

INSTRUMENT # 2010110437



2010110437

DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS
FOR DAVIDSON BAY, PHASE II

THIS DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS FOR DAVIDSON BAY, PHASE II (this "Declaration") is made this 22nd day of September, 2010, by BERA DEVELOPMENT, LLC, a North Carolina limited liability company, referred to in this instrument as "Developer" (which such term, for the purposes of the rights and benefits conferred to Developer herein, shall include TOWER, INC., a North Carolina corporation, and any other such developer (if any) of Affordable Housing, as defined herein, in the Development).

STATEMENT OF PURPOSE

Developer is the developer of the development commonly known as DAVIDSON BAY (the "Development") located in the Town of Davidson, Mecklenburg County, North Carolina, and shown as the crosshatched areas on Exhibit A-1 and Exhibit A-2 attached hereto and incorporated herein by reference (whether one parcel or more, the "Development Property").

In order to obtain the approval of its plans for development of the Development Property by the Town of Davidson (the "Town") under the Davidson Planning Ordinance (the "Ordinance"), Developer agreed to satisfy the affordable housing requirement of Section 6.3 of the Ordinance (the "Affordable Housing Requirement") by restricting the use and occupancy of certain residential units (the "Restricted Units") to be developed in the Development Property (the Phase II Restricted Property, as defined herein) as set forth below.

For this purpose, and in consideration of the Town's approval of Developer's plans for the development of the Development Property, Developer hereby declares that the Restricted Units hereinafter described shall be held, sold and conveyed subject to the following affordable housing restrictions, covenants, and conditions (all of which are collectively referred to in this instrument as "Restrictions"), which restrictions shall be construed as covenants running with the land with respect to the Phase II Restricted Property (as defined herein) only and no other real property in the Development Property, and shall be binding upon all parties having any right, title or interest in the Restricted Units or any part thereof, and to their heirs, successors and assigns (said parties shall be referred to herein as "Developer/Owner", "Owner" or "Owners", as

PREPARED BY:
Womble Carlyle Sandridge & Rice, PLLC (GTM)
3500 One Wachovia Center
301 S. College Street
Charlotte, NC 28202-6037

RETURN TO:
Town of Davidson Planning Department
P.O. Box 579
Davidson, NC 28036
Attn: Cindy C. Reid

2/2

applicable).

1. **Affordable Housing.** It is the intent of the Developer and the Town to establish approximately twelve and one-half percent (12.5%) of the residential lots constructed on the Development Property as "Affordable Housing" as defined in and pursuant to the Ordinance in effect at the time of the approval of the master plan for the Development (a/k/a the "Master Plan Approval"). Developer and the Town have agreed that the determination that a unit is affordable will be made at the initial closing of such units (except in the instance of an initial sale of any lot on the Phase II Restricted Property, as defined herein, to Tower, Inc. or any other such developer (if any) of Affordable Housing in the Development) by the establishment of a Maximum Initial Sales Price (as defined herein) and a Maximum Initial Rental Rate (as defined herein) based on certain Target Households (as defined herein) with certain maximum median incomes. For future resales and rentals, the Maximum Initial Sales Price and/or the Maximum Initial Rental Rate shall be increased as set forth herein.

2. **Property Subject to Restriction.** The real property (the "Phase II Restricted Property") subject to this Declaration is described in Exhibit B attached hereto and incorporated herein by reference. Developer may unilaterally execute and record an amendment to these Restrictions, which shall be recorded in the Mecklenburg County Register of Deeds (the "Amendment"), and which shall subject additional real property (the "Additional Real Property") to this Declaration. At such time as the Amendment is recorded in the Mecklenburg County Register of Deeds, the term Phase II Restricted Property shall theretofore include the Additional Real Property. Reference herein to a "Restricted Unit" or "Restricted Units" shall mean and refer to affordable housing units, whether they be condominiums, town homes, stand alone homes, apartments or other residential living unit. Eight (8) Restricted Units shall be constructed upon the property described in Exhibit B. Two (2) Restricted Units shall be constructed upon the Additional Real Property. These Restrictions shall be deemed to run with the Phase II Restricted Property, but no other real property in the Development Property.

3. **Target Households.** Subject to the terms and provisions contained herein, it is the intent of the Developer and the Town that the Restricted Units shall be occupied by a "Target Household" as follows:

(a) A total of four (4) Restricted Units shall be allocated such that the Target Household shall consist of a person or persons having a combined gross income equal to or less than 50% of the median income for Mecklenburg County, as published by the U.S. Department of Housing and Urban Development ("HUD") (hereinafter, "Area Median Income" or "AMI"); and

(b) A total of six (6) Restricted Units shall be allocated such that the Target Household shall consist of a person or persons having a combined gross income equal to or less than 80% of the AMI.

4. **Maximum Initial Sales Price and Maximum Initial Rental Rate.** The "Maximum Initial Sales Price" and the "Maximum Initial Rental Rate" for the Restricted Units shall be set and agreed to by the Town and the Developer by contractual agreement prior to the recording of these Restrictions, and it shall be determined based on the most recent AMI for various household sizes published annually by HUD. The Maximum Initial Sales Price and the

Maximum Initial Rental Rate for a Restricted Unit shall be set out in the deed from Developer to the first purchaser (excluding any conveyance by Developer to Tower, Inc. or any other such developer (if any) of Affordable Housing in the Development) of a Restricted Unit(s), which deed shall specifically designate the unit as a Restricted Unit subject to this Declaration.

5. Approval by Town. At any time after construction has begun on a Restricted Unit, but not less than sixty (60) days prior to issuance of the Certificate of Occupancy for such Unit, the Developer shall use its best efforts to notify (the "Availability Notice") the Town of the impending availability of a Restricted Unit. The Town shall publish this information and make referrals to approved non-profit organizations. Through the efforts of these entities and the Town to find and serve Target Households, the prospective tenants/owners from Target Households will be given priority by the Town (or its designee) to purchase a Restricted Unit at not more than the Maximum Initial Sales Price or rent a Restricted Unit at not more than the Maximum Initial Rental Rate. The Developer (or an agent of Developer) shall conduct a reasonable (but not unduly stringent) analysis of the prospective tenant/owner's suitability as a tenant or owner, and upon Developer's satisfaction with its analysis and qualification by the Town or its designee, the Developer/Owner of the Restricted Unit shall be permitted to enter into a lease or purchase agreement with the prospective occupant (hereinafter "Qualified Occupant"). If the first person on the list fails to meet a reasonable standard or is unable to obtain mortgage loan approval or otherwise fails to close the purchase of a Restricted Unit or execute lease thereof, then, if there is a waiting list maintained by the Town or its designee, the next person in line would be considered.

If the Town, its designee or its approved non-profit organization is able to produce a Qualified Occupant that can either close the purchase of a Restricted Unit or enter into a lease to occupy a Restricted Unit, then the Developer agrees that it will pay to the Town, its designee or its non-profit organization, at the closing of the sale, an administrative fee in an amount equal to three percent (3%) of the purchase price of the Restricted Unit in the event of a sale or, upon the execution of the lease, three percent (3%) of the monthly rental amount multiplied by the number of months in the lease (up to a maximum of twelve (12) months). The Town may waive this fee.

If the Town, its designee or its approved non-profit organization is not able to produce a Qualified Occupant that can either close the purchase of a Restricted Unit or enter into a lease to occupy a Restricted Unit prior to the date which is the later of (a) one hundred twenty (120) days after receipt by the Town of the Availability Notice or (b) sixty (60) days after the date of the issuance of the Certificate of Occupancy for the Restricted Unit (the later of (a) or (b) being referred to hereinafter as the "Search Period"), then after the Search Period, the Developer/Owner of the Restricted Unit may sell or rent the Restricted Unit to anyone at not more than the Maximum Initial Sales Price or not more than the Maximum Initial Rental Rate. Developer/Owner of the Restricted Unit acknowledges that the Town has a keen interest in the availability of affordable housing to public school teachers, police officers, firefighters, and other public servants who are employed within the Town, and the Developer/Owner of the Restricted Unit will consider persons from this group in determining the purchasers of Restricted Units. The Town acknowledges that under the circumstances described above, where a non-qualified buyer or renter takes possession of a Restricted Unit, such a sale or lease of that Restricted Unit to a non-qualified buyer or renter will satisfy the Affordable Housing Requirement with respect

to that Restricted Unit.

At anytime following the end of the Search Period and prior to entering into a contract to sell, or a lease of, a Restricted Unit, the Town may make a written offer to purchase the Restricted Unit from the Developer at the Maximum Initial Sales Price, and the Developer/Owner of the Restricted Unit agrees to sell such Restricted Unit to the Town at the Maximum Initial Sales Price pursuant to a Board of Realtors standard sales contract with a closing in forty-five (45) days.

6. Resale/Releasing Procedures. Upon the resale or re-leasing of a Restricted Unit, the Owner shall notify (the "Resale Notice") the Town that the Restricted Unit will be offered for sale and/or rental at least sixty (60) days in advance of the vacation by the existing tenant and/or the offering of the Restricted Unit for sale. The Town or its designee shall commence and complete the process set forth in Paragraph 5 and use its best efforts to provide the owner with a Qualified Occupant for the purpose of leasing or purchasing (as determined by the intention of the Owner set out in the Resale Notice) the Restricted Unit. If the Town, its designee or its approved non-profit organization is not able to produce a Qualified Occupant that can either (a) close the purchase of a Restricted Unit within ninety (90) days after receipt of the Resale Notice if the Restricted Unit is being offered for sale or (b) lease and occupy the Restricted Unit within sixty (60) days after receipt of the Resale Notice if the Restricted Unit is being offered for lease, then the Owner may sell or rent the Restricted Unit to anyone at not more than the Maximum Sales Price or not more than Maximum Rental Rate as established in Paragraph 7 hereof.

At anytime after receipt of the Resale Notice by the Town and prior to the Owner of the Restricted Unit entering into a contract to sell, or a lease of, a Restricted Unit, the Town may make a written offer to purchase or to rent the Restricted Unit from the Developer (depending upon the Owner's intention as set out in the Resale Notice), and the Owner of such Restricted Unit agrees to sell or lease (depending upon the Owner's intention as set out in the Resale Notice) such Restricted Unit to the Town at the Maximum Sales Price (as defined in paragraph 7.a. below) pursuant to the Board of Realtors standard sales contract with a closing in forty-five (45) days or at the Maximum Rental Rate (as defined in paragraph 7.b. below) using the Board of Realtors standard residential rental agreement.

7. Maximum Sales Price and Maximum Rental Rate for Resales and Reletting.

a. Upon the resale of a Restricted Unit, the sales price of the Restricted Unit (the "Maximum Sales Price") shall not exceed the sum of (i) the purchase price paid by the Owner when the Owner purchased the Restricted Unit (the "Owner's Purchase Price") increased (but not decreased) to reflect any increase in the cost-of-living since the Owner purchased the Restricted Unit, plus (ii) the costs expended by the Owner, and approved by the Town, for capital improvements to the Restricted Unit not exceeding in the aggregate ten percent (10%) of the Owner's Purchase Price (the "Improvements"), increased (but not decreased) to reflect any increase in the cost-of-living since the Owner purchased the Restricted Unit (together, the sum of (i) and (ii) shall hereinafter be referred to as the "Preliminary Price"), plus (iii) reimbursement for a bona fide real estate commission actually paid by the Owner to a real estate broker (the "Broker") in connection with the sale of the Restricted Unit (the "Real Estate Commission

Reimbursement”), to be calculated by multiplying the real estate commission percentage rate, as charged by the Broker, by the Preliminary Price, but in no event shall the Real Estate Commission Reimbursement exceed five percent (5%) of the Preliminary Price. If Improvements have been made more than one time, each Improvement shall be calculated as set forth herein but the total amount of Improvements permitted under this calculation shall not exceed ten percent (10%) of the Owner’s Purchase Price. In no event shall the Maximum Sales Price be less than the Owner’s Purchase Price plus the Real Estate Commission Reimbursement (if any).

b. Upon the re-letting of a Restricted Unit, the rental rate for the Restricted Unit (the “Maximum Rental Rate”) shall not exceed the previous rental rate (the “Previous Rental Rate”) as increased (but not decreased) to reflect the increase in the cost-of-living since such owner initially rented the Restricted Unit. In no event shall the Maximum Rental Rate be less than the Previous Rental Rate.

c. For the purposes of this Section 7, the cost-of-living and increases thereto shall mean and be as those matters are reflected by HUD’s cost-of-living index. If HUD no longer publishes the a cost-of-living index at the time of the formation of a purchase and sale contract or a rental agreement, the Town, within its reasonable discretion, shall designate another nationally recognized method of computing the cost-of-living for Mecklenburg County.

8. Excessive Purchase Price and/or Rent. The conveyance or lease of a Restricted Unit by the Owner of a Restricted Unit to any person for a purchase price or rent in excess of the Maximum Initial Sales Price or the Maximum Initial Rental Rate, or in the instance of reselling or re-letting for a purchase price or rent in excess of the Maximum Sales Price or the Maximum Rental Rate, shall entitle the future purchaser or renter (the “Claimant”), for a period of thirty-six (36) months after said conveyance or lease, to recover the excess from the seller or owner who charged and accepted such payment, together with interest thereon at the maximum lawful rate, reasonable attorney’s fees and other costs of collection.

9. Enforcement. Except as otherwise provided herein, these Restrictions shall be enforceable exclusively by the Town as real covenants and/or equitable servitudes running with the land. The Developer/Owner of the Restricted Unit, individually and on behalf of each successive owner of a Restricted Unit, agrees that there is no adequate remedy at law, and in any action brought by the Town for the enforcement of any of these Restrictions, the Town shall be entitled to specific performance and/or such other equitable remedies as are appropriate for carrying out the purposes of this Declaration, and the provisions of the Ordinance which it is intended to implement.

10. Foreclosure. The terms, provisions, covenants, restrictions and requirements of this Declaration are expressly subordinate to any first lien deed of trust on a Restricted Unit owned by a Developer/Owner or owned by an owner other than the Developer/Owner securing a loan made to Developer/Owner and/or any subsequent owner. Upon the foreclosure of any such first lien deed of trust and the sale by the trustee in the foreclosure proceeding, or upon the sale by the owner and holder of such deed of trust after acquiring the property from the trustee at the foreclosure sale, the terms, provisions, requirements and restrictions set forth herein shall not be

binding on the trustee or the owner and holder of the deed of trust, and the Restricted Unit may be sold to any party at any price provided that subsequent resales and renting of a Restricted Unit shall be subject to the terms, provisions, restrictions and requirements of this Declaration.

11. **Termination.** This Declaration, and each of the restrictions set forth herein, shall terminate on that date that is thirty (30) years from the date hereof.

12. **Notices.** All notices, demands or requests required, permitted or deemed to be given hereunder shall be given in writing and sent by (a) facsimile transmission with proof of transmission, (b) registered or certified mail, return receipt requested or (c) reputable overnight delivery service such as Federal Express Company. Notices to the Town shall be addressed as follows:

Town of Davidson
Post Office Box 579
216 South Main Street
Davidson, NC 28036
Facsimile number: 704-892-3971
Attention: Town Manager

13. **Additional Declaration.** These Restrictions are in addition and subject to those set forth in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Davidson Bay Townhomes recorded in Book 22099, Page 313 of the Mecklenburg County Register of Deeds, as amended by that certain First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Davidson Bay Townhomes recorded in Book 24111, Page 668 of the Mecklenburg County Register of Deeds (as may be further amended from time to time, the "Davidson Bay Declaration").

14. [Intentionally deleted.]


[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed as of the date first set forth above.

DEVELOPER:

BERA DEVELOPMENT, LLC
a North Carolina limited liability company

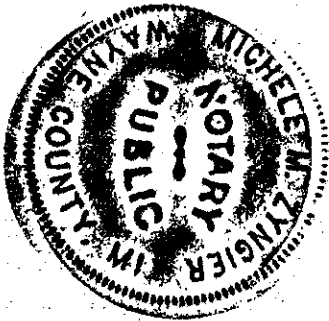
By: Tower Development, Inc.,
a North Carolina corporation
its Member and Manager


By: 
Dominic Liburdi, President

~~Michigan~~
STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG ~~Wayne~~

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Dominic Liburdi, President of Tower Development, Inc., a North Carolina corporation and Manager of Bera Development, LLC, a North Carolina limited liability company, either being personally known to me or proven by satisfactory evidence (said evidence being _____), personally appeared before me this day and acknowledged that he, as President of the corporation and being duly authorized to do so, executed the foregoing instrument on behalf of Tower Development, Inc., as Manager of Bera Development, LLC.

Witness my hand and official stamp or seal, this 20th day of September, 2010.




Notary Public
MICHELE M. ZYNGIER
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Mar 12, 2012
ACTING IN COUNTY OF Wayne

APPROVAL BY THE TOWN OF DAVIDSON

The Town of Davidson approves the foregoing restrictions as being in conformity with the Town's ordinances, rules and regulations regarding the provision of affordable housing as of the date set out below. This approval shall not apply expressly or by implication to any amendment to these restrictions, any other restrictions applicable to this development, or to any other development within the Town's jurisdiction.

TOWN OF DAVIDSON

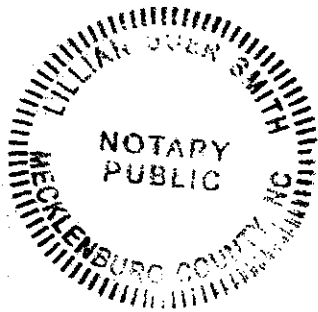
BY: *Leamon B. Price*
Town Manager

Date: 9-22-10

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, the undersigned, a Notary Public of the County and State aforesaid, certify that *Leamon B. Price* personally came before me this day and acknowledged that he is the Manager of the Town of Davidson, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the Town of Davidson.

Witness my hand and official stamp or seal, this 22 day of September, 2010.



Lillian Owen Smith
Notary Public

my commission expires April 7, 2015

EXHIBIT A-1

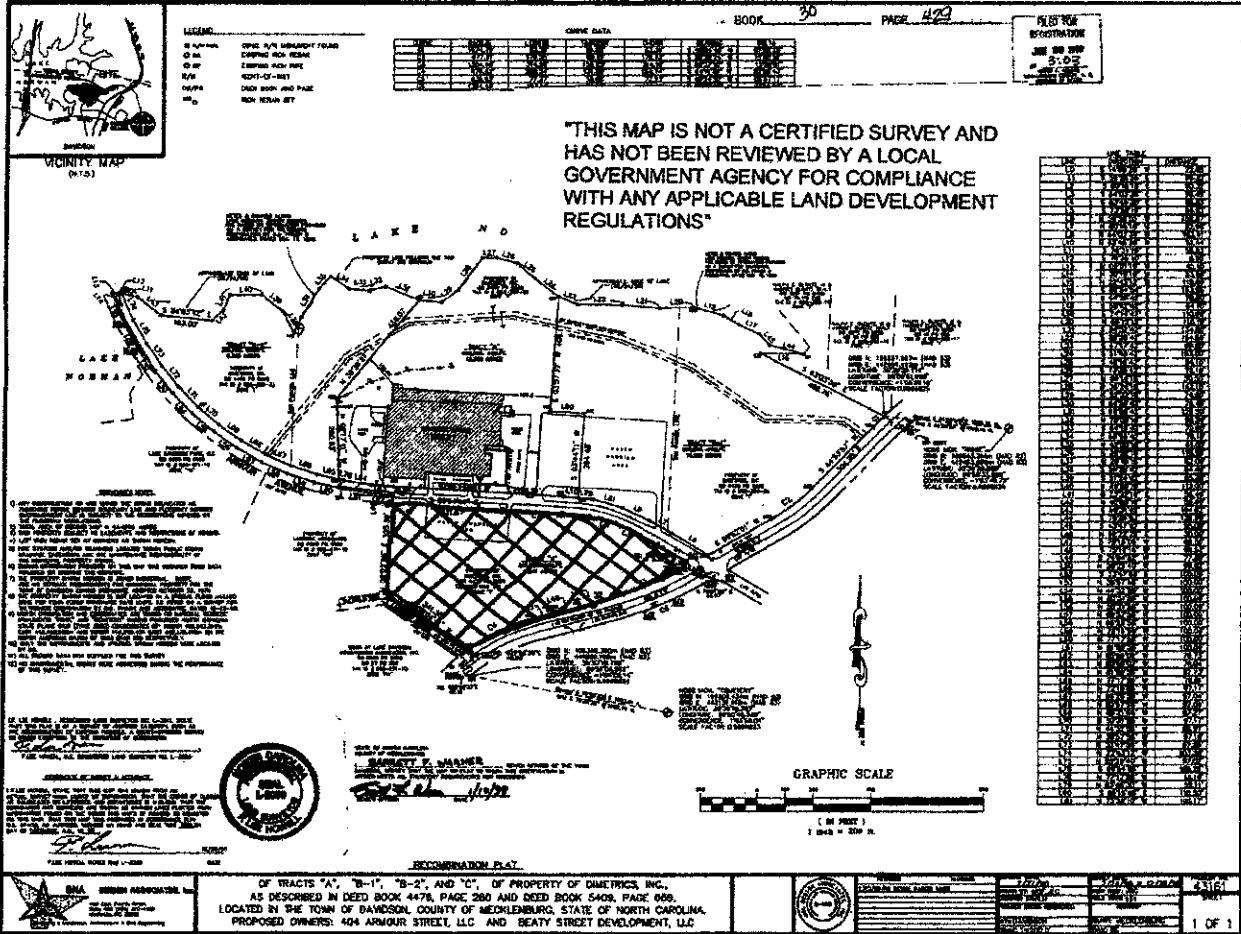
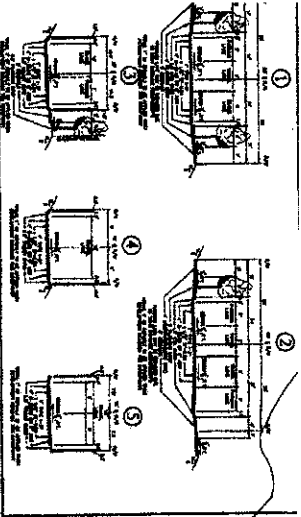
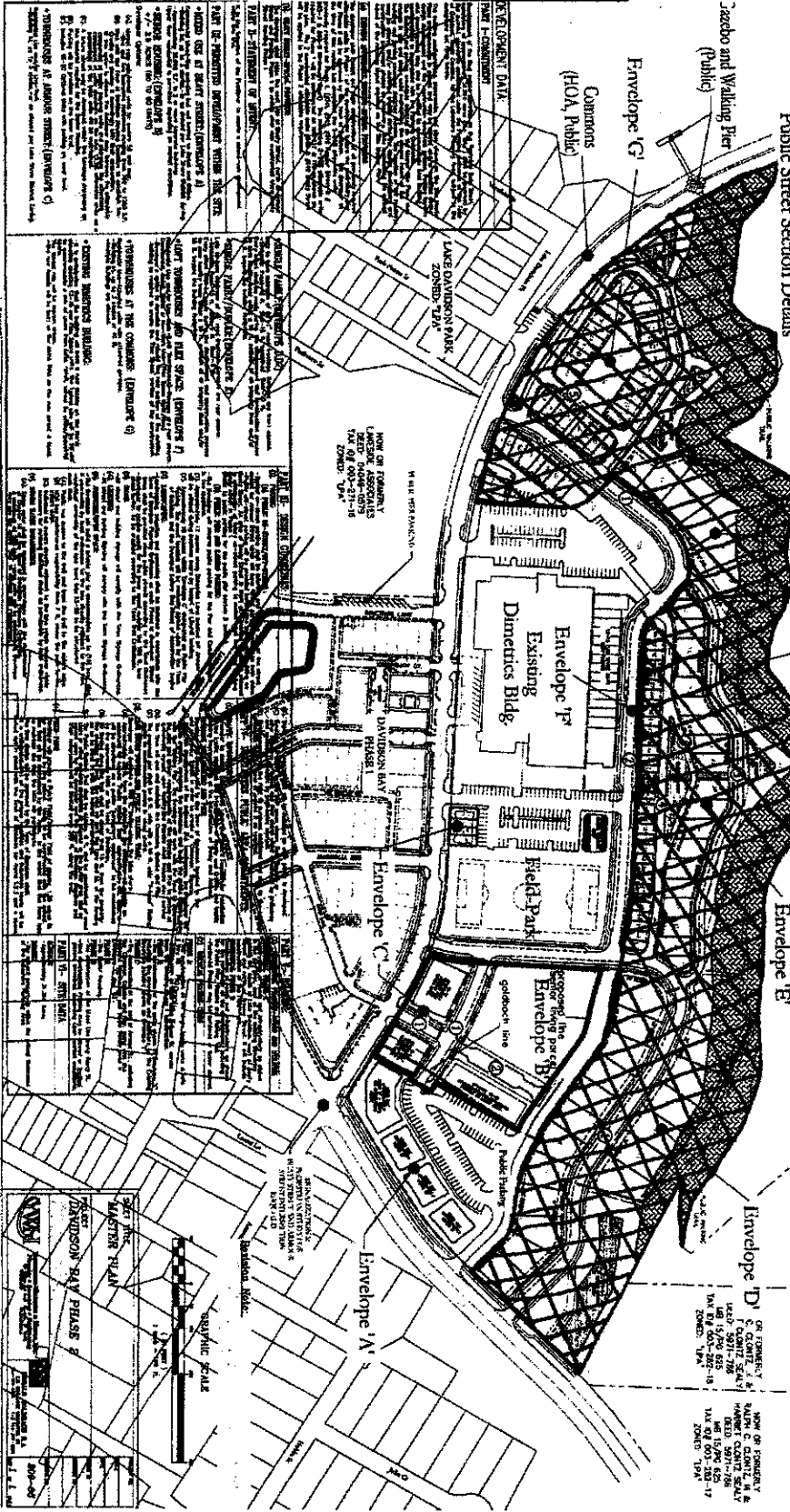


EXHIBIT A-2



"THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS"



ALLOWABLE DENSITY DATA	ENVELOPE
RESIDENTIAL	ENVELOPE A
20 UNITS PER ACRE	ENVELOPE B
15 UNITS PER ACRE	ENVELOPE C
10 UNITS PER ACRE	ENVELOPE D
5 UNITS PER ACRE	ENVELOPE E
3 UNITS PER ACRE	ENVELOPE F
2 UNITS PER ACRE	ENVELOPE G
1 UNIT PER ACRE	ENVELOPE H
1 UNIT PER ACRE	ENVELOPE I
1 UNIT PER ACRE	ENVELOPE J
1 UNIT PER ACRE	ENVELOPE K
1 UNIT PER ACRE	ENVELOPE L
1 UNIT PER ACRE	ENVELOPE M
1 UNIT PER ACRE	ENVELOPE N

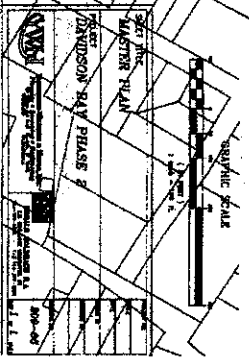
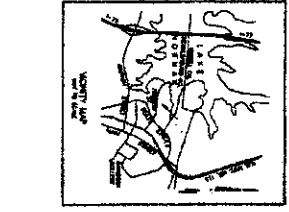


EXHIBIT B

ALL that certain real property situated in the Town of Davidson, Mecklenburg County, North Carolina and more particularly described as follows:

BEING ALL of 72, 73, 117, and 118 on that certain plat with the sheet title "RECORD PLAT – 0.134 ACRES" and the project name "DAVIDSON BAY PHASE 2 MAP 1" and recorded in Map Book 52 at Page 696 of the Mecklenburg County, North Carolina Register of Deeds.

ALSO ALL of TRACT 2A on that certain plat with the sheet title "RECORD PLAT – 0.189 ACRES" and the project name "DAVIDSON BAY PHASE 2 MAP 2" and recorded in Map Book 52 at Page 716 of the Mecklenburg County, North Carolina Register of Deeds.