

**CITY OF HAMPTON
STATE OF GEORGIA**

RESOLUTION NO. 2021-11

RIGHT-OF-WAY IMPROVEMENTS DEVELOPMENT AGREEMENT

WHEREAS, the Mayor and Council are the governing body of the City of Hampton, Georgia (“City”); and

WHEREAS, the Mayor and Council is tasked with protecting and promoting the health, safety, morals, and welfare of the citizens of the City of Hampton; and

WHEREAS, a public hearing on the application was conducted by the Mayor and Council on February 11, 2020, pursuant to O.C.G.A. § 33-66-1, et seq. and local ordinances at the Hampton City Hall; and

WHEREAS, on March 11, 2020 the Mayor and Council approved Ordinances No. 508A, 508B, and 510 (collectively, the “Approved Rezoning Ordinance) to allow for the development of a residential subdivision on +/- 248.74 acres of land located in the City of Hampton and being Tax Parcel No. 023-01082000, 041-01023000 and 041-01023001 (the “Subdivision Property”); and

WHEREAS, the City determined pursuant to the Approved Rezoning Ordinances, that the owner/developer shall enter into a Roadway System Improvements Development Agreement with the City of Hampton, as described in “Attachment B” prior to the issuance of any land disturbance permits for the subdivision; and

WHEREAS, in order to provide orderly development of the roadway system improvements, the City has negotiated the “Right-of-Way Improvements Development Agreement” (the “Development Agreement”) with Hampton Floyd, LLC (the “Developer”); and

WHEREAS, the City Council authorizes the Mayor to execute said Development Agreement on behalf of the City of Hampton, and accept the Developer’s Roundabout Cost towards the East King Floyd Road Roundabout hard construction costs of Two-Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) provided for in said contract.

NOW, THEREFORE BE IT RESOLVED, by a majority vote of the Mayor and Council of the City of Hampton that the terms and conditions of the Right-of-Way Improvements

Development Agreement between the City and Developer are hereby agreed to, and that the Mayor is authorized and empowered to execute said Development Agreement and any subsequent amendments thereto on behalf of the City of Hampton, and the Development Agreement provided for in said agreement.

Read and adopted in the Regular meeting of the City of Hampton held on May 11, 2021.

ATTEST:

Melissa Brooks

City Clerk

(Seal)

City of Hampton
Henry County, Georgia

BY: John E. Holt
Mayor

Certification

I do hereby certify that the above is a true and correct copy of the Resolution duly adopted by the Council on the date so stated in the Resolution.

I further certify that I am the Clerk of the Council and that said resolution has been entered in the official records of said Council and remains in full force and effect the 11 day of May 2021.

Melissa Brooks
Clerk Signature

Federal Employers Identification #225335

RIGHT OF WAY IMPROVEMENTS DEVELOPMENT AGREEMENT

THIS RIGHT OF WAY IMPROVEMENTS DEVELOPMENT AGREEMENT (this "Agreement") dated May 11, 2021 is by and between THE CITY OF HAMPTON, GEORGIA, a municipal corporation of the State of Georgia (the "City") and HAMPTON FLOYD, LLC, a Georgia limited liability company (the "Developer").

RECITALS

WHEREAS, on March 11, 2020 the City approved Ordinances No. 20-508-A & B and No. 20-510 (collectively, the "Approved Rezoning Ordinance") to allow for the development of a residential subdivision on +/-248.74 acres of land located in the City and being Tax Parcel No. 023-01082000, 041-01023000 and 041-01023001 (the "Subdivision Property");

WHEREAS, pursuant to the Approved Rezoning Ordinance, Developer is required to enter into a development agreement with the City, in form, scope and substance mutually acceptable to the parties, which provides for Developer making certain system improvements to Floyd Road, East King Road, South Hampton Road, and SR 20 as more particularly depicted on Exhibit "A" attached hereto and by this reference incorporated herein (the "Roadway System Improvements"), or pay the at cost fees for the City to make the Roadway System Improvements, based upon a detailed design, survey, and estimated construction costs, including the costs of any additional right of way acquisition needed to completed the Roadway System Improvements;

WHEREAS, in satisfaction of the above-referenced zoning conditions pursuant to Attachment B and Exhibit A of the approved zoning ordinances 508A & B, and 510, attached hereto as Exhibit "B" and by this reference incorporated herein (the "Approved Zoning Conditions"), Developer and the City desire to enter into this Agreement regarding the design and construction of the Roadway System Improvements;

NOW THEREFORE, in consideration of the Approved Rezoning Ordinances, and mutual benefits to the parties hereto, the parties hereby agree as follows:

1. **Preliminary Plan Approval:** On or prior to the date of this Agreement, Developer shall submit to the City and to Henry County Department of Transportation ("HCDOT") a preliminary drawing (the "Preliminary ROW Plan") of the required Roadway System Improvements, which plan shall include the following information:

- a. a drawing of the proposed right of way improvements;
- b. the width of the existing right of way;
- c. the owners of the parcels adjacent to the right of way;
- d. the estimated amount of right-of-way, if any, that will need to be acquired to complete the proposed improvements, including any construction easement;

- e. demarcation of the boundaries between the portion of the right of way owned by the City and by Henry County, Georgia ("Henry County"); and
- f. proposed striping of right of way, including deceleration and left turn lanes.

The City and Developer, , shall work promptly and in good faith to reach mutual agreement on the scope and content of the Preliminary ROW Plan. Upon the approval of the Preliminary ROW Plan by the City's City Manager, the City Manager shall present the Preliminary ROW Plan to the City of Hampton Mayor and Council for review and approval to move forward with right of way acquisition and preparation of construction plans in accordance with the Preliminary ROW Plan. The Developer shall be responsible for obtaining any required approvals for the portion of the Preliminary ROW Plan that is located within unincorporated Henry County, Georgia. Developer shall work cooperatively with the City Manager to provide all information and documentation requested by the City in connection with their consideration of the matter.

2. Land Development Permit Applications.

a. After the approval of the Preliminary ROW Plan by the Mayor and Council, Developer shall submit to the City land development permit applications (the "LDP Application") for the Roadway System Improvements, which permit applications shall contain construction plans and specifications (the "Construction Plans") prepared by an approved professional engineer, registered in the State of Georgia and proficient in civil engineering that are consistent with the approved Preliminary ROW Plan.

b. The approval of the LDP Application by the City shall not be deemed to be an assumption of responsibility or liability by the City of any negligent act, or omission in the performance of Developer's engineer or in their preparation of the Construction Plans.

c. Notwithstanding the foregoing, if the Henry County Department of Transportation does not approve the Preliminary ROW Plan for the portion of Floyd Road owned by Henry County, the City and Developer shall proceed with the construction plans for the Roadway System Improvements on the portion of Floyd Road owned by the City, and such will be deemed to satisfy the Approved Zoning Conditions pertaining to the Roadway System Improvements.

3. Acquisition and Dedication of Easements or Rights-of-Way. Subject to the following terms and conditions, if any of the Roadway System Improvements are to be constructed or installed on land not owned by the City or Henry County, Developer hereby agrees to provide to the City and/or Henry County, at Developer sole cost and expense, all necessary rights-of-way and/or easements required to construct and install the Roadway System Improvements described in this Agreement and shown in the Construction Plans prior to the commencement of the construction or installation of the Roadway System Improvements:

a. Developer shall make the initial offer to acquire the needed right of way and/or easements to the existing property owner(s); and

b. If the existing property owner(s) is unwilling to sell the portion of the property needed, or grant the needed easements, at fair market value, the City shall acquire the property or easements needed through the eminent domain process, at Developers sole cost and expense.

4. Construction.

a. Subject to the terms and conditions set forth in Paragraph 5 of this Agreement, upon the approval of the submitted LDP Application(s), and issuance of the Land Development Permit(s) by the City (the “LDPs”), Developer shall promptly commence with the construction of the Roadway System Improvements in accordance with the following:

- i. Prior to issuance of LDP, Developer will provide the City a list of all utilities impacted and that require relocation, along with assurance that any required utility relocation and subsequent installation can be completed within an agreed upon schedule between any conflicting utility parties. The Henry County Water Authority infrastructure is not considered a utility and should any coordination, relocation, and subsequent installation of waterlines, fire hydrants, water meters, water vaults, etc. be in conflict with proposed Roadway System Improvements, shall be the responsibility of the Developer to remedy. Priority of work shall be contingent upon receipt, approval, and issuance of LDPs for construction plans of the Developer.
- ii. Developer agrees that all coordination required with public and/or private utility agencies to eliminate conflicts with proposed street grades or underground improvements shall be the responsibility of the Developer and/or his engineer.
- iii. Prior to the commence of construction, Developer agrees to furnish to the City performance and payment bonds or other security deposit as required by the City, in accordance with its standard policies. These bonds or deposits will be conditioned upon the satisfactory compliance by Developer with all requirements concerning the Roadway System Improvements, including, but not limited to, making payments to any persons, firm, corporation or other entity with whom Developer has a direct contractual relationship for the performance of work hereunder.
- iv. Developer agrees to provide at cost all required surveying services necessary to complete the design and construction of Roadway System Improvements including preparation and recording of right-of-way dedication plats, preparation and recording of easements, title surveys, legal descriptions, construction staking, as-built surveys, etc. to the project’s completion and acceptance by the City of Hampton. Notwithstanding anything herein to the contrary, Developer shall not be required to contribute more than Twenty-Five Thousand and No/100 Dollars (\$25,000.00) towards the surveying services referenced above for the East King Floyd Road Roundabout, which the City hereby acknowledges has already been paid.
- v. All construction work shall be completed free and clear of all liens and encumbrances.
- vi. Prior to the recording of the final plat for all or any portion of the Subdivision Property, one of the following shall have occurred: (a) the construction and

installation of the Roadway System Improvements shall be completed, (b) the performance and payment bonds or other security deposit as required by the City, in accordance with its standard policies shall have been issued, and remain in full force and effect, and the Developer Roundabout Costs (as hereinafter defined) shall have been paid, or (c) the Approved Lump Sum Payment and the Developer Roundabout Costs (as hereinafter defined) shall have been received by the City.

b. Notwithstanding anything herein to the contrary, and subject to the terms and conditions set forth in Paragraph 5 of this Agreement, Developer shall only be obligated to pay those costs applicable to the Roadway System Improvements for which Developer is responsible as specifically set forth on Exhibit "A" attached hereto.

c. Developer shall be responsible for contributing Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) (the "Developer Roundabout Costs") towards the East King Floyd Road Roundabout hard construction costs. Contribution to be received by the City prior to the issuance of LDP for the roundabout project. Upon payment of the Development Roundabout Costs, Developer shall be deemed to have satisfied that portion of the Roadway System Improvements.

5. **Payment in Lieu of Construction.** Notwithstanding the obligations of Developer set forth in Paragraphs 3 and 4 of this Agreement, Developer shall have the right to notify the City in writing (the "Lump Sum Payment Notice") that in lieu of constructing the Roadway System Improvements, Developer has elected to pay to the City the estimated costs and expenses to be incurred for the design, construction and installation of the Roadway System Improvements including the Developer Roundabout Costs, in accordance with the Construction Plans for Floyd Road, including the estimated amount of all right of way and easements to be acquired from all the adjacent property owners (the "Lump Sum Amount") and surveying services set forth in Paragraph 3 of this Agreement. Roadway System Improvements are exclusive of Developer's responsibility for any and all improvements required and noted as ORD. 508A & B and ORD 510. Condition 1. Attachment B. Item B. Roadway *Project* Improvements i. thru vi... The City hereby agrees and acknowledges that Developer shall not be responsible for the installation of the R-Cut at SR 20 at East King as referenced in Figure 3 of the Traffic Impact Study. The payment of such Lump Sum Amount for Roadway System Improvements shall be subject to the following terms and conditions:

- a. The Lump Sum Payment Notice shall be delivered to the City prior to the commencement of the installation and construction of the Roadway System Improvements, and the Lump Sum Payment Notice shall contain the following information:
 - i. Copy of the approved Construction Plans;
 - ii. A Detailed Cost Estimate, with supporting documentation;
 - iii. Right of Way/Acquisition Summary with detailed information concerning the right of way and easement to be acquired, the appraised value of the property to be acquired, and amount to be offered; and
 - iv. An itemized Construction Budget, showing all soft costs and hard costs needed to complete the construction of the Roadway System Improvements.

- b. Upon receipt of the Lump Sum Payment Notice, the City shall have thirty (30) days to review the submitted documentation and submit written questions and comments to Developer (the “**City Lump Sum Payment Response**”). Thereafter, the City and Developer shall work cooperatively and in good faith to reach a mutual agreement regarding the final amount of the lump sum payment to be paid (the “**Approved Lump Sum Payment**”), and the method by which it shall be paid. If the parties cannot reach an agreement within sixty (60) days after Developer’s receipt of the City Lump Sum Payment Response, Developer shall have the right to withdraw the Lump Sum Payment Notice and commence with the installation and construction of the Roadway System Improvements.
- c. Upon the City’s receipt of the Approved Lump Sum Payment, Developer’s obligations under this Agreement shall be deemed satisfied. Furthermore, Developer shall be deemed to have satisfied the conditions set forth in the Approved Zoning Conditions pertaining to the construction and installation of the Roadway System Improvements and the City shall be solely responsible for the installation and construction of the Roadway System Improvements.

6. Default by Developer. Developer shall be deemed to be in default of this Agreement after the expiration of any applicable cure period (an “Event of Default”), upon the following:

- a. Developer’s failure to comply with the terms and conditions set forth herein for a period of thirty (30) days after the City gives written notice specifying the failure, provided however, no notice or cure period will be given for covenants which are not subject to cure. In the event Developer commences the cure of a violation under this Subsection within such thirty (30) day period, and such violation is not reasonably capable of being cured within such thirty (30) day period, then no Event of Default shall be deemed to have occurred if Developer is diligently pursuing such cure and completes the cure within sixty (60) days after such notice.
- b.
- c. Developer’s failure to comply with the timely completion of the construction of the Roadway System Improvements, or payment of the Lump Sum Amount, as set forth herein;
- d. Developer’s failure to timely cure any defect in any Roadway System Improvements constructed by Developer during the term of any maintenance bond, not to exceed twelve (12) months;
- e. Developer’s failure to perform substantial construction work for a period of twenty (20) calendar days after Developer’s commencement of the Roadway System Improvements, subject to a Force Majeure (as herein after defined); and
- f. After the commencement of construction of the Roadway System Improvements by Developer, Developer’s insolvency, appointment of a receiver, or the filing of

any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within thirty (30) days.

The City reserves to itself all remedies available to it at law or in equity for breach of Developer's obligations under this Agreement. The City shall have the right, subject to this Paragraph, to draw upon or utilize the appropriate security to mitigate the City's damages upon the occurrence of an Event of Default by Developer. The right of the City to draw upon or utilize the security is additional to and not in lieu of any other remedy available to the City. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the improvements and, therefore, the City's damages for Developer's default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by the City for the completion of the public improvements in accordance with the improvement plans and specifications contained herein.

In the event that Developer fails to perform any obligation hereunder, Developer agrees to pay all costs and expenses incurred by the City in securing performance of such obligations, including but not limited to fees and charges of engineers, attorneys, other professionals, and court costs actually incurred.

The failure of the City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Developer.

As used herein the term "Force Majeure" shall mean the discontinuance of work resulting from strikes, act of God, adverse weather conditions or other occurrences beyond the reasonable control of Developer. Notwithstanding the foregoing provisions, the City agrees and acknowledges that any delay in performance of Developer's obligations hereunder caused in whole or in material part by governmental decree, lockdown, material or labor shortage, illness to key personnel of Developer, or any other circumstance related to the COVID-19 pandemic (collectively "COVID_19 Circumstances") shall be excused on a day-to-day basis for each day of delay attributable to such COVID-19 Circumstances.

7. **Notice.** Any notices or communications required or permitted to be given by this Agreement must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or nationally recognized overnight courier, or transmitted by electronic mail transmission to the party to whom such notice or communication is directed, to the mailing address or regularly monitored electronic mail address of such party, as follows:

Developer: HAMPTON FLOYD LLC
Attn: Doug Adams
235 Corporate Center Drive, Suite 100,
Stockbridge, GA 30281
Phone No.: (404) 557-4892
Email: doug@havenwoodholdings.com

HAMPTON FLOYD LLC
Attn: Michael Kilgallon
5755 Dupree Drive, Suite 130
Atlanta GA 30327
Phone No.: (404) 409-3071
Email: mike@pacificgroupinc.com

HAMPTON FLOYD LLC
Attn: Raymond Cunliffe
5755 Dupree Drive, Suite 130
Atlanta GA 30327
Phone No.: (404) 384-7374
Email: raycunliffe@pacificgroupinc.com

City: City of Hampton
Attn: City Manager
17 E Main Street South
Hampton, GA 30228
Phone: (770) 946-4306
Email: _____

With a
Copy to: L F Barnes Law, LLC
L'Erin Barnes Wiggins, Esq.
P.O. Box 250464
Atlanta, Georgia 30325
Phone: (404) 680-6498
Email: lerin@lfbarneslaw.com

Notices sent by hand or overnight courier service or mailed by certified or registered mail, shall be deemed to have been given when received. All notices sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement). If such email or other electronic communication is not sent during the normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business day for the recipient.

8. Developer's Obligations. All of Developer's obligations under this Agreement are and shall remain the obligations of Developer notwithstanding a transfer of all or any part of the property within the Subdivision Property subject to this Agreement, and Developer shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the Subdivision Property or to any other third party without the express written consent of the City.

9. **Compliance With Laws.** Developer, its agents, employees, contractors and subcontractors shall comply with all federal, state and local laws in the performance of the improvements and land development work required by this Agreement.

10. **Severability.** The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

11. **Captions.** The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.

12. **Litigation or Arbitration.** In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees actually incurred in accordance with the laws of the State of Georgia.

13. **Incorporation of Recitals.** The recitals to this Agreement are hereby incorporated into in the terms of this Agreement.

14. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties.

15. **Interpretation.** This Agreement shall be interpreted in accordance with the laws of the State of Georgia.

16. **Time of the Essence.** Time is of the essence in the performance of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been executed by the undersigned as of the date first written above.

CITY:

CITY OF HAMPTON, GA

By: 
Printed Name: Steve Hutchison
Title: Mayor

Attest: 
Printed Name: Melissa Brooks
Title: City Clerk

DEVELOPER:

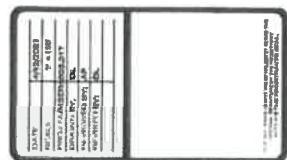
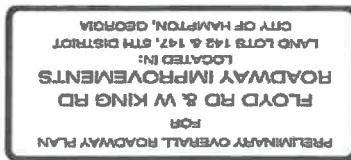
HAMPTON FLOYD, LLC, a Georgia limited liability company

By: PACIFIC LAND, LLC, as its
Managing Member

By: 
Printed Name: Michael Killian
Title: Manager

EXHIBIT "A"
Roadway System Improvements

[SEE ATTACHED]



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A graphic scale bar with markings at 0, 2, 4, 6, 8, and 10. The text 'GRAPHIC SCALE' is written vertically to the left of the scale, and '(IN FEET)' is written vertically to the right of the scale.

Map showing the locations of the 9/11 hijacked flights in the New York City area. The flights are represented by dashed lines connecting the departure and arrival points. The hijacked flights are:

- AMERICAN 11 (Flight 11) from Boston to Los Angeles
- UNITED 175 (Flight 175) from Boston to San Francisco
- AMERICAN 77 (Flight 77) from Dulles to Los Angeles
- UNITED 93 (Flight 93) from Newark to San Francisco

The map also shows the locations of the World Trade Center (WTC), the Twin Towers, and the site of the third hijacked flight, which impacted the Pentagon. The Hudson River and the New Jersey shoreline are also visible.

25-90202

LEGEND OF CONSTRUCTION COST RESPONSIBILITY:

CHARMMAN DEVELOPER, HAMPTON 63 LLC

**SHARED CITY OF HAMPTON /
CHAPMAN & HP HENRY LLC**

STATE OF SOUTH HAMPTON, UP HENRY HIC

Winston Rd.
Weston-super-Mare, Somerset, BS22 8JL
Telephone: 0954 742222

S. HAMPTON RD. & S.R. 20 PLAN
PROPOSED RCUT INTERSECTION

OVERALL FLOYD RD. E. & W. KING RD. PLAN • OPTION #1 ROUNDABOUT

EXHIBIT "B"

Approved Zoning Conditions

[SEE ATTACHED]

ATTACHMENT "B"

PROPOSED TRAFFIC IMPROVEMENTS ZONING CONDITION GATES OF SOUTH HAMPTON

In order to address the substandard condition of Floyd Road which will be impacted by the proposed project, the owner/developer shall make the following improvements to Floyd Road, East King, South Hampton Road and SR 20, which are based upon the Traffic Impact Study prepared by Wilburn Engineering dated February 24, 2020 (the "Traffic Impact Study"), as well as comments received from the Henry County Department of Transportation (HCDOT):

A. Prior to the issuance of any land development permits for the subdivision, the owner/development shall enter into a Development Agreement with the City of Hampton, in form, scope and substance mutually acceptable to the parties, which shall provide for the owner/developer making the following system improvements to Floyd Road, East King, South Hampton Road, and SR 20 (collectively, the "Roadway System Improvements"), or paying at cost fee based on a detailed design, survey, and construction cost estimate for the Roadway System Improvements, including the cost of any additional right of way that needs to be acquired by the City of Hampton or HCDOT, to provide for the City and/or HCDOT to make the Roadway System Improvements, as shown on Exhibit "A" attached hereto and made a part hereof:

- i. Widen the paved driving surface to twenty-four (24) feet, and resurface and install curb and gutter, on approximately 3,050 lineal feet of existing roadway on Floyd Road and East King Road, provided that owner/developer shall not be required to make improvements to those sections of Floyd Road and East King Road which are to be similarly improved by other developers building in the area which have direct access to Floyd Road and/or East King Road; and
- ii. Subject to the approval of the Georgia Department of Transportation, install intersection improvements to East King Road and South Hampton Road, as recommended in the Traffic Impact Study and/or requested by the City of Hampton and is mutually acceptable to the owner/developer.

B. Owner/Developer shall be responsible for the following roadway project improvements (the "Roadway Project Improvements"):

- i. Construct 200-foot full width storage right turn lane on the northbound approach to the subdivision from Floyd Road;
- ii. Construct 250-foot full width storage left turn lane on the southbound approach to the subdivision from Floyd Road;
- iii. Construct 100-foot full width storage left turn lane on the westbound approach from the subdivision onto Floyd Road;
- iv. Construct 250-foot full width storage right turn lane on the southbound approach to the subdivision from South Hampton Road;
- v. Construct 310-foot full width storage left turn lane on the northbound approach to the subdivision from South Hampton Road; and
- vi. Construct 100-foot full width storage right turn lane on the eastbound approach from the subdivision to South Hampton Road.

LAND LOT 142 & 147, 6TH LAND DISTRICT
CITY OF HAMPTON & EAST KING
ROAD IMPROVEMENTS
SOUTH HAMPTON & EAST KING
PORT

OVERALL AERIAL DESIGN

81
LOCATION
MAP
REBONING
MAP
REBONING

MAP
REBONING
MAP
REBONING

GRAPHIC SCALE
1 INCH = 200 FT
1 Photo 200 ft

1.0

