

NORTH CAROLINA  
ORANGE COUNTY

**AGREEMENT TO FORGO EXERCISE OF RIGHT OF FIRST REFUSAL TO PURCHASE PROPERTY IN  
EXCHANGE FOR COMMITMENTS REGARDING CERTAIN PUBLIC AMENITIES**

This Agreement is made and entered into as of the 20<sup>th</sup> day of November, 2015 by and between Woodfield Acquisitions, LLC, a North Carolina limited liability company, its successors and assigns, ("Woodfield") and the Town of Chapel Hill, a North Carolina municipal corporation ("the Town").

WITNESSETH:

WHEREAS, Chapel Hill Post No. 6, American Legion Incorporated, a North Carolina non-profit corporation, (the "Legion") holds fee simple title to certain real property consisting of approximately 36.2 acres, more or less, locate in the Town of Chapel Hill, Orange County, North Carolina, located on Legion Road, further described and shown in Exhibit A attached hereto (the "Property"); and

WHEREAS, the Legion has entered into a Contract for the Purchase of this Property with Woodfield (the "Contract"); and

WHEREAS, the Contract is subject to a prior agreement between the Legion and the Town under which the Town was given a right of first refusal to purchase the Property in the event the Legion decides to sell the Property; and

WHEREAS, Woodfield has acknowledged and accepted that the terms of the Contract include a provision that the Town has this right of first refusal; and

WHEREAS, Woodfield desires to enter into this binding agreement for the purpose of inducing the Town to not exercise its right of first refusal and by doing so allow Woodfield to proceed with its acquisition of the Property; and

WHEREAS, Woodfield and the Town have in good faith entered into negotiations regarding the interests of both Woodfield and the Town with respect to the Property, its potential future uses and the potential for parts of the Property to provide certain public benefits, including but not limited to public open space and recreation space and vehicular and pedestrian connections.

NOW THEREFORE, in consideration of the above-recited premises and the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Woodfield and the Town agree as follows:

1. The Town will forego the exercise of its right of first refusal to purchase the Property from the Legion.

2. Woodfield agrees to make the dedications of land and interests in land in the Property in accordance with the attached Memorandum of Understanding.

The Parties agree that in the event Woodfield acquires the Property—and obtains the entitlements referenced in the attached Memorandum of Understanding, the Town's forgoing of its right of first refusal is adequate consideration for this Agreement and that the commitments Woodfield has made under the provisions of this paragraph 2 may be specifically enforced by the Town.

3. Woodfield shall include, in any application to the Town (under the Town's land use regulatory authority) for development of the Property, the commitments and design elements consistent with the attached Memorandum of Understanding.

The Parties agree that in the event Woodfield acquires the Property and obtains the entitlements referenced in the attached Memorandum of Understanding, the Town's forgoing of its right of first refusal is adequate consideration for this Agreement. If Woodfield proceeds with an application for development of the Property and obtains the entitlements referenced in the attached Memorandum of Understanding, the commitments Woodfield has made under the provisions of this paragraph 3 may be specifically enforced by the Town.

Notwithstanding the preceding paragraphs, the Parties to this Agreement further acknowledge that nothing in this Agreement shall be construed as a commitment or limitation on the Town with respect to the exercise of its police power jurisdiction to review, under then-applicable Town land use regulations, any development application submitted by Woodfield or any successor in interest.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, ratified and delivered as of the effective date set forth above.

Woodfield Acquisitions, LLC, a North Carolina limited liability company,

By: Michael A. Underwood

Name: MICHAEL A. UNDERWOOD

Title: MANAGER

Town of Chapel Hill, a North Carolina municipal corporation

By: Boyd L. Stancil

Name: BOYD L. STANCIL

Title: TOWN MANAGER

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding sets out the general understandings between Woodfield Acquisitions, LLC and its successors and assigns (the "Developer"), and the Town of Chapel Hill, North Carolina (the "Town"), related to the development of the property currently owned by American Legion Post 6 in Chapel Hill, North Carolina.

The Developer is under contract to buy that certain tract of land in Chapel Hill, North Carolina, generally delineated on the Site Plan attached as **Exhibit A** hereto (the "Site Plan") and being tax parcel number 9799554972 (the "Development Property"). The Town is the owner of that certain property generally delineated on the Site Plan and being tax parcel number 9799547762 (the "Town Property"). The Developer will be going through the standard plan approval and entitlement process, as required by the Town, in connection with its acquisition and development of the Development Property.

This Memorandum of Understanding is an outline of the basic terms and conditions under which the Developer will undertake certain construction and maintenance obligations for the benefit of the Town and the Town would provide certain assurances to the Developer as an inducement therefor.

### **The Road Project and Trail Project**

Developer shall construct the Road Project (as defined hereinafter) and the Trail Project (as defined hereinafter), at Developer's sole expense, generally in accordance with the Site Plan. The "Road Project" will consist of a two-lane road which will provide access to the Development Property through the Town Property to Ephesus Church Road. The Road Project shall be constructed in accordance with the applicable requirements for dedication as a publically maintained street. Upon the completion of the Road Project, Developer shall dedicate such portion of the Road Project as is situated on the Development Property to the Town. The "Trail Project" shall consist of a trail generally open to the public running from Ephesus Church Road through the Town Property and the Development Property as shown on the Site Plan. The Trail Project shall be constructed in accordance with the general trail standards of the Town. Upon the completion of the Trail Project, the Developer shall retain ownership and all corresponding maintenance obligations of the portion of the Trail Project located on the Development Property. Developer shall allow the public reasonable use of that portion of the Trail Project, subject to reasonable restrictions imposed by Developer to protect the privacy and property of its tenants. The Town shall be responsible for maintaining the portion of the Trail Project and the Town Property. Construction of the Road Project and the Trail Project will be staged as part of Developer's overall development project and will be completed on or about the time that the overall project is substantially complete.

### **Obligations of Town**

The Developer's obligations with respect to the Road Project and the Trail Project are contingent on (i) Developer consummating its acquisition of the Development Property, (ii) Developer being able to obtain entitlements for the development of approximately 600 apartment

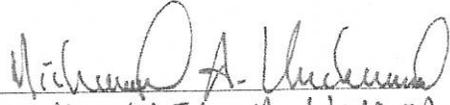
units together with retail and office space on the Development Property on terms that are economically feasible and generally in accordance with the Site Plan and (iii) the Town waiving any and all rights of first offer or first refusal with respect to the Development Property.

The parties acknowledge that the exact plans and specifications for the Road Project and the Trail Project are yet to be developed and that the location of each as shown on the Site Plan is subject to change. The parties will work together in good faith to finalize the final plans and specifications and location of the Road Project and Trail Project.

The parties hereto have executed this Memorandum of Understanding to evidence their agreement with the terms and conditions set forth herein.

**DEVELOPER:**

**WOODFIELD ACQUISITIONS, LLC**

By:   
Name: MICHAEL A. UNDERWOOD  
Title: MANAGER

**TOWN:**

**TOWN OF CHAPEL HILL**

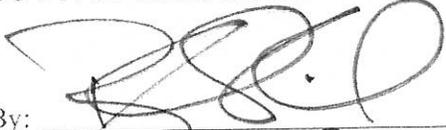
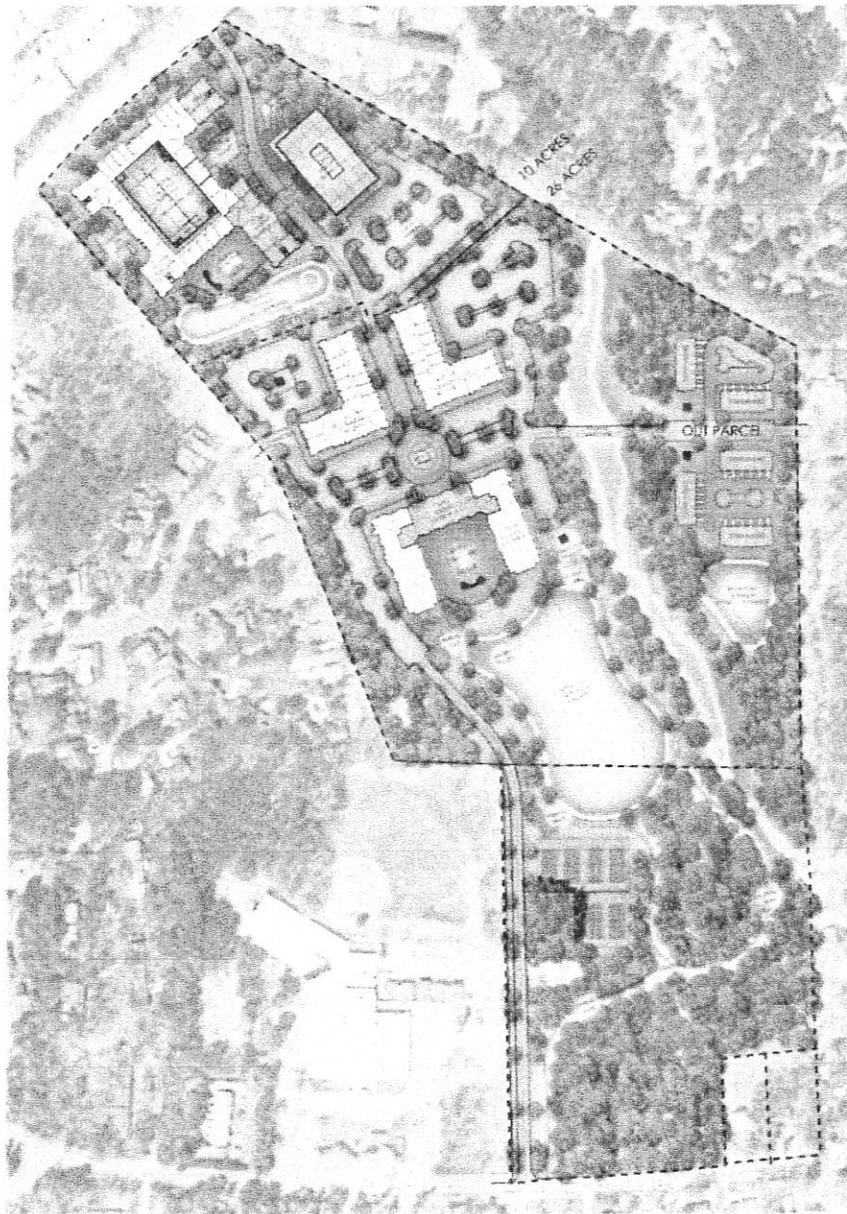
By:   
Name: ROGER L. STANKIN  
Title: TOWN MANAGER

EXHIBIT A

SITE PLAN



WOODFIELD