

TO BOARD RECORDS:

PER YOUR REQUEST,

**ATTACHED IS THE ADDITIONAL CORRESPONDENCE
RECEIVED AFTER THE BCC PACKETS WAS ASSEMBLED.**

**PLEASE ADD TO THE RECORD FOR THE BCC HEARING
TO BE HEARD ON:**

HEARING DATE: Dec 15, 2015

**THANK YOU,
PLANNING DEPARTMENT**

ZONING & DEVELOPMENT MITIGATION SETTLEMENT AGREEMENT
FOXWOOD MEMORY CARE FACILITY
Foxwood Homeowners' Association, Inc.
East Lake Road Development Project

This Zoning & Development Mitigation Settlement Agreement (the "Agreement") is made effective as of the date last signed by the parties below (the "Effective Date"), between Senior Development Partners, LLC, a Florida limited liability company, or assigns (the "Developer"), and Foxwood Estates Homeowner's Association, Inc., a Florida not-for-profit corporation (the "Foxwood HOA"), with respect to the following facts:

Recitals

- A. The Developer is the fee simple owner of those certain parcels of land located on the east side of East Lake Road in Pinellas County, Florida, identified as Pinellas County Tax Parcel Nos. 10-27-16-29303-000-0010 and 10-27-16-29303-000-0120, and which are more particularly described as Lots 1 and 12, Foxwood Estates, according to the plat recorded in Plat Book 139, Pages 9 through 12, inclusive, of the public records of Pinellas County, Florida (the "Development Parcel").
- B. Foxwood HOA is the legal entity which owns the common areas within the Foxwood Estates community in Pinellas County (the "Community"), within which the Development Parcel is situated, and is legally authorized and charged by law to manage the affairs of Foxwood HOA related to such matters of common interest within and to the community. Foxwood HOA also represents the interests of residential lot owners within Lots 2 through 11 of the Foxwood Estates Community (the "Residential Lots"), which Residential Lots share a common access roadway (commonly known as Foxwood Lane) to East Lake Road with the Development Parcel.
- C. The Developer has proposed development of the Development Parcel to include an adult care facility which proposal was perceived by some residential lot owners within the Community as detrimental to the common areas and other matters of common interest to the Community; in response thereto, Foxwood HOA has negotiated with the Developer certain proposed mitigation improvements to alleviate such perceived impacts from the proposed future development, use and operation of the Development Parcel.
- D. Based upon the negotiations with Foxwood HOA, the Developer has modified its proposed plans for the Development Parcel, and has volunteered to make certain binding commitments with respect thereto, in order to directly address the potential mitigation impacts perceived by Foxwood HOA from the future development, use and operation of the Development Parcel.
- E. In turn, Foxwood HOA has agreed to withdraw any objections to the Developer's proposed development and use of the Development Parcel, and to actively support the Developer's new application(s) for approval of its proposed project on the Development Parcel, provided that the terms and conditions set forth in this Agreement are met.

NOW, THEREFORE, in consideration of the sums to be expended by the Developer hereunder, the mutual covenants and promises made by both parties herein, and for other good and valuable consideration, the receipt and sufficiency of all of which is hereby irrevocably acknowledged, the parties agree as follows:

Agreement

1. The above recitals are true and correct, and together with all exhibits hereto, are incorporated herein by reference and made a formal part of this Agreement.
2. The Developer agrees that the applications for approval of the Comprehensive Plan FLUM designation, zoning category and/or conditional overlay, special exception, conditional use, variance and any other related site development and/or building permits or authorizations for development of the Development Parcel (collectively the "Entitlements") shall specify that the proposed/authorized use (the "Intended Use") is for an independent living, assisted living, memory care, or similar senior retirement residential facility (the "MCF"). Upon final approval of the Entitlements by Pinellas County and all other agencies having jurisdiction over the proposed project, acceptance thereof by the Developer, and consummation of any real estate sale and/or development agreement with any facility owner or operator intending to develop, construct and operate the MCF (the "MCF Closing"), the Developer shall record at the MCF Closing a restrictive covenant encumbering the Development Parcel restricting the use of the Development Parcel to the Intended Use ("Covenant"). The Covenant shall specify that the Foxwood HOA shall be an express, intended beneficiary of the restrictions contained therein, and that such restrictions shall run with the land and therefor bind the successors and assigns of the Developer.
3. The Developer agrees that the MCF shall not exceed thirty (30) feet in building height, calculated in accordance with Pinellas County Land Development Code and/or Building Code criteria, which building height is less than the maximum thirty-five (35) foot building height limit for residential homes in Pinellas County, including those residences in the Community.
4. The Developer agrees that the exterior building façade for the MCF structure fronting on East Lake Road shall be consistent in quality (or better) with the conceptual architect's rendering attached as Exhibit A hereto, subject to final architectural design changes required to meet applicable Entitlement approval conditions or construction plan requirements of Pinellas County, or otherwise to meet applicable building codes and/or life safety codes for such senior residential care facilities.
5. The Developer covenants and agrees that the front buffer setbacks and buffer landscape requirements for the MCF, along the East Lake Road right-of-way frontage (the "Frontage Buffer Area"), shall comply in all respects with the requirements of the East Lake Road Corridor Plan, as adopted by Pinellas County.
6. With respect to the Developer's site plan approval process with Pinellas County, Florida, as part of the development of the Development Parcel and/or construction of the MCF, as applicable, the Developer covenants and agrees to provide the following mitigation improvements (the "Required Mitigation") for the benefit of Foxwood HOA and the owners of the Residential Lots:
 - a. East Boundary Wall. The Developer shall construct a six-foot (6') concrete block/masonry wall along the Development Parcel's easternmost property boundary a distance of approximately 220 linear feet (the "East Boundary Wall"), as depicted on the preliminary site plan attached as Exhibit B hereto. The East Boundary Wall may be located either along the Development Parcel property line, or within the twenty-

foot (20') landscape buffer between the Development Parcel property line and the parking/drive aisle area referenced in Section 6.b. below.

- b. Increased Landscape Buffer Area. The Developer shall provide an increased landscape buffer area consisting of twenty (20) feet in width (rather than fifteen (15) feet) along the easternmost property boundary for the distance of approximately 220 linear feet, as depicted on Exhibit B, for the distance of the East Boundary Wall referenced in Section 6.a. above (the "Landscape Buffer Area").
- c. Buffer Landscape Planting Requirements. Within the Landscape Buffer Area referenced in Section 6.b. above, the Developer shall provide a continuous landscape buffer with not less than eight (8) foot tree plantings and understory plantings between trees. The landscape plantings may be outside (east side) of the East Boundary Wall referenced in Section 6.a. above, or may be staggered inside and outside the East Boundary Wall within the Landscape Buffer Area referenced in Section 6.b. above. If planted outside the East Boundary Wall, the plantings may be located within the common area owned by Foxwood HOA adjacent to the retention pond. However, if any plantings are proposed for the common area owned by Foxwood HOA, the landscape plan shall be subject to review and approval by Foxwood HOA, which approval shall not be unreasonably withheld, conditioned or delayed. In either event, the goal of the landscape plan and wall shall be to provide a visually opaque landscape and wall buffer combination along the eastern boundary wall area between the Development Parcel and the Residential Lots. The same buffer landscape plantings (but not any boundary wall or increased landscape buffer area) shall also be provided by the Developer on the north-south property boundary line on the east side of the northernmost wing of the MCF, also as depicted on Exhibit B, a distance of approximately 188 linear feet. The plantings may be located within the Development Parcel and/or the adjacent common area owned by Foxwood HOA, along the Development Parcel property line. If planted in whole or in part on the common area owned by Foxwood HOA, the landscape plan shall be subject to review and approval by Foxwood HOA, which approval shall not be unreasonably withheld, conditioned or delayed.
- d. Boundary Wall Connection to Residential Gate. The Developer also shall extend and connect the East Boundary Wall referenced in Section 6.a. above, from the southeast corner of the MCF property line a distance of approximately 35 linear feet to the existing Foxwood HOA gate within Foxwood Lane, also as depicted on Exhibit B hereto. Foxwood HOA consents to the use of the common area owned by Foxwood HOA for connection of the East Boundary Wall to the existing gate. With respect to such east boundary wall connection, the parties further agree as follows:
 - i. The Developer shall construct a corner column adjacent to the north side of the existing gate, consistent in style with the end column style utilized by the Developer for the East Boundary Wall;
 - ii. The Developer shall construct a matching corner column adjacent to the south side of the existing gate, to provide a uniform appearance in style; and
 - iii. The Developer shall extend the boundary wall from the south column, adjacent to the existing gate, a distance of approximately 19 linear feet to the south boundary line of Foxwood Lane, as depicted on Exhibit B.

- iv. The Developer shall not make any improvements or modifications to the Foxwood HOA gate, which shall remain the sole responsibility of Foxwood HOA.
- e. Boundary Wall Style. The Developer shall utilize an architectural style, finish and color for the east boundary wall that is compatible with the architectural style and coloring for the MCF improvements.
- f. Construction of East Boundary Wall. The Developer shall cause the East Boundary Wall location to be approved as part of the site plan approval for the Development Parcel. Thereafter, the East Boundary Wall shall be constructed during the horizontal site development process, prior to vertical building construction on the Development Parcel, subject to any required mass grading and/or drainage improvements that must be completed prior to construction of the East Boundary Wall.
- g. Boundary Wall & Landscape Buffer Maintenance Responsibility. The Developer shall have sole responsibility for the maintenance of that portion of the East Boundary Wall that is along the Development Parcel property line or within the Development Parcel, and Foxwood HOA shall have sole responsibility for the maintenance of that portion of the East Boundary Wall that is extended into the common area of Foxwood Lane, to connect to the existing residential gate and then extending to the south boundary line of Foxwood Lane, as such extension of the East Boundary Wall into the common area of Foxwood Lane is being made as an accommodation to, and at the request of, Foxwood HOA. All buffer landscaping required under Section 6.c. above shall be the maintenance responsibility of the Developer, whether such landscaping is planted within the Landscape Buffer Area or outside the east boundary wall, adjacent to the Development Parcel on property owned by Foxwood HOA. However, any additional landscaping planted by Foxwood HOA within the common area of Foxwood Lane, shall be maintained by Foxwood HOA.
- h. Parking Area Directional Lighting. The Developer shall use directional lighting, only, in all parking areas of the Development Parcel, so as not to project any exterior lighting toward the Residential Lots. Furthermore, the Developer agrees to utilize only that quantity of exterior lighting within the Development Parcel which is required for personal safety and security, subject to Pinellas County's site plan approval requirements for the Development Parcel.
- i. Refuse Collection Area; Service Vehicles. The Developer shall enclose any refuse collection area within the Development Parcel, and there shall be no refuse collection area outside the East Boundary Wall referenced in Section 6.a. above. In addition, to minimize any back-up requirements for service vehicles, the Developer may propose to use that portion of the common area along the north boundary line of the Development Parcel, east of the MCF service area, for a driveway spur/turnaround for the service vehicles, as conceptually depicted on Exhibit B; provided, however, that the portion of any proposed site plan which locates such improvements upon common area that is owned by Foxwood HOA shall be subject to approval by Foxwood HOA, which approval shall not be unreasonably withheld, conditioned or delayed. Upon such approval, Foxwood HOA agrees to grant a construction and permanent access easement for the Developer to construct, maintain and operate such spur/turnaround area, at the Developer's sole cost and expense.

- j. Preservation of Grand Oak Trees; Potential Driveway Realignment. The Developer shall make every reasonable, good faith effort to design the easternmost site access driveway from Foxwood Lane and adjacent parking areas situated within the Development Parcel to preserve the three (3) grand oak trees depicted on Exhibit B, subject to Pinellas County's site access and site plan approval requirements. Foxwood HOA acknowledges and agrees that the preliminary location for the easternmost site access driveway from Foxwood Lane might require relocation to accommodate the preservation of the trees and/or access requirements to the Development Parcel, pursuant to the final, approved site plan by Pinellas County. In this regard, Foxwood HOA consents and agrees that the Developer may utilize adjacent portions of the common area, either along Foxwood Lane or along the easternmost boundary line of the Development Parcel, if needed to adjust the access driveway so as to help preserve the affected grand oak trees at the MCF rear parking/service entrance. Foxwood HOA agrees to grant a construction and permanent access easement for the Developer to construct, maintain and operate such access driveway as needed to accomplish the intent of this section, at the Developer's sole cost and expense.
- k. Cost of Site Plan Modifications. The Developer shall bear the cost of all modifications to Foxwood Lane which are required by Pinellas County incident to the final site plan approval for the Development Parcel, including any drive lane, turning lane, median, or landscape improvements related thereto.
- l. Permanent Maintenance Obligations. The Developer shall bear the sole cost of maintenance for all landscape, irrigation, parking areas, lighting or other improvements that are constructed within the boundary of the Development Parcel. Pursuant to the Declaration of Covenants, Conditions, Restrictions, Easements and Assessments for Foxwood Estates, recorded at Official Records Book 18299, Page 874, of the Public Records of Pinellas County, Florida (as amended, the "Declaration"), Foxwood HOA shall bear the cost of maintenance for all common areas within the Foxwood Estates community, including without limitation all improvements within Foxwood Lane and the security gate for the Residential Lots. The Developer shall be required to pay its assessments to the Foxwood HOA for Lots 1 and 12, pursuant to the Declaration, for its pro rata share of the common area expenses, which share shall not be modified, amended or changed at any time without the Developer's consent.
- m. Payment of Delinquent Assessments. Within fifteen (15) days after the Effective Date of this Agreement, the Developer shall pay any past-due, legitimate assessments for Lots 1 and 12 to Foxwood HOA; provided, however, that the Developer shall not be responsible for any amounts that were not charged in accordance with the Declaration. Upon payment of any past-due, legitimate assessments by the Developer, Foxwood HOA shall promptly release any recorded liens against the Development Parcel. Foxwood HOA agrees to provide copies of any and all outstanding invoices for unpaid assessments, with copies of all supporting documentation, within five (5) days after the Effective Date of this Agreement, for review, approval and payment by the Developer in accordance with this Section 6.m.
- n. No Access To Residential Area. No owner of the Development Parcel nor any of their guests, residents, invitees, employees, heirs, successors or assigns shall have

any pedestrian or golf cart access to any of the residential area east of the residential gate on Foxwood Lane.

7. In consideration for and conditioned only upon the Developer's compliance with the terms and conditions of this Agreement, Foxwood HOA hereby irrevocably covenants and agrees as follows:

- a. Foxwood HOA, on behalf of itself and its constituent members, shall fully and unequivocally support the Developer's or its successors and assigns', or their respective affiliates', agents' and representatives' applications for any of the Entitlements related to the MCF. Without limiting the general applicability of the foregoing, such support shall include the following: (i) execution of a written consent and/or statement of support on behalf of the Association Board of Directors, promptly when requested by the Developer; (ii) attendance by the Foxwood HOA President, or his designee, at all public hearings related to the Entitlements, with an express statement/presentation by such Foxwood HOA representative that all prior objections are withdrawn, and that all potential or perceived impacts from the proposed project have been addressed to the full satisfaction of Foxwood HOA; (iii) that a valid, binding commitment for mitigation of the perceived impacts upon the Cypress Run community has been made by the Developer, to the complete satisfaction of Foxwood HOA; and (iv) such other acts or statements of support as reasonably required and requested by the Developer.
- b. Foxwood HOA covenants and agrees not to install at any time any landscaping, monuments, or other structures or improvements in the common area owned by Foxwood HOA at the entrance of Foxwood Lane from East Lake Road, which would visually impair, impede or restrict the visibility of the MCF facility or its monument sign at the entrance of Foxwood Lane. In addition, Foxwood HOA shall not at any time take any action with respect to Foxwood Lane which would impair, impede or restrict access to the MCF in accordance with the Developer's site plan as approved by Pinellas County. Furthermore, Foxwood HOA consents to any modifications required by Pinellas County to Foxwood Lane in order to accommodate the required access management plan approved by Pinellas County, incident to the site plan approval process for the MCF, including without limitation any lane improvements and/or modification of any existing medians or median openings.
- c. Foxwood HOA acknowledges that the master roadway, water, sewer, stormwater and other utilities infrastructure is shared by the Development Parcel and the Community pursuant to the prior approved plans for the overall project. Consequently, the permitting and site development of the Development Parcel may require extensions and connection of the Development Parcel infrastructure facilities to the master utilities located within the common areas of Foxwood HOA, certain required modification of the Foxwood Lane median and/or drive lanes as referenced in Section 6.k. above. Foxwood HOA agrees to consent to any such permits and to grant such non-exclusive access and utilities easements to the common area as are required for the Developer to connect to such utilities within the common areas owned by Foxwood HOA as approved by the applicable agencies, and to any such required modifications to Foxwood Lane, all at the Developer's sole cost and expense; provided, however, that such connections and construction shall not negatively affect the required utilities capacity, or increase any maintenance or other costs, to Foxwood HOA. Notwithstanding the foregoing, the Developer shall comply

with all Pinellas County and Southwest Florida Water Management District requirements for the master stormwater system, and shall not negatively impact the pre-existing drainage or utilities capacity for the Residential Lots.

- d. In the event Foxwood HOA or any of its authorized agents, or the Developer, its successors and assigns, commits a material breach of this Agreement, this Agreement shall be specifically enforceable against such party as set forth in Section 9, below.
8. Foxwood HOA acknowledges that the Developer has disclosed that it presently intends to sell the Development Parcel to a successor who will be the actual party to construct and operate the MCF on the Development Parcel. Therefore, it is the intent of the parties that all of the obligations of the Developer under this Agreement shall be assigned to, and assumed by, such successor Developer. Consequently, except for the respective obligations of the Developer and the Foxwood HOA under Sections 6.l., 6.m., and 6.n., above, none of the obligations of the Developer under this Agreement shall be required to be performed unless and until there is a closing by the Developer upon the sale of the Development Parcel for the Intended Use or construction of the improvements to be located within the Development Parcel commences. Concurrent with such sale by the Developer for the Intended Use, the Covenant shall be recorded upon the Development Parcel as set forth in Section 2, above, and this Agreement shall be assigned by the Developer to such successor Developer, which then shall be bound by the terms of this Agreement. If no such closing occurs for the Intended Use upon the Development Parcel, this Agreement shall be null and void and of no effect.
9. Due to the unique nature of the terms and conditions of this Agreement, and the nature of the covenants and promises of the parties set forth herein, the parties expressly acknowledge and agree that a non-defaulting party aggrieved by the other party's act or failure to act hereunder, would not have an adequate remedy at law for damages, or otherwise, and that specific performance or injunctive relief would be necessary to adequately and fully protect the non-defaulting party. Consequently, the parties expressly and irrevocably agree that, in addition to any and all other remedies available at law or in equity for any breach of this Agreement, either party shall have the right to specific performance, emergency/temporary/preliminary injunctive relief, and/or permanent injunctive relief, to enforce all the terms and conditions of this Agreement. In any such action, no bond or other security shall be required to procure such injunctive relief, by irrevocable agreement of the parties at the time of execution of this Agreement. In any action brought to enforce or otherwise related to this Agreement, the prevailing party shall recover reasonable attorney's fees, expert fees, and all costs incurred in connection therewith, including legal assistant/paralegal fees and any such fees and/or costs incurred on any appeal.
10. This Agreement constitutes the sole and complete agreement and understanding between the parties, with respect to the subject matter of this Agreement, and all prior verbal or written understandings, agreements, or discussions whatsoever on this subject are hereby merged into this Agreement, without exception. The developer shall have the right to assign this Agreement. This Agreement shall be binding upon the heirs, successors and assigns of the parties, and may be modified only by express written, formal amendment to this Agreement signed by both parties hereto.

[SIGNATURES FOLLOW ON NEXT PAGE]

WHEREFORE, the parties have set their hands and seals on the respective dates set forth below.

FOXWOOD HOA:

FOXWOOD ESTATES HOMEBOWNER'S ASSOCIATION,
INC., a Florida not-for-profit corporation

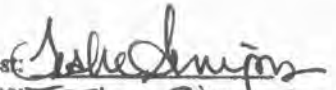
After Formal Approval By Its Authorized Board
Of Directors:

By:


Mark Kolenda, its President

Date:


12/14/15

Attest: 
Name: Tesha Simpson
Its Secretary

DEVELOPER:

SENIOR DEVELOPMENT PARTNERS, LLC, a Florida limited
liability company

By:


Blake Doganiero, its Manager

Date:


12/14/15

EXHIBIT A

**Conceptual Architectural Rendering
Front Building Elevation/Façade Facing East Lake Road
[Subject to Consistent or Better Quality Per Section 4 of the Agreement]**

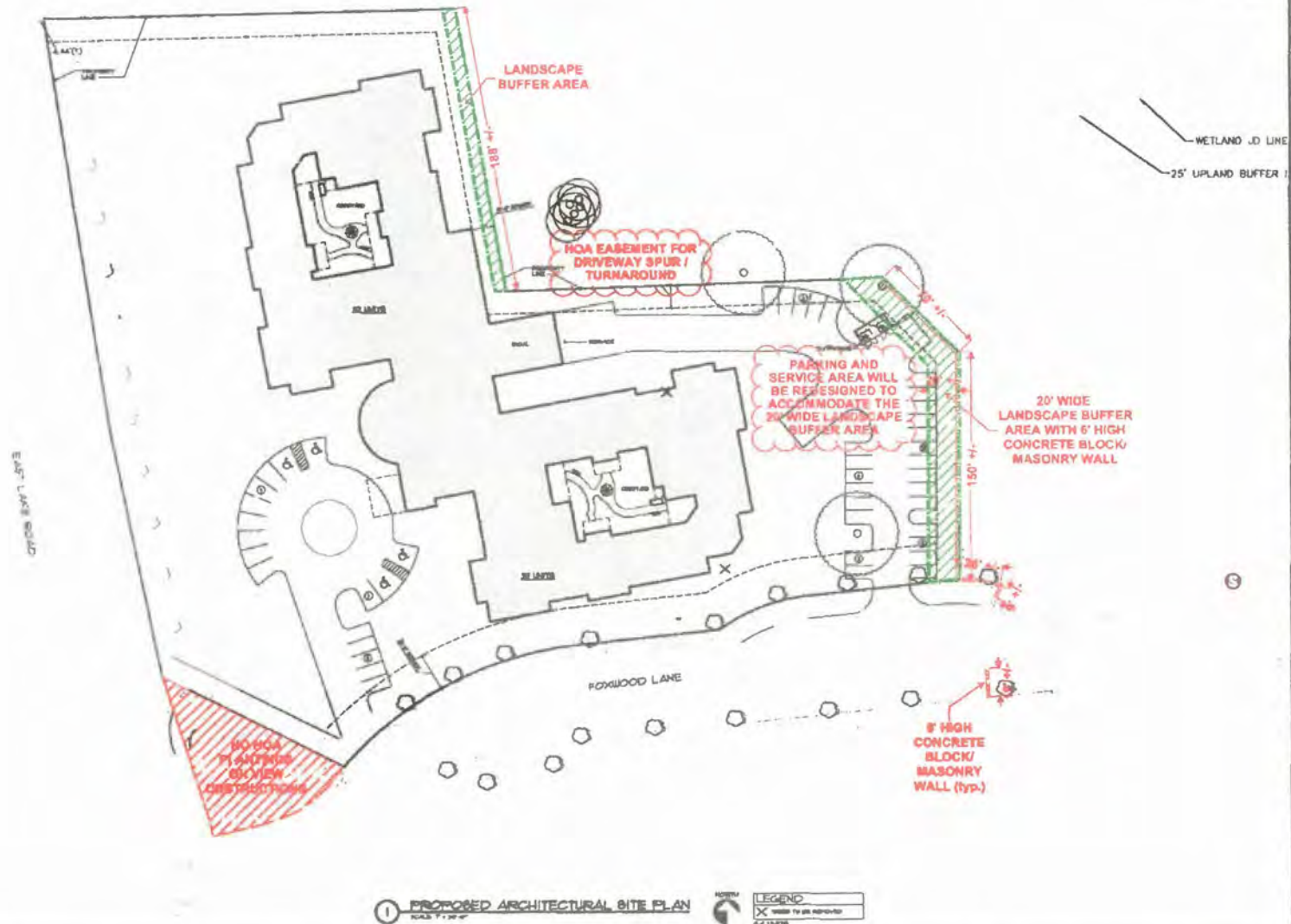
**SEE ATTACHED SAMPLE FOR MARKET STREET
MEMORY CARE RESIDENCE**



EXHIBIT B
PRELIMINARY SITE PLAN FOR DEVELOPMENT PARCEL

[Depiction of Boundary Wall/Landscape Buffer Area(s)/Security Gate Connection]

EXHIBIT B



BESSOLO
DESIGN GROUP, INC.
ARCHITECTURE & DEVELOPMENT
1000 N. W. 10TH AVE., SUITE 111
MIAMI, FL 33136
TEL: 305-571-1111
WWW.BESSOLODESIGN.COM

KEVIN J. BESSOLO
REGISTERED PROFESSIONAL ARCHITECT
NO. 12000
FLORIDA

**WATERCREST EASTLAKE
ASSISTED LIVING FACILITY**
433 EAST LAKE RD. N.
TAMPA, FL 34608

DATE	ISSUED FOR

REV.	DATE	DESCRIPTION

PROJECT NO.	000000
DRAWN BY:	PLD
PROJECT MANAGER:	PLD
CHECKED BY:	CLB
DATE:	08-11-10
SCALE:	1"=20'-0"

AS101
PROPOSED ARCHITECTURAL SITE PLAN