

STATE OF SOUTH CAROLINA) **DEVELOPMENT AGREEMENT**
)
COUNTY OF BEAUFORT) **(MCLEOD FARM PROPERTY)**

This Development Agreement ("Agreement") is made and entered this _____ day of _____, 2006, by and between Claude E. McLeod, Jr., as Trustee of the Claude E. McLeod, Jr. Trust dated August 20, 1999, George A. McLeod, Ann McLeod Poulnot, Wachovia Bank as Trustee of the Jesse M. Kidder Living Trust under Agreement Dated August 9, 1998, Hope McLeod Cappelman, (collectively the "McLeod Family"), and J&K Beaufort Ventures, LLC and Old Seabrook Landing, LLC (collectively, in combination with the McLeod Family, known as "Owner" hereunder) 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 1,024 acres, generally known as the McLeod Farm, 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 viable 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 unprecedented 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 Conceptual 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.

"McLeod Farm PUD" means that certain tract of land described on Exhibits B-1, B-2, and B-3.

"Conceptual Master Plan" means that map of the Property entitled "Conceptual Master Plan for the McLeod Farm 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.

"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.

"Owner" means Claude E. McLeod, Jr., as Trustee of the Claude E. McLeod, Jr. Trust dated August 20, 1999, George A. McLeod, Ann McLeod Poulnot, Wachovia Bank as Trustee of the Jesse M. Kidder Living Trust under Agreement Dated August 9, 1998, Hope McLeod Cappelman, (collectively the McLeod Family), and J&K Beaufort Ventures, LLC and Old Seabrook Landing, LLC (collectively, in combination with the McLeod Family, known as "Owner" hereunder), or their 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 Conceptual 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 the tracts of land described on Exhibits B-1, B-2, and B-3 (collectively Exhibit B). More specifically, while historically the entire property has been owned by the McLeod Family and their predecessors, two tracts have been conveyed to third parties, who join herewith as Owner. The Exhibit B Property Descriptions depict all of the Property submitted hereunder, including the current McLeod Family property and the two third party properties, as more particularly set forth in Exhibit B.

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

"Zoning Regulations" means the 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 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.

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 terminate Twenty (20) years thereafter; provided however, the parties are not precluded from extending the termination date by mutual agreement or from entering subsequent development agreements.

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

The Property shall be developed in accordance with the Zoning Regulations and this Development Agreement. The City shall, throughout the Term, maintain or cause to be maintained, a procedure for the processing of reviews as contemplated by the Zoning Regulations. All costs charged by or to the City for such 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 Zoning Regulations), and the City's UDO, and/or resolving ambiguities or conflicts between the documents, the hierarchy of documents is the Development Agreement first, the PUD and its Zoning Regulations, second, and the City's UDO 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 or 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, subjecting the additional property to the terms of this Agreement, and adding such additional residential density and commercial uses and intensities that are consistent with those granted the original Property.

V. CHANGES TO ZONING REGULATIONS.

The Zoning 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. Owner does, for itself and its successors and assigns, including Owner(s) and notwithstanding the Zoning Regulations, agrees to be bound by the following:

1. 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.

2. The Owners and Developers, and their respective heirs, successors and assigns agree that all Development, with the exception of irrigation, incidental maintenance facilities and facilities existing at the date of this Development Agreement will be served by potable water and sewer prior to occupancy, except as otherwise provided herein for temporary use, or where there is a specific finding in the future that use of wells and / or septic tanks (or similar devices) for specific development areas may enhance the overall environmental standards above the use of water and sewer, and such use does not violate the terms of the Agreement of Transfer of Assets between the City and the Beaufort Jasper Water and Sewer Authority. For instance, if a sparsely populated area of the PUD is well drained, or subdivided with large lots 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, then the use of wells and septic shall be approved by City. Such a decision would be made at the time of development application, by the appropriate development review authority of the City. In the event sewage treatment and disposal is not available to a portion of the Property, it is agreed that septic systems meeting the S.C. Dept. of Health and Environmental Control's (DHEC's) regulatory requirements shall be allowed to service lots and development parcels.

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.

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 McLeod Farm PUD, as attached hereto. 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.

VIII. RESTRICTED ACCESS

Owner and / or Developer shall have the right to develop restricted access communities within the Property.

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 Zoning 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 Zoning 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 will 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 will consider acceptance of any drainage systems separately from acceptance of any streets.

In certain areas, the Owner or Developer may wish to install private roads which are not paved to preserve a rural character. 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 hazard. Nothing in this Agreement or the ordinances of the City shall be construed to require the paving of these private roads and streets unless the Owner or Developer consents in writing. 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, unless the plat or plan specifically and expressly makes such an offer.

B. Public Roads. The Property shall be served by direct access to US Highway 21, as shown on the Conceptual Master Plan. If any public roads are required to be improved or created to provide access to the Property, credit for the costs of such may be given against any impact fee charged or collected by the City or Beaufort County, to the extent allowed by the

current Intergovernmental Agreement between the City and County, and the City agrees to use its best efforts to obtain such credits for the benefit of Owner. 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 will 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 will consider acceptance of any 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 as Owner or Developer sees fit as set forth in the Zoning Regulations.

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, at the election of the Owner, 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 Conceptual 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 silvaculture operations.

H. Drainage System. All Stormwater runoff and drainage system improvements within the Property will be designed in accordance with the Zoning 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 McLeod Farm PUD until such time as: (1) the City is requested to provide such services; and (2) ad valorem tax revenues generated from McLeod Farm PUD, less such amount thereof as are applied to other City-wide services are sufficient to pay the costs the City incurs to provide solid waste collection to McLeod Farm 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 solid waste/refuse generated from the McLeod Farm 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 McLeod Farm PUD, and if, at that time, the ad valorem tax revenues generated from the McLeod Farm PUD are not sufficient to enable the City to provide such solid waste service, absent a City-wide tax increase, 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 ad valorem tax revenues from the McLeod Farm PUD are sufficient to pay for the solid waste collection services 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 (30) days of the City notifying the Owner of those costs.

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 McLeod Farm PUD, without requiring private security, and if the ad valorem tax revenues generated from the McLeod Farm 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 McLeod Farm 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.

K. Recycling Services. The City shall not be obligated to provide recycling services to the McLeod Farm 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 McLeod Farm PUD, and if the ad valorem tax revenues generated from the McLeod Farm PUD are not sufficient to enable the City to provide such service, without a City-wide tax increase, 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 the ad valorem tax revenues from the McLeod Farm 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.

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.

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 meet or 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 upon 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.** Between the platting of the two-hundredth (200th) and five hundredth (500th) 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 one and one half (1½) 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. This donation shall be made from the McLeod Family property, as described on Exhibit B-1 hereto.

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, and there is a community center operated by the County nearby. In order to provide adequate recreational opportunities, between the platting of the five hundredth (500) and the one thousandth (1,000) residential lot (or equivalent multi-family units) within the Property, Owner shall donate a site (or sites) containing a total of at least 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. This donation shall be made from the McLeod Family property, as described on Exhibit B-1 hereto.

3. **Public Schools.** Between the platting of the one thousandth and fifteen hundredth residential lot or equivalent multi-family unit 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, and provided such school site would predominantly serve students generated from the Property, Owner will offer to donate a 12 acre site (or sites) 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 a minimum of 12 total non-wetland acres, and 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 property is offered to the School District. If the School District does not accept 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.

B. Governmental Services And Capital Improvement Charges.

Prior to the time that 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, or transferred to a Developer entity of Owner for development purposes, said fee \$220.00 per high ground acre, payable at the time of transfer. This fee shall periodically be adjusted every five years, by such amount as the compounding of the annual CPI for each of the prior five years would yield. For example, if the annual CPI increase for the first initial one year period 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, 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.

D. Development Fees.

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

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

(ii) All Development Fees shall be collected at the time of obtaining a building permit. These fees will be adjusted every five years by the compounded CPI, in the same manner 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 fee which is payable to Beaufort County under County Ordinance 2004- ____ and the Intergovernmental Agreement adopted by the City on _____, 2004, to support infrastructure provided by Beaufort County, such as, but not limited to, schools, libraries, parks, and roads, shall not be affected by this Agreement, so long as such fees apply to all development and is 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.

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. StormWater 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. 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 ordinances of the City that directly or indirectly affect the setback, buffer or open space requirements permitted pursuant to the Zoning 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 in the Beaufort area, and that there is not at present a defined program or requirement within the City. Once development begins on the Property and at least five hundred (500) building permits are issued for residential units, Owner will consider multiple housing options within the Property at a diversity of pricing points, provided the same is consistent with similar modern live-work-play developments in the area and in conjunction with future City-wide programs which may be implemented. In furtherance of this goal, provided the City in the future develops reasonable incentives or programs applicable City-wide to encourage the development of multiple housing options and makes those incentives available to the Owner, Owner agrees to consider the implementation of any mandated program which is applicable City-wide and imposed upon all similar modern live-work-play developments involving more than fifty (50) lots or equivalent multi-family units, for such areas of the Property which have not then been platted. Reasonable incentives may include but not be limited to the elimination of Development Fees on multiple housing options.

3. Tree Protection. Owner and any Owner shall comply with the Zoning 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 pinetree 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

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. Franchise architecture within commercial areas shall be prohibited by private land use covenants that will establish architectural and landscaping standards, prior to development. Notwithstanding any law or ordinance of the City of Beaufort to the contrary, all types of hunting, fishing silvaculture and agricultural uses which are legal under South Carolina law may continue on the Property, including the use of fire arms, bird breeding and accumulation, controlled burns and other activities presently engaged in on the Property.

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.

XIII. Defaults. The failure of the Owner, Developer or the City to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance and the termination of this Development Agreement in accordance with the Act; provided however no termination of this Development Agreement may be declared by the City absent its according the Owner and/or any relevant Developer the notice, hearing and opportunity to cure in accordance with the Act; 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 Zoning Regulations or this Development Agreement. A default of the Owner shall not constitute a default by a Developer, and a default by a Developer shall not constitute a default by the Owner.

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 Drawer 386
Beaufort, SC 29910
Attention: City Clerk

And to the Owner at:

As To McLeod Farms:

Claude McLeod, Jr.
P.O. Box 22
Seabrook, SC 29940

As to J & K Beaufort Ventures

J&K Beaufort Ventures, LLC
One Columbus Center, Suite 1100
Virginia Beach, VA 22462-6795

As to Old Seabrook Landing, LLC

Old Seabrook Landing, LLC
1214 King Street
Beaufort, SC 29902

With Copy To:

David L. Tedder, Esq.
P.O. Box 1282
Beaufort, SC 29901-1282

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.

XIX. 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.

Assignment. Other than Development Rights as defined herein, no other rights, obligations, duties or responsibilities devolved by this Agreement on or to the Owner, Developer(s) or the City are assignable to any other person, firm, corporation or entity.

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. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

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.

XX. 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 Exhibits B-1, B-2, and B-3 attached hereto. The present legal Owner of the Property are the individuals and entities above referenced.
2. **Duration of Agreement.** The duration of this Agreement is twenty (20) years from the date of its recording (Termination Date). Nothing in this Agreement shall be interpreted to preclude the Parties from extending the Termination Date by mutual agreement or from entering subsequent development agreements.
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 Zoning 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 Zoning 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 Zoning 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 Zoning Regulations. Specific permits must be obtained prior to commencing Development (excluding farming and silvaculture activities, unless required as a state permit), consistent with the standards set forth in the Zoning Regulations. Building Permits must be also 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 Development permitted and proposed under the Zoning 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 Zoning 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 Zoning 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.

J & K BEAUFORT VENTURES, LLC

By: _____

Its: _____

Attest: _____

Its: _____

OLD SEABROOK LANDING, LLC

By: _____

Its: _____

SIGNATURES CONTINUE ON FOLLOWING PAGE

As to the McLeod Farm Property:

Hope McLeod Cappelmann

Anne McLeod Poulnot

**Claude E. McLeod, Jr., as Trustee of the Claude
E. McLeod Jr. Trust Date August 20, 1999**

**Wachovia Bank, NA, as Trustee of the Jesse M.
Kidder Living Trust Under Trust Agreement
Dated August 9, 1988**

**By: _____
Mark S. Hurlbutt
Its Vice President**

**Claude E. McLeod, Jr., as Attorney in Fact
Power of Attorney recorded in the Office of the
Register of Deeds for Beaufort County, South
Carolina in Book 365 at Page 1700.**

CITY OF BEAUFORT, SOUTH CAROLINA

By: _____

Its: _____

STATE OF SOUTH CAROLINA.)
)
COUNTY OF BEAUFORT.) ACKNOWLEDGMENT

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 officials of the City of Beaufort, 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-1"
TO DEVELOPMENT AGREEMENT

All those certain pieces, parcels or lots of lands, situate, lying and being in Beaufort County, South Carolina, consisting of approximately 929 acres in total, and being generally described as all of the properties owned by **CLAUDE E. MCLEOD JR., AS TRUSTEE OF THE CLAUDE E. MCLEOD, JR., TRUST DATED AUGUST 20, 1999, ANNE MCLEOD POULNOT, GEORGE A. MCLEOD, WILLIAM H. MCLEOD, JR., HOPE MCLEOD CAPPELMANN, AND WACHOVIA BANK, AS TRUSTEE OF THE JESSIE M. KIDDER LIVING TRUST UNDER AGREEMENT DATED AUGUST 9, 1988** pursuant to deeds recorded in the Office of the Register of Deeds for Beaufort County in Book 882 at Pages 523-528 as to Claude E. McLeod, Jr., as Trustee of the Claude E. McLeod Jr. Trust Dated August 20, 1999; Book 2160 at Pages 467-474 as to George A. McLeod; Book 535 at Page 239 as to Wachovia Bank, NS, as Trustee of the Jessie M. Kidder Trust Under Agreement dated August 9, 1988; Book 1812 at Page 1797 as to W.H. McLeod; and under Will Jacket MC 73 recorded in the Office of the Probate Judge for Beaufort County, South Carolina Under the Last Will and Testament of Jessie Parham McLeod as to Ann McLeod Poulnot and File # 86-220 in the Office of the Probate Judge for Beaufort County, South Carolina Under the Last Will and Testament of W.H. McLeod, Sr., dated September 20, 1984; all of 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 100 012 000 0010 0000
R 100 015 000 0052 0000
R 100 015 000 0053 0000
R 100 015 000 0046 0000
R 100 015 000 0047 0000
R 100 015 000 0048 0000
R 100 015 000 048A 0000
R 100 015 000 0049 0000

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 of the adjoining waterways and islands.

EXHIBIT "B-2"
TO DEVELOPMENT AGREEMENT

All those certain pieces, parcels or lots of lands, situate, lying and being in Beaufort County, South Carolina, consisting of approximately 57.98 acres in total, and being generally described as all of the properties owned by J & K Beaufort Ventures, LLC, under that deed recorded in the Office of the Register of Deeds for Beaufort County South Carolina, in Records Book 2291 at Page 625.

Portion of TMP R100 012 000 0010 0000

EXHIBIT "B-3"
TO DEVELOPMENT AGREEMENT

All those certain pieces, parcels or lots of lands, situate, lying and being in Beaufort County, South Carolina, consisting of approximately 37.07 acres in total, and being generally described as all of the properties owned by Old Seabrook Landing, LLC, under that deed recorded in the Office of the Register of Deeds for Beaufort County South Carolina, in Records Book 2291 at Page 194.

Portion of TMP R100 012 000 0010 0000

Including all of their right, title and interest in and to those lands lying between the high and low water marks, and the marshes of the adjoining waterways.

Exhibit "C"
TO DEVELOPMENT AGREEMENT

McLeod PDD
Attached as a Separate Document

EXHIBIT "D"
TO DEVELOPMENT AGREEMENT
DEVELOPMENT SCHEDULE *

Development Period(s) (5 Year Increments)	Residential (Residential Units Constructed)	Commercial (Square Footage Constructed)
First 5 years	50% of allowed	25% of allowed
Second 5 years	50% of allowed	75% of allowed

*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 ten year period of actual development, with residential development occurring relatively evenly over the two five year forecast periods, and commercial weighted toward the second forecast period as new residents provide increased demand. Development may occur at a different pace or mix. 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.

EXHIBIT "E"
TO MCLEOD DEVELOPMENT AGREEMENT
INITIAL ALLOCATION OF DENSITIES, COMMERCIAL USES

It is agreed that the three original land owners, J & K Beaufort Investments, LLC, Old Seabrook Landing, LLC, and the McLeod Family, shall initially allocate densities and commercial square footages in the following manner:

	Residential Density	Commercial Footage
McLeod Farms	2,021 Units	1,100,000 sq. ft.
J& K	450 Units	132,000.00 sq. ft.
Old Seabrook	250 Units	55,000.00 sq. ft.
TOTAL	2,721 Units	1,287,000,000 sq. ft.