

Minutes
Catawba County Board of Commissioners
Regular Session, Monday, April 16, 2007 7:00 p.m.

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Unified Public Hearing – rezoning of Key Harbor and Crescent Village;
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The Catawba County Board of Commissioners met in regular session on Monday, April 16, 2007 at 7:00 p.m. a.m. in the 1924 Courthouse, Robert E. Hibbits Meeting Room, 30 North College Avenue, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Barbara G. Beatty and Commissioners Dan Hunsucker, Glenn E. Barger and Lynn M. Lail.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Joellen Daley, Assistant County Manager Lee Worsley, County Attorney Debra Bechtel and County Clerk Barbara Morris.

Also present was Attorney Thomas E. Terrell, Jr. of the Smith Moore Law Firm.

1. Chair Katherine W. Barnes called the meeting to order at 7:00 p.m.
2. Commissioner Glenn E. Barger led the Pledge of Allegiance to the Flag.
3. Chair Barnes offered the invocation.

4. Commissioner Dan Hunsucker made a motion to approve the minutes of the Regular Meeting of April 2, 2007. The motion carried unanimously.
5. Recognition of Special Guests: Chair Barnes welcomed Danny Hearn, President of the Catawba County Chamber of Commerce and Dr. Tim Markley, Superintendent of Catawba County Schools as well as everyone present and said it was nice have so many people interested in the business of the County.
6. Comments for Items not on the Agenda. None.
7. Presentation:
The Board heard a presentation from Mr. W.R. Lutz on a new book entitled A Century of Achievement, 1904-2004, Startown School – Lights the Way in Progressive Farm Life Education. The book details the history of the school now known as Startown Elementary which, during the early years of the 20th century, earned nationwide fame for its innovative farm life education program offered to the students in the farming community of Catawba County. Mr. Lutz presented Chair Katherine W. Barnes with a copy of the book for the County's archives and invited everyone present to attend Startown School Grand Remembrance Day, which will be held at the school on Saturday, May 12, 2007 from 9:30 a.m. to 3:00 p.m.
8. Public Hearings:
 - a. Renee Hart, E-911 Addressing Coordinator presented a request for the Board to hold a public hearing on a proposed road name for an unnamed street located in Catawba Township. The goal of the County's E-911 Office is to assign individual E-911 numbers to all dwellings in the County. One step toward this goal is to name streets or driveways that are at least 1200 feet in length and/or access three or more parcels. An unnamed street has been identified off Lowrance Road. It was determined that this right of way should be named because seven properties could potentially be accessed from it. The suggested name of Ropers Ridge was received from one of the property owners on this street. Since no other suggestions were received and this name is not duplicated across the County, staff recommended approval of the name Ropers Ridge. The Catawba County Planning Board conducted a public hearing on February 26, 2007. There was no opposition to this proposed name. Chair Barnes opened the public hearing and no one came forward to speak for or against the proposed name. The public hearing was closed. Commissioner Barger made a motion to approve the name of Ropers Ridge for the unnamed road. The motion carried unanimously.
 - b. Chair Barnes announced the Board would hold a unified public hearing on the following:
An amendment to the Sherrills Ford Small Area Plan to allow up to 3 units per acre when public water and sewer is available, which is consistent with other small area plans; the rezoning of Key Harbor and Crescent Village to the Planned Development-Conditional District (PD-CD), subject to the concept site plans, and offered and mutually agreed to by the developer and the County; a Development Agreement which provides amenities and long term benefits to the community associated with the Key Harbor, Village Center, Terrapin Creek and Mountain Creek developments, as mutually agreed to by Key Harbor, LLC, Crescent Resources and the County; and a Zoning Consistency Statement which finds the Key Harbor and Village Center rezoning requests are consistent with the Sherrills Ford Small Area Plan and are reasonable and in the public interest. Mr. Jacky Eubanks, Planning Director, presented the following overview of the proposed developments, the largest proposal in the history of Catawba County:

The Sherrills Ford Small Area Plan, which was accepted in February 2003, provided land use recommendations which included a village component located at the intersections of Hwy. 150 at Sherrills Ford and Slanting Bridge Roads. One of the largest property owners in the designated village area is Crescent Resources. In 2003, staff met with representatives of Crescent Resources to discuss their long-range development plans for the approximate 2000 acres under Crescent's ownership and how it could be integrated into an overall master plan. The objective of the County was to require Crescent to provide a master plan versus a piecemeal approach for development of the Crescent properties which would maximize benefits and amenities for the community.

The 2000 acres under Crescent's control at that time included four general areas:

- Terrapin Creek – consisting of four parcels totaling approximately 630 acres located north of Molly's Backbone Road and Monbo Road.
- Island Point Road area – a parcel approximately 700 acres in size located between Island Point Road and Molly's Backbone Road (currently depicted as Key Harbor).
- Slanting Bridge Road area – consisting of three parcels totaling approximately 200 acres located at the intersection of Slanting Bridge Road and Hwy. 150 (currently depicted as the Village Center).
- Mountain Creek – a parcel approximately 600 acres in size located on Little Mountain Road which has frontage on Lake Norman. The FERC Relicensing had included a \$1900/acre reduction in value for this property from Duke Energy. This reduction in value could be used by Crescent as matching dollars for grants to secure this property for donation to the County.

These four parcels were excepted from one-acre zoning when the UDO was adopted February 5, 2007, because of the pending application for rezoning of these parcels and a development agreement. If the parcels had been included in the UDO adoption with 1-acre zoning, as applied to the rest of the County, the density allowed on all four parcels could have totaled 2787 residential units (gross), taking into account the recommendations from the Sherrills Ford Small Area Plan for .75-acre lots along the lakefront and ½ acre lots along Island Point Road where public water exists. The development proposal before the Board of Commissioners calls for a total of 1950 residential units, which is less than what would have been allowed under the UDO without the exceptions noted above. This is less than the original allowance of 2255 residential units (gross) recommended by the Sherrills Ford Small Area Plan with partial 2-acre zoning on the tracts.

In order to accommodate a village center with a mixture of commercial, office and multi-family uses, public water and sewer is necessary (note: public water is currently available). Also, to attract large-scale commercial and office development, it is necessary to have an adequate number of homes in the area to support the businesses. In evaluating the parcels and their suitability for development, Crescent proposed to: 1) develop a village center at Slanting Bridge Road/Hwy. 150 and 2) develop the property at Island Point Road with the majority of the housing units within a utility corridor (water and sewer), 3) reserve the Terrapin Creek and Mountain Creek tracts for a lower residential density development. In order to maximize the use of the utility corridor, a concentration of higher density is necessary for the cost-effectiveness of the public investment in sewer. The Sherrills Ford Small Area Plan provided for low-density residential development in the majority of the district with the exception of areas where public utilities exist. The Plan does indicate that amendments may be necessary when changing conditions warrant, such as the introduction of public sewer.

Since the initial discussions with Crescent, the 700-acre tract on Island Point Road has been sold to a development group called MAG Land (now referred to as Key Harbor). This company agreed to the original concept of enjoining their development with Crescent's developments into one unified development proposal for review and approval by the County. As part of the development proposal, negotiations also were conducted on a development agreement which would detail specific amenities and benefits that the developers would provide along with a payment schedule for reimbursing the County for the installation of public sewer to serve the Key Harbor and Village Center developments on a pay-as-you-go basis. The development agreement follows the provisions of an interim agreement negotiated in March 2006.

In order to incorporate the terms and conditions of the development agreement and provide details of conceptual design features of the proposed developments for Key Harbor and the Village Center, it is necessary to rezone these two parcels from a low-density residential district to a Planned Development - Conditional District. It is also necessary to rezone the Key Harbor and Village Center properties to accommodate higher densities and mixed-uses. Conditional district zoning is a new state authorized tool which allows for a site specific development plan which incorporates physical design, types of uses, driveway connections, amenities, etc. The Board of Commissioners approved the use of this tool in May 2006. The planned development - conditional zoning district allows limited flexibility in design changes, density and parking variations, subject to a 10% variation in the numerical aspects of the development (such as the number of parking spaces, density, etc), without further public hearings. It is not necessary to rezone the Terrapin Creek and Mountain Creek parcels due to the fact that they are currently zoned for low-density development and are subject to the terms of the development agreement.

To review and consider the Crescent and Key Harbor development requests, the following detailed description of the three necessary components which require action by the Board of Commissioners were provided: Sherrills Ford Small Area Plan Amendment, Rezoning and Development Agreement. A single public hearing was conducted to receive input on all three components at one time.

1) SHERRILLS FORD SMALL AREA PLAN AMENDMENT

The Sherrills Ford Small Area Plan (SAP) was accepted by the Board of Commissioners in February 2003. The plan provides recommendations on future land uses for the area, including residential densities. When the plan was developed, there were no immediate plans for public sewer to serve the area; therefore, the residential density recommendations in the plan were based on development being served by individual septic systems. The plan further stated that changing conditions, such as the introduction of public sewer to the area, could warrant an amendment to the plan.

Typically, when public utilities are introduced to an area, the number of allowable houses per acre increase since an individual lot will not have to accommodate an on-site septic system and well. This concept was incorporated into the other six small area plans where higher density is allowed when public utilities exist or are extended to an area. Four of the small area plans allow increased density up to 3 units per acre with public water alone. For example, the St. Stephens and Mountain View Small Area Plans allow 3 units per acre when public water is available. The Sherrills Ford Small Area plan also recognized when public water existed in the area, such as along Sherrills Ford Road and Island Point Road, that the residential density for these areas could be increased as compared to other areas not served by public utilities. The Sherrills Ford Small Area Plan committee, at a meeting held in the Summer of 2005, endorsed an amendment to the Sherrills Ford Plan to allow for higher density within utility corridors when water and sewer becomes available. To be consistent with this policy and the Sherrills Ford Small Area Plan committee, it was recommended that the following language be added to the text of the Sherrills Ford Small Area plan under the Land Use Recommendations for residential uses:

9. Areas served by both public water and sewer can be developed with high residential density up to 3 units per acre.

2) REZONING OF KEY HARBOR AND CRESCENT VILLAGE CENTER

Crescent Resources, Inc., Carolina Centers, LLC, Key Harbor Holdings, LLC and Key Harbor Communities, LLC have submitted individual applications to rezone four parcels, which includes 1 parcel for the Key Harbor project and 3 parcels for the Village Center, from R-80 Residential and RC Rural Commercial to Planned Development-Conditional District (PD-CD). Following is an analysis of the rezoning request.

Location:

Key Harbor

A parcel approximately 701 acres in size located in the Sherrills Ford Small Area Planning District, Mountain Creek Township, which is roughly bound on the east by Lake Norman and Azalea Rd (SR 1837), on the north by Azalea Road (SR 1837) and Dog Leg Road (SR 1836), on the west by Raccoon Track Drive and the Norfolk Southern Railway, and on the south by Island Point Road (SR 1838), and further identified as the majority portion of Parcel ID Number 4619-04-61-6962.

Village Center

Three parcels approximately 192 acres in size located in the Sherrills Ford Small Area Planning District, Mountain Creek Township, which is located at and around the intersection of Slanting Bridge Road (SR 1844) and East NC Highway 150, and further identified as Parcel ID numbers 4607-16-83-2252 (portion of), 4607-16-73-6008 and 4607-16-92-7839.

Project Description and Zoning Standards

Key Harbor

The property is located within the Watershed Protection Overlay (WP-O), and portions of the property are located within the Floodplain Management Overlay (FP-O) and the Catawba River Corridor Overlay (CRC-O) Districts. In order for the Key Harbor project to comply with the watershed protection standards, the development must be approved as a cluster subdivision which requires a minimum of 25% open space and where the overall density does not exceed .46 acre (20,000 square feet) per lot, averaging the tract as a whole.

Key Harbor is proposing a maximum of 1400 single-family residential units, which must be at least 2000 square feet, and an additional 100 which are attached housing (townhomes). Based on this number of units, the proposed residential density is approximately 2 units per acre. Development of the total 1500 units could occur over a maximum of twenty years.

Village Center

The three tracts, which comprise the Village Center, are located within the Watershed Protection Overlay (WP-O), Mixed-Use Corridor Overlay (MUC-O), Floodplain Management Overlay (FP-O) and the Catawba River Corridor Overlay (CRC-O) Districts, all of which have specific use and density standards for development.

The MUC-O District requires specific design standards for building, types of materials, parking, lighting, signage and landscaping. In order to comply with the Watershed Protection Overlay, a high-density option is being requested for the site which will allow up to 50% imperviousness with stormwater controls being installed. When the rezoning is approved, detailed engineering plans for the high-density stormwater design must be submitted for review and approval which will detail the impervious area and the types of and design for stormwater facilities to be installed. Such plans will ultimately address the quantity of surface water on and off-site, as required by the State's watershed regulations.

The proposed uses located within the Village Center consist of the following:

- 145 single-family units;
- 70 multi-family units;
- 135 senior housing units;
- 77,000 square foot of mixed use;
- 163,000 square foot of office space, including a medical center;
- 414,000 square foot of retail;
- YMCA and elementary school;
- Community services center for services such as a public library, emergency services, etc.

Within 5 years, 125,000 square feet of retail must be complete and the remaining 289,000 square feet of retail must be complete within 7 years. The medical office component must commence within 7 years and be completed with 10 years. The residential components must commence within five years and be completed within 10 years.

Land Use and Zoning:

Key Harbor

The subject parcel is zoned R-80 Residential and is vacant/wooded:

- **North** – The properties to the north are zoned R-30 Residential and R-40 Residential and are either vacant/wooded or occupied by single-family residences.

- **South** – The properties to the south are zoned R-20 Residential and are vacant.
- **East** – The properties to the east are zoned R-30 Residential and are either vacant/wooded or occupied by a single-family residences.
- **West** – The properties to the west are zoned R-20 Residential and R-40 Residential and are either vacant/wooded or occupied by single-family residences.

Village Center

The subject parcels are zoned R-80 Residential and RC Rural Commercial and are either vacant/wooded or occupied by an office and storage buildings:

- **North** – The properties to the north are zoned R-20 Residential and are either vacant/wooded or occupied by single-family residences.
- **South** – The properties to the south are zoned R-20 Residential, R-30 Residential, O-I Office-Institutional and HC Highway Commercial and are vacant/wooded, occupied by a boat dealership (HC), a professional office (O-I), a church (R-20), or single-family residences (R-30).
- **East** – The properties to the east are zoned R-20 Residential and R-30 Residential and are either vacant/wooded or occupied by single-family residences.
- **West** – The properties to the west across the Norfolk Southern Railway are zoned R-30 Residential and are either vacant/wooded or occupied by single-family residences.
- **Note** – The Sherrills Ford Fire Department is located on the western side of Slanting Bridge Road, and for all practical purposes is surrounded by the rezoning area. This property is zoned R-30 Residential. The property at the northwest corner of Slanting Bridge Road and NC Highway 150 is zoned RC Rural Commercial.

Rezoning and Planning History of Subject Parcels and Surrounding Area

Key Harbor

- April 30, 1985, parcel # 53 VAR-45, denied setback variance request
- March 31, 2006, Key Harbor - Phase I, sketch plan approval for 212 lots
- June 28, 2006, Key Harbor - Phase I preliminary approval for 212 lots

Village Center

- December 17, 1979, subject property, SU-34, approved construction of office and storage building
- November 16, 1992, parcel # 33, R-335, rezoned from R-2 to E-2
- November 24, 1992, subject property, EXT-104, approved extension of non-conforming use
- December 18, 2000, parcel # 6, R-452, rezoned from R-2 to O-I
- February 17, 2003, parcel # 20, R-470, denied rezoning from R-2 to C-1

Purpose of Zoning Districts

The Catawba County UDO Section 44-443, Planned Development (PD) District states the following:

- *“The planned development district is established to encourage the master planning of large scale, multiple and/or mixed use development patterns. Applicants who propose a planned development have*

more flexibility and creativity in design than is possible under conventional zoning regulations. The planned development process:

- ◆ *Allows for the layout of uses and open space that promote high standards in design and construction which furthers the purposes of the small area plans.*
- ◆ *Encourages well-planned, efficient development to promote economical and efficient land uses.*
- ◆ *Allows a planned and coordinated mix of land uses which are compatible and are harmonious, but were previously discouraged by conventional zoning procedures.*
- ◆ *Encourages the development of contiguous large lot parcels into an integrated and orderly pattern, with particular attention to developing an efficient and coordinated network of internal streets.*
- ◆ *Promotes the clustering of structures and other uses in order to preserve unique and natural features such as woodlands, wetlands, natural drainage systems and scenic areas.*
- ◆ *Reserves adequate public right-of-way within development areas for the eventual extension of arterial and collector streets, including proper width and spacing of such streets.*
- ◆ *A planned development is defined based upon the following general characteristics:*
- ◆ *Aggregate size and number of non-residential buildings.*
- ◆ *Mixture of housing types including single family with multi-family.*
- ◆ *A combination of uses such as retail/commercial with residential or office uses.”*

The Catawba County UDO Section 44-327, Conditional Zoning District (CD) states the following:

- *“The conditional zoning districts included herein allow for the consideration of certain uses that, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole and are created or established for selected criteria as indicated in the applicability section below. The development of these uses cannot be predetermined and controlled by general district regulations. In addition, circumstances arise when a general zoning district designation would not be appropriate for a certain property, but specific uses permitted under the district would be consistent with the objectives of this section. To accommodate those situations, this section establishes the conditional zoning district process. A conditional zoning district is not intended for securing speculative zoning for a proposal but rather is based on a firm development proposal.*

Conditional Zoning

The applicants requested rezoning to a Planned Development – Conditional District (PD-CD) zone. The PD-CD district is intended to provide for the location of master planned projects that have clear and firm development proposals. Conditional zoning is a process in which site and use specific development proposals are submitted for review and approval. Sites approved as conditional zoning districts are limited in terms of use and design in accordance with approved plans and conditions. Such properties may only develop in accordance with approved plans. Substantive modifications, beyond 10% of the dimensional criteria, require re-submittal and re-approval by the Board of Commissioners.

As part of the conditional zoning, a developer submits a list of voluntary conditions which exceed the general zoning standards that would apply to the site if the property is rezoned. Outlined below are some of the conditions offered by the applicants, negotiated and recommended by staff and the Planning Board.

Key Harbor Conditions

1. A lighting plan, including locations, types of uniform fixtures and theme banners affixed to the light poles will be submitted by the Petitioner for approval by the County.
2. Signage will be permitted in accordance with applicable UDO standards. Freestanding signs will be monument style. Pennants or flags along the road frontage of the development or entranceway(s) are not permitted.
3. All subdivision roads will be dedicated to the public.
4. A pedestrian and bicycle network to connect the various elements within the site will be developed. Linkages will be established to connect buildings and uses on the site to this pedestrian network.

5. Vehicular and pedestrian access must be constructed to the 22-acre site being donated to the Sherrills Ford Optimist Club.
6. An open space plan will be submitted to and approved by the Subdivision Review Board. The open space plan will attempt to provide pocket parks/green space within Coves A, G and J without the loss of the total number of lots in the overall development. The open space areas will be developed with a combination of active and passive recreation areas, sidewalks, trails, pathways, and other amenities consistent with the purpose and provisions of this Petition. Public sidewalks, a minimum of 5 feet wide, will be constructed along each side of the road frontage where homes are constructed. Pedestrian street crossings will be textured or stamped asphalt. Consideration for pedestrian access to connect Cove K to the main development will be incorporated into the pedestrian plan. A bike path will be constructed from the Key Harbor development along the north side of Island Point Road to Sherrills Ford Road.
7. Minimum square footage requirements for single-family dwellings (does not include up to 100 townhomes) will be at least as restrictive as those of Northview Harbor:
 - Waterfront:
 - 1 story = 2200 sq. ft.
 - 1 ½ and 2 story = 2800 sq. ft.
 - Non-waterfront:
 - 1 story = 2000 sq. ft.
 - 1 ½ story and 2 story = 2400 sq. ft.
8. Front façade of homes must be covered only with brick, stone, hard stucco, wood or siding consisting of wood or composite materials. Vinyl products are allowed as an accent material.
9. A landscape plan must be submitted for street trees (types and location), amenity areas, the boat storage area and townhouse area.
10. The two community lake access sites must incorporate low-impact development (LID) design standards to address stormwater runoff as well as include amenities such as picnic tables, gazebos and trails.

Village Center Conditions

1. The Petitioner will comply with the applicable portions of the Floodplain Management Overlay, Mixed-Use Corridor Overlay (MUC-O) and Watershed Protection Overlay-high density option standards of the UDO. Flexibility in the MUC-O standards may be allowed subject to the approved guidelines for the Planned Development zoning.
2. A lighting plan with a consistent theme and fixture design will be submitted for approval by County staff for each site component.
3. The Petitioner will submit a plan for a pedestrian and bicycle network. Pedestrian linkage at the lakefront will be incorporated into the plan. Bicycle parking will be provided at blocks of non-residential facilities, including the library/public services facility, restaurants and other retail uses.
4. The retail floor area for a single tenant retail structure will be limited to 175,000 square feet and no more than two single tenants may exceed 100,000 square feet. Buildings greater than 75,000 square feet must break up the front of the building so that a straight linear front, typical of big boxes, is not constructed. If a 'garden center' is built as part of any such use, the area of the 'garden center' will be counted in the total floor area for that tenant. In addition, the Petitioner will limit the number of out parcels (out parcels are defined as any lots which contain freestanding buildings fronting along NC Hw. 150) that may accommodate "auto oriented" uses such as gas stations to two sites and restaurants with drive in windows to a total of four. Further, the Petitioner may add an additional 25,000 sq. ft. of retail floor area on the second floor of other structures used for retail use.

5. An open space plan will be developed which incorporates a combination of active and passive recreation areas, trails, pathways, and other amenities. This plan will include trails behind the proposed school site to connect to the residential development and provide connection from the waterfront area to the retail on the north side of Hwy. 150. A trail system in key segments will be constructed, which includes the waterfront area and connection to the retail sites.
6. A consistent architectural theme and color scheme throughout the village will be used, subject to approval by County staff.
7. Non-residential development will not use vinyl as a principal building material; however, it may be used as an accent material.
8. Front façade of single-family homes must be covered only with brick, stone, hard stucco, wood or siding consisting of wood or composite materials. Vinyl products are allowed as an accent material.
9. Outdoor shipping containers are prohibited.
10. The display of items for sale or motorized vehicles will not be allowed in the parking lot areas.
11. The final site plan must incorporate a design which incorporates types of uses which maximize the water frontage exposure to view from retail, restaurants, offices and live/work units.
12. The final site plan must provide a streetscape within the neighborhood center and community retail center which accommodates storefront features which links the outlying retail and residential areas.
13. Alternative signalization fixtures on Hwy. 150 to reduce overhead clutter, such as mast arm type fixtures, subject to NCDOT approval.

Utilities

Public water is available to the Key Harbor and Village Center sites. The development of the properties will necessitate the installation of public sewer service. Public sewer is currently not available to any of the development sites; however, agreements are in place that would make sewer available to the sites. In August 2006, the County entered into a signed agreement with the City of Hickory for 750,000 gallons per day capacity in the Town of Catawba wastewater treatment plant. Additionally, the County entered into an agreement with the Town of Mooresville for 750,000 gallons per day of capacity. Currently, the County has 100,000 gallons per day capacity in the Town of Catawba plant which is available for sewage treatment until the time the plant is expanded.

A sewer pump & haul operation would be initiated only if necessary, once the first home is ready for occupancy. It is estimated that the developer's infrastructure will not be completely installed (and thus home building will not begin) for another 18 months. Assuming a home will take 12 months to go from permit to complete construction, the first gallon of sewage won't be ready for treatment until 30 months from now, coinciding with the completion of the County's wastewater collection system installation timeline. If the wastewater system contractor(s) are behind schedule due to acts of God or unforeseen reasons out of their control, or the developer's construction is ahead of schedule, the County would request a State permit for pump & haul on a short-term, temporary basis. No building Certificates of Occupancy would be issued unless State approved wastewater and water provisions are available.

Public Services

As the Key Harbor and Village Center developments build out, the County will look at the need for additional public safety services, such as law enforcement, which would be funded by the increased property tax paid by new development. As part of the development agreement, 2 acres of land is being donated to the County

in the Village Center for a community services center. Community services, such as public safety, a library or other county services, may be located in this community service center.

Transportation

For each project, a Traffic Impact Analysis (TIA) has been produced and is currently under review by NCDOT. Pending approval of the TIAs by NCDOT, certain transportation and traffic improvements must be constructed by the developer to mitigate adverse impacts created by the proposed developments. A summary of the proposed transportation improvements is outlined below.

Key Harbor

- Intersection of NC 150 and Sherrills Ford Road: Turn lanes and signal upgrades.
- Intersection of NC 150 and Slanting Bridge Road: Turn lanes and signal upgrades
- Intersection of Sherrills Ford Road and Slanting Bridge Road: New traffic signal and turn lane.
- Intersection of Sherrills Ford Road and Island Point Road: New traffic signal, turn lanes, and improvements to elementary school entrance.
- Intersection of Sherrills Ford Road and Mollys Backbone Road New traffic signal and turn lanes.

NC Highway 150 is designated as a major thoroughfare by the Catawba County Transportation Plan. Major thoroughfares are defined as primary traffic arteries of the urban area. Their purpose is to move traffic from city to city and within urban areas; therefore, strip development and multiple driveway access is to be discouraged.

At this particular location, NC Highway 150 is a 2-lane roadway. 2004 traffic counts were taken to the east and the west the intersection of NC Highway 150 and Slanting Bridge Road. This study measured an average daily traffic (ADT) count of 13,000 and 10,000, respectively.

The capacity of this particular span of NC Highway 150 is estimated to be approximately 10,000 to 12,000 vehicles per day (VPD). The State Transportation Improvement Plan (STIP) contains plans for the widening of NC Highway 150 to a multi-lane facility. The planning and design portion of the project is currently funded, and is in its preliminary stages; however, right-of-way acquisition and construction remain unfunded. The Sherrills Ford Small Area Plan acknowledges the future widening of NC Highway 150, and recommended construction of a four-lane divided highway with landscaped medians. Consistently, for the past 15 years, Catawba County has requested funding from NCDOT for the widening of NC Highway 150.

The TIA identifies the following traffic improvements for the Village Center:

- NC 150 at project site: Turn lanes (right and left), median and traffic signal east of intersection with Slanting Bridge Road, limited access intersections (right-in/right-out).
- Slanting Bridge Road at project site: Turn lanes (right and left).
- Intersection of NC 150 and Slanting Bridge Road: Upgrade existing traffic signal phasing, turn lanes (right and left).
- Intersection of NC 150 and NC 16: Right turn lane.
- Intersection of NC 150 and Sherrills Ford Road: Right turn lane and upgrade existing traffic signal phasing.
- NC 150 at project site: Developer will design/construct the widening of NC 150 to a 4-lane section for the entire frontage of the property. Setbacks of buildings will be provided for additional potential widening of the highway.

Land Use Plan

The Sherrills Ford Small Area Plan, accepted by the Board of Commissioners on February 17, 2003, serves as the current land use plan for this area. The plan recommendations concerning the individual properties are as follows:

Key Harbor

As earlier outlined, an amendment is being requested which would revise the Sherrills Ford Small Area Plan to allow for a residential density of 3 units per acre where public sewer and water are available, which is consistent with the majority of other small area plans in the County. The area in question is currently designated as a residential area.

Village Center

The development site for the Village Center is identified by the plan as being within a "Village-Mixed Use" area. The "Village-Mixed Use" area is recommended to contain a mixture of commercial, office and residential land-uses. Such varying types of land-uses are recommended to be in close proximity to one another to provide convenience goods and services to surrounding neighborhoods, as well as encouraging linkages to employment centers.

3) DEVELOPMENT AGREEMENT

Background/Review:

North Carolina General Statutes §153A-349 et. seq allows local governments to enter into a development agreement with a developer to mitigate for the impacts of a large-scale development project through the securing of amenities which will address growth, improve quality of life and provide long-term benefits to the community. The agreement also provides assurance to the developer that development standards will remain stable over the long-term life of the project.

The proposed Key Harbor and Crescent Resources developments, due to their size and long-term build out, qualify under the General Statutes to be subject to a development agreement. The County and representatives of Crescent Resources, Inc., Carolina Centers, LLC, Key Harbor Communities, LLC and Key Harbor Holdings, LLC have co-drafted a development agreement that is viewed to be in the best interest of the County by providing orderly growth and long-term benefits to the community, while meeting the interests of the developers. The Key Harbor and Crescent development agreement is one of the first such agreements negotiated in North Carolina pursuant to legislation adopted in 2005. It establishes the terms and structure of the development by two companies of approximately 2,000 acres consisting of four, nonadjacent proposed developments located in the Sherrills Ford area of Catawba County. An interim agreement, which provides details of the amenities and improvements to be provided, was approved by all parties in March 2006. The development agreement reflects the negotiated terms in the interim agreement. The term of the attached development agreement is twenty years. It provides for numerous public donations and exactions as well as for scheduled extensions of public sewer. Following is an overview of the development agreement.

Overview of Development Agreement:

General Provisions:

- Key Harbor, LLC to develop a maximum of 1400 single-family homes, at least 2000 square feet, and 100 attached homes on 700 acres. This development, referred to as **Key Harbor**, is located on property identified as the majority of PIN 4619-04-61-6962. The build out of the development originally was proposed to be 10 years, but can now be up to 20 years.

- Crescent Resources to develop a mixed-use retail/office/residential development on 200 acres. This development, referred to as the **Village Center**, is located on the following parcels:
4607-16-83-2252 (the majority of)
4607-16-73-6008
4607-16-92-7839
Within 5 years, 125,000 square feet of retail must be complete and the remaining 289,000 square feet of retail must be complete within 7 years. The medical office component must commence within 7 years and be completed with 10 years. The residential components must commence within five years and be completed within 10 years.

- Crescent will develop up to 100 homes in a low-density conservation style development on 630 acres. This development, referred to as **Terrapin Creek**, is located on the following parcels:
 - 4609-04-93-8888
 - 4609-02-97-0884
 - 4619-01-18-1763
 - 4619-01-17-6406
 - 4619-01-26-6940No specific development schedule is designated for this project.
- Crescent will seek funding to acquire 600 acres for Catawba County or, alternatively, if funding does not materialize, will donate half of the parcel (300 acres) to the County for a public park and develop the other half (300 acres) as single family homes not to exceed 150 homes. This project, referred to as **Mountain Creek**, is located on property identified as PIN 3698-04-74-3141. No specific development schedule is designated for this project. Separate from the development agreement, the FERC Relicensing had included a \$1900/acre reduction in value for this property from Duke Energy. This reduction in value could be used by Crescent as matching dollars for grants to secure this property for donation to the County.

County Benefits:

Key Harbor has agreed to the following:

- acquire and donate a 22-acre site to the Sherrills Ford Optimist Club for community use
- reconfigure and improve the Sherrills Ford Elementary School parking area
- make all right-of-way dedications, road widenings, signal upgrades, and other improvements indicated by the Traffic Impact Analysis, including the following subject to NCDOT approval:
 - Dedicated turn lanes and re-configured signal timing at the intersection of Highway 150 and Sherrills Ford Road;
 - Dedicated turn lanes and signal installation at the intersection of Sherrills Ford Road and Island Point Road;
 - Signal installation and dedicated turn lanes at the intersection of Sherrills Ford Road and Slanting Bridge Road;
 - Signal installation and dedicated turn lanes at the intersection of Sherrills Ford Road and Molly's Backbone Road; and
 - Dedicated turn lanes and re-configured signal timing at the intersection of Highway 150 and Slanting Bridge Road.
- pave a bike path along its road frontage to Sherrills Ford Road, to be located on the northern side of Island Point Road within existing NCDOT right-of-way
- attempt to acquire the Terrell General Store and move it to a protected location so that the intersection can be upgraded
- adopt restrictive covenants not less restrictive than those of Northview Harbor

Crescent has agreed to the following:

- reserve 25 acres for a school site in the Village Center; alternatively to donate the value of the 25 acres if the Board of Education decides on a different site.
- donate a 2-acre site in the Village Center for a county service center for services such as a public library, emergency services, etc.
- donate to the county \$750,000 for the service center construction cost or for emergency equipment acquisition
- reserve 10 acres in the Village Center for the YMCA at a price not to exceed \$50,000 per acre, for a period of up to 8 years

- reserve 10 acres in the Village Center for the Catawba County Medical Center at a price not to exceed \$50,000 per acre, for a period of up to 8 years
- make all right-of-way dedications, road widenings, signal upgrades, and other improvements indicated by the Traffic Impact Analysis, including the following subject to NCDOT approval:
 - Dedicating additional right-of-way for the future widening of Highway 150 to a minimum of four lanes;
 - Construction of a 4-lane section of Highway 150 along the frontage of the Village Center’;
 - Other off-site improvements as determined in the Traffic Impact Analysis
- donate land and right of way for sewer pump stations and sewer lines
- donate land to the County for a future park, consisting of up to 600 acres or a minimum of 300 acres

Public Sewer

The County agrees to provide public sewer to Key Harbor and the Village Center. Crescent will meet a construction schedule, as outlined above, and pay standard capital fees. As a financing mechanism, Key Harbor guarantees that it will either 1) construct 150 homes per year at standard water/sewer capital fees or 2) pay the county higher capital fees for the difference between homes built and the required 150 homes per year.

A sewer pump & haul operation would be initiated only if necessary, once the first home is ready for occupancy. It is estimated that the developer’s infrastructure will not be completely installed (and thus home building will not begin) for another 18 months. Assuming a home will take 12 months to go from permit to complete construction, the first gallon of sewage won’t be ready for treatment until 30 months from now, coinciding with the completion of the County’s wastewater collection system installation timeline. If the wastewater system contractor(s) are behind schedule due to acts of God or unforeseen reasons out of their control, or the developer’s construction is ahead of schedule, the County would request a State permit for pump & haul on a short-term, temporary basis. No building Certificates of Occupancy would be issued unless State approved wastewater and water provisions are available.

Enforcement

If the developers fail to pay required capital fees or commit any other material breach of this agreement, the County may withhold all building permits and certificates of occupancy from the breaching party.

Each developer agrees that the county may sue for specific performance of the agreement and if it prevails, the County shall be awarded attorneys fees. The developers may not receive attorney’s fees if they prevail.

Procedure for Adoption of the Development Agreement

A development agreement adopted pursuant to N.C.G.S. 153A-349 must be noticed to the public and adopted like any other zoning ordinance amendment. Adjoining property owners of the four development agreement areas have received individual mail notice and the properties have been posted with signs noting the time and place of a public hearing. The Board of Commissioners must conduct a public hearing in order to consider adoption of the development agreement.

PLANNING BOARD PUBLIC HEARING AND RECOMMENDATION

The Planning Board conducted a public hearing on the Key Harbor and Crescent Village Center development proposals at its March 26, 2007 meeting. Approximately 75 citizens were in attendance with 21 people speaking during the public hearing portion of the meeting. Ten (10) people asked clarification questions, three (3) spoke in support of the projects and eight (8) spoke in opposition. The main issues of concern that were raised included:

- 1) **Issue:** **Density of the Key Harbor project**

Response: The four parcels, Key Harbor, Crescent Village, Terrapin Creek and Mountain Creek, were excepted from one-acre zoning when the UDO was adopted February 5, 2007, pending an application for rezoning of these parcels and finalizing a development agreement.

- a) The development proposal calls for a total of **1950 residential units** which is less than what would have been allowed under the UDO or the Small Area Plans as discussed in b) and c) below.
- b) If the parcels had been included in the UDO adoption, reflecting the Board's decision to adopt 1-acre zoning, the density allowed on all four parcels could have totaled **2787 residential units** (gross), taking into account the recommendations from the Sherrills Ford Small Area Plan for .75-acre lots along the lakefront and ½ acre lots along Island Point Road where public water exists.
- c) The original Sherrills Ford Small Area Plan recommended **2255 residential units** (gross) with partial 2-acre zoning on the tract.

Focusing on the Key Harbor development proposal specifically, staff would point out the following:

- a) The majority of small area plans have a provision which allows a density of three units per acre when public water and/or sewer are available. The Sherrills Ford Small Area Plan recommends a higher density of 2 units per acre along existing waterlines (Sherrills Ford Road, Island Point Road and Beatty Road). Public sewer was not contemplated in the plan, so 2 units per acre was the highest density recommended. However, the plan did acknowledge that changing conditions, such as the introduction of public sewer, could trigger an amendment to the Plan to allow higher density than what was currently recommended (3 or more units per acre). Based upon the installation of public water and sewer, the Key Harbor project could yield a total of **2100 units** (gross) (700 acres x 3 units/acre) as compared to the proposal of **1500 units** (gross).
- b) Historically, the density allowed throughout the County with the presence of public water and sewer in 24 out of the last 30 years allowed 3 units per acre with only one public utility available. With both utilities available, a density of 3.5 units per acre would have been allowed.
- c) The Key Harbor subdivision is proposing a cluster subdivision in order to comply with the watershed protection regulations (see discussion in #5 below). Cluster subdivisions have been an option for developers since 2001. This option allows a developer to reduce individual lot sizes in exchange for permanent, interconnected open space. The overall density of the development basically remains the same as with a conventional subdivision. For example, with 1500 units proposed in Key Harbor on 700 acres, the overall average density is 2.1 units per acre. When clustering provisions are used and 25% of the area is reserved for open space, excluding the area in the road system, the individual lot size averages .30 acre, which calculates to 3 units per developed acre for the overall project.

2) **Issue: School capacity**

Response: Following are statistics from Dr. Markley regarding available school capacity to serve the Key Harbor development and the area:

Elementary schools:

- Sherrills Ford – current capacity is 598; anticipates an enrollment of 553 students in Fall 2007 with the opening of the new Catawba Elementary School

- Balls Creek –building capacity of 851, with a current enrollment of 697 students with the opening of the new Catawba Elementary School
- Catawba – new construction with a capacity of 700 students; anticipates 474 students when school opens in Fall 2007
- 2/3 of the students from Key Harbor will go to new Catawba Elementary school
- A new elementary school in Sherrills Ford is requested in the capital improvements within 5 years

Middle school:

- Mill Creek Middle – building capacity is 700 with a current enrollment of 544 students

High school:

- Bandy's – building capacity of 900 with a current enrollment 971 students
- Next year, a 12 classroom expansion at Bandy's High School is planned

3) **Issue: Transportation and road improvements**

Response: See full discussion under “Transportation” section of this memorandum

4) **Issue: “Big box” proposed in the Village Center**

Response: The Village Center is divided into two parts:

- 1) The north side, considered as the “village core,” has more characteristics of a classical village including a neighborhood retail center, multi-family/senior housing, community facilities such as a medical center, library, public safety and YMCA, education and single-family neighborhood interconnected with pedestrian amenities (pocket parks, sidewalks and trails).
- 2) The south side has more characteristics of a mixed-use center which includes a large-scale retail site, small offices and retail, restaurants with an emphasis of a public park on the waterfront connected with a greenway trail.

The Village Center development conditions allow a retail floor area for a single tenant structure to be limited to 175,000 square feet and no more than two single tenants not to exceed 100,000 square feet. The UDO and development conditions require any buildings greater than 75,000 square feet to consist of recessions and projections as to break up the front elevation of the building to alleviate the “big box” appearance. The orientation of the 175,000 square foot building on the south side also tends to lessen the impacts of the “big box” appearance through the following:

- a. A building setback from Highway 150 of approximately 700 feet
- b. The building is angled away from the road frontage of Highway 150 which will soften the visual impact
- c. The shielding of the “big box” and parking area with buildings fronting along Highway 150

In addition to this project, there will be approximately 500 acres earmarked for village center development as called for in the Sherrills Ford Small Area Plan. There is an opportunity for a potential classical village with small-scale shops and businesses as envisioned in the plan closer to the intersection of Sherrills Ford Road and Highway 150.

5) **Issue: Pedestrian-friendly component of the Village Center**

Response: The Village Center site plan incorporates pedestrian amenities, such as trails and sidewalks, which link the various components of the village. The Village Center development conditions require the developer to submit a **detailed** plan for a pedestrian and bicycle network to connect the various elements within the site. Linkages are to be established to connect buildings and uses on the site to the pedestrian network. Details of the pedestrian linkage at the lakefront will be incorporated into the plan.

Crescent, along with NCDOT and staff, explored options of safely crossing Highway 150. It is not envisioned that pedestrians will be crossing Highway 150 on a regular basis. Rather, safe intersections need to be included in the event of occasional crossings. The idea of a tunnel underneath as well as a bridge over Highway 150 was discussed and neither option was suitable to NCDOT nor were they compatible with the village setting. The tunnel concept was not advantageous due to personal safety concerns. The bridge over Highway 150 would not be aesthetically pleasing. A pedestrian crossing would be most appropriate at the 4-way traffic signal with a dedicated crosswalk, which connects the main entryway into the northern and southern portions of the village.

6) **Issue: On-site stormwater and erosion control**

Response: Both Key Harbor and the Village Center are located in a WS-IV critical watershed, which is a State-mandated program enforced by the County. The conditions for Key Harbor and the Village Center state that the developments will comply with watershed regulations. Following are the requirements for each and how the developments will comply.

Key Harbor: residential development must consist of individual lots containing a minimum of 20,000 square feet (.46 acre) or clustered lots such that the overall development meets an average density of 20,000 square feet. The Key Harbor project is not required to meet a maximum imperviousness requirement nor treat runoff from the development because the residential development meets an average density of 20,000 square feet. Key Harbor will be approved as a cluster subdivision which meets the overall density of 20,000 square feet (700 acres divided by .46 acre/lot equals a maximum of 1521 lots allowable). The County's UDO requires cluster subdivisions to contain a minimum of 25% open space. The Key Harbor project is proposing to retain buffers and natural areas along the creeks to meet the open space requirement which will serve to impede stormwater flow and filter out many of the recognized runoff pollutants. Additional flow from impervious areas is not expected to impact surrounding properties. The specific locations and detailed calculations of the open space will be submitted with the subdivision plats to be approved by the Subdivision Review Board.

An erosion control plan has been submitted and approved for the Key Harbor project which shows 64 acres of disturbance for the initial phase of the project, including many interior roads. As future phases are proposed, erosion control plans will be submitted and approved with on-site inspections conducted by the County to ensure compliance. On March 26, County staff walked the Key Harbor property and the developer is in compliance with the approved soil erosion plan.

The State watershed and stormwater regulations (and industry standards) is to treat the first inch of runoff from developed areas. The majority of pollutants will be captured in the first inch of runoff; capturing more than one inch results in diminishing returns. One inch of runoff from the maximum Built Upon Area of the Key Harbor development would equal 4.54 million gallons of water. A glance at the topography of the project would reveal several drainage basins in which the runoff would flow; the entire 4.54 million gallons would certainly not flow into the Lake at one discharge point. The Key Harbor project has extensive buffers and natural areas that will impede stormwater flow and filter out many of the recognized runoff pollutants. Additional flow from impervious areas is not expected to impact surrounding properties. Please note, Key Harbor is not required to meet a maximum built-upon area requirement because the watershed

protection regulations require residential development to meet density requirements of which Key Harbor will comply.

Crescent Village: non-residential development within the village must meet a minimum 24% imperviousness requirement, unless a high-density option is approved. The high-density option allows up to 50% imperviousness when stormwater controls are installed. The Crescent Village conditions indicate they will meet the high-density option of the watershed regulations. The County's UDO, based upon the State's model ordinance, allows other types of stormwater control than open detention basins. The State watershed and stormwater regulations (and industry standards) are to treat the first inch of runoff from developed areas. The majority of pollutants will be captured in the first inch of runoff; capturing more than one inch results in diminishing returns. The engineering details for stormwater controls are not typically prepared unless and until the rezoning of the property is approved.

An erosion control plan will be submitted for approval by the County at the time the developer expects to grade more than one acre.

7) **Issue:** *Building permit history in Sherrills Ford area*

Response: There was a question about how many recent building permits were issued in the Sherrill's Ford area. During the calendar year 2006, 92 single-family new construction permits were issued. There were 704 single-family new construction permits issued throughout the entire County, so 13% of new construction within the County occurs within the Sherrill's Ford area.

8) **Issue:** *Sewage treatment, including pump and haul*

Response: The sewage treatment plant at the Town of Catawba is currently being upgraded, with the design 95% complete. Once completed, the upgraded, state-of-the-art facility will have a capacity of 1.5 million gallons per day (MGD), and will be expandable to 3.4 MGD. The County owns 100,000 gallons of capacity in the existing plant and will own 750,000 gallons in the new plant. In addition, the County has available a guaranteed 750,000 gallons in the Mooresville treatment plant. In expanding and upgrading the Catawba plant, the County will be able to take offline 9 small "package" plants that currently discharge into the Catawba River system.

A sewer pump & haul operation would be initiated only if necessary, once the first home is ready for occupancy. It is estimated that the first home will not be ready for occupancy until early 2009. The first gallon of sewage would not be ready for treatment until that time. We anticipate completion of the sewage collection system within 30 months. If, for a limited time, there is a need for a temporary wastewater treatment system, the County would request a State permit for pump & haul on a short-term, temporary basis. No building Certificates of Occupancy would be issued unless State approved wastewater and water provisions are available.

The Planning Board discussed the development proposals and commented that the holistic approach of the development is better than a piecemeal approach. Also the Board commented that the amenities which are being offered through the development agreement and conditional zoning will provide long-term benefits for the community. Following are the official actions taken by the Planning Board:

- 1) Recommended approval for an amendment to the Sherrills Ford Small Area Plan to allow up to 3 units per acre when public water and sewer is available. Vote: 8-0
- 2) Recommended the rezoning of the Key Harbor and Crescent Village Center properties to Planned Development – Conditional District (PD-CD). The Board found that the zoning was consistent with the Sherrills Ford Small Area Plan, subject to the amendment in #1 above, and the rezoning was reasonable and in the public interest. Vote: 7-1. Opposed was Stuart DeWitt

who cited concerns over the impacts of the development on infrastructure, such as schools, fire, rescue, law enforcement and roads.

- 3) Recommended approval of the development agreement with the following amendments:
 - a. Catawba County officially requests the NCDOT to reduce speed limits down to 45 mph on Island Point Road, Molly's Backbone and Azalea Road.
 - b. If grants are not secured for the Mountain Creek tract and the default position of 150 lots are permitted for development, then the subdivision must be designed as a cluster-style development.

Vote 7-1. Opposed was Stuart DeWitt based on the disagreement to rezone the Key Harbor and Crescent Village Center properties as noted in #2 above.

RECOMMENDATION

Staff and Planning Board recommended the Board of Commissioners take the following actions relative to the Key Harbor and Crescent Village Center development proposals:

- 1) Amend the text of the Sherrills Ford Small Area Plan to allow residential densities up to 3 units per acre when both public water and sewer serve an area, which is consistent with other small area plans in the County.
- 2) Rezone the Key Harbor and Crescent Village Center properties from R-80 Residential and RC Rural Commercial to Planned Development – Conditional District, based upon the following:
 - a. The recommendations of the Sherrills Ford Small Area Plan for a village center and higher density development in Key Harbor based upon the amendment in 1) above;
 - b. The availability and/or provision of adequate infrastructure as identified in the development agreement; and
 - c. The conditional notes, associated site plans, brochures, and supplemental information submitted as part of the conditional zoning process for Key Harbor and the Village Center.
- 3) Approve the attached development agreement including the Planning Board's amendments, the amenities, donations and improvements being provided by the developers which will serve to improve the quality of life, provide amenities and long-term benefits to the community.
- 4) Staff recommended the Board's adoption of the attached "Zoning Map Amendment Consistency Statement" which finds that the Key Harbor and Crescent Village Center rezoning are consistent with the Sherrills Ford Small Area Plan and are reasonable and in the public interest.

ZONING MAP AMENDMENT CONSISTENCY STATEMENT

Pursuant to N.C.G.S. §153A-341, and upon consideration of the Sherrills Ford Small Area Plan as amended, all materials presented to the County by Crescent Resources, Key Harbor Holdings, members of the public and county staff, and upon further consideration of the educational, recreational, environmental, growth, road improvement, economic and infrastructure needs of this area of Catawba County, the Catawba County Board of Commissioners finds the rezoning request to be consistent with the Sherrills Ford Small Area Plan and reasonable and in the public interest for the following reasons:

- 1) compact, interconnected mixture of uses, including single-family and multi-family residential, commercial, office and community uses, in a pedestrian-friendly, architecturally-integrated design with controlled driveway access to Highway 150 makes the Village Center conform to the Sherrill's Ford Small Area Plan.
- 2) public sewer introduced into the area allows for increased density, as recognized in other utility corridors in the Sherrills Ford area, while preserving open space through a cluster subdivision design, makes Key Harbor conform to the Sherrills Ford Small Area Plan.
- 3) higher zoning standards and site conditions imposed upon the Key Harbor and Village Center developments;
- 4) rezonings of Key Harbor and the Village Center, collectively with the density and land use controls of the Terrapin Creek and Mountain Creek tracts as controlled by the Development Agreement, create a unified, controlled total land use pattern for several large tracts within the Sherrills Ford area;
- 5) the compact, mixed-use design of the Village Center provides for a land use pattern which will lessen traffic along the Highway 150 corridor by providing for commercial opportunities in a centralized development located within the southeast area of the County as compared to individual developments scattered along Highway 150 or travelling outside of the County for retail opportunities;
- 6) the higher-density, mixed-use patterns contained in two centralized developments creates a smart-growth land use pattern which allows for density to be located within a compact area as opposed to spreading out across several parcels of land. This land use pattern also addresses stormwater runoff on a larger regional facility basis as opposed to smaller, more numerous stormwater facilities;
- 7) the rezoned tracts, together with the Development Agreement adopted on this same date, create a financial mechanism for providing public sewer within the growth corridor in this section of the County; and
- 8) through the rezonings and the accompanying Development Agreement the County has been able to attain through private expense numerous public amenities that more than mitigate the impact of this development and which include but are not limited to: land for a public school site, park land, up to 600 acres of environmentally sensitive land for public use, \$750,000 for a County service center or public safety equipment, land for public safety and other County services, substantial road improvements, land reserved for a medical center and a YMCA, school site improvements, land for sewer pump stations and lines, and dedication of highway right-of-way.

The proposed Development Agreement read as follows:

DEVELOPMENT AGREEMENT

BY AND AMONG

**CRESCENT RESOURCES, LLC, CAROLINA CENTERS, LLC
KEY HARBOR COMMUNITIES, LLC, KEY HARBOR HOLDINGS, LLC**

AND

CATAWBA COUNTY, NORTH CAROLINA

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is made and entered into this 16th day of April, 2007 by and among **Crescent Resources, LLC** ("Crescent"), a Georgia limited liability company authorized to conduct business in the State of North Carolina, **Carolina Centers, LLC** ("Carolina Centers"), a North Carolina limited liability company, **Key Harbor Communities, LLC** ("Communities"), a Georgia limited liability company authorized to conduct business in the State of North Carolina, **Key Harbor Holdings, LLC** ("Holdings"), a Georgia limited liability company authorized to conduct business in the State of North Carolina, and **Catawba County, North Carolina** (the "County"), a political subdivision of the State of North Carolina.

Key Harbor Communities and Key Harbor Holdings are referred to herein collectively as "Key Harbor".

STATEMENT OF PURPOSE

1. Section 153A-349.1(a)(1) of the North Carolina General Statutes provides that "large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources."
2. Section 153A-349.1(a)(3) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development."
3. Section 153A-349.1(a)(4) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development."
4. Section 153A-349.1(a)(5) of the North Carolina General Statutes provides that "because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas."
5. Section 153A-349.1(a)(6) of the North Carolina General Statutes provides that "to better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments."
6. In view of the foregoing, Sections 153A-349.1(b) and 153A-349.3 of the North Carolina General Statutes expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of Sections 153A-349.1 through 153A-349.13 of the North Carolina General Statutes, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.
7. Section 153A-349.4 of the North Carolina General Statutes restricts the use of a development agreement to "property that contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of the application)." N.C.G.S. 153A-349.4 further provides that "development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

BACKGROUND

1. Key Harbor Communities and Key Harbor Holdings are the owners of an approximately 704 acre parcel of land located on the north side of Island Point Road approximately 1/2 mile east of the intersection of Island Point Road and Sherrills Ford Road (hereinafter referred to as the "Key Harbor Property"), which parcel of land is more particularly described on Exhibit A attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B attached hereto and incorporated herein by reference.
2. Carolina Centers is the owner of an approximately 192 acre parcel of land located east of the intersection of Highway 150 and Slanting Bridge Road (hereinafter referred to as the "Village Center Property"), which parcel of land is more particularly described on Exhibit C attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B.
3. Carolina Centers is the owner of an approximately 630.50 acre parcel of land located approximately 1/2 mile north of the intersection of Molly's Backbone Road and Sherrills Ford Road (hereinafter referred to as the "Terrapin Creek Property"), which parcel of land is more particularly described on Exhibit D attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B.
4. Carolina Centers is the owner of an approximately 600 acre parcel of land located approximately two miles northwest of the intersection of Highway 150 and Little Mountain Road (hereinafter referred to as the "Mountain Creek Property"), which parcel of land is more particularly described on Exhibit E attached hereto and incorporated herein by reference, and more particularly depicted on Exhibit B.
5. The Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property are located in the southeastern portion of Catawba County in an area known as Sherrills Ford. The Sherrills Ford area is bounded by Lake Norman and the Catawba River to the east, the Catawba County - Lincoln County line to the south, N.C. Highway 16, Buffalo Shoals Road and Murray Hills Road to the west and U.S. Highway 10, the Town of Catawba's Extraterritorial Jurisdiction and the Catawba River to the north.
6. Beginning in 2000, the County and the Sherrills Ford Small Area Plan Committee engaged in land use studies and comprehensive planning for the Sherrills Ford area for the purpose of developing a small area plan for this portion of the County. The result of these efforts was the drafting of the Sherrills Ford Small Area Plan (the "Small Area Plan") that was adopted by the Catawba County Board of Commissioners (the "Board of Commissioners") on February 17, 2003. The guiding principles of the Small Area Plan include, among other things, balanced land uses with a mixture of housing, shopping and employment; pedestrian oriented development; well planned retail development with varying sizes and functions; and flexibility in regulations.
7. As outlined in the Small Area Plan, and as a result of changing conditions relating to sewer availability and the desire to maximize development opportunities along the utility corridors, the County has endorsed a development vision for the Sherrills Ford area that proposes (a) to provide for lower developable population densities on the Terrapin Creek Property and the Mountain Creek Property and higher densities on the Village Center Property and the Key Harbor Property; (b) the development of a mixed use project on the Village Center Property that would contain, among other things, retail and office uses as well as single family detached homes and attached single family homes; and (c) to transfer the costs of the development of certain amenities and improvements from public resources to the private developments described herein. The County's development vision also contemplates low density and conservation development of the Terrapin Creek Property, and conservation and/or recreational uses on portions of the Mountain Creek Property.
8. The County approved a new zoning ordinance known as the Unified Development Ordinance (the "UDO") on February 5, 2007 that contains new zoning districts and regulations that allow greater development flexibility than was previously allowed under the County's former zoning ordinance. The UDO provides the County with the tools to implement the Small Area Plan.
9. Crescent agrees that it will work diligently and in good faith to secure funding from public, private and/or not-for-profit sources to enable the County to acquire the Mountain Creek Property as contemplated

in the Comprehensive Relicensing Agreement for the Catawba-Wateree Project (FERC No. 2232) (the "Relicensing Agreement"). Crescent's efforts will include (i) sponsoring and funding the accumulation of baseline data and information; (ii) preparing a perennial stream channel and wetlands delineation and buffer surveys; and (iii) applying to the NC Clean Water Management Trust Fund and other entities to fund the acquisition for the County. The proposed purchase price shall be based on the appraised market value of the Mountain Creek Property as if it were zoned for the development of a single family residential community with a density of one lot per two acres, and one lot per .75 acres within 1,000 feet of the Lake Norman Project Boundary, less the reduction in value which would result from the application of perennial stream channel and wetlands conservation easements, and less the value of up to thirty (30) acres of land within the Mountain Creek Property proposed by Duke Energy for a recreation area as described in the Relicensing Agreement, but with total density not exceeding one hundred and fifty (150) homes. Duke Energy's acquisition support funding, as proposed above, shall be credited towards the "match" required by the NC Clean Water Management Trust Fund.

In the event that the applications for funding are denied or the funding is not granted prior to August 1, 2009 or the closing of the acquisition is not consummated by December 31, 2009, then, unless the dates specified herein are not extended, Crescent's obligation to assist in the acquisition of the Mountain Creek Property for the County shall expire, and Crescent shall develop using Catawba's County's cluster option a single family residential community on one-half of the Mountain Creek Property (one-half of the Mountain Creek Property being determined after deducting up 30 acres that are set aside for the recreation area described in the Relicensing Agreement) in accordance with the density described above, namely, one lot per two acres, and one lot per .75 acres within 1,000 feet of the Lake Norman Project Boundary, provided that Crescent shall also dedicate the perennial stream channel and the wetlands conservation easements as proposed above, with the easement areas not being counted towards the eligible development area, and with total density not exceeding one hundred and fifty (150) homes. Furthermore, Crescent may utilize the County's "cluster provision" in planning this development, which will allow the eligible density to be placed on lots as small as one-half acre. The one-half portion of the Mountain Creek Property that may be developed by Crescent (approximately 300 acres of the remaining 600 acres after the 20 to 30 acres are set aside for the recreation area as provided in the Relicensing Agreement) is identified on Exhibit F. The balance of the Mountain Creek Property not being developed by Crescent (including the conservation easements) totals approximately 300 acres, and this land shall be donated to the County as open space.

10. Key Harbor desires to develop a multi-year, multi-phased residential subdivision on the Key Harbor Property that will contain single family detached homes on lots of various sizes, attached single family homes and certain amenities (the "Key Harbor Subdivision"). More specifically, the Key Harbor Subdivision will contain a maximum of 1,500 dwelling units, of which a minimum of 40 dwelling units and a maximum of 100 dwelling units shall be attached single family homes. Attached hereto as Exhibit G and incorporated herein by reference is a schematic site plan of the Key Harbor Subdivision. To develop the Key Harbor Subdivision in accordance with the attached schematic site plan, public sewer must be made available to the Key Harbor Property by the County as provided in this Agreement.

11. A subdivision sketch plan for a portion of the Key Harbor Property was approved by the Catawba County Subdivision Review Board on March 31, 2006 (the "Approved Sketch Plan"). The Approved Sketch Plan provides for the development of a residential subdivision on a portion of the Key Harbor Property containing a maximum 212 single family lots (the "212 Lot Subdivision"). The 212 Lot Subdivision complies with the former and existing zoning of the Key Harbor Property. The schematic site plan of the Key Harbor Subdivision attached hereto as Exhibit G includes and incorporates the 212 Lot Subdivision. Preliminary subdivision approval of the 212 Lot Subdivision was granted on June 27, 2006 by the Catawba County Subdivision Review Board.

12. In the event that public sewer is not made available to the Key Harbor Property as provided herein, then Key Harbor may develop a 355 lot single family residential subdivision on the Key Harbor Property, subject to the approval of a preliminary plat by the Catawba County Subdivision Review Board (the "355 Lot Subdivision"). The 355 Lot Subdivision would include and incorporate the 212 Lot Subdivision, and it may be developed with septic systems.

13. Crescent desires to develop a mixed use project on the Village Center Property that could contain retail, office, governmental, educational, service and residential uses (the "Village Center Project"). A schematic site plan of the Village Center Project is attached hereto as Exhibit H and incorporated herein by reference. To develop the Village Center Project in accordance with the attached schematic site plan, public sewer must be made available to the Village Center Property by the County as provided in this Agreement.

14. Crescent desires to develop the Terrapin Creek Property as a low density conservation subdivision containing a maximum of 100 single family lots as more particularly described herein (the "Terrapin Creek Subdivision"). The Terrapin Creek Subdivision must be reviewed and approved by the Catawba County Subdivision Review Board.

15. After careful review and deliberation, the County has determined that the above described subdivisions and developments are consistent with the adopted Small Area Plan and the UDO, and that they would further the County's land use planning objectives and policies as set out in these documents, as well as the health, safety, welfare and economic well being of the County.

16. The County has also determined that the above-described subdivisions and developments present a unique opportunity for the County to secure quality planning and growth, to protect the environment, to strengthen the tax base and to acquire public amenities through the development approval process.

Accordingly, Crescent, Carolina Centers, Key Harbor and the County desire to enter into this Agreement for the purposes of (a) agreeing upon the maximum density of development on the relevant parcels of land and the types of uses thereon; (b) coordinating the construction of infrastructure that will serve the above-described subdivisions and developments and the community at large; (c) confirming the dedication and/or provision of the public amenities described herein by Crescent and Key Harbor; and (d) providing assurances to Key Harbor and Crescent that they may proceed with the development of their relevant parcels of land in accordance with the approved conditional rezoning plans described below and the terms of this Agreement without encountering future changes in ordinances, regulations or policies that would affect their ability to develop the relevant parcels under the approved conditional rezoning plans and the terms hereof.

TERMS

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

1. Public Hearing. Pursuant to Section 153A-349.5 of the North Carolina General Statutes, the Board of Commissioners conducted a public hearing on April 16, 2007 to consider the approval and execution of this Agreement in accordance with the procedures in N.C.G.S. 153A-323. The notice of public hearing specified, among other things, the location of the parcels of land subject to this Agreement, the development uses proposed on the parcels of land and a place where a copy of the Agreement can be obtained. The Board of Commissioners approved this Agreement and the County's execution of the same.

2. Term. The term of this Agreement shall commence on the date that all parties hereto have executed the Agreement and it shall terminate twenty (20) years thereafter unless sooner terminated by the mutual consent of the parties hereto or their successors in interest, or unless extended by the mutual consent of the parties hereto or their successors in interest.

3. Development of the Property.

A. Key Harbor Property

On April 16, 2007, the Board of Commissioners rezoned the Key Harbor Property to the Planned Development zoning district to permit the development of the Key Harbor Subdivision. The Key Harbor Property shall be developed in accordance with the terms and conditions of the conditional rezoning plan approved by the Board of Commissioners in connection with the rezoning of the Key Harbor Property (the

“Approved Key Harbor Plan”). The sizes, placements and configurations of the lots, common open space, streets, sidewalks and other improvements planned for the Key Harbor Subdivision shall be as depicted on the Approved Key Harbor Plan or as described in the development standards set out on the Approved Key Harbor Plan subject, however, to any rights Key Harbor may have to make adjustments to the same as provided on the Approved Key Harbor Plan, and to Key Harbor’s right to seek minor amendments to the Approved Key Harbor Plan pursuant to Section 44-327(k) of the UDO.

As provided on the Approved Key Harbor Plan, the minimum front and rear yard setbacks for dwelling units located within the Key Harbor Subdivision shall be twenty (20) feet. Side yard setbacks for dwelling units located within Key Harbor on lots with a width of sixty four (64) feet or less shall be zero (0) feet, provided, however, that the minimum building separation shall be five (5) feet. Side yard setbacks for dwelling units located within Key Harbor on lots with a width of sixty five (65) feet to eighty four (84) feet shall be zero (0) feet, provided, however, that the minimum building separation shall be ten (10) feet. Side yard setbacks for dwelling units located on lots with a width of eighty five (85) feet or greater shall be ten (10) feet, and there shall be no minimum building separation other than the side yard setback requirement.

In the event of a conflict between the UDO and the Approved Key Harbor Plan, the terms of the Approved Key Harbor Plan shall govern.

B. Village Center Property

On April 16, 2007, the Board of Commissioners rezoned the Village Center Property to the Planned Development zoning district to permit the development of the Village Center Project. The Village Center Property shall be developed in accordance with the terms and conditions of the conditional rezoning plan approved by the Board of Commissioners in connection with the rezoning of the Village Center Property (the “Approved Village Center Plan”). The configurations, placements and sizes of the lots, buildings, open space, parking areas, streets and other improvements planned for the Village Center Project shall be as depicted on the Approved Village Center Plan or as described in the development standards set out on the Approved Village Center Plan subject, however, to any rights Crescent may have to make adjustments to the same as provided on the Approved Village Center Plan, and to Crescent’s right to seek minor amendments to the Approved Village Center Plan pursuant to Section 44-327(k) of the UDO.

In the event of a conflict between the UDO and the Approved Village Center Plan, the terms of the Approved Village Center Plan shall govern.

C. Terrapin Creek Property

The Terrapin Creek Property shall be developed as a low density conservation subdivision containing a maximum of 100 single family lots. The Terrapin Creek Subdivision shall be developed in accordance with and shall satisfy the standards and requirements of the UDO. The Terrapin Creek Subdivision must be reviewed and approved by the Catawba County Subdivision Review Board. Attached hereto as Exhibit I and incorporated herein by reference is a site plan for concept purposes only illustrating the type of development to be allowed on the Terrapin Creek Property.

D. Mountain Creek Property

The Mountain Creek Property shall be utilized and/or developed as provided in Section 9 under “Background”.

4. Permitted Uses/Maximum Density/Placement and Types of Buildings.

A. Key Harbor Property

The Key Harbor Property shall be devoted to single family detached homes, attached single family homes and related amenities together with any incidental or accessory uses associated therewith which are permitted under the UDO in the Planned Development zoning district. As more particularly depicted on the

Approved Key Harbor Plan, a maximum of 1,500 dwelling units may be developed on the Key Harbor Property, of which a minimum of 40 dwelling units and a maximum of 100 dwelling units may be attached single family homes.

B. Village Center Property

The Village Center Property may be devoted to retail, office, governmental, educational and service uses and to single family detached or attached residential uses or multi-family attached residential uses together with any incidental or accessory uses associated therewith which are permitted under the UDO in the Planned Development District zoning district. As more particularly provided on the Approved Village Center Plan, the maximum floor area for the retail/service and office uses and the maximum number of residential units that may be developed on the Village Center Property are as follows:

- | | | |
|-------|---|-------------------------|
| (i) | Retail/service: | 500,000 square feet; |
| (ii) | Office: | 300,000 square feet; |
| (iii) | Single family detached: | 250 dwelling units; |
| (iv) | Attached single family
(i.e. townhomes): | 200 dwelling units; and |
| (v) | Multi-family
(i.e. apartments and condominiums): | 400 dwelling units. |

Subject to the approval of the Catawba County Planning Staff (the 'Staff'), which approval shall not be unreasonably withheld or delayed, Crescent may shift allowed floor area from retail/service uses to office uses, and from office uses to retail/service uses provided that any such shift of floor area is neutral from a traffic impact standpoint. Subject to the approval of the Staff, which approval shall not be unreasonably withheld or delayed, Crescent may also shift allowed residential units between the various types of allowed residential uses provided that such shift is neutral from a traffic impact standpoint.

The placement of the buildings on the Village Center Property and the types of buildings are more particularly depicted on the Approved Village Center Plan.

C. Terrapin Creek Property

The Terrapin Creek Property shall be devoted to single family detached homes together with any incidental or accessory uses associated therewith which are permitted under the UDO, and to conservation and open space. A maximum of 100 single family detached homes on individual lots may be developed on the Terrapin Creek Property. The Terrapin Creek Subdivision shall be developed in accordance with and shall satisfy the standards and requirements of the UDO. The Terrapin Creek Subdivision must be reviewed and approved by the Catawba County Subdivision Review Board.

D. Mountain Creek Property

The Mountain Creek Property shall be utilized and/or developed in accordance with the densities and uses described above in Section 9 under "Background".

5. Development Schedule. The Key Harbor Property and the Village Center Property shall be developed in accordance with the development schedules set out in subsections 5.A. and 5.B. below, or as may be amended by the agreement of the parties to reflect actual market absorption. The Terrapin Creek Property and the Mountain Creek Property shall not be subject to any development schedule, and shall be developed at a schedule to be determined in the discretion of the developer. Pursuant to N.C.G.S. 153A-349.6(b) of the North Carolina General Statutes, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of this Agreement pursuant to N.C.G.S. 153A-349.8 but must be judged based upon the totality of the circumstances, including, but not limited to, Key Harbor's

and/or Crescent's good faith efforts to attain compliance with the relevant development schedule. The development schedule is a budget planning tool and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace of development if market conditions support a faster pace. Periodic adjustments to the relevant development schedule by Key Harbor shall not be considered to be a material amendment or breach of this Agreement as long as (1) Key Harbor, or its successor in interest, pays the water and sewer capital fees in accordance with the required schedule as set out in Section 12 hereof, and (2) the entire 1,500 lots are developed within the twenty (20) year period described below.

A. Key Harbor Property Development Schedule

(i) Within five (5) years of the Sewer Availability Date (the Sewer Availability Date being defined in Paragraph 11.A.(i) below), Key Harbor shall have completed the development of at least 375 lots;

(ii) Within ten (10) years of the Sewer Availability Date, Key Harbor shall have completed the development of at least 750 lots;

(iii) Within fifteen (15) years of the Sewer Availability Date, Key Harbor shall have completed the development of at least 1,125 lots; and

(iv) Within twenty (20) years of the Sewer Availability Date, Key Harbor shall have completed the development of at least 1,500 lots.

Notwithstanding anything contained herein to the contrary, Key Harbor may develop lots at a faster pace than the pace provided above in subparagraphs (i) through (iv). The failure of Key Harbor to meet the minimum development schedule set out above in subparagraphs (i) through (iv) shall not constitute a breach of this Agreement provided that Key Harbor pays the water and sewer capital fees required under Section 12 of this Agreement in accordance with the schedule set out therein and develops 1,500 lots within twenty (20) years of the Sewer Availability Date.

B. Village Center Property Development Schedule

(i) Within four (4) years and two (2) months of the Sewer Availability Date, Crescent shall complete the development of at least 125,000 square feet of the retail component of the Village Center Project;

(ii) Within six (6) years and two (2) months of the Sewer Availability Date, Crescent shall complete the development of the remaining portion of the retail component of the Village Center Project;

(iii) Within six (6) years and two (2) months of the Sewer Availability Date, Crescent shall commence the development of the medical office component of the Village Center Project, and the development of the medical office component of the Village Center Project shall be completed within nine (9) years and two (2) months of the Sewer Availability Date; and

(iv) Within four (4) years and two (2) months of the Sewer Availability Date, Crescent shall commence the development of the residential component of the Village Center Project, and the development of the residential component of the Village Center Project shall be completed within nine (9) years and two (2) months of the Sewer Availability Date. From and after the commencement of the construction of the first residential unit in the residential component of the Village Center Project, a minimum of thirty (30) residential units shall be constructed during each subsequent twelve (12) month period.

C. Terrapin Creek Property Development Schedule

The Terrapin Creek Property shall not be required to develop according to a schedule.

D. Mountain Creek Property Development Schedule

The Mountain Creek Property retained by Crescent shall not be developed according to a schedule.

6. Law in Effect at Time of the Agreement Governs the Development of Each Relevant Parcel.

A. Key Harbor Property

The laws applicable to the development of the Key Harbor Property and the Key Harbor Subdivision are those in force as of the date of this Agreement. Accordingly, Key Harbor and its successors in interest shall have a vested right to develop the Key Harbor Property and the Key Harbor Subdivision in accordance with the Approved Key Harbor Plan, the terms of this Agreement, and the terms of the UDO and any applicable laws and regulations as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. 153A-349.7(b) and except as provided in N.C.G.S. 153A-344.1(e), the County may not apply subsequently adopted ordinances or development policies to the Key Harbor Property or to the Key Harbor Subdivision during the term of this Agreement without the written consent of Key Harbor or its successors in interest. Additionally, no future development moratoria or development impact fees shall apply to the Key Harbor Property or to the Key Harbor Subdivision without the written consent of Key Harbor or its successors in interest. This Agreement does not abrogate any rights preserved by N.C.G.S. 153A-344 or N.C.G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

B. Village Center Property

The laws applicable to the development of the Village Center Property and the Village Center Project are those in force as of the date of this Agreement. Accordingly, Crescent and its successors in interest shall have a vested right to develop the Village Center Property and the Village Center Project in accordance with the Approved Village Center Plan, the terms of this Agreement, and the terms of the UDO and any applicable laws and regulations as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. 153A-349.7(b) and except as provided in N.C.G.S. 153A-344.1(e), the County may not apply subsequently adopted ordinances or development policies to the Village Center Property or to the Village Center Project during the term of this Agreement without the written consent of Crescent or its successors in interest. Additionally, no future development moratoria or development impact fees shall apply to the Village Center Property or to the Village Center Project without the written consent of Crescent or its successors in interest. This Agreement does not abrogate any rights preserved by N.C.G.S. 153A-344 or N.C.G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

C. Terrapin Creek Property and Mountain Creek Property

The laws applicable to the development of the Terrapin Creek Property and the Mountain Creek Property are those in force as of the date of this Agreement. Accordingly, Crescent and its successors in interest shall have a vested right to develop the Terrapin Creek Property and the Mountain Creek Property in general conformity with the provisions and terms of this Agreement, and the terms of the UDO and any applicable laws and regulations as they exist as of the date hereof during the entire term of this Agreement. Pursuant to N.C.G.S. 153A-349.7(b) and except as provided in N.C.G.S. 153A-344.1(e), the County may not apply subsequently adopted ordinances or development policies to the Terrapin Creek Property or to the Mountain Creek Property during the term of this Agreement without the written consent of Crescent or its successors in interest. Additionally, no future development moratoria shall apply to the Terrapin Creek Property or to the Mountain Creek Property without the written consent of Crescent or its successors in interest. Notwithstanding the foregoing, the Terrapin Creek Property and the Mountain Creek Property shall be subject to future development impact fees if legally adopted by the Board of Commissioners and provided that such development impact fees apply on a county wide basis. This Agreement does not abrogate any rights preserved by N.C.G.S. 153A-344 or N.C.G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

7. Transportation Improvements.

A. Key Harbor Property

Subject to the approval of the North Carolina Department of Transportation (“NCDOT”), Key Harbor, or its successor in interest, shall, at its sole cost and expense, install all of the off-site transportation improvements that are recommended to be installed by the developer of the Key Harbor Property in a Traffic Impact Analysis Technical Addendum dated March 3, 2006 prepared by Chas. H. Sells, Inc. (the “Key Harbor TIA”). The Key Harbor TIA has been reviewed and approved by NCDOT. The off-site transportation improvements to be installed by the developer of the Key Harbor Property shall include the following:

- (i) Dedicated turn lanes and re-configured signal timing at the intersection of Highway 150 and Sherrills Ford Road;
- (ii) Dedicated turn lanes and signal installation at the intersection of Sherrills Ford Road and Island Point Road;
- (iii) Signal installation and dedicated turn lanes at the intersection of Sherrills Ford Road and Slanting Bridge Road;
- (iv) Signal installation and dedicated turn lanes at the intersection of Sherrills Ford Road and Molly’s Backbone Road; and
- (v) Dedicated turn lanes and re-configured signal timing at the intersection of Highway 150 and Slanting Bridge Road.

The off-site transportation improvements described above in subparagraphs (i) through (v) and any other off-site transportation improvements required by NCDOT shall be installed in accordance with the schedule set out in the phasing analysis approved by NCDOT, and such off-site transportation improvements shall be installed in accordance with the specifications of NCDOT. If Key Harbor, or its successor in interest, fails to install any of the required off-site transportation improvements in accordance with the terms of the approved phasing analysis, then the County may, at its option, 1) withhold the issuance of any further building permits for homes within Key Harbor and/or 2) withhold the issuance of certificates of occupancy for any homes within Key Harbor that have not been purchased or have not been placed under contract for sale until such time as the delinquent off-site transportation improvements are completed. Subsequently placing a home under contract shall not remove the hold on its certificate of occupancy.

Catawba County hereby agrees to request NCDOT to consider lower speed limits on Island Point Road, Azalea Road and Molly’s Backbone Road.

B. Village Center Property

(i) Crescent has caused to be prepared by Kubilins Transportation Group, Inc. a Traffic Impact Analysis for the Village Center Project (the “Crescent TIA”). The Crescent TIA is currently being reviewed by NCDOT and is subject to its approval. Crescent, or its successor in interest, shall, at its sole cost and expense, install all of the off-site transportation improvements that are recommended to be installed by the developer of the Village Center Project in the Crescent TIA as approved by NCDOT. The off-site transportation improvements that are recommended to be installed by the developer of the Village Center Project shall be installed in accordance with the schedule set out in the phasing analysis recommended by the Crescent TIA as approved by NCDOT, and such off-site transportation improvements shall be installed in accordance with the specifications of NCDOT. If Crescent, or its successor in interest, fails to install any of the required off-site transportation improvements in accordance with the terms of the approved phasing analysis, then the County may, at its option, withhold the issuance of any further building permits or certificates of occupancy for the Village Center Property until such time as the delinquent off-site transportation improvements are completed.

(ii) Within thirty (30) days of the date of the approval of the Crescent TIA by NCDOT, Crescent shall dedicate right of way to NCDOT for the widening of Highway 150, which right of way area is more particularly depicted on Exhibit J.

8. Condemnation of Right of Way for Off-Site Transportation Improvements.

A. Key Harbor Property

Key Harbor shall exert reasonable and good faith efforts to obtain from the relevant property owners, at its sole cost and expense, the right of way necessary to construct and install the required off-site transportation improvements described above. In the event that Key Harbor is unable to obtain any of the required right of way after exerting reasonable, good faith efforts to do so, the County will obtain the required right of way by purchasing the same or through eminent domain proceedings. In the event that the County purchases any required right of way, Key Harbor shall reimburse the County for the purchase price and any expenses related thereto. In the event that the County acquires any required right of way through eminent domain proceedings, Key Harbor shall reimburse the County for any award of just compensation and/or damages (as determined through settlement or verdict), including interest, that the County is required to pay, and for appraisal fees, attorney's fees and other costs and expenses incurred by the County in connection therewith. Key Harbor shall not be liable, however, for payments through settlement in excess of appraised value unless it has given its prior consent.

B. Village Center Property

Crescent shall exert reasonable and good faith efforts to obtain from the relevant property owners, at its sole cost and expense, the right of way necessary to construct and install the required off-site transportation improvements described above. In the event that Crescent is unable to obtain any of the required right of way after exerting reasonable, good faith efforts to do so, the County will obtain the required right of way by purchasing the same or through eminent domain proceedings. In the event that the County purchases any required right of way, Crescent shall reimburse the County for the purchase price and any expenses related thereto. In the event that the County acquires any required right of way through eminent domain proceedings, Crescent shall reimburse the County for any award of just compensation and/or damages (as determined through settlement or verdict), including interest, that the County is required to pay, and for appraisal fees, attorney's fees and other costs and expenses incurred by the County in connection therewith. Crescent shall not be liable, however, for payments through settlement in excess of appraised value unless it has given its prior consent.

C. Authority to Condemn

The County represents and warrants that it has the legal authority to acquire the right of way areas described above through eminent domain proceedings in accordance with the terms of this Agreement pursuant to 1989 N.C. General Assembly Session Laws, Senate Bill 620.

9. Reservations or Dedications of Land for Public Purposes/Public Improvements by Key Harbor and Crescent.

A. Key Harbor

(i) Bike Path. Within three (3) years of the date on which the Key Harbor Property is rezoned to the Planned Development zoning district and subject to the approval of NCDOT and the availability of right of way, Key Harbor shall install, at its sole cost and expense, a paved bike path along the northern side of Island Point Road extending from the intersection of Island Point Road and Sherrill's Ford Road to the easternmost edge of the Key Harbor Subdivision's frontage on Island Point Road (the "Bike Path"). The Bike Path shall vary in width from 5 feet to 8 feet, and it may meander at the discretion of Key Harbor to save trees. In the event that NCDOT fails to approve the Bike Path, then Key Harbor shall have no obligation to install the Bike Path. Additionally, Key Harbor shall have no obligation to install any portion of the Bike Path where there is no existing right of way to accommodate such portion of the Bike Path.

(ii) Sherrills Ford Elementary School Improvements. In the event that the Key Harbor Property is rezoned to the Planned Development zoning district to permit the development of the Key Harbor Subdivision on or before April 17, 2007, then Key Harbor, at its sole cost and expense, shall re-configure

and improve the Sherrills Ford Elementary School parking area prior to July 31, 2007 as described in the Key Harbor TIA and as depicted on Exhibit K attached hereto and incorporated herein by reference. Key Harbor shall coordinate the installation of these improvements with the Catawba County Board of Education (the "Board of Education") so as to minimize any inconvenience to Sherrills Ford Elementary School during the construction process. In the event that the Key Harbor Property is rezoned after April 17, 2007, then the improvements to the Sherrills Ford Elementary School shall be completed on a schedule mutually agreed upon among the Board of Education, Sherrills Ford Elementary School and Key Harbor, but in no event later than July 31, 2008.

(iii) Park Site. On or before May 15, 2007, Key Harbor shall acquire an approximately 22 acre parcel of land located adjacent to the northern boundary line of the Key Harbor Subdivision (the "Key Harbor Park Site"). The Key Harbor Park Site is more particularly depicted on the Approved Key Harbor Plan. On or before May 18, 2008, Key Harbor shall donate and convey to the Sherrills Ford Optimist Club the Key Harbor Park Site for use as a public park. Key Harbor shall not be required to construct or to fund any of the park's internal improvements or amenities. The deed of conveyance from Key Harbor to the Sherrills Ford Optimist Club shall restrict the use of the Key Harbor Park Site to park and recreational purposes. The County shall provide a letter to Key Harbor confirming the donation of the Key Harbor Park Site for tax purposes. Key Harbor shall lease the Key Harbor Park Site to the Sherrills Ford Optimist Club beginning on May 15, 2007 until the date title is conveyed at a sum not to exceed \$10 per year, provided that the Sherrills Ford Optimist Club agrees to hold Key Harbor harmless from and against any and all causes of action and liabilities arising in tort.

(iv) Terrell General Store. Key Harbor shall exert reasonable and good faith efforts to obtain from the relevant property owner(s), at its sole cost and expense, the parcel or parcels of land on which the Terrell General Store is currently located (the "Terrell General Store Site"). In the event that Key Harbor is able to acquire the Terrell General Store Site, then Key Harbor shall make reasonable and good faith efforts to relocate the Terrell General Store building from its present location on the Terrell General Store Site to another suitable location on the Terrell General Store Site. Such suitable location cannot interfere with any required off-site transportation improvements. In the event that a suitable location is found for the relocation of the Terrell General Store building, then Key Harbor shall relocate the Terrell General Store building to the suitable location at its sole cost and expense. Key Harbor will then be entitled to pursue the commercial rezoning and development of the Terrell General Store Site.

In the event that a suitable location on the Terrell General Store Site for the relocation of the Terrell General Store building cannot be located, then Key Harbor shall offer the Terrell General Store building to the County at no charge, and if the County accepts such offer, the County shall relocate the Terrell General Store building to another location at its sole cost and expense within a reasonable period of time. If the County does not accept such offer, then Key Harbor may dispose of the Terrell General Store building. In either event, Key Harbor may then pursue the commercial rezoning and development of the Terrell General Store Site.

In the event that Key Harbor is unable to acquire the Terrell General Store Site after exerting reasonable and good faith efforts to do so, then Key Harbor shall have satisfied its obligations hereunder.

(v) Public Sidewalks. Key Harbor shall construct a 5 foot public sidewalk on at least one side of each public street located within the Key Harbor Subdivision. This sidewalk system shall connect to the Bike Path on Island Point Road. More specifically, a public sidewalk shall be constructed on both sides of any portion of a public street where dwelling units are located on each side of the public street, and a public sidewalk shall be constructed only on the dwelling unit side of a portion of any public street where dwelling units are located on only one side of the public street. With respect to the open space areas within the Key Harbor Subdivision, a public sidewalk shall be constructed on only one side of any public street located in these areas. Key Harbor shall construct a public sidewalk adjacent to each lot after the dwelling unit is constructed thereon to prevent damage to the public sidewalk during the construction of the dwelling unit, and Key Harbor shall construct public sidewalks in the open space areas at such times as these areas are developed.

The internal trail system to be constructed within the Key Harbor Subdivision shall be constructed of pervious materials, which materials shall consist of mulch, gravel or stone at Key Harbor's discretion, but subject to Planning Staff approval, such approval not to be unreasonably withheld.

(vi) Amenity. Key Harbor shall construct at least two swimming pools and at least two clubhouses within the Key Harbor Subdivision.

B. Crescent

(i) School Site. Crescent shall reserve an approximately 25 acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for a public school site (the "School Site"). Unless extended as provided below, the School Site shall be reserved for a public school for a period of thirteen (13) years, with such thirteen (13) year period commencing on the date that the Village Center Property is rezoned to accommodate the Village Center Project and expiring thirteen (13) years thereafter (the "School Reservation Period"). During the School Reservation Period, the School Site may not be used for any purpose that is inconsistent with the reservation thereof for a public school. The School Site may be used, however, as a construction staging area or other use approved by the County.

If the Board of Education approves the School Site for a public school within the School Reservation Period, then Crescent shall donate and convey to the Board of Education as much of the School Site that is required to accommodate a public school as determined by the Board of Education within ninety (90) days of Crescent's receipt of written notice of the County's approval of the School Site. The deed of conveyance shall restrict the use of the School Site to a public school. Any portion of the School Site that is not required for the public school, as determined by the Board of Education, shall be retained by Crescent free and clear of the reservation, and Crescent may pursue the rezoning and development of the relevant portion of the School Site.

If the Board of Education fails to approve the School Site for a public school within the School Reservation Period, then the reservation shall expire and Crescent may pursue the rezoning and development of the School Site.

At any time during the School Reservation Period, the Board of Education may extend the School Reservation Period for an additional three (3) years upon written notice to Crescent provided that the public school proposed for the School Site is approved for construction during the 2019-2023 funding cycle.

If the Board of Education approves a public school site in another location in the Sherrills Ford area within the School Reservation Period and releases the School Site from the reservation, then Crescent shall contribute to the County an amount equal to the fair market value of the School Site as rezoned to the Planned Development zoning district as of the date of the rezoning of the Village Center Property to accommodate the development of the school at the alternate site. Crescent and the County agree that the fair market value of the School Site based upon the Approved Village Center Plan and as rezoned as of the date of the rezoning of the Village Center Property shall be determined by an appraiser with MAI credentials. If Crescent has not hired an appraiser by April 30, 2007, then the County may hire an MAI appraiser of its choice with appraisal fees to be paid by Crescent. The School Payment shall be paid by Crescent to the County within one hundred and twenty (120) days of Crescent's receipt of written notice of the Board of Education's approval of the alternate site for a public school in the Sherrills Ford area and the release of the School Site from the reservation. Crescent shall then be permitted to pursue the rezoning and development of the School Site.

If the Board of Education approves the School Site for a public school within the School Reservation Period and Crescent fails to donate and convey to the County the School Site as described above, or, alternatively, if Crescent fails to pay the School Payment as described above, then the County may, in its discretion, withhold any or all building permits and/or certificates of occupancy for the Village Center Project until Crescent donates and conveys to the County the School Site or, alternatively, pays to the County the School Payment in full. Additionally, the County may sue Crescent for the specific performance of these obligations.

In no event shall Crescent be responsible for the construction of any improvements required for access to the School Site or for the development and use of the School Site or for any costs related thereto.

(ii) Service Center. Crescent shall donate and convey to the County an approximately two (2) acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for a satellite service center for County services, including, but not limited to, the Catawba County Sheriff's Department, Catawba County Emergency Services, the Catawba County Public Library or other County services (the "Service Center Site"). The deed of conveyance shall restrict the use of the Service Center Site to County services. The Service Center Site shall be donated and conveyed to the County prior to that date which is four (4) years and two (2) months after the Sewer Availability Date (the Sewer Availability Date being defined in Paragraph 11.A.(i) below). Crescent shall also donate and contribute to the County the sum of \$750,000 to be utilized for construction costs and/or the purchase of emergency services equipment prior to that date which is four (4) years and two (2) months after the Sewer Availability Date.

If Crescent fails to donate and convey to the County the Service Center Site or to pay to the County the full sum of \$750,000 as described above, then the County may, in its discretion, withhold any or all building permits and/or certificates of occupancy for the Village Center Project until Crescent donates and conveys to the County the Service Center Site and pays the \$750,000 in full. Additionally, the County may sue Crescent for the specific performance of these obligations.

In no event shall Crescent be responsible for the construction of any improvements required for access to the Service Center Site or for the development and use of the Service Center Site or for any costs related thereto.

(iii) YMCA Site. Crescent shall reserve an approximately ten (10) acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for purchase by the YMCA (the "YMCA Site"). The YMCA Site shall be reserved for purchase by the YMCA for a period of three (3) years, with such three (3) year period commencing on the date of the issuance of the first building permit for the Village Center Property and expiring three (3) years thereafter (the "YMCA Reservation Period"). To exercise its option to purchase the YMCA Site, the YMCA must notify Crescent in writing that it will purchase the YMCA Site and the parties must enter into a written contract for the same within the YMCA Reservation Period. Should the YMCA fail to exercise its option to purchase the YMCA Site within the YMCA Reservation Period, then the reservation shall expire and Crescent may pursue the rezoning and development of the YMCA Site.

The purchase price for the YMCA Site shall be the lesser of (i) the fair market value of the YMCA Site as of the date that the YMCA exercises its option to purchase the same as determined by a third party appraisal procured by Crescent or (ii) \$50,000 per acre.

The purchase contract between Crescent and the YMCA shall contain a provision that provides that in the event that the YMCA does not begin construction of its facility on the YMCA Site within five (5) years of the date that it acquires the YMCA Site, then Crescent may purchase the YMCA Site from the YMCA for the purchase price paid by the YMCA. In this event, Crescent may pursue the rezoning and development of the YMCA Site.

In no event shall Crescent be responsible for the construction of any improvements required for access to the YMCA Site or for the development and use of the YMCA Site or for any costs related thereto.

(iv) Catawba County Medical Center. Crescent shall reserve an approximately ten (10) acre site located within the Village Center Property that is more particularly identified on the Approved Village Center Plan for purchase by the Catawba County Medical Center (the "Medical Center Site"). The Medical Center Site shall be reserved for purchase by the Catawba County Medical Center for a period of three (3) years, with such three (3) year period commencing on the date of the issuance of the first building permit for the Village Center Property and expiring three (3) years thereafter (the "Medical Center Reservation Period"). To exercise its option to purchase the Medical Center Site, the Catawba County Medical Center must notify

Crescent in writing that it will purchase the Medical Center Site and the parties must enter into a written contract for the same within the Medical Center Reservation Period. Should the Catawba County Medical Center fail to exercise its option to purchase the Medical Center Site within the Medical Center Reservation Period, then the reservation shall expire and Crescent may pursue the rezoning and development of the Medical Center Site.

The purchase price for the Medical Center Site shall be the lesser of (i) the fair market value of the Medical Center Site as of the date that the Catawba County Medical Center exercises its option to purchase the same as determined by a third party appraisal procured by Crescent or (ii) \$50,000 per acre.

The purchase contract between Crescent and the Catawba County Medical Center shall contain a provision that provides that in the event that the Catawba County Medical Center does not begin construction of its facility within five (5) years of the date that it acquires the Medical Center Site, then Crescent may purchase the Medical Center Site from the Catawba County Medical Center for the purchase price paid by the Catawba County Medical Center. In this event, Crescent may pursue the rezoning and development of the Medical Center Site.

In no event shall Crescent be responsible for the construction of any improvements required for access to the Medical Center Site or for the development and use of the Medical Center Site or for any costs related thereto.

(v) Pump Stations. If suitable locations can be located on any of its parcels of land, Crescent shall donate and convey the relevant portions of these parcels of land to the County for the construction, operation and maintenance of any pump stations that are required to serve the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property. Crescent shall also dedicate any easements over and across its parcels of land that are required to install and maintain sewer lines from the pump stations to the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property. To the extent that it is legally permissible and physically feasible to locate a sewer pump station on land owned by Duke Power in Iredell County, Crescent shall request Duke Power to donate land in Iredell County for this purpose. It is understood by the parties hereto that the decision to donate such land or not is entirely within the discretion of Duke Power, and Duke Power's refusal to donate such land shall not be deemed to be a breach of this Agreement by Crescent. All costs and expenses associated with or relating to the installation, maintenance and use of the pump stations described above and any related sewer lines shall be borne solely by the County.

10. Key Harbor Restrictive Covenants. Key Harbor shall impose on the Key Harbor Subdivision restrictive covenants that are not less restrictive than the restrictive covenants of record as of the date hereof that are imposed against the Northview Harbor Subdivision.

11. Public Sewer and Water.

A. Sewer

(i) The County shall, at its sole cost and expense, provide public sewer to the Key Harbor Property and the Village Center Property on or before that date which is ten (10) months after the date on which all parties execute this Agreement and the rezoning of the Key Harbor Property and the Village Center Property are approved by the Board of Commissioners (such date being hereinafter referred to as the "Sewer Availability Date"), and the County warrants and represents that public sewer will be available to the Key Harbor Property and the Village Center Property on or before the Sewer Availability Date.

(ii) In connection with the provision of public sewer to the Key Harbor Property and the Village Center Property, the County shall, at its sole cost and expense, construct, install and maintain a pump station and a force main of sufficient size and capacity necessary to provide gravity sewer to the entire Key Harbor Property. Additionally, the County shall, at its sole cost and expense, construct, install and maintain a pump station and a force main of sufficient size and capacity necessary to provide gravity sewer to the entire Village Center Property.

(iii) In the event that lots are developed within the Key Harbor Subdivision and homes are constructed thereon and ready for occupancy prior to the Sewer Availability Date, then the County agrees, at its sole cost and expense, to pump and haul sewage for each such home from a central location on the Key Harbor Property that is mutually agreed upon by the County and Key Harbor and that is provided by Key Harbor until such time as public sewer is actually available. Pump and haul arrangements shall be subject to all superseding state and federal laws and regulations. All required permits and approvals shall be the responsibility of the County to obtain and the County will diligently pursue the issuance of all required permits and approvals.

(iv) The County shall approve plats, issue land disturbing, building and other permits, authorize water and sewer taps and issue certificates of occupancy for homes in Key Harbor that are constructed prior to the availability of public sewer. The issuance of permits and certificates of occupancy shall be in accordance with State law but shall not be withheld because of any pump and haul arrangement.

(v) In the event that the County does not actually provide public sewer to the Key Harbor Property by the Sewer Availability Date, then the County agrees thereafter, at its sole cost and expense, to pump and haul sewage from the Key Harbor Property from a central location on the Key Harbor Property that is mutually agreed upon by the County and Key Harbor for any and all homes located or to be located within the Key Harbor Property until such time as public sewer is actually available to the Key Harbor Property.

(vi) The sewer systems for the Key Harbor Property and the Village Center Property shall be designed to the City of Hickory's specifications and subject to the City of Hickory connection charges.

(vii) The sewer systems for the Key Harbor Property and the Village Center Property shall be approved by the County, the City of Hickory and NCDENR.

(viii) With respect to any public utility lines required to be installed by Key Harbor or Crescent, the County agrees to exercise its power of eminent domain to acquire any easements required for such public utilities to serve the Key Harbor Property and/or the Village Center Property if Key Harbor and/or Crescent are unable to acquire the same after having exercised reasonable and good faith efforts to do so. The procedures described in Paragraph 8 above shall be followed in connection with the County's exercise of its power of eminent domain.

B. Water

(i) The County represents and warrants that public water is currently available to the Key Harbor Property and the Village Center Property. Public water can be made available at Crescent's expense to the Terrapin Creek Property and the Mountain Creek Property.

(ii) The water systems shall be designed to the City of Hickory's specifications and subject to the City of Hickory connection charges.

(iii) The water systems shall be approved by the County, the City of Hickory and NCDENR.

12. Water and Sewer Capital Fees. The County's fiscal year runs from July 1 through June 30. Commencing with the County's fiscal year in which the Sewer Availability Date occurs and in accordance with the schedule set out below and on Exhibit L attached hereto and incorporated herein by reference, Key Harbor shall pay to the County the standard per lot water and sewer capital fees charged by the County for each of the 1,500 lots planned to be developed on the Key Harbor Property.

Specifically, commencing in the County's fiscal year in which the Sewer Availability Date occurs and continuing thereafter during each County fiscal year until such time as the water and sewer capital fees are paid for each of the 1,500 lots planned to be developed on the Key Harbor Property, Key Harbor shall pay water and sewer capital fees to the County based upon the actual number of lots developed and permitted on the Key Harbor Property during each County fiscal year or based upon one hundred and fifty (150) lots

per County fiscal year, whichever is greater. During each County fiscal year, water and sewer capital fees shall be paid on an approved lot basis at the time of the issuance of a building permit for each lot.

If Key Harbor does not develop and obtain a building permit for at least one hundred and fifty (150) lots in any County fiscal year prior to the payment of the per lot water and sewer capital fees for each of the 1,500 lots planned to be developed on the Key Harbor Property, then Key Harbor shall pay to the County the shortfall in water and sewer capital fees within thirty (30) days after June 30, the end of the County fiscal year. Within fifteen (15) days of the end of each County fiscal year, Key Harbor and the County shall reconcile their records to determine what, if any, shortfall actually exists. If Key Harbor develops and permits more than one hundred and fifty (150) lots in any County fiscal year, then the number of developed and permitted lots in excess of one hundred and fifty (150) shall be credited to future County fiscal year lot requirements. The initial per lot water capital fee shall be \$1,000 and the initial per lot sewer capital fee shall be \$3,000. Water and sewer capital fee rates shall be subject to the water and sewer rate schedules adopted annually by the Board of Commissioners.

Notwithstanding the foregoing, planned lots for which water and sewer capital fees are required to be paid pursuant to the schedule set out above but for which building permits have not been issued prior to June 30 of the relevant County fiscal year shall be subject to higher water and sewer capital fee payments as set out on the schedule attached hereto as Exhibit L. For example, in fiscal year 1, the sewer capital fee for a planned lot for which a building permit has not been issued prior to June 30 shall be \$750 more than the standard sewer capital fee, and the water capital fee for such planned lot shall be \$250 more than the standard water capital fee. In fiscal year 4, the sewer capital fee for a planned lot for which a building permit has not been issued prior to June 30 shall be \$1,000 more than the standard sewer capital fee, and the water capital fee for such planned lot shall be \$500 more than the standard water capital fee. For the purposes of determining the amount of capital fee payments only, building permit issuance prior to June 30th of the relevant County fiscal year shall trigger the standard capital fee payments only if actual construction is begun within forty-five (45) days. Requesting building permits for lots not ready for home construction for the purpose of acquiring more favorable capital fee rates shall be considered a material breach of this Agreement.

13. Water and Sewer Capacity Reservation. In making plans for maintaining, upgrading and expanding the County's water and sewer systems in order to provide sufficient water treatment capacity and sewage treatment capacity for citizens of the County, the County shall take into account the homes and amenities planned for the Key Harbor Subdivision shown on the Approved Key Harbor Plan, and the commercial and residential development planned for the Village Center Project shown on the Approved Village Center Plan and shall reserve sufficient water treatment capacity and sewer treatment capacity within its water and sewer systems to supply adequate quantities of public water and sewer treatment services to the Key Harbor Subdivision and the Village Center Project to the extent necessary for Key Harbor and Crescent to construct and obtain certificates of occupancy for each of the homes, non-residential buildings and amenities planned for the Key Harbor Subdivision and the Village Center Project (the "Guaranteed Capacity"). The County shall maintain the Guaranteed Capacity for the term of this Agreement, unless this Agreement is terminated earlier pursuant to its terms.

14. Connection to the County's Sewer and Water System. Upon the request of Key Harbor or Crescent, the County agrees to permit the physical connection of the Key Harbor Property and the Village Center Property to the County's sewer system. Upon the request of Key Harbor or Crescent, the County agrees to permit the physical connection of the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property to the County's water system.

15. Local Development Permits. In accordance with N.C.G.S. 153A-349.6(b), the following is a description or list of the local development permits approved or needed to be approved for the development of the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property:

Zoning Authorization Permits

Soil Erosion Sedimentation Control Permits

Septic Tank/Well Permits
DOT Driveway Permits
DOT Encroachment Agreements
Building Permits.

The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Key Harbor or Crescent of the necessity of complying with their permitting requirements, conditions, terms or restrictions.

16. Amendment. The terms of this Agreement may be amended by the mutual consent of the parties hereto or their successors in interest. A major modification of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement, which procedures shall include a public hearing. A minor amendment to the Approved Key Harbor Plan or to the Approved Village Center Plan pursuant to Section 44-327(k) of the UDO shall not be considered to be an amendment to this Agreement.

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

18. Periodic Review.

(i) Pursuant to N.C.G.S. 153A-349.8, the Planning Director or other County Manager designee shall conduct a periodic review (the "Periodic Review") at least every 12 months, at which time Key Harbor or Crescent shall be required to demonstrate good faith compliance with the terms of this Agreement.

(ii) If, as a result of the Periodic Review, the County finds and determines that either Key Harbor or Crescent has committed a material breach of the terms or conditions of the Agreement, the County shall serve notice in writing, within a reasonable time after the Periodic Review, upon the defaulting party setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the defaulting party a reasonable time in which to cure the material breach.

(iii) If the defaulting party fails to cure the material breach within the time given, then the County unilaterally may terminate or modify the Agreement as to the defaulting party only, provided, however, that the notice of termination or modification or finding of breach may be appealed to the Catawba County Board of Adjustment in the manner provided by N.C.G.S. 153A-345(b).

19. Default.

(i) The failure of Key Harbor, Crescent or the County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party or parties to pursue such remedies as allowed under applicable law against the defaulting party only, provided, however, that no termination of this Agreement may be declared by the County as to a defaulting party absent its according to the defaulting party the notice and opportunity to cure set out in N.C.G.S. 153A-349.8. In addition to any other rights or remedies, any party may institute legal action against a defaulting party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Catawba, State of North Carolina, and the parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction.

(ii) The covenants, commitments and obligations of Key Harbor and Crescent under the terms of this Agreement are independent obligations, such that Key Harbor is not responsible or liable for the

performance of Crescent's covenants, commitments and obligations under this Agreement, and Crescent is not responsible or liable for the performance of Key Harbor's covenants, commitments and obligations under this Agreement. Accordingly, in the event that Crescent fails to perform any of its covenants, commitments or obligations hereunder, Key Harbor shall not be deemed to be in default under this Agreement, the County may not pursue any legal or equitable action against Key Harbor for Crescent's failure to perform and the County may not terminate this Agreement as to Key Harbor. In the event that Key Harbor fails to perform any of its covenants, commitments or obligations hereunder, Crescent shall not be deemed to be in default under this Agreement, the County may not pursue any legal or equitable action against Crescent for Key Harbor's failure to perform and the County may not terminate this Agreement as to Crescent.

(iii) In no event shall Carolina Centers have any responsibility or liability for the performance of Key Harbors' or Crescent's covenants, commitments and obligations hereunder, or liability for the nonperformance of Key Harbor's or Crescent's covenants, commitments and obligations hereunder. However, Carolina Centers shall be obligated to take all necessary steps, as the owner of the Village Center Property, the Mountain Creek Property and the Terrapin Creek Property to enable Crescent to meet all affirmative obligations hereunder.

(iv) In the event that Key Harbor fails to perform any of its covenants, commitments and obligations hereunder after notice and an opportunity to cure, the County may, until such default is cured, withhold the issuance of any further building permits for homes within Key Harbor or withhold the issuance of certificates of occupancy for any homes within Key Harbor that have not been purchased or have not been placed under contract for sale. The County may not withhold the issuance of any further building permits or certificates of occupancy for the Village Center Property, the Terrapin Creek Property or the Mountain Creek Property in the event that Key Harbor fails to perform any of its covenants, commitments or obligations hereunder.

(v) In the event that Crescent fails to perform any of its covenants, commitments and obligations hereunder after notice and an opportunity to cure, the County may withhold the issuance of any further building permits or certificates of occupancy for the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property until such default is cured. The County may not withhold the issuance of any further building permits or certificates of occupancy for the Key Harbor Property in the event that Crescent fails to perform any of its covenants, commitments or obligations hereunder.

(vi) In the event that it becomes necessary for the County to pursue a civil action against a defaulting party and the County is the prevailing party in such action, then the County shall be entitled to recover its reasonable attorneys fee from the defaulting party.

(vii) Unless otherwise clearly indicated, Key Harbor' duties and liabilities under this Agreement shall be joint and several as to each of Key Harbor Communities and Key Harbor Holdings.

20. Notices. Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. Parties shall make reasonable inquiry to determine whether the names of the persons listed in this Agreement should be substituted with the name of the listed person's successor. All notices, demands, requests, consents, approvals or communications to the County shall be addressed to:

Mr. Tom Lundy
Catawba County Manager
P.O. Box 389
Newton, NC 28658

April 16, 2007, MB#50

828-465-8392 (fax)
tlundy@catawbacountync.com

with copies to:

Mr. Jacky Eubanks
Catawba County Planning Department
P.O. Box 389
Newton, NC 28658
828-465-8484 (fax)
jeubanks@catawbacountync.com

Thomas E. Terrell, Jr.
Smith Moore, LLP
P.O. Box 21927
Greensboro, NC 27420
336-433-7482 (fax)
tom.terrell@smithmoorelaw.com

to Key Harbor at:

Doug Adams
Key Harbor Communities, LLC
2010 Industrial Parkway
Suite 400
McDonough, GA 30253
770-507-8499 (fax)
asproperties@bellsouth.net

Doug Adams
Key Harbor Holdings, LLC
2010 Industrial Parkway
Suite 400
McDonough, GA 30253
770-507-8499 (fax)
asproperties@bellsouth.net

with copies to:

John Carmichael
Kennedy Covington Lobdell & Hickman
214 North Tryon Street, 47th Floor
Charlotte, NC 28202
704-353-3209 (fax)
jcarmichael@kennedycovington.com

Allan McClellan
2725 Westinghouse Boulevard, Suite 100
Charlotte, NC 28273
704-587-4556 (fax)
Allan@magdevelopment.com

to Crescent at:

Phil Hayes
Crescent Resources
400 South Tryon Street, Suite 1300

Charlotte, NC 28201
980-373-5829 (fax)
pmhayes@duke-energy.com

with copies to:

John Carmichael
Kennedy Covington Lobdell & Hickman
214 North Tryon Street, 47th Floor
Charlotte, NC 28202
704-353-3209 (fax)
jcarmichael@kennedycovington.com

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Charlotte, NC 28202
704-353-3209 (fax)
jcarmichael@kennedycovington.com

21. Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between Crescent, Carolina Centers, Key Harbor and the County relative to the Key Harbor Property, the Village Center Property, the Terrapin Creek Property and the Mountain Creek Property and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein or as contained in the Catawba County UDO or as expressed in the development conditions applicable to these parcels of land.

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

23. Assignment. After notice to the County, Key Harbor, Crescent or Carolina Centers may assign its respective rights and responsibilities hereunder to subsequent land owners of all or any portion of the relevant parcels of land, provided that no assignment as to a portion of the relevant parcel of land will relieve the assigning party of responsibility with respect to the remaining portion of the relevant parcel of land owned by the assigning party without the written consent of the County. Subject to the provisions of N.C.G.S. § 39-23, in the event that Crescent, Carolina Centers or Key Harbor sells all of its relevant parcel or parcels of land and assigns its respective rights and responsibilities to a subsequent land owner, then such selling party shall be relieved of all of its covenants, commitments and obligations hereunder.

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

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

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

27. Agreements to Run with the Land. This Agreement shall be recorded in the Catawba County Registry. The Agreements contained herein shall be deemed to be a lien upon, binding upon and run with the land and shall be binding upon and an obligation of all successors in the ownership of the relevant parcels of land.

28. Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions.

29. Authority. Each party represents that it has undertaken all actions necessary for corporate or public approval of this Agreement, and that the person signing this Agreement has the authority to bind the company or the County.

WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Upon the conclusion of Mr. Eubanks' presentation, Chair Barnes had Mr. Eubanks clarify that this was only step one to the development of this area. He stated the Subdivision Review Board would be reviewing any specific site plans and the different phases of those developments. The staff would review site plans, the subdivision requirements, the specifications and the design criteria to ensure compliance with the UDO. Each and every section or phase of any of these developments would have to go through extensive review processes.

Chair Barnes then asked that if either representative from MAG or Crescent wished to speak. Prior to those statements, Chair Barnes opened the public hearings and noted it was the appropriate time for the advertised hearings for all four sections of the unified public hearing. She then asked for Crescent and MAG representatives to speak prior to calling those who were listed on the sign-up sheet.

Steve Bailey – Key Harbor Communities – and Laura Simmons – Crescent – presented a power point presentation which outlined the developments – as described in the above presentation by Mr. Eubanks and development agreement. Mr. Bailey stressed the quality of the homes to ensure a higher value subdivision.

Jerry Blanton – Sherrills Ford Road, Terrell, NC – lived in County for 30 years – on behalf of SE Catawba County Council – part of greater Catawba County Chamber of Commerce – thanked Board and for working with them in the past few years and for receiving the Council's input. He requested the Board to control the growth and to do it right and stated this agreement was right – and urged the Commissioners to be visionaries.

Bruce Moler – Riviera Drive, Sherrills Ford – He was against the amendment to the Sherrills Ford Area Plan because wherever the sewer went, the growth would be excessive. He was also against the sewer plant plans – and giving funding and capacity to the Mooresville Plant. He said he was worried about the ability of the local roads to handle the increased traffic and the safety on those highways.

Martin Pannell – Conover – Mr. Pannell was concerned about road construction as well as road capacity and the problems with the HWY 150 bridge and questioned whether the developers would pay for the needed improvements. He stated the Mt. Creek 600 acres given for a park should be on the water rather than where it was currently located – and was concerned this was not asked for in the negotiations. He also voiced concern about the financial stability of Key Harbor LLC and their ability to complete this long term construction and was interested in seeing their financial statements. He said that from all the documents he reviewed he was unable to determine the true cost of these developments for the County and wondered where the money that Crescent made from the development would end up and doubted it would be in Catawba County. He questioned whether the upfront expense for the sewer would be covered by rate

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payers as they came on line because the calculations were based on certain levels of construction and that was not guaranteed. He also voiced his concerns on school capacity and school construction costs.

Glenn Hunsucker – Terrell – He wanted to keep the present atmosphere of the area. He was opposed to the “big box” store that was proposed for the area and was opposed to the developments without adequate roads. He was also opposed to not imposing impact fees to place the cost where it belongs – He wished the development could be slowed down. Mr. Hunsucker said he appreciated what the Board was trying to do.

Clifford W. Haldsclaw – Hopewell Road, Catawba – He disliked the proposed site for the school and said there was too much activity in that area and would be very disruptive. He believed there were better sites for a school in this area.

Sara Scherr – Terrell – She asked that the Board ensure the new park be the full 600 acres vs. the 300 acres.

Mark Sigmon – Denver – He was a lifelong resident of Catawba County and was in favor of the plan. He said he'd rather have sewerage treated by engineers than put in the ground – it doesn't need to go into the lake. He was in favor of the sewer and said it was desperately needed and he didn't care who treats it – Mooresville or Catawba – it gave the County options. He said he wished the road problem could be solved but part of the problem was that Catawba County citizens were leaving the county to get services and stores. He commended staff for the work they have done to make the roads work. He wants to spend tax dollars in Catawba County. He spent four years on the school board – schools are a concern, but the schools have great leadership and our children will get educated. If the site is not appropriate, sell it and get the right sight. With or without this development there will be school capacity issue. Crescent does good developments and they are done right. Builders, masons, tradesmen and realtors will all get business from these developments. Said the Board did a great job planning these developments and commended the staff on their work.

Robert Powell – Marina Lane, Catawba – native of Catawba County – He supported the plans – thought the Village Center would be an asset to Sherrills Ford and to Terrell and looked forward to the convenience of having it in the area instead of driving to Iredell County. He said he thought the citizens deserved a park in the area and the Mountain Creek Park would be a great addition. He knew development was coming to the area – whether anyone liked it or not and he would prefer it to be controlled and planned. Was not sure about 60 foot lots – but believed the benefits outweighs concerns. He also strongly supported the municipal sewer system.

Barbara Walker – Island Pt Road, Sherrills Ford – She owns and operates Sherrills Ford Self Storage on Island Pt Road. Supported the plan before the Board – gratifying that the Board had taken such a responsible, complete and orderly approach to manage growth and change.

Chuck Conner – Sherrills Ford – He lived here since 1959 – sat on Land Use Development Board – followed UDO proceedings – gained 50 members in the last year to the SE Area Chamber of Business – looked forward to the businesses coming in the future. Thanked the Board for its endless hours of work on the plan – and stated the SE Area Chamber supported the Plan.

Don Parham – Don's Point, Sherrills Ford – He has owned property in Sherrills Ford for 22 years – lived on site for 10 years – said the plan was acceptable and tolerable – has visited subdivision developed by MAG and are quality homes and developments. He pointed out the positive points of the plan – planned vs. random development; infrastructure paid by developer; 22 acres for the Optimist Park; 25 acres for a school site donated by developer; 2 acres for a library; a medical center site; a YMCA site; sidewalks 5 feet wide and on both sides of street; interconnected walking trails, bike trails, green space set aside, no clear cutting and road improvements; school entrance and traffic flow improvements at Sherrills Ford Elementary, park land; and saving Terrell Store.

William Graves – Mill Run, Terrell – Without development agreement, they are looking at 2700 units – sprawl – septic field, traffic, etc., with no amenities and no improvements – with agreement, all the improvements mentioned, sewer system and controlled, smart growth. Commend the quality of the proposed developments.

Paul Carter – Had mailed the commissioners a letter – his list had 58 items – residents accept development but what is the result – over 60% of lots at Key Harbor will be a quarter acre or less. Small Area Plan offers a minimum of ½ acre – against what the citizens wants. Thought it will open the floodgates. Said concessions were 0.4 percent of the project total – wondered if another developer would give more. Near nuclear power plant (within 12 miles) and what was the evacuation plan? Where is environmental impact study? Asked Board to vote no.

Renee Barrineau – Sherrills Ford – new resident – need upgrades to infrastructure and shopping opportunities – but is opposed to all the plans – this first effort but should not be the final – a lot of room for improvement. Not in favor of the density – too high. Does not want “big box” development – with feedback given by the residents of Sherrill Ford the plans have not changed. Crescent doesn’t interpret standards like MAG does – different standards. Roads are a large issue – no thought given to traffic. Proposed road improvements will not help traffic. Schools will be over capacity. The sewer plan isn’t really isn’t a plan.

Barbara Gill – Sherrills Ford – Was concerned about the traffic and the two bridges on Hwy 150 – and could they withstand the stopped traffic or was there a possibility of collapse.

Chair Barnes introduced Attorney Tom Terrell of Smith Moore LLP, retained by the County, who does a lot of work on development. Mr. Terrell responded to a few of the comments. He said had worked in real estate development for twenty two years (in over 100 jurisdictions) and comparably to other communities who have dealt with development agreements, he had never seen a set of public benefits and amenities as rich as the ones that the staff had negotiated. He said the staff was tough and pushed hard for these benefits and he believed that other communities would be wanting to know how Catawba County did it.

Jeff Carp – North Camden Point Drive – he said this was one of the biggest undertakings that the County has ever done. He said the Board had exercised extreme prudence in the UDO and asked they do the same regarding this development plan. He had concerns about setback, the school site – and when was the fair market value determined? Community interaction is needed. Asked that approval be delayed or denied.

Chair Barnes then read a letter into the record from Mr. Tom Graves:

“Gentlemen:

I am unable to attend tonight’s meeting because of a personal illness but I would like to voice my support for the amendments to the Sherrills Ford Small Area Plan that you are considering at your meeting.

I work in the Sherrills Ford area and, as such, commute ‘against’ the traffic each morning and evening. Each day as I witness the outflow and inflow of citizens going to and from their jobs I am struck by the fact that most all of those folks are doing their shopping in our neighboring communities to the East. It is disheartening to think that all of us are supporting those communities with our sales taxes while our own communities go wanting.

I urge you to approve this amendment tonight and please, please, please get some services into this end of the County.

Many Thanks,

Tom Graves, Sherrills Ford”

Chair Barnes then closed the public hearing and asked the Commissioners for any questions.

Commissioner Barbara Beatty asked for an update on the Terrell Store. Mr. Eubanks responded that the developers had written to the owner regarding their intent to purchase or work with the owner of that property to come to a satisfactory resolution and the future location and use of that property but the negotiations of the final resolution has not been determined. There was a commitment by the developer to

work with the owner and the developer would pay for any expenses related to the relocation of the store if it is needed to be relocated.

Commissioner Beatty then asked if MAG developed Moss Creek and Skybrook – and they clarified they did not develop those but used them as examples as similar mix and quality of housing that was planned. She asked if there were any plans for a pier at the Village Center and was told that the type of shoreline designation at that location would not allow Duke Shore Management to permit such a pier.

Commissioner Beatty also asked about the Clean Water Trust Act monies for the 600 acres and what were the plans for securing that 600 acres for the park. Since they had not made the March deadline for this year's trust monies, the complete package fully prepared, including the environmental study, and ready to submit in December which would make the Clean Water's next cycle. The developers stated they felt very comfortable in their application and expected a good hearing and with the Duke match, they have an exceptional package. In response to Commissioner Beatty's question if there would be a 300 or 600 acre park, the developer responded he was extremely confident about the 600 acre park.

Commissioner Barger asked that the setbacks in Key Harbor be addressed. Mr. Eubanks responded that the separations in the small, higher density lots (65 feet) was 5 feet separation for buildings and in the larger lots (85 feet or larger) are with 10 foot side setback – so 20 foot separations between buildings. These are different than standard setback because this is a planned development and a clustered subdivision. Commissioner Barger asked if the agreement passed that evening, then the SRB would have no discretion regarding these setbacks. Mr. Eubanks explained this was the case regarding setbacks but the SRB would look at the other infrastructure and ensure they were adhered to. Commissioner Barger said he still had a concern regarding the 5 foot separation. Mr. Bailey explained that these homes were marketed as no-maintenance, retirement, no children, patio homes that are maintained by an HOA. Commissioner Hunsucker asked if there were safety/fire issues with the 5 foot separations and Mr. Bailey indicated with a 5 foot setback, a fire rated wall was typically required – just as in a duplex. Chair Barnes noted she had seen this type of home in Skybrook, and with its no-clear cutting and sidewalks on both sides of the street, and recessed garages, the result was favorable. She said she hoped that the developers in Key Harbor would look at the recessed garages also. Commissioner Lail commented that while she was not impressed with Moss Creek because there was no buffering. She asked Mr. Eubanks when the developers came back to the Planning Staff could more buffering be required. Mr. Eubanks replied a premium would be placed on retaining natural buffers and mature trees. Commissioner Beatty asked what that meant – what could the Subdivision Review Board do if this agreement was approved. Mr. Eubanks said the SRB would require proof why any trees would be removed and ensure they adhered to the conditions set forth in the agreement. Commissioner Barger said he still had an issue with a 65 foot lot accommodating the square footage described and the 5 foot separation.

Commissioner Hunsucker confirmed that the internal power lines would be buried in these developments. He went on to say that in Key Harbor sedimentation ponds were not required in Key Harbor but would be in the Village Center. The 50 foot buffers in Key Harbor would slow the waters prior to meeting the streams and lake instead of a sedimentation ponds. Mr. Bailey clarified that sedimentation screens would be required during construction but there after the 50 foot buffers would disperse the runoff prior to it meeting the lake.

Commissioner Hunsucker asked David Weldon, Emergency Services Director, about an evacuation plan for this area in case of some disaster at the nuclear plant. Mr. Weldon replied there was an evacuation plan in place and it would not change. These developments are not within 10 miles of the nuclear power plant and that is the area that would mainly be evacuated and with the prevailing winds in Catawba County, this area would be considered a sheltered place.

Commissioner Beatty asked about the YMCA, hospital and school sites, how was the land valued. Attorney Terrell responded that with respect to the school site, if the Board of Education chose not to use that site, the site would be valued at the time of the zoning of this project. Crescent would then take the appraised value and pay it to the school to buy the land they want. In respect to the other sites, those are reserved for those facilities and there is a ceiling on the amount that they can charge per acre. If they are not developed, they

revert back to the Village Center and they are developed according to the plan, after coming to the Board for approval. Commissioner Beatty said she wanted to make another point about the work she had been doing in regard to Hwy 150/Hwy 16 and she had not seen Duke, Crescent or MAG present at any of those efforts. She said they had deep pockets and lobbyists and asked what they were going to do to help in these efforts. Mr. Bailey said he would be happy to attend those meetings and they had people who work with the state and they will work for improvements on those highways.

Commissioner Hunsucker asked about the "big box" store and what was the maximum square footage – and Mr. Eubanks replied 175,000 square feet. Commissioner Hunsucker confirmed that it would be required that the front of this building be broken up and changes in the relief approximately every 30 feet. Commissioner Hunsucker then asked about the value of the concession as referred to by one of the citizens who spoke. Attorney Terrell said he had an issue with the calculation presented by the citizen and said in his experience this was the richest set benefits and amenities he had ever seen. He said parks and bike paths were not common. Mr. Bailey also refuted the calculations – to correctly calculate the value, the amenities and incentives should be calculated into the revenues and believed it was one of the richest packages they had ever offered.

Commissioner Barger said he thought there were to be two appraisals on the school site – one by the County and one by the developer. Attorney Terrell said there had been discussions regarding that option but the agreement read that if Crescent did not hire someone in the next two weeks, the County could hire someone at Crescent's expense to do the appraisal. The developer responded they had hired Mr. Dan Meadows to do a preliminary appraisal but if the County preferred, they would accept two appraisals. Commissioner Barger said time was critical regarding the appraisal and Attorney Terrell said the agreement was very clear that the property was to be valued as commercial property and Commissioner Lail and Barger asked that that language regarding two appraisals on this commercial property be added to the agreement.

Commissioner Beatty asked someone to speak on impact fees – County Manager Lundy replied that the agreement was that impact fees would not be paid on the Key Harbor or Village Center properties because of the amenities that were being given. On the Terrapin Creek and Mountain Creek properties, they would be subject to impact fees if levied by the Board countywide. Chair Barnes reminded the Board that the studies showed that the amount to be levied with impact fees did not meet the needs to build schools.

Attorney Terrell said if the agreement was to be amended to include two appraisers for the school property, he requested that the Board deputize staff to draft the appropriate language for that change. Chair Barnes asked about the status of the traffic studies for these developments. Attorney Terrell said he understood the traffic studies for Key Harbor had been approved and Mr. Eubanks said DOT would now do their own study regarding traffic signalization. If signals are found to be warranted, MAG would pay for those signals and would pay for the upgrades to the signal at HWY 150 and Sherrills Ford Road.

Discussions went on to ensure that the development agreement correctly reflected the impact fees and all other changes – and the agreement which are part of these minutes is up to date with the exception to changes agreed to in this meeting.

Commissioner Beatty asked about the need for the "big box" store and the developer said a "big box" store would need to be an ability for the developer but if the market wasn't there, it could be smaller tenants that were brought in but the developer still wanted that ability to bring in a "big box" store.

Chair Barnes asked if the Board was ready to vote. Commissioner Beatty said she still had issues and she was unsure if she could vote on the agreement. Commissioner Lail said she thought it was a good agreement overall and the County would benefit from it and believed the school site would be worth a substantial amount. Commissioner Hunsucker said he still had some problems with the setbacks but thought the agreement was good overall. Commissioner Barger agreed with Commissioner Hunsucker and had problems with the setbacks and the "big box" store. Chair Barnes said she was relatively comfortable with the agreement and was looking forward to spending her shopping dollars in Catawba County rather

than in Mooresville. She said she didn't think a perfect plan existed but that this plan appeared good for Catawba County.

Commissioner Barger asked if this were delayed 30 days, would the developer address their concerns. Attorney Terrell said the question was could they continue to negotiate with developer – and the answer was yes but they had time constraints. The public hearing had been closed but the vote could be continued to a date certain. Attorney Terrell suggested the developer address the concern at this meeting and the vote be taken tonight. Mr. Alan McClellan, Key Harbor, LLC, said he understood the concern about separations of five feet but clarified that this was on lots 60 foot and smaller, not 65 foot lots. After discussions with the developers, it was agreed to change the 5 foot separations, to 7.5 foot separations on lots 64 foot or less which would still have the fire wall requirements. The ability to have the “big box” store anchoring the Village Center remained with the developer due to the economics of the project and the funding for the extensive amenities. The developer stressed they would work with staff and the community to make the appearance pleasing to the community. Mr. McClellan pointed out that he was running out of time to determine if he was going to put sewer in the ground, so the time was short to agree on this agreement. Chair Barnes asked if two weeks was too short – and he said he could live with two weeks. County Attorney Debra Bechtel reminded the Board that unless the agreement was approved at this meeting, the improvements agreed upon at Sherrills Ford Elementary School would be in place prior to July 31, 2007. If the agreement was not agreed upon at this meeting, those improvements did not have to be in place until July 31, 2008.

Commissioner Lail made a motion to approve the amendment to the Sherrills Ford Small Area Plan, the rezoning for Key Harbor and Crescent Development, the approval of the Development Agreement, and the Zoning Consistency Statement and the changes discussed at this meeting and the staff to incorporate that language. Commissioner Barger added the clarification with all developments go through the Subdivision Review Board to ensure compliance with the standards set forth. The motion carried with four votes in favor and Commissioner Beatty opposed.

10. Consent Agenda:

County Manager J. Thomas Lundy presented the four following items for consent:

a. A request for the Board to approve the Catawba County Juvenile Crime Prevention Council's funding plan for fiscal year 2007-2008. The council is responsible for planning for and making recommendations to the Board for funding priorities for each fiscal year. The council held a planning session in November 2006, and the following needs were identified: diagnostic/psychological assessments and treatment, including sex offender counseling; mediation; parent skill training; group homes for boys and girls; substance abuse assessment and treatment; restitution and community service; mentoring; an adolescent day program, especially for long-term suspensions; emergency shelter for males; and sex offender residential treatment. In order to help meet these priorities, the council has available \$337,716 in State funds. Programs applying for these funds must provide a 30% match (cash, in-kind or other sources of funding, such as reimbursement through insurance). At its March 20, 2007 meeting, the council approved funding for agencies working to meet the first six needs listed above, as follows: FamilyNET, \$42,367; Conflict Resolution Center, \$18,975; Catawba Parenting Network, \$19,278; Corner House I and II, \$170,000; Cognitive Connection, \$22,088, Project Challenge, \$50,900 and JCPC Administration, \$14,108, for a total of \$337,716.

b. Hickory Public School requested a letter of commitment stating that funding for a new heating, ventilating and air conditioning (HVAC) system for Jenkins Elementary School will be included in the fiscal year 2007-2008 County budget. In order to begin work by July 1st, Hickory Public Schools has requested a letter of commitment to fund the new system. This project has been delayed for a few years due to the priority of converting the old Hickory American Legion building for use by Hickory High School. The HVAC system at Jenkins is 32 years old and original to the building. A letter of commitment now will allow Hickory Public Schools to order equipment in advance of the new fiscal year, to provide ample time to complete the project during the summer while the building is not occupied with students. This project has been identified as the Hickory Public Schools' number one priority for capital funding in fiscal year 2007-2008.

c. A request for the Board to authorize the Sherrills Ford Friends of Catawba County Library to conduct a book sale and use the proceeds for library purposes. The Friends of Catawba County Library is a nonprofit association that focuses public attention on library service, facilities and needs. It works to stimulate gifts of books, magazines, desirable collections, endowments and bequests. It engages in money making projects

to supplement the income of the library for expanded services and provides volunteer help whenever needed. Library materials that have been damaged, are out of date, contain information that is no longer relevant, or are no longer being used by the public are pulled from the collection and discarded to keep the collection relevant and useful to the citizens of Catawba County. Once materials are deemed surplus, they are sold by the Friends of the Library at a book sale, and the proceeds are used by the Friends of the Library to enhance the library program. North Carolina General Statute 160A-279 states that a county may convey property without monetary consideration, if the recipient agrees to use the property for a public use. The Board must adopt a resolution at a regular meeting and authorize an official to dispose of the property. Once the resolution has been adopted, the statute requires that the local government publish a notice summarizing the contents and that the final surplus declaration may not be concluded until at least ten days after the publication of the notice. The Sherrills Ford book sale is planned for Saturday, May 19, 2007. The following resolution applied to this request:

RESOLUTION #
Approving Conveyance of Property
Pursuant to G.S. 160A-279

WHEREAS, Catawba County does not have use or need of outdated books formerly used at the Catawba County Libraries; and

WHEREAS, the Sherrills Ford Friends of the Catawba County Library has requested the books to be used in fund raising activities; and

WHEREAS, the Friends of the Catawba County Library is an organization formed specifically to benefit Catawba County Libraries; and

WHEREAS, the North Carolina General Statutes 160A-279 authorizes the transfer of county property to an entity engaged in public service; and

FURTHER, it is understood that proceeds from the sale of the books will benefit the Catawba County Library;

NOW, THEREFORE, BE IT RESOLVED, that the Catawba County Board of Commissioners hereby authorizes the Library Director to convey said property to the Sherrills Ford and Newton Friends of Catawba County Library.

Adopted this the 16th day of April, 2007.

d. A request for the Board to approve the sale of a county-owned residence located at 215 South Bost Avenue in Newton, North Carolina, with a requirement that this home be relocated. In February 2001, the Board authorized the purchase of this property and residence. The property was purchased with the intent to use the lot for additional parking for the Main Branch of the Catawba County Library, with an agreement that the previous owner could live in the residence for four years. The previous owner has since passed away. The house was built in 1954, is in poor condition, and has a tax value of \$60,500. Staff first reviewed the possibility of selling the home and requiring the buyer to incur all moving expenses. Staff spoke to a couple of auctioneers and it was their opinion that the County would have difficulty selling the home and probably receive bids for only around \$1,000. The estimated proceeds for the sale of the house, if the County assists with moving expenses, is \$25,000 - \$35,000. The cost to move the home is estimated at \$8,000 - \$10,000 with additional expenses to disconnect utilities. Staff proposes contracting with Yount Auction & Realty to auction the home for a fee of \$2,500 plus \$1,000 advertising costs. The sale would take place at 10:00 a.m. on June 9, 2007 at the property. The County will require a minimum bid of \$20,000 before the sale will be accepted. The estimated cost to clear the lot once the house is moved is \$11,000. Net proceeds from the sale will go towards this expense. North Carolina General Statute 160A-270 authorizes the sale of real property by public auction.

Chair Barnes asked if any Commissioner wished to have any item broken out from the consent agenda. None were requested. Commissioner Hunsucker made a motion to approve the consent agenda. The motion carried unanimously.

9. Appointments:

Commissioner Lynn Lail recommended the appointment of Sandra Foster to the Nursing and Rest Home Community Advisory Committee for a first term expiring April 15, 2008 and also recommended that the Western Piedmont Council of Governments appoint Jane Murphy to the WPCOG Aging Advisory Committee for an unexpired term expiring 6/30/07 and a first term expiring 6/30/09. These recommendations came in the form of a motion. The motion carried unanimously

11. Department Reports.

Utilities and Engineering:

a. Barry Edwards, PE, Director of Utilities and Engineering presented a request to award the bid to construct the Southeastern Catawba County Water Supply Loop Phase II to Ronny Turner Construction Co., Inc., Hickory, NC in the amount of \$3,749,345, and approve McGill Associates, PA to perform construction inspection and observation in the amount of \$122,500, and approve a budget revision in the amount of \$1,826,805.

On March 27, 2007, the County received bids for the installation of approximately 29,000 linear feet of 24-inch and 30-inch diameter water lines complete with valves, hydrants and related appurtenances along Kristen Street, Beverly Lane, Sigmon Dairy Road, Rome Jones Road, Knolls Drive, Dixie Street, Business 321, Prison Camp Road, Jack Whitener Road, St. James Church Road, and Campbell Road, all of which comprise the Southeastern Catawba County Water Supply Loop Phase II. A total of six bids were received ranging from \$4,694,630 to \$3,749,345. Ronny Turner Construction Co., Inc., Hickory, NC was the lowest responsive bidder with a total bid amount of \$3,749,345.

Also requested was an amendment to the Agreement for Engineering Services between Catawba County and McGill Associates, PA in the amount of \$122,500. The Amendment considerations were construction inspection and observation and final certification of the SECC Water Supply Loop Phase II which included field observation and quality of work, review and approval of shop drawings, diagrams, specifications, schedules and samples guarantees, bonds and certificates and review and approval of applications for payment, and preparation of final record drawings and quality assurance documents.

The Southeastern Catawba County Water Supply Loop is a three-phase project consisting of Phase I (Highway 150), which is in operation, Phase II, which is ready to construct, and Phase III, which is currently in the design phase.

The estimated cost of \$2,500,000 for Phase II was derived in early 2003 and budgeted in fiscal year 2003/04. Several key factors contributed to why the cost of this phase of the project has escalated approximately 33% from its budgeted amount:

- The cost of the required pipe has increased 50%.
- The cost of the required bore encasement pipe has increased 54%.
- The cost of the required isolation valves for the project has increased 67%.
- Easement acquisition was prolonged by difficult property owners and staff attempts to acquire easements without the use of condemnation. This subsequently delayed the bidding of the project thereby increasing the time between estimating the cost and actual bidding.

In order to address these issues on future projects staff proposed the following changes in their procedures:

- Staff will seek approval from the Board of Commissioners to pursue condemnation proceedings during the selection of the project Engineer or project approval without separate Board action at a later date.
- As in the past, staff will ensure that future cost estimates have increases built in based on the timing of the project, which is more accurate when easement acquisition is predictable.

Staff independently verified that the pricing the County had received on this project was not only consistent with comparable projects but was actually lower than other recent projects. Adequate funding is available

through the implementation of the Water and Sewer Reserve Fund. Commissioner Hunsucker made a motion to Award the bid to construct the Southeastern Catawba County Water Supply Loop Phase II to Ronny Turner Construction Co., Inc., Hickory, NC in the amount of \$3,749,345, Approve McGill Associates, PA to perform construction inspection and observation in the amount of \$122,500, and Approve a budget revision in the amount of \$1,826,805. The motion carried unanimously. Supplemental Appropriations are as follows:

Expenditures:

230-170020-995415	\$1,826,805
To Water & Sewer Construction	
415-431100-861500-21020	\$1,826,805
SECC Water Supply Loop	

Revenues:

230-170020-690100	\$1,826,805
Fund Balance Applied	
415-430050-695230	\$1,826,805
From Water & Sewer Reserves	

b. Barry Edward, PE, Director of Utilities and Engineering presented a request for the Board of Commissioners to award engineering contracts for the Southeastern Catawba County Waste Water Project to Hayes, Seay, Mattern & Mattern, Inc. and McGill Associates, PA in the amount of \$850,000 and \$789,600, respectively.

On March 7, 2007, Catawba County received responses to a Request for Qualifications for design and permitting of the Southeastern Catawba County (SECC) Waste Water Collection System and additional services consisting of environmental assessment, construction observation, and contract administration. In accordance with North Carolina General Statute 143-64.31, Statements of Qualifications were received from six engineering firms. The Selection Committee, consisting of Utilities and Engineering Director, Barry Edwards; Public Services Administrator, Jack Chandler; Purchasing Agent, Debbie Anderson; County Attorney, Anne Marie Pease; and City of Hickory Engineer, Kevin Greer, met on March 27, 2007 to review the applicants and "short listed" four engineering firms to interview for final selection. The firms selected to present to the Selection Committee and their interview times were as follows:

Hayes, Seay, Mattern & Mattern, Inc.
Hickory, NC
April 5, 2007 at 1:00 pm

McGill Associates, PA
Hickory, NC
April 5, 2007 at 3:00 pm

Camp Dresser & McKee
Raleigh, NC
April 9, 2007 at 1:00 pm

McKim & Creed, PA
Charlotte, NC
April 9, 2007 at 3:00 pm

The Committee decided to divide the project into multiple phases in order to expedite the project. The selected firms are Hayes, Seay, Mattern & Mattern, Inc. and McGill Associates, PA. The design fees from each firm for this project are within the guidelines established by the USDA-Rural Development North Carolina Fee Schedule for Basic Engineering Services of 6.10% and 6.25% respectively.

Hayes, Seay, Mattern & Mattern, Inc. was recommended to design the northern portion of the Southeastern

Catawba County Waste Water Collection System, which consists of sewer lines including sewer pump stations from Sherrills Ford Elementary School to the Hickory-Catawba WWTP. Hayes, Seay, Mattern & Mattern's negotiated engineering cost is \$850,000 which included the preparation of a preliminary engineering report, preliminary and final design phases, bidding and contract award phase, bi-monthly progress meetings to ensure this phase is completed expeditiously, and the preparation of an environmental assessment, if required.

McGill Associates, PA was recommended to design the southern portion of the Southeastern Catawba County Waste Water Collection System which consists of two (2) phases: Phase 1 design includes sewer lines and pump stations from the Village Center to Key Harbor and from Key Harbor to Mooresville; Phase 2 consists of the Highway 150 corridor from the new Highway 16/150 interchange to the Village Center. McGill Associates' negotiated engineering cost is \$541,700 for phase one and \$247,900 for phase two.

McGill Associates is preparing a Preliminary Engineering Report (PER) for the portion from the new Highway 16/150 interchange to the Village Center.

Mr. Edwards advised the Board that additional third party specialists may be required in the future as the scope and design of this project progresses and additional areas of expertise are needed to complete the project.

The Southeastern Catawba County Waste Water Project was funded in fiscal year 2005/06 in the amount of \$2 million which is adequate to cover these design contracts.

Commissioner Barger confirmed that both Phase 1 and Phase 2 would be constructed simultaneously and it would be approximately 30 months away from connecting with Mooresville.

After discussions by the Board and questions about possible interbasin transfer (IBT) issues at the Mooresville's wastewater treatment facility, it was agreed that phase one would be stopped at the county line until staff could determine if there were any IBT issues.

Chair Barnes made a motion to award engineering contracts for the Southeastern Catawba County Waste Water Project to Hayes, Seay, Mattern & Mattern, Inc. and McGill Associates, PA in the amount of \$850,000 and \$789,600, respectively and that phase one would be stopped at the county line until it could be determined if there were any IBT issues.

12. Other Items of Business. None.
13. Attorneys' Report. None.
14. Manager's Report. None.
15. Chair Barnes adjourned the meeting at 11:45 p.m.

Katherine W. Barnes, Chair
Board of Commissioners

Barbara E. Morris, County Clerk