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BEAUFORT COUNTY SC - ROD
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REC'D BY P GREENE RCPT# 347691

STATE OF SOUTH CAROLINA SECOND AMENDMENT TO THE
COUNTY OF BEAUFORT NEW RIVERSIDE
CONCEPT PLAN

THIS SECOND AMENDMENT TO THE NEW RIVERSIDE CONCEPT PLAN, dated this day, June 8, 2005 is entered into by and between CP APEX, LLC, a Georgia limited liability company, LANIER APEX DEVELOPMENT, LLC, a Georgia limited liability company, (together referred to herein as "Owner") 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, LP., 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"); and

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, or its successors and assigns; and

WHEREAS, in a series of conveyances, assignments and assumptions, Owner became "Owner" under the Jones Development Agreement relative to Tracts 2 and 3 of the New Riverside Concept Plan; and

WHEREAS, Owner 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 Second Amendment to the New Riverside Concept Plan; and

WHEREAS, on the 8th day of June, 2005, the Town of Bluffton adopted Ordinance Number 2005-11 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, Owner who has volunteered to enter into this Amendment, 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 13:

In order to protect and preserve the scenic highway status of S. C. Hwy 46, on behalf of the Town, Owners agree to donate to the Town a sum not to exceed Four Thousand Nine Hundred Seventy Dollars (\$4,970.00) to fund the appropriate studies and application for the designation of S.C. Hwy 46 as a Federal Scenic Highway.

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, the Town and the Owners have graciously 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 Municipal Improvement Development Fee (MIDF) in the amount of Nine Hundred and 00/100 (\$900.00) Dollars per residential dwelling unit in New Riverside (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

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time of issuance of a building permit for each residential dwelling unit within Heritage at 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, which compliance includes but is not limited to, no moratoriums or delays by the Town or any agency thereof in issuing permits, plat approvals, certificates of occupancies or any other permits or certificate required for the building and completion of 905 homes or other improvements on Owner's Property (other than for substantive non compliance with existing regulations and laws). The guaranteed minimum and the maximum amount to be paid to the Town as MIDFs shall be \$814,500.00 Dollars, and in the event that the Town has not collected \$814,500.00 Dollars within ten (10) years, Owner shall pay the difference between the total amount that has been collected and \$814,500.00 Dollars in complete satisfaction of all obligations hereunder. After the Town collects \$814,500.00 Dollars from the Owner's Property during the next ten years from New Taxes (as hereinafter defined) or MIDFs, any MIDFs collected thereafter shall be paid to Owner.

3. It is hereby specifically acknowledged and agreed that the agreements, restrictions, donations, grants, and MIDFs, as set forth in this Second Amendment to the New Riverside Concept Plan 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 ten (10) 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 (the "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. Provided however, the Offset shall not apply to any tax levied under a Municipal Tax District so long as the tax does not exceed Seventy Five and 00/100 (\$75.00) per residential lot per year. In the event the Town enacts New Taxes during the ten (10) year period, the combination of such New Taxes and MIDFs will be guaranteed to be no greater than, but no less than, Eight Hundred Fourteen Thousand Five Hundred and 00/100 (\$814,500.00) dollars over the ten (10) year period. Owner guarantees to pay the Town any shortfall from the Eight Hundred Fourteen Thousand Five Hundred and 00/100 (\$814,500.00) Dollars once all MIDFs and or New Taxes collected over the ten (10) years are reconciled. Owner 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.
4. It is hereby specifically acknowledged and agreed that these agreements, restrictions, donations, grants, and MIDFs, as set forth in this Second Amendment to the New Riverside Concept Plan shall serve as mitigation assistance for the greater Bluffton

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area for present and future traffic infrastructure impacts within the Town arising as a result of the development of New Riverside and Palmetto Bluff, and Owner has volunteered to make the contributions set forth herein to aid in the mitigation of the impact. 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 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), Owner (its affiliates, subsidiaries, successors and assigns), shall have the unrestricted right (subject only to the terms contained herein) to develop Nine Hundred Five (905) residential dwelling units in Tracts 2 and 3, New Riverside, in addition to the respective rights for commercial development as provided for in the Development Agreements.

5. That certain Declaration of Covenants, Conditions and Restrictions for Palmetto Bluff originally dated the 29th day of June 2000, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Official Records Book 2076 at Page 881, shall be amended as appropriate.
6. The combined status of CP Apex, LLC and Lanier Apex Development, LLC, as "Owner" under the New Riverside Concept Plan, as stated herein, and their right and authority to enter into this Second Amendment to the New Riverside Concept Plan is reaffirmed.
7. The matters and provisions contained in the New Riverside Concept Plan as previously amended and 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.
8. All terms and conditions of the New Riverside Concept Plan not previously amended or specifically further amended herein shall remain in full force and effect.
9. This Second 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.
10. This Second Amendment to the New Riverside Concept Plan is binding upon the Town and its respective successors and assigns, and Owner and their respective successors and assigns in title to any portion of Owner's Property, though the obligation to donate the sum under Section 2 herein as well as the obligation to make up the shortfall or receive any excess per Sections 3(a) and 4 herein shall be binding upon Owner and only upon the successors or assigns in title who acknowledge in writing the obligations set forth herein.

N WITNESS WHEREOF, Owner and the Town do hereby set their hands and seals as of the day and year first above-written.

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TOWN OF BLUFFTON

Signed, sealed and delivered
in the presence of:

By: Joshua Lange Martin (SEAL)
Joshua Lange Martin, AICP, CNU
Town Manager

[Signature]
Witness
Dawn Woodson
Witness

Attest: Sandra Lunceford (SEAL)
Sandra Lunceford, Town Clerk

State of South Carolina
County of Beaufort

I, Catherine J. Carpenter, a Notary Public of the County and State aforesaid, certify that
Joshua Martin personally came before me this day and in the presence of the two witnesses
named above, acknowledged that he/she is Manager of the Town of Bluffton, South Carolina,
and that by authority duly given by the Town of Bluffton, he/she acknowledged the due execution of the
foregoing instrument.

Witness my hand and official stamp or seal, this 16th day of June, 2005,

My Commission Expires: 2/29/2012

Catherine J. Carpenter
Notary Public
(Notary Seal)

CP Apex, LLC, a Georgia limited liability
company

[Signature]
Witness
Lauren C. Hoxum
Witness

By: T. Kevin Reece (SEAL)
T. Kevin Reece, Manager

State of South Carolina
County of Beaufort

I, Rhonda Waghorn, a notary Public of the County and State aforesaid, certify that
T. Kevin Reece personally came before me this day and in the presence of the two witnesses
named above, acknowledged that he is Manager of CP Apex, LLC, a Georgia limited liability company,
and that by authority duly given and as a fact of the company, he acknowledged the due execution of the
foregoing instrument.

Witness my hand and official stamp or seal, this 22nd day of June, 2005,

My Commission Expires: 4-23-06

Rhonda Waghorn
Notary Public
(Notary Seal)

Lanier Apex Development, LLC, a
Georgia limited liability company

By: [Signature] (SEAL)
J. David Odom, Manager

[Signature]
Witness
[Signature]
Witness

State of South Carolina
County of Beaufort

I, Rhonda Weigman, a notary Public of the County and State aforesaid, certify that
J. David Odom personally came before me this day and in the presence of the two witnesses
named above, acknowledged that he is Manager of Lanier Apex Development, LLC, a Georgia limited
liability company, and that by authority duly given and as a fact of the company, he acknowledged the due
execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 22nd day of June, 2005,

My Commission Expires: 4-23-06

[Signature]
Notary Public
(Notary Seal)