

NORTH CAROLINA
WAKE COUNTY

JOINT USE AGREEMENT
FOR
FORESTVILLE ROAD ELEMENTARY SCHOOL
AND
KNIGHTDALE HIGH SCHOOL

This Agreement for the joint use of Forestville Road Elementary School and Knightdale High School (hereinafter referred to as "Agreement") made and entered into this 5th day of APRIL 2004, by and among the TOWN OF KNIGHTDALE, a municipal corporation of the State of North Carolina (hereinafter referred to as "Town"), and the COUNTY OF WAKE (hereinafter referred to as "County") and the WAKE COUNTY BOARD OF EDUCATION (hereinafter referred to as "Board").

WITNESSETH

THAT WHEREAS, the parties recognize that joint cooperation and action between the Board, Town, and County shall ensure that the best facilities and services are provided to the citizens of Wake County with the least expenditure of public funds; and

WHEREAS, Board, Town, and County are mutually interested in quality education and recreation programs for Wake County students and citizens; and

WHEREAS, Board, Town, and County are authorized to enter into agreements with each other to do any and all things necessary or convenient to aid and cooperate in the cultivation of citizenship by providing quality programs and facilities; and

WHEREAS, pursuant to the Property Division Agreement between Board, Town and County dated _____, 2004 (the "Property Division Agreement"), the Board owns approximately 100.15 acres of real property, which is the campus for Knightdale High School (KHS) and Forestville Road Elementary School (FRES), located in or near the Town of Knightdale, Wake County, North Carolina and further described on the attached Exhibit A ("the Property" or "Board Property"); and

WHEREAS, pursuant to the Property Division Agreement, the Town owns approximately 59.66 acres of real property for park and community use located near Knightdale High School and Forestville Road Elementary School in or near the Town of Knightdale, Wake County, North Carolina and further described on the attached Exhibit B ("Town Property"); and

WHEREAS, Board, Town, and County desire this Board Property and Town Property to be developed as a school/community park complex as shown on the Master Plan, dated, January 28, 2002, and hereto attached as Exhibit C and incorporated herein by reference; and as shown on the supplementary Master Plan attached hereto as Exhibit D (both of the foregoing shall be referred to herein collectively as the "Master Plan")

WHEREAS, Town, County, and Board desire to jointly use Board Property and Town Property for the benefit of school and community; and

WHEREAS, the Board has determined that the areas of Board Property to be jointly used are not necessary at all times after normal school hours for public school purposes for the term of this Agreement; and

WHEREAS, Town, County and Board desire to enter into an agreement for the use of Board Property and Town Property; and

WHEREAS, Board desires to permit Town and County use of Board Property, when such are not scheduled or being used by the Board, and

WHEREAS, community use of school property and facilities is encouraged by the Community Schools Act N.C.G.S. 115C-203 *et seq.*; and

WHEREAS, the Town desires to pay for the additional design and construction costs to upgrade the Forestville Road Elementary School multipurpose room to a full-size gymnasium and a recreation center with classrooms and administrative offices; and

WHEREAS, Town and County desire to pay for the additional design and construction costs of the facilities shown in the Master Plan that are not part of the Wake County Public School System's (WCPSS) educational program specifications; and

WHEREAS, the Board, Town, and County agree that the Town and County are responsible for the additional maintenance responsibilities due to the addition of amenities over and above WCPSS educational program specifications; and

WHEREAS, Board, Town, and County are authorized to enter into this Agreement pursuant to the provisions of N.C.G.S. 115C, Article 13; N.C.G. S. 115C-518; N.C.G.S. 115C-524; and N.C.G.S. 160A-274:

NOW, THEREFORE, pursuant to N.C.G.S. 115C, Article 13, N.C.G.S. 115C-524(b), and N.C.G.S. 160A-274 and in consideration of the above-stated desires of the parties and such other mutual promises and covenants as are hereinafter set forth, the Board, Town, and County do hereby agree as follows:

1. Property Description.

Forestville Road Elementary School (FRES) and Knightdale High School (KHS) campuses are located at the corner of Forestville Road, Horton Road, and Old Knight Road in Knightdale, North Carolina and are more fully described on the attached Exhibit A. The property within KHS and FRES that is subject to this Agreement is identified as Town Licensed Areas 1, 2, 3, 4, 6, 7, 8, 11 and 12.

2. Term.

The term of this Agreement with respect to Town Licensed Areas #1, #2, #3, #4, #6, #7, #8, #11, and #12 as shown on the Master Plan shall be for a period of fifty (50) years from the date of execution of this Agreement signed by the governing bodies of the Board, Town, and County.

3. **Liability.**

Board, Town and County agree that Board is authorizing the use of its property pursuant to this Agreement only to the extent permitted by N.C.G.S. 115C-524(b). The Town and County to the extent allowed by law shall indemnify, protect, and hold harmless the Board, its agents, and employees from and against claims or damages, including attorney's fees, caused by the negligence or intentional wrongdoing of the Town and/or County, their agents, or employees when they are on the Board's property.

4. **Enhancements, Modifications, Renovations, or New Construction on Board Property by Board, Town, or County.**

The Board shall be responsible for any enhancements, modifications, renovations, or new construction on Board Property necessary for educational programming needs. The Board may make any improvements shown on the Master Plan without approval from the Town or County; however, the Board shall notify the Town and/or County that it is making such improvements on Town Licensed Areas, and shall coordinate any of its elementary school gym improvements with the Town. The Board shall consult with the Town and County prior to making any improvements not shown on the Master Plan. Without limiting the Board's rights under this Paragraph 4, the Board shall plan and coordinate with the Town and County for the construction of any enhancements, modifications or improvements to the Property subject to this Agreement to ensure that the amenities and improvements pursuant to this Agreement are completed with minimal impact on the use of TLAs by the Town and County pursuant to this Agreement.

The Town and County shall be responsible for any enhancements, modifications, renovations, or new construction for their respective needs. The Town may make any improvements shown on the Master Plan without approval from the Board or County; however, the Town shall notify the Board and/or County that it is making such improvements on Town Licensed Areas. The Town shall consult with the Board and County prior to making any improvements not shown on the Master Plan. The Town and County shall plan and coordinate with the Board for the construction of any enhancements, modifications or improvements to the Property subject to this Agreement to ensure that the amenities and improvements pursuant to this Agreement are completed with minimal impact on the operations of Forestville Road Elementary School and Knightdale High School.

The Town shall be financially responsible for modifications to the Recreation Center that are required to meet building code.

The Board and Town shall be jointly financially responsible for modifications to the gym required to meet building code.

Town and/or County will be responsible for and shall repair at its/their sole expense any damage to roadways, drive accesses, or parking areas or other portions of Board Property within TLAs 1, 2, 3, 4, 6, 7, 8, 11 or 12 incurred due to their construction, enhancements, modifications or renovations.

5. **Ownership.**

All permanent improvements made to or upon Board Property by the Town and/or County shall be the property of the Board.

6. Town Licensed Areas (TLA).

Board hereby gives and grants to Town a license for joint use of the following areas of Board Property identified as "Town Licensed Areas" on the Master Plan and more specifically described as follows:

- A. Town Licensed Area #1 (TLA #1) includes the lighted varsity baseball field (Field #1), lighted varsity softball field (Field #2), two lighted little league fields (Fields # 3 and #4), wagon wheel parking area (currently 130 spaces), concession/restroom building at wagon wheel baseball area, storage building at wagon wheel baseball area, tot lot playground, drive access at KHS
- B. Town Licensed Area #2 (TLA #2) is the six tennis courts, two outdoor basketball courts, bus parking area and drive access at KH
- C. Town Licensed Area #3 (TLA #3) is the gymnasium at FRES
- D. Town Licensed Area #4 (TLA #4) is the Recreation Center classrooms with administrative offices at FRES
- E. Town Licensed Area #6 (TLA #6) is the parking area and drive access at FRES
- F. Town Licensed Area #7 (TLA #7) is the multipurpose field #2 at FRES
- G. Town Licensed Area #8 (TLA #8) is the amphitheater, pond with dam, playground, picnic shelter and parking.
- H. Town Licensed Area #11 (TLA #11) is the Stadium Track (does not include football field) at KHS
- I. Town Licensed Area #12 (TLA #12) is the KHS student, staff, and visitor parking areas

Licensed Areas (LA).

Pursuant to separate Property Division Agreement dated _____, 2004 the Board deeded to the Town areas depicted as Town Licensed Areas 5, 9 and 10 on the Master Plan. The Town now owns these areas and hereby agrees to give and grant to the Board a license for joint use of these areas now known as "Licensed Areas" once the Town completes its construction of improvements on these areas and pursuant to Paragraph 10 of this Agreement. The agreement for joint use of Town Property shall be in the form attached hereto as Exhibit "E."

- A. Licensed Area #5 (LA #5) is the multipurpose field #1 at FRES.
- B. Licensed Area #9 (LA #9) is the future community center pool, parking area and drive access, multipurpose field and playground area.
- C. Licensed Area #10 (LA #10) is the future softball fields, junior league baseball field with lights, concession and restroom building, parking area and drive access, picnic shelter, walking trail, green way, sand volleyball courts and natural area.

7. Open to Wake County Residents.

The Town agrees to provide program services within the space available to all residents of Wake County.

8. Joint Use and Scheduling of Town Licensed Areas. Joint Use of FRE - KHS Town Licensed Areas. The Board, Town, and County agree that use of TLAs #1, #2, #3, #4, #6,

#7, #8, and #11, and #12 as shown on the Master Plan shall be in accordance with the following conditions and provisions;

- A. Administrative Control
 - (1) The Superintendent of the Wake County Public School System or designee shall have administrative control of Board Property. The Superintendent's administrative control does not override any provision of this Agreement.
 - (2) Board and Town shall work together to maximize use of the Town Licensed Areas of FRES and KHS
 - (3) Town Manager or designee shall schedule TLAs #1, #3, and #4 pursuant to this Agreement.
- B. Inclement Weather:

The Board in its sole discretion will make decisions on when to close its schools due to inclement weather. If the Town decides to make use of TLAs during periods when schools are closed because of inclement weather, the Town and its invitees do so at their own risk and without approval of the Board.
- C. WCPSS Hours of Operation.
 - (1) Normal School hours are defined as daily student and teacher workdays from 7A.M.-6P.M.
 - (2) Non-School Hours are defined as daily after normal school hours, weekends, holidays, staff vacation days, and during school breaks including spring, summer and winter breaks.
- D. Joint Use and Scheduling of Town Licensed Areas.
 - (1) General Guidelines:
 - a. Board and Town designees shall act in good faith to ensure that both parties have fair and reasonable access to the Town Licensed Areas pursuant to this Agreement.
 - b. Board, Town, and County shall meet at least three times per calendar year to inspect the Town Licensed Areas and to coordinate usage and maintenance schedules.
 - c. For those events not scheduled at a calendar coordination meeting, each party shall act in good faith to provide as much advance written notice as possible to the other party hereto of its projected use of the property.
 - d. Town designee will provide to the Board designee its hours of operation for the Recreation Center.
 - e. For purposes of this Agreement, Town use shall be defined as those programs that the Town directs, schedules, coordinates, funds, or insures.
 - f. For purposes of this Agreement, Third Party use is defined as non-Board use or non-Town use.
 - g. Field use shall be scheduled using WCPSS electronic scheduling

- system when the scheduling system becomes available.
- h. Board will make reasonable efforts to accommodate Town use of TLAs when not needed for Board purposes.
- (2) Use of KHS Varsity Baseball and Softball Fields, Little League Fields, Scoreboards, Field Lights, Concession Stand, Restrooms, Press Box, and Parking Area (TLA #1):
- a. Board and Town will coordinate usage schedules. The Town's designee shall schedule use of the fields with a process mutually agreed upon by Board and Town.
 - b. For TLA #1 fields: KHS baseball/softball fields #1 and #2:
 - I. KHS has priority of use, except for mutually agreed upon maintenance, during normal school and non-school hours. Field lights will be included for up to three nights per week per field or up to a maximum of NC HS Athletic Association guidelines. For any additional field light use by the school, the school will pay the Town the appropriate field light fee.
 - II. So long as not necessary for school purposes, Town will schedule and coordinate the use of fields #1 and #2.
 - III. So long as not necessary for school purposes, Town will accommodate and schedule Third Party use.
 - A. Third Party users may be charged a fee. Third Party users must submit WCPSS Form 2900 or submit their request electronically when electronic registration becomes available and pay applicable fees. See paragraph 8.H.
 - c. For TLA #1 fields: Little League Fields #3 and #4
 - I. Board and Town will coordinate usage schedules.
 - II. The Town's designee shall schedule use of the fields.
 - III. Board has priority use, except for mutually agreed upon maintenance, of Little League Fields #3 and #4 during normal school hours.
 - IV. The Town shall have access to Little League Fields #3 and #4 after normal school hours.
 - V. So long as not necessary for school purposes, Town will accommodate and schedule Third Party use.
 - A. Third Party users may be charged a fee. Third Party users must submit WCPSS Form 2900 or submit their request electronically when electronic registration becomes available and pay applicable fees. See paragraph 8.H.
 - d. When coordinated with the Town, Board has use of restrooms during school and non-school hours.
 - e. Town and Board shall use a jointly developed pre- and post-event checklist to document the condition of TLA #1.
 - f. Gate receipt or team registration fee income for Board activities shall go to the school; gate receipt or team registration fee income for Town activities shall go to the Town. Approved Third Party use may keep their gate receipts and/or team registration fee income.
- (3) Use of KHS Outdoor Basketball Courts, Tennis Courts, Bus Parking Area

(TLA #2):

- a. Board has priority use during and after normal school hours.
- b. Board has scheduling control.
- c. The Basketball Courts and Tennis Courts shall be available for Town use for the Town's "walk-on" traffic as Town invitees after normal school hours at no charge when such area is not needed for school purposes.
- d. Town or Third Party requests to use the courts for clinics, lesson, meets, etc. shall be submitted on Form 2900, *Facility Use Application* and coordinated through Community Schools.
- e. Third Party user groups may be charged a fee.

(4) Use of FRES Gym (TLA #3):

- a. The Board shall have use of the gymnasium during normal school hours and for school events. The Town shall schedule use of the gymnasium during non-school hours except when reserved for Board use pursuant to this Agreement. The Board shall have reasonable access and use of the gymnasium and parking (TLA #6) after normal school hours for Board events when such activities have been scheduled and coordinated with the Town. Board may schedule dates for use during non-school hours during the calendar coordination meetings with no more than three such days scheduled during a month throughout the year. With sufficient notice, the Board may schedule additional use of the gym on a space-available basis. Whenever feasible, such unplanned use shall be scheduled approximately 30 days in advance.
- b. The user of the gym will be responsible for general cleanup needs (such as, accidental spills, dust mopping gym floor, and miscellaneous trash and litter collection) within the facility to maintain acceptable appearance and safety levels.
- c. Town will provide an appropriate protective floor covering which must be used for all non-recreational use of the recreation center's gymnasium that may cause damage to gymnasium floor.
- d. Board will be responsible for set up and clean up for any Board events.
- e. Town will be responsible for set up and cleanup for any Town events.
- f. Town and Board will use a jointly developed pre- and post-event checklist to be used by both Board and Town designees to document the condition of gymnasium.
- g. Early Arrivals or After School Program:
 - I. Board and Town agree that a Before- and After-School Care Program during non-school hours on school days has first priority in the gymnasium over Town program use or Third Party use in order to ensure that the community's need for a structured Before- and After-School Care Program for children attending FRES is met.
 - II. WCPSS has the first option to offer a Before- and/or After-School program for students.

- III. Town has the second option to establish and provide a Before- and After-School Care Program based upon the needs of the school community and the mutual agreement of Board and Town, as long as the program is consistent with other WCPSS Before- and After-School Care programs in program content, staffing (student-staff ratio), and benefits.
- IV. If Town chooses to operate a Before- and After-School Care Program the Town will assume all the management, liability, and expense of the program.
- V. This Agreement does not preclude the Board from allowing other groups to use the gym for a Before and After School Program pursuant to Board Policy and in a manner not inconsistent with the scheduled use under this Agreement. A Third Party may provide a Before- or After-School program. The Third Party would follow WCPSS Community Schools policies and procedures and will pay applicable fees and charges.
- h. Student Day Camps on Teacher Workdays:
 - I. WCPSS has the first option to offer a day camp for students on teacher workdays.
 - II. The Town has the second option to offer a day camp for students on teacher workdays when the gymnasium is not scheduled for Board activities.
 - III. The Town may use the gym during non-school hours for its programmed activities except as otherwise stated herein. The Town's designee shall schedule use of the gym with a process mutually agreed upon by Board and Town. The priority of use will be: School, Town, Other.
 - IV. Third party users must submit a *Facility Use Application*, Form 2900, and pay rental fees.
- (5). Use of Recreation Center Classrooms and Administrative Offices at FRES (TLA #4):
 - a. Board and Town agree that, as the Town is 100% responsible for the construction, maintenance and repair of the Recreation Center and that the Recreation Center was constructed primarily for Town purposes that the Town shall have operational control of the facility. It is understood that the Recreation Center may be used for the Town's program activities during school and non-school hours.
 - b. The Board shall have use of the Recreation Center classrooms at no charge when coordinated with the Town.
 - c. Should the Town desire to operate a pre-school program; the Town shall first ensure that each of the TLAs to be used for the pre-school program complies with all federal, state, and local laws, rules, and regulations applicable to pre-school programs at their expense. Any improvements necessary to come in to compliance must be made in accordance with paragraph 4 of this Agreement
- (6) Use of Recreation Center/Gym Parking Area and Drive Access at FRES (TLA #6):
 - Town shall have priority use of 80 parking spaces during and after normal

- school hours for Town programs, events, and activities.
- (7) Use of FRES Multi-purpose Field (TLA #7):
- Board has priority use at all times.
 - So long as not necessary for school purposes, the Town may reserve, at the calendar coordination meetings, up to four days per week for programs offered by the Town. Town requests for use of TLA #7, in excess of the Town's designated days, shall be submitted on a *Facility Use Application*, Form 2900, and subject to rental fee charges.
 - So long as not necessary for school purposes, a minimum of two days per week shall be reserved for community (Third Party) use. Third Party user requests for use of TLA #7 shall be submitted on a *Facility Use Application*, Form 2900, and subject to rental fee charges.
 - Town or Third Party use shall be coordinated and scheduled with the WCPSS Community Schools Office.
- (8) Use of Future Improvements: Amphitheatre, Playground Area, Parking Spaces, Walking Trail/Greenway, Natural Area, Picnic Area, Picnic Shelter (TLA #8):
- Board shall have priority use during normal school hours and for school events.
 - Board and Town shall coordinate use.
 - Town has scheduling control of the picnic shelter and amphitheater after they are constructed.
 - The greenway may be used for Town use for the Town's "walk-on" traffic by individual neighborhood walkers/runners as Town invitees.
 - Third Party users may be charged a fee (see paragraph 8.H.).
- (9) Use of TLA Stadium Track and KHS Parking Lot (TLA #11 and TLA #12):
- Board has priority use and scheduling control at all times.
 - TLA #11 shall be available for Town use for the Town's "walk-on" traffic such as individual neighborhood walkers/runners as Town invitees before and after normal school hours, school activities, programs, practices or games at no charge when such area is not needed for school purposes in the Board's sole discretion.
 - Town, individual or agency/user group requests to use the track for walk-a-thons, practices, track meets, etc. shall be submitted on Form 2900, *Facility Use Application* and coordinated through Community Schools and is subject to rental fee charges.
 - Access to the track does not allow use of the field.
- (10) Use of Drive Accesses
- If Town has use of FRES or KHS during non-school hours, the Town shall be responsible for safe access and parking.

E. Fees/Charges.

Board and Town agree that except as expressly stated in this Agreement, there shall be no additional fees and/or charges associated with each party's use of Town Licensed Areas unless mutually agreed upon.

- F. Income from Town Programs.
Board and Town agree that the income from Town programs operated on Town Licensed Areas that are subject to this Agreement shall go to the Town.
- G. Income from School Programs:
Board and Town agree that the income from school sponsored programs and events such as the receipts from school ball games or fundraisers shall go to the school.
- H. Income from Third Party Users - Rental fees.
- (1). Board and Town agree that Third Party users desiring to use FRES or KHS must complete a WCPSS Community Schools *Facility Use Application*, Form 2900. Third Party users will be invoiced and shall pay fees for the use of TLAs #1, #2, #3, #6 #7, #8, #11 and #12 per WCPSS policies and procedures.
 - (2) Fees collected from Third Party users shall be disbursed to the parties of this Agreement as follows:
 - a. Fees collected from use of TLA #3 (FRES Gym) shall be disbursed quarterly seventy percent (70%) to the Town and thirty percent (30%) to the Board.
 - b. All fees collected by the Board from use of TLA #4 (Rec. Center) shall be disbursed quarterly to the Town. All fees collected by the Town from use of TLA #4 (Rec. Center) shall be retained by the Town.
 - c. Fees collected from use of other TLAs shall be distributed to the parties at the end of the Board's fiscal year proportionate to each party's actual outlays during the fiscal year for housekeeping, maintenance and major facility replacement/repair of the TLA for which the fees were collected. If the fees collected exceed the actual housekeeping/maintenance/repair costs of all parties, the excess shall be distributed to the Board.
- I. Concession Operations.
- (1) Town has scheduling and operating control of the concession buildings on Town Licensed Areas #1, #4, and #8. The net income from these concessions shall go to the Town or its program agents for Town sponsored events and to the Board for Board sponsored events.
 - (2) Concessions operated on TLAs #2, #3, #6, #7, and shall be operated by the Town or its program agents when used for the Town purposes and shall be operated by the Board or its designee when used for school purposes.
- J. Supervision and Security of Town Licensed Areas:
- (1) Town agrees that it will provide adult supervision of participants, parents, staff, and visitors to ensure their safety and well being during Town-sponsored events or programs.
 - (2) Town shall be responsible for providing security, per the Board's policies and procedures, for Town events or rentals of Town Licensed Areas.
 - (3) Town agrees to pay the Board the following security monitoring service fees

associated with TLA #3 and #4:

- a. The annual fees for security background checks of new or additional Town staff members (employees or volunteers) assigned to the Recreational Center/Gym and having key access.
- b. Each July 1st, the Town shall provide WCPSS, Community Schools with a copy of the police generated National Criminal Information Center (NCIC) criminal history report on each gym, recreation center employee assigned to the Recreational Center/Gym and having key access.
- c. The monthly security system monitoring fees for the recreation center and the gym.
- d. Town shall pay False Alarm Fees attributed to Forestville Road Elementary gym or recreation center if the Town was the responsible party after normal school hours.
- e. Board shall pay False Alarm Fees attributed to Forestville Road Elementary gym or recreation center if the Board used and was responsible for securing the facility after normal school hours.

9. **Housekeeping, Routine/Preventive Maintenance, and Major Repair or Life-Cycle Replacement** (refer to Maintenance Charts, Exhibit F):

A. General Guidelines

- (1) Town and Board shall use a jointly developed pre- and post-event checklist to be used by both Board and Town designees to document the condition of the TLAs.
- (2) Trash removal
 - a. Board shall allow the waste generated from TLA #2, #3, #4, #11, and #12 to be disposed of in school dumpsters.
 - b. Town shall provide dumpsters and/or trash removal for TLA #1, #6, #7, and #8.
- (3) Routine maintenance shall be done according to a pre-determined schedule or as mutually agreed upon by the Town and Board designees
- (4) Town, County, and Board designees shall discuss maintenance and repair issues and schedules during the site's master calendar coordination meeting (three times/year).
- (5) Board shall allow time to be scheduled during the school day for County or Town to have access to Town Licensed Areas #1, #2, #6, #7, #8, #11, and #12 to provide maintenance.
- (6) Town and County staff shall cooperate in scheduling and planning for preventive maintenance work to the greatest extent possible in order that resources will be available as needed.
- (7) The Board will have access to TLA #3 and #4 to provide maintenance.
- (8) The Town and County agree to maintain Board property in accordance with Exhibit F (Maintenance Charts).
- (9) The Board, Town and County shall plan and coordinate any improvements, major maintenance, or life cycle repairs/replacements to Town Licensed Areas subject to this Agreement. When making improvements, major maintenance or life cycle replacements to TLAs, the Town and County shall keep Board Property in a safe and secure condition.

- B. Housekeeping Responsibilities for FRES Gym (TLA #3) and Recreation Center Classrooms and Administrative Offices (TLA #4)
- (1) Housekeeping responsibilities include, but are not limited to the following: interior janitorial supplies and services, trash removal, floor care, window washing, and pest control.
 - (2) Town will be responsible for providing housekeeping for the Recreation Center, classrooms, and administrative area at all times.
 - (3) The Town shall not be responsible for: the set-up and breakdown of equipment for Board sponsored events or general cleaning duties after Board activities.
 - (4) If needed, Third Party users will pay the personnel costs for their events.
- C. Preventive and Routine Facility Maintenance for FRES Gym (TLA #3) and Recreation Center Classrooms and Administrative Offices (TLA #4).
- (1) The Town shall be responsible for seventy percent (70%) of the routine maintenance and major facility replacement/repair costs (including HVAC and roof replacement) for TLA #3 (the foregoing shall be referred to hereinafter as the "Town Maintenance Costs"). The Town shall set aside a line item in its budget of \$16,530.76 (\$1.31 per square foot x 12,618.9 square feet) for the Town Maintenance Costs. The Board shall provide preventive and routine facility maintenance and major facility replacement/repair per WCPSS standards. The Town shall pay to the Board in advance each quarter the amount of the expected Town Maintenance Costs for such quarter. Any excess at the end of the quarter shall be carried forward to the next quarter and shall reduce the amount due from the Town for the next quarter. Any excess at the end of the fiscal year shall be retained by the Town in a reserved fund balance for future major facility replacement/repair expenses. Any shortfall shall be paid by the Town at the beginning of the next quarter, along with the Town's payment for the expected Town Maintenance Costs for the next quarter. At the beginning of each Town fiscal year the parties shall reassess the amount the Town shall budget for Town Maintenance Costs for such fiscal year.
 - (2) The housekeeping, routine maintenance and major facility replacement/repair costs, including but not limited to HVAC or roof replacement, for the Recreation Center shall be apportioned 100% to the Town.
 - (3) The Board shall provide the Town with an annual comprehensive accounting of revenues and expenditures for the account showing maintenance excluding housekeeping, repairs and replacements for the gym and recreation center.
 - (4) Should any major facility replacement/repair costs relate to matters for which the Board has any warranty claim or other claim against the contractor that constructed TLA #3 and TLA #4 or against other third parties, the Board either shall use its best efforts to pursue satisfaction of such claim against the responsible party or shall assign its rights to such claim to the Town and shall cooperate with the Town in pursuing satisfaction of such claim.

- D. Multipurpose Field Maintenance, Repair, and Renovations (TLA #7):
- (1) Preventive/Routine:
 - a. County has the primary funding responsibilities and the Town has secondary funding responsibilities for aeration, fertilization, herbicide treatments, irrigating, irrigation system, landscaping, mowing, seeding/over seeding, topdressing, and repair of the field.
 - b. Town is responsible for lining the field and providing portable goals.
 - (2) Major:
 - a. County has the primary funding responsibilities and the Town has secondary funding responsibilities for repairs and the replacement of such items as the irrigation controller, repair or replacement of the pump assembly, field renovations, landscaping, top-dressing fields, and water drainage issues.
- E. Little League, Baseball, and Softball Fields Maintenance, Repair, and Renovation (TLA #1)
- (1) Routine:
 - a. The Town is responsible for maintaining the bleachers, score-box, concession/restroom building, storage building, Little League dugouts and batting cage; adding infield material, dragging the fields, irrigating, lining the Little League fields.
 - b. The County has the primary funding responsibilities and the Town has secondary funding responsibilities for aeration, fertilization, herbicide treatments, irrigation system, landscaping, mowing, seeding/over seeding.
 - c. The County is responsible for maintaining the backstops and fence, and winterizing the irrigation system.
 - (2) Major:
 - a. The County has the primary funding responsibilities and the Town has secondary funding responsibilities for repairs and the replacement of such items as irrigation controller, repair or replacement of the pump assembly, field renovations, top-dressing fields, and water drainage issues.
 - b. The County is responsible for maintaining the backstops and fence.
- F. Field Lights and Tennis Lights Maintenance, Repair, and Replacement (TLA #1, TLA #2):
- (1) Routine:
 - a. The Town has the primary funding responsibility and the County has the secondary funding responsibility for breaker and ballast replacement and repair.
 - b. The Town is responsible for bulb replacement and general inspections.
 - (2) Major:
 - a. County is responsible for light fixture repair/replacement, metal/concrete poles repair or replacement, and major electrical

repairs or replacement.

G. Parking Areas and Drive Access Maintenance:

- (1) Public Roads: Bryan Chalk Lane, Community View Drive, and Lawson Ridge Road, as shown on the Master Plan, are public roads. The Town shall be solely responsible for maintaining all roads designed for vehicular traffic constructed on the property.
- (2) Town and/or County shall be responsible for and shall repair at their sole expense any damage to the roadway and/or parking lot to incurred from Town or County's new construction or renovation of existing amenities of the FRES or KHS.
- (3) The Town is not responsible for keeping the school parking areas clean during school hours.
- (4) Town shall be responsible for trash pick-up and removal on FRES and KHS parking areas during non-school hours.
- (5) TLA #1 – Wagon wheel parking and drive access
 - a. Parking area: The Town is responsible for all routine and major maintenance.
 - b. Drive Access: The Board shall pay 60% and the Town shall pay 40% of the maintenance costs for asphalt resurfacing and repair.
 - c. Town shall pay 100% for the repair and replacement of pavement and/or permanent markings for the parking areas and drive accesses in TLA #1.
 - d. Town will contract with utility company or be responsible for paying the cost of repairs and maintenance for the parking area lights for TLAs #1.
- (6) TLA #2, TLA #12 Parking Areas
 - a. Town and County are not responsible for the repair and replacement of pavement and/or permanent markings for Knightdale High School bus, student and staff parking lots.
- (7) TLA#6:
 - a. Parking area: Town shall pay 100% of the costs for repairs and/or replacement to include permanent markings of the parking area in TLA #6.
 - b. The Town is responsible for the parking area lights.
 - c. Drive Access: Board shall pay 60% and Town shall pay 40% of the costs for the drive access repairs that are not caused by the construction activity for drive access road in TLA #6.
 - d. Town will contract with utility company or be responsible for paying the cost of repairs and maintenance for the parking area lights for TLA #6.

H. Routine, Preventive, and Major Maintenance, Repair, and Replacement for Scoreboards (TLA #1), Concession or Restroom Buildings (TLA #1, #8), Picnic Shelters (TLA #8), Amphitheatre (TLA #8), Natural Areas (TLA # 8), Outdoor High School Basketball Courts (TLA #2), Playgrounds (TLA #1, TLA#8), and Greenway on Board Property:

Town has the primary funding responsibility for all routine and major repair or

replacement to keep property at WCPSS standards. The County has the responsibility to maintain the pond and dam (including aquatic evaluations, dam inspections, trim shrubs, and inhabitant control).

- I. Track at High School - Routine and Major Repair or Replacement (TLA #11):
Board and County will equally share the cost of maintaining, resurfacing and relining the track.
- J. Tennis Courts Routine and Major Repair and Maintenance (TLA #2):
 - (1) Board and Town will equally share the cost of painting/marking the lines, resurfacing, vandalism repair, graffiti removal and for other routine or major maintenance not addressed on the Maintenance Chart.
 - (2) The Town shall be 100% responsible for the repair and replacement of the nets, the net suspension devise and the net suspension assembly.

10. Additional Agreements.

The Board, Town, and County agree that the Town will eventually and within 50 years of the date of this Agreement develop Licensed Areas 5, 9 and 10 as shown on the Master Plan. In the event the Board and/or County should desire to share use of one or more of these planned facilities, the Board, Town, and County agree to enter into a joint use agreement in the form attached hereto as Exhibit E and incorporated herein. There shall be no additional costs or obligations imposed upon the Board and/or County for this potential shared use of Licensed Areas 5, 9 and 10.

11. Utilities.

- A. Separate meters for the utilities necessary for the use and operation of the outdoor amenities such as the athletic fields, concession building, etc., subject to this Agreement shall be the responsibility of the Town. The Board shall not be responsible for any utilities for the athletic fields, concession building, etc., except as specifically authorized in Paragraph 8.
- B. The meters for all utilities necessary for the Forestville Road Elementary School Gymnasium and Recreation Center shall be in the name of the Board. Board and Town agree that the Board will invoice the Town for the actual costs of utilities (such as electric, water, sewer, gas) based on the utility company (s) invoice(s) showing the FRES square foot cost for utility(s). The Town will be responsible for their proportional share of the utilities for the Recreation Center and Gym. The Costs will be apportioned by the square footage in excess of educational specifications. The total square footage of 18,027 for the gym and community center minus the Board's allotted multi-purpose square footage of 2900 square feet for the Town's share of the Recreation Center and Gym currently equals 15,127 sq. ft. The Town will pay the utility fees quarterly.

12. Use of Care/Safe Conditions.

The Town and County acknowledge that construction, maintenance, and use pursuant to this Agreement will take place on a school site at which children, school employees, and members of the public are present. The Town and County shall take reasonable care under the circumstances to protect and secure the construction and maintenance areas to minimize the possibility of injury to students, staff and the public from construction and maintenance

activity and equipment and materials used in connection with the construction and maintenance activity on the property subject to this Agreement. The Town and County further agree to keep the property subject to this Agreement in the condition detailed in the use and maintenance provisions of this Agreement and to ensure that any equipment, materials or supplies brought on to the property by the Town or County are properly stored when not in use.

13. Nonperformance.

In the event either party should fail to keep, perform or abide by any term, condition or covenant of this Agreement for a period of thirty (30) days after written notice of such failure by the non-breaching party, then in addition to any other remedies available under this Agreement, the non-breaching party shall have the right to remedy such nonperformance. In such event, the breaching party shall reimburse the non-breaching party for any expenses incurred by the non-breaching party in effecting such remedy. Such reimbursements shall be due and payable within 90 days after receipt by the breaching party of written notice specifying the amount due. If the Board is the non-breaching party, it may suspend the Town or County's use of its property until the Town or County demonstrates to the Board's reasonable satisfaction that the Town/County has corrected its breach and is fully performing its obligations under the terms, conditions, and covenants of this Agreement.

14. Insurance.

The Town and County shall maintain at all times during the term of this Agreement and during any and every extension thereof public liability insurance in the amount of \$1,000,000/\$2,000,000, or the minimum required by North Carolina State Law, covering personal injury for each accident or occurrence growing out of the Town's or County's use or maintenance of the said Town Licensed Areas and at least \$1,000,000 or the minimum required by North Carolina State Law to cover property damage growing out of each accident or occurrence. The Board shall be named as an additional insured on all insurance policies, with respect to the Town's or County's use or maintenance of the Town Licensed Areas pursuant to this Agreement. The Town and County shall furnish the Board with evidence of such insurance and of its renewal as the premiums become due. The Town and County shall provide the Board with thirty days prior written notice of any reduction in coverage or cancellation of such insurance. The Board shall maintain at all times during the term of this Agreement and during any and every extension thereof public liability and property insurance per Board policy. The Board, Town, and County are each responsible for insuring replacement value of their respective personal property.

15. Nondiscrimination.

The Board, Town and County shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, religion, or national origin. Neither the Board, Town nor County, nor their employees shall discriminate against any person or organization on the basis of race, color, creed, sex, age, religion, or national origin by refusing to furnish such person or organization services for privileges offered to or enjoyed by residents of Wake County nor shall the Board, Town or County or their employees publicize the facilities provided hereunder in any manner that would reflect negatively on any person because of race, color, creed, sex, religion or national origin.

16. **Right to Suspend Use – Default.**

- A. If the Board determines in good faith that it temporarily needs one or more TLAs for school purposes, the Board may suspend the right of the Town and County to use such TLAs for up to three (3) years. During any such suspension of the right to use a TLA, the Town and County shall have no obligation to maintain, repair, make any monetary contribution or other outlay, or other duties with respect to such TLA. During any suspension of use by the Board, the Board shall use its best efforts to make available to the Town and County alternative comparable facilities within or near the Town of Knightdale at similar cost to the Town or County. After the expiration of a suspension of use pursuant to this Paragraph 16 A, the Board shall not have the right to suspend the Town's and County's use again until three (3) years have elapsed. At the Town's option, the term of this Agreement with respect to a TLA for which the Town's use is suspended shall be extended by an amount of time equal to the duration of the suspension.
- B. In the event either party should fail to keep, perform or abide by any material term, condition or covenant of this Agreement for a period of thirty (30) days after written notice of such failure by the non-breaching party, then the sole remedies of the non-breaching party(ies) shall be the right to damages at law or the right to specific performance.

17. **Notices.**

All notices, requests, approvals, or consents required to be given hereunder shall be in writing and hand delivered or sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

Board:	Chair Board of Education Wake County Public School System 3600 Wake Forest Road P.O. Box 28041 Raleigh, NC 27611-8041
Town:	Town Manager Town of Knightdale 950 Steeple Square Court P.O. Box 640 Knightdale, NC 27545
County:	Chair Board of County Commissioners Waverly F. Akins Wake County Office Bldg. Suite 1000 P.O. Box 550 Raleigh, NC 27602

or to such other address as either party may specify in the manner hereinabove prescribed.

18. **Severability.**

In the event any term or provision of this Agreement shall be adjudged to be partially or completely invalid or unenforceable, then such term or provision shall be severed from this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19. **Preservation and Care of Public School Property.**

Town and County agree to regulate the use of Forestville Road Elementary and Knightdale High School consistent with the Board's understanding of how to best maintain the property and to prevent deterioration of the property. The Town and County's use shall be in a manner consistent with N.C. Gen. Stat. § 115C-524(b).

20. **Non-Assignment.**

The Town may not assign this Agreement. The County may not assign this Agreement. The Town and County may use Board Property only as provided in this Agreement. Neither the Town nor the County shall allow any other person, organization, or corporation to use Board Property without the express written permission of the Board.

21. **Entire Agreement.**

The Board, Town and County agree that this document and its attachments listed below constitute the entire agreement regarding the subject matter addressed in each of these documents and their attachments and may only be modified by a written mutual agreement signed by the parties. To the extent that there is any conflict between the terms of these documents, this Agreement and its attachments, regarding the subject matter addressed in these documents, and any prior understanding or agreement between the parties, the terms of these documents shall control.

The attachments to this Agreement include:

1. The Board Property description, Exhibit A.
2. The Town Property description, Exhibit B.
3. The Master Plan, Exhibits C & D.
4. The Joint Use agreement regarding future use of Town Property, Exhibit E.
5. The Maintenance Charts, Exhibit F.

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

IN WITNESS WHEREOF, the Wake County Board of Education has caused this Agreement to be signed by its Chairman, attested by its Secretary, and sealed with its corporate seal, and the Town of Knightdale has caused this Agreement to be signed by its Mayor, attested to by the Town Clerk, and sealed with its seal, and the County of Wake has caused this Agreement to be signed by its Chair, attested by its County Clerk, and sealed with its seal, by order of the respective governing board duly given the day and year first written above.

WAKE COUNTY BOARD OF EDUCATION

By: [Signature] (SEAL)
Chair

ATTEST
By: [Signature]
Superintendent/Secretary

(Affix Corporate Seal)



TOWN OF KNIGHTDALE
By: [Signature] (SEAL)
Mayor

ATTEST
By: [Signature]
Town Clerk



BOARD OF COUNTY COMMISSIONERS
COUNTY OF WAKE

By: [Signature] (SEAL)
Chair

ATTEST
By: [Signature] (SEAL)
(Affix Corporate Seal)



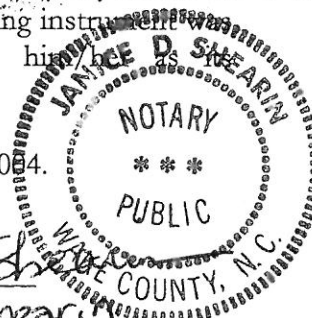
NORTH CAROLINA
WAKE COUNTY

The undersigned, a Notary Public of the County and State aforesaid, hereby certified that William R. McNeal personally appeared before me this day, and being duly sworn by me, acknowledged that he/she is Superintendent/Secretary of the Wake County Board of Education, and that by authority duly given and as the act of the Board the forgoing instrument was signed by its chairman, sealed with its corporate seal and attested by him as Superintendent/Secretary.

Witness my hand and notary seal this 13 day of April, 2004.

My Commission expires: August 21, 2004

Janice D. Shearin
Notary Public



The undersigned, a Notary Public of the County and State aforesaid hereby certified that Rebecca R. Weyner personally appeared before me this day, and being duly sworn by me acknowledged that he/she is Town Clerk of the Town of Knightdale, and that by authority duly given and as the act of the Town, the forgoing instrument was signed by its Mayor, sealed with its corporate seal and attested by him/her as its Town Clerk.

Witness my hand and notary seal this 5 day of April

My Commission expires: 12-3-2005

Hilda Hinnant
Notary Public



The undersigned, a Notary Public of the County and State aforesaid hereby certified that Gwendolyn I. Reynolds personally appeared before me this day, and being duly sworn by me acknowledged that he/she is Clerk of the Wake County Board of Commissioners, and that by authority duly given and as the act of the Board, the forgoing instrument was signed by its Chair, sealed with its corporate seal and attested by him/her as its Clerk.

Witness my hand and notary seal this 3rd day of May, 2004.

My Commission expires: 9-5-2006

Portia J. Johnson
Notary Public

Exhibit A

Board Property

BEING all of "Existing Lot 1", containing 83.23 acres, and "Existing Lot 2", containing 16.92 acres, as shown on survey entitled "Minor Subdivision Plat of Tract 1 and Tract 2 Knightdale High/Forestville Elementary Campus for Wake County Board of Education", by CLH Design, P.A., dated October 1, 2003.

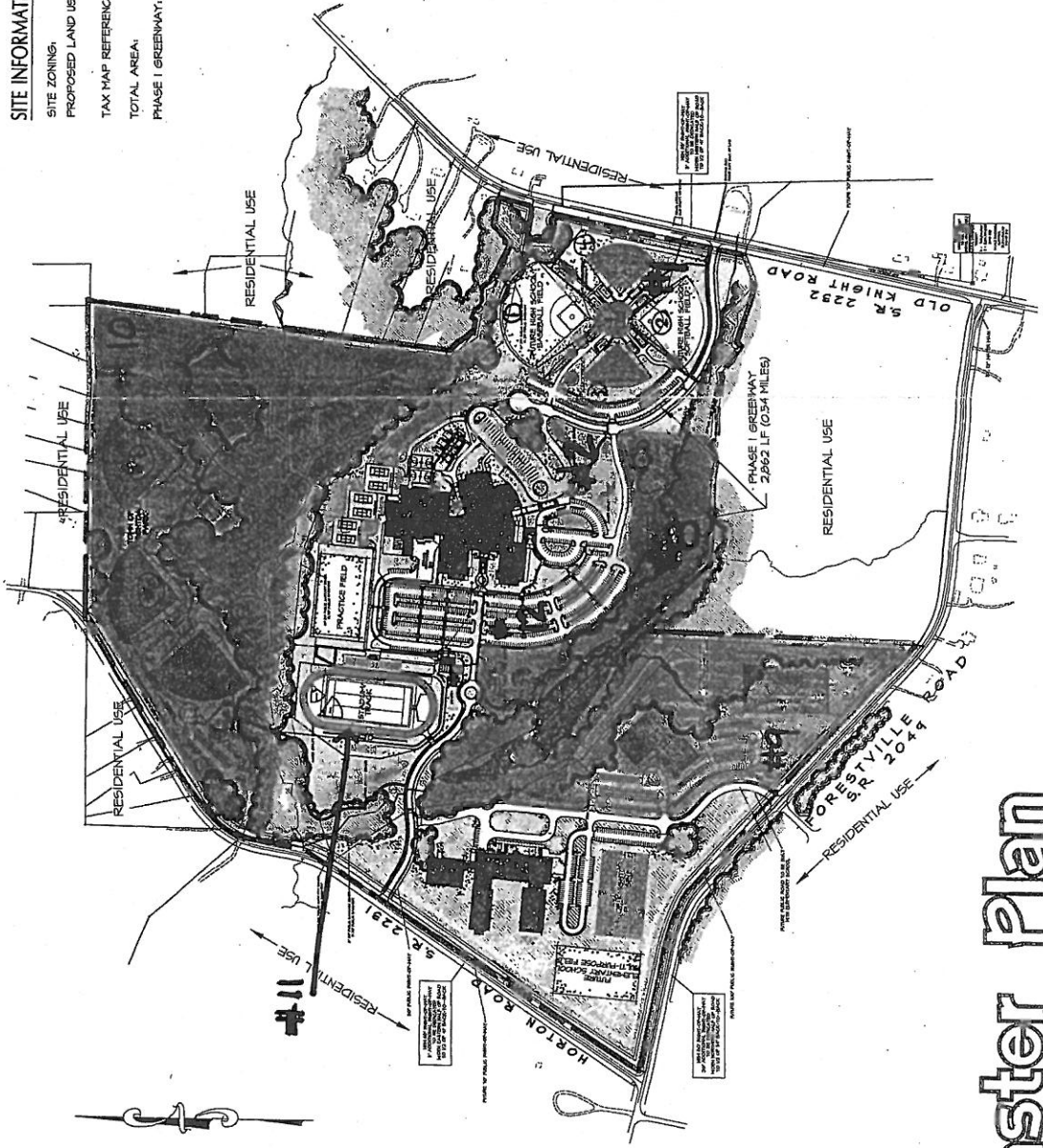
THE KNIGHTDALE AREA HIGH SCHOOL, ELEMENTARY SCHOOL & COMMUNITY PARK

A Joint Development Project with the  Town of Knightdale,  Wake County Parks & Recreation Department and the  Wake County Public School System

Exhibit C

SITE INFORMATION:

RA
 SITE ZONING: SECONDARY SCHOOL (INTENSITY CLASSIFICATION 2)
 PROPOSED LAND USE: PUBLIC PARK (INTENSITY CLASSIFICATION 1)
 TAX MAP REFERENCE: WAKE COUNTY PIN #S: 175554026/175550719
 TOTAL AREA: 169.65 ACRES AREA IN PARKS: 74 ACRES
 PHASE I GREENWAY: 2,662 LF (0.54 MILES)



LEGEND:

- PHASE I PARK FACILITIES
- FUTURE PARK FACILITIES
- FUTURE SCHOOL FACILITIES
- FUTURE SCHOOL BUILDINGS
- #1 WAGON WHEEL BASEBALL AREA
- #2 BUS PARKING TENNIS COURTS BASKETBALL COURT
- AMPHITHEATRE NATURAL AREA GREENWAY
- COMMUNITY CENTER/POOL
- NORTH 40' NORTH PURPOSE FIELD
- PHASE I GREENWAY
- PHASE I GREENWAY
- #11 TRACK ONLY
- #12 KHS STUDENT, STAFF PARKING



CLH DESIGN, P.A.
 MacGregor Park
 121 Bainbridge South
 Suite 203
 Cary, North Carolina 27511
 Phone: (919) 319-7618
 Fax: (919) 319-7618

BONEY
 ARCHITECTURE • DESIGN
 CONSULTING • DEVELOPMENT
 5511 CAPITAL CENTER DR.
 SUITE 200
 RALEIGH, NC 27606
 TEL: 919.851.0333
 FAX: 919.851.0333
 WWW.BONEYARCH.COM

Master Plan

Date Prepared: January 28, 2002.

Exhibit B

Town Property

BEING all of "Proposed TLA #10", containing 41.18 acres, "Proposed TLA #5", containing 3.02 acres and "Proposed TLA #9", containing 15.46 acres, as shown on survey entitled "Minor Subdivision Plat of Tract 1 and Tract 2 Knightdale High/Forestville Elementary Campus for Wake County Board of Education", by CLH Design, P.A., dated October 1, 2003.

TO CONSTRUCT IMPROVEMENTS

Other Regulatory Agencies

Permit # _____ Issue Date: _____
 Permit # WQ _____ Issue Date: _____
 Permit # _____ Issue Date: _____

Improvements

_____ Date: _____

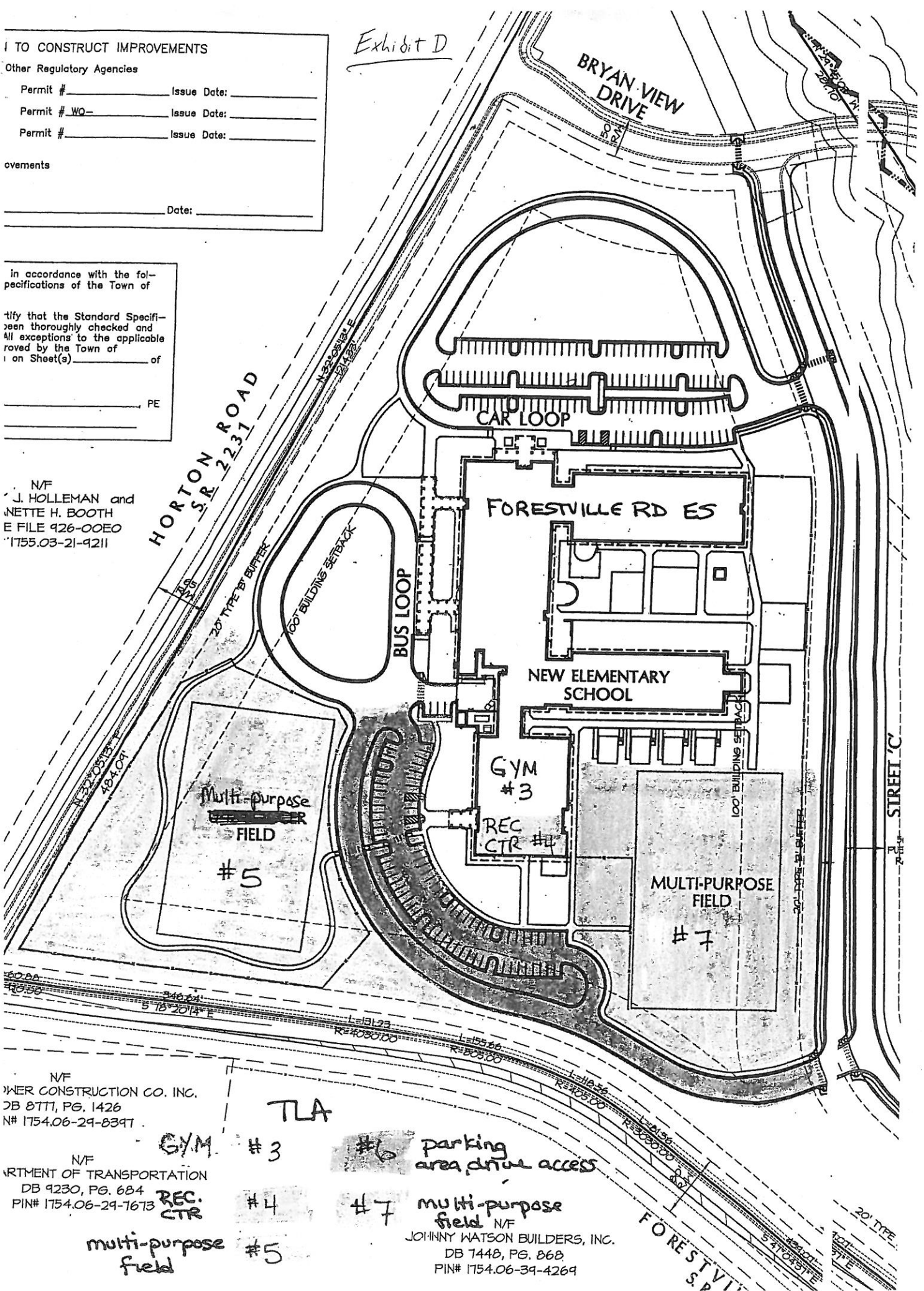
In accordance with the fol-
 lowing specifications of the Town of

Verify that the Standard Specifi-
 cations have been thoroughly checked and
 all exceptions to the applicable
 specifications have been approved by the Town of
 _____ of
 _____ of

_____ PE

N/F
 J. HOLLEMAN and
 NETTE H. BOOTH
 E FILE 926-00EO
 1755.03-21-9211

Exhibit D



N/F
 WATSON CONSTRUCTION CO. INC.
 DB 8771, PG. 1426
 N# 1754.06-29-8397

N/F
 DEPARTMENT OF TRANSPORTATION
 DB 9230, PG. 684
 PIN# 1754.06-29-7673

multi-purpose field #5

GYM #3

REC. CTR #4

TLA

#6 parking area, drive access

#7 multi-purpose field

N/F
 JOHNNY WATSON BUILDERS, INC.
 DB 7448, PG. 868
 PIN# 1754.06-39-4269

Exhibit E

Joint Use Agreement for Licensed Areas 5, 9 and 10

[Same as Exhibit D attached to Property Division Agreement]