

x) "Height" means elevation from Finished Grade as measured in feet and/or stories. Height in stories is the number of habitable floors (stories) exclusive of the area below the first finished floor. Height in feet is the number of feet measured from the Finished Grade to the top of the soffit, in the instance of a building, or to the highest point of other measured structures.

y) "Impervious Surface" means a surface that does not permit the absorption of storm water into the ground.

z) "Land Development Regulations" means ordinances and regulations enacted by the County Council for the regulation of any aspect of Development and includes, but is not limited to, zoning, rezoning, subdivision, building construction, occupancy, aesthetic, environmental, road, or sign regulations, or any other regulations controlling the Development or use of property.

aa) "Laws" means all ordinances, laws, and regulations adopted by a local, state, or federal governing body affecting the Development of property and includes, without being limited to, those governing permitted uses of property, density, design, improvement, and construction standards and specifications.

bb) "Lot" means a Development Parcel identified in a Subdivision Plat recorded in the Fairfield County Planning Building and Zoning Office and the Fairfield County Clerk of Court's office, or in context of this Agreement a specifically defined or described Development Parcel identified as a "Lot".

cc) "Owner" or "Property Owner" means Wilburn Enterprises, LLC, or, where the context requires, any successor in title to the Owner.

dd) "Parties", unless otherwise specified in context, are the Owner and the County, their successors and assigns.

ee) "Planning Office" means the Fairfield County Planning, Building and Zoning Office (and any successor entity).

ff) "Project" means the Development that has occurred and will occur on the Property described in Exhibit A and includes any improvements or structures customarily regarded as part of real property, unless otherwise clearly indicated by the context of this Agreement.

gg) "Property" or "Real Property" means those certain tracts of land constituting, in the aggregate, the 2581± acres that is the subject of this Agreement and described in Exhibit A and any additional real property added to the Property covered by this Agreement.

hh) "SCDHPT" means the South Carolina Department of Highways and Public Transportation (and any successor entity).

ii) "Setback" means and refers to the minimum distance to the nearest adjacent property line, street, or right of way, depending upon the specific context.

jj) "Subdivision Plat" means a recorded or a recordable graphic description of property prepared and approved in compliance with the ordinances of the County with respect to the Property, or portions thereof after the effective date of this Agreement.

kk) "Term" means the duration of this Agreement as set forth herein.

ll) "Tract" or "Parcel" or "Portion of the Property" means a more particularized area constituting less than the whole of the Property.

mm) "Vested Units" means the total number of Dwelling Units authorized on any portion of the Property by this Agreement.

nn) "Vested Commercial Footage" means all the Gross Leasable Area or Gross Commercial Footage authorized on any portion of the Property by this Agreement.

oo) "Zoning Regulations" means the Fairfield County Zoning Ordinance.

3. PARTIES. The Parties to this Agreement are the Owner and the County.

4. RELATIONSHIP OF THE PARTIES. This Agreement creates a contractual relationship between the County and the Owner. This Agreement is not intended to create, and does not create, the relationship of partnership, joint venture, or any other relationship wherein a Party may be held responsible for the acts of the other Party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby one Party may be rendered liable in any manner for the debts or obligations of the other Party, to any person or entity whatsoever, whether such debts or obligation originate under this Agreement or outside of this Agreement.

5. WARRANTY OF OWNERSHIP. The Owner warrants that it is the fee simple owner of record of the Property and that there are no other legal or equitable Owners of the Property (other than its mortgagee(s)) as of the effective date of this Agreement.

6. BENEFITS AND BURDENS. The County and the Owner agree that the burdens of this Agreement bind, and the benefits of this Agreement shall inure to, each of them and to their successors in interest.

7. CONSISTENCY WITH THE COUNTY'S COMPREHENSIVE LAND USE PLAN AND LAND DEVELOPMENT REGULATIONS. The County agrees and represents that this Agreement is consistent with the County's Comprehensive Land Use Plan and Land Development Regulations and with all applicable County ordinances (as of the date of this Agreement), including, but not limited to, zoning, land development (subdivision), landscaping

and storm water management regulations, copies of which are marked Exhibit "C" and which are incorporated herein by reference.

8. LEGISLATIVE ACT. This Agreement constitutes a legislative act of the County Council of Fairfield County, South Carolina. The County Council entered into this Agreement only after following procedures required by the Act and the adoption of the Development Agreement Ordinance No. 495. This Agreement shall not be construed to constitute a debt of the County as referenced in S.C. Code Section 6-31-145. Nothing in this Agreement shall be deemed to be a pledge of the County's general credit or taxing powers.

9. APPLICABLE LAND USE REGULATIONS.

Except as otherwise provided by this Agreement, the Act, or the Development Agreement Ordinance, the Laws applicable to Development of the Property that is subject to this Agreement are those in force at the time of execution of this Agreement. In accordance with Section 6-31-80 of the Act, the County shall not apply subsequently adopted Laws and Land Development Regulations to the Property or the Project unless the County has held a public hearing and has determined: (1) the proposed subsequent Laws or Land Development Regulations are not in conflict with the Laws or Land Development Regulations governing this Agreement and do not prevent the Development set forth in this Agreement in any way, including limiting its intensity, flexibility, completeness, practicality or increasing the cost of such Development; (2) the proposed subsequent Laws or Land Development Regulations are essential to the public health, safety, or welfare, and the proposed subsequent Laws or Land Development Regulations expressly state that they apply to a development that is subject to a development agreement; (3) the proposed subsequent Laws or Land Development Regulations are specifically anticipated and provided for in this Agreement; (4) that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement which changes, if not addressed by the County, would pose a serious threat to the public health, safety, or welfare; or (5) the provisions of this Agreement are based on substantially and materially inaccurate information supplied by the Owner.

10. BUILDING CODES AND OTHER SUCH REGULATIONS. In accordance with Section 6-31-160 of the Act, and notwithstanding any provision which may be construed to the contrary in this Agreement, the Owner must comply with any building, housing, electrical, plumbing and gas codes subsequently adopted by the County or other governmental entity, as authorized by the S.C. Code. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, plumbing and gas codes subsequently adopted by the County or other governmental entity, as authorized by the S.C. Code. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend the rights, duties and privileges of the County to exercise governmental powers and pass laws not applicable to Development of the Property including, but not limited to, the power of eminent domain and the power to levy and collect taxes.

11. TERM OF THE AGREEMENT. The Term of this Agreement shall commence on the date this Agreement is executed by the County and the Owner and terminate fifty (50) years

thereafter; provided, however, the Term of this Agreement may be extended for an additional ten (10) years at the request of either party and with the consent of the non-requesting party. The party requesting the extension shall provide written notice to the other not more than one (1) year nor less than six (6) months prior to the expiration of the Term. The non-requesting party shall respond in writing within thirty (30) days if it declines the extension of the Term, in which event the Term expires as herein provided. If the non-requesting party does not decline the extension, the Term of this Agreement shall automatically be extended an additional five (5) years. Nothing in this Agreement shall be interpreted to preclude the Parties from extending the Term by mutual agreement or from entering into subsequent development agreements, as permitted by the Act.

12. DEVELOPMENT OF THE PROPERTY. The Property shall be developed in accordance with this Agreement, which is consistent with the Zoning Regulations and Laws, as herein defined. The Property is intended to be developed in accordance with the development schedules, attached as Exhibit B. Pursuant to Section 6-31-60(B) of the Act, the failure of the Owner and/or Developer to meet the development schedules shall not, in and of itself, constitute a material breach of this Agreement, but shall be judged based upon the totality of circumstances, including, but not limited to, the good faith efforts made to attain compliance with the development schedules. Factors affecting a failure to meet the development schedules may include, but shall not be limited to, market conditions, availability of financing, competitive developments, and other circumstances beyond the Owner's control.

13. VESTED RIGHTS GOVERNING THE DEVELOPMENT OF THE PROPERTY. Owner and Developer shall have vested rights to undertake Development of any or all of the Property in accordance with the Zoning Regulations and Laws, as defined herein, and as may be modified in the future pursuant to the terms hereof in accordance with this Development Agreement and the Act, for the entirety of the Term or any applicable extension thereof. Future enactments of, on changes or amendments to, County ordinances, including zoning or development standards ordinances, which conflict with the Zoning Regulations and Laws shall apply to the Property only if permitted pursuant to the Act. Subject to the provisions of Section 9 of this Agreement, all rights accorded the Owner by this Agreement and by law shall immediately constitute "Vested Rights" for the Development of the Property. Section 9 of this Agreement does not abrogate any rights either preserved by Section 6-31-140 of the Act, or that may have vested pursuant to common law or otherwise in the absence of a development agreement.

Additional Vested Rights are as follows:

A. Building Development Standards and Design Standards. Except as otherwise specified or limited by this Agreement, minimum Lot area, Lot size, Lot width, Lot depth, Lot coverage, setback and yard requirements shall be in accord with the provisions of the B-2 zoning district classification subject to reasonable adjustment by the Owner and subject to review by the County for consistency with the development plans for the Property. The Owner shall establish limitations for total ground coverage applicable to all impervious surfaces, including building foot prints, decks, walkways, parking and circulation areas, etc.; provided the same shall not exceed the aggregate building densities as prescribed by this Agreement,

which provisions shall be subject to review by the County for consistency with the Development plans for the Property as provided for by this Agreement.

B. Aesthetics. The design of the Development of the Property shall be governed by the Owner directly. Owner shall not be required to obtain the consent of, nor submit to review by, any other aesthetic design body or architectural review board established by the County or any other entity. To assure the County's permitting staff that the Owner has approved a development plan for a Lot or a Development Parcel, the Owner shall affix its stamp or written evidence of approval to the development plan. Provided, however, the Owner agrees that in conjunction with submittal of site plans for review in the regular process of approvals prescribed by the County, building plans will be provided by the Owner with sufficient detail that the County can determine that the contemplated improvements are consistent with the requirements of this Agreement.

14. VESTED RIGHTS AS TO PERMITTED USES FOR THE TRACTS.

A. The Development uses permitted on the Property are all uses permitted outright or conditionally by the B-2 General Business District Zoning Regulations subject to any stated conditions or requirements for conditional uses in the Zoning Regulations Tables and the following additional modifications:

(1) Fishing and Hunting.

(a) Fishing shall be permitted as an accessory use to the main uses in any existing stream or lake and in any lake or pond hereafter constructed on the Property by Owner.

(b) Hunting shall be permitted as an accessory use to the main uses governed by the requirements that (i) hunting not be allowed in designated trail riding areas during the hours when trails are open for riding, (ii) the minimum land area shall be 150 acres, (iii) all deer hunting shall be conducted from elevated stands at least 14 feet above ground at the floor level and (iv) no deer stands shall be located closer than 100 yards to any roadway or boundary line.

(c) All seasons, bag limits, rules and regulations legally imposed by state law or the South Carolina Department of Natural Resources ("SCDNR") for hunting or fishing shall be strictly followed and enforced and all suspected violations shall be promptly reported to the said SCDNR.

(2) Furniture manufacturing, leather products manufacturing and stone, clay and glass products manufacturing by cottage industry artisans shall be permitted as accessory uses on the condition that production be kept below 1000 items per year.

(3) Large scale (over 1000 manufactured items per year) activities shall be permitted only on rezoned manufacturing sites meeting all the requirements in the Zoning Regulations.

- (4) Sexually oriented business shall be strictly prohibited.
- (5) Cemeteries shall be strictly prohibited.
- (6) Outdoor shooting ranges shall be permitted as an accessory use to the main uses subject to the conditions set out in Section 4-24 of the Zoning Ordinance.
- (7) Manufactured housing for employees shall be permitted as an accessory use subject to the conditions set forth in Section 4-2.
- (8) Manufactured home parks shall be permitted as accessory uses subject to the conditions set forth in Section 4-4 of the Zoning Regulation.
- (9) Triplexes and quadriplexes shall be permitted in subdivisions meeting the design and development standards set forth in Zoning Regulations.

B. Within such B-2 General Business District Zoning classification, the building intensities, height and population densities shall be as set out in the current version of the Zoning Ordinance attached hereto and marked as Exhibit C.

C. Not less than 50 feet of green space shall be provided in set-backs and landscaped open areas along all non-roadway boundaries of the Property, including natural and landscaped buffer areas, storm water detention area, and parks.

D. Typical road and street design and construction standards applicable to roads and streets to be dedicated to the County and provided for by the Land Development Regulations and other Laws adopted for application by the County, are superintended for compliance by the Fairfield County Public Works Department. Provided, however, Owner may provide for, and the County may approve requests for, certain features of street design and construction not ordinarily and routinely permitted by the said Public Works Department for use in the County. Such matters of approval are further provided for by Section 16 of this Agreement.

E. Owner and the County agree that the requirement of the Land Development Regulations for direct access to a public road as a prerequisite for approval of subdivision of property and plat approval with respect to the Property subject of this Agreement does not apply. The Owner shall be entitled to subdivide the Property in furtherance of the Project development plans subject of this Agreement and to obtain plat approvals therefor, notwithstanding that streets and roads abutting properties shown on such plats have not been dedicated as public roads.

F. Owner and the County agree that in the event the ordinances and land use regulations in the County shall be amended subsequent to the effective date of this Agreement so as to permit residential usage in office and retail buildings, within B-2 zoning districts, other than by special exception, such usage shall be permitted within the Property.