

3K011999PG01251

WAKE COUNTY, NC 703
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
06/07/2006 AT 16:15:50

BOOK:011999 PAGE:01251 - 01266

After recording, return to: Clyde Holt, Smith Moore LLP, PO Box 27525, Raleigh, NC 27611

STATE OF NORTH CAROLINA

COUNTY OF WAKE

LAKEVIEW POINT/BROOKFIELD STATION
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made this 18th day of January, 2006, by and between the Town of Knightdale, a municipal corporation existing under the laws of the State of North Carolina (the "Town"), and Brookfield Station Development, LLC, a North Carolina limited liability company (referred to hereafter as "Developer"), or its permitted assigns.

WITNESSETH:

WHEREAS, Developer is the owner of a parcel comprised of 41.02+/- acres within the extraterritorial jurisdiction of the Town, being Wake County PIN 1754.005660, more particularly described on Exhibit A attached hereto and hereinafter referred to as the "Property"; and

WHEREAS, the Town has approved a residential development known as "Lakeview Point Subdivision a/k/a Brookfield Station Subdivision," S-7-05 (Modified S-2-05), hereinafter referred to as the "Subdivision Plan" attached hereto as Exhibit B for the property; and

WHEREAS, the residential development will include residential building lots along with ancillary public and private facilities including streets, sidewalks, water and sewer lines, storm drainage improvements and recreation facilities to be developed pursuant to a schedule and phasing plan setting forth a timetable for development, a copy of which is attached hereto as Exhibit C and incorporated herein (the "Phasing Schedule"); and

WHEREAS, Developer has requested annexation by the Town in order that the site will have access to municipal services; and

WHEREAS, with expensive and limited water and sewer capacity, limited park and recreation programs and facilities, and limited public safety personnel and equipment, the Town evaluates annexation petitions simultaneously with development plan review in order to determine its ability to provide for municipal services; and

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WHEREAS, to ensure that the Town is able to finance the necessary municipal services to Developer's property, Developer has and does hereby agree that the Phasing Schedule is an essential part of this Agreement and that the performance standards and schedule therein set shall be satisfied and maintained, and that no deviation to or modification of such standards or schedule shall occur without the specific written consent of the Town Manager after authorization by the Town Council.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the parties hereto agree as follows:

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

A. "Subdivision Plan" shall mean the approved residential development plan for the project attached hereto as Exhibit B and incorporated herein.

B. "Infrastructure" shall mean all public and private infrastructure that is necessary to serve the Property, including but not limited to police and fire protection facilities, 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, storm drainage facilities, and storm water retention facilities. Infrastructure to be located within or abutting the Property shall be referred to as "onsite." Other infrastructure serving the Property shall be referred to as "offsite." Infrastructure shall either be owned by the Town (Public Infrastructure) or by a nonprofit homeowners association (Private Infrastructure).

C. "Standard Specifications" shall mean all development documents necessary for approval for the Property, including but not limited to the subdivision plan, a site plan, subdivision plat(s) and construction drawings required by the State of North Carolina, Wake County, and/or the Town for all infrastructure.

D. "Homeowners Association" shall mean a nonprofit association incorporated under North Carolina law by Developer. The Homeowners Association shall, among other things, have primary enforcement responsibility for subdivision restrictive covenants and for maintenance of Private Onsite Infrastructure provided by Developer. All future homeowners within the subdivision shall be members of the association. The articles of incorporation and declaration of covenants and bylaws for the homeowners association shall be subject to review and approval by the Town Attorney. The expense of such review process, as well as the expense associated with drafting this Development Agreement, shall be directly paid by Developer or reimbursed to the Town. Attorney fees shall not exceed those customarily charged for like services in the Research Triangle, North Carolina area.

Section II. Annexation Schedule. Developer shall submit a petition for annexation of the Property. The Town shall review such petition for sufficiency and shall advertise the same for

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public hearing as required by law. The Town shall make its decision on whether or not to annex the Property based upon the terms of this Agreement and such other information as may be introduced at the public hearing. Developer shall not consent to any annexation of the Property by any other municipality while this Agreement is in effect. Developer shall not withdraw or otherwise attempt to cancel or modify such petition without the express written consent of the Town Manager. If the Town, following the required public hearings, shall decline to annex the Property or any portion thereof, the terms of this Agreement shall be deemed automatically amended to account for such determination by the Town not to annex. If, as a result of said failure to annex, none of the Property shall be included within the corporate limits of the Town ninety (90) days following the decision not to annex, this Agreement shall be null and void. If a portion of the Property is annexed while the balance is refused annexation ninety (90) days following the refusal, the terms of this Agreement shall be deemed amended to apply only to the annexed portions of the Property.

Section III. Onsite Infrastructure. Developer shall design, construct and install, at its expense, all Onsite Infrastructure in accordance with the design criteria set forth in the Standard Specifications. The plans for Onsite Infrastructure shall be prepared by a licensed engineer employed by Developer. Developer shall obtain, at its expense, all required permits and approvals from all governmental agencies prior to commencing construction of Onsite Infrastructure. Upon satisfactory inspection of Onsite Infrastructure by the Town or other government authority, Developer shall do the following:

A. Public Infrastructure.

1. Developer shall dedicate for public use all streets, sidewalks, and water and sewer lines on 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 on, over, under and across all portions of the Property necessary or convenient for repair and maintenance of the Onsite Public Infrastructure.

2. Developer shall deliver to the Town a lien waiver and release, in form and substance 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 Onsite Public Infrastructure.

3. Developer shall deliver to the Town security for Developer's one-year warranty of the Onsite 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 Onsite Public Infrastructure and one (1) complete set of as-built drawings showing all the Onsite Public Infrastructure, easements and rights-of-way as located by a North Carolina licensed surveyor and certified by Developer's engineer of record. The as-built

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drawings shall be submitted in a digital format compatible with the Town's GIS system and approved by the Town Manager.

B. Private Infrastructure.

1. Developer shall convey to the Homeowners Association ownership of the 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 Homeowners 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 Onsite Private Infrastructure. Developer shall warrant the Onsite Private Infrastructure for a period of three (3) years and shall deliver to the Homeowners Association all original manufacturers' warranties and/or operation manuals, if any.

3. Developer shall provide both the Homeowners Association and the Town a complete set of as-built drawings showing all the Onsite Private Infrastructure, easements and rights-of-way 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.

Section V. Offsite Public Infrastructure.

A. Public Utilities. Town water and sewer services are available in close proximity to the Property. Developer shall, at its expense, obtain all applicable permits and install all lines necessary to provide service to the Property. The requirement specifically includes, by way of example but not limitation:

1. The Town's water main in Bethlehem Road shall be extended along Street A to connect with public water mains installed by Developer within the Property and then connect with the public water mains within the adjacent Lewis Landing subdivision.

2. Sewer mains shall be extended from Lewis Landing throughout the subdivision to the farthest property lines, allowing further connections with adjacent developments as needed.

B. Road Improvements by Developer. During the course of development of the Property and subject to the remaining terms and provisions of this Agreement, Developer shall, at its sole expense, provide all rights of way and utility easements for and shall construct the following new roads in accordance with the Town's design standards:

<u>Street Name</u>	<u>Cross-Section</u>	<u>Distance</u>
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Street A	Major Local 60' R/W 31' pavement b/b with sidewalk on each side	From First Avenue/ Bethlehem Road to Street B within the Property
First Avenue/ Bethlehem Road	Major Collector 70' R/W 41' b/b with curb/gutter 5' sidewalk on north side	Determined at the time of construction improvements permit issuance and will include crossing improvements as required by the Town, NCDOT and Norfolk Southern

C. Easements and Rights of Way. Necessary easements and rights-of-way shall be acquired by Developer, at Developer's sole expense. The main sewer easements shall be recorded as dual sewer/greenway easements. In the event Developer is unable, despite its best efforts, to acquire necessary easements and rights of way, Developer shall make a written request to the Town for assistance. The request shall describe the needed easement or right of way and include copies of offers or other evidence of unsuccessful acquisition efforts. After notice to the affected property owners and upon finding that the easement or right of way is needed by the Town for extension of its street, water, sewer or other public facilities, the Town will exercise its power of eminent domain to acquire the same. All expenses incurred by the Town, including the purchase prices, appraisal fees, attorney fees and court costs, shall be reimbursed by Developer.

Section VI. Credits Due to Developer. Credits hereunder for costs related to onsite oversized water and/or sewer lines or offsite utility installations constructed by Developer at the request of the Town shall be provided to Developer by the Town through water and sewer development fee credits, respectively, which the Town shall grant Developer or its assignees. Credits for offsite road improvements shall be available from transportation impact fees which Developer would otherwise pay the Town. The amount of all credits due shall be determined by the Town Manager after consultation with the Developer's engineer and the Town engineer. If any amounts to be reimbursed hereunder exceed development fees applicable to the Project, Developer may qualify for additional reimbursement in accordance with the Town's reimbursement policy in effect at the time.

Section VII. Infrastructure Improvements by the Town. Provided Developer has met and continues to meet its obligations hereunder, the Town shall obtain or provide all rights of way for and construct, at its sole cost and expense, the following improvements in accordance with the Town's design standards: None.

Section VIII.

[INTENTIONALLY LEFT BLANK]

Section IX. Timing of Infrastructure Improvements. Infrastructure improvements to be constructed under this Agreement by Developer shall be completed in a timely fashion to enable

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the development of the Property in accordance with the Phasing Schedule. Any failure on the part of the Developer to comply with this shall be deemed a violation of this Agreement and the Town, in addition to other remedies provided by law, shall have the right to withhold further approvals for the development of the Property, withhold and/or terminate utility allocations, utility connections and occupancy permits. Any failure on the part of the Town to construct or install infrastructure for which it is responsible under this Agreement shall not affect Developer's authorization to develop the Project in accordance with the Phasing Schedule and, in such event, the Project shall be deemed to be in compliance with the Town's adequate public facilities policies, except those of general temporary application to deal with public health or safety concerns. All roads to be constructed pursuant to this Agreement shall be dedicated to the Town or the North Carolina Department of Transportation upon completion. The Town reserves the right to alter the timing of offsite improvements for which it responsible hereunder due to lack of available funds or other public policy concern.

Section X. Water and Sewer Capacity Allocation.

A. The water and sewer allocation from the Town shall be assigned to new homes on the Property when Developer has a Town Council-approved site plan, paid the fees due on the Property phase for which homes are proposed, including but not limited to capacity fees and acreage fees, has received Town approval for the increased flow, and has had the Property annexed into the Town. 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 at the time the fees are paid.

B. The Town does not guarantee water and sewer service will be available for new development on a schedule needed by Developer, but the Town shall apply its best efforts to make such service available in a timely fashion. The Town shall assign its available water and sewer allocation on a first come, first served basis, except the Town Council may otherwise reserve some portion of its available allocation for its own use, for a public purpose, or to benefit the balanced development of the Town. The Town Planning Department shall maintain a public list of the assigned flows and the Town's available allocation of water and sewer.

C. The Town will seek additional water and sewer allocations from the City of Raleigh when needed by this development and other developments when it is in the best interest of the Town to do so, or the Town may seek to merge its utility system with that of the City of Raleigh. If the Town merges its utility system with that of the City of Raleigh, the Town will continue to assign its available allocation on a first come, first served basis, as described herein.

D. The amount of flow assigned for a development shall be the average flow requirement for the type of development as determined by the Town. At the completion of the development of the Property or portions thereof, the Town will adjust the assigned allocation on the actual average usage.

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Section XI. Residential Dwellings.

A. Subdivision restrictive covenants shall provide for a minimum house size of 2,000 square feet of heated, finished floor space. Notwithstanding the foregoing, no more than thirty-five (35) homes adjacent to the Norfolk Southern right-of-way may have a minimum of 1,600 square feet. Any finished area within a garage shall not be credited to the minimum size.

B. *[INTENTIONALLY LEFT BLANK]*

C. At least sixty-five (65) of the homes shall have attached garages with forty (40) of the garages consisting of a two-car minimum size.

D. House exterior siding materials shall be limited to:

1. Brick
2. Cultured stone
3. Hardiplank
4. Cedar shake
5. Vinyl

E. All houses shall be constructed on a crawl-space foundation or with a full basement. No variations from the construction specifications provided for in this Section XI and Section XII of the Agreement shall be made without advance approval of the Town Planning Director on a case-by-case basis, but approval shall not be unreasonably withheld if the resulting dwelling satisfies applicable state and local government regulations and does not diminish the ad valorem tax value of the house and lot. Construction specifications prepared by Tom Hepler, P.E., of CH Engineering, consulting engineers, for two alternative raised-slab foundations concurrently approved with the execution of this Agreement, are included in Town of Knightdale Subdivision File S-7-05 (Modified S-2-05).

F. Brick shall be applied to all foundation walls (including crawl space, raised slab and basement); no plain concrete block shall be exposed. Siding, hardiplank or clapboard may not extend below the first habitable floor structure.

G. All driveways must be concrete or other approved material and shall lead directly from the back of curb to the garage door threshold and be at least twelve (12) feet wide along the entire length. Each lot is required to provide at least two (2) off-street parking spaces.

H. No home and lot within Lakeview Point/Brookfield Station Subdivision shall be conveyed or otherwise transferred other than for a valuable consideration of not less than \$130,000.00. The seller and purchaser of each improved lot selling for less than \$150,000.00 shall within thirty (30) days of closing file with the Knightdale Town Manager or his designee a copy of the HUD-1 settlement statement for the transaction upon which the sales price is verified by the closing agent.

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I. For any home and lot selling for less than \$130,000.00, the Town shall be entitled to receive, in addition to other available remedies for breach of this Agreement, a sum equal to three (3) times the amount of the sales price deficiency. Payment shall be due within sixty (60) days of the recording of the deed of conveyance. The Developer and its successors and/or assigns, as owners of the subject property, shall be jointly and severally liable for this obligation.

Section XII. Miscellaneous Construction Standards for Raised Slab Homes.

A. The value and construction standards of the homes to be constructed on Developer's Property must be of sufficient value to generate ad valorem taxes to local governments sufficient to provide public services and amenities for the future residents of the subdivision. Developer has asked for and received an exemption from the Town's traditional construction standards for permission to construct homes using a raised slab foundation rather than a crawl-space foundation or full basement. This will allow Developer a substantial cost savings in the construction of each home. To ensure homes of considerable value are constructed, as well as to provide for the maintenance of property values within the subdivision as years pass, four or more premium features such as the following will be included on all homes constructed on other than a traditional crawl space foundation or full basement:

1. Homes could have double break rooflines, not to include false gables.
2. Homes could have standing seam metal roof accents.
3. Homes could make use of dormers.
4. Homes could utilize architectural grade roofing shingles.
5. Homes could use masonry wainscoting across the entire front to at least thirty-six (36) inches as measured from the top of the home's foundation.
6. Homes shall utilize masonry material (brick, rock and stacked stone) on a façade column that treats an entire vertical section of the front façade.
7. A masonry chimney could be provided.
8. Homes could have a covered entryway or front porch that has at least two (2) full square columns (not to include spindle columns) supporting a roof that must cover a minimum distance of four (4) feet out from the front door.
9. Homes could have a screened-in back porch with roof.
10. Homes could have Pella grade windows.

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11. Homes could have a bay window.
12. Homes could have Fypon above all windows, doors and garage door.
13. Homes could have Hardiplank siding (no vinyl).

B. The foregoing should be interpreted as an illustrative list of construction features that will tend to enhance the value of homes constructed on a non-traditional (cost saving) foundation. Developer may choose alternative premium features to satisfy the Town's quality standards if approved in writing in advance as set forth in Section XI.E of this Agreement. Homes with more than 2,400 heated square feet of floor space and having sold for a price in excess of \$200,000.00 shall be exempt from the requirements of Section XII.

Section XIII. 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 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 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. Notwithstanding the foregoing, Developer's compliance with the Town's adequate public facilities policies is also conditioned upon fulfillment of its obligations hereunder.

Section XIV. 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. In the event of a conflict or inconsistency between this Agreement and the approved Standard Specifications, the more restrictive standard shall control.

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

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

Section XVII. Real Covenant; Delegation of Duties. The Agreement shall be a real covenant running with the Property, and any portion thereof as 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 Developer's obligations hereunder by a successor in title to the Property and then only with the prior written consent of the Town. The Town's consent shall not be withheld if, as reasonably determined by the Town, the party assuming Developer's obligations possesses adequate

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financial resources, ownership interests and development expertise to complete the requirements of this Agreement.

Section XVIII. Applicability of Agreement. This Agreement shall be applicable to the Project as it has been approved at the time of this Agreement. Any increase in residential density, reduction in home sizes or increase of nonresidential square footage will require an amendment to this Agreement. Developer covenants that it is the owner of the Property in fee simple, free and clear of encumbrances except for those set forth herein and those evidenced in the public records or those that would be disclosed by an accurate survey of the Property.

Section XIX. 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 XX. 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 saving a substantial amount of money for the development by relieving Developer of certain infrastructure expenses for which it would otherwise have been obligated. The construction standards, home sizes and sales prices contained herein 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 XXI. Default by Developer. 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 shall entitle the Town to require specific performance of Developer's obligations hereunder, as well as recover such damages as to which the Town may be entitled plus reasonable attorneys' fees and costs. Furthermore, the Town may halt and enjoin further development activities on the Property by withholding the issuance of permits, map recordings, utility extensions and connections for any period of time within which the development remains out of compliance with the terms of this Agreement. 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.

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

ATTEST:

Amanda Newman
By: Amanda Newman, Town Clerk

TOWN OF KNIGHTDALE

Douglas M. Boyd
By: Douglas M. Boyd, Mayor

NORTH CAROLINA
WAKE COUNTY

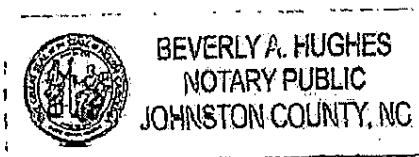
I certify that Amanda Newman, Town Clerk of the Town of Knightdale, personally appeared before me this day and certified to me under oath or by affirmation that she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness,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

Today's Date: May 1st, 2006.

Beverly A. Hughes
[Notary's signature as name appears on seal]

BEVERLY A. HUGHES
[Notary's printed name as name appears on seal]

My commission expires: May 1, 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: Ren E. Wiles, CPA 4/28/06
Town Finance Director

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

BROOKFIELD STATION DEVELOPMENT, LLC

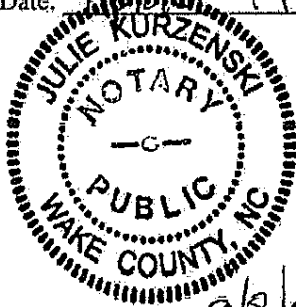
By: D. Stuart Marlowe Jr
Brookfield Station Development, LLC

ACKNOWLEDGMENT

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: D. Stuart Marlowe Jr FOR Brookfield Station Dev, LLC

Today's Date: April 19, 2006[Signature]
[Notary's signature as name appears on seal]JULIE KURZENSKI
[Notary's printed name as name appears on seal]My commission expires: Sept 8, 20089/8/08
[Affix Notary Seal in Space Above]

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**Exhibit A to
January 18, 2006
Lakeview Point/Brookfield Station
Development Agreement**

Property Description:

Being the land acquired by Brookfield Station Development LLC by deed dated January 20, 2006 and recorded in Deed Book 11783, Page 1, Wake County Registry; and further being described as Tract 2-B of the Kathleen G. Lewis Estate on a map recorded in Book of Maps 1997, Page 1014, Wake County Registry.

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**Exhibit B to
January 18, 2006
Lakeview Point/Brookfield Station
Development Agreement**

The Subdivision Plan is on file in the Knightdale, North Carolina Planning Department as file # S-7-05 (modified S-2-05).

Raleigh 307020.1
5/30/06 5:00 PM

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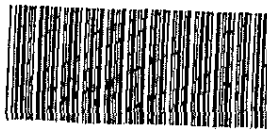
**Exhibit C to
January 18, 2006
Lakeview Point/Brookfield Station
Development Agreement**

Phasing Plan

The 130 lot single family subdivision and associated infrastructure shall be completed in a single phase.

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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

22,004-1/20/06

**LAKEVIEW POINT/BROOKFIELD STATION
DEVELOPMENT AGREEMENT**

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WITNESSETH:

WHEREAS, Developer is the owner of a parcel comprised on 41.02 acres within the extraterritorial jurisdiction of the Town, being Wake County PIN 1754.17214532, 1754.17116462 and 1754.17005660, more particularly described on Exhibit A attached hereto and hereinafter referred to as the "Property"; and

WHEREAS, the Town has approved a residential development known as "Lakeview Point Subdivision a/k/a Brookfield Station Subdivision," S-7-05 (Modified S-2-05), hereinafter referred to as the "Subdivision Plan" attached hereto as Exhibit B for the property; and

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WHEREAS, with expensive and limited water and sewer capacity, limited park and recreation programs and facilities, and limited public safety personnel and equipment, the Town evaluates annexation petitions simultaneously with development plan review in order to determine its ability to provide for municipal services; and

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portion of the Property is annexed while the balance is refused annexation ninety (90) days following the refusal, the terms of this Agreement shall be deemed amended to apply only to the annexed portions of the Property.

Section III. Onsite Infrastructure. Developer shall design, construct and install, at its expense, all Onsite Infrastructure in accordance with the design criteria set forth in the Standard Specifications. The plans for Onsite Infrastructure shall be prepared by a licensed engineer employed by Developer. Developer shall obtain, at its expense, all required permits and approvals from all governmental agencies prior to commencing construction of Onsite Infrastructure. Upon satisfactory inspection of Onsite Infrastructure by the Town or other government authority, Developer shall do the following:

A. Public Infrastructure.

1. Developer shall dedicate for public use all streets, sidewalks, and water and sewer lines on 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 on, over, under and across all portions of the Property necessary or convenient for repair and maintenance of the Onsite Public Infrastructure.

2. Developer shall deliver to the Town a lien waiver and release, in form and substance 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 Onsite Public Infrastructure.

3. Developer shall deliver to the Town security for Developer's one-year warranty of the Onsite 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 Onsite Public Infrastructure and one (1) complete set of as-built drawings showing all the Onsite Public Infrastructure, easements and rights-of-way 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.

B. Private Infrastructure.

1. Developer shall convey to the Homeowners Association ownership of the 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 Homeowners 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 Onsite Private Infrastructure. Developer shall warrant the Onsite Private Infrastructure for a period of three (3) years and shall deliver to the Homeowners Association all original manufacturers' warranties and/or operation manuals, if any.

3. Developer shall provide both the Homeowners Association and the Town a complete set of as-built drawings showing all the Onsite Private Infrastructure, easements and rights-of-way 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.

Section V. Offsite Public Infrastructure.

A. Public Utilities. Town water and sewer services are available in close proximity to the Property. Developer shall, at its expense, obtain all applicable permits and install all lines necessary to provide service to the Property. The requirement specifically includes, by way of example but not limitation:

1. The Town's water main in Bethlehem Road shall be extended along Street A to connect with public water mains installed by Developer within the Property and then connect with the public water mains within the adjacent Lewis Landing subdivision.

2. Sewer mains shall be extended from Lewis Landing throughout the subdivision to the farthest property lines, allowing further connections with adjacent developments as needed.

B. Road Improvements by Developer. During the course of development of the Property and subject to the remaining terms and provisions of this Agreement, Developer shall, at its sole expense, provide all rights of way and utility easements for and shall construct the following new roads in accordance with the Town's design standards:

<u>Street Name</u>	<u>Cross-Section</u>	<u>Distance</u>
Street A	Major Local 60' R/W 31' pavement b/b with sidewalk on each side	From First Avenue/ Bethlehem Road to Street B within the Property
First Avenue/ Bethlehem Road	Major Collector 70' R/W 41' b/b with curb/gutter 5' sidewalk on north side	Determined at the time of construction improvements permit issuance and will include crossing improvements as

required by the Town, NCDOT
and Norfolk Southern

C. Easements and Rights of Way. Necessary easements and rights-of-way shall be acquired by Developer, at Developer's sole expense. The main sewer easements shall be recorded as dual sewer/greenway easements. In the event Developer is unable, despite its best efforts, to acquire necessary easements and rights of way, Developer shall make a written request to the Town for assistance. The request shall describe the needed easement or right of way and include copies of offers or other evidence of unsuccessful acquisition efforts. After notice to the affected property owners and upon finding that the easement or right of way is needed by the Town for extension of its street, water, sewer or other public facilities, the Town will exercise its power of eminent domain to acquire the same. All expenses incurred by the Town, including the purchase prices, appraisal fees, attorney fees and court costs, shall be reimbursed by Developer.

Section VI. Credits Due to Developer. Credits hereunder for costs related to onsite oversized water and/or sewer lines or offsite utility installations constructed by Developer at the request of the Town shall be provided to Developer by the Town through water and sewer development fee credits, respectively, which the Town shall grant Developer or its assignees. Credits for offsite road improvements shall be available from transportation impact fees which Developer would otherwise pay the Town. The amount of all credits due shall be determined by the Town Manager after consultation with the Developer's engineer and the Town engineer. If any amounts to be reimbursed hereunder exceed development fees applicable to the Project, Developer may qualify for additional reimbursement in accordance with the Town's reimbursement policy in effect at the time.

Section VII. Infrastructure Improvements by the Town. Provided Developer has met and continues to meet its obligations hereunder, the Town shall obtain or provide all rights of way for and construct, at its sole cost and expense, the following improvements in accordance with the Town's design standards: None.

Section VIII.

[INTENTIONALLY LEFT BLANK]

Section IX. Timing of Infrastructure Improvements. Infrastructure improvements to be constructed under this Agreement by Developer shall be completed in a timely fashion to enable the development of the Property in accordance with the Phasing Schedule. Any failure on the part of the Developer to comply with this shall be deemed a violation of this Agreement and the Town, in addition to other remedies provided by law, shall have the right to withhold further approvals for the development of the Property, withhold and/or terminate utility allocations, utility connections and occupancy permits. Any failure on the part of the Town to construct or install infrastructure for which it is responsible under this Agreement shall not affect Developer's authorization to develop the Project in accordance with the Phasing Schedule and, in such event, the Project shall be deemed to be in compliance with the Town's adequate public facilities policies, except those of general temporary application to deal with public health or safety concerns. All roads to be constructed pursuant to this Agreement shall be dedicated to the Town or the North Carolina Department of Transportation upon completion. The Town reserves the

right to alter the timing of offsite improvements for which it responsible hereunder due to lack of available funds or other public policy concern.

Section X. Water and Sewer Capacity Allocation.

A. The water and sewer allocation from the Town shall be assigned to new homes on the Property when Developer has a Town Council-approved site plan, paid the fees due on the Property phase for which homes are proposed, including but not limited to capacity fees and acreage fees, has received Town approval for the increased flow, and has had the Property annexed into the Town. 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 at the time the fees are paid.

B. The Town does not guarantee water and sewer service will be available for new development on a schedule needed by Developer, but the Town shall apply its best efforts to make such service available in a timely fashion. The Town shall assign its available water and sewer allocation on a first come, first served basis, except the Town Council may otherwise reserve some portion of its available allocation for its own use, for a public purpose, or to benefit the balanced development of the Town. The Town Planning Department shall maintain a public list of the assigned flows and the Town's available allocation of water and sewer.

C. The Town will seek additional water and sewer allocations from the City of Raleigh when needed by this development and other developments when it is in the best interest of the Town to do so, or the Town may seek to merge its utility system with that of the City of Raleigh. If the Town merges its utility system with that of the City of Raleigh, the Town will continue to assign its available allocation on a first come, first served basis, as described herein.

D. The amount of flow assigned for a development shall be the average flow requirement for the type of development as determined by the Town. At the completion of the development of the Property, or portions thereof, the Town will adjust the assigned allocation on the actual average usage.

Section XI. Residential Dwellings.

A. Subdivision restrictive covenants shall provide for a minimum house size of 2,000 square feet of heated, finished floor space. Notwithstanding the foregoing, no more than thirty-five (35) homes adjacent to the Norfolk Southern right-of-way may have a minimum of 1,600 square feet. Any finished area within a garage shall not be credited to the minimum size.

B. *[INTENTIONALLY LEFT BLANK]*

C. At least sixty-five (65) of the homes shall have attached garages with forty (40) of the garages consisting of a two-car minimum size.

D. House exterior siding materials shall be limited to:

1. Brick
2. Cultured stone
3. Hardiplank
4. Cedar shake
5. Vinyl

E. All houses shall be constructed on a crawl-space foundation or with a full basement. No variations from the construction specifications provided for in this Section XI and Section XII of the Agreement shall be made without advance approval of the Town Planning Director on a case-by-case basis, but approval shall not be unreasonably withheld if the resulting dwelling satisfies applicable state and local government regulations and does not diminish the ad valorem tax value of the house and lot. Construction specifications prepared by Tom Hepler, P.E., of CH Engineering, consulting engineers, for two alternative raised-slab foundations concurrently approved with the execution of this Agreement, are included in Town of Knightdale Subdivision File S-7-05 (Modified S-2-05).

F. Brick shall be applied to all foundation walls (including crawl space, raised slab and basement); no plain concrete block shall be exposed. Siding, hardiplank or clapboard may not extend below the first habitable floor structure.

G. All driveways must be concrete or other approved material and shall lead directly from the back of curb to the garage door threshold and be at least twelve (12) feet wide along the entire length. Each lot is required to provide at least two (2) off-street parking spaces.

H. No home and lot within Lakeview Point/Brookfield Station Subdivision shall be conveyed or otherwise transferred other than for a valuable consideration of not less than \$130,000.00. The seller and purchaser of each improved lot selling for less than \$150,000.00 shall within thirty (30) days of closing file with the Knightdale Town Manager or his designee a copy of the HUD-1 settlement statement for the transaction upon which the sales price is verified by the closing agent.

I. For any home and lot selling for less than \$130,000.00, the Town shall be entitled to receive, in addition to other available remedies for breach of this Agreement, a sum equal to three (3) times the amount of the sales price deficiency. Payment shall be due within sixty (60) days of the recording of the deed of conveyance. The Developer and its successors and/or assigns, as owners of the subject property, shall be jointly and severally liable for this obligation.

Section XII. Miscellaneous Construction Standards for Raised Slab Homes.

A. The value and construction standards of the homes to be constructed on Developer's Property must be of sufficient value to generate ad valorem taxes to local governments sufficient to provide public services and amenities for the future residents of

the subdivision. Developer has asked for and received an exemption from the Town's traditional construction standards for permission to construct homes using a raised slab foundation rather than a crawl-space foundation or full basement. This will allow Developer a substantial cost savings in the construction of each home. To ensure homes of considerable value are constructed, as well as to provide for the maintenance of property values within the subdivision as years pass, four or more premium features such as the following will be included on all homes constructed on other than a traditional crawl space foundation or full basement:

1. Homes could have double break rooflines, not to include false gables.
2. Homes could have standing seam metal roof accents.
3. Homes could make use of dormers.
4. Homes could utilize architectural grade roofing shingles.
5. Homes could use masonry wainscoting across the entire front to at least thirty-six (36) inches as measured from the top of the home's foundation.
6. Homes shall utilize masonry material (brick, rock and stacked stone) on a façade column that treats an entire vertical section of the front façade.
7. A masonry chimney could be provided.
8. Homes could have a covered entryway or front porch that has at least two (2) full square columns (not to include spindle columns) supporting a roof that must cover a minimum distance of four (4) feet out from the front door.
9. Homes could have a screened-in back porch with roof.
10. Homes could have Pella grade windows.
11. Homes could have a bay window.
12. Homes could have Fypon above all windows, doors and garage door.
13. Homes could have Hardiplank siding (no vinyl).

B. The foregoing should be interpreted as an illustrative list of construction features that will tend to enhance the value of homes constructed on a non-traditional (cost saving) foundation. Developer may choose alternative premium features to satisfy the Town's quality standards if approved in writing in advance as set forth in Section XLE of this Agreement. Homes with more than 2,400 heated square feet of floor space

and having sold for a price in excess of \$200,000.00 shall be exempt from the requirements of Section XII.

Section XIII. 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 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 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. Notwithstanding the foregoing, Developer's compliance with the Town's adequate public facilities policies is also conditioned upon fulfillment of its obligations hereunder.

Section XIV. 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. In the event of a conflict or inconsistency between this Agreement and the approved Standard Specifications, the more restrictive standard shall control.

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

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

Section XVII. Real Covenant; Delegation of Duties. The Agreement shall be a real covenant running with the Property, and any portion thereof as 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 Developer's obligations hereunder by a successor in title to the Property and then only with the prior written consent of the Town. The Town's consent shall not be withheld if, as reasonably determined by the Town, the party assuming Developer's obligations possesses adequate financial resources, ownership interests and development expertise to complete the requirements of this Agreement.

Section XVIII. Applicability of Agreement. This Agreement shall be applicable to the Project as it has been approved at the time of this Agreement. Any increase in residential density, reduction in home sizes or increase of nonresidential square footage will require an amendment to this Agreement. Developer covenants that it is the owner of the Property in fee simple, free and clear of encumbrances except for those set forth herein and those evidenced in the public records or those that would be disclosed by an accurate survey of the Property.

Section XIX. 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 XX. 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 saving a substantial amount of money for the development by relieving Developer of certain infrastructure expenses for which it would otherwise have been obligated. The construction standards, home sizes and sales prices contained herein 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 XXI. Default by Developer. 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 shall entitle the Town to require specific performance of Developer's obligations hereunder, as well as recover such damages as to which the Town may be entitled plus reasonable attorneys' fees and costs. Furthermore, the Town may halt and enjoin further development activities on the Property by withholding the issuance of permits, map recordings, utility extensions and connections for any period of time within which the development remains out of compliance with the terms of this Agreement. 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.

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

ATTEST:

TOWN OF KNIGHTDALE

By: Amanda Newman, Town Clerk

By: Douglas M. Boyd, Mayor

NORTH CAROLINA
WAKE COUNTY

I certify that Amanda Newman, Town Clerk of the Town of Knightdale, 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 Douglas M. Boyd sign the foregoing document or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Today's Date: _____, 2006.

[Notary's signature as name appears on seal]

[Notary's printed name as name appears on seal]

My commission expires: _____, 2006

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

BROOKFIELD STATION DEVELOPMENT, LLC

By: D. Stuart Marlowe Jr
Brookfield Station Development, LLC

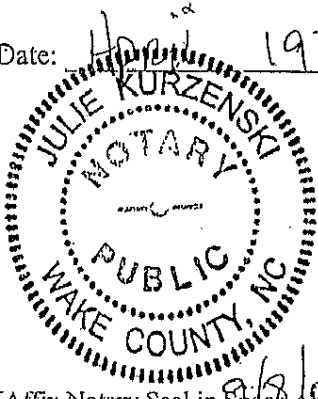
ACKNOWLEDGMENT

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: D. Stuart Marlowe Jr For Brookfield Station Dev. LLC

Today's Date: April 19, 2006



[Signature]
[Notary's signature as name appears on seal]

JULIE KURZENSKI
[Notary's printed name as name appears on seal]

My commission expires: Sept 8, 2008

[Affix Notary Seal in Space Above]