

STATE OF NORTH CAROLINA)
COUNTY OF ROWAN)

DEVELOPMENT
AGREEMENT

This Development Agreement (the “Agreement”) is made and entered into this ___– day of _____, 2023 (“Effective Date”), by and between BYRNE PROPERTIES INC, a North Carolina Corporation & BDM BUILDERS LLC, a North Carolina Limited Liability Company (“Developer”) and the Town of Landis, a North Carolina municipal corporation (“Town”),

WITNESSETH:

WHEREAS, Section 160D-1001(a)(1) of the North Carolina General Statutes that “Development projects often occur in multiple phases extending over several years, requiring a long-term commitment of both public and private resources; and

WHEREAS, Section 160D-1001(a)(3) of the North Carolina General Statutes provides that “Because of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and the phasing of the private development;” and

WHEREAS, Section 160D-1001(a)(4) of the North Carolina General Statutes provides that “Such projects involve substantial commitments of private capital, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development;” and

WHEREAS, Section 160D-1001(a)(5) of the North Carolina General Statutes provides that “Such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas;” and

WHEREAS, Section 160D-1001(a)(6) of the North Carolina General Statutes provides that “To better structure and manage development approvals for such developments and ensure their proper

integration into local capital facilities programs, local governments need the flexibility to negotiate such developments;” and

WHEREAS, in view of the foregoing, Section 160D-1001(b) and 160D-1003 of the North Carolina General Statutes expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of Sections 160D-1001 through 160D-1012 of the North Carolina General Statutes, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing; and

WHEREAS, Section 160D-1004 of the North Carolina General Statutes permits the use of a development agreement to “property of any size”. G.S. 160D-1004 further provides that “Development agreements shall be of a reasonable term specified in the agreement”; and

WHEREAS, Developer is the owner of certain parcels of land containing approximately 1.04 acres, more or less, located approximately 875 feet northwest of the intersection of South Main street and Kimball Road (east side) in the Town of Landis, North Carolina (the “Property”), such Property being identifiable as Rowan County property identification numbers 5626-19-52-2376 more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Developer desires to develop a single-family attached subdivision with expansion capabilities consistent with the Landis Development Ordinance(s) (the “Subdivision”) on the Property in accordance with the terms, conditions and provisions of this Agreement; and

WHEREAS, the Property is entirely within the Landis Town limits, and the Town has determined that the Subdivision is consistent with the Town’s adopted Comprehensive Land Use and Master Plan and Official Zoning Map; that the Subdivision conforms to all relevant requirements of the regulations of the Town of Landis, North Carolina, including the Landis Development Ordinance (the “Zoning”); that the Subdivision, including its lot sizes, density, access and circulation, is compatible with the existing and/or permissible future uses of adjacent property; and that the Subdivision will not have detrimental impacts on the safety or viability of permitted uses on adjacent properties..

WHEREAS, the Town Board of Aldermen finds that the Subdivision will benefit the citizens and businesses of the Town of Landis by expanding the Town’s tax base, by contributing to the diversification of the Town’s local economy, by helping attract new businesses and industries to the Town, and by creating additional jobs within the Town. The Town finds that it is in the best interests of the citizens and businesses of Landis for the Town to encourage the development of the Subdivision.

NOW, THEREFORE, based upon recitals hereinabove, the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties do hereby agree as follows;

Approval of Site Plan. Developer has submitted a ***Preliminary Plat/Site Development Plan*** for the Kimball Landing Townhomes project (the “Site Plan”) to the Town’s Planning Department in accordance with the procedures in the Landis Development Ordinance. A copy of said Site Plan

is attached hereto as Exhibit B and incorporated by reference. If and when the Site Plan is approved by the Town per the procedures in the Landis Development Ordinance, the Developer will be authorized to proceed with the following pursuant to the approved Site Plan:

- The installation and approval of required improvements (subject to the approval of construction drawings as required by the Landis Development Ordinance);
- Site preparation/grading (subject to obtaining a grading permit and/or an erosion control permit as required in the Landis Development Ordinance); and
- The preparation of a final plat, subject to the Landis Development Ordinance including any Performance Guarantee(s) required therein.

Permitted Uses. The Property may be used as a Subdivision with uses currently permitted under the “Mixed Use” (MU-2-CZ) zoning district approved for the property by adoption of Ordinance #ZMA-2022-04-11-1, together with any incidental or accessory uses associated therewith.

Open Space and Common Areas. The Property shall be developed such that all regulated designated Common Open Space shall be left undeveloped and that neither street improvements nor residential lot boundary lines shall extend into such areas as they exist on the effective date of this Agreement.

Development of the Property. The Property and the Subdivision may be developed in accordance with the Site Plan and the terms of this Agreement, and the size, placement and configuration of the lots and buildings, common open space, streets and other improvements shall be as depicted on the Site Plan (including the Site Plan as it may be modified pursuant to the terms of this Agreement).

Expansion of Site. Nothing in this Agreement should prevent the Developer from pursuing contiguous expansion of the Subdivision upon compliance with the Town of Landis Development Ordinance, and the terms of this Agreement.

Subdivision of Site. Developer reserves the right to subdivide the site into smaller parcels in accordance with the Landis Development Ordinance. However, the Town and Developer agree that subdivision of the property is not required and the site may be developed as a single parcel. Prior to any reduction to the Property, the Developer shall obtain an amendment of the Site Plan and no change shall reduce the size of the Property without the consent and approval of the Town.

Transportation Improvements. Developer shall install transportation improvements required for the issuance of the driveway permits for the Subdivision as specified by North Carolina Department of Transportation the “NCDOT”).

Access/Infrastructure Road Improvements. Developer represents that the Property will have sufficient access in accordance with the Site Plan referenced in this Development Agreement to adequately provide two-way access into and out of the Subdivision. Developer agrees to coordinate with Town prior to commencing construction of infrastructure and attend a pre-construction meeting with the Town, NCDOT, utility providers, and all affected/interested utilities. Construction plans shall indicate grades and details sufficient to determine compliance with all applicable standards and specifications. Periodic inspections may be conducted without notice by the Town and the Town shall be notified and accommodated for observance of proof rolls upon

preparation of sub-grades following installation of underground infrastructure within any and all roadway right-of-way, existing and/or proposed; and again, following preparation of base materials prior to paving material placement. The Developer agrees to dedicate any and all public right-of-way improvements in/of the Subdivision to the Town.

Law in Effect at Time of the Agreement Governs the Development of the Subdivision. Developer shall have a right to develop the Property and the Subdivision in accordance with the terms of this Agreement and the terms of the Zoning and other Town development regulations as they exist on this Agreement's Effective Date, except that the Property and the Subdivision always will be subject to current Town regulations regulating or limiting impervious surfaces. Pursuant to G.S. 160D-1007, and except as provided in G.S. 160D-108.1, Town may not apply subsequently adopted land development regulations to the Property or the Subdivision during the term of this Agreement without the written consent of Developer, except for regulations regulating or limiting impervious surfaces. Additionally, during this Agreement's term, no development impact fees subsequently adopted by Town shall apply to the Property or to the Subdivision without the written consent of Developer, including any subsequently adopted fees related to adequate public facilities. This Agreement does not abrogate any rights preserved by G.S. 160D-108 or 16D-108.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement. Developer acknowledges and agrees that this Agreement does not concern or limit any County, State, or federal regulations that may apply to the Property or to the Subdivision.

Schedule and Phasing. The Subdivision shall be constructed in a single phase over a two (2) year time frame in accordance with LDO Art./Sect. 7.11-1(F) and according to the schedule attached hereto as Exhibit C and incorporated herein by reference. In the event development is economically unfeasible according to the Development Schedule, Developer may be granted reasonable extensions consistent with the economic feasibility of the development of the Property and the provisions of LDO Art./Sect. 7.11-1(F).

Development Standards. The Subdivision shall be developed in accordance with the standards of the Zoning and other Town development regulations and in accordance with any additional development standards attached hereto as Exhibit D and incorporated herein by reference.

Term. The term of this Agreement shall commence on Effective Date, and expire five (5) years after unless sooner terminated by the mutual consent of the parties hereto or their successors in interest, or unless extended by the mutual consent of the parties hereto or their successors in interest.

Local Development Permits. In accordance with G.S. 160D-1006(a)(6), the following is a description or list of the local development permits approved or needed to be approved for the development of the Subdivision:

1. Town of Landis and/or NCDOT Entrance/Driveway Permits
2. Town Zoning Permits (for site work and individually for each dwelling and/or accessory structure)
3. State Sedimentation and Erosion Control Permit(s)
4. County Building Permits (for each building, dwelling and/or accessory structure)

The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Developer of the necessity of complying with all Federal, State of North Carolina, Rowan County and Town of Landis laws governing those jurisdictions' respective permitting requirements, conditions, terms or restrictions.

Water and Sewer Fees. Prior to the issuance of zoning clearance permits for each lot and building within the Subdivision, to the extent that the Town provides water and sewer service, Developer shall pay to Town the applicable per-lot or per-building, as applicable, water and sewer tap and/or connection fees in accordance with the Town's then-current schedule of rates and fees.

To the extent that the Town provides water and sewer service, Developer and all property owners in the Subdivision shall pay the fees to Town for water and sewer service as provided in the then-current Landis Schedule of Rates, Fees and Charges for Water and Sewer Service, which schedule is subject to change by the Town Board of Aldermen.

Water and Sewer Capacity Reservation. The parties acknowledge that Town currently provides sufficient water and sewer service for the Property and the Subdivision. The rights and obligations conferred by this Agreement may be assigned by Developer to any purchaser or other developer of any portion of the Property. Town shall be notified in writing of the assignment of such rights. This provision shall be binding upon any operator of the Town's water and sewer system or any successor-in-interest thereto.

Connection to Town's Water and Sewer System. Upon the request of Developer, Town agrees to permit the physical connection of the Subdivision to Town's water and sewer system subject to the terms and conditions of this Agreement and applicable federal, state and local laws.

Surface Infrastructure. Unless otherwise provided in this Agreement, the streets and/or sidewalks constructed within the Subdivision shall conform to the cross sections set out on the Site Plan and shall meet the specifications of Articles 13 and 16 of the Landis Development Ordinance and the Town of Landis Technical Standards & Specifications Manual.

Utilities. The Developer may request the extension of power and other electric, telephone, cable utilities and Developer agrees that all such utilities shall be buried on site adjacent to the public street right-of-way.

Amendment. The terms of this Agreement may be amended in writing by the mutual consent of the parties hereto or their successors in interest.

Recordation/Binding Effect. Within fourteen (14) days after Town enters into this Agreement, Developer shall record this Agreement in the Rowan County Public Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto.

Periodic Review. Pursuant to G.S. 160D-1008, the Planning, Zoning and Subdivision Administrator or other Town designee shall conduct a periodic review, (the "Periodic Review") at least every 12 months, at which time Developer shall be required to demonstrate good faith compliance with the terms of this Agreement.

If, as a result of the Periodic Review, Town finds and determines that Developer has committed a material breach of the terms or conditions of the Agreement, Town shall serve notice in writing, within a reasonable time after the Periodic Review, upon Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing Developer a reasonable time in which to cure the material breach subject to reasonable extensions as the circumstances may apply or dictate.

If Developer fails to cure the material breach within the time given, then Town unilaterally may terminate or modify the Agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160D-405.

Default. The failure of Developer or Town to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as allowed under applicable law, provided, however, that no termination of this Agreement may be declared by Town absent providing to Developer the notice and opportunity to cure set out in G.S. 160D-1008. The parties to this Agreement recognize that, in addition to other remedies that may be available, Town has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance with the terms thereof. Subject to the terms of this Agreement, in the event that an owner, tenant, Developer or any user on the Property violates the rules, policies, regulations or ordinances of Town or violates the terms of this Agreement, Town may, without seeking an injunction and after ten (10) days' notice to correct the violation, take such actions as shall be deemed appropriate under law until such violations have been corrected by the Developer. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement; or to obtain any other remedies permitted by law. Any legal proceedings shall be instituted only in the Superior Court of the County of Rowan, State of North Carolina, or in the Federal District Court for the _____ District of North Carolina,

Notices. Any notice, demand, request, consent, approval or communication which a party is required to or may give to another party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the parties shall be addressed to:

Town at:	Attn: Planning., Zoning and Subdivision Administrator Town of Landis 312 South Main Street Landis, North Carolina 28088
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Developer at: Byrne Properties, Inc.
 Attn: Ms. Tina Byrne, Mr. Scott Byrne
 1050 Lake Wright Road
 China Grove, NC 28023

And

BDM Builders, LLC
Attn: Michael McGlynn
4988 Irish Potato Road
Kannapolis, NC 28083

Entire Agreement. This Agreement sets forth, and incorporates by reference, all of the agreements, conditions and understandings between Town and Developer relative to the Property and the Subdivision, and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth in this Agreement or as clearly and explicitly incorporated by reference.

Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

Assignment. After notice to Town, Developer may assign its rights and responsibilities hereunder to subsequent land owners of all or any portion of the Property, provided that no assignment as to a portion of the Property will relieve Developer of responsibility with respect to the remaining portion of the Property without the written consent of Town.

Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

Agreement to Cooperate. In the event of any legal action instituted by a third party challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

Agreements to Run with the Land. This Agreement shall be recorded in the Rowan County Registry. The Agreements, covenants and restrictions contained herein shall be deemed to be a lien upon, binding upon and run with the land and shall be binding upon and an obligation of all successors in the ownership of the Property. The agreements, covenants and restrictions contained herein on behalf of the Town shall be deemed to be a benefit to Developer and Developer's successors-in-interest that run with the land and shall be binding upon and an obligation of Town and any successors-in-interest of the Town.

Hold Harmless. Developer agrees to and shall hold Town, its officers, agents, employees, consultants, attorneys, special counsel and representatives, harmless from liability for damages,

just compensation, restitution, costs, expenses, and attorneys' fees arising out of claims for personal injury, including death, and claims for property damage which may arise from the direct or indirect operations of the Developer or their contractors, subcontractors, agents, employees or other persons acting on their behalf or with their permission which relates to the Property or the Subdivision. Developer agrees to pay all costs for the defense of the Town and its officers, agents, employees, consultants, attorneys, special counsel and representatives regarding any legal proceeding caused or arising in any way from Developer's actions in connection with the Property or the Subdivision.

Town agrees to and shall hold Developer, its officers, agents, employees, consultants, attorneys, special counsel and representatives, harmless from liability for damages, just compensation, restitution, costs, expenses, and attorneys' fees arising out of claims for personal injury, including death, and claims for property damage which may arise from the direct or indirect operations of the Town or their contractors, subcontractors, agents, employees or other persons acting on their behalf or with their permission which relates to the Property or the Subdivision. Town agrees to pay all costs for the defense of the Developer and its officers, agents, employees, consultants, attorneys, special counsel and representatives regarding any legal proceeding caused or arising in any way from Town's actions in connection with the Property or the Subdivision.

Severability. If any section or provision of this Agreement is ruled by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable for any reason, that section or provision shall be deemed severed from this Agreement, and the remaining sections and provisions of this Agreement shall remain fully effective and enforceable.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereby set their bands and seals, (active the date first above written.

Developer:

By: _____

By: _____

By: _____

Town:

By: _____
Meredith Bare Smith, Mayor

Attest:

By: _____
Madison Stegall, Town Clerk

SEAL

STATE OF _____

IN THE COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he signed the foregoing instrument in his name on his behalf as its act and deed.

Witness my hand and official seal this the _____ day of _____, 2023.

NOTARY PUBLIC

My commission expires: _____

STATE OF _____

IN THE COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that she signed the foregoing instrument in her name on her behalf as its act and deed.

Witness my hand and official seal this the _____ day of _____, 2023.

NOTARY PUBLIC

My commission expires: _____

STATE OF _____

IN THE COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that she signed the foregoing instrument in her name on her behalf as its act and deed.

Witness my hand and official seal this the _____ day of _____, 2023.

NOTARY PUBLIC

My commission expires: _____

EXHIBIT A – Description of Property

All that certain parcel of land, situated, lying and being in the Town of Landis, Rowan County, State of North Carolina, and more particularly described as follows:

Lots Nos. 7 and 8 of the W.L. Kimball Estate as surveyed and mapped by Hudson & Almond, July and October of 1965, said map being on file in the office of the Register of Deeds for Rowan County, North Carolina, in Map Book at Page 1049, and more particularly described as follows:

BEGINNING at a point in the center of Kimball Road and runs thence, passing a stake on the edge of said road, North 40 deg. East 341.5 feet to a stake, corner of Lot No. 7 in the line of R.W. Brown; thence with the line of R.W. Brown and line of Lots Nos. 7 and 8, North 19-43 West 250 feet to a stake, corner of Lots Nos. 8 and 9; thence with the dividing line of Lots Nos. 8 and 9, South 82-32 West to a stake in the center of Kimball Road; thence with the center of Kimball Road, South 7-18 East 154.6 feet to a point in center of Kimball Road; thence with center of Kimball Road, South 4-15 East 45.4 feet to a point in Kimball Road; thence with the center of Kimball Road, South 3-06 West 115 feet to a point in the center of Kimball Road; thence with the center of Kimball Road, South 10-02 West 166.7 feet to the point of Beginning.

EXHIBIT B - SITE DEVELOPMENT PLAN - SHEET 1

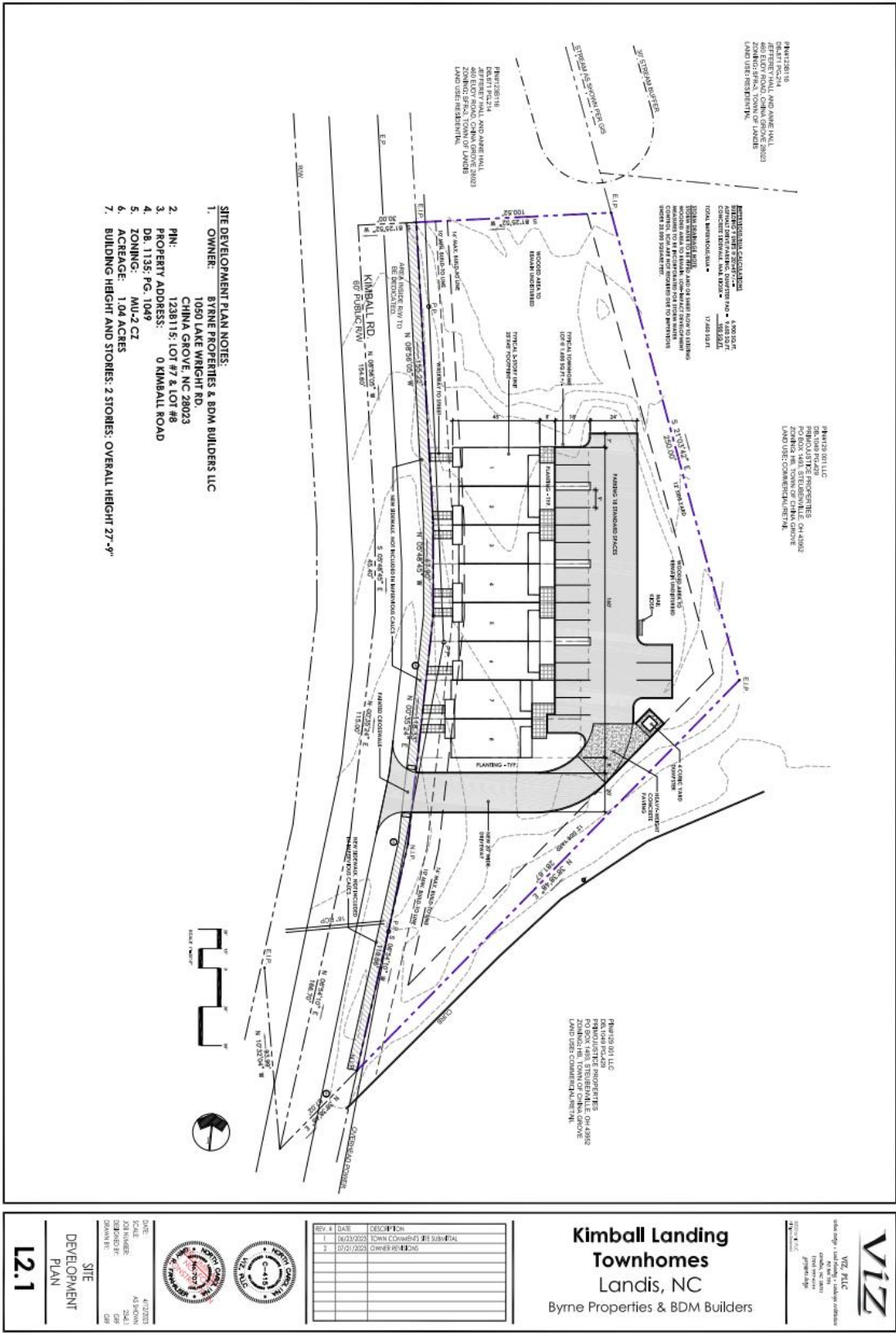


EXHIBIT C - DEVELOPMENT SCHEDULE

1. Phase 1, infrastructure in accordance with the Site Plan appearing in Exhibit B and the approved Construction Plans, shall be initiated within sixty (60) days of the Effective Date of this Agreement. Phase 1 infrastructure shall be completed within twenty-four (24) months of the Effective Date of this Agreement.
2. Phase 1 shall include installation of sidewalks, street trees, signage (stop, speed limit, street name, and parking restrictions for fire and driveway separation) and street lighting per LDO standards & specifications.
3. Phase 1, to close-out temporary ponds, complete any infrastructure repairs, overlay all surface course pavement, inspections, corrections to deficiencies, close permits, petition for acceptance of public infrastructure, and installation of permanent signage to replace initial signage if damaged during construction. Performance guarantees will be released upon completion and final acceptance of improvements at beginning of the 1-year infrastructure construction warranty period.