

SECOND AMENDMENT TO THE SWIFT CREEK LAND MANAGEMENT PLAN  
BETWEEN AND AMONG TOWN OF APEX, TOWN OF CARY, TOWN OF GARNER,  
CITY OF RALEIGH AND WAKE COUNTY

This second amendment to the Swift Creek Land Management Plan is entered into as of the date the last party executes this Amendment, among APEX, NORTH CAROLINA ("Apex"); CARY, NORTH CAROLINA ("Cary"); GARNER, NORTH CAROLINA ("Garner"); RALEIGH, NORTH CAROLINA ("Raleigh"), all of the above being municipal corporations and body politics located in the State of North Carolina; and WAKE COUNTY, NORTH CAROLINA (the "County" or "Wake"), collectively ("Parties") a public body politic located in the State of North Carolina.

RECITALS:

WHEREAS, the territorial and extraterritorial jurisdiction of each Party to this Agreement includes a portion of the area within the jurisdiction of the Swift Creek Water Supply Watershed ("Watershed"); and

WHEREAS, through mutual resolutions, in the late 1980's and early 1990's, the Parties recognized that the Watershed would be a critical drinking water supply resource in future years for several Parties and desired to protect the surface water supply in the Watershed by controlling the type and intensity of development; and

WHEREAS, the Parties conducted a joint planning effort to establish land use regulations and standards that guide the type and intensity of development in the Watershed, resulting in the "Swift Creek Land Management Plan" or "Plan"; and

WHEREAS, through enabling legislation of the North Carolina General Assembly in 1998 and 2005, the Parties were charged with administering the Plan and have responsibility for adopting ordinances and issuing only those permits and development approvals that maintain, meet, or exceed Plan requirements;

WHEREAS, the Parties entered into the Swift Creek Land Management Plan Interlocal Agreement ("Interlocal Agreement") dated January 2, 2018 to provide a strategy for joint oversight of the Swift Creek Land Management Plan and to also formalize the process for amendments and updates to the Plan; and

WHEREAS, pursuant to Article III of the Interlocal Agreement, any amendment to the Land Use Classifications under the Plan requires the unanimous consent of all Parties; and

WHEREAS, on or about July 18, 2018, the Parties entered into a First Amendment to the Plan upon the request of Garner and the County for a Land Use Classification amendment that resulted in a reduction of the potential number of dwelling units by 1,000 within the Watershed and concentrated density along major corridors; and

WHEREAS, in accordance with the Interlocal Agreement, upon request of the Wake County Board of Education, the County has initiated this Second Amendment to the Plan, particularly a Land Use Classification amendment for the purpose of reclassifying a 12.187 acre land area located in the non-critical area of the Watershed in the County's planning jurisdiction to accommodate its annexation into Cary's planning jurisdiction and to support the extension of public utilities required for Wake County Public School educational facilities to be constructed thereon; and

WHEREAS, the land area in question ("Subject Property") consists of seven component tracts that are more particularly identified as 5417, 5501, 5505, 5509 and 5517 Tryon Road and 6200 and 6212 Yates Mill Pond Road, and as identified as having Wake County PIN 0772-96-8540, PIN 0772-96-7543, PIN 0772-96-6541, PIN 0772-96-5449, PIN 0772-96-3486, PIN 0772-96-5034 and PIN 0772-95-6565, being further depicted in Exhibit A attached hereto; and

WHEREAS, the Subject Property is located in the northwestern corner and outer boundary of the Watersheds "Rural" Land Use Classification, while the adjacent area to the west and lying within Cary's planning jurisdiction is New Urban, and the adjacent area to the north and lying with Raleigh's planning jurisdiction is New Urban as depicted upon Exhibit B attached hereto; and

WHEREAS, the Subject Property currently has seven (7) single-family residences located thereon which are served by private sewer and water given their location in the Rural land use area;

WHEREAS, schools are among the limited non-residential uses allowed under the Plan within the Rural area, but public utility extensions are not permitted within the Rural land use area pursuant to the Plan; and

WHEREAS, upon acquisition of the Subject Property, the Wake County Board of Education would redevelop the site which would result in removal of the residential structures and elimination of 12 potential private septic and water systems within the Watershed, but said redevelopment for use as a school would require public sewer and water extensions; and

WHEREAS, the Board of Education has demonstrated a significant public need for a school to be constructed on the Subject Property and has consulted with staff from the respective ILA parties to develop a preliminary development plan for the Subject Property that would have the least invasive impact on the Watershed, which will include enhanced stormwater improvements to ensure that the runoff and nutrients from the school will be less than or equal to what is currently being contributed from the parcels and will not result in an exceedance of watershed development limitations required by the Swift Creek Land Management Plan for the Town of Cary service area; and

WHEREAS, the extension of public utilities to the Subject Property is expected to result in a reduction by the actual number of seven dwelling units together with a potential number of five additional dwelling units within the Watershed and locate a public purpose institutional use along a major corridor, reroute sewer outflows to a closer Town of Cary pump station thereby relieving the burden on the existing Jones Franklin Road pump station currently

accessed by two nearby public schools via  $\pm 3,000$  linear feet of force main lines; and

WHEREAS, the anticipated benefits associated with the proposed school construction on the Subject Property and this Second Amendment outweighs any potential concerns associated with the protection of water quality in the Watershed; and

WHEREAS, the Parties to the Interlocal Agreement mutually agree that the requested Land Use Classification amendment as depicted in the attached Exhibit C to the Swift Creek Land Management Plan is consistent with the Plan goals.

NOW THEREFORE, in consideration of the mutual goals and promises contained herein and the mutual benefits to result there from, that Parties agree to amend the Plan, as follows:

1. Subject to the Wake County Board of Education's acquisition and ownership of the Subject Property for redevelopment and the Wake County Board of Education's compliance with the development standards as described herein, Map D-1 of the Plan shall be modified to reflect the amendments to the Land Use Classifications as described herein and replaced with Map D-2 attached hereto as Exhibit C which shall be duly incorporated into the Plan.
2. All other terms and conditions of the Interlocal Agreement and Plan as amended shall remain in force and effect.

IN WITNESS WHEREOF, the Parties, pursuant to resolutions of their respective governing boards spread upon their minutes, have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date written.

*(Balance of page is left intentionally blank. Signatures appear on subsequent pages.)*

**TOWN OF APEX, NORTH CAROLINA**

BY:

ATTEST:

\_\_\_\_\_  
Lance Olive  
Mayor

\_\_\_\_\_  
Donna Hosch, Clerk  
Town of Apex, North Carolina

This the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF CARY, NORTH CAROLINA**

BY:

ATTEST:

\_\_\_\_\_  
Harold Weinbrecht, Jr.  
Mayor

\_\_\_\_\_  
Virginia Johnson, Clerk  
Town of Cary, North Carolina

This the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF GARNER, NORTH CAROLINA**

BY:

ATTEST:

\_\_\_\_\_  
Ronnie S. Williams  
Mayor

\_\_\_\_\_  
Stella Gibson, Clerk  
Town of Garner, North Carolina

This the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF RALEIGH, NORTH CAROLINA**

BY:

ATTEST:

\_\_\_\_\_  
Ruffin L. Hall  
City Manager

\_\_\_\_\_  
Gail G. Smith, Clerk  
City of Raleigh, North Carolina

This the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**COUNTY OF WAKE, NORTH CAROLINA**

BY:

ATTEST:

\_\_\_\_\_  
Jessica N. Holmes  
Chair, Board of Commissioners

\_\_\_\_\_  
Denise Hogan  
County of Wake, North Carolina

This the \_\_\_\_\_ day of \_\_\_\_\_, 2019.