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AGENDA  
COUNTY COUNCIL OF BEAUFORT COUNTY  
SPECIAL SESSION

Monday, November 26, 2018

5:00 p.m.

Council Chambers, Administration Building  
Beaufort County Government Robert Smalls Complex  
100 Ribaut Road, Beaufort

1. CALL TO ORDER - 5:00 P.M.
2. SPECIAL SESSION
3. PLEDGE OF ALLEGIANCE
4. INVOCATION – Chairman Sommerville
5. PUBLIC COMMENT – Speaker sign-up encouraged no later than 4:45 p.m. day of meeting
6. PUBLIC HEARING
  - A. AN ORDINANCE ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF BEAUFORT, SOUTH CAROLINA, AND ROBERT L. GRAVES, PEPPER HALL PLANTATION ([ordinance](#)) ([agreement](#))
    1. First public hearing (1 of 2). Second public hearing (2 of 2) to occur Monday, December 10, 2018 beginning at 6:30 p.m. in the Council Chambers of the Administration Building, Beaufort County Government Robert Smalls Complex, 100 Ribaut Road, Beaufort
    2. Second reading approved on November 5, 2018 / Vote: 7:3:1
    3. First reading, by title only, approved on October 22, 2018 / Vote 7:2
    4. Natural Resources Committee discussed and recommended on October 15, 2018 / Vote 5:0:1
7. SECOND READING (REREAD) OF THE DEVELOPMENT AGREEMENT FOR PEPPER HALL PLANTATION ([ordinance](#)) ([agreement](#))
  1. Consideration of second reading (reread) on November 26, 2018
  2. Second reading approved on November 5, 2018 / Vote: 7:3:1
  3. First reading, by title only, approved on October 22, 2018 / Vote 7:2
  4. Natural Resources Committee discussed and recommended on October 15, 2018 / Vote 5:0:1
8. DISCUSSION OF RECOMMENDED 2019 COMMITTEE SCHEDULES
9. EXECUTIVE SESSION
  - A. Discussion of a person regulated by County Council
10. MATTERS ARISING OUT OF EXECUTIVE SESSION



11. PUBLIC COMMENT – Speaker sign-up encouraged

12. ADJOURNMENT

**AN ORDINANCE ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF BEAUFORT, SOUTH CAROLINA, AND ROBERT L. GRAVES, PEPPER HALL PLANTATION**

**WHEREAS**, Beaufort County, South Carolina (the “County”), acting by and through the Beaufort County Council (the “County Council”) is empowered under and pursuant to the provisions of 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, to enter into development agreements relating to property within the County; and

**WHEREAS**, Owner is the owner of several tracts of land containing a total of approximately Eighty-Three (83) acres near the Okatie River (“Property”), sometimes referred to as Pepper Hall, located in Bluffton Township, Beaufort County, South Carolina; and

**WHEREAS**, Owner proposes to obtain authority for the development of a mixed-use community with commercial uses (including, possibly, medical or technology facilities), residential areas, and recreational opportunities on the Property; and

**WHEREAS**, County is the owner and developer of approximately eighteen (18) acres of land lying between the Property and the waters and marshes of the Okatie River; and

**WHEREAS**, County has designated its said eighteen-acre parcel to be part of the County’s passive park system, and has named it “Okatie River Park” (but may change that to another name in the future); and

**WHEREAS**, County and Owner have entered into a Memorandum of Understanding (“MOU”), pursuant to County’s Council’s Resolution No. 2018-9; and

**WHEREAS**, by the MOU, the County and Owner agreed conceptually to consider entering into a mutually-binding, public-private “partnership”, as contemplated by Beaufort County Council Resolution R-2012-3, and under the authority of the Beaufort County Community Development Code (“CDC”) Division 3.160, “Parks, Playgrounds and Outdoor Recreation Areas”; and

**WHEREAS**, the Joint Development Agreement (the “Agreement”) is intended to lay out the terms and conditions for such public-private “partnership”, and for the zoning, permitting, uses, densities, planning, development, operation and maintenance of the Property and the Okatie River Park; and

**WHEREAS**, based on consideration of the County's desires and plans for the Okatie River Park, Owner has prepared a Conceptual Plan for the general layout and development scheme currently contemplated for the Property and the Okatie River Park, reflecting the Owner's current planning to establish a prototype of development that works toward the Parties' common goals of protecting the health of the Okatie River, enhancing and providing public access to the Okatie River Park for public benefit, balancing environmental preservation with property rights, and providing private sector solutions for environmentally-responsive development; and

**WHEREAS**, the Parties' joint planning for the Property and the Okatie River Park, being contiguous to each other, has presented unique challenges and opportunities to each of the Parties, and the Parties have negotiated the within Agreement with many exchanged and shared benefits and costs, in consideration of all of which, counting the mutual and respective costs and benefits, the Parties have come into agreement on all of the terms and conditions expressed in the within Agreement; and

**WHEREAS**, the County finds that the proposal for these properties, as set forth in the within Agreement, is consistent with the County's Comprehensive Plan, will further the health, safety, welfare and economic well-being of the County, and presents an unprecedented opportunity to secure quality planning and growth in the public and private sectors, as well as creating and maintaining the Okatie River Park for public access and benefit, all in an environmentally-sensitive manner; and

**WHEREAS**, the County desires to protect the important natural environment of the Okatie River area, while encouraging quality growth and economic opportunity for its citizens, with access to passive, public outdoor recreation; and,

**WHEREAS**, the County seeks to protect and preserve the natural environment and to secure for its citizens' quality, well-planned and well-designed development and a stable and viable tax base, and passive parks for public access and benefit; and,

**NOW, THEREFORE, BE IT ORDAINED**, by Beaufort County Council, in a meeting duly assembled, as follows:

**SECTION I: FINDINGS INCORPORATED**

The above recitals and findings are incorporated herein by reference and made a part of this Ordinance. In addition to the recitals set forth above, which the County Council hereby adopts as findings of fact, the County Council specifically finds that the Agreement attached hereto as

Exhibit “A” and incorporated herein by reference, complies with the Act, the Comprehensive Plan, and the CDC.

SECTION II: DEVELOPMENT AGREEMENT

The terms of the Agreement are hereby approved in accordance with the Act and CDC. The Agreement shall be effective immediately upon approval of this Ordinance after third reading and execution by both Parties.

SECTION III: EXECUTION

The County Administrator is authorized to execute and deliver the Agreement on behalf of the County, and any and all other necessary documents or instruments incidental to the approval of this Ordinance and the Agreement.

SECTION IV: EFFECTIVE DATE

This Ordinance shall become effective immediately upon its approval following third reading by the County Council.

DONE this \_\_\_\_ day of \_\_\_\_\_, 2018.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas J. Keaveny, II, County Attorney

ATTEST:

\_\_\_\_\_  
Connie L. Schroyer, Clerk to Council

First Reading:  
Second Reading:  
Public Hearing:  
Third and Final Reading:

**JOINT DEVELOPMENT AGREEMENT**  
**OF**  
**BEAUFORT COUNTY AND ROBERT L. GRAVES**  
**FOR**  
**PEPPER HALL AND OKATIE RIVER PARK**

**Approved by the parties as of the 10<sup>th</sup> day of December, 2018.**

Prepared by:  
Barry L. Johnson  
Attorney at Law  
JOHNSON & DAVIS, PA  
The Victoria Building, Suite 200  
10 Pinckney Colony Road  
Bluffton, SC 29909

**PEPPER HALL AND OKATIE RIVER PARK JOINT DEVELOPMENT AGREEMENT  
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# PEPPER HALL AND OKATIE RIVER PARK JOINT DEVELOPMENT AGREEMENT

## TABLE OF EXHIBITS

<u>Exhibit Number</u>	<u>Exhibit Name</u>
A.	Plat of Pepper Hall, 83.195 acres (the “Property”)
B.	Plat of Okatie River Park, 18.00 acres, as now configured (“Okatie River Park”)
C.	Memorandum of Understanding and Beaufort County Council Resolution 2018-9
D.	Plat of Graves Family Barn Site, approximately 2.97 acres
E.	Conceptual Plan for the Development of Pepper Hall and the Okatie River Park
F.	Map of the Current Beaufort County zoning classifications (C-5, C-3) of the Property
G.	Current Community Development Code of Beaufort County, including all amendments to date
H.	Notice of Transfer (Form)
I.	Anticipated Development of the Property at Maximum Build-Out
J.	Current Beaufort County Manual for Stormwater Best Management and Design Practices Manual

**STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF BEAUFORT        )**     **PEPPER HALL AND OKATIE RIVER PARK  
JOINT DEVELOPMENT AGREEMENT**

**THIS JOINT DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between Robert L. Graves, (Owner), and the governmental authority of Beaufort County, South Carolina ("County"), for themselves and their respective successors and assigns.

**RECITALS**

**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 "[t]he 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 county governments, to enter development agreements with landowners to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and,

**WHEREAS**, Beaufort County seeks to protect and preserve the natural environment and to secure for its citizens quality, well-planned and well-designed development and a stable and viable tax base, and passive parks for public access and benefit; and,

**WHEREAS**, Owner is the owner of several tracts of land containing a total of approximately Eighty-Three (83) acres near the Okatie River (“Property”), sometimes referred to as Pepper Hall, located in Bluffton Township, Beaufort County, South Carolina, and as more particularly described on **Exhibit A** attached hereto; and,

**WHEREAS**, Owner proposes to obtain authority for the development of a mixed-use community with commercial uses (including, possibly, medical or technology facilities), residential areas, and recreational opportunities on the Property; and

**WHEREAS**, County is the owner and developer of approximately eighteen (18) acres of land lying between the Property and the waters and marshes of the Okatie River, as more particularly described in **Exhibit B** hereto; and

**WHEREAS**, County has designated its said eighteen-acre parcel to be part of the County’s passive park system, and has named it “Okatie River Park” (but may change that to another name in the future); and

**WHEREAS**, County and Owner have entered into a Memorandum of Understanding (“MOU”), pursuant to County’s Council’s Resolution No. 2018-9 (copies of Resolution and MOU are attached together as **Exhibit C** hereto); and

**WHEREAS**, by the MOU, the County and Owner agreed conceptually to consider entering into a mutually-binding, public-private “partnership”<sup>1</sup>, as contemplated by Beaufort County Council Resolution R-2012-3, and under the authority of the Beaufort County Community Development Code (“CDC”) Division 3.160, “Parks, Playgrounds and Outdoor Recreation Areas”; and

**WHEREAS**, the within Joint Development Agreement is intended to lay out the terms and conditions for such public-private “partnership”, and for the zoning, permitting, uses, densities, planning, development, operation and maintenance of the Property and the Okatie River Park; and

**WHEREAS**, based on consideration of the County’s desires and plans for the Okatie River Park, Owner has prepared a Conceptual Plan (**Exhibit E** attached) for the general layout and development scheme currently contemplated for the Property and the Okatie River Park, reflecting the Owner’s current planning to establish a prototype of development that works toward the Parties’ common goals of protecting the health of the Okatie River, enhancing and providing public access to the Okatie River Park for public benefit, balancing environmental preservation with property rights, and providing private sector solutions for environmentally-responsive development; and

**WHEREAS**, the Parties’ joint planning for the Property and the Okatie River Park, being contiguous to each other, has presented unique challenges and opportunities to each of the Parties, and the Parties have negotiated the within Joint Development Agreement with many exchanged and shared benefits and costs, in consideration of all of which, counting the mutual and respective

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<sup>1</sup> See legal disclaimer at Section XV. D., *infra*

costs and benefits, the Parties have come into agreement on all of the terms and conditions expressed in the within Joint Development Agreement; and

**WHEREAS**, the County finds that the proposal for these properties, as set forth in the within Agreement, is consistent with the County's Comprehensive Plan, will further the health, safety, welfare and economic well-being of the County, and presents an unprecedented opportunity to secure quality planning and growth in the public and private sectors, as well as creating and maintaining the Okatie River Park for public access and benefit, all in an environmentally-sensitive manner; and

**WHEREAS**, the County desires to protect the important natural environment of the Okatie River area, while encouraging quality growth and economic opportunity for its citizens, with access to passive, public outdoor recreation; and,

**WHEREAS**, the Parties intend to establish a Residential Improvement District (RID) pursuant to South Carolina Code Section 6-35-10 et. seq. for the purpose of the County recovering a portion of the financial obligations set forth herein; and

**WHEREAS**, the County may, in the County's sole discretion establish a RID, and Owner hereby consents to a RID; furthermore the Owner agrees to cooperate with the County in establishing the RID and to provide any additional agreements required under the Residential Improvement District Act; and

**WHEREAS**, it is the County's intention to implement a RID to recover the cost associated with the construction of the Primary Access Road (a portion of Graves Road and a connector road to the Okatie River Park) as well as costs associated with the design and construction of the Okatie River Park; and

**WHEREAS**, this Agreement is being made and entered between the County and the Owner, under the terms of the Act, the Residential Improvement District Act, the CDC, the

County's Resolution 2012-3, the County's Resolution 2018-9, and the MOU, all for the purposes of providing assurances, *inter alia*, to the Owner that it may proceed with the Development of the Property under the terms of this Agreement, without being limited by future changes of law which would materially affect the ability to develop or the cost of future Development under the plans, and for the purpose of providing important protections to the natural environment and the financial stability of the County of Beaufort, as well as to establish the mutual opportunities and responsibilities of the County and the Owner for Okatie River Park and its access.

**NOW, THEREFORE**, for and in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic and other benefits to both County and the Owner by entering this Agreement, and to encourage well-planned Development of the Okatie River Park and the Property, the receipt and sufficiency of such consideration being hereby acknowledged, the County and the Owner, for themselves and their heirs, successors and assigns, do hereby agree as follows:

**I. INCORPORATION OF RECITALS.**

The above recitals are hereby incorporated into this Agreement.

**II. DEFINITIONS.**

As used herein, the following terms mean:

“Conceptual Plan” means the general layout and development scheme currently contemplated for the Property and the Okatie River Park, attached as **Exhibit E**, and as such may be modified in the future pursuant to the terms of this Agreement.

“Community Development Director” means the person, from time to time, appointed to that (or a similarly-named) position of authority in Beaufort County, and authorized to execute the functions of Director in CDC Division 7, and otherwise under the CDC or State law, as amended or succeeded by future such ordinances and/or statutes.

“Current Zoning of the Property” means the C-5 Zoning and C-3 Zoning areas as delineated on **Exhibit F** and as detailed and explained in the CDC (**Exhibit G**).

“Development” means the development of portions of the Property and of the Okatie River Park, including vertical or horizontal construction of improvements thereon and adjacent thereto as allowed by this Agreement.

“Development Rights” mean rights to undertake Development in accordance with this Agreement.

“Barn Site” means that certain tract of land, with improvements, described in **Exhibit D**.

“MOU” means the Memorandum of Understanding included in **Exhibit C**.

“Okatie River Park” means that certain tract of land described in **Exhibit B**.

“Okatie River Park Improvements, Off-Site, means the external road, pedestrian, bicycle or other means of access for people and vehicles, and parking, and utilities, to the Okatie River Park. It also includes the off-site improvements associated with use of the Okatie River Park, and such access and parking, including storm water and drainage facilities, landscaping, irrigation, street lighting improvements, etc.

“Okatie River Park Improvements, On-Site, means the recreational park facilities, structures, utilities, piers and docks, trails and paths, roads and parking, signs deemed necessary and appropriate by the Parties for the Okatie River Park and located within the boundaries thereof.

“Owner” means Robert L. Graves, of Beaufort County, South Carolina.

“Parties” means, Robert L. Graves, his heirs, successors and assigns, and Beaufort County, South Carolina.

“Party” means one of the Parties.

“Primary Park Access Road” means the primary access road from the Property entrance near the Okatie River Park, to access the Okatie River Park.

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

"Zoning Regulations" means the Community Development Code (CDC) of Beaufort County, in effect at the time of the execution of this Agreement (**Exhibit G**), as amended by this Agreement's Development Requirements set forth in Section IV hereof. As between the Zoning Regulations and the Development Requirements, the Development Requirements shall control.

### **III. TERM.**

The Term of this Agreement shall commence on the date this Agreement is executed by the Parties, and terminate five (5) years thereafter; provided, however, that the Term of this Agreement will be automatically renewed and extended for six (6) additional successive five (5) year terms absent a material breach of any terms of this Agreement by Owner during the Term (including renewals/extensions thereof).

### **IV. OKATIE RIVER PARK.**

A. General. Pursuant to the agreement of the Parties in the MOU, the Parties have now structured and agreed upon this Agreement to form a mutually-binding agreement between themselves for the Development of the Property and the Okatie River Park.

#### **B. Capital Cost Contributions by County.**

1. Okatie River Park Improvements, On-Site. County will pay the cost of designing and constructing the Okatie River Park Improvements, On-Site. This will include reimbursing Owner for all of the costs of design for the Okatie River Park done by Owner or his professional design team, as well as any additional costs incurred by Owner for construction of the Okatie River Park Improvements, On-Site, including, but not limited to, roadways, paths, docks, piers, sheds, buildings, restroom facilities, parking, interpretive exhibits and signage, electricity, water, sewer and other desired utilities and services. County will be responsible at its cost for

obtaining all permits and approvals for all Okatie River Park Improvements, On-Site, including any and all filing and permitting fees, impact fees, etc., attributable to the Okatie River Park.

2. The County may recover the costs for design and construction of improvements in the Okatie River Park by establishing a Residential Improvement District pursuant to S.C. Code of Laws Section 6-35-10 et. seq. Owner hereby expressly grants approval to the County as required by S.C. Code of Laws Section 6-35-30.

3. Okatie River Park Improvements, Off-Site.

- a. Roads and Traffic Improvements. The Parties acknowledge that the Conceptual Plan (**Exhibit E**) provides the primary access to the Okatie River Park by way of the northerly entrance from Graves Road (to be improved) into the central village of the Property, with secondary access through other access points from Graves Road and/or the signalized access to the Property from Highway 278. The Owner and the Community Development Director may agree to shift the site location and route of the Primary Park Access Road, as final plans for the Development of the Property evolve. The County will pay the design, permitting, and construction cost of Graves Road (as outlined in Section VI.B. hereof) and the construction cost of the Primary Park Access Road from Graves Road to the central village of the Property, which will be near the Okatie River Park. Those construction costs will include all road, pedestrian, bicycle or other means of access for people and vehicles, and parking, and utilities, to the Okatie River Park, including the road and traffic improvements associated with such access and parking, and also including storm water and drainage facilities, landscaping, irrigation, street lighting

improvements, etc. on and along Graves Road and the Primary Park Access Road. Owner will provide non-exclusive use of his lands within the Property for those purposes on specific lands and designs to be approved by the Parties. Owner will pay the costs for opening the Highway 278 signalized access to the Property and for the internal roads of the Property (except for the Primary Park Access Road), some of which will also connect to the Okatie River Park, as described and limited herein and by Section VI. B. hereof. County will cooperate with and assist in the permitting for Graves Road, the Primary Park Access Road, and access to Highway 278, and the other Internal Roads of the Property. Based on the County's and Owner's Traffic Impact Analyses, the County will pay its pro-rata share of Off-Site Traffic Improvements indicated by the traffic generated by the Okatie River Park.

- b. The County may recover the costs for design, permitting and construction of the Primary Park Access Road (including improvements to Graves Road) by establishing a Residential Improvement District pursuant to S.C. Code of Laws Section 6-35-10 et. seq. Owner hereby expressly grants approval to the County as required by S.C. Code of Laws Section 6-35-30. Storm Water Facilities.

The Parties agree and acknowledge that, regardless of the efficacy, or lack thereof, of previously-permitted storm-water systems on near-by, neighboring, and adjacent properties to the Property, and regardless of whether or not the drainage from Highway 278 was or was not permitted and/or provided for, the Property and the Okatie River Park remain the collection points for substantial storm water runoff from those other properties, despite that Development has not yet occurred on the Property or the Okatie River Park in any significant

way. The Parties acknowledge and agree that the Property and the Okatie River Park are now burdened with excess storm water run-off and flows originating from outside of either property (“Off-Site Flows”); in consequence, (1) the County will bear the expense of the portions of the construction, operation, repairs, and maintenance of the storm water management system serving the Property and the Okatie River Park, as related to the Off-Site Flows, and as related to the Okatie River Park, and (2) Owner will bear the expense of the portions of the construction, operation, repairs, and maintenance of the Storm Water Management System serving the Property and the Okatie River Park, as related only to the Property. The Okatie River Park presently includes some high ground, and some vintage, agrarian, culvert crossings, dams, holding ponds, and at least one outfall pipe, which collectively connect the storm water drainage from those adjacent properties, and from the Property and the Okatie River Park, into and through the Property and the Okatie River Park, and then into the waters of the Okatie River. The Parties agree that fifty (50%) per cent of the costs of design, permitting, construction, operation and maintenance of the storm water management system for the Property and the Okatie River Park will be paid for by County and the balance by Owner. County will reimburse Owner for costs associated with the County’s 50% share provided herein upon receipt of supporting invoices, and as long as County has approved Owner’s design engineer and contractor and construction contract for such storm water infrastructure. Owner will provide, as part of the overall considerations exchanged and/or shared by the Parties in this Agreement, the non-exclusive use of the appropriate lands within the Property for those purposes, and the

County will provide, as part of the overall considerations exchanged and/or shared by the Parties in this Agreement, the use of the appropriate lands within the Okatie River Park for those purposes.

C. Other Infrastructure and Services. The provisions of Section VI hereof are incorporated by reference herein. In addition, the County will pay the incremental cost increase (if any) associated with increase in capacity or upsizing water and sewer lines, caused by the Okatie River Park, for the cost of design, construction, installation and maintenance for water mains and sewer lines (and associated pump/lift stations) from their current connecting points through the Property to be stubbed out at the property line of the Okatie River Park, at points to be agreed upon by the Community Development Director and Owner.

D. Barn Site. The Barn Site ("Site") is within the current boundaries of the Okatie River Park. This Site is also, historically, a part of the Graves Family Heritage Compound, as the Graves Family has continuously owned and operated Pepper Hall since the 1870's. The County acquired this Site as part of its acquisition of the eighteen-acre Okatie River Park land. The County and Owner, for certain considerations, have agreed to the following option, exercisable by Owner in his sole discretion within nine (9) months after December 10, 2018, for the Site:

1. Owner may receive back the Barn Site from the County, by way of the County's quit-claim deed, with a reservation of a public-access easement along the westerly edge of the Site, extending 50 feet easterly from the mean high water line of the Okatie River, and beginning at the northerly end of the Site, and stopping at the southern edge of the Barn Site with an additional 15' walkway along the southern property line of the Barn Site in such a way that access to a public right of way is preserved. Such deed to be executed, delivered, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina; and, for and in consideration of the foregoing,

Owner will, immediately next after the recording of the above-described quit-claim deed, also record a conservation easement in favor of the County or its designee, such easement to be in a form to be reasonable agreed-upon by the Parties (and/or any such designee of County), to restrict the future use of the Site to the existing barn structures, or no more than two cottages, with a combined square footage of conditioned living space not exceeding 4122 square feet, and normal residential support structures; and providing for no additional docks to be built on the Site. Said conservation easement shall provide for the use of the preserved pathways described herein for public use and for the preservation of a connection from the park property to a public right of way. The Parties may, by mutual agreement, adjust the site location of the 15' walkway for aligning the connection with a right of way. Owner shall provide as additional consideration, a 1.5 acres parcel of useable high ground, contiguous to the Park and in a configuration and location mutually agreeable to the Parties.

2. Failure to exercise the above option with nine (9) months of December 10, 2018 will result in Owner relinquishing any and all interest in the Barn Site and the Option provided in this Agreement shall expire.

E. Easements. Owner will convey to the County non-exclusive easement rights for ingress, egress, and for utilities access, installation and maintenance on and along the Primary Park Access Road, and on and along such other roads and lands of the Property as the Parties may agree upon, to and from the Okatie River Park, all at specific locations to be agreed upon by the Parties. Owner reserves the right to modify, alter or replace such easements by providing alternative access on and along the Internal Roads of the Property. The Parties acknowledge that certain *cul-de-sacs*

within the Property may be developed as small, private enclaves, with gated entrances with private roads, privately maintained, within such enclaves.

F. Buffers. No buffers will be required for the separation between the Property and the Okatie River Park.

**V. DEVELOPMENT REQUIREMENTS AND DEVELOPMENT RIGHTS FOR THE PROPERTY AND THE OKATIE RIVER PARK.**

A. CDC and Future Laws: Applicability and Vesting. The Property and the Okatie River Park shall be developed in accordance with the CDC, this Agreement, the Current Beaufort County Manual for Stormwater Best Management and Design Practices, and the Development Requirements and Development Rights as set forth in this Section V; provided that, as between the County's Zoning Regulations and the Development Requirements, these Development Requirements shall control to the extent allowed by law. Any future laws, including any amendment or modification to the CDC relating to the Property, shall not be applicable to the Property without the express, written consent of Owner; except, however, that the County may amend the CDC as it pertains to (1) procedures for processing land development applications and approvals, approvals of subdivision plats, and/or (2) the issuance of building permits, without the express, written consent of Owner. It is the intent of the Parties that only the CDC's Zoning Regulations, rights under this Agreement, and any other laws, regulations and ordinances of the County applicable to the development of land in the County be vested for the Property for the Term (including renewals/extensions thereof). All other laws, regulations and ordinances of the County, and those as may be enacted in the future, shall be applicable to the Owner, and his heirs, successors and assigns, so long as such do not conflict with this Agreement, or interfere with the ability to utilize and develop the Property in accordance with this Agreement. It is also specifically acknowledged by the Parties that this Agreement shall not prohibit the application to the Property

and the Okatie River Park of any current or future building, housing, electrical, plumbing, gas, swimming pool or other standard codes of general application throughout the County, of any tax or fee (including school impact fees) of general application throughout the County. It is, further, specifically acknowledged that nothing in this Agreement shall be deemed to exempt the Property and the Okatie River Park from fees and taxes that may be imposed by governmental entities other than the County. Owner shall have vested rights to undertake Development of any portion or all of the Property in accordance with the CDC, except as varied, if at all, by this Agreement.

B. Permitted Uses and Densities.

1. Permitted uses on the Property include all of those allowed under the Current Zoning of the Property, to include but not be limited to the following: residential dwellings and customary or accessory uses thereto, community buildings, recreational uses such as parks, water-related amenities and the like, and commercial, lodging, office, medical and residential uses, as well as roads, parking areas, utilities, storm water drainage and management infrastructure, some as conceptually shown and depicted on the Conceptual Plan that is attached as **Exhibit G**. Subject to the limitations provided in the current CDC, no more than Six Hundred Eighty (680) dwelling units (and such additional residential units as may be obtained on upper floors of mixed-use buildings, together with up to Fifty (50) additional residential units that may be derived by Owner's conversion of up to One Hundred Thousand (100,000) commercial square-footage within the Property into residential dwelling units at a conversion ratio of One (1) dwelling unit per 2000 square feet of commercial square-footage), and no more than Three Hundred Fifty Thousand (350,000) square feet of first-floor ground area commercial square-footage may be constructed on the Property; provided, however, that Owner may

choose that up to One Hundred Thousand (100,000) commercial square-footage within the Property may be converted by the Owner into dwelling units at a conversion ratio of One (1) dwelling unit per Two Thousand (2000) square feet of commercial square-footage. Densities may not exceed those allowed under the current CDC.

2. Such residential dwelling units allowed on the Property are allocated, subject to the regulations of the CDC as follows: The lands within the Property's C-5 Zoning District are allocated up to Four Hundred Fifty (450) dwelling units. The lands within the Property's C-3 Zoning District are allocated up to Three Hundred (300) dwelling units. Either or both of these allocated limits may be increased by upper floors of mixed use buildings and/or by conversion of commercial square footage to residential dwelling units as otherwise provided in this Agreement.
3. Such commercial square-footage allowed on the Property is allocated as follows: The lands within the Property's C-5 Zoning District are allocated up to Two Hundred Fifty (250,000) square feet of commercial use dedicated to first floor ground area and such additional commercial use square-footage as may be dedicated to second-floor and/or third-floor uses. The lands within the Property's C-3 Zoning District are allocated up to One Hundred (100,000) square feet of commercial use dedicated to first floor ground area and such additional commercial use square-footage, or mixed-use residential as may be dedicated to second-floor and/or third-floor uses.
4. The specific locations of each and all such uses shall be determined by Owner and the Community Development Director at the times of detailed submittals, on a per-phase basis, for Conceptual and Final development approvals for phased portions

of the Property. The densities allowed hereunder are not allowed to exceed those permitted under the CDC.

5. Owner herewith agrees to undertake a good faith and considerate effort to utilize a portion of the square footage in buildings having two or more floors as mixed-use areas (commercial and residential) in an effort to reduce the amount of “impervious surface area” upon the Property and to consider design standards, elements and uses found in the CDC provisions for “Traditional Community Plans” (“TCP”), and “Mixed-Use” (“Mixed-Use”) developments in specific provisions of the CDC. The Community Development Director has the discretion to allow up to 3.5 story buildings, above base flood elevation, in the central village portion of the Property’s C-3 Zoning District.
6. Where the provisions of this Agreement regarding Permitted Uses and Densities may conflict with the CDC in existence at the time of the effective date of this Agreement, the CDC shall prevail.

C. Development.

1. It is acknowledged by the Parties hereto that the Conceptual Plan (**Exhibit E**) represents by-right Development under the Zoning Regulations (**Exhibit G**), but does not represent a specific site development plan for uses and densities, and that the Owner may materially deviate from the general concepts shown on the Conceptual Plan without the prior consent of County, upon condition that such changes are in compliance with the applicable provisions of the CDC and this Agreement.

2. County agrees that the Owner shall have the unlimited right to set and modify the schedule and phasing of Development of the Property, within the Term, including renewals/extensions, as Owner deems appropriate.
3. All future Development proposed and executed as part of a specific development plan for all or a phase of the Property must, nevertheless, be in compliance with all applicable Federal, State, and Local standards, except as such Local standards are varied, if at all, by the terms of this Agreement.
4. Storm water management shall be subject to the Current Beaufort County Manual for Stormwater Best Management and Design Practices (**Exhibit J**), and to applicable standards of Federal and State permitting authorities required at times of development and shall at a minimum meet all State and County criteria for drainage including volume and velocity control, nutrient reduction, and shall at a minimum satisfy the necessary [IC1] criteria for meeting the goals of the Okatie River TMDL, as established by South Carolina's Department of Health and Environmental Control (DHEC), and shall use soil, storm water, and vegetative best management practices in accordance with this Agreement. The Parties agree that the use of rain gardens within wetland buffers and other buffer areas is a desirable and acceptable management practice for these purposes.
5. Owner agrees to encumber portions, and eventually all, of the Property with recorded Conditions, Covenants and Restrictions (CC&R's) at the time of development to carry out the provisions of this Agreement, which CC&R's shall be subject to the reasonable approval of the County, such approval not to be unreasonably withheld.

6. The Owner is required to notify Beaufort County, in writing, if, as, and when Development Rights are transferred to any other landowner, developer, or builder. 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 for which the transfer applies. Subsequent persons transferring Development Rights to any other party shall be subject to the same requirement of notification, and any entity acquiring Development Rights hereunder shall be subject to the requirements of this Agreement.

D. Permitting Procedures.

1. Best Efforts. Beaufort County agrees to use its best efforts to review in an expeditious manner all land use changes, Development applications, plats and building permit applications, and other documents related to this Agreement, in accordance with applicable ordinances as modified by this Agreement for the Property. Owner may submit these items for concurrent review with Beaufort County and other governmental authorities.
2. Traffic Impact Analysis ("TIA"). The Parties agree that Owner will provide a traffic impact analysis which tabulates detailed pre- and post-development traffic loadings for those areas of the Property where development has been indicated to occur on the Property within the immediate future (within two to three years), or as otherwise mutually agreed by the Community Development Director and the Owner, as well as a schematic estimate of traffic loadings at project build-out to maximum densities. Similarly, the County will provide a traffic impact analysis for the Development and use of the Okatie River Park. The Parties may agree to cooperate in a joint TIA. The schematic estimates may be subject to significant

changes due to uncertainty in future transportation impacts and changes in traffic patterns and infrastructure for the surrounding area. The TIA will include recommendations for internal roadway circulations and capacities as well as recommendations for improvements over existing access roads and/or new intersections and access roads as necessary. The TIA will also include phasing recommendations for completion of required improvements based on traffic volumes generated. The TIA will also include recommendations for routes to the Property and the Okatie River Park, and potential measures to best accommodate construction traffic associated with the current phasing.

As Development planning for the Property moves forward from phase to phase, it may be necessary to update the TIA periodically as warranted by Development progress and changing conditions. When deemed necessary, and at the Community Development Director's sole discretion but not more frequently than bi-annually, the TIA may be required to be updated and submitted to the Community Development Director for review in conjunction with the submittal of each subsequent Development phase for the Property. The scope of the updates will be mutually determined by the Owner and the Community Development Director. Unless otherwise determined by the Owner and the Community Development Director, at a minimum, the scope of the updates will include:

- a. a tabulation of land uses that have received building permits subsequent to the most recent TIA update; and
- b. a tabulation of land uses that are anticipated to be permitted for building prior to initiation of the next Development phase; and

- c. an update of the trip generation calculations associated with the cumulative existing land uses, and those that are anticipated prior to initiation of the next Development phase.

E. Signage. Signage for the Property shall be governed by Division 5.6 (“Sign Standards”) of the CDC. In addition, Owner shall be entitled to retain, use, lease, maintain and service the existing, grand-fathered billboard on the southeasterly corner of the Property until and unless Owner, in his sole and unfettered discretion, elects to remove such billboard during the Term hereof (including renewals/extensions). Owner will provide, near access points to the Okatie River Park, general signage for road-side designated public parking areas.

## **VI. INFRASTRUCTURE AND SERVICES.**

A. General. County and Owner recognize that, generally and subject to the terms of this Agreement, services to the Property will be provided by the County and other governmental or quasi-governmental entities. The provisions of this Section VI are subject to, and fully incorporate by reference, the remainder of this Agreement including, in particular, the provisions of Sections IV. and V. hereof.

For clarification, the Parties make specific note of, and acknowledge, the following:

B. Internal Roads. All roads within the Property, excluding the Primary Park Access Road, shall be constructed by the Owner and maintained by him and/or one or more property owners associations. Notwithstanding the provisions hereof, Owner and County agree to convey to each other cross-easements for scenic view, parking, pedestrian and vehicular ingress and egress over and across the internal, public-access roads of the Property for public access (including from the Property) to the Okatie River Park, together with parking, view, utility installation and maintenance easements and such other use rights as may be reasonably agreed by the Parties.

The Parties acknowledge that the development will not be a gated community. Small,

private enclaves, with gated entrances for securing certain amenities of certain portions of the development that are privately maintained, may be created; provided, however, that such shall not unreasonably impede access to the Okatie River Park.<sup>2</sup> The Parties may agree to the Owner's dedication of certain Internal Roads within the Property to the County. The Owner may participate in the formation of the Residential Improvement District as contemplated within this Agreement for the purpose of recovering costs associated with the construction of its roads. Election by the Owner to participate in the RID shall not interfere with the County's imposition of the RID for recovering the County's costs associated with the design, permitting and construction of its obligations under this Agreement.

C. External Roads.

1. Highway 278. The major, external public road that serves the Property is Highway 278 and is under the jurisdiction of the State of South Carolina regarding construction, improvements and maintenance. It shall be the responsibility of the Owner to adhere to applicable State and County requirements regarding ingress and egress to Highway 278 or any other public roads that may serve the Property. Owner will pay any required costs to open the existing signalized access point on Highway 278 into the Property, and for the Internal Roads (other than Graves Road and the Primary Access Road to the Okatie River Park as discussed in Section IV hereof). The County will assist with and support applications for all such purposes.
2. Graves Road.
  - a. County and Owner herewith acknowledge that the existing Graves Road adjacent to the Property is a public-use roadway currently maintained by the County as

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<sup>2</sup> See, above, Section IV.E.

an unpaved dirt road, and that the actual ownership of the existing Graves Road is unknown.

- b. The provision of public access to the Okatie River Park will be from points along Highway 278 and Graves Road, and will be non-exclusive. The County will pay for the necessary condemnations and rights of way, and the design, construction and maintenance, of Graves Road from its intersection with Highway 278, northerly to the intersection with the northerly entrance to the Property. Any further northerly extension of Graves Road improvements desired by Owner, or others, will be paid for by the Owner, or others, if the County utilizes its eminent domain power to acquire any necessary lands for same. Owner will provide, without condemnation or just compensation paid to him, and upon further agreement with the County as to exactly which additional lands, certain additional land from the Property to add to the existing Graves Road to allow it to be upsized, paved, and drained to County standards, for all purposes under this Agreement.

D. Potable Water. The provisions of this Section are governed also by the provisions of Section IV. C. hereof, which are incorporated by reference. Potable water will be supplied to the Property by Beaufort-Jasper Water and Sewer Authority ("BJWSA"). BJWSA or Owner will construct or cause to be constructed all necessary water service infrastructure within the Property intended to serve private uses, which will be maintained by them or the Authority or one or more property owners associations. County shall not be responsible for any construction, treatment, maintenance or costs associated with potable water service intended for private uses on and to the Property other than those utility services required also to serve the Okatie River Park, for which County shall be responsible. The Parties agree that all Development, with the exception of existing wells for

livestock, agricultural, and residential use and facilities existing at the date of this Agreement, will continue until abandoned or decommissioned by Owner, as Owner, in his sole discretion, may deem appropriate. All new construction pursuant to this Agreement shall use potable water and sewer services provided by BJWSA.

E. Sanitary Sewage Collection, Treatment, and Disposal. The provisions of this Section are governed also by the provisions of Section IV. C. hereof, which are incorporated by reference. Sanitary sewage collection, treatment, and disposal will be provided by BJWSA. BJWSA or Owner will construct or cause to be constructed all necessary sewer service infrastructures within the Property, which will be maintained by BJWSA. County shall not be responsible for any construction, treatment, maintenance or costs associated with sewer service intended to serve private uses on and to the Property, other than those utility services required also to serve the Okatie River Park, for which County shall be responsible. Owner further agrees that as BJWSA water and sewer infrastructures are extended to those parts of the Property upon which there are existing structures and uses for which Owner currently utilizes septic systems, such existing structures will be eventually retrofitted, as such Development with new construction comes to those parts of the Property, to connect to the BJWSA water and sewer systems.

F. Storm Water Management System.

1. All storm water runoff and drainage system improvements within the Property will be designed utilizing best management practices, will be constructed by Owner, and maintained by Owner and/or one or more property owner associations (to be established later).
2. The provisions of Section IV. B.2. hereof, are here fully incorporated by reference.
3. In addition, County herewith agrees to allocate and expend a portion of the funds from the “Storm Water Utility Fees” generated from the Development of the

Property and other locations within the County to partially fund, as a “shared cost” with Owner, the construction, installation and maintenance of storm water systems and features that are designed and incorporate “green infrastructure technologies” and elements on, under or upon the Property. County further agrees to designate a portion of the County Stormwater Utility Fees for ongoing water quality monitoring in the Okatie River Headwaters during and after development activities are completed upon the Property and the Okatie River Park as budgeted by the Stormwater Manager<sup>[1C2]</sup>.

4. The Parties are and 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 storm water.
5. Owner and the County shall comply with any and all future ordinances or regulations of the County (or portions thereof) governing collection, detention, filtration, and treatment of storm water, provided those ordinances and regulations apply County-wide, and are consistent with sound engineering practices. It is specifically agreed however, that any such future ordinances of the County that directly or indirectly affect the setback, buffer, pervious/impervious cover, or open space requirements permitted pursuant to this Agreement will not be applicable to the Owner within the Property without the Owner’s express, written consent thereto.

G. Solid Waste Collection. Solid waste collection will be provided for the Property by agreements with private companies. The County will provide for its own solid waste collection for the Okatie River Park.

H. Police Protection. The County shall provide police protection services to the Property and the Okatie River Park on the same basis as is generally provided to other residents and businesses within the County, and to the County's parks, it being understood that the County's passive parks, such as Okatie River Park, are normally closed from dusk until at least dawn, except for permitted special events. The promoters of any such special events will be required to provide event security in accordance with County requirements and protocols.

I. Emergency Medical Services. Such services are now being provided by Beaufort County, and the County will continue to provide emergency Medical services to the Property and to the Okatie River Park on the same basis as is provided to other residents and businesses within the County, and to the County's parks.

J. Library Services. Such services are now provided by the County and such services shall continue.

K. School Services. Such services are now provided by the Beaufort County School District and such services shall continue.

L. Recycling Services. The County shall not be obligated to provide recycling/collection services to the Property, absent its election to provide such services on a County-wide basis.

M. Fire Services. Fire protection for the Property and the Okatie River Park will be provided by the Bluffton Township Fire Department.

N. Subsequent Entities or Financing District. Nothing in this Agreement shall be construed to prevent the establishment by the County, or other governmental entity, or some combination of entities, solely (or in conjunction with each other and the Owner), of an Improvement District authorized by the County Public Works Act provisions of the Code of Laws of South Carolina (1976 as amended), as agreed to herein by Owner; it being, nevertheless, understood that the Parties agree, at the appropriate time in the sell-out of the Development of the Property and the

completion of Development of the Okatie River Park, to cooperate with each other to cause the creation of an Improvement District, under authority of S.C. Code §§ 6-35-10 to -190 “Residential Improvement District Act” or the “County Public Works Act”, codified as S.C. Code §§ 4-35-10 to -160, to establish such an Improvement District for recoupment of costs of Development.,

O. Tree Preservation. The Owner will submit to the Community Development Director, from time to time for each phase or portion of the Property then being proposed for specific Development approvals, a survey or exhibit depicting all trees and forests as mandated by the CDC, together with such preservation, protection and mitigations as mandated by the CDC.

P. Delivery Dates for Public Facilities. In compliance with S.C. Code § 6-31-50 (C), the Parties agree that the Agreement provides for public facilities for a passive park, roads, storm water, and open space to be provided by the County. The County’s delivery dates for those public facilities will be triggered by the Parties meeting the following performance standards:

- i. As to the Okatie River Park, the County’s passive park, all improvements provided in the approved design are to be delivered within twenty-four (24) months after one-hundred fifty (150) residential dwelling units have been permitted.
- ii. As to the roads provided by the County under this Agreement (a portion of Graves Road and Primary Park Access Road), County shall deliver the roads within twenty-four months of when construction begins on the first phase of Development of the Property. However, the Owner, or subsequent developer, may accelerate the delivery of the road by mutual agreement with the Administrator by providing for the construction of the road as soon as practical. The Administrator is hereby authorized to enter into an agreement for an accelerated delivery of the road subject to the Owner’s demonstrated

compliance with County procurement procedures, and subject to the County's budget process, for reimbursement of expenditures by developer or Owner in performing the delivery of the road.

## **VII. OWNER ENTITLEMENTS.**

The County agrees that, by this Agreement, the Property is approved and fully vested for intensity, density, Development Fees, uses and height, setbacks and parking and shall not have any obligations for on-site or off-site transportation or other facilities or improvements other than as specifically provided in this Agreement. The County shall not impose additional development obligations or regulations in connection with the development of the Property, except in accordance with the procedures and provisions of § 6-31 -80 (B) of the Act, which the Owner shall have the right to challenge, and as set forth in Section V. A. of this Agreement.

The County acknowledges that Owner is also approved and vested with the following rights:

A. Setbacks and Buffers. Beaufort County agrees that the Property is vested and that the types of parcel lot lines, setbacks and buffers shown and described on the Concept Plan, as may be amended from time to time in accordance with this Agreement, are acceptable. The Parties agree that there will be reduced and modified buffers between the Okatie River Park and the Property, *e.g.*, as set forth in Section IV. F. hereof.

B. Coordination with Okatie River Park. The Parties agree that Owner may elect to count the acreage of the Okatie River Park as part of the requirements under the CDC for the Property, for such purposes as open space, forest preservation, tree protection.

C. Densities. Subject to the provisions of Section V. B. hereof, the density for the Property shall not exceed Six Hundred Eighty (680) residential dwelling units, and Three Hundred Fifty

Thousand (350,000) square feet of commercial uses, all as allocated, and modifiable, as set forth above in Section V. B. of this Agreement.

D. Uses. All those land uses set forth in Section IV. B. of this Agreement.

### **VIII. ATTORNEY'S FEES.**

Each of the Parties to this Agreement agrees to pay his/its own attorney's fees incurred by them in the formation of this Agreement.

### **IX. COMPLIANCE REVIEWS.**

Owner, or his designee, shall meet with the County, or its designee, at least once per year in the month of January during the Term (including renewals/extensions) of this Agreement to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year. The Owner, or his designee, shall be required to provide such information as may reasonably be requested, to include but not limited to, commercial square footage, acreage or lots of the Property sold in the prior year, commercial square footage, acreage or lots of the Property under contract, the number of certificates of occupancy anticipated to be issued in the ensuing year. The Owner, or his designee, shall be required to compile this information for Development. Reporting of such information to the County will be made upon such forms as the County and Owner may agree upon from time to time. This Compliance Review shall be in addition to, and not in lieu of, any other reporting or filing required by this Agreement.

### **X. DEFAULT.**

The failure of the Owner or County 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, damages, 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 County absent its according the Owner 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 County or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of this Agreement.

#### **X. MODIFICATION OF AGREEMENT.**

This Development Agreement may be modified or amended only by the written agreement of the County and the Owner. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the Party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced. Any amendment to this Agreement shall comply with the provisions of S.C. Code §§ 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.

#### **XII. NOTICES.**

Any notice, demand, request, consent, approval or communication which a Party is required to or may give to another Party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other addresses 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 County shall be addressed to:

With Copy to: The County of Beaufort  
PO Box 1228  
Beaufort, SC 29901-228  
Attention: County Administrator  
Thomas J. Keaveny, II, Esquire  
Beaufort County Attorney  
PO Box 1228  
Beaufort, SC 29901-1228

And to the Owner at: Robert L. Graves  
PO Box 5818  
Hilton Head Island, SC 29938

With Copy to: Barry L. Johnson, Esquire  
Johnson & Davis, PA  
The Victoria Building, Suite 200  
10 Pinckney Colony Road  
Bluffton, SC 29909

### **XIII. ENFORCEMENT.**

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

### **XIV. COMMITMENT TO EMPLOYMENT OPPORTUNITY FOR RESIDENTS.**

Owner is an equal opportunity employer and demands the same from all its contractors. Owner also recognizes that it is important that citizens of County have opportunity for gainful employment and future advancement in the immediate County area.

### **XV. GENERAL.**

A. Subsequent Superior 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 are superior to the law of Beaufort County, South Carolina, and prevent or preclude compliance with the Act or one or more provisions of this Agreement ("Subsequent Superior Law(s)"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Subsequent Superior Law. Immediately after enactment of any such Subsequent Superior Law, or court decision, a representative designated by each of the Owner and the County shall meet and confer in good faith in order to agree upon such modification or suspension of this Agreement, based on the effect that such Subsequent Superior 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 Subsequent Superior Law, the County may take reasonable action to comply with such Subsequent Superior Law. Should these representatives not agree to a modification or suspension of this Agreement, either of the Parties may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner and County each shall have the right to challenge, at his/its own expense and cost for legal fees, etc., the Subsequent Superior 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.

B. Estoppel Certificate. The County and Owner may, at any time, and from time to time, deliver written notice to the other of such Parties, requesting such other of the Parties 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 certifying one of the Parties, the requesting one of the Parties 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, would constitute a default and, if so, specifying each such event.

C. Entire Agreement. This Agreement sets forth, and incorporates by reference, all of the agreements, conditions, and understandings among the County and the Owner relative to the Property and the Okatie River Park and the Development of both, 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.

D. No Partnership or Joint Venture. Notwithstanding the statements herein and in the Exhibits hereto concerning a “Public-Private Partnership”, or words to similar effect as relating to the County’s passive public park system, generally, and to Okatie River Park, particularly, nothing in this Agreement shall be deemed to create a partnership or joint venture between the County and Owner or to render such party liable in any manner for the debts or obligations of the other party.

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

F. 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.

G. Assignment. The rights, obligations, duties or responsibilities under this Agreement of the Owner are assignable to any other person, firm, corporation or entity.

H. Governing Law. This Agreement is and shall be governed by the laws of the State of South Carolina.

I. 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.

J. 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 of the Parties shall retain the right to pursue its own independent legal defense.

K. No Third-Party Beneficiaries. The provisions of this Agreement may be enforced only by the County and the Owner, and their respective heirs, successors and assigns. No other persons shall have any rights hereunder, except the heirs, successors and assigns of one or both of the Parties hereto.

L. Successors and Assigns.

1. Binding Effect. This Agreement shall be binding upon the respective Parties, their heirs, successors and assigns in the ownership or Development of any portion of the Property and the Okatie River Park. Except for Owner's continuing obligation if and as specifically stated herein, a purchaser or a person acquiring title to any portion of the Property, or a person to whom Owner assigns Development Rights with respect to any portion of the Property (herein collectively referred to as a "Transferee") shall, during the Term of this Agreement, be solely responsible for the performance of the Owner's obligations under this Agreement applicable to the portion of the Property transferred, or for such Development Rights as transferred,

and Owner shall not be liable therefor, either primarily or secondarily. Each Transferee shall be required to execute a written acknowledgement assuming Owner's obligations (including Development Requirements) under this Agreement which are directly applicable to such portion of the Property or such Development Rights. Such acknowledgment shall be in the form provided in **Exhibit H**, attached hereto and made a part hereof (the "Notice of Transfer"), and provided to the County at the time of recording any instrument transferring title, and Development Rights, of the Property or any portion of the Property. This Subsection shall not be construed to prevent Owner from obtaining indemnification of liability to the County from Transferees. Unless specifically set forth herein, upon transfer to a Transferee, Owner shall be released of all obligations assumed by such Transferee.

2. Transfer of all of the Property. Owner shall be entitled to transfer all of the Property to a Transferee subject to the following requirements:
  - a. Owner shall require that such Transferee shall comply with the provisions of this Agreement.
  - b. Notification to County. When the Owner transfers all of the Property to a Transferee, the Owner shall be responsible for delivering, or causing to be delivered, to the County the Notice of Transfer (**Exhibit H**) together with the name, address, telephone number, facsimile number, and contact person for the Transferee.
3. Assignment of Development Rights. Any and all such Assignments to a Transferee shall be by a recordable instrument (Office of Register of Deeds, Beaufort County, SC) with a covenant running with the land expressly stating the precise amount of

commercial square footage rights, and the number of residential dwelling unit rights being assigned to the Transferee.

4. Mortgage Lenders: Notwithstanding anything to the contrary contained herein, the requirements for transfer, concerning heirs, successors and assigns, shall apply: (a) to any mortgage lender upon acquiring title to the Property or any portion thereof, either as a result of foreclosure of mortgage secured by any portion of the Property or to any other transfer in lieu of foreclosure; (b) to any third-party purchaser at such foreclosure; or (c) to any third-party purchaser of such mortgage lender's interest subsequent to the mortgage lender's acquiring ownership of any portion of the Property as set forth herein. Furthermore, nothing contained herein shall prevent, hinder, or delay any transfer of any portion of the Property to any such mortgage lender or subsequent purchaser.

## **XVI. STATEMENT OF REQUIRED PROVISIONS.**

A. General. The Act requires that a development agreement must include certain mandatory provisions, pursuant to SC Code § 6-31-60(A).

B. Detailed Statement of Required Provisions. 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 SC Code § 6-31-60(A) for the required items:

1. Legal Description of the Property and Okatie River Park, and Legal and Equitable Owner/Owners. The legal description of the Property is set forth in **Exhibit A** attached hereto. The present legal Owner of the Property is Robert L. Graves (Sr.). Palmetto State Bank has an equitable interest in the Property as virtue of its mortgage, dated April 5, 2013, and recorded in the Office of the Register of Deeds

for Beaufort County in Book 3230 at Page 2471, on April 11, 2013. The present legal Owner of the Okatie River Park is the County and the legal description of the Okatie River Park is set forth in **Exhibit B**, subject to the provisions herein.

2. Duration of Agreement. The duration of this Agreement is five (5) years, and such further time as included within the renewals/extensions of Term as are provided in Section III hereof.
3. Permitted Uses, Densities, Building Heights and Intensities. A complete listing and description of permitted uses, building intensities and heights, as well as other development - related standards, are contained in the CDC (**Exhibit G**) and in this Agreement. Specific zoning districts are identified in the Current Zoning of the Property, attached as **Exhibit F**. **Exhibit I** sets forth anticipated development of the Property at maximum build out. Building heights will be limited to those heights set forth in the Zoning Regulations, subject to the terms of this Agreement.
4. Required Public Facilities. The County will provide, or cause to be provided, police and fire services, as well as Development application services to the Property and the Okatie River Park. Beaufort Jasper Water and Sewer Authority will provide water and sanitary sewer service to the Property and the Okatie River Park. Mandatory provisions and procedures of the Zoning Regulations and this Agreement will ensure availability of roads and utilities to serve the residents on a timely basis.
5. Dedication of Land and Provisions to Protect Environmentally Sensitive Areas. 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 complied with, together with the Development Requirements and other provisions set forth in this Agreement.

6. Local Development Permits. Specific permits for each phase of the Development of the Property and the Okatie River Park must be obtained prior to commencing such Development, consistent with the standards set forth in this Agreement. Building Permits must be obtained under County law for any vertical or horizontal construction, and appropriate permits must be obtained from the State of South Carolina (“OCRM”) and/or the U. S. Army Corps of Engineers, when applicable, prior to any impact upon critical area or freshwater wetlands. Access to Highway 278 will be in accordance with permitting procedures of the South Carolina Department of Transportation. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Owner, or the County, and his/its respective heirs, successors and assigns, from the necessity of complying with the law governing permitting requirements, conditions, terms or restrictions, except as varied, if at all, by this Agreement.
7. Comprehensive Plan and Development Agreement. The Development permitted and proposed under the Zoning Regulations and this Agreement is consistent with the Comprehensive Plan and with current land use regulations of Beaufort, South Carolina, as amended.
8. Terms for Public Health, Safety and Welfare. The County 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 the Act.

9. Historical Structures. Any historical or archaeological issues will be addressed through the permitting process, at the time of Development of any affected phase of Development, under the Zoning Regulations, and no exception from any existing standard for historical structures is hereby granted.

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

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

OWNER:

\_\_\_\_\_  
Robert L. Graves  
(a/k/a Robert L. Graves, Sr.)

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

**ACKNOWLEDGEMENT**

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Robert L. Graves, a/k/a Robert L. Graves (Sr.), known to me (or satisfactorily proven) to be the person whose name is subscribed to the within documents, who acknowledged the due execution of the foregoing Joint Development Agreement.

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: \_\_\_\_\_

---

By: \_\_\_\_\_  
Interim County  
Administrator

**STATE OF SOUTH CAROLINA )**  
**)**  
**COUNTY OF BEAUFORT )**

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned Notary Public of the state and County aforesaid, personally appeared known to me (or satisfactorily proven) to be the persons whose names are subscribed on behalf of Beaufort County to the within document, who acknowledged the due execution of the foregoing Joint Development Agreement.

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: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**JOINDER OF MORTGAGEE  
(For Equitable Interest)**

For and in consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Palmetto State Bank as the holder of the Mortgage, dated April 5, 2013, and recorded in the Office of the Register of Deeds for Beaufort County in Book 3230 at Page 2471, on April 11, 2013, hereby joins herein for the limited purposes of acknowledging and consenting to the within Joint Development Agreement.

WITNESSES:

PALMETTO STATE BANK

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**ACKNOWLEDGEMENT**

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_, and \_\_\_\_\_, as officers of, and acting on behalf of Palmetto State Bank, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

**NOTICE OF TWO PUBLIC HEARINGS  
CONSIDERATION OF DEVELOPMENT AGREEMENT**

**PLEASE TAKE NOTICE THAT A PUBLIC HEARING** will be held by the Beaufort County Council on November 26, 2018 at 5:00 P.M and on December 10, 2018 at 6:30 P.M. The Public Hearings will take place in the Council Chambers, Administration Building, Beaufort County Government Robert Smalls Complex, 100 Ribaut Road, Beaufort, South Carolina, on a proposed joint development agreement by and between Beaufort County and Robert L. Graves. The lands involved are in southern Beaufort County, near the intersection of SC Hwy 170 and US Hwy 278, and are generally known as Pepper Hall (83.195 acres), owned by Robert L. Graves, and Okatie River Park (18.00 acres), owned by Beaufort County. A portion of Pepper Hall, closer to US Hwy 278, containing approximately 36 acres, is zoned in zoning classification C5 under the Beaufort County Community Development Code. The remainder of Pepper Hall, approximately 48 acres is zoned in zoning classification C3. Okatie River Park is zoned in zoning classification C3. The nature, scope and purpose of this proposed joint development agreement is to create and provide for the implementation of a public-private partnership pursuant to, and as contemplated by, Beaufort County Council Resolution R-2012-3, providing for public-private partnerships related to passive parks, and under the authority of the Beaufort County Community Development Code and South Carolina state law. A copy of the proposed development agreement and all relevant information may be viewed and/or obtained from the Beaufort County Community Development Planning Department, Administration Building, Beaufort County Government Robert Smalls Complex, 100 Ribaut Road, Beaufort, South Carolina. Interested members of the public may submit written comments or evidence prior to the public hearings at the Beaufort County Community Development Planning Department, Administration Building, Beaufort County Government Robert Smalls Complex, 100 Ribaut Road, Beaufort, South Carolina, Attn: Eric Greenway, Community Planning Director, contact phone number: (843) 255-2140. Interest members of the public and adjoining land owners may appear at the public hearings, be heard, and submit evident and written comments with respect to the propose joint development agreement.

**PUBLIC COMMENTS, WRITTEN OR ORAL, ARE INVITED.**

**AN ORDINANCE ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE COUNTY OF BEAUFORT, SOUTH CAROLINA, AND ROBERT L. GRAVES, PEPPER HALL PLANTATION**

**WHEREAS**, Beaufort County, South Carolina (the “County”), acting by and through the Beaufort County Council (the “County Council”) is empowered under and pursuant to the provisions of 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, to enter into development agreements relating to property within the County; and

**WHEREAS**, Owner is the owner of several tracts of land containing a total of approximately Eighty-Three (83) acres near the Okatie River (“Property”), sometimes referred to as Pepper Hall, located in Bluffton Township, Beaufort County, South Carolina; and

**WHEREAS**, Owner proposes to obtain authority for the development of a mixed-use community with commercial uses (including, possibly, medical or technology facilities), residential areas, and recreational opportunities on the Property; and

**WHEREAS**, County is the owner and developer of approximately eighteen (18) acres of land lying between the Property and the waters and marshes of the Okatie River; and

**WHEREAS**, County has designated its said eighteen-acre parcel to be part of the County’s passive park system, and has named it “Okatie River Park” (but may change that to another name in the future); and

**WHEREAS**, County and Owner have entered into a Memorandum of Understanding (“MOU”), pursuant to County’s Council’s Resolution No. 2018-9; and

**WHEREAS**, by the MOU, the County and Owner agreed conceptually to consider entering into a mutually-binding, public-private “partnership”, as contemplated by Beaufort County Council Resolution R-2012-3, and under the authority of the Beaufort County Community Development Code (“CDC”) Division 3.160, “Parks, Playgrounds and Outdoor Recreation Areas”; and

**WHEREAS**, the Joint Development Agreement (the “Agreement”) is intended to lay out the terms and conditions for such public-private “partnership”, and for the zoning, permitting, uses, densities, planning, development, operation and maintenance of the Property and the Okatie River Park; and

**WHEREAS**, based on consideration of the County's desires and plans for the Okatie River Park, Owner has prepared a Conceptual Plan for the general layout and development scheme currently contemplated for the Property and the Okatie River Park, reflecting the Owner's current planning to establish a prototype of development that works toward the Parties' common goals of protecting the health of the Okatie River, enhancing and providing public access to the Okatie River Park for public benefit, balancing environmental preservation with property rights, and providing private sector solutions for environmentally-responsive development; and

**WHEREAS**, the Parties' joint planning for the Property and the Okatie River Park, being contiguous to each other, has presented unique challenges and opportunities to each of the Parties, and the Parties have negotiated the within Agreement with many exchanged and shared benefits and costs, in consideration of all of which, counting the mutual and respective costs and benefits, the Parties have come into agreement on all of the terms and conditions expressed in the within Agreement; and

**WHEREAS**, the County finds that the proposal for these properties, as set forth in the within Agreement, is consistent with the County's Comprehensive Plan, will further the health, safety, welfare and economic well-being of the County, and presents an unprecedented opportunity to secure quality planning and growth in the public and private sectors, as well as creating and maintaining the Okatie River Park for public access and benefit, all in an environmentally-sensitive manner; and

**WHEREAS**, the County desires to protect the important natural environment of the Okatie River area, while encouraging quality growth and economic opportunity for its citizens, with access to passive, public outdoor recreation; and,

**WHEREAS**, the County seeks to protect and preserve the natural environment and to secure for its citizens' quality, well-planned and well-designed development and a stable and viable tax base, and passive parks for public access and benefit; and,

**NOW, THEREFORE, BE IT ORDAINED**, by Beaufort County Council, in a meeting duly assembled, as follows:

**SECTION I: FINDINGS INCORPORATED**

The above recitals and findings are incorporated herein by reference and made a part of this Ordinance. In addition to the recitals set forth above, which the County Council hereby adopts as findings of fact, the County Council specifically finds that the Agreement attached hereto as

Exhibit “A” and incorporated herein by reference, complies with the Act, the Comprehensive Plan, and the CDC.

SECTION II: DEVELOPMENT AGREEMENT

The terms of the Agreement are hereby approved in accordance with the Act and CDC. The Agreement shall be effective immediately upon approval of this Ordinance after third reading and execution by both Parties.

SECTION III: EXECUTION

The County Administrator is authorized to execute and deliver the Agreement on behalf of the County, and any and all other necessary documents or instruments incidental to the approval of this Ordinance and the Agreement.

SECTION IV: EFFECTIVE DATE

This Ordinance shall become effective immediately upon its approval following third reading by the County Council.

DONE this \_\_\_\_ day of \_\_\_\_\_, 2018.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: \_\_\_\_\_  
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas J. Keaveny, II, County Attorney

ATTEST:

\_\_\_\_\_  
Connie L. Schroyer, Clerk to Council

First Reading:  
Second Reading:  
Public Hearing:  
Third and Final Reading:

**JOINT DEVELOPMENT AGREEMENT**  
**OF**  
**BEAUFORT COUNTY AND ROBERT L. GRAVES**  
**FOR**  
**PEPPER HALL AND OKATIE RIVER PARK**

**Approved by the parties as of the 10<sup>th</sup> day of December, 2018.**

Prepared by:  
Barry L. Johnson  
Attorney at Law  
JOHNSON & DAVIS, PA  
The Victoria Building, Suite 200  
10 Pinckney Colony Road  
Bluffton, SC 29909

**PEPPER HALL AND OKATIE RIVER PARK JOINT DEVELOPMENT AGREEMENT  
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**PEPPER HALL AND OKATIE RIVER PARK JOINT DEVELOPMENT AGREEMENT**

**TABLE OF EXHIBITS**

<b><u>Exhibit Number</u></b>	<b><u>Exhibit Name</u></b>
A.	Plat of Pepper Hall, 83.195 acres (the “Property”)
B.	Plat of Okatie River Park, 18.00 acres, as now configured (“Okatie River Park”)
C.	Memorandum of Understanding and Beaufort County Council Resolution 2018-9
D.	Plat of Graves Family Barn Site, approximately 2.97 acres
E.	Conceptual Plan for the Development of Pepper Hall and the Okatie River Park
F.	Map of the Current Beaufort County zoning classifications (C-5, C-3) of the Property
G.	Current Community Development Code of Beaufort County, including all amendments to date
H.	Notice of Transfer (Form)
I.	Anticipated Development of the Property at Maximum Build-Out
J.	Current Beaufort County Manual for Stormwater Best Management and Design Practices Manual

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
PEPPER HALL AND OKATIE RIVER PARK  
JOINT DEVELOPMENT AGREEMENT

THIS JOINT DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between Robert L. Graves, (Owner), and the governmental authority of Beaufort County, South Carolina ("County"), for themselves and their respective successors and assigns.

**RECITALS**

**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 "[t]he 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 county governments, to enter development agreements with landowners to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and,

**WHEREAS**, Beaufort County seeks to protect and preserve the natural environment and to secure for its citizens quality, well-planned and well-designed development and a stable and viable tax base, and passive parks for public access and benefit; and,

**WHEREAS**, Owner is the owner of several tracts of land containing a total of approximately Eighty-Three (83) acres near the Okatie River (“Property”), sometimes referred to as Pepper Hall, located in Bluffton Township, Beaufort County, South Carolina, and as more particularly described on **Exhibit A** attached hereto; and,

**WHEREAS**, Owner proposes to obtain authority for the development of a mixed-use community with commercial uses (including, possibly, medical or technology facilities), residential areas, and recreational opportunities on the Property; and

**WHEREAS**, County is the owner and developer of approximately eighteen (18) acres of land lying between the Property and the waters and marshes of the Okatie River, as more particularly described in **Exhibit B** hereto; and

**WHEREAS**, County has designated its said eighteen-acre parcel to be part of the County’s passive park system, and has named it “Okatie River Park” (but may change that to another name in the future); and

**WHEREAS**, County and Owner have entered into a Memorandum of Understanding (“MOU”), pursuant to County’s Council’s Resolution No. 2018-9 (copies of Resolution and MOU are attached together as **Exhibit C** hereto); and

|

**WHEREAS**, by the MOU, the County and Owner agreed conceptually to consider entering into a mutually-binding, public-private “partnership”<sup>1</sup>, as contemplated by Beaufort County Council Resolution R-2012-3, and under the authority of the Beaufort County Community Development Code (“CDC”) Division 3.160, “Parks, Playgrounds and Outdoor Recreation Areas”; and

**WHEREAS**, the within Joint Development Agreement is intended to lay out the terms and conditions for such public-private “partnership”, and for the zoning, permitting, uses, densities, planning, development, operation and maintenance of the Property and the Okatie River Park; and

**WHEREAS**, based on consideration of the County’s desires and plans for the Okatie River Park, Owner has prepared a Conceptual Plan (**Exhibit E** attached) for the general layout and development scheme currently contemplated for the Property and the Okatie River Park, reflecting the Owner’s current planning to establish a prototype of development that works toward the Parties’ common goals of protecting the health of the Okatie River, enhancing and providing public access to the Okatie River Park for public benefit, balancing environmental preservation with property rights, and providing private sector solutions for environmentally-responsive development; and

**WHEREAS**, the Parties’ joint planning for the Property and the Okatie River Park, being contiguous to each other, has presented unique challenges and opportunities to each of the Parties, and the Parties have negotiated the within Joint Development Agreement with many exchanged and shared benefits and costs, in consideration of all of which, counting the mutual and respective

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<sup>1</sup> See legal disclaimer at Section XV. D., *infra*

costs and benefits, the Parties have come into agreement on all of the terms and conditions expressed in the within Joint Development Agreement; and

**WHEREAS**, the County finds that the proposal for these properties, as set forth in the within Agreement, is consistent with the County's Comprehensive Plan, will further the health, safety, welfare and economic well-being of the County, and presents an unprecedented opportunity to secure quality planning and growth in the public and private sectors, as well as creating and maintaining the Okatie River Park for public access and benefit, all in an environmentally-sensitive manner; and

**WHEREAS**, the County desires to protect the important natural environment of the Okatie River area, while encouraging quality growth and economic opportunity for its citizens, with access to passive, public outdoor recreation; and,

**WHEREAS**, the Parties intend to establish a Residential Improvement District (RID) pursuant to South Carolina Code Section 6-35-10 et. seq. for the purpose of the County recovering a portion of the financial obligations set forth herein; and

**WHEREAS**, the County may, in the County's sole discretion establish a RID, and Owner hereby consents to a RID; furthermore the Owner agrees to cooperate with the County in establishing the RID and to provide any additional agreements required under the Residential Improvement District Act; and

**WHEREAS**, it is the County's intention to implement a RID to recover the cost associated with the construction of the Primary Access Road (a portion of Graves Road and a connector road to the Okatie River Park) as well as costs associated with the design and construction of the Okatie River Park; and

**WHEREAS**, this Agreement is being made and entered between the County and the Owner, under the terms of the Act, the Residential Improvement District Act, the CDC, the

County's Resolution 2012-3, the County's Resolution 2018-9, and the MOU, all for the purposes of providing assurances, *inter alia*, to the Owner that it may proceed with the Development of the Property under the terms of this Agreement, without being limited by future changes of law which would materially affect the ability to develop or the cost of future Development under the plans, and for the purpose of providing important protections to the natural environment and the financial stability of the County of Beaufort, as well as to establish the mutual opportunities and responsibilities of the County and the Owner for Okatie River Park and its access.

**NOW, THEREFORE**, for and in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic and other benefits to both County and the Owner by entering this Agreement, and to encourage well-planned Development of the Okatie River Park and the Property, the receipt and sufficiency of such consideration being hereby acknowledged, the County and the Owner, for themselves and their heirs, successors and assigns, do hereby agree as follows:

**I. INCORPORATION OF RECITALS.**

The above recitals are hereby incorporated into this Agreement.

**II. DEFINITIONS.**

As used herein, the following terms mean:

"Conceptual Plan" means the general layout and development scheme currently contemplated for the Property and the Okatie River Park, attached as **Exhibit E**, and as such may be modified in the future pursuant to the terms of this Agreement.

"Community Development Director" means the person, from time to time, appointed to that (or a similarly-named) position of authority in Beaufort County, and authorized to execute the functions of Director in CDC Division 7, and otherwise under the CDC or State law, as amended or succeeded by future such ordinances and/or statutes.

“Current Zoning of the Property” means the C-5 Zoning and C-3 Zoning areas as delineated on **Exhibit F** and as detailed and explained in the CDC (**Exhibit G**).

“Development” means the development of portions of the Property and of the Okatie River Park, including vertical or horizontal construction of improvements thereon and adjacent thereto as allowed by this Agreement.

“Development Rights” mean rights to undertake Development in accordance with this Agreement.

“Barn Site” means that certain tract of land, with improvements, described in **Exhibit D**.

“MOU” means the Memorandum of Understanding included in **Exhibit C**.

“Okatie River Park” means that certain tract of land described in **Exhibit B**.

“Okatie River Park Improvements, Off-Site, means the external road, pedestrian, bicycle or other means of access for people and vehicles, and parking, and utilities, to the Okatie River Park. It also includes the off-site improvements associated with use of the Okatie River Park, and such access and parking, including storm water and drainage facilities, landscaping, irrigation, street lighting improvements, etc.

“Okatie River Park Improvements, On-Site, means the recreational park facilities, structures, utilities, piers and docks, trails and paths, roads and parking, signs deemed necessary and appropriate by the Parties for the Okatie River Park and located within the boundaries thereof.

“Owner” means Robert L. Graves, of Beaufort County, South Carolina.

“Parties” means, Robert L. Graves, his heirs, successors and assigns, and Beaufort County, South Carolina.

“Party” means one of the Parties.

“Primary Park Access Road” means the primary access road from the Property entrance near the Okatie River Park, to access the Okatie River Park.

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

"Zoning Regulations" means the Community Development Code (CDC) of Beaufort County, in effect at the time of the execution of this Agreement (**Exhibit G**), as amended by this Agreement's Development Requirements set forth in Section IV hereof. As between the Zoning Regulations and the Development Requirements, the Development Requirements shall control.

### **III. TERM.**

The Term of this Agreement shall commence on the date this Agreement is executed by the Parties, and terminate five (5) years thereafter; provided, however, that the Term of this Agreement will be automatically renewed and extended for six (6) additional successive five (5) year terms absent a material breach of any terms of this Agreement by Owner during the Term (including renewals/extensions thereof).

### **IV. OKATIE RIVER PARK.**

A. General. Pursuant to the agreement of the Parties in the MOU, the Parties have now structured and agreed upon this Agreement to form a mutually-binding agreement between themselves for the Development of the Property and the Okatie River Park.

#### **B. Capital Cost Contributions by County.**

- 1. Okatie River Park Improvements, On-Site.** County will pay the cost of designing and constructing the Okatie River Park Improvements, On-Site. This will include reimbursing Owner for all of the costs of design for the Okatie River Park done by Owner or his professional design team, as well as any additional costs incurred by Owner for construction of the Okatie River Park Improvements, On-Site, including, but not limited to, roadways, paths, docks, piers, sheds, buildings, restroom facilities, parking, interpretive exhibits and signage, electricity, water, sewer and other desired utilities and services. County will be responsible at its cost for

obtaining all permits and approvals for all Okatie River Park Improvements, On-Site, including any and all filing and permitting fees, impact fees, etc., attributable to the Okatie River Park.

1.2. The County may recover the costs for design and construction of improvements in the Okatie River Park by establishing a Residential Improvement District pursuant to S.C. Code of Laws Section 6-35-10 et. seq. Owner hereby expressly grants approval to the County as required by S.C. Code of Laws Section 6-35-30.

2.3. Okatie River Park Improvements, Off-Site.

a. Roads and Traffic Improvements. The Parties acknowledge that the Conceptual Plan (**Exhibit E**) provides the primary access to the Okatie River Park by way of the northerly entrance from Graves Road (to be improved) into the central village of the Property, with secondary access through other access points from Graves Road and/or the signalized access to the Property from Highway 278. The Owner and the Community Development Director may agree to shift the site location and route of the Primary Park Access Road, as final plans for the Development of the Property evolve. The County will pay the design, permitting, and construction cost of Graves Road (as outlined in Section VI.B. hereof) and the construction cost of the Primary Park Access Road from Graves Road to the central village of the Property, which will be near the Okatie River Park. Those construction costs will include all road, pedestrian, bicycle or other means of access for people and vehicles, and parking, and utilities, to the Okatie River Park, including the road and traffic improvements associated with such access and parking, and also including storm water and drainage facilities, landscaping, irrigation, street lighting

improvements, etc. on and along Graves Road and the Primary Park Access Road. Owner will provide non-exclusive use of his lands within the Property for those purposes on specific lands and designs to be approved by the Parties. Owner will pay the costs for opening the Highway 278 signalized access to the Property and for the internal roads of the Property (except for the Primary Park Access Road), some of which will also connect to the Okatie River Park, as described and limited herein and by Section VI. B. hereof. County will cooperate with and assist in the permitting for Graves Road, the Primary Park Access Road, and access to Highway 278, and the other Internal Roads of the Property. Based on the County's and Owner's Traffic Impact Analyses, the County will pay its pro-rata share of Off-Site Traffic Improvements indicated by the traffic generated by the Okatie River Park.

~~a. The County may recover the costs for design, permitting and construction of the Primary Park Access Road (including improvements to Graves Road) by establishing a Residential Improvement District pursuant to S.C. Code of Laws Section 6-35-10 et. seq. Owner hereby expressly grants approval to the County as required by S.C. Code of Laws Section 6-35-30.~~

- b. Storm Water Facilities. The Parties agree and acknowledge that, regardless of the efficacy, or lack thereof, of previously-permitted storm-water systems on near-by, neighboring, and adjacent properties to the Property, and regardless of whether or not the drainage from Highway 278 was or was not permitted and/or provided for, the Property and the Okatie River Park remain the collection points for substantial storm water runoff from those other properties, despite

that Development has not yet occurred on the Property or the Okatie River Park in any significant way. The Parties acknowledge and agree that the Property and the Okatie River Park are now burdened with excess storm water run-off and flows originating from outside of either property ("Off-Site Flows"); in consequence, (1) the County will bear the expense of the portions of the construction, operation, repairs, and maintenance of the storm water management system serving the Property and the Okatie River Park, as related to the Off-Site Flows, and as related to the Okatie River Park, and (2) Owner will bear the expense of the portions of the construction, operation, repairs, and maintenance of the Storm Water Management System serving the Property and the Okatie River Park, as related only to the Property. The Okatie River Park presently includes some high ground, and some vintage, agrarian, culvert crossings, dams, holding ponds, and at least one outfall pipe, which collectively connect the storm water drainage from those adjacent properties, and from the Property and the Okatie River Park, into and through the Property and the Okatie River Park, and then into the waters of the Okatie River. The Parties agree that fifty (50%) per cent of the costs of design, permitting, construction, operation and maintenance of the storm water management system for the Property and the Okatie River Park will be paid for by County and the balance by Owner. County will reimburse Owner for ~~such~~ costs associated with the County's 50% share provided herein upon receipt of supporting invoices, and as long as County has approved Owner's design engineer and contractor and construction contract for such storm water infrastructure. Owner will provide, as part of the overall considerations exchanged and/or shared by the Parties in

this Agreement, the non-exclusive use of the appropriate lands within the Property for those purposes, and the County will provide, as part of the overall considerations exchanged and/or shared by the Parties in this Agreement, the use of the appropriate lands within the Okatie River Park for those purposes.

C. Other Infrastructure and Services. The provisions of Section VI hereof are incorporated by reference herein. In addition, the County will pay the incremental cost increase (if any) associated with increase in capacity or upsizing water and sewer lines, caused by the Okatie River Park, ~~of for~~ the cost of design, construction, installation and maintenance for water mains and sewer lines (and associated pump/lift stations) from their current connecting points through the Property to be stubbed out at the property line of the Okatie River Park, at points to be agreed upon by the Community Development Director and Owner.

D. Barn Site. The Barn Site ("Site") is within the current boundaries of the Okatie River Park. This Site is also, historically, a part of the Graves Family Heritage Compound, as the Graves Family has continuously owned and operated Pepper Hall since the 1870's. The County acquired this Site as part of its acquisition of the eighteen-acre Okatie River Park land. ~~County has now recognized that the two barn buildings on this Site require very large expenditures of money for capital and routine maintenance, with portions of those two barn structures now being substantially deteriorated. The County does not want to be liable for those expenditures now or in the future, nor to be potentially liable otherwise for those structures or the Site, or their uses.~~ The County and Owner, for certain considerations, have agreed to the following ~~two~~ options, exercisable by Owner in his sole discretion within ~~six~~ nine (9) months after December 10, 2018, for the Site:

1. Owner may receive back the Barn Site from the County, by way of the County's quit-claim deed, with a reservation of a public-access easement ~~for a walkway~~ along the

westerly edge of the Site, extending ~~15-50~~ feet easterly from the mean high water line of the Okatie River, and beginning at the northerly end of the Site, and stopping at the southern ~~northerly~~ edge of the ~~Disputed Area~~ Barn Site with an additional 15' walkway along the southern property line of the Barn Site in such a way that access to a public right of way is preserved. ~~described as Parcel "A" on Exhibit B,~~ such Such deed to be executed, delivered, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina; and, for and in consideration of the foregoing, Owner will, immediately next after the recording of the above-described quit-claim deed, also record a conservation easement in favor of the County or its designee, such easement to be in a form to be reasonable agreed-upon by the Parties (and/or any such designee of County), to restrict the future use of the Site to the existing barn structures, or no more than two cottages, with a combined square footage of conditioned living space not exceeding 4122 square feet, and normal residential support structures; and providing for no additional docks to be built on the Site. Said conservation easement shall provide for the use of the preserved pathways described herein for public use and for the preservation of a connection from the park property to a public right of way. The Parties may, by mutual agreement, adjust the site location of the 15' walkway for aligning the connection with a right of way. Owner shall provide as additional consideration, a 1.5 acres parcel of useable high ground, contiguous to the Park and in a configuration and location mutually agreeable to the Parties.

2. ~~Or, leave the Site in the ownership of the County, on condition that the barns be demolished and removed during development of the Okatie River Park. Failure to exercise the above option with nine (9) months of December 10, 2018 will result in~~

Owner relinquishing any and all interest in the Barn Site and the Option provided in this Agreement shall expire.

E. Easements. Owner will convey to the County non-exclusive easement rights for ingress, egress, and for utilities access, installation and maintenance on and along the Primary Park Access Road, and on and along such other roads and lands of the Property as the Parties may agree upon, to and from the Okatie River Park, all at specific locations to be agreed upon by the Parties. Owner reserves the right to modify, alter or replace such easements by providing alternative access on and along the Internal Roads of the Property. The Parties acknowledge that certain *cul-de-sacs* within the Property may be developed as small, private enclaves, with gated entrances with private roads, privately maintained, within such enclaves.

F. Buffers. No buffers will be required for the separation between the Property and the Okatie River Park.

**V. DEVELOPMENT REQUIREMENTS AND DEVELOPMENT RIGHTS FOR THE PROPERTY AND THE OKATIE RIVER PARK.**

A. CDC and Future Laws: Applicability and Vesting. The Property and the Okatie River Park shall be developed in accordance with the CDC, this Agreement, the Current Beaufort County Manual for Stormwater Best Management and Design Practices, and the Development Requirements and Development Rights as set forth in this Section V; provided that, as between the County's Zoning Regulations and the Development Requirements, these Development Requirements shall control to the extent allowed by law. Any future laws, including any amendment or modification to the CDC relating to the Property, shall not be applicable to the Property without the express, written consent of Owner; except, however, that the County may amend the CDC as it pertains to (1) procedures for processing land development applications and approvals, approvals of subdivision plats, and/or (2) the issuance of building permits, without the

express, written consent of Owner. It is the intent of the Parties that only the CDC's Zoning Regulations, rights under this Agreement, and any other laws, regulations and ordinances of the County applicable to the development of land in the County be vested for the Property for the Term (including renewals/extensions thereof). All other laws, regulations and ordinances of the County, and those as may be enacted in the future, shall be applicable to the Owner, and his heirs, successors and assigns, so long as such do not conflict with this Agreement, or interfere with the ability to utilize and develop the Property in accordance with this Agreement. It is also specifically acknowledged by the Parties that this Agreement shall not prohibit the application to the Property and the Okatie River Park of any current or future building, housing, electrical, plumbing, gas, swimming pool or other standard codes of general application throughout the County, of any tax or fee (including school impact fees) of general application throughout the County. It is, further, specifically acknowledged that nothing in this Agreement shall be deemed to exempt the Property and the Okatie River Park from fees and taxes that may be imposed by governmental entities other than the County. Owner shall have vested rights to undertake Development of any portion or all of the Property in accordance with the CDC, except as varied, if at all, by this Agreement.

**B. Permitted Uses and Densities.**

1. Permitted uses on the Property include all of those allowed under the Current Zoning of the Property, to include but not be limited to the following: residential dwellings and customary or accessory uses thereto, community buildings, recreational uses such as parks, water-related amenities and the like, and commercial, lodging, office, medical and residential uses, as well as roads, parking areas, utilities, storm water drainage and management infrastructure, some as conceptually shown and depicted on the Conceptual Plan that is attached as **Exhibit**

**G. Subject to the limitations provided in the current CDC, No more than Six**

Hundred Eighty (680) dwelling units (and such additional residential units as may be obtained on upper floors of mixed-use buildings, together with up to Fifty (50) additional residential units that may be derived by Owner's conversion of up to One Hundred Thousand (100,000) commercial square-footage within the Property into residential dwelling units at a conversion ratio of One (1) dwelling unit per 2000 square feet of commercial square-footage), and no more than Three Hundred Fifty Thousand (350,000) square feet of first-floor ground area commercial square-footage may be constructed on the Property; provided, however, that Owner may choose that up to One Hundred Thousand (100,000) commercial square-footage within the Property may be converted by the Owner into dwelling units at a conversion ratio of One (1) dwelling unit per Two Thousand (2000) square feet of commercial square-footage. Densities may not exceed those allowed under the current CDC.

2. Such residential dwelling units allowed on the Property are allocated, subject to the regulations of the CDC as follows: The lands within the Property's C-5 Zoning District are allocated up to Four Hundred Fifty (450) dwelling units. The lands within the Property's C-3 Zoning District are allocated up to Three Hundred (300) dwelling units. Either or both of these allocated limits may be increased by upper floors of mixed use buildings and/or by conversion of commercial square footage to residential dwelling units as otherwise provided in this Agreement.
3. Such commercial square-footage allowed on the Property is allocated as follows: The lands within the Property's C-5 Zoning District are allocated up to Two Hundred Fifty (250,000) square feet of commercial use dedicated to first floor ground area and such additional commercial use square-footage as may be

dedicated to second-floor and/or third-floor uses. The lands within the Property's C-3 Zoning District are allocated up to One Hundred (100,000) square feet of commercial use dedicated to first floor ground area and such additional commercial use square-footage, or mixed-use residential as may be dedicated to second-floor and/or third-floor uses.

4. The specific locations of each and all such uses shall be determined by Owner and the Community Development Director at the times of detailed submittals, on a per-phase basis, for Conceptual and Final development approvals for phased portions of the Property. The densities allowed hereunder are not allowed to exceed those permitted under the CDC.

5. Owner herewith agrees to undertake a good faith and considerate effort to utilize a portion of the square footage in buildings having two or more floors as mixed-use areas (commercial and residential) in an effort to reduce the amount of "impervious surface area" upon the Property and to consider design standards, elements and uses found in the CDC provisions for "Traditional Community Plans" ("TCP"), and "Mixed-Use" ("Mixed-Use") developments in specific provisions of the CDC. The Community Development Director has the discretion to allow up to 3.5 story buildings, above base flood elevation, in the central village portion of the Property's C-3 Zoning District.

5.6. Where the provisions of this Agreement regarding Permitted Uses and Densities may conflict with the CDC in existence at the time of the effective date of this Agreement, the CDC shall prevail.

C. Development.

1. It is acknowledged by the Parties hereto that the Conceptual Plan (**Exhibit E**) represents by-right Development under the Zoning Regulations (**Exhibit G**), but does not represent a specific site development plan for uses and densities, and that the Owner may materially deviate from the general concepts shown on the Conceptual Plan without the prior consent of County, upon condition that such changes are in compliance with the applicable provisions of the CDC and this Agreement.
2. County agrees that the Owner shall have the unlimited right to set and modify the schedule and phasing of Development of the Property, within the Term, including renewals/extensions, as Owner deems appropriate.
3. All future Development proposed and executed as part of a specific development plan for all or a phase of the Property must, nevertheless, be in compliance with all applicable Federal, State, and Local standards, except as such Local standards are varied, if at all, by the terms of this Agreement.
4. Storm water management shall be subject to the Current Beaufort County Manual for Stormwater Best Management and Design Practices (**Exhibit J**), and to applicable standards of Federal and State permitting authorities required at times of development and shall at a minimum meet all State and County criteria for drainage including volume and velocity control, nutrient reduction, and shall at a minimum satisfy the necessary published<sup>[IC1]</sup>-criteria for meeting the goals of the Okatie River TMDL, as established by South Carolina's Department of Health and Environmental Control (DHEC), and shall use soil, storm water, and vegetative best management practices in accordance with this Agreement. The Parties agree

that the use of rain gardens within wetland buffers and other buffer areas is a desirable and acceptable management practice for these purposes.

5. Owner agrees to encumber portions, and eventually all, of the Property with recorded Conditions, Covenants and Restrictions (CC&R's) at the time of development to carry out the provisions of this Agreement, which CC&R's shall be subject to the reasonable approval of the County, such approval not to be unreasonably withheld.
6. The Owner is required to notify Beaufort County, in writing, if, as, and when Development Rights are transferred to any other landowner, developer, or builder. 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 for which the transfer applies. Subsequent persons transferring Development Rights to any other party shall be subject to the same requirement of notification, and any entity acquiring Development Rights hereunder shall be subject to the requirements of this Agreement.

**D. Permitting Procedures.**

1. Best Efforts. Beaufort County agrees to use its best efforts to review in an expeditious manner all land use changes, Development applications, plats and building permit applications, and other documents related to this Agreement, in accordance with applicable ordinances as modified by this Agreement for the Property. Owner may submit these items for concurrent review with Beaufort County and other governmental authorities.
2. Traffic Impact Analysis ("TIA"). The Parties agree that Owner will provide a traffic impact analysis which tabulates detailed pre- and post-development traffic

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loadings for those areas of the Property where development has been indicated to occur on the Property within the immediate future (within two to three years), or as otherwise mutually agreed by the Community Development Director and the Owner, as well as a schematic estimate of traffic loadings at project build-out to maximum densities. Similarly, the County will provide a traffic impact analysis for the Development and use of the Okatie River Park. The Parties may agree to cooperate in a joint TIA. The schematic estimates may be subject to significant changes due to uncertainty in future transportation impacts and changes in traffic patterns and infrastructure for the surrounding area. The TIA will include recommendations for internal roadway circulations and capacities as well as recommendations for improvements over existing access roads and/or new intersections and access roads as necessary. The TIA will also include phasing recommendations for completion of required improvements based on traffic volumes generated. The TIA will also include recommendations for routes to the Property and the Okatie River Park, and potential measures to best accommodate construction traffic associated with the current phasing.

As Development planning for the Property moves forward from phase to phase, it may be necessary to update the TIA periodically as warranted by Development progress and changing conditions. When deemed necessary, and at the Community Development Director's sole discretion but not more frequently than bi-annually, the TIA may be required to be updated and submitted to the Community Development Director for review in conjunction with the submittal of each subsequent Development phase for the Property. The scope of the updates will be mutually determined by the Owner and the Community Development

Director. Unless otherwise determined by the Owner and the Community Development Director, at a minimum, the scope of the updates will include:

- a. a tabulation of land uses that have received building permits subsequent to the most recent TIA update; and
- b. a tabulation of land uses that are anticipated to be permitted for building prior to initiation of the next Development phase; and
- c. an update of the trip generation calculations associated with the cumulative existing land uses, and those that are anticipated prior to initiation of the next Development phase.

E. Signage. Signage for the Property shall be governed by Division 5.6 (“Sign Standards”) of the CDC. In addition, Owner shall be entitled to retain, use, lease, maintain and service the existing, grand-fathered billboard on the southeasterly corner of the Property until and unless Owner, in his sole and unfettered discretion, elects to remove such billboard during the Term hereof (including renewals/extensions). Owner will provide, near access points to the Okatie River Park, general signage for road-side designated public parking areas.

## **VI. INFRASTRUCTURE AND SERVICES.**

A. General. County and Owner recognize that, generally and subject to the terms of this Agreement, services to the Property will be provided by the County and other governmental or quasi-governmental entities. The provisions of this Section VI are subject to, and fully incorporate by reference, the remainder of this Agreement including, in particular, the provisions of Sections IV. and V. hereof.

For clarification, the Parties make specific note of, and acknowledge, the following:

B. Internal Roads. All roads within the Property, excluding the Primary Park Access Road, shall be constructed by the Owner and maintained by him and/or one or more property owners

associations. Notwithstanding the provisions hereof, Owner and County agree to convey to each other cross-easements for scenic view, parking, pedestrian and vehicular ingress and egress over and across the internal, public-access roads of the Property for public access (including from the Property) to the Okatie River Park, together with parking, view, utility installation and maintenance easements and such other use rights as may be reasonably agreed by the Parties.

The Parties acknowledge that the development will not be a gated community. ~~certain cul-de-sacs within the Property may be developed as small~~Small, private enclaves, with gated entrances with private roads for securing certain amenities of certain portions of the development that are, privately maintained, within such enclaves may be created; provided, however, that such shall not unreasonably impede access to the Okatie River Park.<sup>2</sup> The Parties may agree to the Owner's dedication of certain Internal Roads within the Property to the County. The Owner may participate in the formation of the Residential Improvement District as contemplated within this Agreement for the purpose of recovering costs associated with the construction of its roads. Election by the Owner to participate in the RID shall not interfere with the County's imposition of the RID for recovering the County's costs associated with the design, permitting and construction of its obligations under this Agreement.

C. External Roads.

1. Highway 278. The major, external public road that serves the Property is Highway 278 and is under the jurisdiction of the State of South Carolina regarding construction, improvements and maintenance. It shall be the responsibility of the Owner to adhere to applicable State and County requirements regarding ingress and egress to Highway 278 or any other public roads that may serve the Property.

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<sup>2</sup> See, above, Section IV.E.

Owner will pay any required costs to open the existing signalized access point on Highway 278 into the Property, and for the Internal Roads (other than Graves Road and the Primary Access Road to the Okatie River Park as discussed in Section IV hereof). The County will assist with and support applications for all such purposes.

2. Graves Road.

- a. County and Owner herewith acknowledge that the existing Graves Road adjacent to the Property is a public-use roadway currently maintained by the County as an unpaved dirt road, and that the actual ownership of the existing Graves Road is unknown.
- b. The provision of public access to the Okatie River Park will be from points along Highway 278 and Graves Road, and will be non-exclusive. The County will pay for the necessary condemnations and rights of way, and the design, construction and maintenance, of Graves Road from its intersection with Highway 278, northerly to the intersection with the northerly entrance to the Property. Any further northerly extension of Graves Road improvements desired by Owner, or others, will be paid for by the Owner, or others, if the County utilizes its eminent domain power to acquire any necessary lands for same. Owner will provide, without condemnation or just compensation paid to him, and upon further agreement with the County as to exactly which additional lands, certain additional land from the Property to add to the existing Graves Road to allow it to be upsized, paved, and drained to County standards, for all purposes under this Agreement.

D. Potable Water. The provisions of this Section are governed also by the provisions of Section IV. C. hereof, which are incorporated by reference. Potable water will be supplied to the Property by

Beaufort-Jasper Water and Sewer Authority ("BJWSA"). BJWSA or Owner will construct or cause to be constructed all necessary water service infrastructure within the Property intended to serve private uses, which will be maintained by them or the Authority or one or more property owners associations. County shall not be responsible for any construction, treatment, maintenance or costs associated with potable water service intended for private uses on and to the Property other than those utility services required also to serve the Okatie River Park, for which County shall be responsible. The Parties agree that all Development, with the exception of existing wells for livestock, agricultural, and residential use and facilities existing at the date of this Agreement, will continue until abandoned or decommissioned by Owner, as Owner, in his sole discretion, may deem appropriate. All new construction pursuant to this Agreement shall use potable water and sewer services provided by BJWSA.

E. Sanitary Sewage Collection, Treatment, and Disposal. The provisions of this Section are governed also by the provisions of Section IV. C. hereof, which are incorporated by reference. Sanitary sewage collection, treatment, and disposal will be provided by BJWSA. BJWSA or Owner will construct or cause to be constructed all necessary sewer service infrastructures within the Property, which will be maintained by BJWSA. County shall not be responsible for any construction, treatment, maintenance or costs associated with sewer service intended to serve private uses on and to the Property, other than those utility services required also to serve the Okatie River Park, for which County shall be responsible. Owner further agrees that as BJWSA water and sewer infrastructures are extended to those parts of the Property upon which there are existing structures and uses for which Owner currently utilizes septic systems, such existing structures will be eventually retrofitted, as such Development with new construction comes to those parts of the Property, to connect to the BJWSA water and sewer systems.

F. Storm Water Management System.

1. All storm water runoff and drainage system improvements within the Property will be designed utilizing best management practices, will be constructed by Owner, and maintained by Owner and/or one or more property owner associations (to be established later).
2. The provisions of Section IV. B.2. hereof, are here fully incorporated by reference.
3. In addition, County herewith agrees to allocate and expend a portion of the ~~“Storm Water Impact Fees”~~ and funds from the “Storm Water Utility Fees” generated from the Development of the Property and other locations within the County to partially fund, as a “shared cost” with Owner, the construction, installation and maintenance of storm water systems and features that are designed and incorporate “green infrastructure technologies” and elements on, under or upon the Property. County further agrees to designate a portion of the County Stormwater Utility Fees ~~“Storm Water Impact Fees” generated from the development of the Property~~ for ongoing water quality monitoring in the Okatie River Headwaters during and after development activities are completed upon the Property and the Okatie River Park as budgeted by the Stormwater Manager[IC2].
4. The Parties are and 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 storm water.
5. Owner and the County shall comply with any and all future ordinances or regulations of the County (or portions thereof) governing collection, detention, filtration, and treatment of storm water, provided those ordinances and regulations apply County-wide, and are consistent with sound engineering practices. It is

specifically agreed however, that any such future ordinances of the County that directly or indirectly affect the setback, buffer, pervious/impervious cover, or open space requirements permitted pursuant to this Agreement will not be applicable to the Owner within the Property without the Owner's express, written consent thereto.

G. Solid Waste Collection. Solid waste collection will be provided for the Property by agreements with private companies. The County will provide for its own solid waste collection for the Okatie River Park.

H. Police Protection. The County shall provide police protection services to the Property and the Okatie River Park on the same basis as is generally provided to other residents and businesses within the County, and to the County's parks, it being understood that the County's passive parks, such as Okatie River Park, are normally closed from dusk until at least dawn, except for permitted special events. The promoters of any such special events will be required to provide event security in accordance with County requirements and protocols.

I. Emergency Medical Services. Such services are now being provided by Beaufort County, and the County will continue to provide emergency Medical services to the Property and to the Okatie River Park on the same basis as is provided to other residents and businesses within the County, and to the County's parks.

J. Library Services. Such services are now provided by the County and such services shall continue.

K. School Services. Such services are now provided by the Beaufort County School District and such services shall continue.

L. Recycling Services. The County shall not be obligated to provide recycling/collection services to the Property, absent its election to provide such services on a County-wide basis.

M. Fire Services. Fire protection for the Property and the Okatie River Park will be provided by the Bluffton Township Fire Department.

N. Subsequent Entities or Financing District. Nothing in this Agreement shall be construed to prevent the establishment by the County, or other governmental entity, or some combination of entities, solely ~~(or in conjunction with each other and the Owner)~~, of an Improvement District authorized by the County Public Works Act provisions of the Code of Laws of South Carolina (1976 as amended), ~~unless as~~ agreed to herein by Owner; it being, nevertheless, understood that the Parties agree, at the appropriate time in the sell-out of the Development of the Property and the completion of Development of the Okatie River Park, to cooperate with each other to cause the creation of an Improvement District, under authority of S.C. Code §§ 6-35-10 to -190 “Residential Improvement District Act” or the “County Public Works Act”, codified as S.C. Code §§ 4-35-10 to -160, to establish such an Improvement District ~~(to be comprised of the Okatie River Park, the Property, and adjacent and nearby residential and commercial developments)~~ for recoupment of costs of Development, ~~as may be agreed upon at that time by the Parties, and to take over the maintenance (routine and capital) costs and operational costs for the Okatie River Park, with assessments as provided in the County Public Works Act, to be in amounts, and applied to such properties, and applied on a schedule to be determined by the Parties.~~

O. Tree Preservation. The Owner will submit to the Community Development Director, from time to time for each phase or portion of the Property then being proposed for specific Development approvals, a survey or exhibit depicting all trees and forests as mandated by the CDC, together with such preservation, protection and mitigations as mandated by the CDC.

P. Delivery Dates for Public Facilities. In compliance with S.C. Code § 6-31-50 (C), the Parties agree that the Agreement provides for public facilities for a passive park, roads, storm

water, and open space to be provided by the County. The County's delivery dates for those public facilities will be triggered by the Parties meeting the following performance standards:

- i. As to the Okatie River Park, the County's passive park, all improvements provided in the approved design and all roads, storm water, and open space serving it are to be delivered within twelve twenty-four (24) months after December 10, 2018 one-hundred fifty (150) residential dwelling units have been permitted.  
~~— provided, that if the Owner or a Developer of the Property proceeds faster than that, then the roads, storm water, and open space are to be delivered within six months after Final Development Approval for the first phase of the Property.~~
- ii. As to the roads provided by the County under this Agreement (a portion of Graves Road and Primary Park Access Road), County shall deliver the roads within twenty-four months of when construction begins on the first phase of Development of the Property. However, the Owner, or subsequent developer, may accelerate the delivery of the road by mutual agreement with the Administrator by providing for the construction of the road as soon as practical. The Administrator is hereby authorized to enter into an agreement for an accelerated delivery of the road subject to the Owner's demonstrated compliance with County procurement procedures, and subject to the County's budget process, for reimbursement of expenditures by developer or Owner in performing the delivery of the road.

## VII. OWNER ENTITLEMENTS.

The County agrees that, by this Agreement, the Property is approved and fully vested for intensity, density, Development Fees, uses and height, setbacks and parking and shall not have any obligations for on-site or off-site transportation or other facilities or improvements other than as specifically provided in this Agreement. The County shall not impose additional development obligations or regulations in connection with the development of the Property, except in accordance with the procedures and provisions of § 6-31 -80 (B) of the Act, which the Owner shall have the right to challenge, and as set forth in Section V. A. of this Agreement.

The County acknowledges that Owner is also approved and vested with the following rights:

A. Setbacks and Buffers. Beaufort County agrees that the Property is vested and that the types of parcel lot lines, setbacks and buffers shown and described on the Concept Plan, as may be amended from time to time in accordance with this Agreement, are acceptable. The Parties agree that there will be reduced and modified buffers between the Okatie River Park and the Property, *e.g.*, as set forth in Section IV. F. hereof.

B. Coordination with Okatie River Park. The Parties agree that Owner may elect to count the acreage of the Okatie River Park as part of the requirements under the CDC for the Property, for such purposes as open space, forest preservation, tree protection.

C. Densities. Subject to the provisions of Section V. B. hereof, the density for the Property shall not exceed Six Hundred Eighty (680) residential dwelling units, and Three Hundred Fifty Thousand (350,000) square feet of commercial uses, all as allocated, and modifiable, as set forth above in Section V. B. of this Agreement.

D. Uses. All those land uses set forth in Section IV. B. of this Agreement.

#### **VIII. ATTORNEY'S FEES.**

Each of the Parties to this Agreement agrees to pay his/its own attorney's fees incurred by them in the formation of this Agreement.

**IX. COMPLIANCE REVIEWS.**

Owner, or his designee, shall meet with the County, or its designee, at least once per year in the month of January during the Term (including renewals/extensions) of this Agreement to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year. The Owner, or his designee, shall be required to provide such information as may reasonably be requested, to include but not limited to, commercial square footage, acreage or lots of the Property sold in the prior year, commercial square footage, acreage or lots of the Property under contract, the number of certificates of occupancy anticipated to be issued in the ensuing year. The Owner, or his designee, shall be required to compile this information for Development. Reporting of such information to the County will be made upon such forms as the County and Owner may agree upon from time to time. This Compliance Review shall be in addition to, and not in lieu of, any other reporting or filing required by this Agreement.

**X. DEFAULT.**

The failure of the Owner or County 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, damages, 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 County absent its according the Owner 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 County or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of this Agreement.

## **X. MODIFICATION OF AGREEMENT.**

This Development Agreement may be modified or amended only by the written agreement of the County and the Owner. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the Party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced. Any amendment to this Agreement shall comply with the provisions of S.C. Code §§ 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.

## **XII. NOTICES.**

Any notice, demand, request, consent, approval or communication which a Party is required to or may give to another Party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other addresses 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 County shall be addressed to:

The County of Beaufort  
PO Box 1228  
Beaufort, SC 29901-228

With Copy to:

Attention: ~~Thomas J. Keaveny, II,~~  
~~Interim~~ County Administrator  
~~Christopher S. Inglese~~ Thomas J. Keaveny, II,  
Esquire  
Beaufort County Attorney  
PO Box 1228  
Beaufort, SC 29901-1228

And to the Owner at:

Robert L. Graves  
PO Box 5818  
Hilton Head Island, SC 29938

With Copy to:

Barry L. Johnson, Esquire  
Johnson & Davis, PA  
The Victoria Building, Suite 200  
10 Pinckney Colony Road  
Bluffton, SC 29909

### **XIII. ENFORCEMENT.**

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

### **XIV. COMMITMENT TO EMPLOYMENT OPPORTUNITY FOR RESIDENTS.**

Owner is an equal opportunity employer and demands the same from all its contractors. Owner also recognizes that it is important that citizens of County have opportunity for gainful employment and future advancement in the immediate County area.

### **XV. GENERAL.**

A. Subsequent Superior 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 are superior to the law of Beaufort County, South Carolina, and prevent or preclude compliance with the Act or one or more provisions of this Agreement ("Subsequent

Superior Law(s)”), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Subsequent Superior Law. Immediately after enactment of any such Subsequent Superior Law, or court decision, a representative designated by each of the Owner and the County shall meet and confer in good faith in order to agree upon such modification or suspension of this Agreement, based on the effect that such Subsequent Superior 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 Subsequent Superior Law, the County may take reasonable action to comply with such Subsequent Superior Law. Should these representatives not agree to a modification or suspension of this Agreement, either of the Parties may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner and County each shall have the right to challenge, at his/its own expense and cost for legal fees, etc., the Subsequent Superior 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.

B. Estoppel Certificate. The County and Owner may, at any time, and from time to time, deliver written notice to the other of such Parties, requesting such other of the Parties 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 certifying one of the Parties, the requesting one of the Parties 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, would constitute a default and, if so, specifying each such event.

C. Entire Agreement. This Agreement sets forth, and incorporates by reference, all of the agreements, conditions, and understandings among the County and the Owner relative to the Property and the Okatie River Park and the Development of both, 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.

D. No Partnership or Joint Venture. Notwithstanding the statements herein and in the Exhibits hereto concerning a “Public-Private Partnership”, or words to similar effect as relating to the County’s passive public park system, generally, and to Okatie River Park, particularly, nothing in this Agreement shall be deemed to create a partnership or joint venture between the County and Owner or to render such party liable in any manner for the debts or obligations of the other party.

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

F. 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.

G. Assignment. The rights, obligations, duties or responsibilities under this Agreement of the Owner are assignable to any other person, firm, corporation or entity.

H. Governing Law. This Agreement is and shall be governed by the laws of the State of South Carolina.

I. 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.

J. 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 of the Parties shall retain the right to pursue its own independent legal defense.

K. No Third-Party Beneficiaries. The provisions of this Agreement may be enforced only by the County and the Owner, and their respective heirs, successors and assigns. No other persons shall have any rights hereunder, except the heirs, successors and assigns of one or both of the Parties hereto.

L. Successors and Assigns.

1. Binding Effect. This Agreement shall be binding upon the respective Parties, their heirs, successors and assigns in the ownership or Development of any portion of the Property and the Okatie River Park. Except for Owner's continuing obligation if and as specifically stated herein, a purchaser or a person acquiring title to any portion of the Property, or a person to whom Owner assigns Development Rights with respect to any portion of the Property (herein collectively referred to as a "Transferee") shall, during the Term of this Agreement, be solely responsible for the performance of the Owner's obligations under this Agreement applicable to the portion of the Property transferred, or for such Development Rights as transferred, and Owner shall not be liable therefor, either primarily or secondarily. Each Transferee shall be required to execute a written acknowledgement assuming Owner's obligations (including Development Requirements) under this Agreement which are directly applicable to such portion of the Property or such Development

Rights. Such acknowledgment shall be in the form provided in **Exhibit H**, attached hereto and made a part hereof (the "Notice of Transfer"), and provided to the County at the time of recording any instrument transferring title, and Development Rights, of the Property or any portion of the Property. This Subsection shall not be construed to prevent Owner from obtaining indemnification of liability to the County from Transferees. Unless specifically set forth herein, upon transfer to a Transferee, Owner shall be released of all obligations assumed by such Transferee.

2. Transfer of all of the Property. Owner shall be entitled to transfer all of the Property to a Transferee subject to the following requirements:
  - a. Owner shall require that such Transferee shall comply with the provisions of this Agreement.
  - b. Notification to County. When the Owner transfers all of the Property to a Transferee, the Owner shall be responsible for delivering, or causing to be delivered, to the County the Notice of Transfer (**Exhibit H**) together with the name, address, telephone number, facsimile number, and contact person for the Transferee.
3. Assignment of Development Rights. Any and all such Assignments to a Transferee shall be by a recordable instrument (Office of Register of Deeds, Beaufort County, SC) with a covenant running with the land expressly stating the precise amount of commercial square footage rights, and the number of residential dwelling unit rights being assigned to the Transferee.
4. Mortgage Lenders: Notwithstanding anything to the contrary contained herein, the requirements for transfer, concerning heirs, successors and assigns, shall apply: (a) to any mortgage lender upon acquiring title to the Property or any portion thereof,

either as a result of foreclosure of mortgage secured by any portion of the Property or to any other transfer in lieu of foreclosure; (b) to any third-party purchaser at such foreclosure; or (c) to any third-party purchaser of such mortgage lender's interest subsequent to the mortgage lender's acquiring ownership of any portion of the Property as set forth herein. Furthermore, nothing contained herein shall prevent, hinder, or delay any transfer of any portion of the Property to any such mortgage lender or subsequent purchaser.

## **XVI. STATEMENT OF REQUIRED PROVISIONS.**

A. General. The Act requires that a development agreement must include certain mandatory provisions, pursuant to SC Code § 6-31-60(A).

B. Detailed Statement of Required Provisions. 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 SC Code § 6-31-60(A) for the required items:

1. Legal Description of the Property and Okatie River Park, and Legal and Equitable Owner/Owners. The legal description of the Property is set forth in **Exhibit A** attached hereto. The present legal Owner of the Property is Robert L. Graves (Sr.). Palmetto State Bank has an equitable interest in the Property as virtue of its mortgage, dated April 5, 2013, and recorded in the Office of the Register of Deeds for Beaufort County in Book 3230 at Page 2471, on April 11, 2013. The present legal Owner of the Okatie River Park is the County and the legal description of the Okatie River Park is set forth in **Exhibit B**, subject to the provisions herein.

2. Duration of Agreement. The duration of this Agreement is five (5) years, and such further time as included within the renewals/extensions of Term as are provided in Section III hereof.
3. Permitted Uses, Densities, Building Heights and Intensities. A complete listing and description of permitted uses, building intensities and heights, as well as other development - related standards, are contained in the CDC (**Exhibit G**) and in this Agreement. Specific zoning districts are identified in the Current Zoning of the Property, attached as **Exhibit F**. **Exhibit I** sets forth anticipated development of the Property at maximum build out. Building heights will be limited to those heights set forth in the Zoning Regulations, subject to the terms of this Agreement.
4. Required Public Facilities. The County will provide, or cause to be provided, police and fire services, as well as Development application services to the Property and the Okatie River Park. Beaufort Jasper Water and Sewer Authority will provide water and sanitary sewer service to the Property and the Okatie River Park. Mandatory provisions and procedures of the Zoning Regulations and this Agreement will ensure availability of roads and utilities to serve the residents on a timely basis.
5. Dedication of Land and Provisions to Protect Environmentally Sensitive Areas. 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 complied with, together with the Development Requirements and other provisions set forth in this Agreement.
6. Local Development Permits. Specific permits for each phase of the Development of the Property and the Okatie River Park must be obtained prior to commencing

such Development, consistent with the standards set forth in this Agreement. Building Permits must be obtained under County law for any vertical or horizontal construction, and appropriate permits must be obtained from the State of South Carolina (“OCRM”) and/or the U. S. Army Corps of Engineers, when applicable, prior to any impact upon critical area or freshwater wetlands. Access to Highway 278 will be in accordance with permitting procedures of the South Carolina Department of Transportation. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Owner, or the County, and his/its respective heirs, successors and assigns, from the necessity of complying with the law governing permitting requirements, conditions, terms or restrictions, except as varied, if at all, by this Agreement.

7. Comprehensive Plan and Development Agreement. The Development permitted and proposed under the Zoning Regulations and this Agreement is consistent with the Comprehensive Plan and with current land use regulations of Beaufort, South Carolina, as amended.
8. Terms for Public Health, Safety and Welfare. The County 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 the Act.
9. Historical Structures. Any historical or archaeological issues will be addressed through the permitting process, at the time of Development of any affected phase of Development, under the Zoning Regulations, and no exception from any existing standard for historical structures is hereby granted.



WITNESSES:

Beaufort County

By: \_\_\_\_\_

~~Thomas J. Keaveny, II~~, Interim County  
Administrator

Attest: \_\_\_\_\_

County Clerk - County of Beaufort, SC

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

**ACKNOWLEDGEMENT**

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned Notary Public of the state and County aforesaid, personally appeared known to me (or satisfactorily proven) to be the persons whose names are subscribed on behalf of Beaufort County to the within document, who acknowledged the due execution of the foregoing Joint Development Agreement.

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: \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

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**JOINDER OF MORTGAGEE  
(For Equitable Interest)**

For and in consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Palmetto State Bank as the holder of the Mortgage, dated April 5, 2013, and recorded in the Office of the Register of Deeds for Beaufort County in Book 3230 at Page 2471, on April 11, 2013, hereby joins herein for the limited purposes of acknowledging and consenting to the within Joint Development Agreement.

WITNESSES:

PALMETTO STATE BANK

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

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**ACKNOWLEDGEMENT**

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_, and \_\_\_\_\_, as officers of, and acting on behalf of Palmetto State Bank, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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

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

**NOTICE OF TWO PUBLIC HEARINGS  
CONSIDERATION OF DEVELOPMENT AGREEMENT**

**PLEASE TAKE NOTICE THAT A PUBLIC HEARING** will be held by the Beaufort County Council on November 26, 2018 at 5:00 P.M and on December 10, 2018 at 6:30 P.M. The Public Hearings will take place in the Council Chambers, Administration Building, Beaufort County Government Robert Smalls Complex, 100 Ribaut Road, Beaufort, South Carolina, on a proposed joint development agreement by and between Beaufort County and Robert L. Graves. The lands involved are in southern Beaufort County, near the intersection of SC Hwy 170 and US Hwy 278, and are generally known as Pepper Hall (83.195 acres), owned by Robert L. Graves, and Okatie River Park (18.00 acres), owned by Beaufort County. A portion of Pepper Hall, closer to US Hwy 278, containing approximately 36 acres, is zoned in zoning classification C5 under the Beaufort County Community Development Code. The remainder of Pepper Hall, approximately 48 acres is zoned in zoning classification C3. Okatie River Park is zoned in zoning classification C3. The nature, scope and purpose of this proposed joint development agreement is to create and provide for the implementation of a public-private partnership pursuant to, and as contemplated by, Beaufort County Council Resolution R-2012-3, providing for public-private partnerships related to passive parks, and under the authority of the Beaufort County Community Development Code and South Carolina state law. A copy of the proposed development agreement and all relevant information may be viewed and/or obtained from the Beaufort County Community Development Planning Department, Administration Building, Beaufort County Government Robert Smalls Complex, 100 Ribaut Road, Beaufort, South Carolina. Interested members of the public may submit written comments or evidence prior to the public hearings at the Beaufort County Community Development Planning Department, Administration Building, Beaufort County Government Robert Smalls Complex, 100 Ribaut Road, Beaufort, South Carolina, Attn: Eric Greenway, Community Planning Director, contact phone number: (843) 255-2140. Interest members of the public and adjoining land owners may appear at the public hearings, be heard, and submit evident and written comments with respect to the propose joint development agreement.

**PUBLIC COMMENTS, WRITTEN OR ORAL, ARE INVITED.**