

19. COMPLIANCE REVIEWS. In accordance with Section 6-31-90 of the Act, periodic reviews by the County's Planning, Building and Zoning Director, or by other appropriate officers designated by the County, shall take place at least every twelve (12) months, at which time the Owner is required to demonstrate good faith compliance with the terms of this Agreement. The Owner, or designee, shall meet with the County's officer to review Development completed in the prior year and the Development anticipated to be commenced or completed in the ensuing year. The Owner, or designee, shall be required to provide such information as may reasonably be requested, including, but not limited to, area (by acreage or square footage) of the Property developed or sold in the prior year, area (by acreage or square footage) of the Property under contract, the number of certificates of occupancy issued in the prior year, and the number anticipated to be transferred in the ensuing year. The Owner, or designee, shall be required to compile this information for the Development of the Property within the B-2 zoning district.

20. DEFAULTS. The failure of the Owner, Developer or County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as may be deemed appropriate, including specific performance of or the termination of, this Agreement in accordance with the Act; provided, however, no termination of this Agreement may be declared by the County absent its providing to the Owner and Developers the notice, hearing and opportunity to cure in accordance with Section 6-31-90 of the Act, and, provided further that nothing herein shall be deemed or construed to preclude the County from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Zoning Regulations or this Development Agreement.

21. MODIFICATION OF AGREEMENT. This Agreement may be modified or amended as to a particular portion of the Property only by the written agreement of the County and the Owner. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the Party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment per se of this Agreement unless the text expressly requires such amendment. Wherever said consent or approval is required, the same shall not be unreasonably withheld or delayed.

The conceptual plans for development of the Property at the time of adoption of this Agreement are depicted by the "Illustrative Master Plan", dated March 14, 2005 2004, attached hereto as Exhibit D, which are not intended to be rigid, exact site plans for future development. The location, sizes, number and configuration of roads, buildings, recreational amenities and other elements may vary at the time of permit applications when more specific designs are available, so long as the maximum densities set herein and the general concept of development illustrated by the conceptual plans are reasonably followed and

respected.

A. Increase in Total Approved Density. Any increase in approved density beyond the total limits of dwelling units and square feet of GLA or GCF as listed in Section 14 is a significant change.

B. Introduction of Any Use Not Specifically Permitted. The introduction of any new land use which is not herein permitted is a significant change. Accessory uses permitted by B-2 General Business District zoning and not prohibited by this Agreement are permitted as in accordance with the terms of this Agreement.

C. Change of Land Use. The development of less than the maximum densities is not a significant change, nor is development which provides greater amounts of open space. The Owner may alter the precise number, size, configuration and location of buildings, lot sizes and other site specific design elements, provided the development meets the requirements of this Agreement and does not alter specific requirements mandated or prohibited by this Agreement.

22. TRANSFER OF TITLE.

A. Binding Effect. This Agreement shall be binding on the successors and assigns of the Owner in the Ownership or Development of any portion of the Property or the Project. A purchaser or other successor in title of any portion of the Property shall be responsible for performance of Owners obligations hereunder as to the portion of the Property so transferred. Owner shall be released from obligations under this Agreement only upon the sale or other transfer of Lots, Development Parcels, or individual sites in commercial areas as to the property so conveyed under circumstances which specifically provide for such subsequent owner's assumption of Owner's responsibility applicable to the particular property, as provided for by this Agreement. Notwithstanding anything hereinabove to the contrary the binding provision relating to responsibility for performance under Owner's obligations shall not be imposed upon a mortgagee in possession through foreclosure or deed in lieu of foreclosure. Nevertheless, a mortgagee in possession may utilize Owner's rights under this Agreement by its assumption of Owner's responsibility particular to the particular property.

B. Transfer of Title to Real Property. The Owner shall be entitled to transfer title to any portion or all of the Property to a purchaser, and assign Owner's rights and obligations under this Agreement, subject to the following:

(1) Notice of Property Transfer by Owner. If the Owner intends to transfer all the land comprising the Property, Owner shall notify the County in writing. With respect to such transfer, the Owner's assignment of rights and obligations under this Agreement (and the transferee's assumption thereof) shall be effective upon written notice to the County. This provision shall not apply and no prior notice to the County shall be required if the Owner transfers any portion of the Property to a mortgagee, either through a foreclosure or a deed in lieu of foreclosure, in which event Owner shall notify the County of the transfer within sixty (60) days after its effective date.

(2) Transfer of Facility and Service Obligations. If the Owner transfers any portion of the Property on which the Owner is required to provide and/or construct certain Facilities or provide certain services, distinct from those provided throughout the Project and which are site-specific to the portion of the Property conveyed, then the Owner shall be required to obtain a written agreement from the purchaser expressly assuming all such separate responsibilities and obligations with regards to the parcel conveyed and the Owner shall provide a copy of such agreement to the County.

(3) Allocation of Development Rights. Any and all conveyances of any Lots or Development Parcels within the Property subject to the maximum number of Dwelling Units, Densities, GLA or GCF shall, by contract and by covenant in the deed, allocate the number of Dwelling Units, Densities, GLA or GCF being conveyed. Owner shall notify the County of such transfer in a written document promptly delivered to the County.

C. Release of Owner. In the event of the sale or other conveyance of all or a portion of the Property and in compliance with the conditions set forth herein, the transferor-Owner shall be released from any further obligations with respect to this Agreement as to the portion of the Property so transferred, and the transferee shall be considered as substituted for the Owner under the Agreement as to the portion of the Property so transferred.

23. TRANSFER OF DEVELOPMENT RIGHTS TO A DEVELOPER. The Owner shall be entitled to transfer Development Rights (without the transfer of title to a portion of the Real Property) to a Developer and to assign Owner's rights and obligations under this Agreement with respect to said Development Rights to all or any portion of the Property, subject to the following notification requirement:

The Owner shall be required to notify the County, in writing, as and when Development Rights are transferred to a Developer. Such information shall include the identity and address of the Developer, a Developer contact person, the location and nature of the Development Rights transferred, and the location and number of acres within the Property affected by the transfer, the number of residential units and/or the amount of Gross Commercial Footage, if applicable, subject to the transfer. A Developer transferring Development Rights to another Developer shall be subject to this same requirement of notification, and any Developer acquiring Development Rights shall be required to file with the County an acknowledgment of this Development Agreement and a commitment to be bound by it.

24. MERGER. This Agreement, coupled with its Exhibits, which are incorporated herein by reference, shall state the final and complete expression of the Parties' intentions. All prior negotiations and representations are superseded and merged herein.

25. COOPERATION. The Parties hereto agree to cooperate with each other to effectuate the provisions of this Agreement and to act reasonably and expeditiously in all performances required under the Agreement.

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending such legal action; provided, however, each Party shall retain the right to engage said Party's own independent counsel at the party's own expense.

26. GOVERNING LAW. This Agreement shall be constructed and enforced in accordance with the laws of the State of South Carolina.

27. REMEDIES/NON-BINDING ARBITRATION. If there is a breach of this Agreement, the non-breaching party may pursue all available legal and equitable remedies. Each Party recognizes that the other Party may suffer irreparable harm from a material breach of this Agreement and that no adequate remedy at law may exist to enforce this Agreement. Consequently, the Parties agree that any non-breaching Party who seeks enforcement of the Agreement is entitled to seek the equitable remedies of injunction and specific performance.

However, if there is a dispute between the County and the Owner concerning the terms, meaning, interpretation, rights or obligations under this Agreement (including any determination of material breach under the Act), the Parties agree to submit such dispute to prompt non-binding arbitration as described herein. The County and a representative of the Owner shall within five (5) days of receipt of such notice each pick an arbitrator, and the two arbitrators shall select a third. The Parties shall then promptly convene a conference with the arbitration panel and present their positions. In this conference the rules of evidence and other legal formalities shall not apply. The arbitrators shall promptly render their decision. Upon the rendering of the arbitration panel's majority decision, any Party may then pursue legal proceedings if the decision rendered is not acceptable and no other agreed settlement of the dispute can be achieved. The County and the Owner shall each bear the cost of their appointed arbitrator, and split 50/50 the cost of the third arbitrator as well as any separate expenses associated with the arbitration conference.

28. RECORDING. Within fourteen (14) days after the execution of this Agreement, the Owner shall record this Agreement in the Office of the Clerk of Court for Fairfield County.

29. NO THIRD PARTY BENEFICIARIES. Notwithstanding any provision herein to the contrary, this Agreement shall not be interpreted to create or bestow any rights, remedies, or obligations on persons or entities who are not Parties, or successors or assigns to this Agreement. The provisions of this Agreement may be enforced only by the County, the Owner and Developer with directly assigned interest in the Property pursuant to this Agreement.

30. NOTICES. Any notice, demand, request, consent, approval, or communication which a Party is required to or may give to another Party hereunder shall be in writing and shall be delivered or addressed to the other at the address set forth below or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made on the actual date of delivery by personal delivery or by independent courier service or by

facsimile followed by next day mail, or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, consents, approvals or communications to the County shall be addressed to the County at:

County of Fairfield
P.O. Drawer 60, Winnsboro, SC 29180
Attention: County Administrator
Fax: (803) 635-5969

With a copy to:

W. Thomas Sprott, Esquire
Fairfield County Attorney
P.O. Drawer 329
Winnsboro, SC 29180
Fax: (803) 712-6943

And to the Owner at:

Wilburn Enterprises, LLC
c/o Mr. Donald Wilburn
2603 Rolling High Drive
Monroe, NC 28110
Fax: (704) 363-8682

With a copy to:

Edward D. Barnhill, Jr., Attorney
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street (29201)
P.O. Box 11070
Columbia, SC 29211-1070
Fax: (803) 255-5559

And to:

Mr. James E. Floyd
Gibson Smith Realty Co.
One Wachovia Center, Suite 3880
301 South College Street
Charlotte, NC 28202
Fax: (704) 333-7154

31. ESTOPPEL CERTIFICATES. The County, the Owner or any Developer may, at any time, and from time to time, deliver written notice to the other applicable Party requesting such Party to certify in writing:

- A. That this Agreement is in full force and effect;
- B. That this Agreement has not been amended or modified, or if so amended, identifying the amendments;
- C. Whether, to the knowledge of such Party, the requesting Party is in default or is

claimed to be in default of the performance of its obligations under this Agreement; and, if so, describing the nature and extent, if any, of any such default or claimed default; and

D. Whether, to the knowledge of such Party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default; and, if so, specifying each such event.

Upon request in writing from the Owner, Developer, or an assignee of either, to the County sent by certified or registered mail, return receipt requested, the County will provide a Certificate in recordable form, that solely with respect to the portion of the Real Property described in the request, there are no violations or breaches of this Agreement, except as otherwise described in the Certificate. The County will respond to such a request within ten (10) days of the receipt of the request, unless a longer time is mutually agreed to in writing by the Parties.

If the County does not respond to such request within ten (10) days of the date of its receipt, the portion of the Real Property described in the request will be deemed to be in compliance with all of the covenants and terms of this Agreement. A certification of such failure to respond and deemed compliance may be recorded by the Owner (including a copy of the request and the notice of receipt), and it shall be binding on the County as of its date; and, it shall have the same effect as a Certificate issued by the County.

32. STATE AND FEDERAL LAWS. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal laws. In the event state or federal laws or regulations are enacted after the execution of this Development Agreement, or decisions are issued by a court of competent jurisdiction, which prevent or preclude compliance with one or more provisions of this Agreement (any one or more of said events being herein referenced "New Law"), the provisions of this Agreement may be modified or suspended as necessary to comply with such New Law. Immediately after enactment of any such New Law, the Owner, Developer and the County shall meet and confer in good faith in order to agree upon an appropriate modification or suspension based on the effect such New Law has on the purpose and intent of this Agreement. Should the Parties be unable to agree to a modification or suspension, any Party may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner, Developer and the County each shall have the right to challenge the New Law preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.