

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

July 8, 2007

Honorable Larry E. Clark  
Watkins, Ludlam, Winter and Stennis, P.A.  
Post Office Box 427  
Jackson, MS 39205

Re: Interlocal Agreement between the City of Holly Springs, Mississippi and Marshall County, Mississippi relating to the financing of infrastructure and payment of bonds pursuant to the Tax Increment Financing Act, Section 21-45-1 et seq. (Holly Springs Commons Project)

OFFICIAL OPINION

Dear Mr. Clark:

Attorney General Jim Hood received the above named Interlocal Agreement and assigned it to me for review and approval in accordance with Section 17-13-1 et seq. of the Mississippi Code of 1972. Following our review, we find that the Interlocal Agreement satisfies the requirements of Section 17-13-1 et seq. of the Mississippi Code of 1972 and is hereby approved.

Please note the filing requirements set forth in Section 17-13-11 of the Mississippi Code of 1972.

If you have any questions, please feel free to contact us.

Very truly yours,

Chuck Rubisoff  
Special Assistant Attorney General

## INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement (the "Agreement") is made and entered into by and between the City of Holly Springs, Mississippi, a municipal corporation organized and existing under the laws of the State of Mississippi (the "City"), and Marshall County, Mississippi, a political subdivision of the State of Mississippi (the "County"), pursuant to the Mississippi Interlocal Cooperation Act of 1974, codified at Section 17-13-1, et seq., Mississippi Code of 1972, as amended (the "Interlocal Act"), on the date set forth hereinafter.

### RECITALS:

**WHEREAS**, the City and County agree, find and determine as follows:

1. In addition to any words and terms elsewhere defined herein, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:

"Ad Valorem TIF Revenues" shall mean, with respect to the City and the County, the additional ad valorem tax revenue received by each, respectively, resulting from ad valorem taxes on the Captured Assessed Value of real property, including personal property located thereon, within the boundaries of the TIF District.

"Bond Payments" shall mean payments of principal of, premium, if any, and interest on the Bonds, and Paying Agent charges pertaining to the Bonds and such charges, deposits or payments for Debt Service Reserve Fund, bond insurance and any other payments as are provided for in the bond resolution(s) regarding the payment of and security for the Bonds, and specifically including any prepayments of principal on the Bonds.

"Bonds" shall mean the tax increment financing bonds of the City in the maximum principal amount of \$5,830,000, which may be issued in one or more series in one or more years, and with respect to one or more Developers, to finance the Costs of the Project Infrastructure and costs pertaining to any bonds issued to refund the Bonds.

"Captured Assessed Value" shall mean, with respect to real property within the TIF District, including personal property located thereon, the amount by which the "current assessed value" of such property exceeds the "original assessed value" as such terms are defined in Section 21-45-21, Mississippi Code of 1972.

"Chancery Clerk" shall mean the Chancery Clerk of the County.

"Clerk" shall mean the City Clerk of the City.

"Commons Project" shall mean the Holly Springs Commons Project, as described in the TIF Plan.

"Costs of the Project Infrastructure" shall mean any or all of the costs of acquisition and construction of the Project Infrastructure, together with related engineering fees, attorney's fees, TIF Plan preparation fees, capitalized interest and other related soft costs.

"Developer" shall mean Kenlan Development – HS, LLC, Holly Springs, Mississippi, Swords/Farrell, LLC, Holly Springs, Mississippi (or Frank Swords individually), Holly Springs, Mississippi, or any other developer subsequently entering into a Development and Reimbursement Agreement with the City with regard to any such Developer, any entity related thereto, and any successor or assigns thereof.

"Development and Reimbursement Agreement" shall mean, individually and collectively, any Development and Reimbursement Agreement by and between the City and a Developer.

"Final Bond Payment Date" shall mean the date on which all of the Bond Payments have been made, whether before, on or after the last scheduled Principal Payment Date. For this purpose, all Bond Payments shall not be deemed to have been made if the County has any unpaid deficiency in paying its portion of the Bond Payments pursuant to Section 11 hereunder.

"Payment Date" shall mean any date on which interest or principal and interest on the Bonds is scheduled to be made.

"Principal Payment Date" shall mean with respect to any of the Bonds, any Payment Date on which principal is scheduled to be paid (including for this purpose any advancement of maturity pursuant to a mandatory sinking fund payment).

"Project" shall mean that portion of the Commons Project in the TIF District being developed by a particular Developer within the area described or illustrated in **Attachment A** hereto.

"Project Infrastructure" shall mean infrastructure improvements supporting the Project and the Commons Project which may include, but not necessarily be limited to, installation of utilities such as water, sanitary sewer and natural gas lines; relocation of utilities; installation and relocation of electrical services; installation of storm drainage; constructions of roadways with curb and gutter, sidewalks; installation of traffic signalization and signage; grading; landscaping of rights-of-way; purchase of rights-of-way pursuant to plans presented to and approved by the City.

"Sales Tax TIF Revenues" shall mean the increase in the amount of the municipal sales tax diversion received by the City from sales taxes collected within the boundaries of the TIF District, calculated in the manner set forth in Section 21-45-21, Mississippi Code of 1972.

"Tax Increment Financing District" or "TIF District" shall mean the property area included in the Tax Increment Financing Plan.

"Tax Increment Financing Plan" or "TIF Plan" shall mean the Tax Increment Financing Plan, Holly Springs Commons Project, City of Holly Springs, Mississippi, April 2006.

"Tax Increment Financing Redevelopment Plan" or "Redevelopment Plan" shall mean the Tax Increment Financing Redevelopment Plan, City of Holly Springs, Mississippi, as amended from time to time.

"TIF Act" shall mean the Tax Increment Financing Act codified at Sections 21-45-1 through 21-45-21, Mississippi Code of 1972, as amended.

"TIF Fund" shall mean the Holly Springs Commons TIF Fund created pursuant to Section 11 hereof.

"TIF Revenues" shall mean the Ad Valorem TIF Revenues of the City and the County and the Sales Tax TIF Revenues.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words and terms herein defined shall be equally applicable to the plural as well as the singular form of any of such words and terms.

2. The Developer proposes to construct the Project and the Project Infrastructure. The City desires to issue the Bonds to assist in the financing of the acquisition and construction of the Project Infrastructure in order to promote economic development and assist in the creation of jobs and to promote the economic, social and general welfare of both the City and the County.

3. The governing authorities of the City and the County desire to enter into a joint effort to make the most efficient use of their powers and enable them to promote economic development and to assist in the creation of jobs and to promote the general welfare of the City and County and the citizens of each.

4. In order that the Bonds may be issued and sold and the payment of the Bonds properly provided for, it is necessary that the term of this Agreement shall extend through the Final Bond Payment Date of the Bonds, none of which shall have a scheduled maturity later than fifteen (15) years from the dated date thereof.

5. In order to provide for the Project Infrastructure and to enable the acquisition and construction by the Developer of the Project, it is necessary and in the public interest for the City to cooperate with the County by entering into this Agreement pursuant to the TIF Act.

6. It is agreed and understood that the City has developed the Tax Increment Financing Plan and established the Tax Increment Financing District in order to provide for the issuance and sale of the Bonds to finance the Project Infrastructure, and it is agreed and understood that the City may, in its discretion, include as sources of payment for the Bonds and pledge to the extent deemed necessary and appropriate all or any portion of the Revenues.

7. The City and the County desire to enter into this Agreement for the purposes of (i) assisting in the financing of the Costs of the Project Infrastructure and (ii) satisfying the requirements of the TIF Act.

8. It is necessary for the City and the County to enter into this Agreement pursuant to the TIF Act and the Interlocal Act in order to enable the City to issue and sell the Bonds, and to provide for the securing of the Bonds and the payment of the Bond Payments.

9. The Act authorizes the City to issue the Bonds for the financing of part of the Costs of the Project Infrastructure.

10. The City hereby agrees that it will issue the Bonds for the purpose of assisting the financing of the Project Infrastructure. The Bond Payments shall be the responsibility of the City and shall be payable from the TIF Revenues.

11. The City and the County have agreed to divert a portion of their respective Ad Valorem TIF Revenues from the TIF District to be used for the Bond Payments as hereinafter set forth.

12. In order to ensure that sufficient moneys are available for the Bond Payments and to enhance the marketability of the Bonds, the City has agreed that it will also, to the extent that Ad Valorem TIF Revenues are not sufficient for the Bond Payments, divert a sufficient portion of the Sales Tax TIF Revenues for the Bond Payments.

13. It is in the best interests of the citizens of the City that the City enter into and execute the Agreement.

14. It is in the best interests of the citizens of the County that the County enter into and execute the Agreement.

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE ABOVE AND THE MUTUAL BENEFITS ACCRUING TO THE CITY AND THE COUNTY, THE CITY AND THE COUNTY DO HEREBY AGREE AS FOLLOWS:**

**SECTION 1. Duration.** This Agreement shall be in force and effect until terminated in accordance with the provisions of Section 6 hereof.

**SECTION 2. Purpose.** The purpose of this Agreement is to define the respective responsibilities of the City and the County with regard to the financing of the Project Infrastructure and the payment of the Bonds.

**SECTION 3. Organization; Statutory Authority.** There will be no separate legal or administrative entity created pursuant to this Agreement. The City and County are authorized by the TIF Act to jointly exercise and carry out the powers, authorities, and responsibilities to be exercised by each of them pursuant to the terms of this Agreement.

**SECTION 4. Financing, Staffing and Supplying.** (a) The Project Infrastructure shall be financed as a joint undertaking of the City and the County. All of the staffing pertaining to the acquisition and/or construction of the Project Infrastructure and the issuance of the Bonds will be provided by the City. The City and the County hereby designate and authorize the City to exercise all powers needed to carry out and assist in the development of the Project and the Project Infrastructure, including but not limited to the power to issue the Bonds to finance part of the Costs of the Project Infrastructure, and to reimburse the Developer or any contractor hired by or with the approval of the City, from proceeds of the Bonds, for any advances made by the Developer to acquire and/or construct the Project Infrastructure in anticipation of the issuance of the Bonds.

(b) The City will establish a budget which may be included as a part of the City's budget for the receipts and expenditures pertaining to the Project and to the Bond Payments. The Tax Collector of the County, or such other official of the County as shall be designated by the County with notice to the City, is hereby designated to receive, disburse and account for the TIF Revenues. The Tax Collector of the County, or such other official of the County as shall have been designated by the County with notice to the City, shall receive, disburse and account for all funds of the Agreement.

**SECTION 5. Operation of Agreement and the Project Infrastructure.** The operation of the Agreement and of the Project Infrastructure shall be carried out by the City as described in Section 4 of this Agreement and as may be otherwise provided herein, pursuant to the TIF Act.

**SECTION 6. Termination; Disposition of Property.** This Agreement will terminate as set out in Section 10, hereof. At the termination of the Agreement any property owned by the City and Developer, respectively, shall remain their property. The Project Infrastructure shall be dedicated to the City as a condition for reimbursement to the Developer for the costs of the Project Infrastructure to be paid from proceeds of the Bonds. Any surplus TIF Revenues remaining after termination shall be returned to the City and the County, respectively, after each has satisfied its respective obligations under Section 11 hereof.

**SECTION 7. Amendment.** This Agreement may be amended at any time by the mutual consent of the City and the County by an agreement entered into pursuant to the provisions of the Interlocal Act and the TIF Act. No such amendment shall have a material adverse effect on the ability of the City to make the Bond Payments.

**SECTION 8. Administration of Issuance of Bonds.** The provision for the administration of issuance of the Bonds and the payment thereof is provided for in Section 4 hereof, pursuant to the Interlocal Act and the TIF Act.

**SECTION 9. Manner of Acquiring, Holding and Disposing of Property; Cooperation Concerning Property Matters.** (a) The Developer has acquired or will acquire all property needed for the Project and the Project Infrastructure. The City has entered into or will enter into one or more Development and Reimbursement Agreements with one or more Developers for the dedication and conveyance to the City of any and all Project Infrastructure.

(b) The City shall have the right, at its request, to review and approve the plans, specifications and expenditures for all Project Infrastructure. The City and the County shall have access to all records pertaining to the acquisition and construction of the Project Infrastructure, and no changes which materially affect the overall scope thereof will be carried out without the written consent of the City.

(c) The County will grant to the City any necessary construction and maintenance easements on property on which the County can grant such rights to aid in the acquisition and/or construction of the Project Infrastructure.

**SECTION 10. Terms and Conditions That Will Cause Agreement to Be Terminated.** The Agreement will be terminated on the later of (1) the payment in full of the Bond Payments or (2) to the extent there is any deficiency owed by the County to the City,

pursuant to Section 11 herein, then the date of payment of any such deficiency; but in no event later than twenty (20) years from the effective date hereof. However, the obligations of the City and the County, respectively, incurred during the term of this Agreement shall not lapse due to a failure or refusal of the party owing such obligation.

**SECTION 11. Manner in Which the Costs of the Project Infrastructure Shall be Shared.**

(a) The City has approved the Redevelopment Plan and the TIF Plan, and has created the TIF District. The City will issue the Bonds for the purpose of financing the Project Infrastructure associated with the Project. The Bond Payments shall be the responsibility of the City and shall be paid from the TIF Revenues.

(b) There is hereby created a "Holly Springs Commons TIF Fund" which will be held as a separate fund by the County Tax Collector (or the County Chancery Clerk on behalf of the County Tax Collector). The County Tax Collector (or the County Chancery Clerk on behalf of the County Tax Collector) will annually transfer the moneys on deposit in the TIF Fund, to the paying agent for the Bonds for deposit into the bond fund for the Bonds.

(c) To provide for the Bond Payments, the County will divert its Ad Valorem TIF Revenues. Such Ad Valorem TIF Revenues shall be retained by or paid to the County Tax Collector, credited to the TIF Fund and disbursed as provided in Subsection (b) above and, if applicable, (e) below.

(d) To provide for the Bond Payments, the City will divert of its Ad Valorem TIF Revenues to be used for the Bond Payments. Such Ad Valorem TIF Revenues shall be retained by or paid to the County Tax Collector, credited to the TIF Fund and disbursed as provided in Subsection (b) above and, if applicable, (e) below.

(e) To the extent that Ad Valorem TIF Revenues provided by the City and the County are sufficient to provide for the Bond Payments, then Ad Valorem TIF Revenues shall be provided by each party in the same proportion as the percentage produced by dividing the Ad Valorem TIF Revenues required for the Bond Payments by the total increase in Ad Valorem TIF Revenues accruing to the City and to the County (excluding any ad valorem taxes for school district purposes). In order to effectuate the foregoing, at any time that the balance credited to the TIF Fund shall exceed principal of and interest on the Bonds due and payable during the succeeding thirteen (13) months, such excess: (i) to the extent attributable to payments by the City during the preceding twelve (12) months pursuant to Subsection (f) below shall be returned to the City; and (ii) such excess, to the extent not returned to the City pursuant to clause (i) above, shall be returned to the County and the City based on the proportion of amounts contributed by the County and the City pursuant to Subsections (c) and (d) respectively during the preceding twelve (12) months.

(f) In the event that Ad Valorem TIF Revenues described in Subsection (c) and (d) above are not sufficient for the Bond Payments, and additional funds are needed, the City will, after first taking into account all additional ad valorem taxes which are due and payable and reasonably expected to be paid prior to the next Payment Date and which will, upon receipt, be

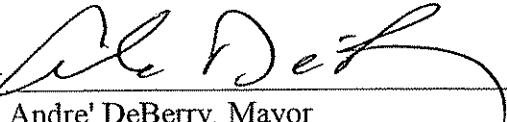
diverted by the City and the County, divert a sufficient portion of the Sales Tax TIF Revenues for Bond Payments. Such Sales Tax TIF Revenues shall be retained by or paid to the County Tax Collector, credited to the TIF Fund and disbursed as provided in Subsection (b) above and, if applicable, (e) above.

**SECTION 12. TIF Revenues from the Tax Increment Financing District; Security for Bond Payments.** It is agreed that the City may include as sources of payment for the Bonds and pledge the TIF Revenues provided for in Section 11 herein for the Bond Payments.

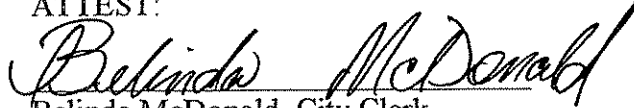
**SECTION 13. Effective Date.** This Agreement will be effective when it is approved by the respective governing bodies of the City and the County and by the Mississippi Attorney General. The initial term of this Agreement shall commence on the effective date hereof and extend through the Final Bond Payment Date.

WITNESS the signatures of the duly authorized officers of the City and the County as of  
the 16<sup>th</sup> day of April, 2008.

CITY OF HOLLY SPRINGS, MISSISSIPPI

By:   
Andre' DeBerry, Mayor

ATTEST:

  
Belinda McDonald, City Clerk

(SEAL)

This the 21st day of April, 2008.

MARSHALL COUNTY, MISSISSIPPI

By *Ronnie J. Bennett*  
President, Board of Supervisors

ATTEST:

*Chuck Thomas*  
Clerk, Board of Supervisors

(SEAL)

CERTIFICATE

I, Belinda McDonald City Clerk of the City Holly Springs, Mississippi, do hereby certify that the above and foregoing document is a true and correct copy of the Tax Increment Financing Interlocal Cooperation Agreement, adopted by the City Council of the City of Holly Springs, Mississippi, and executed on 4/16, 2008.

Witness my hand this the 16<sup>th</sup> day of April, 2008.

Belinda McDonald  
City Clerk

**ATTACHMENT A**  
**PROJECT AREA**

## DESCRIPTION OF TIF DISTRICT

DESCRIPTION: A 217.53 acres, more or less, tract of land located in the Southeast Quarter (SE 1/4) of Section 1, the Southwest quarter (SW1/4) of Section 6, the Northeast Quarter (NE 1/4) of Section 12, and the Northwest Quarter (NW 1/4) of Section 7, Township 4 South, Range 2 West, in the City of Holly Springs, Marshall County, Mississippi and being more particularly described as follows:

Commencing at a point located 419.00 feet East of the Northwest corner of the Northwest Quarter (NW 1/4) of Section 7, Township 4 South, Range 2 West, in the City of Holly Springs, Marshall County, Mississippi and run thence Easterly along the North line of said Section 7, a distance of 1,290.00 feet to a point; run thence in a Southwesterly direction, a distance of 307.36 feet to a point on the North property line of the Billy Autry property; run thence along said North line in a Westerly direction, a distance of 306.14 feet to a point; run thence South, a distance of 622.35 feet to a point on the North property line of the Fitch and Ash property; run thence along said North property line in a Westerly direction, a distance of 798.21 feet to a point; run thence in a Southerly direction, a distance of 1,330.28 feet to a point on the North property line of The Holly Springs Commons, PUD; run thence along said North line in an Easterly direction, to a metal "T" post found on the West right-of-way line of Mississippi Highway No. 7; run thence along said West right-of-way line in a Southwesterly direction to a right-of-way marker found; run thence continuing along said West right-of-way line in a Southwesterly direction to a right-of-way marker found on the East right-of-way line of US Highway No. 78; run thence in a Northwesterly direction along said East right-of-way line to a point on the South right-of-way line of Peyton Road; run thence along said South right-of-way line in a Northeasterly direction to a point on the West property line of the Ray C. Smithers property; run thence along said West line in a Southeasterly direction to a point on the South property line of said Smithers property, run thence along said South property line in an Easterly direction to a point on the West property line of Marshall Academy; run thence along said West line in a southerly direction to a point on the South line of said Section 1, also being the South property line of Marshall Academy; run thence in an Easterly direction, along said South section line, for a distance of 785.00 feet to a point on the East property line of said Marshall Academy; run thence, following along East property line of said Marshall Academy, North for a distance of 150.00 feet to a point; run thence East for a distance of 270.00 feet to a point; run thence in a Northeasterly direction for a distance of 218.00 feet to a point; run thence in a Northerly direction for a distance of 215.00 feet to a point; run thence in a Westerly direction for a distance of 366.00 feet to a point; run thence in a northerly direction for a distance of 835.00 feet to a point marking the

Southeast corner of the Oakview Subdivision; run thence, along the East property line of said Oakview Subdivision, in a northerly direction for a distance of 720.00 feet to a point on the South right-of-way line of the South West Boundary Street; run thence, along said south right-of-way line, East for a distance of 275.00 feet to a point; run thence, leaving said south right-of-way line, East for a distance of 300.00 feet to a point on the East boundary line of said Section 1; run thence, along said East section line, North for a distance of 565.00 to a point on the north property line of the L.F. Swords property; run thence, leaving said section line, following along said North property line, in an Easterly direction for a distance of 300.00 feet to a point; run thence North for a distance of 106.00 feet to a point; run thence Easterly for a distance of 325.00 feet to a point on the East line of said Swords property; run thence, following along said East property line, in a Southerly direction for a distance of 614.00 feet to a point; run thence Southwesterly for a distance of 44.00 feet to a point; run thence, Westerly for a distance of 143.00 feet to a point; run thence, continuing along said East property line, South for a distance of 2,085.00 feet to a point to the Point of Beginning of the herein described tract of land, said tract containing 217.53 acre, more or less.

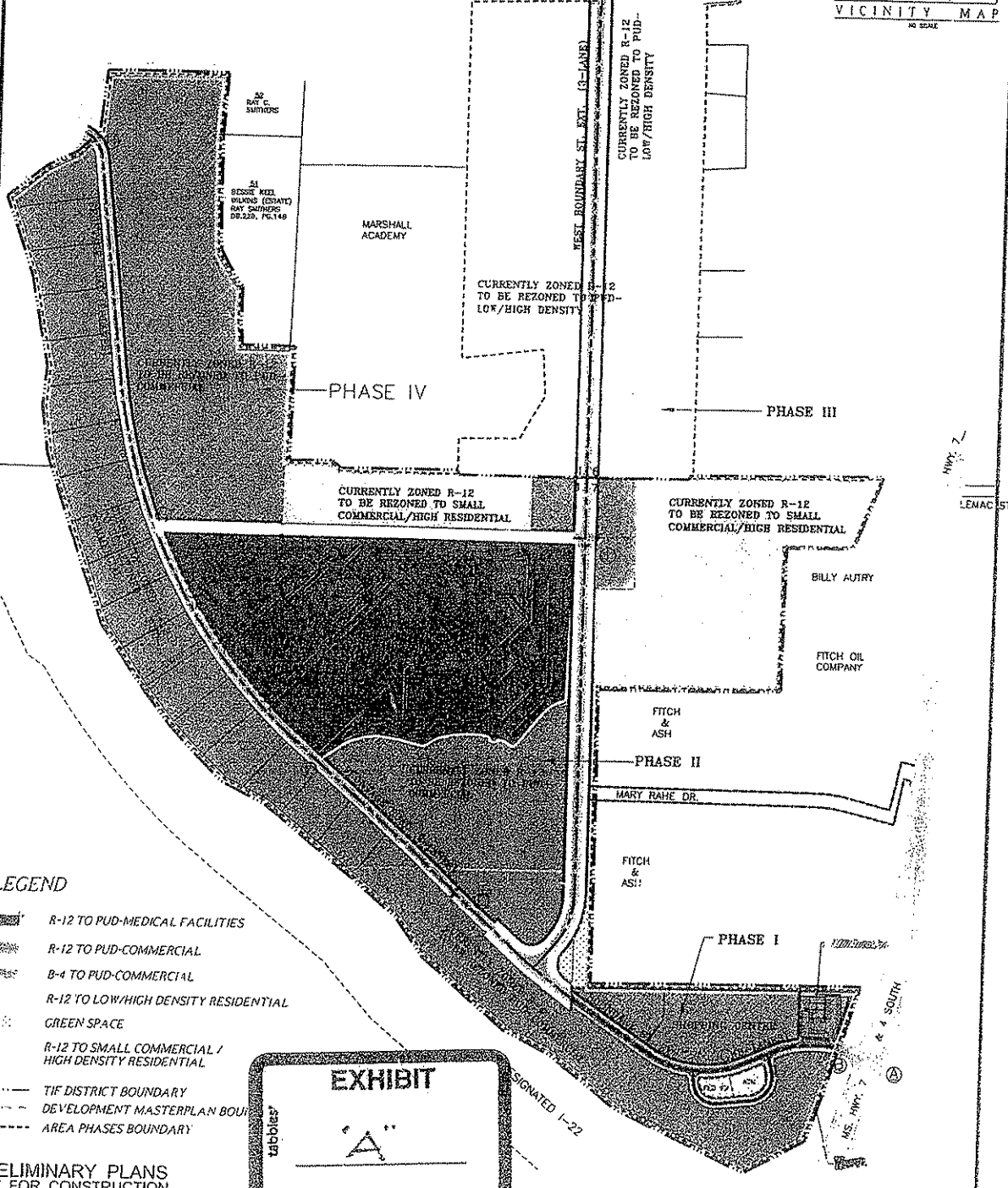
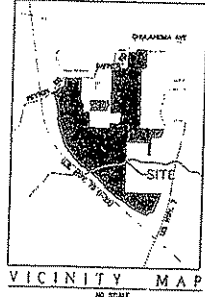
# The Holly Springs Commons PUD

## TIF DISTRICT MAP & DEVELOPMENT MASTERPLAN

SCALE: 1" = 200'

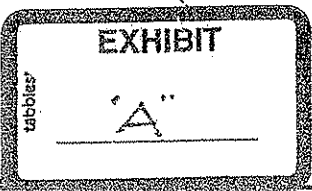
**NOTES:**

- 1- ALL INFORMATION REQUIRED BY THE HOLLY SPRINGS SUBDIVISION REGULATIONS WILL BE PROVIDED WITH PHASED CONSTRUCTION.
- 2- COVENANTS ARE AS RECORDED.
- 3- THIS IS NOT A BOUNDARY SURVEY.



**LEGEND**

- R-12 TO PUD-MEDICAL FACILITIES
- R-12 TO PUD-COMMERCIAL
- B-4 TO PUD-COMMERCIAL
- R-12 TO LOW/HIGH DENSITY RESIDENTIAL
- GREEN SPACE
- R-12 TO SMALL COMMERCIAL / HIGH DENSITY RESIDENTIAL
- TIF DISTRICT BOUNDARY
- DEVELOPMENT MASTERPLAN BOUNDARY
- AREA PHASES BOUNDARY



PRELIMINARY PLANS  
NOT FOR CONSTRUCTION

DATE	PROJECT NUMBER	ELLIOTT BRITT	DESIGNED BY	Holly Springs Commons PUD	