

TOWN COUNCIL



STAFF REPORT Department of Growth Management

MEETING DATE:	October 13, 2015
PROJECT:	Ordinance Terminating the Kent Estates Development Agreement – Final Reading & Public Hearing
PROJECT MANAGER:	Shawn Leininger, AICP, Director of Growth Management

REQUEST: Town Council approve Final Reading of an Ordinance terminating the Kent Estates Development Agreement subject to the terms set forth in the Multi-Party Agreement to Terminate Kent Estates Development Agreement and Assignment of Development Rights to the Town of Bluffton.

INTRODUCTION: On October 27, 2004, the Town negotiated and entered into the Kent Estates Development Agreement with New Leaf LLC. The Development Agreement allowed New Leaf to develop and sell any or all of the approximately 130.8 acres generally defined as the Kent Estates Tract per certain pre-approved development standards set forth in the Development Agreement. Portions of the property were eventually sold to Lowcountry Evergreen, LLC (22.48 acres) and National HealthCare Corporation (NHC) (19.75 acres) Specifically these terms provided the following development rights:

Property Owner	Acreage Owned	Development Rights					
		Owned/ Assigned		Developed		Remaining	
		DU	Non-Residential	DU	Non-Residential	DU	Non-Residential
National HealthCare Corporation	19.75 Acres	0 DU	69,000 Sq Ft	0 DU	24,000 Sq Ft*	0 DU	45,000 Sq Ft
Lowcountry Evergreen, LLC	22.48 Acres	204 DU	0 Sq Ft	0 DU	0 Sq Ft	204 DU	0 Sq Ft
New Leaf, LLC	88.53 Acres	245 DU	50,000 Sq Ft	0 DU	0 Sq Ft	245 DU	50,000 Sq Ft
Total	130.76 Acres	449 DU	119,000 Sq Ft	0 DU	24,000 Sq Ft*	449 DU	95,000 Sq Ft

* The PUD and Initial Master Plan provide that an Assisted Living Facility counts against approved Commercial Density using the following equation: 1 Bed = 200 Sq Feet of Commercial. The Phase 1 facility of 120 beds equates to 24,000 Sq Feet.

As reflected in the table above, only NHC has built within the Kent Estates tract. The current facility consists of the 88,000 square feet with 120 beds. Earlier this year construction began on a 62,357 square foot expansion with 76 assisted living units.

In addition to establishing development rights, the Development Agreement also set forth obligations. These obligations include the following:

1. Dedicate right-of-way for the SC170 widening project.
2. Pay the Town or appropriate governmental entity \$50,000 towards a future traffic signal.
3. Dedicate a 10 foot easement within the SC170 highway buffer for a greenway and leisure trail.
4. Pay the Town the annual sum of \$14,000.00 for a period of five consecutive years for the construction of a Leisure Trail.
5. Pay the Town the annual sum of \$44,000.00 for a period of four consecutive years and for each year of any extension to the Development Agreement to meet the demands of the Kent Estate's development and to avoid adverse ad valorem tax consequences for the residents of the Town.
6. Pay the Town annual Interim Development Fees, as set forth in Section XI(C) of the Development Agreement.
7. Pay the Town the annual sum of \$70,000.00 as a fee in lieu of taxes commencing on the sixth (6th) anniversary date of the Development Agreement each year thereafter for ten (10) successive years, or the end of the New River TIF, whichever event occurs first, to offset the loss of projected tax revenues due to the Kent Estates Tract's location in the New River Tax Increment Financing District.

The Kent Estates Development Agreement was scheduled to expire on October 27, 2014. However, Acts 297 and 112 passed by the 118th and 120th South Carolina General Assembly, respectively, have suspended the running period of development approvals and any associated vested right until December 31, 2016.

In July 2014 Colony Bank commenced a foreclosure action against Lowcountry Evergreen LLC for the foreclosure of a mortgage on Lowcountry Evergreen LLC's portion of Kent Estates. New Leaf LLC is currently in default of its mortgage that is also held with Colony Bank.

Both Lowcountry Evergreen LLC and New Leaf LLC are in default of their financial obligations to the Town of Bluffton. Currently Lowcountry Evergreen LLC owes the Town \$10,800 and New Leaf LLC owes the Town \$402,407.04. The Town has served notice to both Lowcountry Evergreen LLC and New Leaf LLC regarding the default and breach of the Development Agreement and maintains a lien on the property to protect the fees owed.

On September 8, 2015, Town Council approved First Reading of the Ordinance terminating the Kent Estates Development Agreement. There have been no substantive changes to the Termination Agreement since the First Reading approval.

BACKGROUND: Earlier this year the Open Land Trust and Beaufort County approached Colony Bank, New Leaf LLC, and Lowcountry Evergreen LLC to discuss a possible purchase of approximately 111 acres of the Kent Estates Tract. The intent of the purchase is to preserve the property as open space, provide public access, and potential connectivity to

the Okatie Regional Park that is located to the northeast of Kent Estates. Additionally, Beaufort County will utilize Stormwater Utility Fees to assist in the purchase and construct stormwater management lagoons. These lagoons along with the preservation of the property in the critical headwaters area of the impaired Okatie River will work in an effort to improve the stormwater quality as it enters the Okatie River.

In order to protect the property from development in environmentally sensitive areas the following is proposed:

1. Open Land Trust and Beaufort County intend to subject the property to restrictions in use pursuant to the terms of the voter approved bond referendum language authorizing the borrowing of those funds.
2. In consideration of the Open Land Trust and Beaufort County purchase of the Property, Colony Bank will release its mortgage liens and relinquish any other interests in the property.
3. To facilitate the purchase by the Open Land Trust and Beaufort County and promote the preservation of property in the headwaters of the Okatie River, the Town will release the property, New Leaf LLC, and Lowcountry Evergreen LLC from the obligations of the Development Agreement and, with the consent of NHC, will take appropriate action to terminate the Development Agreement in its entirety upon closing of the property by the Open Land Trust and Beaufort County.
4. In consideration of terminating the Development Agreement, New Leaf LLC, Lowcountry Evergreen LLC, the Open Land Trust, and Beaufort County will transfer all remaining development rights to the Town of Bluffton Development Rights Bank (449 residential units and 50,000 square feet of non-residential floor area) upon closing of the property by the Open Land Trust and Beaufort County.
5. In consideration that no development rights will remain on the property after the closing and in order to provide appropriate zoning, the Town will consider rezoning the property from Planned Unit Development (PUD) District to Preserve (PR) District to be effective upon closing of the property by the Open Land Trust and Beaufort County.
6. NHC shall retain the PUD Zoning and all rights for development that currently exist on their property.
7. NHC, Colony Bank, New Leaf LLC, and Lowcountry Evergreen LLC will donate the right-of-way necessary for the SC170 widening that is currently pending condemnation by Beaufort County.

The attached Multi-Party Agreement to Terminate Kent Estates Development Agreement and Assignment of Development Rights to the Town of Bluffton sets forth the terms outlined above.

TOWN COUNCIL ACTIONS: The Town Council has the authority to take the following actions with respect to the application:

1. Approve the application as submitted by the Applicant;
2. Approve the application with conditions; or
3. Deny the application as submitted by the Applicant.

ANALYSIS: As part of the 2015 Strategic Plan, Town Council established the Renegotiation of Development Agreements as a High Priority. Additionally the Bluffton Covenant,

Southern Beaufort County Regional Plan, and Town of Bluffton Comprehensive Plan offer the following guidance and support for this request:

Bluffton Covenant. The Bluffton Covenant states, "That we bear responsibility for the stewardship of nature's blessings entrusted to us in Bluffton... That our natural, physical and cultural history is worthy of our protection as trustees in order for us to embrace our future."

Southern Beaufort County Regional Plan. Chapter 1 Natural Assets and Natural Constraints to Growth states, "Preserving open space is important to protect valuable habitat types, limit development in environmentally sensitive areas, provide public access to natural amenities and to relieve congestion in intensely developed areas. Specific objectives include:

1. 7.1 Limit Development Near Salt Marshes and Coastal Waters.
2. 8.2 Coordination of Public and Private Open Space. Participating Local Governments will work cooperatively to ensure that additions to the public and private open space systems are complementary and coordinated to the greatest extent possible.
3. 9.2: Protect Range of Forest and Vegetation Types. The Participating Local Governments will cooperate to identify and protect a broad range of native forest types in southern Beaufort County.

Town of Bluffton Comprehensive Plan. The Comprehensive Plan notes that the Okatie River is considered an Outstanding Resource Water by SCDHEC, similar to the May River. It also states:

"According to the Okatie River Baseline Study, the Okatie is a narrow tidal creek which flows into the Colleton River. Tides can fluctuate 8.5 feet every six hours and is considered one of the highest along the southeast coast. The Okatie has great historic and ecological significance. The river once supported a healthy and prosperous Comprehensive Plan 4-7 shellfish population but agriculture and development have reduced its overall harvest. The Okatie was part of a five-year, multidisciplinary research and outreach program funded by the NOAA Coastal Ocean Program, South Carolina and Georgia Sea Grant, known as LUC-ES. Scientists from South Carolina and Georgia are working collaboratively to examine how changes in land use affect marine resources. In addition, the headwaters of the Okatie River have been an area of great interest to Beaufort County. The purchase of development rights from property adjacent to its headwaters is a tool that can help restore water quality.

Due to high levels of fecal coliform in the headwaters of the Okatie, SCDHEC developed a Total Maximum Daily Load (TMDL) for shellfish monitoring stations 18-07, 18-08, 18-16, and 18-17. The Town must work, in cooperation with Beaufort County, to reduce levels of fecal coliform to meet this regulatory requirement."

The following specific goals and objectives are identified:

1. Protect shellfish resources for ecological and economic value.
2. Provide protection for remaining threatened and endangered species and associated habitats.
3. Maintain and generate healthy urban forests.

4. Preserve open space to ensure water quality.

NEXT STEPS:

Termination of Kent Estates Development Agreement Procedure	Step Completed
Step 1. Planning Commission Zoning Map Amendment Workshop (August 26, 2015)	✓
Step 2. Town Council First Reading – Termination Agreement (September 8, 2015)	✓
Step 3. Town Council Second Reading / Public Hearing – Termination Agreement (October 13, 2015)	
Step 4. Closing of Property by the Open Land Trust and Beaufort County (TBD)	

ATTACHMENTS:

1. Ordinance
2. Multi-Party Agreement to Terminate Kent Estates Development Agreement and Assignment of Development Rights to the Town of Bluffton
3. Property Plat
4. Kent Estates Master Plan
5. Kent Estates Development Agreement Assignment
6. New Leaf to Lowcountry Evergreen Assignment
7. New Leaf to National Healthcare Assignment

ORDINANCE NO. 2015 -

TOWN OF BLUFFTON, SOUTH CAROLINA

AN ORDINANCE TO APPROVE THE TERMINATION OF THE KENT ESTATES PLANNED UNIT DEVELOPMENT (PUD) DEVELOPMENT AGREEMENT.

WHEREAS, on August 11, 2004 the Town of Bluffton Town Council approved the annexation, development agreement, and zoning map amendment for approximately 130 acres known as the Kent Estate PUD; and

WHEREAS, Kent Estate PUD property owners New Leaf, LLC, Lowcountry Evergreen, LLC, and associated interested parties are negotiating the sale of a portion of the Kent Estate PUD to Beaufort County as part of the Rural and Critical Lands Program; and

WHEREAS, the parties involved in negotiations have requested the termination of the Kent Estates PUD Development Agreement in order to remove the encumbrance on the property; and

WHEREAS, the Town has reached a consensus with the parties involved in these negotiations regarding outstanding obligations identified within the Kent Estate PUD Development Agreement; and

WHEREAS, the Town desires to terminate the Kent Estate PUD Development Agreement subject to certain terms as detailed below.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA:

Section 1. Kent Estate PUD Development Agreement Termination. The Kent Estate PUD Development Agreement is hereby terminated in accordance with the terms of the Multi-Party Agreement to Terminate Kent Estates Development Agreement and Assignment of Development Rights to the Town of Bluffton which is attached and incorporated as Exhibit A.

Section 2. Ordinance if Full Force and Effect. This Ordinance shall take full force and effect upon Beaufort County's purchase of the approximately 111 acres, more or less, located on Okatie Highway (Hwy 170) and identified by Beaufort County Parcel Numbers R610 029 000 0023 0000 and R610 029 000 0483 0000.

DONE, RATIFIED AND ENACTED this _____ day of _____, 2015.

This Ordinance was read and passed at First Reading on _____, 2015.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

A Public Hearing was held on this Ordinance on _____, 2015.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at Second and Final Reading held
on _____, 2015.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

STATE OF SOUTH CAROLINA) MULTI-PARTY AGREEMENT TO
) TERMINATE THE KENT ESTATES
) DEVELOPMENT AGREEMENT AND
 COUNTY OF BEAUFORT) ASSIGNMENT OF DEVELOPMENT
) RIGHTS TO THE TOWN OF BLUFFTON

THIS MULTI-PARTY AGREEMENT TO TERMINATE THE KENT ESTATES DEVELOPMENT AGREEMENT and ASSIGNMENT OF DEVELOPMENT RIGHTS TO THE TOWN OF BLUFFTON (the "**Termination Agreement**") is entered into on this ___ day of _____, 2015, by and among (a) **New Leaf, LLC**, d/b/a New Leaf Development, LLC, a Delaware limited liability company (herein, "**New Leaf**"); (b) **National Health Care Corporation**, a Tennessee corporation (herein, "**NHC**"); (c) **NHC Healthcare/Bluffton, LLC**, a South Carolina limited liability company (herein, "**NHC Bluffton**"); (d) the **Town of Bluffton**, a municipal corporation of the State of South Carolina (herein, the "**Town**"); and (e) **Colony Bank**, as successor by merger to Colony Bank Southeast (herein "**Colony**").

WITNESSETH

Development Agreement

WHEREAS, on October 27, 2004, the Town negotiated and entered into that certain *Kent Estates Development Agreement* with New Leaf, which Development Agreement was duly approved by Bluffton Town Council in accordance with South Carolina law, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, (herein, the "**Register of Deeds**") in Record Book 2045 at Page 1139 (herein, the "**Development Agreement**"); and,

WHEREAS, pursuant to the Development Agreement and as expressly permitted by the South Carolina Local Government Development Agreement Act, the Town agreed to allow New Leaf to develop and sell any or all of the approximately 130.8 acres defined in the Development Agreement as the Kent Estates Tract located in the Town (herein "**the Kent Estates Tract**") subject to certain pre-approved development standards set forth in the Development Agreement; and,

WHEREAS, Pursuant to the Development Agreement, New Leaf contractually agreed to:

- (i) Pay the Town Fourteen Thousand and No/100 (\$14,000.00) Dollars per year for a period of five years for the construction of a Leisure Trail, as the same is defined in the Development Agreement; and,
- (ii) Pay the Town Forty-Four Thousand and No/100 (\$44,000.00) Dollars per year for a period of four years and for each year of any extension of the Development Agreement to meet the demands of the Kent Estate's development and to avoid adverse ad valorem tax consequences for the residents of the Town; and,
- (iii) Pay the Town annual Interim Development Fees, as set forth in Section XI(C) of the Development Agreement; and,
- (iv) Pay the Town Seventy Thousand and No/100 (\$70,000.00) Dollars per year as a fee in lieu of taxes commencing on the sixth (6th) anniversary date of the Development Agreement each year thereafter for ten (10) successive years, or the end of the Town's New River Tax Increment Financing District, whichever event occurs first, to offset the loss of projected tax revenues due to the Kent Estates Tract's location in the New River Tax Increment Financing District; and,
- (v) Pay the Town or other appropriate governmental entity a pro rata share, not to exceed Fifty Thousand and No/100 (\$50,000) of the cost of any traffic signals that are installed on S.C. Highway 170 between US Highway 278 and S.C. Highway 46 over the term of the Development Agreement upon request by the Town or its designee; and,
- (vi) Commit the entirety of the Kent Estates Tract to a recorded Declaration of Covenants, Conditions and Restrictions to ensure that all payments to be made to the Town by New Leaf were properly made and to secure such payments with a lien on all of the Kent Estate Tract.

WHEREAS, on or about October 27, 2004, pursuant to the Development Agreement and recording thereof, New Leaf recorded that certain *Declaration of Master Covenants, Conditions and Restrictions for Kent Estates Planned Unit Development* against the entirety of the Kent Estates Tract, which was recorded on November 1, 2004, with the Register of Deeds in Record Book 2045 at Page 1871 (herein, the "**Declaration**"); and,

WHEREAS, Colony is the holder of a valid note and mortgage lien against the interests of New Leaf in the Kent Estates Tract by virtue of that certain Mortgage recorded in the Office of the Register of Deeds in Record Book 2231 at Page 1440 (herein "**New Leaf Mortgage**"); and,

Out Conveyance to Lowcountry Evergreen, LLC

WHEREAS, on or about March 13, 2006, Lowcountry Evergreen, LLC (herein "**Lowcountry**") acquired approximately 22.48 acres of the Kent Estates Tract (the "**Lowcountry**");

Tract") by virtue of that certain general warranty deed from New Leaf that was recorded with the Register of Deeds in Record Book 2339 at Page 2081; and,

WHEREAS, Colony is the holder of a valid note and mortgage lien against the interests of Lowcountry in the Kent Estates Tract by virtue of a Mortgage recorded in the Office of the Register of Deeds in Record Book ____ at Page ____ (herein "**Lowcountry Mortgage**"); and,

WHEREAS, contemporaneously with the execution of said deed to Lowcountry, New Leaf assigned certain declarant rights under the Declaration to Lowcountry, as set forth in that *Partial Assignment of Declarant's Rights* recorded with the Register of Deeds on March 17, 2006, in Record Book 2339 at Page 2102; and,

WHEREAS, contemporaneously with the execution of said deed to Lowcountry, New Leaf assigned certain development rights under the Development Agreement and Lowcountry assumed certain development obligations under the Development Agreement as set forth in that *Partial Assignment and Assumption of Rights and Obligations Under Development Agreement* recorded with the Register of Deeds on March 21, 2006, in Record Book 2341 at Page 1489; and,

WHEREAS, following the conveyance of Lowcountry Tract to Lowcountry, New Leaf recorded that certain *Declaration of Restrictive Covenants, Establishment of Easements and Provisions for Cost Sharing* encumbering the remaining 108.28 acres of the Kent Estates Tract, which was recorded in the Register of Deeds on April 23, 2008, in Record Book 2712 at Page 2351 (herein, the "**Cost Sharing Agreement**"); and,

Out Conveyance to National Health Care

WHEREAS, on or about April 16, 2008, New Leaf sold approximately nineteen and seventy-five hundredths (19.75) acres of the Kent Estates Tract (the "**NHC Tract**") to NHC by deeds recorded in the Office of the Register of Deeds on April 23, 2008, in Record Book 2712 at Page 2368, in Record Book 2712 at Page 2374; and,

WHEREAS, contemporaneously with the execution of said deed and quitclaim deed to NHC, New Leaf assigned certain development rights under the Development Agreement and NHC assumed certain development obligations under the Development Agreement as set forth in that *Partial Assignment and Assumption of Rights and Obligations Under Development Agreement* recorded with the Register of Deeds on April 23, 2008, in Record Book 2712 at Page 2393; and,

WHEREAS, following the conveyance of a portion of the Kent Estates Tract to NHC, New Leaf recorded that certain *Declaration of Restrictive Covenants* against the remaining eighty-eight and fifty-three hundredths (88.53) acres of the Kent Estates Tract, which was recorded in the Register of Deeds on April 23, 2008, in Record Book 2712 at Page 2377 (herein, "**NHC Declaration**"); and,

WHEREAS, on November 10, 2009, NHC conveyed all of its interest in the Kent Estates Tract to NHC Bluffton by virtue of that certain deed recorded in the Register of Deeds on November 12, 2009, in Record Book 2906 at Page 1916; and,

WHEREAS, contiguous to a portion of the NHC Tract is that certain unpaved road known as “**Davis Road**”; and,

Out Conveyance to Beaufort-Jasper Water and Sewer Authority

WHEREAS, on or about September 22, 2009, NHC conveyed five one-hundredths (0.05) of an acre of its parcel to Beaufort-Jasper Water and Sewer Authority for the construction of a lift station, which deed was recorded in the Register of Deeds on October 1, 2009, in Record Book 2894 at Page 106; and,

Condemnations

WHEREAS, on or about September 7, 2012, the County commenced a condemnation proceeding against NHC and New Leaf for the stated purpose of widening S.C. Highway 170, which condemnation action was entitled *Beaufort County v. New Leaf, LLC, and National Healthcare Corporation*, Civil Action No. 2012-CP-07-03190 (herein “**1st Condemnation Action**”). NHC has settled its portion of the 1st Condemnation Action; and,

WHEREAS, on or about June 26, 2014, the County commenced a subsequent condemnation action against New Leaf and Colony Bank for the stated purpose of widening S.C. Highway 170, which condemnation action was entitled *Beaufort County v. New Leaf, LLC, and Colony Bank*, Civil Action No. 2014-CP-07-01540 (herein, “**2nd Condemnation Action**”); and,

Foreclosure

WHEREAS, on or about July 15, 2014, Colony commenced a foreclosure action against Lowcountry for the foreclosure of the Lowcountry Mortgage, which foreclosure action was entitled *Colony Bank Southeast as Successor in Merger to Colony Bank v. Lowcountry Evergreen, LLC; Carolina Premier Investors, Inc.; and The Town of Bluffton*, Civil Action No. 2014-CP-07-01692 (herein “**Foreclosure Action**”); and,

WHEREAS, the Town answered the Foreclosure Action asserting its lien for the recovery of payments and fees due pursuant to the Development Agreement was superior to the Lowcountry Mortgage and, for the purposes of this Agreement, Colony acknowledges same; and,

Financial Defaults

WHEREAS, as of August 1, 2015, New Leaf is in default under the New Leaf Mortgage and owes Colony the total amount of approximately \$5,000,000.00 Dollars, in principal, interest, fees, fines and other charges related to the New Leaf Mortgage; however, such amounts do not reflect the entire debt owed to Colony by New Leaf, which may include Colony’s attorneys’ fees and costs, and any and all other amounts chargeable, incurred and/or held under the New Leaf

Mortgage. New Leaf has entered into a Settlement Agreement with Colony regarding the New Leaf Mortgage; and,

WHEREAS, as of August 1, 2015, Lowcountry is in default under the Lowcountry Mortgage and owes Colony the total amount of approximately \$3,000,000.00 in principal, interest, fees, fines, and other charges related to the Lowcountry Mortgage; however, such amounts do not reflect the entire debt owed to Colony by Lowcountry, which may include Colony's attorneys' fees and costs, and any and all other amounts chargeable, incurred and/or held under the Lowcountry Mortgage.

WHEREAS, as of August 1, 2015, New Leaf is in default under its financial obligations to the Town pursuant to the Development Agreement and owes the Town the total amount of approximately \$400,000.00; however, such amounts may not reflect the entire debt owed to the Town by New Leaf pursuant to the Development Agreement; and,

WHEREAS, as of August 1, 2015, Lowcountry is in default under its financial obligations to the Town pursuant to the Development Agreement and owes the Town the total amount of \$10,800.00; however, such amounts may not reflect the entire debt owed to the Town by Lowcountry pursuant to the Development Agreement; and,

Resolution

WHEREAS, the Town and Beaufort County (herein "**County**") agree that it is in the best interests of the Town and the County to restrict development in environmentally sensitive areas such as the Kent Estates Tract; and,

WHEREAS, the County has informed the Parties to this Termination Agreement that it intends to purchase those portions of the Kent Estates Tract now owned by New Leaf and Lowcountry or its mortgagee, Colony, (the "**Property**") and intends to subject all of the Property to a conservation easement intended to protect the headwaters of the Okatie River and as described in Paragraph 6 herein; and,

WHEREAS, prior to the County purchase, all allocated density on the Property will be transferred to the Town's Development Rights Bank; and,

WHEREAS, in consideration of the County's purchase of the Property, and payment to Colony of the full purchase price, as more fully set forth herein, Colony will release its mortgage liens on the New Leaf and Lowcountry Tracts and relinquish any other interests in the Property and the Town will release the Property from the obligations of the Development Agreement and, with the consent of the other Parties to this Agreement, will take appropriate action to terminate the Development Agreement in its entirety; and,

WHEREAS, the Parties have reached an agreement to resolve disputes and matters between them pursuant to the terms of this Termination Agreement, and the Parties wish to execute this Agreement to memorialize their agreement and respective obligations.

NOW, THEREFORE, IN CONSIDERATION OF the mutual benefits and covenants of the Parties herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated herein as if restated fully and are hereby made an integral part hereof so that their contents are a substantive part of the Agreement.

2. **Assignment of Development Rights.**

a. *Assignment by Lowcountry.* Upon the completion of the Foreclosure Action and its acquisition of the Lowcountry at the resulting foreclosure sale, Colony shall transfer, assign, convey and deliver unto the Town's Development Rights Bank, its successors and assigns, any and all such rights as it may have to develop any part, parcel or portion of the Kent Estates Tract, together with any and all such rights for the land uses on the Kent Estates Tract that are defined in the Development Agreement and Initial Master Plan. At a minimum, the Town and Colony agree that such rights to be assigned to the Town include the right to develop two hundred and four (204) apartment dwelling units and such rights for the land uses defined in the Development Agreement and the Initial Master Plan as multi-family residential. The Parties hereby acknowledge and agree that such assignment shall be for the benefit of the Town and such transfers shall include no restrictions as to receiving zones.

b. *Assignment by New Leaf.* On the closing date, New Leaf shall transfer, assign, convey and deliver unto the Town's Development Rights Bank, its successors and assigns, any and all such rights as it may have to develop any part, parcel or portion of the Kent Estates Tract, together with any and all such rights for the land uses on the Kent Estates Tract that are defined in the Development Agreement and Initial Master Plan. At a minimum, the Town and New Leaf agree that such rights to be assigned to the Town include the right to develop up to two hundred fifty-three (253) residential dwelling units and fifty thousand (50,000 sf) square feet of Non-Residential Development density. The Parties hereby acknowledge and agree that such assignment shall be for the benefit of the Town and such transfers shall include no restrictions as to receiving zones.

c. *Assignment by NHC.* Subject to the provisions of Paragraph 7 herein and contemporaneously with the execution of this Agreement, NHC shall transfer, assign, convey and deliver unto the Town's Development Rights Bank, its successors and assigns, any and all such rights as it may have to develop any part, parcel or portion of the Kent Estates Tract, together with any and all such rights for the land uses on the Kent Estates Tract that are defined in the Development Agreement and Initial Master Plan. At a minimum, the Town, NHC and NHC Bluffton agree that such rights to be assigned to the Town include the right to develop up to sixty-nine thousand (69,000 sf) square feet of Non-Residential Development density. The Parties hereby acknowledge and agree that such assignment shall be for the benefit of the Town and such transfers shall include no restrictions as to receiving zones.

3. **Satisfaction of Financial Obligations Pursuant to Development Agreement.** In consideration of the transfer of development rights as set forth in Section 2 hereof and other good and valuable consideration, the Town shall release its lien against the Kent Estates Tract for the payment of such financial obligations as set forth in the Development Agreement, and shall release the Parties to the Development Agreement (including NHC and NHC Bluffton), their successors and assigns, of and from any all claims, demands, causes of action, suits, and debts, arising from or relating to such financial obligations owed to the Town by virtue of the Development Agreement.

4. **Conveyances of Right-of-Way to Beaufort County.** To settle, implement the settlement between the County and NHC Bluffton, and resolve all pending disputes regarding the 1st Condemnation Action and the 2nd Condemnation Action, NHC Bluffton and New Leaf, contemporaneously with the execution of this Agreement, shall donate to the County, its successors and assigns, certain rights-of-way reasonable and necessary for the completion of the widening of S.C. Highway 170, which such rights-of-ways shall be in the form and substance as attached on Exhibits A-1 and A-2. Upon the execution and recording of such rights-of-way, the County shall dismiss the 1st Condemnation Action and the 2nd Condemnation Action with prejudice.

5. **Purchase of Property by Beaufort County.** The Parties hereby agree and acknowledge that the County intends to purchase the Property for the total purchase price of _____ with closing to take place within fifteen (15) days of Colony's completion of the Foreclosure Action and Colony's acquisition of the Lowcountry Tract at the resulting foreclosure sale (herein, the "**Closing**" or the "**Closing Date**"). Upon the County's purchase of the Property, Colony shall release the Lowcountry Mortgage and the New Leaf Mortgage, and the Town and Colony shall dismiss the Foreclosure Action without prejudice.

6. **Termination of Development Agreement.** The Town, Colony, New Leaf, County and NHC Bluffton agree that the Development Agreement and all amendments thereto are hereby terminated as of the Closing Date; provided however, that the Town shall have the right to retain all payments made pursuant to the Development Agreement prior to its termination, all rights, interests and obligations to the Town, Lowcountry, New Leaf, NHC and NHC Bluffton in or to the Development Agreement are hereby terminated. Upon the termination of the Development Agreement as stated herein, NHC Bluffton shall retain its current PUD zoning and all associated rights, density entitlements, and obligations attached to its parcel under the NHC Bluffton and/or Kent Estates Master Plan, including but not limited to the right to develop sixty-nine thousand (69,000 sf) square feet of Non-Residential Development as defined in the PUD. The Town and NHC Bluffton agree and acknowledge that Open Space, as defined in the PUD, is a required land use and further acknowledge NHC Bluffton's obligation under the PUD to include at least ten (10) percent of its portion of the Kent Estates Tract as Open Space.

7. **Davis Road Agreement.** Contemporaneous with the execution of this Agreement, the Town and NHC Bluffton will execute an agreement relative to the condemnation of Davis Road, the construction of a paved portion of Davis Road and the future maintenance of Davis Road (the "**Davis Road Agreement**"). The Davis Road Agreement will also be signed by the County. The Town acknowledges that the execution of the Davis Road Agreement is a material inducement to NHC Bluffton to enter into this Agreement. The Town further agrees

and acknowledges that the Davis Road Agreement and the rights and obligations thereunder are not contingent upon the completion of all matters and obligations under this Agreement.

8. **Agreement to Cooperate.** Town agrees to cooperate and work in good faith with NHC Bluffton in the event that further action is required to allow NHC Bluffton to develop the Non-Residential square footage, including, but not limited to, adopting any necessary ordinances, including a re-zoning of the property.

9. **Termination of Other Documents.** The Town, Colony, New Leaf and NHC Bluffton agree to execute all documents necessary to terminate the Declaration, the Cost Sharing Agreement, and the NHC Declaration and all amendments thereto as of the Closing date.

10. **Escrow Agreement.** The Town, Colony, New Leaf, and NHC Bluffton shall enter into an escrow agreement (the "Escrow Agreement") to facilitate the County's purchase of the Property. The escrow agent appointed to act under the Escrow Agreement shall collect all documents and funds necessary to close the County's purchase of the Property, to transfer the development rights under the Development Agreement to the Town, to terminate the Development Agreement, the Declaration, the Cost Sharing Agreement, and the NHC Declaration, to satisfy of record the New Leaf Mortgage and the Lowcountry Mortgage, to release any liens claimed by the Town under the Development Agreement and the Declaration, and to dismiss the 1st Condemnation Action and the 2nd Condemnation Action, and disburse such documents and funds as provided for in the Escrow Agreement. Within thirty (30) days of the full execution of this Termination Agreement, the Town, Colony, New Leaf, and NHC Bluffton shall all execute counterparts of the documents necessary to transfer the development rights under the Development Agreement to the Town, and to terminate the Development Agreement, the Declaration, the Cost Sharing Agreement, and the NHC Declaration.

11. **Contingent Obligations of Colony.** The Parties acknowledge that Colony currently does not hold title to the Lowcountry Tract and that Colony's performance of its obligations under this Termination Agreement is contingent on Colony's completion of the foreclosure sale. In the event Colony does not acquire the Lowcountry Tract, the Parties will proceed with the Termination Agreement and implement its terms relative to the New Leaf Tract.

12. **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing, signed by each party.

13. **Construction of Agreement.** Each party acknowledges that it has participated in the negotiation and drafting of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto or thereto by any court by reason of such party having or being deemed to have structured, dictated, or drafted any provision in the Agreement.

14. **Successors and Assigns.** All provisions of this Agreement shall run with the land and bind and inure to the benefit of each party and each party’s respective heirs, executors, legal representatives, successors, successors in title and assigns.

15. **Merger Provision.** This Agreement contains the entire agreement between the Parties with respect to the issues set forth herein. All other discussions, proposals, agreements or offers are merged into this Agreement.

16. **Capitalized Terms.** The terms beginning in a capital letter contained herein shall have the same definition as contained in the Agreement, the Development Agreement and/or the PUD, as applicable.

WITNESSES:

NEW LEAF, LLC

By: _____

Its: _____

NATIONAL HEALTH CARE CORPORATION

By: _____

Its: _____

NHC HEALTHCARE BLUFFTON, LLC

By: _____

Its: _____

TOWN OF BLUFFTON

By: _____

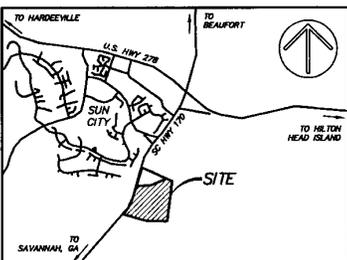
Its: _____

COLONY BANK

By: _____

Its: _____

F:\client\B\Bluffton\Kent Estates\New Leaf, LLC\Agreement to Terminate Clean 10-1-15.docx

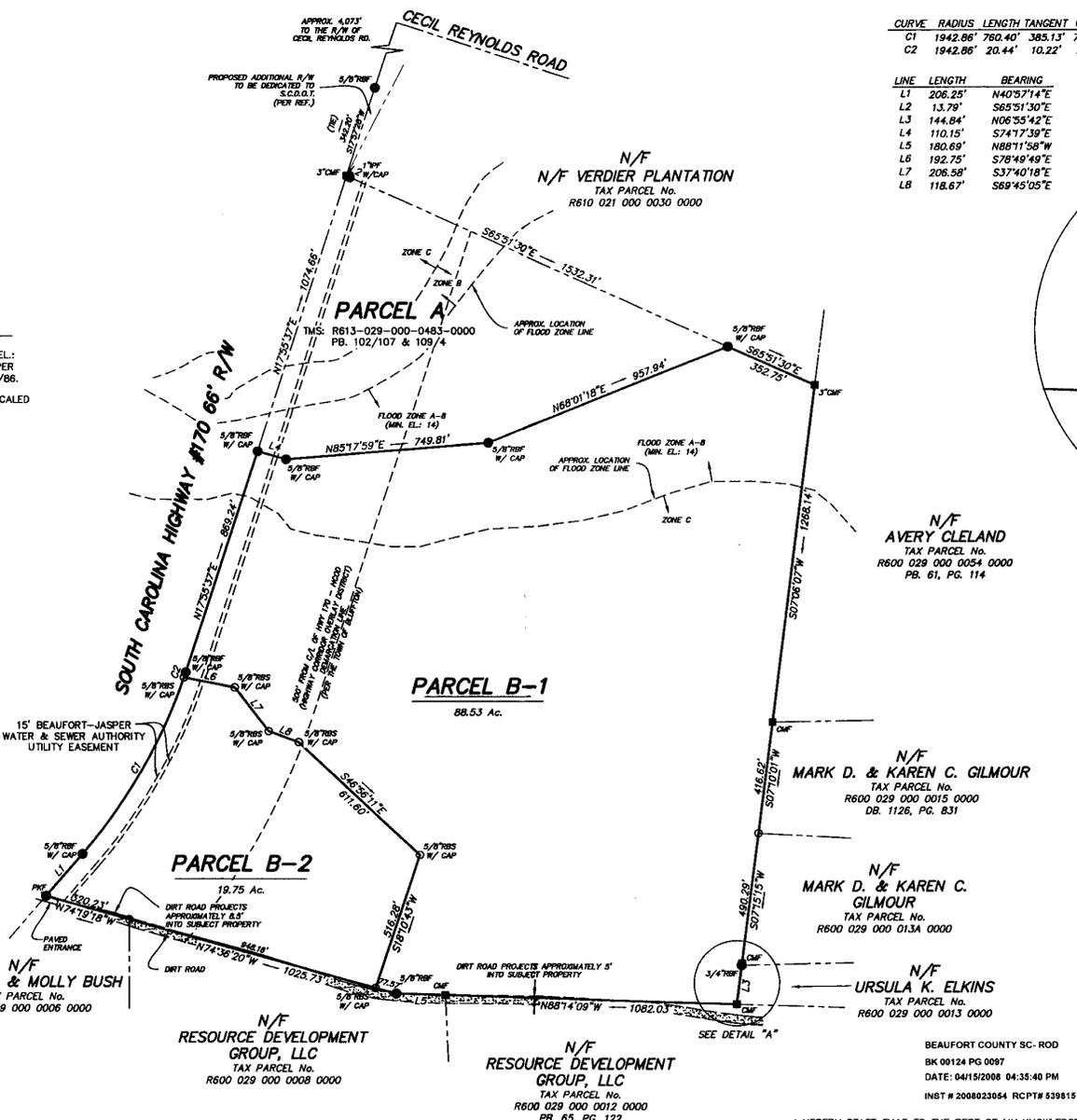


VICINITY MAP NOT TO SCALE

- NOTES:
1. THIS PROPERTY APPEARS TO LIE IN FLOOD ZONE A-B, (MIN. EL.: 14), AND IN ZONE C, NOT A SPECIAL FLOOD HAZARD AREA, PER FIRM PANEL No. 55-D, COMMUNITY No. 450025, DATED 9/28/86.
 2. FLOOD HAZARD LINES SHOWN ARE APPROXIMATE AND WERE SCALED FROM FLOOD INSURANCE RATE MAP (FIRM) PANEL No. 55-D.
 3. NOT ALL IMPROVEMENTS HAVE BEEN SHOWN.

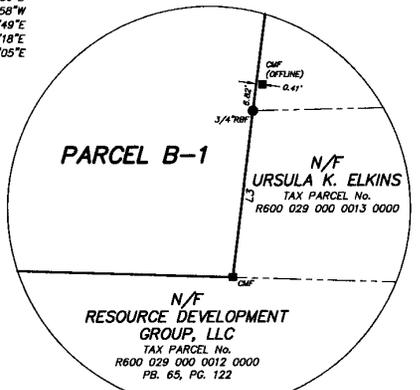
- REFERENCE:
1. "PLAT OF THE KAY FORD TRACT CONTAINING 130.8 ACRES"
DATE: 01/15/04
BY: MICHAEL JIM GARDNER, S.C.R.L.S. No. 12239
 2. "A PLAT OF PARCELS A & B S.C. HIGHWAY 170 THE KAY FORD TRACT"
DATE: 08/25/04, LAST REVISED: 11/15/04
BY: DONALD R. COOK, JR., S.C.R.L.S. No. 19010
RECORDED IN: PB. 109, PG. 4

- LEGEND:
- CMF CONCRETE MONUMENT FOUND
 - RFB IRON REBAR FOUND
 - RBS IRON REBAR SET
 - HCO HIGHWAY CORRIDOR OVERLAY DISTRICT



CURVE	RADIUS	LENGTH	TANGENT	CHORD	CH.BRG.	DELTA
C1	1942.06'	760.40'	385.13'	755.55'	N29°44'30"E	22°25'28"
C2	1942.06'	20.44'	10.22'	20.44'	N181°3'41"E	0°36'10"

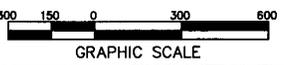
LINE	LENGTH	BEARING
L1	206.25'	N40°57'14"E
L2	13.79'	S85°51'30"E
L3	144.84'	N06°55'42"E
L4	110.15'	S74°17'38"E
L5	180.69'	N85°17'58"W
L6	192.75'	S78°40'49"E
L7	206.58'	S37°40'18"E
L8	118.67'	S89°45'05"E



Town of Bluffton
Approved
[Signature]

ACREAGE TABLE

PARCEL	ACRES
PARCEL B-1	88.53 ACRES
PARCEL B-2	19.75 ACRES
TOTAL	108.28 ACRES



WARD EDWARDS, INC.
No. 000152
No. 12239
4/14/08

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

MICHAEL JIM GARDNER
S.C.R.L.S. No. 12239
NOT VALID UNLESS COUNTERED WITH SEAL

BEAUFORT COUNTY SC. ROD
BK 00124 PG 0097
DATE: 04/15/2008 04:35:40 PM
INST # 2008023064 RCP#W 939815

A SUBDIVISION SURVEY OF
PARCELS B-1 & B-2
S.C. HIGHWAY 170
A PORTION OF THE
KAY FORD TRACT
TAX PARCEL No. R613-029-000-0023-0000
BLUFFTON TOWNSHIP, BEAUFORT COUNTY,
SOUTH CAROLINA
PREPARED FOR:
**NEW LEAF, LLC & NATIONAL
HEALTHCARE CORPORATION**



Engineering • Planning • Science • Surveying
P.O. BOX 381 138 CANAL STREET SUITE 304
BLUFFTON, SC 29910 FLORENCE, GA 31522
PH (843) 837-8200 PH (912) 330-0028
FAX (843) 837-2908 FAX (912) 330-0098
http://www.ingeniumusa.com ftp://www.ingeniumusa.com

FIELD CHECK: ECR PROJECT No.: **030731F**
OFFICE CHECK: DLJ FIELD BOOK No.: **536-11**
DRAWN BY: LAM PROJECT NAME: **030731 SD**
DATE: 04/14/08 FILE: **030731 SD4.dwg**
SCALE: 1" = 300'

D:\Land Projects\030731 SD.dwg 03/21/08 3:21:19 PM EJT

Initial Master Plan
for
Kent Estates
Beaufort County, South Carolina
March 2004 (Last Rev. July 2013)

Planning by: _____ Prepared For: _____ Engineering by: _____



- Kent Estates - General Notes:**
- Residential and Commercial areas shall be developed as fee simple lots. Lot lines and the covenants, restrictions and provisions of this plan are designed to allow for open space, tree retention, side yards setbacks and construction of on site amenities and service areas.
 - Locations and configuration of sidewalks and pathways are subject to change in accordance with the Kent Estates Planned Unit Development (KEPUD) document.
 - For purposes of this exhibit open space includes Community Recreation areas (excluding impervious parking areas), retention ponds, wetlands, perimeter buffers, parks and designated open spaces within residential neighborhoods. This plan shows an estimated 50% open space for Kent Estates, in addition each lot is required to contribute open space. The total open space exceeds the minimum requirement.
 - Final layout, uses and use locations, roadway configuration and other design elements may be adjusted at the time of final development permit application to conform to site specific condition, environmental design criteria, market conditions, final engineering and other physical constraints, as defined in the Master Plan Narrative. This plan is conceptual in nature and based on current projections. The terms of the Development Agreement, Master Plan and Master Plan Narrative shall control future development of the property as set forth in the Master Plan Narrative.
 - Density Allocations are subject to change in accordance with the Kent Estates Planned Unit Development documents. At no time may the maximum density exceed 40 residential dwelling units as stated in the Kent Estates Planned Unit Development documents.
 - All acreages are approximate, as is appropriate for the Initial Master Plan and are subject to change when land use boundaries change. These changes will be made in accordance with the Kent Estates Planned Unit Development documents.
 - The development summary is not the comprehensive listing of all allowable land uses allowed in the Kent Estates Planned Unit Development district. See the Kent Estates Planned Unit Development documents that accompany this plan for a comprehensive listing of all allowed land uses.
 - The boundary and wetland survey was prepared by Gardner Williams and Associates, surveyors in cooperation with Sigh Environmental Services. The Army Corp of Engineers has issued a letter confirming the survey. A copy of the Corp letter is included with this application.

RELEASE FOR CONSTRUCTION DATE: _____

RELEASE FOR PERMIT DATE: _____

OTHER: DATE 3/29/2004

COPYRIGHT KRA, INC. © 2004

This drawing and its reproduction are the property of the Architect and may not be reproduced, published, or used in any way without the written permission of the Architect.

NO.	DATE	REVISION
1	3/29/04	
2	3/2012	ADDED NEW S.C. 170 R/W AND NHC BOUNDARY

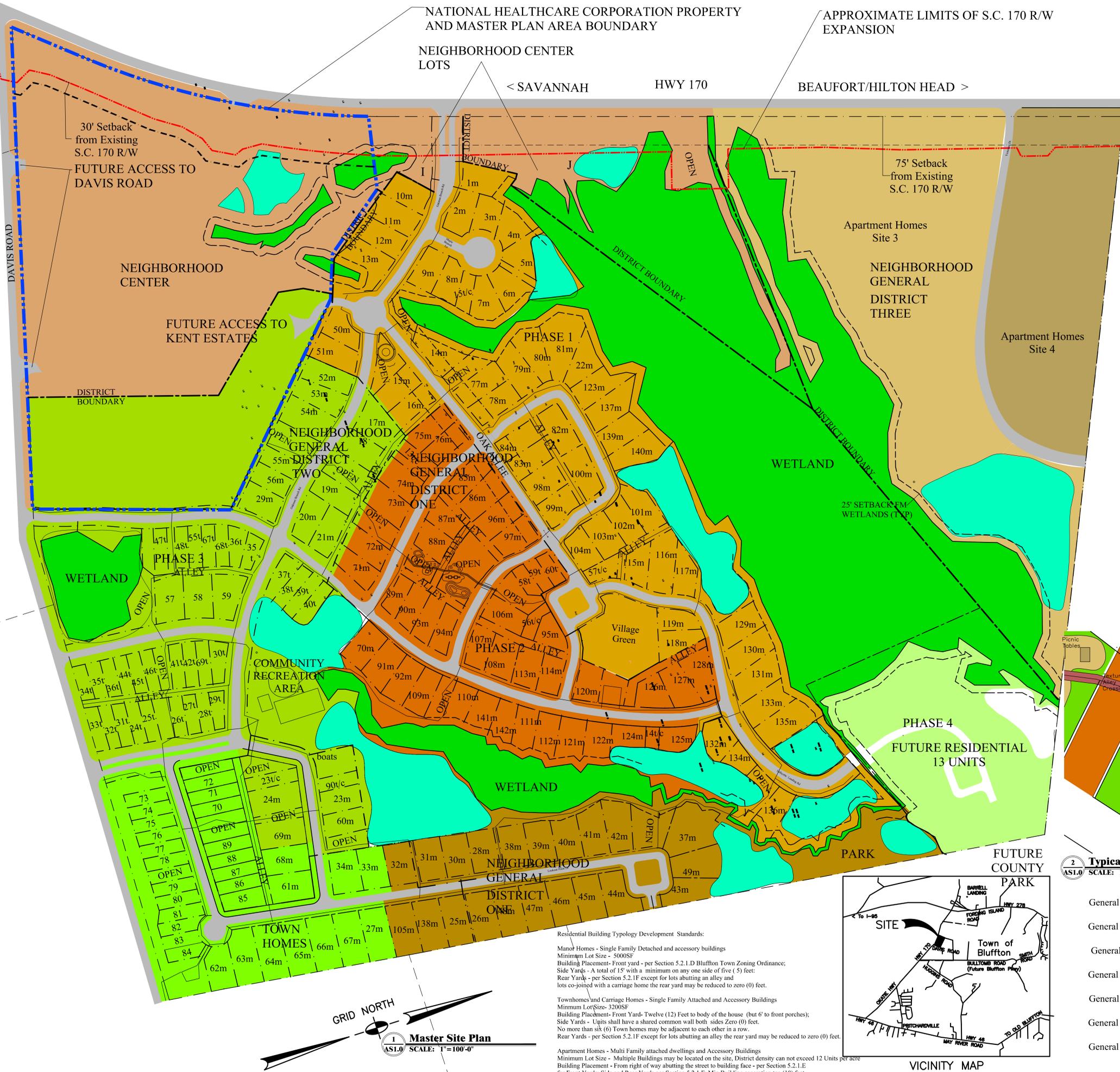
KRA, INC.
ARCHITECTURE, PLANNING AND ENGINEERING
Beaufort Towne Village
18 Oak Forest Road, Bluffton SC 29910
843/815-2021 Fax 843/815-2022
E-Mail: info@krainc.us

Kent Estates
A Touch of the Lowcountry
Highway 170 @ Sun City
Bluffton Township, SC
PREPARED FOR:
New Leaf Development, LLC

PROJECT NO: 3458
DRAWN BY: MTD
CHECKED BY: JTR

Master Site Plan

SHEET NO.
AS1.0

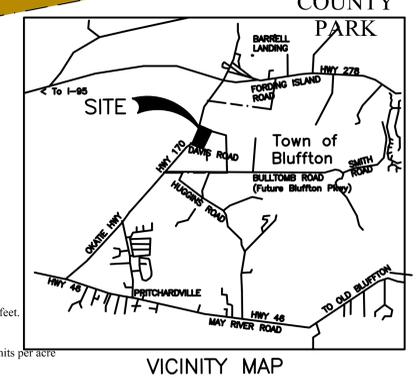


Residential Building Typology Development Standards:

Manor Homes - Single Family Detached and Accessory Buildings
Minimum Lot Size - 5000SF
Building Placement - Front yard - per Section 5.2.1.D Bluffton Town Zoning Ordinance;
Side Yards - A total of 15' with a minimum on any one side of five (5) feet;
Rear Yards - per Section 5.2.1F except for lots abutting an alley and lots co-joined with a carriage home the rear yard may be reduced to zero (0) feet.

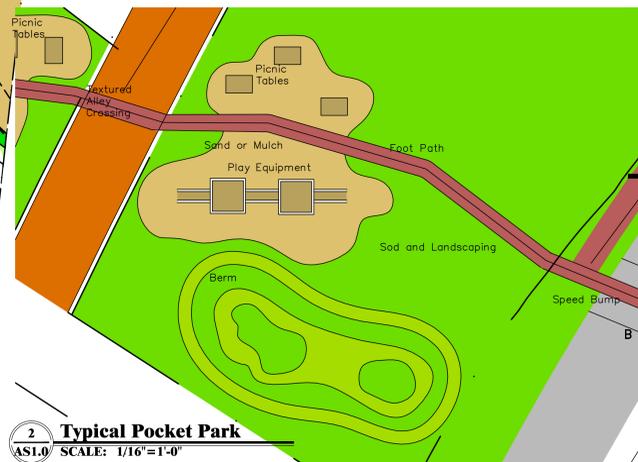
Townhomes and Carriage Homes - Single Family Attached and Accessory Buildings
Minimum Lot Size - 3200SF
Building Placement - Front Yard - Twelve (12) Feet to body of the house (but 6' to front porches);
Side Yards - Units shall have a shared common wall both sides Zero (0) feet.
No more than six (6) Town homes may be adjacent to each other in a row.
Rear Yards - per Section 5.2.1F except for lots abutting an alley the rear yard may be reduced to zero (0) feet.

Apartment Homes - Multi Family attached dwellings and Accessory Buildings
Minimum Lot Size - Multiple Buildings may be located on the site, District density can not exceed 12 Units per acre
Building Placement - From right of way abutting the street to building face - per Section 5.2.1.E for Front Yards; Side and Rear Yards per Section 5.2.1.F; Min Building separation ten (10) feet.



2
AS1.0
SCALE: 1/16"=1'-0"

General Residential 1 Phase 1	General Residential 3 Site 3
General Residential 1 Phase 2	General Residential 3 Site 4
General Residential 1 Phase 3	Neighborhood Commercial (10)
General Residential 1 Phase 4	Wetlands
General Residential 2 Phase 1	Roads
General Residential 2 Phase 2	Storm Water Retention
General Residential 2 Phase 3	



GRID NORTH
Master Site Plan
SCALE: 1"=100'-0"

Kent Estate Development Agreement Excerpt

It is acknowledged that nothing in this agreement shall be deemed or construed to affect the right of any person to seek a variance from the provisions of the Zoning Regulations in accordance with applicable state and local laws in effect at the time of the variance application.

VI. DEVELOPMENT SCHEDULE

The Property shall be developed in accordance with the development schedule, attached as Exhibit D. Pursuant to the Act, the failure of the Owner and Developer(s) to meet the development schedule shall not in and of itself, constitute a material breach of this agreement. In such event, the failure to meet the development schedule shall be judged by the totality of circumstances, including but not limited to the Owners and Developer(s) good faith efforts to attain compliance with the development schedule. These schedules are planning and forecasting tools only. The fact that actual development may take place at a different pace, based on future market forces, is expected and shall not be considered a default hereunder. Furthermore, periodic adjustments to the development schedule, which may be submitted by Owner/ Developers in the future, shall not be considered a material amendment or breach of the Agreement.

VII. DENSITY AND LAND USES

Mixed-use development on the Property shall be limited to the following:

A. **Residential Units:** A total of 449 Residential Units, including attached and detached single family, patio lots, zero lot line and multifamily condominium units, as more particularly shown and described in Exhibit C hereto, with the flexibility to adjust unit types and other development matters as set forth in the Initial Master Plan. Notwithstanding the basic maximum of 449 total residential units, an additional 8 residential units may be developed if the alternate development option is chosen in lieu of Phase IV development, as provided under the Exhibit C Initial Master Plan. In such event, the maximum residential development would become 457 units.

B. **Non-Residential Development:** A total of 119,000 sq. ft. of non-residential space, as set forth under the Initial Master Plan, with the flexibility and optional non-residential lot, as set forth in the Initial Master Plan. For the purpose of this clause, governmental service buildings and community use and recreational space, constructed solely for the residents of the property, shall not be included in the calculation of non-residential square footage.

VIII. RESTRICTED ACCESS

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

IX. EFFECT OF FUTURE LAWS

Owner and Developers shall have vested rights to undertake Development of any or all of the Property in accordance with the Zoning Regulations, as defined herein and modified hereby, and as may be modified in the future pursuant to the terms hereof, and this Development Agreement for the entirety of the Term. Future enactments of, or changes or amendments to Town ordinances, including zoning or development standards ordinances, which conflict with the Zoning Regulations shall apply to the Property only if permitted pursuant to the Act.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present or future building, housing, electrical, plumbing, gas or other standard codes, of any tax or fee of general application throughout the Town, or of any law or ordinance of general application throughout the Town found by Bluffton Town Council to be necessary to protect the health, safety and welfare of the citizens of Bluffton. Notwithstanding the above, the Town may apply subsequently enacted laws to the Property only in accordance with the Act.

X. INFRASTRUCTURE AND SERVICES

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

A. Private Roads. All roads within the property within gated communities, or for the exclusive use by Owners within the Property, shall be constructed by the Owner and / or Developers, and maintained by them and / or Owners Association, or dedicated to other appropriate entities. The Town of Bluffton will not be responsible for construction or

a. Assignee's prorated share of the cost of the constructing the Leisure Trail, as defined at Section XI (A) of the Development Agreement, said share being \$2,408.00 per year for four (4) consecutive years to timing of which to coincide with payment of the Assignor's prorated share thereof;

b. Payment of the Interim Development Fees for multi-family units and the Boat Ramp Repair Fund payment for each unit Assignee constructs upon the Property as described at Section XI (C) and (D), respectively, of the Development Agreement.

c. Assignee shall be responsible for payment to the Town of its prorated share of any charges for traffic signals pursuant to Section X (C) of the Development Agreement to a maximum obligation by Assignee of \$8,600.00.

d. The remaining costs, fees and charges due by the Assignor pursuant to the Development Agreement shall remain the responsibility of the Assignor and shall form a part of the Excluded Obligations.

Assignee acknowledges receipt of the Development Agreement and all Exhibits thereto and agrees to be bound by the terms thereof, and to develop the Property in accordance with such terms. The rights and obligations hereby assigned and assumed shall be covenants running with the land, binding upon the parties hereto and their successors and assigns.

2. Excluded Obligations This Assignment shall not include and the Assignor shall retain all such rights and obligations pursuant to the Development Agreement as follows (the "Excluded Obligations"):

a. to develop ninety (90) Townhouses and the Interim Development Fees (as defined by the Development Agreement) associated therewith;

b. to develop one hundred fifty-five (155) Manor Homes and the Interim Development Fees associated therewith;

c. to develop one hundred nineteen thousand (119,000) square feet of commercial property and the Interim Development Fees associated therewith;

d. any and all other development fees and costs not otherwise allocated between the Assignor and Assignee pursuant to the Agreement.

3. Estoppel Certificate. Pursuant to Article XVIII of the Development Agreement, the Town and Assignor hereby certify the following, to wit:

(a) that the Development Agreement, as amended, is in full force and effect,

(b) that the Development Agreement through the amendment dated August 11, 2004 has not been further amended or modified,

(c) that to the best knowledge of Town and Assignor, all parties to the Development Agreement are in full compliance with all obligations there under as of the date hereof,

(d) that to the best knowledge of Town and Assignor, no event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute an event of default under the terms of the Development Agreement,

- (e) that by its execution hereof, the Town of Bluffton confirms that the within instrument shall serve as the requisite notice under the provisions of Article XIII of the Development Agreement of transfer of the Property and hereby consents to the terms of this Partial Assignments and Assumption, and agrees that with respect to any obligations assigned by Assignor to Assignee and assumed by Assignee hereunder, the Town of Bluffton shall look solely to Assignee, not to Assignor, for performance of such obligations, and enforcement thereof by the Town.
- (f) that by its execution hereof, the Town confirms that Assignor by assigning multi family residential zoning retains all rights that Assignor may have to the single family residential and general commercial and/or neighborhood commercial and that this transfer in no way affects such rights and that the acreage associated with this transfer in no way counts against single family residential, general commercial and/or neighborhood commercial acreage rights held by Assignor.

4. Default and Enforcement of Provisions. As provided in Article XIV of the Development AGREEMENT, and, as herein provided, upon the failure of Assignor, Assignee or the Town of Bluffton to comply with the terms of the Development Agreement and the within Partial Assignment and Assumption incident to the Property, one or more of the non-defaulting parties may pursue any and all legal or equitable remedies, including a specific performance, against the defaulting party.

5. Notices. Ant notice, demand, request, consent, approval, or communication among any of the parties hereto or the Town of Bluffton shall be in writing and shall be delivered or addressed as provided under Paragraph XVII of the Development Agreement and shall be addressed as follows:

As to Assignor:

New Leaf, LLC
c/o Charles Wayne Properties, Inc.
444 Seabreeze Boulevard, Suite 1000
Daytona Beach, FL 32118
Attn: Charles Lichtigman

With a required copy to:

McNair Law Firm, P.A.
23-B Shelter Cove Lane
Suite 400
Hilton Head Island, SC 29928-3588
Attn: Walter Nester, Esquire

As to Assignee:

Dr. Paul R. Steadman
~~8805 Briarstone Lane~~ 5064 Crofton Drive
~~Waxhaw, NC 28173~~ Fort Mill, SC 29715

With a required copy to:

Daniel A. Saxon, Esquire
Novit, Scarminach & Akins, P.A.

**PO Drawer 14
Hilton Head Island, SC 29938**

As to the Town of Bluffton:

Town of Bluffton
Attn: Town Manager
P. O. Box 386
Bluffton, South Carolina 29910

With a required copy to:

Town Attorney
c/o Town of Bluffton
P.O. Box 386
Bluffton, South Carolina 29910

6. Binding Effect. This Partial Assignment and Assumption shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.
7. Governing Law. The within Partial Assumption shall be interpreted and constructed and conform to the laws of the state of South Carolina.
8. Reaffirmation of Terms. All other terms, conditions, rights and privileges contained in the Development Agreement not specifically referenced herein shall remain in full force and effect and binding upon the parties hereto and their successors and assign

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have caused this Partial Assignment and Assumption to be duly executed as of the 13 day of MARCH, 2006.

WITNESSES:

NEW LEAF, LLC d/b/a NEW LEAF DEVELOPMENT, LLC
a Delaware limited liability company

Lola L. Affolter
Notary Public

By: Charles S. Cichely
Its Manager

FLORIDA)
STATE OF ~~SOUTH CAROLINA~~)
VOLUSIA)
COUNTY OF ~~BEAUFORT~~)

ACKNOWLEDGMENT

I the undersigned Notary Public for Florida ~~South Carolina~~, do hereby certify that Charles S. Cichely as Manager of New Leaf, LLC, d/b/a New Leaf Development, LLC., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 13th day of March, 2006.

Lola L. Affolter
Notary Public for ~~South Carolina~~ Florida
My Commission Expires:



The undersigned Josh Martin, as Manager of the Town of Bluffton, and Sandra Lunceford as Town Clerk, are authorized to and hereby ratify and approve this Partial Assignment and Assumption of Rights and Obligations under the Development Agreement on behalf of the Town of Bluffton, South Carolina as of this 7th day of March, 2006.

WITNESSES:

Trinity R. Zennet

Dawn W. Goodwin

Trinity R. Zennet

Dawn W. Goodwin

Josh Martin
Josh Martin, Town Manager

Sandra Lunceford
Sandra Lunceford, Town Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, Catherine J. Carpenter Notary Public for South Carolina, do hereby certify that **Josh Martin as Town Manager and Sandra Lunceford as Town Clerk**, respectively of the Town of Bluffton, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 7th day of March, 2006.

Catherine J. Carpenter
Notary Public for South Carolina
My Commission Expires: _____ **MY COMMISSION EXPIRES FEB. 29, 2012**

(69,000) square feet of Non-Residential Development density together with such rights for the land uses on the Property that are defined in the Development Agreement and Initial Master Plan as Non-Residential Development density (the "Assigned Land Use"). Assignee shall be entitled to all of the privileges and obligations as described in the Development Agreement and the Kent Estates PUD Initial Master Plan ("Master Plan") applicable for the Assigned Land Use to the Property except for those certain excluded obligations, rights and privileges ("Excluded Obligations") identified hereinbelow. Assignee hereby assumes and agrees to perform all of Assignor's rights, privileges and obligations as described in the Development Agreement applicable to the Assigned Land Use for the Property, except for the Excluded Obligations defined hereinbelow. The Assignee shall be solely responsible for payment to the Town of the following fees associated with the Property pursuant to the Development Agreement:

- a. Assignee's prorated share (15.104%) of the cost of constructing the Leisure Trail, as defined at Section XI (A) of the Development Agreement, said share being Two Thousand One Hundred Fourteen and 56/100 Dollars (\$2,114.56) per year, the timing of which to coincide with payment of the Assignor's prorated share thereof;
- b. Assignee's prorated share (15.104%) of the Fee in Lieu of Taxes applicable to the Property as described and due pursuant to Section XI.F of the Development Agreement, said share being Ten Thousand Five Hundred Seventy-Two and 80/100 Dollars (\$10,572.80) per year;
- c. Assignee shall be responsible for payment to the Town of the Property's prorated share (15.104%) of any charges for traffic signals pursuant to Section X (C) of the Development Agreement; and
- d. Assignee shall be responsible for payment to the Town of the Property's prorated share (15.104%) of administration charges for necessary planning pursuant to Section XI.B of the Development Agreement, said share being Six Thousand Six Hundred Forty-Five and 76/100 Dollars (\$6,645.76) per year.
- e. Assignee shall be responsible for payment to the Town of Interim Development Fees for the Assigned Land Use pursuant to Section XI(C) of the Development Agreement.

Assignee acknowledges receipt of the Development Agreement and all Exhibits thereto and agrees to be bound by the terms thereof and to develop the Property in accordance with such terms. The rights and obligations hereby assigned and assumed shall be covenants running with the land, binding upon the parties hereto and their successors and assigns.

2. Excluded Obligations. This Assignment shall not include and the Assignor shall retain all such rights and obligations pursuant to the Development Agreement as follows (the "Excluded Obligations"):
 - a. to develop up to two hundred fifty-three (253) Residential Units and the Interim Development Fees (as defined by the Development Agreement) associated therewith;
 - b. to develop fifty thousand square feet (50,000 sf) of Non-Residential Development density and the Interim Development Fees associated therewith;

- c. to develop two hundred four (204) apartment dwelling units and the Interim Development Fees associated therewith, which Assignor has already assigned to Lowcountry Evergreen, LLC by virtue of the Partial Assignment and Assumption of Rights and Obligations under the Development Agreement dated March 13, 2006 and recorded in the Beaufort County ROD Office in Book 2341, at Page 1489;
 - d. any and all other development fees and costs not otherwise allocated between the Assignor and Assignee pursuant to the Agreement.
3. Estoppel Certificate. Pursuant to Article XVIII of the Development Agreement, the Town and Assignor hereby certify the following, to wit:
- (a) that the Development Agreement, as amended, is in full force and effect;
 - (b) that the Development Agreement through the amendment dated August 11, 2004 has not been further amended or modified;
 - (c) that to the best knowledge of Town and Assignor, all parties to the Development Agreement are in full compliance with all obligations thereunder as of the date hereof;
 - (d) that to the best knowledge of Town and Assignor, no event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute an event of default under the terms of the Development Agreement;
 - (e) that by its execution hereof, the Town of Bluffton confirms that the within instrument shall serve as the requisite notice under the provisions of Article XIII of the Development Agreement of transfer of the Property and hereby consents to the terms of this Partial Assignment and Assumption, and agrees that with respect to any obligations assigned by Assignor to Assignee and assumed by Assignee hereunder, the Town of Bluffton shall look solely to Assignee, not to Assignor, for performance of such obligations, and enforcement thereof by the Town;
 - (f) that by its execution hereof, the Town confirms that Assignor by assigning the Assigned Land Use for the herein described portion of the Non-Residential Development zoning to Assignee, Assignor nevertheless retains all rights that Assignor may have to the Residential Units and the remaining fifty thousand square feet (50,000 sf) of Non-Residential Development zoning and that this transfer in no way affects such rights and that the acreage associated with this transfer in no way counts against the Residential and/or the remaining fifty thousand square feet (50,000 sf) of Non-Residential Development acreage rights held by Assignor.
4. Default and Enforcement of Provisions. As provided in Article XIV of the Development Agreement, and, as herein provided, upon the failure of Assignor, Assignee or the Town of Bluffton to comply with the terms of the Development Agreement and the within Partial Assignment and Assumption incident to the Property, one or more of the non-defaulting parties may pursue any and all legal or equitable remedies, including a specific performance, against the defaulting party.

- S. Notices. Any notice, demand, request, consent, approval, or communication among any of the parties hereto or the Town of Bluffton shall be in writing and shall be delivered or addressed as provided under Paragraph XVII of the Development Agreement and shall be addressed as follows:

As to Assignor: New Leaf, LLC
c/o Charles S. Lichtigman
444 Seabreeze Blvd, Suite 1000
Daytona Beach, FL 32118

With a required copy to: McNair Law Firm, P.A.
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928-3588
Attn: Walter Nester, III

As to Assignee: National HealthCare Corporation
Thomas B. Campbell, CCIM
Director of Development
100 Vine Street
Murfreesboro, TN 37130

With a required copy to: John K. Lines
Senior Vice President and General Counsel
National HealthCare Corporation
100 Vine Street
Murfreesboro, TN 37130

With a required copy to: Moore & Van Allen, PLLC
40 Calhoun Street, Suite 300
Charleston, SC 29401
Attn: D. Carlyle Rogers

As to the Town of Bluffton: Town of Bluffton
Attn: Town Manager
P.O. Box 386
Bluffton, SC 29910

With a required copy to: Town Attorney
c/o Town of Bluffton
P.O. Box 386
Bluffton, SC 29910

6. Binding Effect. This Partial Assignment and Assumption shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.
7. Governing Law. The within Partial Assumption shall be interpreted and constructed and conform to the laws of the state of South Carolina.
8. Reaffirmation of Terms. All other terms, conditions, rights and privileges contained in the Development Agreement not specifically referenced herein shall remain in full force and effect and binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Partial Assignment and Assumption to be duly executed as of the 16th day of April, 2008.

WITNESSES:

NEW LEAF, LLC

Debra K. Rouse
Debra K. Rouse

By: Kent Estates Investors, LLC, Its Manager

By: *Charles S. Lichtigman*
Charles S. Lichtigman, Manager

STATE OF SC)
COUNTY OF Beaufort)

ACKNOWLEDGEMENT

I, Debra K. Rouse, a Notary Public for said County and State, do hereby certify that Charles S. Lichtigman, the Manager of Kent Estates Investors, LLC, the Manager of New Leaf, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 16th day of April, 2008.

Debra K. Rouse (SEAL)
Notary Public For S.C.
My commission expires: 3-4-2014

IN WITNESS WHEREOF, the parties have caused this Partial Assignment and Assumption to be duly executed as of the 21st day of April, 2008.

WITNESSES: <u>Thomas B. Campbell</u> <u>Chen Wu</u>	NATIONAL HEALTHCARE CORPORATION By: <u>Stephen J. Platt</u> Name: <u>Stephen J. Platt</u> Its: <u>Senior Vice President Development</u>
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STATE OF Tennessee)
COUNTY OF Reaherford)

ACKNOWLEDGEMENT

I, Barbara Harris, a Notary Public for said County and State, do hereby certify that Stephen J. Platt, as Senior VP - Development of National HealthCare Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 21st day of April, 2008.

Barbara Harris (SEAL)
Notary Public For _____
My commission expires: 8-24-11

Exhibit "A"

Property Description

All that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, being shown and designated as PARCEL B-2 on a plat entitled "A SUBDIVISION SURVEY OF PARCELS B-1 & B-2 S.C. HIGHWAY 170 A PORTION OF THE KAY FORT TRACT TAX PARCEL NO. R613-029-000-0023-0000 BLUFFTON TOWNSHIP, BEAUFORT COUNTY, SOUTH CAROLINA PREPARED FOR: NEW LEAF, LLC & NATIONAL HEALTHCARE CORPORATION" prepared by Ward Edwards, Inc., certified by Michael Jim Gardner, S.C.P.L.S. No. 12239 dated April 14, 2008 and recorded on April 15, 2008 in the ROD Office for Beaufort County in Plat Book 124 at Page 97; said tract has such size, shape, metes, bounds and dimensions as are shown on said plat.