of the improvements.

6. Except for any lots developed by Developer, the owner of lots at the time of building permit issuance will be responsible for the payment of all recreation fees charged by the Town and no such fees shall be payable by the Developer.

7. The Town shall make reimbursement payments by its checks payable to Developer.

8. All payments by the Town shall be by its check drawn on a bank having offices in Wake County, North Carolina, and delivered to the named payees at the office of the Town Manager.

9. All moneys to be collected by the Town and reimbursed to the Developer shall originate from Recreation Fees paid by users of the community recreational facility in the Development. The parties expressly acknowledge that the Town shall pay no tax revenue to Developer hereunder. Nothing herein shall be construed to entitle anyone to the payment of revenues from tax sources, or any revenue source other than recreation fees generated within the Development. It is acknowledged and agreed that recreation fees reimbursable to Developer hereunder are not and under no circumstances shall they be considered "taxes, "tax revenues," or "revenue from tax sources."

(a) Although the parties endeavor to master plan the Community Recreational Facility within the \$800,000.00 budget, Developer acknowledges that the cost of installing the Community Recreational Facilities may exceed the recreation fees generated by the Development.

(b) In the event of a controversy over the right to any reimbursable fees hereunder, the Town shall disburse such fees by its check payable jointly to all parties claiming an interest in the proceeds, and by delivering the check to one of the claimants at its offices.

Section 6. Water and Sewer Capacity allocation.

A. From the date of execution of this agreement, the Town shall reserve for use by the Developer on this Property water capacity and sewer capacity in the amount necessary to serve the Project provided Developer is constructing the Public Infrastructure provided for herein and has paid the fees due on the

property phase for which construction is proposed (including but not limited to capacity fees and acreage fees) in accordance with the following schedule:

- Water and sewer fees paid for **50** lots by **December 31, 2009**.
- Water and sewer fees paid for **150** lots by **December 31, 2010**
- Water and sewer fees paid for **250** lots by **December 31, 2011**
- Water and sewer fees paid for **350** lots by **December 31, 2012**
- Water and sewer fees paid for **500** lots by **December 31, 2013**
- Water and sewer fees paid for **650** lots by **December 31, 2014**
- Water and sewer fees paid for **831** lots by **December 31, 2015**
- Water and sewer fees paid for **all commercial development** by **December 31, 2016**.

If Developer fails to pay the fees in accordance with the schedule above, the remaining reservation of water and sewer capacity shall be null and void. The Town development fee schedule is subject to change at any time. The amount of fees due to the Town shall be the amount specified by the Fee Schedule in effect at the time the fees are paid.

B. The Town Planning Department shall maintain a public list of the assigned flows and the Town's available allocation of water and sewer, and that list shall reflect reservation of capacity for the Developer so long as the requirements of this section are met.

C. Developer acknowledges that the Town obtains its water and sewer capacity from the City of Raleigh, and that by this agreement the Town is reserving a portion of the capacity the City of Raleigh is obligated to provide to the Town.

Section 7. Force Majeure. The parties hereto shall not be liable for any failure to perform hereunder as a result of an external event or events beyond their respective control, including, without limitation, acts of the United States of America, acts of the State of North Carolina (including the denial of permits which the Town has pursued in good faith), embargos, fire, flood, drought, hurricanes, tornadoes, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism or civil riots. However, if any such event interferes with the performance by a party hereunder, such party shall diligently and in good faith

act to the extent within its power to remedy the circumstances affecting its performance or to complete performance in as timely a manner as is reasonably possible.

Section 8. Indemnification of Town.

A. Indemnification. Developer shall defend, indemnify, and hold harmless the Town from and against all claims, losses, demands, and legal actions (“Claim” or “Claims”) arising or resulting from negligent acts or omissions or intentional tortious conduct of Developer or contractors or subcontractors of Developer incident to the construction of Public Infrastructure and Community Recreation Facilities pursuant to this Agreement. Except as provided hereafter, the liability of Developer to indemnify the Town hereunder shall extend only to Claims asserted within a period of three (3) years from and after the Town’s acceptance of the respective Public Infrastructure and/or Community Recreation Facilities giving rise to the Claim or Claims asserted. With respect to a Claim or Claims related to the quality of the construction of Public Infrastructure or Community Recreation Facilities or the materials utilized therein, the liability of Developer hereunder shall extend only to the one-year warranty in the foregoing paragraph 3 of Section 3.A. of this Agreement.

B. Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

C. Survival. This Section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise).

D. Limitation of Developer’s Liability. The Developer shall have no liability under this Section 8 for claims proximately caused by or resulting from the negligence or intentional act, in whole or in part, by the Town.

Section 9. Written Consents from the Town. Where this Agreement refers to written approvals

or consents to be given by the Town and the person or position that may give consent is not identified, the authority to give such approvals shall be delegated to the Town Manager or his designee. An approval required by this Agreement shall not be effective unless given in writing.

Section 10. No Waiver of Governmental Authority or Discretion. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Rolesville Board of Commissioners in a manner not permitted by law. The Town shall incur no liability to the Developer for any losses or damages it may incur as a result of or in connection with the Town's exercise or performance of its regulatory, legislative, or governmental powers or functions, or any judicial determination regarding the same.

Section 11. Miscellaneous.

A. **Choice of Law and Forum.** This Agreement shall be deemed made in Wake County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Wake County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

B. **Waiver.** No action or failure to act by the Town shall be deemed to constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

C. **Severability.** If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

D. **No Third-Party Rights Created.** This Agreement is intended for the benefit of the Town and Developer and not for any other person, and no such persons shall enjoy any right, benefit, or entitlement

under this Agreement.

E. Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (1) the singular includes the plural and the plural, the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc., without limitation and shall not be deemed to be an exclusive list unless expressly labeled as such. (2) References to a “Section” or “section” shall mean a section of this Agreement. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement. (5) “Duties” includes obligations. (6) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word “shall” and “must” are mandatory. (8) The word “day” means calendar day. (9) Attorneys for all parties have participated in the drafting of this document, and no future interpretation shall favor or disfavor one party over another on account of authorship.

F. Construction of Agreement. In the event of a conflict or inconsistency between this Agreement and any currently existing agreement between the Town and Developer, the provisions of this Agreement shall control.

G. Amendment. This Agreement shall not be modified in any manner except in writing, signed by each of the parties.

H. Applicability of Agreement. This Agreement shall be applicable to the Property and Master Plan as approved at the time of this Agreement, and as the same shall thereafter be amended or modified by the then owner and approved by the Town.

I. **Preambles.** The preambles to this Agreement are a part of the agreement of the parties set forth in this Agreement, and shall be binding upon the parties in accordance with their terms.

Section 12. Term. The term of this Agreement shall be a period of twenty (20) years following execution by both parties.

Section 13. Real Covenant; Delegation of Duties. This Agreement shall be a real covenant running with the Property, and any portion thereof, as it may be subdivided or recombined, and shall apply to the development of all or any portion of the Property. Developer shall be released from its obligations under this Agreement only upon the assumption of all of Developer's obligations hereunder by a successor in title to the Property and only with the prior written consent of the Town Manager. The Town's consent shall not be unreasonably withheld, conditioned or delayed if, as reasonably determined by the Town, the party assuming Developer's obligations possesses adequate financial resources, ownership interests, and development expertise needed to complete the requirements of this Agreement, and provided Developer delegates, and proposed assignee assumes and agrees to fulfill, in writing, all of Developer's duties set forth in this Agreement.

Section 14. Consideration. The parties hereto agree that this Agreement is mutually beneficial in that it provides for orderly urban growth and systematic extension of municipal improvements while at the same time providing a significant amenity to the development that will increase the marketability of the development and providing funds to offset the future cost of infrastructure improvements. The project description contained in **Exhibit A** attached hereto and infrastructure described herein and in **Exhibit C** shall be considered by the parties to be the minimum additions to the Town's corporate tax basis sufficient to enable the Town to finance the provision of municipal services to Developer's property. The parties acknowledge that these mutual benefits are sufficient to constitute good and valuable consideration in support of this contractual agreement.

Section 15. Default.

A. Default by Developer. The Town's Planning Director or his designee shall conduct an annual investigation around each anniversary date of recording this Agreement to determine if Developer is in compliance with construction obligations attached hereto. In addition to other remedies provided for in this Agreement or by law or equity, any material breach which remains uncured for a period of thirty (30) days after receipt of written notice from the Town of non-compliance with the construction obligations attached hereto shall entitle the Town to require specific performance of Developer's obligations hereunder and recover such damages as to which the Town may be entitled, plus reasonable attorneys' fees and costs of any such litigation. Any failure of the Town to exercise any right or remedy as provided for herein shall not be deemed a waiver of the Town's right to strictly enforce Developer's obligations in any other instance.

B. Default by Town. Upon breach of this Agreement by the Town, Developer may enforce the terms and conditions of this Agreement by actions for specific performance or injunction. In the event of a default, Developer shall provide due and reasonable notice of the specifics of the default to the Town and shall provide the Town thirty (30) days to cure the default. In the event the Town fails to cure the default within the cure period, Developer shall have the right to declare the Town in breach of this Agreement and may enforce the Agreement as provided above. Any failure of the Developer to exercise any right or remedy as provided for herein shall not be deemed a waiver of the Developer's right to strictly enforce the Town's obligations in any other instance.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year indicated below:

ATTEST:

TOWN OF ROLESVILLE

By: Lynn House
Lynn House, Town Clerk

By: Frank Eagles
Frank Eagles, Mayor

NORTH CAROLINA

WAKE COUNTY

I certify that Lynn House, Town Clerk of the Town of Rolesville, personally appeared before me this day and certified to me under oath or by affirmation that she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed Frank Eagles sign the foregoing document, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Today's Date: Jan. 8 ²⁰⁰⁸/₂₀₀₇

Gina R. Temple
[Notary's signature as name appears on seal]

Gina R. Temple
[Notary's printed name as name appears on seal]



[Affix Notary Seal in Space Above]

My commission expires: 8/13 ²⁰¹¹/₂₀₀₆

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

By: Matt Livingston
Matt Livingston, Town Manager

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year indicated below:

AMMONS DEVELOPMENT GROUP, INC.

Andrew L. Ammons, President
Name: Andrew L. Ammons

ATTEST:

Jeanette F. Ammons, Secretary
Name: Jeanette F. Ammons

NORTH CAROLINA
WAKE COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

President, Ammons Development Group, [a North Carolina corporation.]

Today's Date: Dec. 14, 2007.

Gina H. Teague
[Notary's signature as appears on seal]

GINA H. TEAGUE
[Notary's printed name as name appears on seal]

My commission expires: February 3, 2008

[Affix Notary Seal in Space Above]

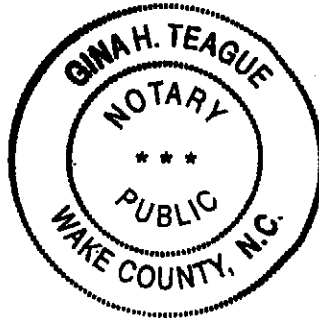
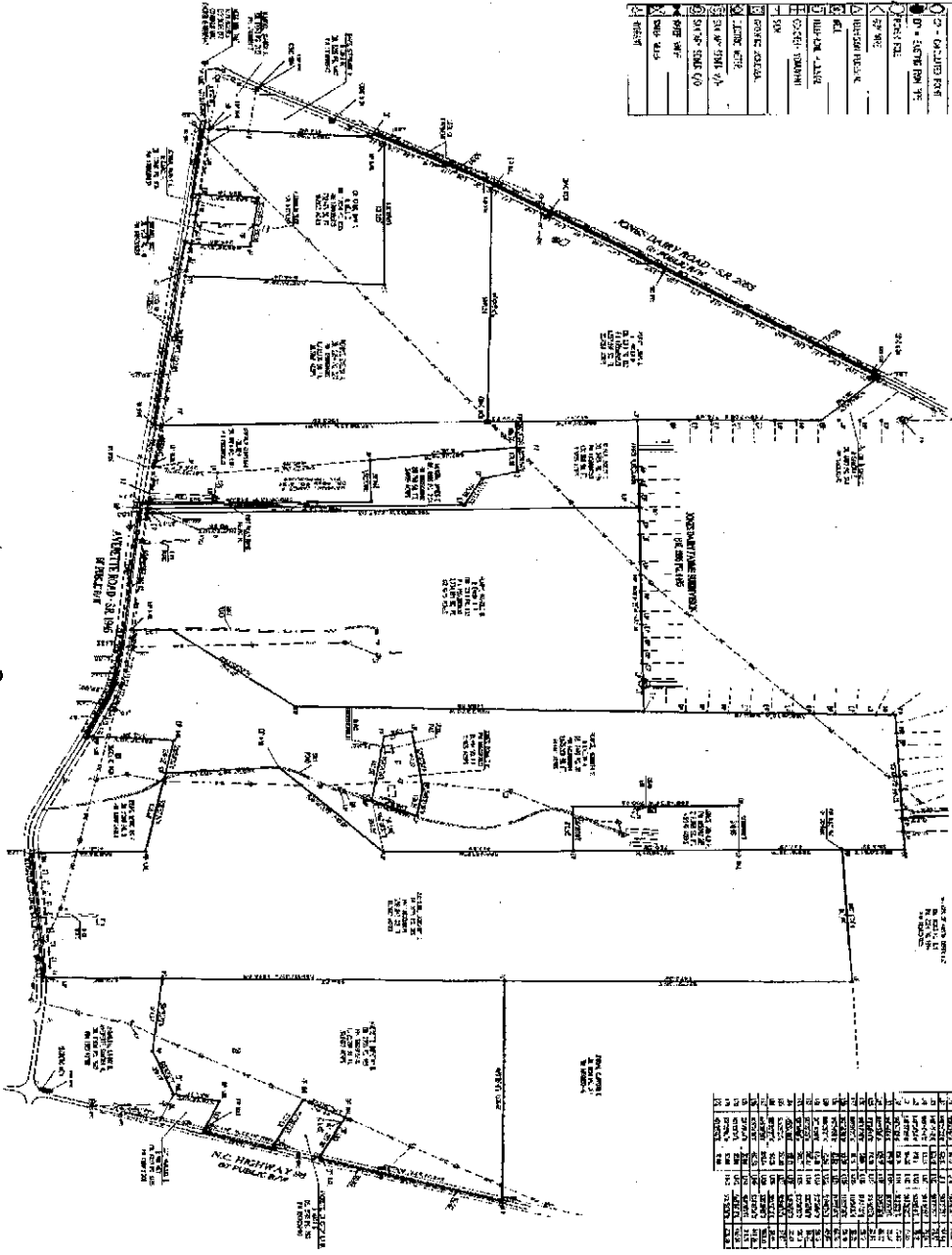


Exhibit A
Annexation Plat

This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations



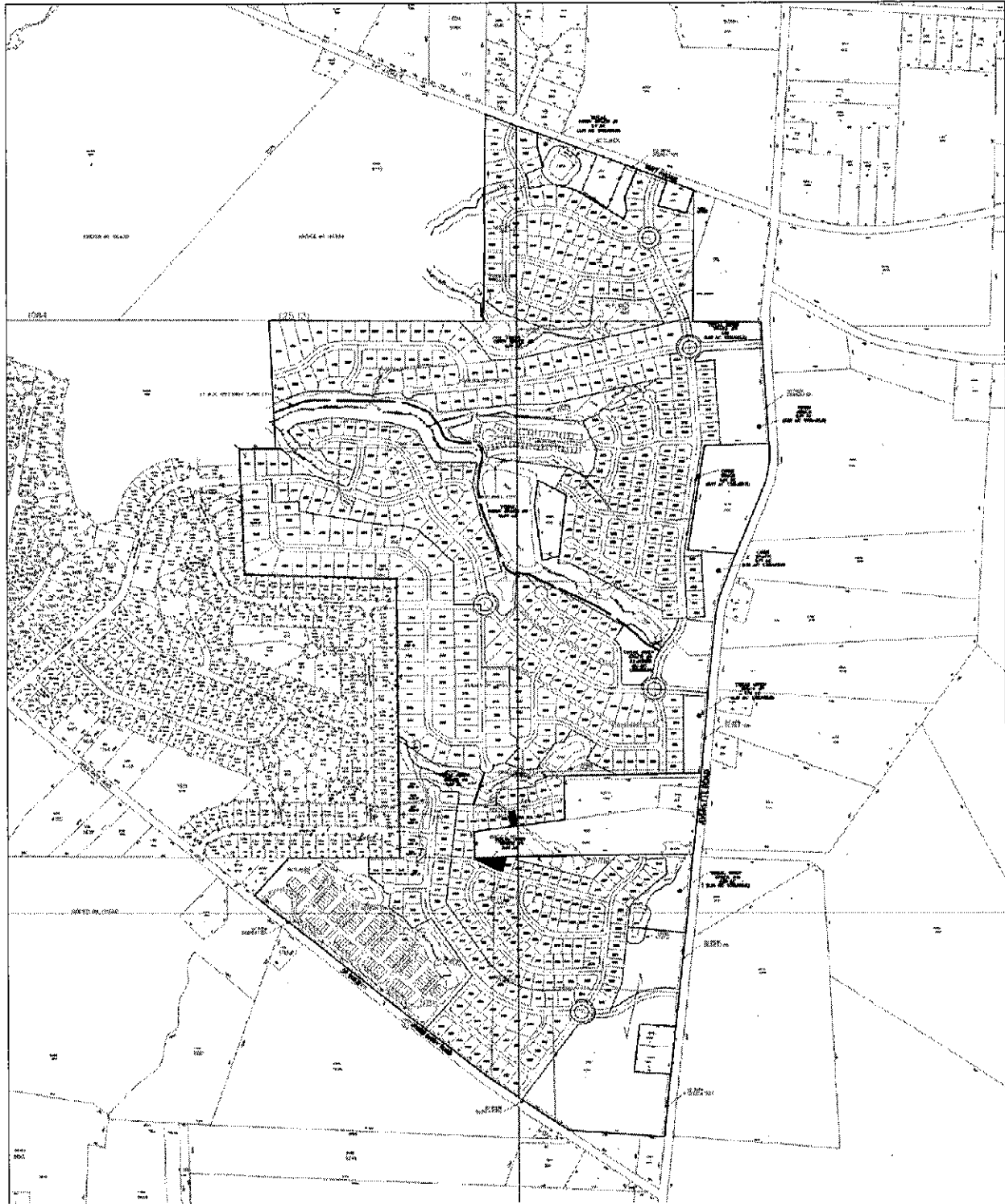
NO.	DESCRIPTION	BY	DATE
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2	REVISION	SW	11/19/97
3	REVISION	SW	11/19/97
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5	REVISION	SW	11/19/97
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72	REVISION	SW	11/19/97
73	REVISION	SW	11/19/97
74	REVISION	SW	11/19/97
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94	REVISION	SW	11/19/97
95	REVISION	SW	11/19/97
96	REVISION	SW	11/19/97
97	REVISION	SW	11/19/97
98	REVISION	SW	11/19/97
99	REVISION	SW	11/19/97
100	REVISION	SW	11/19/97

10 A. TRACT AREA
10.289100 SQ. FT.
244.5577 ACRES

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

SHEET		ANNEXATION PLAT		DATE		DRAWN BY		DATE		DESCRIPTION		BY	
OF		AMMONS DEVELOPMENT		SCALE: 1" = 300'		CHK BY: SW		REV		REVISIONS		REVISIONS	
WAVERFORD		WAVERFORD		NORTH CAROLINA								BASS, NIXON & KENNEDY, INC. CONSULTING ENGINEERS 4510 CHAPMAN HILL ROAD, SUITE 200, RALEIGH, NORTH CAROLINA 27606 2515 HERITAGE TRAIL DR, WAKE FOREST, NORTH CAROLINA 27707 TELEPHONE: (919) 782-4422 or (919) 848-4874 FAX: (919) 782-4422 or (919) 848-4874	

Exhibit B



This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations

Exhibit C



**MA07-07 (AVERETTE FARMS)
SPECIAL USE PERMIT CONDITIONS**

SPECIAL USE PERMIT NUMBER: SUP 07-05

DATE: October 17, 2007

PROPERTY/DESCRIPTION: Averette Farms

PIN NUMBER: 1860043778, 1860038609, 1860931255, 1860022839, 1850920644, 1769094682, 1860016653, 1759992822, 185009044753, 1860000842, and 1769086810

ZONING: R&PUD

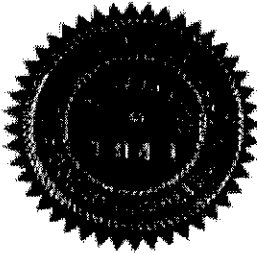
SPECIAL USE PERMIT PROVISIONS:

1. All requirements of the Town of Rolesville Planned Unit Development Ordinance §6.2 shall be met except for:
 - A. Alleys – all lots will not have to be served by alleys. Alleys are only required within tracts R-B(2) and R-B(3) within the subdivision as proposed.
 - B. Design Standards – Front walkways are not required to connect the house to the sidewalk except for those lots being serviced by alleys.
2. The ten (10) foot wide greenway trails, connecting Austin Creek subdivision with Averette Road/West Young Street will be completed before seventy-five percent (75%) of the homes or 623 lots are issued a certificate of occupancy. The cost of constructing the trail will be subject to town reimbursement policy within the developer's agreement.
3. The open space land requirement shall be dedicated to the Town of Rolesville or Home Owner's Association.
4. The developer shall construct a "recreational park" at the most northern access on Averette Road as presented on the attached site plan. The developer shall be responsible for having a design for the park submitted by time that the certificate of occupancy is issued on the 100th home. The developer shall be responsible for the completion of the park by the time that the certificate of occupancy is issued on the 600th home or within 4 years of the date of the initial building permit (whichever is sooner). This cost for constructing this park will be subject to the town reimbursement policy within the developer's agreement. The final design for the park shall be reviewed and approved by the Town Board of Commissioners.
5. General architectural requirements of the neighborhood will be governed by the recorded conditions, covenants, and restrictions in a manner similar to or greater than the "builder's book" of the Heritage Neighborhood. The guidelines shall be at minimum:
 - A. Trees: Each single family detached lot will require a minimum of 3 trees. One should be evergreen and one should have ornamental blooms. Corner lots should have additional trees where appropriate on the street side yard.
 - B. Fences: Fences should be the appropriate material and design for the lot and style of the house. No chain link fences.

Page 4 of 3

- C. **Entry walkways:** All houses with garages located off an alley driveway shall have a single concrete or paver walkway leading the home to the sidewalk and should be 4' wide.
 - D. **Mechanical equipment:** Mechanical equipment (HVAC) should be screened out of view from the street with fencing, landscape, or a combination of the two.
 - E. **Skylights** are not allowed on the main roof street elevation but are allowed on secondary roofs and the back side of the main roof.
6. At least 51% of all homes within the subdivision will have a minimum of 2,500 heated square feet. The subdivision will be broken up into the following tracts as shown on the attached map.
- A. **Residential Type-A Tracts** - all residences will be single family detached dwellings greater than 2,700 heated square feet. All lots within this section that border the Jones Dairy Subdivision shall be a minimum of 17,000 square feet (0.39 acres).
 - B. **Residential Type-B Tracts** - all residences will be single family detached dwellings with 75% of the homes having a minimum of 2,500 heated square feet. All lots within this section that border the Jones Dairy Subdivision shall be a minimum of 17,000 square feet (0.39 acres).
 - C. **Residential Type-C Tracts** - all residences will be single family detached dwellings with 100% of the homes having a minimum of 1,850 heated square feet. All homes will have at least 1,200 heated square feet on the first floor.
 - D. **Residential Type-D Tracts** - all residences will be town-home style dwellings greater than 1,100 heated square feet. Fifty percent of the town-homes will have one and/or two car garages.
 - E. **Mixed Use Tracts** - The uses permitted within Mixed Use Tract #1 (19 acres as presented on the attached site plan) are recreational parks, amenity centers, swimming clubs, athletic clubs, churches, administrative offices, medical services, dental services, general retail, grocery stores, schools, day care centers, day classes, financial institutions, eating establishments, civic uses, and residential dwellings on second floors. The uses permitted within Mixed Use Tract #2 (4 acres as presented on the attached site plan) are recreational parks, amenity centers, swimming clubs, athletic clubs, schools, day care centers, civic uses, and residential dwellings on the second floor. All proposed site plans for improvements to these tracts will be approved by the Town Board of Commissioners.
7. At least 50% of the homes with front loading two (or more) car garages shall have separate single garage doors.
8. All single family detached homes, within the Type A, Type B, and Type C sections, shall either be "crawl space" or "stem-wall" type foundations. Those houses with "stem-wall" type foundations shall have a brick veneer around the full perimeter and be made accessible in compliance with the American with Disabilities Act (ADA). This does not apply to any Residential Type D tracts as presented in the site plan.
9. The amenity center for the subdivision, built by the developer, will be completed before fifty percent (50%) of the homes or 415 lots are issued a certificate of occupancy or within 4 years of the date of the initial building permit (whichever is sooner). This amenity center will include a pool, clubhouse, and playground area.

10. Five (3) feet wide sidewalks will be constructed on both sides of all streets.
11. All houses shall have sheathing that is 1/2 inch or greater OSB, Densglass, or other similar materials. No "thermoply" or narrow wall panel structural sheathing will be permitted.
12. The developer shall adhere to all Phase 2 Stormwater requirements from NC DENR or Wake County's Stormwater Ordinance (whichever is more restrictive) at the time of construction drawing submittal.
13. All homes are to have a mixture of porches, covered entrances, and other architectural designs to minimize the visual impact of front loading garages.



Nancy M Kelly
 Nancy Kelly
 Town of Rolesville Mayor

Lynn House
 Lynn House
 Town of Rolesville Clerk

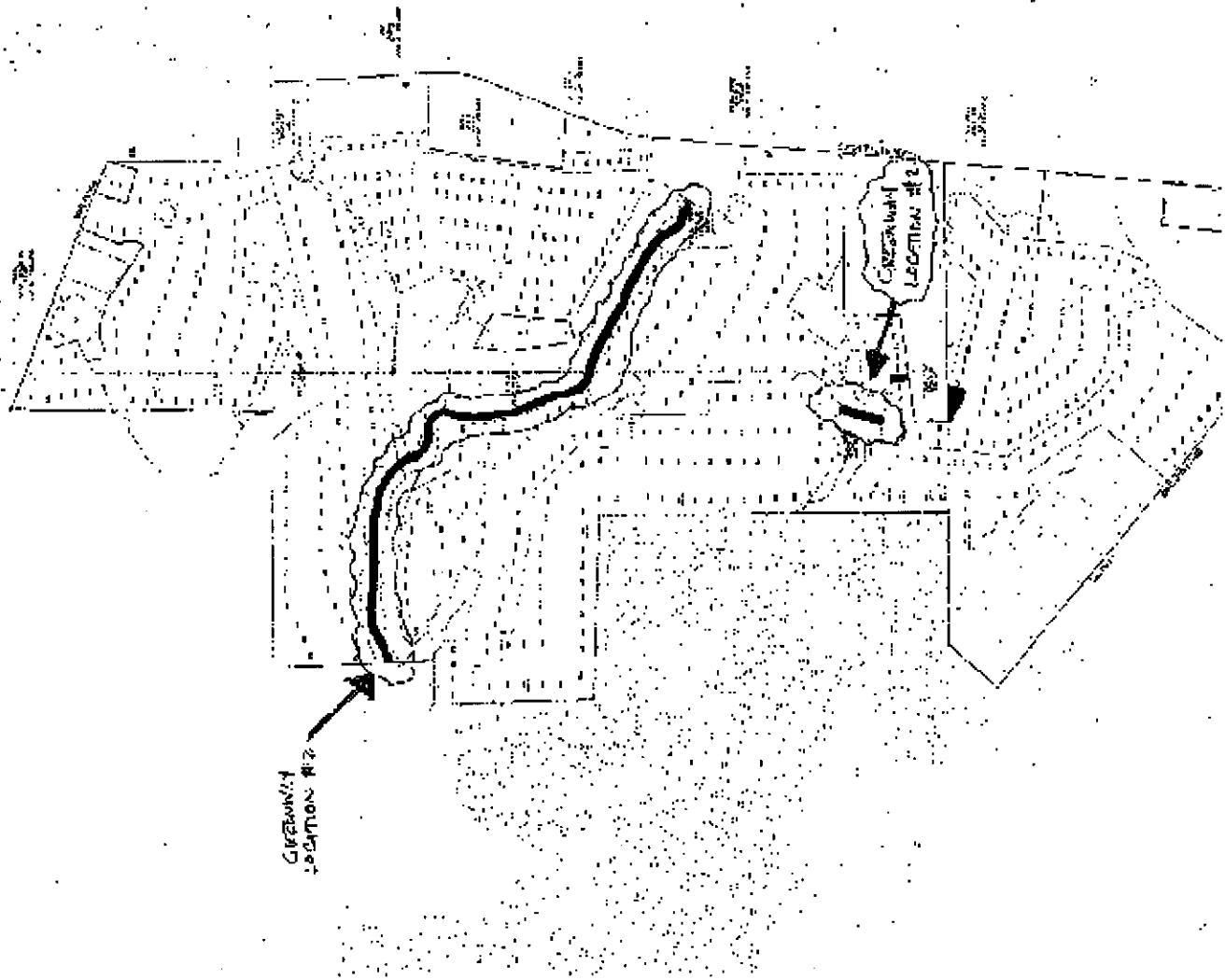
Reviewed and Acknowledged by the Property Owner or Applicant:

Andrew L. Ammer, Esquire
 Printed Name: Andrew Ammer, Esquire, Inc.

Andrew L. Ammer
 Signature

10/12/07
 Date

Exhibit D



This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations



BOOK:013421 PAGE:00192 - 00217

**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages
210

