



AGENDA | REGULAR TOWN COUNCIL MEETING

Tuesday, September 01, 2020 at 6:00 PM

Council Chamber at Apex Town Hall, 73 Hunter Street

Council and Administration

Mayor: Jacques K. Gilbert | Mayor Pro Tem: Nicole L. Dozier

Council Members: Brett D. Gantt; Audra M. Killingsworth; Cheryl F. Stallings; Terry Mahaffey

Town Manager: Drew Havens | Assistant Town Managers: Shawn Purvis and Marty Stone

Town Clerk: Donna B. Hosch, MMC | Town Attorney: Laurie L. Hohe

COMMENCEMENT

Call to Order | Invocation | Pledge of Allegiance

PRESENTATIONS

[PR1](#) Nicole Dozier, Mayor Pro Tem

Nicole Dozier, Mayor Pro Tem will present the Think Apex Awards

[PR2](#) Anne Harrison, Simple Gifts Community Garden

Presentation from Anne Harrison, representing Simple Gifts Community Gardens

CONSENT AGENDA

All Consent Agenda items are considered routine, to be enacted by one motion with the adoption of the Consent Agenda, and without discussion. If a Council Member requests discussion of an item, the item may be removed from the Consent Agenda and considered separately. The Mayor will present the Consent Agenda to be set prior to taking action on the following items

[CN1](#) Donna Hosch, Town Clerk

Motion to approve Minutes of the March 17, 2020 Regular Council Meeting

[CN2](#) Amanda Bunce, Current Planning Manager

Motion to approve the Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the various Unified Development Ordinance (UDO) Amendments of August 18, 2020.

[CN3](#) Lauren Staudenmaier, Planner I

Motion to set Public Hearing for the October 6, 2020 Town Council meeting regarding Rezoning Application #20CZ07 2309 Old US 1 Highway. The applicant, Rich Levert, seeks to rezone approximately 1.60 acres for the property located at 2309 Old US 1 Highway (PIN 0720985958), from Rural Residential (RR) and Tech/Flex-Conditional Zoning (TF-CZ #15CZ25) to Mixed Office-Residential-Retail-Conditional Zoning (MORR-CZ).

- [CN4](#) Marty Stone, Assistant Town Manager
Motion to approve and authorize the Town Manager to execute the same for an Encroachment Agreement between the Town and property owner, Katharine Heinkel, regarding Wake County, NC PIN#0722-68-8817, 727 Meadowside Court, as recorded in Book of Maps 2018, Page 00062, Wake County Register of Deeds.
- [CN5](#) Marty Stone, Assistant Town Manager
Motion to approve and authorize the Town Manager to execute the same for an Encroachment Agreement between the Town and property owners, Hyun J. Woo and spouse David W. Lee, regarding Wake County, NC PIN#0723-60-4354, 2712 Tunstall Grove Drive, as recorded in Book of Maps 2018, Page 00961, Wake County Register of Deeds.
- [CN6](#) John Letteney, Police Chief and Vance Holloman, Finance Officer
Motion to approve Budget Ordinance Amendment No. 1 which appropriates Fund Balance in order to purchase body worn cameras for all sworn members of the Apex Police Department.
- [CN7](#) Dianne Khin, Director of Planning and Community Development
Motion to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for September 15, 2020 on the Question of Annexation – Apex Town Council's intent to annex MFW Investments, LLC (Colby Crossing) property containing 7.578 acres located along a portion of the future connection of Colby Chase Drive between Merion and Pemberley subdivisions, Annexation #651 into the Town's corporate limits.
- [CN8](#) Dianne Khin, Director of Planning and Community Development
Motion to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for September 15, 2020 on the Question of Annexation – Apex Town Council's intent to annex Kimberly & Loomis Horton, III, Mary Elizabeth Horton, Dwight Marvin Wright, MFW Investments, LLC, and MFWIRA, LLC (Horton Park PUD) property containing 101.356 acres located at 8140, 8252, 8306 and 8308 Smith Road, 0 East Williams Street, 0,0,0,0 & 0 Dezola Street and 5220 Jessie Drive, Annexation #687 into the Town's corporate limits.
- [CN9](#) Patrick Lechner, Facilities & Grounds Manager
Motion to approve and authorization for the Town Manager to sign three year contract agreements with: Gregory Poole Generator inspection/maintenance
- [CN10](#) Patrick Lechner, Facilities & Grounds Manager
Motion to approve and authorization for the Town Manager to sign three-year contract agreements with FESS Fire protection
- [CN11](#) Mary Beth Manville, Human Resources Director
Motion to approve an auto-renewing contract with Delta Dental of North Carolina, effective July 1, 2020.

REGULAR MEETING AGENDA

Mayor Gilbert will call for additional Agenda items from Council or Staff and set the Regular Meeting Agenda prior to Council actions.

PUBLIC FORUM

Public Forum allows the public an opportunity to address the Town Council. The speaker is requested not to address items that appear as Public Hearings scheduled on the Regular Agenda.

The Mayor will recognize those who would like to speak at the appropriate time. Large groups are asked to select a representative to speak for the entire group.

Comments must be limited to 3 minutes to allow others the opportunity to speak.

PUBLIC HEARINGS

- [PH1](#) Dianne Khin, Director of Planning and Community Development
Public hearing and possible motion to adopt an Ordinance on the Question of Annexation – Apex Town Council's intent to annex Hector Cuales (Perry Hills Phase 6) property containing 1.66 acres located at 0 and 1105 Tingen Road, Annexation #695 into the Town's corporate limits.

OLD BUSINESS

UNFINISHED BUSINESS

NEW BUSINESS

- [NB1](#) Mike Deaton, Water Resources Director
Possible motion to waive the \$4,700 Civil Penalty that was assessed to the Center Street Pharmacy property owner on March 19, 2020. The property owner failed to submit an annual inspection report for the on-site stormwater control measure (SCM) in accordance with UDO Section 6.1.12(l) (1).
- [NB2](#) Joanna Helms, Economic Development Director
Possible motion to approve extension of a ground lease agreement and an option to purchase agreement with Jack1, LLC regarding the Cash Corporate Center economic development site

CLOSED SESSION

- [CS1](#) Laurie Hohe, Town Attorney
Possible motion to go to closed session pursuant to GS 143-318.11(a)(3) to consult with the Town Attorney concerning the handling of the matter of Torres v. Tracy Lynn Carter, et al.

WORK SESSION

ADJOURNMENT

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PRESENTATION

Meeting Date: September 1, 2020

Item Details

Presenter(s): Nicole Dozier, Mayor Pro Tem

Department(s): Economic Development

Requested Motion

Nicole Dozier, Mayor Pro Tem will present the Think Apex Awards

Approval Recommended?

N/A

Item Details

Mayor Pro Tem Dozier will present the 5th Annual "Think Apex" Awards. Awards will be given to the "Top Thinker" and "Honorable Mention" in the categories of: Business; Individual or Group; and Non-Profit.

The "Think Apex" initiative was created in 2014 to encourage a local mindset by all parts of the Apex community, including businesses, residents and visitors. Think Apex empowers the community to celebrate, engage, play, volunteer, shop, eat and work locally.

The Think Apex Awards are intended to recognize local businesses, individuals, groups, and nonprofits for their dedicated service to others and to the Apex community as a whole. Nominations were received through a public, on-line application process. The nominees must be physically located in Apex and must be nominated for acts of service in the calendar year 2019.

(Note: These awards are typically given in April but were delayed this year due to the pandemic.)

There were a total of 17 nominees across the three categories.

All nominees were featured on the Think Apex website page and via social media.

The winners were notified earlier this year.

The Council will be asked to remain seated during the presentation with only Mayor Pro Tem Dozier at the podium. Winners will come forward when their name is called to receive their award and for a quick photo.

Attachments

- N/A



| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PRESENTATION

Meeting Date: September 1, 2020

Item Details

Presenter(s): Anne Harrison, Simple Gifts Community Garden

Department(s): Governing Body

Requested Motion

Presentation from Anne Harrison, representing Simple Gifts Community Gardens

Approval Recommended?

N/A

Item Details

Ms. Harrison will provide information about the work of this community garden that includes providing fresh produce to Western Wake Crisis Ministries and St. Mary's AME food pantry.

Attachments

- None



| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter(s): Donna Hosch, Town Clerk

Department(s): Office of the Town Clerk

Requested Motion

Motion to approve Minutes of the March 17, 2020 Regular Council Meeting

Approval Recommended?

Yes

Item Details

These Minutes were composed but inadvertently not placed on the next meeting Agenda for approval by Council.

Attachments

- 2020.03.17 Minutes





Apex Town Council Meeting

Tuesday, March 17, 2020

Jacques K. Gilbert, Mayor
Nicole L. Dozier, Mayor Pro Tempore
Brett D. Gantt, Audra M. Killingsworth, Cheryl F. Stallings,
and Terry Mahaffey, Council Members
Drew Havens, Town Manager
Shawn Purvis, Assistant Town Manager
Marty Stone, Assistant Town Manager
Donna B. Hosch, MMC, NCCMC, Town Clerk
Laurie L. Hohe, Town Attorney

The Regular Meeting of the Apex Town Council
scheduled for Tuesday, March 17, 2020, at 6:00
p.m. was held in the Council Chamber of Apex
Town Hall, 73 Hunter Street

In attendance were Mayor Jacques K. Gilbert, Mayor Pro Tem Nicole L. Dozier, and Council Members
Audra M. Killingsworth, Brett D. Gantt, Cheryl F. Stallings, and Terry Mahaffey
Also in attendance were Town Manager Drew Havens, Town Clerk Donna B. Hosch,
and Town Attorney Laurie L. Hohe

COMMENCEMENT

Mayor Gilbert called the meeting to order, read a diversity and inclusion statement as it relates to religion, gave the Invocation, and led the Pledge of Allegiance.

Mayor Gilbert stated that [due to the Coronavirus situation] there would not be a Public Form or Public Hearings at this meeting. This additionally included Presentations.

PRESENTATIONS

PR1 Mayor Jacques K. Gilbert

Presentation of the Proclamation declaring March 20, 2020 as Arbor Day in the Town of Apex.

PR2 Roy Jones, CEO

Presentation of Exceptional Achievement in the Area of Workforce Development from the Public Power Association

CONSENT AGENDA

CN1 Donna Hosch, Town Clerk

Minutes of the Joint Conversational Meeting with Cary Town Council on February 13, 2020, the Council Budget Retreat on February 14, 2020, the Regular Council Meeting on February 18, 2020, and the Regular Council Meeting on March 4, 2020

CN2 Mayor Jacques K. Gilbert

Appointment of Tim Carley to the Environmental Advisory Board as the "Development Community" representative with the term expiring on 12/31/2020

CN3 Personnel Committee: Mayor Pro Tem Dozier and Mayor Jacques Gilbert

The addition of a full-time Deputy Town Clerk to the current number of authorized positions and set the Pay Grade at 19

CN4 Dennis Brown, PE

Approval of and authorization for Town Manager to execute design agreement contract with Davis Kane Architects for design for Public Safety Station #6 in the amount of \$450,000.00

The Town Manager requested additional Consent Agenda items regarding traffic calming devices and a revised Caregiver Leave Policy. He also requested the addition of three items for New Business. Council Member Gantt asked that the traffic calming request be moved to New Business.

Being polled by Mayor Gilbert, Council were in unanimous agreement to set the
Consent Agenda with the modifications as stated.

REGULAR MEETING AGENDA

The Town Manager requested amendments to the Regular Agenda. (1) Removing Public Forum, adding that the required one Forum for the month had been satisfied. (2) Continuing Public Hearing 01 to the first meeting in May. (3) Rescheduling New Business 01 as the applicant had withdrew the request. This would come back before Council as staff would need direction from Council. (4) Not hearing New Business 01, as there was no sense of urgency related to this request.

The Town Manager also requested the following items to be added under New Business: the item related to traffic calming as stated earlier; Ordinance 2020-0317 regarding utility billing and collections; a Remote Participation Policy for Meetings by the Apex Town Council prepared by the Town Attorney; amendment of the Town Council Meeting Schedule to cancel the first meeting in April and also canceling the first meeting in April of the Planning Board.

Mayor Gilbert called for a motion. Council Member Gantt made the motion to approve the Regular Agenda as requested; Council Member Stallings seconded the motion.

The motion carried by a 5-0 vote.

PUBLIC FORUM

As stated earlier, Public Forum was not held at this meeting.

PUBLIC HEARINGS

PH1 Amanda Bunce, Current Planning Manager

Public Hearing and possible motion regarding various amendments to the Unified Development Ordinance

Mayor Gilbert called for a motion. Council Member Mahaffey made the motion to continue the Public Hearing to the May 5, 2020 Council Meeting; Council Member Gantt seconded the motion.

The motion carried by a 5-0 vote.

OLD BUSINESS

There were no Old Business Session items for consideration.

UNFINISHED BUSINESS

UB1 Colleen Merays, Downtown & Small Business Development Coordinator and David Wood, Halle Cultural Arts Center Manager

Review of Apex Special Event Policy and research on other local municipalities

As stated earlier, Unfinished Business was not heard at this meeting.

NEW BUSINESS

NB1 John M. Brown, Director Parks, Recreation, and Cultural Resources and Craig Setzer, Park Operations Manager

Motion to approve implementation of Adopt a Park / Adopt a Trail Program

As stated earlier, New Business 1 was not heard at this meeting.

Added N2 : Russell Dalton, Senior Transportation Engineer

Construction contrac to Eastern Services LLC DBA Raleigh Paving in the amount of \$8,140.00 for installation of two asphalt speed humps with signs and markings on Straywhite Avenue in the Miramonte subdivision recommended in accordance with the UDO process

Staff provided history on the request. Council asked if there was a process to re-evaluate the standards in order to avoid negative issues. Staff explained the re-evaluation policy, stating that the Town has a scientific process for studying traffic for humps. The humps will be paid for in part by the Town and in part by the HOA.

Council asked what was the criteria for setting the petition boundary, and staff explained how the boundary was devised. Staff explained the HOA has to approve the Town's plan; about 70% of the residents are in agreement. Staff spoke about perception vs. actual data collected. Council thanked staff for his knowledge.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to approve the contract; Council Member Stallings seconded the moton,
The motion carried by a 5-0 vote.

Added NB3 : Drew Havens, Town Manager

Ratification of actions taken by the Town Manager and Ordinance 2020-03-17 ...

Staff stated he was seeking ratification of actions he'd previously taken to suspend disconnection of customer utilities for non payment because of the Coronavirus. The Ordinance would modify the fee

structure reaching through May 12, 2020, an eight week window. Staff would let customers know they still have to pay their bills, and staff was working on ways for customers to make payment arrangements.

Council Member Killingsworth made the motion to adopt the Ordinance
with a May 12, 2020 extension date.

Council asked if the date could be extended if needed. Staff stated the situation would be re-evaluated as times go on, and that the matter may come back before Council with further modifications.

Council stated he would be more comfortable extending the date now.

Council Member Dozier seconded the motion.

She then spoke about executive orders and the Town's possible flexibility via these orders. She appreciated what staff was doing in this situation and being proactive. Conversation ensued with the Town Attorney regarding payments and fees and extending the date.

Council Member Mahaffey made a substitute motion to amend the date to July 1, 2020.

Council asked staff if this could be done, his stating 'yes' if this was the direction of Council. But we would have to be careful in messaging this to people so they truly understand they would still have to pay their utility bills. This was not a waiver but our not charging late fees accrued during this time and not doing disconnects.

Council Member Killingsworth stated she was in agreement with the July 1 date.

Mayor Gilbert redirected Council to the motions on the table.

Conversation ensued about the Town's flexibility and ability to operate effectively. Staff stated there could be a compromise of a June 5 date. Council mentioned the possibility of never having a shut off date. Council stated the latter would be a separate conversation. There was agreement with the June 5 date. Council asked the Town Attorney could the Town Manager be directed to extend beyond the decided date, the Town Attorney explaining that this would need to be done via Ordinance, ratifying if necessary.

Council Member Killingsworth was in agreement with a June 5, 2020 date,
with extending if necessary, as was Council Member Dozier.

The motion carried by a 5-0 vote.

ADDED NB 3 – Laurie Hohe, Town Attorney

Remote Participation Policy for Meetings of the Apex Town Council

Staff stated that in the event one or more Council Members were unable to attend a Council meeting in this current climate, this policy would provide some degree of remote participation. This would still require a quorum to be present – a minimum of three Council Members. This would make it less likely to be a possible legal challenge.

Council questioned if we could have the same type of policy for Public Hearings. He thought it a good way to go in the future. There was brief discussion about online signup, which one Council Member was in disagreement. Conversation ensued about alternate way to make it easier for the public. She suggested the question going to the School of Government and League of Municipalities so that they could do the research and come back to us with suggestions. The Town Attorney stated that while it would not be the same as speaking in Public Forum, Council's contact information is available to the public.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to adopt the policy as presented; Council Member Dozier seconded the motion with the addition that staff ask the League and School of Government for information on how we could be more accessible to the public.

The motion carried by a 5-0 vote.

Added NB 4 – Amending the Apex Town Council schedule of Regular Meetings to remove the April 7, 2020 Meeting from the official calendar and to amend the Apex Planning Board regular schedule of meetings to remove the April 13, 2020 meeting from the official calendar

Staff stated the building would be closed to the public during these times, extending to April 15. Conversation ensued on the impact of this to upcoming meetings. Council asked that upcoming Public Hearings be spread out as much as possible to more than just one meeting. Staff stated that Council might want to consider having a two-night Council Meeting if the workload is too high. Responding to Council question, staff stated the budget process would not be affected if we could get back to a normal way of life.

Mayor Gilbert called for a motion. Council Member Killingsworth made the motion to adopt amending the schedule as presented; Council Member Stallings seconded the motion.

Council express concern if the situation continues or gets worse; at some point we have to just do Town business. Council discussed Council having flexibility as far as time.

The motion carried by a 5-0 vote.

Mayor Gilbert stated it was Women's History Month and recognized Mayor Pro Tem Dozier, Council Members Killingsworth and Stallings, and Town Clerk Hosch and Master Officer Kalinowski who was in attendance.

He praised "our great leader" Town Manager Drew Havens in getting things done during this pressing time along with Town Attorney Hohe.

CLOSED SESSION

There were no Closed Session items for consideration.

WORK SESSION

There were no Work Session items for consideration.

ADJOURNMENT

With there being no further business and without objection from Council, Mayor Gilbert declared the meeting adjourned.

Donna B. Hosch, MMC, NCCMC
Town Clerk

ATTEST:

Jacques K. Gilbert, Mayor

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter(s): Amanda Bunce, Current Planning Manager

Department(s): Planning and Community Development

Requested Motion

Motion to approve the Statement of the Apex Town Council pursuant to G.S. 160A-383 addressing action on the various Unified Development Ordinance (UDO) Amendments of August 18, 2020.

Approval Recommended?

The Planning and Community Development Department recommends approval.

Item Details

Attachments

- Statement of Town Council



STATEMENT OF THE APEX TOWN COUNCIL PURSUANT TO G.S. 160A-383 ADDRESSING ACTION ON UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENTS OF AUGUST 18, 2020

Pursuant to G.S. §160A-384 and Sec. 2.2.11.E of the Unified Development Ordinance, the Planning Director for the Town of Apex, Dianne Khin, caused proper notice to be given (by publication and posting), of a public hearing on UDO Amendments before the Town Council on the 18th day of August 2020.

The Apex Town Council held a public hearing on the 18th day of August 2020. Amanda Bunce, Current Planning Manager, presented the Planning Board's vote to recommend approval by a vote of 7-0 at the public hearing.

All persons who desired to present information relevant to the UDO Amendments and who were residents of Apex or its extraterritorial jurisdiction were allowed to present evidence at the public hearing before the Apex Town Council. No one who wanted to speak was turned away.

The Town Council by a vote of 4 to 0 approved the Ordinance for UDO Amendments.

The Apex Town Council finds from information and testimony provided at the public hearing that the approval of the UDO Amendments of August 18, 2020 is consistent with the Advance Apex: The 2045 Plan and reasonable and in the public interest for the following reason(s):

1. The amendments to UDO Sec. 6.3.1.D *Small Town Character Overlay District, Approval Criteria* provide more flexibility in site design within the Central Business District by removing building landscaping requirements for all uses and removing vehicular use area landscaping requirements for public parking lots.
2. The amendments to UDO Sec. 10.3 *Nonconforming Structures* correct a typographical error and changes a word to better clarify the intent of a sentence.
3. The amendment to UDO Sec. 14.1.3 *Parks, Recreation, and Open Space Sites; Standards for Dedication* adds a requirement for a Phase I site assessment in order to determine the usability of land proposed for dedication to the Town for recreation purposes.

Jacques K. Gilbert
Mayor

ATTEST:

Donna B. Hosch, MMC, NCCMC
Town Clerk

Date

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter(s): Lauren Staudenmaier, Planner I

Department(s): Planning and Community Development

Requested Motion

Motion to set Public Hearing for the October 6, 2020 Town Council meeting regarding Rezoning Application #20CZ07 2309 Old US 1 Highway. The applicant, Rich Levert, seeks to rezone approximately 1.60 acres for the property located at 2309 Old US 1 Highway (PIN 0720985958), from Rural Residential (RR) and Tech/Flex-Conditional Zoning (TF-CZ #15CZ25) to Mixed Office-Residential-Retail-Conditional Zoning (MORR-CZ).

Approval Recommended?

The Planning and Community Development Department recommends approval.

Item Details

Attachments

- Vicinity Map
- Application



Friendship
Acres

Rezoning #20CZ07

Humie Olive Rd

Old US 1 Hwy

Vaudry Ct

PETITION TO AMEND THE OFFICIAL ZONING MAP & 2045 LAND USE MAP

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 20CZ07

Submittal Date: 7/1/2020

2045 LUM Amendment:

Fee Paid:

Project Information

Project Name: 2309 Old US 1 Hwy Rezoning

Address(es): 2309 Old US 1 Hwy

PIN(s): 0720-98-5958

Acreage: 1.60

Current Zoning: RR & TF-CZ

Proposed Zoning: MORR-CZ

Current 2045 LUM Designation: Office Employment - Commercial Services

Proposed 2045 LUM Designation: N/A

See next page for LUM Amendment.

If any portion of the project is shown as mixed use (3 or more stripes on the 2045 Land Use Map) provide the following:

Area classified as mixed use: Acreage: N/A

Area proposed as non-residential development: Acreage: N/A

Percent of mixed use area proposed as non-residential: Percent: N/A

Applicant Information

Name: Rich Levert

Address: 2309 Old US 1 Hwy

City: APEX

State: NC

Zip: 27502-8410

Phone:

E-mail:

Owner Information

Name: Richer and Richere Levert

Address: 2309 Old US 1 Hwy

City: APEX

State: NC

Zip: 27502-8410

Phone:

E-mail:

Agent Information

Name: Peak Engineering & Design, Jeff Roach

Address: 1125 Apex Peakway

City: Apex

State: NC

Zip: 27502

Phone: (919) 439-0100

E-mail: jroach@peakengineering.com

Other contacts: jedwards@peakengineering.com

dwoods@peakengineering.com

PETITION TO AMEND THE OFFICIAL ZONING MAP & 2045 LAND USE MAP

Application #: _____ Submittal Date: _____

2045 LAND USE MAP AMENDMENT (IF APPLICABLE)

The applicant does hereby respectfully request the Town Council amend the 2045 Land Use Map. In support of this request, the following facts are shown:

The area sought to be amended on the 2045 Land Use Map is located at:

N/A

Current 2045 Land Use Classification: _____

Proposed 2045 Land Use Classification: _____

What condition(s) justifies the passage of the amendment to the 2045 Land Use Map? Discuss the existing use classifications of the subject area in addition to the adjacent land use classifications. Use additional pages as needed.

PETITION INFORMATION

Application #:

Submittal Date:

An application has been duly filed requesting that the property described in this application be rezoned from RR & TF-CZ to MORR-CZ. It is understood and acknowledged that if the property is rezoned as requested, the property described in this request will be perpetually bound to the use(s) authorized and subject to such conditions as imposed, unless subsequently changed or amended as provided for in the Unified Development Ordinance. It is further understood and acknowledged that final plans for any specific development to be made pursuant to any such Conditional Zoning shall be submitted for site or subdivision plan approval. Use additional pages as needed.

PROPOSED USES:

The Rezoned Lands may be used for, and only for, the uses listed immediately below. The permitted uses are subject to the limitations and regulations stated in the UDO and any additional limitations or regulations stated below. For convenience, some relevant sections of the UDO may be referenced; such references do not imply that other sections of the UDO do not apply.

1	Accessory Apartment	21	Book Store
2	Condominium	22	Convenience Store
3	Family Care Home	23	Dry Cleaners and Laundry Service
4	Nursing or Convalescent Facility	24	Financial Institution
5	Single Family	25	Floral Shop
6	Day Care Facility	26	Greenhouse or Nursery, Retail
7	Government Services	27	Grocery, Specialty
8	Veterinary Clinic or Hospital	28	Health/Fitness Center or Spa
9	Utility Minor	29	Newsstand or Gift Shop
10	Wireless Support Structure	30	Personal Service
11	Botanical Garden	31	Pharmacy
12	Greenway	32	Real Estate Sales
13	Park, Active	33	Studio for Art
14	Park, Passive	34	Tailor Shop
15	Restaurant, Drive-Through	35	Pet Services
16	Restaurant, General	36	
17	Medical or Dental Office or Clinic	37	
18	Office, Business or Professional	38	
19	Bed and Breakfast	39	
20	Barber and Beauty Shop	40	

PETITION INFORMATION

Application #: _____

Submittal Date: _____

PROPOSED CONDITIONS:

The applicant hereby requests that the Town Council of the Town of Apex, pursuant to the Unified Development Ordinance, approve the Conditional Zoning for the above listed use(s) subject to the following condition(s). Use additional pages as needed.

Please see attached sheet for proposed zoning conditions.

LEGISLATIVE CONSIDERATIONS - CONDITIONAL ZONING

The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest. Use additional pages as needed.

1) *Consistency with 2045 Land Use Map.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Map.

The proposed non-residential building will not require a modification to the 2045 Land Use Map and is in keeping with the adopted plans from the Town of Apex.

2) *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

The proposed use will have buffers and building standards which will be compatible with the surrounding uses and fit within the Town's long-range plans for the corner property.

PETITION INFORMATION

Application #: _____

Submittal Date: _____

3) Zoning district supplemental standards. The proposed Conditional Zoning (CZ) District use's compliance with Sec 4.4, Supplemental Standards, if applicable.

The proposed use will meet the required Supplemental Standards for the proposed use(s).

4) *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.

The design will provide perimeter buffer, architectural controls, access, and utility connections to avoid adverse impacts on the surrounding properties.

5) *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

The site is proposed to meet UDO standards for design controls, including minimization and avoidance of environmentally sensitive areas, limited site impact, and reduction in clearing of perimeter vegetation.

6) *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.

The site is located close to existing public facilities, including water, sewer, stormwater, gas, electric and telephone. The site is an infill site with significant surrounding public infrastructure including streets with easy access for emergency vehicles and personnel.

7) *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.

The proposed use will not be detrimental to the health, safety, and welfare of Apex residents. The future use will provide a service to Apex citizens.

PETITION INFORMATION

Application #:

Submittal Date:

8) *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.

The use is in keeping with the adopted plans and will not be detrimental to the adjacent property owners.

9) *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.

The use does not constitute a nuisance or hazard based upon the anticipated number of persons who will utilize the future non-residential services.

10) *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

The proposed development will meet the standards within various sections of the Town of Apex UDO.

Proposed Zonings Conditions

2309 Old US 1 Highway

Zoning Case #20CZ07

1. For uses proposing new construction the following shall apply:
 - a) The exterior materials for nonresidential product include a combination of building materials. The primary (front) facade of the main buildings to be considered include:
 - I. Brick masonry.
 - II. Decorative concrete block (either integrally colored or textured)
 - III. Stone accents.
 - IV. Aluminum storefronts with anodized or pre-finished colors.
 - V. EIFS cornices, and parapet trim. EIFS or synthetic stucco shall not be used in the first four feet above grade and shall be limited to only 25% of each building facade.
 - VI. Precast concrete.
 - b) The main entrance to the building shall be emphasized.
 - c) No more than one double-loaded bay of parking shall be provided in front of the building.
 - d) Buildings shall have vertical proportions. Expanses of blank wall shall not exceed sixty (60) feet in width without being interrupted with an architectural feature such as, but not limited to, a column, recess in or projection from the building facade. Windows and storefront glazing shall be divided to be either square or vertical in proportion so that each section is taller than it is wide. Permitted setbacks can be used to articulate bays of a building to break up its width. Architectural features such as, but not limited to, columns, piers, rooflines, and brick patterns can be used to divide and create vertical orientation on building facades.
 - e) The building facade shall have an identifiable base, body, and cap with horizontal elements separating these components. The body of the building shall constitute a minimum of fifty (50%) percent of the total building height. Buildings shall not have blank side walls creating a false front appearance. In addition, corner buildings shall have two facades which maintain a relationship to each other although they do not need to be identical.
2. For purposes of access, at a time when the property is redeveloped, the following shall apply:
 - a. The residential driveway access shall be removed.
 - b. Access and cross-access for redevelopment shall be provided by the Humie Olive Road extension and the signal on Old US 1 Highway.
3. The existing nonconforming structure on the property shall be corrected prior to the first site plan submittal either by removing the structure from the property or by moving the structure or providing a recombination plat so that the structure is made conforming.
4. Residential density shall be limited to 0.69 units/acre.

CERTIFIED LIST OF NEIGHBORING PROPERTY OWNERS

Application #: _____

Submittal Date: _____

Provide a certified list of property owners subject to this application and all property owners within 300' of the subject property and HOA Contacts.

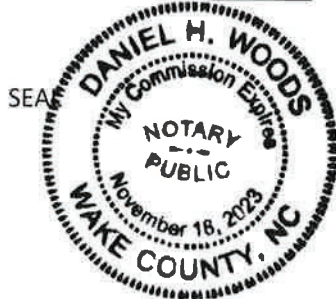
	Owner's Name	PIN
1.	Nancy Barnes	0720-98-0797
2.	Jose Brizuela	0720-98-3739
3.	Richere Levert	0720-98-8751
4.	Richer Levert	0720-98-8948
5.	JVI Building & Development, Inc	0720-99-0292
6.	David Powell	0720-99-3254
7.	David Powell	0720-99-8487
8.	Miller Land Group LLC	0720-99-9210
9.		
10.		
11.		
12.		
13.		
14.		
15.		

I, Jonathan Edwards, certify that this is an accurate listing of all property owners and property owners within 300' of the subject property.

Date: June 3, 2020By: Jonathan Edwards

COUNTY OF WAKE STATE OF NORTH CAROLINA

Sworn and subscribed before me, DANIEL H. WOODS, a Notary Public for the above State and County, on this the 3 day of JUNE, 2020.



Daniel H. Woods
Notary Public
DANIEL H. WOODS
Print Name

My Commission Expires: 11/18/2023

AGENT AUTHORIZATION FORM

Application #: _____

Submittal Date: _____

Rich Levert & Richere Levert

is the owner* of the property for which the attached

application is being submitted:

- ☐ Land Use Amendment
- ☒ Rezoning: For Conditional Zoning and Planned Development rezoning applications, this authorization includes express consent to zoning conditions that are agreed to by the Agent which will apply if the application is approved.
- ☐ Site Plan
- ☐ Subdivision
- ☐ Variance
- ☐ Other: _____

The property address is: 2309 Old US 1 Hwy

The agent for this project is: Peak Engineering & Design

☐ I am the owner of the property and will be acting as my own agent

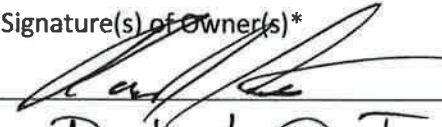
Agent Name: Jeff Roach

Address: 1125 Apex Peakway, Apex NC 27502


Telephone Number: (919) 439-0100

E-Mail Address: jedwards@peakengineering.com

Signature(s) of Owner(s)*



Rich Levert
Type or print name



Richere Levert
Type or print name

6/24/2020
Date

6/24/2020
Date

Attach additional sheets if there are additional owners.

*Owner of record as shown on the latest equalized assessment rolls of Wake County. An option to purchase does not constitute ownership. If ownership has been recently transferred, a copy of the deed must accompany this authorization.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this application 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 application and any related documents. If electronic signatures are used the application shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

AFFIDAVIT OF OWNERSHIP

Application #: _____

Submittal Date: _____

The undersigned, Rich Levert (the "Affiant") first being duly sworn, hereby swears or affirms as follows:

1. Affiant is over eighteen (18) years of age and authorized to make this Affidavit. The Affiant is the sole owner, or is the authorized agent of all owners, of the property located at 2309 Old US 1 Hwy, Apex, NC 27502-8410 and legally described in **Exhibit "A"** attached hereto and incorporated herein (the "Property").
2. This Affidavit of Ownership is made for the purpose of filing an application for development approval with the Town of Apex.
3. If Affiant is the owner of the Property, Affiant acquired ownership by deed, dated 7-18-2014, and recorded in the Wake County Register of Deeds Office on 7-18-2014, in Book 15723 Page 2185.
4. If Affiant is the authorized agent of the owner(s) of the Property, Affiant possesses documentation indicating the agency relationship granting the Affiant the authority to apply for development approval on behalf of the owner(s).
5. If Affiant is the owner of the Property, from the time Affiant was deeded the Property on 2309 Old US 1 Hwy, Apex, NC 27502-8410, Affiant has claimed sole ownership of the Property. Affiant or Affiant's predecessors in interest have been in sole and undisturbed possession and use of the property during the period of ownership. Since taking possession of the Property on 2309 Old US 1 Hwy, Apex, NC 27502-8410, no one has questioned Affiant's ownership or right to possession nor demanded any rents or profits. To Affiant's knowledge, no claim or action has been brought against Affiant (if Affiant is the owner), or against owner(s) (if Affiant is acting as an authorized agent for owner(s)), which questions title or right to possession of the property, nor is any claim or action pending against Affiant or owner(s) in court regarding possession of the Property.

This the 26th day of JUNE, 2020.

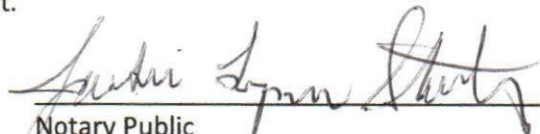
 (seal)
Rich Levert
Type or print name

STATE OF NORTH CAROLINA
COUNTY OF _____

I, the undersigned, a Notary Public in and for the County of WAYNE, hereby certify that RICH LEVERT, Affiant, personally known to me or known to me by said Affiant's presentation of said Affiant's RICH LEVERT, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing Affidavit.



[NOTARY SEAL]


Notary Public
State of North Carolina
My Commission Expires: 6-30-2021

Application #:

Submittal Date:

Insert legal description below.**Project Identification and Legal Description**

Richard and Richere Levert Property
Apex, Buckhorn Township
Wake County, North Carolina

The Richer and Richere Levert Property is identified by Wake County GIS PIN 0720-98-5958 located on the south side of N.C.S.R. 1011 (Old US 1 Highway).

The POINT OF BEGINNING is an existing point at the intersection of Vaudry Court centerline and the southern right-of-way for SR 1011, and at the northwest corner of N/F Richer Levert property (PIN 0720-98-5958);
thence N 71°01'04" E for 183.16' along the common line with southern right-of-way for SR 1011 to an existing point;
thence N 71°10'41" E for 74.81' along the common line with southern right-of-way for SR 1011 to an existing point with N/F Richer and Richere Levert (PIN 0720-98-8948);
thence S 13°53'21" E for 105.22' along the common line with N/F Richer and Richere Levert (PIN 0720-98-8948) to an existing point;
thence S 32°49'07" W for 238.60' along the common line with N/F Richer and Richere Levert (PIN 0720-98-8948) to an existing point;
thence S 28°07'41" E for 120.97' along the common line with N/F Richer and Richere Levert (PIN 0720-98-8948) to an existing point on the centerline of Vaudry Court
thence N 82°52'56" W along a curve at a radius of 150.00 for 117.36' (chord) along the centerline of Vaudry Court to an existing point;
thence N 30°50'28" W along a curve at a radius of 150.00 for 151.91' (length) along the centerline of Vaudry Court to an existing point;
thence N 01°49'43" W for 186.25' to an existing iron point at the intersection of Vaudry Court centerline and the southern right-of-way for SR 1011, said point being the POINT OF BEGINNING.

Said property includes approximately 69,842 square feet or 1.6033 acres.

The property hereinabove described was acquired by the Grantor by Deed Book 15723 Page 2185 and BM2019 Pg01041.

NOTICE OF NEIGHBORHOOD MEETING

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

June 3, 2020

Date

Dear Neighbor:

You are invited to a neighborhood meeting to review and discuss the development proposal at

2309 Old US 1 Hwy, Apex NC 27502-8410

0720-98-5958

Address(es)

PIN(s)

in accordance with the Town of Apex Neighborhood Meeting procedures. This meeting is intended to be a way for the applicant to discuss the project and review the proposed plans with adjacent neighbors and neighborhood organizations before the submittal of an application to the Town. This provides neighbors an opportunity to raise questions and discuss any concerns about the impacts of the project before it is officially submitted. Once an application has been submitted to the Town, it may be tracked using the [Interactive Development Map](#) or the [Apex Development Report](#) located on the Town of Apex website at www.apexnc.org.

A Neighborhood Meeting is required because this project includes (check all that apply):

Application Type		Approving Authority
<input checked="" type="checkbox"/>	Rezoning (including Planned Unit Development)	Town Council
<input type="checkbox"/>	Major Site Plan	Town Council (QJPH*)
<input type="checkbox"/>	Special Use Permit	Town Council (QJPH*)
<input type="checkbox"/>	Residential Master Subdivision Plan (excludes exempt subdivisions)	Technical Review Committee (staff)

*Quasi-Judicial Public Hearing: The Town Council cannot discuss the project prior to the public hearing.

The following is a description of the proposal (also see attached map(s) and/or plan sheet(s)):

The owner is requesting to rezone to a MORR (Mixed Office-Residential-Retail) zoning designation for the purpose of creating an office use and residential use to the property.

Estimated submittal date: July 1, 2020

MEETING INFORMATION:

Property Owner(s) name(s): Rich Levert and Richere Levert

Applicant(s): Jeff Roach

Contact information (email/phone): jroach@peakengineering.com, (919) 439-0100

Meeting Address: 1125 Apex Peakway, Apex, NC 27502

Date of meeting**: June 23, 2020

Time of meeting**: 5:30 - 7:30

MEETING AGENDA TIMES:

Welcome: 5:30 - 5:40 Project Presentation: 5:40 - 6:00 Question & Answer: 6:00 -

**Meetings shall occur between 5:00 p.m.-9:00 p.m. on a Monday through Thursday (excluding Town recognized holidays). If you have questions about the general process for this application, please contact the Planning Department at 919-249-3426. You may also find information about the Apex Planning Department and on-going planning efforts at <http://www.apexnc.org/180/Planning>.

PROJECT CONTACT INFORMATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Development Contacts:

Project Name: 2309 Old US 1 Hwy Rezoning Zoning: RR & TF-CZ

Location: 2309 Old US 1 Hwy, Apex NC 27502-8410

Property PIN(s): 0720-98-5958 Acreage/Square Feet: 1.60

Property Owner: Richer and Richere Levert

Address: 2309 Old US 1 Hwy

City: Apex State: NC Zip: 27502-8410

Phone: _____ Email: _____

Developer: Rich Levert

Address: 2309 Old US 1 Hwy

City: Apex State: NC Zip: 27502-8410

Phone: _____ Fax: _____ Email: _____

Engineer: Peak Engineering & Design (Jeff Roach)

Address: 1125 Apex Peakway

City: Apex State: NC Zip: 27502

Phone: (919) 439-0100 Fax: _____ Email: jroach@peakengineering.com

Builder (if known): _____

Address: _____

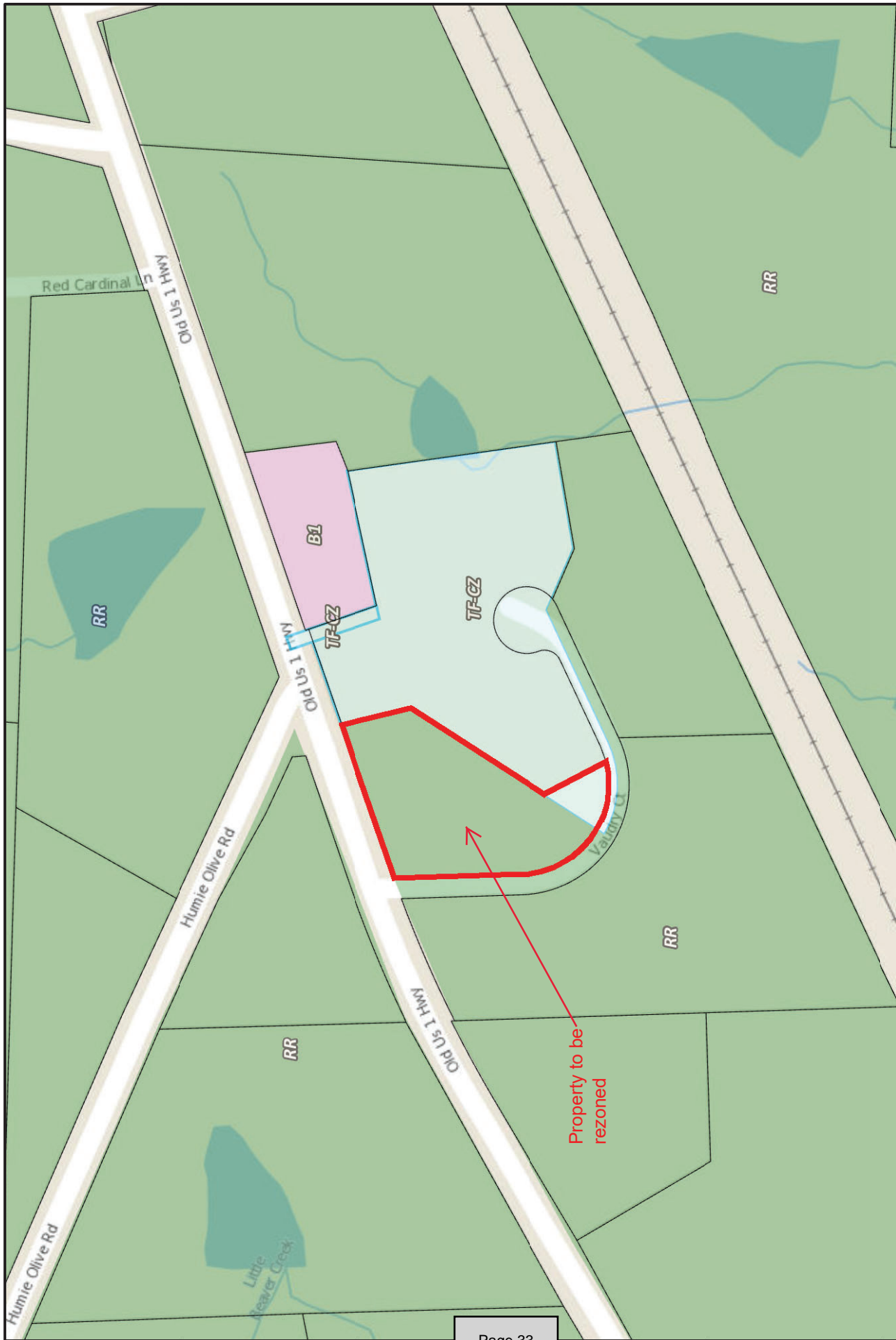
City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____ Email: _____

Please note that Town staff will not have complete information about a proposed development until the application is submitted for review. If you have a question about Town development standards and how they relate to the proposed development, please contact the appropriate staff person listed below.

Town of Apex Department Contacts

Planning Department Main Number (Provide development name or location to be routed to correct planner)	(919) 249-3426
Parks, Recreation & Cultural Resources Department Angela Reincke, Parks Planner	(919) 249-7468
Public Works - Transportation Russell Dalton, Senior Transportation Engineer	(919) 249-3358
Water Resources Department Mike Deaton, Stormwater & Utility Engineering Manager Stan Fortier, Senior Engineer (Sedimentation & Erosion Control)	(919) 249-3413 (919) 249-1166
Electric Utilities Division Rodney Smith, Electric Technical Services Manager	(919) 249-3342



2309 Old US 1 Hwy Rezoning



Disclaimer

iMaps makes every effort to produce and publish the most current and accurate information possible. However, the maps are produced for information purposes, and are **NOT** surveys. No warranties, expressed or implied, are provided for the data therein, its use, or its interpretation.

NEIGHBORHOOD MEETING SIGN-IN SHEET

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Meeting Address: 1125 Apex Peakway, Apex, NC 27502

Date of meeting: June 23, 2020 Time of meeting: 5:30

Property Owner(s) name(s): Rich Levert & Richere Levert

Applicant(s): Rich Levert

Please print your name below, state your address and/or affiliation with a neighborhood group, and provide your phone number and email address. Providing your name below does not represent support or opposition to the project; it is for documentation purposes only.

	NAME/ORGANIZATION	ADDRESS	PHONE #	EMAIL	SEND PLANS & UPDATES
1.	No one attended the meeting				
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					

Use additional sheets, if necessary.

SUMMARY OF DISCUSSION FROM THE NEIGHBORHOOD MEETING

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Property Owner(s) name(s): Rich Levert & Richere Levert

Applicant(s): Jeff Roach

Contact information (email/phone): jroach@peakengineering.com

Meeting Address: 1125 Apex Peakway, Apex, NC 27502

Date of meeting: June 23, 2020

Time of meeting: 5:30

Please summarize the questions/comments and your response from the Neighborhood Meeting in the spaces below (attach additional sheets, if necessary). Please state if/how the project has been modified in response to any concerns. The response should not be "Noted" or "No Response". There has to be documentation of what consideration the neighbor's concern was given and justification for why no change was deemed warranted.

Question/Concern #1:

No one attended the meeting

Applicant's Response:

Question/Concern #2:

Applicant's Response:

Question/Concern #3:

Applicant's Response:

Question/Concern #4:

Applicant's Response:

AFFIDAVIT OF CONDUCTING A NEIGHBORHOOD MEETING, SIGN-IN SHEET AND ISSUES/RESPONSES SUBMITTAL

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

I, Jeff Roach, do hereby declare as follows:
Print Name

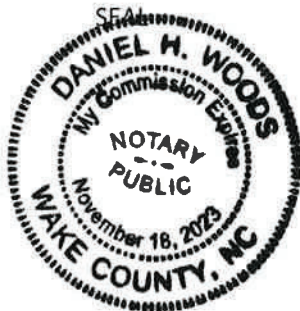
1. I have conducted a Neighborhood Meeting for the proposed Rezoning, Major Site Plan, Master Subdivision Plan, or Special Use Permit in accordance with UDO Sec. 2.2.7 *Neighborhood Meeting*.
2. The meeting invitations were mailed to the Apex Planning Department, all property owners within 300 feet of the subject property and any neighborhood association that represents citizens in the area via first class mail a minimum of 10 days in advance of the Neighborhood Meeting.
3. The meeting was conducted at 1125 Apex Peakway, Apex, NC 27502 (location/address) on June 23, 2020 (date) from 5:30 (start time) to (end time).
4. I have included the mailing list, meeting invitation, sign-in sheet, issue/response summary, and zoning map/reduced plans with the application.
5. I have prepared these materials in good faith and to the best of my ability.


6-25-2020
Date

By: 

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, DANIEL H. WOODS, a Notary Public for the above State and County, on this the 25 day of JUNE, 2020.




Notary Public
DANIEL H. WOODS
Print Name

My Commission Expires: 11/18/23

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter(s): Marty Stone, Assistant Town Manager

Department(s): Administration

Requested Motion

Motion to approve and authorize the Town Manager to execute the same for an Encroachment Agreement between the Town and property owner, Katharine Heinkel, regarding Wake County, NC PIN#0722-68-8817, 727 Meadowside Court, as recorded in Book of Maps 2018, Page 00062, Wake County Register of Deeds.

Approval Recommended?

Yes

Item Details

Approve Encroachment Agreement between the Town and property owner Katharine Heinkel, (Grantee) for the property described as a residential lot known as Wake County PIN#0722-68-8817, Book of Maps 2018, Page 00062, Lot 92, 727 Meadowside Court, Apex, NC 27523. Grantee wishes to install a fence of which 550 S.F. will encroach into the Public Sanitary Sewer Easement.

Attachments

- Encroachment Agreement
- Exhibit A



After Recording Mail To: Development Services
 Town of Apex
 PO Box 250
 Apex, NC 27502

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT, being made this _____ day of _____, 2020, by and between Katharine Heinkel, hereinafter referred to as "Grantee," and the Town of Apex, hereinafter referred to as the "Town."

WHEREAS, the Grantee is the owner of a certain residential lot of land in the County of Wake, State of North Carolina, which is designated as PIN #0722-68-8817 and more particularly described as **Lot 92** of the subdivision known as **The Preserve at White Oak Creek Ph. 2B**, which is shown on that certain plat recorded in **Book of Maps 2018, Page 00062**, Wake County Registry (hereinafter the "**Subdivision Plat**"). The residential lot is also known as **727 Meadowside Court, Apex, NC 27523**. The residential lot described in this paragraph is hereinafter referred to as the "**Residential Lot**."

WHEREAS, the Town is the owner of a 30' Public Town of Apex Sanitary Sewer Easement as shown on the **Subdivision Plat** hereinafter referred to as the "**Public Sanitary Sewer Easement**."

WHEREAS, Grantee wishes to install certain improvements, more particularly described as a **fence that will encroach 550 S.F. into the Public Sanitary Sewer Easement** which serves the Residential Lot, hereinafter referred to as the "**Encroachment**," all as shown on the attached **Exhibit A**. Grantee desires to make certain agreements and covenants regarding the Encroachment.

WHEREAS, the Town, under the terms and conditions herein set forth, is willing to allow the above-described Encroachment upon the **Public Sanitary Sewer Easement**.

NOW, THEREFORE, in consideration of these promises and other consideration, the receipt and sufficiency of which is hereby acknowledged, Grantee and the Town hereby covenant and agree:

1. Subject to the terms herein, the Town agrees to allow Grantee, and Grantees' successors and assigns at Grantee' sole risk and expense, to encroach into the **Public Sanitary Sewer Easement** of the Town as shown in the attached **Exhibit A**, and incorporated by reference as though fully set forth herein.

2. The Encroachment shall not be enlarged or increased beyond the Encroachment shown in **Exhibit A** and described in this Encroachment Agreement. Grantee is responsible for any and all expenditures of labor or materials required for the installation, erection, repair, removal, or maintenance of the above-referenced Encroachment.

3. Grantee is fully responsible for any and all property damage or injury or death of any person which results from any and all negligence, omission, defect in design, maintenance, or workmanship created by the Encroachment described herein, or any cause of action arising out of the installation, maintenance, removal, destruction, or location of said Encroachment.

4. Grantee agrees to and does not hereby hold the Town, its officers, council members and employees harmless from any and all liability arising out of such negligence, omission, defect or other cause of action; that it will defend the Town, its officers, council members and employees, and pay all attorney fees in any and all actions brought as a result of such; and that it will indemnify the Town, its officers, council members, and employees against any and all loss sustained by reason of such negligence, omission, defect, or other cause of action, claim, cost, or expense arising out of the installation, maintenance, removal, or location of said Encroachment.

5. Sections 3 and 4 shall survive the termination of this Encroachment Agreement for any reason.

6. All notices required herein shall be deemed given by depositing such in the United States mail, first class, and addressed to:

To Town: Town Manager
Town of Apex
PO Box 250
Apex, NC 27502

To Grantees: Katharine Heinkel
727 Meadowside Court
Apex, NC 27523

7. In the event there is a dispute between the parties concerning the interpretation of the terms of this Encroachment Agreement or their respective rights and obligations hereunder, such dispute or controversy shall be adjudged pursuant to the laws of the State of North Carolina.

8. Grantee agrees to abide by all applicable laws, regulations, statutes and ordinances.

9. This Encroachment Agreement shall not divest the Town of any rights or interest in said **Public Sanitary Sewer Easement** and the Town may terminate this Encroachment Agreement by giving Grantee ninety (90) days written notice of termination. Prior to the termination date, Grantee shall remove, at its own expense, all or part of the Encroachment as specified by the Town.

10. If the Town deems, within its sole discretion, that there is not time to give Grantee notice as provided in Paragraph 9 and that removal of the Encroachment is necessary in order to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Sanitary Sewer Easement**, then no notice shall be required and the Town may remove the Encroachment from the **Public Sanitary Sewer Easement** without cost, risk or liability to the Town.

11. Grantee agrees to pay and reimburse the Town the entire expense and cost of removal of the Encroachment in the event that the Town removes the Encroachment as provided in the Paragraph 10 or if Grantee fails to remove the Encroachment within the time limit after receiving notice under Paragraph 9.

12. Grantee, if not self-performing the installations that are the subject of this Agreement, agree to purchase or cause to be procured from a responsible insurance carrier or carriers authorized under the laws of the State of North Carolina, valid general liability insurance in the minimum amount of \$500,000 and provide a certificate of such insurance naming the Town of Apex as additional insured by endorsement to the policy. Where the Grantee is self-performing the installations, Grantee shall show proof of homeowner's insurance with personal liability coverage in a minimum amount of at least \$300,000. Grantee 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.

13. Notwithstanding Section 14 below, Grantee shall be released from its obligation under this Encroachment Agreement only upon the assumption of said obligations either by a successor in title to real property known as **Lot 92 The Preserve at White Oak Creek Phase 2B (727 Meadowside Court, Apex, NC 27523)**, or by assumption of said obligations by an incorporated property or condominium owners association for **The Preserve at White Oak Creek Phase 2B**. The Town's consent to such assumption and release shall be required but shall not be withheld, conditioned or delayed if, as reasonably determined by the Town, the party assuming the Grantee's obligations possesses adequate financial resources and ownership interest, and Grantee's delegate and proposed assignee assume and agree to fulfill, in writing, all of Grantee's duties set forth in this Encroachment Agreement.

14. The right to encroach is appurtenant to and runs with the land hereinabove referred to and shall forever be subject to the conditions above agreed on between the parties. This Encroachment Agreement is binding upon the heirs, assigns, transferees, and successors in interest of the Grantee and shall, upon execution, be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

In testimony whereof, said Grantee and said Town have here unto set their hands and seals, the day and year first above written.

GRANTEE

By:

Katharine Heinke:

STATE OF NORTH CAROLINA

COUNTY OF Wake [county in which acknowledgement taken]

i, do hereby certify that Katharine Heinkel, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 25 day of Aug., 2020.

Marleny Powell

[Signature of Notary Public]

My Commission Expires: 08/20/2024

MARLENY POWELL
NOTARY PUBLIC
WAKE COUNTY, N.C.
My Commission Expires 08-20-2024

TOWN OF APEX

Andrew L. Havens
Town Manager

(Corporate Seal)

ATTEST:

Donna B. Hosch, MMC, NCCMC
Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF _____ *[county in which acknowledgement taken]*

I, _____, a Notary Public of _____ County, North Carolina, certify that Donna B. Hosch personally came before me this day and acknowledged that she 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 _____ day of _____, 2020.

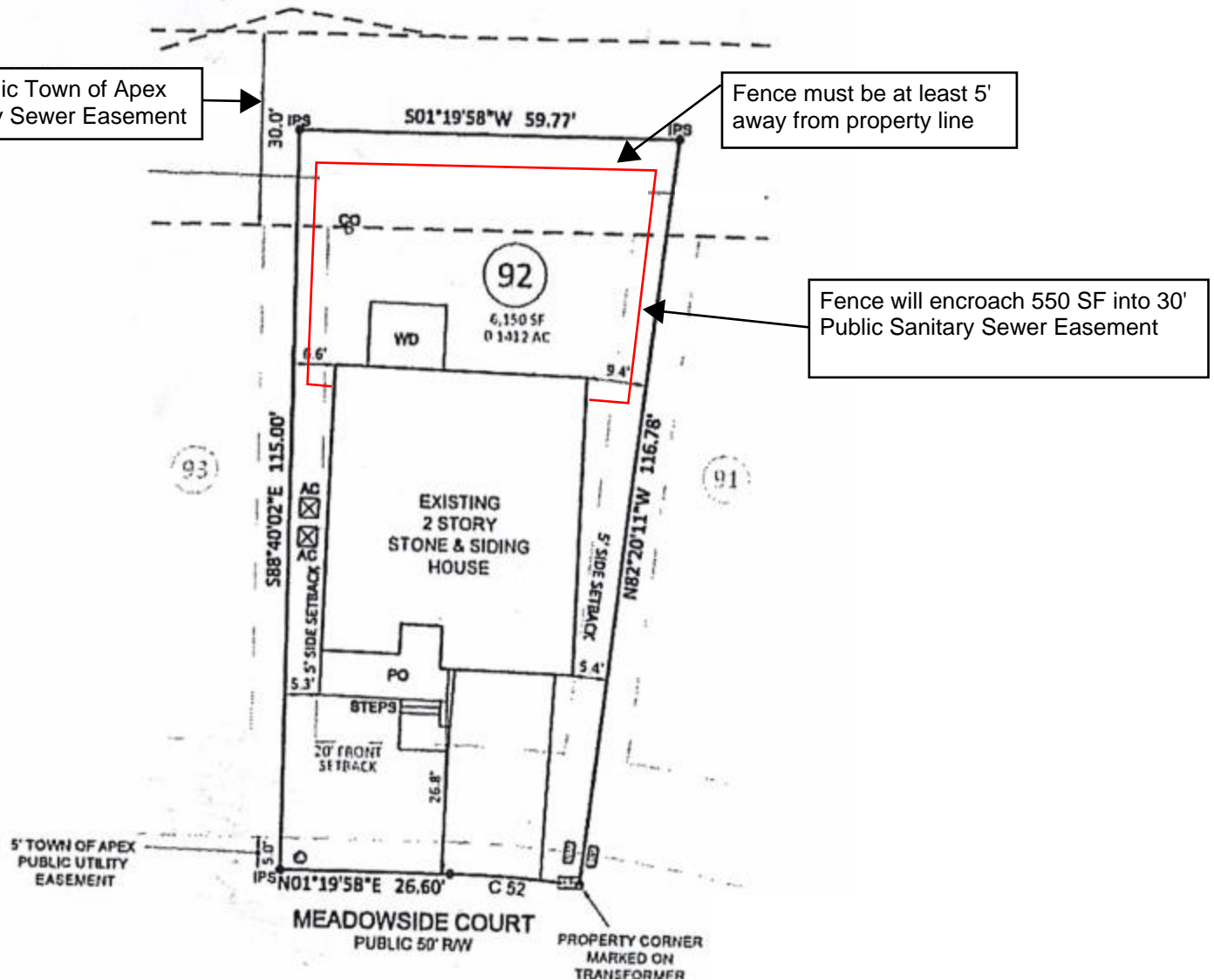
[Signature of Notary Public]

(Seal)

My Commission Expires: _____

EXHIBIT A

727 Meadowside Court



| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter(s): Marty Stone, Assistant Town Manager

Department(s): Administration

Requested Motion

Motion to approve and authorize the Town Manager to execute the same for an Encroachment Agreement between the Town and property owners, Hyun J. Woo and spouse David W. Lee, regarding Wake County, NC PIN#0723-60-4354, 2712 Tunstall Grove Drive, as recorded in Book of Maps 2018, Page 00961, Wake County Register of Deeds.

Approval Recommended?

Yes

Item Details

Approve Encroachment Agreement between the Town and property owners Hyun J. Woo and spouse David W. Lee, (Grantees) for the property described as a residential lot known as Wake County PIN#0723-60-4354, Book of Maps 2018, Page 00961, Lot 257, 2712 Tunstall Grove Drive, Apex, NC 27523. Grantees wish to install a 12'x12' shed of which 144 S.F. will encroach upon the Public Sanitary Sewer Easement.

Attachments

- Encroachment Agreement
- Exhibit A



After Recording Mail To: Development Services
Town of Apex
PO Box 250
Apex, NC 27502

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT, being made this _____ day of _____, 2020, by and between Hyun J. Woo and spouse David W. Lee, hereinafter referred to as "Grantees," and the Town of Apex, hereinafter referred to as the "Town."

WHEREAS, the Grantees are the owner of a certain residential lot of land in the County of Wake, State of North Carolina, which is designated as **PIN #0723-60-4354** by the Wake County Revenue Department and more particularly described as **Lot 257** of the subdivision known as **The Preserve at White Oak Creek Phase 2C and Phase 3C** as shown on that certain plat recorded in **Book of Maps 2018, Page 00961**, Wake County Registry (hereinafter the "**Subdivision Plat**"). The residential lot is also known as **2712 Tunstall Grove Drive, Apex, NC 27523**. The residential lot described in this paragraph is hereinafter referred to as the "**Residential Lot**."

WHEREAS, the Town is the owner of a **40' Town of Apex Public Sanitary Sewer Easement** as shown on the **Subdivision Plat** hereinafter referred to as the "**Public Sanitary Sewer Easement**."

WHEREAS, Grantees wish to install certain improvements, more particularly described as a **12'x12' shed of which 144 SF will encroach upon the Public Sanitary Sewer Easement** which serves the

Residential Lot, hereinafter referred to as the “**Encroachment**”, all as shown on the attached **Exhibit A**. Grantees desire to make certain agreements and covenants regarding the Encroachment.

WHEREAS, the Town, under the terms and conditions herein set forth, is willing to allow the above-described Encroachment upon the **Public Sanitary Sewer Easement**.

NOW, THEREFORE, in consideration of these promises and other consideration, the receipt and sufficiency of which is hereby acknowledged, Grantees and the Town hereby covenant and agree:

1. Subject to the terms herein, the Town agrees to allow Grantees, and Grantees’ successors and assigns at Grantees’ sole risk and expense, to encroach into the **Public Sanitary Sewer Easement** of the Town as shown in the attached **Exhibit A**, and incorporated by reference as though fully set forth herein.

2. The Encroachment shall not be enlarged or increased beyond the Encroachment shown in **Exhibit A** and described in this Encroachment Agreement. Grantees are responsible for any and all expenditures of labor or materials required for the installation, erection, repair, removal, or maintenance of the above-referenced Encroachment.

3. Grantees are fully responsible for any and all property damage or injury or death of any person which results from any and all negligence, omission, defect in design, maintenance, or workmanship created by the Encroachment described herein, or any cause of action arising out of the installation, maintenance, removal, destruction, or location of said Encroachment.

4. Grantees agree to and do hereby hold the Town, its officers, council members and employees harmless from any and all liability arising out of such negligence, omission, defect or other cause of action; that it will defend the Town, its officers, council members and employees, and pay all attorney fees in any and all actions brought as a result of such; and that it will indemnify the Town, its officers, council members, and employees against any and all loss sustained by reason of such negligence, omission, defect, or other cause of action, claim, cost, or expense arising out of the installation, maintenance, removal, or location of said Encroachment.

5. Sections 3 and 4 shall survive the termination of this Encroachment Agreement for any reason.

6. All notices required herein shall be deemed given by depositing such in the United States mail, first class, and addressed to:

To Town: Town Manager
 Town of Apex
 PO Box 250
 Apex, NC 27502

To Grantee: Hyun J. Woo and Spouse David W. Lee
 2712 Tunstall Grove Drive
 Apex, NC 27523

7. In the event there is a dispute between the parties concerning the interpretation of the terms of this Encroachment Agreement or their respective rights and obligations hereunder, such dispute or controversy shall be adjudged pursuant to the laws of the State of North Carolina.

8. Grantees agree to abide by all applicable laws, regulations, statutes and ordinances.

9. This Encroachment Agreement shall not divest the Town of any rights or interest in said **Public Sanitary Sewer Easement** and the Town may terminate this Encroachment Agreement by giving Grantees ninety (90) days written notice of termination. Prior to the termination date, Grantees shall remove, at its own expense, all or part of the Encroachment as specified by the Town.

10. If the Town deems, within its sole discretion, that there is not time to give the Grantees notice as provided in Paragraph 9 and that removal of the Encroachment is necessary in order to operate, protect, maintain, modify, replace, add-to or improve its facilities located within the **Public Sanitary Sewer Easement**, then no notice shall be required and the Town may remove the Encroachment from the **Public Sanitary Sewer Easement** without cost, risk or liability to the Town.

11. Grantees agree to pay and reimburse the Town the entire expense and cost of removal of the Encroachment in the event that the Town removes the Encroachment as provided in the Paragraph 10 or if Grantees fail to remove the Encroachment within the time limit after receiving notice under Paragraph 9.

12. Grantees, if not self-performing the installations that are the subject of this Agreement, agree to purchase or cause to be procured from a responsible insurance carrier or carriers authorized under the laws of the State of North Carolina, valid general liability insurance in the minimum amount of \$500,000 and provide a certificate of such insurance naming the Town of Apex as additional insured by endorsement to the policy. Where the Grantees are self-performing the installations, Grantees shall show proof of homeowner's insurance with personal liability coverage in a minimum amount of at least \$300,000. Grantees 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.

13. Notwithstanding Section 14 below, Grantees shall be released from their obligation under this Encroachment Agreement only upon the assumption of said obligations either by a successor in title to real property known as **Lot 257, The Preserve at White Oak Creek, PH2C and Phase 3C (2712 Tunstall Grove Drive, Apex, NC 27523)**, or by assumption of said obligations by an incorporated property or condominium owners association for **The Preserve at White Oak Creek, Phase 2C and Phase 3C**. The Town's consent to such assumption and release shall be required but shall not be withheld, conditioned or delayed if, as reasonably determined by the Town, the party assuming Grantees' obligations possesses adequate financial resources and ownership interest, and Grantees' delegate and proposed assignee assume and agree to fulfill, in writing, all of Grantees' duties set forth in this Encroachment Agreement.

14. The right to encroach is appurtenant to and runs with the land hereinabove referred to and shall forever be subject to the conditions above agreed on between the parties. This Encroachment Agreement is binding upon the heirs, assigns, transferees, and successors in interest of the Grantees and shall, upon execution, be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

In testimony whereof, said Grantees and said Town have here unto set their hands and seals, the day and year first above written.

GRANTEES

By: 
Hyun J. Woo

By: 
David W. Lee

STATE OF NORTH CAROLINA

COUNTY OF Wake [county in which acknowledgement taken]

I, do hereby certify that Hyun J. Woo, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 31st day of July, 2020.


[Signature of Notary Public]

My Commission Expires: 08/08/2024

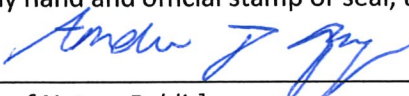


STATE OF NORTH CAROLINA

COUNTY OF Wake [county in which acknowledgement taken]

I, do hereby certify that David W. Lee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 31st day of July, 2020.


[Signature of Notary Public]

My Commission Expires: 08/08/2024



TOWN OF APEX

Andrew L. Havens
Town Manager

(Corporate Seal)

ATTEST:

Donna B. Hosch, MMC, NCCMC
Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF _____ *[county in which acknowledgement taken]*

I, _____, a Notary Public of _____ County, North Carolina, certify that Donna B. Hosch personally came before me this day and acknowledged that she 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 _____ day of _____, 2020.

[Signature of Notary Public]

(Seal)

My Commission Expires: _____

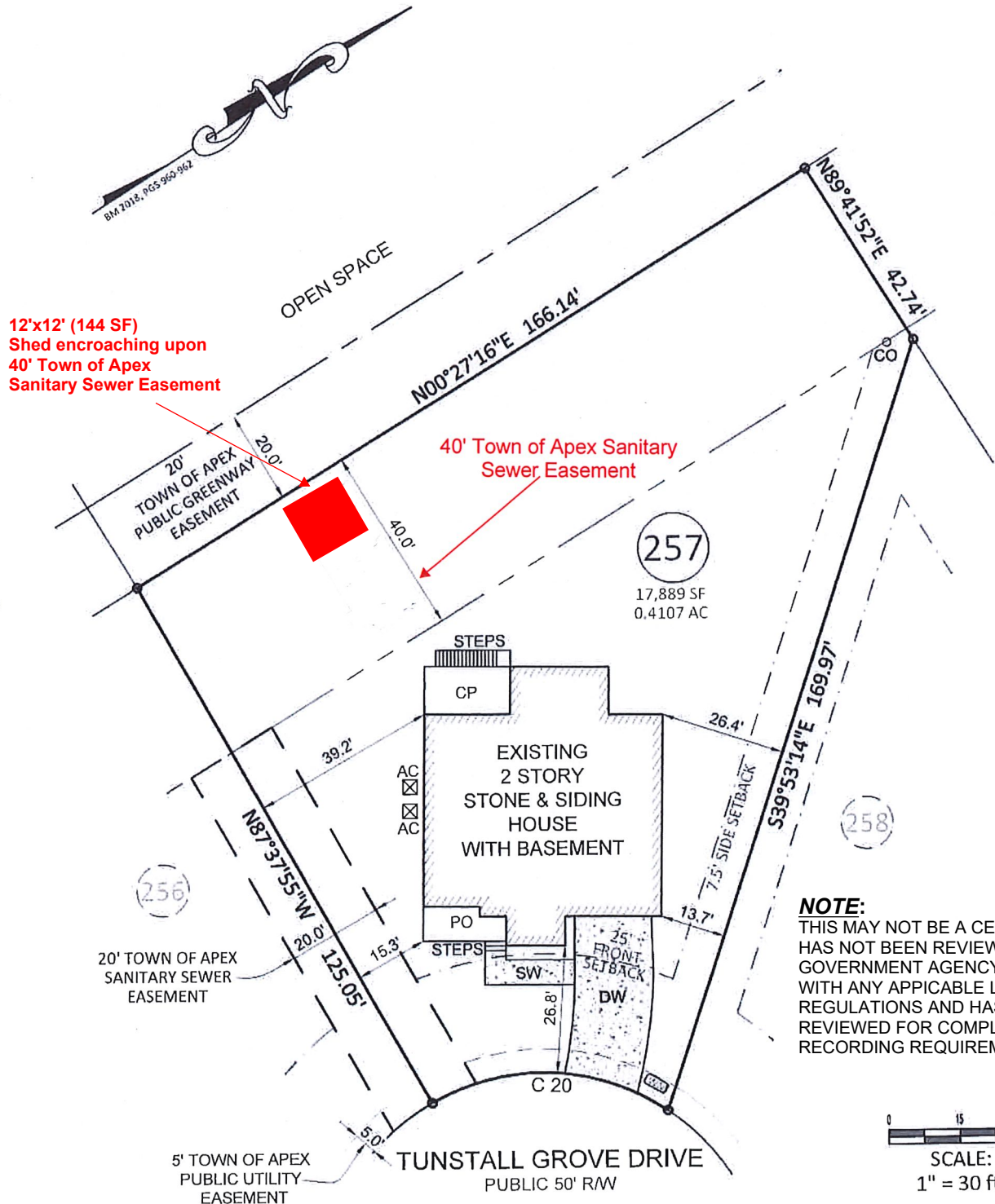
EXHIBIT A

2712 Tunstall Grove Drive

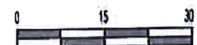
CURVE TABLE				
CURVE	RADIUS	LENGTH	CHORD DIRECTION	CHORD
C 20	47.00'	52.48'	S34°21'31"W	49.80'

LOT INFORMATION:

PIN: 0723604354
TOTAL LOT AREA = 0.4107 AC = 17,889 SF
HOUSE = 2,398 SF
PORCH = 114 SF
SIDEWALK = 118 SF
DRIVEWAY = 569 SF
AC PAD = 18 SF
COVERED PORCH = 182 SF
EXISTING IMPERVIOUS = 3,399 SF
PERCENT IMPERVIOUS = 19.0 %



NOTE:
THIS MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS



SCALE:
1" = 30 ft.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter(s): John Letteney, Police Chief and Vance Holloman, Finance Officer

Department(s): Police Department and Finance Department

Requested Motion

Motion to approve Budget Ordinance Amendment No. 1 which appropriates Fund Balance in order to purchase body worn cameras for all sworn members of the Apex Police Department.

Approval Recommended?

Yes

Item Details

The original Fiscal Year 20-21 Budget Ordinance included an appropriation to purchase 15 body worn cameras for the Apex Police Department as the first phase of the implementation of this project. Subsequently the decision has been made to purchase body worn cameras for all sworn members of the Department. We have 99 sworn staff, and this appropriation will allow us to purchase 100 cameras so we have one spare. The appropriation of \$277,000 is necessary to fund the additional purchases.

Attachments

- Budget Ordinance Amendment No. 1





Town of Apex

Budget Ordinance Amendment No. 1

BE IT ORDAINED, by the Council of the Town of Apex that the following Budget Amendment for the Fiscal Year 2020-2021 Budget Ordinance be adopted:

GENERAL FUND

Section 1. Revenues:

Appropriated Fund Balance	\$277,000
Total Revenues	\$277,000

Section 2. Expenditures:

Police-Capital Outlay-Equipment	\$277,000
Total Expenditures	\$277,000

Section 3. Within five (5) days after adoption, copies of this Amendment shall be filed with the Finance Officer and Town Clerk.

Adopted this the 1st day of September, 2020

Attest:

Jacques K. Gilbert, Mayor

Donna B. Hosch, MMC, Town Clerk

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter: Dianne Khin, Director of Planning and Community Development

Department: Planning and Community Development

Requested Motion

Motion to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for September 15, 2020 on the Question of Annexation – Apex Town Council's intent to annex MFW Investments, LLC (Colby Crossing) property containing 7.578 acres located along a portion of the future connection of Colby Chase Drive between Merion and Pemberley subdivisions, Annexation #651 into the Town's corporate limits.

Approval Recommended?

Yes, by the Planning and Community Development Department.

Item Details

The Town Clerk certifies to the investigation of said annexation. Adoption of the Resolution authorizes the Town Clerk to advertise said public hearing by electronic means and on the Town of Apex's website.

Attachments

- Annexation Petition
- Legal Description
- Vicinity Map
- Resolution Directing the Town Clerk to Investigate Petition
- Certificate of Sufficiency by the Town Clerk
- Resolution Setting Date of Public Hearing





RESOLUTION DIRECTING THE TOWN CLERK
TO INVESTIGATE PETITION RECEIVED UNDER G.S. § 160A-31

Annexation Petition# 651
MFW Investments LLC (Colby Crossings)

WHEREAS, G.S. §160-A 31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Apex deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, that the Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify to the Town Council the result of her investigation.

This the 1st day of September 2020.

Jacques K. Gilbert
Mayor

ATTEST:

Donna B. Hosch, MMC, NCCMC
Town Clerk



CERTIFICATE OF SUFFICIENCY BY THE TOWN CLERK

Annexation Petition #651
MFW Investments LLC (Colby Crossings)

To: The Town Council of the Town of Apex, North Carolina

I, Donna B. Hosch, Town Clerk, do hereby certify that I have investigated the annexation petition attached hereto, and have found, as a fact, that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. § 160A-31, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Apex, North Carolina this 1st day of September 2020.

Donna B. Hosch, MMC, NCCMC
Town Clerk

(Seal)

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 651 Submittal Date: 11-21-18
Fee Paid \$ \$200.00 Check # 5628

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

MFW Investments LLC	0750264926 Deed Book 16554, Page 2295
Owner Name (Please Print)	Property PIN or Deed Book & Page #
919-801-3905	mwhitehead@macgregordev.com
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company Jeff Baker
Phone: 919-577-1080 Fax: 919-577-1081
E-mail Address: jeff.baker@batemancivilsurvey.com

Annexation Summary Chart

Total Acreage to be annexed:	<u>7.578</u>	Reason for annexation: (select one)	
Population of acreage to be annexed:		Receive Town Services	<u>X</u>
Existing # of housing units:		Other (please specify)	
Zoning District*:	<u>MD-CZ</u>		

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 651

Submittal Date: 11/21/18

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, MFW Investments, LLC a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 21 day of November, 20 18.

Name of Limited Liability Company MFW Investments, LLC

By: [Signature]

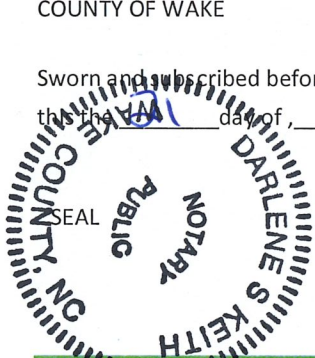
Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Darlene S. Keith, a Notary Public for the above State and County, this the 21 day of November, 20 18.

[Signature]
Notary Public

My Commission Expires: 8-5-2022



COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the ____ day of _____, 20 ____.

Name of Partnership _____

By: _____

Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County, this the ____ day of _____, 20 ____.

Notary Public

SEAL

My Commission Expires: _____



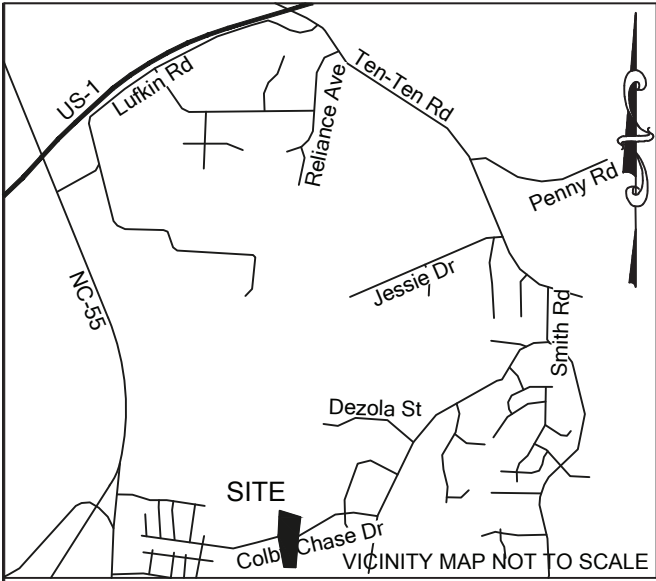
Bateman Civil Survey Company, PC
2524 Reliance Avenue
Apex, NC 27539

Phone: (919) 577-1080
Fax: (919) 577-1081
info@batemancivilsurvey.com

Annexation Legal Description for PIN: 0750264926

All that certain parcel of land, situated in Apex, Wake County, North Carolina, being on the lands of MFW Investments LLC as described in Deed Book 16554 at Page 2295, Wake County Records, and being more particularly described as follows:

Beginning at an Iron Pipe found at the North West property corner of MFW Investments LLC (DB 16554, PG 2295), Wake County Records and North East property corner of Pemberly Property Owners' Association (DB 16533, PG 1996), Wake County records and being designated as the Point of Beginning as shown on map made by Bateman Civil Survey Company, dated 3/26/2020 and entitled "Annexation Map for the Town of Apex" Apex, NC, Wake County, White Oak Township, REID# 0332044, having State Plane Coordinates N:707394.511, E:2052194.259;
thence S77°53'40"E, 487.73' to an Iron Pipe set; thence S02°53'36"W, 729.80' to an Iron Pipe set; thence N82°46'39"W, 330.00' to an Iron Pipe set; thence N17°15'52"W, 434.04' to an Iron Pipe found; thence N02°27'54"E, 375.53' to an Iron Pipe found; said Iron Pipe being the Point of Beginning.
Said Annexation contains 330,112 square feet / 7.578 acres, more or less.



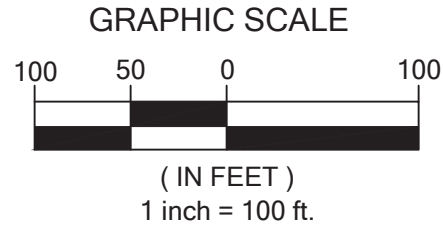
SITE LOCATION:
0 E Williams Street, Apex, NC, 27539

REFERENCES

- Book Map 2006 Page 172
- Deed Book 16554 Page 2295

ANNEXATION # _____ I Donna B. Hosch, MMC,
NCCMC, Town Clerk, Apex, North Carolina certify this is a true and exact map
of annexation adopted the _____ day of _____, by the Town
Council. I set my hand and seal of the Town of Apex, _____
Day / Month / Year

Donna B. Hosch, MMC, NCCMC, Town Clerk



LEGEND

- IRON PIPE SET
- IRON REBAR FOUND
- ⊙ IRON PIPE FOUND
- ⊗ COMPUTED POINT
- ⊠ R/W MARKER FOUND
- BOUNDARY LINE
- - - EXISTING PROPERTY LINE
- - - EXISTING EASEMENT

NOTES:

- This survey was prepared by Bateman Civil Survey Co., under the supervision of Jeffrey W. Baker, PLS.
- This plan has been prepared for layout and permitting purposes only.
- Property lines shown were taken from existing field evidence, existing deeds and/or plats of public record, and information supplied to the surveyor by the client
- All distances are horizontal ground distances and all bearings are North Carolina State Plane Coordinate System unless otherwise shown.
- No investigation into the existence of jurisdictional wetlands or riparian buffers performed by this firm.
- Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence or any other facts that an accurate and current title search may disclose.
- No Grid Monuments found within 2000'.
- Tied to the National CORS Network through NC VRS.

Required Base Information:

Project Information: MFW Investment LLC
0 E Williams Street, Apex, NC 27539 (Reid 0332044)

Owner Information: MFW Investment LLC (Reid 0203125)
Mike Whitehead
114 Birklands Drive, Cary, NC, 27518
mwhitehead@macgregordev.com

Surveyor Information: Jeffrey W. Baker
North Carolina
L-4412

Date of Survey & Plat Preparation: 11/13/2018

Zoning District & Zoning Case #: MD-CZ

Setbacks: PUD-CZ
Single Family: Front: 25'
Side: 6' minimum 16' total
Corner: 15'
Rear: 20'
Minimum Lot Width: 50'

Township, County, State: White Oak, Wake, North Carolina

Primary or Secondary Watershed: Secondary - Middle Creek Basin

FEMA designated floodplain: 'X' per F.I.R.M #3720075000J dated 05/02/2006

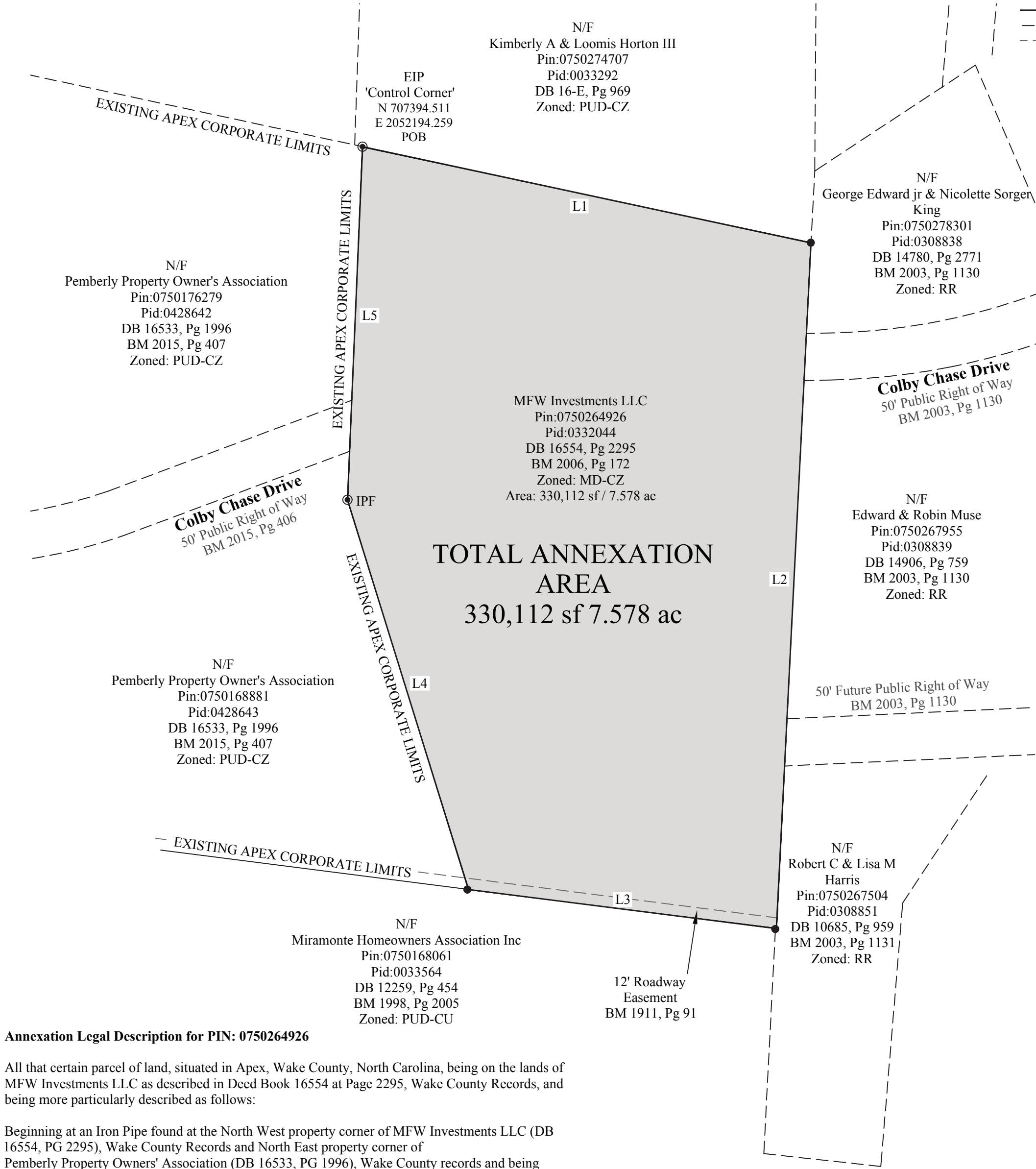
Class of Survey: D
Positional Accuracy: 0.02'
Date of Survey: July, 2017
Datum/Epoch: NAD83/NSRS2011
Geoid Model: 12B
Combined Grid Factors: 0.99988461
Units: US Survey Feet

"I, Jeffrey W. Baker, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book 5861, page 59, Book 10551, page 648); that the boundaries not surveyed are clearly indicated as drawn from information found in Book 1988, page 754, Book 1998, Page 1820; that the ratio of precision or positional accuracy as calculated is 1:10000+; that this plat was prepared in accordance with G.S. 47-30 as amended. witness my original signature, license number and seal this 9th day of January, A.D. 2019."

Professional Land Surveyor
License Number-4412

I, Jeffrey W. Baker, Professional Land Surveyor No. L-4412 certify
D. That the survey is of another category, such as the
recombination of existing parcels, a court-ordered survey,
or other exceptions to the definition of subdivision.

Jeffrey W. Baker, PLS L-4412 date



Line Table Field		
Line #	Direction	Length
L1	S77°53'40"E	487.73
L2	S02°53'36"W	729.80
L3	N82°46'39"W	330.00
L4	N17°15'52"W	434.04
L5	N02°27'54"E	375.53

Annexation Legal Description for PIN: 0750264926

All that certain parcel of land, situated in Apex, Wake County, North Carolina, being on the lands of MFW Investments LLC as described in Deed Book 16554 at Page 2295, Wake County Records, and being more particularly described as follows:

Beginning at an Iron Pipe found at the North West property corner of MFW Investments LLC (DB 16554, PG 2295), Wake County Records and North East property corner of Pembroly Property Owners' Association (DB 16533, PG 1996), Wake County records and being designated as the Point of Beginning as shown on map made by Bateman Civil Survey Company, dated 3/26/2020 and entitled "Annexation Map for the Town of Apex" Apex, NC, Wake County, White Oak Township, REID# 0332044, having State Plane Coordinates N:707394.511, E:2052194.259; thence S77°53'40"E, 487.73' to an Iron Pipe set; thence S02°53'36"W, 729.80' to an Iron Pipe set; thence N82°46'39"W, 330.00' to an Iron Pipe set; thence N17°15'52"W, 434.04' to an Iron Pipe found; thence N02°27'54"E, 375.53' to an Iron Pipe found; said Iron Pipe being the Point of Beginning. Said Annexation contains 330,112 square feet / 7.578 acres, more or less.

UNLESS THIS MAP IS SIGNED AND SEALED BY THE SURVEYOR
IN CHARGE, THIS MAP IS CONSIDERED PRELIMINARY AND
NOT TO BE USED FOR RECORDING, CONVEYANCE OR SALES



Bateman Civil Survey Company
Engineers • Surveyors • Planners
2524 Reliance Ave., Apex, NC 27539
Phone: 919.577.1080 Fax: 919.577.1081
NCBELS FIRM No. C-2378

OWNER
MFW INVESTMENTS LLC
114 BIRKLANDS DRIVE
CARY, NORTH CAROLINA, 27518

ANNEXATION MAP
FOR THE TOWN OF APEX
APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
REID# 0332044

Designed By: N/A
Drawn By: JCH
Checked By: JWB
Scale: 1"=100'
Date: 3/26/2020
Project #:180585

SHEET
1 OF 1

[Home](#)

Wake County Real Estate Data Account Summary

[iMaps](#)
[Tax Bills](#)
Real Estate ID **0332044**PIN # **0750264926**
 Location Address
0 E WILLIAMS ST

 Property Description
**LOD RECOMB HEAVER HEIRS & JOSEPH LEE ETUX
 BM2006-172**

 Account
 Search


[Pin/Parcel History](#) [Search Results](#) [New Search](#)
[NORTH CAROLINA](#) [Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner MFV INVESTMENTS LLC (Use the Deeds link to view any additional owners)		Owner's Mailing Address 114 BIRKLANDS DR CARY NC 27518-8203	Property Location Address 0 E WILLIAMS ST APEX NC 27539-0000
Administrative Data Old Map # 695-- Map/Scale 0750 01 VCS 20AP901 City Fire District 23 Township WHITE OAK Land Class VACANT ETJ AP Spec Dist(s) Zoning MD-CZ History ID 1 History ID 2 Acreage 7.58 Permit Date Permit #		Transfer Information Deed Date 9/30/2016 Book & Page 16554 2295 Revenue Stamps 420.00 Pkg Sale Date Pkg Sale Price Land Sale Date 9/30/2016 Land Sale Price \$210,000 Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area	Assessed Value Land Value Assessed \$342,936 Bldg. Value Assessed Tax Relief Land Use Value Use Value Deferment Historic Deferment Total Deferred Value Use/Hist/Tax Relief Assessed Total Value Assessed* \$342,936

*Wake County assessed building and land values reflect the market value as of January 1, 2020, which is the date of the last county-wide revaluation. Any inflation, deflation or other economic changes occurring after this date does not affect the assessed value of the property and cannot be lawfully considered when reviewing the value for adjustment.

The January 1, 2020 values will remain in effect until the next county-wide revaluation. Until that time, any real estate accounts created or new construction built is assessed according to the 2020 Schedule of Values.

For questions regarding the information displayed on this site, please contact the Department of Tax Administration at Taxhelp@wakegov.com or call 919-856-5400.



RESOLUTION SETTING DATE OF PUBLIC HEARING
ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. § 160A-31 AS AMENDED

Annexation Petition #651
MFW Investments LLC (Colby Crossings)

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the Town Council of Apex, North Carolina has by Resolution directed the Town Clerk to investigate the sufficiency thereof; and

WHEREAS, Certification by the Town Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at the Apex Town Hall at 6 o'clock p.m. on the 15th day of September 2020.

Section 2. The area proposed for annexation is described as attached.

Section 3. Notice of said public hearing shall be published on the Town of Apex Website, www.apexnc.org, Public Notice, at least ten (10) days prior to the date of said public hearing.

This the 1st day of September 2020.

Jacques K. Gilbert, Mayor

ATTEST:

Donna B. Hosch, MMC, NCCMC, Town Clerk

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #:

651

Submittal Date:

11-21-18

Fee Paid

\$

#200.00

Check #

5628

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

MFW Investments LLC

0750264926 Deed Book 16554, Page 2295

Owner Name (Please Print)

Property PIN or Deed Book & Page #

919-801-3905

mwhitehead@macgregordev.com

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company Jeff Baker

Phone: 919-577-1080

Fax: 919-577-1081

E-mail Address: jeff.baker@batemancivilsurvey.com

Annexation Summary Chart

Total Acreage to be annexed: 7.578

Reason for annexation: (select one)

Population of acreage to be annexed:

Receive Town Services

X

Existing # of housing units:

Other (please specify)

Zoning District*:

MD-CZ

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 651

Submittal Date: 11/21/18

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, MFW Investments, LLC a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 21 day of November, 20 18.

Name of Limited Liability Company MFW Investments, LLC

By: [Signature]

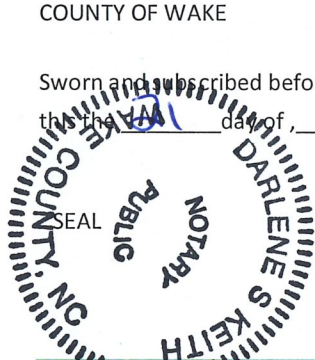
Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Darlene S. Keith, a Notary Public for the above State and County, this the 21 day of November, 20 18.

[Signature]
Notary Public

My Commission Expires: 8-5-2022



COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the ____ day of _____, 20 ____.

Name of Partnership _____

By: _____

Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County, this the ____ day of _____, 20 ____.

Notary Public

SEAL

My Commission Expires: _____



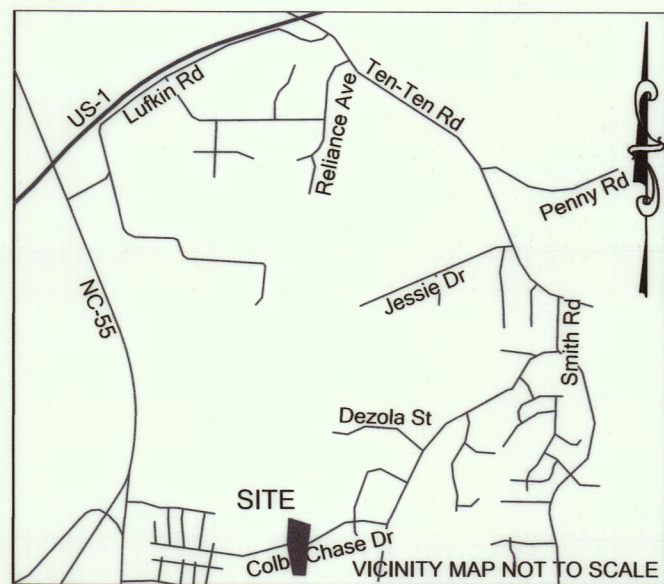
Bateman Civil Survey Company, PC
2524 Reliance Avenue
Apex, NC 27539

Phone: (919) 577-1080
Fax: (919) 577-1081
info@batemancivilsurvey.com

Annexation Legal Description for PIN: 0750264926

All that certain parcel of land, situated in Apex, Wake County, North Carolina, being on the lands of MFW Investments LLC as described in Deed Book 16554 at Page 2295, Wake County Records, and being more particularly described as follows:

Beginning at an Iron Pipe found at the North West property corner of MFW Investments LLC (DB 16554, PG 2295), Wake County Records and North East property corner of Pemberly Property Owners' Association (DB 16533, PG 1996), Wake County records and being designated as the Point of Beginning as shown on map made by Bateman Civil Survey Company, dated 3/26/2020 and entitled "Annexation Map for the Town of Apex" Apex, NC, Wake County, White Oak Township, REID# 0332044, having State Plane Coordinates N:707394.511, E:2052194.259;
thence S77°53'40"E, 487.73' to an Iron Pipe set; thence S02°53'36"W, 729.80' to an Iron Pipe set; thence N82°46'39"W, 330.00' to an Iron Pipe set; thence N17°15'52"W, 434.04' to an Iron Pipe found; thence N02°27'54"E, 375.53' to an Iron Pipe found; said Iron Pipe being the Point of Beginning.
Said Annexation contains 330,112 square feet / 7.578 acres, more or less.



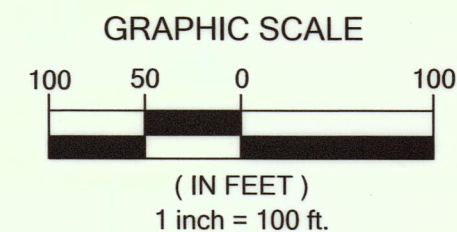
SITE LOCATION:
0 E Williams Street, Apex, NC, 27539

REFERENCES

- Book Map 2006 Page 172
- Deed Book 16554 Page 2295

ANNEXATION # _____ I Donna B. Hosch, MMC,
NCCMC, Town Clerk, Apex, North Carolina certify this is a true and exact map
of annexation adopted the _____ day of _____, by the Town
Council. I set my hand and seal of the Town of Apex, _____
Day / Month / Year

Donna B. Hosch, MMC, NCCMC, Town Clerk



LEGEND

- IRON PIPE SET
- IRON REBAR FOUND
- ⊙ IRON PIPE FOUND
- ⊗ COMPUTED POINT
- ⊠ R/W MARKER FOUND
- BOUNDARY LINE
- EXISTING PROPERTY LINE
- EXISTING EASEMENT

NOTES:

- This survey was prepared by Bateman Civil Survey Co., under the supervision of Jeffrey W. Baker, PLS.
- This plan has been prepared for layout and permitting purposes only.
- Property lines shown were taken from existing field evidence, existing deeds and/or plats of public record, and information supplied to the surveyor by the client
- All distances are horizontal ground distances and all bearings are North Carolina State Plane Coordinate System unless otherwise shown.
- No investigation into the existence of jurisdictional wetlands or riparian buffers performed by this firm.
- Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence or any other facts that an accurate and current title search may disclose.
- No Grid Monuments found within 2000'.
- Tied to the National CORS Network through NC VRS.

Required Base Information:

Project Information: MFW Investment LLC
0 E Williams Street, Apex, NC 27539 (Reid 0332044)

Owner Information: MFW Investment LLC (Reid 0203125)
Mike Whitehead
114 Birklands Drive, Cary, NC, 27518
mwhitehead@macgregordev.com

Surveyor Information: Jeffrey W. Baker
North Carolina
L-4412

Date of Survey & Plat Preparation: 11/13/2018

Zoning District & Zoning Case #: MD-CZ

Setbacks: PUD-CZ
Single Family: Front: 25'
Side: 6' minimum 16' total
Corner: 15'
Rear: 20'
Minimum Lot Width: 50'

Township, County, State: White Oak, Wake, North Carolina

Primary or Secondary Watershed: Secondary - Middle Creek Basin

FEMA designated floodplain: 'X' per F.I.R.M #3720075000J dated 05/02/2006

Class of Survey: D
Positional Accuracy: 0.02'
Date of Survey: July, 2017
Datum/Epoch: NAD83/NSRS2011
Geoid Model: 12B
Combined Grid Factors: 0.99988461
Units: US Survey Feet

"I, Jeffrey W. Baker, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book 5861, page 59, Book 10551, page 648); that the boundaries not surveyed are clearly indicated as drawn from information found in Book 1988, page 754, Book 1998, Page 1820; that the ratio of precision or positional accuracy as calculated is 1:10000+; that this plat was prepared in accordance with G.S. 47-30 as amended. witness my original signature, license number and seal this 14th day of April, A.D. 2020."

Professional Land Surveyor
License Number-4412

I, Jeffrey W. Baker, Professional Land Surveyor No. L-4412 certify
D. That the survey is of another category, such as the
recombination of existing parcels, a court-ordered survey,
or other exceptions to the definition of subdivision.

Jeffrey W. Baker, PLS L-4412

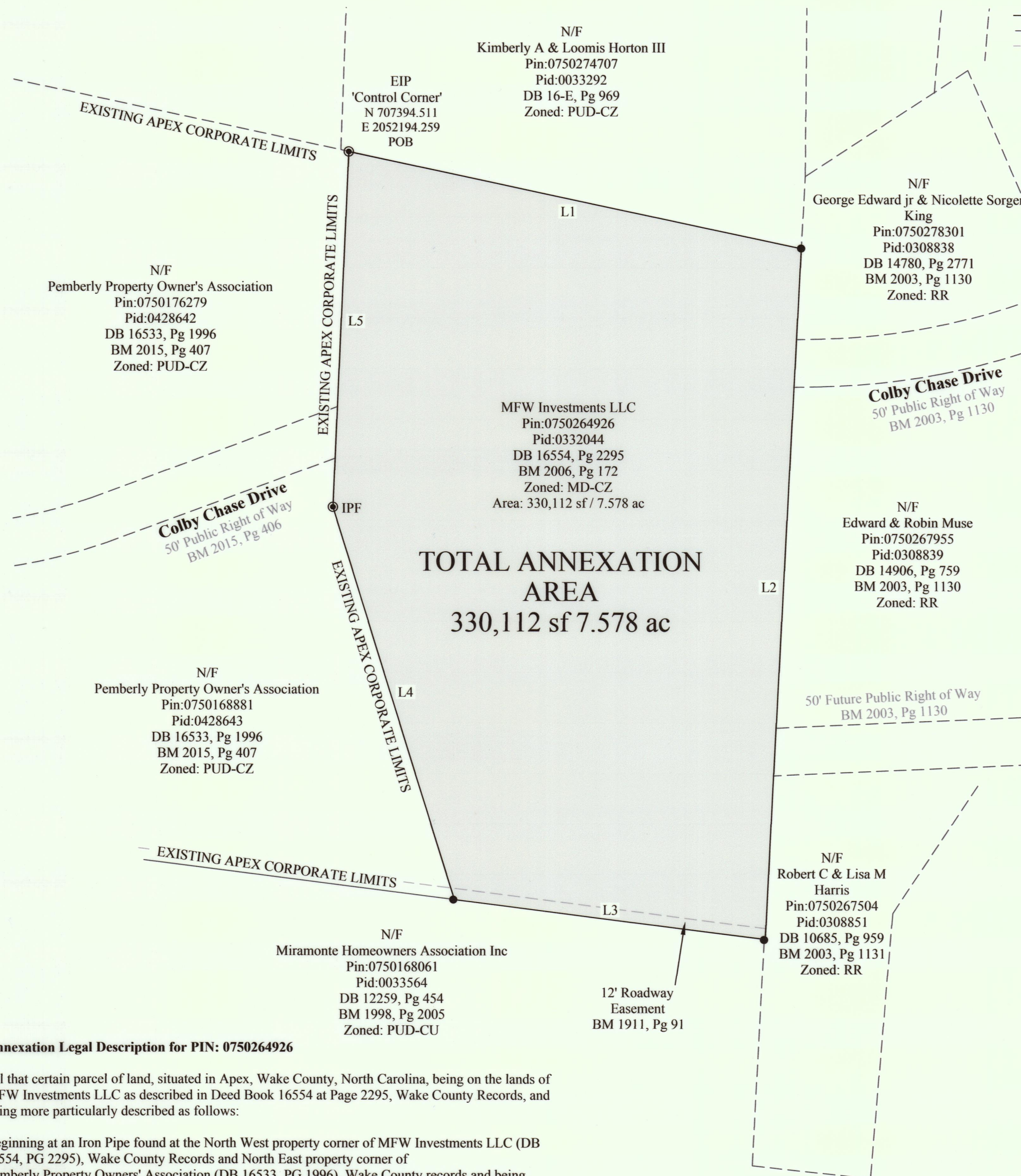
4/14/2020
date

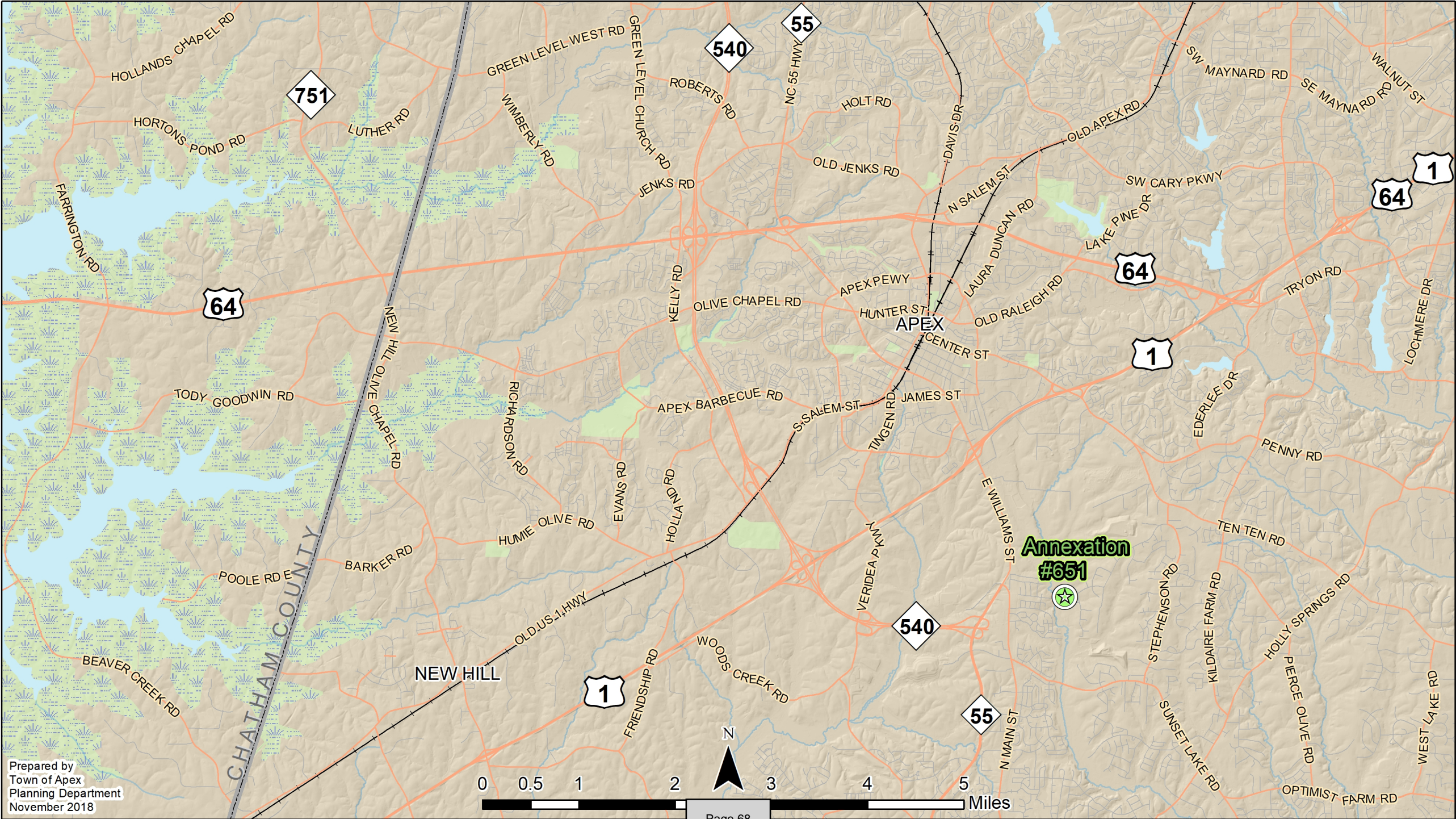


Annexation Legal Description for PIN: 0750264926

All that certain parcel of land, situated in Apex, Wake County, North Carolina, being on the lands of MFW Investments LLC as described in Deed Book 16554 at Page 2295, Wake County Records, and being more particularly described as follows:

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Prepared by
Town of Apex
Planning Department
November 2018



Annexation #651

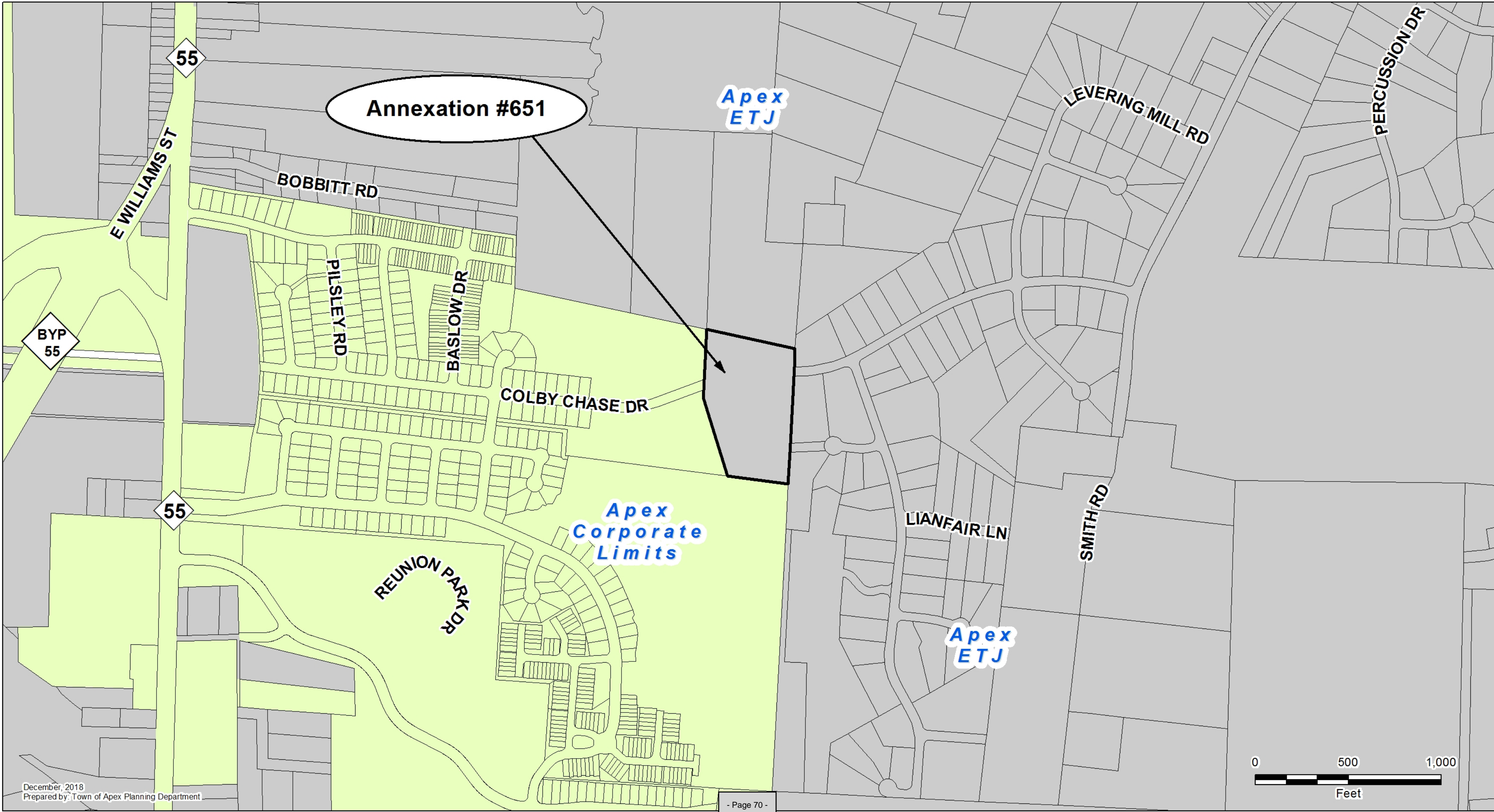
Pemberley

Merion

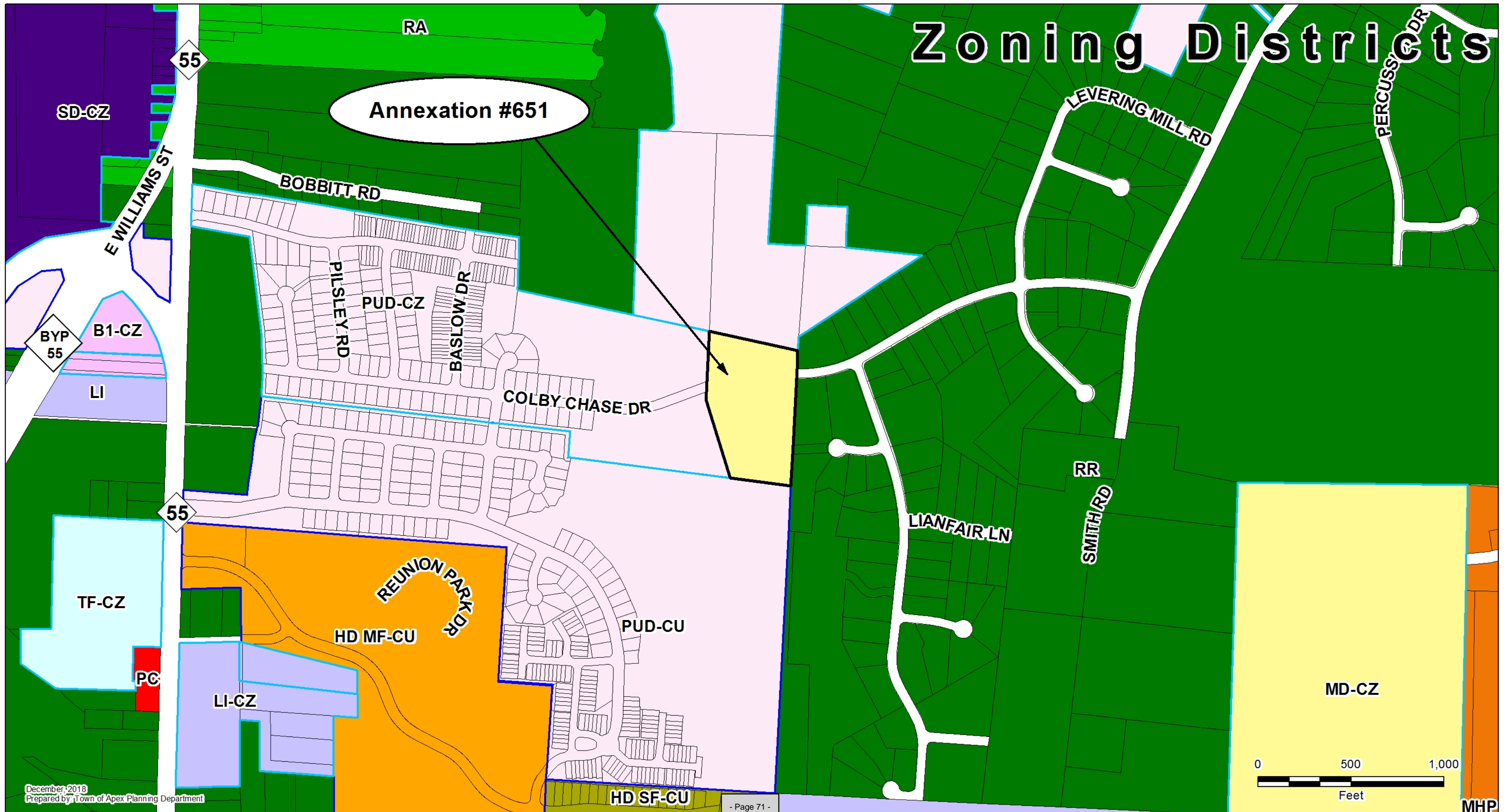
Miramonte



November, 2018
October 2018 Aerial Photography
Prepared by: Town of Apex Planning Department



Zoning Districts





Bateman Civil Survey Company, PC
2524 Reliance Avenue
Apex, NC 27539

Phone: (919) 577-1080
Fax: (919) 577-1081
info@batemancivilsurvey.com

Annexation Legal Description for PIN: 0750264926

All that certain parcel of land, situated in Apex, Wake County, North Carolina, being on the lands of MFW Investments LLC as described in Deed Book 16554 at Page 2295, Wake County Records, and being more particularly described as follows:

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Said Annexation contains 330,079 square feet / 7.578 acres, more or less.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter: Dianne Khin, Director of Planning and Community Development

Department: Planning and Community Development

Requested Motion

Motion to adopt a Resolution Directing the Town Clerk to Investigate Petition Received, to accept the Certificate of Sufficiency by the Town Clerk, and to adopt a Resolution Setting Date of Public Hearing for September 15, 2020 on the Question of Annexation – Apex Town Council's intent to annex Kimberly & Loomis Horton, III, Mary Elizabeth Horton, Dwight Marvin Wright, MFW Investments, LLC, and MFWIRA, LLC (Horton Park PUD) property containing 101.356 acres located at 8140, 8252, 8306 and 8308 Smith Road, 0 East Williams Street, 0,0,0,0 & 0 Dezola Street and 5220 Jessie Drive, Annexation #687 into the Town's corporate limits.

Approval Recommended?

Yes, by the Planning and Community Development Department.

Item Details

The Town Clerk certifies to the investigation of said annexation. Adoption of the Resolution authorizes the Town Clerk to advertise said public hearing by electronic means and on the Town of Apex's website.

Attachments

- Annexation Petition
- Legal Description
- Vicinity Map
- Resolution Directing the Town Clerk to Investigate Petition
- Certificate of Sufficiency by the Town Clerk
- Resolution Setting Date of Public Hearing





RESOLUTION DIRECTING THE TOWN CLERK
TO INVESTIGATE PETITION RECEIVED UNDER G.S. § 160A-31

Annexation Petition# 687
Horton Park PUD

WHEREAS, G.S. §160-A 31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

WHEREAS, the Town Council of the Town of Apex deems it advisable to proceed in response to this request for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, that the Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify to the Town Council the result of her investigation.

This the 1st day of September 2020.

Jacques K. Gilbert
Mayor

ATTEST:

Donna B. Hosch, MMC, NCCMC
Town Clerk



CERTIFICATE OF SUFFICIENCY BY THE TOWN CLERK

Annexation Petition #687
Horton Park PUD

To: The Town Council of the Town of Apex, North Carolina

I, Donna B. Hosch, Town Clerk, do hereby certify that I have investigated the annexation petition attached hereto, and have found, as a fact, that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. § 160A-31, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Apex, North Carolina this 1st day of September 2020.

Donna B. Hosch, MMC, NCCMC
Town Clerk

(Seal)

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687
Fee Paid: \$ 200

Submittal Date: 6/30/2020
Check #: 1394

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

Kimberly & Loomis III Horton

Owner Name (Please Print)

(919) 801-3905

Phone

0750-27-4707, 0750-39-8682

Property PIN or Deed Book & Page #

mwhitehead@macgregordev.com

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company

Phone: 919-577-1080

Fax: 919-577-1081

E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>26.52</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>500 (Overall Horton Park Project)</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>	Receive Town Services	<input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Loomis Horton III

Please Print

Kimberly Horton

Please Print

Please Print

Please Print

[Signature]

Signature

[Signature]

Signature

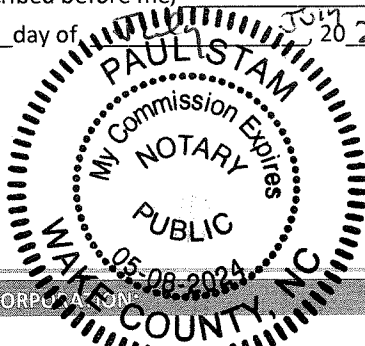
Signature

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Paul Stam, a Notary Public for the above State and County,
this the 10 day of July, 2020.

SEAL



[Signature]

Notary Public

My Commission Expires: May 8, 2024

COMPLETE IF A CORPORATION

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary by order of its Board of Directors, this the _____ day of _____, 20____.

Corporate Name _____

SEAL

By: _____

President (Signature)

Attest: _____

Secretary (Signature)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687 Submittal Date: 6/30/2020
Fee Paid \$ Check #

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

Mary Elizabeth Horton	0750-39-0993
Owner Name (Please Print)	Property PIN or Deed Book & Page #
(919) 801-3905 / <u>no working phone</u>	mwhitehead@macgregordev.com
Phone	E-mail Address
<u>Mary</u>	
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company
Phone: 919-577-1080 Fax: 919-577-1081
E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>20</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
	500 (Overall)	Sewer service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	Horton Park Project	Receive Town Services	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>		

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Please Print

Mary Elizabeth Horton

Please Print

Please Print

Please Print

Signature

Signature

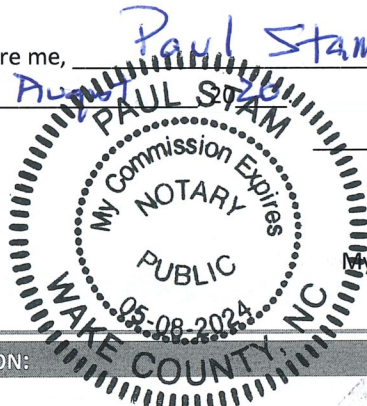
Signature

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Paul Stam, a Notary Public for the above State and County,
this the 14th day of August

SEAL



Notary Public

My Commission Expires: May 8, 2024

COMPLETE IF A CORPORATION:

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary by order of its Board of Directors, this the _____ day of _____, 20____.

Corporate Name _____

SEAL

By: _____

Attest: _____

President (Signature)

Secretary (Signature)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687
Fee Paid \$

Submittal Date: 6/30/2020
Check #

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

Dwight Marvin Wright

Owner Name (Please Print)

(919) 801-3905

Phone

0750-49-8888

Property PIN or Deed Book & Page #

mwhitehead@macgregordev.com

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company

Phone: 919-577-1080

Fax: 919-577-1081

E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>0.34</u> *	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>0</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>	Receive Town Services	<input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

* under contract for purchase by West Investments, LLC

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Dwight Marvin Wright

Please Print

Dwight Marvin Wright
Signature

Please Print

Signature

Please Print

Signature

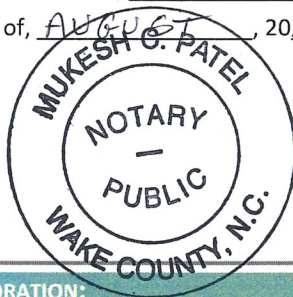
Please Print

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, MUKESH C. PATEL, a Notary Public for the above State and County,
this the 12 day of AUGUST, 2020.

SEAL



Mukesh C. Patel
Notary Public

My Commission Expires: 19th Nov 2021

COMPLETE IF A CORPORATION:

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary by order of its Board of Directors, this the _____ day of _____, 20____.

Corporate Name _____

SEAL

By: _____

Attest: _____

President (Signature)

Secretary (Signature) _____

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

SEAL

Notary Public

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687 Submittal Date: 6/30/2020
Fee Paid: \$ Check #

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

MFW Investments LLC	0750-27-8677, 0750-27-0906, 0750-28-0998
Owner Name (Please Print)	Property PIN or Deed Book & Page #
(919) 801-3905	mwhitehead@macgregordev.com
Phone	E-mail Address
MFW Investments LLC	0750-29-9342, 0750-27-8925, 0751-31-0079 (PARTIAL)
Owner Name (Please Print)	Property PIN or Deed Book & Page #
(919) 801-3905	mwhitehead@macgregordev.com
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company
Phone: 919-577-1080 Fax: 919-577-1081
E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>46.85</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
	500 (Overall Horton Park Project)	Sewer service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:		Receive Town Services	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>		

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF IN A LIMITED LIABILITY COMPANY

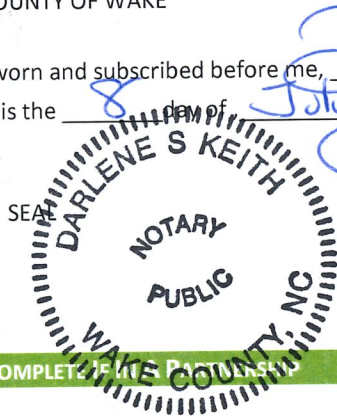
In witness whereof, MFW Investments, LLC limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 8th day of July, 2020

Name of Limited Liability Company MFW Investments, LLC

By: [Signature]
Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Darlene S. Keith, a Notary Public for the above State and County, this the 8th day of July, 2020.



[Signature]
Notary Public

My Commission Expires: 8/5/2022

COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the _____ day of _____, 20____.

Name of Partnership _____

By: _____
Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County, this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687 Submittal Date: 6/30/2020
Fee Paid \$ Check #

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

MFWIRA, LLC	0751-40-0194
Owner Name (Please Print)	Property PIN or Deed Book & Page #
(919) 801-3905	mwhitehead@macgregordev.com
Phone	E-mail Address
<hr/>	<hr/>
Owner Name (Please Print)	Property PIN or Deed Book & Page #
<hr/>	<hr/>
Phone	E-mail Address
<hr/>	<hr/>
Owner Name (Please Print)	Property PIN or Deed Book & Page #
<hr/>	<hr/>
Phone	E-mail Address
<hr/>	<hr/>

Surveyor Information

Surveyor: Bateman Civil Survey Company
Phone: 919-577-1080 Fax: 919-577-1081
E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>14.79</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>500 (Overall Horton Park Project)</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>	Receive Town Services	<input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, MEWIRA, LLC a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 8th day of July, 2020.

Name of Limited Liability Company MEWIRA, LLC

By: _____

Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Darlene S. Keith, a Notary Public for the above State and County, this the 8 day of July, 2020.



Darlene S. Keith
Notary Public

My Commission Expires: 8-5-2022

COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the _____ day of _____, 20____.

Name of Partnership _____

By: _____

Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County, this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____



Bateman Civil Survey Company, PC
2524 Reliance Avenue
Apex, NC 27539

Phone: (919) 577-1080
Fax: (919) 577-1081
info@batemancivilsurvey.com

Annexation Legal Description for REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

All that certain parcels of land, situated in Apex, Wake County, North Carolina, being known as REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, Wake County Records, and being more particularly described as follows:

Beginning at an Iron Pipe found at the South West property corner of MFW Investments LLC (REID 0033171, DB 17139, PG 745), Wake County Records and South East property corner of Kimberly A & Loomis Horton III (REID 0094319, DB 16-E, PG 969), Wake County records and being designated as the Point of Beginning as shown on map made by Bateman Civil Survey Company, dated 3/24/2020 and entitled "Annexation Map for the Town of Apex" Apex, NC, Wake County, White Oak Township, REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, having State Plane Coordinates N:707485.663, E:2051769.272;

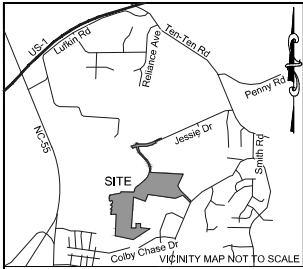
Thence N02°44'07"E, 994.82' to an Iron Pipe found; thence N86°50'22"W, 258.73' to an Iron Pipe found; thence N39°30'30"E, 26.26' to a point; thence N23°42'22"W, 35.95' to a point; thence N13°54'09"E, 79.15' to a point; thence N17°33'13"W, 18.56' to a point; thence N67°29'17"E, 37.85' to a point; thence N02°16'21"W, 22.18' to a point; thence N70°27'02"W, 29.99' to a point; thence N44°05'42"W, 39.31' to a point; thence N13°50'46"E, 28.19' to a point; thence N66°20'10"E, 26.21' to a point; thence N16°14'26"E, 42.75' to a point; thence N42°08'44"E, 49.37' to a point; thence N12°33'20"W, 47.21' to a point; thence S89°48'05"W, 27.39' to a point; thence N47°19'12"W, 39.00' to a point; thence N17°31'45"E, 67.92' to a point; thence S52°16'45"E, 28.62' to a point; thence N53°21'20"E, 14.91' to a point; thence N12°12'41"E, 91.90' to a point; thence N02°59'42"W, 51.52' to a point; thence N59°30'21"W, 62.80' to a point; thence S39°54'45"W, 52.49' to a point; thence S81°30'52"W, 18.15' to a point; thence N37°30'45"W, 51.54' to a point; thence N14°00'20"W, 81.92' to a point; thence N41°47'32"E, 23.66' to a point; thence N31°38'22"W, 1.96' to a point; thence N09°34'30"W, 39.41' to a point; thence N04°27'00"E, 78.83' to a point; thence S86°25'14"E, 33.05' to a point; thence N79°11'30"E, 445.19' to a point; thence N48°13'38"E, 50.09' to a point; thence N22°54'33"E, 74.47' to a point; thence S87°24'13"E, 584.86' to a point; thence N19°40'32"E, 59.76' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 280.51' and a Direction of N34°33'25"E, 277.37' to a point; thence N49°26'19"E, 244.69' to a point; thence a curve to the Left having a Radius of 25.00', a

Length of 38.27' and a Direction of N05°35'05"E, 34.64' to a point; thence N49°26'19"E, 50.04' to a point; thence a curve to the Right having a Radius of 25.00', a Length of 38.27' and a Direction of S86°42'27"E, 34.64' to a point; thence N49°26'19"E, 55.76' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 288.86' and a Direction of N36°48'17"E, 286.52' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 13.10' and a Direction of N22°43'53"W, 11.68' to a point; thence N69°38'01"W, 18.54' to a point; thence N24°32'45"E, 50.21' to a point; thence S69°38'01"E, 15.90' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 12.85' and a Direction of N64°20'28"E, 11.51' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 710.34' and a Direction of N12°45'08"W, 676.04' to a point; thence N43°49'14"W, 349.36' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 161.66' and a Direction of N35°14'40"W, 161.05' to a point; thence N33°53'34"W, 32.27' to a point; thence a curve to the Right having a Radius of 545.00', a Length of 131.00' and a Direction of N16°24'52"W, 130.68' to a point; thence N09°31'44"W, 39.04' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.64' and a Direction of N56°17'17"W, 29.14' to a point; thence N17°01'28"W, 70.37' to a point; thence a curve to the Left having a Radius of 35.00', a Length of 57.08' and a Direction of N63°44'30"W, 50.96' to a point; thence a curve to the Left having a Radius of 899.85', a Length of 59.13' and a Direction of S67°39'31"W, 59.12' to a point; thence N24°13'25"W, 100.00' to a point; thence a curve to the Right having a Radius of 1,000.00', a Length of 48.98' and a Direction of N67°10'47"E, 48.98' to a point; thence S87°58'54"E, 49.66' to a point; thence S87°58'17"E, 130.39' to a point; thence S09°31'44"E, 28.27' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 30.32' and a Direction of S52°57'16"E, 27.50' to a point; thence a curve to the Right having a Radius of 1,005.00', a Length of 79.07' and a Direction of N85°52'26"E, 79.05' to a point; thence N88°07'40"E, 207.65' to a point; thence a curve to the Left having a Radius of 880.00', a Length of 299.33' and a Direction of N78°22'59"E, 297.89' to a point; thence S87°54'41"E, 25.01' to a point; thence N66°41'16"E, 199.17' to a point; thence S24°31'49"E, 95.91' to a point; thence S65°28'11"W, 172.84' to a point; thence a curve to the Right having a Radius of 990.00', a Length of 391.50' and a Direction of S76°47'55"W, 388.96' to a point; thence S88°15'11"W, 158.83' to a point; thence S82°47'37"W, 110.66' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.23' and a Direction of S36°37'57"W, 28.85' to a point; thence S09°31'44"E, 31.05' to a point; thence a curve to the Left having a Radius of 475.00', a Length of 114.32' and a Direction of S16°25'26"E, 114.05' to a point; thence S14°55'06"E, 28.54' to a point; thence a curve to the Left having a Radius of 480.01', a Length of 143.51' and a Direction of S35°15'20"E, 142.97' to a point; thence S43°49'14"E, 349.36' to a point; thence a curve to the Right having a Radius of 715.00', a Length of 674.37' and a Direction of S16°48'02"E, 649.65' to a point; thence S87°28'46"E, 195.69' to a point; thence S87°28'09"E, 1,310.85' to a point; thence S87°31'29"E, 16.61' to a point; thence S24°36'54"W, 730.39' to a point; thence a curve to the Right having a Radius of 1097.98', a Length of 143.09' and a Direction of S49°31'31"E, 142.99' to a point; thence S45°47'31"E, 153.36' to a point; thence a curve to the Right having a Radius of 880.00', a Length of 231.46' and a Direction of S53°15'39"E, 230.79' to a point; thence S45°47'31"W, 376.61' to a point; thence S35°44'56"W, 30.33' to a point; thence S35°44'56"W, 30.33' to a point; thence N45°47'31"W, 385.60' to a point; thence a curve to the Left having a Radius of 820.00', a Length of 90.03' and a Direction of N48°52'15"E, 89.98' to a point; thence

S66°31'41"W, 375.96' to a point; thence N81°31'47"W, 861.72' to a point; thence N81°28'50"W, 149.98' to a point; thence N81°33'25"W, 56.41' to a point; thence N81°44'30"W, 219.28' to a point; thence S19°51'42"W, 340.91' to a point; thence N70°08'18"W, 585.61' to a point; thence S03°40'12"W, 844.63' to a point; thence S03°03'45"W, 587.47' to a point; thence S89°39'02"E, 205.00' to a point; thence N00°17'07"E, 209.76' to a point; thence S89°42'53"E, 210.00' to a point; thence S00°17'07"W, 210.00' to a point; thence S85°26'31"E, 434.14' to a point; thence S56°32'07"W, 821.71' to a point; thence S02°53'36"W, 73.32' to a point; thence N77°53'40"W, 922.38' to a point;

said Iron Pipe being the Point of Beginning.

Said Annexation contains 4,415,090 square feet / 101.356 acres, more or less.



REFERENCES

- Book Map 1942 Page 114
- Book Map 1987 Page 1199
- Book Map 1988 Page 754
- Book Map 2003 Page 1130
- Book Map 2006 Page 172
- Book Map 2015 Page 1973
- Book Map 2016 Page 1677
- Book Map 2016 Page 1902
- Book Map 2017 Page 1067
- Book Map 2017 Page 2004
- Book Map 2018 Page 1394
- Book Map 2018 Page 1751
- Deed Book 17511 Page 1752
- Deed Book 17511 Page 1755
- Deed Book 17473 Page 2443
- Deed Book 17279 Page 1698
- Deed Book 17211 Page 2706
- Deed Book 17139 Page 745
- Deed Book 16932 Page 295
- Deed Book 16638 Page 1192
- Deed Book 16215 Page 1702
- Deed Book 14735 Page 685
- Deed Book 4443 Page 94
- Deed Book 2353 Page 559

Required Base Information:

Project Information: MFW Investment LLC
0 E Williams Street, Apex, NC 27539 (Reid 0463860)
5220 Jessie Drive, Apex, NC 27539 (Reid 0012276)
5101 Jessie Drive, Apex, NC 27539 (Reid 0034313)
0 Dezola Street, Apex, NC 27539 (Reid 0203126)
8140 Smith Road, Apex, NC 27539 (Reid 0040550)
8306 Smith Road, Apex, NC 27539 (Reid 0033171)
0 Dezola Street, Apex, NC 27539 (Reid 0203135)
8252 Smith Road, Apex, NC 27539 (Reid 0089614)

Owner Information: MFW Investment LLC
Mike Whitehead
114 Birklands Drive, Cary, NC, 27518
mwhitehead@macgregordev.com

Project Information: Trinity Apex North 100 LLC
5125 Jessie Drive, Apex, NC 27539 (Reid 0099938)

Owner Information: Trinity Apex North 100 LLC
106 Island View Drive, Beaufort, NC, 28516
fill in the blank@whoknows.com

Project Information: Mary Elizabeth Horton
0 Dezola Street, Apex, NC 27539 (Reid 0434123)

Owner Information: Mary Elizabeth Horton
PO Box 306, Apex, NC, 27539
fill in the blank@whoknows.com

Project Information: MFWIRA LLC
0 Dezola Street, Apex, NC 27539 (Reid 0449641)

Owner Information: MFWIRA LLC
Mike Whitehead
114 Birklands Drive, Cary, NC, 27518
mwhitehead@macgregordev.com

Project Information: Kimberly A & Loomis Horton III
0 Dezola Street, Apex, NC 27539 (Reid 0457588)

Owner Information: Kimberly A & Loomis Horton III
4801 SW 202nd Avenue, Southwest Ranches, FL, 33332
mwhitehead@macgregordev.com

Project Information: Kimberly A & Loomis Horton III
8308 Smith Road, Apex, NC 27539 (Reid 0033292)

Owner Information: Kimberly A & Loomis Horton III
4801 SW 202nd Avenue, Southwest Ranches, FL, 33332
mwhitehead@macgregordev.com

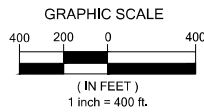
Project Information: Dwight Marvin Wright
5010 Dezola Street, Apex, NC 27539 (Reid 0104750)

Owner Information: Dwight Marvin Wright
407 S Salem Street, Apex, NC, 27539
mwhitehead@macgregordev.com

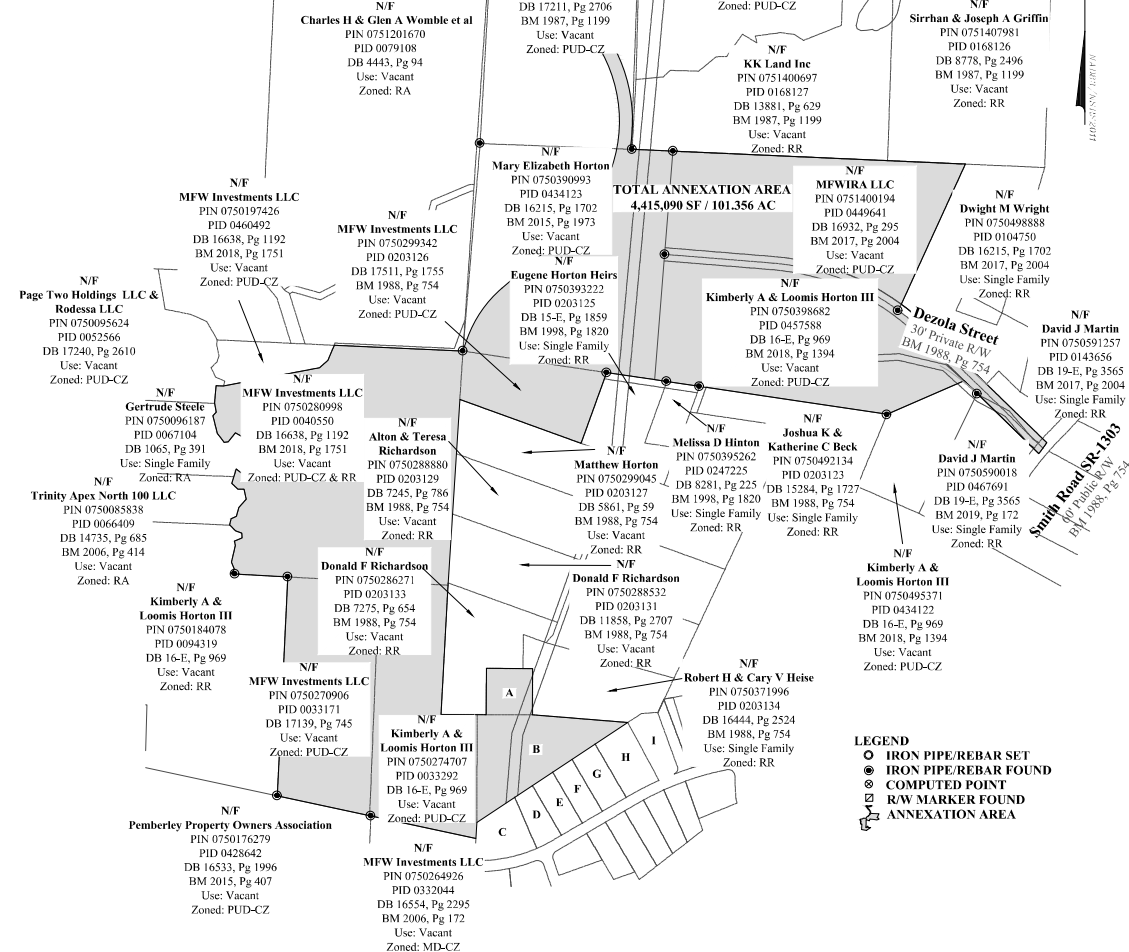
Surveyor Information: Jeffrey W. Baker
North Carolina
L-4412

Date of Survey & Plat Preparation: 3/24/2020
Zoning District & Zoning Case #: PUD-CZ
Setbacks: PUD-CZ
Single Family: Front: 25'
Side: 6' minimum 16' total
Corner: 15'
Rear: 20'
Minimum Lot Width: 50'

Township, County, State: White Oak, Wake, North Carolina
Primary or Secondary Watershed: Secondary - Middle Creek Basin
FEMA designated floodplain: 'X' per F.I.R.M. #37200751001 dated 05/02/2006



Class of Survey: D
Positional Accuracy: 0.02'
Date of Survey: July, 2017
Datum/Epoch: NAD83/NSRS2011
Geoid Model: 12B
Combined Grid Factors: 0.99988461
Units: US Survey Feet



- LEGEND
- IRON PIPE/REBAR SET
 - IRON PIPE/REBAR FOUND
 - COMPUTED POINT
 - R/W MARKER FOUND
 - ANNEXATION AREA

Owner	PIN#	REID#	Deed Reference	Plat Reference	Use	Zoning
A) MFW Investments LLC -	0750278925	-0089614	- DB 17473, Pg 2443	- BM 1988, Pg 754	- Vacant -	PUD-CZ
B) MFW Investments LLC -	0750278677	-0203135	- DB 17511, Pg 1752	- BM 1988, Pg 754	- Vacant -	PUD-CZ
C) Timothy & Allison Felton -	0750278301	-0308838	- DB 17376, Pg 1337	- BM 2003, Pg 1130	- Single Family -	RR
D) John J & Joyce T Falchit -	0750279358	-0308837	- DB 10836, Pg 2123	- BM 2003, Pg 1130	- Single Family -	RR
E) Todd C & Gloria C Young -	0750370454	-0308836	- DB 11069, Pg 476	- BM 2003, Pg 1130	- Single Family -	RR
F) Dennis & Roberta Dale -	0750371540	-0308835	- DB 11800, Pg 97	- BM 2003, Pg 1130	- Single Family -	RR
G) Robert J & Mary A Stewart -	0750372555	-0308834	- DB 11012, Pg 2141	- BM 2003, Pg 1130	- Single Family -	RR
H) Robert E & Krista B Whetstall -	0750373664	-0308833	- DB 11988, Pg 1801	- BM 2003, Pg 1130	- Single Family -	RR
I) Amanda C & Steven A Rhodes -	0750375700	-0308832	- DB 12006, Pg 1186	- BM 2003, Pg 1130	- Single Family -	RR

"I, Jeffrey W. Baker, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book 17511, page 1752, Book 17511, page 1755, Book 17473, page 2443, Book 17279, page 1698, Book 17211, page 2706, Book 17139, page 745, Book 16932, page 295, Book 16638, page 1192, Book 16215, page 1702, Book 14735, page 685, Book 4443, page 94, Book 2353, page 559); that the boundaries not surveyed are clearly indicated as drawn from information found in Book 1942, page 114, Book 1987, page 1199, Book 1988, page 754, Book 2003, page 1130, Book 2006, page 172, Book 2015, page 1973, Book 2016, page 1677, Book 2016, page 1902, Book 2017, page 1067, Book 2017, page 2004, Book 2018, page 1394, Book 2018, page 1751; that the ratio of precision or positional accuracy as calculated is 1:10000; that this plat was prepared in accordance with G.S. 47-30 as amended, witness my original signature, license number and seal this 9th day of January, A.D. 2019."

Professional Land Surveyor
License Number 4412

I, Jeffrey W. Baker, Professional Land Surveyor No. L-4412 certify
D. That the survey is of another category, such as the
recombination of existing parcels, a court-ordered survey,
or other exceptions to the definition of subdivision.

Jeffrey W. Baker, PLS L-4412 date

NOTES:

- This survey was prepared by Bateman Civil Survey Co., under the supervision of Jeffrey W. Baker, PLS.
- This plan has been prepared for layout and permitting purposes only.
- Property lines shown were taken from existing field evidence, existing deeds and/or plats of public record, and information supplied to the surveyor by the client.
- All distances are horizontal ground distances and all bearings are North Carolina State Plane Coordinate System unless otherwise shown.
- No investigation into the existence of jurisdictional wetlands or riparian buffers performed by this firm.
- Surveyor has made no investigation or independent search for encumbrances, restrictive covenants, ownership title evidence or any other facts that an accurate and current title search may disclose.
- No Grid Monuments found within 2000'.
- Tied to the National CORS Network.

ANNEXATION # _____, I Donna B. Hosch, MMC,
NCCMC, Town Clerk, Apex, North Carolina certify this is a true and exact map
of annexation adopted the _____ day of _____, by the Town
Council. I set my hand and seal of the Town of Apex, _____
Day / Month / Year

Donna B. Hosch, MMC, NCCMC, Town Clerk

UNLESS THIS MAP IS SIGNED AND SEALED BY THE SURVEYOR
IN CHARGE, THIS MAP IS CONSIDERED PRELIMINARY AND
NOT TO BE USED FOR RECORDING, CONVEYANCE OR SALES

Bateman Civil Survey Company
Engineers • Surveyors • Planners
2624 Ballantyne Ave., Suite 275
Phone: 919.577.1080 Fax: 919.577.1081
NCBLS FIRM No. C-52378

OWNER
MFW INVESTMENTS LLC
114 BIRKLANDS DRIVE
CARY, NORTH CAROLINA, 27518

ANNEXATION MAP
FOR THE TOWN OF APEX
APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588,
0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

Designed By: N/A
Drawn By: JCH
Checked By: JWB
Scale: 1"=400'
Date: 03/24/2020
Project #: 180585

SHEET
1 OF 7



Bateman Civil Survey Company
Engineers • Surveyors • Planners
2524 Belvidere Ave., Suite 100, NC 27609
Phone: 919.572.1080 Fax: 919.572.1081
NCBELS FIRM No. C-25378

OWNER
MFW INVESTMENTS LLC
1000 WILKINS LANE
CARY, NORTH CAROLINA, 27518

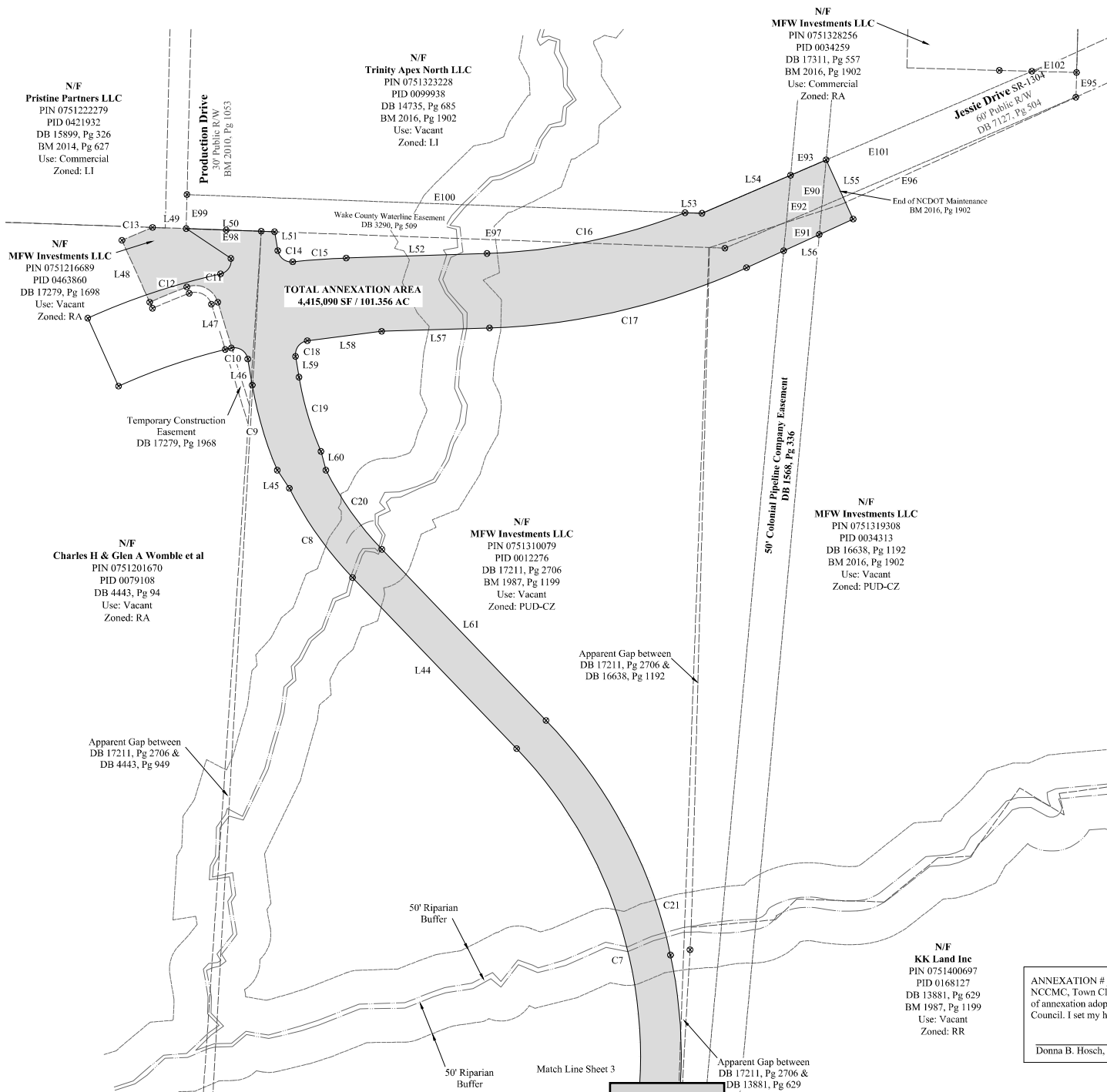
**ANNEXATION MAP
FOR THE TOWN OF APEX**
APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588,
0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

Designed By: N/A
Drawn By: JCH
Checked By: JWB
Scale: 1"=100'
Date: 03/24/2020
Project #: 180585

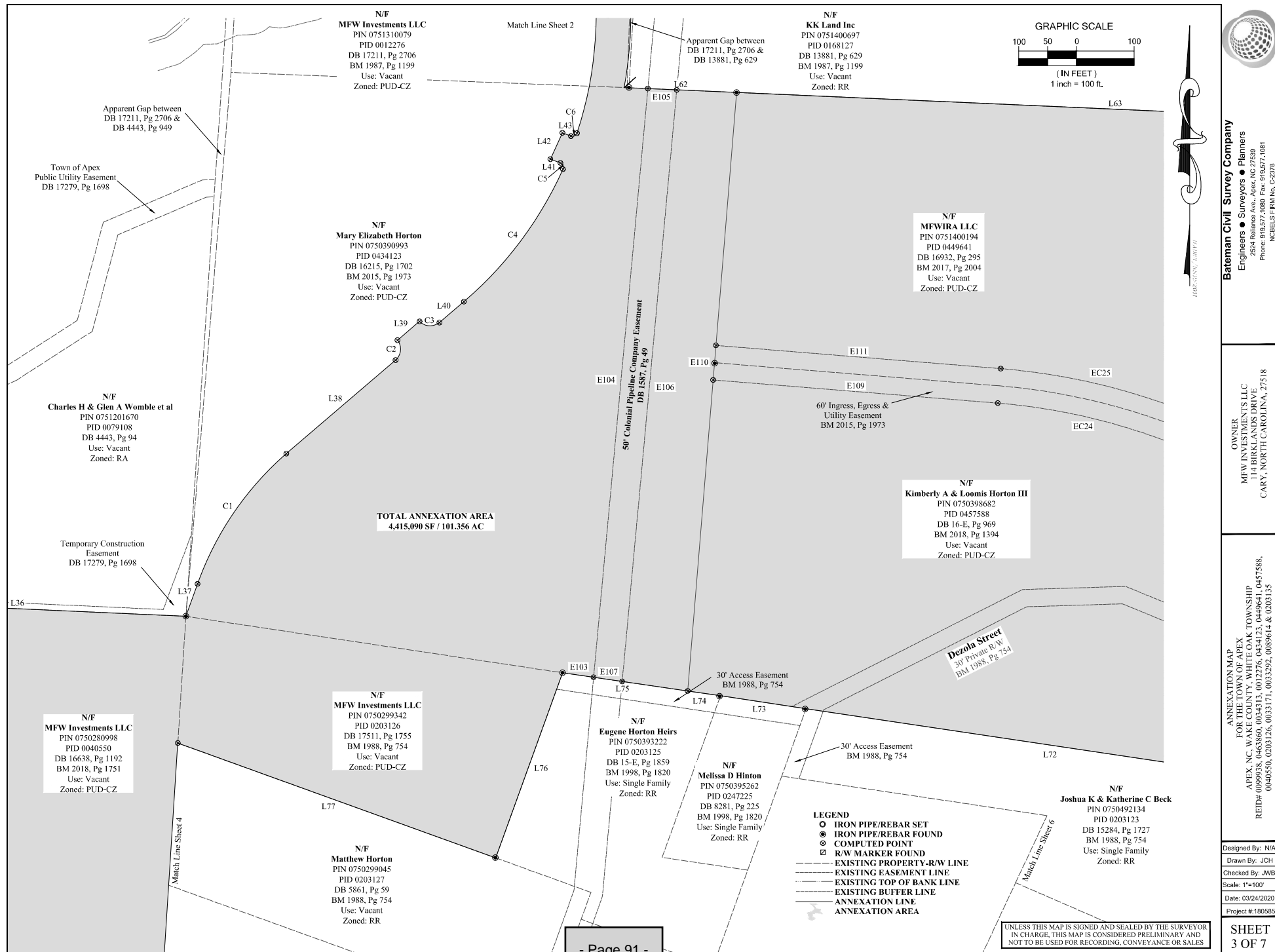
**SHEET
2 OF 7**

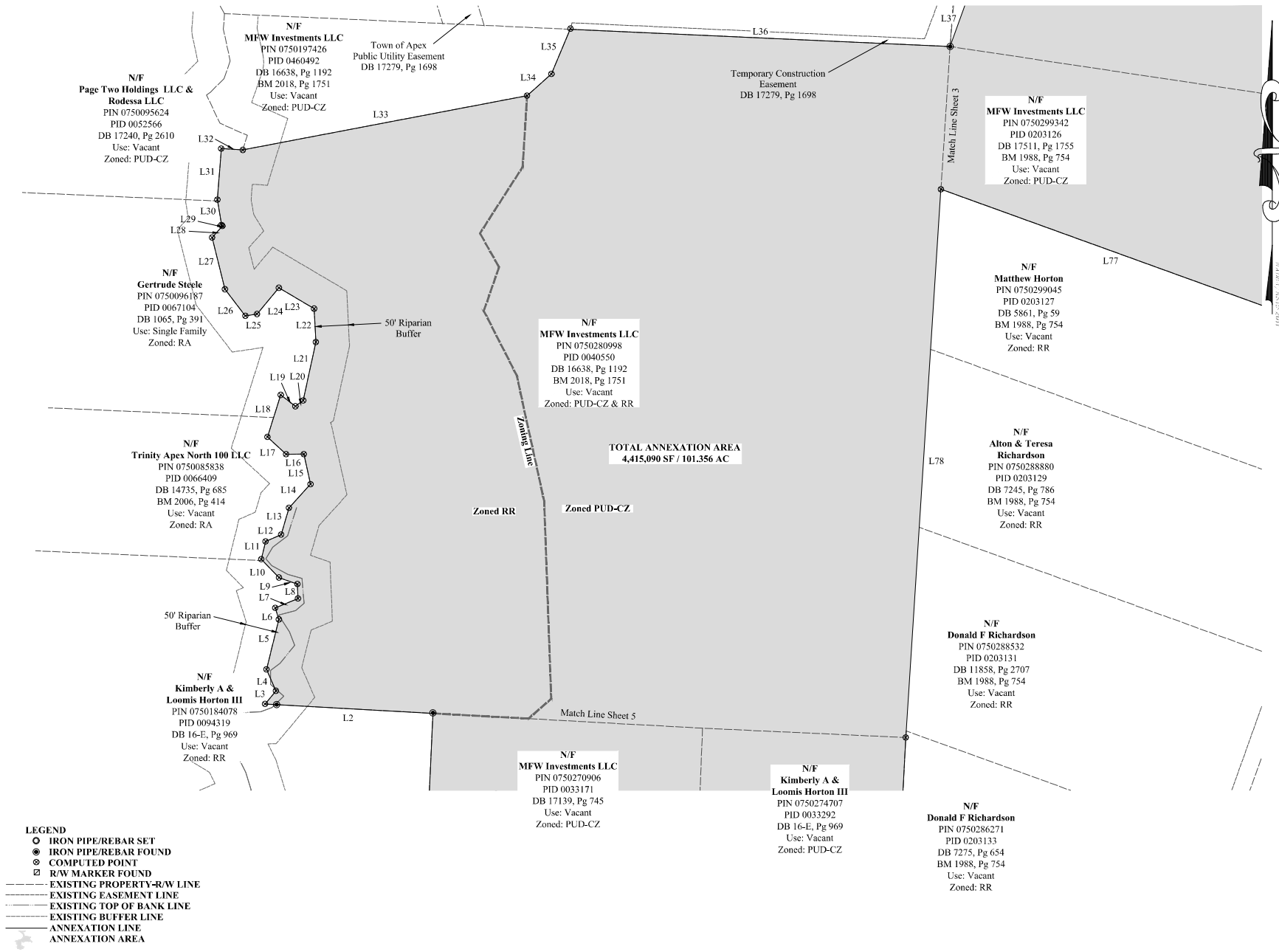
GRAPHIC SCALE
100 50 0 100
(IN FEET)
1 inch = 100 ft.

LEGEND
● IRON PIPE/REBAR SET
● IRON PIPE/REBAR FOUND
● COMPUTED POINT
■ R/W MARKER FOUND
--- EXISTING PROPERTY-R/W LINE
--- EXISTING EASEMENT LINE
--- EXISTING TOP OF BANK LINE
--- EXISTING BUFFER LINE
--- ANNEXATION LINE
--- ANNEXATION AREA

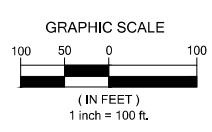


UNLESS THIS MAP IS SIGNED AND SEALED BY THE SURVEYOR
IN CHARGE, THIS MAP IS CONSIDERED PRELIMINARY AND
NOT TO BE USED FOR RECORDING, CONVEYANCE OR SALES





- LEGEND**
- IRON PIPE/REBAR SET
 - IRON PIPE/REBAR FOUND
 - ⊙ COMPUTED POINT
 - ROW MARKER FOUND
 - EXISTING PROPERTY-RAW LINE
 - EXISTING EASEMENT LINE
 - EXISTING TOP OF BANK LINE
 - EXISTING BUFFER LINE
 - ANNEXATION LINE
 - ANNEXATION AREA



Bateman Civil Survey Company
 Engineers • Surveyors • Planners
 2524 Bellanca Ave., Apex, NC 27539
 Phone: 919.577.1080 Fax: 919.577.1081
 NCBELS FIRM No. C-2378

OWNER

MFW INVESTMENTS LLC
 10000 LANTANA DRIVE
 CARY, NORTH CAROLINA, 27518

**ANNEXATION MAP
FOR THE TOWN OF APEX**

APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
 REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 047588,
 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

Designed By: N/A
 Drawn By: JCH
 Checked By: JWB
 Scale: 1"=100'
 Date: 03/24/2020
 Project #:180585

**SHEET
4 OF 7**

UNLESS THIS MAP IS SIGNED AND SEALED BY THE SURVEYOR IN CHARGE, THIS MAP IS CONSIDERED PRELIMINARY AND NOT TO BE USED FOR RECORDING, CONVEYANCE OR SALES



Bateman Civil Survey Company
Engineers • Surveyors • Planners
2524 Reliance Ave., Suite 275
Phone: 919.572.1081 Fax: 919.572.1081
NCBELS FIRM No. C-2378

OWNER
MFW INVESTMENTS LLC
2524 Reliance Ave., Suite 275
CARY, NORTH CAROLINA, 27518

ANNEXATION MAP
FOR THE TOWN OF APEX
APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
REID# 0099938, 0403860, 0034313, 0012276, 0434123, 0449641, 0457588,
0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

Designed By: N/A
Drawn By: JCH
Checked By: JWB
Scale: 1"=100'
Date: 03/24/2020
Project #: 180585

SHEET
5 OF 7

GRAPHIC SCALE
100 50 0 100
(IN FEET)
1 inch = 100 ft.

LEGEND
○ IRON PIPE/REBAR SET
● IRON PIPE/REBAR FOUND
⊙ COMPUTED POINT
⊠ R/W MARKER FOUND
--- EXISTING PROPERTY-R/W LINE
--- EXISTING EASEMENT LINE
--- EXISTING TOP OF BANK LINE
--- EXISTING BUFFER LINE
--- ANNEXATION LINE
--- ANNEXATION AREA

N/F
Donald F Richardson
PIN 0750288532
PID 0203131
DB 11858, Pg 2707
BM 1988, Pg 754
Use: Vacant
Zoned: RR

N/F
Donald F Richardson
PIN 0750286271
PID 0203133
DB 7275, Pg 654
BM 1988, Pg 754
Use: Vacant
Zoned: RR

N/F
Kimberly A &
Loomis Horton III
PIN 0750274707
PID 0033292
DB 16-E, Pg 969
Use: Vacant
Zoned: PUD-CZ

N/F
MFW Investments LLC
PIN 0750270906
PID 0033171
DB 17139, Pg 745
Use: Vacant
Zoned: PUD-CZ

N/F
Kimberly A &
Loomis Horton III
PIN 0750184078
PID 0094319
DB 16-E, Pg 969
Use: Vacant
Zoned: RR

TOTAL ANNEXATION AREA
4,415,090 SF / 101.356 AC

EIP
'Control Corner'
N:707485.663
E:2051769.272
POB

EXISTING APEX CORPORATE LIMITS

N/F
Pemberley Property Owners Association
PIN 0750176279
PID 0428642
DB 16533, Pg 1996
BM 2015, Pg 407
Use: Vacant
Zoned: PUD-CZ

N/F
MFW Investments LLC
PIN 0750264926
PID 0332044
DB 16554, Pg 2295
BM 2006, Pg 172
Use: Vacant
Zoned: MD-CZ

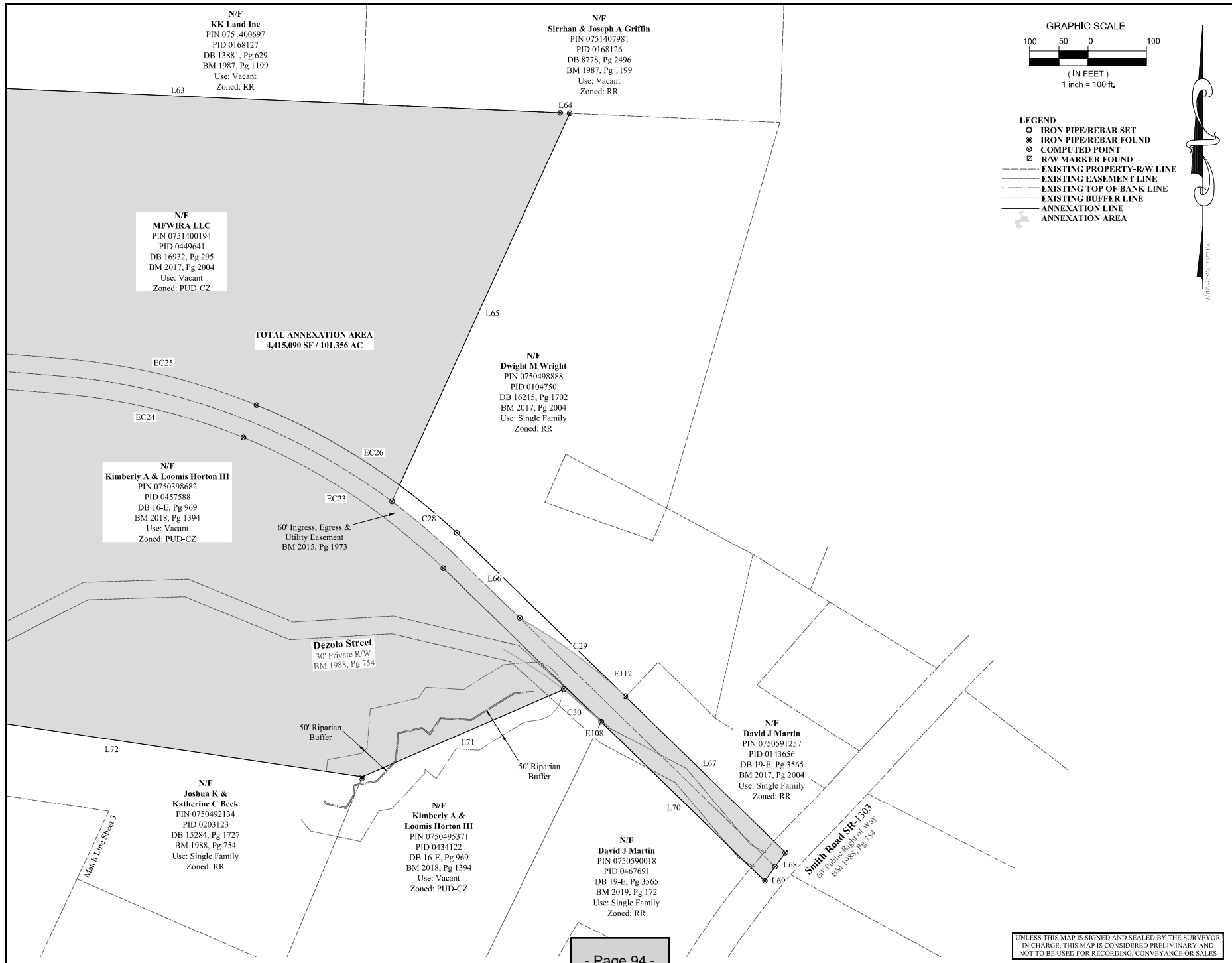
N/F
Timothy & Allison Felton
PIN 0750278301
PID:0308838
DB 17376, Pg 1337
BM 2003, Pg 1130
Use: Single Family
Zoned: RR

N/F
MFW Investments LLC
PIN 0750278677
PID 0203135
DB 17511, Pg 1752
BM 1988, Pg 754
Use: Vacant
Zoned: PUD-CZ

N/F
Robert H & Cary V Heise
PIN 0750371996
PID 0203134
DB 16444, Pg 2524
BM 1988, Pg 754
Use: Single Family
Zoned: RR

N/F
MFW Investments LLC
PIN 0750278925
PID 0089614
DB 17473, Pg 2443
BM 1988, Pg 754
Use: Vacant
Zoned: PUD-CZ

Owner	PIN#	REID#	Deed Reference	Plat Reference	Use	Zoning
D) John J & Joyce T Falchi -	0750279358	- 0308837	- DB 10836, Pg 2123	- BM 2003, Pg 1130	- Single Family -	RR
E) Todd C & Gloria C Young -	0750370454	- 0308836	- DB 11069, Pg 476	- BM 2003, Pg 1130	- Single Family -	RR
F) Dennis & Roberta Dale -	0750371540	- 0308835	- DB 11800, Pg 97	- BM 2003, Pg 1130	- Single Family -	RR
G) Richard J & Mary A Stewart -	0750372555	- 0308834	- DB 11012, Pg 2141	- BM 2003, Pg 1130	- Single Family -	RR
H) Robert E. & Krista B Cathey III -	0750373664	- 0308833	- DB 11988, Pg 1801	- BM 2003, Pg 1130	- Single Family -	RR
I) Amanda C & Steven A Rhodes -	0750375700	- 0308832	- DB 12006, Pg 1186	- BM 2003, Pg 1130	- Single Family -	RR



Annexation Legal Description for REID# 009938, 0463860, 0034123, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

All that certain parcels of land, situated in Apex, Wake County, North Carolina, being known as REID# 009938, 0463860, 0034123, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, Wake County Records, and being more particularly described as follows:

Beginning at an Iron Pipe found at the South West property corner of MFW Investments LLC (REID 0033171, DB 17139, PG 745), Wake County Records and South East property corner of Kimberly A & Loomis Horton III (REID 0094319, DB 16-E, PG 969), Wake County records and being designated as the Point of Beginning as shown on map made by Bateman Civil Survey Company, dated 3/24/2020 and entitled "Annexation Map for the Town of Apex" Apex, NC, Wake County, White Oak Township, REID# 009938, 0463860, 0034123, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, having State Plane Coordinates N:707485.663, E:2051769.272;

Thence N02°44'07"E, 994.82' to an Iron Pipe found; thence N86°50'22"W, 258.73' to an Iron Pipe found; thence N39°30'30"E, 26.26' to a point; thence N23°42'22"W, 35.95' to a point; thence N13°54'09"E, 79.15' to a point; thence N17°33'13"W, 18.56' to a point; thence N67°29'17"E, 37.85' to a point; thence N02°16'21"W, 22.18' to a point; thence N70°27'02"W, 29.99' to a point; thence N44°05'42"W, 29.31' to a point; thence N13°50'46"E, 28.19' to a point; thence N66°20'10"E, 26.21' to a point; thence N16°14'26"E, 42.75' to a point; thence N42°08'44"E, 49.37' to a point; thence N12°33'20"W, 47.21' to a point; thence S89°48'05"W, 27.39' to a point; thence N47°19'12"W, 39.00' to a point; thence N17°31'45"E, 67.92' to a point; thence S52°16'45"E, 28.62' to a point; thence N53°21'20"E, 14.91' to a point; thence N12°12'41"E, 91.90' to a point; thence N02°59'42"W, 51.52' to a point; thence N59°30'21"W, 62.80' to a point; thence S39°54'45"W, 52.49' to a point; thence S81°30'52"W, 18.15' to a point; thence N37°30'45"W, 51.54' to a point; thence N14°00'20"W, 81.92' to a point; thence N41°47'32"E, 23.66' to a point; thence N31°38'22"W, 1.96' to a point; thence N09°34'30"W, 39.41' to a point; thence N04°27'00"E, 78.83' to a point; thence S86°25'14"E, 33.05' to a point; thence N79°11'30"E, 445.19' to a point; thence N48°13'38"E, 50.09' to a point; thence N22°54'33"E, 74.47' to a point; thence S87°24'13"E, 584.86' to a point; thence N19°40'32"E, 59.76' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 280.51' and a Direction of N34°33'25"E, 277.37' to a point; thence N49°26'19"E, 244.69' to a point; thence a curve to the Left having a Radius of 25.00', a Length of 38.27' and a Direction of N05°35'05"E, 34.64' to a point; thence N49°26'19"E, 50.04' to a point; thence a curve to the Right having a Radius of 25.00', a Length of 38.27' and a Direction of S86°42'27"E, 34.64' to a point; thence N49°26'19"E, 55.76' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 288.86' and a Direction of N36°48'17"E, 286.52' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 13.10' and a Direction of N22°43'53"W, 11.68' to a point; thence N69°38'01"W, 18.54' to a point; thence N24°32'45"E, 50.21' to a point; thence S69°38'01"E, 15.90' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 12.85' and a Direction of N64°20'28"E, 11.51' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 710.34' and a Direction of N12°45'08"W, 676.04' to a point; thence N43°49'14"W, 349.36' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 161.66' and a Direction of N35°14'40"W, 161.05' to a point; thence N33°53'34"W, 32.27' to a point; thence a curve to the Right having a Radius of 545.00', a Length of 131.00' and a Direction of N16°24'52"W, 130.68' to a point; thence N09°31'44"W, 39.04' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.64' and a Direction of N56°17'17"W, 29.14' to a point; thence N17°01'28"W, 70.37' to a point; thence a curve to the Left having a Radius of 35.00', a Length of 57.08' and a Direction of N63°44'30"W, 50.96' to a point; thence a curve to the Left having a Radius of 899.85', a Length of 59.13' and a Direction of S67°39'31"W, 59.12' to a point; thence N24°13'25"W, 100.00' to a point; thence a curve to the Right having a Radius of 1,000.00', a Length of 48.98' and a Direction of N67°10'47"E, 48.98' to a point; thence S87°58'54"E, 49.66' to a point; thence S87°58'17"E, 130.39' to a point; thence S09°31'44"E, 28.27' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 30.32' and a Direction of S52°57'16"E, 27.50' to a point; thence a curve to the Right having a Radius of 1,005.00', a Length of 79.07' and a Direction of N85°52'26"E, 79.05' to a point; thence N88°07'40"E, 207.65' to a point; thence a curve to the Left having a Radius of 880.00', a Length of 299.33' and a Direction of N78°22'59"E, 297.89' to a point; thence S87°54'41"E, 25.01' to a point; thence N66°41'16"E, 199.17' to a point; thence S24°31'49"E, 95.91' to a point; thence S65°28'11"W, 172.84' to a point; thence a curve to the Right having a Radius of 990.00', a Length of 391.50' and a Direction of S76°47'55"W, 388.96' to a point; thence S88°15'11"W, 158.83' to a point; thence S82°47'37"W, 110.66' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.23' and a Direction of S36°37'57"W, 28.85' to a point; thence S09°31'44"E, 31.05' to a point; thence a curve to the Left having a Radius of 475.00', a Length of 114.32' and a Direction of S16°25'26"E, 114.05' to a point; thence S14°55'06"E, 28.54' to a point; thence a curve to the Left having a Radius of 480.01', a Length of 143.51' and a Direction of S35°15'20"E, 142.97' to a point; thence S43°49'14"E, 349.36' to a point; thence a curve to the Right having a Radius of 715.00', a Length of 674.37' and a Direction of S16°48'02"E, 649.65' to a point; thence S87°28'46"E, 195.69' to a point; thence S87°28'09"E, 1,310.85' to a point; thence S87°31'29"E, 16.61' to a point; thence S24°36'54"W, 730.39' to a point; thence a curve to the Right having a Radius of 1,097.98', a Length of 143.09' and a Direction of S49°31'31"E, 142.99' to a point; thence S45°47'31"E, 153.36' to a point; thence a curve to the Right having a Radius of 880.00', a Length of 231.46' and a Direction of S53°15'39"E, 230.79' to a point; thence S45°47'31"W, 376.61' to a point; thence S35°44'56"W, 30.33' to a point; thence N45°47'31"W, 385.60' to a point; thence a curve to the Left having a Radius of 820.00', a Length of 90.03' and a Direction of N48°52'15"E, 89.98' to a point; thence S66°31'41"W, 375.96' to a point; thence N81°31'47"W, 861.72' to a point; thence N81°28'50"W, 149.98' to a point; thence N81°33'25"W, 56.41' to a point; thence N81°44'30"W, 219.28' to a point; thence S19°51'42"W, 340.91' to a point; thence N70°08'18"W, 585.61' to a point; thence S03°40'12"W, 844.63' to a point; thence S03°03'45"W, 587.47' to a point; thence S89°39'02"E, 205.00' to a point; thence N00°17'07"E, 209.76' to a point; thence S89°42'53"E, 210.00' to a point; thence S00°17'07"W, 210.00' to a point; thence S85°26'31"E, 434.14' to a point; thence S56°32'07"W, 821.71' to a point; thence S02°53'36"W, 73.32' to a point; thence N77°53'40"W, 922.38' to a point;

said Iron Pipe being the Point of Beginning.

Said Annexation contains 4,415,090 square feet / 101.356 acres, more or less.

Easement Line Table		
Line #	Direction	Length
E90	S05°16'12"W	110.52
E91	S65°28'11"W	57.62
E92	N05°16'12"E	111.92
E93	N66°41'16"E	56.94
E95	S01°32'39"W	36.51
E96	S66°43'25"W	562.77
E97	N87°54'57"W	683.87
E98	N87°58'54"W	110.69
E99	N01°20'12"E	50.18
E100	S87°54'41"E	759.44
E101	N66°41'16"E	529.20
E102	S88°26'17"E	65.92
E103	S81°44'30"E	54.38
E104	N05°16'12"E	1024.00
E105	S87°27'56"E	50.06
E106	S05°16'12"W	1029.00
E107	N81°44'30"W	50.07
E108	N45°47'31"W	767.73
E109	N85°20'31"W	494.97
E110	N04°39'29"E	60.00
E111	S85°20'31"E	494.97
E112	S45°47'31"E	758.81
E114	N04°45'16"E	317.54
E115	N19°40'04"E	280.91
E116	S00°17'07"W	150.66
E117	S19°40'04"W	132.24
E118	S04°45'16"W	271.62
E119	S56°32'07"W	63.64
E120	N56°32'07"E	159.14

Curve Table						
Curve #	Radius	Length	Delta	Direction	Chord	Tangent
C1	540.00	280.51	029°45'47"	N34°33'25"E	277.37	143.50
C2	25.00	38.27	087°42'27"	N05°35'05"E	34.64	24.02
C3	25.00	38.27	087°42'27"	S86°42'27"E	34.64	24.02
C4	655.00	288.86	025°16'04"	N36°48'17"E	286.52	146.82
C5	8.00	13.10	093°48'15"	N22°43'53"W	11.68	8.55
C6	8.00	12.85	092°03'02"	N64°20'28"E	11.51	8.29
C7	655.00	710.34	062°08'11"	N12°45'08"W	676.04	394.63
C8	540.00	161.66	017°09'08"	N35°14'40"W	161.05	81.44
C9	545.00	131.00	013°46'17"	N16°24'52"W	130.68	65.81
C10	20.00	32.64	093°31'06"	N56°17'17"W	29.14	21.27
C11	35.00	57.08	093°26'04"	N63°44'30"W	50.96	37.16
C12	899.85	59.13	003°45'54"	S67°39'31"W	59.12	29.58
C13	1000.00	48.98	002°48'24"	N67°10'47"E	48.98	24.50
C14	20.00	30.32	086°51'05"	S52°57'16"E	27.50	18.93
C15	1005.00	79.07	004°30'28"	N85°52'26"E	79.05	39.56
C16	880.00	299.33	019°29'22"	N78°22'59"E	297.89	151.13
C17	990.00	391.50	022°39'29"	S76°47'55"W	388.96	198.34
C18	20.00	32.23	092°19'21"	S36°37'57"W	28.85	20.83
C19	475.00	114.32	013°47'24"	S16°25'26"E	114.05	57.44
C20	480.01	143.51	017°07'47"	S35°15'20"E	142.97	72.29
C21	715.00	674.37	054°02'25"	S16°48'02"E	649.65	364.63
C28	1097.98	143.09	007°28'00"	S49°31'31"E	142.99	71.65
C29	880.00	231.46	015°04'12"	S53°15'39"E	230.79	116.40
C30	820.00	90.03	006°17'26"	N48°52'15"W	89.98	45.06

Easement Curve Table						
Curve #	Radius	Length	Delta	Direction	Chord	Tangent
EC23	1070.35	411.40	022°01'20"	N56°49'40"W	408.87	208.27
EC24	1065.04	325.80	017°31'38"	N76°36'09"W	324.53	164.18
EC25	1127.96	344.10	017°28'44"	S76°36'09"E	342.77	173.40
EC26	1127.99	434.53	022°04'18"	S56°49'40"E	431.85	219.99

Line Table			Line Table		
Line #	Direction	Length	Line #	Direction	Length
L1	N02°44'07"E	994.82	L45	N33°53'34"W	32.27
L2	N86°50'22"W	258.73	L46	N09°31'44"W	39.04
L3	N39°30'30"E	26.26	L47	N17°01'28"W	70.37
L4	N23°42'22"W	35.95	L48	N24°13'25"W	100.00
L5	N13°54'09"E	79.15	L49	S87°58'54"E	49.66
L6	N17°33'13"W	18.56	L50	S87°58'17"E	130.39
L7	N67°29'17"E	37.85	L51	S09°31'44"E	28.27
L8	N02°16'21"W	22.18	L52	N88°07'40"E	207.65
L9	N70°27'02"W	29.99	L53	S87°54'41"E	25.01
L10	N44°05'42"W	39.31	L54	N66°41'16"E	199.17
L11	N13°50'46"E	28.19	L55	S24°31'49"E	95.91
L12	N66°20'10"E	26.21	L56	S65°28'11"W	172.84
L13	N16°14'26"E	42.75	L57	S88°15'11"W	158.83
L14	N42°08'44"E	49.37	L58	S82°47'37"W	110.66
L15	N12°33'20"W	47.21	L59	S09°31'44"E	31.05
L16	S89°48'05"W	27.39	L60	S14°55'06"E	28.54
L17	N47°19'12"W	39.00	L61	S43°49'14"E	349.36
L18	N17°31'45"E	67.92	L62	S87°28'46"E	195.69
L19	S52°16'45"E	28.62	L63	S87°28'09"E	1310.85
L20	N53°21'20"E	14.91	L64	S87°31'29"E	16.61
L21	N12°12'41"E	91.90	L65	S24°36'54"W	730.39
L22	N02°59'42"W	51.52	L66	S45°47'31"E	153.36
L23	N59°30'21"W	62.80	L67	S45°47'31"E	376.61
L24	S39°54'45"W	52.49	L68	S35°44'56"W	30.33
L25	S81°30'52"W	18.15	L69	S35°44'56"W	30.33
L26	N37°30'45"W	51.54	L70	N45°47'31"W	385.60
L27	N14°00'20"W	81.92	L71	S66°31'41"W	375.96
L28	N41°47'32"E	23.66	L72	N81°31'47"W	861.72
L29	N31°38'22"W	1.96	L73	N81°28'50"W	149.98
L30	N09°34'30"W	39.41	L74	N81°33'25"W	56.41
L31	N02°27'00"E	78.83	L75	N81°44'30"W	219.28
L32	S86°25'14"E	33.05	L76	S19°51'42"W	340.91
L33	N79°11'30"E	445.19	L77	N70°08'18"W	585.61
L34	N48°13'38"E	50.09	L78	S03°40'12"W	844.63
L35	N22°54'33"E	74.47	L79	S03°03'45"W	587.47
L36	S87°24'13"E	584.86	L80	S89°39'02"E	205.00
L37	N19°40'32"E	59.76	L81	N00°17'07"E	209.76
L38	N49°26'19"E	244.69	L82	S89°42'53"E	210.00
L39	N49°26'19"E	50.04	L83	S00°17'07"W	210.00
L40	N49°26'19"E	55.76	L84	S85°26'31"E	434.14
L41	N69°38'01"W	18.54	L85	S56°32'07"W	821.71
L42	N24°32'45"E	50.21	L86	S02°53'36"W	73.32
L43	S69°38'01"E	15.90	L87	N77°53'40"W	922.38
L44	N43°49'14"W	349.36			



Bateman Civil Survey Company
 Engineers • Surveyors • Planners
 2624 Raleigh Ave., Suite 102, NC 27609
 Phone: 919.572.1080 Fax: 919.572.1081
 NCBSL FIRM No. C-2578

MFW INVESTMENTS LLC
 2624 Raleigh Ave., Suite 102, NC 27609
 CARY, NORTH CAROLINA, 27518

ANNEXATION MAP FOR THE TOWN OF APEX
 APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
 REID# 009938, 0463860, 0034123, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

Designed By: NIA
 Drawn By: JCH
 Checked By: JWB
 Scale:
 Date: 03/24/2020
 Project #: 180585

SHEET 7 OF 7


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Wake County Real Estate Data Account Summary

[iMaps](#)
[Tax Bills](#)
Real Estate ID **0033292**PIN # **0750274707**Location Address
8308 SMITH RDProperty Description
ROGERS LDAccount
Search
[Pin/Parcel History](#) [Search Results](#) [New Search](#)

[NORTH CAROLINA](#) [Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner HORTON, KIMBERLY A HORTON, LOOMIS III (Use the Deeds link to view any additional owners)		Owner's Mailing Address 4801 SW 202ND AVE SOUTHWEST RANCHES FL 33332-1033	Property Location Address 8308 SMITH RD APEX NC 27539-8178
Administrative Data Old Map # 696-00000-0014 Map/Scale 0750 01 VCS 20AP901 City Fire District 23 Township WHITE OAK Land Class FOR-FARM ETJ AP Spec Dist(s) Zoning PUD-CZ History ID 1 History ID 2 Acreage 10.00 Permit Date Permit #		Transfer Information Deed Date 2/28/2016 Book & Page 16-E- 969 Revenue Stamps Pkg Sale Date Pkg Sale Price Land Sale Date Land Sale Price Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area	Assessed Value Land Value Assessed \$412,272 Bldg. Value Assessed Tax Relief Land Use Value \$2,500 Use Value Deferment \$409,772 Historic Deferment Total Deferred Value \$409,772 Use/Hist/Tax Relief Assessed \$2,500 Total Value Assessed* \$412,272

*Wake County assessed building and land values reflect the market value as of January 1, 2020, which is the date of the last county-wide revaluation. Any inflation, deflation or other economic changes occurring after this date does not affect the assessed value of the property and cannot be lawfully considered when reviewing the value for adjustment.

The January 1, 2020 values will remain in effect until the next county-wide revaluation. Until that time, any real estate accounts created or new construction built is assessed according to the 2020 Schedule of Values.

For questions regarding the information displayed on this site, please contact the Department of Tax Administration at Taxhelp@wakegov.com or call 919-856-5400.

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Wake County Real Estate Data Account Summary

[iMaps](#)[Tax Bills](#)Real Estate ID **0457588**PIN # **0750398682**Account
SearchLocation Address
0 DEZOLA STProperty Description
PT HORTON HEIRS PROPERTIES TR1AR BM2018-01394[Pin/Parcel History](#) [Search Results](#) [New Search](#)
[Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner HORTON, KIMBERLY A HORTON, LOOMIS III (Use the Deeds link to view any additional owners)		Owner's Mailing Address 4801 SW 202ND AVE SOUTHWEST RANCHES FL 33332-1033	Property Location Address 0 DEZOLA ST APEX NC 27539-
Administrative Data Old Map # 696-- Map/Scale 0750 01 VCS 20AP901 City Fire District 23 Township WHITE OAK Land Class FOR-FARM ETJ AP Spec Dist(s) Zoning PUD-CZ History ID 1 History ID 2 Acreage 16.52 Permit Date Permit #		Transfer Information Deed Date 2/28/2016 Book & Page 16-E- 969 Revenue Stamps Pkg Sale Date Pkg Sale Price Land Sale Date Land Sale Price Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area	Assessed Value Land Value Assessed \$883,540 Bldg. Value Assessed Tax Relief Land Use Value \$4,130 Use Value Deferment \$879,410 Historic Deferment Total Deferred Value \$879,410 Use/Hist/Tax Relief Assessed \$4,130 Total Value Assessed* \$883,540

*Wake County assessed building and land values reflect the market value as of January 1, 2020, which is the date of the last county-wide revaluation. Any inflation, deflation or other economic changes occurring after this date does not affect the assessed value of the property and cannot be lawfully considered when reviewing the value for adjustment.

The January 1, 2020 values will remain in effect until the next county-wide revaluation. Until that time, any real estate accounts created or new construction built is assessed according to the 2020 Schedule of Values.

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Wake County Real Estate Data Account Summary

[iMaps](#)[Tax Bills](#)Real Estate ID **0434123**PIN # **0750390993**Account
SearchLocation Address
0 DEZOLA STProperty Description
LOTR 3 HORTON HEIRS PROPERTIES BM2015-01973[Pin/Parcel History](#) [Search Results](#) [New Search](#)
[NORTH CAROLINA](#) [Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner HORTON, MARY ELIZABETH (Use the Deeds link to view any additional owners)		Owner's Mailing Address PO BOX 306 APEX NC 27502-0306	Property Location Address 0 DEZOLA ST APEX NC 27539-
Administrative Data Old Map # 696-- Map/Scale 0750 01 VCS 20AP901 City Fire District 23 Township WHITE OAK Land Class FOR-FARM ETJ AP Spec Dist(s) Zoning PUD-CZ History ID 1 History ID 2 Acreage 20.00 Permit Date Permit #		Transfer Information Deed Date 11/18/2015 Book & Page 16215 1702 Revenue Stamps Pkg Sale Date Pkg Sale Price Land Sale Date Land Sale Price Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area	Assessed Value Land Value Assessed \$769,132 Bldg. Value Assessed Tax Relief Land Use Value \$5,000 Use Value Deferral \$764,132 Historic Deferral Total Deferred Value \$764,132 Use/Hist/Tax Relief Assessed \$5,000 Total Value Assessed* \$769,132

*Wake County assessed building and land values reflect the market value as of January 1, 2020, which is the date of the last county-wide revaluation. Any inflation, deflation or other economic changes occurring after this date does not affect the assessed value of the property and cannot be lawfully considered when reviewing the value for adjustment.

The January 1, 2020 values will remain in effect until the next county-wide revaluation. Until that time, any real estate accounts created or new construction built is assessed according to the 2020 Schedule of Values.

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Wake County Real Estate Data Account Summary

[iMaps](#)
[Tax Bills](#)
Real Estate ID **0104750**PIN # **0750498888**Location Address
5010 DEZOLA STProperty Description
LOGR PT TR2B HORTON HEIRS PROPERTIES BM2017-02004Account
Search
[Pin/Parcel History](#) [Search Results](#) [New Search](#)
[NORTH CAROLINA](#) [Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner WRIGHT, DWIGHT MARVIN (Use the Deeds link to view any additional owners)		Owner's Mailing Address 407 S SALEM ST APEX NC 27502-2037	Property Location Address 5010 DEZOLA ST APEX NC 27539-9500
Administrative Data Old Map # 696-- Map/Scale 0750 01 VCS 20AP901 City Fire District 23 Township WHITE OAK Land Class R-<10-HS ETJ AP Spec Dist(s) Zoning RR History ID 1 History ID 2 Acreage 9.20 Permit Date 6/4/2019 Permit # 2019-00280		Transfer Information Deed Date 11/18/2015 Book & Page 16215 1702 Revenue Stamps Pkg Sale Date Pkg Sale Price Land Sale Date Land Sale Price Improvement Summary Total Units 1 Recycle Units 1 Apt/SC Sqft Heated Area 1,100	Assessed Value Land Value Assessed \$468,530 Bldg. Value Assessed \$21,399 Tax Relief Land Use Value Use Value Deferral Historic Deferral Total Deferred Value Use/Hist/Tax Relief Assessed Total Value Assessed* \$489,929

*Wake County assessed building and land values reflect the market value as of January 1, 2020, which is the date of the last county-wide revaluation. Any inflation, deflation or other economic changes occurring after this date does not affect the assessed value of the property and cannot be lawfully considered when reviewing the value for adjustment.

The January 1, 2020 values will remain in effect until the next county-wide revaluation. Until that time, any real estate accounts created or new construction built is assessed according to the 2020 Schedule of Values.

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Wake County Real Estate Data Account Summary

[iMaps](#)[Tax Bills](#)Real Estate ID **0203135**PIN # **0750278677**Account
SearchLocation Address
0 DEZOLA STProperty Description
LO13 CARCILLAR HORTON EST DIV BM1988-754[Pin/Parcel History](#) [Search Results](#) [New Search](#)[Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner MFV INVESTMENTS LLC (Use the Deeds link to view any additional owners)		Owner's Mailing Address 114 BIRKLANDS DR CARY NC 27518-8203	Property Location Address 0 DEZOLA ST APEX NC 27539-0000
Administrative Data Old Map # 696-- Map/Scale 0750 01 VCS 20AP901 City Fire District 23 Township WHITE OAK Land Class VACANT ETJ AP Spec Dist(s) Zoning PUD-CZ History ID 1 History ID 2 Acreage 3.95 Permit Date Permit #		Transfer Information Deed Date 7/22/2019 Book & Page 17511 1752 Revenue Stamps Pkg Sale Date Pkg Sale Price Land Sale Date 11/18/2003 Land Sale Price \$50,000 Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area	Assessed Value Land Value Assessed \$175,140 Bldg. Value Assessed Tax Relief Land Use Value Use Value Deferral Historic Deferral Total Deferred Value Use/Hist/Tax Relief Assessed Total Value Assessed* \$175,140

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Wake County Real Estate Data Account Summary

[iMaps](#)[Tax Bills](#)Real Estate ID **0033171**PIN # **0750270906**Account
SearchLocation Address
8306 SMITH RDProperty Description
ROGERS LD PARCEL 6 E L HORTON EST[Pin/Parcel History](#) [Search Results](#) [New Search](#)
[NORTH CAROLINA](#) [Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner MFW INVESTMENTS LLC (Use the Deeds link to view any additional owners)		Owner's Mailing Address 114 BIRKLANDS DR CARY NC 27518-8203	Property Location Address 8306 SMITH RD APEX NC 27539-8178
Administrative Data Old Map # 696-00000-0013 Map/Scale 0750 01 VCS 20AP901 City Fire District 23 Township WHITE OAK Land Class VACANT ETJ AP Spec Dist(s) Zoning PUD-CZ History ID 1 History ID 2 Acreage 10.00 Permit Date Permit #		Transfer Information Deed Date 5/29/2018 Book & Page 17139 0745 Revenue Stamps 620.00 Pkg Sale Date 2/1/1981 Pkg Sale Price \$9,500 Land Sale Date 5/29/2018 Land Sale Price \$310,000 Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area	Assessed Value Land Value Assessed \$336,000 Bldg. Value Assessed Tax Relief Land Use Value Use Value Deferral Historic Deferral Total Deferred Value Use/Hist/Tax Relief Assessed Total Value Assessed* \$336,000

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Wake County Real Estate Data Account Summary

[iMaps](#)[Tax Bills](#)Real Estate ID **0040550**PIN # **0750280998**Account
SearchLocation Address
8140 SMITH RDProperty Description
LO1 RCMB MFW INVESTMENTS LLC BM2018-01751[Pin/Parcel History](#) [Search Results](#) [New Search](#)
[Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner MFW INVESTMENTS, LLC (Use the Deeds link to view any additional owners)		Owner's Mailing Address 114 BIRKLANDS DR CARY NC 27518-8203	Property Location Address 8140 SMITH RD APEX NC 27539-8857
Administrative Data Old Map # 696-- Map/Scale 0750 01 VCS 20AP901 City Fire District 23 Township WHITE OAK Land Class VACANT ETJ AP Spec Dist(s) Zoning PUD-CZ History ID 1 History ID 2 Acreage 23.23 Permit Date Permit #		Transfer Information Deed Date 12/15/2016 Book & Page 16638 1192 Revenue Stamps Pkg Sale Date Pkg Sale Price Land Sale Date Land Sale Price Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area	Assessed Value Land Value Assessed \$696,360 Bldg. Value Assessed Tax Relief Land Use Value Use Value Deferral Historic Deferral Total Deferred Value Use/Hist/Tax Relief Assessed Total Value Assessed* \$696,360

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Wake County Real Estate Data Account Summary

[iMaps](#)
[Tax Bills](#)
Real Estate ID **0449641**PIN # **0751400194**Location Address
0 DEZOLA STProperty Description
HORTON HEIRS PROPERTIES TR2A BM2017-02004Account
Search
[Pin/Parcel History](#) [Search Results](#) [New Search](#)

[Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner MFWIRA, LLC (Use the Deeds link to view any additional owners)		Owner's Mailing Address 114 BIRKLANDS DR CARY NC 27518-8203	Property Location Address 0 DEZOLA ST APEX NC 27539-
Administrative Data Old Map # 696-- Map/Scale 0751 03 VCS 20AP901 City Fire District 23 Township WHITE OAK Land Class VACANT ETJ AP Spec Dist(s) Zoning PUD-CZ History ID 1 History ID 2 Acreage 14.79 Permit Date Permit #		Transfer Information Deed Date 10/6/2017 Book & Page 16932 0295 Revenue Stamps 1036.00 Pkg Sale Date Pkg Sale Price Land Sale Date 10/6/2017 Land Sale Price \$518,000 Improvement Summary Total Units 0 Recycle Units 0 Apt/SC Sqft Heated Area	Assessed Value Land Value Assessed \$538,356 Bldg. Value Assessed Tax Relief Land Use Value Use Value Deferment Historic Deferment Total Deferred Value Use/Hist/Tax Relief Assessed Total Value Assessed* \$538,356

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The January 1, 2020 values will remain in effect until the next county-wide revaluation. Until that time, any real estate accounts created or new construction built is assessed according to the 2020 Schedule of Values.

For questions regarding the information displayed on this site, please contact the Department of Tax Administration at Taxhelp@wakegov.com or call 919-856-5400.



RESOLUTION SETTING DATE OF PUBLIC HEARING
ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. § 160A-31 AS AMENDED

Annexation Petition #687
Horton Park PUD

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the Town Council of Apex, North Carolina has by Resolution directed the Town Clerk to investigate the sufficiency thereof; and

WHEREAS, Certification by the Town Clerk as to the sufficiency of said petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Apex, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at the Apex Town Hall at 6 o'clock p.m. on the 15th day of September 2020.

Section 2. The area proposed for annexation is described as attached.

Section 3. Notice of said public hearing shall be published on the Town of Apex Website, www.apexnc.org, Public Notice, at least ten (10) days prior to the date of said public hearing.

This the 1st day of September 2020.

Jacques K. Gilbert, Mayor

ATTEST:

Donna B. Hosch, MMC, NCCMC, Town Clerk

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687
Fee Paid: \$ 200

Submittal Date: 6/30/2020
Check #: 1394

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

Kimberly & Loomis III Horton

Owner Name (Please Print)

(919) 801-3905

Phone

0750-27-4707, 0750-39-8682

Property PIN or Deed Book & Page #

mwhitehead@macgregordev.com

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company

Phone: 919-577-1080

Fax: 919-577-1081

E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>26.52</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>500 (Overall Horton Park Project)</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>	Receive Town Services	<input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Loomis Horton III

Please Print

Kimberly Horton

Please Print

Please Print

Please Print

[Signature]

Signature

[Signature]

Signature

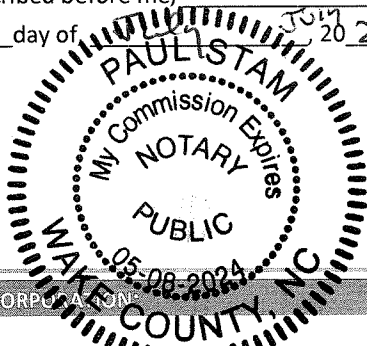
Signature

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Paul Stam, a Notary Public for the above State and County,
this the 10 day of July, 2020.

SEAL



[Signature]

Notary Public

My Commission Expires: May 8, 2024

COMPLETE IF A CORPORATION

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary by order of its Board of Directors, this the _____ day of _____, 20____.

Corporate Name _____

SEAL

By: _____

President (Signature)

Attest: _____

Secretary (Signature) _____

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687 Submittal Date: 6/30/2020
Fee Paid: \$ Check #:

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

Mary Elizabeth Horton	0750-39-0993
Owner Name (Please Print)	Property PIN or Deed Book & Page #
(919) 801-3905 / <u>no working phone</u>	mwhitehead@macgregordev.com
Phone	E-mail Address
<u>Mary</u>	
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company
Phone: 919-577-1080 Fax: 919-577-1081
E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>20</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>500 (Overall Horton Park Project)</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>	Receive Town Services	<input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Please Print

Mary Elizabeth Horton

Please Print

Please Print

Please Print

Signature

Signature

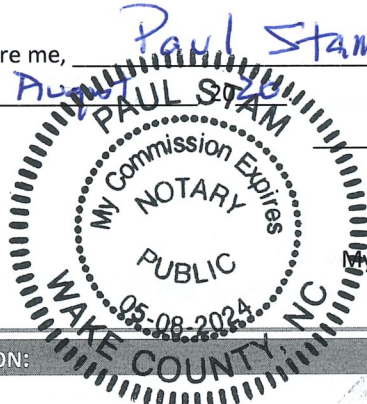
Signature

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Paul Stam, a Notary Public for the above State and County,
this the 14th day of August

SEAL



Paul Stam
Notary Public

My Commission Expires: May 8, 2024

COMPLETE IF A CORPORATION:

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary by order of its Board of Directors, this the ____ day of _____, 20____.

Corporate Name _____

SEAL

By: _____

Attest: _____

President (Signature)

Secretary (Signature)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the ____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687
Fee Paid \$

Submittal Date: 6/30/2020
Check #

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

Dwight Marvin Wright

Owner Name (Please Print)

(919) 801-3905

Phone

0750-49-8888

Property PIN or Deed Book & Page #

mwhitehead@macgregordev.com

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Owner Name (Please Print)

Property PIN or Deed Book & Page #

Phone

E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company

Phone: 919-577-1080

Fax: 919-577-1081

E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>0.34</u> *	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>0</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>	Receive Town Services	<input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

* under contract for purchase by West Investments, LLC

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Dwight Marvin Wright

Please Print

Dwight Marvin Wright
Signature

Please Print

Signature

Please Print

Signature

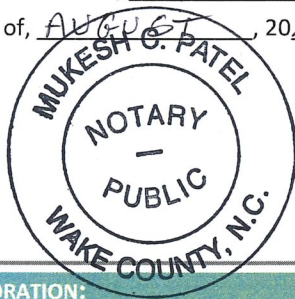
Please Print

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, MUKESH C. PATEL, a Notary Public for the above State and County,
this the 12 day of AUGUST, 2020.

SEAL



Mukesh C. Patel
Notary Public

My Commission Expires: 19th Nov 2021

COMPLETE IF A CORPORATION:

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary by order of its Board of Directors, this the _____ day of _____, 20____.

Corporate Name _____

SEAL

By: _____

Attest: _____

President (Signature)

Secretary (Signature) _____

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

SEAL

Notary Public

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687 Submittal Date: 6/30/2020
Fee Paid: \$ Check #

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

MFW Investments LLC	0750-27-8677, 0750-27-0906, 0750-28-0998
Owner Name (Please Print)	Property PIN or Deed Book & Page #
(919) 801-3905	mwhitehead@macgregordev.com
Phone	E-mail Address
MFW Investments LLC	0750-29-9342, 0750-27-8925, 0751-31-0079 (PARTIAL)
Owner Name (Please Print)	Property PIN or Deed Book & Page #
(919) 801-3905	mwhitehead@macgregordev.com
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company
Phone: 919-577-1080 Fax: 919-577-1081
E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>46.85</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>0</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>0</u>	Water service (new construction)	<input checked="" type="checkbox"/>
	500 (Overall Horton Park Project)	Sewer service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:		Receive Town Services	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>		

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF IN A LIMITED LIABILITY COMPANY

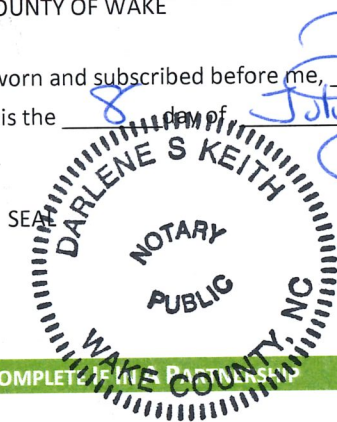
In witness whereof, MFW Investments, LLC limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 8th day of July, 2020

Name of Limited Liability Company MFW Investments, LLC

By: [Signature]
Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Darlene S. Keith, a Notary Public for the above State and County, this the 8th day of July, 2020



[Signature]
Notary Public

My Commission Expires: 8/5/2022

COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the ____ day of _____, 20____.

Name of Partnership _____

By: _____
Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County, this the ____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 687 Submittal Date: 6/30/2020
Fee Paid \$ Check #

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

MFWIRA, LLC	0751-40-0194
Owner Name (Please Print)	Property PIN or Deed Book & Page #
(919) 801-3905	mwhitehead@macgregordev.com
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address
Owner Name (Please Print)	Property PIN or Deed Book & Page #
Phone	E-mail Address

Surveyor Information

Surveyor: Bateman Civil Survey Company
Phone: 919-577-1080 Fax: 919-577-1081
E-mail Address: heath@batemancivilsurvey.com

Annexation Summary Chart

Property Information	Reason(s) for annexation (select all that apply)
Total Acreage to be annexed: <u>14.79</u>	Need water service due to well failure <input type="checkbox"/>
Population of acreage to be annexed: <u>0</u>	Need sewer service due to septic system failure <input type="checkbox"/>
Existing # of housing units: <u>0</u>	Water service (new construction) <input checked="" type="checkbox"/>
Proposed # of housing units: <u>500 (Overall Horton Park Project)</u>	Sewer service (new construction) <input checked="" type="checkbox"/>
Zoning District*: <u>PUD-CZ</u>	Receive Town Services <input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

PETITION FOR VOLUNTARY ANNEXATION

Application #: 687

Submittal Date: 6/30/2020

COMPLETE IF IN A LIMITED LIABILITY COMPANY

In witness whereof, MEWIRA, LLC a limited liability company, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the 8th day of July, 2020.

Name of Limited Liability Company MEWIRA, LLC

By: _____

Signature of Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, Darlene S Keith, a Notary Public for the above State and County, this the 8 day of July, 2020.



Darlene S Keith
Notary Public

My Commission Expires: 8-5-2022

COMPLETE IF IN A PARTNERSHIP

In witness whereof, _____, a partnership, caused this instrument to be executed in its name by a member/manager pursuant to authority duly given, this the _____ day of _____, 20____.

Name of Partnership _____

By: _____

Signature of General Partner

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County, this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____



Bateman Civil Survey Company, PC
2524 Reliance Avenue
Apex, NC 27539

Phone: (919) 577-1080
Fax: (919) 577-1081
info@batemancivilsurvey.com

Annexation Legal Description for REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

All that certain parcels of land, situated in Apex, Wake County, North Carolina, being known as REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, Wake County Records, and being more particularly described as follows:

Beginning at an Iron Pipe found at the South West property corner of MFW Investments LLC (REID 0033171, DB 17139, PG 745), Wake County Records and South East property corner of Kimberly A & Loomis Horton III (REID 0094319, DB 16-E, PG 969), Wake County records and being designated as the Point of Beginning as shown on map made by Bateman Civil Survey Company, dated 3/24/2020 and entitled "Annexation Map for the Town of Apex" Apex, NC, Wake County, White Oak Township, REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, having State Plane Coordinates N:707485.663, E:2051769.272;

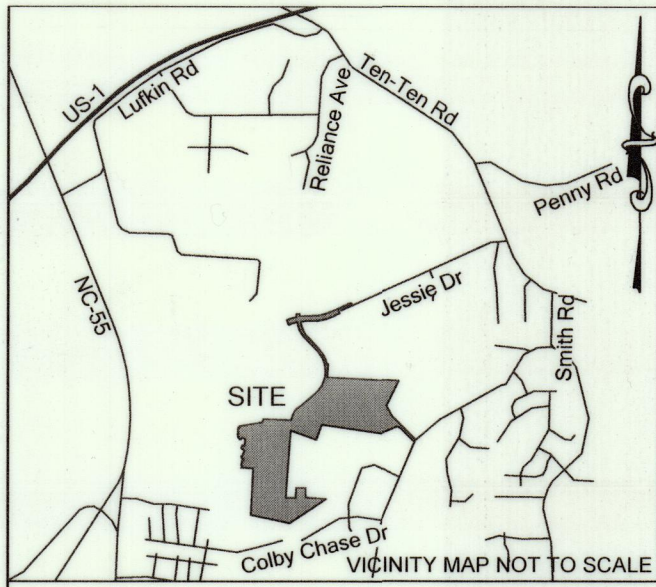
Thence N02°44'07"E, 994.82' to an Iron Pipe found; thence N86°50'22"W, 258.73' to an Iron Pipe found; thence N39°30'30"E, 26.26' to a point; thence N23°42'22"W, 35.95' to a point; thence N13°54'09"E, 79.15' to a point; thence N17°33'13"W, 18.56' to a point; thence N67°29'17"E, 37.85' to a point; thence N02°16'21"W, 22.18' to a point; thence N70°27'02"W, 29.99' to a point; thence N44°05'42"W, 39.31' to a point; thence N13°50'46"E, 28.19' to a point; thence N66°20'10"E, 26.21' to a point; thence N16°14'26"E, 42.75' to a point; thence N42°08'44"E, 49.37' to a point; thence N12°33'20"W, 47.21' to a point; thence S89°48'05"W, 27.39' to a point; thence N47°19'12"W, 39.00' to a point; thence N17°31'45"E, 67.92' to a point; thence S52°16'45"E, 28.62' to a point; thence N53°21'20"E, 14.91' to a point; thence N12°12'41"E, 91.90' to a point; thence N02°59'42"W, 51.52' to a point; thence N59°30'21"W, 62.80' to a point; thence S39°54'45"W, 52.49' to a point; thence S81°30'52"W, 18.15' to a point; thence N37°30'45"W, 51.54' to a point; thence N14°00'20"W, 81.92' to a point; thence N41°47'32"E, 23.66' to a point; thence N31°38'22"W, 1.96' to a point; thence N09°34'30"W, 39.41' to a point; thence N04°27'00"E, 78.83' to a point; thence S86°25'14"E, 33.05' to a point; thence N79°11'30"E, 445.19' to a point; thence N48°13'38"E, 50.09' to a point; thence N22°54'33"E, 74.47' to a point; thence S87°24'13"E, 584.86' to a point; thence N19°40'32"E, 59.76' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 280.51' and a Direction of N34°33'25"E, 277.37' to a point; thence N49°26'19"E, 244.69' to a point; thence a curve to the Left having a Radius of 25.00', a

Length of 38.27' and a Direction of N05°35'05"E, 34.64' to a point; thence N49°26'19"E, 50.04' to a point; thence a curve to the Right having a Radius of 25.00', a Length of 38.27' and a Direction of S86°42'27"E, 34.64' to a point; thence N49°26'19"E, 55.76' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 288.86' and a Direction of N36°48'17"E, 286.52' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 13.10' and a Direction of N22°43'53"W, 11.68' to a point; thence N69°38'01"W, 18.54' to a point; thence N24°32'45"E, 50.21' to a point; thence S69°38'01"E, 15.90' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 12.85' and a Direction of N64°20'28"E, 11.51' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 710.34' and a Direction of N12°45'08"W, 676.04' to a point; thence N43°49'14"W, 349.36' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 161.66' and a Direction of N35°14'40"W, 161.05' to a point; thence N33°53'34"W, 32.27' to a point; thence a curve to the Right having a Radius of 545.00', a Length of 131.00' and a Direction of N16°24'52"W, 130.68' to a point; thence N09°31'44"W, 39.04' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.64' and a Direction of N56°17'17"W, 29.14' to a point; thence N17°01'28"W, 70.37' to a point; thence a curve to the Left having a Radius of 35.00', a Length of 57.08' and a Direction of N63°44'30"W, 50.96' to a point; thence a curve to the Left having a Radius of 899.85', a Length of 59.13' and a Direction of S67°39'31"W, 59.12' to a point; thence N24°13'25"W, 100.00' to a point; thence a curve to the Right having a Radius of 1,000.00', a Length of 48.98' and a Direction of N67°10'47"E, 48.98' to a point; thence S87°58'54"E, 49.66' to a point; thence S87°58'17"E, 130.39' to a point; thence S09°31'44"E, 28.27' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 30.32' and a Direction of S52°57'16"E, 27.50' to a point; thence a curve to the Right having a Radius of 1,005.00', a Length of 79.07' and a Direction of N85°52'26"E, 79.05' to a point; thence N88°07'40"E, 207.65' to a point; thence a curve to the Left having a Radius of 880.00', a Length of 299.33' and a Direction of N78°22'59"E, 297.89' to a point; thence S87°54'41"E, 25.01' to a point; thence N66°41'16"E, 199.17' to a point; thence S24°31'49"E, 95.91' to a point; thence S65°28'11"W, 172.84' to a point; thence a curve to the Right having a Radius of 990.00', a Length of 391.50' and a Direction of S76°47'55"W, 388.96' to a point; thence S88°15'11"W, 158.83' to a point; thence S82°47'37"W, 110.66' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.23' and a Direction of S36°37'57"W, 28.85' to a point; thence S09°31'44"E, 31.05' to a point; thence a curve to the Left having a Radius of 475.00', a Length of 114.32' and a Direction of S16°25'26"E, 114.05' to a point; thence S14°55'06"E, 28.54' to a point; thence a curve to the Left having a Radius of 480.01', a Length of 143.51' and a Direction of S35°15'20"E, 142.97' to a point; thence S43°49'14"E, 349.36' to a point; thence a curve to the Right having a Radius of 715.00', a Length of 674.37' and a Direction of S16°48'02"E, 649.65' to a point; thence S87°28'46"E, 195.69' to a point; thence S87°28'09"E, 1,310.85' to a point; thence S87°31'29"E, 16.61' to a point; thence S24°36'54"W, 730.39' to a point; thence a curve to the Right having a Radius of 1097.98', a Length of 143.09' and a Direction of S49°31'31"E, 142.99' to a point; thence S45°47'31"E, 153.36' to a point; thence a curve to the Right having a Radius of 880.00', a Length of 231.46' and a Direction of S53°15'39"E, 230.79' to a point; thence S45°47'31"W, 376.61' to a point; thence S35°44'56"W, 30.33' to a point; thence S35°44'56"W, 30.33' to a point; thence N45°47'31"W, 385.60' to a point; thence a curve to the Left having a Radius of 820.00', a Length of 90.03' and a Direction of N48°52'15"E, 89.98' to a point; thence

S66°31'41"W, 375.96' to a point; thence N81°31'47"W, 861.72' to a point; thence N81°28'50"W, 149.98' to a point; thence N81°33'25"W, 56.41' to a point; thence N81°44'30"W, 219.28' to a point; thence S19°51'42"W, 340.91' to a point; thence N70°08'18"W, 585.61' to a point; thence S03°40'12"W, 844.63' to a point; thence S03°03'45"W, 587.47' to a point; thence S89°39'02"E, 205.00' to a point; thence N00°17'07"E, 209.76' to a point; thence S89°42'53"E, 210.00' to a point; thence S00°17'07"W, 210.00' to a point; thence S85°26'31"E, 434.14' to a point; thence S56°32'07"W, 821.71' to a point; thence S02°53'36"W, 73.32' to a point; thence N77°53'40"W, 922.38' to a point;

said Iron Pipe being the Point of Beginning.

Said Annexation contains 4,415,090 square feet / 101.356 acres, more or less.



REFERENCES

-Book Map 1942 Page 114
-Book Map 1987 Page 1199
-Book Map 1988 Page 754
-Book Map 2003 Page 1130
-Book Map 2006 Page 172
-Book Map 2015 Page 1973
-Book Map 2016 Page 1677
-Book Map 2016 Page 1902
-Book Map 2017 Page 1067
-Book Map 2017 Page 2004
-Book Map 2018 Page 1394
-Book Map 2018 Page 1751
-Deed Book 17511 Page 1752
-Deed Book 17473 Page 2443
-Deed Book 17279 Page 1698
-Deed Book 17211 Page 2706
-Deed Book 17139 Page 745
-Deed Book 16932 Page 295
-Deed Book 16638 Page 1192
-Deed Book 16215 Page 1702
-Deed Book 14735 Page 685
-Deed Book 4443 Page 94
-Deed Book 2353 Page 559

Required Base Information:

Project Information: MFW Investment LLC
0 E Williams Street, Apex, NC 27539 (Reid 0463860)
5220 Jessie Drive, Apex, NC 27539 (Reid 0012276)
5101 Jessie Drive, Apex, NC 27539 (Reid 0034313)
0 Dezola Street, Apex, NC 27539 (Reid 0203126)
8140 Smith Road, Apex, NC 27539 (Reid 0040550)
8306 Smith Road, Apex, NC 27539 (Reid 0033171)
0 Dezola Street, Apex, NC 27539 (Reid 0203135)
8252 Smith Road, Apex, NC 27539 (Reid 0089614)

Owner Information: MFW Investment LLC
Mike Whitehead
114 Birklands Drive, Cary, NC, 27518
mwhitehead@macgregordev.com

Project Information: Trinity Apex North 100 LLC
5125 Jessie Drive, Apex, NC 27539 (Reid 0099938)

Owner Information: Trinity Apex North 100 LLC
106 Island View Drive, Beaufort, NC, 28516
fill in the blank@whoknows.com

Project Information: Mary Elizabeth Horton
0 Dezola Street, Apex, NC 27539 (Reid 0434123)

Owner Information: Mary Elizabeth Horton
PO Box 306, Apex, NC, 27539
fill in the blank@whoknows.com

Project Information: MFWIRA LLC
0 Dezola Street, Apex, NC 27539 (Reid 0449641)

Owner Information: MFWIRA LLC
Mike Whitehead
114 Birklands Drive, Cary, NC, 27518
mwhitehead@macgregordev.com

Project Information: Kimberly A & Loomis Horton III
0 Dezola Street, Apex, NC 27539 (Reid 0457588)

Owner Information: Kimberly A & Loomis Horton III
4801 SW 202nd Avenue, Southwest Ranches, FL, 33332
mwhitehead@macgregordev.com

Project Information: Kimberly A & Loomis Horton III
8308 Smith Road, Apex, NC 27539 (Reid 0033292)

Owner Information: Kimberly A & Loomis Horton III
4801 SW 202nd Avenue, Southwest Ranches, FL, 33332
mwhitehead@macgregordev.com

Project Information: Dwight Marvin Wright
5010 Dezola Street, Apex, NC 27539 (Reid 0104750)

Owner Information: Dwight Marvin Wright
407 S Salem Street, Apex, NC, 27539
mwhitehead@macgregordev.com

Surveyor Information: Jeffrey W. Baker
North Carolina
L-4412

Date of Survey & Plat Preparation: 3/24/2020

Zoning District & Zoning Case #: PUD-CZ

Setbacks: PUD-CZ

Single Family: Front: 25'
Side: 6' minimum 16' total
Corner: 15'
Rear: 20'
Minimum Lot Width: 50'

Township, County, State: White Oak, Wake, North Carolina
Primary or Secondary Watershed: Secondary - Middle Creek Basin
FEMA designated floodplain: 'X' per F.I.R.M #3720075100J dated 05/02/2006

Owner

Owner	PIN#	REID#	Deed Reference	Plat Reference	Use	Zoning
A) MFW Investments LLC	0750278925	- 0089614	- DB 17473, Pg 2443	- BM 1988, Pg 754	- Vacant	- PUD-CZ
B) MFW Investments LLC	0750278677	- 0203135	- DB 17511, Pg 1752	- BM 1988, Pg 754	- Vacant	- PUD-CZ
C) Timothy & Allison Felton	0750278301	- 0308838	- DB 17376, Pg 1337	- BM 2003, Pg 1130	- Single Family	- RR
D) John J & Joyce T Falchi	0750279358	- 0308837	- DB 10836, Pg 2123	- BM 2003, Pg 1130	- Single Family	- RR
E) Todd C & Gloria C Young	0750370454	- 0308836	- DB 11069, Pg 476	- BM 2003, Pg 1130	- Single Family	- RR
F) Dennis & Roberta Dale	0750371540	- 0308835	- DB 11800, Pg 97	- BM 2003, Pg 1130	- Single Family	- RR
G) Richard J & Mary A Stewart	0750372555	- 0308834	- DB 11012, Pg 2141	- BM 2003, Pg 1130	- Single Family	- RR
H) Robert E & Krista B Cathey III	0750373664	- 0308833	- DB 11988, Pg 1801	- BM 2003, Pg 1130	- Single Family	- RR
I) Amanda C & Steven A Rhodes	0750375700	- 0308832	- DB 12006, Pg 1186	- BM 2003, Pg 1130	- Single Family	- RR

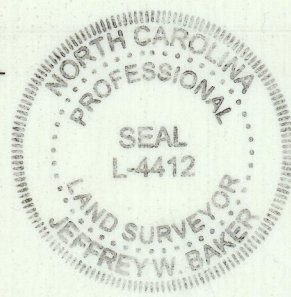
"I, Jeffrey W. Baker, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book 17511, page 1752, Book 17511, page 1755, Book 17473, page 2443, Book 17279, page 1698, Book 17211, page 2706, Book 17139, page 745, Book 16932, page 295, Book 16638, page 1192, Book 16215, page 1702, Book 14735, page 685, Book 4443, page 94, Book 2353, page 559); that the boundaries not surveyed are clearly indicated as drawn from information found in Book 1942, page 114, Book 1987, Page 1199, Book 1988, page 754, Book 2003, page 1130, Book 2006, page 172, Book 2015, page 1973, Book 2016, page 1677, Book 2016, page 1902, Book 2017, page 1067, Book 2017, page 2004, Book 2018, page 1394, Book 2018, page 1751; that the ratio of precision or positional accuracy as calculated is 1:10000+; that this plat was prepared in accordance with G.S. 47-30 as amended, witness my original signature, license number and seal this 25th day of June, A.D. 2020."

Professional Land Surveyor
License Number-4412

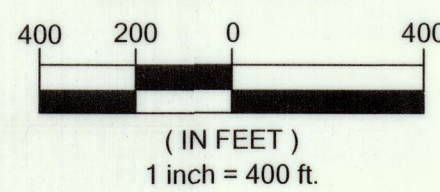
I, Jeffrey W. Baker, Professional Land Surveyor No. L-4412 certify
D. That the survey is of another category, such as the
recombination of existing parcels, a court-ordered survey,
or other exceptions to the definition of subdivision.

Jeffrey W. Baker, PLS L-4412

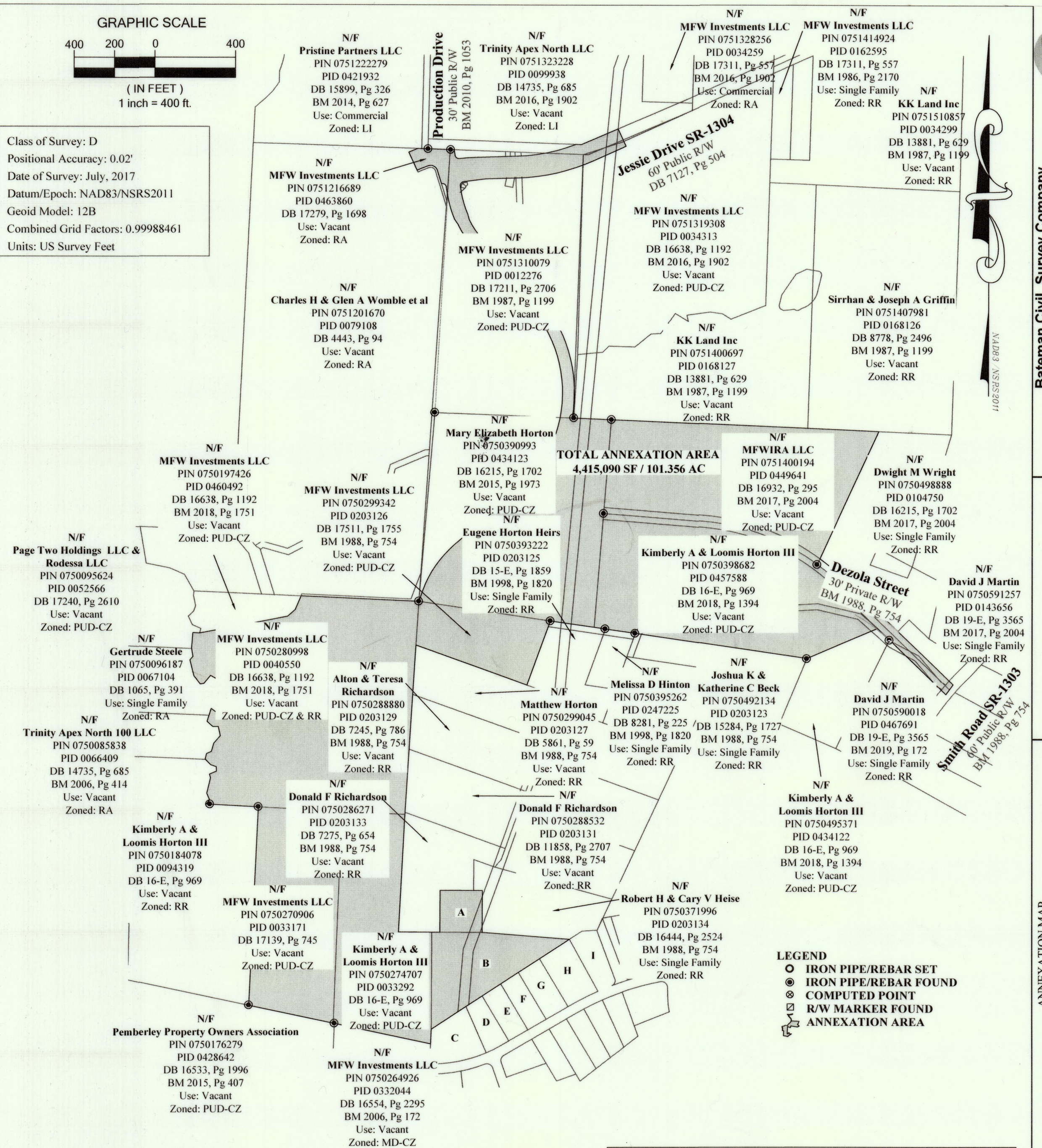
date



GRAPHIC SCALE



Class of Survey: D
Positional Accuracy: 0.02'
Date of Survey: July, 2017
Datum/Epoch: NAD83/NSRS2011
Geoid Model: 12B
Combined Grid Factors: 0.99988461
Units: US Survey Feet



LEGEND
● IRON PIPE/REBAR SET
● IRON PIPE/REBAR FOUND
● COMPUTED POINT
● R/W MARKER FOUND
■ ANNEXATION AREA

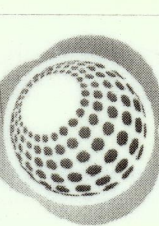
NOTES:

- This survey was prepared by Bateman Civil Survey Co., under the supervision of Jeffrey W. Baker, PLS.
- This plan has been prepared for layout and permitting purposes only.
- Property lines shown were taken from existing field evidence, existing deeds and/or plats of public record, and information supplied to the surveyor by the client
- All distances are horizontal ground distances and all bearings are North Carolina State Plane Coordinate System unless otherwise shown.
- No investigation into the existence of jurisdictional wetlands or riparian buffers performed by this firm.
- Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence or any other facts that an accurate and current title search may disclose.
- No Grid Monuments found within 2000'.
- Tied to the National CORS Network through NC VRS.

ANNEXATION # _____ I Donna B. Hosch, MMC,
NCCMC, Town Clerk, Apex, North Carolina certify this is a true and exact map
of annexation adopted the _____ day of _____, _____, by the Town
Council. I set my hand and seal of the Town of Apex, _____
Day / Month / Year

Donna B. Hosch, MMC, NCCMC, Town Clerk

UNLESS THIS MAP IS SIGNED AND SEALED BY THE SURVEYOR
IN CHARGE, THIS MAP IS CONSIDERED PRELIMINARY AND
NOT TO BE USED FOR RECORDING, CONVEYANCE OR SALES



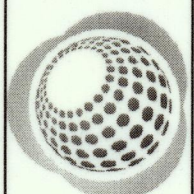
Bateman Civil Survey Company
Engineers • Surveyors • Planners
2524 Reliance Ave., Apex, NC 27539
Phone: 919.577.1080 Fax: 919.577.1081
NCBELS FIRM No. C-2378

OWNER
MFW INVESTMENTS LLC
114 BIRKLANDS DRIVE
CARY, NORTH CAROLINA, 27518

ANNEXATION MAP
FOR THE TOWN OF APEX
APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588,
0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

Designed By: N/A
Drawn By: JCH
Checked By: JWB
Scale: 1"=400'
Date: 03/24/2020
Project #: 180585

SHEET
1 OF 7



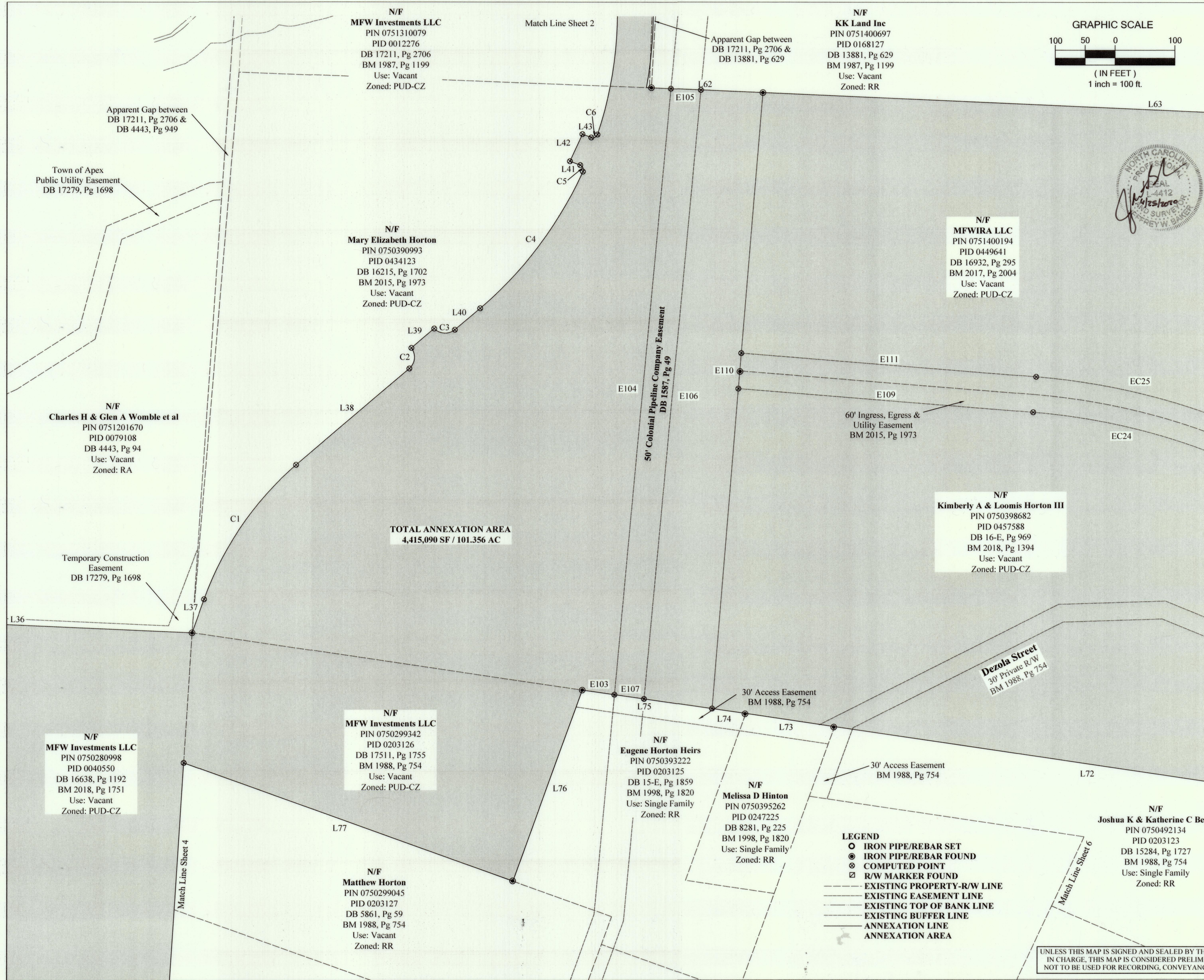
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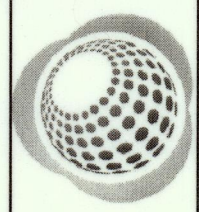
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ANNEXATION MAP
FOR THE TOWN OF APEX
APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588,
0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

Designed By: N/A
Drawn By: JCH
Checked By: JWB
Scale: 1"=100'
Date: 03/24/2020
Project #: 180585

SHEET
3 OF 7





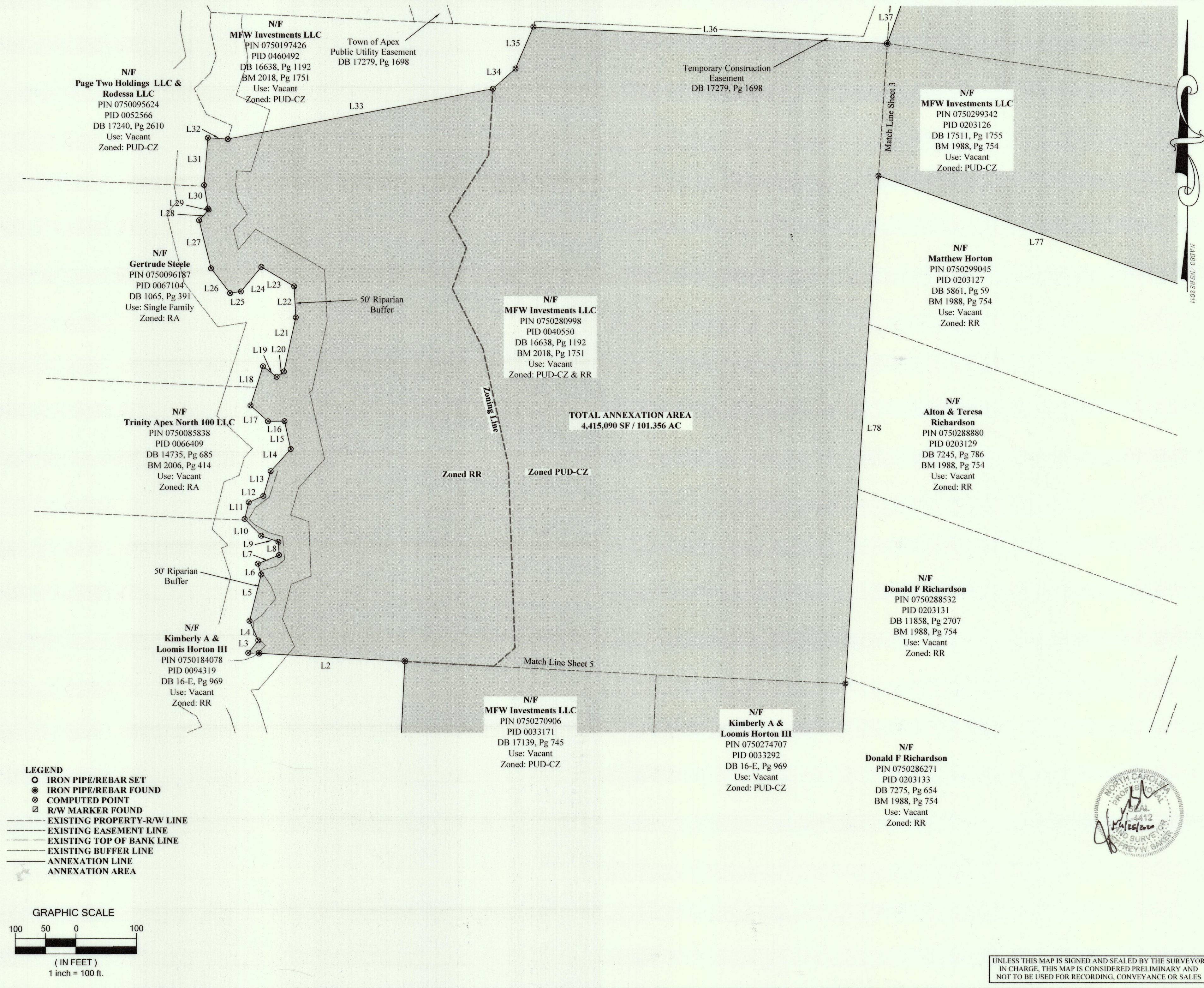
Bateman Civil Survey Company
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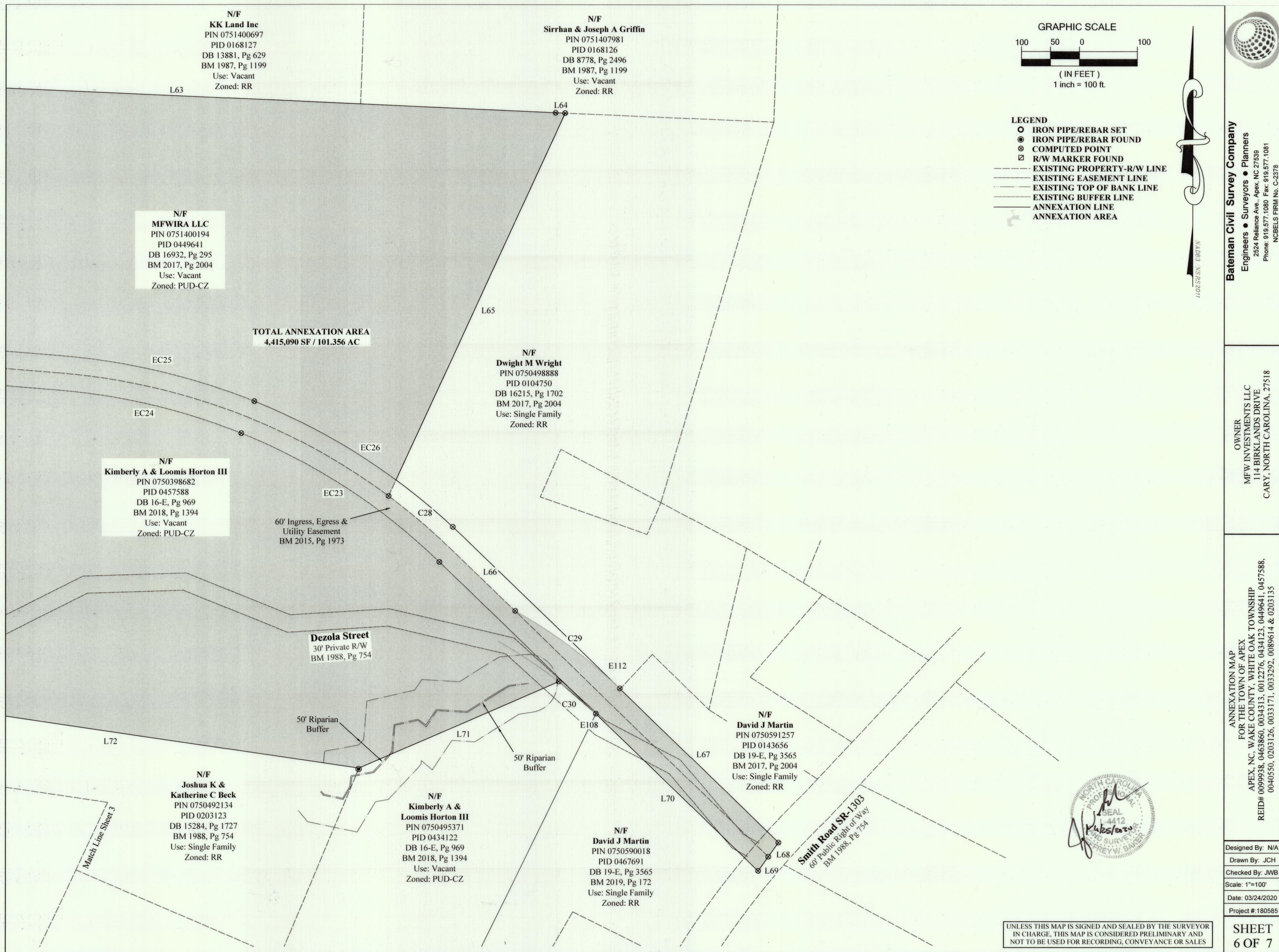
**ANNEXATION MAP
FOR THE TOWN OF APEX**
APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588,
0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

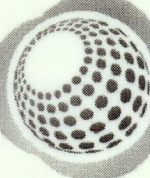
Designed By: N/A
Drawn By: JCH
Checked By: JWB
Scale: 1"=100'
Date: 03/24/2020
Project #: 180585

**SHEET
4 OF 7**



UNLESS THIS MAP IS SIGNED AND SEALED BY THE SURVEYOR
IN CHARGE, THIS MAP IS CONSIDERED PRELIMINARY AND
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Bateman Civil Survey Company
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2524 Reliance Ave., Apex, NC 27539
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NCBELS FIRM No. C-2378

OWNER
MFW INVESTMENTS LLC
114 BIRKLANDS DRIVE
CARY, NORTH CAROLINA, 27518

ANNEXATION MAP
FOR THE TOWN OF APEX
APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588,
0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

Designed By: N/A
Drawn By: JCH
Checked By: JWB
Scale: 1"=100'
Date: 03/24/2020
Project #: 180585

SHEET
6 OF 7

Annexation Legal Description for REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

All that certain parcels of land, situated in Apex, Wake County, North Carolina, being known as REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, Wake County Records, and being more particularly described as follows:

Beginning at an Iron Pipe found at the South West property corner of MFW Investments LLC (REID 0033171, DB 17139, PG 745), Wake County Records and South East property corner of Kimberly A & Loomis Horton III (REID 0094319, DB 16-E, PG 969), Wake County records and being designated as the Point of Beginning as shown on map made by Bateman Civil Survey Company, dated 3/24/2020 and entitled "Annexation Map for the Town of Apex" Apex, NC, Wake County, White Oak Township, REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, having State Plane Coordinates N:707485.663, E:2051769.272;

Thence N02°44'07"E, 994.82' to an Iron Pipe found; thence N86°50'22"W, 258.73' to an Iron Pipe found; thence N39°30'30"E, 26.26' to a point; thence N23°42'22"W, 35.95' to a point; thence N13°54'09"E, 79.15' to a point; thence N17°33'13"W, 18.56' to a point; thence N67°29'17"E, 37.85' to a point; thence N02°16'21"W, 22.18' to a point; thence N70°27'02"W, 29.99' to a point; thence N44°05'42"W, 39.31' to a point; thence N13°50'46"E, 28.19' to a point; thence N66°20'10"E, 26.21' to a point; thence N16°14'26"E, 42.75' to a point; thence N42°08'44"E, 49.37' to a point; thence N12°33'20"W, 47.21' to a point; thence S89°48'05"W, 27.39' to a point; thence N47°19'12"W, 39.00' to a point; thence N17°31'45"E, 67.92' to a point; thence S52°16'45"E, 28.62' to a point; thence N53°21'20"E, 14.91' to a point; thence N12°12'41"E, 91.90' to a point; thence N02°59'42"W, 51.52' to a point; thence N59°30'21"W, 62.80' to a point; thence S39°54'45"W, 52.49' to a point; thence S81°30'52"W, 18.15' to a point; thence N37°30'45"W, 51.54' to a point; thence N14°00'20"W, 81.92' to a point; thence N41°47'32"E, 23.66' to a point; thence N31°38'22"W, 1.96' to a point; thence N09°34'30"W, 39.41' to a point; thence N04°27'00"E, 78.83' to a point; thence S86°25'14"E, 33.05' to a point; thence N79°11'30"E, 445.19' to a point; thence N48°13'38"E, 50.09' to a point; thence N22°54'33"E, 74.47' to a point; thence S87°24'13"E, 584.86' to a point; thence N19°40'32"E, 59.76' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 280.51' and a Direction of N34°33'25"E, 277.37' to a point; thence N49°26'19"E, 244.69' to a point; thence a curve to the Left having a Radius of 25.00', a Length of 38.27' and a Direction of N05°35'05"E, 34.64' to a point; thence N49°26'19"E, 50.04' to a point; thence a curve to the Right having a Radius of 25.00', a Length of 38.27' and a Direction of S86°42'27"E, 34.64' to a point; thence N49°26'19"E, 55.76' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 288.86' and a Direction of N36°48'17"E, 286.52' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 13.10' and a Direction of N22°43'53"W, 11.68' to a point; thence N69°38'01"W, 18.54' to a point; thence N24°32'45"E, 50.21' to a point; thence S69°38'01"E, 15.90' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 12.85' and a Direction of N64°20'28"E, 11.51' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 710.34' and a Direction of N12°45'08"W, 676.04' to a point; thence N43°49'14"W, 349.36' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 161.66' and a Direction of N35°14'40"W, 161.05' to a point; thence N33°53'34"W, 32.27' to a point; thence a curve to the Right having a Radius of 545.00', a Length of 131.00' and a Direction of N16°24'52"W, 130.68' to a point; thence N09°31'44"W, 39.04' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.64' and a Direction of N56°17'17"W, 29.14' to a point; thence N17°01'28"W, 70.37' to a point; thence a curve to the Left having a Radius of 35.00', a Length of 57.08' and a Direction of N63°44'30"W, 50.96' to a point; thence a curve to the Left having a Radius of 899.85', a Length of 59.13' and a Direction of S67°39'31"W, 59.12' to a point; thence N24°13'25"W, 100.00' to a point; thence a curve to the Right having a Radius of 1,000.00', a Length of 48.98' and a Direction of N67°10'47"E, 48.98' to a point; thence S87°58'54"E, 49.66' to a point; thence S87°58'17"E, 130.39' to a point; thence S09°31'44"E, 28.27' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 30.32' and a Direction of S52°57'16"E, 27.50' to a point; thence a curve to the Right having a Radius of 1,005.00', a Length of 79.07' and a Direction of N85°52'26"E, 79.05' to a point; thence N88°07'40"E, 207.65' to a point; thence a curve to the Left having a Radius of 880.00', a Length of 299.33' and a Direction of N78°22'59"E, 297.89' to a point; thence S87°54'41"E, 25.01' to a point; thence N66°41'16"E, 199.17' to a point; thence S24°31'49"E, 95.91' to a point; thence S65°28'11"W, 172.84' to a point; thence a curve to the Right having a Radius of 990.00', a Length of 391.50' and a Direction of S76°47'55"W, 388.96' to a point; thence S88°15'11"W, 158.83' to a point; thence S82°47'37"W, 110.66' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.23' and a Direction of S36°37'57"W, 28.85' to a point; thence S09°31'44"E, 31.05' to a point; thence a curve to the Left having a Radius of 475.00', a Length of 114.32' and a Direction of S16°25'26"E, 114.05' to a point; thence S14°55'06"E, 28.54' to a point; thence a curve to the Left having a Radius of 480.01', a Length of 143.51' and a Direction of S35°15'20"E, 142.97' to a point; thence S43°49'14"E, 349.36' to a point; thence a curve to the Right having a Radius of 715.00', a Length of 674.37' and a Direction of S16°48'02"E, 649.65' to a point; thence S87°28'46"E, 195.69' to a point; thence S87°28'09"E, 1,310.85' to a point; thence S87°31'29"E, 16.61' to a point; thence S24°36'54"W, 730.39' to a point; thence a curve to the Right having a Radius of 1097.98', a Length of 143.09' and a Direction of S49°31'31"E, 142.99' to a point; thence S45°47'31"E, 153.36' to a point; thence a curve to the Right having a Radius of 880.00', a Length of 231.46' and a Direction of S53°15'39"E, 230.79' to a point; thence S45°47'31"W, 376.61' to a point; thence S35°44'56"W, 30.33' to a point; thence S35°44'56"W, 30.33' to a point; thence N45°47'31"W, 385.60' to a point; thence a curve to the Left having a Radius of 820.00', a Length of 90.03' and a Direction of N48°52'15"E, 89.98' to a point; thence S66°31'41"W, 375.96' to a point; thence N81°31'47"W, 861.72' to a point; thence N81°28'50"W, 149.98' to a point; thence N81°33'25"W, 56.41' to a point; thence N81°44'30"W, 219.28' to a point; thence S19°51'42"W, 340.91' to a point; thence N70°08'18"W, 585.61' to a point; thence S03°40'12"W, 844.63' to a point; thence S03°03'45"W, 587.47' to a point; thence S89°39'02"E, 205.00' to a point; thence N00°17'07"E, 209.76' to a point; thence S89°42'53"E, 210.00' to a point; thence S00°17'07"W, 210.00' to a point; thence S85°26'31"E, 434.14' to a point; thence S56°32'07"W, 821.71' to a point; thence S02°53'36"W, 73.32' to a point; thence N77°53'40"W, 922.38' to a point;

said Iron Pipe being the Point of Beginning.
Said Annexation contains 4,415,090 square feet / 101.356 acres, more or less.

Easement Line Table		
Line #	Direction	Length
E90	S05°16'12"W	110.52
E91	S65°28'11"W	57.62
E92	N05°16'12"E	111.92
E93	N66°41'16"E	56.94
E95	S01°32'39"W	36.51
E96	S66°43'25"W	562.77
E97	N87°54'57"W	683.87
E98	N87°58'54"W	110.69
E99	N01°20'12"E	50.18
E100	S87°54'41"E	759.44
E101	N66°41'16"E	529.20
E102	S88°26'17"E	65.92
E103	S81°44'30"E	54.38
E104	N05°16'12"E	1024.00
E105	S87°27'56"E	50.06
E106	S05°16'12"W	1029.00
E107	N81°44'30"W	50.07
E108	N45°47'31"W	767.73
E109	N85°20'31"W	494.97
E110	N04°39'29"E	60.00
E111	S85°20'31"E	494.97
E112	S45°47'31"E	758.81
E114	N04°45'16"E	317.54
E115	N19°40'04"E	280.91
E116	S00°17'07"W	150.66
E117	S19°40'04"W	132.24
E118	S04°45'16"W	271.62
E119	S56°32'07"W	63.64
E120	N56°32'07"E	159.14

Curve Table						
Curve #	Radius	Length	Delta	Direction	Chord	Tangent
C1	540.00	280.51	029°45'47"	N34°33'25"E	277.37	143.50
C2	25.00	38.27	087°42'27"	N05°35'05"E	34.64	24.02
C3	25.00	38.27	087°42'27"	S86°42'27"E	34.64	24.02
C4	655.00	288.86	025°16'04"	N36°48'17"E	286.52	146.82
C5	8.00	13.10	093°48'15"	N22°43'53"W	11.68	8.55
C6	8.00	12.85	092°03'02"	N64°20'28"E	11.51	8.29
C7	655.00	710.34	062°08'11"	N12°45'08"W	676.04	394.63
C8	540.00	161.66	017°09'08"	N35°14'40"W	161.05	81.44
C9	545.00	131.00	013°46'17"	N16°24'52"W	130.68	65.81
C10	20.00	32.64	093°31'06"	N56°17'17"W	29.14	21.27
C11	35.00	57.08	093°26'04"	N63°44'30"W	50.96	37.16
C12	899.85	59.13	003°45'54"	S67°39'31"W	59.12	29.58
C13	1000.00	48.98	002°48'24"	N67°10'47"E	48.98	24.50
C14	20.00	30.32	086°51'05"	S52°57'16"E	27.50	18.93
C15	1005.00	79.07	004°30'28"	N85°52'26"E	79.05	39.56
C16	880.00	299.33	019°29'22"	N78°22'59"E	297.89	151.13
C17	990.00	391.50	022°39'29"	S76°47'55"W	388.96	198.34
C18	20.00	32.23	092°19'21"	S36°37'57"W	28.85	20.83
C19	475.00	114.32	013°47'24"	S16°25'26"E	114.05	57.44
C20	480.01	143.51	017°07'47"	S35°15'20"E	142.97	72.29
C21	715.00	674.37	054°02'25"	S16°48'02"E	649.65	364.63
C28	1097.98	143.09	007°28'00"	S49°31'31"E	142.99	71.65
C29	880.00	231.46	015°04'12"	S53°15'39"E	230.79	116.40
C30	820.00	90.03	006°17'26"	N48°52'15"W	89.98	45.06

Easement Curve Table						
Curve #	Radius	Length	Delta	Direction	Chord	Tangent
EC23	1070.35	411.40	022°01'20"	N56°49'40"W	408.87	208.27
EC24	1065.04	325.80	017°31'38"	N76°36'09"W	324.53	164.18
EC25	1127.96	344.10	017°28'44"	S76°36'09"E	342.77	173.40
EC26	1127.99	434.53	022°04'18"	S56°49'40"E	431.85	219.99

Line Table			Line Table		
Line #	Direction	Length	Line #	Direction	Length
L1	N02°44'07"E	994.82	L45	N33°53'34"W	32.27
L2	N86°50'22"W	258.73	L46	N09°31'44"W	39.04
L3	N39°30'30"E	26.26	L47	N17°01'28"W	70.37
L4	N23°42'22"W	35.95	L48	N24°13'25"W	100.00
L5	N13°54'09"E	79.15	L49	S87°58'54"E	49.66
L6	N17°33'13"W	18.56	L50	S87°58'17"E	130.39
L7	N67°29'17"E	37.85	L51	S09°31'44"E	28.27
L8	N02°16'21"W	22.18	L52	N88°07'40"E	207.65
L9	N70°27'02"W	29.99	L53	S87°54'41"E	25.01
L10	N44°05'42"W	39.31	L54	N66°41'16"E	199.17
L11	N13°50'46"E	28.19	L55	S24°31'49"E	95.91
L12	N66°20'10"E	26.21	L56	S65°28'11"W	172.84
L13	N16°14'26"E	42.75	L57	S88°15'11"W	158.83
L14	N42°08'44"E	49.37	L58	S82°47'37"W	110.66
L15	N12°33'20"W	47.21	L59	S09°31'44"E	31.05
L16	S89°48'05"W	27.39	L60	S14°55'06"E	28.54
L17	N47°19'12"W	39.00	L61	S43°49'14"E	349.36
L18	N17°31'45"E	67.92	L62	S87°28'46"E	195.69
L19	S52°16'45"E	28.62	L63	S87°28'09"E	1310.85
L20	N53°21'20"E	14.91	L64	S87°31'29"E	16.61
L21	N12°12'41"E	91.90	L65	S24°36'54"W	730.39
L22	N02°59'42"W	51.52	L66	S45°47'31"E	153.36
L23	N59°30'21"W	62.80	L67	S45°47'31"E	376.61
L24	S39°54'45"W	52.49	L68	S35°44'56"W	30.33
L25	S81°30'52"W	18.15	L69	S35°44'56"W	30.33
L26	N37°30'45"W	51.54	L70	N45°47'31"W	385.60
L27	N14°00'20"W	81.92	L71	S66°31'41"W	375.96
L28	N41°47'32"E	23.66	L72	N81°31'47"W	861.72
L29	N31°38'22"W	1.96	L73	N81°28'50"W	149.98
L30	N09°34'30"W	39.41	L74	N81°33'25"W	56.41
L31	N04°27'00"E	78.83	L75	N81°44'30"W	219.28
L32	S86°25'14"E	33.05	L76	S19°51'42"W	340.91
L33	N79°11'30"E	445.19	L77	N70°08'18"W	585.61
L34	N48°13'38"E	50.09	L78	S03°40'12"W	844.63
L35	N22°54'33"E	74.47	L79	S03°03'45"W	587.47
L36	S87°24'13"E	584.86	L80	S89°39'02"E	205.00
L37	N19°40'32"E	59.76	L81	N00°17'07"E	209.76
L38	N49°26'19"E	244.69	L82	S89°42'53"E	210.00
L39	N49°26'19"E	50.04	L83	S00°17'07"W	210.00
L40	N49°26'19"E	55.76	L84	S85°26'31"E	434.14
L41	N69°38'01"W	18.54	L85	S56°32'07"W	821.71
L42	N24°32'45"E	50.21	L86	S02°53'36"W	73.32
L43	S69°38'01"E	15.90	L87	N77°53'40"W	922.38
L44	N43°49'14"W	349.36			



UNLESS THIS MAP IS SIGNED AND SEALED BY THE SURVEYOR IN CHARGE, THIS MAP IS CONSIDERED PRELIMINARY AND NOT TO BE USED FOR RECORDING, CONVEYANCE OR SALES



Bateman Civil Survey Company
Engineers • Surveyors • Planners
2524 Reliance Ave., Apex, NC 27539
Phone: 919.577.1080 Fax: 919.577.1081
NCBELS FIRM No. C-2376

OWNER

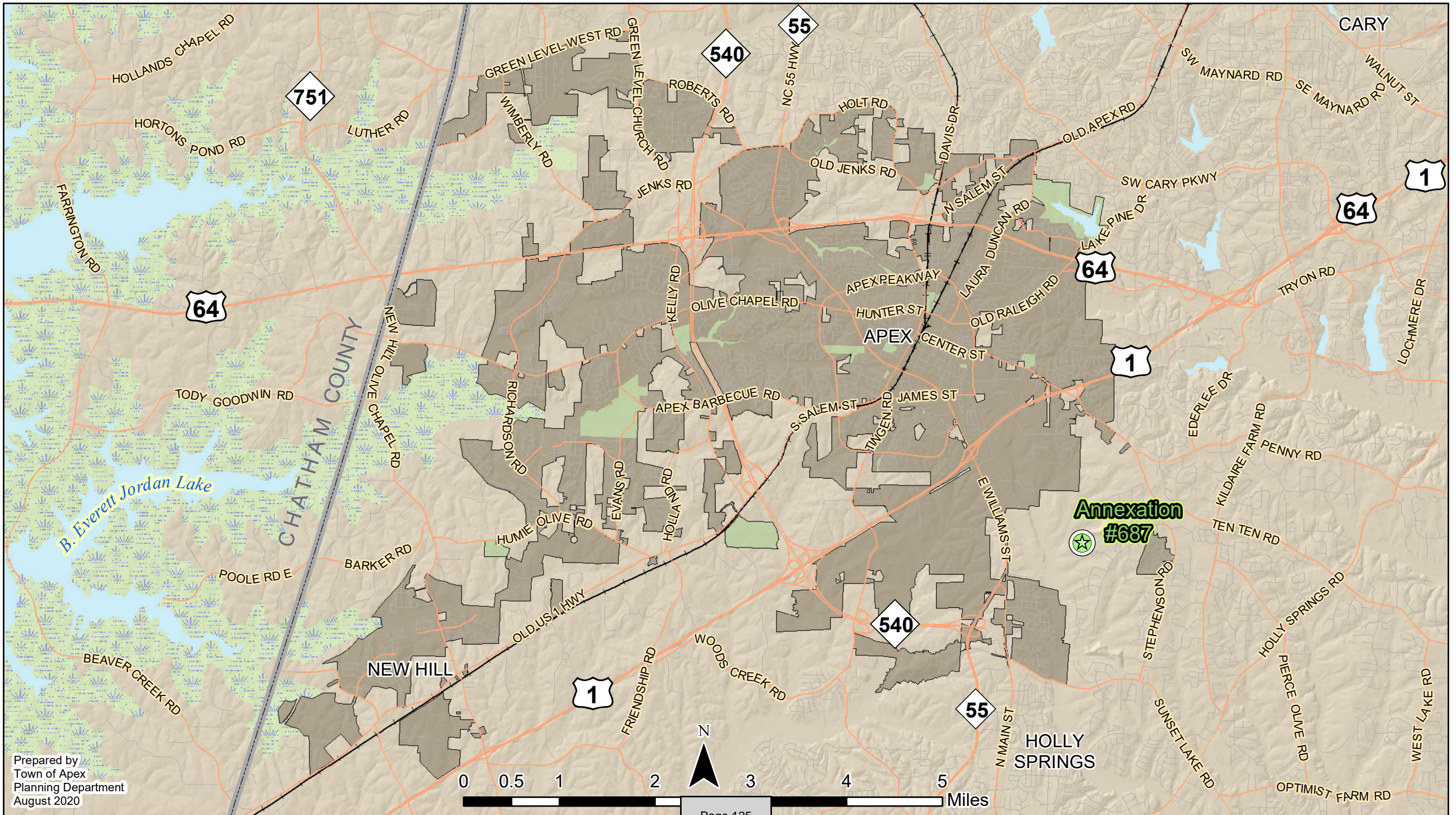
MFW INVESTMENTS LLC
114 BIRKLANDS DRIVE
CARY, NORTH CAROLINA, 27518

ANNEXATION MAP
FOR THE TOWN OF APEX
APEX, NC, WAKE COUNTY, WHITE OAK TOWNSHIP
REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588,
0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

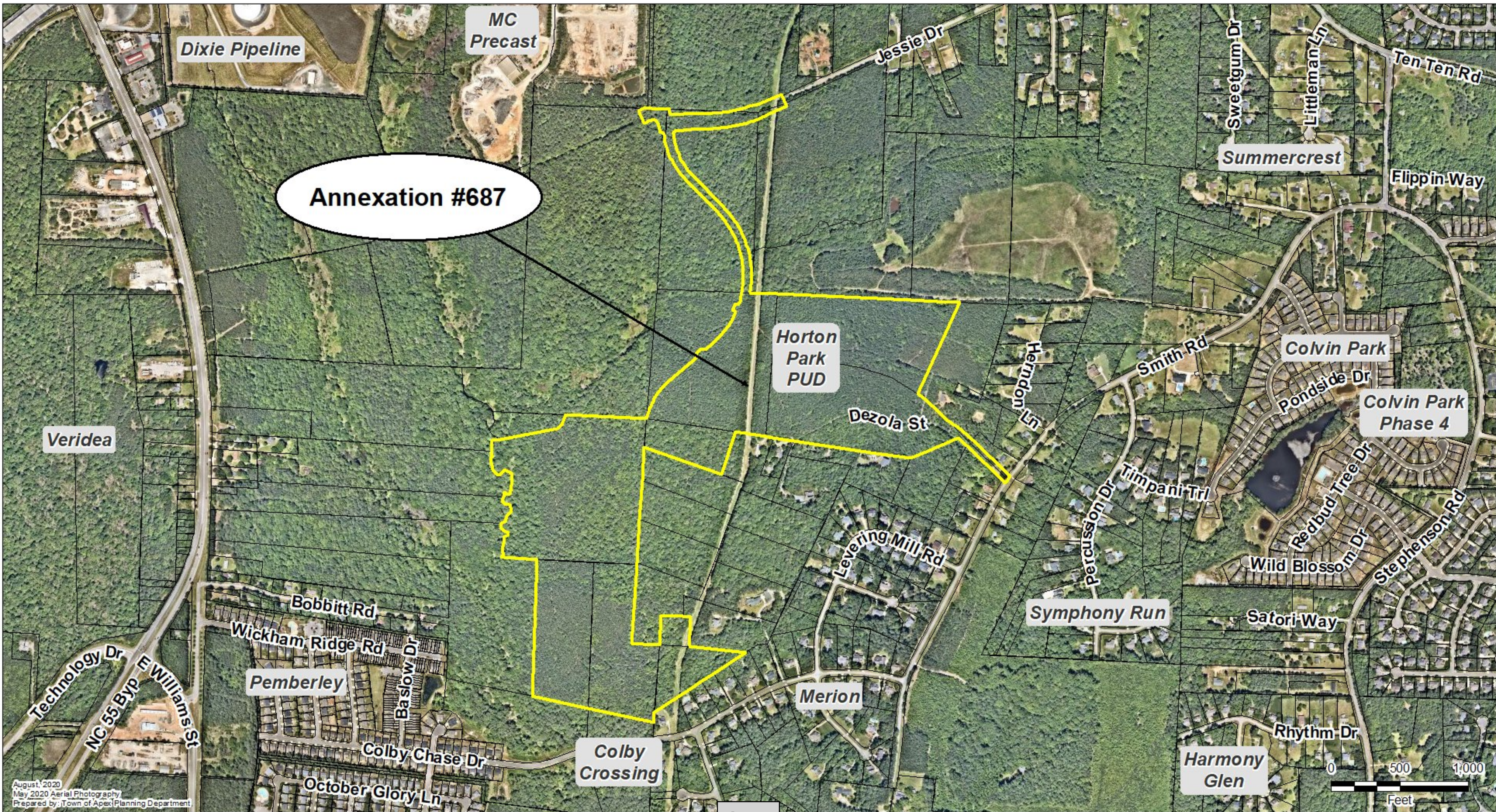
Designed By: N/A
Drawn By: JCH
Checked By: JWB
Scale:
Date: 03/24/2020
Project #: 180585

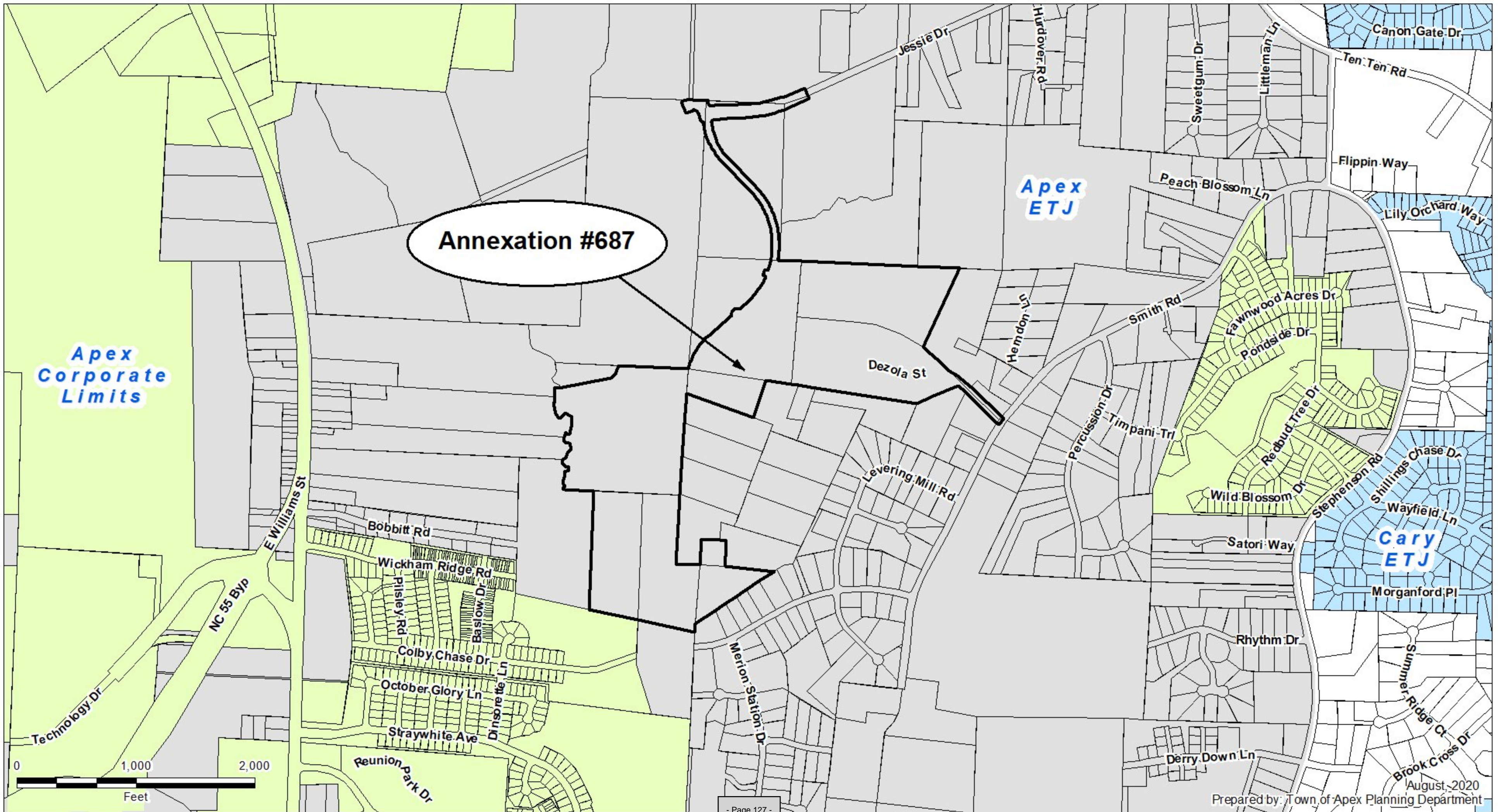
SHEET
7 OF 7

- Page 124 -

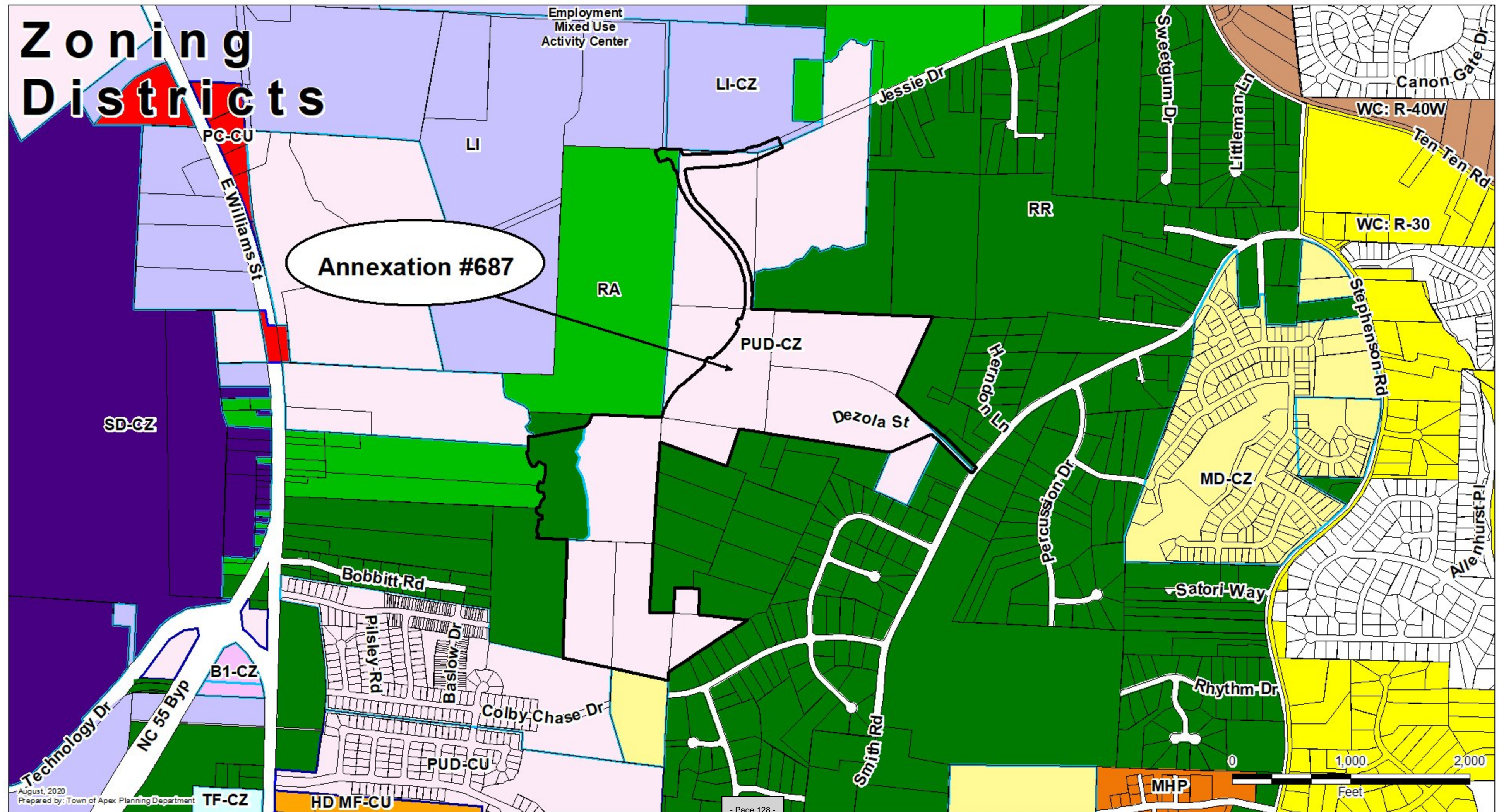


Prepared by
Town of Apex
Planning Department
August 2020





Zoning Districts





Bateman Civil Survey Company, PC
2524 Reliance Avenue
Apex, NC 27539

Phone: (919) 577-1080
Fax: (919) 577-1081
info@batemancivilsurvey.com

Annexation Legal Description for REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135

All that certain parcels of land, situated in Apex, Wake County, North Carolina, being known as REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, Wake County Records, and being more particularly described as follows:

Beginning at an Iron Pipe found at the South West property corner of MFW Investments LLC (REID 0033171, DB 17139, PG 745), Wake County Records and South East property corner of Kimberly A & Loomis Horton III (REID 0094319, DB 16-E, PG 969), Wake County records and being designated as the Point of Beginning as shown on map made by Bateman Civil Survey Company, dated 3/24/2020 and entitled "Annexation Map for the Town of Apex" Apex, NC, Wake County, White Oak Township, REID# 0099938, 0463860, 0034313, 0012276, 0434123, 0449641, 0457588, 0040550, 0203126, 0033171, 0033292, 0089614 & 0203135, having State Plane Coordinates N:707485.663, E:2051769.272;

Thence N02°44'07"E, 994.82' to an Iron Pipe found; thence N86°50'22"W, 258.73' to an Iron Pipe found; thence N39°30'30"E, 26.26' to a point; thence N23°42'22"W, 35.95' to a point; thence N13°54'09"E, 79.15' to a point; thence N17°33'13"W, 18.56' to a point; thence N67°29'17"E, 37.85' to a point; thence N02°16'21"W, 22.18' to a point; thence N70°27'02"W, 29.99' to a point; thence N44°05'42"W, 39.31' to a point; thence N13°50'46"E, 28.19' to a point; thence N66°20'10"E, 26.21' to a point; thence N16°14'26"E, 42.75' to a point; thence N42°08'44"E, 49.37' to a point; thence N12°33'20"W, 47.21' to a point; thence S89°48'05"W, 27.39' to a point; thence N47°19'12"W, 39.00' to a point; thence N17°31'45"E, 67.92' to a point; thence S52°16'45"E, 28.62' to a point; thence N53°21'20"E, 14.91' to a point; thence N12°12'41"E, 91.90' to a point; thence N02°59'42"W, 51.52' to a point; thence N59°30'21"W, 62.80' to a point; thence S39°54'45"W, 52.49' to a point; thence S81°30'52"W, 18.15' to a point; thence N37°30'45"W, 51.54' to a point; thence N14°00'20"W, 81.92' to a point; thence N41°47'32"E, 23.66' to a point; thence N31°38'22"W, 1.96' to a point; thence N09°34'30"W, 39.41' to a point; thence N04°27'00"E, 78.83' to a point; thence S86°25'14"E, 33.05' to a point; thence N79°11'30"E, 445.19' to a point; thence N48°13'38"E, 50.09' to a point; thence N22°54'33"E, 74.47' to a point; thence S87°24'13"E, 584.86' to a point; thence N19°40'32"E, 59.76' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 280.51' and a Direction of N34°33'25"E, 277.37' to a point; thence N49°26'19"E, 244.69' to a point; thence a curve to the Left having a Radius of 25.00', a

Length of 38.27' and a Direction of N05°35'05"E, 34.64' to a point; thence N49°26'19"E, 50.04' to a point; thence a curve to the Right having a Radius of 25.00', a Length of 38.27' and a Direction of S86°42'27"E, 34.64' to a point; thence N49°26'19"E, 55.76' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 288.86' and a Direction of N36°48'17"E, 286.52' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 13.10' and a Direction of N22°43'53"W, 11.68' to a point; thence N69°38'01"W, 18.54' to a point; thence N24°32'45"E, 50.21' to a point; thence S69°38'01"E, 15.90' to a point; thence a curve to the Left having a Radius of 8.00', a Length of 12.85' and a Direction of N64°20'28"E, 11.51' to a point; thence a curve to the Left having a Radius of 655.00', a Length of 710.34' and a Direction of N12°45'08"W, 676.04' to a point; thence N43°49'14"W, 349.36' to a point; thence a curve to the Right having a Radius of 540.00', a Length of 161.66' and a Direction of N35°14'40"W, 161.05' to a point; thence N33°53'34"W, 32.27' to a point; thence a curve to the Right having a Radius of 545.00', a Length of 131.00' and a Direction of N16°24'52"W, 130.68' to a point; thence N09°31'44"W, 39.04' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.64' and a Direction of N56°17'17"W, 29.14' to a point; thence N17°01'28"W, 70.37' to a point; thence a curve to the Left having a Radius of 35.00', a Length of 57.08' and a Direction of N63°44'30"W, 50.96' to a point; thence a curve to the Left having a Radius of 899.85', a Length of 59.13' and a Direction of S67°39'31"W, 59.12' to a point; thence N24°13'25"W, 100.00' to a point; thence a curve to the Right having a Radius of 1,000.00', a Length of 48.98' and a Direction of N67°10'47"E, 48.98' to a point; thence S87°58'54"E, 49.66' to a point; thence S87°58'17"E, 130.39' to a point; thence S09°31'44"E, 28.27' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 30.32' and a Direction of S52°57'16"E, 27.50' to a point; thence a curve to the Right having a Radius of 1,005.00', a Length of 79.07' and a Direction of N85°52'26"E, 79.05' to a point; thence N88°07'40"E, 207.65' to a point; thence a curve to the Left having a Radius of 880.00', a Length of 299.33' and a Direction of N78°22'59"E, 297.89' to a point; thence S87°54'41"E, 25.01' to a point; thence N66°41'16"E, 199.17' to a point; thence S24°31'49"E, 95.91' to a point; thence S65°28'11"W, 172.84' to a point; thence a curve to the Right having a Radius of 990.00', a Length of 391.50' and a Direction of S76°47'55"W, 388.96' to a point; thence S88°15'11"W, 158.83' to a point; thence S82°47'37"W, 110.66' to a point; thence a curve to the Left having a Radius of 20.00', a Length of 32.23' and a Direction of S36°37'57"W, 28.85' to a point; thence S09°31'44"E, 31.05' to a point; thence a curve to the Left having a Radius of 475.00', a Length of 114.32' and a Direction of S16°25'26"E, 114.05' to a point; thence S14°55'06"E, 28.54' to a point; thence a curve to the Left having a Radius of 480.01', a Length of 143.51' and a Direction of S35°15'20"E, 142.97' to a point; thence S43°49'14"E, 349.36' to a point; thence a curve to the Right having a Radius of 715.00', a Length of 674.37' and a Direction of S16°48'02"E, 649.65' to a point; thence S87°28'46"E, 195.69' to a point; thence S87°28'09"E, 1,310.85' to a point; thence S87°31'29"E, 16.61' to a point; thence S24°36'54"W, 730.39' to a point; thence a curve to the Right having a Radius of 1097.98', a Length of 143.09' and a Direction of S49°31'31"E, 142.99' to a point; thence S45°47'31"E, 153.36' to a point; thence a curve to the Right having a Radius of 880.00', a Length of 231.46' and a Direction of S53°15'39"E, 230.79' to a point; thence S45°47'31"W, 376.61' to a point; thence S35°44'56"W, 30.33' to a point; thence S35°44'56"W, 30.33' to a point; thence N45°47'31"W, 385.60' to a point; thence a curve to the Left having a Radius of 820.00', a Length of 90.03' and a Direction of N48°52'15"E, 89.98' to a point; thence

S66°31'41"W, 375.96' to a point; thence N81°31'47"W, 861.72' to a point; thence N81°28'50"W, 149.98' to a point; thence N81°33'25"W, 56.41' to a point; thence N81°44'30"W, 219.28' to a point; thence S19°51'42"W, 340.91' to a point; thence N70°08'18"W, 585.61' to a point; thence S03°40'12"W, 844.63' to a point; thence S03°03'45"W, 587.47' to a point; thence S89°39'02"E, 205.00' to a point; thence N00°17'07"E, 209.76' to a point; thence S89°42'53"E, 210.00' to a point; thence S00°17'07"W, 210.00' to a point; thence S85°26'31"E, 434.14' to a point; thence S56°32'07"W, 821.71' to a point; thence S02°53'36"W, 73.32' to a point; thence N77°53'40"W, 922.38' to a point;

said Iron Pipe being the Point of Beginning.

Said Annexation contains 4,415,090 square feet / 101.356 acres, more or less.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter(s): Patrick Lechner, Facilities & Grounds Manager

Department(s): Facility Services

Requested Motion

Motion to approve and authorization for the Town Manager to sign three year contract agreements with: Gregory Poole Generator inspection/maintenance

Approval Recommended?

Yes

Item Details

Contracts are for as needed annual Generator inspections, Load bank and Automated Transfer Switch Testing.

Attachments: Gregory Poole

- Gregory Poole 3yr MSA
- Routing Sheet
- W9
- Copy of Insurance
- Testing Quote



STATE OF NORTH CAROLINA

Contract Identification # 2021-0031

COUNTY OF WAKE

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT is entered into this the ____ day of _____, 2020, by and between, Gregory Poole Equipment Company, a North Carolina Corporation with its principal business offices located at 4807 Beryl Rd. Raleigh NC, 27606 (the "Contractor"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town"). Town and Contractor may collectively be referred to as "Parties" hereinafter.

WITNESSETH:

WHEREAS, Town, is engaged in the operation of backup power supply, which from time to time requires the testing, inspections, repairs or replacement of generators that are outside the Town of Apex facilities staff abilities; and

WHEREAS, the professional services of outside firms or consultants and/or others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, Contractor provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, the Parties contemplate that the services of the Contractor will be performed in various stages in accordance with separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Services Agreement rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties acknowledge and agree that this Agreement shall act as a base agreement under which the Parties can enter into multiple specific transactions by executing a Purchase Order and written confirmation to proceed pursuant to a Scope of Services and/or rate sheet; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Contractor to being available to perform services until a Scope of Services is submitted, and does not preclude the Town from hiring other vendors or contractors to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

1. SCOPE OF SERVICES.

The Contractor agrees to perform for the Town the following general services when requested by the Town: Generator testing, inspecting, repairing or replacement.

When service is requested by the Town, Contractor shall provide a cost estimate based on the attached rate sheet and a detailed Scope of Services that shall be governed by the terms of this Agreement. The Scope of Services shall reference this Agreement and this Agreement shall be incorporated into and made a part of the scope of services whether or not expressly incorporated by reference in the Scope of Services.

In the event of a conflict between the terms of a Scope of Services, quote, or estimate and this Agreement, this Agreement shall control.

2. SPECIFICATIONS.

Upon request by the Town, Contractor will provide plans and specifications prior to engaging in any services under this Agreement. Contractor hereby acknowledges that it is fully licensed to perform the work contemplated by this Agreement. In the event of a conflict between the provided plans and specifications and this Agreement, this Agreement shall control.

3. TIME OF COMMENCEMENT AND COMPLETION.

This Agreement shall terminate on June 30th, 2023 unless terminated sooner in accordance with the terms of this Agreement. Contractor shall commence and complete the work required by this Agreement in accordance with the dates provided in the Scope of Services as agreed upon by the Parties. Contractor shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Contractor shall not begin any work pursuant to this Agreement or a Scope of Services until written confirmation has been provided by the Town. The Parties hereby agree that written confirmation may be provided through electronic communication from the Town. If Contractor has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Scope of Services must be agreed to in writing by the Town and the Contractor.

4. CONSIDERATION AND PAYMENT OF SERVICES.

In consideration of the above services, the Town will pay the Contractor the amount authorized by the issued Purchase Order corresponding to the agreed upon Scope of Services and the attached rate sheet. As services are agreed upon pursuant to this Agreement and the associated Scopes of Service, Contractor will invoice the Town for work performed. Town has the right to require the Contractor to produce for inspection all of Contractor's records and charges to verify the accuracy of all invoices. Town shall pay Contractor's invoices within thirty (30) days of

receipt unless a bona fide dispute exists between Town and Contractor concerning the accuracy of said invoice or the services covered thereby.

5. INDEMNIFICATION.

To the extent permitted by law, the Contractor 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 Contractor.

6. APPLICABILITY OF LAWS AND REGULATIONS.

The Contractor shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

7. E-VERIFY COMPLIANCE.

The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Contractor shall require all of the Contractor's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

8. QUALITY AND WORKMANSHIP.

All work shall be performed to the satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Contractor shall provide services in accordance with all federal, state and local law and in accordance with all governing agency regulations and shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina.

9. INSURANCE.

The Contractor 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 contractor shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000. The Contractor 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 Contractor 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.

10. PRE-PROJECT SAFETY REVIEW MEETING.

If requested by the Town, the Contractor shall attend a pre-project safety review meeting with the contacting Department Head and Supervisors and Safety and Risk Manager prior to the start of work.

11. DEFAULT.

In the event of substantial failure by Contractor to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Contractor upon seven (7) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this Agreement.

12. TERMINATION FOR CONVENIENCE.

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Contractor. Contractor shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Contractor for all services satisfactorily performed.

13. NOTICE.

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO CONTRACTOR: Gregory Poole
Attn: Christy Hamilton, Contract Services
Gregory Poole Equipment Co. 4807
Beryl RD. Raleigh NC, 27606
christy.hamilton@gregpoole.com

TO TOWN: Town of Apex
Attention: Patrick Lechner
PO Box 250
Apex, NC 27502
Patrick.lechner@apexnc.org

14. DELAY BEYOND THE CONTROL OF THE PARTIES.

Neither Contractor nor Town 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 fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

15. NONWAIVER FOR BREACH.

No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

16. CONSTRUCTION.

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

17. NO REPRESENTATIONS.

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

18. SEVERABILITY.

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

19. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

20. MODIFICATION.

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

21. BINDING EFFECT.

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

22. ASSIGNMENT.

Contractor shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Contractor from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Contractor in the performance of services rendered.

23. INDEPENDENT CONTRACTOR.

Contractor is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Contractor shall be wholly responsible for the methods, means and techniques of performance.

24. NON-APPROPRIATION.

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town are from appropriations and monies from the Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

25. IRAN DIVESTMENT ACT CERTIFICATION.

N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement the Contractor hereby certifies that the Contractor is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Contractor will not utilize any subcontractors found on the Final Divestment List.

26. ANTI-HUMAN TRAFFICKING.

The Contractor warrants and agrees that no labor supplied by the Contractor or the Contractor'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.

27. 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 thereof, the contracting parties, by their authorized agents, affix their signatures and seals this ____ day of _____, 2019.

Contractor

Name: Gregory Poole Equipment Company

By: [Signature]
(Signature)

Title: Asst. Secretary

Attest: [Signature]
(Secretary, if a corporation)

Town of Apex

Andrew L. Havens, Town Manager

Attest: _____
Town Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director

CONTRACT ROUTING CONTROL SHEET

Routing Order: (1) Department Director, (2) Purchasing and Contract Manager (3) Legal,
(4) Risk Manager, (5) Vendor for Signature (6) Finance Director, (7) Town Clerk, (8) Town Council/Town Manager

EVERY SECTION MUST BE COMPLETED

DEPARTMENT: Public Works and Transportation	
Department Contact Person for Contract: Patrick Lechner Extension: 3534	
Contractor/Vendor Name and address: Gregory Poole Equipment Company, 4807 Beryl Rd., Raleigh NC. 27606	
Contractor/Vendor Phone: Contractor/Vendor Contact Person: 919.775.7047 Christy Hamilton	
Purpose of Contract: 3 year term for Generator inspections, repairs, replacement and testing.	
Amount: \$31,171.73 est per year Budget Code: 10-5000-44500	
Type of Contract: <input type="checkbox"/> New <input checked="" type="checkbox"/> Renew <input type="checkbox"/> Amendment Exhibits/Attachments included: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A	
Department Director's Signature: <u>Jose F. Martinez III</u> Date: 8-25-20	
All Contracts should be sent to the Purchasing and Contract Manager (Steve Maynard). Steve will determine whether the contract will need to go to the Legal Department for review or not.	
LEGAL	
Reviewed by: Steve Maynard Date: 8/25/2020	
Comments: 3 year term. Patrick Lechner will submit agenda.	
<input checked="" type="checkbox"/> Town Council approval required <input type="checkbox"/> Town Manager authorized to approve	
<input type="checkbox"/> N/A – Purchasing and Contract Manager to forward	
<input type="checkbox"/> Other Approvals required/permitted:	
RISK MANAGER	
Reviewed by and approved: Steve Maynard Date: _____	
<input type="checkbox"/> N/A – Purchasing and Contract Manager to forward	
<input checked="" type="checkbox"/> Insurance specifications meet requirements.	
<input type="checkbox"/> Insurance specifications have been revised.	
<input type="checkbox"/> A pre-project safety review between the contractor and contracting department is required.	
Return to Department Contact Person to have contract signed by Contractor prior to forwarding to Finance Director	
Obtain a copy of Certificate of Insurance that includes the proper coverage and shows the Town as an additional insured	
FINANCE DIRECTOR	
<input type="checkbox"/> Sufficient funds are available in the proper category to pay for this expenditure.	
<input type="checkbox"/> This contract is conditioned upon appropriation by the Town Council of sufficient funds.	
<input type="checkbox"/> A budget amendment is necessary before this agreement is approved.	
<input type="checkbox"/> A budget amendment is attached as required for approval of this agreement.	
Finance Director: _____ Date: ____/____/20__	
TOWN CLERK	
Date Received: ____/____/20__ Signed by Contractor: <input type="checkbox"/> YES <input type="checkbox"/> NO--Return to Department	
Council Action Required: – forward to Town Manager Agenda Date: ____/____/20__	
Approved by Council: <input type="checkbox"/> YES <input type="checkbox"/> NO	
TOWN MANAGER	
This document has been reviewed and approval is recommended by the Town Manager: <input type="checkbox"/> YES <input type="checkbox"/> NO	
Town Manager: _____ Date: ____/____/20__	
After approval and signatures, contract will be sent to the Purchasing and Contracts Manager who will return it to the Department Contact Person for Department to administer.	
Scan signed contract to Department contracts folder (include Routing Sheet and copy of Certificate of Insurance)	

Quotation No: **PME439288413**

CH

C001317

Town Of Apex

Fire/ems Station 5

Apex, NC. 27502

315 W Williams St

Contract Date: **April 7, 2020**

Contract Rep: **Casey Dunlap**

Phone No: **(919) 755-7045**

Email: **casey.dunlap@gregpoole.com**



Contact: **PATRICK SPRINGLE**

Phone No: **(919) 723-0690**

E-Mail: **PATRICK.SPRINGLE@APEXNC.ORG**

Maintenance Agreement Start Date: **July 1, 2020**

Coverage Years: **1**

Site/Job Specific Requirements (Check all that apply)

- ☐ Site Considerations / Safety Training
☐ Fluid Handling Requirements / MSDS
☐ Terms and Conditions (Required)
☐ Third Party Invoicing

Scheduling Preference:

- ☒ Regular Time ☐ Over Time ☐ Premium Time
Weekday Hours Evenings & Saturdays Sundays & Holidays

Total Price for Generator/Engine Services **\$15,619.20**

Total Price for ATS/Switchgear Services **\$5,855.09**

Total Price for Loadbanks **\$9,697.43**

Total Price for Additional Services **\$0.00**

Total Estimate (Year Price) **\$31,171.73**

Includes Estimated Taxes

Agreement Notes:

Effective with the date of this agreement, Gregory Poole Power Systems is authorized to perform Scheduled Programmed Maintenance as outlined in the applicable PM checklists. This agreement covers parts, labor, and fluids to provide maintenance services at various interval levels (PM level I and PM level II inspection). These services are provided for a charge as listed above per unit / equipment from Gregory Poole Power Systems Maintenance Services Pricing Schedule. All travel charges are included in the PM pricing. If repairs or adjustments are necessary, Gregory Poole Power Systems will advise and secure customer's permission before proceeding with repairs. If a customer requests an estimate before repairs are made, prices will be provided. Travel time and mileage will be charged if additional trips are necessary. Charges for labor and parts for additional services will be billed at rates in effect at the time of repair.

In accepting this agreement, the customer agrees to allow Gregory Poole Power Systems personnel reasonable access to the equipment to perform the services during normal working hours. If the equipment is not released for service as previously scheduled, the trip will be charged at prevailing rates. Site safety considerations or training need to be indicated before pricing contract, or they will be billed separately. The customer can request prices to have work performed at overtime or double time rates up front in the pricing of the contract.

This agreement becomes effective upon execution by both parties and will continue in effect for the number of coverage years listed above. PO, if required, must reflect.

Oil surcharge may be added to the total flat rate amount, if prevailing rates increase greater than 25%.

Delays in performance by Gregory Poole Power Systems or its suppliers shall be excused if by natural catastrophes, strikes, or other causes beyond the control of Gregory Poole Power Systems or its suppliers. It is the ultimate responsibility of the customer to ensure that Scheduled Programmed Maintenance is performed in a timely manner by providing sufficient lead time for scheduling services at proper PM intervals. In no event shall Gregory Poole Power Systems be liable for loss of use or other consequential damages. We agree to pay Gregory Poole Power Systems for the services rendered pursuant to this agreement by cash or upon terms and conditions of our open account. Agreement may be terminated by either party upon giving sixty (60) days prior written notification at the address shown Above.

Terms and Conditions:

- Pricing for the above estimate is valid for sixty days
- Price is based on customer providing ready access to equipment for continuous, uninterrupted work. Any unusual delays not caused by Gregory Poole will be billed at the applicable Regular or Overtime Rates
- Customer provides written notification of any site-specific safety practices prior to start of work that need to be included in this estimate for additional time for site entry or application related concerns (such as security). In the absence of site- Specific safety practices, Gregory Poole will follow the safety procedures in the Gregory Poole Safety Policy and Procedure Manual
- Proposal must be approved, signed with Purchase Order (if required by your company), and returned to the location listed at the top of this quote before maintenance can be scheduled.

This agreement becomes effective upon execution by both parties and will continue in effect for the number of coverage years listed above. At the end of the coverage years this agreement will automatically renew, providing you with uninterrupted service. Upon reenrollment, the per visit price will be readjusted (not to exceed a 5% price increase) to the current per visit list price and guaranteed for the same number of coverage years as listed above. This renewal process will continue as stated until terminated by either party upon giving Sixty (60) days prior written notification at the address shown above.

Initial here if you are agreeing to the automatic renewal of the equipment listed on this agreement at the end of the coverage years listed above.

AUTHORIZED SIGNATURE

PO NUMBER

BY GREGORY POOLE EQUIPMENT COMPANY

Patrick Lechner

Gregory Poole Equipment Company

Services	Gregory Poole Power Systems			CSA - MAINTENANCE SERVICES PROGRAM															CAT	
	Equip Type	Make	Model	Serial No.	Unit ID#	Owner Customer Account No.	Site Location	Service Description	Service Qty Per Year	Includes Estimated Taxes			Additional Service Description	Service Qty Per Year	Includes Estimated Taxes			Total PM Annual Pricing		
										Tax	Service Cost Each	Extended Price			Tax	Service Cost Each	Extended Price			
01	Load Bank	ONA	35GGFB	E980738413	APEX EMS	C001317	Fire/ems Station 5 315 W Williams St	Load Bank Testing (2hr)	1	\$42.85	\$591.05	\$633.90						\$633.90		
02	Load Bank	GNR	20A01735-S	2056590	Community Center & Town Hall	C001309	Directly Behind Town Hall Community Center 53 Hunter St Public	Load Bank Testing (2hr)	1	\$67.25	\$927.65	\$994.90						\$994.90		
03	Load Bank	CAT	C4.4 DG	L4R00182	PW-OPS	C061456	Works/GENERATORS/Patrick Sorinole 105 Unchurch Street Public	Load Bank Testing (2hr)	1	\$52.46	\$723.65	\$776.11						\$776.11		
04	Load Bank	CMM	QSL9-G2	73541226	P&I	C061456	Works/GENERATORS/Patrick Sorinole 105 Unchurch Street Public	Load Bank Testing (2hr)	1	\$74.65	\$1,029.65	\$1,104.30						\$1,104.30		
05	Load Bank	CMM	QSL9-G2	73578632	Public Works - Admin Building	C061456	Works/GENERATORS/Patrick Sorinole 105 Unchurch Street Public	Load Bank Testing (2hr)	1	\$74.65	\$1,029.65	\$1,104.30						\$1,104.30		
06	Load Bank	CAT	D100-6	D4B02855	Fire Station 1	C001312	Fire Station 1 220 N Salem St	Load Bank Testing (2hr)	1	\$52.46	\$723.65	\$776.11						\$776.11		
07	Load Bank	CAT	C4.4 DG	L4R00183	STN2	C001313	Fire Station 2 3045 New Hill Holleman Rd	Load Bank Testing (2hr)	1	\$52.46	\$723.65	\$776.11						\$776.11		
08	Load Bank	CAT	C7.1	WG200151	STN3	C001314	Fire Station 3 736 Hunter Street	Load Bank Testing (2hr)	1	\$59.86	\$825.65	\$885.51						\$885.51		
09	Load Bank	CAT	D100-6	D4B01002	Public Safety Station 4	C001316	Public Safety Station 4 1615 E Williams St	Load Bank Testing (2hr)	1	\$52.46	\$723.65	\$776.11						\$776.11		
10	Load Bank	CAT	C18	EKW00791	Police Station	C001308	Police Station 205 Saunders St	Load Bank Testing (2hr)	1	\$126.41	\$1,743.65	\$1,870.06						\$1,870.06		
11																				
12																				
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Note: The above quoted services are your basic Programmed Maintenance Services provided by Gregory Poole Power Systems. Please note that the Operation and Maintenance Manual (OMM) requires that additional services be performed on your equipment during scheduled maintenance periods.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter(s): Patrick Lechner, Facilities & Grounds Manager

Department(s): Facility Services

Requested Motion

Motion to approve and authorization for the Town Manager to sign three-year contract agreements with FESS Fire protection

Approval Recommended?

Yes

Item Details

Contracts are for as needed work request that are out of Facilities staff ability due to time of completion, specialty equipment, current work load or a combination of the three.

Attachments: FESS Fire Protection

- FESS 3yr MSA
- Routing
- W9
- Copy of Insurance



STATE OF NORTH CAROLINA

Contract Identification # _____

COUNTY OF WAKE

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT is entered into this the ____ day of _____, 2020, by and between, **FESS Fire protection**, a **North Carolina limited liability Corporation** with its principal business offices located at **131 International Dr. Morrisville NC, 27560** (the “Contractor”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Contractor may collectively be referred to as “Parties” hereinafter.

WITNESSETH:

WHEREAS, Town, is engaged in the operation of **Fire suppression systems**, which from time to time requires the **installation, inspection, repairs, removal, testing or relocating of fire sprinkler systems as well as other projects that are outside the Town of Apex facilities staff abilities**; and

WHEREAS, the professional services of outside firms or consultants and/or others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, Contractor provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, the Parties contemplate that the services of the Contractor will be performed in various stages in accordance with separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Services Agreement rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties acknowledge and agree that this Agreement shall act as a base agreement under which the Parties can enter into multiple specific transactions by executing a Purchase Order and written confirmation to proceed pursuant to a Scope of Services and/or rate sheet; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Contractor to being available to perform services until a Scope of Services is submitted, and does not preclude the Town from hiring other vendors or contractors to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

1. SCOPE OF SERVICES.

The Contractor agrees to perform for the Town the following general services when requested by the Town: Fire suppression services, installation, replacements and inspections as needed.

When service is requested by the Town, Contractor shall provide a cost estimate based on the attached rate sheet and a detailed Scope of Services that shall be governed by the terms of this Agreement. The Scope of Services shall reference this Agreement and this Agreement shall be incorporated into and made a part of the scope of services whether or not expressly incorporated by reference in the Scope of Services.

In the event of a conflict between the terms of a Scope of Services, quote, or estimate and this Agreement, this Agreement shall control.

2. SPECIFICATIONS.

Upon request by the Town, Contractor will provide plans and specifications prior to engaging in any services under this Agreement. Contractor hereby acknowledges that it is fully licensed to perform the work contemplated by this Agreement. In the event of a conflict between the provided plans and specifications and this Agreement, this Agreement shall control.

3. TIME OF COMMENCEMENT AND COMPLETION.

This Agreement shall terminate on **August 30th, 2023** unless terminated sooner in accordance with the terms of this Agreement. Contractor shall commence and complete the work required by this Agreement in accordance with the dates provided in the Scope of Services as agreed upon by the Parties. Contractor shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Contractor shall not begin any work pursuant to this Agreement or a Scope of Services until written confirmation has been provided by the Town. The Parties hereby agree that written confirmation may be provided through electronic communication from the Town. If Contractor has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Scope of Services must be agreed to in writing by the Town and the Contractor.

4. CONSIDERATION AND PAYMENT OF SERVICES.

In consideration of the above services, the Town will pay the Contractor the amount authorized by the issued Purchase Order corresponding to the agreed upon Scope of Services and the attached rate sheet. As services are agreed upon pursuant to this Agreement and the associated Scopes of Service, Contractor will invoice the Town for work performed. Town has the right to require the Contractor to produce for inspection all of Contractor's records and charges to verify the accuracy of all invoices. Town shall pay Contractor's invoices within thirty (30) days of

receipt unless a bona fide dispute exists between Town and Contractor concerning the accuracy of said invoice or the services covered thereby.

5. INDEMNIFICATION.

To the extent permitted by law, the Contractor 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 Contractor.

6. APPLICABILITY OF LAWS AND REGULATIONS.

The Contractor shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

7. E-VERIFY COMPLIANCE.

The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Contractor shall require all of the Contractor's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

8. QUALITY AND WORKMANSHIP.

All work shall be performed to the satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Contractor shall provide services in accordance with all federal, state and local law and in accordance with all governing agency regulations and shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina.

9. INSURANCE.

The Contractor 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 contractor shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000. The Contractor 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 Contractor 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.

10. PRE-PROJECT SAFETY REVIEW MEETING.

If requested by the Town, the Contractor shall attend a pre-project safety review meeting with the contacting Department Head and Supervisors and Safety and Risk Manager prior to the start of work.

11. DEFAULT.

In the event of substantial failure by Contractor to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Contractor upon seven (7) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this Agreement.

12. TERMINATION FOR CONVENIENCE.

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Contractor. Contractor shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Contractor for all services satisfactorily performed.

13. NOTICE.

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO CONTRACTOR:
Attn: Theresa Bailey
131 International Dr.
Morrisville NC, 27560
TBailey@fessinc.net

TO TOWN: Town of Apex
Attention: Patrick Lechner
PO Box 250
Apex, NC 27502
Patrick.lechner@apexnc.org

14. DELAY BEYOND THE CONTROL OF THE PARTIES.

Neither Contractor nor Town 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 fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

15. NONWAIVER FOR BREACH.

No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

16. CONSTRUCTION.

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

17. NO REPRESENTATIONS.

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

18. SEVERABILITY.

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

19. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

20. MODIFICATION.

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

21. BINDING EFFECT.

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

22. ASSIGNMENT.

Contractor shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Contractor from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Contractor in the performance of services rendered.

23. INDEPENDENT CONTRACTOR.

Contractor is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Contractor shall be wholly responsible for the methods, means and techniques of performance.

24. NON-APPROPRIATION.

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town are from appropriations and monies from the Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

25. IRAN DIVESTMENT ACT CERTIFICATION.

N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement the Contractor hereby certifies that the Contractor is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Contractor will not utilize any subcontractors found on the Final Divestment List.

26. ANTI-HUMAN TRAFFICKING.

The Contractor warrants and agrees that no labor supplied by the Contractor or the Contractor'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.

27. 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 thereof, the contracting parties, by their authorized agents, affix their signatures and seals this ____ day of _____, 2020.

Contractor

Name: Theresa Bailey

By: Theresa Bailey
(Signature)

Title: Sales – FESS Fire Protection

Attest:

(Secretary, if a corporation)

Town of Apex

Andrew L. Havens, Town Manager

Attest:

Town Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director

CONTRACT ROUTING CONTROL SHEET

Routing Order: (1) Department Director, (2) Purchasing and Contract Manager (3) Legal,
(4) Risk Manager, (5) Vendor for Signature (6) Finance Director, (7) Town Clerk, (8) Town Council/Town Manager

EVERY SECTION MUST BE COMPLETED

DEPARTMENT: Public Works & Transportation	
Department Contact Person for Contract: <u>Patrick Lechner</u> Extension: <u>3534</u>	
Contractor/Vendor Name and address: <u>FESS Fire Protection, 131 International Drive (PO Box 1307), Morrisville, NC 27560</u>	
Contractor/Vendor Phone: <u>Contractor/Vendor Contact Person: Theresa Bailey 919.663.0400</u>	
Purpose of Contract: <u>To inspect and make repairs to the sprinkler system in the Town owned facilities as needed</u>	
Amount: <u>Various</u> Budget Code: <u>Various</u>	
Type of Contract: <input type="checkbox"/> New <input checked="" type="checkbox"/> Renew <input type="checkbox"/> Amendment Exhibits/Attachments included: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A	
Department Director's Signature: <u>Jose F. Martinez III</u> Date: <u>8-6-20</u>	
All Contracts should be sent to the Purchasing and Contract Manager (Steve Maynard). Steve will determine whether the contract will need to go to the Legal Department for review or not.	
LEGAL	
Reviewed by: _____ Date: _____	
Comments: _____	
<input type="checkbox"/> Town Council approval required <input type="checkbox"/> Town Manager authorized to approve	
<input type="checkbox"/> N/A – Purchasing and Contract Manager to forward	
<input type="checkbox"/> Other Approvals required/permitted: _____	
RISK MANAGER	
Reviewed by and approved: _____ Date: _____	
<input type="checkbox"/> N/A – Purchasing and Contract Manager to forward	
<input type="checkbox"/> Insurance specifications meet requirements.	
<input type="checkbox"/> Insurance specifications have been revised.	
<input type="checkbox"/> A pre-project safety review between the contractor and contracting department is required.	
Return to Department Contact Person to have contract signed by Contractor prior to forwarding to Finance Director	
Obtain a copy of Certificate of Insurance that includes the proper coverage and shows the Town as an additional insured	
FINANCE DIRECTOR	
<input type="checkbox"/> Sufficient funds are available in the proper category to pay for this expenditure.	
<input type="checkbox"/> This contract is conditioned upon appropriation by the Town Council of sufficient funds.	
<input type="checkbox"/> A budget amendment is necessary before this agreement is approved.	
<input type="checkbox"/> A budget amendment is attached as required for approval of this agreement.	
Finance Director: _____ Date: ____/____/20__	
TOWN CLERK	
Date Received: ____/____/20__ Signed by Contractor: <input type="checkbox"/> YES <input type="checkbox"/> NO--Return to Department	
Council Action Required: – forward to Town Manager Agenda Date: ____/____/20__	
Approved by Council: <input type="checkbox"/> YES <input type="checkbox"/> NO	
TOWN MANAGER	
This document has been reviewed and approval is recommended by the Town Manager: <input type="checkbox"/> YES <input type="checkbox"/> NO	
Town Manager: _____ Date: ____/____/20__	
After approval and signatures, contract will be sent to the Purchasing and Contracts Manager who will return it to the Department Contact Person for Department to administer.	
Scan signed contract to Department contracts folder (include Routing Sheet and copy of Certificate of Insurance)	



From **FESS Fire Protection**
 131 International Drive
 Morrisville NC 27560
 (919)663-0400
 www.fessfire.com

Quote No. **1319996**
Type Inspection
Prepared By Theresa Bailey
Created On 08/26/2020
Valid Until 09/30/2020

Quote For **Town of Apex - Facilities**
 Apex Community Center - Town of
 Apex
 53 Hunter Street
 Apex NC 27502
 (919) 249-3402

Description of Work

Patrick,

The link below will take you to the proposal for the (1) Annual, (2) Quarterly, & (1) Semi-Annual Fire Sprinkler Inspection & Testing.

(1) Wet System & (1) Fire Pump

If you would like us to schedule this work, please click the green "Approve" button in the top right corner.

If you have any questions, please feel free to call me.

The owner/owner's representative shall place alarm systems on test and restore upon completion of work.

Theresa

Sprinkler Tests & Inspections

FESS Fire Protection appreciates the opportunity to provide the following proposal for your sprinkler tests and inspections. This proposal includes the necessary labor, materials, and equipment to perform inspections at the frequency indicated below, and will be performed by qualified personnel in accordance to the most recent edition of NFPA 25. Pricing includes all BSI and Compliance Engine upload fees, if applicable.

EXCLUSIONS:

- Any Additional Work NOT Specifically Listed in the proposal
- No Draining of Low Point Drains Other Than At The Time of The Service
- Over Time And/or After-Hours Costs Weekends And/or Holidays

Services to be completed

Parts, labor, and fees	Quantity	Unit Price	Total
Annual Wet Fire Sprinkler System	1	\$175.00	\$175.00
Annual Fire Pump Flow Test and Inspection	1	\$375.00	\$375.00
Quarterly Wet Fire Sprinkler Inspection and Testing	2	\$150.00	\$300.00
Semi-Annual Wet Fire Sprinkler Inspection and Testing	1	\$150.00	\$150.00
GRAND TOTAL			\$1000.00

Terms and Conditions

ALL MATERIAL IS GUARANTEED TO BE AS SPECIFIED. ALL WORK TO BE COMPLETED IN A WORKMANLIKE MANNER ACCORDING TO STANDARD PRACTICES. ANY ALTERATION OR DEVIATION FROM THE ABOVE SPECIFICATION INVOLVING EXTRA COSTS WILL BE EXECUTED ONLY UPON WRITTEN ORDERS AND WILL BECOME AN EXTRA CHARGE OVER AND ABOVE THE ESTIMATE. ALL AGREEMENTS CONTINGENT UPON STRIKES, ACCIDENTS OR DELAYS BEYOND OUR CONTROL. OWNER TO CARRY FIRE, TORNADO AND OTHER NECESSARY INSURANCE. OUR WORKERS ARE FULLY COVERED BY WORKMAN'S COMPENSATION INSURANCE. IF PAYMENT FOR WORK PROVIDED IN THIS PROPOSAL IS NOT PAID WHEN DUE, CUSTOMER AGREES TO PAY ALL COSTS OF COLLECTION INCLUDING ATTORNEYS FEES. ANY DELAYS DURING SCOPE OF WORK CAUSING ADDITIONAL TIME ON JOB WILL BE CONSIDERED BILLABLE TIME. NO ANNUAL COST, SERVICE FEES OR COMPLIANCE ENGINE UPLOAD FEES ARE INCLUDED BUT MAYBE REQUIRED. SALES TAX MAY OR MAY NOT BE INCLUDED OR APPLY. PAYMENT TERMS DUE UPON COMPLETION UNLESS OTHERWISE AUTHORIZED IN ADVANCE. ANY DELAY WILL BE ASSESSED A 1.5% MONTHLY PENALTY & ANY OTHER COSTS

ASSOCIATED WITH COLLECTION OF OVERDUE MONEY. BY APPROVING THIS QUOTE YOU ARE AGREEING TO OUR COMPLETE LIST OF TERMS AND CONDITIONS WHICH CAN BE FOUND AT ***TERMS.FESSFIRE.COM***.

By my signature below, I authorize work to begin and agree to pay the Grand Total according to the terms and conditions of this agreement.

Name: _____ Date: _____

Signature: _____



From **FESS Fire Protection**
 131 International Drive
 Morrisville NC 27560
 (919)663-0400
 www.fessfire.com

Quote No. **1320685**
Type Inspection
Prepared By Theresa Bailey
Created On 08/26/2020
Valid Until 09/30/2020

Quote For **Town of Apex - Facilities**
 Fire Station #2 - Town of Apex
 3045 New Hill Holleman Road
 New Hill NC 27562
 (919) 249-3528

Description of Work

Patrick,

The link below will take you to the proposal for the (1) Annual, (2) Quarterly, & (1) Semi-Annual Fire Sprinkler Inspection & Testing.

(1) Wet System

If you would like us to schedule this work, please click the green "Approve" button in the top right corner.

If you have any questions, please feel free to call me.

The owner/owner's representative shall place alarm systems on test and restore upon completion of work.

Theresa

Sprinkler Tests & Inspections

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EXCLUSIONS:

- Any Additional Work NOT Specifically Listed in the proposal
- No Draining of Low Point Drains Other Than At The Time of The Service
- Over Time And/or After-Hours Costs Weekends And/or Holidays

Services to be completed

Parts, labor, and fees	Quantity	Unit Price	Total
Annual Wet Fire Sprinkler Inspection and Testing	1	\$175.00	\$175.00
Quarterly Wet Fire Sprinkler Inspection and Testing	2	\$150.00	\$300.00
Semi-Annual Wet Fire Sprinkler Inspection and Testing	1	\$150.00	\$150.00
GRAND TOTAL			\$625.00

Terms and Conditions

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By my signature below, I authorize work to begin and agree to pay the Grand Total according to the terms and conditions of this agreement.

Name: _____ Date: _____

Signature: _____



From **FESS Fire Protection**
 131 International Drive
 Morrisville NC 27560
 (919)663-0400
 www.fessfire.com

Quote No. **1320734**
Type Inspection
Prepared By Theresa Bailey
Created On 08/26/2020
Valid Until 09/30/2020

Quote For **Town of Apex - Facilities**
 Fleet Shop - Town of Apex
 105-A Upchurch Road
 Apex NC 27502
 (919) 249-3528

Description of Work

Patrick,

The link below will take you to the proposal for the (1) Annual, (2) Quarterly, & (1) Semi-Annual Fire Sprinkler Inspection & Testing.

(1) Wet System

If you would like us to schedule this work, please click the green "Approve" button in the top right corner.

If you have any questions, please feel free to call me.

The owner/owner's representative shall place alarm systems on test and restore upon completion of work.

Theresa

Sprinkler Tests & Inspections

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EXCLUSIONS:

- Any Additional Work NOT Specifically Listed in the proposal
- No Draining of Low Point Drains Other Than At The Time of The Service
- Over Time And/or After-Hours Costs Weekends And/or Holidays

Services to be completed

Parts, labor, and fees	Quantity	Unit Price	Total
Annual Wet Fire Sprinkler Inspection and Testing	1	\$175.00	\$175.00
Quarterly Wet Fire Sprinkler Inspection and Testing	2	\$150.00	\$300.00
Semi-Annual Wet Fire Sprinkler Inspection and Testing	1	\$150.00	\$150.00
GRAND TOTAL			\$625.00

Terms and Conditions

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By my signature below, I authorize work to begin and agree to pay the Grand Total according to the terms and conditions of this agreement.

Name: _____ Date: _____

Signature: _____



From **FESS Fire Protection**
 131 International Drive
 Morrisville NC 27560
 (919)663-0400
 www.fessfire.com

Quote No. **1320748**
Type Inspection
Prepared By Theresa Bailey
Created On 08/26/2020
Valid Until 09/30/2020

Quote For **Town of Apex - Facilities**
 P & I - Town of Apex
 105 Upchurch Street
 Apex NC 27502
 (919) 249-3528

Description of Work

Patrick,

The link below will take you to the proposal for the (1) Annual, (2) Quarterly, & (1) Semi-Annual Fire Sprinkler Inspection & Testing.

(1) Wet System

If you would like us to schedule this work, please click the green "Approve" button in the top right corner.

If you have any questions, please feel free to call me.

The owner/owner's representative shall place alarm systems on test and restore upon completion of work.

Theresa

Sprinkler Tests & Inspections

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EXCLUSIONS:

Any Additional Work NOT Specifically Listed in the proposal

No Draining of Low Point Drains Other Than At The Time of The Service

Over Time And/or After-Hours Costs Weekends And/or Holidays

Services to be completed

Parts, labor, and fees	Quantity	Unit Price	Total
Annual Wet Fire Sprinkler Inspection and Testing	1	\$175.00	\$175.00
Quarterly Wet Fire Sprinkler Inspection and Testing	2	\$150.00	\$300.00
Semi-Annual Wet Fire Sprinkler Inspection and Testing	1	\$150.00	\$150.00
GRAND TOTAL			\$625.00

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By my signature below, I authorize work to begin and agree to pay the Grand Total according to the terms and conditions of this agreement.

Name: _____ Date: _____

Signature: _____



From **FESS Fire Protection**
 131 International Drive
 Morrisville NC 27560
 (919)663-0400
 www.fessfire.com

Quote No. **1320758**
Type Inspection
Prepared By Theresa Bailey
Created On 08/26/2020
Valid Until 09/30/2020

Quote For **Town of Apex - Facilities**
 Public Safety Station #4 - Town of
 Apex
 1615 E Williams Street
 Apex NC 27539
 (919) 249-3528

Description of Work

Patrick,

The link below will take you to the proposal for the (1) Annual, (2) Quarterly, & (1) Semi-Annual Fire Sprinkler Inspection & Testing.

(1) Wet System

If you would like us to schedule this work, please click the green "Approve" button in the top right corner.

If you have any questions, please feel free to call me.

The owner/owner's representative shall place alarm systems on test and restore upon completion of work.

Theresa

Sprinkler Tests & Inspections

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EXCLUSIONS:

Any Additional Work NOT Specifically Listed in the proposal

No Draining of Low Point Drains Other Than At The Time of The Service

Over Time And/or After-Hours Costs Weekends And/or Holidays

Services to be completed

Parts, labor, and fees	Quantity	Unit Price	Total
Annual Wet Fire Sprinkler Inspection and Testing	1	\$175.00	\$175.00
Quarterly Wet Fire Sprinkler Inspection and Testing	2	\$150.00	\$300.00
Semi-Annual Wet Fire Sprinkler Inspection and Testing	1	\$150.00	\$150.00
GRAND TOTAL			\$625.00

Terms and Conditions

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ASSOCIATED WITH COLLECTION OF OVERDUE MONEY. BY APPROVING THIS QUOTE YOU ARE AGREEING TO OUR COMPLETE LIST OF TERMS AND CONDITIONS WHICH CAN BE FOUND AT ***TERMS.FESSFIRE.COM***.

By my signature below, I authorize work to begin and agree to pay the Grand Total according to the terms and conditions of this agreement.

Name: _____ Date: _____

Signature: _____



From **FESS Fire Protection**
 131 International Drive
 Morrisville NC 27560
 (919)663-0400
 www.fessfire.com

Quote No. **1320771**
Type Inspection
Prepared By Theresa Bailey
Created On 08/26/2020
Valid Until 09/30/2020

Quote For **Town of Apex - Facilities**
 Public Safety Station #5 - Town of
 Apex
 2050 Kelly Road
 Apex NC 27502
 (919) 249-3528

Description of Work

Patrick,

The link below will take you to the proposal for the (1) Annual, (2) Quarterly, & (1) Semi-Annual Fire Sprinkler Inspection & Testing.

(1) Wet System

If you would like us to schedule this work, please click the green "Approve" button in the top right corner.

If you have any questions, please feel free to call me.

The owner/owner's representative shall place alarm systems on test and restore upon completion of work.

Theresa

Sprinkler Tests & Inspections

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EXCLUSIONS:

Any Additional Work NOT Specifically Listed in the proposal

No Draining of Low Point Drains Other Than At The Time of The Service

Over Time And/or After-Hours Costs Weekends And/or Holidays

Services to be completed

Parts, labor, and fees	Quantity	Unit Price	Total
Annual Wet Fire Sprinkler Inspection and Testing	1	\$175.00	\$175.00
Quarterly Wet Fire Sprinkler Inspection and Testing	2	\$150.00	\$300.00
Semi-Annual Wet Fire Sprinkler Inspection and Testing	1	\$150.00	\$150.00
GRAND TOTAL			\$625.00

Terms and Conditions

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By my signature below, I authorize work to begin and agree to pay the Grand Total according to the terms and conditions of this agreement.

Name: _____ Date: _____

Signature: _____



From **FESS Fire Protection**
 131 International Drive
 Morrisville NC 27560
 (919)663-0400
 www.fessfire.com

Quote No. **1320661**
Type Inspection
Prepared By Theresa Bailey
Created On 08/26/2020
Valid Until 09/30/2020

Quote For **Town of Apex - Facilities**
 Apex Town Hall - Town of Apex
 73 Hunter Street
 Apex NC 27502
 (919) 249-3400

Description of Work

Patrick,

The link below will take you to the proposal for the (1) Annual, (2) Quarterly, & (1) Semi-Annual Fire Sprinkler Inspection & Testing.

(1) Wet System

If you would like us to schedule this work, please click the green "Approve" button in the top right corner.

If you have any questions, please feel free to call me.

The owner/owner's representative shall place alarm systems on test and restore upon completion of work.

Theresa

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- Over Time And/or After-Hours Costs Weekends And/or Holidays

Services to be completed

Parts, labor, and fees	Quantity	Unit Price	Total
Annual Wet Fire Sprinkler Inspection and Testing	1	\$175.00	\$175.00
Quarterly Wet Fire Sprinkler Inspection and Testing	2	\$150.00	\$300.00
Semi-Annual Wet Fire Sprinkler Inspection and Testing	1	\$150.00	\$150.00
GRAND TOTAL			\$625.00

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By my signature below, I authorize work to begin and agree to pay the Grand Total according to the terms and conditions of this agreement.

Name: _____ Date: _____

Signature: _____

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CONSENT AGENDA

Meeting Date: September 1, 2020

Item Details

Presenter(s): Mary Beth Manville, Human Resources Director

Department(s): Human Resources

Requested Motion

Motion to approve an auto-renewing contract with Delta Dental of North Carolina, effective July 1, 2020.

Approval Recommended?

Yes

Item Details

The Town's dental program is now being administered by Delta Dental of North Carolina. The Town would like to amend the services agreement to extend the contract term to September 18, 2023. The per employee per month rate is \$3.51.

Attachments

- BHS_Town of Apex Amendment 2020
- BHS_Town of Apex Service Agreement 2017





Delta Dental Service Contract For Town of Apex

This Service Contract ("Contract") is entered into by and between Town of Apex (the "Contractor") and Delta Dental of North Carolina, a North Carolina non-profit corporation ("Delta Dental"). Delta Dental agrees to perform claims administration services for the Contractor's self-funded dental benefit plan. Contractor and Delta Dental may be singularly referred to herein as "Party" and collectively referred to herein as the "Parties". This is a legally binding contract between the Contractor and Delta Dental and is effective on July 1, 2020, the ("Effective Date").

SECTION I - DECLARATIONS

The benefits afforded are only with respect to such benefits as are indicated in this Contract, including the Summary of Dental Plan Benefits. Delta Dental's liability is limited to the benefits stated herein; subject to all the terms of this Contract having reference thereto. This Declarations Section and the Summary of Dental Plan Benefits supersedes any contrary provision of the subsequent sections of this Contract.

A. Effective Date: 12:01 A.M. Standard Time, July 1, 2020

B. First Renewal Date: July 1, 2021

C. Client Number: 10135-0001, 9001

D. Rate(s):

Administrative Service Fee: Composite - \$3.51 per month per Enrollee

This rate is contingent upon 95 percent enrollment of the eligible members of the defined group with the cost paid by the Contractor and a minimum enrollment of 75 percent of their eligible dependents with the additional cost of dependent coverage paid by the Subscriber. In addition to the Administrative Service Fee, Delta Dental shall invoice Contractor for Cost of Claims for the preceding month on the first (1st) of each month. Payment shall be due on or before the twentieth (20th) of that month. Rates do not include any applicable claims taxes.

These rates assume that claims from nonparticipating dentists will be paid using our national Table 90.

This instrument has been preaudited in the manner
required by the Local Government Budget & Fiscal Control Act

Vance Holloman, Finance Director

DELTA DENTAL OF NORTH CAROLINA

BY:



President and CEO

DATE: June 8, 2020

CONTRACTOR

BY:

(Authorized Signature)

(Title)

BY:

(Witnessed By)

(Title)

DATE:

SECTION II - DEFINITIONS

The following words and terms have the following meanings unless the context or use clearly indicates another meaning or intent. Capitalized words and terms not defined below are defined in the Certificate.

ADMINISTRATIVE SERVICE FEE means the fee charged by Delta Dental for the administrative services performed under this Contract.

BENEFIT MANAGER TOOLKIT means Delta Dental's online portal used for eligibility updates and Dental Plan information.

COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

CONTRACT means this document, including the Certificate and applicable Summary(ies) of Dental Plan Covered Services (the terms of which are incorporated herein), the materials submitted by the Contractor in applying for coverage, and, if applicable, any appendices, supplements, riders, successor agreements, renewal letters, or renewals now or hereafter issued or executed.

COST OF CLAIMS means the total amount of Claims payments made by Delta Dental for Covered Services for which the Contractor must reimburse Delta Dental.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

SECTION III - ERISA

Contractor, or a person designated by Contractor (other than Delta Dental), shall be the Named Fiduciary of the Contractor's Dental Plan as that term is defined by ERISA §402(a)(2). To the extent Contractor has delegated to Delta Dental the responsibility and discretionary authority to make final claims determinations, Delta Dental shall be the named fiduciary with respect to such determinations. Any determination or interpretation made by Delta Dental pursuant to this authority is binding on the Member and the Contractor unless it is demonstrated that the determination was arbitrary and capricious. In the event final claims determinations are made by any other entity, Delta Dental shall not be a fiduciary with respect to such determinations. Furthermore, to the extent that Delta Dental is deemed to possess any plan assets of the Dental Plan, Delta Dental will be a fiduciary with respect to such assets to the extent that Delta Dental exercises discretion and control over such assets. Except as otherwise stated herein, Delta Dental shall not have any further discretionary authority or control respecting the management of the Dental Plan or the Dental Plan's assets, if any, and the Contractor retains all responsibility and authority, including all other fiduciary responsibilities, as defined in ERISA, for operation of the Dental Plan.

SECTION IV - ELIGIBILITY AND ENROLLMENT

- A. Contractor shall have sole responsibility for determining the eligibility of, and shall manage the enrollment, disenrollment, and contribution obligations of all Members.
- B. As a condition of enrollment, the Contractor shall require all Members to provide Delta Dental with all information needed to process claims and administer Covered Services. Such information may include, but not be limited to, the Member's dental records. In the event a Member fails and/or refuses to provide Delta Dental with requested information, Delta Dental may place the Member's coverage on hold.
- C. Contractor shall provide Delta Dental with an initial eligibility upload of all Members. Such eligibility upload shall be in a form and format acceptable to Delta Dental. Thereafter, Contractor shall provide Delta Dental with eligibility updates on an as needed basis, which in no event shall be less than monthly. Contractor shall promptly respond to any requests for information made by Delta Dental concerning the eligibility of a Member.
- D. Contractor shall be solely responsible for the accuracy and delivery of all eligibility information submitted to Delta Dental. Delta Dental shall not be liable for any losses or damages resulting from eligibility information provided by Contractor and/or any other third party.
- E. Unless otherwise stated in the Declarations Section of this Contract, no retroactive eligibility updates will be accepted for an effective date more than 90 days from the date of notification. If the Contractor requests that an Enrollee's eligibility be terminated retroactively and a claim was incurred for that Enrollee or that Enrollee's Eligible Dependent after the requested termination date, the Enrollee's eligibility will continue until the end of the month in which the claim occurred, and Contractor shall be responsible for all Cost of Claims and applicable Administrative Service fees for services that were rendered to the Enrollee or Dependent up until the effective termination date. In addition, in the event that an Enrollee or Dependent is retroactively added, Contractor shall be responsible for all Cost of Claims and applicable Administrative Service fees for services that were rendered to the Enrollee or Dependent from the effective addition date forward.
- F. Upon reasonable prior written notice, Delta Dental shall have the right to audit the accuracy of Contractor's eligibility information. Contractor's refusal to permit such audit shall be deemed a material breach of this Contract.

- G. Contractor shall be solely responsible for identifying Members entitled to COBRA continuation Covered Services. Contractor shall provide all required notices, collect all necessary payments, and otherwise administer all facets of its COBRA program. In the event that Contractor continues to provide eligibility information to Delta Dental for a Member during the COBRA election period, as opposed to terminating coverage and then retroactively reinstating a Member upon the Member's election of COBRA coverage, Contractor shall be liable for any Claim paid during that period if the Member ultimately does not elect COBRA coverage.
- H. In the event that a Member undergoes a change in eligibility, Contractor must notify Delta Dental of such change. Any failure by Contractor to provide timely notice of eligibility changes may result in Covered Services being improperly administered. Contractor shall be solely responsible for such failures. Contractor must notify Delta Dental immediately for any change in a Member's eligibility. In the event Contractor does not notify Delta Dental immediately, Contractor shall be responsible for any paid Claims.
- I. If the Contractor elects to transmit eligibility information via the Benefit Manager Toolkit, Contractor shall execute all proper authorization forms prior to accessing Delta Dental's systems.
- J. Delta Dental will deliver to the Contractor an electronic copy of the Certificate for distribution to each Enrollee, unless otherwise agreed to in writing by the Parties.
- K. The Contractor will timely distribute to each of its Enrollees the Certificates and other information provided by Delta Dental regarding the Covered Services available under this Contract, unless otherwise agreed to in writing by the Parties.
- L. Delta Dental shall furnish the Contractor with enrollment forms and related informational materials necessary and appropriate to enroll the Contractor's Members. Delta Dental shall provide reasonable assistance to Contractor on an as needed basis during the enrollment process.
- M. In the event of any material changes in enrollment or composition of Members or if invoices are not paid as billed, unless otherwise agreed to in writing, Delta Dental shall have the right in its sole discretion to either:
 - 1. Terminate this Contract pursuant to Section IX; or
 - 2. Propose an adjustment to the Administrative Service Fee; or
 - 3. If the proposed adjustment to the Administrative Service Fee is not accepted by Contractor within 30 days of receipt of the proposed adjustment, Delta Dental reserves the right to terminate this Contract.

SECTION V – COVERED SERVICES

- A. Delta Dental shall administer and make payment for Covered Services in accordance with this Contract and the Certificate attached hereto. Contractor may request changes to the Covered Services available to Members by submitting the request in writing to Delta Dental. Changes to Covered Services are subject to Delta Dental's approval and may cause an increase to the Administrative Service Fee. Any changes to Covered Services must be agreed to in writing by Delta Dental prior to implementation.

SECTION VI - DELTA DENTAL NETWORK

- A. Delta Dental shall provide Members with an established network of dentists ("Participating Dentists") who have agreed to accept Delta Dental's Maximum Approved Fees for Covered Services. Delta Dental has complete discretion when setting the Maximum Approved Fees. For a detailed description of how payment is made, see Section V of the applicable Certificate.
- B. Delta Dental shall ensure that there are an adequate number of qualified and credentialed Participating Dentists.
- C. Delta Dental is under no obligation to contract with any particular dentist and/or maintain any particular Participating Dentist in its network. In addition, Delta Dental is under no obligation to recommend or refer any dentist to a Member.
- D. Contractor acknowledges and agrees that:
 - 1. Delta Dental does not provide, direct, or control the provision of dental services to Members.
 - 2. All decisions regarding dental services are made solely by the Member and his or her dentist; and
 - 3. Delta Dental does not warrant or guarantee that the dental services received by a Member from his or her dentist will be rendered in accordance with generally accepted standards or procedures.

SECTION VII - CLAIMS AND APPEALS

- A. Delta Dental will adjudicate and process all clean Claims submitted for Contractor's Dental Plan, in accordance with this Contract, the Certificate and Delta Dental's standard operating procedures. . Clean Claims are those Claims that contain all information necessary for Delta Dental to process the Claim. In the event that Delta Dental does not receive a clean Claim, the Claim will be not be billable to the patient.
- B. Subject to the terms of this Contract and unless otherwise stated in the Declarations Section, Delta Dental has complete discretion to process Claims received under Contractor's Dental Plan. As such, Delta Dental shall, without limitation, make determinations regarding:
 - 1. Coordination of benefits,
 - 2. The applicability of Benefit waiting periods, limitations and exclusions; and
 - 3. The quality of care provided to Members by a treating dentist.
- C. Delta Dental shall provide Pre-Treatment Estimates to Members and Participating Dentists upon request as set forth in the Certificate. A Pre-Treatment Estimate is a voluntary and optional process where Delta Dental issues a written estimate of Benefits that may be available under the Dental Plan. A Pre-Treatment Estimate is not a prerequisite or condition for approval of future Benefits payment. Receipt of a Pre-Treatment Estimate does not guarantee payment or coverage, and is not a formal adjudication of a Claim. Pre-Treatment Estimates do not assess whether a Member is specifically eligible for a Covered Service or whether he or she has reached any applicable annual or lifetime maximum payments under the Dental Plan.
- D. Delta Dental will follow established procedures for resolving all adverse Claims determination questions asserted by a dentist, or Member as set forth in the Certificate ("Claims Appeal Procedure"). The Claims Appeal Procedure shall contain processes for appealing initial adverse determinations made by Delta Dental. To the extent the Dental Plan is governed by ERISA, Delta Dental's procedures shall comply with ERISA and any regulations or guidelines thereunder. All determinations made according to the Claims Appeal Procedure will be final and binding on the Participating Dentist and the Member, unless otherwise stated in the Declarations Section of this Contract; provided, however, that the Member may exercise any additional legal rights he or she may have.
- E. Payments made directly to a Member as reimbursement for Covered Services under the Dental Plan are for the personal benefit of such Member and cannot be transferred or assigned, unless otherwise stated in the Declarations Section of this Contract. Delta Dental shall not honor attempts to assign Benefits unless required to by law.
- F. Delta Dental shall use reasonable efforts to recover any overpayments on Contractor's behalf. Delta Dental is under no obligation to engage in litigation in an attempt to recover such payments. Any funds recovered by Delta Dental will be properly credited to Contractor. Notwithstanding the foregoing, Delta Dental will be responsible for any overpayments made due to Delta Dental's negligence or breach of this Contract.
- G. Delta Dental does not insure or underwrite risk for Claims submitted on behalf of Members. The Contractor retains sole responsibility for all Claims properly paid by Delta Dental under this Contract.

SECTION VIII - PAYMENT

- A. The Contractor agrees to reimburse Delta Dental for the actual Cost of Claims and the invoiced Administrative Service Fee as set forth in the Declarations Section of this Contract. Delta Dental shall not be obligated to accept partial or late payments and acceptance of a partial or late payment will not waive Delta Dental's remedies under this Contract, or otherwise modify the terms herein.
- B. The Contractor shall maintain funds necessary to satisfy its obligations under this Contract.
- C. Unless otherwise stated in the Declarations Section of this Contract, payment for Administrative Service Fees shall be due on the fifth of each month. An invoice for the current month's Administrative Service Fees shall be sent on or about the third week of the preceding month.
- D. The Contractor is responsible for the full amount of all invoices regardless of any contribution owed by the Members to the Contractor. Delta Dental shall not be responsible for collecting any contributions from Members.
- E. If required by Delta Dental, Contractor shall deposit an amount specified in the Declarations Section of this Contract ("Prefund") with Delta Dental. The Prefund shall serve as a deposit to offset against any untimely or partial payments from Contractor. In the event Delta Dental uses any of the Prefund to offset untimely or partial payments, Delta Dental shall submit an invoice to the Contractor in the amount necessary to replenish the Prefund. If the Contractor fails to timely replenish the Prefund, Delta Dental shall be entitled to all remedies set forth in Section XI.

SECTION IX - TERM AND TERMINATION

- A. The term of this Contract shall remain in full force and effect for the initial term commencing on the Effective Date and continuing to the First Renewal Date, as specified in the Declarations Section. Thereafter, the Contract may be renewed for subsequent terms as specified in the Declarations Section or in a renewal letter, unless Contractor or Delta Dental provides written notice of its intent not to, renew at least (30) days prior to the expiration of the then current term.
- B. In the event of a Party's material breach, the non-breaching Party may terminate this Contract by sending written notice to the breaching Party explaining in detail the nature of the breach and providing an opportunity to cure, which in no event shall be less than 30 days. In the event the material breach is not cured within the notice period, the non-breaching party may immediately terminate this Contract.
- C. Unless otherwise stated in the Declarations Section of this Contract, this Contract may be terminated by either Party without cause upon 60 days' written notice to the other Party.
- D. There shall be a twelve month run-out period for all Claims incurred prior to the termination date, except in cases where Delta Dental has terminated this Contract for cause. All Claims paid by Delta Dental during this run-out period shall be invoiced to the Contractor in accordance with Section VII of this Contract. Any Claims for services rendered after the termination date shall be denied. After the conclusion of the twelve month run out period, Claims shall be denied and Delta Dental shall not have any further obligations to the Contractor.
- E. Following the Claims run-out period, Delta Dental shall prepare a final settlement statement and invoice for Contractor. Such settlement statement and invoice shall detail the final amounts due and owing between the Parties including, to the extent applicable, any remaining Prefund deposited by the Contractor, all outstanding Administrative Service Fees and all remaining Claims payments made during the run-out period.
- F. Any false or misleading statements made by either Party shall be considered a material breach of this Contract.

SECTION X - CONFIDENTIALITY AND DISCLOSURE

- A. The Parties have entered into a Business Associate Agreement regarding the permissible use and disclosure of Member's protected health information as that term is defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and all subsequent amendments thereto. The Business Associate Agreement is attached as an Addendum hereto.
- B. The Parties acknowledge that in the course of performing under this Contract each Party may be provided with or given access to information, in oral, recorded or written form, that is proprietary and confidential to the other Party (collectively referred to as the "Confidential Information"). Such Confidential Information includes, but is not limited to: information regarding the other Party's management, business, organizational structure, policies, procedures, business relationships, intellectual property, copyrights, patents, trademarks, software, data, databases, system designs, specifications, documentation, code, architecture, structure, algorithms, techniques, processes, protocols, product materials, notes, slides, ideas, Maximum Approved Fees, Allowed Amounts, preferred provider reports, actuarial formulas, providers' personal information, and financial terms of this Contract..
- C. Confidential Information shall not include any information that:
 - 1. Is already known to the Party at the time of the disclosure (as evidenced by written documentation existing at that time;
 - 2. Is generally available to the public or becomes publicly known through no wrongful act of a Party; or
 - 3. Is received by a Party from a third-party who had a legal right to provide it (as evidenced by written documentation existing at that time).
 - 4. **Is a public record pursuant to Chapter 132 of the North Carolina General Statutes.**
- D. The Parties each will make all reasonable, necessary and appropriate efforts to safeguard each other's Confidential Information. Each Party will safeguard the other's Confidential Information to the same extent that it safeguards information relating to its own business, which in no event will be less than the safeguards that a reasonably prudent business would exercise under similar circumstances.
- E. Each party agrees not to use, distribute or exploit each other's Confidential Information, in whole or in part, for its own benefit or that of any third party and will not disclose such Confidential Information to any other person, or entity without each other's prior written consent. A Party shall be responsible for any breach of this Contract by its employees, authorized subcontractors, agents or representatives.

- F. Notwithstanding anything to the contrary in this Section, the Parties shall be permitted to disclose Confidential Information as required by order of a court of law, administrative agency, or other governmental body; provided, however, the Party shall provide reasonable advance written notice to the other Party to the extent allowed by law in order to allow that Party the opportunity to seek a protective order or otherwise limit such disclosure, and the disclosing Party shall reasonably cooperate with the other Party to limit any such disclosure or to seek a protective order. If a Party is nonetheless required to disclose the other Party's Confidential Information, said Party shall only disclose the minimum information necessary to respond to the legal request. Notwithstanding the foregoing, Delta Dental shall not be required to provide Contractor notice prior to responding to governmental agency subpoenas regarding potential provider fraud or abuse.

SECTION XI - RIGHTS AND REMEDIES

- A. In addition to the right of termination described in Section IX, Delta Dental shall have the following rights and remedies in the event Contractor fails to timely pay in full the Administrative Service Fees or reimburse Delta Dental for the Cost of Claims, subject to Contractor's right to cure pursuant to Section IX.B.:
1. Delta Dental may retroactively terminate this Contract to the date it last received payment; and
 2. Delta Dental may initiate proceedings to recover and collect all payments due and owing, as well as all costs associated with the collection proceedings including, but not limited to, attorneys' fees.
- Notwithstanding the foregoing, Delta Dental may immediately suspend payment of all Claims in the event that it does not receive timely payment of the Administrative Service Fees or reimbursement for the Cost of Claims.
- B. No claim, lawsuit or action, may be brought more than three years after the claim first arose.
- C. Either Party's failure to exercise any right or remedy contained herein shall not constitute a waiver of any future rights or remedies available to that party.

SECTION XIII - GENERAL PROVISIONS

- A. **Subrogation.** The Contractor shall retain all subrogation rights resulting from Claims paid by Delta Dental. In the event the Contractor elects to pursue a subrogation matter, Delta Dental shall provide reasonable assistance to the Contractor. Such assistance shall be limited to providing the Contractor with documents, records and demand letters.
- B. **Right to Review Published Materials.** Contractor agrees not to publish or distribute any materials containing the logo, trademark, or business mark of Delta Dental, or containing a change in the benefits to be administered under this Contract, until Delta Dental reviews and, with respect to the use of Delta Dental's logo, trademark, or business mark, approves the materials. This provision does not apply to materials that Delta Dental has provided to Contractor for distribution.
- C. **Cooperation.** The Contractor shall provide Delta Dental with any information it may reasonably require to administer the Dental Plan or otherwise discharge its duties under this Contract.
- D. **Indemnification.**
1. Each Party agrees to defend, indemnify, and hold harmless the other Party and its directors, officers, affiliates, agents, and employees (who are acting in the course of their employment, but not as claimants) from any loss, cost, or expense (including reasonable attorney fees and court costs) ("Losses") resulting from or arising out of or in connection with the indemnifying Party's breach of this Contract, or any negligent act or omission of any of the indemnifying Party's directors, officers, agents or employees, unless liability for such act or omission is expressly assigned elsewhere in this Contract.
 2. The indemnifying Party shall provide prompt written notice of relevant information concerning any Losses to the indemnified Party. Reasonable assistance (at the indemnifying Party's expense) may be requested by the indemnified Party in connection with the defense of any Losses. Notwithstanding the foregoing:
 - a. the indemnified party shall permit the indemnifying Party to control the defense or settlement of the claim, suit or proceeding at the indemnifying party's expense;
 - b. the indemnified Party shall have the right to provide for its separate defense at its own expense;
 - c. Neither Party shall settle any Losses without the consent of the other Party, which consent shall not be unreasonably withheld. Any release obtained as a result of settlement must contain a release of all claims against the indemnified Party as well as its officers, directors and employees, and
 - d. The indemnification obligations of indemnifying Party hereunder shall not extend to Losses attributable to the negligence, intentional misconduct, or willful malfeasance of the indemnified Party.

- E. **Notice.** Any notice required or permitted to be given under this Contract will be considered given if in writing and personally delivered, or if in writing and deposited in the United States mail with postage prepaid, addressed to the other Party at its last address of record.
- F. **Survival.** The following Sections shall survive expiration or early termination of this Contract: Section VIII. Payment; Section X. Confidentiality & Disclosure; Section XI. Rights and Remedies; and Section XII. General Provisions.
- G. **Internal Policies and Procedures.** Delta Dental has the right to amend its internal policies and procedures periodically and without notice to the Contractor to the extent the amendment does not affect the delivery of benefits to Members. Delta Dental will provide advance written notice, to the extent possible, to Contractor of any amendment to Delta Dental's policies or procedures that affect the delivery of benefits to Members; if advance notice is not possible, Delta Dental will provide written notice as soon as possible after the amendment is adopted.
- H. **Third Party Beneficiaries.** This Contract will not confer any rights or remedies on any third- party, other than the Parties to this Contract and their respective successors and permitted assigns.
- I. **Assignment and Subcontracting.** Unless it has first obtained the written consent of the other Party, neither Party may assign this Contract or any of its rights or obligations under this Contract to any other person, except that Delta Dental may make assignments to its subsidiaries and affiliates without the prior written consent of the Contractor.
- J. **Integration.** This Contract constitutes the entire understanding between the Parties with respect to the subject matter of this Contract and supersedes any prior discussions, negotiations, agreements and understandings.
- K. **Force Majeure.** Unless otherwise stated in the Declarations Section of this Contract, neither Delta Dental (including its agents, directors, officers, and employees) nor Contractor shall be liable for delays in performance due to circumstances beyond their reasonable control. Each Party shall be excused from performance under this Contract and shall have no liability to the other Party for any period during which it is prevented from performing any of its obligations (other than payment obligations), in whole or in part, as a result of delays caused by the other Party or by an act of God, war, terrorism, civil unrest, civil disturbance, court order, labor dispute, or other cause beyond its reasonable control, including failures or fluctuations in electrical power, heat, light, or telecommunications, and such nonperformance shall not be a default under or grounds for termination of this Contract.
- L. **Applicable Law.** This Contract and the obligations of the Parties under this Contract will be governed by and construed in accordance with ERISA to the extent applicable. If it is determined by a court of competent jurisdiction that ERISA does not apply, the law of the State of North Carolina will control.
- M. **Venue.** The Parties submit to the jurisdiction and venue of the courts of the State of North Carolina.
- N. **Severability.** If any part of this Contract or an amendment of it is found by an arbitrator, court, or other authority to be illegal, void or not enforceable, all other portions of this Contract shall remain in full force and effect.
- O. **Counterparts.** This Contract may be executed in one or more counterparts, each of which will be deemed an original agreement, but all of which will be considered one instrument and will become a binding agreement when one or more counterparts have been signed by each of the Parties and delivered to the other. Electronic and/or fax signatures shall be accepted as original signatures.
- P. **Audits.** The Contractor shall have the right to audit Delta Dental's files, books, and records (both paper and electronic) pertaining to the administrative services provided under this Agreement. The Contractor will bear the entire cost of any such audits. The Contractor may assign this right to audit to an agent, provided the agent is a licensed firm and the audit is led by an individual who holds a nationally recognized audit accreditation. Delta Dental will allow the Contractor or the Contractor's agent to audit the work areas at which services under this Contract are performed, within 14 business days of receipt of a fully-signed confidentiality agreement. Where applicable, Delta Dental agrees to segregate the Contractor's records from third- party records in order to allow accurate assessment of Contractor-specific processes. Such audits will take place no more than once in a 12-month period, unless both the Contractor and Delta Dental mutually agree that there is reasonable cause to conduct an audit more frequently, in which case the Contractor will give 14 business days' written notice before such audit. The scope of any audit conducted under this provision must be mutually agreed upon, in writing, by both parties prior to the start of the audit. Notwithstanding the foregoing, Contractor shall not have the right to audit any information which Delta Dental, in its sole discretion, determines is proprietary.



**Delta Dental PPO plus Premier
Summary of Dental Plan Benefits
For Group# 10135-0001, 9001
Town of Apex**

This Summary of Dental Plan Benefits should be read along with your Certificate. Your Certificate provides additional information about your Delta Dental plan, including information about plan exclusions and limitations. If a statement in this Summary conflicts with a statement in the Certificate, the statement in this Summary applies to you and you should ignore the conflicting statement in the Certificate. The percentages below are applied to Delta Dental's allowance for each service and it may vary due to the dentist's network participation.*

Control Plan - Delta Dental of North Carolina

Benefit Year - July 1 through June 30

Covered Services -

	Delta Dental PPO Dentist Plan Pays	Delta Dental Premier Dentist Plan Pays	Nonparticipating Dentist Plan Pays*
Diagnostic & Preventive			
Diagnostic and Preventive Services - exams, cleanings, fluoride, and space maintainers	100%	100%	100%
Emergency Palliative Treatment - to temporarily relieve pain	100%	100%	100%
Sealants - to prevent decay of permanent teeth	100%	100%	100%
Brush Biopsy - to detect oral cancer	100%	100%	100%
Radiographs - X-rays	100%	100%	100%
Teeth Bleaching	100%	100%	100%
Basic Services			
Minor Restorative Services - fillings and crown repair	80%	80%	80%
Endodontic Services - root canals	80%	80%	80%
Periodontic Services - to treat gum disease	80%	80%	80%
Oral Surgery Services - extractions and dental surgery	80%	80%	80%
Major Restorative Services - crowns	80%	80%	80%
Other Basic Services - misc. services	80%	80%	80%
Relines and Repairs - to bridges, implants, and dentures	80%	80%	80%
Major Services			
Prosthodontic Services - bridges, implants, dentures, and crowns over implants	80%	80%	80%
Orthodontic Services			
Orthodontic Services - braces	50%	50%	50%
Orthodontic Age Limit -	No Age Limit	No Age Limit	No Age Limit

* When you receive services from a Nonparticipating Dentist, the percentages in this column indicate the portion of Delta Dental's Nonparticipating Dentist Fee that will be paid for those services. This Nonparticipating Dentist Fee may be less than what your dentist charges, which means that you will be responsible for the difference.

The explanation and sample calculation of how these services will be paid can be found in Section VI - How Payment is Made in your Certificate.

- Oral exams (including evaluations by a specialist) are payable twice per benefit year.
- Prophylaxes (cleanings) are payable twice per benefit year. Full mouth debridement is payable once per lifetime.
- People with specific at-risk health conditions may be eligible for additional prophylaxes (cleanings) or fluoride treatment. The patient should talk with his or her dentist about treatment.
- Fluoride treatments are payable twice per benefit year for people age 18 and under.
- Bitewing X-rays are payable once per Benefit Year and full mouth X-rays (which include bitewing X-rays) are payable once in any five-year period.

- Sealants are payable once per tooth per lifetime for first and second permanent molars for people age 15 and under. The surface must be free from decay and restorations.
- Crowns, onlays and substructures are payable once per tooth in any seven-year period.
- Composite resin (white) restorations are payable on posterior teeth.
- Porcelain and resin facings on crowns are payable on posterior teeth.
- Vestibuloplasty is a Covered Service.
- Full and partial dentures are payable once in any seven-year period. Tissue conditioning is payable once in any two-year period.
- Bridges are payable once in any seven-year period.
- Implants are payable once per tooth in any seven-year period. Implant related services are Covered Services.
- Crowns over implants are payable once per tooth in any seven-year period. Services related to crowns over implants are Covered Services.
- External bleaching is a Covered Service once per arch per Benefit Year. Internal bleaching is a Covered Service once per tooth per Benefit Year.

Having Delta Dental coverage makes it easy for you to get dental care almost everywhere in the world! You can now receive expert dental care when you are outside of the United States through our Passport Dental program. This program gives you access to a worldwide network of dentists and dental clinics. English-speaking operators are available around the clock to answer questions and help you schedule care. For more information, check our Web site or contact your benefits representative to get a copy of our Passport Dental information sheet.

Maximum Payment – \$1,500 per person total per Benefit Year on all services.

Payment for Orthodontic Service – When orthodontic treatment begins, your Dentist will submit a payment plan to Delta Dental based upon your projected course of treatment. In accordance with the agreed upon payment plan, Delta Dental will make an initial payment to you or your Participating Dentist equal to Delta Dental's stated Copayment on 30% of the Maximum Payment for Orthodontic Services as set forth in this Summary of Dental Plan Benefits. Delta Dental will make additional payments as follows: Delta Dental will pay 50% of the per monthly fee charged by your Dentist based upon the agreed upon payment plan provided by your Dentist to Delta Dental.

Maximum Carryover – If at least one Covered Service is applied toward your Maximum Payment in a Benefit Year and the total Benefit paid does not exceed \$750 in that Benefit Year, up to \$350 will carry over to the next Benefit Year's Maximum Payment. This carryover amount will accumulate from one Benefit Year to the next, but will not exceed \$1,500. If no Covered Services are paid during a Benefit Year, all accumulated carryover amounts from previous Benefit Years will be forfeited.

Deductible – None.

Waiting Period – Employees who are eligible for dental benefits are covered on the 31st day of employment.

Eligible People – All regular benefited employees of the Contractor working 20 hours per week or more who choose the dental plan (0001), and COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985) enrollees (9001). The Contractor pays the full cost of this plan for Subscribers. The Subscriber pays the additional cost of dependent coverage.

Also eligible are your Spouse and your Children to the end of the month in which they turn 26, including your Children who are married, who no longer live with you, who are not your Dependents for Federal income tax purposes, and/or who are not permanently disabled.

Dependents choosing this dental plan are required to remain enrolled for a period of 12 months. Should a Dependent choose to drop coverage after that time, he or she may not re-enroll prior to the date on which 12 months have elapsed. An election may be revoked or changed at any time if the change is the result of a qualifying event as defined under Internal Revenue Code Section 125.

If you and your Spouse are both eligible to enroll in This Plan as Enrollees, you may be enrolled together on one application or separately on individual applications, but not both. Your Dependent Children may only be enrolled on one application. Delta Dental will not coordinate Benefits between your coverage and your Spouse's coverage if you and your Spouse are both covered as Enrollees under This Plan.

Benefits will cease on the last day of the month in which the employee is terminated.



Delta Dental PPOSM

Our national PPO program

Welcome!

Your dental program is administered by Delta Dental of North Carolina, a North Carolina nonprofit health service plan corporation. Delta Dental of North Carolina is the state's dental benefits specialist. Good oral health is a vital part of good general health, and your Delta Dental program is designed to promote regular dental visits. We encourage you to take advantage of this program by calling your Dentist today for an appointment.

This Certificate, along with your Summary of Dental Plan Benefits, describes the specific benefits of your Delta Dental program and how to use them. If you have any questions about this program, please call our Customer Service department at (800) 662-8856 or access our website at www.deltadentalnc.com.

You can easily verify your own benefit, claims and eligibility information online 24 hours a day, seven days a week by visiting www.deltadentalnc.com and selecting the link for our Consumer Toolkit. The Consumer Toolkit will also allow you to print claim forms and ID cards, select paperless Explanation of Benefits statements (EOBs), search our Dentist directories, and read oral health tips.

We look forward to serving you!

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Note: Please read this Certificate together with the Summary of Dental Plan Benefits. The Summary of Dental Plan Benefits lists the specific provisions of your group dental plan. If a statement in the Summary conflicts with a statement in this Certificate, the statement in the Summary applies to This Plan and you should ignore the conflicting statement in this Certificate.

NOTICE: IF YOU OR YOUR FAMILY MEMBERS ARE COVERED BY MORE THAN ONE HEALTH CARE AND/OR DENTAL CARE PLAN, YOU MAY NOT BE ABLE TO COLLECT BENEFITS FROM BOTH PLANS. EACH PLAN MAY REQUIRE YOU TO FOLLOW ITS RULES OR USE SPECIFIC DENTISTS, AND IT MAY BE IMPOSSIBLE TO COMPLY WITH BOTH PLANS AT THE SAME TIME. READ ALL OF THE RULES VERY CAREFULLY, INCLUDING THE COORDINATION OF BENEFITS SECTION, AND COMPARE THEM WITH THE RULES OF ANY OTHER PLAN THAT COVERS YOU OR YOUR FAMILY.

I. Delta Dental PPO Certificate

Delta Dental of North Carolina, referred to herein as Delta Dental, issues this Certificate to you, the Subscriber. The Certificate is a summary of your dental benefits coverage. It reflects and is subject to a contract between Delta Dental and the Contractor.

The Benefits provided under This Plan may change if any state or federal laws change.

Delta Dental agrees to provide Benefits as described in this Certificate and the Summary of Dental Plan Benefits.

All the provisions in the following pages form a part of this document as fully as if they were stated over the signature below.

IN WITNESS WHEREOF, this Certificate is executed at Delta Dental's home office by an authorized officer.


Curtis R. Ladig, CPA
President and CEO
Delta Dental of North Carolina

II. Definitions

Adverse Benefit Determination

Any denial, reduction or termination of the benefits for which you filed a claim. Or a failure to provide or to make payment (in whole or in part) of the benefits you sought, including any such determination based on eligibility, application of any utilization review criteria, or a determination that the item or service for which benefits are otherwise provided was experimental or investigational, or was not medically necessary or appropriate.

Allowed Amount

The amount permitted under the applicable fee schedule for this Plan, which was selected by the Contractor, and upon which Delta Dental will base its payment for a Covered Service.

Benefit Year

The period during which any benefit frequency limitation and/or annual maximum payment will apply. This will be the calendar year, unless the Contractor elects a different period to serve as the Benefit Year. (See the Summary of Dental Plan Benefits for your Benefit Year.) If the Benefit Year is based upon a calendar year, the terms Benefit Year and Calendar Year may be used interchangeably.

Benefits

Payment for the Covered Services that have been selected under This Plan.

Certificate

This document. Delta Dental will provide Benefits as described in this Certificate. Any changes in this Certificate will be based on changes to the contract between Delta Dental and the Contractor.

Child(ren)

Your natural Children, stepchildren, adopted Children, foster Children, Children by virtue of legal guardianship, or

Children who are residing with you during the waiting period for adoption or legal guardianship.

Claim

A request for payment for a Covered Service. Claims are not conditioned upon your seeking advance approval, certification, or authorization to receive payment for any Covered Service.

Completion Date

The date that treatment is complete. Some procedures may require more than one appointment before they can be completed. Treatment is complete:

- ◆ For dentures and partial dentures, on the delivery dates;
- ◆ For crowns and bridgework, on the permanent cementation date;
- ◆ For root canals and periodontal treatment, on the date of the final procedure that completes treatment.

Coinsurance

The percentage of the charge, if any, that you must pay for Covered Services.

Contractor

The employer, organization, group, or association sponsoring This Plan.

Covered Services

The unique dental services selected for coverage as described in the Summary of Dental Plan Benefits and subject to the terms of this Certificate.

Deductible

The amount a person and/or a family must pay toward Covered Services before Delta Dental begins paying for those services under this Certificate. The Summary of Dental Plan Benefits lists the Deductible that applies to you, if any.

Delta Dental

Delta Dental of North Carolina, a nonprofit health service plan corporation providing dental benefits. Delta Dental is not an insurance company.

Delta Dental Member Plan

An individual dental benefit plan that is a member of the Delta Dental Plans Association, the nation's largest, most experienced system of dental health plans.

Delta Dental Premier® Dentist Schedule

The maximum fee allowed per procedure for services rendered by a Premier Dentist as determined by that Dentist's local Delta Dental Member Plan.

Deny/Denied/Denial

When a Claim for a particular service is denied for payment due to certain contractual limitations/exclusions. You will be responsible for paying your Dentist the applicable amount for such service regardless of the Dentist's participating status.

Dentist

A person licensed to practice dentistry in the state or jurisdiction in which dental services are performed.

- ◆ **Delta Dental PPO Dentist (“PPO Dentist”)** – a Dentist who has signed an agreement with the Delta Dental Plan in his or her state to participate in Delta Dental PPO.
- ◆ **Delta Dental Premier Dentist (“Premier Dentist”)** – a Dentist who has signed an agreement with the Delta Dental Plan in his or her state to participate in Delta Dental Premier.
- ◆ **Nonparticipating Dentist** – a Dentist who has not signed an agreement with any Delta Dental Plan to participate in Delta Dental PPO or Delta Dental Premier.
- ◆ **Out-of-Country Dentist** – A Dentist whose office is located outside the United States and its territories. Out-of-Country Dentists are not eligible to sign participating agreements with Delta Dental.

Delta Dental PPO Dentists and Delta Dental Premier Dentists are sometimes collectively referred to herein as **“Participating Dentists.”** Wherever a definition or provision of this Certificate differs from another state’s Delta Dental Plan and its agreement with Participating Dentists, the agreement in that state with that Dentist will be controlling.

Delta Dental Premier Dentists, Nonparticipating Dentists, and Out-of-Country Dentists are sometimes collectively referred to herein as **“Non-PPO Dentists.”**

Dependent(s)

Your dependents are as defined by the rules of eligibility as stated in your Summary of Dental Plan Benefits.

Enrollee

You, when the Contractor notifies Delta Dental that you are eligible to receive Benefits under This Plan.

Maximum Approved Fee

A system used by Delta Dental to determine the approved fee for a given procedure for a given Participating Dentist. A fee meets Maximum Approved Fee requirements if it is the lowest of:

- ◆ The Submitted Amount
- ◆ The lowest fee regularly charged, offered, or received by an individual Dentist for a dental service or supply, irrespective of the Dentist’s contractual agreement with another dental benefits organization.
- ◆ The maximum fee that the local Delta Dental Plan approves for a given procedure in a given region and/or specialty, under normal circumstances, based upon applicable Participating Dentist schedules and internal procedures.

Participating Dentists agree not to charge Delta Dental patients more than the Maximum Approved Fee for a Covered Service. In all cases, Delta Dental will make the final determination regarding the Maximum Approved Fee for a Covered Service.

Maximum Payment

The maximum dollar amount Delta Dental will pay in any Benefit Year or lifetime for Covered Services. See the Summary of Dental Plan Benefits for the maximum payments applicable to This Plan.

Member

Any Enrollee or Dependent with coverage under This Plan.

Nonparticipating Dentist Fee

The maximum fee allowed per procedure for services rendered by a Nonparticipating Dentist as determined by Delta Dental.

Open Enrollment Period

The period of time, as determined by the Contractor, during which a Member may enroll or be enrolled for Benefits.

Out-of-Country Dentist Fee

The maximum fee allowed per procedure for services rendered by an Out-of-Country Dentist as determined by Delta Dental.

PPO Dentist Schedule

The maximum fee allowed per procedure for services rendered by a PPO Dentist as determined by that Dentist’s local Delta Dental Member Plan.

Pre-Treatment Estimate

A voluntary and optional process where Delta Dental issues a written estimate of dental benefits that may be available under your coverage for your proposed dental treatment. Your Dentist submits the proposed dental treatment to Delta Dental in advance of providing the treatment.

A Pre-Treatment Estimate is for informational purposes only and is not required before you receive any dental care. It is not a prerequisite or condition for approval of future dental benefits payment. You will receive the same Benefits under This Plan whether or not a Pre-Treatment Estimate is requested. The Benefits estimate provided on a Pre-Treatment Estimate notice is based on Benefits available on the date the notice is issued. It is not a guarantee of future dental benefits or payment.

Availability of dental benefits at the time your treatment is completed depends on several factors. These factors include, but are not limited to, your continued eligibility for benefits, your available annual or lifetime Maximum Payments, any coordination of benefits, the status of your Dentist, This Plan’s limitations and any other provisions, together with any additional information or changes to your dental treatment. A request for a Pre-Treatment Estimate is not a claim for Benefits or a preauthorization, precertification or other reservation of future Benefits.

Processing Policies

Delta Dental’s policies and guidelines used for Pre-Treatment Estimate and payment of claims. The Processing Policies may be amended from time to time.

Special Enrollment Period

A period outside of the Open Enrollment Period in which you or your Dependent can obtain coverage under This Plan due to a qualifying life event.

Spouse

Your legal spouse.

Submitted Amount

The amount a Dentist bills to Delta Dental for a specific treatment or service. A Participating Dentist cannot charge you or your Dependents for the difference between this amount and the Maximum Approved Fee.

Summary of Dental Plan Benefits

A description of the specific provisions of your group dental coverage. The Summary of Dental Plan Benefits is and should be read as a part of this Certificate, and supersedes any contrary provision of this Certificate.

This Plan

The dental coverage established for Members pursuant to this Certificate and your Summary of Dental Plan Benefits.

III. Enrolling in this Plan

The Open Enrollment Period, if applicable, will be established by the Contractor and will occur on an annual basis. During the Open Enrollment Period, all eligible persons as defined in your Summary of Dental Plan Benefits may enroll in This Plan. You and/or your Dependents may not enroll in This Plan at any other time during the applicable Benefit Year except in the following instances:

- a. Newly hired or rehired employees (if applicable): You will be eligible to enroll on the date for which employment compensation begins or, if applicable, that date plus the number of days specified as a waiting period in the Summary of Dental Plan Benefits.
- b. New Spouse: Your new Spouse will be eligible to enroll on the date of marriage.
- c. Newborn: Your newborn will be eligible to enroll on the date of birth.
- d. Legal adoptions or guardianships: Your newly adopted Child(ren) and/or the minor Child(ren) that you and/or your Spouse have guardianship over will be eligible to enroll on the date that the legal petition for adoption or guardianship becomes legally final, or the date on which the Child(ren) begins residing with the Enrollee and the Enrollee assumes responsibility for the Child(ren) while waiting for adoption or guardianship to become final.
- e. New Stepchild: Your new stepchild will be eligible to enroll on the date that the Child's natural parent becomes a Dependent.
- f. To the extent the Contractor permits Dependents other than those defined in this Certificate to enroll in This Plan, such Dependents will be eligible to enroll on the date that they become an eligible Dependent. Any such additional Dependents permitted by the Contractor shall be set forth in your Summary of Dental Plan Benefits.

- g. All others will be permitted on the date that Delta Dental approves in writing the enrollment or listing of those people, unless compelled by a court or administrative order to otherwise provide Benefits for a Dependent.

IV. Selecting a Dentist

You may choose any Dentist. Your out-of-pocket costs are likely to be less if you go to a Delta Dental Participating Dentist.

To verify that a Dentist is a Participating Dentist, you can use Delta Dental's online Dentist Directory at www.deltadentalinc.com or call (800) 662-8856.

V. Accessing Your Benefits

To utilize your dental benefits, follow these steps:

1. Please read this Certificate and the Summary of Dental Plan Benefits carefully so you are familiar with your benefits, payment methods, and terms of This Plan.
2. Make an appointment with your Dentist and tell him or her that you have dental benefits with Delta Dental. If your Dentist is not familiar with This Plan or has any questions, have him or her contact Delta Dental by writing to Delta Dental, Attention: Customer Service, P.O. Box 9089, Farmington Hills, Michigan 48333-9089, or calling the toll-free number at (800) 662-8856.
3. After you receive your dental treatment, you or the dental office staff will file a claim form, completing the information portion with:
 - a. The Enrollee's full name and address
 - b. The Enrollee's Member ID number
 - c. The name and date of birth of the person receiving dental care
 - d. The Contractor's name and number

Notice of Claim Forms

Delta Dental does not require special claim forms. However, most dental offices have claim forms available. Participating Dentists will fill out and submit your dental claims for you.

Mail claims and completed information requests to:

Delta Dental
P.O. Box 9085
Farmington Hills, Michigan 48333-9085

Pre-Treatment Estimate

A Pre-Treatment Estimate is not required to receive payment, but it allows claims to be processed more efficiently and allows you to know what services may be covered before your Dentist provides them. You and your Dentist should review your Pre-Treatment Estimate Notice before treatment. Once treatment is complete, the dental office will submit a claim to Delta Dental for payment.

Written Notice of Claim and Time of Payment

Because the amount of your Benefits is not conditioned on a Pre-Treatment Estimate decision by Delta Dental, all claims under This Plan are Post-Service Claims. All claims for Benefits must be filed with Delta Dental within

one year of the date the services were completed. Once a claim is filed, Delta Dental will decide it within 30 days of receiving it. If there is not enough information to decide your claim, Delta Dental will notify you or your Dentist within 30 days. The notice will (a) describe the information needed, (b) explain why it is needed, (c) request an extension of time in which to decide the claim, and (d) inform you or your Dentist that the information must be received within 45 days or your claim will be denied. You will receive a copy of any notice sent to your Dentist. Once Delta Dental receives the requested information, it has 15 days to decide your claim. If you or your Dentist does not supply the requested information, Delta Dental will have no choice but to deny your claim. Once Delta Dental decides your claim, it will notify you within five days.

Authorized Representative

You may also appoint an authorized representative to deal with Delta Dental on your behalf with respect to any benefit claim you file or any review of a denied claim you wish to pursue (see the Claims Appeal Procedure section). You should contact your Human Resources department, call Delta Dental's Customer Service department, toll-free, at (800) 662-8856, or write them at P.O. Box 9089, Farmington Hills, Michigan, 48333-9089, to request a form to designate the person you wish to appoint as your representative. While in some circumstances your Dentist is treated as your authorized representative, generally Delta Dental only recognizes the person whom you have authorized on the last dated form filed with Delta Dental. Once you have appointed an authorized representative, Delta Dental will communicate directly with your representative and will not inform you of the status of your claim. You will have to get that information from your representative. If you have not designated a representative, Delta Dental will communicate directly with you.

Questions and Assistance

Questions regarding your coverage should be directed to your Human Resources department or call Delta Dental's Customer Service department, toll-free, at (800) 662-8856. You may also write to Delta Dental's Customer Service department at P.O. Box 9089, Farmington Hills, Michigan, 48333-9089. When writing to Delta Dental, please include your name, the group's name and number, the Enrollee's Member ID number, and your daytime telephone number.

VI. How Payment is Made

Delta Dental shall make payments for covered services in accordance with the plan selected by the Contractor. Your Plan will be identified on your Summary of Dental Plan Benefits.

Delta Dental PPO plus Premier

If your Dentist is a Participating Dentist, Delta Dental will base payment on the Maximum Approved Fee for Covered Services.

Delta Dental will send payment directly to Participating Dentists and you will be responsible for any applicable Copayments or Deductibles. Unless prohibited by state law, you will be responsible for the Maximum Approved Fee for most commonly performed non-covered services. For other non-covered services, you will be responsible for the Dentist's Submitted Amount.

If your Dentist is a Nonparticipating Dentist, Delta Dental will base payment on the Nonparticipating Dentist Fee for Covered Services.

If your Dentist is an Out-of-Country Dentist, Delta Dental will base payment on the Out-of-Country Dentist Fee for Covered Services.

For Covered Services rendered by a Nonparticipating Dentist or Out-of-Country Dentist, Delta Dental will usually send payment to you, and you will be responsible for making full payment to the Dentist. You will be responsible for any difference between Delta Dental's payment and the Dentist's Submitted Amount.

Delta Dental PPO (Standard)

Whether your Dentist is a PPO Dentist or not, Delta Dental will base its payment on the lesser of the Submitted Amount or the PPO Dentist Schedule.

Delta Dental will send payment directly to Participating Dentists and you will be responsible for any applicable Copayments or Deductibles. If your Dentist is not a PPO Dentist, but is a Premier Dentist, you will also be responsible for any difference between the PPO Dentist Schedule and the Premier Dentist Schedule for Covered Services, in addition to Copayments or Deductibles. Unless prohibited by state law, you will be responsible for the Maximum Approved Fee for most commonly performed non-covered services. For other non-covered services, you will be responsible for the Dentist's Submitted Amount.

For Covered Services rendered by a Nonparticipating Dentist or Out-of-Country Dentist, Delta Dental will usually send payment to you, and you will be responsible for making full payment to the Dentist. You will be responsible for any difference between Delta Dental's payment and the Dentist's Submitted Amount.

Orthodontics

If This Plan includes orthodontics it will be identified on and paid as reflected in your Summary of Dental Plan Benefits Covered Services.

Covered Services Requiring Multiple Visits

In the event a Covered Service requires more than one (1) visit with your Dentist, payment for the Covered Service will be rendered upon Completion Date.

VII. Benefit Categories

The Benefits covered by This Plan are set forth in your Summary of Dental Plan Benefits.

VIII. Exclusions and Limitations

Exclusions

Delta Dental will make no payment for the following services or supplies, unless otherwise specified in the Summary of Dental Plan Benefits. All charges for these services will be your responsibility:

1. Services or supplies for the treatment of an occupational injury or sickness which are paid under the North Carolina Worker's Compensation Act only to the extent such services or supplies are the liability of the employee, employer or workers' compensation insurance carrier according to a final

adjudication under the North Carolina Workers' Compensation Act or an order of the North Carolina Industrial Commission approving a settlement agreement under the North Carolina Workers' Compensation Act.

2. Services received from any government agency, political subdivision, community agency, foundation, or similar entity.

NOTE: This provision does not apply to any programs provided under Medicaid or Medicare.

3. Services or supplies, as determined by Delta Dental, for correction of congenital or developmental malformations, except for the correction of congenital defects or anomalies (including treatment and care for cleft lip or cleft palate) with respect to newborn Children, adopted Children, foster Children, and Children covered by virtue of court or administrative order.
4. Cosmetic surgery or dentistry for aesthetic reasons, as determined by Delta Dental, except for the correction of congenital defects or anomalies (including treatment and care for cleft lip or cleft palate) with respect to newborn Children, adopted Children, foster Children, and Children covered by virtue of court or administrative order.
5. Services completed or appliances completed before a person became eligible under This Plan. This exclusion does not apply to orthodontic treatment in progress (if a Covered Service).
6. Prescription drugs (except intramuscular injectable antibiotics), premedication, medicaments/ solutions, and relative analgesia.
7. General anesthesia and intravenous sedation for (a) surgical procedures, unless medically necessary, or (b) restorative dentistry.
8. Charges for hospitalization, laboratory tests, and histopathological examinations.
9. Charges for failure to keep a scheduled visit with the Dentist.
10. Services or supplies, as determined by Delta Dental, for which no valid dental need can be demonstrated.
11. Services or supplies, as determined by Delta Dental, that are investigational in nature, including services or supplies required to treat complications from investigational procedures.
12. Services or supplies, as determined by Delta Dental, which are specialized techniques.
13. Treatment by other than a Dentist, except for services performed by a licensed dental hygienist under the supervision of a licensed dentist.
14. Treatment rendered by any other dental professional, may be covered only as determined by the Contractor and/or Delta Dental. Services or supplies for which the patient is not legally obligated to pay, or for which no charge would be made in the absence of Delta Dental coverage.
15. Services or supplies covered under a hospital, surgical/medical, or prescription drug program.
16. Services or supplies that are not within the categories of Benefits selected by the Contractor and that are not covered under the terms of this Certificate.
17. Fluoride rinses, self-applied fluorides, or desensitizing medicaments.
18. Interim caries arresting medicament.
19. Preventive control programs (including oral hygiene instruction, caries susceptibility tests, dietary control, tobacco counseling, home care medicaments, etc.).
20. Sealants.
21. Space maintainers for maintaining space due to premature loss of anterior primary teeth.
22. Lost, missing, or stolen appliances of any type and replacement or repair of orthodontic appliances or space maintainers.
23. Cosmetic dentistry, as determined by Delta Dental, except for the correction of congenital defects or anomalies (including treatment and care for cleft lip or cleft palate) with respect to newborn Children, adopted Children, foster Children, and Children covered by virtue of court or administrative order.
24. Veneers.
25. Prefabricated crowns used as final restorations on permanent teeth.
26. Appliances, surgical procedures, and restorations for increasing vertical dimension; for altering, restoring, or maintaining occlusion; for replacing tooth structure loss resulting from attrition, abrasion, abfraction, or erosion; or for periodontal splinting. If Orthodontic Services are Covered Services, this exclusion will not apply to Orthodontic Services as limited by the terms and conditions of the contract between Delta Dental and the Contractor.
27. Implant/abutment supported interim fixed denture for edentulous arch.
28. Soft occlusal guard appliances.
29. Paste-type root canal fillings on permanent teeth.
30. Replacement, repair, relines, or adjustments of occlusal guards.
31. Chemical curettage.
32. Services associated with overdentures.
33. Metal bases on removable prostheses.
34. The replacement of teeth beyond the normal complement of teeth.
35. Personalization or characterization of any service or appliance.
36. Temporary crowns used for temporization during crown or bridge fabrication.
37. Posterior bridges in conjunction with partial dentures in the same arch.
38. Precision attachments and stress breakers.

39. Biologic materials to aid in soft and osseous tissue regeneration when submitted on the same day as soft tissue grafting, guided tissue regeneration, and periodontal or implant bone grafting.
40. Bone replacement grafts and specialized implant surgical techniques, including radiographic/surgical implant index.
41. Appliances, restorations, or services for the diagnosis or treatment of disturbances of the temporomandibular joint.
42. Diagnostic photographs and cephalometric films, unless done for orthodontics and orthodontics are a Covered Service.
43. Myofunctional therapy.
44. Mounted case analyses.
45. Any and all taxes applicable to the services.
46. Processing policies may otherwise exclude payment by Delta Dental for services or supplies.

Delta Dental will make no payment for the following services or supplies. Participating Dentists may not charge Members for these services or supplies. All charges from Nonparticipating Dentists for the following services or supplies are your responsibility:

1. Services or supplies, as determined by Delta Dental, which are not provided in accordance with generally accepted standards of dental practice.
2. The completion of forms or submission of claims.
3. Consultations, patient screening, or patient assessment when performed in conjunction with examinations or evaluations.
4. Local anesthesia.
5. Acid etching, cement bases, cavity liners, and bases or temporary fillings.
6. Infection control.
7. Temporary, interim, or provisional crowns.
8. Gingivectomy as an aid to the placement of a restoration.
9. The correction of occlusion, when performed with prosthetics and restorations involving occlusal surfaces.
10. Diagnostic casts, when performed in conjunction with restorative or prosthodontic procedures.
11. Palliative treatment, when any other service is provided on the same date except X-rays and tests necessary to diagnose the emergency condition.
12. Post-operative X-rays, when done following any completed service or procedure.
13. Periodontal charting.
14. Pins and preformed posts, when done with core buildups for crowns, onlays, or inlays.
15. Any substructure when done for inlays, onlays, and veneers.

16. A pulp cap, when done with a sedative filling or any other restoration. A sedative or temporary filling, when done with pulpal debridement for the relief of acute pain prior to conventional root canal therapy or another endodontic procedure. The opening and drainage of a tooth or palliative treatment, when done by the same Dentist or dental office on the same day as completed root canal treatment.
17. A pulpotomy on a permanent tooth, except on a tooth with an open apex.
18. A therapeutic apical closure on a permanent tooth, except on a tooth where the root is not fully formed.
19. Retreatment of a root canal by the same Dentist or dental office within two years of the original root canal treatment.
20. A prophylaxis or full mouth debridement, when done on the same day as periodontal maintenance or scaling in the presence of gingival inflammation.
21. Scaling in the presence of gingival inflammation when done on the same day as periodontal maintenance.
22. Prophylaxis, scaling in the presence of gingival inflammation, or periodontal maintenance when done within 30 days of three or four quadrants of scaling and root planing or other periodontal treatment.
23. Full mouth debridement when done within 30 days of scaling and root planing.
24. Scaling and debridement in the presence of inflammation or mucositis of a single implant, including cleaning of the implant surfaces without flap entry and closure, when performed within 12 months of implant restorations, provisional implant crowns and implant or abutment supported interim dentures.
25. Full mouth debridement, when done on the same day as comprehensive evaluation.
26. An occlusal adjustment, when performed on the same day as the delivery of an occlusal guard.
27. Reline, rebase, or any adjustment or repair within six months of the delivery of a partial denture.
28. Tissue conditioning, when performed on the same day as the delivery of a denture or the reline or rebase of a denture.
29. Periapical and/or bitewing X-rays, when done within a clinically unreasonable period of time of performing panoramic and/or full mouth X-rays, as determined solely by Delta Dental.
30. Teledentistry fees.
31. Processing policies may otherwise exclude payment by Delta Dental for services or supplies.

Limitations

The Benefits for the following services or supplies are limited as follows, unless otherwise specified in the Summary of Dental Plan Benefits. All charges for services or supplies that exceed these

reductions will be your responsibility. All time limitations are measured from the applicable prior dates of services in our records with any Delta Dental Member Plan or, at the request of the Contractor, any dental plan:

1. Bitewing X-rays are payable once per calendar year, unless a full mouth X-ray, which include bitewings, has been paid in that same year.
2. Panoramic or full mouth X-rays (which may include bitewing X-rays) are payable once in any five-year period.
3. Any combination of teeth cleanings (prophylaxes, full mouth debridement, scaling in the presence of inflammation, and periodontal maintenance procedures) are payable twice per calendar year. Full mouth debridement is payable once in a lifetime.
4. Oral examinations and evaluations are only payable twice per calendar year, regardless of the Dentist's specialty.
5. Patient screening is payable once per calendar year.
6. Preventive fluoride treatments are payable twice per calendar year for people under age 19.
7. Space maintainers for posterior teeth are payable once in a lifetime for people under age 14. A distal shoe space maintainer is only payable for first permanent molars.
8. Cast restorations (including jackets, crowns and onlays) and associated procedures (such as core buildups and post substructures) are payable once in any five-year period per tooth.
9. Crowns or onlays are payable only for extensive loss of tooth structure due to caries (decay) or fracture (lost or mobile tooth structure).
10. Individual crowns over implants are payable at the prosthodontic benefit level once in a five year period.
11. Substructures, porcelain, porcelain substrate, and cast restorations are not payable for people under age 12.
12. Hard full or partial arch occlusal guards are payable once in a lifetime.
13. An interim partial denture is payable only for the replacement of permanent anterior teeth for people under age 17 or during the healing period for people age 17 and over.
14. Biologic materials to aid in soft and osseous tissue regeneration are payable once per tooth in a 36 month period.
15. Prosthodontic Services limitations:
 - a. One complete upper and one complete lower denture, and any implant used to support a denture, are payable once in any five-year period.
 - b. A removable partial denture, endosteal implant (other than to support a denture), or fixed bridge is payable once in any five-year period unless the loss of additional teeth requires the construction of a new appliance.
 - c. Fixed bridges and removable partial dentures are not payable for people under age 16.
- d. A reline or the complete replacement of denture base material is payable once in any two-year period per appliance.
- e. Implant removal is payable once per lifetime per tooth or area.
- f. Implant maintenance is payable once per any twelve (12) month period.
- g. Removal of a broken implant retaining screw is payable once in a 5 year period.
16. Orthodontic Services limitations, if covered under your Plan pursuant to your Summary of Dental Plan Benefits:
 - a. Orthodontic Services are payable for Members pursuant to the limits specified in your Summary of Dental Plan Benefits.
 - b. If the treatment plan terminates before completion for any reason, Delta Dental's obligation for payment ends on the last day of the month in which the patient was last treated.
 - c. Upon written notification to Delta Dental and to the patient, a Dentist may terminate treatment for lack of patient interest and cooperation. In those cases, Delta Dental's obligation for payment ends on the last day of the month in which the patient was last treated.
17. Delta Dental's obligation for payment of Benefits ends on the last day of coverage. However, Delta Dental will make payment for Covered Services provided on or before the last day of coverage, as long as Delta Dental receives a claim for those services within one year of the date of service. When services in progress are interrupted and completed later by another Dentist, Delta Dental will issue payment for any incomplete services; however, Delta Dental will calculate the Maximum Approved Fee that the dentist may charge you for such incomplete services, and those charges will be your responsibility. In the event the interrupted services are completed later by a Dentist, Delta Dental will review the Claim and determine the amount of payment, if any, to the Dentist in accordance with Delta Dental's policies at the time services are completed.
18. Care terminated due to the death of a Member will be paid to the limit of Delta Dental's liability for the services completed or in progress.
19. Optional treatment: If you select a more expensive service than is customarily provided, Delta Dental may make an allowance for certain services based on the fee for the customarily provided service. You are responsible for the difference in cost. In all cases, Delta Dental will make the final determination regarding optional treatment and any available allowance.

Listed below are services for which Delta Dental will provide an allowance for optional treatment. Remember, you are responsible for the difference in cost for any optional treatment.

- a. Resin, porcelain fused to metal, and porcelain crowns, bridge retainers, or pontics on posterior teeth – Delta Dental will pay only the amount that it would pay for a full metal crown.
- b. Overdentures – Delta Dental will pay only the amount that it would pay for a conventional denture.
- c. Resin, or porcelain/ceramic onlays on posterior teeth – Delta Dental will pay only the amount that it would pay for a metallic onlay.
- d. Inlays, regardless of the material used – Delta Dental will pay only the amount that it would pay for an amalgam or composite resin restoration.
- e. All-porcelain/ceramic bridges – Delta Dental will pay only the amount that it would pay for a conventional fixed bridge.
- f. Implant/abutment supported complete or partial dentures – Delta Dental will pay only the amount that it would pay for a conventional denture.
- g. Gold foil restorations – Delta Dental will pay only the amount that it would pay for an amalgam or composite restoration.
- h. Posterior stainless steel crowns with esthetic facings, veneers, or coatings – Delta Dental will pay only the amount that it would pay for a conventional stainless steel crown.

20. Maximum Payment:

All Benefits available under This Plan are subject to the Maximum Payment limitations set forth in your Summary of Dental Plan Benefits.

21. If a Deductible amount is stated in the Summary of Dental Plan Benefits, Delta Dental will not pay for any services or supplies, in whole or in part, to which the Deductible applies until the Deductible amount is met.
22. Caries risk assessments are payable once in any 36-month period for Members age 3-18.
23. Processing Policies may otherwise limit payment by Delta Dental for services or supplies.

Delta Dental will make no payment for services or supplies that exceed the following reductions. All charges are your responsibility. However, Participating Dentists may not charge Members for these services or supplies when performed by the same Dentist or dental office. All time limitations are measured from the applicable prior dates of services in our records with any Delta Dental Member Plan or, at the request of the Contractor, any dental plan:

1. Amalgam and composite resin restorations are payable once in any two-year period, regardless of the number or combination of restorations placed on a surface.
2. Core buildups and other substructures are payable only when needed to retain a crown on a tooth with excessive breakdown due to caries (decay) and/or fractures.
3. Recementation of a crown, onlay, inlay, space maintainer, or bridge within six months of the seating date.

4. Retention pins are payable once in any two-year period. Only one substructure per tooth is a Covered Service.
5. Root planing is payable once in any two-year period.
6. Periodontal surgery is payable once in any three-year period.
7. A complete occlusal adjustment is payable once in any five-year period. The fee for a complete occlusal adjustment includes all adjustments that are necessary for a five-year period. A limited occlusal adjustment is not payable more than three times in any five-year period. The fee for a limited occlusal adjustment includes all adjustments that are necessary for a six-month period.
8. Tissue conditioning is payable twice per arch in any three-year period.
9. The allowance for a denture repair (including reline or rebase) will not exceed half the fee for a new denture.
10. Services or supplies, as determined by Delta Dental, which are not provided in accordance with generally accepted standards of dental practice.
11. Distal shoe space maintainers are only payable for Members age 8 and under.
12. One caries risk assessment is allowed on the same date of service.
13. One caries risk assessment is allowed within a twelve (12) month period when done by the same dentist/dental office.
14. Processing Policies may otherwise limit payment by Delta Dental for services or supplies.

IX. Coordination of Benefits

All Benefits under this Certificate are subject to a coordination of benefits provision, if applicable, that is designed to provide maximum coverage, but not result in payment of more than 100 percent of the total fee for a given treatment.

Coordination of Benefits (“COB”) applies to This Plan when a Member has dental benefits under more than one plan. The objective of COB is to make sure the combined payments of the plans are no more than your actual dental bills. COB rules establish whether This Plan’s Benefits are determined before or after another plan’s benefits.

A Plan is any of the following that provides benefits or services for, or because of, medical or dental care or treatment:

- ◆ Group insurance or group-type coverage, whether insured or uninsured. This includes pre-payment group practice, or individual practice coverage. It does not include school accident-type coverage, blanket, franchise, individual, automobile, or homeowner coverage.
- ◆ Coverage under a governmental plan or coverage required or provided by law. This does not include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act, as amended

from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other non-governmental program.

You must submit your bills to the primary plan first. The primary plan must pay its full benefits as if you had no other coverage. If the primary plan denies your claim or does not pay the full bill, you may then submit the remainder of the bill to the secondary plan.

Allowable Expenses are necessary, reasonable, and customary items of expense for health care when the item of expense is covered at least in part by one or more plans covering the person for whom the Claim is made. Total benefits paid must be equal to 100 percent of necessary medical expenses covered by both plans. However, This Plan is not required to pay for an item, service, or benefit which is not a part of This Plan's Contract.

Which Plan is Primary?

To decide which plan is primary, Delta Dental will consider both the COB provisions of the other plan and the relationship of the Member to This Plan's Subscriber, as well as other factors. The primary plan is determined by the first of the following rules that applies:

1. Non-coordinating Plan

If you have another plan that does not coordinate benefits, it will always be primary.

2. Subscriber v. Dependent Coverage

The plan that covers the Member other than as a Subscriber will be primary over a plan that covers the Member as a dependent. However, please note that if the Member is a Medicare beneficiary, federal law may reverse this order.

3. Children (Parents Divorced or Separated)

If a court decree makes one parent responsible for health care expenses, that parent's plan is primary.

If a court decree states that the parents have joint custody without stating that one of the parents is responsible for the Child's health care expenses, Delta Dental follows the birthday rule (see rule 4 below).

If neither of these rules applies, the order will be determined as follows:

- a. First, the plan of the parent with custody of the Child will be primary;
- b. Then, the plan of the spouse of the parent with custody of the Child will be primary;
- c. Next, the plan of the parent without custody of the Child will be primary;
- d. Last, the plan of the spouse of the parent without custody of the Child will be primary.

4. Children and the Birthday Rule

The plan of the parent whose birthday is earliest in the calendar year is always primary for Children. For example, if your birthday is in January and your spouse's birthday is in March, your plan will be primary for all of your Children. If both parents have the same birthday, the plan that has covered the parent for the longer period will be primary.

5. Laid Off or Retired Employees

The plan that covers the Member as a laid off or retired employee or as a dependent of a laid off or retired employee will be primary.

6. COBRA Coverage

The plan that is provided under a right of continuation pursuant to federal law or a similar state law (that is, COBRA) will be primary.

7. Other Plans

If none of the rules above determines the order of benefits, the plan that has covered the Member for the longer period will be primary.

If the other plan does not have rule 5 and/or rule 6 (above) and decides the order of benefits differently from This Plan, This Plan may ignore either of those rules.

In the event that these rules do not determine how Delta Dental should coordinate benefits with another plan, Delta Dental will follow its internal policies and procedures for determining which plan is primary, unless prohibited by applicable law.

How Delta Dental Pays as Primary Plan

When Delta Dental is the primary plan, it will pay for Covered Services as if you had no other coverage.

How Delta Dental Pays as Secondary Plan

Unless the Contractor has selected carve out coordination of benefits or non-duplication of benefits as stated in your Summary of Dental Plan Benefits, when Delta Dental is the secondary plan, it will pay for Covered Services based on the amount left after the primary plan has paid. It will not pay more than that amount, and it will not pay more than it would have paid as the primary plan.

When Benefits are reduced as described above, each Benefit is reduced in proportion. Benefits are then charged against any applicable benefit limit of This Plan.

Right to Receive and Release Needed Information

Delta Dental needs certain facts to apply these COB rules, and it has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person regarding the Claim being coordinated. Delta Dental need not tell or get the consent of any person to do this. Each person claiming Benefits under This Plan must give Delta Dental any facts it needs to pay the claim.

Facility of Payment

A payment made under another plan may include an amount that should have been paid under This Plan. If it does, Delta Dental may pay that amount to the organization that made the payment.

That amount will then be treated as though it were a Benefit paid under This Plan, and Delta Dental will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable cash value of the benefits provided in the form of services.

Right of Recovery

If the amount of the payments made by Delta Dental is more than it should have paid under this COB provision, Delta Dental may recover the excess from the people it has paid or for whom it has paid;

Payment includes the reasonable cash value of any benefits provided in the form of services. This right of recovery is limited to two years after the date of the original Claim payment, unless Delta Dental has reasonable belief that fraud or intentional misconduct occurred.

X. Reconsideration and Claims Appeal Procedure

Reconsideration

If you receive notice of an Adverse Benefit Determination and you think that Delta Dental incorrectly denied all or part of your claim, you or your Dentist should contact Delta Dental's Customer Service department and ask them to check the claim to make sure it was processed correctly. You may do this by calling the toll-free number, (800) 662-8856, and speaking to a telephone advisor. You may also mail your inquiry to the Customer Service Department at P.O. Box 9089, Farmington Hills, Michigan, 48333-9089.

When writing, please enclose a copy of your explanation of benefits and describe the problem. Be sure to include your name, telephone number, the date, and any information you would like considered about your claim.

A request for reconsideration is not required and should not be considered a formal request for review of a denied claim. Delta Dental provides this opportunity for you to describe problems, or submit an explanation or additional information that might indicate your claim was improperly denied, and allow Delta Dental to correct any errors quickly and immediately.

Whether or not you have asked Delta Dental informally to reconsider its initial determination, you can request a formal review using the Formal Disputed Claims Procedure described below.

Formal Disputed Claims Procedure

If you receive notice of an Adverse Benefit Determination, you, or your authorized representative, should seek a review as soon as possible, but **you must file your request for review within 180 days** of the date that you received that Adverse Benefit Determination.

To request a formal review of your claim, send your request in writing to:

**Dental Director
Delta Dental
P.O. Box 30416
Lansing, Michigan 48909-7916**

Please include your name and address, the Subscriber's Member ID, the reason why you believe your claim was wrongly denied, and any other information you believe supports your claim. You also have the right to review the contract between Delta Dental and the Contractor and any documents related to it. If you would like a record of your request and proof that Delta Dental received it, mail your request certified mail, return receipt requested.

The Dental Director or any person reviewing your claim will not be the same as, nor subordinate to, the person(s) who initially decided your claim. The reviewer will grant no

deference to the prior decision about your claim. The reviewer will assess the information, including any additional information that you have provided, as if he or she were deciding the claim for the first time. The reviewer's decision will take into account all comments, documents, records and other information relating to your claim even if the information was not available when your claim was initially decided.

If the decision is based, in whole or in part, on a dental or medical judgment (including determinations with respect to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate), the reviewer will consult a dental health care professional with appropriate training and experience, if necessary. The dental health care professional will not be the same individual or that person's subordinate consulted during the initial determination.

The reviewer will make a determination within 60 days of receipt of your request. If your claim is denied on review (in whole or in part), you will be notified in writing. The notice of an Adverse Benefit Determination during the Formal Disputed Claims Procedure will meet the requirements described below.

Manner and Content of Notice

Your notice of an Adverse Benefit Determination will inform you of the specific reasons(s) for the denial, the pertinent plan provisions(s) on which the denial is based, the applicable review procedures for dental claims, including time limits and that, upon request, you are entitled to access all documents, records and other information relevant to your claim free of charge. This notice will also contain a description of any additional materials necessary to complete your claim, an explanation of why such materials are necessary, and a statement that you have a right to bring a civil action in court if you receive an Adverse Benefit Determination after your claim has been completely reviewed according to this Formal Disputed Claims Procedure. The notice will also reference any internal rule, guideline, protocol, or similar document or criteria relied on in making the Adverse Benefit Determination, and will include a statement that a copy of such rule, guideline or protocol may be obtained upon request at no charge. If the Adverse Benefit Determination is based on a matter of medical judgment or medical necessity, the notice will also contain an explanation of the scientific or clinical judgment on which the determination was based, or a statement that a copy of the basis for the scientific or clinical judgment can be obtained upon request at no charge.

The Adverse Benefit Determination notice will inform you of your right to a managerial conference to complete the formal grievance procedure.

XI. Termination of Coverage

Your Delta Dental coverage may automatically terminate:

- ◆ When the Contractor advises Delta Dental to terminate your coverage.
- ◆ On the first day of the month for which the Contractor has failed to pay Delta Dental.

- ◆ For fraud or misrepresentation in the submission of any claim.
- ◆ For your Dependent, when they no longer qualify as a Dependent.
- ◆ For any other reason stated in the contract between Delta Dental and the Contractor.

Delta Dental will not continue eligibility for any person covered under This Plan beyond the termination date requested by the Contractor. A person whose eligibility is terminated may not continue group coverage under this Certificate, except as required by the continuation coverage provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 or comparable, non-preempted state law ("COBRA").

XII. Continuation of Coverage

If the Contractor is required to comply with COBRA and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and your dental coverage would otherwise end, you and your Dependents may have the right to continue that coverage at your expense.

When is Plan Continuation Coverage Available?

Continuation coverage is available if your coverage or a covered Dependent's coverage would end because:

1. Your employment, if applicable, ends for any reason other than your gross misconduct.
2. You do not qualify as an Enrollee as set forth in your Summary of Dental Plan Benefits.
3. You are divorced or legally separated.
4. You die.
5. Your Dependent is no longer a Dependent.
6. You become enrolled in Medicare (if applicable).
7. You are called to active duty in the armed forces of the United States.

If you believe you are entitled to continuation coverage, you should contact the Contractor to receive the appropriate documentation required under the Employee Retirement Income Security Act of 1974 ("ERISA").

XIII. General Conditions

Assignment

Services and Benefits are for the personal benefit of Members and cannot be transferred or assigned, other than to pay Participating Dentists directly.

Obtaining and Releasing Information

While you and/or your Dependent(s) are enrolled in This Plan, you and/or your Dependent(s) agree to provide Delta Dental with any information it needs to process Claims and administer Benefits for you and/or your Dependent(s). This includes allowing Delta Dental access to your dental records.

Dentist-Patient Relationship

Members are free to choose any Dentist. Each Dentist is solely responsible for the treatment and/or dental advice provided to the Member, and Delta Dental does not have any liability resulting therefrom.

Loss of Eligibility During Treatment

If a Member loses eligibility while receiving dental treatment, only Covered Services received while that person was covered under This Plan will be payable.

Certain services begun before the loss of eligibility may be covered if they are completed within 60 days from the date of termination. In those cases, Delta Dental evaluates those services in progress to determine what portion may be paid by Delta Dental. The difference between Delta Dental's payment and the total fee for those services is your responsibility. This provision does not apply to orthodontics if covered under this plan.

Late Claims Submissions

Delta Dental will make no payment for services or supplies if a claim for such has not been received by Delta Dental within one year following the date the services or supplies were completed. In the event that a Participating Provider submits a Claim more than one year from the date of service, Delta Dental will deny that portion of the Claim that Delta Dental would have paid if the Claim had been timely submitted. However, you will remain responsible for any applicable Deductible and/or Co-Insurance. In the event that a Nonparticipating Provider submits a claim more than one year from the date of service, Delta Dental will Deny the Claim and you may be responsible for the full amount.

Change of Certificate or Contract

No changes to this Certificate, your Summary of Dental Plan Benefits, or the underlying contract are valid unless Delta Dental approves them in writing.

Actions

You cannot bring an action on a legal claim arising out of or related to this Certificate unless you have provided at least 60 days' written notice to Delta Dental, unless prohibited by applicable state law. In addition, you cannot bring an action more than three years after the legal claim first arose or after expiration of the applicable statute of limitations, whichever is shorter. Any person seeking to do so will be deemed to have waived his or her right to bring suit on such legal claim. Except as set forth above, this provision does not preclude you from seeking a judicial decision or pursuing other available legal remedies.

Governing Law

This Certificate and the underlying group contract will be governed by and interpreted under the laws of the state of North Carolina.

Legally Mandated Benefits

If any applicable law requires broader coverage or more favorable treatment for you or your Dependents than is provided by this Certificate, that law shall control over the language of this Certificate.

Change of Status

You must notify Delta Dental, through the Contractor, of any event that changes the status of a Dependent. Events that can affect the status of a Dependent include, but are not limited to, marriage, birth, death, divorce, and entrance into military service.

Right of Recovery Due to Fraud

If Delta Dental pays for services that were sought or received under fraudulent, false, or misleading pretenses or circumstances, pays a claim that contains false or misrepresented information, or pays a claim that is determined to be fraudulent due to your acts or acts of your Dependents, it may recover that payment from you or your Dependents. You and your Dependents authorize Delta Dental to recover any payment determined to be based on false, fraudulent, misleading, or misrepresented information by deducting that amount from any payments properly due to you or your Dependents. Delta Dental will provide an explanation of the payment recovery at the time the deduction is made.

Any person intending to deceive an insurer, who knowingly submits an application or files a claim containing a false or misleading statement, is guilty of insurance fraud.

Insurance fraud significantly increases the cost of health care. If you are aware of any false information submitted to Delta Dental, please call our toll-free hotline. We only accept anti-fraud calls at this number.

ANTI-FRAUD TOLL-FREE HOTLINE:

(800) 524-0147

BUSINESS ASSOCIATE ADDENDUM

THIS BUSINESS ASSOCIATE ADDENDUM (“the ADDENDUM”) is an addendum to the most recently executed Agreement between Delta Dental Plan of North Carolina (“Business Associate”) and Contractor (“Covered Entity”). Business Associate and Covered Entity are sometimes collectively referred to herein as the “Parties.”

I. INTRODUCTION

- A. **WHEREAS**, pursuant to the terms and conditions set forth in the Agreement, Business Associate performs, for or on behalf of Covered Entity, certain services described in the Agreement (the “Services”); and
- B. **WHEREAS**, in performing the Services, Business Associate will receive, create, or access certain Protected Health Information of Participants in Covered Entity’s dental plan, and, accordingly, is a business associate as that term is defined in 45 CFR 160.103; and
- C. **WHEREAS**, Covered Entity is a covered entity as that term is defined in 45 CFR 160.103; and
- D. **WHEREAS**, the Parties desire to enter into this Addendum to comply with the provisions in the Privacy Rule requiring a business associate to provide adequate assurances to a covered entity with respect to the confidentiality of PHI.
- E. **NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

II. DEFINITIONS

- A. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR 164.501 and is limited to a group of records maintained by or for Covered Entity that includes: (a) enrollment, payment, and claims adjudication records of an Individual maintained by or for Covered Entity; or (b) other Protected Health Information used, in whole or in part, by or for Covered Entity to make coverage decisions about an Individual.
- B. “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information,” at 45 CFR 160.103, and is limited to the electronic protected health information that is created, received, maintained, or transmitted to or on behalf of Covered Entity.
- C. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.
- D. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended.
- E. “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, found in the American Recovery and Reinvestment Act of 2009 at Division A, Title XIII and Division B, Title IV.
- F. “Individual” shall have the same meaning as the term “individual” in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- G. “Minimum Necessary” shall have the meaning set forth in the Health Information Technology for Economic and Clinical Health Act, § 13405(b).
- H. “Participant” means any Individual who is eligible for benefits under Covered Entity’s dental plan.
- I. “Privacy Rule” means the “Standards for Privacy of Individually Identifiable Health Information,” at 45 CFR parts 160 and 164, subparts A and E, as promulgated pursuant to HIPAA.
- J. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR 160.103, and is limited to the information created, received, or accessed by Business Associate from or on behalf of Covered Entity.
- K. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- L. “Secretary” shall mean the Secretary of the Department of Health and Human Services, or his designee.
- M. “Security Rule” means the “Standards for the Security of Electronic Protected Health Information,” at 45 CFR parts 160, 162 and 164, as promulgated pursuant to HIPAA.

III. AGREEMENTS

A. Obligations of Business Associate.

1. **Application of Security Rule and Privacy Rule to Business Associate.** The administrative, physical and technical safeguards set forth in the HIPAA Security Rule at 45 CFR 164.308, 164.310, 164.312, and 164.316, shall apply to Business Associate in the same manner that such sections apply to a covered entity. The additional requirements of Subtitle D of the HITECH Act (Sections 13400 through 13411) that relate to privacy or security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and are hereby incorporated into this Agreement.
2. **Uses and Disclosures.** Business Associate shall not use or further disclose PHI other than (a) as permitted or required by this Agreement and Addendum, (b) as permitted or required by Covered Entity, (c) as permitted or required by the Privacy Rule, (d) as Required by Law, (e) in a manner that would be permissible if used or disclosed by Covered Entity, or (f) in a manner that would not violate the Privacy Rule or other applicable federal or state law or regulation. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR 164.504(e).
3. **Minimum Necessary Standard.** Business Associate shall use and disclose PHI in a manner minimally necessary to accomplish the intended purpose of the use or disclosure.
4. **Security.** Business Associate agrees to: (a) implement safeguards in accordance with the Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity; (b) ensure that any agents, including subcontractors, to whom Business Associate provides PHI agree to implement reasonable and appropriate safeguards in accordance with the Security Rule to protect the PHI; and (c) report to Covered Entity any violation of the Security Rule of which it becomes aware.
5. **Reporting and Mitigation of Unauthorized Access, Use or Disclosure of PHI.** Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for under Section III.A.2 of this Addendum of which Business Associate becomes aware. Additionally, Business Associate agrees that, to the extent practicable, it shall mitigate any harmful effect of a use or disclosure of PHI of which it becomes aware that is in violation of the requirements of Section III.A.2 of this Addendum.
6. **Written Notification of Unauthorized Access, Use or Disclosure of Unsecured PHI.** Business Associate shall notify Covered Entity in writing of any unauthorized access, use or disclosure of unsecured PHI as soon as reasonably possible but no later than five (5) days following the date of discovery. Such notice shall include:
 - (a) a brief description of what happened, including the date of the breach and the date of the discovery,
 - (b) the name(s) of the Participant(s) whose PHI was used or disclosed,
 - (c) the identity(ies) of the entity(ies)/person(s) to whom the use or disclosure was made,
 - (d) description of the types of unsecured PHI that were disclosed,
 - (e) the steps taken by Business Associate to discontinue and minimize the impact of any inappropriate use or disclosure.
7. **Agents and Subcontractors.** Business Associate shall ensure that any subcontractors or agents to whom it provides PHI that has been created or received by Business Associate from or on behalf of Covered Entity agree to the same restrictions and conditions with respect to such PHI as are applicable to Business Associate as set forth herein.
8. **Requests for Information or Access.** Business Associate shall process any requests it receives from Individuals seeking access to or copies of PHI maintained by Business Associate for or on behalf of Covered Entity. Covered Entity hereby expressly delegates its authority regarding requests for access to Business Associate and agrees to abide by Business Associate's determinations to grant or deny access in accordance with the Privacy Rule.
9. **Requests to Amend.** Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual. The Business Associate shall make amendments as soon as administratively feasible.

10. **Requests for Accounting.** Business Associate agrees to document disclosures of Protected Health Information, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 and any additional regulations promulgated by the Secretary pursuant to HITECH Act § 13405(c). Business Associate agrees to implement an appropriate record keeping process that will track, at a minimum, the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.
 11. **Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's compliance with HIPAA, the Privacy Rule, and other applicable federal and/or state law. Business Associate shall notify Covered Entity of any such requests and shall provide Covered Entity with a copy of the request and any documents or information provided in response to such requests.
 12. **Termination.** If either party knows or discovers a pattern of activity or practice of the other party that constitutes a material breach of the other party's obligations under this Agreement or under applicable federal standards, the discovering party agrees to immediately notify the other party in writing as to the nature and extent of such breach, and shall provide the other party a reasonable amount of time to cure such breach. A reasonable amount of time shall depend on the nature and extent of the breach, shall be clearly stated in the notice, but in no case shall the period for cure be less than five (5) business days. Notwithstanding the foregoing, should the discovering party determine that the breach is incurable, or that the other party has repeatedly engaged in such impermissible use or disclosure despite prior notice, the discovering party must terminate this Agreement, if feasible, upon written notice to the breaching party, without damages or liability thereto; or, if termination is not feasible, report the problem to the Secretary.
 13. **Return of PHI Upon Termination.** At termination of the Agreement, Business Associate shall return or destroy all PHI received from Covered Entity, or created by Business Associate on behalf of Covered Entity, that Business Associate maintains in any form. In the event the return or destruction of such PHI is infeasible, then Business Associate shall continue to extend the protections required hereunder to the PHI for as long as it maintains the PHI. Further, Business Associate shall limit any further use or disclosure of the PHI to those purposes that make its return or destruction infeasible. This provision shall survive the termination of this Agreement.
 14. **Prohibition against Sale or Marketing of PHI.** Except as otherwise provided in Section 13405 of the HITECH Act, Business Associate shall not (a) directly or indirectly receive remuneration in exchange for any PHI of a Participant; or (b) use or disclose PHI for any purpose related directly or indirectly to any marketing or marketing communication.
- B. **Additional Permissible Uses and Disclosures of PHI by Business Associate.** Subject to the foregoing provisions, and in addition to the use and disclosure by Business Associate of PHI authorized elsewhere in this Addendum, Business Associate may use and disclose PHI for the following additional purposes:
1. As necessary for data aggregation purposes relating to the health care operations of Covered Entity;
 2. As necessary for data aggregation purposes of Business Associate, but only if the PHI is de-identified pursuant to 45 CFR 164.514;
 3. For the proper internal management and administration of Business Associate;
 4. To carry out the legal responsibilities of Business Associate; and
 5. To provide summary health information (as defined in 45 CFR 164.504) to Covered Entity for the purposes of administering its dental plan.

For purposes (3) and (4) above, Business Associate may disclose PHI to third parties only if the disclosure is either: (a) Required by Law; or (b) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that such PHI will be held confidentially and used or further disclosed only for the purposes for which it was disclosed to the person and that any instances in which the confidentiality of such PHI is breached are immediately reported to the Business Associate.

C. Obligations of the Covered Entity.

1. **Communicate Changes in Permitted Uses and Disclosures.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individuals to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures of PHI.
2. **Communication of Restrictions on Uses and Disclosures.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to.
3. **Prohibition of Employment-Related Disclosures.** Covered Entity shall not use or disclose the PHI of any Participant for any employment-related purposes, nor shall it direct Business Associate to do so.
4. **Limitation on Requests.** Covered Entity shall not ask Business Associate to use or disclose PHI in a manner that would not otherwise be permitted under the Privacy Rule if done by Covered Entity.

D. **Record Keeping.** Business Associate agrees to implement an appropriate record keeping process to enable it to comply with the HIPAA requirements applicable to it under this Addendum and the Privacy Rule.

E. **Confidential and Proprietary Information.** Business Associate may receive, create, or have access to confidential and/or proprietary information of Covered Entity concerning its business affairs, property, products, operations, computer systems, and strategies. Business Associate agrees to hold such confidential and/or proprietary information in strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform the Services as required by this Agreement.

Likewise, Covered Entity may receive, create, or have access to confidential and/or proprietary information of Business Associate concerning its business affairs, property, operations, computer systems, dentists, providers, and strategies. Covered Entity agrees to hold such confidential and/or proprietary information in strict confidence, to maintain and safeguard the confidentiality of such information, and to use such information solely to perform its obligations as required by this Agreement.

F. **Amendment.** Upon enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the State or the United States relating to any such law, or the publication of any interpretative policy or opinion of any government agency charged with the enforcement of any such law or regulation, Business Associate, may send written notice to Covered Entity requesting that this Addendum be amended as necessary to comply with such law or regulation. If, within thirty (30) days from the date of such notice, the Parties are unable to reach an agreement amending this Addendum, either Party may terminate the Agreement immediately upon written notice to the other Party.

G. **Binding Effect.** Except as otherwise provided herein, the terms and conditions of the Agreement shall remain in full force and effect. Additionally, the terms and conditions of this Addendum shall remain in full force and effect following termination of the Agreement.

H. **Indemnification by Covered Entity.** Covered Entity shall indemnify, defend, and hold harmless Business Associate, its board of directors, officers, members, agents, employees, subcontractors, and personnel from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by Business Associate as a result of, or that are proximately caused by, (1) Covered Entity's breach of the terms of this agreement or; (2) Covered Entity's violation of HIPAA and any amendments thereto.

Business Associate shall provide prompt written notice of relevant information concerning the Claims to Covered Entity. Business Associate shall provide such reasonable assistance (at Covered Entity's expense) as may reasonably be requested by Covered Entity in connection with the defense of any Claim. Notwithstanding the foregoing: (1) Business Associate shall not settle any such Claim without the consent of Covered Entity, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Covered Entity hereunder shall not extend to Claims attributable solely to the gross negligence, intentional misconduct, or willful malfeasance of Business Associate.

I. **Indemnification by Business Associate.** Business Associate hereby agrees to indemnify, defend, and hold harmless Covered Entity, its board of directors, officers, members, agents, employees, subcontractors, and personnel (the "Indemnities") from and against any and all claims, demands, suits, actions, losses, expenses, costs (including reasonable attorney fees), obligations, damages, deficiencies, causes of action, and liabilities (collectively, "Claims") incurred by the Indemnities as a result of, or that are proximately caused by, (1) Business Associate's breach of this Agreement; or (2) Business Associate's violation of HIPAA or any amendments thereto.

Covered Entity shall provide prompt written notice of relevant information concerning the Claims to Business Associate. Covered Entity shall provide such reasonable assistance (at Business Associate's expense), as may reasonably be requested by Business Associate, in connection with the defense of any

Claim. Notwithstanding the foregoing: (1) Business Associate shall not settle any such Claim without the consent of Covered Entity, which consent shall not be unreasonably withheld, and (2) the indemnification obligations of Business Associate hereunder shall not extend to Claims attributable solely to the negligence, gross negligence, intentional misconduct, or willful malfeasance of Covered Entity.

- J. **Injunction.** The Parties acknowledge and agree that in the event of a breach or threatened breach by either Party, the non-breaching Party shall be irreparably and substantially harmed, and that remedies at law will not be an adequate remedy for such breach. Accordingly, in such event, non-breaching Party shall be entitled to seek injunctive relief against such breach or threatened breach. Such rights to injunctive relief shall be in addition to, and not in limitation of, any other legal and equitable relief available to either Party under applicable law.
- K. **Counterparts.** This Agreement may be executed in the original or by facsimile or other electronic means in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: PUBLIC HEARING

Meeting Date: September 1, 2020

Item Details

Presenter: Dianne Khin, Director of Planning and Community Development

Department: Planning and Community Development

Requested Motion

Public hearing and possible motion to adopt an Ordinance on the Question of Annexation – Apex Town Council's intent to annex Hector Cuales (Perry Hills Phase 6) property containing 1.66 acres located at 0 and 1105 Tingen Road, Annexation #695 into the Town's corporate limits.

Approval Recommended?

Yes, by the Planning and Community Development Department.

Item Details

The Town Clerk certifies to the investigation of said annexation.

Attachments

- Annexation Ordinance
- Annexation Petition
- Legal Description
- Preliminary Plat





TOWN OF APEX, NORTH CAROLINA
Municipality No. 333

After recording, please return to:
Donna Hosch, MMC, NCCMC, Town Clerk
Town of Apex
P.O. Box 250
Apex, NC 27502

ORDINANCE NO. 2020-0901-17
ANNEXATION PETITION NO. #695
1105 Tingen Road

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS
OF THE TOWN OF APEX, NORTH CAROLINA
P.O. Box 250, Apex, North Carolina 27502

WHEREAS, the Apex Town Council has been petitioned under G.S. § 160A-31, as amended, to annex the area described herein; and

WHEREAS, the Apex Town Council has by Resolution directed the Town Clerk to investigate the sufficiency of said petition; and

WHEREAS, the Town Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at Apex Town Hall at 6:00 p.m. on September 1, 2020, after due notice by posting to the Town of Apex website, <http://www.apexnc.org/news/public-notice-legal-ads>; and

WHEREAS, the Apex Town Council does hereby find as a fact that said petition meets the requirements of G.S. § 160A-31, as amended.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Apex, North Carolina:

Section 1. By virtue of the authority granted by G.S. § 160A-31, as amended, the territory described in the attached property description and also shown as "Annexation Area" on the below identified survey plat is hereby annexed and made part of the Town of Apex, North Carolina, as of the date of adoption of this Ordinance on September 1, 2020. The survey plat that describes the annexed territory is that certain survey plat entitled "Town of Apex Annexation Plat of Kissena Lane, White Oak Township, Wake County, North Carolina, Taylor Land Consultants PLLC, dated June 12, 2020" and recorded in Book of Maps book number 2020 and page number [REDACTED], Wake County Registry.

Section 2. Upon and after the adoption of this ordinance, the territory described herein and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Apex, North Carolina, and shall be entitled to the same privileges and benefits as other parts of the Town of Apex. Said territory shall be subject to municipal taxes according to G.S. § 160A-58.10, as amended.

Section 3. The Clerk of the Town of Apex, North Carolina shall cause to be recorded in the Office of the Register of Deeds of Wake County and in the Office of the Secretary of State at Raleigh, North Carolina and in the Office of the Wake County Board of Elections an accurate map of the annexed territory, described in Section 1 hereof, together with a duly certified copy of this Ordinance.

Adopted this the 1st day of September 2020.

Jacques K. Gilbert
Mayor

ATTEST:

Donna B. Hosch, MMC, NCCMC
Town Clerk

APPROVED AS TO FORM:

Laurie L. Hohe
Town Attorney

Legal Description

Property 1: 1105 Tingen Road: PIN 0741-36-1302

BEGINNING at a point at the eastern right of way of Apex - termination of Kissena Lane thence N 75°26'28" W a distance of 38.91' to a point; thence N 09°51'25" E a distance of 200.21' to a point; thence S 86°36'05" E a distance of 115.53' to a point; thence S 87°05'54" E a distance of 35.51' to a point; thence S 87°05'54" E a distance of 156.09' to a point; thence S 41°21'29" W a distance of 291.97' to a point; thence N 75°26'28" W a distance of 114.03' to the original Point of Beginning. The above described area containing an area of 1.16 acres (50,554 sf). Which is defined by the below referenced property. DB 17673; PG 1611

Property 2: 0 Tingen Road: PIN 0741-26-8380 BEGINNING at a point 4.07' west of the western right of way of Apex - termination of Kissena Lane thence N 86°17'20" W a distance of 109.93' to a point; thence N 09°45'45" E a distance of 199.89' to a point; thence S 86°25'05" E a distance of 41.98' to a point; thence S 86°25'05" E a distance of 68.31' to a point; thence S 09°51'25" W a distance of 200.18' to the original Point of Beginning.

The above described area containing an area of 0.50 acres (21,898 sf). Which is defined by the below referenced property. DB 17272; PG 548 The total area described above contains an area of 1.66 acres (72,452 sf).

STATE OF NORTH CAROLINA

COUNTY OF WAKE

CLERK'S CERTIFICATION

I, Donna B. Hosch, MMC, NCCMC, Town Clerk, Town of Apex, North Carolina, do hereby certify the foregoing is a true and correct copy of Annexation Ordinance No. 2020-0901-17, adopted at a meeting of the Town Council, on the 1st day of September 2020, the original of which will be on file in the Office of the Town Clerk of Apex, North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of the Town of Apex, North Carolina, this the 2nd day of September 2020.

Donna B. Hosch, MMC, NCCMC
Town Clerk

(SEAL)

PETITION FOR VOLUNTARY ANNEXATION

This document is a public record under the North Carolina Public Records Act and may be published on the Town's website or disclosed to third parties.

Application #: 695 Submittal Date: 6/15/2020
Fee Paid \$ 200 Check # 6158

TO THE TOWN COUNCIL APEX, NORTH CAROLINA

1. We, the undersigned owners of real property, respectfully request that the area described in Part 4 below be annexed to the Town of Apex, Wake County, North Carolina.
2. The area to be annexed is ☒ contiguous, ☐ non-contiguous (satellite) to the Town of Apex, North Carolina and the boundaries are as contained in the metes and bounds description attached hereto.
3. If contiguous, this annexation will include all intervening rights-of-way for streets, railroads and other areas as stated in G.S. 160A-31(f), unless otherwise stated in the annexation amendment.

Owner Information

<u>Hector Cuales</u>	<u>0741-26-8380</u>	<u>0741-36-1302</u>
Owner Name (Please Print)	Property PIN or Deed Book & Page #	
<u>919-303-2360</u>		
Phone	E-mail Address	
<u>Owner Name (Please Print)</u>	<u>Property PIN or Deed Book & Page #</u>	
<u>Phone</u>	<u>E-mail Address</u>	
<u>Owner Name (Please Print)</u>	<u>Property PIN or Deed Book & Page #</u>	
<u>Phone</u>	<u>E-mail Address</u>	

Surveyor Information

Surveyor: Taylor Land Consultants, PLLC (attn. Jeremy Taylor)
Phone: 919-801-1104 Fax: _____
E-mail Address: jeremy@taylorlc.com

Annexation Summary Chart

Property Information		Reason(s) for annexation (select all that apply)	
Total Acreage to be annexed:	<u>1.74 acres</u>	Need water service due to well failure	<input type="checkbox"/>
Population of acreage to be annexed:	<u>2</u>	Need sewer service due to septic system failure	<input type="checkbox"/>
Existing # of housing units:	<u>1</u>	Water service (new construction)	<input checked="" type="checkbox"/>
Proposed # of housing units:	<u>9 lots</u>	Sewer service (new construction)	<input checked="" type="checkbox"/>
Zoning District*:	<u>PUD-CZ</u>	Receive Town Services	<input checked="" type="checkbox"/>

*If the property to be annexed is not within the Town of Apex's Extraterritorial Jurisdiction, the applicant must also submit a rezoning application with the petition for voluntary annexation to establish an Apex zoning designation. Please contact the Planning Department at 919-249-3426 for questions.

PETITION FOR VOLUNTARY ANNEXATION

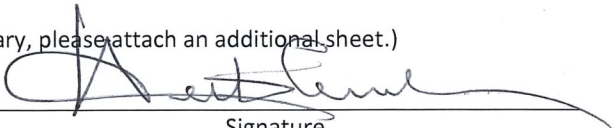
Application #: 695

Submittal Date: 6/15/2020

COMPLETE IF SIGNED BY INDIVIDUALS:

All individual owners must sign. (If additional signatures are necessary, please attach an additional sheet.)

Hector Cuales
Please Print


Signature

Please Print

Signature

Please Print

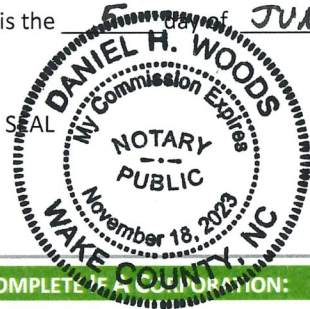
Signature

Please Print

Signature

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, DANIEL H. WOODS, a Notary Public for the above State and County,
this the 5 day of JUNE, 2020.




Notary Public

My Commission Expires: 11/18/2023

COMPLETE IF BY CORPORATION:

In witness whereof, said corporation has caused this instrument to be executed by its President and attested by its Secretary by order of its Board of Directors, this the ____ day of _____, 20____.

Corporate Name _____

SEAL

By: _____
President (Signature)

Attest:

Secretary (Signature)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Sworn and subscribed before me, _____, a Notary Public for the above State and County,
this the _____ day of _____, 20____.

Notary Public

SEAL

My Commission Expires: _____

AFFIDAVIT OF OWNERSHIP: EXHIBIT A – LEGAL DESCRIPTION

Application #:

Submittal Date:

Insert legal description below.

Property 1: 1105 Tingen Road: PIN 0741-36-1302

BEGINNING at a point at the eastern right of way of Apex - termination of Kissena Lane
thence N 75°26'28" W a distance of 38.91' to a point;
thence N 09°51'25" E a distance of 200.21' to a point;
thence S 86°36'05" E a distance of 115.53' to a point;
thence S 87°05'54" E a distance of 35.51' to a point;
thence S 87°05'54" E a distance of 156.09' to a point;
thence S 41°21'29" W a distance of 291.97' to a point;
thence N 75°26'28" W a distance of 114.03' to the original Point of Beginning.

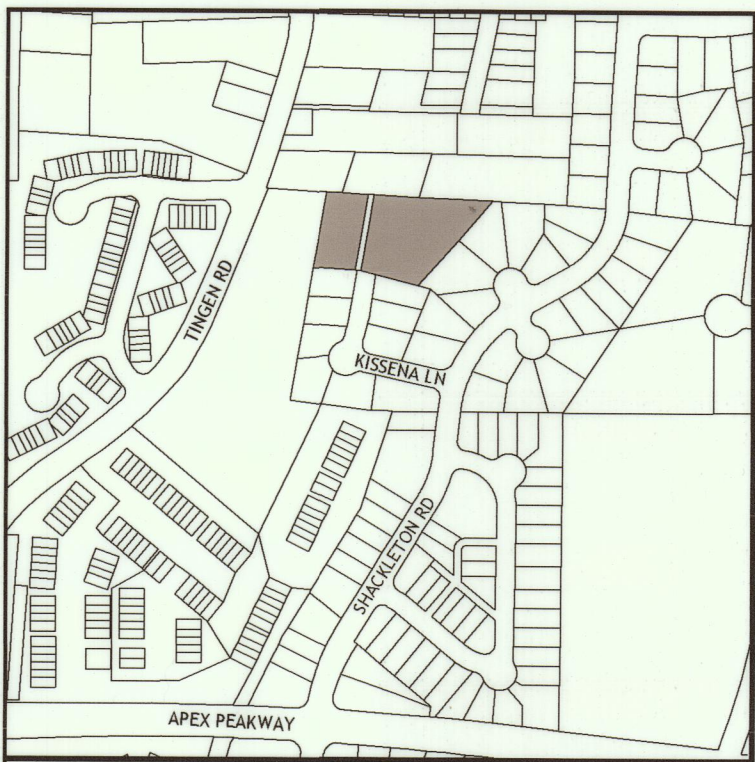
The above described area containing an area of 1.16 acres (50,554 sf). Which is defined by the below referenced property. DB 17673; PG 1611

Property 2: 0 Tingen Road: PIN 0741-26-8380

BEGINNING at a point 4.07' west of the western right of way of Apex - termination of Kissena Lane
thence N 86°17'20" W a distance of 109.93' to a point;
thence N 09°45'45" E a distance of 199.89' to a point;
thence S 86°25'05" E a distance of 41.98' to a point;
thence S 86°25'05" E a distance of 68.31' to a point;
thence S 09°51'25" W a distance of 200.18' to the original Point of Beginning

The above described area containing an area of 0.50 acres (21,898 sf). Which is defined by the below referenced property. DB 17272; PG 548

The total area described above contains an area of 1.66 acres (72,452 sf).



TOWN OF APEX ANNEXATION PLAT of KISSENA LANE

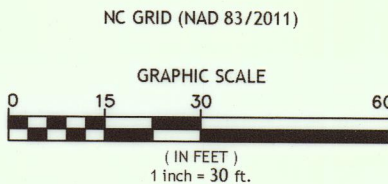
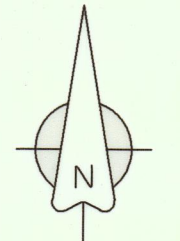
WHITE OAK TOWNSHIP, WAKE COUNTY, NORTH CAROLINA

JUNE 12, 2020
(rev. 6/30/20)

ANNEXATION # _____

I, Donna B. Hosch, MMC, NCCMC, Town Clerk, Apex, North Carolina certify this is a true and exact map of annexation adopted the _____ day of _____, 2020, by the Town Council. I set my hand and seal of the Town of Apex, _____ Day _____ Month _____ Year

Donna B. Hosch, MMC, NCCMC, Town Clerk



LEGEND & NOMENCLATURE

- Existing Iron Pipe (unless noted otherwise)
 - New 3/4" Iron Pipe
 - Concrete Monument Set
 - Computed Point
 - Deed Book
 - Book of Maps
 - Page
 - Square Feet
 - Acres
 - Sight Triangle
 - Address
- D.B.
B.M.
Pg.
S.F.
Ac.
S.T.
0000

LINE	BEARING	DISTANCE
L1	S 86°25'05" E	15.30'
L2	N 75°26'28" W	38.91'
L3	N 86°17'20" W	11.23'
L4	N 86°17'20" W	4.07'
L5	S 86°57'06" E	22.19'

MARY G. JOHNSON
TRACY M. JOHNSON
PIN: 0741-36-0405
D.B. 12378, PAGE 1889

MARLENE DELORIS CUALES
PIN: 0741-36-2484
D.B. 13789, PAGE 41
B.M. 2016, PAGE 1589

TOTAL AREA ANNEXED
1.66 ACRES

HECTOR CUALES
PIN: 0741-26-8380
0 TINGEN RD.
D.B. 17272, PAGE 548
21,898 S.F.
0.50 Ac.

HECTOR CUALES
PIN: 0741-36-1302
1105 TINGEN RD.
D.B. 17673, PAGE 1611
50,554 S.F.
1.16 Ac.

MARTIN GEORGE MAGLY
PIN: 0741-36-2258
D.B. 8411, PAGE 922
B.M. 1998, PAGE 1533

FEDERAL HOME APEX, LLC
PIN: 0741-26-6052
D.B. 16373, PAGE 389
B.M. 1999, PAGE 209

HECTOR CUALES
PIN: 0741-26-9237
D.B. 17272, PAGE 548
3,045 S.F.
0.07 Ac.

MICHAEL PHILLIP HODGES &
ELIZABETH SARAH RASZMANN
PIN: 0741-26-8146
D.B. 17529, PAGE 2329
B.M. 2001, PAGE 1148

MICHAEL COLLINS GOLDER JR. &
ANDREA COAKLEY GOLDER
PIN: 0741-36-1179
D.B. 17150, PAGE 2409
B.M. 1998, PAGE 1533

AMANDA VANDERBROEK
PIN: 0741-36-0124
D.B. 16603, PAGE 2289
B.M. 1998, PAGE 1533

SURVEYOR NOTES:

- All distances shown are horizontal ground measurements in U.S. Survey Feet.
- Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence or any other facts that an accurate and current title search may disclose
- Areas calculated by CAD software (coordinate geometry).
- This plat is for annexation purposes only. All improvements, easements not shown hereon.

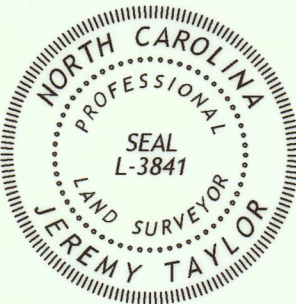
SURVEYOR CERTIFICATION

I, Jeremy Taylor, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed and description recorded in Book referenced etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book referenced; that the ratio of precision or positional accuracy as calculated exceeds 1:10,000; that this plat was prepared in accordance with G.S. 47-30 as amended.

Furthermore this survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision

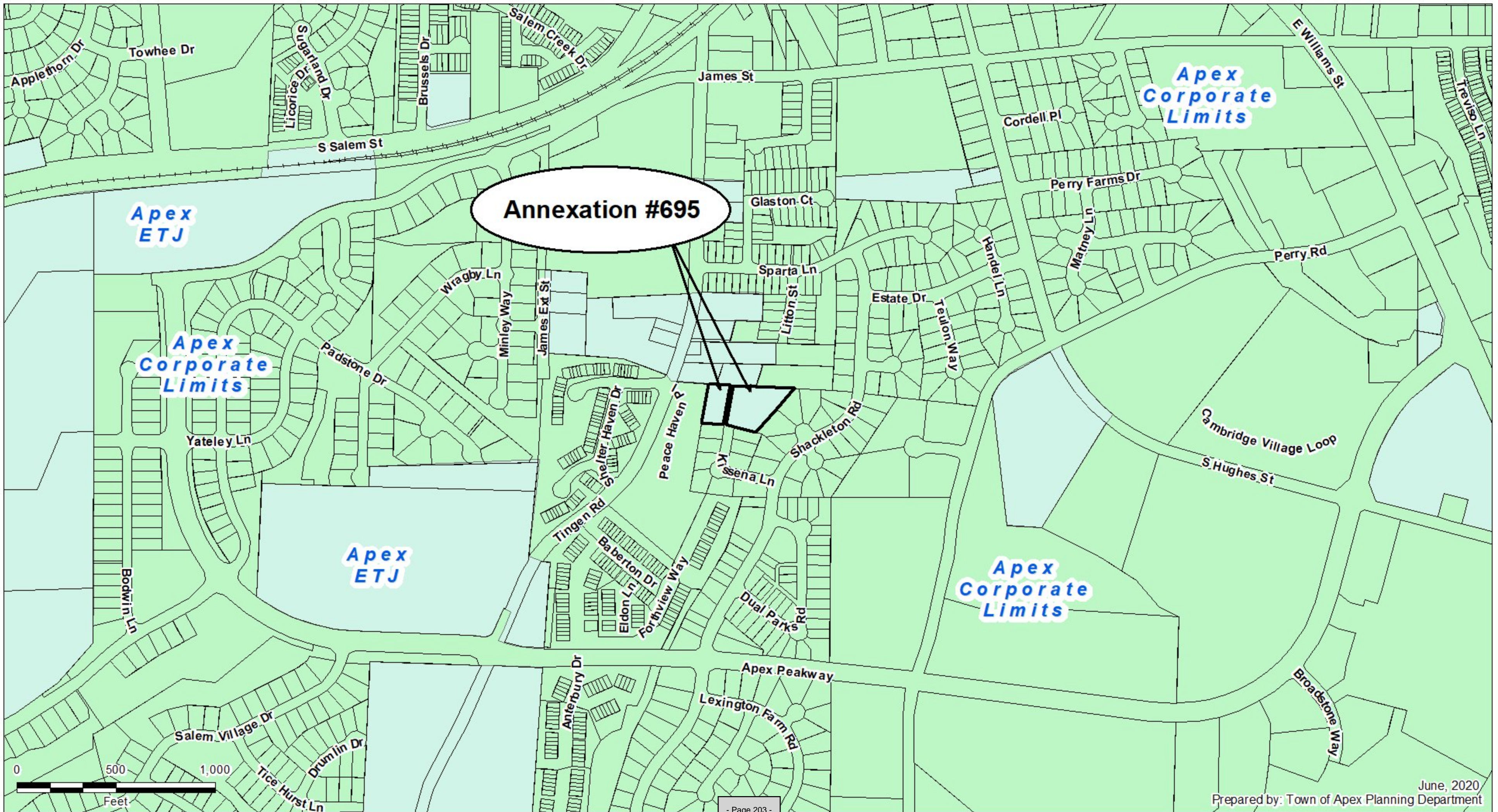
Witness my original signature, license number and seal this 30th day of July, A.D., 2020.

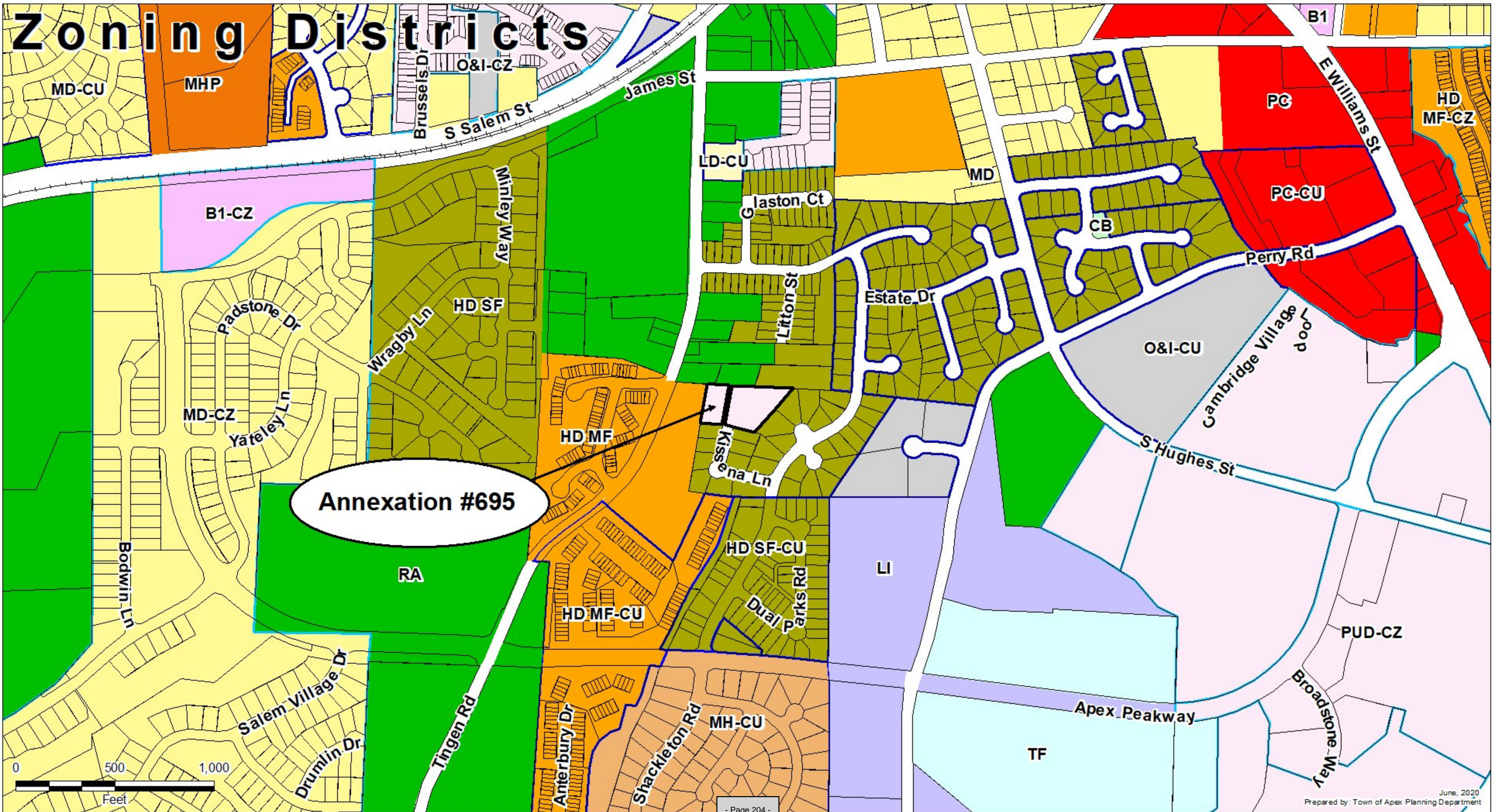
Professional Land Surveyor
License Number: L-3841



TAYLOR
LAND CONSULTANTS, PLLC
License No P-0829
1600 Olive Chapel Road, #140
Apex, NC 27502 (919) 801-1104







| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: NEW BUSINESS

Meeting Date: September 1, 2020

Item Details

Presenter(s): Mike Deaton, Water Resources Director

Department(s): Water Resources

Requested Motion

Possible motion to waive the \$4,700 Civil Penalty that was assessed to the Center Street Pharmacy property owner on March 19, 2020. The property owner failed to submit an annual inspection report for the on-site stormwater control measure (SCM) in accordance with UDO Section 6.1.12(I) (1).

Approval Recommended?

N/A

Item Details

There is a long history of non-compliance at this property. The first SCM inspection report was required back in 2009 and has been due annually ever since that time. Over the past 11 years, none of the SCM inspection reports were submitted in a timely manner with a total of 7 Notices of Violations (NOVs) issued over that period. Constant reminders, follow up correspondence with owner and inspectors, and NOVs were the basis for the civil penalty assessment.

The property owner has stated hardships such as loss of rental income and associated accrual of taxes and utility bills on the subject property (in addition to the loss of personal income due to COVID-19) has made this Civil Penalty difficult to pay. The owner states that the SCM is now in compliance and gives assurance that he will not miss future SCM inspection deadlines.

Attachments

- Notice of Civil Penalty Assessment_3-19-2020.pdf





March 19, 2020

Certified Mail
Return Receipt Requested

Raj Polavaram
RASI LLC GG GALLA LLC
2025 Giovanni Ct.
Cary, NC 27518

Re: NOTICE OF CIVIL PENALTY ASSESSMENT
Project Name: Center Street Pharmacy
Structural SCM(s): One (1) Bio Retention Cell

Dear Mr. Polavaram;

On January 9, 2020, the Town of Apex (Town) sent a Notice of Violation and Correction Order to you for violation of section 6.1.12(l)(1) of the Town Unified Development Ordinance (UDO). The Notice of Violation and Correction Order was delivered by the USPS on January 21, 2020 and specified a deadline for compliance of 10 calendar days after the date of receipt. Multiple attempts were made to contact you in reference to bringing the site into compliance to include: signature receipt with the USPS, site visit, speaking with your realtor (who is selling the facility) with North Carolina Medical & Commercial Realty on 2/26/2020 and I'm glad to hear that James Misciagno was able to speak with you over the phone on March 12, 2020. As of March 18, 2020, the items identified in the Notice of Violation and Correction Order have not been completed. Section 6.1.15(B) of the Town UDO provides authority to impose a civil penalty in accordance with UDO section 11.4.4. Civil penalties of up to \$100.00 per violation per day can accrue and can continue to accrue if the violation is not remedied.

You are hereby assessed a civil penalty in the amount of \$4700.00.

In order to comply with the Town UDO, you must and are hereby ordered to conduct the following:

- Pay assessed civil penalty.
- Take immediate action to complete the corrective actions specified in the January 9, 2020 Notice of Violation and Correction Order.

The civil penalty payment of \$4700.00 is due by 5:00pm on Friday, April 24, 2020. Please make payment payable to the Town of Apex, Attn: Lindley Paynter, P.O. Box 250, Apex, NC 27502. If you wish to contest this assessment, please provide written demand for a hearing within thirty (30) days after receipt of this notice to the Town Clerk at P.O. Box 250, Apex, NC 27502. A hearing on a civil penalty shall be conducted

by the Town Board of Adjustment after the date of the written demand for the hearing. The Town Board of Adjustment shall render its final decision on the civil penalty after the close of the hearing record.

Failure to comply with the listed measures will be considered a continuation of the January 9, 2020 Notice of Violation and Correction Order. No further notices of violation will be issued; violations will result in further accumulation of civil penalties.

Your assistance and cooperation in this matter is appreciated. If you have any questions, please feel free to contact me at (919) 249-3413 or Michael.Deaton@apexnc.org.

Sincerely,
TOWN OF APEX, NC



Michael Deaton, PE
Water Resources Director

cc: Brian Meyer, *Assistant Town Attorney*

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: NEW BUSINESS

Meeting Date: September 1, 2020

Item Details

Presenter(s): Joanna Helms, Economic Development Director

Department(s): Economic Development

Requested Motion

Possible motion to approve extension of a ground lease agreement and an option to purchase agreement with Jack1, LLC regarding the Cash Corporate Center economic development site

Approval Recommended?

Yes

Item Details

As an addendum to the Development Agreement between the Town of Apex and JACK1, LLC (Cash site owners), the Memo of Lease states that if the Town wishes to extend the lease beyond the initial term, it must provide the owner a 90-day notice. The Agreement states that the Town has the option to extend the lease for up to three (3) additional three (3) year terms, resulting in a total of twelve (12) years. The initial term expires December 14, 2020; therefore we would need to notify the owners by September 14, 2020, if we intent to extend our agreement. Economic Development staff is currently working with several potential industries looking at the site.

Attachments

- Ground Lease Agreement Extension
- Option to Purchase Agreement Extension
- Original Agreement with Ground Lease and Purchase Option Exhibits



NORTH CAROLINA

AGREEMENT TO EXTEND GROUND LEASE

WAKE COUNTY

This Agreement made and entered into this ____ day of _____, 2020, by and between JACK1, LLC, a North Carolina limited liability company (“Landlord”), and THE TOWN OF APEX, a political subdivision of the State of North Carolina and municipal corporation (“Tenant”).

WHEREAS, on the 14th of December, 2017, the parties hereto entered into a certain Ground Lease, a Memorandum of which is recorded in the office of the Register of Deeds of Wake County, North Carolina, in Book 17134, Page 2742, whereby the Landlord leased to the Tenant for a period of three years, beginning on the 14th day of December, 2017 and ending on the 14th day of December, 2020, the premises known and described on Exhibit A of the above referenced Memorandum.

WHEREAS, the Landlord and Tenant have agreed to extend the period for which the said premises were leased.

NOW, THEREFORE, it is mutually agreed, that the premises described in the lease above referred to are hereby leased unto the said Lessee for the additional term of three years (the “Extended Term”), subject to the terms and conditions set forth in Article 2.2 of the Lease, beginning on December 14, 2020 and ending on December 14, 2023, at the rental specified in the above described lease, payable at the times and under the conditions therein set forth. All the terms, conditions, and covenants set forth in the above described lease apply to the additional period of extension as fully as if set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this extension Agreement on the day and date first above written.

LANDLORD:

JACK1, LLC

By: _____ (Seal)
Paula Perkins, Member-Manager

By: _____ (Seal)
Fred Gray Cash, III, and

By: _____ (Seal)
Judy Cash, jointly, as Member-Manager

STATE OF NORTH CAROLINA

COUNTY OF _____ [*county in which acknowledgement taken*]

I, _____, certify that Paula Perkins, personally appeared before me this day and acknowledged that she is a member/manager of JACK1, LLC, Landlord herein, and that by authority duly given as an member/manager of the company, the foregoing instrument was signed and sealed by her on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this ____ day of _____, 2020.

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____ [*county in which acknowledgement taken*]

I, _____, certify that Fred Gray Cash and Judy Cash, personally appeared before me this day and acknowledged that they are jointly a member/manager of JACK1, LLC, Landlord herein, and that by authority duly given as an member/manager of the company, the foregoing instrument was signed and sealed by them on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this ____ day of _____, 2020.

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____

TENANT:

TOWN OF APEX

By: _____ (Seal)
Jacques K. Gilbert, Mayor

STATE OF NORTH CAROLINA

COUNTY OF _____ [*county in which acknowledgement taken*]

I, _____, certify that Jacques K. Gilbert, personally appeared before me this day and acknowledged that he is the Mayor of the Town of Apex, Tenant herein, and that by authority duly given and as the act of such entity, the foregoing instrument was signed and sealed by him on its behalf and acknowledged said writing to be the act and deed of said municipal corporation.

Witness my hand and official stamp or seal, this ____ day of _____, 2020.

[*Signature of Notary Public*]

[SEAL]

My Commission Expires: _____

NORTH CAROLINA

AGREEMENT TO EXTEND OPTION TO PURCHASE

WAKE COUNTY

This Agreement made and entered into this ____ day of _____, 2020, by and between JACK1, LLC, a North Carolina limited liability company ("Seller"), and THE TOWN OF APEX, a political subdivision of the State of North Carolina and municipal corporation ("Buyer").

WHEREAS, on the 14th of December, 2017, the parties hereto entered into a certain Option to Purchase, a Memorandum of which is recorded in the office of the Register of Deeds of Wake County, North Carolina, in Book 17134, Page 2748, whereby the Seller granted to the Buyer the exclusive right and option to purchase all or a portion of that certain plot, piece, or parcel of land together with all improvements located thereon in the Town of Apex, County of Wake, State of North Carolina, for a period of three years, beginning on the 14th day of December, 2017 and ending on the 14th day of December, 2020, the premises known and described on Exhibit A of the above referenced Memorandum.

WHEREAS, the Seller and Buyer have agreed to extend the period for which the Buyer may exercise its option to purchase all or part of said leased premises.

NOW, THEREFORE, it is mutually agreed, that the rights described in the Option to Purchase above referred to are hereby granted unto the said Seller for the additional term of three years (the "Extended Term"), subject to the terms and conditions set forth in Article 1 of the Option to Purchase, beginning on December 14, 2020 and ending on December 14, 2023. All the terms, conditions, and covenants set forth in the above described Option to Purchase apply to the additional period of extension as fully as if set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this extension Agreement on the day and date first above written.

SELLER:

JACK1, LLC

By: _____ (Seal)
Paula Perkins, Member-Manager

By: _____ (Seal)
Fred Gray Cash, III, and

By: _____ (Seal)
Judy Cash, jointly, as Member-Manager

STATE OF NORTH CAROLINA

COUNTY OF _____ [*county in which acknowledgement taken*]

I, _____, certify that Paula Perkins, personally appeared before me this day and acknowledged that she is a member/manager of JACK1, LLC, Seller herein, and that by authority duly given as an member/manager of the company, the foregoing instrument was signed and sealed by her on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this ____ day of _____, 2020.

[*Signature of Notary Public*]

[SEAL]

My Commission Expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____ [*county in which acknowledgement taken*]

I, _____, certify that Fred Gray Cash and Judy Cash, personally appeared before me this day and acknowledged that they are jointly a member/manager of JACK1, LLC, Seller herein, and that by authority duly given as an member/manager of the company, the foregoing instrument was signed and sealed by them on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this ____ day of _____, 2020.

[*Signature of Notary Public*]

[SEAL]

My Commission Expires: _____

BUYER:

TOWN OF APEX

By: _____ (Seal)
Jacques K. Gilbert, Mayor

STATE OF NORTH CAROLINA

COUNTY OF _____ [*county in which acknowledgement taken*]

I, _____, certify that Jacques K. Gilbert, personally appeared before me this day and acknowledged that he is the Mayor of the Town of Apex, Buyer herein, and that by authority duly given and as the act of such entity, the foregoing instrument was signed and sealed by him on its behalf and acknowledged said writing to be the act and deed of said municipal corporation.

Witness my hand and official stamp or seal, this ____ day of _____, 2020.

[*Signature of Notary Public*]

[SEAL]

My Commission Expires: _____

DEVELOPMENT AGREEMENT
BETWEEN
TOWN OF APEX, NORTH CAROLINA
AND
JACK1, LLC

ENTERED INTO ON THE 14th DAY OF DECEMBER, 2017

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this _ day of December, 2017, between **THE TOWN OF APEX, NORTH CAROLINA**, a political subdivision of the State of North Carolina and municipal corporation (alternatively the "Town" or "Apex"), and **JACK1, LLC**, a North Carolina limited liability company (referred to as "Jack 1"). The Town and Jack 1 are referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Jack 1 owns land as described in Exhibit A, which is located within Wake County (the "Property");

WHEREAS, the Town desires to acquire and develop the Property for purposes of promoting economic development within the Town, and thereby creating an increase in employment and an improved and diversified property tax base;

WHEREAS, the Parties desire to structure the acquisition in such a way as to allow for the Town's funds to go to infrastructure to serve the Property, improvements to the Property, and marketing of the Property, which will be for the mutual benefit of both of the Parties; and

WHEREAS, the Parties desire to enter into the equity participation arrangement described herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Ground Lease.** Jack 1, contemporaneously with the execution of this Agreement, has entered into a ground lease (the "Lease") of the Property to the Town. The Lease is in the form as shown at Exhibit B. The initial term of the Lease is three (3) years from the Effective Date, as defined in Section 33 below. If Apex is in compliance with the Development and Marketing Milestones as set forth in Section 10 of this Agreement, at each time that Apex has an opportunity for an extension of the Lease, Apex shall have the option, in its sole discretion, to extend the term of the Lease for up to three (3) additional three (3) year lease terms, resulting in a total lease term of twelve (12) years. Provided however, if Apex fails to meet one (1) or more of the Development and Marketing Milestones as set forth in this Agreement, in the initial term or any additional optional term of this Lease, then the Town may only extend the Term of this Lease for the next three (3) year Lease term with the written consent of Jack 1. At the end of the initial Lease term or any extended optional three (3) year Lease term, if the Town has failed to meet a Development or Marketing Milestone required to be completed prior to the expiration of that Lease term, Jack 1 shall have the right to terminate this Lease.

2. **Lease Payments.** As more fully set forth in the Lease, the Lease payments pursuant to the terms of the Lease will be equivalent to the amount by which the personalty and real estate property taxes due and attributable to the Property each year exceed the amount of the annual property taxes actually paid by Jack 1 for the Property as of the date of the execution of the Lease, which increases in any such taxes are attributable to the Town's development efforts, the passage of time, and/or a result of being annexed into the Town, pursuant to Section 7 below. Provided however that the Town will not be responsible for paying any late fees or interest on property taxes due on the Property. Lease payments shall be paid by the Town annually to Jack 1 no later than thirty (30) days following the date on which Jack 1 gives its annual property tax bill and proof of payment of that bill to the Town. It is understood and agreed that the Town will not assess any impact fees on Jack 1 by virtue of this lease and option arrangement. But, provided however, that if Jack 1 chooses to reacquire full title to any portions of the Property, pursuant to Section 13, and to build a facility to lease to an end user, impact fees may be imposed by the Town as a result of that new facility and the company to occupy the facility, and that those impact fees will be due and payable by Jack 1 or the company to occupy the new facility.

3. **Insurance and Indemnification.** As more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will maintain property, casualty and environmental impairment insurance on the Property to cover any damages or liabilities which might arise as a result of the Town's development activities, and the Town will provide copies of all such insurance policies to Jack 1 upon request. Such insurance policies shall name Jack 1 as additional insured parties. Also, as more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will defend, indemnify and hold Jack 1 harmless from any damages or losses whatsoever which are the result of any actions, inactions, or neglect on the part of the Town or its contractors, agents or invitees. Provided however that the Town shall not have the responsibility of providing insurance coverage for or indemnifying Jack 1 for any property, casualty or environmental losses, claims or damages arising before or attributable to conditions of the Property prior to the Effective Date of this Agreement.

4. **Option to Purchase.** The Town and Jack 1, contemporaneously with the execution of the Lease, have entered into an option to purchase (the "Option"), pursuant to which the Town will have the option [in its sole discretion] to purchase all or portions of the Property, pursuant to the terms, conditions, and limitations set forth herein and in the Option. The Option shall be in the form as shown at Exhibit C. The Town shall pay Jack 1 an option fee of one hundred dollars (\$100.00) in consideration for the Option.

5. **Term of Option.** The Option shall have an initial term of three (3) years which shall run contemporaneously with the initial term of the Lease as set forth in Section 1 above. The Option may be extended, [in the sole discretion] of Apex, for up to three (3) additional three (3) year terms, if the Town also exercises its corresponding options to enter into extended three (3) year terms under the Lease. If Apex does not exercise its option to enter into a three (3) year extension of the Lease, or if this Agreement or the

Lease is terminated for any reason whatsoever, then the Option shall be terminated as of the date the Lease is terminated.

6. **Exercise of Option.** The Town may acquire all or portions of the Property, pursuant to the terms and price as set forth in Sections 8 and 9 below, respectively.

7. **Annexation.** Within fifteen (15) business days following the execution of this Agreement, Jack 1 will file applications for the Property to be annexed into the Town's territorial jurisdiction and to rezone the Property to LI-CZ, and will fully cooperate in and continue to pursue the annexation and zoning processes until their conclusion. The Town will dedicate a staff member to assist Jack 1 in the entire annexation and rezoning processes and will waive any applicable fees, such that Jack 1 will incur no costs related to these processes. Should the Cash Family fail to comply with this term or if the annexation or zoning is not finally approved for any reason whatsoever, this Agreement and the Lease and Option shall be terminated and the Parties will have no further obligations from one to the other; provided, however, that the Town's indemnity obligations as set forth in Section 3 above shall survive any termination of the Lease or this Agreement.

8. **Property Conveyance.** When the Town chooses to exercise its rights under the Option from time to time to acquire all or portions of the Property, those purchases shall be pursuant to a Contract to Purchase in the form as set forth at Exhibit D. Jack 1 will donate to the Town any rights of way necessary for the installation of water lines, waste water treatment lines, electrical lines and roads into and to serve the Property, and for the placement of signage and plantings at the entrance to the Property. The portions of the Property donated by Jack 1 to the Town shall not be subject to the minimum acreage requirements referred to herein.

9. **Purchase Price.** The purchase price of the Property (as defined below) is to be paid on an acreage release basis as all or portions of the Property are purchased by the Town. As used herein, the term "Purchase Price" shall mean the sum of the following:

- a. The price of the Property, per acre, as of the date hereof (the "Base Price"). The Base Price has been determined by an appraisal of the Property in its current state, prior to the execution of this Agreement, with such appraisal having been completed by an appraiser agreed to by the Parties. Such appraisal of the Property is attached hereto as Exhibit H and made a part hereof. The Base Price is fifty four thousand nine hundred eighty five dollars (\$54,985.00) per acre.
- b. Plus, twenty-five percent (25%) of the "equity" created in the Property by virtue of the Town's development and marketing efforts, the construction of new company facilities on the Property, and/or the passage of time (the "Equity Participation Portion"). The equity in the Property is defined as the difference between the cumulative total of the Base Price per acre or portion thereof, plus reimbursement to Apex of a per acre or portion of an acre pro rata amount of all Development Costs expended by the Town in the

development of the Property, and the per acre fair market value of the Property as determined by a mutually satisfactory appraisal completed by an appraiser agreed to by the Parties at the time the Town notifies Jack 1 of its desire to purchase all or portions of the Property.

At such time as the Town notifies Jack 1 of its desire to purchase all or portions of the Property, a survey will be completed to determine the acreage to be acquired by the Town. All such surveys shall be paid for by the Town, and the costs of such surveys will be included in the Town's Development Costs. The Town will pay to Jack 1 the Purchase Price for each acre or portion of an acre on a pro rata basis of the Purchase Price for an acre which will be equal to the percentage rounded to the nearest hundredth of a percent of an acre being purchased.

NOTWITHSTANDING THE ABOVE DEFINITION OF THE "PURCHASE PRICE," OR ANYTHING ELSE TO THE CONTRARY AS SET FORTH HEREIN, IN NO EVENT WILL THE PURCHASE PRICE TO BE PAID TO JACK 1 EVER BE LESS THAN THE BASE PRICE, AS DEFINED ABOVE.

10. **Development and Marketing Milestones.** It is understood and agreed that a portion of the value to be realized by Jack 1 is based upon the Town undertaking development efforts and aggressively marketing the Property which is expected to increase the fair market value of the Property and thereby increase Jack 1's Equity Participation Portion. Consequently, the Town's adherence to the following milestones in its development efforts and marketing of the Property (the "Development and Marketing Milestones") are an essential part of this Agreement and are a material inducement to Jack 1's execution hereof. To this end, the Town will achieve the following Development and Marketing Milestones no later than the timeframes shown below following the effective date of this Agreement:

a. Application for rezoning of the Property to LI-CZ	No Later Than Sixty (60) days following the Effective Date
b. Development of marketing materials	No Later Than Ninety Days (90) following the Effective Date
c. Extension of wastewater treatment service to the Property	No Later Than One (1) Year following the Effective Date
d. Construction of short road into the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
e. Extension of electric service to the Property	No Later Than One Hundred and Eighty

	Days (180) following the Effective Date
f. Development of entrance and signage to the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
g. Site Certification	No Later Than One Hundred and Eighty Days (180) following the Effective Date
h. Extension of water service to the Property	No Later Than One Hundred and Eighty (180) days following the Effective Date
i. Purchase of percentages of the Property:	
i. Ten percent (10%)	No Later Than Three Years following the Effective Date of this Agreement
ii. Additional fifteen percent (15%)	No Later Than Five Years following the Effective Date of this Agreement
iii. Additional twenty-five percent (25%)	No Later Than Six (6) Years following the Effective Date of this Agreement
iv. Additional twenty-five percent (25%)	No Later Than Seven (7) Years following the Effective Date of this Agreement
v. Additional twenty-five percent (25%)	No Later Than Eight (8) Years following the Effective Date of this Agreement

11. **Liens and Encumbrances.** The Town shall not place any liens on or encumber the Property without the prior written consent of Jack 1, which consent shall not be unreasonably conditioned, delayed, or withheld. The prior sentence notwithstanding, the Town shall have the right to acquire by donation of Jack 1 rights of way for any utility

infrastructure or roads to be placed on the Property. Development Costs incurred by the Town shall be evidenced by a promissory note securing future advances in the form as shown at Exhibit E and will be secured by a deed of trust in the form as shown at Exhibit F. The promissory note at Exhibit E will not require any interest. Payments of the amounts evidenced by this promissory note will be payable on a pro rata basis as property is sold by Jack 1, as set forth in Section 12 below, or offset against the compensation due to Jack 1 for parcels purchased by the Town, pursuant to Sections 6, 8 and 9 above.

12. **Satisfaction of Deed of Trust.** As portions of the Property are sold by Jack 1 to the Town or a business and thereby released from the Lease and the Option as described in Section 13 below, or are sold by Jack 1 following the termination of the Lease and the Option, and after the payment of the Development Costs and the Town's equity share as described in Section 13 below, the Town will provide to Jack 1 an executed Satisfaction of Promissory Note and Deed of Trust which shall be in the form as shown at Exhibit G. These documents will be executed by the Town and delivered to Jack 1 contemporaneously with the payment of the amounts as described in Section 13 below.

13. **Jack 1 Reacquisition of Property.** Jack 1 shall have the option to release portions of the Property from the Lease and Option if they have an agreement to sell all or portions of the Property to a business which meets the criteria set forth in Section 14 below. In the event that Jack 1 does exercise its option to so release certain portions of the Property, it shall pay to the Town an amount which is the sum of the following amounts on a per acre, or pro rata per acre, basis:

- a. A pro rata portion or a per acre basis of the Development Costs incurred by the Town on the Property; and
- b. Seventy-five percent (75%) of the "equity" in the Property, as defined in Section 9.b. above, attributable to the portion of the Property which is released from the Lease and Option.

14. **Acceptable Businesses.** It is understood and agreed by the Parties that neither the Town nor Jack 1 will recruit a business to the Property or sell Property to a business unless it meets the following criteria:

- a. The business will provide new jobs and/or capital investments sufficient to meet the economic development goals of the Town.
- b. The zoning required for that particular business will be consistent with the zoning applicable to the Property as set forth in Section 10.a. above.
- c. The type of business being recruited will not be detrimental to the future development of the Property as a whole.
- d. The business will require the utilization of at least ten (10) acres for its facility; or if agreed to by Jack 1, less than ten (10) acres.

- e. To the knowledge of the Town and Jack 1, the business will not be planning to conduct any testing of its products on animals within the facility to be located on the Property.

The obligation of Jack 1 to only sell portions of the Property to companies which will meet the above criteria shall remain in effect for seven (7) years following the date on which the Lease and Option are terminated; provided, however, that no restrictions on the future lease or sale of the Property (or any portions thereof) shall apply in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder. Such requirements will be set forth in deed restrictions.

15. **Deferred Taxes.** Jack 1 may have to pay up to three (3) years of deferred taxes as a result of a change in the zoning of the Property. The Town will provide funds to Jack 1 to pay for any and all deferred taxes that Jack 1 might be required to pay. Any of the amounts advanced to Jack 1 by the Town shall be credited against the Purchase Price of the first portion(s) of the Property purchased by the Town. If this transaction is terminated as a result of Jack 1 reacquiring a portion or all of the Property pursuant to Section 13, then the amount of such funds advanced to Jack 1 by the Town shall be added to the promissory note and secured by the deed of trust as set forth in Section 11; provided, however, that Jack 1 will not be under any obligation to return any such funds in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder.

16. **Jack 1 Leases.** It is understood by the Parties that Jack 1 has an interest in any opportunity to lease Property and improvements to companies that might be recruited to or located on the Property. Consequently, the Town will allow Jack 1 the earliest opportunity possible to talk with companies being recruited, to the extent that the company is interested in a lease arrangement and is willing to discuss this with Jack 1. Also, prior to contact with the company, Jack 1 and its representatives will sign a confidentiality agreement, in a form reasonably acceptable to the Town and company being recruited, protecting the interests of the company being referred to them.

17. **Warranties.** Except as set forth in the Contract to Purchase at Exhibit D or any of the other documents attached hereto, there are no other warranties from one Party to the other.

18. **Temporary Extensions of Development and Marketing Milestones.** Notwithstanding anything herein to the contrary, if the Town shall be prevented or delayed from fulfilling, or continuing to fulfill, any of the Development and Marketing Milestones set forth herein by direct reason of a:

- a. Government moratorium affecting Town operations beyond the scope of this Agreement and the activities contemplated hereunder;

b. Delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite timely and reasonable efforts by the Town to obtain same;

c. Enemy or hostile governmental action;

d. Act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;

e. Strike, lockout or a labor dispute involving entities other than the Town which causes the Town an inability to obtain labor or materials;

f. Any failure or neglect of Jack 1 to undertake a necessary act despite written notice and a reasonable opportunity to cure same; or

g. Any other event, other than normal business exigencies, which is beyond the reasonable control of the Town,

then the time allowed to achieve Development and Marketing Milestones shall be equitably expanded to reflect the effect of such event, with there being one day of extension of time in all of the Development and Marketing Milestones for each day of delay caused by a force majeure.

19. **Assignments.** Notwithstanding anything contained in this Agreement or any document related to this Agreement the contrary, this Agreement and any rights and/or obligations related to this Agreement, may be assigned by Jack 1 without the prior written consent of the Town or any other third party. This Agreement shall not be assigned by Jack 1 to any entity created or organized outside of the United States without prior written consent of the Town. Any assignee of Jack 1 shall be subject to and bound by the terms of this Agreement to the same extent as Jack 1. This Agreement may only be assigned by the Town, upon prior written notice to Jack 1, to a nonprofit economic development entity established by the Town to assist in this project, provided that the Town shall guarantee the performance by any assignee of all obligations due under this Agreement and any documents related to this Agreement.

20. **LIMITED OBLIGATION OF TOWN.** NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE TOWN'S SOLE DISCRETION FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL

BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE TOWN'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE TOWN GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE SHALL TAKE PRIORITY.

21. **Governing Law.** The Parties intend that this Agreement shall be governed by the law of the State of North Carolina.

22. **Notices.**

- a. Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.
- b. Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first class mail, postage prepaid, by overnight delivery, or by email, and addressed as follows:
 - i. If to Jack 1 LLC, to Gray Cash, 738 Cash St. Apex, NC 27502.
 - ii. If to the Town, to Town Manager, 73 Hunter Street, Post Office Box 250, Apex, North Carolina 27502 drew.havens@apexnc.org.
- c. Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

23. **Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

24. **Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

25. **Entire Agreement: Amendments.** This Agreement, including Exhibits A through G attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the Parties.

26. **Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by Parties and their respective successors and assigns.

27. **Time.** Time is of the essence in this Agreement and each and all of its provisions.

28. **Liability of Officers and Agents.** No officer, agent, or employee of the Town shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

29. **Presumptions as to Drafter.** The Parties agree that each of them have been represented by legal counsel in the negotiation and drafting of this Agreement. Consequently, in the interpretation of this Agreement, no inference or presumption will be attributed to either Party as to such interpretation.

30. **E-Verify Compliance.** Jack 1 shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Jack 1 shall require all of Jack 1's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

31. **Iran Divestment Act Certification Required by N.C.G.S. 147-86.60.** N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement, Jack 1 hereby certifies that Jack 1 is not listed on the Final Divestment List created by the North Carolina State Treasurer and that Jack 1 will not utilize any subcontractors found on the Final Divestment List.

32. **Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

33. **Effective Date.** As used herein, the term "Effective Date" shall mean the date first shown above.

34. **Development Costs.** As used herein, the term "Development Costs" shall be defined as reasonable, and necessary costs actually paid by the Town, in its sole discretion, to third parties in direct connection with the Town's efforts to meet the Development and Marketing Milestones set forth in Section 10 above. Development Costs shall include, but not be limited to, all costs of materials, fees, contractor's labor, expenses and profits, mitigation costs, construction management, testing and certifications related to or necessary for the extensions of water and waste water treatment lines to and into the Property, electrical lines to and into the Property, roadways into the Property, signage and entrance improvements for the Property, certification of the Property, surveys of the

Property as described herein, and appraisals of the Property as described herein. If the Town sells timber from any portions of the Property, the proceeds from that timber sales will be applied to and deducted from the current amount of the accrued Development Costs. The Town shall be under no obligation to sell timber of any kind under this Agreement. But if timber from any portions of the Property is harvested by any other party, and the Town does not receive the proceeds from such timber sales, then this provision will not apply. Development Costs shall not include the Town's expenses for time spent or activities of Town employees. Jack 1 or its representatives shall have the right to examine the Town's records and receipts relating to any such Development Costs within twenty (20) days following the furnishing of any statement of same to Jack 1. Unless Jack 1 takes written exception to any item within fifteen (15) days following the furnishing of the statement to Jack 1, such statement shall be considered as final and accepted by Jack 1. If such examination reveals that the Town has overcharged Jack 1, the parties shall endeavor in good faith to agree upon a mutually acceptable amount of such costs. Additionally, in the event such examination reveals that the Town has overcharged Jack 1 by five percent (5%) or more, the Town shall also pay to the reasonable costs of such examination.

35. **Revisions to Attached Documents.** The documents attached as Exhibits to this Agreement are intended to be sufficient to effectuate and carry out the intent as expressed in this Agreement. If any of the documents at the attached Exhibits needs to be amended in one or more transactions between the Parties to close on the purchase of portions or all of the Property, the Parties will work together cooperatively and negotiate in good faith as to any needed amendments.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

JACK1, LLC

By: Paula Perkins Date: _____
Paula Perkins, Member-Manager

By: Fred Gray Cash III, and Judy Cash By: Judy Cash
Fred Gray Cash III, and Judy Cash, jointly, as Member-Manager
Date: _____

TOWN OF APEX, NORTH CAROLINA

By: Lance Olive Date: Dec. 14, 2017
Name: Lance Olive, Mayor

ATTEST:

Bonnie J. Brock
Name: Bonnie J. Brock
Date: 12/14/2017
Bonnie J. Brock Deputy
Donna Hesch, Town Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Vance Holloman
Name: Vance Holloman
Finance Officer, Town of Apex, North Carolina
Date: 12/14/17

GROUND LEASE

THIS GROUND LEASE, dated this 14th day of December, 2017 (the "Effective Date"), by and between **JACK1, LLC**, a North Carolina limited liability company ("Landlord"), and **THE TOWN OF APEX NORTH CAROLINA**, a political subdivision of the State of North Carolina and municipal corporation ("Tenant") (the "Lease").

RECITALS:

A. Landlord is the owner of that certain tract of land located in the City of Apex, White Oak Township, Wake County, North Carolina, as recorded in Book 2013 Page 1625 in the Wake County Registry.

B. Landlord and Tenant are parties to a Development Agreement, dated December __, 2017, which is attached hereto as **Exhibit A** and incorporated by reference (the "Development Agreement").

C. Landlord and Tenant desire for Landlord to lease to Tenant the Premises, as hereinafter defined, to permit Tenant to construct improvements thereon, (the "Improvements") and to market all or portions of the Premises.

NOW, THEREFORE, in consideration of the rent to be paid, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. Tenant hereby accepts this Lease and the Premises upon the covenants and conditions set forth herein and subject to any encumbrances, covenants, conditions, restrictions and other matters of record as of the date hereof (the "Permitted Encumbrances") and all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises.

TO HAVE AND TO HOLD THE SAME subject to the terms and conditions set forth herein.

ARTICLE 1 - PREMISES

For and in consideration of the rents, taxes and insurance and other charges and expenses to be paid by Tenant, and in consideration of the performance by Tenant of the covenants set forth herein, Landlord does hereby demise and lease to Tenant all that certain real property consisting of 121.305 acres of land, located within Wake County, North Carolina, more particularly described on **Exhibit B** attached hereto, together with the Improvements thereon (the "Premises").

ARTICLE 2 -TERM

2.1 Term. The term of this Lease shall commence on the date hereof and shall expire three (3) years after the Effective Date (the "Term").

2.2 Options to Extend Term. Landlord further hereby grants Tenant three (3) successive options to extend the Term, each for an additional period of three (3) years, as follows: Provided it is not then in default under this Lease beyond any applicable cure period, Tenant shall have the option to extend the Term for each successive three (3) year period ("Extended Term") by giving notice to Landlord of its exercise of the option at least ninety (90) days prior to the expiration of the Term or the then-expiring Extended Term, as the case may be. All of the terms and conditions of this Lease shall apply during each Extended Term. Notwithstanding the foregoing, in the event that Tenant fails to meet one (1) or more of the Development and Marketing Milestones set forth in the Development Agreement, Tenant's right to extend the Term or Extended Term, as the case may be, shall be subject to the prior written consent of Landlord.

ARTICLE 3 -RENT

3.1 Rent. In consideration of leasing the Premises, Tenant agrees to pay Landlord, or Landlord's designated agent, at the address set forth herein or such other address as Landlord from time to time may designate in writing, the Annual Rent (as defined below), due and payable annually within thirty (30) days after Landlord delivers to Tenant a written notice specifying the amount of the Rent, its annual tax bill(s) evidencing same, and evidence that the tax bill has been paid. The annual rent shall be equal to the amount by which all personalty and real property taxes due and attributable to the Premises each tax year (including, without limitation, the taxes listed in Section 4.1) exceed the amount of the annual property taxes actually paid by the Landlord for the Premises as of the date of the execution of the Lease (as determined by the most recent tax bills received by Landlord prior to the Effective Date) (the "Annual Rent"). Tenant shall not be responsible for paying any late fees or interest on past due amounts for the payment of taxes due and payable by Landlord on the Premises. All other amounts to be paid by Tenant under this Lease shall constitute "Additional Rent" hereunder, due and payable within thirty (30) days after Tenant's receipt of Landlord's written request therefor.

The term "Lease Year" as used herein shall mean each consecutive twelve (12) month period from and after the Effective Date until the expiration of the Term; provided, however, if the Effective Date falls on a day other than the first day of a calendar month, then the first Lease Year shall be longer than one calendar year and shall end on the last day of the twelfth (12th) full calendar month after the Effective Date. Each subsequent Lease Year shall end on the last day of that same calendar month.

3.2 Late Charge. If Tenant fails to pay any installment of Rent, or any other charge that Tenant is obligated to pay hereunder within thirty (30) days after the same is due and payable, then, without limiting Landlord in the exercise of any other right or remedy of Landlord with respect to such failure, Tenant shall pay Landlord a late charge equal to five percent (5.00%) of the amount of the late payment to compensate Landlord for any inconvenience or

damage resulting therefrom; provided, however, such late charge shall not be imposed more than once for any particular late payment and shall not be applicable to any payment which becomes due on or after the date on which Landlord elects to pursue any remedy available hereunder. In addition to the late fee provided herein, Tenant shall pay interest on any amount not paid within thirty (30) days after the same is due and payable at the rate of the lower of eighteen percent (18%) per annum or the maximum amount per annum permitted under North Carolina law. Interest shall begin to accrue on any unpaid amount on the day that such amount is due and payable.

3.3 Rent Independent. Tenant's covenants to pay Minimum Rent, Additional Rent (as defined in Section 4.1) and any other sums payable to Landlord under this Lease are independent of any other covenant, condition, provision, or agreement contained herein. Nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time that the same becomes due and payable hereunder, or limit any other remedy of Landlord. Annual Rent and Additional Rent are sometimes collectively referred to as "Rent." Rent shall be payable without deduction, offset, or prior notice or demand in lawful money of the United States.

ARTICLE 4 -TAXES AND UTILITIES

4.1 Real Property Taxes and Assessments. Landlord shall be responsible for the payment taxes to the applicable taxing authority; provided, however, from and after the Effective Date, Tenant shall be responsible for all increases in all personalty, real property and other taxes and assessments attributable to the Property, or installments thereof, whether general or special, or ordinary or extraordinary, every nature, name and kind whatever, including all governmental charges of whatever nature or kind, which are levied, assessed, charged or imposed against the Premises or any part of the Premises, the Improvements, the leasehold of Tenant under this Lease or against Tenant by reason of ownership of the Improvements and become due in accordance with Section 3.1.

4.2 Utilities. Tenant shall make all arrangements for obtaining, and during the Term shall pay for, all utilities and services furnished to, or to be used on, the Premises, including, without limitation, electricity, water, gas, sewer, telephone service and trash collection, and for all service commencement charges and meter reading fees. Such charges and expenses shall be paid directly to the utility companies or other entities to which such charges and fees are payable.

4.3 Personal Property Taxes. During the Term, Tenant shall pay all personal property taxes levied upon the personal property on the Premises, before the date on which such taxes would be delinquent.

4.4 Impact Fees. Notwithstanding anything contained in this Lease to the contrary, Tenant shall not assess any impact fees on Landlord by virtue of this ground lease and the option arrangement pursuant to the Development Agreement; provided, however, in the event that Landlord elects to reacquire full title to any portions of the Premises pursuant to Section 13 of the Development Agreement to build a facility to lease to an end user, impact fees may be

imposed by the town as a result of that new facility and the end user to occupy such new facility ("Permitted Impact Fees").

ARTICLE 5 -USE OF PREMISES

5.1 Permitted Use. The Premises shall be used only for purposes of marketing the Premises to recruit companies to the Town of Apex, provided that the companies being recruited are "Acceptable Businesses" as defined in Section 14 of the Development Agreement, or for any other lawful purpose approved in writing by the Landlord, which approval shall not be unreasonably withheld or delayed. The Premises shall not be used in such manner as to knowingly violate any applicable law, rule, ordinance, or regulation of any governmental body. In addition, the Premises shall not be used for a purpose which would result in a breach or violation of any recorded document.

5.2 Enforcement of Use Restrictions. Landlord may enforce the restrictions on Tenant's use of the Premises by cancellation of this Lease or by injunctive or other equitable relief in addition to any other legal remedies available to Landlord and in the event of any such legal or equitable action, Landlord shall, among other things, be entitled to recover attorney's fees and costs.

ARTICLE 6 -CONSTRUCTION OF IMPROVEMENTS; REPAIRS AND MAINTENANCE; ALTERATIONS AND IMPROVEMENTS

6.1 Repairs and Maintenance. Tenant agrees that, subject to the provisions of Article 8 below, during the Term it will, at its expense and without any expense to Landlord, make all necessary repairs to or replacements of the Improvements, including all parking areas, sidewalks, curbs, lawns and landscaping on the Premises, and maintain the Premises in good, sanitary and neat order, condition and repair, including repairs and replacement of the electrical, plumbing, heating, air conditioning and other equipment of all types on or in the Premises. Tenant shall, at its sole expense, keep any sidewalks and parking areas on the Premises free from snow, ice, rubbish and other obstructions. Tenant shall, at all times following said construction, assure that the Premises and all improvements constructed thereon are in compliance with all applicable laws and so as not to create a nuisance. Tenant shall not commit waste with respect to the Premises.

6.2 Alterations and Improvements. Tenant shall have the right, at any time and from time to time, during the Term, at its expense, to (a) make changes or alterations, structural or otherwise, to the Improvements, (b) erect, construct or install upon the Premises buildings and improvements in addition to or in substitution for those now or hereafter located thereon, and (c) demolish and remove the Improvements or any other structures hereafter located on the Premises for the purpose of replacing the same; provided, however, that the fair market value of all improvements on the Premises following each such change, alteration, construction or installation shall be at least equal to the fair market value of all improvements on the Premises immediately prior to such change, alteration, construction or installation.

6.3 Title to Improvements. At all times while this Lease is in force and effect, title to the Improvements shall belong solely to Tenant. Upon the termination or expiration of this Lease, title to the Improvements shall pass to Landlord, without payment therefor to Tenant, and Tenant shall have no further rights therein. Provided however, that land dedicated and donated to the Town of Apex pursuant to Section 8 of the Development Agreement to provide rights of ways for the installation of water lines, waste water treatment lines, electrical lines, and roads into and to serve the Premises, shall not pass to the Landlord at the termination or expiration of this Lease, if such improvements have been constructed and placed on the property. If such improvements have not been constructed, the unused rights of ways shall be conveyed back to the Landlord.

ARTICLE 7 - LIENS

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant, and shall indemnify, protect and hold harmless Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. Provided however, that the Landlord consents to, and the provisions of this section of the Lease are not applicable to a lien on the Premises to secure repayment to the Town of Apex for expenditures for Development Costs as defined and set forth in Sections 11 and 34 of the Development Agreement.

If, at any time during the Term, any interest of Landlord in the Premises becomes subject to a lien for labor or materials furnished to Tenant in the repair or improvement of the Premises, within thirty (30) days after Tenant's receipt of written notice informing Tenant of the recording of such lien, Tenant shall cause the lien to be bonded or discharged, and shall otherwise save Landlord harmless on account thereof, provided, however, that if Tenant desires in good faith to contest the validity or correctness of any such lien, it may do so, and Landlord shall cooperate to whatever extent may be necessary, provided only that Tenant shall indemnify Landlord against any costs, loss, liability or damage on account thereof, including reasonable attorneys' fees, which amounts shall constitute Additional Rent and shall be payable on demand with interest at the rate set forth in Section 3.3 accruing from the date paid or incurred by Landlord until reimbursed to Landlord by Tenant.

ARTICLE 8 - LIABILITY INSURANCE

8.1 Tenant's Insurance. Tenant covenants and agrees that from and after the delivery of the Premises from Landlord to Tenant, Tenant shall carry and maintain, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided:

A. Public Liability and Property Damage. Commercial general public liability and property damage insurance with a combined single limit of Three Million Dollars (\$3,000,000.00) insuring against any and all liability of the insured with respect to the Premises or arising out of the maintenance, use, or occupancy thereof. All such personal injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions set forth herein as to liability for injury to or death of persons and injury or damage to property.

B. Casualty Insurance – An "all risk" policy against all loss or damage by casualty (including, but not limited to, fire, vandalism, malicious mischief and all other hazards, risks and periods usually covered in the State of North Carolina by extended coverage) in an amount equal to the then current full replacement cost of the buildings and improvements located at the Premises. Landlord shall be named as additional insured and Tenant shall be named as insured under the casualty policies of insurance required to be carried by Tenant. If Tenant has heretofore or shall hereafter mortgage or pledge its leasehold estate to a leasehold mortgagee/or lessor, insurance proceeds payable under the policies may be paid solely to such mortgagee/or lessor only if such mortgagee or lessor agrees that the same shall be made available to pay restoration or rebuilding costs.

C. Workers' Compensation Coverage. Tenant shall provide to Landlord a certificate of insurance evidencing proof of coverage within the statutory limits providing a Waiver of Subrogation to Landlord.

D. Pollution and Environmental Insurance. Pollution and environmental insurance with a combined single limit of One Million Dollars (\$1,000,000.00) insuring against any and all liability of the insured with respect to the Premises or arising out of Tenant's activities at the Premises.

E. Policy Form. All policies of insurance provided for herein shall be issued by insurance companies satisfactory to Landlord with general policyholders' rating of not less than A and a financial rating of AAA as rated in the most current available "Best's Insurance Reports", and qualified to do business in the State of North Carolina, and shall be issued in the names of Landlord, Tenant, and such other person or firms as Landlord specifies from time to time, including mortgagees of Landlord. Such policies shall contain a waiver of the right of subrogation against Landlord. Such policies shall be for the mutual and joint benefit and protection of Landlord, Tenant, and others hereinabove mentioned, and executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within five (5) days after Tenant's receipt of written request therefor. All public liability and property damage policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to Landlord and Landlord's servants, agents, and employees by reason of the negligence or misconduct of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. Tenant shall provide written notice to Landlord at least fifteen (15) days prior to the expiration of the term of each such insurance policy, of any cancellation or lapse, or the effective date of any reduction in the amounts of insurance. All public liability, property damage, and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. If Tenant fails to keep any such insurance in force, Landlord may, but shall not be required to, obtain such insurance, and the expense thereof shall constitute and be collectible as Additional Rent, payable to Landlord on Landlord's demand.

8.2 Exculpation of Landlord. It is expressly understood and agreed by and between Landlord and Tenant that Landlord shall have no liability for damage or injury to any person or property in, on or about the Premises caused by or resulting from acts or omissions of any tenant, occupant, licensee or invitee of the Premises, electricity, gas, rain, ice, snow, or leakage or flow of water from or into any part of the Improvements, or from any other cause or occurrence, unless such damage or injury is caused by or results from the gross negligence or willful misconduct of Landlord or Landlord's agents, employees, representatives, or contractors.

8.3 Tenant's Indemnification of Landlord. Tenant agrees to indemnify, protect, defend and hold Landlord and Landlord's partners, shareholders, employees, lender and managing agent harmless from and against any and all claims, losses, costs, liabilities, actions and damages, including, without limitation, attorneys' fees and costs by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from any breach or default on the part of Tenant in the performance of any representation, warranty, covenant or other agreement on the part of Tenant to be performed, pursuant to the terms of this Lease, or arising from any action, inaction or negligence on the part of Tenant or its agents, contractors, servants, employees, licensees or invitees, or arising from any accident, injury or damage to the extent caused by Tenant or its agents or employees to any person, firm or corporation occurring during the Term of this Lease or any renewal thereof, in or about the Premises, and from and against all costs, reasonable attorneys' fees, expenses and liabilities actually incurred in or about any such claim or action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord or its managing agent by reason of any such claim, Tenant, upon notice from

Landlord, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord.

8.4 Tenant's Property. All property on the Premises belonging to Tenant or its agents, employees, invitees or otherwise located at the Premises, shall be at the risk of Tenant only, and Landlord shall not be liable for damage thereto or theft, misappropriation or loss thereof and Tenant agrees to defend and hold Landlord and Landlord's agents, employees and servants harmless and indemnify them against claims and liability for injuries to such property; provided, however, the foregoing shall not apply to any intentional or grossly negligent act or omission of Landlord, its employees, agents or independent contractors or to a breach of this Lease by Landlord.

ARTICLE 9 – [INTENTIONALLY DELETED]

ARTICLE 10 - DAMAGE AND DESTRUCTION

10.1 No Abatement of Rent. Notwithstanding any statute or rule of law of the state in which the Premises are located to the contrary, if the Improvements or any part thereof are damaged or destroyed by fire or other casualty, this Lease shall continue in full force and effect and such damage or destruction shall not affect, abate or mitigate Tenant's obligation to pay rental or other sums due hereunder.

10.2 Restoration of Improvements. In the event of damage to or destruction of the Improvements, then, within a reasonable period of time after the date of the damage or destruction, Tenant shall proceed to repair, restore, and replace the Improvements to their prior condition and shall have available to it all proceeds from Tenant's property insurance; provided, however, in the event more than fifty percent (50%) of the square footage of the Improvements are damaged or destroyed, Tenant may elect not to restore the Improvements to their prior condition, in which case Tenant shall promptly tear down and remove all remaining parts of the Improvements and restore the Premises to their original condition. Tenant's determination not to restore the Improvements shall not affect any of Tenant's obligations under this Lease. In the event the Improvements are to be restored, the proceeds of Tenant's property insurance shall be placed in an escrow account and shall be applied exclusively to the costs of repairs and replacements. The escrow account shall be maintained by Landlord or by Tenant's leasehold mortgagee, if required, and shall be disbursed during the course of the repairs. If the insurance proceeds are insufficient to pay the costs of the repair work, Tenant shall pay any and all deficiency. Under no circumstances shall Landlord be obligated to make any payment, disbursement or contribution towards the cost of the repairs or replacements. If the proceeds exceed the cost of such work, Tenant may retain the excess, except that, where any leasehold mortgage contains a contrary provision regarding the excess, such provision shall govern the application of the excess insurance proceeds.

ARTICLE 11 - CONDEMNATION

11.1 Complete Taking. If, at anytime during the Term, the whole of the Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, including any such taking by "inverse condemnation," then this Lease shall terminate as of the earlier of the date that title vests in the condemnor or the date that the condemnor takes possession of the property so taken ("Date of Taking"). In such event, Minimum Monthly Rent, all Additional Rent, and all other charges payable hereunder shall be prorated and paid to the date of termination.

11.2 Partial Taking. If, at anytime during the Term, more than fifty percent (50%) of the acreage of the Premises or any part of a driveway or other access way which is reasonably necessary for access to the business on the Premises is taken for the purposes set forth in Section 11.1 and Landlord cannot provide an alternative driveway or access, and such taking materially, adversely affects the operation of the business on the Premises, Tenant shall have the right to terminate this Lease as of the Date of Taking, by giving written notice of such termination to Landlord within ninety (90) days after the date of Tenant's receipt of notice of such taking. In such event, Minimum Monthly Rent, all Additional Rent, and all other charges payable hereunder shall be prorated and paid to the date of termination.

11.3 Allocation of Condemnation Award. Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 11.3, provided Tenant's award does not reduce or affect Landlord's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

ARTICLE 12 - BANKRUPTCY

If, at any time during the Term, bankruptcy, insolvency or other similar proceedings shall be instituted by or against Tenant, whether or not such proceedings result in an adjudication against Tenant, or should a receiver of the business or assets of Tenant be appointed, such proceedings or adjudication shall not affect the validity of this Lease so long as the Rent and additional rent reserved hereunder continues to be paid to Landlord when due, and the other terms, covenants and conditions of this Lease on the part of Tenant to be performed are performed, and in such event this Lease shall remain in full force and effect in accordance with its terms.

ARTICLE 13 - ASSIGNMENT AND SUBLETTING

This Lease may be assigned pursuant to the terms set forth in Section 19 of the Development Agreement. The Premises may not be sublet by the Tenant to any other party.

ARTICLE 14 - EVENTS OF DEFAULT; REMEDIES

14.1 Events of Default. The occurrence of any one or more of the following events (in this Article sometimes called an "Event of Default") shall constitute a default and breach of this Lease by Tenant:

a. If Tenant fails to pay any Rent or Additional Rent payable under this Lease or fails to pay any obligation required to be paid by Tenant and such failure shall continue for a period of ten (10) days after written notice from Landlord to Tenant that the same is due and payable.

b. If Tenant fails to perform any of Tenant's non-monetary obligations or breaches any covenant or representation or warranty under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more time is required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) day period and thereafter diligently pursues its completion without interruptions. The notice required by this subsection is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement.

c. If Landlord discovers that any financial statement, warranty, representation or other information given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest of Tenant or any guarantor of Tenant's obligation hereunder, and any of them, in connection with this Lease, was materially false or misleading when made or furnished.

d. Abandonment of the Premises, Improvements or the leasehold estate.

14.2 Remedies. Upon the occurrence of an Event of Default by Tenant, and at any time thereafter, at Landlord's option, and without limiting Landlord in the exercise of any other rights or remedies which Landlord may have at law or in equity by reason of such breach, with or without notice or demand, Landlord may:

a. Without terminating this Lease, re-enter the Premises with or without service of notice or resort to process of law, take possession of the same, and expel or remove Tenant and all other parties, occupying the Premises and remove all property of Tenant and store such property in a public warehouse or elsewhere at the costs of and for the account of Tenant without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may, at its option, at any time and from time to time repair, alter, remodel and/or change the character of the Premises as it may deem fit and/or relet the Premises or any part thereof for the account of Tenant, for such term, upon such conditions, and at such rental as Landlord may deem proper. In such event, Landlord may receive and collect the rent from such reletting and shall apply it against any amounts due from Tenant hereunder, including, without limitation, such expenses as Landlord may have incurred in recovering possession of the Premises, placing the same in good order and condition, altering or repairing the same for reletting, and all other expenses, commissions and charges, including attorneys' fees, which Landlord may have paid or incurred in connection with such repossession and

reletting. Landlord may execute any Lease made pursuant hereto in Landlord's name or in the name of Tenant, as Landlord may see fit, and the Tenant thereunder shall be under no obligation to see to the application by Landlord of any rent collected by Landlord, nor shall Tenant have any right to collect any rent thereunder. Whether or not the Premises are relet, Tenant shall pay to Landlord all amounts required to be paid by Tenant up to the date of Landlord's reentry, and thereafter Tenant shall pay to Landlord, until the end of the Term, the amount of all rent and other charges required to be paid by Tenant hereunder, less the proceeds of such reletting as provided above. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and Landlord need not wait until the termination of this Lease to recover them by legal action or otherwise. Landlord shall not be deemed to have terminated this Lease or the liability of Tenant for the total rent hereunder by any reentry or other act, unless Landlord shall give Tenant written notice of Landlord's election to terminate this Lease.

b. Terminate this Lease by giving written notice to Tenant of Landlord's election to so terminate, re-enter the Premises with or without process of law and take possession of the same, and expel or remove Tenant and all other parties occupying the Premises, and remove all property of Tenant and store such property in a public warehouse or elsewhere at the costs of and for the account of Tenant without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.

14.3 Limitation on Landlord's Liability. In the event of a default or breach by Landlord in the performance of Landlord's obligations hereunder or a violation by Landlord of any of the provisions of this Lease, there shall be no personal liability of Landlord and Tenant shall look solely to the equity of Landlord in the Premises for satisfaction of Tenant's remedies.

ARTICLE 15 - SURRENDER OF THE PREMISES

At the expiration or earlier termination of this Lease pursuant to the provisions hereof, Tenant shall quit and surrender the Premises to Landlord without delay, and in good order, condition and repair, ordinary wear and tear (and damage and destruction or condemnation if this Lease is terminated pursuant to either Article 10 or 11 excepted). Such surrender of the Premises shall be accomplished without the necessity for any payment therefor by Landlord. Upon such event, title to the Improvements shall automatically vest in Landlord without the execution of any further instrument; provided, however, Tenant covenants and agrees, upon either such event, to execute (at no cost or expense to Tenant) such appropriate documentation as may be reasonably requested by Landlord to transfer title to the Improvements to Landlord.

ARTICLE 16 - QUIET ENJOYMENT AND TITLE

16.1 Covenant of Quiet Enjoyment. Subject to the terms of this Lease, upon paying the Rent and Additional Rent and performing the other terms, covenants and conditions of this Lease on Tenant's part to be performed, Tenant shall and may peaceably and quietly have, hold, occupy, possess and enjoy the Premises during the Term, subject to the rights, if any, of the parties under easements or encumbrances of record or pursuant to the Declaration.

16.2 Right to Possession. Landlord covenants, warrants and represents that: (a) Landlord alone has the full right to lease the Premises for the Term and as set forth in this Lease, (b) the Premises are now unoccupied and tenant-free, and (c) absolute, tenant-free possession of the Premises will be delivered to Tenant on the Effective Date.

ARTICLE 17 - TRADE FIXTURES

Anything contained in this Lease to the contrary notwithstanding, Landlord acknowledges, consents and agrees that all furniture, fixtures and equipment which are installed or placed in, on or about the Improvements or other parts of the Premises by Tenant or its affiliate ("Trade Fixtures"), whether affixed to the Premises or otherwise (excluding heating, ventilating, and air conditioning system, and all electrical, mechanical, and plumbing systems and components thereof that constitute an integral part of the Building), shall be and at all times remain the property of Tenant or its affiliate and provided that Tenant is not in default under the terms of this Lease, may be removed at any time during the Term or upon the expiration or earlier termination of this Lease, whether or not such Trade Fixtures may be regarded as property of Landlord by operation of law or otherwise. Tenant shall cause any damage to the Improvements caused by such removal to be repaired at no cost to Landlord, including performing any work that may be required to restore the Improvements to a complete architectural unit, such as, by way of example only, restoring an exterior wall section left open after removal of equipment that theretofore served to complete the wall section. Provided that Tenant is not at such time in default under the terms of this Lease, Landlord further agrees that, upon expiration or earlier termination of this Lease, Tenant shall have the right to remove from the Premises all signs and other distinctive features of the business on the Premises. Tenant shall, at its expense, repair any damage caused by such removal.

ARTICLE 18 - SUBORDINATION

18.1 Subordination. This Lease and all of Tenant's rights hereunder are and shall be subordinate to any mortgages or deeds of trust which Landlord may place on the the Premises. Upon Landlord's request, Tenant shall promptly execute and deliver to Landlord such instrument as may be reasonably necessary to effect such subordination, in form and content reasonably acceptable to Landlord, provided that Landlord delivers to Tenant an agreement in writing and in recordable form from the mortgagee or holder of the deed of trust requesting such subordination to the effect that:

a. Such person shall not for any reason disturb the possession, use or enjoyment of the Premises by Tenant, its successors and assigns, so long as all of the obligations of Tenant are fully performed in accordance with the terms of this Lease; and

b. Such person shall permit application of the insurance proceeds and condemnation proceeds in accordance with Articles 10 and 11 above, respectively, in the event of damage to or destruction of the Improvements, or condemnation of the Improvements or any part of the Premises.

ARTICLE 19 - HAZARDOUS SUBSTANCE OR WASTE

19.1 Landlord's Liability. Landlord hereby represents and warrants that, to the best of its actual knowledge without investigation, there does not exist on, in or under the Premises any "hazardous substance" or "hazardous waste" as those terms are used under the various applicable federal and state environmental laws, including, without limitation, petroleum, petroleum products and asbestos-containing materials ("Hazardous Material").

19.2 Tenant's Liability. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials on or from the Premises. Tenant shall not allow the storage or use of such substances or materials in or on the Premises in any manner not sanctioned by law and by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into or on the Premises, any such materials or substances except to use in the ordinary course of business. If any such Hazardous Material is discovered at any time during the Term or any time thereafter, Tenant shall indemnify, defend with counsel reasonably satisfactory to Landlord, and hold and save Landlord harmless from and against all claims, liabilities, actions, judgments, responsibilities and damages of every kind and nature arising from or related to the presence of such Hazardous Material during said period, including investigation costs, engineering fees, remediation costs and reasonable attorney's fees.

19.3 Hazardous Material. Without limitation, "hazardous substances and material" shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; any applicable state or local laws and the regulations which have been or may be enacted for the purpose of regulating or governing the environment or any aspect thereof, If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials in violation of Tenant's obligations under this Section 19.3, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as Additional Rent if such requirement applies to the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of hazardous materials on the Premises occurring while Lessee is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The covenants in this Section 19.3 shall survive the expiration or earlier termination of the term of this Lease.

ARTICLE 20 - NOTICES AND DEMANDS

Any notice, demand or other communication required or permitted by law or any provision of this Lease to be given or served on either party shall be in writing, addressed to the party at the address set forth below, or such other address as the party may designate from time to time by notice, and (a) deposited in the United States mail, registered or certified, return receipt requested, postage prepaid or (b) delivered by an overnight private mail service which

provides delivery confirmation such as, without limitation, Federal Express, Airborne or UPS,. All communications delivered as set forth herein shall be deemed received at the earlier of actual delivery, forty-eight (48) hours after deposit in registered or certified United States mail, postage prepaid or twenty-four (24) hours after deposit with an institutional overnight delivery service, and addressed to the parties as follows:

To Landlord:

Gray Cash
738 Cash St.
Apex, NC 27502

To Tenant:

Town Manager
73 Hunter St. PO Box 250
Apex, NC 27502

ARTICLE 21 - ATTORNEY'S FEES

If any action or proceeding, whether judicial or non-judicial, is commenced with respect to any claim or controversy arising from a breach of this Lease or seeking the interpretation or enforcement of this Lease, including any exhibits attached hereto, in addition to any and all other relief, the prevailing party or parties in such action or proceeding shall receive and be entitled to recover all costs and expenses, including reasonable attorney's fees and costs, incurred by it on account of or related to such action or proceeding.

ARTICLE 22 - GENERAL PROVISIONS

22.1 Binding on Successors. All of the covenants, agreements, provisions and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto, their successors, legal representatives and assigns.

22.2 Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable, to any extent, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the maximum extent permitted by law.

22.3 Entire Agreement. This Lease and the exhibits attached hereto contain the entire agreement between the parties and shall not be modified in any manner except by a document executed by the parties hereto or their respective successors in interest.

22.4 Captions. The captions used in this Lease are inserted as a matter of convenience only, and in no way define, limit or describe the scope of this Lease or the intentions of the parties hereto, and shall not in any way affect the interpretation or construction of this Lease.

22.5 No Waiver. A waiver by Landlord or Tenant of any breach of any provision of this Lease shall not be deemed a waiver of any breach of any other provision hereof or of any subsequent breach by Tenant or Landlord of the same or any other provision.

22.6 Time of Essence. Time is of the essence with regard to every provision of this Lease and the exhibits attached hereto.

22.7 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

22.8 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.

22.9 No Third Party Rights. The terms and provisions of this Lease shall not be deemed to confer any rights upon, nor obligate any party hereto to, any person or entity other than the parties hereto.

22.10 Landlord's Right of Entry. Landlord reserves the right to enter upon the Premises at any time during construction or repair of Improvements or regular business hours to inspect the same or for the purpose of exhibiting the same to prospective purchasers or mortgagees or, during the last six (6) months of the Term or Extended Term, to prospective lessees. Landlord may post any customary sign stating "for lease" or "for sale" during the last six (6) months of the Term or Extended Term.

22.11 Estoppel Certificates. Landlord and Tenant agree that within fifteen (15) days after receipt of a written request from either to the other, the party receiving the request will execute and deliver to the other a certificate certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modifications and that, as so modified, this Lease is in full force and effect, (b) the date to which the rent and other charges hereunder are paid in advance, if any, (c) the then-scheduled expiration date of the Term and the number and duration of any unexercised, unexpired options to extend the Term, (d) that to the certifying party's knowledge, as of the date of the certificate, there are no uncured defaults hereunder on the part of the requesting party or specifying such defaults as are claimed by the certifying party, and (e) as to such other matter as may be reasonably requested by the certifying party.

22.12 Due Authorization. Each person executing this Lease on behalf of Landlord and Tenant, respectively, warrants and represents that the party for whom he or she is acting has been duly formed, is in good standing, and has duly authorized the transactions contemplated herein and the execution of this Lease by him or her and that, when so executed, this Lease shall constitute a valid and binding obligation of the party on whose behalf it is so executed.

22.13 Relationship of Parties. Nothing contained in this Lease shall be deemed to create a partnership or joint venture between Landlord and Tenant, and Landlord and Tenant's relationship in this Lease shall be deemed to be one of landlord and tenant only.

22.14 Incorporation of Exhibits. All exhibits attached to this Lease are hereby incorporated herein as though set forth in full in this Lease itself.

22.15 Controlling Document. Notwithstanding anything contained in this Lease to the contrary, all terms in this Lease are subject to the terms of the Development Agreement, dated December __, 2017, by and between the Tenant and the Landlord, and in the event of any ambiguity or conflict between this Lease and the Development Agreement, the terms of the Development Agreement shall control.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD:

JACK1, LLC,
a North Carolina limited liability company

By: Paula Perkins (SEAL)
PAULA PERKINS, Member-Manager

By: Fred Gray Cash III (SEAL)
FRED GRAY CASH, III, and

By: Judy Cash (SEAL)
JUDY CASH, jointly, as Member-Manager

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

TENANT:

TOWN OF APEX, NORTH CAROLINA

By: [Signature]
Name: Lance Olive
Title: Mayor

ATTEST:

[Signature]
Name: Bonnie J Brock

[Signature]
Deputy Town Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

[Signature]
Name: Vance Holloman
Finance Officer, Town of Apex, North Carolina

EXHIBIT A

**DEVELOPMENT AGREEMENT
BETWEEN
TOWN OF APEX, NORTH CAROLINA
AND
JACK1, LLC**

ENTERED INTO ON THE 14th DAY OF DECEMBER, 2017

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this ___ day of December, 2017, between **THE TOWN OF APEX, NORTH CAROLINA**, a political subdivision of the State of North Carolina and municipal corporation (alternatively the "Town" or "Apex"), and **JACK1, LLC**, a North Carolina limited liability company (referred to as "Jack 1"). The Town and Jack 1 are referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Jack 1 owns land as described in Exhibit A, which is located within Wake County (the "Property");

WHEREAS, the Town desires to acquire and develop the Property for purposes of promoting economic development within the Town, and thereby creating an increase in employment and an improved and diversified property tax base;

WHEREAS, the Parties desire to structure the acquisition in such a way as to allow for the Town's funds to go to infrastructure to serve the Property, improvements to the Property, and marketing of the Property, which will be for the mutual benefit of both of the Parties; and

WHEREAS, the Parties desire to enter into the equity participation arrangement described herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Ground Lease.** Jack 1, contemporaneously with the execution of this Agreement, has entered into a ground lease (the "Lease") of the Property to the Town. The Lease is in the form as shown at Exhibit B. The initial term of the Lease is three (3) years from the Effective Date, as defined in Section 33 below. If Apex is in compliance with the Development and Marketing Milestones as set forth in Section 10 of this Agreement, at each time that Apex has an opportunity for an extension of the Lease, Apex shall have the option, in its sole discretion, to extend the term of the Lease for up to three (3) additional three (3) year lease terms, resulting in a total lease term of twelve (12) years. Provided however, if Apex fails to meet one (1) or more of the Development and Marketing Milestones as set forth in this Agreement, in the initial term or any additional optional term of this Lease, then the Town may only extend the Term of this Lease for the next three (3) year Lease term with the written consent of Jack 1. At the end of the initial Lease term or any extended optional three (3) year Lease term, if the Town has failed to meet a Development or Marketing Milestone required to be completed prior to the expiration of that Lease term, Jack 1 shall have the right to terminate this Lease.

2. **Lease Payments.** As more fully set forth in the Lease, the Lease payments pursuant to the terms of the Lease will be equivalent to the amount by which the personalty and real estate property taxes due and attributable to the Property each year exceed the amount of the annual property taxes actually paid by Jack 1 for the Property as of the date of the execution of the Lease, which increases in any such taxes are attributable to the Town's development efforts, the passage of time, and/or a result of being annexed into the Town, pursuant to Section 7 below. Provided however that the Town will not be responsible for paying any late fees or interest on property taxes due on the Property. Lease payments shall be paid by the Town annually to Jack 1 no later than thirty (30) days following the date on which Jack 1 gives its annual property tax bill and proof of payment of that bill to the Town. It is understood and agreed that the Town will not assess any impact fees on Jack 1 by virtue of this lease and option arrangement. But, provided however, that if Jack 1 chooses to reacquire full title to any portions of the Property, pursuant to Section 13, and to build a facility to lease to an end user, impact fees may be imposed by the Town as a result of that new facility and the company to occupy the facility, and that those impact fees will be due and payable by Jack 1 or the company to occupy the new facility.

3. **Insurance and Indemnification.** As more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will maintain property, casualty and environmental impairment insurance on the Property to cover any damages or liabilities which might arise as a result of the Town's development activities, and the Town will provide copies of all such insurance policies to Jack 1 upon request. Such insurance policies shall name Jack 1 as additional insured parties. Also, as more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will defend, indemnify and hold Jack 1 harmless from any damages or losses whatsoever which are the result of any actions, inactions, or neglect on the part of the Town or its contractors, agents or invitees. Provided however that the Town shall not have the responsibility of providing insurance coverage for or indemnifying Jack 1 for any property, casualty or environmental losses, claims or damages arising before or attributable to conditions of the Property prior to the Effective Date of this Agreement.

4. **Option to Purchase.** The Town and Jack 1, contemporaneously with the execution of the Lease, have entered into an option to purchase (the "Option"), pursuant to which the Town will have the option [in its sole discretion] to purchase all or portions of the Property, pursuant to the terms, conditions, and limitations set forth herein and in the Option. The Option shall be in the form as shown at Exhibit C. The Town shall pay Jack 1 an option fee of one hundred dollars (\$100.00) in consideration for the Option.

5. **Term of Option.** The Option shall have an initial term of three (3) years which shall run contemporaneously with the initial term of the Lease as set forth in Section 1 above. The Option may be extended, [in the sole discretion] of Apex, for up to three (3) additional three (3) year terms, if the Town also exercises its corresponding options to enter into extended three (3) year terms under the Lease. If Apex does not exercise its option to enter into a three (3) year extension of the Lease, or if this Agreement or the

Lease is terminated for any reason whatsoever, then the Option shall be terminated as of the date the Lease is terminated.

6. **Exercise of Option.** The Town may acquire all or portions of the Property, pursuant to the terms and price as set forth in Sections 8 and 9 below, respectively.

7. **Annexation.** Within fifteen (15) business days following the execution of this Agreement, Jack 1 will file applications for the Property to be annexed into the Town's territorial jurisdiction and to rezone the Property to LI-CZ, and will fully cooperate in and continue to pursue the annexation and zoning processes until their conclusion. The Town will dedicate a staff member to assist Jack 1 in the entire annexation and rezoning processes and will waive any applicable fees, such that Jack 1 will incur no costs related to these processes. Should the Cash Family fail to comply with this term or if the annexation or zoning is not finally approved for any reason whatsoever, this Agreement and the Lease and Option shall be terminated and the Parties will have no further obligations from one to the other; provided, however, that the Town's indemnity obligations as set forth in Section 3 above shall survive any termination of the Lease or this Agreement.

8. **Property Conveyance.** When the Town chooses to exercise its rights under the Option from time to time to acquire all or portions of the Property, those purchases shall be pursuant to a Contract to Purchase in the form as set forth at Exhibit D. Jack 1 will donate to the Town any rights of way necessary for the installation of water lines, waste water treatment lines, electrical lines and roads into and to serve the Property, and for the placement of signage and plantings at the entrance to the Property. The portions of the Property donated by Jack 1 to the Town shall not be subject to the minimum acreage requirements referred to herein.

9. **Purchase Price.** The purchase price of the Property (as defined below) is to be paid on an acreage release basis as all or portions of the Property are purchased by the Town. As used herein, the term "Purchase Price" shall mean the sum of the following:

- a. The price of the Property, per acre, as of the date hereof (the "Base Price"). The Base Price has been determined by an appraisal of the Property in its current state, prior to the execution of this Agreement, with such appraisal having been completed by an appraiser agreed to by the Parties. Such appraisal of the Property is attached hereto as Exhibit H and made a part hereof. The Base Price is fifty four thousand nine hundred eighty five dollars (\$54,985.00) per acre.
- b. Plus, twenty-five percent (25%) of the "equity" created in the Property by virtue of the Town's development and marketing efforts, the construction of new company facilities on the Property, and/or the passage of time (the "Equity Participation Portion"). The equity in the Property is defined as the difference between the cumulative total of the Base Price per acre or portion thereof, plus reimbursement to Apex of a per acre or portion of an acre pro rata amount of all Development Costs expended by the Town in the

development of the Property, and the per acre fair market value of the Property as determined by a mutually satisfactory appraisal completed by an appraiser agreed to by the Parties at the time the Town notifies Jack 1 of its desire to purchase all or portions of the Property.

At such time as the Town notifies Jack 1 of its desire to purchase all or portions of the Property, a survey will be completed to determine the acreage to be acquired by the Town. All such surveys shall be paid for by the Town, and the costs of such surveys will be included in the Town's Development Costs. The Town will pay to Jack 1 the Purchase Price for each acre or portion of an acre on a pro rata basis of the Purchase Price for an acre which will be equal to the percentage rounded to the nearest hundredth of a percent of an acre being purchased.

NOTWITHSTANDING THE ABOVE DEFINITION OF THE "PURCHASE PRICE," OR ANYTHING ELSE TO THE CONTRARY AS SET FORTH HEREIN, IN NO EVENT WILL THE PURCHASE PRICE TO BE PAID TO JACK 1 EVER BE LESS THAN THE BASE PRICE, AS DEFINED ABOVE.

10. **Development and Marketing Milestones.** It is understood and agreed that a portion of the value to be realized by Jack 1 is based upon the Town undertaking development efforts and aggressively marketing the Property which is expected to increase the fair market value of the Property and thereby increase Jack 1's Equity Participation Portion. Consequently, the Town's adherence to the following milestones in its development efforts and marketing of the Property (the "Development and Marketing Milestones") are an essential part of this Agreement and are a material inducement to Jack 1's execution hereof. To this end, the Town will achieve the following Development and Marketing Milestones no later than the timeframes shown below following the effective date of this Agreement:

a. Application for rezoning of the Property to LI-CZ	No Later Than Sixty (60) days following the Effective Date
b. Development of marketing materials	No Later Than Ninety Days (90) following the Effective Date
c. Extension of wastewater treatment service to the Property	No Later Than One (1) Year following the Effective Date
d. Construction of short road into the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
e. Extension of electric service to the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date

f. Development of entrance and signage to the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
g. Site Certification	No Later Than One Hundred and Eighty Days (180) following the Effective Date
h. Extension of water service to the Property	No Later Than One Hundred and Eighty (180) days following the Effective Date
i. Purchase of percentages of the Property:	
i. Ten percent (10%)	No Later Than Three Years following the Effective Date of this Agreement
ii. Additional fifteen percent (15%)	No Later Than Five Years following the Effective Date of this Agreement
iii. Additional twenty-five percent (25%)	No Later Than Six (6) Years following the Effective Date of this Agreement
iv. Additional twenty-five percent (25%)	No Later Than Seven (7) Years following the Effective Date of this Agreement
v. Additional twenty-five percent (25%)	No Later Than Eight (8) Years following the Effective Date of this Agreement

11. **Liens and Encumbrances.** The Town shall not place any liens on or encumber the Property without the prior written consent of Jack 1, which consent shall not be unreasonably conditioned, delayed, or withheld. The prior sentence notwithstanding, the Town shall have the right to acquire by donation of Jack 1 rights of way for any utility infrastructure or roads to be placed on the Property. Development Costs incurred by the Town shall be evidenced by a promissory note securing future advances in the form as shown at Exhibit E and will be secured by a deed of trust in the form as shown at Exhibit F.

The promissory note at Exhibit E will not require any interest. Payments of the amounts evidenced by this promissory note will be payable on a pro rata basis as property is sold by Jack 1, as set forth in Section 12 below, or offset against the compensation due to Jack 1 for parcels purchased by the Town, pursuant to Sections 6, 8 and 9 above.

12. **Satisfaction of Deed of Trust.** As portions of the Property are sold by Jack 1 to the Town or a business and thereby released from the Lease and the Option as described in Section 13 below, or are sold by Jack 1 following the termination of the Lease and the Option, and after the payment of the Development Costs and the Town's equity share as described in Section 13 below, the Town will provide to Jack 1 an executed Satisfaction of Promissory Note and Deed of Trust which shall be in the form as shown at Exhibit G. These documents will be executed by the Town and delivered to Jack 1 contemporaneously with the payment of the amounts as described in Section 13 below.

13. **Jack 1 Reacquisition of Property.** Jack 1 shall have the option to release portions of the Property from the Lease and Option if they have an agreement to sell all or portions of the Property to a business which meets the criteria set forth in Section 14 below. In the event that Jack 1 does exercise its option to so release certain portions of the Property, it shall pay to the Town an amount which is the sum of the following amounts on a per acre, or pro rata per acre, basis:

- a. A pro rata portion or a per acre basis of the Development Costs incurred by the Town on the Property; and
- b. Seventy-five percent (75%) of the "equity" in the Property, as defined in Section 9.b. above, attributable to the portion of the Property which is released from the Lease and Option.

14. **Acceptable Businesses.** It is understood and agreed by the Parties that neither the Town nor Jack 1 will recruit a business to the Property or sell Property to a business unless it meets the following criteria:

- a. The business will provide new jobs and/or capital investments sufficient to meet the economic development goals of the Town.
- b. The zoning required for that particular business will be consistent with the zoning applicable to the Property as set forth in Section 10.a. above.
- c. The type of business being recruited will not be detrimental to the future development of the Property as a whole.
- d. The business will require the utilization of at least ten (10) acres for its facility; or if agreed to by Jack 1, less than ten (10) acres.

- e. To the knowledge of the Town and Jack 1, the business will not be planning to conduct any testing of its products on animals within the facility to be located on the Property.

The obligation of Jack 1 to only sell portions of the Property to companies which will meet the above criteria shall remain in effect for seven (7) years following the date on which the Lease and Option are terminated; provided, however, that no restrictions on the future lease or sale of the Property (or any portions thereof) shall apply in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder. Such requirements will be set forth in deed restrictions.

15. **Deferred Taxes.** Jack 1 may have to pay up to three (3) years of deferred taxes as a result of a change in the zoning of the Property. The Town will provide funds to Jack 1 to pay for any and all deferred taxes that Jack 1 might be required to pay. Any of the amounts advanced to Jack 1 by the Town shall be credited against the Purchase Price of the first portion(s) of the Property purchased by the Town. If this transaction is terminated as a result of Jack 1 reacquiring a portion or all of the Property pursuant to Section 13, then the amount of such funds advanced to Jack 1 by the Town shall be added to the promissory note and secured by the deed of trust as set forth in Section 11; provided, however, that Jack 1 will not be under any obligation to return any such funds in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder.

16. **Jack 1 Leases.** It is understood by the Parties that Jack 1 has an interest in any opportunity to lease Property and improvements to companies that might be recruited to or located on the Property. Consequently, the Town will allow Jack 1 the earliest opportunity possible to talk with companies being recruited, to the extent that the company is interested in a lease arrangement and is willing to discuss this with Jack 1. Also, prior to contact with the company, Jack 1 and its representatives will sign a confidentiality agreement, in a form reasonably acceptable to the Town and company being recruited, protecting the interests of the company being referred to them.

17. **Warranties.** Except as set forth in the Contract to Purchase at Exhibit D or any of the other documents attached hereto, there are no other warranties from one Party to the other.

18. **Temporary Extensions of Development and Marketing Milestones.** Notwithstanding anything herein to the contrary, if the Town shall be prevented or delayed from fulfilling, or continuing to fulfill, any of the Development and Marketing Milestones set forth herein by direct reason of a:

- a. Government moratorium affecting Town operations beyond the scope of this Agreement and the activities contemplated hereunder;

- b. Delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite timely and reasonable efforts by the Town to obtain same;

- c. Enemy or hostile governmental action;
- d. Act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- e. Strike, lockout or a labor dispute involving entities other than the Town which causes the Town an inability to obtain labor or materials;
- f. Any failure or neglect of Jack 1 to undertake a necessary act despite written notice and a reasonable opportunity to cure same; or
- g. Any other event, other than normal business exigencies, which is beyond the reasonable control of the Town,

then the time allowed to achieve Development and Marketing Milestones shall be equitably expanded to reflect the effect of such event, with there being one day of extension of time in all of the Development and Marketing Milestones for each day of delay caused by a force majeure.

19. **Assignments.** Notwithstanding anything contained in this Agreement or any document related to this Agreement the contrary, this Agreement and any rights and/or obligations related to this Agreement, may be assigned by Jack 1 without the prior written consent of the Town or any other third party. This Agreement shall not be assigned by Jack 1 to any entity created or organized outside of the United States without prior written consent of the Town. Any assignee of Jack 1 shall be subject to and bound by the terms of this Agreement to the same extent as Jack 1. This Agreement may only be assigned by the Town, upon prior written notice to Jack 1, to a nonprofit economic development entity established by the Town to assist in this project, provided that the Town shall guarantee the performance by any assignee of all obligations due under this Agreement and any documents related to this Agreement.

20. **LIMITED OBLIGATION OF TOWN.** NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE TOWN'S SOLE DISCRETION FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE TOWN'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE TOWN GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT

BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE SHALL TAKE PRIORITY.

21. **Governing Law.** The Parties intend that this Agreement shall be governed by the law of the State of North Carolina.

22. **Notices.**

- a. Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.
- b. Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first class mail, postage prepaid, by overnight delivery, or by email, and addressed as follows:
 - i. If to Jack 1 LLC, to Gray Cash, 738 Cash St. Apex, NC 27502.
 - ii. If to the Town, to Town Manager, 73 Hunter Street, Post Office Box 250, Apex, North Carolina 27502 drew.havens@apexnc.org.
- c. Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

23. **Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

24. **Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

25. **Entire Agreement: Amendments.** This Agreement, including Exhibits A through G attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the Parties.

26. **Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by Parties and their respective successors and assigns.

27. **Time.** Time is of the essence in this Agreement and each and all of its provisions.

28. **Liability of Officers and Agents.** No officer, agent, or employee of the Town shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such

officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

29. **Presumptions as to Drafter.** The Parties agree that each of them have been represented by legal counsel in the negotiation and drafting of this Agreement. Consequently, in the interpretation of this Agreement, no inference or presumption will be attributed to either Party as to such interpretation.

30. **E-Verify Compliance.** Jack 1 shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Jack 1 shall require all of Jack 1's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

31. **Iran Divestment Act Certification Required by N.C.G.S. 147-86.60.** N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement, Jack 1 hereby certifies that Jack 1 is not listed on the Final Divestment List created by the North Carolina State Treasurer and that Jack 1 will not utilize any subcontractors found on the Final Divestment List.

32. **Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

33. **Effective Date.** As used herein, the term "Effective Date" shall mean the date first shown above.

34. **Development Costs.** As used herein, the term "Development Costs" shall be defined as reasonable, and necessary costs actually paid by the Town, in its sole discretion, to third parties in direct connection with the Town's efforts to meet the Development and Marketing Milestones set forth in Section 10 above. Development Costs shall include, but not be limited to, all costs of materials, fees, contractor's labor, expenses and profits, mitigation costs, construction management, testing and certifications related to or necessary for the extensions of water and waste water treatment lines to and into the Property, electrical lines to and into the Property, roadways into the Property, signage and entrance improvements for the Property, certification of the Property, surveys of the Property as described herein, and appraisals of the Property as described herein. If the Town harvests timber from any portions of the Property, the proceeds from that timber sales will be applied to and deducted from the current amount of the accrued Development Costs. But if timber from any portions of the Property is harvested by any other party, and

the Town does not receive the proceeds from such timber sales, then this provision will not apply. Development Costs shall not include the Town's expenses for time spent or activities of Town employees. Jack 1 or its representatives shall have the right to examine the Town's records and receipts relating to any such Development Costs within twenty (20) days following the furnishing of any statement of same to Jack 1. Unless Jack 1 takes written exception to any item within fifteen (15) days following the furnishing of the statement to Jack 1, such statement shall be considered as final and accepted by Jack 1. If such examination reveals that the Town has overcharged Jack 1, the parties shall endeavor in good faith to agree upon a mutually acceptable amount of such costs. Additionally, in the event such examination reveals that the Town has overcharged Jack 1 by five percent (5%) or more, the Town shall also pay to the reasonable costs of such examination.

35. **Revisions to Attached Documents.** The documents attached as Exhibits to this Agreement are intended to be sufficient to effectuate and carry out the intent as expressed in this Agreement. If any of the documents at the attached Exhibits needs to be amended in one or more transactions between the Parties to close on the purchase of portions or all of the Property, the Parties will work together cooperatively and negotiate in good faith as to any needed amendments.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

JACK1, LLC,
a North Carolina limited liability company

By: _____ (SEAL)
PAULA PERKINS, Member-Manager

By: _____ (SEAL)
FRED GRAY CASH, III, and

By: _____ (SEAL)
JUDY CASH, jointly, as Member-Manager

TOWN OF APEX, NORTH CAROLINA

By: _____
Name: Lance Olive, Mayor Date: _____

ATTEST:

Name: _____
Date: _____

Donna Hosch, Town Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Name: Vance Holloman
Finance Officer, Town of Apex, North Carolina
Date: _____

EXHIBIT B

Legal Description of Premises

Being those certain parcels or tracts of land located in White Oak Township, Wake County, North Carolina and more particularly described as follows:

Being all of Lot 1R, containing 60.6525 acres, and all of Lot 2R, containing 60.6525 acres, as shown on that survey entitled "Recombination Plat for Fred Gray Cash, III and Paula Perkins Trust", prepared by Smith and Smith Surveyors, dated October 8, 2013, and recorded in Book of Maps 2013, Page 1625, Wake County Registry.

Said parcels having Wake County PIN numbers of: 0751130961 and 0751234512

NORTH CAROLINA OPTION TO PURCHASE

This Option to Purchase is made the 14th day of December, 2017, between **JACK1, LLC**, a North Carolina limited liability company, hereinafter referred to as Seller, to **TOWN OF APEX**, hereinafter referred to as Buyer.

WHEREAS, Seller and Buyer entered into that certain Development Agreement, dated December 14th 2017, which is attached hereto as **Exhibit A** and incorporated by reference, concerning the development of the Property (as defined below) (the "Development Agreement").

WHEREAS, Seller and Buyer entered into that certain Ground Lease, dated December 14th, 2017, which is attached hereto as **Exhibit B** and incorporated by reference, concerning the lease of the Property (as defined below) by Buyer from Seller (the "Lease").

WITNESSETH, that Seller, for and in consideration of the sum of One Hundred Dollars (\$100.00) to him in hand paid by Buyer, receipt of which is hereby acknowledged, does hereby give and grant unto Buyer, his heirs, assigns, or representatives, the exclusive right and option to purchase all or a portion of that certain plot, piece, or parcel of land together with all improvements located thereon in the Town of Apex, County of Wake, State of North Carolina, being known as and more particularly described as shown on **Exhibit C**.

The terms and conditions of this option are as follows:

1. Term. The term of this Option shall commence on the date hereof and shall expire three (3) years after the Rent Commencement Date (as set forth in the Lease) (the "Term"). Landlord further hereby grants Tenant three (3) successive options to extend the Term, each for an additional period of three (3) years, as follows: Provided it is not then in default under the Lease or the Development Agreement beyond any applicable cure period, Tenant shall have the option to extend the Term for each successive three (3) year period ("Extended Term") by giving notice to Landlord of its exercise of the option at least ninety (90) days prior to the expiration of the Term or the then-expiring Extended Term, as the case may be. Notwithstanding anything contained in this Option to the contrary, this Option shall immediately terminate upon the expiration or earlier termination of the Lease or termination of the Development Agreement.

2. Exercise. At any time during the option period, Buyer may exercise this option by hand-delivery or deposit of written notice by certified or registered mail, return receipt requested, to Seller at the following address:

Jack1, LLC
Gray Cash
738 Cash St.
Apex, NC 27502

3. Contract Upon Exercise. Upon exercise, the terms of the purchase and sale shall be as set forth on **Exhibit D** attached hereto and incorporated herein by reference.

4. Application of Option Money. The consideration paid for this option, above set forth, shall not be applied to the purchase price at closing, if this option is exercised. If this option is not exercised, the option money will be retained by Seller.

5. Controlling Document. Notwithstanding anything contained in this Lease to the contrary, all terms in this Lease are subject to the terms of the Development Agreement, dated December 14th, 2017, by and between the Tenant and the Landlord, and in the event of any ambiguity or conflict between this Lease and the Development Agreement, the terms of the Development Agreement shall control.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, Seller has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

JACK1, LLC

By: Paula Perkins
Paula Perkins, Member-Manager

By: Fred Gray Cash III By: Judy Cash
Fred Gray Cash III, and Judy Cash, jointly, as Member-Manager

NORTH CAROLINA, WAKE COUNTY


I, a Notary Public for the County and State aforesaid, certify that Paula Perkins, Member-Manager of Jack1, LLC personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 29 day of December, 2017.



Stephen Paris Candela
Notary Public
Print Name: Stephen Paris Candela
My Commission Expires: 07/01/19

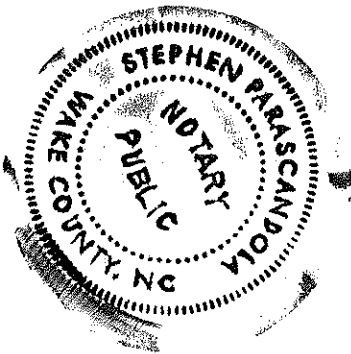
NORTH CAROLINA, WAKE COUNTY

I, a Notary Public for the County and State aforesaid, certify that Fred Gray Cash, III and Judy Cash, jointly as Member-Manager of Jack1, LLC personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 29 day of December, 2017.



Notary Public
Print Name: Stephen Parascandola
My Commission Expires: 07/01/19

(SEAL)



TOWN OF APEX

By: [Signature]
Name: Lance Olive
Title: Mayor

ATTEST:

[Signature]
Name: Bonnie J. Brock

[Signature]
Deputy Town Clerk

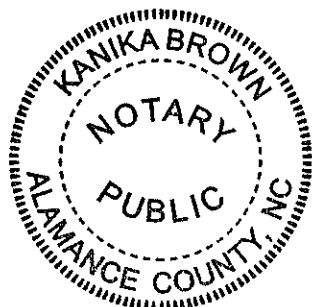
This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

[Signature]
Name: Vance Holloman
Finance Officer, Town of Apex, North Carolina

NORTH CAROLINA, Wake COUNTY

I, a Notary Public for the County and State aforesaid, certify that
Lance Olive, Bonnie Brock and Vance Holloman personally appeared before me this day and
acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or
seal, this 15th day of December, 2017.

(SEAL)



[Signature]
Notary Public
Print Name: Kanika Brown

My Commission Expires: July 4, 2022

EXHIBIT A

**DEVELOPMENT AGREEMENT
BETWEEN
TOWN OF APEX, NORTH CAROLINA
AND
JACK1, LLC**

ENTERED INTO ON THE 14th DAY OF DECEMBER, 2017

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this ___ day of December, 2017, between **THE TOWN OF APEX, NORTH CAROLINA**, a political subdivision of the State of North Carolina and municipal corporation (alternatively the "Town" or "Apex"), and **JACK1, LLC**, a North Carolina limited liability company (referred to as "Jack 1"). The Town and Jack 1 are referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Jack 1 owns land as described in Exhibit A, which is located within Wake County (the "Property");

WHEREAS, the Town desires to acquire and develop the Property for purposes of promoting economic development within the Town, and thereby creating an increase in employment and an improved and diversified property tax base;

WHEREAS, the Parties desire to structure the acquisition in such a way as to allow for the Town's funds to go to infrastructure to serve the Property, improvements to the Property, and marketing of the Property, which will be for the mutual benefit of both of the Parties; and

WHEREAS, the Parties desire to enter into the equity participation arrangement described herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **Ground Lease.** Jack 1, contemporaneously with the execution of this Agreement, has entered into a ground lease (the "Lease") of the Property to the Town. The Lease is in the form as shown at Exhibit B. The initial term of the Lease is three (3) years from the Effective Date, as defined in Section 33 below. If Apex is in compliance with the Development and Marketing Milestones as set forth in Section 10 of this Agreement, at each time that Apex has an opportunity for an extension of the Lease, Apex shall have the option, in its sole discretion, to extend the term of the Lease for up to three (3) additional three (3) year lease terms, resulting in a total lease term of twelve (12) years. Provided however, if Apex fails to meet one (1) or more of the Development and Marketing Milestones as set forth in this Agreement, in the initial term or any additional optional term of this Lease, then the Town may only extend the Term of this Lease for the next three (3) year Lease term with the written consent of Jack 1. At the end of the initial Lease term or any extended optional three (3) year Lease term, if the Town has failed to meet a Development or Marketing Milestone required to be completed prior to the expiration of that Lease term, Jack 1 shall have the right to terminate this Lease.

2. **Lease Payments.** As more fully set forth in the Lease, the Lease payments pursuant to the terms of the Lease will be equivalent to the amount by which the personalty and real estate property taxes due and attributable to the Property each year exceed the amount of the annual property taxes actually paid by Jack 1 for the Property as of the date of the execution of the Lease, which increases in any such taxes are attributable to the Town's development efforts, the passage of time, and/or a result of being annexed into the Town, pursuant to Section 7 below. Provided however that the Town will not be responsible for paying any late fees or interest on property taxes due on the Property. Lease payments shall be paid by the Town annually to Jack 1 no later than thirty (30) days following the date on which Jack 1 gives its annual property tax bill and proof of payment of that bill to the Town. It is understood and agreed that the Town will not assess any impact fees on Jack 1 by virtue of this lease and option arrangement. But, provided however, that if Jack 1 chooses to reacquire full title to any portions of the Property, pursuant to Section 13, and to build a facility to lease to an end user, impact fees may be imposed by the Town as a result of that new facility and the company to occupy the facility, and that those impact fees will be due and payable by Jack 1 or the company to occupy the new facility.

3. **Insurance and Indemnification.** As more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will maintain property, casualty and environmental impairment insurance on the Property to cover any damages or liabilities which might arise as a result of the Town's development activities, and the Town will provide copies of all such insurance policies to Jack 1 upon request. Such insurance policies shall name Jack 1 as additional insured parties. Also, as more fully set forth in the Lease, during the initial term or any extended term of the Lease, the Town will defend, indemnify and hold Jack 1 harmless from any damages or losses whatsoever which are the result of any actions, inactions, or neglect on the part of the Town or its contractors, agents or invitees. Provided however that the Town shall not have the responsibility of providing insurance coverage for or indemnifying Jack 1 for any property, casualty or environmental losses, claims or damages arising before or attributable to conditions of the Property prior to the Effective Date of this Agreement.

4. **Option to Purchase.** The Town and Jack 1, contemporaneously with the execution of the Lease, have entered into an option to purchase (the "Option"), pursuant to which the Town will have the option [in its sole discretion] to purchase all or portions of the Property, pursuant to the terms, conditions, and limitations set forth herein and in the Option. The Option shall be in the form as shown at Exhibit C. The Town shall pay Jack 1 an option fee of one hundred dollars (\$100.00) in consideration for the Option.

5. **Term of Option.** The Option shall have an initial term of three (3) years which shall run contemporaneously with the initial term of the Lease as set forth in Section 1 above. The Option may be extended, [in the sole discretion] of Apex, for up to three (3) additional three (3) year terms, if the Town also exercises its corresponding options to enter into extended three (3) year terms under the Lease. If Apex does not exercise its option to enter into a three (3) year extension of the Lease, or if this Agreement or the

Lease is terminated for any reason whatsoever, then the Option shall be terminated as of the date the Lease is terminated.

6. **Exercise of Option.** The Town may acquire all or portions of the Property, pursuant to the terms and price as set forth in Sections 8 and 9 below, respectively.

7. **Annexation.** Within fifteen (15) business days following the execution of this Agreement, Jack 1 will file applications for the Property to be annexed into the Town's territorial jurisdiction and to rezone the Property to LI-CZ, and will fully cooperate in and continue to pursue the annexation and zoning processes until their conclusion. The Town will dedicate a staff member to assist Jack 1 in the entire annexation and rezoning processes and will waive any applicable fees, such that Jack 1 will incur no costs related to these processes. Should the Cash Family fail to comply with this term or if the annexation or zoning is not finally approved for any reason whatsoever, this Agreement and the Lease and Option shall be terminated and the Parties will have no further obligations from one to the other; provided, however, that the Town's indemnity obligations as set forth in Section 3 above shall survive any termination of the Lease or this Agreement.

8. **Property Conveyance.** When the Town chooses to exercise its rights under the Option from time to time to acquire all or portions of the Property, those purchases shall be pursuant to a Contract to Purchase in the form as set forth at Exhibit D. Jack 1 will donate to the Town any rights of way necessary for the installation of water lines, waste water treatment lines, electrical lines and roads into and to serve the Property, and for the placement of signage and plantings at the entrance to the Property. The portions of the Property donated by Jack 1 to the Town shall not be subject to the minimum acreage requirements referred to herein.

9. **Purchase Price.** The purchase price of the Property (as defined below) is to be paid on an acreage release basis as all or portions of the Property are purchased by the Town. As used herein, the term "Purchase Price" shall mean the sum of the following:

- a. The price of the Property, per acre, as of the date hereof (the "Base Price"). The Base Price has been determined by an appraisal of the Property in its current state, prior to the execution of this Agreement, with such appraisal having been completed by an appraiser agreed to by the Parties. Such appraisal of the Property is attached hereto as Exhibit H and made a part hereof. The Base Price is fifty four thousand nine hundred eighty five dollars (\$54,985.00) per acre.
- b. Plus, twenty-five percent (25%) of the "equity" created in the Property by virtue of the Town's development and marketing efforts, the construction of new company facilities on the Property, and/or the passage of time (the "Equity Participation Portion"). The equity in the Property is defined as the difference between the cumulative total of the Base Price per acre or portion thereof, plus reimbursement to Apex of a per acre or portion of an acre pro rata amount of all Development Costs expended by the Town in the

development of the Property, and the per acre fair market value of the Property as determined by a mutually satisfactory appraisal completed by an appraiser agreed to by the Parties at the time the Town notifies Jack 1 of its desire to purchase all or portions of the Property.

At such time as the Town notifies Jack 1 of its desire to purchase all or portions of the Property, a survey will be completed to determine the acreage to be acquired by the Town. All such surveys shall be paid for by the Town, and the costs of such surveys will be included in the Town's Development Costs. The Town will pay to Jack 1 the Purchase Price for each acre or portion of an acre on a pro rata basis of the Purchase Price for an acre which will be equal to the percentage rounded to the nearest hundredth of a percent of an acre being purchased.

NOTWITHSTANDING THE ABOVE DEFINITION OF THE "PURCHASE PRICE," OR ANYTHING ELSE TO THE CONTRARY AS SET FORTH HEREIN, IN NO EVENT WILL THE PURCHASE PRICE TO BE PAID TO JACK 1 EVER BE LESS THAN THE BASE PRICE, AS DEFINED ABOVE.

10. **Development and Marketing Milestones.** It is understood and agreed that a portion of the value to be realized by Jack 1 is based upon the Town undertaking development efforts and aggressively marketing the Property which is expected to increase the fair market value of the Property and thereby increase Jack 1's Equity Participation Portion. Consequently, the Town's adherence to the following milestones in its development efforts and marketing of the Property (the "Development and Marketing Milestones") are an essential part of this Agreement and are a material inducement to Jack 1's execution hereof. To this end, the Town will achieve the following Development and Marketing Milestones no later than the timeframes shown below following the effective date of this Agreement:

a. Application for rezoning of the Property to LI-CZ	No Later Than Sixty (60) days following the Effective Date
b. Development of marketing materials	No Later Than Ninety Days (90) following the Effective Date
c. Extension of wastewater treatment service to the Property	No Later Than One (1) Year following the Effective Date
d. Construction of short road into the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
e. Extension of electric service to the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date

f. Development of entrance and signage to the Property	No Later Than One Hundred and Eighty Days (180) following the Effective Date
g. Site Certification	No Later Than One Hundred and Eighty Days (180) following the Effective Date
h. Extension of water service to the Property	No Later Than One Hundred and Eighty (180) days following the Effective Date
i. Purchase of percentages of the Property:	
i. Ten percent (10%)	No Later Than Three Years following the Effective Date of this Agreement
ii. Additional fifteen percent (15%)	No Later Than Five Years following the Effective Date of this Agreement
iii. Additional twenty-five percent (25%)	No Later Than Six (6) Years following the Effective Date of this Agreement
iv. Additional twenty-five percent (25%)	No Later Than Seven (7) Years following the Effective Date of this Agreement
v. Additional twenty-five percent (25%)	No Later Than Eight (8) Years following the Effective Date of this Agreement

11. **Liens and Encumbrances.** The Town shall not place any liens on or encumber the Property without the prior written consent of Jack 1, which consent shall not be unreasonably conditioned, delayed, or withheld. The prior sentence notwithstanding, the Town shall have the right to acquire by donation of Jack 1 rights of way for any utility infrastructure or roads to be placed on the Property. Development Costs incurred by the Town shall be evidenced by a promissory note securing future advances in the form as shown at Exhibit E and will be secured by a deed of trust in the form as shown at Exhibit F.

The promissory note at Exhibit E will not require any interest. Payments of the amounts evidenced by this promissory note will be payable on a pro rata basis as property is sold by Jack 1, as set forth in Section 12 below, or offset against the compensation due to Jack 1 for parcels purchased by the Town, pursuant to Sections 6, 8 and 9 above.

12. **Satisfaction of Deed of Trust.** As portions of the Property are sold by Jack 1 to the Town or a business and thereby released from the Lease and the Option as described in Section 13 below, or are sold by Jack 1 following the termination of the Lease and the Option, and after the payment of the Development Costs and the Town's equity share as described in Section 13 below, the Town will provide to Jack 1 an executed Satisfaction of Promissory Note and Deed of Trust which shall be in the form as shown at Exhibit G. These documents will be executed by the Town and delivered to Jack 1 contemporaneously with the payment of the amounts as described in Section 13 below.

13. **Jack 1 Reacquisition of Property.** Jack 1 shall have the option to release portions of the Property from the Lease and Option if they have an agreement to sell all or portions of the Property to a business which meets the criteria set forth in Section 14 below. In the event that Jack 1 does exercise its option to so release certain portions of the Property, it shall pay to the Town an amount which is the sum of the following amounts on a per acre, or pro rata per acre, basis:

- a. A pro rata portion or a per acre basis of the Development Costs incurred by the Town on the Property; and
- b. Seventy-five percent (75%) of the "equity" in the Property, as defined in Section 9.b. above, attributable to the portion of the Property which is released from the Lease and Option.

14. **Acceptable Businesses.** It is understood and agreed by the Parties that neither the Town nor Jack 1 will recruit a business to the Property or sell Property to a business unless it meets the following criteria:

- a. The business will provide new jobs and/or capital investments sufficient to meet the economic development goals of the Town.
- b. The zoning required for that particular business will be consistent with the zoning applicable to the Property as set forth in Section 10.a. above.
- c. The type of business being recruited will not be detrimental to the future development of the Property as a whole.
- d. The business will require the utilization of at least ten (10) acres for its facility; or if agreed to by Jack 1, less than ten (10) acres.

- e. To the knowledge of the Town and Jack 1, the business will not be planning to conduct any testing of its products on animals within the facility to be located on the Property.

The obligation of Jack 1 to only sell portions of the Property to companies which will meet the above criteria shall remain in effect for seven (7) years following the date on which the Lease and Option are terminated; provided, however, that no restrictions on the future lease or sale of the Property (or any portions thereof) shall apply in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder. Such requirements will be set forth in deed restrictions.

15. **Deferred Taxes.** Jack 1 may have to pay up to three (3) years of deferred taxes as a result of a change in the zoning of the Property. The Town will provide funds to Jack 1 to pay for any and all deferred taxes that Jack 1 might be required to pay. Any of the amounts advanced to Jack 1 by the Town shall be credited against the Purchase Price of the first portion(s) of the Property purchased by the Town. If this transaction is terminated as a result of Jack 1 reacquiring a portion or all of the Property pursuant to Section 13, then the amount of such funds advanced to Jack 1 by the Town shall be added to the promissory note and secured by the deed of trust as set forth in Section 11; provided, however, that Jack 1 will not be under any obligation to return any such funds in the event this Agreement, or the Lease or Option, are terminated due to any breach thereof by the Town or the Town's failure to perform thereunder.

16. **Jack 1 Leases.** It is understood by the Parties that Jack 1 has an interest in any opportunity to lease Property and improvements to companies that might be recruited to or located on the Property. Consequently, the Town will allow Jack 1 the earliest opportunity possible to talk with companies being recruited, to the extent that the company is interested in a lease arrangement and is willing to discuss this with Jack 1. Also, prior to contact with the company, Jack 1 and its representatives will sign a confidentiality agreement, in a form reasonably acceptable to the Town and company being recruited, protecting the interests of the company being referred to them.

17. **Warranties.** Except as set forth in the Contract to Purchase at Exhibit D or any of the other documents attached hereto, there are no other warranties from one Party to the other.

18. **Temporary Extensions of Development and Marketing Milestones.** Notwithstanding anything herein to the contrary, if the Town shall be prevented or delayed from fulfilling, or continuing to fulfill, any of the Development and Marketing Milestones set forth herein by direct reason of a:

- a. Government moratorium affecting Town operations beyond the scope of this Agreement and the activities contemplated hereunder;
- b. Delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite timely and reasonable efforts by the Town to obtain same;

- c. Enemy or hostile governmental action;
- d. Act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- e. Strike, lockout or a labor dispute involving entities other than the Town which causes the Town an inability to obtain labor or materials;
- f. Any failure or neglect of Jack 1 to undertake a necessary act despite written notice and a reasonable opportunity to cure same; or
- g. Any other event, other than normal business exigencies, which is beyond the reasonable control of the Town,

then the time allowed to achieve Development and Marketing Milestones shall be equitably expanded to reflect the effect of such event, with there being one day of extension of time in all of the Development and Marketing Milestones for each day of delay caused by a force majeure.

19. **Assignments.** Notwithstanding anything contained in this Agreement or any document related to this Agreement the contrary, this Agreement and any rights and/or obligations related to this Agreement, may be assigned by Jack 1 without the prior written consent of the Town or any other third party. This Agreement shall not be assigned by Jack 1 to any entity created or organized outside of the United States without prior written consent of the Town. Any assignee of Jack 1 shall be subject to and bound by the terms of this Agreement to the same extent as Jack 1. This Agreement may only be assigned by the Town, upon prior written notice to Jack 1, to a nonprofit economic development entity established by the Town to assist in this project, provided that the Town shall guarantee the performance by any assignee of all obligations due under this Agreement and any documents related to this Agreement.

20. **LIMITED OBLIGATION OF TOWN.** NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE TOWN WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE TOWN WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE TOWN TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE TOWN'S SOLE DISCRETION FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE TOWN'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE TOWN GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT

BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE SHALL TAKE PRIORITY.

21. **Governing Law.** The Parties intend that this Agreement shall be governed by the law of the State of North Carolina.

22. **Notices.**

- a. Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.
- b. Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first class mail, postage prepaid, by overnight delivery, or by email, and addressed as follows:
 - i. If to Jack 1 LLC, to Gray Cash, 738 Cash St. Apex, NC 27502.
 - ii. If to the Town, to Town Manager, 73 Hunter Street, Post Office Box 250, Apex, North Carolina 27502 drew.havens@apexnc.org.
- c. Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

23. **Non-Business Days.** If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

24. **Severability.** If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

25. **Entire Agreement: Amendments.** This Agreement, including Exhibits A through G attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the Parties.

26. **Binding Effect.** Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by Parties and their respective successors and assigns.

27. **Time.** Time is of the essence in this Agreement and each and all of its provisions.

28. **Liability of Officers and Agents.** No officer, agent, or employee of the Town shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such

officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

29. **Presumptions as to Drafter.** The Parties agree that each of them have been represented by legal counsel in the negotiation and drafting of this Agreement. Consequently, in the interpretation of this Agreement, no inference or presumption will be attributed to either Party as to such interpretation.

30. **E-Verify Compliance.** Jack 1 shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Jack 1 shall require all of Jack 1's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

31. **Iran Divestment Act Certification Required by N.C.G.S. 147-86.60.** N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement, Jack 1 hereby certifies that Jack 1 is not listed on the Final Divestment List created by the North Carolina State Treasurer and that Jack 1 will not utilize any subcontractors found on the Final Divestment List.

32. **Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

33. **Effective Date.** As used herein, the term "Effective Date" shall mean the date first shown above.

34. **Development Costs.** As used herein, the term "Development Costs" shall be defined as reasonable, and necessary costs actually paid by the Town, in its sole discretion, to third parties in direct connection with the Town's efforts to meet the Development and Marketing Milestones set forth in Section 10 above. Development Costs shall include, but not be limited to, all costs of materials, fees, contractor's labor, expenses and profits, mitigation costs, construction management, testing and certifications related to or necessary for the extensions of water and waste water treatment lines to and into the Property, electrical lines to and into the Property, roadways into the Property, signage and entrance improvements for the Property, certification of the Property, surveys of the Property as described herein, and appraisals of the Property as described herein. If the Town sells timber from any portions of the Property, the proceeds from that timber sales will be applied to and deducted from the current amount of the accrued Development Costs. The Town shall be under no obligation to sell timber of any kind under this

Agreement. But if timber from any portions of the Property is harvested by any other party, and the Town does not receive the proceeds from such timber sales, then this provision will not apply. Development Costs shall not include the Town's expenses for time spent or activities of Town employees. Jack 1 or its representatives shall have the right to examine the Town's records and receipts relating to any such Development Costs within twenty (20) days following the furnishing of any statement of same to Jack 1. Unless Jack 1 takes written exception to any item within fifteen (15) days following the furnishing of the statement to Jack 1, such statement shall be considered as final and accepted by Jack 1. If such examination reveals that the Town has overcharged Jack 1, the parties shall endeavor in good faith to agree upon a mutually acceptable amount of such costs. Additionally, in the event such examination reveals that the Town has overcharged Jack 1 by five percent (5%) or more, the Town shall also pay to the reasonable costs of such examination.

35. **Revisions to Attached Documents.** The documents attached as Exhibits to this Agreement are intended to be sufficient to effectuate and carry out the intent as expressed in this Agreement. If any of the documents at the attached Exhibits needs to be amended in one or more transactions between the Parties to close on the purchase of portions or all of the Property, the Parties will work together cooperatively and negotiate in good faith as to any needed amendments.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

JACK1, LLC

By: _____ Date: _____
Paula Perkins, Member-Manager

By: _____ By: _____
Fred Gray Cash III, and Judy Cash, jointly, as Member-Manager
Date: _____

TOWN OF APEX, NORTH CAROLINA

By: _____
Name: Lance Olive, Mayor Date: _____

ATTEST:

Name: _____
Date: _____

Donna Hosch, Town Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Name: Vance Holloman
Finance Officer, Town of Apex, North Carolina
Date: _____

EXHIBIT B

GROUND LEASE

THIS GROUND LEASE, dated this ____ day of December, 2017 (the "Effective Date"), by and between **JACK1, LLC**, a North Carolina limited liability company ("Landlord"), and **THE TOWN OF APEX NORTH CAROLINA**, a political subdivision of the State of North Carolina and municipal corporation ("Tenant") (the "Lease").

RECITALS:

A. Landlord is the owner of that certain tract of land located in the City of Apex, White Oak Township, Wake County, North Carolina, as recorded in Book 2013 Page 1625 in the Wake County Registry.

B. Landlord and Tenant are parties to a Development Agreement, dated December __, 2017, which is attached hereto as **Exhibit A** and incorporated by reference (the "Development Agreement").

C. Landlord and Tenant desire for Landlord to lease to Tenant the Premises, as hereinafter defined, to permit Tenant to construct improvements thereon, (the "Improvements") and to market all or portions of the Premises.

NOW, THEREFORE, in consideration of the rent to be paid, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties hereto, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. Tenant hereby accepts this Lease and the Premises upon the covenants and conditions set forth herein and subject to any encumbrances, covenants, conditions, restrictions and other matters of record as of the date hereof (the "Permitted Encumbrances") and all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises.

TO HAVE AND TO HOLD THE SAME subject to the terms and conditions set forth herein.

ARTICLE 1 - PREMISES

For and in consideration of the rents, taxes and insurance and other charges and expenses to be paid by Tenant, and in consideration of the performance by Tenant of the covenants set forth herein, Landlord does hereby demise and lease to Tenant all that certain real property consisting of 121.305 acres of land, located within Wake County, North Carolina, more

particularly described on **Exhibit B** attached hereto, together with the Improvements thereon (the "**Premises**").

ARTICLE 2 -TERM

2.1 Term. The term of this Lease shall commence on the date hereof and shall expire three (3) years after the Effective Date (the "**Term**").

2.2 Options to Extend Term. Landlord further hereby grants Tenant three (3) successive options to extend the Term, each for an additional period of three (3) years, as follows: Provided it is not then in default under this Lease beyond any applicable cure period, Tenant shall have the option to extend the Term for each successive three (3) year period ("**Extended Term**") by giving notice to Landlord of its exercise of the option at least ninety (90) days prior to the expiration of the Term or the then-expiring Extended Term, as the case may be. All of the terms and conditions of this Lease shall apply during each Extended Term. Notwithstanding the foregoing, in the event that Tenant fails to meet one (1) or more of the Development and Marketing Milestones set forth in the Development Agreement, Tenant's right to extend the Term or Extended Term, as the case may be, shall be subject to the prior written consent of Landlord.

ARTICLE 3 -RENT

3.1 Rent. In consideration of leasing the Premises, Tenant agrees to pay Landlord, or Landlord's designated agent, at the address set forth herein or such other address as Landlord from time to time may designate in writing, the Annual Rent (as defined below), due and payable annually within thirty (30) days after Landlord delivers to Tenant a written notice specifying the amount of the Rent, its annual tax bill(s) evidencing same, and evidence that the tax bill has been paid. The annual rent shall be equal to the amount by which all personalty and real property taxes due and attributable to the Premises each tax year (including, without limitation, the taxes listed in Section 4.1) exceed the amount of the annual property taxes actually paid by the Landlord for the Premises as of the date of the execution of the Lease (as determined by the most recent tax bills received by Landlord prior to the Effective Date) (the "**Annual Rent**"). Tenant shall not be responsible for paying any late fees or interest on past due amounts for the payment of taxes due and payable by Landlord on the Premises. All other amounts to be paid by Tenant under this Lease shall constitute "**Additional Rent**" hereunder, due and payable within thirty (30) days after Tenant's receipt of Landlord's written request therefor.

The term "**Lease Year**" as used herein shall mean each consecutive twelve (12) month period from and after the Effective Date until the expiration of the Term; provided, however, if the Effective Date falls on a day other than the first day of a calendar month, then the first Lease Year shall be longer than one calendar year and shall end on the last day of the twelfth (12th) full

calendar month after the Effective Date. Each subsequent Lease Year shall end on the last day of that same calendar month.

3.2 Late Charge. If Tenant fails to pay any installment of Rent, or any other charge that Tenant is obligated to pay hereunder within thirty (30) days after the same is due and payable, then, without limiting Landlord in the exercise of any other right or remedy of Landlord with respect to such failure, Tenant shall pay Landlord a late charge equal to five percent (5.00%) of the amount of the late payment to compensate Landlord for any inconvenience or damage resulting therefrom; provided, however, such late charge shall not be imposed more than once for any particular late payment and shall not be applicable to any payment which becomes due on or after the date on which Landlord elects to pursue any remedy available hereunder. In addition to the late fee provided herein, Tenant shall pay interest on any amount not paid within thirty (30) days after the same is due and payable at the rate of the lower of eighteen percent (18%) per annum or the maximum amount per annum permitted under North Carolina law. Interest shall begin to accrue on any unpaid amount on the day that such amount is due and payable.

3.3 Rent Independent. Tenant's covenants to pay Minimum Rent, Additional Rent (as defined in Section 4.1) and any other sums payable to Landlord under this Lease are independent of any other covenant, condition, provision, or agreement contained herein. Nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time that the same becomes due and payable hereunder, or limit any other remedy of Landlord. Annual Rent and Additional Rent are sometimes collectively referred to as "Rent." Rent shall be payable without deduction, offset, or prior notice or demand in lawful money of the United States.

ARTICLE 4 - TAXES AND UTILITIES

4.1 Real Property Taxes and Assessments. Landlord shall be responsible for the payment taxes to the applicable taxing authority; provided, however, from and after the Effective Date, Tenant shall be responsible for all increases in all personalty, real property and other taxes and assessments attributable to the Property, or installments thereof, whether general or special, or ordinary or extraordinary, every nature, name and kind whatever, including all governmental charges of whatever nature or kind, which are levied, assessed, charged or imposed against the Premises or any part of the Premises, the Improvements, the leasehold of Tenant under this Lease or against Tenant by reason of ownership of the Improvements and become due in accordance with Section 3.1.

4.2 Utilities. Tenant shall make all arrangements for obtaining, and during the Term shall pay for, all utilities and services furnished to, or to be used on, the Premises, including, without limitation, electricity, water, gas, sewer, telephone service and trash collection, and for all service commencement charges and meter reading fees. Such charges and expenses shall be paid directly to the utility companies or other entities to which such charges and fees are payable.

4.3 Personal Property Taxes. During the Term, Tenant shall pay all personal property taxes levied upon the personal property on the Premises, before the date on which such taxes would be delinquent.

4.4 Impact Fees. Notwithstanding anything contained in this Lease to the contrary, Tenant shall not assess any impact fees on Landlord by virtue of this ground lease and the option arrangement pursuant to the Development Agreement; provided, however, in the event that Landlord elects to reacquire full title to any portions of the Premises pursuant to Section 13 of the Development Agreement to build a facility to lease to an end user, impact fees may be imposed by the town as a result of that new facility and the end user to occupy such new facility ("Permitted Impact Fees").

ARTICLE 5 -USE OF PREMISES

5.1 Permitted Use. The Premises shall be used only for purposes of marketing the Premises to recruit companies to the Town of Apex, provided that the companies being recruited are "Acceptable Businesses" as defined in Section 14 of the Development Agreement, or for any other lawful purpose approved in writing by the Landlord, which approval shall not be unreasonably withheld or delayed. The Premises shall not be used in such manner as to knowingly violate any applicable law, rule, ordinance, or regulation of any governmental body. In addition, the Premises shall not be used for a purpose which would result in a breach or violation of any recorded document.

5.2 Enforcement of Use Restrictions. Landlord may enforce the restrictions on Tenant's use of the Premises by cancellation of this Lease or by injunctive or other equitable relief in addition to any other legal remedies available to Landlord and in the event of any such legal or equitable action, Landlord shall, among other things, be entitled to recover attorney's fees and costs.

ARTICLE 6 - CONSTRUCTION OF IMPROVEMENTS; REPAIRS AND MAINTENANCE; ALTERATIONS AND IMPROVEMENTS

6.1 Repairs and Maintenance. Tenant agrees that, subject to the provisions of Article 8 below, during the Term it will, at its expense and without any expense to Landlord, make all necessary repairs to or replacements of the Improvements, including all parking areas, sidewalks, curbs, lawns and landscaping on the Premises, and maintain the Premises in good, sanitary and neat order, condition and repair, including repairs and replacement of the electrical, plumbing, heating, air conditioning and other equipment of all types on or in the Premises. Tenant shall, at its sole expense, keep any sidewalks and parking areas on the Premises free from snow, ice, rubbish and other obstructions. Tenant shall, at all times following said construction, assure that the Premises and all improvements constructed thereon are in compliance with all applicable laws and so as not to create a nuisance. Tenant shall not commit waste with respect to the Premises.

6.2 Alterations and Improvements. Tenant shall have the right, at any time and from time to time, during the Term, at its expense, to (a) make changes or alterations, structural or otherwise, to the Improvements, (b) erect, construct or install upon the Premises buildings and improvements in addition to or in substitution for those now or hereafter located thereon, and (c) demolish and remove the Improvements or any other structures hereafter located on the Premises for the purpose of replacing the same; provided, however, that the fair market value of all improvements on the Premises following each such change, alteration, construction or installation shall be at least equal to the fair market value of all improvements on the Premises immediately prior to such change, alteration, construction or installation.

6.3 Title to Improvements. At all times while this Lease is in force and effect, title to the Improvements shall belong solely to Tenant. Upon the termination or expiration of this Lease, title to the Improvements shall pass to Landlord, without payment therefor to Tenant, and Tenant shall have no further rights therein. Provided however, that land dedicated and donated to the Town of Apex pursuant to Section 8 of the Development Agreement to provide rights of ways for the installation of water lines, waste water treatment lines, electrical lines, and roads into and to serve the Premises, shall not pass to the Landlord at the termination or expiration of this Lease, if such improvements have been constructed and placed on the property. If such improvements have not been constructed, the unused rights of ways shall be conveyed back to the Landlord.

ARTICLE 7 - LIENS

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant, and shall indemnify, protect and hold harmless Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. Provided however, that the Landlord consents to, and the provisions of this section of the Lease are not applicable to a lien on the Premises to secure repayment to the Town of Apex for expenditures for Development Costs as defined and set forth in Sections 11 and 34 of the Development Agreement.

If, at any time during the Term, any interest of Landlord in the Premises becomes subject to a lien for labor or materials furnished to Tenant in the repair or improvement of the Premises, within thirty (30) days after Tenant's receipt of written notice informing Tenant of the recording of such lien, Tenant shall cause the lien to be bonded or discharged, and shall otherwise save Landlord harmless on account thereof, provided, however, that if Tenant desires in good faith to contest the validity or correctness of any such lien, it may do so, and Landlord shall cooperate to whatever extent may be necessary, provided only that Tenant shall indemnify Landlord against any costs, loss, liability or damage on account thereof, including reasonable attorneys' fees, which amounts shall constitute Additional Rent and shall be payable on demand with interest at the rate set forth in Section 3.3 accruing from the date paid or incurred by Landlord until reimbursed to Landlord by Tenant.

ARTICLE 8 - LIABILITY INSURANCE

8.1 Tenant's Insurance. Tenant covenants and agrees that from and after the delivery of the Premises from Landlord to Tenant, Tenant shall carry and maintain, at Tenant's sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided:

A. Public Liability and Property Damage. Commercial general public liability and property damage insurance with a combined single limit of Three Million Dollars (\$3,000,000.00) insuring against any and all liability of the insured with respect to the Premises or arising out of the maintenance, use, or occupancy thereof. All such personal injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity provisions set forth herein as to liability for injury to or death of persons and injury or damage to property.

B. Casualty Insurance – An “all risk” policy against all loss or damage by casualty (including, but not limited to, fire, vandalism, malicious mischief and all other hazards, risks and periods usually covered in the State of North Carolina by extended coverage) in an amount equal to the then current full replacement cost of the buildings and improvements located at the Premises. Landlord shall be named as additional insured and Tenant shall be named as insured under the casualty policies of insurance required to be carried by Tenant. If Tenant has heretofore or shall hereafter mortgage or pledge its leasehold estate to a leasehold mortgagee/or lessor, insurance proceeds payable under the policies may be paid solely to such mortgagee/or lessor only if such mortgagee or lessor agrees that the same shall be made available to pay restoration or rebuilding costs.

C. Workers' Compensation Coverage. Tenant shall provide to Landlord a certificate of insurance evidencing proof of coverage within the statutory limits providing a Waiver of Subrogation to Landlord.

D. Pollution and Environmental Insurance. Pollution and environmental insurance with a combined single limit of One Million Dollars (\$1,000,000.00) insuring against any and all liability of the insured with respect to the Premises or arising out of Tenant's activities at the Premises.

E. Policy Form. All policies of insurance provided for herein shall be issued by insurance companies satisfactory to Landlord with general policyholders' rating of not less than A and a financial rating of AAA as rated in the most current available "Best's Insurance Reports", and qualified to do business in the State of North Carolina, and shall be issued in the names of Landlord, Tenant, and such other person or firms as Landlord specifies from time to time, including mortgagees of Landlord. Such policies shall contain a waiver of the right of subrogation against Landlord. Such policies shall be for the mutual and joint benefit and protection of Landlord, Tenant, and others hereinabove mentioned, and executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within five (5) days after Tenant's receipt of written request therefor. All public liability and property damage policies shall contain a provision that Landlord, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to Landlord and Landlord's servants, agents, and employees by reason of the negligence or misconduct of Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. Tenant shall provide written notice to Landlord at least fifteen (15) days prior to the expiration of the term of each such insurance policy, of any cancellation or lapse, or the effective date of any reduction in the amounts of insurance. All public liability, property damage, and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry. If Tenant fails to keep any such insurance in force, Landlord may, but shall not be required to, obtain such insurance, and the expense thereof shall constitute and be collectible as Additional Rent, payable to Landlord on Landlord's demand.

8.2 Exculpation of Landlord. It is expressly understood and agreed by and between Landlord and Tenant that Landlord shall have no liability for damage or injury to any person or property in, on or about the Premises caused by or resulting from acts or omissions of any tenant, occupant, licensee or invitee of the Premises, electricity, gas, rain, ice, snow, or leakage or flow of water from or into any part of the Improvements, or from any other cause or occurrence, unless such damage or injury is caused by or results from the gross negligence or willful misconduct of Landlord or Landlord's agents, employees, representatives, or contractors.

8.3 Tenant's Indemnification of Landlord. Tenant agrees to indemnify, protect, defend and hold Landlord and Landlord's partners, shareholders, employees, lender and managing agent harmless from and against any and all claims, losses, costs, liabilities, actions and damages, including, without limitation, attorneys' fees and costs by or on behalf of any person or persons, firm or firms, corporation or corporations, arising from any breach or default on the part of Tenant in the performance of any representation, warranty, covenant or other agreement on the part of Tenant to be performed, pursuant to the terms of this Lease, or arising from any action, inaction or negligence on the part of Tenant or its agents, contractors, servants, employees, licensees or invitees, or arising from any accident, injury or damage to the extent caused by Tenant or its agents or employees to any person, firm or corporation occurring during the Term of this Lease or any renewal thereof, in or about the Premises, and from and against all costs, reasonable attorneys' fees, expenses and liabilities actually incurred in or about any such claim or action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord or its managing agent by reason of any such claim, Tenant, upon notice from

Landlord, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord.

8.4 Tenant's Property. All property on the Premises belonging to Tenant or its agents, employees, invitees or otherwise located at the Premises, shall be at the risk of Tenant only, and Landlord shall not be liable for damage thereto or theft, misappropriation or loss thereof and Tenant agrees to defend and hold Landlord and Landlord's agents, employees and servants harmless and indemnify them against claims and liability for injuries to such property; provided, however, the foregoing shall not apply to any intentional or grossly negligent act or omission of Landlord, its employees, agents or independent contractors or to a breach of this Lease by Landlord.

ARTICLE 9 – [INTENTIONALLY DELETED]

ARTICLE 10 - DAMAGE AND DESTRUCTION

10.1 No Abatement of Rent. Notwithstanding any statute or rule of law of the state in which the Premises are located to the contrary, if the Improvements or any part thereof are damaged or destroyed by fire or other casualty, this Lease shall continue in full force and effect and such damage or destruction shall not affect, abate or mitigate Tenant's obligation to pay rental or other sums due hereunder.

10.2 Restoration of Improvements. In the event of damage to or destruction of the Improvements, then, within a reasonable period of time after the date of the damage or destruction, Tenant shall proceed to repair, restore, and replace the Improvements to their prior condition and shall have available to it all proceeds from Tenant's property insurance; provided, however, in the event more than fifty percent (50%) of the square footage of the Improvements are damaged or destroyed, Tenant may elect not to restore the Improvements to their prior condition, in which case Tenant shall promptly tear down and remove all remaining parts of the Improvements and restore the Premises to their original condition. Tenant's determination not to restore the Improvements shall not affect any of Tenant's obligations under this Lease. In the event the Improvements are to be restored, the proceeds of Tenant's property insurance shall be placed in an escrow account and shall be applied exclusively to the costs of repairs and replacements. The escrow account shall be maintained by Landlord or by Tenant's leasehold mortgagee, if required, and shall be disbursed during the course of the repairs. If the insurance proceeds are insufficient to pay the costs of the repair work, Tenant shall pay any and all deficiency. Under no circumstances shall Landlord be obligated to make any payment, disbursement or contribution towards the cost of the repairs or replacements. If the proceeds exceed the cost of such work, Tenant may retain the excess, except that, where any leasehold mortgage contains a contrary provision regarding the excess, such provision shall govern the application of the excess insurance proceeds.

ARTICLE 11 - CONDEMNATION

11.1 Complete Taking. If, at anytime during the Term, the whole of the Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain, including any such taking by "inverse condemnation," then this Lease shall terminate as of the earlier of the date that title vests in the condemnor or the date that the condemnor takes possession of the property so taken ("Date of Taking"). In such event, Minimum Monthly Rent, all Additional Rent, and all other charges payable hereunder shall be prorated and paid to the date of termination.

11.2 Partial Taking. If, at anytime during the Term, more than fifty percent (50%) of the acreage of the Premises or any part of a driveway or other access way which is reasonably necessary for access to the business on the Premises is taken for the purposes set forth in Section 11.1 and Landlord cannot provide an alternative driveway or access, and such taking materially, adversely affects the operation of the business on the Premises, Tenant shall have the right to terminate this Lease as of the Date of Taking, by giving written notice of such termination to Landlord within ninety (90) days after the date of Tenant's receipt of notice of such taking. In such event, Minimum Monthly Rent, all Additional Rent, and all other charges payable hereunder shall be prorated and paid to the date of termination.

11.3 Allocation of Condemnation Award. Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Section 11.3, provided Tenant's award does not reduce or affect Landlord's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

ARTICLE 12 - BANKRUPTCY

If, at any time during the Term, bankruptcy, insolvency or other similar proceedings shall be instituted by or against Tenant, whether or not such proceedings result in an adjudication against Tenant, or should a receiver of the business or assets of Tenant be appointed, such proceedings or adjudication shall not affect the validity of this Lease so long as the Rent and additional rent reserved hereunder continues to be paid to Landlord when due, and the other terms, covenants and conditions of this Lease on the part of Tenant to be performed are performed, and in such event this Lease shall remain in full force and effect in accordance with its terms.

ARTICLE 13 - ASSIGNMENT AND SUBLETTING

This Lease may be assigned pursuant to the terms set forth in Section 19 of the Development Agreement. The Premises may not be sublet by the Tenant to any other party.

ARTICLE 14 - EVENTS OF DEFAULT; REMEDIES

14.1 Events of Default. The occurrence of any one or more of the following events (in this Article sometimes called an "Event of Default") shall constitute a default and breach of this Lease by Tenant:

a. If Tenant fails to pay any Rent or Additional Rent payable under this Lease or fails to pay any obligation required to be paid by Tenant and such failure shall continue for a period of ten (10) days after written notice from Landlord to Tenant that the same is due and payable.

b. If Tenant fails to perform any of Tenant's non-monetary obligations or breaches any covenant or representation or warranty under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more time is required to complete such performance, Tenant shall not be in default if Tenant commences such performance within the thirty (30) day period and thereafter diligently pursues its completion without interruptions. The notice required by this subsection is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement.

c. If Landlord discovers that any financial statement, warranty, representation or other information given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest of Tenant or any guarantor of Tenant's obligation hereunder, and any of them, in connection with this Lease, was materially false or misleading when made or furnished.

d. Abandonment of the Premises, Improvements or the leasehold estate.

14.2 Remedies. Upon the occurrence of an Event of Default by Tenant, and at any time thereafter, at Landlord's option, and without limiting Landlord in the exercise of any other rights or remedies which Landlord may have at law or in equity by reason of such breach, with or without notice or demand, Landlord may:

a. Without terminating this Lease, re-enter the Premises with or without service of notice or resort to process of law, take possession of the same, and expel or remove Tenant and all other parties, occupying the Premises and remove all property of Tenant and store such property in a public warehouse or elsewhere at the costs of and for the account of Tenant without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may, at its option, at any time and from time to time repair, alter, remodel and/or change the character of the Premises as it may deem fit and/or relet the Premises or any part thereof for the account of Tenant, for such term, upon such conditions, and at such rental as Landlord may deem proper. In such event, Landlord may receive and collect the rent from such reletting and shall apply it against any amounts due from Tenant hereunder, including, without limitation, such expenses as Landlord may have incurred in recovering possession of the Premises, placing the same in good order and condition, altering or repairing the same for

reletting, and all other expenses, commissions and charges, including attorneys' fees, which Landlord may have paid or incurred in connection with such repossession and reletting. Landlord may execute any Lease made pursuant hereto in Landlord's name or in the name of Tenant, as Landlord may see fit, and the Tenant thereunder shall be under no obligation to see to the application by Landlord of any rent collected by Landlord, nor shall Tenant have any right to collect any rent thereunder. Whether or not the Premises are relet, Tenant shall pay to Landlord all amounts required to be paid by Tenant up to the date of Landlord's reentry, and thereafter Tenant shall pay to Landlord, until the end of the Term, the amount of all rent and other charges required to be paid by Tenant hereunder, less the proceeds of such reletting as provided above. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and Landlord need not wait until the termination of this Lease to recover them by legal action or otherwise. Landlord shall not be deemed to have terminated this Lease or the liability of Tenant for the total rent hereunder by any reentry or other act, unless Landlord shall give Tenant written notice of Landlord's election to terminate this Lease.

b. Terminate this Lease by giving written notice to Tenant of Landlord's election to so terminate, re-enter the Premises with or without process of law and take possession of the same, and expel or remove Tenant and all other parties occupying the Premises, and remove all property of Tenant and store such property in a public warehouse or elsewhere at the costs of and for the account of Tenant without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.

14.3 Limitation on Landlord's Liability. In the event of a default or breach by Landlord in the performance of Landlord's obligations hereunder or a violation by Landlord of any of the provisions of this Lease, there shall be no personal liability of Landlord and Tenant shall look solely to the equity of Landlord in the Premises for satisfaction of Tenant's remedies.

ARTICLE 15 - SURRENDER OF THE PREMISES

At the expiration or earlier termination of this Lease pursuant to the provisions hereof, Tenant shall quit and surrender the Premises to Landlord without delay, and in good order, condition and repair, ordinary wear and tear (and damage and destruction or condemnation if this Lease is terminated pursuant to either Article 10 or 11 excepted). Such surrender of the Premises shall be accomplished without the necessity for any payment therefor by Landlord. Upon such event, title to the Improvements shall automatically vest in Landlord without the execution of any further instrument; provided, however, Tenant covenants and agrees, upon either such event, to execute (at no cost or expense to Tenant) such appropriate documentation as may be reasonably requested by Landlord to transfer title to the Improvements to Landlord.

ARTICLE 16 - QUIET ENJOYMENT AND TITLE

16.1 Covenant of Quiet Enjoyment. Subject to the terms of this Lease, upon paying the Rent and Additional Rent and performing the other terms, covenants and conditions of this Lease on Tenant's part to be performed, Tenant shall and may peaceably and quietly have, hold, occupy, possess and enjoy the Premises during the Term, subject to the rights, if any, of the parties under easements or encumbrances of record or pursuant to the Declaration.

16.2 Right to Possession. Landlord covenants, warrants and represents that: (a) Landlord alone has the full right to lease the Premises for the Term and as set forth in this Lease, (b) the Premises are now unoccupied and tenant-free, and (c) absolute, tenant-free possession of the Premises will be delivered to Tenant on the Effective Date.

ARTICLE 17 - TRADE FIXTURES

Anything contained in this Lease to the contrary notwithstanding, Landlord acknowledges, consents and agrees that all furniture, fixtures and equipment which are installed or placed in, on or about the Improvements or other parts of the Premises by Tenant or its affiliate ("Trade Fixtures"), whether affixed to the Premises or otherwise (excluding heating, ventilating, and air conditioning system, and all electrical, mechanical, and plumbing systems and components thereof that constitute an integral part of the Building), shall be and at all times remain the property of Tenant or its affiliate and provided that Tenant is not in default under the terms of this Lease, may be removed at any time during the Term or upon the expiration or earlier termination of this Lease, whether or not such Trade Fixtures may be regarded as property of Landlord by operation of law or otherwise. Tenant shall cause any damage to the Improvements caused by such removal to be repaired at no cost to Landlord, including performing any work that may be required to restore the Improvements to a complete architectural unit, such as, by way of example only, restoring an exterior wall section left open after removal of equipment that theretofore served to complete the wall section. Provided that Tenant is not at such time in default under the terms of this Lease, Landlord further agrees that, upon expiration or earlier termination of this Lease, Tenant shall have the right to remove from the Premises all signs and other distinctive features of the business on the Premises. Tenant shall, at its expense, repair any damage caused by such removal.

ARTICLE 18 - SUBORDINATION

18.1 Subordination. This Lease and all of Tenant's rights hereunder are and shall be subordinate to any mortgages or deeds of trust which Landlord may place on the the Premises. Upon Landlord's request, Tenant shall promptly execute and deliver to Landlord such instrument as may be reasonably necessary to effect such subordination, in form and content reasonably

acceptable to Landlord, provided that Landlord delivers to Tenant an agreement in writing and in recordable form from the mortgagee or holder of the deed of trust requesting such subordination to the effect that:

a. Such person shall not for any reason disturb the possession, use or enjoyment of the Premises by Tenant, its successors and assigns, so long as all of the obligations of Tenant are fully performed in accordance with the terms of this Lease; and

b. Such person shall permit application of the insurance proceeds and condemnation proceeds in accordance with Articles 10 and 11 above, respectively, in the event of damage to or destruction of the Improvements, or condemnation of the Improvements or any part of the Premises.

ARTICLE 19 - HAZARDOUS SUBSTANCE OR WASTE

19.1 Landlord's Liability. Landlord hereby represents and warrants that, to the best of its actual knowledge without investigation, there does not exist on, in or under the Premises any "hazardous substance" or "hazardous waste" as those terms are used under the various applicable federal and state environmental laws, including, without limitation, petroleum, petroleum products and asbestos-containing materials ("Hazardous Material").

19.2 Tenant's Liability. Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials on or from the Premises. Tenant shall not allow the storage or use of such substances or materials in or on the Premises in any manner not sanctioned by law and by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into or on the Premises, any such materials or substances except to use in the ordinary course of business. If any such Hazardous Material is discovered at any time during the Term or any time thereafter, Tenant shall indemnify, defend with counsel reasonably satisfactory to Landlord, and hold and save Landlord harmless from and against all claims, liabilities, actions, judgments, responsibilities and damages of every kind and nature arising from or related to the presence of such Hazardous Material during said period, including investigation costs, engineering fees, remediation costs and reasonable attorney's fees.

19.3 Hazardous Material. Without limitation, "hazardous substances and material" shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; any applicable state or local laws and the regulations which have been or may be enacted for the purpose of regulating or governing the environment or any aspect thereof, If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials in violation of Tenant's obligations under this Section 19.3, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as Additional Rent if such requirement

applies to the Premises. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Premises. In all events, Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of hazardous materials on the Premises occurring while Lessee is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The covenants in this Section 19.3 shall survive the expiration or earlier termination of the term of this Lease.

ARTICLE 20 - NOTICES AND DEMANDS

Any notice, demand or other communication required or permitted by law or any provision of this Lease to be given or served on either party shall be in writing, addressed to the party at the address set forth below, or such other address as the party may designate from time to time by notice, and (a) deposited in the United States mail, registered or certified, return receipt requested, postage prepaid or (b) delivered by an overnight private mail service which provides delivery confirmation such as, without limitation, Federal Express, Airborne or UPS,. All communications delivered as set forth herein shall be deemed received at the earlier of actual delivery, forty-eight (48) hours after deposit in registered or certified United States mail, postage prepaid or twenty-four (24) hours after deposit with an institutional overnight delivery service, and addressed to the parties as follows:

To Landlord:

Gray Cash
738 Cash St.
Apex, NC 27502

To Tenant:

Town Manager
73 Hunter St. PO Box 250
Apex, NC 27502

ARTICLE 21 - ATTORNEY'S FEES

If any action or proceeding, whether judicial or non-judicial, is commenced with respect to any claim or controversy arising from a breach of this Lease or seeking the interpretation or enforcement of this Lease, including any exhibits attached hereto, in addition to any and all other relief, the prevailing party or parties in such action or proceeding shall receive and be entitled to recover all costs and expenses, including reasonable attorney's fees and costs, incurred by it on account of or related to such action or proceeding.

ARTICLE 22 - GENERAL PROVISIONS

22.1 Binding on Successors. All of the covenants, agreements, provisions and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto, their successors, legal representatives and assigns.

22.2 Severability. If any term or provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable, to any extent, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the maximum extent permitted by law.

22.3 Entire Agreement. This Lease and the exhibits attached hereto contain the entire agreement between the parties and shall not be modified in any manner except by a document executed by the parties hereto or their respective successors in interest.

22.4 Captions. The captions used in this Lease are inserted as a matter of convenience only, and in no way define, limit or describe the scope of this Lease or the intentions of the parties hereto, and shall not in any way affect the interpretation or construction of this Lease.

22.5 No Waiver. A waiver by Landlord or Tenant of any breach of any provision of this Lease shall not be deemed a waiver of any breach of any other provision hereof or of any subsequent breach by Tenant or Landlord of the same or any other provision.

22.6 Time of Essence. Time is of the essence with regard to every provision of this Lease and the exhibits attached hereto.

22.7 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

22.8 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same document.

22.9 No Third Party Rights. The terms and provisions of this Lease shall not be deemed to confer any rights upon, nor obligate any party hereto to, any person or entity other than the parties hereto.

22.10 Landlord's Right of Entry. Landlord reserves the right to enter upon the Premises at any time during construction or repair of Improvements or regular business hours to inspect the same or for the purpose of exhibiting the same to prospective purchasers or mortgagees or, during the last six (6) months of the Term or Extended Term, to prospective lessees. Landlord may post any customary sign stating "for lease" or "for sale" during the last six (6) months of the Term or Extended Term.

22.11 Estoppel Certificates. Landlord and Tenant agree that within fifteen (15) days after receipt of a written request from either to the other, the party receiving the request will execute and deliver to the other a certificate certifying (a) that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modifications and that, as so modified, this Lease is in full force and effect, (b) the date to which the rent and other charges hereunder are paid in advance, if any, (c) the then-scheduled expiration date of the Term and the number and duration of any unexercised, unexpired options to extend the Term, (d) that to the certifying party's knowledge, as of the date of the certificate, there are no uncured defaults hereunder on the part of the requesting party or specifying such defaults as are claimed by the certifying party, and (e) as to such other matter as may be reasonably requested by the certifying party.

22.12 Due Authorization. Each person executing this Lease on behalf of Landlord and Tenant, respectively, warrants and represents that the party for whom he or she is acting has been duly formed, is in good standing, and has duly authorized the transactions contemplated herein and the execution of this Lease by him or her and that, when so executed, this Lease shall constitute a valid and binding obligation of the party on whose behalf it is so executed.

22.13 Relationship of Parties. Nothing contained in this Lease shall be deemed to create a partnership or joint venture between Landlord and Tenant, and Landlord and Tenant's relationship in this Lease shall be deemed to be one of landlord and tenant only.

22.14 Incorporation of Exhibits. All exhibits attached to this Lease are hereby incorporated herein as though set forth in full in this Lease itself.

22.15 Controlling Document. Notwithstanding anything contained in this Lease to the contrary, all terms in this Lease are subject to the terms of the Development Agreement, dated December __, 2017, by and between the Tenant and the Landlord, and in the event of any ambiguity or conflict between this Lease and the Development Agreement, the terms of the Development Agreement shall control.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD:

By: _____ Date: _____
Paula Perkins, Member-Manager

By: _____ By: _____
Fred Gray Cash III, and Judy Cash, jointly, as Member-Manager

Date: _____

TENANT:

TOWN OF APEX, NORTH CAROLINA

By: _____
Name: _____
Title: _____

ATTEST:

Name: _____

Town Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Name: _____
Finance Officer, Town of Apex, North Carolina

EXHIBIT C

Property Description

Being those certain parcels or tracts of land located in White Oak Township, Wake County, North Carolina and more particularly described as follows:

Being all of Lot 1R, containing 60.6525 acres, and all of Lot 2R, containing 60.6525 acres, as shown on that survey entitled "Recombination Plat for Fred Gray Cash, III and Paula Perkins Trust," prepared by Smith and Smith Surveyors, dated October 8, 2013, and recorded in Book of Maps 2013, Page 1625, Wake County Registry.

Said parcels having Wake County PIN numbers of: 0751130961 and 0751234512.

EXHIBIT D



AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between
TOWN OF APEX, NORTH CAROLINA, a(n)
____ ("Buyer"), and
(individual or State of formation and type of entity)
Jack1, LLC, a North Carolina limited liability company

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "**Property**": (Address) _____

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide _____ at Page(s) _____, _____ County, consisting of _____ acres.

☐ If this box is checked, "Property" shall mean that property described on **Exhibit A** attached hereto and incorporated herewith by reference,

(For information purposes: (i) the tax parcel number of the Property is: _____; and, (ii) some or all of the Property, consisting of approximately _____ acres, is described in Deed Book _____, Page No. _____, _____ County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on **Exhibit A**.

\$ _____ (b) "**Purchase Price**" shall mean the sum of _____ Dollars,

an amount equal to **FIFTY-FOUR THOUSAND NINE HUNDRED EIGHTY-FIVE DOLLARS (\$54,985) PER AN ACRE,**

payable on the following terms:

\$ _____ -0- _____ (i) "**Earnest Money**" shall mean _____ Not applicable _____ Dollars

or _____ terms as follows: _____ Not applicable _____

Upon this Agreement becoming _____ deposited _____ escrow with _____ Not

applicable _____ (name of person/entity with whom deposited- "Escrow Agent"), to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein. ☐ **ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND:** *(check only ONE box)*

☐ ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: _____)

☐ ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$ _____ (ii) Proceeds of a new loan in the amount of _____

_____ Dollars for a term of _____ years, with an amortization period not to exceed _____ years, at an interest rate not to exceed _____ % per annum with mortgage loan discount points not to exceed _____ % of the loan amount, or such other terms as may be set forth on **Exhibit B**. Buyer shall pay all costs associated with any such loan.

\$ _____ -0- (iii) Delivery of a promissory note secured by a deed of trust, said promissory note in the amount of _____ of _____ Not applicable _____ Dollars being payable over a term of _____ years, with an amortization period of _____ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____ %) per annum in the amount of \$ _____, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on **Exhibit B**. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ _____ -0- (iv) Assumption of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ _____ Not applicable and evidenced by a note bearing interest at the rate of _____ percent (_____ %) per annum, and a current payment amount of \$ _____.

\$ _____ (v) Cash, balance of Purchase Price, at Closing in the amount of _____

_____ Dollars.

(c) "**Closing**" shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on or before _____ or _____

_____.

(d) **"Contract Date"** means the date this Agreement has been fully executed by both Buyer and Seller.

(e) **"Examination Period"** shall mean the period beginning on the first day after the Contract Date and extending through 5:00pm (based upon time at the locale of the Property) on

_____. ***TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.***

(f) **"Broker(s)"** shall mean:

_____ ("Listing Agency"),

_____ ("Listing Agent" – License # _____)

Acting as: ☐ Seller's Agent; ☐ Dual Agent

and

_____ ("Selling Agency"),

_____ ("Selling Agent" – License # _____)

Acting as: ☐ Buyer's Agent; ☐ Seller's (Sub)Agent; ☐ Dual Agent

(g) **"Seller's Notice Address"** shall be as follows:

Gray Cash, 738 Cash St., Apex, NC 27502.

e-mail address: _____ fax number: _____

_____ except as same may be changed pursuant to Section 12.

(h) **"Buyer's Notice Address"** shall be as follows:

Town Manager, 73 Hunter Street, PO Box 250, Apex, North Carolina 27502

Buyer Initials _____ Seller Initials _____

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e-mail address: drew.havens@apexnc.org fax number: Not

applicable

except as same may be changed pursuant to Section 12.

- ☐ (i) If this block is marked, additional terms of this Agreement are set forth on **Exhibit B** attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)
- ☐ (j) If this block is marked, additional terms of this Agreement are set forth on the Additional Provisions Addendum (Form 581-T) attached hereto and incorporated herein by reference.

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached **Exhibit B**, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following:

None

Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following:

None

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all material information relevant to the Property in the possession of Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

Buyer Initials _____ Seller Initials _____

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Section 5. Evidence of Title: Seller agrees to convey fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (as defined in Section 7, if applicable) and (c) specific instruments on the public record at the Contract Date agreed to by Buyer (not objected to by Buyer prior to the end of the Examination Period), which specific instruments shall be enumerated in the deed referenced in Section 11 (items 5(a), 5(b) and 5(c) being collectively "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on **Exhibit A**) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Notwithstanding, after _____, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(c) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(d) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, conducting timber cruises, and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall

Buyer Initials _____ Seller Initials _____

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cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(e) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

☒ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases") and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on **Exhibit B**. Seller represents and warrants that as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **Exhibit B**;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against

Buyer Initials _____ Seller Initials _____

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or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

(e) Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Closing: At or before Closing, Seller shall deliver to Buyer a special warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit A, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

Section 11. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) upon the sender's receipt of evidence of complete and successful transmission of electronic mail or facsimile to the electronic mail address or facsimile number, if any, provided in Section 1(g) as to Seller and in Section 1(h) as to Buyer or (iv) on the date deposited with a recognized

Buyer Initials _____ Seller Initials _____

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overnight delivery service, addressed to the addresses set out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

Section 12. Counterparts; Entire Agreement: This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

Section 13. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 14. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

Note: For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the date of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

Seller represents that the regular owners' association dues, if any, are \$_____ per _____.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Buyer Initials _____ Seller Initials _____

Section 15. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 16. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 17. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 18. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 19. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 20. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 21. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 22. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

Section 23. Controlling Document. Notwithstanding anything contained in this Lease to the contrary, all terms in this Lease are subject to the terms of the Development Agreement, dated December __, 2017, by and between the Tenant and the Landlord, and in the event of any ambiguity or conflict between this Lease and the Development Agreement, the terms of the Development Agreement shall control.

☐ **EIFS/SYNTHETIC STUCCO:** If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIFS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is

Buyer Initials _____ Seller Initials _____

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advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

BUYER:

Business Entity

TOWN OF APEX, NORTH CAROLINA

By: _____
By: _____

Name: _____

Title: _____
Title: _____

Date: _____

SELLER:

Business Entity

JACK1, LLC

By: _____
Paula Perkins, Member-Manager

By: _____
Fred Gray Cash, III, and

By: _____
Judy Cash, jointly, as Member-Manager

Date: _____

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

(Name of Escrow Agent)

Date: _____

By:

Buyer Initials _____ Seller Initials _____

| Agenda Item | cover sheet

for consideration by the Apex Town Council

Item Type: CLOSED SESSION
Meeting Date: September 1, 2020

Item Details

Presenter(s): Laurie Hohe, Town Attorney
Department(s): Legal

Requested Motion

Possible motion to go to closed session pursuant to GS 143-318.11(a)(3) to consult with the Town Attorney concerning the handling of the matter of Torres v. Tracy Lynn Carter, et al.

Approval Recommended?

n/a

Item Details

n/a

Attachments

- N/A

