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Shawn W. Bunn
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

FIRST AMENDMENT TO THE
NEW RIVERSIDE CONCEPT PLAN

THIS FIRST AMENDMENT TO THE NEW RIVERSIDE CONCEPT PLAN dated this day, March 9, 2005, is entered into by and between NEW RIVERSIDE, LLC, a South Carolina limited liability company, and the TOWN OF BLUFFTON, SOUTH CAROLINA ("Town").

WITNESSETH:

WHEREAS, on the 21st day of June, 2000, a Development Agreement ("Jones Development Agreement") was entered into by and between New River Farms, L.P., Holly Branch Farms, L.P., Jones Associates, Ltd., Barbara J. Bailey Limited Partnership, Dorothy R. Zetterower, Christopher C. Ryals and Lillian R. Stephenson (collectively, the "Jones Family") and the Town, which said Jones Development Agreement was recorded on the 24th day of July, 2000, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Records Book 1315 at Page 1099; and

WHEREAS, on the 23rd day of November, 1998, a Development Agreement ("Palmetto Bluff Development Agreement") was entered into by and between Union Camp Corporation and the Town, which said Palmetto Bluff Development Agreement was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Records Book 1113 at Page 1085; and

WHEREAS, on the 10th day of June, 2004, the Town adopted Ordinance Number 2004-09 entitled "An Ordinance to Amend the Jones Tract Development Agreement" and Ordinance Number 2004-10 entitled "An Ordinance to Amend the Palmetto Bluff Tract Development Agreement", which ordinances provided for the amending of the Jones Development Agreement and the Palmetto Bluff Development Agreement, respectively, to allow for the orderly and consolidated development of New Riverside under an Amended Concept Plan attached thereto, said Amended Concept Plan being dated the 21st day of May, 2004 and revised on the 7th day of June, 2004 ("New Riverside Concept Plan")

WHEREAS, on the 25th day of August, 2004, the First Amendment to the Jones Development Agreement and the Palmetto Bluff Development Agreement ("First Amendment to the Development Agreements") was entered into by and between New Riverside, LLC, and the Town, which was recorded on the 10th day of December, 2004, in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Records Book 2065 at Page 1784 (the Jones Development Agreement, the Palmetto Bluff Development Agreement, and the First Amendment to the Development Agreements are collectively referred to herein as the "Development Agreements"); and

WHEREAS, pursuant to Section 6 of said First Amendment to the Development Agreements, the development of New Riverside shall be undertaken in accordance with the above described ordinances

and the New Riverside Concept Plan, including all narratives, site development standards, Zoning Regulations, schedules and exhibits, including the New Riverside Land Use Master Plan included therein; and

WHEREAS, pursuant to Section 8 of said First Amendment to the Development Agreements, the New Riverside Concept Plan may be modified or amended only by written agreement of the Town and New Riverside, LLC; and

WHEREAS, New Riverside, LLC, Palmetto Bluff Development, LLC, Palmetto Bluff Uplands, LLC, and the Town have agreed to address mutual concerns with regard to the adequacy of roads and infrastructure to accommodate recent and projected growth throughout the greater Bluffton area by entering into this First Amendment to the New Riverside Concept Plan and the Second Amendment to the Palmetto Bluff Development Agreement (to be executed simultaneously herewith); and

WHEREAS, on the 9th day of March, 2005, the Town of Bluffton adopted Ordinance Number 2005-07 entitled "An Ordinance to Amend the New Riverside Concept Plan", so as to reflect and provide for the following amendments to the New Riverside Concept Plan;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy whereof is herewith acknowledged, New Riverside, LLC, and the Town do hereby agree to the following Amendments to the New Riverside Concept Plan, to wit:

1. The above recitals are incorporated herein.
2. The following provision shall be added to the New Riverside Concept Plan as Section One, Paragraph 11:

No new Initial Master Plans for developments shall be submitted to the Town for New Riverside or Palmetto Bluff prior to June 1, 2005.

3. The following provision shall be added to the New Riverside Concept Plan as Section One, Paragraph 12:

New Riverside, LLC, reaffirms its commitment pursuant to Section 3 of the New Riverside Concept Plan for the planning, development, and maintenance of the Roundabout at the intersection of Hwy. 170 and Hwy. 46. It is anticipated that the Roundabout shall be completed within five (5) years from the date hereof, subject to delays that are not within the control of New Riverside, LLC.

4. The following provision shall be added to the New Riverside Concept Plan as Section One, Paragraph 13:

In order to protect and preserve the scenic highway status of S.C. Hwy. 46, on behalf of itself, Palmetto Bluff Development, LLC, and Palmetto Bluff Uplands, LLC, New Riverside, LLC, shall donate to the Town a sum not to exceed Fifteen Thousand Dollars (\$15,000.00) to fund the appropriate studies and application for the designation of S.C. Hwy. 46 as a Federal Scenic Highway.

5. The following provision shall be added to the New Riverside Concept Plan as Section One, Paragraph 14:

It is expressly agreed and understood that the total combined residential density on Tracts 1, 2, 3, 4A, 4B, 5A, 5B and 6A and 6B, as shown on the New Riverside Land Use Master Plan originally dated March 30, 2004, most recently revised on June 7, 2004, prepared by Thomas & Hutton Engineering Co., shall not exceed Two Thousand Seven Hundred Thirty-one (2,731) residential dwelling units.

6. The following provision shall be added to the New Riverside Concept Plan as Section One, Paragraph 15:

The Development Agreements contemplated and provided for the future need for additional roads and community infrastructure to accommodate growth. The Town has expressed concern as to the adequacy of roads and infrastructure to accommodate recent and projected growth, and in response thereto, New Riverside, LLC and the Town have agreed that, in addition to the mitigation already provided for in the Development Agreements, all existing development and future growth within New Riverside and Palmetto Bluff shall be mitigated (except for site-specific project mitigation associated with specific projects that are within the jurisdiction of the Town and allowed under the appropriate Development Standards Ordinance applicable to New Riverside and Palmetto Bluff) by the following contributions and/or donations:

- a. a one time grant to the Town of One Million Five Hundred Thousand and No/100 (\$1,500,000.00) Dollars to be used by the Town or any other appropriate governmental entity directly or as a part of a financing plan for the construction of Bluffton Parkway;
- b. the donation of Parcel 1 as shown on the New Riverside Land Use Master Plan, containing 42.02 acres, for the use by the Town as a park, providing pedestrian access to the Linear Trail and the New River, in satisfaction of that certain obligation as contained in Section IX, B (page 11) of the Palmetto Bluff Development Agreement requiring Owner to donate no less than ten (10) acres of high land for a park;
- c. a Municipal Improvement Development Fee (MIDF) in the amount of Nine Hundred and 00/100 (\$900.00) Dollars per residential dwelling unit in New Riverside (excluding Parcels 2 and 3) shall be paid to the Town for the purpose of municipal improvements including, but not being limited to, traffic and other infrastructure impacts, parks and open spaces within the Town. All MIDFs shall be paid at the time of issuance of a building permit for each residential dwelling unit within New Riverside for as long as the Town is in compliance with the terms hereof and those of the Development Agreements as amended by the Second Amendment to the Palmetto Bluff Development Agreement. The guaranteed minimum and the maximum amount to be paid to the Town as MIDFs shall be \$3.7 Million Dollars, and in the event that the Town has not collected \$3.7 Million Dollars within seven (7) years, New Riverside, LLC, shall pay the difference between the total amount that has been collected and \$3.7 Million Dollars in complete satisfaction of all obligations hereunder. After the Town collects \$3.7 Million Dollars, any MIDFs collected thereafter shall be paid to New Riverside, LLC.

7. It is hereby specifically acknowledged and agreed that the agreements, restrictions, donations, grants, and MIDFs, as set forth in this First Amendment to the New Riverside Concept Plan, and the Second Amendment to the Palmetto Bluff Development Agreement, shall serve as mitigation assistance for the greater Bluffton area for present and future traffic infrastructure impacts within the Town arising as a result of the development of New Riverside and Palmetto Bluff. Notwithstanding any provisions to the contrary, if any, contained in the Development Agreements, from and after the date hereof, the Town may seek, request, or demand (directly or indirectly) any additional contributions of money, assessments, impact or other fees or development right concessions ("New Taxes") from New Riverside and/or Palmetto Bluff only if enacted pursuant to and in accordance with S.C. Code §6-31-80(B) (as amended) and the applicable Tax Enabling Ordinance or State Statute. This limitation on New Taxes shall not include site-specific project mitigation associated with specific projects that are within the jurisdiction of the Town and allowed under the appropriate Development Standards Ordinance applicable to New Riverside and Palmetto Bluff. For a period of seven (7) years from the date hereof, in the event the Town establishes any New Taxes within New Riverside or Palmetto Bluff in accordance with S.C. Code §6-31-80(B) (as amended) and the applicable Tax Enabling Ordinance or State Statute, the amount of any such New Taxes shall be offset against the MIDFs, thereby reducing the Nine Hundred and 00/100 (\$900.00) Dollars per Residential Dwelling Unit MIDF by the amount of the per unit or per lot New Taxes. In the event the Town enacts New Taxes during the seven (7) year period, the combination of such New Taxes and MIDF's will be guaranteed to be no greater than, but no less than, \$3.7 Million Dollars over the seven (7) year period. New Riverside, LLC, Palmetto Bluff Development, LLC, and Palmetto Bluff Uplands, LLC, guarantee to pay the Town any shortfall from the \$3.7 Million Dollars once all MIDF's and/or New Taxes collected over the seven (7) years are reconciled. New Riverside, LLC, Palmetto Bluff Development, LLC, and Palmetto Bluff Uplands, LLC, shall use best efforts to cooperate with the Town with regard to the establishment of any tax increment financing districts that include New Riverside, Palmetto Bluff, and other undeveloped portions of nearby properties within the Town to be served by the improvements funded by such tax increment financing district.
8. It is hereby specifically acknowledged and agreed that the agreements, restrictions, donations, grants, and MIDFs, as set forth in this First Amendment to the New Riverside Concept Plan and the Second Amendment to the Palmetto Bluff Development Agreement, shall serve as mitigation assistance for the greater Bluffton area for present and future traffic infrastructure impacts within the Town arising as a result of the development of New Riverside and Palmetto Bluff. Notwithstanding any other provisions to the contrary, if any, contained in the Development Agreements, from and after the date hereof, the Town may impose, request, legislate, or demand, directly or indirectly (through ordinance, regulation, emergency regulation, or Development Standards), any further conditions, limitations, slow-down or other infrastructure or traffic related permit controls, or any other restrictions relative to the timing or issuance of development or building permits for development within Palmetto Bluff or New Riverside, including any limitations or restrictions on the issuance of development or building permits based on differences between the actual pace of development and the Development Schedules attached to the respective Development Agreements, only if enacted pursuant to and in accordance with S.C. Code §6-31-80(B) and (C) (as amended). Subject only to the Development Standards as contained within the Development Agreements and to S.C. Code §6-31-80(B) and (C) (as amended), New Riverside, LLC (its affiliates, subsidiaries, successors and assigns), shall have the unrestricted right (subject only to the terms contained herein) to develop Four Thousand Seven Hundred Thirty-One (4,731) residential dwelling units in New Riverside; and Palmetto Bluff Development, LLC, and Palmetto Bluff Uplands, LLC (their affiliates, subsidiaries, successors and assigns), shall

have the unrestricted right (subject only to the terms contained herein) to develop Two Thousand Nine Hundred Twenty (2,920) residential dwelling units in Palmetto Bluff, in addition to the respective rights for commercial development as provided for in the Development Agreements.

9. The matters and provisions contained in the New Riverside Concept Plan, as amended hereby, are consistent with the Town's Comprehensive Plan, as well as the Town's long-range planning for traffic, wetland protection and other planning goals.
10. The right and authority of New Riverside, LLC, to amend the New Riverside Concept Plan as set forth herein is reaffirmed.
11. All terms and conditions of the New Riverside Concept Plan not specifically amended herein shall remain in full force and effect.
12. The New Riverside Concept Plan, as amended hereby, may be modified or amended only by written agreement of the Town and New Riverside, LLC. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or affect an abandonment of the New Riverside Concept Plan or this amendment thereto, 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.
13. This First Amendment to the New Riverside Concept Plan 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.
14. This First Amendment to the New Riverside Concept Plan is binding upon the parties, their respective heirs, successors and assigns.

**[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY]
[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, New Riverside, LLC, and the Town do hereby set their hands and seals as of the day and year first above-written.

Signed, sealed and delivered in the presence of:

[Signature]
Witness
Margaret A. Callahan
Witness

NEW RIVERSIDE, LLC
f/k/a Palmetto Bluff Mainland, LLC

By: William G. Peacher
William G. Peacher
Chief Operating Office/General Manager

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

ACKNOWLEDGMENT

The undersigned notary public does hereby certify that William G. Peacher, as Chief Operating Officer/General Manager of New Riverside, LLC, a South Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 16th day of March, 2005.

Margaret A. Callahan
Notary Public for County of Beaufort
My commission expires August 16, 2014

Signed, sealed and delivered in the presence of:

Yvette Clifton
Witness
Geneva Taylor
Witness

TOWN OF BLUFFTON,
SOUTH CAROLINA

Henry E. Johnston
Henry E. Johnston, Mayor
Town of Bluffton, SC

Attest: Sandra Lunceford
Sandra Lunceford, Town Clerk
Town of Bluffton, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

ACKNOWLEDGMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that HENRY E. JOHNSTON, as Mayor of the Town of Bluffton, and SANDRA LUNCEFORD, as Town Clerk of the Town of Bluffton, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 14th day of March, 2005.

Catherine J. Carpenter
Notary Public for County of Beaufort
My commission expires 2/28/12