

ORDINANCE

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN RUTHERFORD COUNTY AND ANDALE, LLC

WHEREAS, Part 3A of Article 18 of Chapter 153A of the North Carolina General Statutes authorizes Rutherford County to enter into development agreements with property owners to govern large-scale development projects;

WHEREAS, Rutherford County has negotiated with Andale, LLC the terms of the "Development Agreement" that is attached as Exhibit A and incorporated herein by reference, which would govern a project that Andale, LLC intends to develop on certain real property in the County that is defined as the "Property" in the Development Agreement;

WHEREAS, the Board of Commissioners has determined that entering into the attached Development Agreement with Andale, LLC is in the best interests of County residents;

WHEREAS, the Board of Commissioners has held the public hearing on the proposed Development Agreement required by N.C. Gen. Stat. § 153A-349.5; and

WHEREAS, N.C. Gen. Stat. § 153A-349.3 requires that a development agreement be approved by the Board of Commissioners by ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Rutherford County that:

1. The Board of Commissioners of Rutherford County hereby approves the "Development Agreement" with Andale, LLC that is attached as Exhibit A and incorporated herein by reference, which includes the specific changes identified by the Chairman before the public hearing began.
2. The Board of Commissioners authorizes and directs the County Manager to execute on the County's behalf the Development Agreement that is attached as Exhibit A. The Board of Commissioners also authorizes the County Manager, before executing the Development Agreement, to negotiate and approve minor, non-substantive changes to the Development Agreement.

This 10th day of November, 2010.



Chairman, Board of Commissioners

ATTEST:


Clerk, Board of Commissioners

Exhibit A
Development Agreement

Drafted by and Return to:
Womble Carlyle Sandridge and Rice, PLLC (JCC/APM)
2100 Wachovia Capitol Center
150 Fayetteville Street
Raleigh North Carolina 27601

STATE OF NORTH CAROLINA }
 }
COUNTY OF RUTHERFORD }

DEVELOPMENT AGREEMENT

 This DEVELOPMENT AGREEMENT (this “Development Agreement”) is made this _____ day of November, 2010, by and among RUTHERFORD COUNTY, NORTH CAROLINA, a political subdivision duly organized and existing under the Constitution and laws of the State of North Carolina (the “County”); the TOWN OF FOREST CITY, a North Carolina municipal corporation (the “Town”); and ANDALE, LLC, a Delaware limited liability company (“Andale”).

WITNESSETH,

 WHEREAS, Andale and the County are party to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated November __, 2010 (the “PSA”) pursuant to and in accordance with which, among other things, the County has agreed to (i) assign to Andale that certain Option to Purchase Real Estate dated July 21, 2008, between the County, as Purchaser, and Jerry R. Morrow and Janice Q. Morrow, Co-Trustees of the Jerry R. Morrow Living Trust and Daniel Steve Robbins and wife, Kathie D. Robbins, as Seller, as amended, to acquire approximately 15.24 acres of real property fronting on Low Bridge Road, more particularly described on ***Exhibit A-1*** attached hereto and made a part hereof by reference (the “Option Tract”), and (ii) sell, convey and assign to Andale that certain real property, containing approximately 138 acres of real property, consisting of 10 lots, being located adjacent to or off of Old Caroleen Road and all being more particularly described on ***Exhibit A-2*** attached hereto and made a part hereof by reference (collectively, the “County Tracts”) (the Option Tract and the County Tracts, collectively, the “Property”); and

 WHEREAS, more than twenty-five (25) acres of the Property is developable within the jurisdiction of the County; and

WHEREAS, currently the Property is located entirely within the unincorporated portion of the County and is not subject to any laws adopted by the County pursuant to North Carolina General Statutes (“NCGS”) Chapter 153A, Article 18, Parts 1, 3, 3B or 5 or to any laws adopted by the Town pursuant to NCGS Chapter 160A, Article 19, Parts 1-8; and

WHEREAS, the Local Governments (defined below), through the County’s Economic Development Commission, have been encouraging the location of developments such as the Project (defined below) in the County; and

WHEREAS, the Local Governments, individually and collectively, find developments such as the Project to be in the public interest of their respective citizens and thus, they desire to further encourage and aid the Project; and

WHEREAS, Andale has proposed to establish on the Property a multi-year large-scale project of multiple phases (including, without limitation, Phase I, Phase II and Phase III (each as defined below)) extending over a period of years with the uses of one or more data centers, call centers, and/or other facilities used to house, and in which are operated, maintained and replaced from time to time, computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing property performance (including generators), and equipment used for the transformation, transmission, distribution or management of electricity (including substations), Internet-related equipment, data communications connections, environmental controls and security devices, structures and site features, as well as certain accessory uses or buildings located on the Property and other related or associated uses, buildings or structures such as (but not limited to) utility buildings, structures and appurtenants located on, adjacent or near the Property that are reasonably related to a data center (collectively, the “Project”); and

WHEREAS, Andale anticipates that the Project will require a long-term commitment of Andale’s resources, and will require the careful integration between public capital facilities, planning, financing, and construction schedules and the phasing of the development of the Property in order to be successful; and

WHEREAS, development of the Project on the Property will involve a substantial commitment of private capital by Andale, which commitment Andale is unwilling to risk without sufficient assurances from the Local Governments that development standards will remain stable through the extended period of the development of the Project; and

WHEREAS, at the current time, Andale is proposing as part of the Project (i) a building of approximately 240,000 square feet, to include, among other things, a data center and related uses, and (ii) various accessory buildings, structures and facilities, paved parking and driveways, security installations and utility and related structures and facilities incident to such uses (collectively, “Phase I”); and

WHEREAS, Andale may elect to construct (i) one or more future data centers and related uses, and (ii) various accessory buildings, structures and facilities, paved parking and driveways, security installations and utility and related structures and facilities incident to such uses (collectively, “Phase II”); and

WHEREAS, Andale may elect to construct (i) one or more future data centers and related uses, and (ii) various accessory buildings, structures and facilities, paved parking and driveways, security installations and utility and related structures and facilities incident to such uses (collectively, “Phase III”); and

WHEREAS, the Town desires to provide water and sewer to serve the proposed Project and desires that Andale file a petition with the Town to voluntarily annex the Property and the Project into the Town as a satellite annexation; and

WHEREAS, the Town has reviewed the standards applicable to satellite annexations and represents to Andale and the County that the Town possesses the power and authority under law to accept a satellite annexation petition with respect to the Property and to annex the Property into the corporate limits of the Town, should Andale petition the Town for voluntary annexation of the Property; and

WHEREAS, should Andale determine to petition for voluntary satellite annexation of the Property into the Town, the Town desires that Andale submit such a petition on a timeline that minimizes the potential related costs to the Town; and

WHEREAS, because of the type, size and location of the Project, the Local Governments and Andale believe that the orderly completion of the Project will be difficult to accommodate within traditional development and public utilities processes; and

WHEREAS, Andale has submitted to the Local Governments a proposed development plan showing Phase I, Phase II and Phase III entitled “Andale—Full Build Out Site Plan”, which is attached hereto as ***Exhibit B*** and made a part hereof by reference (the “Project Plan”); and

WHEREAS, prior to the Effective Date (defined below) Andale has incurred, in good faith, substantial expenditures in connection with the preparation of the Project Plan, and has made clearly visible changes to the Property pursuant to the PSA, and the County has permitted all such changes to the Property which have been undertaken by Andale, to further aid and encourage Andale to select the Property and to develop the Project thereon; and

WHEREAS, each Local Government, as a material inducement to Andale to locate the Project at the Property, hereby represents and warrants to Andale that its only current or proposed Laws (defined below) are listed on ***Exhibit F***, which is attached hereto and made a part hereof by reference, and that the Laws of that Local Government listed on Exhibit F do not prohibit construction of the Project described in this Development Agreement; and

WHEREAS, should Andale select the Property and proceed with construction of any of the phases of the Project in accordance with the Project Plan, the Local Governments, individually and collectively, acknowledge that Andale will incur substantial additional expenditures and obligations in good faith reliance upon this Development Agreement and to facilitate the same, the Local Governments, individually and collectively, agree that the development standards applicable to the Project, the Property and the Project Plan will remain the same during the entire term of this Development Agreement; and

WHEREAS, after careful review and deliberation, the Local Governments, individually and collectively, find (i) that the Project constitutes a development suitable to be planned and developed through a development agreement as permitted for counties by NCGS Chapter 153A, Article 18, Part 3A and as permitted for municipalities in NCGS Chapter 160A, Article 19, Part 3D (collectively, the "Development Agreement Law"), and (ii) that it is in each such Local Government's individual and collective interest to enter into this Development Agreement because of the significant benefits to the Local Governments and the citizens of the County and Town will be realized as a result of the Project and this Development Agreement; and

WHEREAS, the Town and the County, each being authorized by Article 20, Chapter 160A of NCGS to form interlocal cooperation agreements, find that entering into this Development Agreement and recognizing Andale's common law vested right to complete the Project regardless of a change of jurisdiction is a joint undertaking by the Town and the County and is in the interest of citizens of the Town and the County as allowed by Article 20, Chapter 160A of NCGS; and

WHEREAS, the details concerning the Project required by the Development Agreement Law are set forth in *Exhibit C* and made a part hereof by reference, and the proposed schedule for development of the Property (the "Development Schedule") is attached hereto as *Exhibit D* and made a part hereof by reference; and

WHEREAS, each of the Local Governments has published notice of, and held, a public hearing concerning this Development Agreement as required by State law and has otherwise completed all steps, conditions and requirements necessary for the Board of Commissioners of the County (the "County Board") and the Board of Commissioners of the Town (the "Town Board") to consider the adoption of this Development Agreement as permitted by law; and

WHEREAS, after holding their respective public hearings and carefully considering the terms and conditions of this Development Agreement, the County Board and the Town Board each has duly adopted this Development Agreement as an ordinance as required by the Development Agreement Law and each has directed execution of this Development Agreement by the respective presiding officers of each of the County Board and Town Board, and attestation by the respective clerks to each of the County Board and Town Board.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, and pursuant to State law, including, without limitation, the Development Agreement Law, the County, the Town and Andale hereby agree as follows:

1. Definitions:

1.1 “Andale”, as defined in the preamble of this Development Agreement, shall be deemed to include the successors and assigns of Andale, including, without limitation, any purchaser of all or any portion of the Property, whether at a foreclosure sale, pursuant to a deed in lieu or otherwise, along with (when appropriate in the context) the officers, managers, members, employees, agents, independent contractors, tenants, subtenants and lenders of Andale. Notwithstanding the immediately preceding sentence, no members, officers, employees, agents, or independent contractors of Andale shall be deemed to have any obligations or liabilities under this Development Agreement in their individual capacities.

1.2 “County”, as defined in the preamble of this Development Agreement, shall be deemed to include the successors and assigns of the County, along with (when appropriate in the context) the elected officials, employees, agents and independent contractors of the County. Notwithstanding the immediately preceding sentence, no officials, employees, agents, or independent contractors of the County shall be deemed to have any obligations or liabilities under this Development Agreement in their individual capacities.

1.3 “Development Permit” shall mean a building permit, zoning permit, subdivision approval, special or conditional use permit, variance, or any other official action, permit, license or approval by either the County or Town, having the effect of permitting the development of Real Property.

1.4 “Effective Date” shall mean the date on which this Development Agreement is executed by all the Parties after the adoption of ordinances approving this Development Agreement by the County Board and the Town Board. Each of the County and the Town shall sign and deliver this Development Agreement to Andale promptly after, but in any case within three (3) calendar days of, the adoption by each of their respective ordinances approving this Development Agreement.

1.5 “Land Development Regulations” shall mean ordinances and regulations existing or enacted by either the County or the Town for the regulation of any aspect of development and including zoning, subdivision, or any other land development ordinances.

1.6 “Land Records” shall mean the Office of the Register of Deeds of Rutherford County, North Carolina.

1.7 “Laws” shall mean all ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by either the County or the Town affecting the development of Real Property, and including, without limitation, laws governing permitted uses of Real Property, density, design, and improvements.

1.8 “Local Governments” shall mean, collectively, the County and the Town. “Local Government” shall mean and refer each of the County and the Town, individually.

1.9 “Parties” shall mean, collectively, the County, the Town and Andale. “Party” shall mean and refer to any of the Parties, individually.

1.10 “Person” shall mean any individual, sole proprietorship, corporation, partnership, limited liability company, joint venture, association, joint stock company, estate, trust, trustee of a trust, unincorporated organization, a unit of local government or any other similar legal entity.

1.11 “Project Development Law” shall have the meaning assigned thereto in Section 4.1 of this Development Agreement.

1.12 “Real Property” shall mean all real property subject to land use regulation by the County and/or the Town and including any improvements or structures customarily regarded as a part of real property.

1.13 “Recording Date” shall mean the date on which this Development Agreement is recorded in the Land Records.

1.14 “State” shall mean the State of North Carolina.

1.15 “Town”, as defined in the preamble of this Development Agreement, shall be deemed to include the successors and assigns of Town, along with (when appropriate in the context) the elected officials, employees, agents and independent contractors of Town. Notwithstanding the immediately preceding sentence, no officials, employees, agents, or independent contractors of the Town shall be deemed to have any obligations or liabilities under this Development Agreement in their individual capacities.

2. Establishment and Provision of Public Infrastructure

2.1 County:

(a) Public Infrastructure. In order to provide sufficient public infrastructure for the Project and other properties and citizens located in the vicinity of the Project, the County shall undertake the following:

- None

(b) Wells/River Withdrawals: Andale anticipates using groundwater or diverted river water as a redundant water supply in connection with the Project. The County acknowledges that it has regulatory authority over the drilling of wells at the Property only to the extent set forth in N.C.G.S. Sections 87-97 and 87-88, under which the County regulates only wells used for human consumption. In the event that Andale elects to drill water wells on the Property or in connection with the Project, to the extent that the County has any regulatory authority over said wells as set forth above, the County shall provide expedited review and approval of all submittals associated with said wells within ten (10) business days of the County's receipt of each complete submittal for approval. This ten (10) business day period shall be tolled for any period in which the County is awaiting revisions or additional information from Andale reasonably required for final action on the submittal. In the event that Andale elects to (i) withdraw, divert or remove water from the Second Broad River, which borders the Property in part, or (ii) drill wells in connection with which the County has no regulatory authority, the County hereby consents to the establishment of such wells or such withdrawal, diversion or removal, although the Parties acknowledge that the County has no regulatory authority over any such withdrawal, diversion, or removal. Notwithstanding any other provision in this Section 2.1(b), Andale shall have the duty to comply with all State of North Carolina laws and regulations, and to obtain all permits and approvals required by the State of North Carolina, applicable to use of water from any such wells or such withdrawal, diversion or removal of water.

2.2 Town:

(a) Public Infrastructure. In order to provide sufficient public infrastructure for the Project and other properties and citizens located in the vicinity of the Project, the Town shall undertake the following:

- None

(b) Wells/River Withdrawals: Andale and the Town acknowledge that, as between the Town and Andale, the drilling of wells and/or diversion of water from the Second Broad River in connection with the Project or the Property shall be governed exclusively by: (i) that certain Sewer Supply Agreement between Andale and the Town dated on or about the date hereof (the "Sewer Agreement") and (ii) that certain Potable Water Supply Agreement between Andale and the Town dated on or about the date hereof (the "Water Agreement").

3. Coordination and Management of Development Approvals for the Project: In order to provide for coordination and management of the development reviews, approvals and permits associated with the Project, the Local Governments agree as follows:

3.1 Reviews and Approvals: Each Local Government shall provide expedited review and approval of all construction plans, designs or drawings associated with the completion of the Project that must be or may be approved by that Local Government, including but not limited to subdivision, grading and building plans, within ten (10) business days of such Local Government's receipt of each complete submittal for approval. This ten (10) business day period shall be tolled for any period in which the Local Government is awaiting revisions or additional information from Andale needed for final action on the submittal. Additionally, each Local Government does hereby waive and shall waive all filing, building permit and inspection fees that would otherwise be payable in respect of the design and construction of the Project and, as applicable, shall assign a dedicated building inspector promptly to perform review of any plans and all inspections required for the construction and occupancy of the Project.

3.2 Cooperation and Assistance: Each Local Government shall reasonably assist and cooperate with Andale in connection with applications, determinations, reviews, approvals and permits issued by the County, the Town or the State, or any other government, governmental agency or governmental entity associated with the Project, including but not limited to (i) site plans and applications for soil and erosion approvals, and for any necessary driveway or other transportation related permits or approvals and/or any necessary zoning, grading, foundation, and building permits; (ii) applications, determinations and other instruments or proceedings related to the actual or potential existence of environmental materials on, under or about the Property or any environmental claims related to the Property, including, without limitation, execution of Brownfields applications; and (iii) any applications or determinations related to the abandonment of that certain road commonly known as Commerce Drive up to its western intersection with Old Caroleen Road. To the extent such Local Government is a necessary or sufficient authority for granting any such reviews, approvals and permits, such Local Government shall take final action within ten (10) business days of such Local Government's receipt of each complete submittal for approval. This ten (10) business day period shall be tolled for any period in which the Local Government is awaiting revisions or additional information from Andale needed for final action on the submittal.

3.3 Written Report and Agreement: To the extent a Local Government's ordinances or policies may require Andale to submit written reports and agreements in connection with submitting general development plans for the development of the Project, and to the extent that this Development Agreement provides all information reasonably necessary to fulfill the requirements of the Local Government's ordinances or policies, then this Development Agreement shall constitute such written report and agreement for the Project and no further written report or agreement shall be required.

3.4 Future Development Permits and Approvals for the Project: The only permits and/or approvals that Andale needs to obtain from the Local Governments in order to complete the development of the Project are listed on *Exhibit E*, attached hereto as and made a part hereof by reference.

The failure of this Development Agreement to identify a particular permit, condition, term or restriction does not relieve Andale of the necessity of complying with the Project Development Law. Further, nothing herein prohibits Andale from seeking other or further reviews, permits or approvals in connection with the Project, such as the recombination of lots or creation of lots under State law and applicable subdivision ordinances or regulations of the Local Governments, in the event Andale seeks to subdivide, combine or otherwise reconfigure lots on the Property.

3.5 Administration of this Agreement: In accordance with the Development Agreement Law, as between the Town and the County, the County is responsible for the overall administration of this Development Agreement, so long as the Property is located entirely within the unincorporated portion of the County. In the event some or all of the Property is annexed into the corporate limits of the Town, the Local Governments agree that the Town shall become responsible for the overall administration of this Development Agreement from and after the date of any such annexation. The Local Government charged with administering this Development Agreement pursuant to the terms of this Section may be referred to herein as the “Administering Government.”

3.6 Possible Future Annexation of the Property. At the request of the Town, which request is supported by the County, Andale agrees to consider preparing and filing with the Town a petition for voluntary satellite annexation of the Property (the “Petition”) into the corporate limits of the Town. Andale agrees, if it elects to pursue such annexation, to file the Petition prior to October 31st of the calendar year in which the construction of permanent taxable improvements on the Property is commenced (or, in the event that the construction of permanent taxable improvements on the Property is commenced in the months of November or December, promptly upon the commencement of such construction). The Parties agree, notwithstanding any contrary provision of the Development Agreement Law, in the event Andale elects to file the Petition, and in the further event that the Town accepts the Petition and annexes the Property, that the term of this Development Agreement shall not be shortened and shall remain the same even though the jurisdiction over the Property, the Project and the Project Plan would have changed. Further, the Parties agree that any such annexation and jurisdictional change would not, in any respect, affect Andale’s vested rights to complete the Project pursuant to (a) this Development Agreement or (b) State common law.

4. Vested Rights to Complete the Project

4.1 Development Agreement Vested Rights to Complete the Project; Application of Laws and Land Development Regulations: Except for the limited grounds stated in the current (as of the Effective Date) version of NCGS §§ 153A-344.1(e) and 160A-385.1(e), the Project shall be subject only to the Laws and

Land Development Regulations and policies enacted and applicable to the Property and Project on the Effective Date (the "Project Development Law"), and each Local Government shall not materially change its interpretation of the Project Development Law with respect to the Project after the Effective Date. Additionally, no future development moratoria or development impact fees adopted by either of the Local Governments shall apply to the Project without the written consent of Andale. Any Laws enacted or adopted by either Local Government or any of its boards, officials or staff subsequent to the adoption of this Development Agreement, including but not limited to Laws governing land use, streets, buffers, the division of land, grading, landscaping, water, sewer, stormwater, setbacks, and signage, shall not directly or indirectly be applicable to any aspect of the Project during the term of this Development Agreement, as provided in Section 8 of this Development Agreement. Notwithstanding any other provision of this Agreement, and subject to the provisions of NCGS §§ 153A-349.7(c) and 160A-400.26(c), in the event that State or federal law is changed after the Effective Date in such a way that prevents compliance with this Development Agreement by Andale or one or both of the Local Governments, then the Local Governments and Andale will promptly meet to review the terms of this Development Agreement and will work together diligently and in good faith to modify the affected provisions to accomplish the intended purpose of this Development Agreement and the economic benefits foreseen by the Parties when they entered into this Development Agreement.

4.2 Common Law Vested Rights to Complete the Project. In addition to the provisions of Section 4.1 above, the Local Governments collectively, and each Local Government individually, acknowledge, recognize and agree that Andale has a common law vested right, but not obligation, to complete the Project under State law. Accordingly, the Project shall be subject only to the Project Development Law for the duration of this Development Agreement. Additionally, no future development moratoria or development impact fees adopted by either Local Government shall apply to the Project without the written consent of Andale. Any Laws enacted or adopted by a Local Government or any of its boards, officials or staff subsequent to the Effective Date, including but not limited to Laws governing land use, streets, buffers, the division of land, grading, landscaping, water, sewer, stormwater, setbacks, and signage, shall not directly or indirectly be applicable to any aspect of the Project for the duration of this Development Agreement. For the avoidance of doubt, any annexation of the Property into the Town shall not result in or be deemed to result in the application of any Laws other than the Project Development Law.

4.3 Commitments Regarding Nearby Developments. The Local Governments represent and warrant that no existing school or airport is located within 1000 feet of the Property. Further, each Local Government agrees that it will not fund, in whole or in part, the construction of any school or airport so close to the Property that, due to provisions in the Project Development Law, said school or airport will limit or prohibit the use and/or development of the Property as the Project or affect the rights of Andale to complete the development of the Project in accordance with this

Development Agreement. Consistent with the foregoing and in furtherance of accomplishing the purposes of the Development Agreement, and to the extent allowed by law, neither Local Government will adopt a land use or general police power ordinance permitting the location of a school or airport so close to the Property that, due to provisions in the Project Development Law, said school or airport will limit or prohibit the use and/or development of the Property as the Project or affect the rights of Andale to complete the development of the Project in accordance with this Development Agreement.

4.4 No Exemption from State Building Code. This Development Agreement shall not exempt Andale from compliance with the State Building Code.

5. Review to Assess Compliance with this Development Agreement: In accordance with the Development Agreement Law, the Administering Government, on behalf of itself and the other Local Government, may conduct periodic reviews to determine Andale's reasonable compliance with this Development Agreement, at which time Andale may be requested to demonstrate to the Administering Government good faith, reasonable compliance with the terms of this Development Agreement; provided, however, that in no event shall Andale's failure to satisfy a commencement or completion date of the Project or construct all or any portion of the Project be a material breach of this Development Agreement, as any such failure must be based upon the totality of the circumstances. As with every agreement governed by State law, the Parties have an implied duty to deal in good faith and fairly with each other regarding their performances under this Development Agreement and each Party agrees to work reasonably and cooperatively to address concerns related to any real or perceived inadequate performance of this Development Agreement by any such Party. In no event shall any periodic review entitle either Local Government to inspect Andale's records, whether at the Property or otherwise, or to require disclosure by Andale of information that constitutes either trade secrets or Confidential Business Information (as defined in Section 10.15 herein).

In addition to the foregoing review, from time to time any Party, upon its own initiative, may request a review of any other Party's prior execution or prospective future ability to execute the provisions of this Development Agreement to assure compliance with this Development Agreement and the accomplishment of the purposes originally intended by the Parties.

6. Default and Remedies:

6.1 Andale.

(a) Cure Periods. If Andale fails to perform any of its duties or obligations hereunder, the Local Governments shall provide Andale with written notice thereof, which notice shall specify a period of not less than sixty (60) days in which Andale shall have a right to cure such failure; provided, however, such cure period may be extended by Andale if (a) a failure cannot reasonably be cured within

the cure period provided in such notice, (b) Andale notifies such Local Government of such fact by no later than the end of the cure period provided in the notice, and (c) Andale, in such extension notice, covenants to (and thereafter actually does) diligently pursue the cure to completion.

(b) Mortgagee Provisions. Each Local Government agrees to give any beneficiary of a mortgage or deed of trust secured by the Property, as the same may be modified, by certified mail, return receipt requested, a copy of any notice of default served upon Andale, provided that prior to such notice such Local Government has been notified in writing of the address of such beneficiary. Each Local Government further agrees that if Andale shall have failed to cure any failure described in Section 6.1(a) within the time provided therein, then such beneficiaries shall have a reasonable period of time thereafter to commence and diligently pursue the remedies necessary to cure such failure (including but not limited to commencement of foreclosure proceedings, if necessary, to effect such cure), and such Local Government shall not exercise any right or remedy during the time such necessary remedies are being so diligently pursued.

(c) Local Government Remedies. The Parties agree that in the event that no cure of any failure described in Section 6.1(a) is effected pursuant to Sections 6.1(a) or (b), then the Local Governments, as their sole and exclusive remedy, and with written notice thereof to Andale and any beneficiaries described in Section 6.1(b), may either (A) terminate this Development Agreement, in which case (i) this Development Agreement shall be of no further force or effect and none of Andale or the Local Governments shall have any of the duties or obligations specified herein and (ii) a Local Government may record a notice of termination of this Development Agreement in the Land Records; or (B) modify this Development Agreement; provided, however, that Andale shall have the right to approve such modification in Andale's sole and absolute discretion. Notwithstanding anything to the contrary contained in the foregoing, no termination of this Development Agreement may be declared by the Local Governments absent provision of notice and opportunity to cure as provided in the Development Agreement Law, to Andale and any beneficiaries described in Section 6.1(b).

6.2 Local Government: In addition to the default and remedies provided in the Development Agreement Law, in the event of a default in the performance of Local Government duties or obligations created by this Development Agreement, Andale shall provide written notice of the default to the applicable Local Government and shall specify a period of not less than sixty (60) days (or not less than five (5) days with respect to a Local Government's default under Sections 2.1, 3.1, 3.2, or 3.3 of this Development Agreement) in which such Local Government shall have a right to cure the default; provided, however, such cure period may be extended by the Local Government if (a) a default cannot reasonably be cured within the cure period provided in such notice, (b) such Local Government notifies Andale of such fact by no

later than the end of the cure period provided in the notice, and (c) such Local Government in such extension notice covenants to (and thereafter actually does) diligently pursue the cure to completion. In the event such Local Government fails to cure the default, Andale may either (i) terminate this Development Agreement or (ii) enforce this Development Agreement by seeking damages or the remedy of specific performance, but in no event shall such damages exceed Five Hundred Thousand Dollars (\$500,000). For purposes of illustration only, and not by way of limitation, it would constitute a default of this Development Agreement for a Local Government, during the term of this Development Agreement, to seek to apply Laws other than the Project Development Law to the Project, except as contemplated by the limited grounds stated in the current (as of the Effective Date) version of NCGS § 153A-344.1(e), in the case of the County, and NCGS § 160A-385.1(e), in the case of the Town.

6.3 Development Schedule: The Project shall be developed in accordance with the Development Schedule; provided, however, that the failure to meet a commencement or completion date specified in the Development Schedule in and of itself shall not constitute a material breach of this Development Agreement pursuant to the Development Agreement Law, as any such failure must be based upon the totality of the circumstances. The Development Schedule is a planning tool and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace of development if market conditions support a slower or faster pace.

7. Recordation of Agreement: Pursuant to the Development Agreement Law, within fourteen (14) days after the Effective Date, Andale shall use commercially reasonable efforts to record this Development Agreement in the Land Records.

8. Term: The term of this Development Agreement shall be a period of twenty (20) years from the Effective Date.

9. Condition on Obligations: The obligations of the Parties under this Development Agreement are conditioned upon Andale's acquisition of all or part of the Property which shall constitute the selection of the site for the Project. In the event Andale does not acquire any of the Property by December 31, 2011, this Development Agreement shall automatically be cancelled, rendered void, and be of no further force or effect and neither Andale nor the Local Governments shall have any of the duties or obligations specified herein. In the event Andale does not become the owner of all of the tracts which constitute the Property, Andale may elect to reduce the size of the Project by sending written notice of its election to the Local Governments; provided that, to the extent allowed by law, the Parties agree that all such reductions in the Project's size that do not cause the Project to violate this Development Agreement or the Project Development Law are not major modifications to this Development Agreement and are hereby deemed approved by the Local Governments. Andale also may elect to add to the Project any Real Property contiguous to any part of the Property (whether in one or more parcels, the "Additional Property") that Andale may later acquire by sending written notice of its election to the Local Governments; provided that, to the extent allowed by

law, the Parties agree that all such additions of Additional Property that do not cause the Project to violate this Development Agreement or the Project Development Law are not major modifications to this Development Agreement and are hereby deemed approved by the Local Governments. Notwithstanding the immediately preceding sentence, until and unless Andale has made at least Four Hundred and Fifty Million Dollars (\$450,000,000.00) in Qualifying Expenditures (as that term is defined in the Economic Development Agreement entered into by the County and Andale this same date), the combined acreage of the Project (including all Property and Additional Property) cannot exceed Two Hundred and Fifty (250) acres. Any Additional Property added to the Project will be governed by and subject to this Development Agreement and a legal description of the Additional property shall be promptly attached to this Development Agreement as an additional exhibit to be recorded by Andale. To the extent permitted by applicable law, Andale may elect to modify or supplement Exhibit B to show improvements to be constructed on any Additional Property; provided that such improvements are substantially identical to those improvements contemplated by this Development Agreement and shown on the original Exhibit B; and, provided further, that the Parties agree that all such modifications or supplements to Exhibit B that do not cause the Project to violate this Development Agreement or the Project Development Law are not major modifications to this Development Agreement and are hereby deemed approved by the Local Governments. Any such modified or supplemented Exhibit B shall be promptly attached to this Development Agreement as an additional exhibit to be recorded by Andale. In the event that Andale files a petition with the Town for voluntary annexation of the Property, Andale acknowledges that it is Andale's intention to petition for the voluntary annexation of the Additional Property and to file such petition with the Town prior to October 31st of the calendar year in which the construction of permanent taxable improvements on the Additional Property is commenced (or, in the event that the construction of permanent taxable improvements on the Additional Property is commenced in the months of November or December, promptly upon the commencement of such construction).

10. Miscellaneous:

10.1 Force Majeure: The Parties shall not be liable for any failure to perform hereunder as a result of an external event or events beyond their respective control, including, without limitation, changes in the laws of the United States of America, changes in the laws of the State, embargos, fire, flood, drought, hurricanes, tornadoes, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism or civil riots. However, if any such event interferes with the performance by a Party hereunder, such Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance or to complete performance in as timely a manner as is reasonably possible.

10.2 Amendment: Except for Andale's right to modify the description of the Property from time to time as set forth in Section 9 hereof, this Development Agreement may be amended, modified, supplemented or canceled only by the mutual written consent of the Parties, their successors in interest or assigns.

10.3 Recitals: The recitals of this Development Agreement are material terms of this Development Agreement and shall be binding upon the Parties.

10.4 Severability: If any provision of this Development Agreement, or its application to any Person, is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the Parties to the extent possible. In any event, invalidation of any provision of this Development Agreement, or its application to any Person shall not affect any other provisions of this Development Agreement or its application to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect. In no event shall the unenforceability of the any provision of this Development Agreement adversely affect Andale's common law vested right to complete the Project.

10.5 Notice: All notices or other communications required or permitted to be served hereunder shall be deemed served in accordance with this Development Agreement if the notice is: (a) mailed in a sealed wrapper and deposited in the United States mail, certified mail, return receipt requested, postage prepaid (with delivery conclusively presumed to occur on the third (3rd) business day following such deposit absent evidence of actual failure of delivery) and a courtesy copy delivered via facsimile to the telephone numbers below; or (b) deposited with a national overnight courier service for next day delivery that retains receipts of its deliveries, properly addressed (with delivery conclusively presumed to occur on the next business day following such deposit absent evidence of actual failure of delivery) and a courtesy copy delivered via facsimile to the telephone numbers below:

County: Rutherford County
Attn: County Manager
Rutherford County Office Building
289 North Main Street
Rutherfordton, North Carolina 28139

Rutherford County
Attn: Clerk to the Board of Commissioners
Rutherford County Office Building
289 North Main Street
Rutherfordton, North Carolina 28139

With copy to:

Elizabeth T. Miller
Rutherford County Attorney
PO Box 800
346 North Main Street
Rutherfordton, North Carolina 28139

Stephen R. Hunting
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street
Suite 3000
Charlotte, NC 28202

Town: Town of Forest City
128 Powell Street
Forest City, North Carolina 28043
Attention: Town Manager

with a copy to:

David A. Lloyd
230 Spindale Street, Suite Two
Spindale, NC 28160

Andale: Andale, LLC
c/o Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, CA 94105
Attn: Stephen I. Berkman

The Parties, by written notice given to the other, may designate any further or different names or addresses to which all notices or other communications shall be sent without said further or different names or addresses being considered amendments to this Development Agreement.

10.6 Assignment: After notice to the County and the Town, Andale may assign its rights and obligations under this Development Agreement (a) to any affiliate controlling, controlled by or under common control with Andale, provided that Andale shall remain obligated hereunder solely in connection with any assignment of rights or obligations under this Development Agreement, which assignment is not coupled with an interest in the Property; or (b) to subsequent owners of all or any portion of the Property, provided that no assignment of a portion of the Property shall relieve Andale's obligation with respect to the portion of the Property remaining titled in Andale without the written consent of the County and the Town. In the event that Andale sells the Property in its entirety and assigns its rights and obligations hereunder to its successor in title to the Property, then Andale shall be relieved of all of its covenants, commitments and obligations hereunder. Nothing in this Section shall or shall be deemed to limit the provisions of Section 10.7.

10.7 Run with the Land: This Development Agreement shall run with the Property and any portion thereof as it may be subdivided or recombined, and nothing in Section 10.6 above shall impair this provision.

10.8 Entire Agreement and Construction with Other Agreements: This Development Agreement contains the entire agreement among the Parties regarding the subject matter of this Development Agreement. All prior or contemporaneous oral or written drafts or communications are merged into this Development Agreement. To the extent a conflict or inconsistency exists between this Development Agreement and any of the PSA, the Sewer Agreement, the Water Agreement, that certain Economic Development Agreement between Andale and the Town dated on or about the date hereof or that certain Economic Development Agreement between Andale and the County dated on or about the date hereof, the provision which most encourages, promotes and enables the Project shall control.

10.9 Multiple Counterparts: This Development Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Development Agreement to produce or account for more than one such fully executed counterpart.

10.10 Applicable Law: This Development Agreement is governed by and shall be construed in accordance with the laws of the State.

10.11 Representations and Warranties of the Parties: Each Party represents and warrants, as applicable, that (a) such Party has the full power and authority to enter into this Development Agreement and to perform the obligations hereunder, (b) this Development Agreement is a valid and binding obligation, enforceable against the such Party in accordance with its terms, (c) entering into this Development Agreement does not conflict with any other agreements entered into by such Party, and (d) the execution, delivery and performance of this Development Agreement has been duly and validly authorized by all necessary corporate or governmental action on the part of such Party. Specifically (and not as a limitation), each Local Government represents and warrants to Andale that this Development Agreement has been pre-audited to ensure compliance with the budgetary accounting requirements (if any) that apply to such Local Government. In the event that any of the obligations of a Local Government in this Development Agreement constitute debt, such Local Government has complied, at the time of the obligation to incur the debt and before the debt becomes enforceable against such Local Government, with any applicable constitutional and statutory procedures for the approval of the debt.

10.12 Effect on Other Vested Rights: This Development Agreement does not abrogate any rights established or preserved by NCGS §§ 153A-344, 153A-344.1, 160A-385(b) or 160A-385.1, or that have vested or may vest pursuant to common law or otherwise in the absence of this Development Agreement. To the contrary, by

executing this Development Agreement, the Local Governments acknowledge Andale's common law vested right to complete the Project, as well as Andale's vested rights established by this Development Agreement.

10.13 Construction: The Parties agree that each Party and its counsel have reviewed and revised this Development Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Development Agreement or any amendments or exhibits hereto. This Development Agreement shall be reasonably interpreted and construed to encourage, promote and aid the Project so that the opportunities and positive community impacts of the Project are fully realized by the Local Governments, their respective citizens and Andale.

10.14 Agreement to Cooperate Regarding Validity of this Development Agreement: Notwithstanding a lack of standing or subject matter jurisdiction, a third Person (other than Andale or either Local Government) could attempt to initiate a lawsuit challenging the validity of this Development Agreement or any provision thereof. In such an event, the County, the Town and Andale each hereby agree to cooperate with and assist the other(s) in responding to such litigation and defending the validity of this Development Agreement and any provisions thereof; provided, however, each Party shall retain the right to pursue its own independent legal defense, and each Party shall bear its own litigation expenses.

10.15 Confidential Information: Andale may designate any trade secrets or confidential business information included in any report or other writing delivered to either or both Local Governments pursuant to or in connection with this Development Agreement by any method intended to clearly set apart the specific material that Andale claims to be either its trade secrets or confidential business information (such information, collectively, "Confidential Business Information"). Each Local Government shall redact or delete from any records it makes available for inspection or of which it provides copies any material designated by Andale as confidential information or trade secrets. Each Local Government shall give prompt written notice to Andale of receipt of any request to inspect or for which it has received a request to provide copies of public records relating to this Development Agreement or the Project. The notice shall include a copy of the request. Neither Local Government shall allow inspection or provide copies of any such records until Andale shall have had not less than three (3) business days excluding the day of receipt to determine whether to contest the right of any third party to inspect or receive copies of the records or to inspect such records without redaction of Andale's Confidential Business Information. The costs, damages, if any, and attorneys' fees in any proceeding commenced as a consequence of Andale's election to contest the right of any party to inspect or receive Andale's Confidential Business Information shall be borne by Andale. Neither Local Government shall be obligated to defend any action involving the right to inspect or obtain copies of public records relating to this Development Agreement or the Project

unless such Local Government is first indemnified to its satisfaction against costs, damages and attorneys' fees. Notwithstanding any provision of this Development Agreement to the contrary, nothing in this Development Agreement shall be deemed to prevent the Local Governments from complying fully with the State's public records laws.

[Remainder of Page Left Blank; Signatures Begin on Next Page]

IN WITNESS WHEREOF, the Parties have caused these presents to be executed on the day and year indicated above.

RUTHERFORD COUNTY, NORTH
CAROLINA

By: _____

Name:

Title: Chair of the Board of County

[COUNTY SEAL]
Commissioners

ATTEST:

By: _____

Hazel Haynes, Clerk to the Board of County Commissioners

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

I, _____, a Notary Public of _____ County, North Carolina, do hereby certify that _____, Chair of the Board of County Commissioners of Rutherford County, North Carolina, a political subdivision duly organized and existing under the Constitution and laws of the State of North Carolina, personally came before me this day and acknowledged that ___he is the Chair of the Board of County Commissioners of such County, that this Development Agreement has been approved by the Board of County Commissioners of Rutherford County by ordinance in accordance with the requirements of Part 3A of Article 18 of Chapter 153A, that ___he has been authorized by the Board of County Commissioners to execute this Development Agreement on behalf of the County, that ___he knows the Corporate Seal of the County, that the Corporate Seal was affixed to this Development Agreement by Hazel Haynes, Clerk to the Board of County Commissioners, pursuant to authorization from the Board of County Commissioners, that this Development Agreement is the act and deed of Rutherford County, North Carolina, and that ___he acknowledged the due execution of this Development Agreement by him/her in the aforesaid capacity.

Witness my hand and official seal or stamp, this the ____ day of _____, 201__.

My commission expires:

Notary Public

[NOTARY SEAL]

Print Name of Notary

This instrument has been pre-audited to the extent and in the manner required by the "Local Government Budget and Fiscal Control Act."

By: _____

Name: _____

Title: Rutherford County Director Of Fiscal Operations

[Signatures Continue on Next Page]

[Signatures Continued from Previous Page]

TOWN OF FOREST CITY

By: _____
_____, Mayor

[TOWN SEAL]

ATTEST:

By: _____
Sandra P. Mayse, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

I, _____, a Notary Public of _____ County, North Carolina, do hereby certify that _____, Mayor of the Town of Forest City, North Carolina, a municipal corporation, personally came before me this day and acknowledged that he is the Mayor of the Town of Forest City, that this Development Agreement has been approved by the Forest City Board of Commissioners by ordinance in accordance with the requirements of Part 3D of Article 19 of Chapter 160A, that he has been authorized by the Board of Commissioners to execute this Development Agreement on behalf of the Town, that he knows the Corporate Seal of the Town, that the Corporate Seal was affixed to this Development Agreement by Sandra P. Mayse, the City Clerk, pursuant to authorization from the Board of Commissioners, that this Development Agreement is the act and deed of the Town of Forest City, and that he acknowledged the due execution of this Development Agreement by him in the aforesaid capacity.

Witness my hand and official seal or stamp, this the ____ day of _____, 201__.

My commission expires:

Notary Public

[NOTARY SEAL]

Print Name of Notary

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Scott Webber, Town of Forest City Finance Director

[Signatures Continue on Next Page]

[Signatures Continued from Previous Page]

ANDALE, LLC

By: _____

Name: _____

Title: _____

Dated: _____

STATE OF _____

COUNTY OF _____

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____, as
_____ of ANDALE, LLC.

Witness my hand and official seal, this the _____ day of _____, 201____.

My commission expires:

Notary Public

[NOTARY SEAL]

Print Name of Notary

EXHIBIT A-1

LEGAL DESCRIPTION OF OPTION TRACT

That certain real property lying and being situate in Rutherford County, North Carolina, and more particularly described as follows:

Starting at the southeast corner of State Road 1911, bordered by now or formerly John S. McKinney, said line runs North 25 East 800 feet to an iron pin; then North 51 East 817 feet to an iron pin; then running with the Burlington line North 85 West 795 feet to an iron pin; then South 05 West 553 feet to an iron pin; then North 85 West 419 feet to an iron pin; then South 05 West 754.38 feet to an iron pin in the center of State Road 1911; then running with the road South 85 East 348 feet to the point of BEGINNING. Tract contains more or less 15 acres.

EXHIBIT A-2

LEGAL DESCRIPTION OF COUNTY TRACTS

Property A:

That certain real property lying and being situate in Rutherford County, North Carolina, and being more particularly described as follows:

BEING ALL of Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, as shown on plat of survey for Rutherford County by Nathan Odom, RLS, dated February 28, 2005, being Map #: 21828, recorded on August 25, 2006 in Plat Book 27 at Pages 261, 262 and 263, in the Office of the Register of Deeds of Rutherford County, North Carolina.

Property B:

That certain real property lying and being situate in Rutherford County, North Carolina, and being more particularly described as follows:

BEING the identical 59.01 acre tract shown on that survey by Nathan Odom, RLS, being Map #: 20057B, dated February 27, 2003, recorded March 10, 2003, in Plat Book 24 at Page 35 in the Office of the Register of Deeds for Rutherford County.

LESS AND EXCEPT that 0.212 acre parcel described in Plat Book 28 at Page 245, conveyed to Duke Energy Carolinas, LLC, dated November 8, 2007, recorded November 8, 2007, in Book 947 at Page 80 in the Office of the Register of Deeds for Rutherford County.

Abandoned Commerce Drive:

Commence at the NGS concrete monument "Cowan" (NAD83(NSRS2007) N:583336.13 E:1158049.01); thence South 12°32'21" East, 1679.14 feet to a five-eighths inch rebar found (L-2718); thence South 62°19'16" West, 329.79 feet to a concrete monument found on the northeast right-of-way line of Commerce Drive and the point of beginning of the parcel of land herein described;

thence from said POINT OF BEGINNING, along said right-of-way and a curve concave to the west having a radius of 50.00 feet and a central angle of 99°31'54" and being subtended by a chord which bears South 22°05'38" West 76.34 feet; thence southerly, along said curve, 86.86 feet to a five-eighths inch rebar found (L-2718); thence continuing along said right-of-way and curve concave to the north having a radius of 50.00 feet and a central angle of 26°12'21" and being subtended by a chord which bears South 84°57'45" West, 22.67 feet; thence along said curve 22.86 feet to a curve concave to the south having a radius of 20.00 feet and a central angle of 43°42'55" and being subtended by a chord which bears South 73°54'16" West, 14.89 feet; thence westerly 15.26 feet along said curve to a curve concave to the northwest having a

radius of 330.00 feet and a central angle of 19°26'49" and being subtended by a chord which bears South 64°31'31" West, 111.47 feet; thence westerly along said curve 112.01 feet; thence South 74°15'49" West, 486.43 feet to the beginning of a curve concave to the south having a radius of 440.00 feet and a central angle of 5°22'29" and being subtended by a chord which bears South 71°21'36" West 41.26 feet; thence westerly along said curve, 41.28 feet to a to a disturbed concrete right-of-way monument found on the south right-of-way line of Commerce Drive; thence continuing along said right-of-way and curve concave to the southeast having a radius of 440.00 feet and a central angle of 10°12'40" and being subtended by a chord which bears South 63°34'01" West, 78.31 feet; thence westerly along said curve 78.41 feet; thence South 58°35'47" West, 207.24 feet to the beginning of a curve concave to the north, having a radius of 560.00 feet and a central angle of 23°31'01" and being subtended by a chord which bears South 71°21'18" West, 228.42 feet; thence westerly along said curve 229.85 feet; thence South 82°06'48" West, 49.98 feet to a five-eighths inch rebar found (L-2718) and the beginning of a curve concave to the north, having a radius of 530.00 feet and a central angle of 13°01'01" and being subtended by a chord which bears North 88°37'19" East, 120.15 feet; thence westerly along said curve 120.41 feet; thence North 84°52'11" West, 161.96 feet to the beginning of a curve concave to the south, having a radius of 470.00 feet and a central angle of 14°38'12" and being subtended by a chord which bears North 87°48'43" East, 119.74 feet; thence westerly along said curve 120.06 feet; thence South 80°29'14" West, 133.90 feet to a PK nail set at the intersection of the south right-way line of Commerce Drive and the east right-of-way line of Old Caroleen Road (SR-1901); thence along the east right-of-way Old Caroleen Road, North 14°54'18" West, 70.29 feet to a PK nail set at the intersection of the north right-way line of Commerce Drive and the east right-of-way line of Old Caroleen Road (SR-1901); thence along the north right-of-way line of Commerce Drive, North 80°30'39" East, 106.07 feet to the beginning of a curve concave to the south having a radius of 500.00 feet and a central angle of 14°38'11" and being subtended by a chord which bears North 87°48'44" East 127.38 feet; thence easterly along said curve, 127.72 feet; thence South 84°52'11" East, 146.10 feet to a five-eighths inch rebar found (L-2718); thence continuing South 84°52'11" East, 59.29 feet to the beginning of a curve concave to the north, having a radius of 470.00 feet and a central angle of 13°01'01" and being subtended by a chord which bears North 88°37'19" East 106.55 feet; thence easterly along said curve 106.78 feet; thence North 82°06'48" East, 49.98 feet to the beginning of a curve concave to the north having a radius of 500.00 feet and a central angle of 21°18'36" and being subtended by a chord which bears North 71°26'59" East 184.90 feet; thence easterly along said curve, 185.96 feet to a five-eighths inch rebar found; thence continuing along said north right-of-way and curve concave to the northwest having a radius of 500.00 feet and a central angle of 2°12'42" and being subtended by a chord which bears North 59°41'19" East, 19.30 feet; thence northeasterly along said curve 19.30 feet; thence North 58°30'14" East, 207.22 feet to the beginning of a curve concave to the southeast having a radius of 500.00 feet and a central angle of 15°35'27" and being subtended by a chord which bears North 66°27'13" East, 135.64 feet; thence northeasterly along said curve, 136.05 feet to a concrete monument found on the north right-of-way line of Commerce Drive; thence continuing along said right-of-way line, North 74°14'56" East, 486.51 feet to the beginning of a curve concave to the northwest, having a radius of 270.00 feet and a central angle of 19°02'00" and being subtended by a

chord which bears North $64^{\circ}43'56''$ East, 89.29 feet; thence northeasterly along said curve, 89.70 feet to the beginning of a curve concave to the northwest having a radius of 20.00 feet and a central angle of $47^{\circ}24'00''$ and being subtended by a chord which bears North $30^{\circ}32'22''$ East, 16.08 feet; thence northeasterly along said curve 16.54 feet to the beginning of a curve concave to the southeast having a radius of 50.00 feet and a central angle of $62^{\circ}35'51''$ and being subtended by a chord which bears North $40^{\circ}39'04''$ East, 51.95 feet; thence northeasterly along said curve 54.63 feet to a concrete monument found on the north right-of-way line of Commerce Drive and on a curve concave to the south having a radius of 50.00 feet and a central angle of $80^{\circ}22'41''$ and being subtended by a chord which bears South $67^{\circ}51'40''$ East, 64.53 feet; thence southeasterly along said curve 70.14 feet to the point of beginning.

EXHIBIT B

PROJECT PLAN

[see attached]

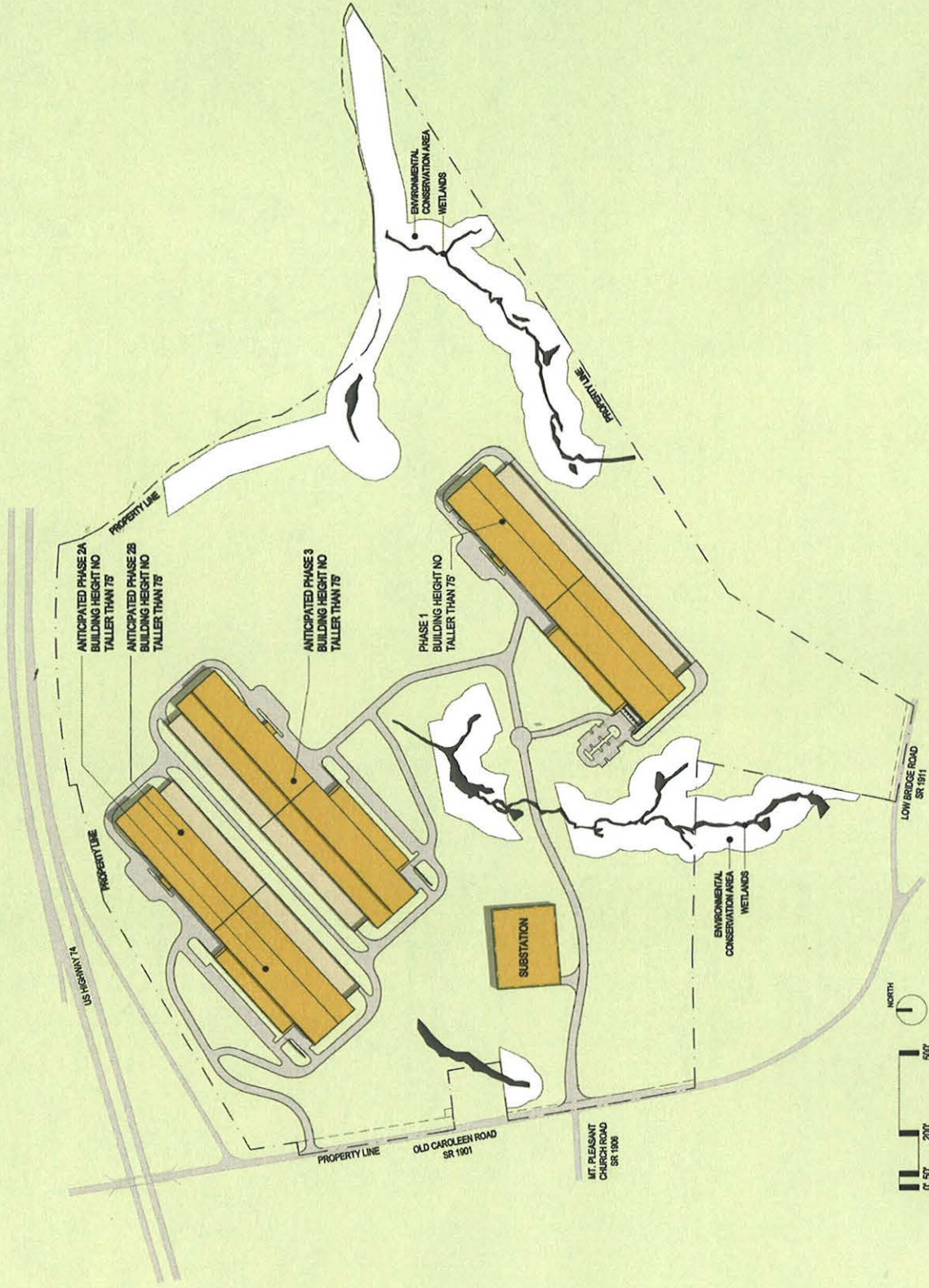


EXHIBIT C

DISCLOSURES REQUIRED BY

N.C.G.S. §§ 153A-349.6 and 160A-400.25

A description of the development uses permitted on the Property, including population densities and building types, intensities, placement on the site and design: The Project will consist of one or more data centers, call centers, and/or other facilities used to house, and in which are operated, maintained and replaced from time to time, computer systems and associated components, such as telecommunications and storage systems, cooling systems, power supplies and systems for managing property performance (including generators), and equipment used for the transformation, transmission, distribution or management of electricity (including substations), Internet-related equipment, data communications connections, environmental controls and security devices, structures and site features, as well as certain accessory uses or buildings located on the Property and other related or associated uses, buildings or structures such as (but not limited to) utility buildings, structures and appurtenances located on, adjacent or near the Property that are reasonably related to a data center. Each data center building shall be of an average height not to exceed seventy-five (75) feet, shall be generally oriented to the internal streets located at the Property and be constructed on a slab.

It is not anticipated that there will be any people residing in the Project, except for the possibility of security and maintenance employees, and for temporary stays by Andale's employees or representatives.

Building types, intensities, design and placement for Phase I, Phase II and Phase III of the Project will be as shown on the Project Plan.

A description of public facilities that will service the Property, other than those provided in the Development Agreement to be provided by entities other than Rutherford County or the Town of Forest City, the date any such new public facilities will be constructed, and a schedule to assure such public facilities are available concurrent with the impacts of the Property: None.

A description of any reservation of dedication of land for public purposes and any provisions to protect environmentally sensitive property: Not applicable

A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the County for the public health, safety or welfare of its citizens: None

A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the Town for the public health, safety or welfare of its citizens: None

A description of any provisions for the preservation and restoration of historic structures: Not applicable

EXHIBIT D

DEVELOPMENT SCHEDULE REQUIRED

BY N.C.G.S. §§ 153A-349.6 and 160A-400.25(b)

1. Commencement Date: December 31, 2010
2. Completion of Phase I: December 31, 2015
3. Completion of Phase II-A: December 31, 2020
4. Completion of Phase II-B: December 31, 2025
5. Completion of Phase III: December 31, 2030

Note: NCGS § 153A-349.6 and 160A-400.25(b) requires a development schedule and that commencement dates and interim completion dates are at no greater than five-year intervals; however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of a development agreement.

EXHIBIT E

FUTURE DEVELOPMENT PERMITS AND APPROVALS FOR THE PROJECT

1. Local Governments

A. Building Permits

EXHIBIT F

County Ordinances: Rutherford County Airport Zoning Ordinance
Hazardous and Low-Level Radioactive Waste Management Ordinance
Historic Preservation Commission Ordinance
Subdivision Regulations of Rutherford County, North Carolina
Watershed Protection Ordinance
Flood Damage Prevention Ordinance of Rutherford County
School Zone Protective Ordinance
Mobile Home Park Ordinance (revisions have been proposed)
Fire Prevention Ordinance (proposed)

Town Ordinances: Town's Buildings and Building Regulations
Town's Business Regulation and Taxation Regulations
Town's Cemeteries Regulations
Town's Civil Emergencies Regulations
Town's Cultural Resources and Historic Preservation Regulations
Town's Fire Prevention and Protection Regulations
Town's Flood Damage Prevention Regulations
Town's Nuisances Regulations
Town's Offenses Regulations
Town's Planning and Development Regulations
Town's Housing Regulations
Town's Parks and Recreation Regulations
Town's Streets, Sidewalks and Bridges Regulations
Town's Subdivision Regulations
Town's Trees Regulations
Town's Utility Regulations
Town's Zoning Ordinance
Town's Charter
Town's Comprehensive Plan and All Adopted or Pending Updates
Town's City Plan for Strategic Economic Development 2010-2015