

The Parties further agree that if any provision of this Agreement is declared invalid as a result of a New Law, the Parties may then agree that this Agreement be amended to the extent necessary to make it consistent with the New Law, and the balance of this Agreement, as amended, shall remain in full force and effect.

Developer agrees, during the term of this Development Agreement, to provide the Fairfield County Zoning Administrator with copies of all studies, permit applications and permits required by State and Federal laws and/or agencies at no cost to County.

### 33. GENERAL TERMS AND CONDITIONS.

A. Agreement to Run with the Land. This Agreement shall be recorded against the Property as described in Exhibit A and this Agreement shall be deemed to run with the land. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors and assigns of the Parties to this Agreement as set forth in Section 6 herein.

B. Exhibits. All exhibits attached hereto and/or referred to in this Agreement are incorporated herein as though set forth in full.

C. Construction. The Parties agree that each Party and its counsel have reviewed and revised this 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 Agreement.

D. Assignment. Other than as recited herein, no other rights, obligations, duties or responsibilities devolved by this Agreement on or to the Owner, Developers or the County are assignable to any other person, firm, corporation or entity, except by agreement of the Parties.

E. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

F. No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.

G. Attorney's Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement against another Party in any legal proceeding whatsoever, including declaratory relief or other litigation, the prevailing Party shall be entitled to receive from the other Party thereto reimbursement for all attorney's fees and costs and expenses as determined by the Court exercising jurisdiction over the matter and the Parties. Should any judgment or final order be issued in said legal proceeding, said reimbursement amount shall be specified therein.

H. Entire Agreement. This Agreement sets forth, and incorporates by reference, all of the agreements, conditions and understandings among the County and the Owner relating to the Property and its Development and there are no promises, agreements, conditions or

understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed herein other than as set forth or as referred to herein.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to by Parties to this Agreement as prescribed herein.

The assertions and representations of this Subparagraph H do not abrogate the agreement of the Parties that the "Illustrative Master Plan" attached as Exhibit D and otherwise referenced by this Agreement is not a rigid or final development plan and that its particulars will be subject to change consistent with the objective of this Agreement.

**34. STATEMENT OF REQUIRED PROVISIONS.** The Act requires that a development agreement include certain mandatory provisions, pursuant to Section 6-31-60(A). Although certain of these items are addressed elsewhere in this Agreement, the following listing of the required provisions is set forth for convenient reference. The number below corresponds to the number utilized under Section 6-31-60(A) for the required items:

A. Legal Description of Property and Legal and Equitable Owner. The legal description of the Property is set forth in Exhibit A attached hereto. The present legal owner of the Property is Wilburn Enterprises, LLC, a North Carolina Limited Liability Company. A warranty of ownership is recited in Section 5 of this Agreement.

B. Duration of the Agreement. The duration of this Agreement is fifty (50) years, with provision for extension in accordance with Section 11 of this Agreement. Provided, however, 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.

C. Permitted Uses, Densities, Building, Intensities and Heights. A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development standards, are contained in the recitals and various sections and provisions of this Agreement, specifically including Section 14.

D. Facilities. Facilities and services are described generally above in Section 15 and Section 16. The Zoning Regulations and the said sections of this Agreement provide for availability of roads and utilities to serve the Property on a timely basis.

E. Dedication of Land and Provisions to Protect Environmentally Sensitive Areas. Pursuant to other specific provisions of this Development Agreement, Owner will be responsible for identified construction costs associated with the placement of infrastructure for utilities services upon the Property, and if necessary, some off-site utilities connections. In such instances and for such purposes, Owner shall be responsible for dedication of such facilities and appropriate easements therefor to the County, or other governmental entities, as applicable for the specific utility. Such dedications shall be at Owner's cost, without cost to the

County, or the applicable utility provider, unless otherwise specifically agreed by and between the said provider and Owner.

If or to the extent that the County (i) shall determine a need for land for the development of sites for public uses, including fire or police services, EMS services, library services, or other functions regularly provided for public use and benefit by the County and (ii) shall determine that land within the Property is a proper location for such use(s), then and in that event, Owner agrees to a good faith consideration of the County's proposal for such location(s), specifically including price and specific site appropriateness for the proposed use. Owner and the County hereby agree that there is no present agreement or obligation of Owner to donate to County any such land without cost to the County.

Owner is obligated to provide written verification that there are no areas of the Property identified as environmentally sensitive and that no species of protected or endangered wildlife (plants or animals) have been identified on the Property. Zoning Regulations described above, and incorporated herein, contain provisions for environmental protection. All relevant state and federal laws will be fully complied with by Owner in the development of the Property. In addition, the provisions set forth in Section 18 of this Agreement also apply to this Agreement's treatment of environmental protection issues.

F. Local Development Permits. The Development is governed in conformance with the ordinances of the County. Specific permits must be obtained prior to proceeding with Development, consistent with the standards set forth in the County's zoning, land development, and stormwater regulations. Building permits must be obtained from the County for construction, and other appropriate permits must be obtained from the State of South Carolina when applicable. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Owner or the Developers, their successors or assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions. Identification of known or anticipated licenses and permits are set forth on Exhibit E hereto.

G. Comprehensive Plan and Development Agreement. The Development permitted and proposed under the Zoning Regulations is consistent with the County's Comprehensive Plan and with current land development regulations of the County of Fairfield, State of South Carolina. Specific findings to that effect are contained in the recitals hereinabove adopted as a part of this Development Agreement.

H. Terms for Public Health, Safety and Welfare. The County Council, by the adoption of Ordinance No. 495 approving this Development Agreement and by Council's execution of this Agreement, has found and confirms that all issues currently relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of this Agreement, the Zoning Regulations, and existing law.

I. Historical Structures. There are no historic structures to be preserved or restored, and no further archaeological surveys are required.

J. Development Schedule. In accordance with Section 6-31-60-(B) of the Act, Development Schedules are set forth in Exhibit B hereto.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the day and year first above written.

WILBURN ENTERPRISES, LLC,  
a South Carolina Limited  
Liability Company

WITNESSES:

Edward W. Bamberg  
John M. [Signature]

BY: Donald Wilburn  
DONALD WILBURN  
Managing Member

COUNTY OF FAIRFIELD, SOUTH  
CAROLINA, a Political Subdivision of  
the State of South Carolina

Rama P. [Signature]  
Michelle H. [Signature]

BY: David L. Ferguson Sr.  
DAVID FERGUSON  
Chairperson, Fairfield County Council

BY: Philip L. Hinely  
PHILIP L. HINELY  
Fairfield County Administrator

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FAIRFIELD )

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PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness, who being duly sworn deposes and says that he/she witnessed execution of the foregoing Development Agreement by the Owner, Wilburn Enterprises, LLC, by its managing member, Donald Wilburn, and that said execution was also witnessed by the second witness whose name appears upon the face of the said document.

Edward D. Smyke  
Witness Signature

SWORN TO BEFORE ME THIS  
14<sup>th</sup> DAY OF March, 2005

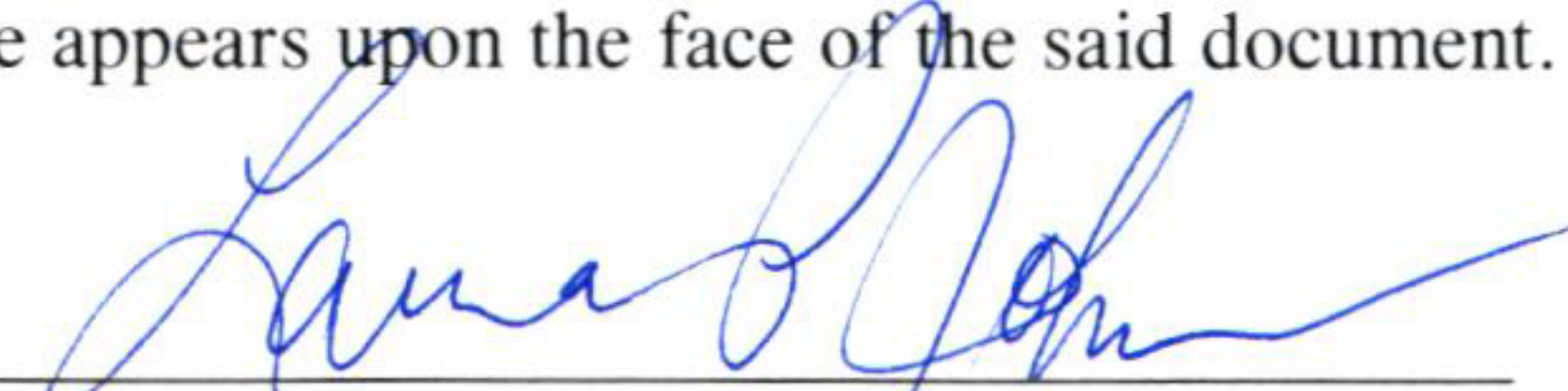
Shirley M. Brown [Seal]  
Notary Public for South Carolina  
My Notarial Commission Expires: 07/02/2006

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FAIRFIELD )

PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness, who being duly sworn deposes and says that he/she witnessed execution of the foregoing Development Agreement by the County of Fairfield by David Ferguson, Chairperson, Fairfield County Council and Philip L. Hinely, Fairfield County Administrator, and that said execution was also witnessed by the second witness whose name appears upon the face of the said document.

  
\_\_\_\_\_  
Witness Signature

SWORN TO BEFORE ME THIS  
15 DAY OF MARCH, 2005

 [Seal]

Notary Public for South Carolina

My Notarial Commission Expires: 3-14-2010

