

MEMORANDUM OF UNDERSTANDING 9-13-07

This **Memorandum of Understanding** (this "Memorandum of Understanding") is to reflect the general terms under which the Commercial Development Authority of the City of Auburn (the "Authority"), the **City of Auburn, Alabama** (the "City") and **West Pace, LLC**, an Alabama limited liability company ("West Pace") will collaborate in the development of certain public infrastructure improvements described below, all to be further evidenced by such documentation as the parties hereto shall mutually agree and as generally described herein.

RECITALS

A. West Pace or its related entities presently own certain properties which are described on Exhibit A attached hereto and made a part hereof by reference, which are collectively referred to herein as the "Project Site". The project site shall include all property adjacent to I-85, Alabama Highway 29 and Shell Toomer Parkway owned by or under contract for purchase by West Pace or any related entity.

B. West Pace desires to develop a retail shopping center and other retail establishments on the Project Site, such commercial development being herein referred to as the "Project".

C. The Project is located within and contiguous to the corporate limits of the City of Auburn that the Authority has determined to be an important location for planned economic development, and the Authority has determined that it is in the public interest to assist the development of the Project by enabling the provision of a portion of the funds to pay the costs of certain public infrastructure improvements in connection with the development and construction of the Project.

D. The City, the Authority and West Pace wish to memorialize the general terms of their understandings with respect to the development of the Project with the intention of later executing a more detailed and definitive development Agreement (the "Development Agreement") which will elaborate on the terms and conditions of the understandings described herein.

E. West Pace understands and acknowledges that the establishment of an Alabama Improvement District and/or an Alabama Cooperative District are governed by the law(s) set forth in Alabama Code Sections 11-99A-1, et al and 11-99B-1, et al, and hereby agrees to comply with all provisions stated in the aforementioned law including, but not limited to, complying with the bid law requirements, if applicable.

UNDERSTANDINGS

1. In connection with the Project, the parties hereto understand as follows:

(a) The City and the Authority will use their best efforts to facilitate the incorporation of The West Pace Crossing Improvement District (the "Improvement District"), pursuant to Chapter 99A of Title 11 of the Code of Alabama 1975, as

amended, following receipt by the City of a petition for incorporation of said Improvement District. The boundaries of the Improvement District will include the Project Site, and the Board of Directors of the Improvement District shall be selected and appointed in a matter to be agreed upon in the contemplated Economic Development Agreement.

(b) The City and the Authority will use their best efforts to facilitate the incorporation of The Cooperative District of the City of Auburn, Alabama, (West Pace Crossing Project) (the "Cooperative District"), pursuant to Chapter 99B of Title 11 of the Code of Alabama 1975, as amended, following receipt by the City of a petition for incorporation of said Cooperative District. The sole members of the Cooperative District will be the Authority and the Improvement District. The boundaries of the Cooperative District will be identical to the boundaries of the Improvement District, and the Board of Directors of the Cooperative District shall be selected and appointed in a matter to be agreed upon in the contemplated Economic Development Agreement.

(c) The Authority will in good faith seek financial assistance from the City (the "City Assistance") to enable the Authority to assist in the design, construction, and development of certain public infrastructure improvements respecting the Project as allowed by Chapter 99A of Title 11 of the Code of Alabama 1975, as amended, (the "Public Infrastructure Improvements"). The City Assistance must be used in accordance with Section 94 of the Constitution of Alabama 1901 and other provisions of Alabama law respecting the construction of such Public Infrastructure Improvements. The parties hereto understand and acknowledge that the City Assistance shall (a) consist solely of amounts received by the Authority from the City and (b) for any fiscal year be an amount not greater than the amount received by the City from the Derived Taxes described below during such fiscal year. As used herein, "Derived Taxes" shall mean the taxes described in subparagraphs (i), (ii), (iii) and (iv) below received by the City with respect to taxable transactions conducted within the boundaries of the Cooperative District without regard to any increases in such taxes following the date hereof:

- (i) 1.5 cents per dollar tax on the sale of taxable sales of tangible personal property other than vehicles within the Cooperative District; and
- (ii) .55 cents per dollar tax on the taxable sales of new and used vehicles (i.e. any automotive vehicle or truck trailer, semi-trailer or house trailer) within the Cooperative District; and
- (iii) 3 cents per dollar tax on the taxable gross receipts on hotels and other lodging establishments located within the Cooperative District.
- (iv) West Pace reserves the right to charge an incremental .50 cents sales tax on the taxable sales of tangible personal property other than vehicles within the

Cooperative District, above and beyond the current City sales tax levy, such incremental sales tax to be split 50/50 with the City.

(d) All amounts constituting City Assistance received by the Authority shall be used for the Public Infrastructure Improvements as aforesaid, and shall be deposited into a trust account designated as such. The Cooperative District trust account's monthly statements shall be presented to the Authority within five (5) days of receipt by the Cooperative District for review and audit.

(e) All construction activities within the Cooperative District shall comply with all City ordinances and regulations, to include but not be limited to zoning, codes, business licensing and taxing ordinances and regulations.

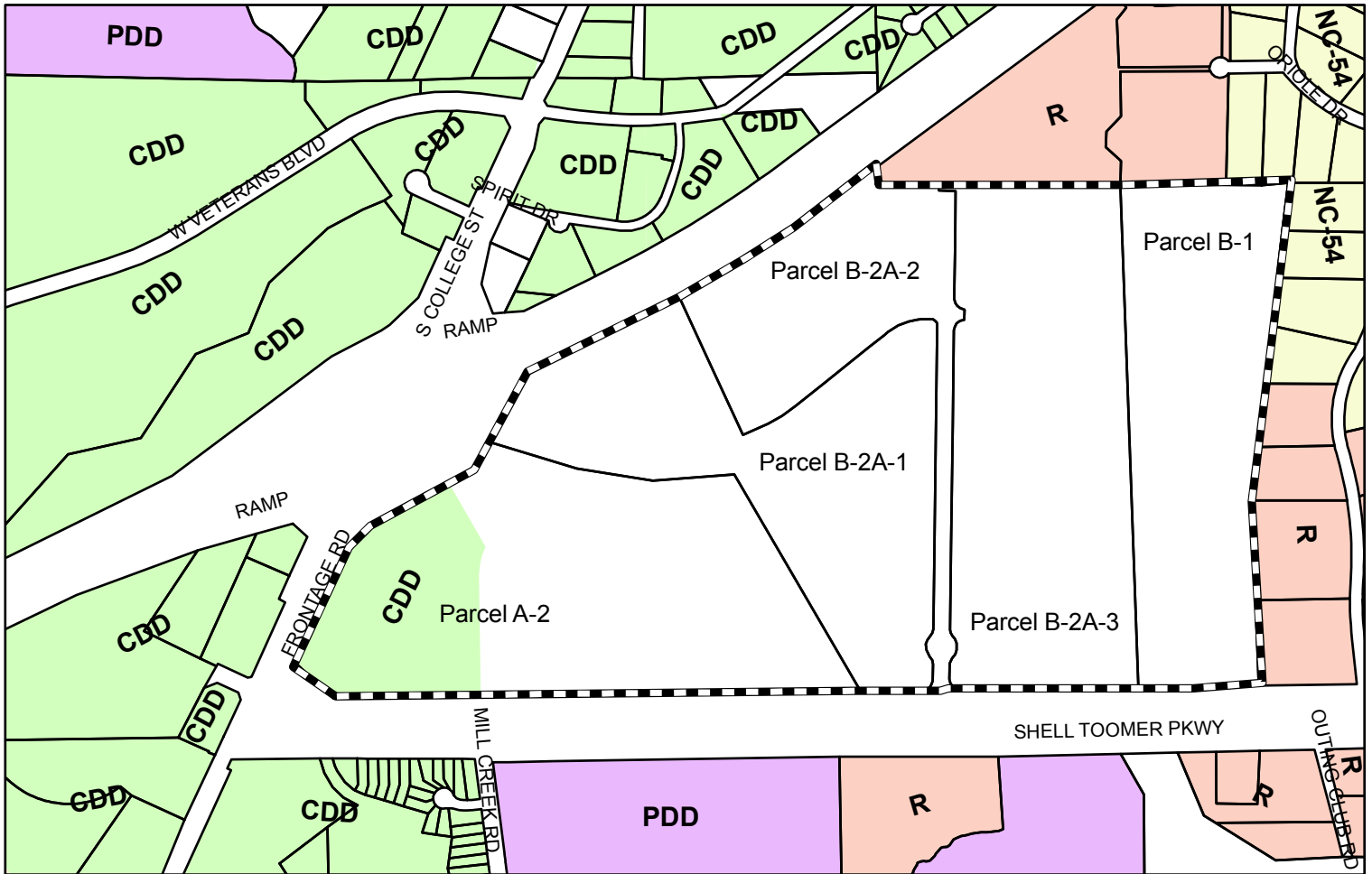
(f) The construction of the Public Infrastructure Improvements shall substantially conform to the site plan submitted by West Pace at the time of the execution of the Development Agreement contemplated herein. Said plans and specifications shall be reviewed, updated periodically and approved by the Authority along with a conceptual detailed schedule of construction, such approval not to be unreasonably withheld.

2. West Pace, either directly or through the Cooperative District or the Improvement District, shall construct, erect, and install and shall also bear the costs of all necessary Public Infrastructure Improvements needed to serve the Improvement District that may not be located within the Cooperative District. The determination of whether such Public Infrastructure Improvements are necessary to serve the District shall be made by the West Pace and the Authority.

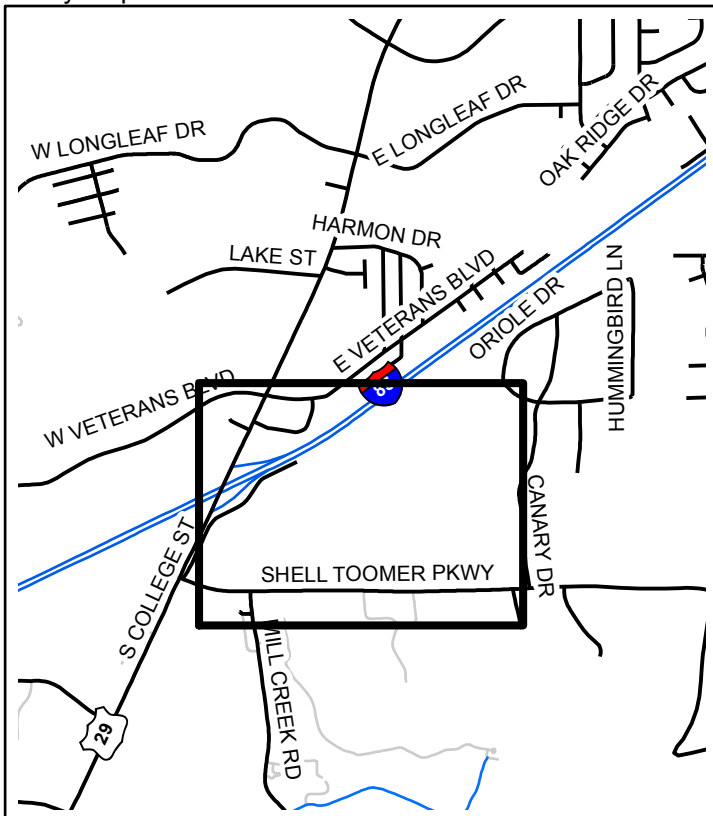
3. Property within the Cooperative/Improvement District may not be de-annexed. If, for any reason, the Property ceases to be within the corporate limits of the City then in such event West Pace understands that the City Assistance shall cease and the Authority shall have no obligation to otherwise provide or assist in the provision of payment of subsequent costs of Public Infrastructure Improvements.

4. This Memorandum of Understanding has been approved by the City Council. In the event the parties to this Memorandum of Understanding fail to reach and consummate an Economic Development Agreement on or before October 3, 2007, for any reason whatsoever, the parties hereby acknowledge that this Memorandum of Understanding will be null and void and furthermore, both parties hereby agree that both parties hereby waive any and all claims, causes of action or lawsuits of any kind that exist now or that could be brought as a result of the negotiation of this Memorandum of Understanding or any negotiations subsequent hereto, should the parties fail to reach and consummate and Economic Development Agreement by the date stated hereinabove.

West Pace, LLC Exhibit A Map



Vicinity Map



Subject Property



City of Auburn



The City of Auburn does not guarantee this map to be free from errors or inaccuracies. The City of Auburn, Alabama disclaims any responsibility or liability for interpretations from this map or decisions based thereon. The information contained on this map is a general representation only and is not to be used without verification by an independent professional qualified to verify such information.