

**STATE OF SOUTH CAROLINA            )**  
**)**  
**COUNTY OF BEAUFORT                 )**           **DEVELOPMENT AGREEMENT**  
**)**           **(CLARENDON FARMS PROPERTY)**

This Development Agreement ("Agreement") is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between Clarendon Farms, L.L.C. ("Owner") and the governmental authority of the City of Beaufort, South Carolina ("Beaufort or City").

**WHEREAS**, the legislature of the State of South Carolina has enacted the "South Carolina Local Government Development Agreement Act," (the "Act") as set forth in Sections 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976), as amended; and,

**WHEREAS**, the Act recognizes that "The lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning." [Section 6-31-10 (B)(1)]; and,

**WHEREAS**, the Act also states: "Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the Development Agreement or in any way hinder, restrict, or prevent the development of the project. Development Agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State." [Section 6-31-10 (B)(6)]; and,

**WHEREAS**, the Act further authorizes local governments, including municipal governments, to enter Development Agreements with owners to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and,

**WHEREAS**, Owner has annexed to the City approximately 4,151 acres, generally known as the Clarendon Farms, and proposes to develop, or cause to be developed, therein a mixture of residential, commercial and conservation uses; and,

**WHEREAS**, the City seeks to protect and preserve the natural environment and to secure for its citizens quality, well planned and designed development and a stable and sustainable tax base; and,

**WHEREAS**, the City finds that the program of development proposed by Owner for this Property is consistent with the City's comprehensive land use plan; and will further the health, safety, welfare and economic well being of the City and its residents; and,

**WHEREAS**, the annexation of the Property and the program for its development presents an opportunity for the City to secure quality planning and growth, protection of the environment and a strengthened and revitalized tax base; and,

**WHEREAS**, this Development Agreement is being made and entered between Owner and Beaufort, under the terms of the Act, for the purpose of providing assurances to Owner that it may proceed with its development plan under the terms hereof, as hereinafter defined, consistent with its approved PUD Master Plan (as hereinafter defined) without encountering future changes in law which would materially affect the ability to develop under the plan, and for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to the City of Beaufort.

**NOW THEREFORE**, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic benefits to both Beaufort and Owner by entering this Agreement, and to encourage well planned development by Owner, the receipt and sufficiency of such consideration being hereby acknowledged, Beaufort and Owner hereby agree as follows:

**I. INCORPORATION.**

The above recitals are hereby incorporated into this Agreement, together with the South

Carolina General Assembly findings as set forth under Section 6-31-10(B) of the Act.

## II. DEFINITIONS.

**As used herein, the following terms mean:**

**"Act"** means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-31-10 through 6-31-160 of the Code of Laws of South Carolina (1976), as amended; attached hereto as Exhibit A.

**"Agreement"** means this Development Agreement, including the recitals and exhibits attached hereto.

**"Clarendon Farms PUD"** means that certain tract of land described on Exhibit B.

**"Clarendon PUD Development Regulations"** means the Planned Unit Development (PUD) ordinance ratified by the City Council of Beaufort on \_\_\_\_\_, 2006, establishing a Planned Unit Development for the Property, and all the attachments thereto, including but not being limited to the Conceptual Master Plan, all narratives, applications, and site performance development standards, as same may be hereafter amended by mutual agreement of the City and the Owner, (a copy of all of which is attached hereto marked Exhibit C and incorporated herein by reference), and this Development Agreement.

**"Conceptual Master Plan"** means that map of the Property entitled "Conceptual Master Plan for the Clarendon Farms Planned Unit Development" that has been accepted and approved by the City incidental to the City's zoning of the Property to PUD, and as attached hereto as a part of Exhibit C.

**"Developer"** means Owner and all successors in title or lessees of the Owner who undertake Development of the Property or who are transferred Development Rights.

**"Development"** means the definition of development as set forth in the Zoning Regulations. This definition does not include commercial timbering and other silviculture

activities, or the continuation or expansion of the farming, hunting, game management and game breeding activities, which may continue on Undeveloped Lands during the Term of this Agreement.

**"Development Plan Areas"** means those discrete areas brought forward for development/subdivision approval by the City which are not otherwise exempt under State law or the City's Unified Development Ordinance.

**"Development Rights"** means Development undertaken by the Owner or Owner(s) in accordance with the Zoning Regulations and this Development Agreement.

**"Dwelling Unit"** means one or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with cooking, sleeping and sanitary facilities provided within the dwelling unit. Dwelling Unit shall not include, however, hotel rooms or other facilities for transient short term stays; assisted living facilities, or other commercial properties.

**"Owner"** means Clarendon Farms, L.L.C., or its successors or assigns.

**"Owners Association"** means an entity or entities formed pursuant to the Zoning Regulations which is responsible for the construction and/or maintenance and/or upgrading of the infrastructure in the Master Plan approved under the Zoning Regulations and this Development Agreement, to include but not be limited to roads, common areas, water, sewer and stormwater management systems.

**"Property"** means that tract of land described on Exhibit B.

**"Subsequent Developer"** means a developer who obtains some or all of the Property subsequent to the execution of this Agreement.

**"Term"** means the duration of this agreement as set forth in Section III hereof.

**"Undeveloped Lands"** in existence on the date of execution of this Agreement is the Real Property described in Exhibit B, which include parcels or lots of land with existing

structures or uses. Undeveloped Lands shall, during the term of this Agreement, include Real Property that either (i) has not received final plat approval or (ii) has received preliminary, conditional or final plat approval but consists of five (5) or more contiguous acres of Real Property, depicted as Lots or parcels thereon, and has not been sold or transferred to a party unrelated to the Owner. Unrelated to the Owner means those persons or entities not owning, at the time of this Agreement, shares of stock of the Owner, or their lineal descendants. Properties designated by the Owner as "Undeveloped Lands" shall continue to be taxed as "agricultural" by the County, but are subject to impact fees, and may be used for hunting, game breeding, and agricultural purposes, including forestry.

### **III. TERM.**

The term of this Agreement shall commence on the date this Agreement is executed by the City and Owner or the effective date of the annexation of the Property, whichever occurs later, and the terminate thirty-five (35) years thereafter; provided however, that the term of this agreement will be renewed for three (3) successive five year periods, absent a material breach of any term of this Agreement by the Owner or Developer during the initial or any renewal term, as applicable. The parties are not precluded from extending the termination date by mutual agreement or from entering into subsequent development agreements.

### **IV. DEVELOPMENT OF THE PROPERTY/ADDITIONS OF OTHER PROPERTIES.**

The Property shall be developed in accordance with the Clarendon PUD Development Regulations and this Development Agreement. The City shall, throughout the Term, maintain or cause to be maintained, a procedure for the processing of applications as contemplated by the Clarendon PUD Development Regulations. All costs customarily charged by or to the City for such application reviews shall be paid by the Owner or Owner, as applicable.

Whenever express or implied substantive or procedural standards or provisions contained in this Agreement are inconsistent or in conflict with provisions or standards in the Ordinances of the City of Beaufort or other Laws of a local government, the provisions or standards set forth in this Agreement shall govern. When interpreting this Agreement, the PUD

(with its Clarendon PUD Development Regulations), and the City's Land Use Development Regulations, and/or resolving ambiguities or conflicts between the documents, the hierarchy of documents is the Development Agreement first, the PUD and its Clarendon PUD Development Regulations, second, and the City's Land Use Development Regulations last.

In the event Owner or a Subsequent Developer acquires property or properties adjacent to and contiguous with the Property, and desires to subject such property or properties to the benefits and obligations of this Development Agreement, Owner and Developer may request the City to annex the property or properties into the corporate boundaries of the City (if it is not already within the corporate boundaries), and the City agrees to consider an amendment to this Agreement if the property or properties are annexed.

**V. CHANGES TO CLARENDON PUD DEVELOPMENT REGULATIONS/BINDING EFFECT.**

The Clarendon PUD Development Regulations relating to the Property subject to this Development Agreement, except as provided for in Section X herein, shall not be amended or modified during the Term, without the express written consent of the Owner. Modifications to the PUD Ordinance of the City are contained in Attachment 2 of the Conceptual Master Plan Planned Unit Development Document (Exhibit C to this Agreement), including procedural changes. Owner does, for itself and its successors and assigns, including Owner(s) and notwithstanding the Clarendon PUD Development Regulations, agrees to be bound by the following:

1. Binding Effect/Successors and Assigns/Release of Owner. This Agreement shall be binding on the successors and assigns of the Owner in the ownership or Development of any portion of the Real Property or the Project. A purchaser, lessee or other successor in interest of any portion of the Real Property shall be solely responsible for performance of Owner's obligations hereunder as to the portion or portions of the Property so transferred. Subsequent Developers and/or assignees of development tracts shall be required to execute a written acknowledgment accepting and agreeing to the Owner's obligations in this Agreement, said document to be in recordable form and provided to the City at the time of the recording of any deed transferring a development tract in the manner set forth below. Following delivery of such

documents, Owner shall be released of any further liability or obligation with respect to said tract.

The Owner shall be required to notify the City, in writing, as and when Development Rights are transferred to any other party. Such information shall include the identity and address of the acquiring party, a proper contact person, the location and number of acres of the Property transferred, and the number of residential units and/or commercial acreage, as applicable, subject to the transfer. A Owner transferring Development Rights to any other party shall be subject to this requirement of notification, and any entity acquiring Development Rights hereunder shall be required to file with the City an acknowledgment of this Development Agreement and a commitment to be bound by it. Reporting of such information to the City will be made upon such forms as the City and Owner may agree upon from time to time. This paragraph shall not be construed as to require notification to the City by a Developer of the transfer of individual lots or units in multi-family buildings in residential areas once the site has been subdivided and the plat approved by the City, nor of individual building sites or pads after approval of a commercial subdivision, once the one-time fees set forth in Section XII C) are paid to the City.

In the event of conveyance of all or a portion of the Property and compliance with the conditions set forth therein, the Owner shall be released from any further obligations with respect to this Agreement as to the portion of Property so transferred, and the transferee shall be substituted as the Owner under the Agreement as to the portion of the Property so transferred.

2. The Owners and Developers, and their respective heirs, successors and assigns agree that all Development, with the exception of irrigation, golf courses, incidental maintenance facilities, temporary uses/facilities, and facilities existing at the date of this Development Agreement will be served by potable water and sewer prior to occupancy. The use of wells and septic shall be approved by City if an exempted lot/subdivision (as set forth in VI below), or where the Beaufort Jasper Water and Sewer Authority agrees that public water and/or sewer is impractical, or if or a Master Plan submittal for or including a subdivision of ten lots or less, or large lots (2 acres or more), is in a sparsely populated area of the PUD which is well drained where septic would pose no environmental threat, or where the running of lines and clearing

and trenching to install water and / or sewer would cause or threaten environmental damage. Such a decision would be made at the time of development application, by the appropriate development review authority of the City, in the reasonable exercise of its discretion.

## **VI. DEVELOPMENT SCHEDULE.**

The Property shall be developed in accordance with the development schedule, attached as Exhibit D. Pursuant to the Act, the failure of the Owner and any Owner to meet the development schedule shall not, in and of itself, constitute a material breach of this agreement. In such event, the failure to meet the development schedule shall be judged by the totality of circumstances, including but not limited to the Owners and Developer(s) good faith efforts to attain compliance with the development schedule. These schedules are planning and forecasting tools only. The fact that actual development may take place at a different pace, based on future market forces, is expected and shall not be considered a default hereunder. Furthermore, periodic adjustments to the development schedule which may be submitted by Owner/Developers in the future, shall not be considered a material amendment or breach of the Agreement. Notwithstanding the foregoing or any other section of this Agreement, this Agreement in no way obligates Owner to develop any portion of the Property. It is acknowledged that as part of the Marine Corps Air Station Protections (Section XII (B)), there are up to ten residential units available for employee/farmworker housing in the protected area. Additionally, Owner may desire to create residential/recreational compounds on the Property for transfer to its shareholders. Creation of these two types of residences are exempt from the City's subdivision plat approval requirements, and shall be considered an exempt subdivision. Neither public sewer or water, nor paved roads shall be required of these exempt residential subdivisions, provided that there is sufficient access for fire and emergency vehicle access.

## **VII. DENSITY.**

Mixed use, residential and commercial development on the Property shall be limited to the total densities and uses as set forth in the Conceptual Master Plan of Clarendon Farms PUD, as attached hereto. As more particularly set forth in the Conceptual Master Plan PUD documents (attached as Exhibit B), residential density shall be limited to 4,500 units (base maximum density), and commercial square footage to 1,060,000 (Base Non-residential Density). In addition to the base maximum residential units set forth above, up to an additional 2,000 residential units shall be allowed if Owner or Developer, or their assigns, can demonstrate through a traffic impact analysis acceptable to the City, that traffic generated by the additional density can be adequately handled by then existing traffic infrastructure or traffic infrastructure which the City forecasts to be constructed within a reasonable time, and further, that the City determines, in good faith, that adequate provision has been made for commercial infrastructure fostering internal capture of vehicle trips, and for the handling of governmental services, including fire, police, school and other such services for the additional density.

Owner and Developers may transfer their rights to undertake development within the Property to other Developers or third parties, provided the overall caps on density and intensities of uses does not exceed that allowed under this Agreement and the PUD. For instance, should a Developer be assigned, as part of its purchase of a portion of the Property 500 single-family dwelling units and 50,000 square feet of commercial space, such Developer could, if it chose, assign all or a portion of those 500 units or commercial area to another Developer or third party, subject to the notification requirements to the City contained in this Agreement in Section V (1) above, and the total maximum densities allowed under this Agreement.

### **VIII. RESTRICTED ACCESS**

The Property currently has restricted access, and has for decades. Owner and/or Developer shall have the right to develop restricted access communities within the Property. Notwithstanding the foregoing, reasonable access will be provided the general public to any park or conservation

area dedicated to the public, and over the roads and rights of way to be created serving the Traditional Village area, and connecting this Property to other properties.

**IX. RESERVATION OF MINERAL RIGHTS**

Owner and / or its designee intend to reserve mineral and / or royalty rights on minerals located on or under the Property.

**X. EFFECT OF FUTURE LAWS.**

Owner and Developers shall have vested rights to undertake Development of any or all of the Property in accordance with the Clarendon PUD Development Regulations, as defined herein and modified hereby, and as may be modified in the future pursuant to the terms hereof, and this Development Agreement for the entirety of the Term. Future enactments of, or changes or amendments to City ordinances, including zoning or development standards ordinances, which conflict with the Clarendon PUD Development Regulations shall apply to the Property only if permitted pursuant to the Act, and only if such change is made specifically applicable to the Property and the Owner is given specific notice of such intended application of a new law during the process of enactment thereof.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present or future building, housing, electrical, plumbing, gas, or other standard codes, (such as standard fire prevention or property maintenance codes), or of any tax or fee, of general application throughout the City. Notwithstanding the above, the City may apply subsequently enacted laws to the Property only in accordance with the Act.

## XI. INFRASTRUCTURE AND SERVICES

City and Owner recognize that the majority of the direct costs associated with the Development of the Property will be borne by the Owner and Developers, and many other necessary services will be provided by other governmental or quasi-governmental entities, and not by the City of Beaufort. For clarification, the parties make specific note of and acknowledge the following:

**A. Private Roads.** All roads within the Property shall be constructed by the Owner, and maintained by it and/or an Owner's Association, or dedicated for maintenance to other appropriate entities. The City of Beaufort will not be responsible for the construction or maintenance of any roads within the Property, unless the City specifically agrees to such in the future. In the event any road within the Property is constructed to either S.C. Dept. of Transportation or City standards, and is acceptable as a public road, the City may consider a request to take ownership and assume responsibility for the maintenance of same upon the request of the person or entity which has ownership of the road. The City is under no obligation to accept any road. If such an offer is made and accepted, the road will become a public road. The City may consider acceptance of any attendant drainage systems separately from acceptance of any streets. The City is under no obligation to accept any drainage system.

In certain areas, the Owner or Developer may wish to install private roads which are not paved to preserve a rural character, as more particularly described and provided in the attached Exhibit B, (Conceptual Master Plan PUD with Attachment 2). The Owner reserves the right to limit access to private roads within the Property (provided such has not been expressly dedicated to the City), and the right to determine the location of curb cuts, provided a qualified engineer determines that their location does not present a significant safety hazard. Nothing in this Agreement or the ordinances of the City shall be construed to require the paving of these rural private roads servicing the farmsteads, the residential/recreational compounds reserved unto shareholders, or in areas of residential density of less than one unit per 3 acres, unless the Owner or Developer consents in writing. In areas of concentrated density, streets will be paved

to Clarendon PUD Development Regulation standards, unless otherwise approved by City Council at Master Plan submittal to allow for alternative design, i.e., brick, hard packed granite fines or similar fine material, semi-pervious paving material, etc.

Roadways (public or private) in areas having less than 2 units to the acre density may utilize swale drainage systems and are not required to have raised curb and gutter systems, provided that pedestrian and non-vehicular pathways or sidewalks are provided on at least one side in order to provide interconnectivity between interior subdivisions, commercial or institutional areas and public gathering areas. Roadway cross sections utilizing swale drainage will be designed, constructed and maintained to meet BMP standards (imposed by regulatory agencies) for stormwater quality. Roadway cross sections will be reviewed at time of construction of such Roadway based upon engineering and planning standards consistent with the PUD Plan prepared by Owner or Developer subject to the approval of the City planner.

The recording of a final plat or plan subdividing a portion of the property shall not constitute an offer to deed or dedicate any or all streets and rights of ways shown thereon to the City, or any other person or entity.

**B. Public Roads.** The Property will be served by direct access to US Highway 21, and other public roads, as shown on the Conceptual Master Plan. If any public roads are required to be improved or created to provide access to the Property, to the extent allowed by Intergovernmental Agreement between the City and County, credit for the costs of such may be given against any impact fee charged or collected by the City or Beaufort County, The City agrees to use its best effort to obtain such credits for the benefit of Owner. In the event any road within the Property is accessible to the general public, and is constructed to either S.C. Dept. of Transportation or City standards, the City may consider a request to take ownership and assume responsibility for the maintenance of same upon the request of the person or entity which has ownership of the road. The City is under no obligation to accept such offer of dedication. The City will consider acceptance of any attendant drainage systems separately from acceptance of any streets. The City may consider acceptance of any attendant drainage

systems separately from acceptance of any streets.

**C. Bike Trails/Sidewalks.** Owner or Developer may install sidewalks, bike trails, or other leisure trails or paths, and the Owner and Developer may construct them in the manner, location and configuration in conformance with the Clarendon PUD Development Regulations, unless otherwise approved by City Council at Master Plan submission at the request of the Owner or Developer. Notwithstanding the foregoing, Owner or Developer will provide pedestrian, non-vehicular pathways, sidewalks and/or leisure trails or paths to provide interconnectivity between interior residential subdivisions, commercial or institutional areas and public gathering areas on at least one side of the street in accordance with the Clarendon PUD Development Regulations. In areas of high pedestrian traffic such as schools, institutions, parks and commercial areas, and areas of concentrated (more than 1 unit per acre) density, sidewalks will be provided on both sides of the street in accordance with the standards of the Clarendon PUD Development Regulations, unless otherwise approved by City Council at Master Plan submittal.

**D. Potable Water.** Potable water will be supplied to the Property by Beaufort/Jasper Water and Sewer Authority or some other legally constituted public or private provider allowed to operate in the City, except as set forth in Section V (2) above. Owner will construct or cause to be constructed all necessary water service infrastructure within the Property, which will be maintained by it or the provider. The City of Beaufort shall not be responsible for any construction, treatment, maintenance or costs associated with water service to the Property. Nothing herein shall be construed as precluding the City from providing potable water to its residents in accordance with applicable provisions of laws.

**E. Sewage Treatment and Disposal.** Sewage treatment and disposal will be provided by Beaufort/Jasper Water and Sewage Authority or some other legally constituted public or private provider allowed to operate in the City, except as provided in Section V(2) above. Owner will construct or cause to be constructed all related infrastructure improvements within

the Property, which will be maintained by it or the provider, unless such service is not required for environmental reasons as stated in Section V(2). The City of Beaufort will not be responsible for any treatment, maintenance or costs associated with sewage treatment within the Property. Nothing herein shall be construed as precluding the City from providing sewer services to its residents in accordance with applicable provisions of law.

**F. Use of Effluent.** Owner agrees that treated effluent will be disposed of only in such manner as may be approved by DHEC and the Beaufort Jasper Water and Sewer Authority.

**G. Water Conservation.** Owner agrees to encourage the use of indigenous plants for landscaping purposes, to help minimize irrigation methods. Owner shall install, or cause to be installed, rain sensors on automatic sprinklers within the common areas of the Property for any future development under the Master Plan. Owner will include in any restrictive covenants a provision that requires the inclusion of rain sensors whenever irrigation is installed, for future development. Notwithstanding the foregoing, such sensors will not be required for agricultural or silviculture operations.

**H. Drainage System.** All Stormwater runoff and drainage system improvements within the Property will be designed in accordance with the Clarendon PUD Development Regulations and Section XIII hereof and best efforts shall be made to coordinate such systems with the County Master Drainage Program. All Stormwater runoff and drainage system improvements will be constructed by Owner or Developers and maintained by Owner, Developers and/or Owners Association (s), unless such are dedicated to a public entity which accepts maintenance and/or installation responsibilities. The City of Beaufort will not be responsible for any construction or maintenance costs associated with the drainage system within the Property, unless it specifically agrees to such.

**I. Solid Waste Collection.** Owner shall provide or cause to be provided solid waste

collection services to Clarendon Farms PUD until such time as: (1) the City is requested to provide such services; (2) there are at least 100 units to the customer base; and (3) waste collection fee revenues generated from Clarendon Farms PUD are sufficient to pay the costs the City incurs to provide solid waste collection to Clarendon Farms PUD, at the level provided to other residents and businesses within the pre-annexation boundaries of the City. The City reserves the right to require a franchise agreement for any solid waste collector company servicing the property, exempting however, the solid waste collector for the agricultural operations.

The City reserves the right to require solid waste/refuse generated from the Clarendon Farms PUD to comply with standards promulgated for the Beaufort County landfill, provided the waste is being taken to a landfill designated by Beaufort County.

In the event that a court of competent jurisdiction shall require the City prior to its election, to provide solid waste collection services to the Clarendon Farms PUD, and if, at that time, the waste collection fee revenues generated from the Clarendon Farms PUD are not sufficient to enable the City to provide such solid waste service, the Owner shall be responsible to pay the City the costs of providing such service and shall be obligated to continue such payment until such point in time when the waste collection fee tax revenues from the Clarendon Farms PUD are sufficient to pay for the solid waste collection services required by. Payment to the City shall be made on an annual basis and within (30) days of the City notifying the Owner of those costs. Nothing herein shall prevent the Owner or Developer from collecting user fees from the residents or users of the solid waste collection services from recouping such payments (and an administrative fee) as part of the Homeowner or Property Owners Association assessments.

**J. Police Protection.** The City shall provide police protection services to the Property on the same basis as is provided to other residents and businesses within the City, with the exception of restricted access communities which may require a lesser level of service due to

the use of private security forces within the community.

Owner acknowledges the concurrent jurisdiction of the City's police department and the Sheriff of Beaufort County on the Property and shall not interfere or in any way hinder law enforcement activities of either on the Property.

In the event that a court of competent jurisdiction shall require the City, prior to its election, to provide police protection services to the Clarendon Farms PUD, and if the ad valorem tax revenues from the police services millage of the City generated from the Clarendon Farms PUD are not sufficient to enable the City to provide such police service, without a City-wide tax increase, the Owner/Developer(s) shall be responsible to pay the City the costs of providing such service, and shall be obligated to continue such payment until such point in time when the ad valorem tax revenues from the police services millage from the Clarendon Farms PUD are sufficient to pay for the police protection expenses required by it, without the necessity of a City-wide tax increase. Payment to the City shall be made on an annual basis and within thirty (30) days of the City notifying the Owner of costs. Nothing herein shall prevent the Owner or Developer from collecting user fees from the residents or landowners to recoup such payments (and an administrative fee) as part of the Homeowner or Property Owners Association assessments.

**K. Recycling Services.** The City shall not be obligated to provide recycling services to the Clarendon Farms PUD.

The City reserves the right to require recycling materials generated from the Property to comply with standards promulgated by it or Beaufort County, as applicable, if the solid waste is to be deposited in a facility designated by Beaufort County

In the event that a court of competent jurisdiction shall require the City prior to its election, to provide recycling services to the Clarendon Farms PUD, and if the recycling fee revenues generated from the Clarendon Farms PUD are not sufficient to enable the City to provide such service, the Owner/ Developers shall be responsible to pay the City the costs of providing such service, and shall be obligated to continue such payment until such point in time when recycling fee revenues from the Clarendon Farms PUD are sufficient to pay for the recycling expenses required by it, without the necessity of a City-wide tax increase. Payment to the City shall be made on an annual basis and within thirty (30) days of the City notifying the Owner of costs. Nothing herein shall prevent the Owner or Developer from collecting user fees from the residents or users of the recycling services from recouping such payments (and an administrative fee) as part of the Homeowner or Property Owners Association assessments.

**L. Emergency Medical Services.** Such services are now provided by Beaufort County. The City of Beaufort shall not be obligated to provide emergency medical services to the Property, absent its election to provide such services on a city-wide basis.

**M. Library Services.** Such services are now provided by Beaufort County. The City of Beaufort shall not be obligated to provide library services to the Property, absent its election to provide such services on a city-wide basis.

**N. School Services.** Such services are now provided by Beaufort County. The City of Beaufort shall not be obligated to provide school services to the Property, absent its election to provide such services on a city-wide basis.

**O. Fire Services.** Such services are now provided by the Burton Fire District, in accordance with the present contractual relationship with the Burton Fire District. The City of Beaufort shall not be obligated to provide fire services to the Property, absent its election or a requirement to provide such services as part of a modification to, or cessation of the present

contract with the Burton Fire District.

In the event that a court of competent jurisdiction shall require the City, prior to its election, to provide fire protection services to the Clarendon Farms PUD, and if the ad valorem tax revenues from the fire services millage of the City generated from the Clarendon Farms PUD are not sufficient to enable the City to provide such fire services, without a City-wide tax increase, the Owner/Developer(s) shall be responsible to pay the City the costs of providing such service unless no development (as defined above, and also exempting from the definition of development employee housing or family compounds and Undeveloped Lands) has been undertaken, and shall be obligated to continue such payment until such point in time when the ad valorem tax revenues from the fire services millage from the Clarendon Farms PUD are sufficient to pay for the fire protection expenses required by it, without the necessity of a City-wide tax increase. Payment to the City shall be made on an annual basis and within thirty (30) days of the City notifying the Owner of costs. Any Fire Impact Fees paid by Property owners or Developers with respect to the property which are retained by the City and not paid to an entity providing fire services to the Property shall be included in the calculation regarding the sufficiency of revenue from the Clarendon Farms PUD referenced herein. Nothing herein shall prevent the Owner or Developer from collecting user fees from the residents or landowners to recoup such payments (and an administrative fee) as part of the Homeowner or Property Owners Association assessments.

## **XII. DEDICATIONS AND FEES**

The City of Beaufort and Owner understand and agree that future development of Property shall impose certain costs upon the City. Eventually, ad valorem taxes collected from the Property may exceed the burdens placed upon the City, but certain initial costs and capital expenditures are now required in order to ensure that the present residents of the City are not called upon to pay higher taxes to accommodate the development of the Property. The following items are hereby agreed to be provided by Owner, its successors and assigns, to offset such future costs and expenditures:

## **A. Dedication of Sites for Government Facilities.**

**1. Fire/Police.** After the platting of the two hundredth (200<sup>th</sup>) lot, but prior to the platting of the five hundredth (500<sup>th</sup>) lot for residential units (or equivalent units of commercial or multi-family space) within the Property, Owner shall donate a site (or sites) containing a total of at least five (5) non-wetland acres to the City or its designee for locating fire services, police services or other government services deemed appropriate by the City. The site(s) shall be located by the Owner, after consultation with the City, in an area within or adjacent to the higher density areas, such as the Village/Marina District, the Boatyard District, or the T-4 Mixed Use District. Owner has no obligation to donate more than a total of five (5) non-wetland acres to the entirety of governmental entities that provide services under this section.

**2. Park Area.** Significant open space, parks and active recreational areas are proposed for the Property, as indicated on the Conceptual Master Plan and described within the PUD. The Burton Wells County Regional Park is also located in this general area of Northern Beaufort County. In order to provide adequate recreational opportunities, between the issuance of the one thousandth (1,000) and the fifteen hundredth (1,500) building permits for residential units (or equivalent units of commercial space) within the Property, Owner shall donate a site (or sites) containing a total of at least ten (10) non-wetland acres to the City or its designee for use by residents of the Property, but accessible by the general public. The site(s) shall be located by the Owner, after consultation with the City. Thereafter, between the issuance of the two thousandth (2,000) and three thousandth (3,000) building permits for residential units (or equivalent units of commercial space) within the Property, an additional ten (10) acre site shall be donated to the City or its designee in like manner as the initial donation, and may be adjacent to or separate from the initial site, dependent upon availability. Owner may, if it so desires, donate these park lands earlier than required herein. Thereafter, in like manner, an additional ten (10) acre site shall be donated for each one thousand (1,000) building permits issued for residential units (or equivalent units of commercial space) within the Property, unless already existing sites within the Property in sufficient

size to satisfy the otherwise required acreage are available for use by residents of the Property and are accessible by the general public.

**3. Public Schools.** The Owner and the City acknowledge that all Development Fees for Schools shall be collected and placed in a segregated interest bearing account ("School Fund") to be utilized for either 1) the acquisition, after completion of the demographic study as set forth below, of a total of fifty (50) acres for school site(s) to be selected by mutual agreement of the Owner and City ("School Sites") at a purchase price of Thirty Thousand Dollars (\$30,000) per gross acre, as adjusted annually in the same manner as set forth in Section IX (B) herein ("School Price"), which School Site(s) shall be utilized as a neighborhood school site predominantly serving the Property; 2) water, sewer, or storm water infrastructure serving such schools on the Property; or 3), road improvements or installation on the Property or the regional traffic system servicing such School Site(s) on the Property. Should the City not timely acquire the School Site(s) pursuant to the terms as set forth below, the City shall no longer have the right to acquire such School Site(s), and such sites which are not timely acquired may then be utilized for and all purposes permitted under the Clarendon PUD Development Regulations, free and clear of any rights of the City to acquire such sites.

Between the issuance of the one thousandth (1,000th) and fifteen hundredth (1,500th) building permits for residential lots or equivalent multi-family units within the Property, Owner shall coordinate a demographic study with the appropriate school district to determine the demonstrated need for a school site caused by students generated from households within the Property. Provided such a need is demonstrated and that such school site would predominantly serve students generated from the Property, Owner will offer a site (or sites) for donation to the Beaufort County School District, for the purpose of locating a public school or schools within the Property. The site or sites shall contain as much acreage needed to locate a public school or schools within the Property, but shall not exceed 50 total non-wetland acres under any circumstances. The site or sites shall be located by the Owner, in its discretion, after consultation with the City and the Beaufort County School District. The Owner shall identify the site(s) on a plat or scaled drawing at the time the site(s) is offered to the School District. If the site is accepted by the School District within two (2) years of the offer of dedication, Owner shall receive credit for the value of the land (as set forth above) against the School Developer Fees, with such fees as have been collected

available for payment for the land; if sufficient funds are not available to fully reimburse the Owner for the land, future School Developer Fees shall be collected by the City and paid to the Owner on a semi-annual basis until such time as the compensation due Owner is paid in full. If the School District does not accept the offered site(s) within two (2) years of the original offer, the offer shall terminate and Owner shall have no further obligation to offer property to the School District hereunder. A similar demographic study shall be conducted five (5) years after completion of the initial demographic study, and provided there is a demonstrated need caused by student population from the Property, and further provided other large scale developments within the City of Beaufort (those developments which have three hundred (300) or more residential lots or equivalent multi-family units) are being required to donate sites for schools, a like-sized additional site shall be provided if available from the fifty (50) total non-wetland acres described above. Under no circumstances shall greater than fifty (50) total non-wetland acres be donated by Owner to for the placement of schools.

If such sites from other developers are not required to be donated, additional sites shall be offered for sale in the following manner. The Owner shall identify the site(s) on a plat or scaled drawing at the time the property is offered to the School District and shall state the Owner's position as to the market price. The School District shall be given two years from the date of the offer to close on the purchase of the offered property. During this two year option period, the School District may choose to obtain its own appraisal of market value. If the School District's appraisal differs substantially from the offered price, either party may request a Third Party appraisal, to be performed by an independent appraiser to be chosen by Owner's and the School District's appraisers. The cost of the Independent appraisal shall be shared equally between Owner and the School District. The market price determined by the independent appraiser shall become the offered sales price of the property. If the School District does not close on the offered property within 2 years of the original offer, the offer shall terminate and Owner shall have no further obligation to offer property to the School District hereunder.

School Developer Fees shall continue to be collected throughout the term of this Agreement.

Nothing herein shall be deemed to prevent the creation and construction of charter or private schools on the Property, and the above-mentioned demographic studies shall include in its report the presence or planned creation of charter or private schools serving the Property. In the

event a charter school is created, the Owner or Developer may deduct from the lands required to be offered the School District any lands dedicated to the charter school, as well as receiving payment for the land in the manner set forth above.

#### **4. Marine Corps Air Station Protections.**

Protection of the existing Marine Corps Air Station Beaufort (MCAS) is a priority of the City and Owner. The present Air Installation Compatible Use Zone (AICUZ) plan adopted in 2004 by the City after a Joint Land Use Study (JLUS) may not provide adequate protection against encroachment of uses detrimental to the MCAS facility. Present County ordinances are even less protective. Owner and MCAS initially agreed to enter into a Letter of Intent (LOI) which provided for, among other things, the prohibition of residential uses in the existing Accident Potential (APZ) and in the existing AICUZ footprint, which affects approximately 850 to 900 acres; the reduction of density in an additional buffer area extending outward of the existing 65 Ldn line as shown on the existing map to 1.0 units to the acre, which affects approximately 350 to 400 acres; the substitution of restrictions from the Navy provided Document entitled "Table 2, Air Installations Compatible Use Zones" which include both suggested Land Use Compatibility and Noise Reduction Measures, for the provisions regulating uses and noise reduction contained in the current City Ordinances, as well as additional restrictions specifically requested by the military in the PUD; the transfer of development rights and an aviation easement for portions of the property in exchange for certain acreage identified in the proposed LOI; and the transfer of development rights in exchange for present or future payments from the military and/or an easement partner. More specific details are found in the provisions of the proposed LOI (attached hereto as Exhibit "\_\_\_").

The military and Owner initially acknowledged and agreed that it might take some time to implement all of the provisions of the proposed LOI and its implementing documentation. It has now been disclosed to the Owner that the military is unwilling to enter into a LOI at this time, although the military has begun to implement the provisions of the LOI. Accordingly, at Owner's election, the land use and development standard restrictions of the Beaufort County AICUZ Ordinance and/or the City's AICUZ ordinance (Section 6.7) enacted as of January 1, 2006, will

become the applicable standards for the approximately 1200 acres that would otherwise be subject to the military's proposed restrictions under the proposed LOI, with the underlying density and allowable uses of the transect zone T-3 described in the PUD; provided further, however, that no development will occur in that area for two years from the date of execution of this Agreement. In the event the military is able to comply with the terms of the offered LOI within that two year period, the land use restrictions included in the PUD for the AICUZ areas as described above shall become the standards governing that area.

The implementation of the proposed LOI terms may require a portion of the property or rights in the property to be transferred to either the City or a qualifying non-governmental organization (NGO), consistent with federal requirements. It is agreed that to the extent rights to use the land are granted to the City or a NGO which provide for park land, open space, or sites for government facilities consistent with the AICUZ Table 2 as revised for this Agreement, credit shall be given against the dedication requirements of this Agreement or the Clarendon PUD Development Regulations, and/or open space requirements, including active open space as defined in the Clarendon PUD Development Regulations. The City agrees to cooperate as a facilitating governmental entity as may be required by the military, provided that arrangements are included which provide that City participation in any acquisition which require the expenditure of City funds is wholly discretionary at the City's option.

#### **B. Governmental Services And Capital Improvement Charges.**

Prior to the time that ad valorem taxes generated from the Property are sufficient to provide government services and capital improvements related to such services for residents of the Property, the Owner agrees to make certain lump sum payments to the City to assist the City and handling services to residents of the Property, without burdening other residents of the City. The parties recognize that the need for such funds will not occur until the Property, or portions thereof, are transferred to Developer entities for development purposes. Therefore, Owner agrees that a one time Governmental Services and Capital Improvements Fee shall be paid to the City at the time that bulk acreage is transferred by Owner to a Developer in the future, said fee being \$220.00 per

high ground acre, payable at the time of transfer. Transfers of land to a government entity, or to a non-profit organization for the purposes of implementing a land preservation or transfer of development rights to such organization are exempt from this requirement. Beginning with the tenth year after the commencement of this Agreement, this fee shall periodically be adjusted every five years, by such amount as the compounding of the annual Consumer Price Index (CPI) for the Southeast for each of the prior years would yield. For example, if the annual CPI increase for the first prior year to be adjusted was 3%, the CPI for the second one year period was 2%, the CPI for the third one year period was 4%, the CPI for the fourth one year period was 3%, and the CPI for the fifth one year period was 3%, the Governmental and Capital Services Fee would be \$254.34 for the next five years period, being the final compounded amount for the previous five years (year one - \$226.60) (year two - \$230.52 (the compounding of the initial calculated adjustment) (year three - \$239.74) (year four - \$246.93) yields year 5 - \$254.34). Each consecutive five year period shall be adjusted in like manner.

**C. Development Fees.**

(i) To assist the City in meeting expenses resulting from ongoing development, Owner shall pay development fees ("Development Fees") as follows:

<b>CITY DEVELOPMENT FEES</b>	<b>AMOUNT</b>
<b>Single Family Residential (SFR) &lt; 2,000 sq. ft.</b>	<b>\$500.00</b>
<b>(SFR) &gt; 2,000 sq. ft. or &lt; 3,000 sq. ft.</b>	<b>\$750.00</b>
<b>(SFR) &gt;3,000 sq. ft.</b>	<b>\$1,000.00</b>
<b>Multi-Family (MF) – 1 bedroom</b>	<b>\$200.00</b>
<b>(MF) – 2 bedroom</b>	<b>\$250.00</b>
<b>(MF) – 3 bedroom</b>	<b>\$350.00</b>
<b>Commercial Development</b>	<b>\$.75 per square foot</b>

(ii) All Development Fees shall be collected at the time of obtaining a building permit. These fees will be adjusted every five years beginning with the tenth year after commencement of this Agreement by the compounded CPI as set forth in XI(B) immediately above

(iii) These Development Fees are being paid in addition to any other impact fees or Development Fees adopted by the City and applied uniformly city-wide at any time hereafter during the term of this Agreement, and the Owner and/or Owners shall be subject to the payment of any and all present or future fees enacted by the City that are of uniform city-wide application and that relate to processing applications, development permits, building permits, review of plans, or inspections or other matters.

(iv) Nothing herein shall be construed as relieving the Owner, its successors and assigns, from payment of any such fees or charges as may be assessed or collected by entities other than the City. The impact fees which are payable to Beaufort County under County Ordinances 1999-26 and 2005-2, and the Intergovernmental Agreement adopted by the City on \_\_\_\_\_, 2004, to support infrastructure provided by Beaufort County or its chartered public service districts, such as, but not limited to, fire protection, libraries, parks, and roads, shall not be affected by this Agreement, so long as such fees apply to all development and are collected City-wide; provided however, that due credit shall be given for public infrastructure or dedications of land or improvements thereon in accordance with Sections XI (B) and XII (A) and (B) to the extent allowed by the current Intergovernmental Agreement with the County. The City agrees to use its best efforts to obtain such credits on behalf of Owner.

The Owner and Developer specifically acknowledge this Agreement provides no exemption from increases in the present County impact fees, or the imposition of future impact fees by either the County or City, so long as such fees apply to all development and are collected City-wide, and credit is given for public infrastructure provided by the Owner or Developer, Development Agreement Fees, and/or other dedications under this Agreement.

(v) The Owner and Developer, having acknowledged the applicability of present or future impact fees or increases in the present impact fees, represent their belief that there will need to be future road improvements to the regional transportation system to accommodate both present predicted growth and that which is authorized under this Agreement. Owner and Developer believe

that present impact fees for traffic are inadequate to properly fund these improvements, which may not be included in the required capital improvement plan supporting the methodology for the present impact fee for traffic. Owner and Developer therefore agree to pay to the City, which collects the present impact fee for traffic pursuant to an Intergovernmental Agreement with Beaufort County, an additional traffic impact fee (Enhanced Traffic Fee) of \$800.00 per residential unit, collected at building permit issuance as in the normal course. The City will transfer to the County the amount then being collected by the City on behalf of the County, and retain the Enhanced Traffic Fee of \$800.00 in a segregated interest bearing account.

This Enhanced Traffic Fee shall be made available first as reimbursement to the Owner or Developer to the extent improvements are made to the regional traffic system servicing the Property, including Highway 21 and the intersections with Highway 21 any road directly connecting the Property to Highway 21. It will not be available, absent the consent of the City, for improvements to the public roads (such as Clarendon Road, Poppy Hill Road, Parker Drive, Schein Loop) which abut or feed into the Property (other than their intersections with Highway 21, if any). The remainder, after the Highway 21 intersection improvements set forth above, shall be available for use by the City for other improvements to Highway 21, either solely or in conjunction with present or future County impact fees.

In the event County impact fees collected by the City on behalf of the County are increased above the presently collected amount, the Owner and/or Developer shall pay the difference between the presently collected amount and such future increased amount, provided credit is given for public infrastructure provided by the Owner or Developer, Development Agreement Fees, and/or other dedications under this Agreement.

(vi) In order to provide for school facilities which may be affected by the development of this Property, Owner and Developer agrees to pay a School Developer Fee of One Thousand Dollars (\$1,000.00) per residential dwelling unit, or equivalent multi-family dwelling unit, to be collected at the time of the issuance of a building permit for such unit. This fee shall be placed in a segregated interest bearing account with the City, and shall be available for the uses as set forth hereinabove. This fee shall be subject to the adjustment as set forth in Section IX(B) herein. Nothing herein shall prevent the Owner or Developer from collecting user fees from the residents

or landowners to recoup such payments (and an administrative fee) as part of the Homeowner or Property Owners Association assessments.

(vii) Any Development Fees paid and/or credits for Development Fees with respect to property conveyed, services performed and/or money paid as provided in this Agreement may be assigned by the Owner and/or Developer owning such credits and all such credits shall remain valid until utilized. The City shall recognize all such written assignments of such rights and shall credit same against any Development Fees which are owned pursuant to this Agreement.

(viii) The City, County or other governmental entity may establish, solely or in conjunction with each other, a Tax Increment, FILOT, Multi-County Business Park, or any other special tax district or financing vehicle authorized by applicable provisions of the Code of Laws of South Carolina (1976 as amended), which does not impose additional ad valorem taxes or assessments against the Property.

(ix) The City shall not establish any special tax district or financing vehicle authorized by applicable provisions of the Code of Laws of South Carolina (1976 as amended), which does impose additional ad valorem taxes or assessments against the Property for infrastructure or services specifically provided for in this Agreement (i.e., roads, parks, schools, fire protection, etc.), unless (1) the Owner or Developer (as applicable) otherwise agrees, or (2), credit is given for the fees and dedications provided pursuant to this Agreement.

(x) It is acknowledged that at the written election of Owner a municipal improvement district and/or special taxing district may be implemented for the Property in order to provide for installation or improvement of qualifying on or off-site public infrastructure, provided such are financially non-recourse to the City and both the Owner and City agree.

### **XIII. PROTECTION OF ENVIRONMENT AND QUALITY OF LIFE.**

The City of Beaufort and Owner recognize that Development can have negative as well as positive impacts. Specifically, Beaufort considers the protection of the natural environment and nearby waters, and the preservation of the character and unique identity of the City of Beaufort, to

be mandatory goals, to be achieved without compromise. Owner shares this commitment and therefore agrees to the following:

**1. Storm Water Quality.** Protection of the quality in nearby waters is a primary goal of the City. The Owner and Developers shall be required to abide by all provisions of federal and state laws and regulations, including those established by the Department of Health and Environmental Control, the Office of Ocean and Coastal Resource Management, and their successors for the handling of stormwater.

The Owner agrees, prior to commencing development activity in a Development Plan Area, to prepare a study of pre-development drainage characteristics of the Development Plan Area, prepare a Master Plan of the storm water drainage systems for each Development Plan Area, and thereafter construct such storm water drainage systems in accordance with the approved Plans, and maintain the systems allowing proper operation and function. In order to meet the water quality and anti-degradation goals which are impacted by the amount of impervious surfaces, Owner or any Developer commits to design storm water management systems in such a way that the storm water quality delivered to the receiving waters is mitigated to a level which is no more than that associated with ten percent (10%) impervious coverage. Additional standards are contained in the Clarendon PUD Development Regulations. Further, Owner agrees to provide pretreatment BMP's, including supplemental Open Space (in accordance with Beaufort County's Manual for Storm Water Best Management Practices, prepared by Camp Dresser & McKee, as of 2003), where required by engineering design and calculations. In addition to the water quality safeguards as committed to by Owner above, notwithstanding Section V hereof, Owner and any developer shall adhere to any and all future ordinances or regulations of the City (or portions thereof) governing detention, filtration, and treatment of storm water provided those ordinances and regulations apply city wide, and are consistent with sound engineering practices. It is specifically agreed however, that any such future ordinances of the City that directly or indirectly affect the setback, buffer or open space requirements presently permitted pursuant to the Clarendon PUD Development Regulations will not be applicable to the Owner and any developer within the Property without the Owner or any developers express written consent thereto.

**2. Multiple Housing Options.** Owner and the City recognize the increasing needs for multiple housing options at diverse pricing points in the Beaufort area, and that there is

not at present a defined program or requirement within the City. Owner and Developer agree to implement any mandated program which is applicable City-wide and imposed upon all similar development for such areas of the Property which have not then been platted, once development begins on the Property and at least five hundred (500) building permits are issued for residential units, and provided the City in the future develops reasonable incentives or programs applicable City-wide to encourage the development of multiple housing options at a diversity of pricing points and makes those incentives or programs available to the Owner or Developer. Owner and Developer shall be given credit for any qualifying housing built prior to the implementation of this requirement. Reasonable incentives may include but not be limited to the elimination or reduction of development and impact fees on these multiple housing options.

**3. Tree Protection.** Owner and any Owner shall comply with the Clarendon PUD Development Regulations pertaining to trees, provided however, that it is acknowledged that this is an active silviculture and agricultural operation, and such continued operations are exempt from tree protection requirements. Furthermore, future subdivision or development plans submitted to the City will not be required to prepare tree surveys as part of the submission for those areas of the Property which have been used as farmland or silviculture. Those areas shall be represented on an exhibit illustrating the area containing either the field area or planted pine tree planting pattern with typical row, spacing, and size. The information may be field-verified to ensure accuracy of the exhibit's factors, but each tree in the area will not be physically located by standard survey methods. Owner or its assignee shall have the right to timber any area proposed for development, subject only to the requirement that it leave a fifty (50) foot perimeter buffer (that may be subject to further timbering, clearing or development in accordance with the Zoning Regulation) and all hardwoods or specimen trees over eight (8) inches DBH, with post timbering coverage of at least fifteen trees per acre.

**4. Beaufort Character Protection / Hunting and Fishing.** Owner and the City agree and recognize that it is imperative to preserve and enhance the basic character of Beaufort and the quality of life that has made Beaufort both unique and appealing. Private land use covenants will establish architectural and landscaping standards, prior to or as part of a Master Plan submittal. Notwithstanding any law or ordinance of the City of Beaufort to the contrary, all types of hunting, fishing, silviculture, and agricultural uses which are legal under South Carolina law may continue on the Property, including but not limited to the use of fire arms, bird breeding and

accumulation, controlled burns, and other activities presently engaged in on the Property at the commencement of this Agreement. Hunting and the use of firearms will not be allowed in areas submitted for Master Plan approval, unless such activities are incorporated into the Master Plan submittal and are carried out in conformity with applicable Department of Natural Resources regulations, which include, among other things, adequate separation from populated areas.

#### **XIV. Compliance Reviews.**

As long as Owner owns any of the Property in Beaufort, Owner, or its designee, shall meet with the City, or its designee, at least once per year, during the Term to review Development completed in the prior year and the Development anticipated to be commenced or completed in the ensuing year. The Owner, or its designee, shall be required to provide such information as may reasonably be requested, to include but not be limited to, acreage of the Property sold in the prior year, acreage of the Property under contract, the number of certificates of occupancy issued in the prior year, and the number anticipated to be issued in the ensuing year, Development Rights transferred in the prior year, and anticipated to be transferred in the ensuing year. The Owner, or its designee, shall be required to compile this information and report same on such forms as may be agreed upon between the Owner and City from time to time.

**XV. Defaults.** The failure of the Owner, Subsequent Developer or the City to comply with the terms of this Agreement not cured within sixty (60) days after written notice from the non-defaulting party to the defaulting party (as such time period may be extended with regard to non-monetary breaches for a reasonable period of time based on the circumstances, provided such defaulting party commences to cure such breach within such sixty (60) day period and is proceeding diligently and expeditiously to complete such cure) shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance; provided however no termination of this Development Agreement may be declared by the City absent its according the Owner and any relevant Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided any such termination shall be limited to the portion of the Property in default, and provided further that nothing herein shall be deemed or construed to preclude the City or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Clarendon PUD

Development Regulations or this Agreement. A default of the Owner shall not constitute a default by Subsequent Developers, and default by a Subsequent Developer shall not constitute a default by the Owner. The parties acknowledge that individual residents and owners of completed buildings within the Project shall not be obligated for the obligations of the Owner or Subsequent Developers set forth in this Agreement.

**XVI. Modification of Agreement.** This Development Agreement may be modified or amended only by the written agreement of the City 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 amendment to this Agreement shall comply with the provisions of Section 6-31-10, et seq. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment. Whenever such consent or approval is required, the same shall not unreasonably be withheld. Minor modifications not increasing density may be assented to by the City by either resolution or ordinance, in its discretion. Minor modifications which may be made by the administrative staff of the City under the authority of its Unified Development Ordinance may likewise be approved by mutual assent of the Owner and the City staff, and variances may be authorized by the Zoning Board of Appeals. As it is anticipated that portions of the Property will be conveyed to future developers, any amendment requested by such future developer shall only require the consent of the City, the requesting Developer, and the Owner.

**XVII. Notices.** Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth 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 when communicated by personal delivery or by independent courier service or by facsimile 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 City shall be addressed to the City at:

City of Beaufort  
Post Office Box 1167  
Beaufort, SC 29901  
Attention: City Manager

And to the Owner at:

Clarendon Farms, L.L.C.  
80 Clarendon Plantation Drive  
Burton, SC 29906

With Copy To:

R. Dale Hughes, Esq.  
Dow, Lohnes & Albertson, PLLC  
One Ravinia Drive, Suite 1600  
Atlanta, GA 30346

#### **XVIII. ENFORCEMENT.**

Any party hereto shall have the right to enforce the terms, provisions and conditions of the Agreement by any remedies available at law or in equity, including specific performance, and the right to recover attorney's fees and costs associated with said enforcement.

##### **I. GENERAL.**

**Subsequent 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 the Act or one or more provisions of this Agreement ("New Laws"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, or court decision, a party designated by the Owners and the City shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the City may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a

modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner, developers and the City 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.

**Estoppel Certificate.** The City, 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:

(1) that this Agreement is in full force and effect,

(2) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,

(3) whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and

(4) 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.

**Entire Agreement.** This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings among the City and the Owner relative to the Property and its Development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

**No Partnership or Joint Venture.** Nothing in this Agreement shall be deemed to create a partnership or joint venture between the City, the Owner or any Developer or to render such party liable in any manner for the debts or obligations of another party.

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

**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 or any amendments or exhibits hereto.

**Governing Law.** This Agreement shall be governed by the laws of the State of South Carolina.

**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.

**Agreement to Cooperate.** City and the Owner, at Owner's expense, shall cooperate in the event of any court action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement (but there shall be no duty to reimburse for the City's defense of administrative decisions made by the City, such as the issuance of permits, approvals, variances and appeals), and City shall, upon request of Owner, appear in the action and defend its decision, except that City shall not be required to be an advocate for Owner. To the extent that Owner determines to contest or defend such litigation challenges, Owner shall reimburse City all legal and court costs within thirty (30) days written demand therefor, which may be made from time to time during the course of such litigation challenge, provided that City shall either: (a) elect to joint representation by the Owner's counsel; or (b) retain an experienced litigation attorney, require such attorney to prepare and comply with a litigation budget and present such budget to Owner prior to incurring obligations to pay legal fees in excess of \$10,000.00. If Owner defends any such legal challenge, nothing herein shall authorize Owner to settle such legal challenge on terms that would constitute an amendment or modification to this Agreement, unless such modification or amendment is approved by City in accordance with

applicable legal requirements, and City reserves its full legislative discretion with respect thereto.

In addition, City shall have the right, but not the obligation, to contest or defend such litigation challenges, in the event Owner elects not to do so.

**Eminent Domain.** Nothing contained in this Agreement shall limit, impair or restrict the City's right and power of eminent domain under the laws of the State of South Carolina, nor of Owner's right to just compensation under the laws of this State or the Constitution of the United States of America.

**No Third Party Beneficiaries.** The provisions of this Agreement may be enforced only by the City, the Owner and Developers. No other persons shall have any rights hereunder.

**Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, the party adversely affected may (in its sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

## **II. STATEMENT OF REQUIRED PROVISIONS**

**A. Specific Statements.** The Act requires that a development agreement must 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 numbering below corresponds to the numbering utilized under Section 6-31-60 (A) for the required items:

1. **Legal Description of Property and Legal and Equitable Owners.** The legal description of the property is set forth in Exhibit B attached hereto. The present legal Owner of the Property is Clarendon Farms, L.L.C. (successor to Clarendon Farms, Inc. by operation of a change in the form of organization).
2. **Duration of Agreement.** The duration of this Agreement is set forth in Section III above.
3. **Permitted Uses, Densities, Building Heights and Intensities.** A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development related standards, are contained in the Clarendon PUD Development Regulations.
4. **Required Public Facilities.** The utility service available to the Property are described generally above regarding electrical services, telephone service and solid waste disposal. The mandatory procedures of the Clarendon PUD Development Regulations will ensure availability of roads and utilities to serve the residents on a timely bases.
5. **Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.** The only dedication of land for public purposes are the donations of lands, if any, which are described above. The Clarendon PUD Development Regulations described above, and incorporated herein, contain numerous provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws will be fully complied with, in addition to the important provisions set forth in this Agreement.
6. **Local Development Permits.** The Development standards for the Property shall be as set forth in the Clarendon PUD Development Regulations. Specific permits must be obtained prior to commencing Development (excluding farming, hunting and silvaculture activities, unless required as a state permit), consistent with the standards set forth in the Clarendon PUD Development Regulations. Developer may submit permit applications for concurrent review with the City and other governmental authorities. City may give final approval to any submission, but will not grant authorization to record plats or begin development construction activities until all permitting agencies have completed their reviews. Building Permits must also be obtained under applicable law for any vertical construction, and

appropriate permits must be obtained from the State of South Carolina (OCRM) and Army Corps of Engineers, when applicable, prior to any impact upon freshwater wetlands. Any activities occurring below mean high water in salt water areas shall require permitting by the appropriate State and Federal agencies only. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Owner, its successors and assign, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

- 7. **Comprehensive Plan and Development Agreement.** The City Council finds the Development permitted and proposed under the Development Agreement and Clarendon PUD Development Regulations, is consistent with the Comprehensive Plan and with current land use regulations of Beaufort, South Carolina.
  
- 8. **Terms for Public Health, Safety and Welfare.** The City Council finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of this Agreement, the Clarendon PUD Development Regulations and existing laws.
  
- 9. **Historical Structures.** No specific terms relating to historical structures are pertinent to this Development Agreement. Any historical structure or sites will be addressed through the permitting process at the time of development, as required by the Clarendon PUD Development Regulations, and no exception from any existing standard is hereby granted.

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

WITNESSES:  
  
\_\_\_\_\_  
  
\_\_\_\_\_

CLARENDON FARMS, L.L.C.  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SIGNATURES AND ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGES**

STATE OF SOUTH CAROLINA.

)

)

**ACKNOWLEDGMENT**

COUNTY OF BEAUFORT.

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I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2006. before me, the undersigned Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate official of Clarendon Farms, L.L.C., who acknowledged the due execution of the foregoing document.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_



**EXHIBIT "A"**  
**TO DEVELOPMENT AGREEMENT**

**S.C. Development Agreement Act**

**(Omitted this draft)**

**Exhibit "B"**  
**TO DEVELOPMENT AGREEMENT**

All those certain pieces, parcels or lots of lands, situate, lying and being in Beaufort County, South Carolina, consisting of approximately 4,151 acres in total, and being generally described as all of the properties owned by Clarendon Farms, LLC which are contiguous to the City of Beaufort's municipal limits and themselves, including, but not limited to, the following tax map and parcel designations:

TMP

R 100 020 000 107A 0000	R 700 044 000 0003 0000
R 100 014 000 0004 0000	R 100 020 000 0026 0000
R 100 014 000 0005 0000	R 100 015 000 0350 0000
R 100 014 000 0013 0000	R 100 020 000 0107 0000
R 100 014 000 008B 0000	R 100 020 000 0109 0000
R 100 014 000 011A 0000	R 100 020 000 0152 0000
R 100 014 000 0157 0000	R 100 020 000 107B 0000
R 100 020 000 0027 0000	
R 100 020 000 0054 0000	
R 100 020 000 0105 0000	
R 100 020 000 0242 0000	
R 100 020 000 027A 0000	
R 700 044 000 0001 0000	
R 700 044 000 0002 0000	

SAVE AND EXCEPT TMP numbers R 100 024 000 0010 0000, R 100 019 000 0001 0000, and that portion of TMP R100 020 0119 0000 conveyed by deed recorded at Book 1107 at Page 563.

BUT ALSO INCLUDING all of their right, title and interest in and to area sometimes designated as the the Rail Road Right of Way, and to those lands lying between the high and low water marks, and the marshes of the adjoining waterways and islands.

**Exhibit "C"**  
**TO DEVELOPMENT AGREEMENT**

**Clarendon PDD**  
**Attached as a Separate Document**

**EXHIBIT "D"**  
**TO DEVELOPMENT AGREEMENT**  
**DEVELOPMENT SCHEDULE \***

<b>Development Period(s)</b> (5 Year Increments)	<b>Residential</b> (Residential Units Constructed)	<b>Commercial</b> (Square Footage Constructed)***
First 5 years**	-0-	-0-
Second 5 years**	-0-	-0-
Third 5 years	750	Less than 5% of total allowed
Fourth 5 years	1250	13% of total allowed
Fifth 5 years	1000	15% of total allowed
Sixth 5 years	750	25% of total allowed
Seventh 5 years	500	25% of total allowed
Eighth 5 years	Remainder unbuilt/available	Same

\*As stated in the Development Agreement, Section VI, actual development may occur more rapidly or less rapidly, based upon market conditions and final product mix. The above preliminary forecast assumes a twenty-five year period of actual development, with no substantial activity for ten years prior to commencement of development. Development may commence at any time earlier, or later. Owner will submit updated forecasts to City as further information becomes available, and such schedule updates will be considered expected supplements hereto and not amendments hereto

\*\* It is anticipated that in these first time periods, extensive planning and engineering would take place, along with some outside permitting. However, units may become available for platting and sale during this time.

\*\*\*To promote commercial development and enhance internal capture of traffic within the Property, the Owner agrees to provide for a minimum of 15% of the upland acres within a Master Planned area in the urbanized and suburban village areas to be platted for commercial and mixed use development. These areas shall not be converted to a non-commercial use, without the approval of City Council, for a period of five years after development begins within the Master Planned area.

**EXHIBIT "E"**  
**TO DEVELOPMENT AGREEMENT**  
**PROPOSED LETTER OF INTENT**

**MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement is entered into between [MCAS ENTITY] ("MCAS") and CLARENDON FARMS, LLC ("Clarendon") regarding the exchange of real property currently owned by MCAS for development rights related to real property currently owned by Clarendon.

The parties hereto agree and understand that the overall site locations affected by this swap have not been finalized as of the date of this Agreement. It is agreed and understood that the MCAS will deed in fee approximately 125 acres as described on Exhibit A attached hereto to Clarendon. In exchange, Clarendon will take the following actions with regard to the development of its property: (i) the approximately 800 acres described on Exhibit B attached hereto will not have any additional residential development, except for approximately 5-10 homes for Clarendon employees, or equestrian estate tracts; (ii) the approximately 400 acres described on Exhibit C attached hereto will not have residential development with a NLR of less than 30dB, nor, if development commences, a gross density of 1.0 single family units per acre; and (iii) Clarendon will comply with the non-residential development uses/noise reduction guidelines set forth in OPNAVINST Table 2 as a substitute for the City of Beaufort's AICUZ uses.

MCAS and Clarendon agree that an appraisal will be performed by a mutually agreed upon appraiser to determine the fair market value(s) of the real estate interest(s) acquired. Any compensation for difference in value between the interests acquired by MCAS and those from Clarendon will be decided upon by MCAS and Clarendon. Such compensation may include payments over an extended period of time. Upon reaching agreement on the aforesaid valuations, MCAS and Clarendon will proceed to document the aforesaid exchanges in documentation reasonably acceptable to both parties. This Memorandum of Agreement is a letter of intent subject to the conditions of agreement set forth herein.

Agreed to this \_\_\_\_\_ day of May 2006.

MCAS:

Clarendon:

CLARENDON FARMS, LLC, a Delaware  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_