

NORTH CAROLINA

DEVELOPMENT AGREEMENT

WAKE COUNTY

This Development Agreement (the “**Agreement**”), made this the ____ day of _____, 20__, by and between the Town of Apex, a municipal corporation under the laws of North Carolina (the “**Town**”) and Horton Park Investments, LLC a North Carolina limited liability company (the “**Developer**”).

WITNESSETH:

WHEREAS, Developer is the owner of those certain tracts of real property totaling approximately 124.13 acres and located between Jessie Drive to the north and Colby Chase Drive to the south as depicted on the map entitled Exempt Recombination Plat Horton Park (the “**Map**”), recorded in Book of Maps 2022, Pages 1376 - 1380 at the Wake County Register of Deeds (the “**Properties**”) and plans to develop a residential subdivision commonly known as “Horton Park, Pods 5,6,7 & 8” on the Properties; and

WHEREAS, Ten Ten Road is a busy thoroughfare within the Town and the Town and Developer desire to provide 200 feet of additional storage length for the westbound left turn lane on Ten Ten Road at Jessie Drive combined with the 100 feet of storage committed by the Developer in rezoning case 18CZ04, with the entire 300 feet of storage to be constructed by the Developer to provide additional traffic capacity (the “**Improvements**”); and

WHEREAS, pursuant to North Carolina General Statute § 160A-309, the Town is authorized to contract with a developer for public intersection and roadway improvements that are adjacent of ancillary to a private land development project where the public cost will not exceed \$250,000; and

WHEREAS, the Town finds that the coordination of separately constructed public intersection or roadway improvements, and the adjacent or ancillary private land development improvements would be impracticable; and

WHEREAS, the Town and the Developer desire to cooperate to facilitate construction of the Improvements, with Developer acting as the contracting and managing party with third parties hired to construct the Improvements.

NOW, THEREFORE, IT IS HEREBY AGREED between the Town and the Developer:

1. Recitals. The foregoing recitals shall constitute an integral part of this Agreement, and this Agreement shall be construed in light thereof.

2. Construction of Improvements. The Developer shall, at its own expense, construct the Improvements, all of which are more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Plans**”). The Developer shall design, construct and install the Improvements (i) in a good and workmanlike manner, (ii) in compliance with this Agreement, Town Specifications, and all applicable Federal, State, and local laws, statutes, ordinances, rules, regulations, policies, and specifications, and (iii) in accordance with the Plans.

The Developer shall administer the construction contract without cost or expense to the Town except as provided for in this Agreement, and the Town may require the Developer to file reports of its administration with the Town’s Engineer.

3. Certification, Inspection, and Acceptance of Facilities. Upon completion of construction of the Improvements, Developer shall provide the Town with written certification and as-built drawings from Developer’s designated consulting engineering firm that the Improvements are complete and have been constructed and installed in compliance with this Agreement and within appropriate easements or fee simple parcels. Fee simple interest is required for street rights-of-way. The Improvements shall be offered for public dedication to the North Carolina Department of Transportation (“**NCDOT**”) upon completion of construction, and shall be subject to inspection and acceptance by the NCDOT. Upon the inspection and acceptance of the Improvements, Developer shall take any steps necessary to transfer title to and possession of the Improvements, easements and fee simple parcels to the NCDOT. Thereafter, the NCDOT shall own the Improvements and have exclusive possession and control of the Improvements. In the event that any defect or breach of warranty claim becomes known after acceptance and dedication of the Improvements, Developer agrees either to pursue its rights and claims against the contractor or other party responsible for the defect or breach of warranty and pay over any recoveries to the Town or to assign such rights and claims to the Town as directed by the Town.

4. Approved Project Costs. The “**Approved Project Costs**” are those costs attributed to the 200 feet additional storage length for the westbound left turn lane on Ten Ten Road at Jessie Drive and as shown in the estimate provided by the Developer’s Engineer and attached hereto as **Exhibit B**. The Town agrees that within thirty (30) days after inspection and acceptance of the Improvements by NCDOT, the Town shall pay to Developer an amount equal to the costs attributed to the construction of the Improvements as shown in Exhibit B as may be modified as provided herein.

Costs that are not certified by the Developer’s Engineer and approved by the Town’s Engineer shall not be included in the Approved Project Costs. Approved Project Costs shall not include any costs for designing, bidding, and managing services.

The Town shall not participate in or be responsible to pay or reimburse any change order increasing the costs of the Improvements unless agreed to by the Town and approved by the Town’s Engineer in writing prior to execution of the change order. In other words, the costs associated with a

change order shall be excluded from the Approved Project Costs unless the change order is pre-approved by the Town's Engineer, which approval will not be unreasonably withheld, conditioned or delayed. Developer shall immediately upon learning of a proposed change order provide the Town with all the documentation and information needed for the Town to evaluate the proposed change order. In addition, the Approved Project Costs incurred by Developer in constructing the Improvements shall reflect any cost savings that reduce the amount that the Developer actually pays to construct the Improvements.

Developer agrees to provide the Town with any additional information reasonably requested by the Town in connection with the Approved Project Costs, provided that the Town requests such additional information within ten (10) business days of receipt of the detailed invoices from Developer.

5. Notices. Any notice given pursuant to this Agreement shall be deemed given if (a) delivered by hand, or (b) faxed to the addressee and then deposited in the United States Mail to the addressee, postage paid certified mail, return receipt requested and addressed as follows:

If to the Town: Town of Apex
 Post Office Box 250
 Apex, NC 27502-0250
 Attention: Russell Dalton, Traffic Engineering Manager
 Email: russell.dalton@apexnc.org

If to Developer: Horton Park Investments, LLC
 6908 North Ridge Dr.
 Raleigh, NC 27615
 Attn: Pablo Reiter
 Email: pablo@prmsinv.com

6. Termination for Failure to Complete. If Developer does not complete construction of the Improvements on or before the fifth anniversary of the full execution of this Agreement absent force majeure delays (as defined below), the Town may terminate this Agreement and have no further obligations to Developer.

7. Delay Beyond the Control of the Parties. Neither Developer nor Town, having taken commercially reasonable precautions, shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by natural disaster, fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disobedience, or other event reasonably outside of the parties' control. Due to the ever-changing circumstances surrounding the COVID-19 pandemic, situations may arise during the performance of this Agreement that affect availability of resources and

staff of Developer or Developer's contractors or the Town. There could be changes in anticipated performance times and service costs. Developer will exercise reasonable efforts to overcome the challenges presented by current circumstances. In the event of changes in performance times or service costs caused by the COVID-19 pandemic the Town reserves the right to terminate this Agreement in accordance with its terms. The Parties agree that they shall not be liable to each other for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 pandemic.

8. Indemnification. To the extent permitted by law, the Developer agrees to defend, pay on behalf of, indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex, its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof resulting from the negligence of the Developer or Developer's contractors.

9. Anti-Human Trafficking. The Developer warrants and agrees that no labor supplied by the Developer or the Developer's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

10. Insurance. The Developer shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an additional insured by endorsement to the policies. If the policy has a blanket additional insured provision, the contractor's insurance shall be primary and non-contributory to other insurance. Additionally, the Developer shall require all of the Developer's subcontractors to maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000. The Developer shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company. All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Developer to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

11. Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Developer hereby warrants and agrees that Developer will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual

orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

12. E-Verify Compliance. The Developer shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Developer shall require all of the Developer's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Town shall comply with North Carolina General Statute § 160A-169.1 (E-Verify).

13. Complete Agreement, Modifications, Waiver and Assignment. This Agreement constitutes the entire agreement between the parties hereto and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore had between these parties are merged herein. This Agreement may not be changed, modified, or amended orally, but only by an agreement in writing signed by both the Town and the Developer. No waiver of any of the provisions to this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. This Agreement is not assignable without the written consent of all parties to this Agreement. There are no third-party beneficiaries of this Agreement.

14. No Agency, Joint Venturer Relationship. The Town and the Developer agree to exercise good faith in dealing with each other. The Town and the Developer are not agents, partners, or joint venturers of any kind, and the Town shall have no relationship via this Agreement with any third party with whom the Developer contracts in furtherance of this Agreement.

15. Choice of Law, Jurisdiction, and Venue. This Agreement shall be governed, interpreted and construed under the laws of the State of North Carolina without regard to principals of conflicts of laws. The parties agree that any dispute or other matter concerning this Agreement shall be decided by state or federal courts sitting in Wake County, North Carolina. The parties irrevocably submit to the sole and exclusive jurisdiction of such courts and waive all objections and defenses based on jurisdiction and/or improper or inconvenient venue. The parties agree that this Agreement may be enforced by specific performance.

16. Electronic Signature. Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The Parties hereby consent to use electronic or digitized signatures in accordance with the Town's Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

IN WITNESS WHEREOF, the Town and the Developer have duly executed this Agreement under seal as of the day and year first above written.

TOWN OF APEX

BY: _____ (SEAL)
Catherine Crosby, Town Manager

ATTEST:

Allen Coleman, Town Clerk

STATE OF NORTH CAROLINA)
WAKE COUNTY)

I, a Notary Public of the County and State aforesaid, certify that Allen Coleman, personally came before me this day and acknowledged that he is Town Clerk of the Town of Apex, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Town Manager, sealed with its corporate seal and attested by her as its Town Clerk.

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

[Signature of Notary Public] [AFFIX NOTARIAL STAMP SEAL]

My Commission Expires: _____

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

By: _____
Finance Director
Town of Apex

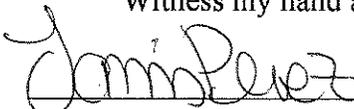
DEVELOPER

By: 
Print Name: Pablo Reiter
Title: Manager

STATE OF North Carolina
COUNTY OF Wake

I, a Notary Public of the County and State aforesaid, do hereby certify that Pablo Reiter, Managing Member of Horton Park Investments, LLC a North Carolina limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of Horton Park Investments, limited liability company.

Witness my hand and official stamp or seal, this the 13 day of October, 2022


[Signature of Notary Public]

[AFFIX NOTARIAL STAMP SEAL]

My Commission Expires: August 4, 2026

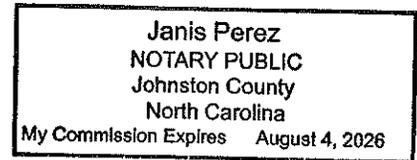
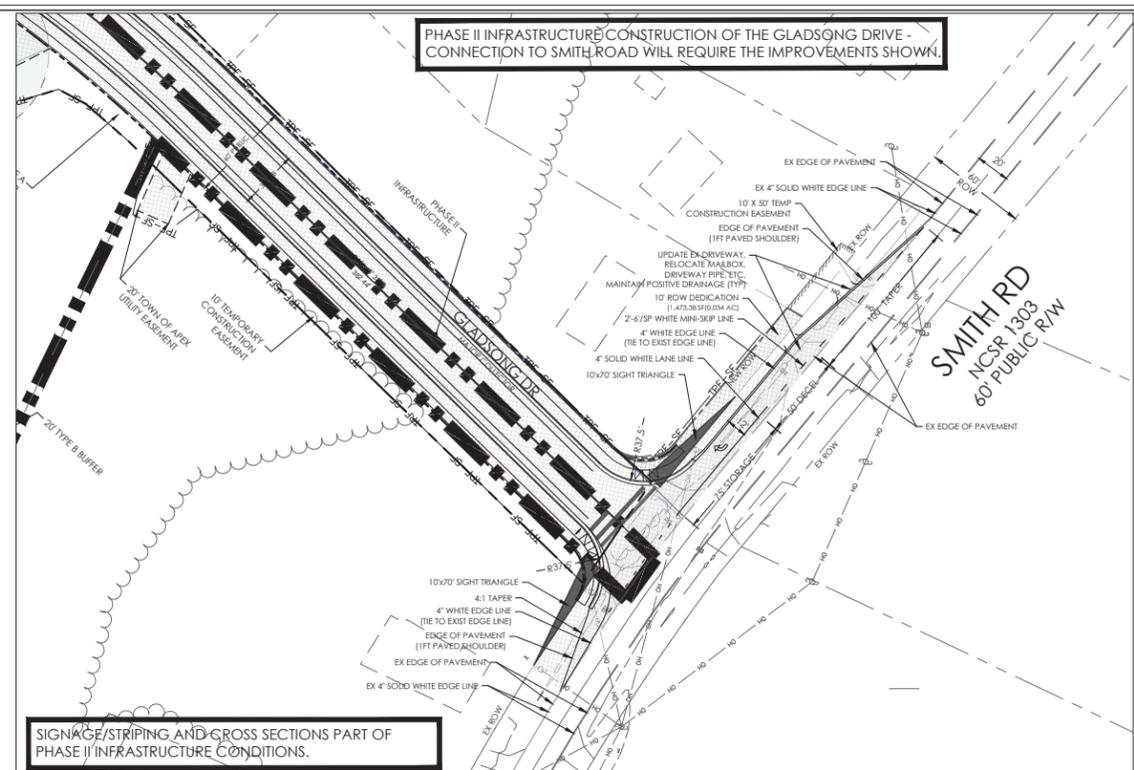
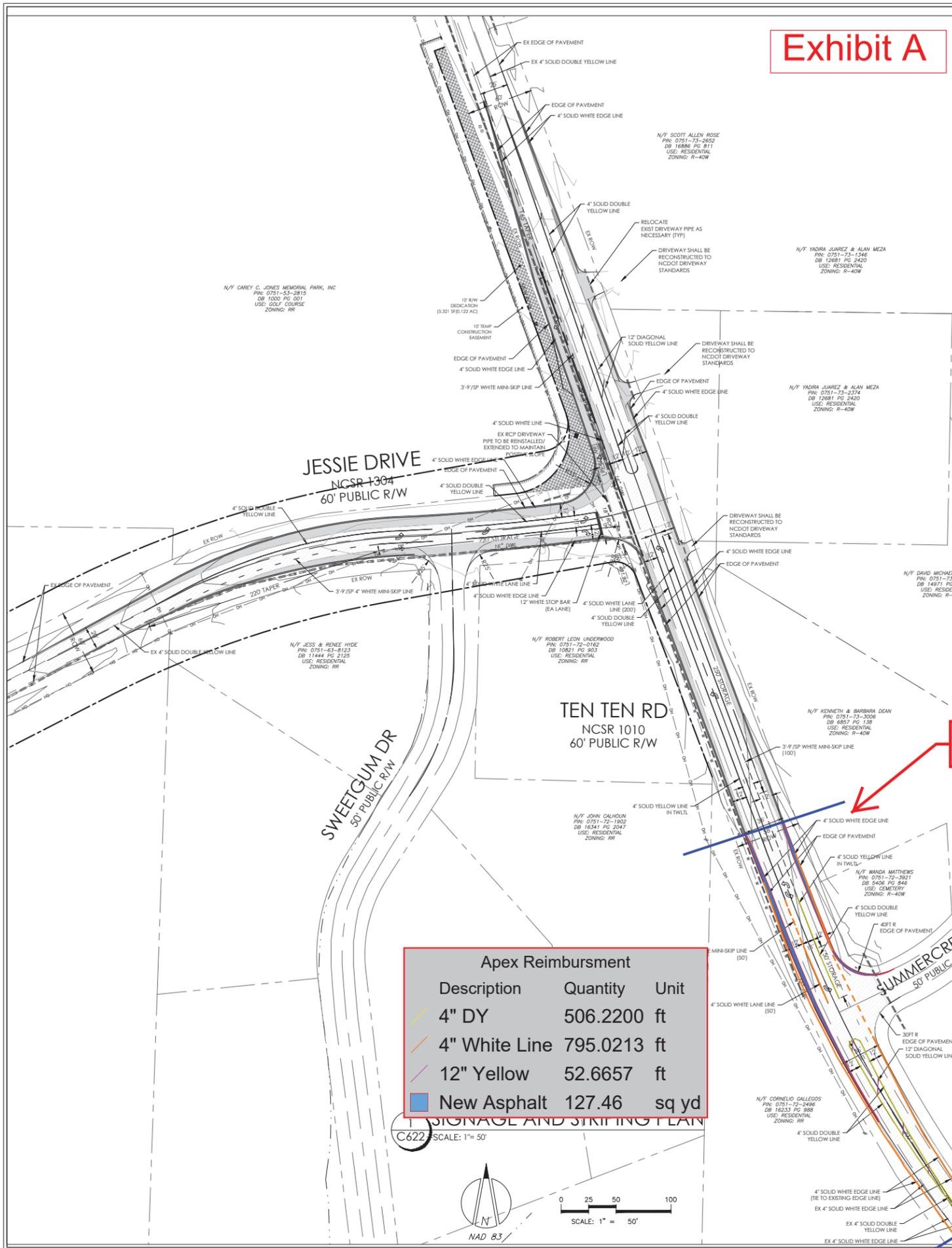


Exhibit A



TRANSPORTATION IMPROVEMENTS:

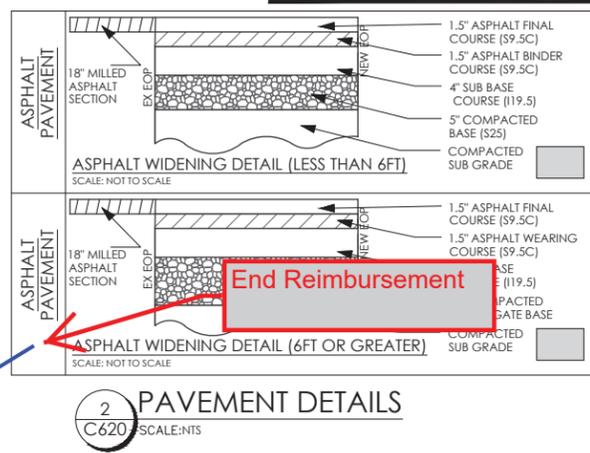
- Jessie Drive at Ten-Ten Road**
- THE DEVELOPER SHALL CONSTRUCT A WESTBOUND LEFT-TURN LANE WITH A MINIMUM OF 100 FEET OF STORAGE AND APPROPRIATE TAPER PRIOR TO THE PENDING STATE TIP PROJECT.
 - THE DEVELOPER SHALL CONSTRUCT AN EASTBOUND RIGHT-TURN LANE WITH A MINIMUM OF 200 FEET OF STORAGE AND APPROPRIATE TAPER PRIOR TO THE PENDING STATE TIP PROJECT.
 - THE DEVELOPER SHALL CONSTRUCT A NORTHBOUND RIGHT-TURN LANE WITH 100 FEET OF STORAGE AND APPROPRIATE TAPER PRIOR TO THE PENDING STATE TIP PROJECT.
 - The Developer shall monitor this intersection and install a traffic signal if warranted and permitted by NCDOT prior to the pending state TIP project.
 - The Developer shall construct the improvements at the aforementioned Jessie Drive/Ten-Ten intersection prior to the first Final Plat for the site.
- Smith Road at Gladsong Dr (formerly DeZola Street)**
- THE DEVELOPER SHALL CONSTRUCT A SOUTHBOUND RIGHT-TURN LANE WITH A MINIMUM OF 100 FEET OF STORAGE AND APPROPRIATE TAPER.
 - THE DEVELOPER SHALL CONSTRUCT AND IMPROVE DEZOLA STREET TO A MAJOR COLLECTOR STREET TYPICAL SECTION ON A 60-FOOT PUBLIC RIGHT OF WAY FOR THE ENTIRE LENGTH.
 - The Developer shall provide access to existing residential properties on DeZola Street in a manner that avoids residential driveways directly accessing any Major Collector Streets.
 - The Developer shall construct the aforementioned improvements at the Smith Road/DeZola Street (aka East-West Collector) intersection at the time the East-West Collector Street is constructed and planted to Smith Road.

KEY SITE NOTES:

- ALL DETAILS LOCATED ON DETAIL SHEETS OR WITHIN CONSTRUCTION DOCUMENTS.
- | | |
|-------------------------------------|--|
| 1 STOP SIGN MUTCD R1-1 AND STOP BAR | 11 10' SIDEWALK |
| 2 10' X 70' SIGHT DISTANCE TRIANGLE | 12 MAIL KIOSK |
| 3 TYPICAL PARKING SPACE | 13 PUBLIC ACCESS & SIDEWALK EASEMENT |
| 4 HANDICAP PARKING SPACE | 14 MONOLITHIC CONCRETE ISLAND |
| 5 HANDICAP PARKING SPACE | 15 3 RED RETROREFLECTIVE SIGNS OM4-3, AND 1 SIGN STATING "FUTURE ROAD EXTENSION" |
| 6 HANDICAP PARKING SIGN | 16 CUL-DE-SAC |
| 7 5' SIDEWALK | 17 STUB STREET TURN-AROUND |
| 8 6' SIDEWALK | 18 RETAINING WALL |
| 9 18" MEDIAN CURB | 19 YIELD SIGN MUTCD R1-2 FOR MINI TRAFFIC CIRCLE AND ROUNDABOUT |
| 10 30" STANDARD CURB AND GUTTER | |

ROADWAY IMPROVEMENT NOTE:

Per UDO Section 7.5.9 (C), all road improvements within a public right-of-way (including but not limited to road widening, road extension, pavement markings, curb and gutter installation, and sidewalk installation) shall be completed prior to the first Certificate of Occupancy (CO) for site plans and first plat for residential subdivisions. If a developer seeks to obtain the first CO or first plat approval prior to completion of the required road widening, a phasing plan requesting a delay in the road widening must be submitted for consideration. This phasing plan shall in no way change the requirements with respect to NCDOT permits.



The signatures affixed below certify that this sheet has been reviewed and approved solely per the certifications signed on the cover sheet of these construction plans.

Signature	Date	Department	Date
Public Works-Transportation		Water Resources - Stormwater	
Building Inspections		Planning	
Water Resources-Utility Engineering		Planning - Transportation	
Electric		Fire	
Water Resources - Soil & Erosion Control		Parks, Recreation & Cultural Res.	



NC License #P-0673

Project: **HORTON PARK**
JESSIE DRIVE
WHITE OAK TOWNSHIP
APEX, NORTH CAROLINA 27539



NO.	DATE	REVISION	BY
1	October 22, 2018	Issue for Construction Document 1st Review	JR
2	December 11, 2018	Issue for Construction Document 2nd Review	JR
3	February 15, 2019	Issue for Construction Document 3rd Review	JR
4	May 28, 2020	Issue for Construction Document 4th Review	JR
5	June 22, 2020	Issue for Construction Document 5th Review	JR
6	July 20, 2020	Issue for Construction Document 6th Review	JR
7	October 10, 2020	Issue for Construction Document 7th Review	JR
8	October 10, 2020	Issue for Construction Document 8th Review	JR

title: **OFFSITE ROADWAY IMPROVEMENTS SIGNAGE AND STRIPING PLAN**

proj #: **161201**
 date: **October 1, 2018**
 dwg by: **chkd by: FS JR**
 scale: **AS NOTED**
 sheet: **C622**



Exhibit B

4201 Fayetteville Road, Raleigh, NC 27603

Office: 919-586-8006 Fax: 919-586-8007

DATE: **8/9/2022**

TO: **Horton Park Invenments, LLC**

ATTN: **Larry Witek, Consultant**

RE: **Horton Park Apex Reimbursement: 200 FT full width Left turn lane storage on 1010 Rd @ Jessie Dr.**

	Item Description	Qty	Unit	Unit Price	Total
16	Ten Ten Road at Jessie Drive				
*	Mobilization	1	LS	\$4,750.00	\$4,750.00
	Grading	1	LS	\$6,500.00	\$6,500.00
	5" B25.0B	127.5	SY	\$70.00	\$8,925.00
	4" I-19.0B	127.5	SY	\$55.00	\$7,012.50
	1.5" S9.5B (1st Lift)	127.5	SY	\$21.00	\$2,677.50
	1.5" S9.5B (2nd Lift)	127.5	SY	\$22.00	\$2,805.00
	1.5" Mill for Overlay	1480	SY	\$18.00	\$26,640.00
	1.5" Overlay	1480	SY	\$20.00	\$29,600.00
	Thermoplastic 4" (90 mil)	795	LF	\$2.30	\$1,828.50
	Thermoplastic 4" DY 90mil	506	LF	\$4.55	\$2,302.30
	Thermoplastic 12" (90mil) white/yellow	52	LF	\$7.35	\$382.20
	Thermoplastic Arrow	3	EA	\$273.00	\$819.00
	Traffic Control	4	DY	\$3,250.00	\$13,000.00
					\$107,242.00

TOTAL - ABOVE ITEMS \$107,242.00

Clarifications:

* Mobilization includes additional fuel, equipmet maintance and site supervision for additional time due to the changes in scope & duration.

Exclusions:

APPROVED _____ TITLE _____ DATE _____

Horton Park Invenments, LLC

APPROVED _____ TITLE _____ DATE _____

Duke Lazzara Development, LLC

Proposal based on plans by:

Approval of this proposal shall serve as a notice of award and contract terms until a standard AIA contract has been executed.

	In addition, payment terms will be net 30 days or per the executed contract.		
	If work has not commenced or contracts not signed within 30 days of this approval, pricing will be voided.		
	Please contact Brett Hoover at 919-586-8006 if you have any questions.		