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AGENDA

NATURAL RESOURCES COMMITTEE

Monday, November 1, 2010

2:00 p.m.

Executive Conference Room
Administration Building

Committee Members:
Paul Sommerville, Chairman
Jerry Stewart, Vice-Chairman
Steven Baer
Gerald Dawson
Brian Flewelling
William McBride
Stu Rodman

Staff Support: Tony Criscitiello

2:00 p.m. 1. CALL TO ORDER

- 2. ADOPTION OF THE 2010 BEAUFORT COUNTY COMPREHENSIVE PLAN (A COMPILATION OF PREVIOUSLY APPROVED UPDATED ELEMENTS, A NEW INTRODUCTION AND HISTORY CHAPTER, AND ALL OF THE 1997 COMPREHENSIVE PLAN APPENDICES) (memo)
3. CONSIDERATION OF DEVELOPMENT AGREEMENT IN CONJUNCTION WITH REQUEST FOR EXTENSION OF THE GREENHEATH PLANNED UNIT DEVELOPMENT (PUD), INVOLVING 97.80 ACRES ON LADY'S ISLAND; OWNER/APPLICANT: GLEASON PLACE LP (development agreement)
4. REQUEST FOR EXTENSION OF THE GREENHEATH PLANNED UNIT DEVELOPMENT (PUD), INVOLVING 97.80 ACRES ON LADY'S ISLAND; OWNER/APPLICANT: GLEASON PLACE LP (backup)
5. CONSIDERATION OF REAPPOINTMENTS AND VACANCIES
• Southern Corridor Review Board

6. ADJOURNMENT

Table with 2 columns: Day, Time. Title: County TV Rebroadcast

Table with 3 columns: Date, Time, Location. Title: Natural Resources

A quorum of Council may be in attendance at all Committee meetings.
Please silence your cell phone during the meeting.



MEMORANDUM

TO: Natural Resources Committee of Beaufort County Council
FROM: Anthony Criscitiello, Beaufort County Planning Division
DATE: October 26, 2010
SUBJECT: 2010 Comprehensive Plan

PLANNING COMMISSION RECOMMENDATION from its October 4, 2010, draft meeting minutes:

Chairman Hicks noted that the 2007 Comprehensive Plan was adopted in a progressive manner, with elements adopted separately over a number of years. All but three chapters have been approved by County Council to date. The Plan will be forwarded in total to the Natural Resources Committee and on to County Council.

Mr. Anthony Criscitiello, the County Planning Director, briefed the Commission. He reiterated Chairman Hick's comments. He passed the floor to Mr. Robert Merchant, Beaufort County Long-range Planner

Mr. Merchant noted the three chapters were: Introduction, Chapter 1; History, Chapter 2; and Demographics, Chapter 3. The staff chose adopting the Plan by chapters rather in total. Also, some of the adopted chapters were renumbered for a better flow. The History chapter is chronological in nature. Mr. Merchant credited Mr. Ian Hill, County Historic Preservationist, with researching this chapter. The Population and Demographics Chapter provides historic data and future projections. He noted that housing data is in the Housing Chapter. He then commented on when each of the other chapters were adopted.

Public Comments: None were received since there are no public present.

Commission discussion included:

- kudos to the Mr. Merchant for his work and effort behind the Comprehensive Plan;
- the Plan being a great road map for the future;
- emphasizing the cooperation among the government entities;
- supporting the Comprehensive Plan interaction with public policy;
- the Plan making clear sense and being an easy read;
- the economic changes the County went through from the inception of the Plan to the present time;
- the Plan being a living document that parts may be changed, as needed, in the future;
- the growth boundaries and the expectant Form-Based Code;

- recommending the adoption of the Plan with separate adoption of the first three chapters and reaffirmation of the remaining chapters; and
- acknowledging that the Plan was done in-house by the Planning staff, in particular by Mr. Robert Merchant.

Motion: Mr. Semmler made a motion, and Mr. Thomas seconded the motion, **to recommend to County Council the adoption of the first three chapters of the Plan and the adoption of the Plan in total as renumbered by the staff.** No further discussion occurred. The motion was **carried unanimously** (FOR: Brown, Hicks, LeGree, Petit, Riley, Semmler, Sutler, and Thomas).

STAFF REPORT

Please find attached a complete draft of the 2010 Comprehensive Plan that is being presented in its entirety for adoption. This draft incorporates all of the individual plan elements that have been adopted in the last 3 years, in addition to two chapters – Introduction and History. The Introduction chapter provides a brief summary of the purpose and authority of the plan. The History chapter provides a brief history of Beaufort County starting with the first Native American settlements to the present time. This chapter provides an historical backdrop to the Population and Demographics, Land Use and Cultural Resources Elements.

Below is a summary of each of the plan elements and their adoption dates. Please note that chapter numbering has been revised for better flow and cohesion.

Chapter		Adoption Date
1	Introduction	*
2	History	*
3	Population and Demographics	**
4	Land Use	12-10-07 – amended 4-27-09
5	Natural Resources	1-12-09
6	Cultural Resources	10-13-08
7	Economic Development (originally Chapter 9)	10-12-09
8	Affordable Housing (originally Chapter 10)	4-27-09
9	Energy (originally Chapter 13)	4-27-09
10	Transportation (originally Chapter 8)	12-10-07
11	Community Facilities	12-10-07
12	Priority Investment	12-10-07

* Introduction and History Chapters being presented for adoption

**Population and Demographics did not receive 3rd and final reading. Revisions made to Average Daily Population (page 3-6).

In addition to the plan document, there are 23 appendices to the Comprehensive Plan. These include the community preservation plans, access management plans, and additional materials that have been adopted over the last 10 years. With the exception of the Priority Investment appendices, these documents are not included in the packet. They will be linked on the County website and a master copy will be available for public view. The appendices are listed below:

Appendix		Adoption Date
Appendix 4A	Dale Community Preservation Plan	1-8-01
Appendix 4B	St. Helena Corners Community Preservation Plan	2-25-02
Appendix 4C	Shell Point Community Preservation Plan	11-25-02
Appendix 4D	Seabrook – Stuart Point Plan	8-25-03
Appendix 4E	Alljoy Road Preservation Plan	4-25-05
Appendix 4F	Buckingham Landing Community Preservation Plan	6-25-07
Appendix 4G	Daufuskie Island Plan	8-23-10
Appendix 4H	May River Community Preservation Plan	9-27-10
Appendix 6A	Old Sheldon Church Road Scenic Highway Corridor Management Plan	6-14-04
Appendix 7A	Shunk Analysis	10-12-09
Appendix 7B	State Economic Development Incentives	10-12-09
Appendix 7C	Beaufort Commerce Park Development Flowchart	10-12-09
Appendix 8A	Supplementary Housing Data	4-27-09
Appendix 8B	Informed Respondent Survey	4-27-09
Appendix 10A	Trails and Blueways Master Plan	1-12-04
Appendix 10B	Robert Smalls Parkway Joint Corridor Plan	8-9-04
Appendix 10C	Okatie Highway (SC Highway 170) and West Fording Island Road (U.S. Highway 278) Joint Corridor Access Management Plan	5-23-05
Appendix 10D	Buckwalter Parkway Access Management Plan	5-5-08
Appendix 10E	Bluffton Parkway Access Management Plan	5-5-08
Appendix 11A	Inventory of Park and Recreation Facilities	12-10-07
Appendix 12A	Priority Investment CIP	12-10-07
Appendix 12B	Priority Investment CIP Revenues	12-10-07
Appendix 12C	Road CIP Schedule	12-10-07

WHEREAS, Greenheath was a vested “low impact” PUD pursuant to Section 106-7 of the Beaufort County Zoning and Development Standards ordinance (“ZDSO”) enacted in 1999; and

WHEREAS, Beaufort County subsequently amended Section 106-7 to require all “low impact” PUDs to either complete the entire project by January 1, 2010, or seek an amendment to the PUD in accordance with Section 106-7 (d), in an effort to require outstanding PUDs to either complete the development or update the development standards to those currently used by Beaufort County; and

WHEREAS, the adjacent properties to Greenheath are located in the Lady’s Island Community Preservation District, with a base zoning density of two units per acre; and

WHEREAS, The County Planning Staff, Planning Commission and County Council have recognized the superior level of subdivision design incorporated within the Greenheath PUD standards, and desire to provide sufficient time to develop this “neo-traditional” mixed use project, without unduly accelerating the Project’s development schedule and causing an undesirable effect on the area’s infrastructure; and

WHEREAS, the zoning density at maximum build-out for the Greenheath PUD is 3.18 units to the acre; and

WHEREAS, Gleason Place has submitted to Beaufort County, in accordance with Section 106-7, an amendment to the Greenheath PUD which would extend its PUD designation for an additional ten (10) years, which amendment has been favorably recommended by the Beaufort County Planning Staff, the Planning Commission, and County Council, with conditions; and

WHEREAS, those recommended PUD conditions are contained within Beaufort County Ordinance Number 2008/ _____, being adopted contemporaneously with this Development Agreement, and are discussed hereinbelow; and

WHEREAS, the County finds that the PUD designation, and the extension proposed for the Greenheath PUD is consistent with the Comprehensive Plan, and will further the health, safety, welfare and economic well being of the County and its residents; and

WHEREAS, this Development Agreement is being made and entered between Gleason Place and the County, under the terms of the Act, for the purpose of providing assurances to the Gleason Place so that it and its assignees may proceed with both the unified development of the Property under the terms hereof, as hereinafter defined, without encountering future changes in law which would materially affect the ability to develop under the plan, and for the purpose of providing important protection to development and providing enhanced job opportunities for its citizens, while adding to the long term viable tax base of the County;

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic benefits to both the County and Owners by entering this Agreement, and to encourage well planned development by Gleason Place, the receipt and sufficiency of such consideration being hereby acknowledged, County and Gleason Place hereby agree as follows:

I. INCORPORATION.

The above recitals are hereby incorporated into this Agreement, together with the South Carolina General Assembly findings as set forth under Section 6-31-10(6) of the Act.

II. DEFINITIONS.

As used herein, the following terms mean:

“Act” means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-31 -10 through 6-31-160 of the Code of Laws of South Carolina (1976), as amended;

“Covenants” means and refers to a declaration of covenants and restrictions for a parcel of the Property, or for the Property as a whole, to be recorded in the Register of Deeds Office for Beaufort County, and all amendments and supplements thereto.

“Developer” means Owners and all successors in title to or lessees of the Owner who undertake Development of the Property or who are transferred Development Rights.

“Development” means the land disturbance of portions of the Property and/or vertical or horizontal construction of improvements thereon as contemplated by the Zoning Regulations.

“Development Agreement Ordinance” means the ordinance by which Beaufort County adopts the Development Agreement and authorizes the execution and filing of this Agreement.

"Development Fees" means any and all fees incurred in Development of all or any portion of the Property including but not limited to any impact fees, development fees, development agreement fees, building permit, review, application, filing and/or any other similar fee now existing or hereinafter adopted by Beaufort County.

“Development Plan” means the layout and development scheme contemplated for the Property, as more fully set forth in the PUD approval for Greenheath, attached to the PUD Master Plan as Exhibit A-2, and as may be modified per the terms of this Agreement.

“Development Rights”, when capitalized, means development of the Property, or portions thereof, undertaken by the Owner(s) or Developer(s) in accordance with the Zoning Regulations and this Development Agreement.

“Effective Date” means the date which the last signatory signs and delivers the Development Agreement for recording.

“Impact Fee” or “Development Impact Fee” means a payment of money imposed as a condition of development approval, as defined in § 6-1-920 (8) of the Code of Laws of South Carolina, 1976, as amended.

“Intensity” means the total number of commercial square feet per acre, or floor area coverage permissible for a specific parcel of the Property or for the Property as a whole, under the terms of this Agreement, as context dictates.

“I.T.E.” means Institute of Traffic Engineers.

“Owner” means Gleason Place, L.P., or its successors and/or assigns.

“Homeowner’s Association or Owner’s Association” shall mean a duly constituted Owner’s Association under South Carolina law, pursuant to a Declaration of Covenants and Restrictions, filed of record in Beaufort County at or about the time of land subdivision, providing regulations for the governance of such subdivision, the upkeep of common elements, including assessment provisions, and other related matters.

“Outparcel Lots” means any area of the Property which is subdivided for sale or transfer to a Secondary Developer, and may refer to a commercial lot or lots, or a residential section of the Property.

“Property” means those certain parcels of land depicted and/or described in Exhibit A, the Legal Description.

“Purchaser” or “Developer” means any person or entity which may take title to all or a portion of the Property in the future for the purpose of development thereof under the terms hereof.

“School Capital Construction Fee” is that fee payable to Beaufort County for school construction assistance pursuant to Beaufort County Council Resolution R-2007-18, as further delineated in Section IX.D hereafter.

“Secondary Developer” means any and all successors in title to Owner who or which undertake or cause to be undertaken development activity on the Property.

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

“Tract” means any of those parcels comprising the Property, or portions of the Property as a whole once combined and re-divided.

“Zoning Regulations” means all terms and conditions of the Greenheath PUD approval and extension, the Zoning and Development Standards Ordinance (ZDSO) of Beaufort County,

in effect at the time of the execution of this Agreement (Exhibit “C” attached hereto), and the terms of this Development Agreement. References in the ZDSO to the latest version of County manuals shall mean and refer to the latest version of such manual as of the date of this Agreement. Specifically, it is noted that the adoption of the Development Agreement Ordinance shall have the effect of a properly adopted land use ordinance. To the extent that any provision of the Development Agreement Ordinance may be deemed to be a modification of presently existing Beaufort County law, such modification is hereby approved, ratified and adopted as binding upon the Property by the approval of this Development Agreement. In case of any conflict, the terms of this Development Agreement shall take precedence, followed by the terms and conditions of the PUD approval, followed by the terms of the ZDSO.

III. TERM.

The Term of this Agreement shall commence on the Effective Date and terminate five (5) years thereafter; or, if renewed, at the end of one (1) additional five (5) year period. During the Term hereof the provisions of the Development Agreement shall be vested against any future changes to Beaufort County law which would materially affect the ability of the Owner to carry out the development as approved under this Development Agreement. Further, at the end of the first 5 year period (or the additional 5 year period if applicable) the provisions of this Development Agreement and the incorporated Zoning Regulations shall be vested against any future changes to Beaufort County law if Owner shall have achieved Substantial Development. “Substantial Development” shall mean (i) the conveyance by Owner of the Easement Parcel to the County pursuant to the terms of Article V (2) of this Agreement, and either of (ii) the platting and recording of more than forty per cent (40%) of the lots or (iii) the construction (being completed or under construction) of not less than forty percent (40%) of the infrastructure development contemplated under this Agreement. Nothing herein shall be deemed a prohibition against extension adopted by mutual agreement pursuant to Section 6-31-(A) (2) of the Act. The degree of completion of infrastructure shall be measured by reference to the engineering estimate of the cost to construct the infrastructure required to plat lots at the time of the request for the vesting extension.

IV. DEVELOPMENT OF THE PROPERTY

The Property shall be developed in accordance with the Zoning Regulations and this Development Agreement. Certain provisions of the ZDSO may be interpreted, enhanced, supplemented or modified by this Agreement in accordance with Section V below. The PUD Master Plan, and its Exhibits, are attached hereto as Exhibit B, and are incorporated by reference and made a part hereof. The development of the Property and all of the terms contained in this Agreement shall be deemed by virtue of the adoption of the ordinance authorizing this Development Agreement to comply with the Beaufort County Comprehensive Plan existing as of the Effective Date.

V. ZONING REGULATIONS-AND DEVELOPMENT REQUIREMENTS

Any amendment or modification to the ZDSO relating to the Property shall not be applicable to the Property without the express written consent of the Owner; provided, however, in accordance with Section 6-31-80 of the Act, Beaufort County may apply such subsequently adopted laws to the Development if it holds a public hearing and it is determined that the subsequently adopted laws are: (a) not in conflict with laws governing this Agreement and do not prevent the Development set forth in this Agreement; (b) essential to public health, safety or welfare, and the subsequently adopted laws expressly state that they apply to the Development of the Property; (c) specifically anticipated and provided for in the Development Agreement; (d) the County demonstrates that substantial changes have occurred in pertinent conditions existing as of the Effective Date and if not addressed by the County would pose a serious health risk to the public health, safety and welfare; or (e) the Development Agreement is based on substantially inaccurate information supplied by the Owner or Developer(s). Notwithstanding the foregoing, specific provisions regarding the applicability of subsequently enacted laws or regulations regarding storm water standards are contained in Article VIII (E) below. Owner does, for itself and its successors and assigns, and notwithstanding the ZDSO, agrees to be bound by the following:

1. Site and Environmental Standards. As noted in Section I of the Greenheath PUD Master Plan, site standards noted within the Master Plan – including those related to road standards, density, building height, land uses, building uses, lot sizes, setbacks, and buffers - are recognized as specific standards of the Greenheath PUD. As noted in the conditions to the term extension in Beaufort County ordinance Number 2008/ _____, environmental standards applicable to the Project (including tree protection and landscaping, environmental quality and protection of natural and cultural resources) will be those in force at the time of the Effective Date of this agreement. Specific provisions regarding drainage and stormwater management are contained in Article VIII (E) below. Notwithstanding the foregoing, the development is not subject to the site capacity or natural resource protection requirements of Article Seven of the ZDSO, as those particular standards and requirements have already been addressed within the PUD Master Plan as part of the site design. It is specifically agreed however, that any such future ordinances of the County that directly or indirectly affect the residential density, commercial intensity, setback, buffer or open space requirements permitted pursuant to the Zoning Regulations will not be applicable to the Owner, Developer and any Secondary Developer within the Property without the Owner's, Developer's or any Secondary Developer's express written consent thereto.

2. Open Space and Buffers. Open space requirements are those contained within the Greenheath Master Plan, and meet or exceed the open space requirements of the ZDSO. Buffer and setback requirements are contained within the Master Plan. The thirty foot (30') landscape buffer along Brickyard Point Road shall contain a fifteen foot (15') easement for dedication to the County for use as, and its construction of, a ten foot (10') wide multi-use pathway within this area, which is also subject to a utility easement in favor of SCE&G. Within the thirty foot (30')

landscaped buffer, the naturally occurring vegetation may be replaced or supplemented with plants of a more decorative nature upon the mutual agreement of the Developer and the County (acting through the DRT), which agreement will not be unreasonably withheld.. Dedication of the fifteen foot (15') easement to the County must occur no later than the final approval of the first site specific development plan.

3. Access to Coosaw Elementary. The Greenheath Development Plan, Exhibit A-2 to the Master Plan, shows a pedestrian path extending east from the intersection of Keats and Austen streets to the Coosaw Elementary property. This pedestrian path may be allowed to be constructed as a golf cart access drive to the school, provided such is determined to be lawful and the Beaufort County School Board determines that such is desirable and does not compromise student safety and school site security.

4. Development Plan. The locations and layouts and development standards of permitted uses are shown on the Development Plan, included as part of the PUD Master Plan, attached thereto as Exhibit A-2 and made a part hereof. The Development Plan specifies location of roads, building types, uses, amenities and recreational facilities. It is specifically understood that Owner, its successors and assigns shall have the absolute right to develop the Property to the residential density and commercial intensity stated herein and depicted in the Master Plan. The Owner shall have the right to make minor revisions to the Master Plan for matters including, but not limited to, adjustments to the dimensions of any outparcel lots, outparcel lot buildings, and buildings so long as the same are in keeping with the character and intent of the Development Agreement Ordinance and authorized under the Zoning Regulations. It is acknowledged that Developer may not materially deviate from the layout shown on the Development Plan without the prior consent of County, except as provided herein. Minor changes to development locations and layouts which do not alter approved uses, densities, intensities, allowed conversion or the development concept shall not require Amendment of the Agreement or the Exhibit B PUD Master Plan by County Council.

5. Major and Minor Changes. More specifically, on the subject of minor and major changes to the Development Agreement and PUD, it is first noted and agreed that all uses, densities, intensities, conversions and flexibility standards which are specifically provided under the Greenheath PUD and this Development Agreement are not considered changes, but are allowed. Beyond these stated allowances, further changes to the development plan which are the result of final engineering and planning may be approved as minor changes at the Development Review Team (DRT) level, provided such changes do not change the basic concept of the road layout system, the function of the required pathway systems, or negatively impact the open space requirements. Minor changes in the location of housing units or non-residential elements, roads and right of way widths may be allowed as minor changes, so long as the uses and residential densities and commercial intensities approved under the PUD and this Development Agreement are not exceeded. By way of example, and not limitation, a modification which seeks the shifting of residential density or applicable building and lot standards of Village General to The Green, vice versa, or to the other residential districts, moving a lot or block line by twenty feet (20'), or the increase or decrease in allowed commercial building size by 2,000 square feet shall be considered minor changes to the Master Plan under Section 106-2447(d) of the ZDSO,

provided the overall residential density or commercial intensity allowed under the PUD are not exceeded. Changes requesting additional overall residential density or commercial intensity, shall be considered major changes, and require amendment hereof and/or amendment of the PUD. It is acknowledged these types of minor changes are consistent with both the provisions of Ordinance 90-3, Section 8.3.2 (the predecessor development ordinance under which this PUD was originally approved), and Section 106-2447(d) of the current ZDSO. If an applicant and the DRT fail to agree on whether a particular requested change is major or minor, using these principles as guidance, the matter may be reviewed in accordance with the appeal procedure under the Local Government Comprehensive Planning Enabling Act of 1994 (the "Enabling Act").

6. Transfers/Notification. The Owner shall be required to notify the County at least fourteen (14) calendar days prior to a proposed transfer in writing on a form approved by the County in order to apprise the County of a Development Rights transfer when Development Rights are to be transferred to a Secondary Developer, to allow an opportunity for the County to confirm the consistency of the terms of the transfer with the terms of this Development Agreement. Such information shall include the identity and address of the Secondary Developer, a contact person, and the location and number of acres of the Property, the number of commercial acreage and square footages, and/or the open space acreage, as applicable, subject to the transfer. All subsequent Secondary Developers transferring Development Rights to another Secondary Developer shall be subject to this requirement of notification, and shall be required to file with the County an acknowledgment that it shall be bound by this Development Agreement. This requirement does not apply to individual building lots.

7. Release of Transferor. In the event of the sale or other conveyance of all or a portion of a tract that has been deemed in compliance with this Agreement, the transferor/Property Owner shall be released from any further obligations with respect to that portion of the tract so transferred, and the transferee shall be considered as substituted for the Property Owner under the Agreement as to the portion of the tract yet to comply with this Agreement. Notwithstanding the foregoing, the Owner shall not be relieved of its obligation to dedicate the fifteen foot (15") easement along Brickyard Road to the County, and any deed to that portion of the Property shall contain an acknowledgment of the existence of the right to this area in favor of the County.

8. Variances. 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. Variance applications shall include a certification from the Owner stating its endorsement of the variance.

9. No Other Requirements. Except with respect to the dedications and/or conveyances of the properties referred to in Article V (2), no other dedications or conveyances of lands for public facilities shall be required in connection with the development of the Property

VI. DEVELOPMENT SCHEDULE.

The Property shall be developed in accordance with the development schedule, attached as **Exhibit D**, or as may be amended by Owners or Developer(s) in the future to reflect actual market absorption. Pursuant to the Act, the failure of the Owners and any Developer to meet the initial 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, and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace if market conditions support a faster pace. 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. Development activity may occur faster or slower than the forecast schedule, as a matter of right, depending upon market conditions. Furthermore, periodic adjustments to the development schedule which may be submitted unilaterally by Owners / Developers in the future shall not be considered a material amendment or breach of the Agreement.

It is further acknowledged that while Ordinance 2008/____ provides a ten year extension of the existing Greenheath PUD, the Greenheath PUD is subject to being rezoned from a PUD at the expiration of the initial five (5) year term of this Agreement, or the expiration of the ten (10) year PUD extension, unless 1) this Agreement is renewed or extended in accordance with Section III and Section XV (3) herein, or 2) the Owner shall have achieved Substantial Development, meaning the Owner has conveyed the Easement property to the County pursuant to Article V(2) of this Agreement, and either (i), the PUD has more than forty per cent (40%) of the lots platted and recorded, e.g., "lots of record," or (ii), more than forty percent (40%) of the utilities and infrastructure for the entire project have been completed, as of the relevant expiration term, in which case it shall be deemed "exempt" in like manner as other PUDs under Section 106-7(2)(a) of the ZDSO. The degree of completion of infrastructure shall be measured by reference to the engineering estimate of the cost to construct the infrastructure required to plat lots at the time of the request for the extension.

VII. EFFECT OF FUTURE LAWS.

Owners and Developers are relying upon this agreement, and will proceed to undertake development activities in accordance with the terms and conditions contained herein, which activities require the expenditure of substantial monies. Beaufort County understands and acknowledges this presumption and Owners and Developer's reliance on this premise. The intent of the parties to this Agreement is that Owners' and Developers' reliance and substantial change in position based upon the terms and conditions contained herein shall create a vested right to construct and operate the development referenced herein pursuant to such terms and conditions. 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. Subject to the provisions of Section XIII (E), future enactments of, or changes or amendments to County ordinances, including zoning or development standards ordinances, which conflict with the Zoning Regulations and the terms of this Agreement, shall apply to the Property only with the approval of the Owners if permitted pursuant to the Act and this Agreement.

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; any tax or fee of general application throughout the County or any fee that is equally applied to the applicable payees (unless specifically addressed within this Agreement, (i.e., see Section IX); or of any law or ordinance of general application throughout the County found by the County Council to be necessary to protect the public health, safety and welfare in accordance with Section 6-31-80(B). Notwithstanding the foregoing, the County may apply subsequently enacted laws to the Property only in accordance with the Act. The parties acknowledge that this agreement is subject to the provisions of Section 6-31-80 of the Code of Laws of South Carolina.

VIII. INFRASTRUCTURE AND SERVICES

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

A. Roads/Facilities. All new roads within the boundaries of the Property and required improvements to existing public roads at their intersections with the new roads shall be constructed by the Owners and/or Developers.

1. Private Roads. Private Roads constructed within the Property may be constructed by the Owners and/or Developers, and shall be maintained by them and/or an Owner's Association, or dedicated to appropriate entities. The County will not be responsible for the construction or maintenance of any private roads within the Property, and the Owners and/or Developers and/or Owner's Association will continue the maintenance thereof.

(a) **Express Dedication.** Notwithstanding the generality of the foregoing, in the event that a road and its drainage within the Property is constructed to the standards contained in the ZDSO or specific requirements of the County contained within this agreement, and is acceptable as a public road, the County may consider a request to take ownership and assume responsibility for the maintenance of same upon the request of the person or entity which has ownership of the road. Such consideration by the County regarding roadways and drainage in no way binds the County to actually accept the road or drainage.

(b) **No Implied Dedication.** The recording of a final plat or plan subdividing a portion of the Real Property shall not constitute an offer to deed or dedicate any or all streets and rights of way shown thereon to the County.

(c) Emergency Access through Gates. If any gate is placed across any road to prevent access to a private residential community within the Property, an emergency access system approved by the County DRT or its successor shall be included as part of the gate installation.

B. Public Roads. All public roads adjacent to and outside the Property that serve the Property are under the jurisdiction of the State of South Carolina or Beaufort County regarding access, construction, improvements and maintenance. Owners acknowledge that they must comply with all applicable state statutes, and rules and regulations of the South Carolina Department of Transportation, or its successor, and those of the County. Future public roads may serve the Property. The County shall not be responsible for construction, improvements or maintenance of the public roads which now or hereafter serve the Property, except as set forth herein, unless it otherwise agrees.

C. Potable Water. Potable water will be provided to the Property by the Beaufort Jasper Water and Sewer Authority (BJWSA) on the same basis as is provided to other residents and businesses within the County. The County shall not be responsible for any construction, treatment, maintenance or costs associated with water service to the property, unless it otherwise agrees.

D. Sewage Treatment and Disposal. Sewage treatment and disposal will be provided by the Beaufort Jasper Water and Sewer Authority on the same basis as is provided to other residents and businesses within the County. The County will not be responsible for any treatment, maintenance or costs associated with sewage treatment or capacity fees within the Property, except as set forth herein, unless it otherwise agrees.

E. Drainage System. All Storm water runoff and drainage system improvements within the Property will be designed in accordance with the Zoning Regulations and Section V hereof, and best efforts shall be made to coordinate such systems with the County Master Drainage Program. All Storm water runoff and drainage system improvements will be constructed by Owner or Developers and maintained by Owner, Developers and/or Owners Association (s), unless such are dedicated to a public entity which accepts maintenance and/or installation responsibilities. Beaufort County will not be responsible for any construction or maintenance costs associated with the drainage system within the Property, unless it specifically agrees to such. In conjunction with the storm water requirements as committed to by Owner above, notwithstanding Section V hereof, Developer and any Secondary Developers shall adhere to any and all future ordinances or regulations of the County governing detention, filtration, and treatment of storm water for any undeveloped areas of the Property, provided those ordinances and regulations apply County-wide uniformly to properties with similar hydrological characteristics, and are based on acceptable scientific principles and the best available information; provided further, nothing herein shall be construed as preventing the Developer or its successors and assigns from challenging the validity of the standards under the Act. It is specifically agreed however, that any such future ordinances of the County that directly or indirectly affect the residential density, commercial intensity, setback, buffer or open space

requirements permitted pursuant to the Zoning Regulations shall apply only to new phases, developed after the passage of such new laws, and not to previous phases of development. As to new phases where the residential density, commercial intensity, setback, buffer or open space would be affected by application of such future ordinances, the Developer and the County will in good faith collaborately design the stormwater system, utilizing such Best Management Practices that will respect the density, commercial intensity, setbacks, buffers, open space and similar aspects of the PUD, while protecting the receiving waters of the County to the best extent practical.

F. Solid Waste Collection. The County shall provide solid waste collection to the Property on the same basis as is provided to other residents and businesses within the unincorporated areas of the County; it is acknowledged that the County presently does not provide such services, either residential or commercial.

G. Utility Easements. Property Owner shall furnish necessary easements for water, sewer, gas, electricity, telephone, cable television, and other utilities when the Property Owner determines that same are required. Adequate easements for utilities shall be reserved by Property Owner in the conveyances of Lots and Development Parcels. All utilities shall be installed underground, except those portions of the system which must necessarily be above ground (i.e., transformers, switch gears, connection pedestals).

H. Police Protection. The County shall provide police protection services to the Property on the same basis as is provided to other residents and businesses within the unincorporated areas of the County. Owner acknowledges the jurisdiction of the Beaufort County Sheriff's Department on the Property.

I. Recycling Services. The County shall provide recycling services to the Property on the same basis as is provided to the residents and businesses of the unincorporated areas of the County, should it elect to provide such services in the future.

J. Emergency Medical Services. Such services are now provided by Beaufort County, and the County shall provide emergency medical services to the Property on the same basis as it may provide to other residents and businesses.

K. Fire Services. Fire services are provided by the Lady's Island–St. Helena Fire District, which shall provide fire protection services to the Property on the same basis as is provided to other residents and businesses within the District.

L. Library Services. Such services are now provided by Beaufort County.

M. School Services. Such services are now provided by the Beaufort County School District.

IX. FEES AND RELATED AGREEMENTS

A. County Impact Fees. Nothing herein shall be construed as relieving the Owner, its successors and assigns, from payment of any such fees or charges as may be assessed or collected by entities other than the County. The impact fees which are payable to Beaufort County under County Ordinance 2006-24 (codified as section 82-21 through 82-140 of the County Code of Ordinances) to support infrastructure provided by Beaufort County, such as, but not limited to, fire, parks, library, and roads, shall not be affected by this Agreement. County Impact Fees adopted by ordinance in the future may or may not be applied to the Property in whole or in part, at the discretion of County Council.

B. Other Charges or Fees. The Owners, their successors and assigns, shall be subject to the payment of any and all present or future fees enacted by the County that are of general County-wide application and that relate to processing applications, development permits, building permits, review of plans, or inspections or other matters, other than development impact fees. Owner agrees that should the State authorize a real estate transfer fee in the future, and the County elects to collect such, this Development Agreement shall not affect the ability of the County to collect same.

C. Special Districts. Nothing in this Agreement shall be construed to prevent the establishment by the County of a special source revenue district, Municipal Improvement District, multi-county business park, tax increment financing, or other special district on the Property in accordance with applicable provisions of the Code of Laws of South Carolina, 1976, as amended.

D. School Capital Construction Fee.

~~The laws of the State of South Carolina do not permit the imposition of impact fees for the effect and impact that development has or will have upon the public school systems servicing the Property.~~ At the request of the County in accordance with Resolution R-2007-18, Owner will pay to Beaufort County the sum of \$6,000 per residential dwelling unit which is 2400 square feet or greater, and a prorated sum of \$2.50 per square foot for all residential units less than 2400 square feet (heated interior) (“Standard Fee”) as a School Capital Construction Fee. All commercial development shall pay a School Capital Construction Fee of \$2.50 per square foot of interior heated space to Beaufort County. These sums shall be payable at the time that a lot or residential unit or commercial building is granted a Certificate of Occupancy or Certificate of Completion. These fees shall not be applicable to transfers to service providers, Property Owner Association(s), or governmental related entities.

~~These fees shall not apply to the first 196 residential units, based upon the allowable density attributable to the adjacent Community Preservation (CP) zoning for Lady’s Island at 2 units per acre, unless all residential units in the Lady’s Island CP District are subject to such a fee; however, these first 196 units shall pay a Reduced Fee, such Reduced Fee being the maximum per unit school impact fee under Ordinances 95/26 and 95/39, in effect at the time~~

of the approval of the PUD, increased by the cumulative Consumer Price Index for All Urban Areas (CPI-U), with the initial CPI increase calculated for year 1998 forward. This calculation can be made by using the U.S. Government Inflation calculator found at http://www.bls.gov/data/inflation_calculator.htm. The maximum fee under Ordinances 95/26 and 95/39 was \$1,000.00; the Inflation Calculator calculates that figure has inflated to \$1,343.88 as of August 1, 2009.

Standard Fees will be assessable against all units in excess of the exempt 196 units paying the Reduced Fee, these units being the additional units over the density rate of 2 units per acre of the adjacent CP lands. The Reduced Fee is justified by the fact that there is in actuality no additional density being granted to the Greenheath PUD under the ZDSO, as density of Greenheath was actually less than that allowed under the zoning and development standards in effect at the time the Greenheath PUD was created. The Reduced Fee is further justified based upon the fact that at the time of the approval of the Greenheath PUD, these were the fees expected to be collected and were incorporated into the business plan of the Owner for the property.

At the end of five years from the date of this Development Agreement, if this Development Agreement is extended beyond the initial 5 year period, the amount of the Standard School Capital Construction Fee and Reduced Fee shall be increased by the sum of the increase in the Consumer Price Index for All Urban Areas (CPI-U), and annually thereafter, on each succeeding anniversary, as such increase is measured against the immediately preceding year, again by reference to the U.S. Government's Inflation Calculator.

Notwithstanding the above, should the State of South Carolina adopt legislation (statewide or local) which allows Beaufort County and/or the School District to impose Development Impact Fees for Schools, and should Beaufort County or the School District adopt such a School Impact Fee, the fees provided for hereunder shall be adjusted, to the extent necessary, to that authorized under such School Impact Fee Ordinance. Furthermore, should a court of competent jurisdiction determine that these fees, or a School Development Impact Fee be unlawful or excessive, this Agreement shall be deemed amended to either remove the requirement for School Capital Construction or School Development Impact Fees (both Reduced and Standard), or change the amount due to such lesser amount as may be judicially approved or subsequently enacted and ultimately approved by judicial review, if any. In the event these fees, or a School Development Impact Fee is abandoned or not implemented by Beaufort County and/or the School District, the requirements of this section for payment of fees shall likewise become of no further effect, and any unspent or unallocated by budget funds collected from this Property shall be refunded.

X. COMPLIANCE REVIEWS.

Pursuant to the requirements of § 6-31-90, the Owners, or their designee(s), shall meet with the County Administrator, or his designee, at least once per year during the Term, to review Development completed in the prior year and the Development anticipated to be commenced or completed in the ensuing year. In lieu of a meeting, Owner may provide the below listed

information in a writing delivered to the County Administrator or his designee. The Owners, or their designee(s), shall be required to provide such information as may reasonably be requested, to include but not be limited to, acreage and/or square footage of building footprints or floor area ratios sold in the prior year, acreage and/or square footage of building footprints or floor area ratio under contract, the number of lots sold in the prior year, the number of certificates of occupancy issued in the prior year, and the number anticipated to be issued in the ensuing year, Development Rights transferred in the prior year, and anticipated to be transferred in the ensuing year. A failure to provide this information in a timely manner shall not constitute an event of default under Section XI herein unless the County has provided a notice of a twenty day period in which to cure the omission by filing the requested information.

XI. DEFAULTS.

The failure of an Owner, Developer or County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance and the termination of this Development Agreement in accordance with the Act; provided however no termination of this Development Agreement may be declared by the County or an Owner or Developer absent its according the Owner(s) and Developer(s), or to the County, as the case may be, the notice, hearing and opportunity to cure in accordance with Sections 6-31-90 (b) and (C) of the Act; and provided further that nothing herein shall be deemed or construed to preclude the County or its designee from issuing individual stop work orders or voiding specific permits issued for Development when such Development contravenes the provisions of the Zoning Regulations or this Development Agreement.

A default of the Owner shall not constitute a default by a Developer, and a default by a Developer shall not constitute a default by the Owner. Neither shall a default by one Owner or Developer constitute a default as to the Owner or other Developers collectively. Notwithstanding the foregoing, it is acknowledged by all persons, firms or entities claiming or accorded interests under this Agreement that the failure of the Owner or its successor to convey to the County the easement rights to the fifteen foot area for a multi-use trail or sidewalk pursuant to Article V (2) within the time provided for therein shall constitute a default, entitling the County to pursue the termination of this Development Agreement, in accordance with the Act.

XII. MODIFICATION OF AGREEMENT.

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

If an amendment affects less than all the persons and entities comprising the Property Owners, then only the County and those affected persons or entities need to sign such written amendment. Because this Agreement constitutes the unified development plan for the Property, minor modifications to a site plan or to development provisions may be made by County staff without a public hearing or amendment to applicable ordinances. The County Zoning and Development Administrator, after consultation with the Planning Director, may make administrative variances to numerical standards of the Zoning Regulations of up to 10% without requiring a formal variance application to be brought before the Zoning Board of Appeals. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment. Wherever said consent or approval is required, the same shall not be unreasonably withheld.

The Master Plan is not intended to be a rigid, exact site plan for future development. The location of roads, buildings, and other elements may vary somewhat at the time of permit applications when more specific designs are available, as long as the maximum intensities set herein in the Master Plan attached as Exhibit B and the general concept of commercial and residential development is respected.

XIII. NOTICES.

Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

To the County at:

Beaufort County
Post Office Drawer 1228
Beaufort, SC 29901-1228
Attention: County Administrator

With additional copy to:

Beaufort County
Post Office Drawer 1228
Beaufort, SC 29901-1228
Attn: Planning Director

And to the Owner at:

Gleason Place, L.P.
c/o Mr. Fred Trask
P.O. Box 1256
Beaufort, SC 29901

With Copy To: David L. Tedder, Esquire
Attorney at Law
Post Office Box 1282
Beaufort, SC 29901-1282

XIV. GENERAL:

Subsequent Laws. In the event state or federal laws or regulations are enacted after the execution of this Development Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement ("New Laws"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, or court decision, a party designated by the Owners and Developers and the County shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the County may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owners, Developers and the County each shall have the right to challenge the New Law preventing compliance with the terms of this Agreement. In the event that such challenge is successful, the remainder of this Agreement shall remain unmodified and in full force and effect.

Estoppel Certificate. The County, the Owner or any Developer may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

- (1) that this Agreement is in full force and effect,
- (2) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,
- (3) whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and

(4) whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

Entire Agreement. This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings among the County and the Owners relative to the Property and its Development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

No Partnership or Joint Venture. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the County, the Owner or any Developer, or between Owners, or Owners and any Developers, or to render such party liable in any manner for the debts or obligations of another party.

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

Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

Assignment. Subject to the notification provisions hereof, Owner may assign its rights and responsibilities hereunder to subsequent land owners and Developers.

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

Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute but one and the same instrument.

Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. In the event of a provision being held invalid, void, or unenforceable, the parties shall use the procedure set forth in Section XV, "Subsequent Laws", to take such steps as may be necessary to achieve the purposes and intent of this Agreement.

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

Eminent Domain. Nothing contained in this Agreement shall limit, impair or restrict the County's right and power of eminent domain under the laws of the State of South Carolina.

No Third Party Beneficiaries. The provisions of this Agreement may be enforced only by the County, the Owner and Developers (including their successors and/or assigns). No other persons shall have any rights hereunder.

XV. STATEMENT OF REQUIRED PROVISIONS

A. Specific Statements. The Act requires that a development agreement include certain mandatory provisions, pursuant to Section 6-31-60 (A). Although certain of these items are addressed elsewhere in this Agreement, the following listing of the required provisions is set forth for convenient reference. The numbering below corresponds to the numbering utilized under Section 6-31-60 (A) for the required items:

1. Legal Description of Property and Legal and Equitable Owner. The legal description of the Property is set forth in Exhibit A, attached hereto and having TMP Numbers R200 010 000 0022, and consisting of 98.35 acres, more or less. The present legal owner of the Property is as follows: Gleason Place, L.P.

2. Duration of Agreement. The duration of this Agreement is as set forth in Section III above, 5 years from the date of recording. Nothing in this Agreement shall be interpreted to preclude the Parties from extending the term of this Agreement by mutual agreement or from entering into subsequent development agreements, as provided by statute.

3. Permitted Uses, Densities, Building Heights and Intensities. A complete listing and description of permitted uses, building intensities and heights, as well as other development related standards, are contained in the Greenheath Master Plan attached hereto as Exhibit B, and as shown on the Development Plan attached thereto as Exhibit A-2.

4. Required Public Facilities. The utility services available to the Property are described generally above regarding electrical service, telephone and solid waste disposal. Beaufort-Jasper Water and Sewer Authority will provide water and sewer to the Property. The mandatory procedures of the Zoning Regulations and this Agreement will ensure availability of roads and utilities to serve the residents on a timely basis. The County will provide, or cause to be provided, police, fire and sanitation services, as well as development application services to the Property on the same basis as is provided the unincorporated areas of the County.

5. Provisions to Protect Environmentally Sensitive Areas/ Dedication of Land. All relevant State and Federal laws will be fully complied with, in addition to the provisions set forth in this Agreement. Where required by state or federal law, protective buffers for wetlands have been created.

6. Local Development Permits. The Development is set forth in the Master Plan with its Exhibits, attached hereto as Exhibit B, and must comply with the Zoning Regulations. Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Zoning Regulations. Building permits must be obtained under County Ordinances for any vertical construction, and appropriate permits have been or must be obtained from the State of South Carolina (OCRM) and the Army Corps of Engineers, when applicable, prior to any impact wetlands. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Owners, their successors and assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

7. Comprehensive Plan and Development Agreement. The Development permitted and proposed under the Zoning Regulations, is consistent with the Comprehensive Plan and with current land use regulations of the County of Beaufort.

8. Terms for Public Health, Safety and Welfare. The County Council finds that all issues currently relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of this Agreement, the Zoning Regulations, and existing law.

9. Historical Structures. No specific terms relating to historical structures are pertinent to this Development Agreement. Any historic structures and issues will be addressed through the permitting process of the Zoning Regulations at the time of development and no exception from any existing standard is hereby granted.

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

SIGNATURES BEGIN ON FOLLOWING PAGE

WITNESSES:

GLEASON PLACE, L.P.

By: Frederick G. Trask, President of Wiseblood,
Inc., General Partner of Gleason Place, L.P.

Attest: _____
Its: Secretary of Wiseblood, Inc.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this _____ day of _____, 2009, before me, the undersigned Notary Public of the State and County aforesaid,, personally appeared Frederick G. Trask, President, and _____, Secretary, on behalf of Wiseblood, Inc., General Partner of Gleason Place, L.P., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, who acknowledged the due execution of the foregoing document.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Notary Public for South Carolina
My Commission Expires:

SIGNATURES AND ACKNOWLEDGMENTS CONTINUE ON FOLLOWING PAGE

EXHIBIT A

Property Description

ALL that certain piece, parcel or tract of land, situate, lying and being on Lady's Island, Beaufort County, South Carolina, containing 97.80 acres, more or less, being known as AGreenheath Subdivision,@ and being more particularly shown and described as Parcel AA@ on a plat prepared by David E. Gasque, R.L.S., recorded in Plat Book 77 at Page 165 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat of record.

TMP 200-010-000-0022-0000

EXHIBIT B

GREENHEATH MASTER PLAN WITH EXHIBITS

(Omitted this printing)

EXHIBIT C

The Zoning Regulations hereunder shall be composed of the Development Agreement, the PUD Approved Master Plan for Greenheath (Exhibit B) and by the now current Zoning and Development Standards Ordinance (ZDSO) of Beaufort County, through Supplement No. 21, Update 1 (Codified through Ordinance No. 200/30, enacted August 24, 2009), which ZDSO is hereby attached to this Exhibit C to complete the Zoning Regulations.

(Note: A certified copy of the ZDSO on CD (Read Only), may be substituted for the printed version; an initialed copy of the CD will be kept on file at the Clerk to Council's Office, the Planning Department, and with the Owner)

EXHIBIT D

DEVELOPMENT SCHEDULE

First Five Years: 40% of residential units, being 125 units

Second Five Years: Remaining 60% of units, being 186 units
25,000 s.f. of commercial



MEMORANDUM

TO: Land Management Committee of Beaufort County Council
FROM: Anthony Criscitiello, Planning Director
DATE: August 12, 2008
SUBJECT: Request to Amend the Greenheath PUD Master Plan

Excerpt of the PLANNING COMMISSION RECOMMENDATION from its August 4, 2008, draft meeting minutes:

Mr. Criscitiello briefed the Commission. The applicant is requesting an extension of the 2010 sunset date. Coosa Elementary School is over capacity and this development will further exacerbate the problem.

The Planning staff recommended approval with the following conditions:

- Concurrent with this PUD action, the applicant shall address school deficiencies through a development agreement with Beaufort County.
- Improved access shall be provided between the development and Coosa Elementary. If golf cart type vehicles are envisioned for Greenheath residents, then connectivity to the school should allow for golf cart type vehicle access.
- The landscape buffer along Brickyard Point Road shall include a 15-foot easement to allow construction of a future 10-foot wide multi-use pathway.

The Lady's Island/St. Helena Island Subcommittee did not have a quorum, but forwarded the following comments:

- If approved, the Greenheath PUD must meet all of the development requirements of the ZDSO.
- All current impact fees must apply to this PUD.
- A Development Agreement must accompany this PUD and, as part of the Development Agreement negotiations, a sunset date for this project should be considered.
- At the Planning Commission meeting, the County's Transportation Engineer shall address the impacts of increased traffic from this development on Brickyard Point and Fiddlers Drive.

Applicant's Comments: Mr. David Tedder, the applicant's representative, noted that the project was approved in 1997 after community input was received. The PUD has stormwater controls built into it. The Applicant does not have a problem with the recommendations. The Project has alleyway similar to the Newpoint Subdivision. Mr. Tedder noted that Mr. Trask had waited to build his development; however, with the current market, he was not prepared to begin any

activity. He does not mind a development agreement, but feels a five-year limit should be discussed. Also, he does not have a problem with impact fees, if it is equitable.

Public Comment: Mr. Mike Edmonds, a resident in the Country Club Bluff subdivision that is across from the property, is questioning the 3.1 units per acre density. If an extension is given, the project should comply with the new zoning regulations of 2 units per acre. Lady's Island does not need the 3.1 units per acre. Mr. Edmonds is concerned with how electrical power would be brought into the project—the powerline path and transformer placement. He is also concerned with the increased transportation caused by the project.

Mr. Colin Kinton, the County Traffic and Transportation Engineer, mentioned that this PUD was included in the traffic model and would not cause a failure to Brickyard Point Road. The access points into the project will have to be re-examined for turn lanes and traffic controls.

Commission discussion included the various PUDs that have not developed and will be facing the 2010 sunset date, a caution regarding consistency given to these PUDs facing the 2010 sunset date, recommending a sunset date for PUDs that have not developed, the state law that sets development agreements, the City of Beaufort reviewing development agreements and PUDs simultaneously with the County, a recommended action to deny or for a conditional approval for this request, the non-desire to return the PUD to the drawing board with a denial, an explanation of the Lady's Island CP density, and the Burlington PUD density and its effect to Joe Frazier Road.

Mr. Tedder asked for a clarification of the 50% vesting rule. He noted that getting the project 50% built before 2010 was an investment factor.

Further Commission discussion included a clarification of the staff recommendations, a clarification on the applicant's request, the opportunity to require additional standards for the PUD because of the applicant's request, and the possibility of filing a new PUD that would require new standards.

Motion: Mr. Flewelling made a motion, and Mr. Riley seconded the motion, to forward a recommendation of approval to County Council on the Request to Extend the 2010 Sunset Date for Greenheath Planned Unit Development for an additional 10 years with the conditions recommended by staff and Lady's Island Subcommittee:

- Concurrent with this PUD action, the applicant shall address school deficiencies through a development agreement with Beaufort County.
- Improved access shall be provided between the development and Coosa Elementary. If golf cart type vehicles are envisioned for Greenheath residents, then connectivity to the school should allow for golf cart type vehicle access.
- The landscape buffer along Brickyard Point Road shall include a 15-foot easement to allow construction of a future 10-foot wide multi-use pathway.
- If approved, the Greenheath PUD must meet all of the development requirements of the ZDSO.
- All current impact fees must apply to this PUD.

- **A Development Agreement must accompany this PUD and, as part of the Development Agreement negotiations, a sunset date for this project should be considered.**

Further discussion included a clarification on treating this PUD as a new PUD, the amended Melrose PUD that did not have a sunset clause, recommending a sunset clauses on new PUDs instead of the unlimited timeframe allowed, and the reasonableness of Beaufort County impact fees as compared to other states. The motion was carried unanimously (FOR: Flewelling, Hicks, LeGree, Mullen, Petit, Riley and Sutler).

STAFF REPORT:

A. BACKGROUND:

Case No. MISC-2008-09

Applicant/Owner: Gleason Place LP / Fredrick G. Trask

Property Location: Junction of Middle Road and Brickyard Point Road, adjacent to Coosa Elementary School – Lady’s Island

District/Map/Parcel: R200-010-0022

Property Size: 98.35 acres

Future Land Use Map: Neighborhood / Mixed-Use

Current Zoning District: Planned Unit Development (PUD)

Proposed Zoning District: PUD – Amended

B. SUMMARY OF REQUEST:

County Council approved the Greenheath PUD in 1997, for 313 dwelling units and 25,000 square feet of commercial development on 98.35 acres at a gross density of 3.18 dwelling units per acres (du/ac). To date, there has been no development activity in this PUD.

Because Greenheath was approved prior to the adoption of the 1999 Zoning & Development Standards Ordinance (ZDSO), it falls under the provisions of Section 106-7(2), which state that a PUD approved prior to July 1, 1999, is exempt from the ZDSO if:

1. The PUD has more than 50 percent of the lots platted and recorded or more than 50 percent of the utilities and infrastructure completed as of January 1, 2010; or
2. The PUD is deemed “low impact”, i.e. develops less than 25 units or less than 10,000 square feet of commercial area per year, and is entirely completed by January 1, 2010.

The applicant wishes to extend the “sunset” date for the Greenheath PUD standards beyond 2010 because current market forces have inhibited construction of this development. The applicant proposes that no expiration date be set for this PUD.

C. ANALYSIS: Section 106-492 of the ZDSO states that a zoning map amendment may be approved if the weight of the findings describe and prove:

1. *The change is consistent with the County’s Comprehensive Plan and the purposes of this Ordinance.*

The Greenheath development was proposed as a traditional neighborhood design, with parks, open spaces, alleys, pedestrian sidewalks that link to the school, commercial and civic sites. Greenheath is governed by a set of development guidelines, including a master plan, village regulations, architectural and landscaping guidelines, and street sections. The PUD is also required to conform to the regulations in effect at the time of development permit application for stormwater management, environmental standards, overlay districts, signs and impact fees.

The property is surrounded by the Lady’s Island Community Preservation (LICP) District. This district is intended to preserve the character of existing residential neighborhoods on Lady’s Island and to encourage compatible infill development. It allows primarily single-family residential development, with some multi-family and planned communities near the “village center” (US Hwy. 21). The underlying gross density for the LICP district is 2 dwellings per acre.

When the Greenheath PUD was approved in 1997, its underlying zoning (Development District) permitted residential development at 4 to 8 units per acre. The project’s proposed density of 3.18 units per acre clearly fell below these density parameters. The current LICP district also allows a range of densities from 2 units per acre for single-family to 2.6 units per acre for planned communities and 4 units per acre for multi-family. Planned communities are only permitted within one and one-quarter miles from the boundaries of the village center. The Greenheath PUD is located more than 2 miles from the village center; therefore, this development could not be permitted by right under the current LICP district.

The Future Land Use Map of the updated (2007) Beaufort County Comprehensive Plan shows the property under the Neighborhood / Mixed Use designation, which is intended to be primarily residential with some supporting neighborhood retail. New development is encouraged to be pedestrian-friendly, have a mix of housing types, a mix of land uses and interconnected streets. Gross residential density is approximately two dwelling units per acre overall, with a mix of housing types and densities within each neighborhood. Mixed-use developments are encouraged to promote pedestrian access to services and provide internal trip capture.

Because Greenheath is a traditional neighborhood, it meets many of the design guidelines for the Neighborhood / Mixed Use designation. This land use designation was not intended to result in homogeneous development of 2 units per acre across the board, but a mix of development types that resulted in an *overall* density of 2 units per acre. The neighborhoods surrounding the Greenheath property, with the exception of Telfair (approx. 2 units per acre) are under 1 unit per

gross acre. The addition of Greenheath, with a gross density of 3.18 dwelling units per acre (du/ac), will not result in an overall increase in gross density in this area of over 2 units per acre.

One of the goals of the Future Land Use Element is to coordinate development with the planning for and provision of public services and facilities for transportation, water and sewer facilities and schools. A transportation assessment is provided in Section D of this report. Essentially, the Greenheath development was taken into account in the County's 2025 transportation model forecast. The traffic model projects that transportation facilities in the area will operate at level-of-service (LOS) D, even with this development. LOS D is the County's adopted standard for roadways within the County. Water and sewer are currently available to the site.

Greenheath is adjacent to Coosa Elementary School. According to the School Board's Planning Coordinator, Coosa Elementary, with a capacity of 476 student and 10 mobile classrooms, is "bursting at the seams." Even with transfers out to other schools, it is over-capacity with 644 attending students and projected growth of students living in the zone (resident students) to be 1020 by 2011-2012. The 2008 school referendum included money for additional land on Lady's Island, but not for a new elementary school. Because of the existing deficiencies at Coosa Elementary, it is clear that development of Greenheath will only exacerbate the problem.

2. The change is consistent with the character of the neighborhood.

Greenheath lies in the midst of several mature residential neighborhoods. It is bounded by Brickyard Point Road on the south and Fiddler Drive on the north and west. It is also contiguous on its northeastern boundary with Coosa Elementary School. When the Greenheath PUD was approved, it was deemed to be consistent with the character of the surrounding area. Perimeter buffers were required to mitigate incompatibilities with adjoining properties.

3. The extent to which the property is consistent with the zoning and use of nearby properties.

See response to item # 2.

4. The suitability of the property for the uses to which it has been restricted.

Tree coverage on the site consists of a pine and hardwood forest. Freshwater wetlands comprise a total of .91 of an acre on the property. The property has access to public water and sewer facilities. It is suitable for the approved PUD.

5. Allowable uses in the proposed district would not adversely affect nearby property.

See response to item # 2.

6. The length of time a property has remained vacant as zoned, where the zoning is different from nearby developed properties.

The property is undeveloped.

D. TRANSPORTATION ASSESSMENT:

The following transportation assessment was provided by the County Transportation Engineer:

- The development of the Greenheath PUD has been included in the County's Year 2025 Transportation Model forecast.
- The model projects traffic volumes on Middle Road between the proposed Greenheath development and Sam's Point Road to average between 10,000 and 11,000 vehicles per day. This projected volume is within established criteria of Level-of-Service D, the County's adopted standard.
- Sam's Point Road is projected at 27,000 to 28,000 vehicles per day for Year 2025, which is within the acceptable limits for this type of facility at Level-of-Service D or better.
- The County's Road Capital Improvement Program has identified improvements to the intersection of Sam's Point Road at Brickyard Road/Holly Hall Road in order to maintain acceptable service levels on the roadway network in this area.
- The planned improvements at this intersection include the construction of a modern roundabout.
- The roundabout intersection design is currently under way with a consultant engineering firm working for Beaufort County.
- Funding for this roundabout is through road impact fees.
- Anticipated construction is scheduled for late 2009.
- There are no other anticipated deficiencies on the area roadway network with the exception of US 21 Business across the Beaufort River (Woods Memorial Bridge).

With regard specifically to Greenheath PUD, consideration should be given to providing improved access between the development and Coosa Elementary. Previous plans have indicated a pedestrian path. If golf cart type vehicles are envisioned for Greenheath residents, then connectivity to the school should allow for golf cart type vehicles access.

Landscape buffers along Brickyard Point Road should provide an easement to allow for future construction of multi-use pathways adjacent to these roadways.

The Transportation Engineer continues to have concerns regarding Fiddler Drive. Fiddler Drive is an existing paved County local road that surrounds 2 sides of the proposed Greenheath PUD. This existing infrastructure should be utilized in the development of Greenheath. However, the proposed development indicates homes will not face Fiddler and that an alleyway will be constructed between Greenheath homes and Fiddler Drive. The effect is more of an exclusive community (not part of the surrounding area) and the need for additional infrastructure rather than utilizing the existing infrastructure.

E. RECOMMENDATION:

After review of the guidelines set forth in Section 106-492 of the ZDSO, staff finds that:

- The Greenheath PUD contains a specific master plan and development standards that address density, lot sizes, uses, setbacks, buffers, access and road standards, drainage and environmental regulations.
- The project is consistent with the Future Land Use designation of the site.
- With the exception of schools, there are adequate public facilities available to serve this development.

Based on the analysis and findings above, staff recommends approval of the request to amend the Greenheath PUD to exempt it from the January 1, 2010 expiration date, with the following conditions:

1. Concurrent with this PUD action, the applicant shall address school deficiencies through a development agreement with Beaufort County.
2. Improved access shall be provided between the development and Coosa Elementary. If golf cart type vehicles are envisioned for Greenheath residents, then connectivity to the school should allow for golf cart type vehicle access.
3. The landscape buffer along Brickyard Point Road shall include a 15-foot easement to allow construction of a future 10-foot wide multi-use pathway.

F. LADY'S ISLAND / ST. HELENA ISLAND SUBCOMMITTEE OF THE PLANNING COMMISSION RECOMMENDATION:

The Subcommittee met on July 16, 2008. Subcommittee attendees were Jim Hicks (Chairman) and Ronald Petit. The applicant's representatives present at the meeting were Frederick G. Trask of GP Gleason LP, and David L. Tedder, Esq. Delores Frazier, Assistant Planning Director, presented the staff report and recommendation. David Tedder presented the applicant's request. A number of concerns were raised by area residents, including:

- Concerns about increased traffic on Brickyard Point and Fiddlers Drive as a result of this development.
- Access to Brickyard Point from this development.
- The proposed density over 2 units per acre is too dense for the area.
- Concerns about how SCE&G will get power to the development; i.e. where the powerline will be located.

There being no quorum present, the Subcommittee could not vote on the applicant's request; however, the members present forwarded the following comments to the Planning Commission:

1. If approved, the Greenheath PUD must meet all of the development requirements of the ZDSO.
2. All current impact fees must apply to this PUD.
3. A Development Agreement must accompany this PUD and, as part of the Development Agreement negotiations, a sunset date for this project should be considered.

4. At the Planning Commission meeting, the County's Transportation Engineer shall address the impacts of increased traffic from this development on Brickyard Point and Fiddlers Drive.

Attachments:

1. Zoning Map
2. Application