

SUBDIVISION ORDINANCE
TOWN OF HILDEBRAN, NC



Prepared by:
WESTERN PIEDMONT COUNCIL OF GOVERNMENTS

In conjunction with:
TOWN OF HILDEBRAN PLANNING BOARD

Adopted:
Adopted July 30, 2012
Updated May 2019
Updated April 2021
Updated January 2022

ARTICLE I
TITLE

This Ordinance shall be known and may be cited as the *Subdivision Ordinance of the Town of Hildebran, North Carolina*.

ARTICLE II
AUTHORITY AND ENACTMENT CLAUSE

The Town Council of the Town of Hildebran, pursuant to the authority conferred by Chapter 160D-801 et seq of the General Statutes of the State of North Carolina, does hereby ordain and enact into law these Articles and Sections.

ARTICLE III
JURISDICTION AND PURPOSE

SECTION 3.0 JURISDICTION

These regulations of this Chapter, as provided in G.S. 160D-200; 202; 903, shall apply within the corporate limits of Hildebran. Such corporate limits are as shown on the Official Zoning Map of Hildebran.

SECTION 3.1 PURPOSE

An ordinance establishing procedures and standards for the development and subdivision of real estate and regulating the subdivision of land and for the surveying and platting thereof, as adopted and prescribed in this Ordinance, as hereby found by the Town Council of Hildebran to be necessary and appropriate in order to aid in the following:

- A. To ensure the orderly development of the Town and safeguard conditions essential to public health, safety and welfare;
- B. To provide space for safe and sanitary dwelling accommodations within the Town and Planning Area;
- C. To promote the eventual elimination of unsafe and unsanitary conditions arising from the overcrowding and concentration of population, improper planning, lack of proper light, air and space, unsafe or unsanitary design and arrangements, lack of sanitary facilities, and existences of conditions which endanger life or property by fire or other causes;
- D. To provide for suitable neighborhoods with adequate streets and utilities and appropriate building sites which are readily accessible to emergency vehicles;
- E. To save unnecessary expenditures of public funds by reserving space for public lands and buildings and by initial proper construction of streets and utilities;

- F. To provide for economical and sufficient streets with adequate width and with proper alignment and grade for the coordination of utilities, streets, and highways within proposed subdivisions with existing or planned streets and highways and other public facilities, and;
- G. To provide proper land records for the convenience of the public and for better identification and permanent location of real property boundaries.

ARTICLE IV
GENERAL PROVISIONS

SECTION 4.0 COMPLIANCE WITH ZONING AND OTHER ORDINANCES

Proposed subdivisions must comply in all respects with the requirements of the zoning ordinance in effect in the area to be subdivided and any other officially adopted ordinances.

SECTION 4.1 TRANSPORATION PLANS

Where a proposed subdivision includes any part of a thoroughfare which has been designated as such in the officially adopted Greater Hickory Urban Area Long Range Transportation Plan, such part of such thoroughfare plan shall be platted by the subdivider in the location shown on the thoroughfare plan and at the width specified in the thoroughfare plan or this ordinance.

SECTION 4.2 REVIEW FEES

Review fees are established by the Town Council and are listed on the Town of Hildebran Schedule of Fees. Review fees shall be submitted along with plats submitted for review. Review fees are nonrefundable.

ARTICLE V
DEFINITIONS

SECTION 5.0 SUBDIVISION DEFINED

For the purposes of this Ordinance, the term "subdivision" means all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development, whether immediate or future, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, the following shall not be included within this definition nor be subject to the regulations prescribed by this ordinance, except for Section 5.1, (G.S. 160D-802):

- A. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town as shown in this Ordinance;
- B. The division of land into parcels greater than ten (10) acres where no street right-of-way

dedication is involved;

- C. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors;
- D. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the Town, as shown in this Ordinance;
- E. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

SECTION 5.1 EXEMPT PLATS

The following content shall be provided for all plats which are exempt from the Town of Hildebran Subdivision Ordinance.

- A. Exempt plats must be reviewed by the Town Planner to ensure compliance with the Town of Hildebran Zoning Ordinance.
- B. All plats to be presented to the register of deeds for recording must meet the requirements of G.S. 47-30 and Burke County Register of Deeds.
- C. All content required shown in the Table of Content Required (Figure 1). Plats not illustrating or containing the data shall be returned by the Town Planner to the subdivider or his authorized agent for completion and resubmission.
- D. The following certifications shall be shown on all exempt plats:

CERTIFICATION OF EXEMPTION

I, _____, hereby that this plat is exempt from the Town of Hildebran Subdivision Ordinance according to Section 5.0 of the Subdivision Ordinance. I certify that the property shown meets the minimum standards of the Hildebran Zoning Ordinance.

Zoning Administrator

Date

CERTIFICATE OF SURVEY AND ACCURACY

I, _____, certify that this was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book _____, Page _____, Book _____, Page _____, etc.) (other); that the error of closure as calculated by latitudes and departures is 1:_____; that the boundaries not surveyed are shown as broken lines plotted from information found in Book _____, Page _____; that this map was prepared in accordance with G.S. 74.30 as amended. Witness my hand and seal this _____ day of _____, A.D., 19__.

Registered Surveyor or Professional Engineer

License or Registration Number

CERTIFICATION OF APPROVAL BY REVIEW OFFICER

I, _____, Review Officer for the County of Burke, certify that the plat to which this certification is affixed meets all the statutory requirements for recording.

Review Officer

Date

SECTION 5.2 ADDITIONAL DEFINITIONS

For the purpose of this Ordinance, certain words or terms used herein shall be defined as follows:

ACCESS CORRIDORS - A strip of land lying between the side lot boundary lines of lake or river front lots offering access to lots at least one lot depth away from the water's edge.

ACCESS EASEMENT - A recorded corridor designed for the purpose of giving access to adjacent properties.

ALLEY - A minor right-of-way privately or publicly owned, primarily for service access to the back or side of properties.

BEST MANAGEMENT PRACTICES (BMP) - A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

BUFFER - A strip of land consisting of walls, fences, vegetation, and/or combination thereof provided, as described in this ordinance.

BUILDING - Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or personal property.

BUILDING SETBACK LINE - A line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutters, and similar fixtures) and the street or highway right-of-way line or other property lines when measured perpendicularly thereto.

CLERK OF SUPERIOR COURT - Clerk of Superior Court of Burke County, North Carolina.

CLUSTER DEVELOPMENT - The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development, as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

DEDICATION - A transfer of ownership or a transfer of a portion of the development rights through an "easement." Since a transfer of property is involved, the dedication is made by written instrument and is completed with an acceptance.

DRIVEWAY - A private way connecting public right-of-ways to property and providing access to parking areas.

EASEMENT - A grant by the property owner of land for a specified purpose and use by the public, town, a corporation, or persons.

LOT - A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessory uses and open spaces belonging to the same. This word may also include the words "plot," "parcel," "tract," or "site."

LOT COVERAGE - The area of a lot covered by impervious surfaces expressed as a percentage of the total lot area.

LOT DEPTH - The mean horizontal distance between the front and rear lot lines.

LOT OF RECORD - A lot which is part of a subdivision, a plat or which has been recorded in the office of the Burke County Register of Deeds or a lot described by metes and bounds, the description of which has been so recorded at the Burke County Courthouse.

LOT TYPES

- Corner Lot - A lot which occupies the interior angle at the intersection of two street lines which make an angle of more than 45 degrees and fewer than 135 degrees with each other. The subdivider shall be required to specify which frontage is the front of the lot for Zoning purposes.
- Double Frontage Lot - A continuous (through) lot which is accessible from both streets upon which it fronts.
- Interior Lot - A lot, other than a corner lot or double frontage lot, with only one frontage on a street
- Flag Lot - A lot which does not meet the minimum frontage requirements and mean lot width requirements and access is provided by a narrow driveway leading to the major portion of the lot.

LOT WIDTH - The mean distance between the side lot lines.

OFFICIAL MAPS OR PLANS - Any maps or plans officially adopted by the Town of Hildebran.

OPEN SPACE - Any land or area reserved for conserving and enhancing natural or scenic resources; or protecting streams or water supply; or promoting conservation of soils, wetlands; or enhancing the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, or sanctuaries; or enhancing recreation opportunities.

PLANNED UNIT DEVELOPMENT (PUD) - A form of development characterized by a unified site design for a number of housing units, clustering of buildings and provided common open space, increased density, mixed uses, and a mix of building types. It permits the planning of a project and a calculation of densities over the entire development rather than on an individual lot-by-lot basis. The site must include two or more principal buildings. Such development shall be based on a plan which allows for flexibility of design not available under normal district requirements.

PLAT - A map or plan of a parcel of land which is to be, or has been, subdivided or meets the exemption requirements.

PRIVATE STREET - A street, not publicly owned or maintained, intended to be for private ingress or egress, or to serve a large development under one ownership, such as in a large industrial park or with a planned unit development.

RECREATION AREA OR PARK - An area of land or combination of land and water resources that is developed for active and/or passive recreation with various manmade features that accommodates such activities.

RESERVATION - A reservation of land does not involve any transfer of property rights. It simply constitutes an obligation to keep property free from development for a stated period of time.

RESERVE STRIP - A strip of land not dedicated to public use, reserved for the purpose of the continuation of streets when future development occurs.

STREETS - A dedicated and accepted public right-of-way for vehicular traffic.

CUL-DE-SAC - A short local street having but one end open to traffic and the other end being permanently terminated and a vehicular turnaround provided.

SUBDIVIDER - Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision, as herein defined.

SUBDIVISION ADMINISTRATOR - The employee(s) or agent(s) designated by the Town to oversee the administration and enforcement of these regulations.

SECTION 5.3 WORD INTERPRETATION

For the purpose of this Ordinance, certain words shall be interpreted as follows:

The word "may" is permissive.

The words "shall" and "will" are mandatory

Present tense shall include the future tense and future includes the present, the singular includes the plural and plural the singular.

ARTICLE VI
PROCEDURE FOR REVIEW AND APPROVAL OF MINOR SUBDIVISION PLATS

SECTION 6.0 GENERAL

No final plat of a minor subdivision within the jurisdiction of Hildebran as established in Article II of this Ordinance shall be recorded by the Register of Deeds of Burke County until it has been approved by the Subdivision Administrator as provided herein. To secure such approval of a final plat, the subdivider shall follow the procedures established in this section (G.S. 160D-804, 804.1).

SECTION 6.1 MINOR SUBDIVISION

For purposes of these regulations, a minor subdivision is defined as a subdivision:

- A. involving not more than five (5) lots fronting on an existing approved street; and
- B. not involving any new street or prospectively requiring any new street for access to interior property; and
- C. not requiring extension of public sewage or water lines or creation of new drainage easements through lots to serve property at the rear; and
- D. not adversely affecting the development of the remainder of the parcel or of adjoining property; and
- E. creating no new or residual parcels not conforming to the requirements of these regulations; and
- F. all included land being under ownership of a single entity.

SECTION 6.2 MINOR SUBDIVISION APPROVAL PROCESS

If the land to be subdivided meets the requirements of a minor subdivision as defined in Article VI, Section 6.1, of this Ordinance, the subdivider will not have to follow the same procedures as for a major subdivision. The review process for minor subdivisions shall be adequate to protect the public interest, but should also provide minimum delay and expense to the subdivider. A preliminary plat is not required. However, the following minor plat approval process shall be used only where the subdivision meets the requirements of Section 6.1.

A. SKETCH PLAN REQUIRED

A preliminary plat shall not be required for approval for minor subdivisions. Instead, a sketch design plan shall first be submitted to the Subdivision Administrator for approval.

All content required is shown in the Table of Content Required (Figure 1). Plats not illustrating or containing the data shall be returned by the Subdivision Administrator to the subdivider or his

authorized agent for completion and resubmission.

B. REVIEW PROCEDURE FOR SKETCH PLAN

The Subdivision Administrator shall review the sketch design plan for general compliance with the requirements of this Ordinance and may request that copies be submitted to the County Health Department, Erosion Control Section, Soil and Water Conservation District, Fire Marshall, and Inspection Division for their comments and reports. The Subdivision Administrator shall advise the subdivider or his authorized agent of the regulations pertaining to the proposed subdivision, any comments received by other departments, and the procedures to be followed in the preparation and submission of the final plat.

C. APPROVAL OF SKETCH PLAN BY SUBDIVISION ADMINISTRATOR

The Subdivision Administrator, after determining that all requirements of this Ordinance have been met on the sketch plan, and any comments received from other departments have been addressed, shall approve the sketch plan, and the subdivider shall be advised that the final plat may be prepared as long as it conforms to the sketch plan. This review shall in no way be construed as constituting an official approval for recording.

D. DISPUTE OF FINDINGS OF SUBDIVISION ADMINISTRATOR

In the event that the subdivider disagrees with any findings of the Subdivision Administrator concerning approval of a sketch plan of a minor subdivision, the matter shall be taken to the Planning Board for a decision.

1. Five (5) copies of the sketch plan shall be retained as part of the files of the Planning Board, with the original drawing being returned to the subdivider or his authorized agent.
2. No final plat shall be prepared until the Planning Board has acted on the disputed sketch plan.

E. MINOR SUBDIVISION - CERTIFICATES AND CONTENT REQUIRED

1. CERTIFICATIONS REQUIRED

The following signed and notarized certificates shall appear on the reproducible copy of the final plat which is submitted to the Subdivision Administrator:

CERTIFICATION OF OWNERSHIP AND DEDICATION

I hereby certify that I am/we are the owner(s) of the property shown and described hereon, which is located in the subdivision jurisdiction of Hildebran, and that I/we hereby adopt this plan of minor subdivision.

Owner(s)

Date

CERTIFICATE OF SURVEY AND ACCURACY

I, _____, certify that this was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book _____, Page _____, Book _____, Page _____, etc.) (other); that the error of closure as calculated by latitudes and departures is 1: _____; that the boundaries not surveyed are shown as broken lines plotted from information found in Book _____, Page _____; that this map was prepared in accordance with G.S. 74.30 as amended. Witness my hand and seal this _____ day of _____, A.D., 19__.

Registered Surveyor or Professional Engineer

License or Registration Number

CERTIFICATION OF APPROVAL BY ZONING ADMINISTRATOR

I, _____, Zoning Administrator for the Town of Hildebran, do hereby certify that the property shown meets the minimum standards of the Hildebran Zoning Ordinance.

Zoning Administrator

CERTIFICATION OF APPROVAL BY REVIEW OFFICER

I, _____, Review Officer for the County of Burke, certify that the plat to which this certification is affixed meets all the statutory requirements for recording.

Review Officer

Date

2. CONTENT REQUIRED

All content required shown in the Table of Content Required (Figure 1). Plats not illustrating or containing the data shall be returned by the Subdivision Administrator to the subdivider or his authorized agent for completion and resubmission

All plats to be presented to the register of deeds for recording must meet the requirements of G.S. 47-30 and Burke County Register of Deeds.

F. FINAL PLAT APPROVAL OF MINOR SUBDIVISION

In order not to cause any unnecessary expense to the developer and to the administrative departments of the Town, the Subdivision Administrator shall have the responsibility for approving minor subdivisions. The final plat for minor subdivisions shall be complete and show all information required for a final plat for minor subdivisions as prescribed by this Ordinance in Section 6.2 E. The recording of a minor subdivision plat shall be the same as for a major subdivision as provided in this Ordinance in Section 7.2 K. 8. If a minor subdivision plat is disapproved, the reasons for such action shall be specified in writing. One (1) copy of such reasons shall be given to the subdivider. If a minor subdivision plat is disapproved, the subdivider may make the recommended changes, as requested, and submit a revised minor plat or appeal the decision to the Town Council. Appeals will be made pursuant to G.S. 160D-1403.

ARTICLE VII
PROCEDURE FOR REVIEW AND APPROVAL OF MAJOR SUBDIVISION PLATS

SECTION 7.0 GENERAL

No final plat of a major subdivision within the jurisdiction of Hildebran as established in Article II of this Ordinance shall be recorded by the Register of Deeds of Burke County until it has been approved by the Town Council as provided herein. To secure such approval of a final plat, the subdivider shall follow the procedures established in this section (G.S. 160D-804, 804.1).

SECTION 7.1 MAJOR SUBDIVISION

For purposes of these regulations, a major subdivision is defined as a subdivision:

- A. which does not meet the definition of an exempt plat; and
- B. does not meet the definition of a minor plat.

SECTION 7.2 MAJOR SUBDIVISION APPROVAL PROCESS

The following regulations and procedure shall be followed to obtain approval of all major subdivisions.

A. SKETCH PLAN REQUIRED

Prior to submitting a preliminary plat, a sketch plan shall be submitted to the staff planner.

All content required shown in the Table of Content Required (Figure 1). Plats not illustrating or containing the data shall be returned by the Town Planner to the subdivider or his authorized agent for completion and resubmission

B. REVIEW PROCEDURE FOR SKETCH PLAN

The Subdivision Administrator shall review the sketch plan for general compliance with the requirements of this Ordinance and may request that copies be submitted to the County Health Department, Erosion Control Section, Soil and Water Conservation District, Fire Marshall, and Inspection Division for their comments and reports. The Subdivision Administrator shall advise the subdivider or his authorized agent of the procedures to be followed in the preparation and submission of the preliminary and final plats. This review shall in no way be construed as constituting an official action of approval for recording of the subdivision by the Planning Board or the Town Council as required by this Ordinance.

C. DISPUTE OF FINDINGS OF THE SUBDIVISION ADMINISTRATOR

In the event that the subdivider disagrees with any findings of the Subdivision Administrator

concerning approval of a sketch plan, the matter shall be taken to the Planning Board for a decision.

1. Five (5) copies of the sketch plan shall be retained as part of the files of the Planning Board, with the original drawing being returned to the subdivider or his authorized agent.
2. No preliminary plat shall be prepared until the Planning Board has acted on the disputed sketch plan.

D. PRELIMINARY PLAT REQUIRED

After approval of the sketch plan, the preliminary plat can then be prepared and shall be submitted to the Subdivision Administrator and Planning Board for review at least twenty (20) days prior to a regular meeting of the Planning Board, for every major subdivision of land which is located within the territorial jurisdiction established by Article III, Section 3.0.

E. PRELIMINARY PLAT - CERTIFICATIONS AND CONTENT REQUIRED.

1. Three (3) copies (or more if deemed necessary by staff) of the preliminary plat shall be submitted; no specific graphic media must be employed. Three (3) copies shall be distributed as provided under Section 7.2 F.
2. No specific size requirements apply to preliminary plats. Preliminary plats shall be prepared at a scale of one (1) inch equals two hundred (200) feet or greater.
3. No certifications must be shown on the drawing in connection with the submission of preliminary plats.
4. Plans for water supply and sewage disposal systems must be approved by the respective agencies providing service and maintenance for such systems, and documentation of such approval must be presented to the Planning Board prior to the Board's approval of the preliminary plat.
5. If any street is proposed to intersect with a State maintained road, the plat shall be accompanied by an application for driveway approval as required by the Department of Transportation.
6. All content required shown in the Table of Content Required (Figure 1). Plats not illustrating or containing the data shall be returned by the Subdivision Administrator to the subdivider or his authorized agent for completion and resubmission

F. REVIEW PROCEDURE FOR PRELIMINARY PLAT

The Planning Board shall review and take action on each preliminary plat within thirty (30) days after submission. Considerations shall be at the next regularly scheduled meeting of the Planning Board that follows at least twenty (20) days after the plat is submitted. Before taking action on the plat, the Subdivision Administrator shall refer copies of the plat and any accompanying material to those public officials and agencies concerned with new development, including but not limited to the County Health Director, the District Engineer of the North Carolina State Highway Commission, and the County Soil Conservation Service.

If the plat is approved, approval shall be noted on at least three (3) copies of the plat by the Staff Planner who shall retain one (1) copy for public examination, one (1) copy shall be returned to the subdivider, and one (1) copy shall be retained for the Planning Board files.

If the preliminary plat is not approved, the Planning Board shall specify the reasons for such action in writing. One (1) copy of such reasons shall be retained by the Staff Planner and one (1) copy shall be given to the subdivider. If the preliminary plat is not approved, the subdivider may make the recommended changes and submit a revised preliminary plat, or appeal the decision to the Town Council.

G. FINAL PLAT REQUIRED

After approval of the preliminary plat, the final plat can then be prepared and shall be submitted to the Subdivision Administrator and Planning Board for review. The plat shall be submitted at least twenty (20) days prior to the next regularly scheduled meeting of the Planning Board.

The final plat shall constitute only that portion of the preliminary plat which the subdivider proposes to record and develop at the time; such portion shall conform to all requirements of this Ordinance.

H. FINAL PLAT - CERTIFICATIONS AND CONTENT REQUIRED

1. CERTIFICATIONS REQUIRED

The following signed and notarized certificates shall appear on the reproducible copy of the final plat which is submitted to the Subdivision Administrator:

CERTIFICATION OF OWNERSHIP AND DEDICATION

I hereby certify that I am/we are the owner(s) of the property shown and described hereon, which is located in the subdivision jurisdiction of Hildebran, and that I/we hereby adopt this plan of subdivision and dedicate all sanitary sewer lines to the Town of Hildebran.

Owner(s)

Date

*CERTIFICATION OF APPROVAL OF WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS

I hereby certify that the water supply and sewage disposal systems installed, or proposed for installation, in the subdivision meet all public health requirements of Burke County.

County Health Officer or his Authorized Representative

Date

*If this certificate of Water and Sewage Disposal Systems is not applicable, use the applicable certificate below for water or sewage disposal system.

CERTIFICATE OF SURVEY AND ACCURACY

I, _____, certify that this was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book _____, Page _____, Book _____, Page _____, etc.) (other); that the error of closure as calculated by latitudes and departures is 1:_____; that the boundaries not surveyed are shown as broken lines plotted from information found in Book _____, Page _____; that this map was prepared in accordance with G.S. 74.30 as amended. Witness my hand and seal this _____ day of _____, A.D., 19_____.

Registered Surveyor or Professional Engineer

License or Registration Number

CERTIFICATE OR APPROVAL OF THE DESIGN AND INSTALLATION OF UTILITIES AND OTHER REQUIRED IMPROVEMENTS

I hereby certify that all required improvements have been installed in an acceptable manner and according to the Hildebran specifications and standards in the _____ Subdivision or that guarantees of the installation of the required improvements in an amount and manner satisfactory to Hildebran have been received, and that the filing fee for this plat, in the amount of \$ _____, has been paid.

Hildebran Town Clerk

Date

CERTIFICATE OF APPROVAL OF THE DESIGN AND INSTALLATION OF PUBLIC STREETS

DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
SUBDIVISION ROAD CONSTRUCTION STANDARDS CERTIFICATION

APPROVED: _____
District Engineer

DATE: _____

*DISCLOSURE AND CERTIFICATION FOR PRIVATE STREETS

All roads in this subdivision are hereby declared private and shall not be maintained by the North Carolina Department of Transportation. The maintenance of all streets and roads on this subdivision shall be the responsibility of

and it shall be the responsibility of

to bring the roads up to the standards of the North Carolina Department of Transportation Secondary Roads Council before any private streets or roads on this plat are included, at any time after the approval of this plat, into the North Carolina State Maintained Road System.

Subdivider or Agent

*Private streets are only permitted under certain circumstances; see Design Standards

CERTIFICATION OF APPROVAL OF PUBLIC WATER SUPPLY SYSTEM

I hereby certify that the water supply systems installed, or proposed for installation in _____ Subdivision, meet all public health, materials, and installation requirements of the agency responsible for supplying and maintaining the public water system.

Public Water Agency Engineer

Date

CERTIFICATION OF APPROVAL OF PUBLIC SEWAGE DISPOSAL SYSTEM

I hereby certify that the sewage disposal systems installed, or proposed for installation in _____ Subdivision, meet all public health, materials, and installation requirements for the agency responsible for treating and maintaining the sewage disposal system.

Sewage Disposal Agency Engineer

Date

CERTIFICATION OF APPROVAL BY ZONING ADMINISTRATOR

I _____, Zoning Administrator for the Town of Hildebran, do hereby certify that the property shown meets the minimum standards of the Hildebran Zoning Ordinance.

Zoning Administrator

Date

CERTIFICATE OF APROVAL FOR RECORDING

I hereby certify that the subdivision plat shown hereon has been found to comply with the Subdivision Ordinance for Hildebran, NC, and that this plat has been approved by the Town Council for recording in the office of the Register of Deeds of Burke County.

Clerk

Date

Mayor

CERTIFICATION OF APPROVAL BY REVIEW OFFICER

I, _____, Review Officer for the County of Burke, certify that the plat to which this certification is affixed meets all the statutory requirements for recording.

Review Officer

Date

2. CONTENT REQUIRED

All content required shown in the Table of Content Required (Figure 1). Plats not illustrating or containing the data shall be returned by the Review Officer to the subdivider or his authorized agent for completion and resubmission

I. IMPROVEMENTS INSTALLATION AND PERFORMANCE GUARANTEES

Upon the approval of the preliminary plat by the Planning Board, the subdivider may proceed with the preparation of the final plat and the installation or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this Ordinance.

Prior to approval of a final plat, the subdivider shall have installed improvements or guarantees in lieu of improvements, as specified in this Ordinance.

1. PERFORMANCE GUARANTEES

In lieu of prior construction of the improvements required by this Ordinance, the Town Council may, for the purpose of approving a final plat, accept a guarantee from the subdivider that such improvements will be carried out according to the Town's specifications at the subdivider's expense. For purposes of this section, all of the following apply with respect to performance guarantees (G.S. 160D-804.1):

- (1) Type. - The type of performance guarantee shall be at the election of the developer. The term "performance guarantee" means any of the following forms of guarantee:
 - a. Surety bond issued by any company authorized to do business in this State.
 - b. Letter of credit issued by any financial institution licensed to do business in this State.
 - c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.
- (1a) Duration. - The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for

the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.

- (1b) Extension. - A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the Town of Hildebran, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension under this subdivision shall only be for a duration necessary to complete the required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subdivision (3) of this subsection and shall include the total cost of all incomplete improvements.
- (2) Release. - The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the Town of Hildebran that the improvements for which the performance guarantee is being required are complete. The Town of Hildebran shall return letters of credit or escrowed funds upon completion of the required improvements to its specifications or upon acceptance of the required improvements, if the required improvements are subject to local government acceptance. When required improvements that are secured by a bond are completed to the specifications of the local government, or are accepted by the Town of Hildebran, if subject to its acceptance, upon request by the developer, the Town of Hildebran shall timely provide written acknowledgement that the required improvements have been completed.
- (3) Amount. - The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. The Town of Hildebran may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of

completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

- (3a) Timing. – The Town of Hildebran, at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded or at a time subsequent to plat recordation.
- (4) Coverage. - The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion.
- (5) Legal responsibilities. - No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:
 - a. The Town of Hildebran to whom the performance guarantee is provided.
 - b. The developer at whose request or for whose benefit the performance guarantee is given.
 - c. The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.
- (6) Multiple guarantees. - The developer shall have the option to post one type of a performance guarantee as provided for in subdivision (1) of this section, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees.
- (7) Exclusion. - Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section.

2. DEFECTS GUARANTEE

The Planning Board and Town Council shall require a letter guaranteeing utility taps, curbs, gutters, street pavement, sidewalks, drainage facilities, water and sewer lines, and other improvements against defects for one (1) year.

3. MAINTENANCE GUARANTEE

The Planning Board shall secure from all subdividers a letter which states who shall maintain any street improvements located thereon and any ditch which has been installed in connection with the installation of such improvements.

4. FINAL PLAT REVIEW CONTINGENT UPON EXECUTION OF GUARANTEES

No final plat will be accepted for review by the Planning Board or Town Council unless accompanied by written notice from the Town Planner acknowledging compliance with this Ordinance, requiring installation of all improvements or guarantees in lieu of improvements and the required maintenance letters.

J. INSTALLATION OF PERMANENT REFERENCE POINTS

Prior to the approval of the final plat, permanent reference points shall be placed in accordance with the following requirements:

1. SUBDIVISION CORNER TIE

At least one corner of the subdivision shall be designated by course and distance (tie) from a readily discernible reference marker. If a corner is within two thousand (2,000) feet of a U.S. Coast and Geodetic Station or N.C. Grid System coordinated monument, or Town of Hildebran coordinated system, then this corner shall be marked with a Monument so designated by computed X and Y coordinates which shall appear on the map with a statement identifying this Station or Monument to an accuracy of 1:10000. When such a Monument or Station is not available, the tie shall be made to some pertinent and physical object or structure that could not be destroyed.

2. MONUMENTS

Within each block of a subdivision, at least two (2) Monuments designed and designated as Control Corners shall be installed. The Surveyor shall employ additional Monuments if and when required. All Monuments shall be constructed of concrete and shall be at least four (4) inches in diameter or square and not less than three (3) feet in length. Each Monument shall have imbedded in its top or attached by a suitable means, a metal plate of noncorrosive material and marked plainly with the point, the surveyor's registration number, the month and the year it was installed, and the word "Monument" or "Control Corner." Monuments shall be set at least thirty (30) inches in the ground with at least six (6) inches exposed above the ground unless this requirement is impractical.

3. PROPERTY MARKERS

A steel or wrought iron pipe or the equivalent not less than three-fourths (3/4) inches in diameter and at least thirty (30) inches in length shall be set at all corners, except those located by Monuments. A Marker shall also be set at a point of curve, point of intersection, property corner, point of tangency and reference point unless a Monument is placed at said points. Additional markers shall be placed where necessary.

K. MAJOR SUBDIVISION FINAL PLAT APPROVAL

1. FINAL PLAT MEDIA AND COPIES

The subdivider shall submit five (5) copies of the final plat to the Subdivision

Administrator. One (1) additional copy shall be drawn in ink, linen, film or mylar suitable for reproduction.

2. FINAL PLAT SIZE AND SCALE

All plats to be presented to the register of deeds for recording must meet the requirements of G.S. 47-30 and Burke County Register of Deeds.

Where the size of land areas or suitable scale to assure legibility require, subdivisions may be placed on two (2) or more sheets with appropriate match lines.

3. FINAL PLAT PREPARATION

The final plat shall be prepared by a surveyor or professional engineer licenses and registered to practice in the State of North Carolina. The final plat shall substantially conform to the preliminary plat as it was approved. The final plat shall conform to the provisions of Section 47-30 of the General Statutes of North Carolina. The plat shall bear all the required certifications set forth in Section 7.2 H. of this Ordinance.

4. FINAL PLAT SUBMITTAL

The final plat copies and reproducible drawing as described in 7.2 K.1-3 shall be submitted not fewer than twenty (20) days prior to the Planning Board meeting. The final plat shall be submitted not more than twelve (12) months after the date on which the preliminary plat was approved; otherwise a written extension of this time limit may be granted by the Planning Board on or before the one-year anniversary of the preliminary plat approval.

5. PLANNING BOARD REVIEW

The Planning Board shall approve or disapprove the final plat within thirty (30) days of its first consideration of the final plat. During its review of the final plat, the Planning Board may appoint any engineer or surveyor to confirm the accuracy of the final plat. If substantial errors are found, it shall be the subdivider's duty to correct the plat and it shall not be approved until such errors have been corrected.

If the Planning Board disapproves the final plat, the Subdivision Administrator shall state in writing the reason for such action, specifying the provisions of this Ordinance with which the plat does not comply. One (1) copy of this statement shall be transmitted to the subdivider within fifteen (15) days of disapproval; one (1) copy shall be retained by the Planning Board as a part of its proceedings. If the final plat is disapproved, the subdivider may make such changes as will bring the plat into compliance with the provisions of this Ordinance and resubmit for reconsideration by the Planning Board.

If the Planning Board fails to approve or disapprove the final plat within fifty (50) days after the submission date, as previously defined in Section 7.2.K.4., such failure shall be deemed to be approval and shall constitute grounds for the subdivider to apply for final decision by the Town Council.

6. TOWN COUNCIL REVIEW

The Town Council shall approve or disapprove the final plat at its next regularly schedule meeting, following approval by the Planning Board.

If the Town Council approves the final plat, such approval shall be displayed on each copy of the plat by the signed "CERTIFICATE OF APROVAL FOR RECORDING" shown in Section 7.2.H.1.

If the final plat is disapproved by the Town Council, the reasons for such disapproval shall be stated in writing, specifying the provision(s) of this Ordinance with which the final plat does not comply. One (1) copy of such reasons shall be retained by the Town Council as a part of its proceedings, one (1) copy retained by the Subdivision Administrator, and one (1) copy shall be transmitted to the subdivider. If the final plat is disapproved, the subdivider may make such changes that will bring the final plat into compliance with this Ordinance and resubmit it for reconsideration by Town Council.

7. DISPOSITION OF PRINTS

If the final plat is approved by the Town Council, one (1) reproducible media and two (2) prints shall be returned to the subdivider to be filed and recorded with the Register of Deeds. One (1) print shall be retained by the Town Council and one (1) retained by the Subdivision Administrator.

8. RECORDING OF THE FINAL PLAT

The subdivider shall file the approved final plat with the Register of Deeds of Burke County for recording within sixty (60) days after the date of the Town Council approval; otherwise, such approval shall be null and void.

After recording the final plat, the subdivider must submit a copy of the Final Registered Plat to the Town within twenty (20) days. The recorded plat must be returned to Town Hall before any permits will be issued.

L. RESUBDIVISION PROCEDURES

For any replatting or resubdivision of land, the same procedures, rules and regulations for new subdivisions shall apply. Lot sizes may, however, be varied on an approved plan after recording, provided the following:

1. No lot or tract of land shall be created or sold that is smaller than the size shown on the approved plan;
2. Drainage, easements, or right-of-way shall not be changed;
3. Street alignment and block sizes shall not be changed;
4. The property line between the back of the lots shall not be changed;
5. The rear portion of lots shall not be subdivided from the front parts; and
6. The character of the area shall be maintained.

ARTICLE VIII
GENERAL REQUIREMENTS AND DESIGN STANDARDS

SECTION 8.0 PRIVATE UTILITIES.

Non-public water supply systems serving ten (15) or more connections or 25 or more people are classified as public water supplies by State law, and plans and specifications must be approved by the NCDENR Division of Water Resources Public Water Supply Section. . Plans and specifications for water supply systems serving from two (2) to nine (14) connections, inclusive, must be approved by the County Health Department. Plans for non-public and community sewer systems must be approved by the Division of Stream Sanitation and Hydrology of the North Carolina Department of Water and Air Resources. Individual water supplies should be located, constructed and operated in accordance with State Board of Health Bulletin No. 476, "Protection of Private Water Supplies" Individual sewage disposal systems must be installed and maintained in accordance with the State Board of Health "Rules and Regulations Governing the Disposal of Sewage from Any Residence, Place of Business or Place of Public Assembly in North Carolina" and the regulations of the Burke County Health Department, State Board of Health Bulletin No. 519 "Residential Sewage Disposal Plants" contains helpful information.

In major subdivisions all utilities within the subdivision must be buried.

SECTION 8.1 RESTRICTIONS ON THE SUBDIVISION FOR RESIDENTIAL PURPOSES OF LAND WITHIN FLOOD-PRONE AREAS

Lots that are subject to flooding shall not be established in subdivisions for the purpose of creating residential building sites, except as herein provided. Copies of FEMA FIRM panels can be obtained from the Town of Hildebran, the Federal Emergency Management Agency, Burke County Health Department, U.S. Army Corps of Engineers, the Soil and Water Conservation District (SWCD) or the U.S. Geological Survey. Where the developer proposes to create residential lots within a flood hazard area, an engineering report shall accompany the subdivision application describing the impacts to the Flood Hazard Area.

- A. All regulations of the Hildebran Flood Damage Prevention Ordinance must be met. Each structure must receive a Floodplain Development permit before a zoning and building permit is issued.
- B. No proposed residential building lot that is wholly within the floodway shall be approved. Lots located within the floodway shall provide a building site and access that is located outside of the floodway.

SECTION 8.2 OPEN SPACES, GREENWAYS, AND SIDEWALKS

A. OPEN SPACES

- 1. All major subdivision shall set aside at least ten percent (10%) of the total land area as designated public open space. At least fifty percent (50%) of the open space shall be accessible as playgrounds, grass fields, nature trails or other usable

recreation space. Developers are encouraged to dedicate flood hazard areas as open space.

B. GREENWAYS

1. In all major subdivisions, the dedication of land as recreational open space in the form of greenway corridors is required where the Hildebran Pedestrian Plan recommends greenways.
2. Developers must construct greenways within subdivisions according to the Hildebran Pedestrian Plan where the Plan recommends greenways. All paved greenways must be constructed to ADA standards.

C. SIDEWALKS

1. In all major subdivisions, the dedication of land in the form of sidewalk corridors is required where the Hildebran Pedestrian Plan recommends sidewalks.
2. Developers must construct sidewalks according to the Hildebran Pedestrian Plan where the Plan recommends sidewalks. All sidewalks shall be constructed to ADA standards.
3. Wheelchair ramps must be constructed according to ADA and NCDOT standards.

SECTION 8.3 PARKS, SCHOOLS, ETC

- A. The developer and Planning Board should give due consideration to the designating suitable sites for public parks, schools, and other uses. Such areas shall be indicated on the preliminary plat and final plat.
- B. Streets and walkways shall be designed to assure convenient access to parks, playgrounds, schools and other places of public assembly and use. All paved walkways shall be constructed to ADA standards.

SECTION 8.4. GENERAL REQUIREMENTS

A. CONFORMITY TO EXISTING MAPS OR PLANS

1. The location of all proposed streets shall be in conformity with official plans and maps of the Town of Hildebran

B. CONTINUATION OF EXISTING ROADS AND PROPOSED ROAD WIDENING

1. The proposed road and lot layout for major subdivisions shall be coordinated with the existing road system of the surrounding area and the adopted Greater Hickory

Long Range Transportation Plan in order to facilitate the transportation needs for existing or proposed roads.

2. The dedication of additional right-of-way along the frontage of all subdivisions is required where there is proposed road widening.

C. ACCESS TO ADJACENT PROPERTIES

1. Where property being subdivided is adjacent to a vacant property or one which would reasonably be expected to be developed or subdivided in the future, proposed roads shall be extended by dedication to the boundary of such property and a temporary turnaround shall be provided.

D. RESERVE STRIPS

1. No reserve strips shall be platted in any subdivision.

E. LARGE TRACTS AND PARCELS

1. Where land is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow for the opening of future roads and logical further subdivision.

F. LOTS

1. All lots shall front upon a public street according to Section 9.6 A. of the Hildebran Zoning Ordinance.
2. While all lots must meet Section 8.4 F 1. above, this does not exclude the use of private streets for private ingress or egress, or to serve a large development under one ownership, such as in a large industrial park or a planned unit development.

G. ALLEYS

1. Alleys may be required at the rear of all lots used for other than residential purposes if necessary to provide access for delivery vehicles. Alleys are prohibited in residential subdivisions. All dead-end alleys shall be provided with a turnaround.

H. CONTOUR MAP

1. A contour map shall be provided if requested by the Town Planner. The contour interval required will depend upon topographic and drainage characteristics and shall be specified by the Town Engineer.

I. STREET NAMES

1. In no case shall the name for proposed streets duplicate or be phonetically similar to existing street names, irrespective of the use of the suffix street, avenue, boulevard, drive, place, court, etc. However, when proposed streets are obviously in alignment with other existing and named streets, they shall bear the assigned name of the existing streets.

J. UTILITIES

1. In major subdivisions all utilities within the subdivision must be buried.
2. All lots must be serviced by public water and sewage facilities where available and connections or taps must be provided for each lot.

K. EASEMENTS

1. Utility and drainage easements of ten (10) feet in width shall be provided along rear and side lot lines. Where a subdivision is traversed by a water course, drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially with the lines of such water course, and such further width or construction, or both, as will be adequate for the purposes. Parallel streets or parkways may be required in connection therewith.

L. BUFFERS

1. Buffers shall be provided according to Article XII of the Hildebran Zoning Ordinance.

M. STORM WATER DRAINAGE

1. Developments within the WS-IV Watershed Area must meet the requirements of Article XV of the Hildebran Zoning Ordinance.
2. Developments outside of the WS-IV Watershed Area must meet the requirements of NCDENR Division of Water Quality Stormwater Permitting Unit.
3. Stormwater drainage for streets must meet the requirements of NCDOT.

SECTION 8.5 STREET DESIGN STANDARDS

- A. Streets shall be designed, approved and constructed in accordance with the North Carolina Department of Transportation (NCDOT) Standards.

- B. All driveways and roads intersecting with a NCDOT road must obtain a driveway permit from NCDOT.
- C. It is strongly advised that all private streets, as permitted in Section 8.4 F. 2., be designed and constructed in accordance with NCDOT Standards. However, if they are not designed and constructed to NCDOT standards it will be responsibility of the owner(s) to bring the road up to NCDOT standards before it will be accepted by NCDOT or the Town.
- D. The dedication of half streets at the perimeter of a new subdivision is prohibited.
- E. All alleys, when required, shall be constructed in accordance with the following requirements:
 - 1. Right-of-way width 20 feet
 - 2. Minimum centerline radius when a deflection angle of more than ten (10) degrees occurs 35 feet
 - 3. Property line radius at alley intersections 15 feet
- F. CUL-DE-SACS
 - 1. Cul-de-sacs shall be no more than sixteen hundred (1600) feet in length and no fewer than four hundred (400) feet in length.

SECTION 8.4 LOT DESIGN STANDARDS

- A. LOT LAYOUT Lots shall be laid out in the following manner:
 - 1. Length - Block lengths shall not exceed sixteen hundred (1600) feet nor be fewer than four hundred (400) feet.
 - 2. Widths - Blocks shall be wide enough to allow two tiers of lots of minimum depth, except where fronting on major streets or prevented by topographic conditions, in which case a single tier of lots may be approved.
 - 3. Access – Subdivisions of more than 100 lots shall provide a second access road into the subdivision.
- B. LOT SHAPE AND ORIENTATION OF LOT LINES
 - 1. The size, shape and orientation of lots shall reflect due consideration for topography and drainage.

2. Side lot lines shall be substantially at right angles or radial to street lines.

C. LOT AREA

1. All lots shall conform to the minimum lot size requirements for the zoning district in which the lot is located, except in the following circumstances:
 - a. Where the NC Watershed Act deems additional requirements be met on lots served by a septic tank system.

D. CONFORMANCE WITH ZONING ORDINANCE

1. All lots shall conform to the minimum lot size and maximum lot coverage requirements for the zoning district in which the lot is located. These requirements can be found in Article VIII of the Hildebran Zoning Ordinance.
2. All lots shall conform to the dimensional requirements for the zoning district in which the lot is located. These requirements can be found in Article VIII of the Hildebran Zoning Ordinance.
3. The minimum setback lines for buildings shall conform to the requirements of the zoning district in which the lot is located.

E. CLUSTER DEVELOPMENT

1. Lot layout and design may be varied with approval from the Planning Board and Town Council to order to allow for the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project.
2. In no case shall the lot size, frontage, coverage and setbacks requirements be made less than required by the Hildebran Zoning Ordinance.
3. The term cluster development includes non-residential development, as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

ARTICLE IX
NO SERVICE OR PERMITS UNTIL
FINAL PLAT APPROVED

No street shall be accepted and maintained by the Town nor shall any street lighting, water, or sewer be extended to or connected with any subdivision of land nor shall any permit be issued by an administrative agent or department of the Town for the construction of any building or other improvement requiring a permit, upon any land on which a plat is required to be approved, until all the requirements of this Ordinance have been completed and a Final Plat is approved and recorded.

ARTICLE X
LEGAL PROVISIONS

SECTION 10.0 PENALTIES FOR VIOLATION

- A. After the effective date of this Ordinance, any person who subdivides land in violation of the ordinance, transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the final plat has been properly approved and recorded, shall be fined not exceeding fifty dollars (\$50.00). Each day that a violation of this Ordinance is not corrected within thirty (30) days after the notice of said violation has been given shall constitute a separate and distinct violation.

- B. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from the penalty in Section 10.0 A.

- C. The Town, through its attorney or other official designated by the Council, may enjoin illegal subdivision, transfer, or sale of land by action or injunction. Further, violators of this Ordinance shall be subject, upon conviction, to fine and/or imprisonment as provided by G.S. 14-4.

- D. The provisions of this section do not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision regulation or recorded with the register of deeds, provided the contract does all of the following:
 - (1) Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

 - (2) Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if

the final recorded plat differs in any material respect from the preliminary plat.

- (3) Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.
- (4) Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

- E. The provisions of this section do not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision regulation or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision regulation and recorded with the register of deeds.

SECTION 10.1 SEPARABILITY

Should any section or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

SECTION 10.2 VARIANCES

A. VARYING MINIMUM STANDARDS

These regulations adopted in this Ordinance are only minimum requirements. Developers are encouraged to go beyond the standards of these regulations. The Planning Board and the Town Council may require standards above the minimum contained herein whenever the public health, safety, and welfare justify such increase. Furthermore, either Board may reduce or otherwise vary the requirements of these regulations only when it encounters the situation described below. In granting such variances, the Planning Board and Town Council may attach and require whatever

conditions each deems necessary to secure the basic objectives of this Ordinance. Any variance granted shall be noted in the official minutes of both the Planning Board and Town Council, along with the reasons which justified granting the variance.

B. HARDSHIP REQUIRED

The Planning Board and Town Council may reduce or otherwise vary the requirements of these regulations, only when a definite hardship is created by strict enforcement of the standards herein. Each of the following conditions must be met before any variance can be granted by either the Board of Adjustment (G.S. 160D-705).

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

SECTION 10.3 REGISTRATION OF ORDINANCE AND PLATS

A. NORTH CAROLINA GENERAL STATUTES

In accordance with Article 160D-803 of the General Statutes of North Carolina, the Town shall file a copy of this Ordinance with the Register of Deeds of Burke County upon adoption.

B. REGISTER OF DEEDS

The Register of Deeds shall not, after the effective date of this Ordinance, record a plat of a subdivision of land lying within the jurisdiction of this Ordinance that has not been approved in accordance with the provisions contained herein; nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with the provisions or intent of this Ordinance.

SECTION 10.4 AMENDMENTS

The Town Council may from time to time amend the terms of this Ordinance, but no amendment shall become effective until the Planning Board reviews the amendment and makes a

recommendation to Town Council and the Town Council holds a public hearing and approves the amendment.

SECTION 10.5 ABROGATION

- A. It is not intended that this Ordinance repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law.

- B. Where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

Adopted this _____ day of _____, 2012

Mayor

Town Clerk