

(bryan.vaughn@lcsdmail.net)

Subject: DRC - Meeting - Providence Estates (Note Name will Change)

Importance: High

Hello Everybody,

We'll be having a DRC meeting on **Tuesday, July 22, 2014** at 11:15 a.m.- 12:00 noon in the County Council Chambers upstairs. This is to accept comments for the preliminary plan for Providence Estates located directly behind Legacy Park. Please note that the name will be changing for this project. If you can't attend please send any comments to eboone@lancastercountysc.net. I hope that you all have a great day.

Thanks,

J. Elaine Boone

Planner II

Lancaster County Planning Department

101 N. Main Street

P.O. Box 1809

Lancaster, S.C. 29721

Phone: (803) 416-9396 Direct

Phone: (803) 285-6005 Main

Fax: (803) 285-6007

CONFIDENTIALITY NOTICE: This email message, including attachments, is for the sole use of the intended recipient(s) and may contain private, restricted and/or legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Please note that any views or opinions presented in this e-mail are solely those of the author and do not necessarily represent those of Lancaster County. Finally, the recipient should check this e-mail and any attachments for the presence of viruses. Lancaster County accepts no liability for any damage caused by any virus transmitted by this email.

NOTICE: All email correspondence to and from this address may be subject to public disclosure under the SC Freedom of Information Act.

JUDY E BOONE

From: KENNETH C CAUTHEN
ent: Tuesday, July 29, 2014 9:20 AM
To: JUDY E BOONE
Cc: Amy Bowers; Dwight Witherspoon
Subject: comments - Providence estates

Follow Up Flag: Follow up
Flag Status: Completed

Elaine,
Got everything straight with Brent. Ordinance requirements refer to areas of Special Flood Hazard in every case. This parcel is not in a Special Flood Hazard Area. This area is well over ¼ mile downstream.
Please convey our concerns about street yard trees. Some builders plant them between the Back of Curb and Sidewalks while others plant them in the front yard. If planting between BOC and sidewalk encourage them to leave room where roots and the trunk will not bust the curb or the sidewalk. Sorry for the delay.

Thanks,
Kenneth

JUDY E BOONE

From: Jeffery D. Catoe
Sent: Friday, August 08, 2014 1:58 PM
To: JUDY E BOONE; bcowan@isaacsgrp.com
Cc: Penelope Karagounis
Subject: RE: Deerfield Creek a/k/a Providence Estates

Elaine,

I agree with all stated below. Public Works does have more concern over the condition of Vance Baker, Cedar lane, and Legacy Park Boulevard once construction begins, than the TIA, but I agree the TIA would be very helpful. Some type of arrangement will need to be made because from past experience, communication can break down when/if areas of our roads start tearing up, and repetitive heavy loads like dump trucks, concrete trucks, etc. can do just that. It wouldn't hurt if the developer contacts the Legacy Park HOA and makes them aware when construction is scheduled to start, if they haven't already. Just some general comments I'm sure we will be addressing. Thanks Elaine.

Jeff Catoe
Lancaster County
Public Works Director
P.O Box 1809
Lancaster, SC 29721
(803) 416-9692 Phone
(803) 285-3835 Fax

CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of the intended recipient(s) and may contain private, restricted and/or legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of Lancaster County. Finally, the recipient should check this email and any attachments for the presence of viruses. Lancaster County accepts no liability for any damage caused by any virus transmitted by this email.

NOTICE: All email correspondence to and from this address may be subject to public disclosure under the SC Freedom of Information Act.

From: JUDY E BOONE
Sent: Friday, August 08, 2014 1:08 PM
To: bcowan@isaacsgrp.com
Cc: Jeffery D. Catoe; Patricia T. Hinson; Penelope Karagounis
Subject: Deerfield Creek a/k/a Providence Estates

Brent,

I hope you're having a good day. I'll need a drawing(map) showing the connectivity index links/nodes also, after you left last night and the meeting resumed the Commission thought that maybe a TIA should be done since this property has

all county maintained roads for access. I asked Jeff Catoe if he had ever had a TIA done on any County maintained roads he said no, but stated it probably wouldn't be a bad idea. Also, I sent an e-mail to Trish Hinson concerning the proposed roads names, do you have anything from her in writing? Or if they'll be changed. Another thing we need to address is some type of LOC for any road improvements due to damage by construction from this subdivision. (Cedar Lane, Legacy Park Blvd., and Vance Baker Roads). You may want to set up a time when you and the developer can meet Jeff Catoe at the site for an inspection.

Thanks,

J. Elaine Boone
Plannner II
Lancaster County Planning Department
101 N. Main Street
P.O. Box 1809
Lancaster, S.C. 29721
Phone: (803) 416-9396 Direct
Phone: (803) 285-6005 Main
Fax: (803) 285-6007

CONFIDENTIALITY NOTICE: This email message, including attachments, is for the sole use of the intended recipient(s) and may contain private, restricted and/or legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Please note that any views or opinions presented in this e-mail are solely those of the author and do not necessarily represent those of Lancaster County. Finally, the recipient should check this e-mail and any attachments for the presence of viruses. Lancaster County accepts no liability for any damage caused by any virus transmitted by this email.

NOTICE: All email correspondence to and from this address may be subject to public disclosure under the SC Freedom of Information Act.

JUDY E BOONE

From: JUDY E BOONE
Sent: Friday, August 08, 2014 1:08 PM
To: bcowan@isaacsgrp.com
Cc: Jeffery D. Catoe; Patricia T. Hinson; Penelope Karagounis
Subject: Deerfield Creek a/k/a Providence Estates

Brent,

I hope you're having a good day. I'll need a drawing(map) showing the connectivity index links/nodes also, after you left last night and the meeting resumed the Commission thought that maybe a TIA should be done since this property has all county maintained roads for access. I asked Jeff Catoe if he had ever had a TIA done on any County maintained roads he said no, but stated it probably wouldn't be a bad idea. Also, I sent an e-mail to Trish Hinson concerning the proposed roads names, do you have anything from her in writing? Or if they'll be changed. Another thing we need to address is some type of LOC for any road improvements due to damage by construction from this subdivision. (Cedar Lane, Legacy Park Blvd., and Vance Baker Roads). You may want to set up a time when you and the developer can meet Jeff Catoe at the site for an inspection.

Thanks,

J. Elaine Boone
Planner II
Lancaster County Planning Department
101 N. Main Street
P.O. Box 1809
Lancaster, S.C. 29721
Phone: (803) 416-9396 Direct
Phone: (803) 285-6005 Main
Fax: (803) 285-6007

CONFIDENTIALITY NOTICE: This email message, including attachments, is for the sole use of the intended recipient(s) and may contain private, restricted and/or legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Please note that any views or opinions presented in this e-mail are solely those of the author and do not necessarily represent those of Lancaster County. Finally, the recipient should check this e-mail and any attachments for the presence of viruses. Lancaster County accepts no liability for any damage caused by any virus transmitted by this email.

NOTICE: All email correspondence to and from this address may be subject to public disclosure under the SC Freedom of Information Act.

JUDY E BOONE

From: Patricia T. Hinson
Sent: Thursday, July 10, 2014 2:56 PM
To: JUDY E BOONE; Stephen Blackwelder; STEPHEN C YEARGIN; KENNETH C CAUTHEN; Keith Tunnell (keith.Tunnell@lancasterscworks.com); Seth Rodgers (sethrogers@comporium.net); James Hawthorne (james.hawthorne@LCWASD.org); Jeffery D. Catoe
Cc: BARRY S FAILE; John McKay (McKayJD@dot.state.sc.us); Wayne Joyner (JoynerJW@dot.state.sc.us); Daniel Hopkins (hopkinsDM@scdot.org); Mike Bagley (BagleyMR@dot.state.sc.us); bcowan@isaacsgrp.com; Gene Moore (gene.moore@lcsdmail.net); David Small (david.small@lcsdmail.net); Bryan Vaughn (bryan.vaughn@lcsdmail.net); Chris Nunnery
Subject: RE: DRC - Meeting - Providence Estates (Note Name will Change)
Follow Up Flag: Follow up
Flag Status: Flagged

Elaine,

In looking at the sketch submitted for Providence Estates (subdivision name to be changed), below are my comments:

- **Creek Ridge Ct** is not an approved road name for use (**should be Shoal Creek**). The suffix choice they currently have for Shoal Creek is **CT**, this will need to change. (See section 14.1.3 of the LCUDO for suffix choices based on the length of a road). **Providence Bridge Dr and Ev Roberts Lake Dr are both approved for this project and on hold for use.**
- The subdivision name will also need to be changed; I am waiting on Brent to submit another name to be cross referenced for use.

Section 14.1.3 Road name standards.

1.

Any road in excess of one thousand (1,000) feet in length shall be designated as either "road", "street", "avenue" or "drive." The acceptable abbreviations for these suffixes are "Rd", "St", "Ave" and "Dr."

2.

Any road less than one thousand (1,000) feet in length or any road that is cul-de-sac or any road that begins and ends on the same road shall be designated as "court, way, place, terrace, or lane." The acceptable abbreviations for these are "Ct", "Way", "Pl.", "Ter.", and "Ln."

3.

Any previously unnamed road or new road with center line offsets at intersections of less than one hundred (100) feet shall be given the same name, except in a subdivision. The roads will be allowed two (2) separate road names under the discretion of the approval of the Lancaster County Addressing Coordinator. Excluding roads within an approved subdivision or PDD.

4.

Any continuous road shall have the same name over its entire length even though its direction may change.

5.

No road name hereafter established, regardless of suffixes or directionals, shall duplicate either phonetically or by spelling, another road name in the unincorporated area of the county.

6.

No road name hereafter established shall exceed fifteen (15) characters, including spaces and suffix abbreviations. (IF SUBDIVISION PROVIDES THEIR OWN SIGNS, THIS DOES NOT APPLY) pth

7.

No special characters, such as hyphens, apostrophes, periods, or decimals, shall be used.

8.

Areas of surrounding counties, which share Postal Service zip codes or multi-jurisdictional emergency services agreements with areas of Lancaster County, shall be considered when determining duplicates.

9.

The E-911 addressing department will not allow use of words which in its opinion are overused, either in the immediate area or county-wide, as such overuse is likely to cause confusion.

10.

Directional names (N, S, E, W or combination thereof) shall not be allowed.

11.

Proposed road names, which are intentionally misspelled, obscene, derogatory or other offensive words shall not be permitted.

(Ord. No. 916, 6-2-08)

If you need anything further from me or have any questions, please let me know.

Thanks,
Trish

From: JUDY E BOONE

Sent: Wednesday, July 09, 2014 2:53 PM

To: Stephen Blackwelder; STEPHEN C YEARGIN; KENNETH C CAUTHEN; Keith Tunnell (keith.Tunnell@lancasterscworks.com); Seth Rodgers (sethrodgers@comporium.net); James Hawthorne (james.hawthorne@LCWASD.org); Jeffery D. Catoe

Cc: BARRY S FAILE; Patricia T. Hinson; John McKay (McKayJD@dot.state.sc.us); Wayne Joyner (JoynerJW@dot.state.sc.us); Daniel Hopkins (hopkinsDM@scdot.org); Mike Bagley (BagleyMR@dot.state.sc.us); bcowan@isaacsgrp.com; Gene Moore (gene.moore@lcsdmail.net); David Small (david.small@lcsdmail.net); Bryan Vaughn (bryan.vaughn@lcsdmail.net)

Subject: DRC - Meeting - Providence Estates (Note Name will Change)

Importance: High

Hello Everybody,

We'll be having a DRC meeting on **Tuesday, July 22, 2014** at 11:15 a.m.- 12:00 noon in the County Council Chambers upstairs. This is to accept comments for the preliminary plan for Providence Estates located directly behind Legacy

Park. Please note that the name will be changing for this project. If you can't attend please send any comments to eboone@lanastercountysc.net. I hope that you all have a great day.

Thanks,

J. Elaine Boone
Planner II
Lancaster County Planning Department
101 N. Main Street
P.O. Box 1809
Lancaster, S.C. 29721
Phone: (803) 416-9396 Direct
Phone: (803) 285-6005 Main
Fax: (803) 285-6007

CONFIDENTIALITY NOTICE: This email message, including attachments, is for the sole use of the intended recipient(s) and may contain private, restricted and/or legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Please note that any views or opinions presented in this e-mail are solely those of the author and do not necessarily represent those of Lancaster County. Finally, the recipient should check this e-mail and any attachments for the presence of viruses. Lancaster County accepts no liability for any damage caused by any virus transmitted by this email.

NOTICE: All email correspondence to and from this address may be subject to public disclosure under the SC Freedom of Information Act.

JUDY E BOONE

From: Patricia T. Hinson
Sent: Friday, August 08, 2014 11:59 AM
To: JUDY E BOONE
Subject: Re: Roads name for Deerfield Creek - a/k/a Providence Estates

Elaine

I'm not at work. Joel planned a surprise 25th anniversary weekend trip. Planned my day off and all. I can't go from memory on the road names, sorry!

Sent from my iPhone

On Aug 8, 2014, at 11:23 AM, "JUDY E BOONE" <eboone@lancastercountysc.net> wrote:

Trish,

Did you approve the names on the plan Brent submitted? The names are Providence Bridge Drive, Shoal Creek Drive and EV Roberts Lake Drive.

J. Elaine Boone
Planner II
Lancaster County Planning Department
101 N. Main Street
P.O. Box 1809
Lancaster, S.C. 29721
Phone: (803) 416-9396 Direct
Phone: (803) 285-6005 Main
Fax: (803) 285-6007

CONFIDENTIALITY NOTICE: This email message, including attachments, is for the sole use of the intended recipient(s) and may contain private, restricted and/or legally privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. Please note that any views or opinions presented in this e-mail are solely those of the author and do not necessarily represent those of Lancaster County. Finally, the recipient should check this e-mail and any attachments for the presence of viruses. Lancaster County accepts no liability for any damage caused by any virus transmitted by this email.

NOTICE: All email correspondence to and from this address may be subject to public disclosure under the SC Freedom of Information Act.

DA-014-006 – Bonterra Builders (Barber Rock South) has submitted an application to enter into a development agreement with Lancaster County. The site is located in the panhandle area of the County along Barberville Road (Tax Map 6, Parcels 53, 53.01, and 53.02). The site contains a total of 83.82 acres. {Public Hearing} pgs. 142-172

Penelope Karagounis

Planning Staff Report

I. Facts

A. General Information

Bonterra Builders (Barber Rock South) has submitted an application to enter into a development agreement with Lancaster County. The site is located in the panhandle area of the County along Barberville Road (Tax Map 6, Parcels 53, 53.01, and 53.02). The site contains a total of 83.82 acres. The development uses proposed on the property are single-family residential. The zoning of the property is R-15P, Low Density Residential/Agricultural Panhandle District with a Cluster Subdivision Overlay District.

The plan is to develop the site with 125 single-family lots. Under this development agreement, Barber Rock South (Bonterra Builders LLC) would be vested for five years.

A development agreement is an agreement between the developer and the County. This development agreement needs to comply with the state and local requirements for development agreements. The state requirements and Ordinance #663, which establishes the county's requirements for a development agreement, are also attached.

TEXT:

See Attached Document – Exhibit 3

II. Findings

The attached document has been reviewed by Steve Willis, County Administrator, Mike Ey from McNair Law Firm, Morris Russell and Darren Player, Emergency Management and Fire Service; Jeff Catoe, Public Works Director, Kenneth Cauthen, Zoning Administrator, Clay Catoe, EMS and Penelope G. Karagounis, Lancaster County Planning Director.

Exhibits:

- 1) Comments from Staff Department Heads
- 2) Property Location
- 3) Development Agreement Process
- 4) Proposed Development Agreement
- 5) Email comments from Planning Commissioner, Jerry Holt

Lancaster County Planning Department

101 N. Main St., Ste. 108

P.O. Box 1809

Lancaster, South Carolina 29721-1809

Exhibit 1

Telephone (803) 285-6005

Fax (803) 285-6007

Memo

To: Lancaster County Planning Commission

From: Penelope G. Karagounis, Planning Director

Date: August 6, 2014

Re: Development Agreement Staff Recommendations for Barber Rock South

Message:

On Wednesday, July 23, 2014, County staff met to discuss recommendations for the Barber Rock South subdivision by Bonterra Builders. Steve Willis, County Administrator; Darren Player, Emergency Management and Fire Service; Jeff Catoe, Public Works Director, Kenneth Cauthen, Zoning Administrator and myself attended the meeting. Mr. Mike Ey was not able to attend but submitted his comments. Mr. Clay Catoe was not able to attend the meeting.

Steve Willis Comments:

- (1) Section 3.01 Vested Right to Develop- "The closing of the County road system is the only thing I know of."
- (2) Section 3.01A Connectivity: Road Widths – "I would defer to Penelope and Jeff on connectivity and stub outs. Road width needs to be standard or we will hit objections from the fire service."
- (3) Section 4.01A. Payment – "The payment to the School District will be an upfront payment like the Public Safety fee. We are doing rooftop fees any more."
- (4) Section 4.01B. Funds for Public Safety – "I think the Committee will be amenable to negotiating on the fee since it will all be upfront but I don't know how much as this will be our first one."

Jeff Catoe Comments: Regardless if road system is capped or not, there should be no language "automatically" accepting roads into the county system. Agreements should

not allow roads, regardless of private or public to be built below minimum standards. ROADS ARE PRIVATE and the minimum width of pavement is 22'.

Mike Ey Comments: JME – July 25, 2014

Initial Review of Bonterra Builders, LLC – Reserve at Barber Rock Development Agreement

- General Editing. A small amount of minor general editing is needed throughout the document. This editing would have little or no substantive effect.
- Sec. 107. Development Schedule and Exhibit C. A schedule is needed for the exhibit.
- Sec. 1.09. Benefits and Burdens. Individual Lot Owners. Subsection (B) needs to be revised to reflect the final language used in the Bent Creek and Southstone development agreements.
- Sec. 1.10. Term. The maximum term pursuant to state law is five (5) years.
- Sec. 3.01. Vested Right to Develop. Future Laws. Are there any ordinances that are in the "pipeline" that the County will want to apply to the property? If so, they need to be specifically identified. A possible change to financial guarantees is the only item listed in the Bent Creek and Southstone development agreements.
- Section 3.01A. Connectivity; Road Widths. Is the County willing to alter the normal requirements for stub outs and connectivity? If so, should the provision follow the language used in the Bent Creek development agreement?

Is the road width provision adequate?

- Sec. 3.05. Transfer of Development Rights. The section needs to be revised to reflect the final language used in the Bent Creek and Southstone development agreements.
- Section 4.01A. Payment. What is the dollar amount of this payment (School Payment)? Is it to be like the payment in the Bent Creek and Southstone development agreements?

- Section 4.01B. Funds for Public Safety. What is the dollar amount of this payment (Public Safety)? Is it to be like the payment in the Bent Creek and Southstone development agreements?
- Sec. 4.02. Payment of Costs. When is the reimbursement to the County due?
- Sec. 4.04(A)(1). Roads. Should the language from the Southstone development agreement be used? Are there any specific road improvements that should be listed? What about traffic signals and mast-arms?
- Sec. 5.19. When Agreement takes Effect. When will Bonterra Builders, LLC, take title to the property?
- Exhibit A, Property Description. Is a metes and bounds or other legal description of the property available?
- Exhibit B, Development Schedule. A development schedule is needed.
- Exhibit D, Required Information. Who are the current legal and equitable owners of the property?

Penelope Karagounis' Comments:

Section 3.01A. Connectivity; Road Widths – Our ordinance identifies that a stub out is required to a parcel that has more than 5 acres. Connectivity is very important to help relieve traffic on Barberville Road and Highway 160.

During the bubble plan submittal for the rezoning of the property to R-15P, with a Cluster Subdivision Overlay District, Bonterra Builders graciously agreed to a voluntary dedication of a minimum 50-foot wide, up to a maximum of 100-foot wide strip of land within the stream buffer area along the Creek. We need to know the exact location (we would request an actual recording of an easement to Lancaster County before a final plat can be approved for the Barber Rock South subdivision). We would like to request at least a 100 foot strip of land for the greenway. The reason why we would like to increase the width of the greenway is that in order to build a successful greenway, we will need more than 50 feet in width. We understand the developer does not want to maintain the trail or build the trail but both departments (Planning and Parks and Recreation) will experience an added expense to write and submit applications for

federal grants and also maintain the trail after it is built. We believe any type of voluntary donation to help fund the greenway would be greatly appreciated. We would also request that the greenway be a public greenway. We do not want the trail to be exclusive to the Barber Rock South residents but have it open to the public for all Lancaster County residents to be able to use and enjoy. This needs to be stated in the development agreement.

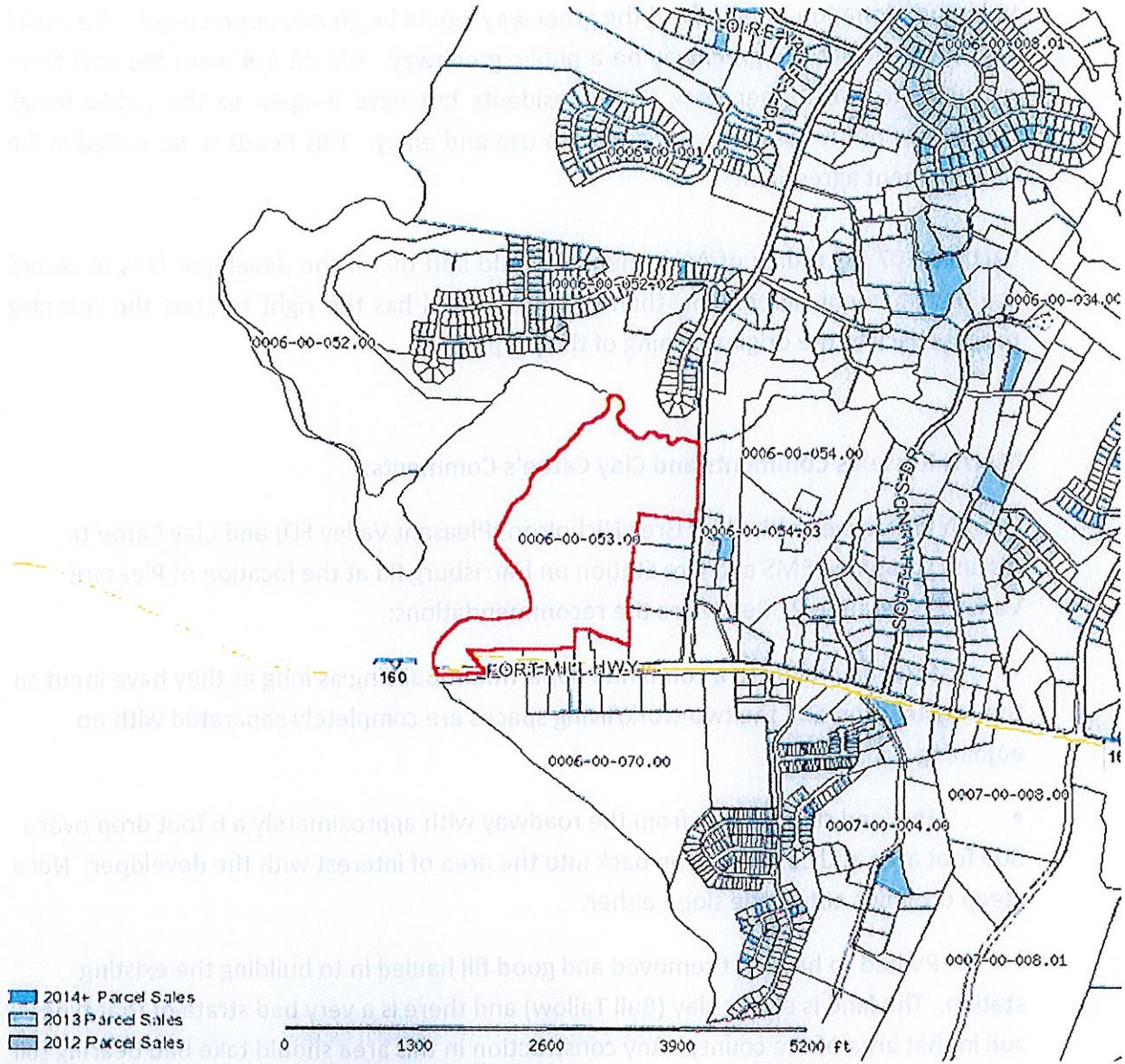
Section 5.07 Recording of Agreement: I would add that if the developer fails to record the development agreement, then County Council has the right to start the rezoning process back to the original zoning of the property.

Morris Russell's Comments and Clay Catoe's Comments:

Darren Player met with Chief Greg Nicholson (Pleasant Valley FD) and Clay Catoe to discuss combined EMS and Fire Station on Harrisburg Rd at the location of Pleasant Valley FD's station 2. Below are the recommendations:

- PV is amenable to a combined department building as long as they have input on the construction and the two work/living spaces are completely separated with no adjoining doorways.
- The land slopes away from the roadway with approximately a 6 foot drop over a 300 foot area and continuing on back into the area of interest with the developer. Not a steep drop but not gentle slope either.
- PV had to have dirt removed and good fill hauled in to building the existing station. The land is elastic clay (Bull Tallow) and there is a very bad strata of that type soil in that area of the county. Any construction in this area should take bad bearing soil into consideration of cost variables.
- The building could be a metal type building with brick or stone façade to make it conducive to the architecture of the area and for the new development.
- Shared cost savings from a combined building are as follows: Sprinkler system vault would be shared cost rather than two; Building generator back up would be shared cost rather than two separate systems; paving/concrete work would be shared for parking areas and driveways; Single construction building with continuous roofline with a single contiguous wall separating living/work spaces for the two different departments giving a 2 hour or four hour fire separation depending on the materials used to construct the barrier wall;

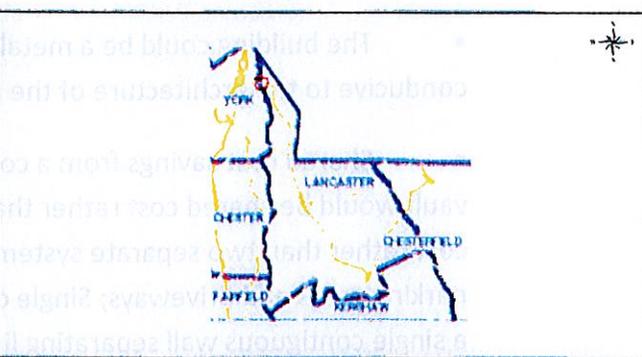
Exhibit 2



- 2014+ Parcel Sales
- 2013 Parcel Sales
- 2012 Parcel Sales

0 1300 2600 3900 5200 ft

| Lancaster County Assessor | | | |
|-------------------------------------|---------------------------------|-----------------|----------------|
| Parcel: 0006-00-053.00 Acres: 69.59 | | | |
| Name: | ROBERSON OTIS P ETAL | Land Value | \$1,586,704.00 |
| Site: | 9923 BARBERVILLE RD | Improvement Val | \$85,400.00 |
| Info: | \$11 on 03-2003 Vacant= Qual=90 | Accessory Value | \$800.00 |
| Mail: | 9899 BARBERVILLE ROAD | Total Value | \$1,672,904.00 |
| | INDIAN LAND, SC 29707-0000 | | |
| | | | |



The Lancaster County Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. PLEASE NOTE THAT THE PROPERTY APPRAISER MAPS ARE FOR ASSESSMENT PURPOSES ONLY NEITHER LANCASTER COUNTY NOR ITS EMPLOYEES ASSUME RESPONSIBILITY FOR ERRORS OR OMISSIONS ---THIS IS NOT A SURVEY---
Date printed: 04/24/14 : 11:17:47

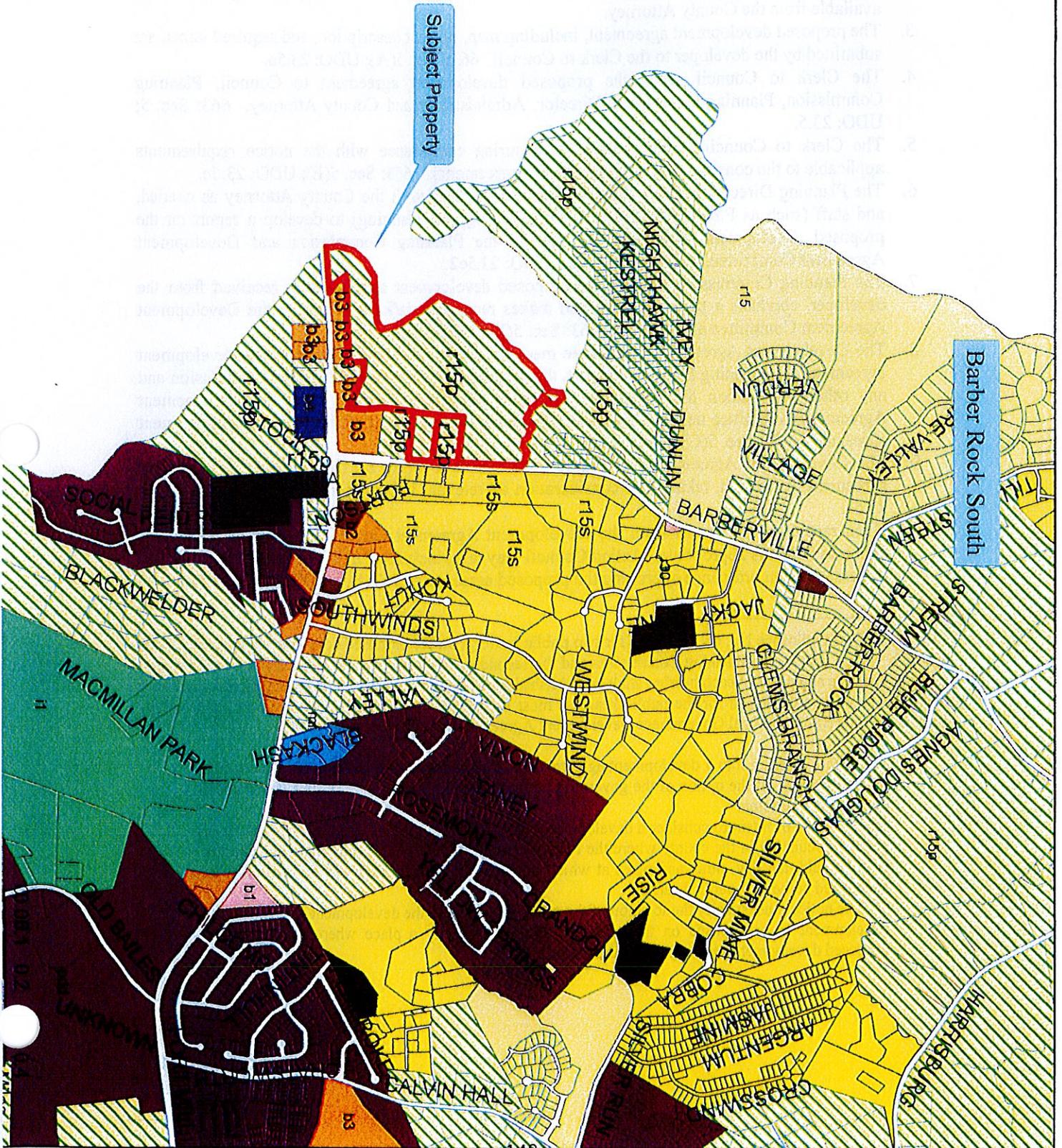


Disclaimer:

Lancaster County makes no guarantee expressed or implied, regarding the use of data contained within this document, nor does the distribution of this document constitute or imply any such warranty. Distribution of this document is intended for informational purposes only and should not be considered authoritative or accessible for legal, financial, and other site-specific

Subject Property

Barber Rock South



Development Agreement Process

1. Developers seeking to rezone property containing twenty-five (25) acres or more should be advised that it is Council's practice for a development agreement to be agreed to for that property.
2. Developers should be prepared to submit a proposed development agreement that conforms to the requirements of the Development Agreement Ordinance for Lancaster County, South Carolina (Ordinance No. 663; UDO, Chapter 23). Word versions of recent development agreements are available from the County Attorney.
3. The proposed development agreement, including map, project description, and required items, are submitted by the developer to the Clerk to Council. 663: Sec. 5(A); UDO: 23.5a.
4. The Clerk to Council sends the proposed development agreement to Council, Planning Commission, Planning Department Director, Administrator and County Attorney. 663: Sec. 5; UDO: 23.5.
5. The Clerk to Council is responsible for ensuring compliance with the notice requirements applicable to the consideration of development agreements.¹ 663: Sec. 5(E); UDO: 23.5e.
6. The Planning Director reviews the documents, consulting with the County Attorney as needed, and staff (such as Fire, EMS, Public Works, Zoning and Planning) to develop a report on the proposed development agreement for use by the Planning Commission and Development Agreement Committee. 663: Sec. 5(C)(2); UDO: 23.5c2.
7. The Planning Commission reviews the proposed development agreement as received from the developer, conducts a public hearing and makes recommendations, if any, to the Development Agreement Committee and Council. 663: Sec. 5(D); UDO: 23.5d.
8. The Development Agreement Committee meets as needed to review the proposed development agreement, the Planning Director's report, the recommendations of the Planning Commission and any other information the committee considers relevant. Through staff, the Development Agreement Committee negotiates with the developer on any aspect of the proposed development agreement. 663: Sec. 5(C); UDO: 23.5c.
9. The Development Agreement Committee shall submit a report on the proposed development agreement to Council, taking into consideration all relevant information. 663: Sec. 5(C); UDO: 23.5c.
10. Upon receipt of the report from the Development Agreement Committee, Council takes such action as it deems appropriate. Action Council may take, includes, but is not limited to, no action or passage of an ordinance approving the proposed agreement. 663: Sec. 5(F); UDO: 23.5f.

¹Section 5(E) of Ordinance No. 663 provides for two public hearings on the proposed development agreement, one of which will be held by the Planning Commission and the second by the Council. Not less than fifteen (15) days' notice of the time and place of each hearing shall be published in at least one newspaper of general circulation in the county. The notices published for the public hearings must include the information required to be published by Section 6-31-50(B) of the Local Government Development Agreement Act which provides that:

(A) Before entering into a development agreement, a local government shall conduct at least two public hearings. At the option of the governing body, the public hearing may be held by the local planning commission.

(B)(1) Notice of intent to consider a development agreement must be advertised in a newspaper of general circulation in the county where the local government is located. If more than one hearing is to be held, the day, time, and place at which the second public hearing will be held must be announced at the first public hearing.

(2) The notice must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.

Memorandum

To: Members of Lancaster County Council
Members of the Lancaster County Planning Commission
Penelope Karagounis, Planning Director and Staff Liaison for the Planning Commission
Judy Barrineau, Clerk to the Planning Commission
Steve Willis, County Administrator
Mike Ey, County Attorney

From: Debbie C. Hardin, Clerk to Council

Date: 6/30/2014

Re: Proposed Development Agreement for Barber Rock South / Bonterra Builders

The attached proposed Development Agreement was delivered to me on Friday, June 27, 2014.

As per Ordinance 663 regarding the procedures and requirements for consideration of and entering into development agreements, I am forwarding a copy to the Planning Director and Planning Commission for review.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you

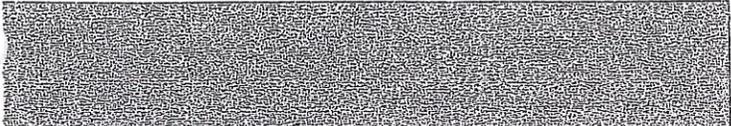


Exhibit 4

DRAFT AGREEMENT

June 24, 2014

------(Space above this line for recording use)-----

| | | |
|-------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA |) | DEVELOPMENT AGREEMENT |
| |) | |
| COUNTY OF LANCASTER |) | BARBER ROCK SOUTH |

This DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the _____ day of [DATE OF THIRD READING APPROVAL], 2014 ("Agreement Date"), by and between BONTERRA BUILDERS LLC., a North Carolina Limited Liability Corporation ("Developer"), and the COUNTY OF LANCASTER (the "County"), a body politic and corporate, a political subdivision of the State of South Carolina.

RECITALS

WHEREAS, Developer has obtained the right to acquire certain real property consisting of approximately Eighty Three and 82/100 (83.82) acres, more or less, located along Barberville Road and known as the Barber Rock South development.

WHEREAS, Developer has submitted an application to the County requesting that the area comprising the Barber Rock South development be rezoned to R-15P, Low Density Residential / Agricultural Panhandle District with a Cluster Subdivision Overlay District.

WHEREAS, County have determined that it is in the best interests of the County and Developer to enter into this Agreement to set forth the terms and conditions of the development in order to more fully protect the Developer's development rights, thereby providing certainty and predictability to the Developer of those rights and providing certainty and predictability to the County on the scope and terms of the development.

WHEREAS, the Developer desires to obtain from the County in connection with the development, and the County is willing to provide, assurances: (1) that the property will be zoned R-15P, Low Density Residential / Agricultural Panhandle District with a Cluster

Subdivision Overlay District for the duration of this Agreement; (2) that upon receipt of its development and construction permits it may proceed with the planned development and construction; and (3) that the development rights will be vested for the duration of this Agreement.

WHEREAS, in connection with the proposed development, Developer and County recognize that the scope and term of the planned development under this Agreement accomplish the statutory aims of comprehensive, orderly planning and development within the County, thus providing benefits to the citizens of the County and providing public benefits through, among other things, the donation of funds or financing of those public facilities and services described and identified in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth in this Agreement, the receipt and sufficiency of such consideration being acknowledged by the parties, and pursuant to the South Carolina Local Government Development Agreement Act, codified as Sections 6-31-10 to -160, Code of Laws of South Carolina 1976, as amended (the “Act”) and the Development Agreement Ordinance for Lancaster County, South Carolina (“Ordinance No. 663”), the parties to this Agreement, intending to be legally bound to a development agreement in accordance with the Act and Ordinance No. 663, agree as follows:

ARTICLE I

GENERAL

Section 1.01. Incorporation. The above recitals are incorporated in this Agreement as if the recitals were set out in this Agreement in its entirety. The findings contained in the Act are incorporated into this Agreement as if it were set out in this Agreement in its entirety.

Section 1.02. Definitions. (A) As used in this Agreement:

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

(2) “Agreement” means this Development Agreement.

(2A) “Agreement Date” means [DATE OF THIRD READING APPROVAL] , 2014.

(3) “County” means the County of Lancaster, a body politic and corporate, a political subdivision of the State of South Carolina.

(4) “County Council” means the governing body of the County.

(5) “Developer” means Bonterra Builders, LLC., a North Carolina Limited Liability Corporation, and its successors in title to the Property who undertake Development of the Property or who are transferred Development Rights.

(6) “Development Rights” means the right of the Developer to develop all or part of the Property in accordance with this Agreement.

(7) Reserved.

(8) “Laws and Land Development Regulations” means the County’s applicable rules and regulations governing development of real property as set forth on Exhibit E hereto.

(9) "Ordinance No. 663" means Ordinance No. 663 of the County which is cited as the Development Agreement Ordinance for Lancaster County, South Carolina.

(10) "Ordinance No. 2014-1272" means Ordinance No. 2014-1272 of the County zoning the Property R-30P, Low Density Residential / Agricultural Panhandle District with a Cluster Subdivision Overlay District.

(11) Reserved.

(12) "Ordinance No. 2014-____" means Ordinance No. 2014-____ of the County approving this Agreement.

(13) Reserved.

(14) "Parties" means County and Developer.

(15) "Property" means the land, and any improvements thereon, described in Section 1.04.

(16) Reserved.

(17) "UDO" means Ordinance No. 309, as amended, as of the Agreement Date and which is cited as the Unified Development Ordinance of Lancaster County. The UDO includes Ordinance No. 328, as amended, as of the Agreement Date and which is cited as the Land Development Regulations of Lancaster County. A copy of the UDO has been signed by the Parties and is on file in the office of the County Planning Department.

(B) Unless the context clearly indicates otherwise, terms not otherwise defined in this Agreement have the meanings set forth in the Act and Ordinance No. 663.

Section 1.03. Parties. The parties to this Agreement are County and Developer.

Section 1.04. Property. This Agreement applies to the land described in Exhibit A, attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety. The Property is generally known as the Barber Rock South development.

Section 1.05. Zoning. The Property is zoned R-15P, Low Density Residential / Agricultural Panhandle District with a Cluster Subdivision Overlay District pursuant to Ordinance No. 2014-1272.

Section 1.06. Permitted Uses. (A) The UDO provides for the development uses on the Property, including population densities, building intensities and height.

(B) All lots for the Development must meet all of the standards contained in this Agreement and if no specific standard is contained in this Agreement, then the standards contained in the UDO apply.

Section 1.07. Development Schedule. (A) The estimated development schedule for the Property is set forth on Exhibit C, attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety.

(B) County and Developer acknowledge that the development schedule is an estimate. The failure of the Developer to meet a commencement or completion date does not, in and of itself, constitute a material breach of this Agreement, but must be judged based on the totality of the circumstances. The development schedule is a planning and forecasting tool only. County

and Developer acknowledge that actual development is likely to take place at a different pace than set forth in the development schedule because of future market forces.

(C) County agrees that if Developer requests an adjustment to the development schedule, including commencement dates and interim completion dates, then the dates must be modified if the Developer is able to demonstrate and establish that there is good cause to modify those dates. "Good cause" includes, but is not limited to, changes in market conditions.

(D) Periodic adjustments to the development schedule do not require a formal amendment to this Agreement and are not considered a major modification. To adjust the development schedule, the Developer shall submit a proposed adjustment to the Clerk to Council who shall forward copies of the proposed adjustment to each member of County Council. The proposed adjustment must be accompanied by an explanation and justification. The proposed adjustment is effective sixty (60) days from receipt by the Clerk to Council unless the County Council has disapproved the proposed adjustment by passage of a resolution to that effect within the sixty (60) day period.

Section 1.08. Relationship of Parties. This Agreement creates a contractual relationship among the Parties. This Agreement is not intended to create, and does not create, the relationship of partnership, joint venture, or any other relationship wherein any one of the parties may be held responsible for the acts of any other party. This Agreement is not intended to create, and does not create, a relationship whereby any one of the parties may be rendered liable in any manner for the debts or obligations of any other party, to any person or entity whatsoever, whether the debt or obligation arises under this Agreement or outside of this Agreement.

Section 1.09. Benefits and Burdens. (A) The Parties agree that the burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interests to the Parties to this Agreement.

(B) Any purchaser or other successor in title is responsible for performance of Developer's obligations pursuant to this Agreement as to the portion of the Property so transferred. Developer must give notice to the County of the transfer of property to any purchaser or other successor in title in the manner prescribed in Section 3.05.

(C) Developer acknowledges and agrees that it and its successors and assigns (i) are responsible for the development of the Property when Developer acquires title to or Development Rights for the Property, and (ii) will develop the Property in accordance with the terms and conditions of this Agreement. It is the express intention of the Parties that the obligations of this Agreement are intended to run with the Property. If the Property is sold, either in whole or in part, and the Developer's obligations are transferred to a purchaser or successor in title to the Property as provided herein and in Section 3.05 below, Developer shall be relieved of any further liability for the performance of Developer's obligations as provided in this Agreement as it relates to the portion of the Property sold if the Developer is then current with its obligations pursuant to this Agreement.

Section 1.10. Term. The term of this Agreement commences on the Agreement Date and terminates ____ () years thereafter.

Section 1.11. Required Information. Ordinance No. 663 requires a development agreement to include certain information. Exhibit D contains the required information or identifies where the information may be found in this Agreement. Exhibit D is incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of County. (A) The County represents that it finds the development permitted by this Agreement is consistent with the County's comprehensive plan and land development regulations.

(B) The County represents that it has approved this Agreement by adoption of Ordinance No. 2014-____ in accordance with the procedural requirements of the Act, Ordinance No. 663 and any other applicable state law.

(C) The County represents that prior to the final reading of Ordinance No. 2014-____ that at least two public hearings were held after publication of the required notice and the publication of a notice of intent to consider a proposed development agreement.

Section 2.02. Representations and Warranties of Developer. (A) Developer represents that the number of acres of highland contained in the Property is more than twenty-five (25).

(B) Developer represents that, as of the Agreement Date, it has contractual rights to acquire the Property.

(C) Developer represents and warrants that the execution, delivery and performance by the respective individual or entity signing this Agreement on behalf of the party has been duly authorized and approved by all requisite action on the part of Developer.

ARTICLE III

DEVELOPMENT RIGHTS

Section 3.01. Vested Right to Develop. (A) County agrees that the Developer, upon receipt of its development permits as identified in Section 3.04, may proceed to develop the Property according to the terms and conditions of this Agreement. The right of Developer to develop the Property as set forth in this Agreement is deemed vested with Developer for the term of this Agreement when the Developer has complied with all of the requirements of Section 5.19 of this Agreement.

(B) County agrees that the specific Laws and Land Development Regulations in force as of the Agreement Date as set forth in Exhibit E to this Agreement, attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety, shall govern all aspects of the development of the Property, according to the terms and standards as stated in this Agreement, for the term of this Agreement.

(C) The Developer has a vested right to proceed with the development of the Property in accordance with the zoning classification set forth in Ordinance No. 2014-1272, the UDO and

the terms of this Agreement when the Developer has complied with all of the requirements of Section 5.19 of this Agreement.

(D) Except as may be otherwise provided for in this Agreement, the Act or Ordinance No. 663, no future changes or amendments to the Laws and Land Development Regulations shall apply to the Property, and no other local land development legislative enactments shall apply to the development, the Property, or this Agreement which have a direct or indirect adverse effect on the ability of the Developer to develop the Property in accordance with the Laws and Land Development Regulations.

(E) To the extent that this Agreement may contain zoning and development standards which conflict with existing zoning and development standards, including zoning and development standards contained in the UDO, the standards contained in this Agreement supersede all other standards and this Agreement is deemed controlling.

(F) For purposes of Subsection (D) of this Section 3.01 and Section 3.03(A)(3), the UDO is anticipated to be amended subsequent to the Agreement Date to provide that financial guarantees will no longer be accepted for water, sewer and storm water infrastructure and the water, sewer and storm water infrastructure must be installed, tested and in acceptable condition before final plat approval and, these provisions as amended, will apply to the Property.

Section 3.01A. Connectivity; Road Widths.

- A) **Connectivity** Notwithstanding the provisions of Sections 13.7.10.3 and 13.7.9.1 of the UDO relating to connectivity as further set forth in Sections 2.1.5 (6)(i).2 and 2.1.5.6.(i) relating to the Cluster Subdivision Overlay District Ordinance, Developer and County agree that the Developer is not required to provide a stubbed out street for any adjacent undeveloped parcel or parcel used for single family home that contains a minimum of five (5) areas and is not required to provide a minimum connectivity index of 1.4 due to inherent constraints associated with the property.
- B) **Road Widths.** Notwithstanding the provisions of Section 26-61 of the Lancaster County Code of Ordinances, the standard for pavement width for local (closed drainage) and local (open drainage) roads is twenty-two feet (22').

Section 3.02. Effect on Vested Rights Act and County Ordinance No. 673. The Parties agree that vested rights conferred upon Developer in this Agreement are not affected by the provisions of the Vested Rights Act, codified as Sections 6-29-1510 to -1560, Code of Laws of South Carolina 1976, as amended, or the provisions of Ordinance No. 673, the County's ordinance relating to the Vested Rights Act.

Section 3.03. Applicability of Subsequently Adopted Laws and Land Development Regulations. (A) County may apply laws adopted after the execution of this Agreement to the development of the Property only if the County Council holds a public hearing and determines:

- (1) the laws are not in conflict with the laws governing this Agreement and do not prevent the development set forth in this Agreement;
- (2) the laws are essential to the public health, safety, or welfare and the laws expressly state that they apply to the development that is subject to this Agreement;
- (3) the laws are specifically anticipated and provided for in this Agreement;

(4) that substantial changes have occurred in pertinent conditions existing at the time this Agreement was approved which changes, if not addressed by County, would pose a serious threat to the public health, safety, or welfare; or

(5) that this Agreement was based on substantially and materially inaccurate information supplied by the Developer that materially affected the terms and provisions of this Agreement.

(B) Notwithstanding the provisions of subsection (A) of this section, the County agrees that if County Council imposes a moratorium or other similar restriction that would curtail or hinder the rate at which development can occur, then the moratorium or other similar restriction shall not apply to the Development of the Property.

(C) Developer agrees to comply with any county-wide building, housing, electrical, plumbing, and gas codes adopted by County Council after the Agreement Date and in force at the time plans for buildings are submitted to the County for review. Nothing in this Agreement is intended to supersede or contravene the requirements of any building, housing, electrical, plumbing, or gas code adopted by County Council.

Section 3.04. Development Permits. (A) Developer agrees to obtain all local development permits for the development of the property. Local development permits, approvals and processes, some of which may have been obtained or complied with as of the Agreement Date, include, but are not limited to:

- (1) Development Review Committee process;
- (2) Preliminary plan approval
- (3) Final plat approval;
- (4) Zoning permits;
- (5) Building permits; and
- (6) Sign permits.

(B) The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

Section 3.05. Transfer of Development Rights. Developer may, at its sole discretion, transfer its Development Rights to other developers. The transferring Developer must give notice to the County of the transfer of any Development Rights. The notice to the County must include the identity and address of the transferring Developer, the identity and address of the acquiring Developer, the acquiring Developer's contact person, the location and number of acres of the Property associated with the transfer and the number of residential units or commercial acreage subject to the transfer. If the acquiring Developer is an entity, then, at the request of the County, the acquiring Developer shall provide the County the opportunity to view a listing of the names and addresses of the entity's officers and owners. Any Developer acquiring Development Rights is required to file with the County an acknowledgment of this Agreement and the transfer of Development Rights is effective only when the County receives a commitment from the acquiring Developer to be bound by it. As used in this section and Section 1.09, "Developer" includes an individual or entity who acquires one or more lots and will be the end-user of the lot.

ARTICLE IV

DEDICATIONS AND FEES AND RELATED AGREEMENTS

Section 4.01. Purpose of Article. The Parties understand and agree that Development of the Property imposes certain burdens and costs on the County, including those for certain services and infrastructure improvements. Eventually, *ad valorem* taxes collected from the property may meet or exceed the burdens and costs placed upon the County, but certain initial costs and capital expenditures are now required that are not to be funded by any increase in taxes paid by existing residents of the County. The purpose of this article is to identify the matters agreed upon to be provided by the Developer to mitigate such burdens and costs.

Section 4.01A. Payment. Developer agrees to pay to the County for the benefit of the Lancaster County School District _____/100 dollars (\$____) for each lot created from the Property for residential dwelling units (the “School Payment”). Except as otherwise provided in this section, from the Agreement Date until the end of the _____ (____) month of the Agreement, the School Payment is due and payable at the same time that the County building permit fees for the lot are due and payable. Payment of the School Payment is a condition for the issuance of a building permit. For the period after the _____ (____th) month, Developer agrees to pay County by the end of the _____ (____th) month for the benefit of the Indian Land Schools, in the Lancaster County School District an amount equal to _____ and No/100 dollars (\$____) times the number of lots for which a building permit has not been issued. If the Developer sells a portion of the Barber Rock South development, whether subdivided or not, the Developer shall pay not later than closing on the sale an amount equal to _____ and No/100 dollars (\$____) times the number of lots associated with the portion of the Reserve at Barber Rock development that is sold. The School Payment is separate and distinct from any fees or amounts payable to the County for a building permit. Monies received from the School Payment shall be remitted by the County to the Lancaster County School District by the end of the month following the month in which the School Payment is received by the County. Developer acknowledges and agrees that County is responsible only for the remittance of the School Payment to the Lancaster County School District and that the County has no other obligation or responsibility for the School Payment. As used in this section, “Developer” means Bonterra Builders, LLC., a North Carolina Limited Liability Corporation, and does not include its successors or assigns.

Section 4.01B. Funds for Public Safety. Developer agrees to pay County _____ dollars (\$____) by _____ to be used for public safety purposes (the “Public Safety Payment”). The determination of the specific uses for the Public Safety Payment is at the discretion of the County Council but should be utilized for improvements within a ten (10) mile radius of the Reserve at Barber Rock Development .

Section 4.02. Payment of Costs. Upon submission of appropriate documentation of the expenditure, Developer agrees to reimburse the County, not later than _____, for the County’s reasonable unreimbursed actual costs related to this Agreement. The foregoing cost reimbursement is capped at _____ dollars (\$____) and is limited to County payments to third-party vendors and service providers that have not been otherwise reimbursed from the fee paid by Developer pursuant to Section 10 of Ordinance No. 663.

Section 4.03. Other Charges or Fees. (A) Nothing in this Agreement shall be construed as relieving Developer from the payment of any fees or charges in effect at the time of collection as may be assessed by entities other than the County.

(B) Developer is subject to the payment of any and all present or future fees enacted by the County that are of County-wide application and that relate to the County's costs of processing applications, issuing development permits, reviewing plans, conducting inspections or similar type processing costs.

Section 4.04. Infrastructure and Services. The Parties recognize that the majority of the direct costs associated with the Development of the Property will be borne by Developer, and many necessary infrastructure improvements and services will be provided by Developer or other governmental or quasi-governmental entities, and not by the County. For clarification, the Parties make specific note of and acknowledge the following:

(A) **Roads.** (1)(a) Developer is responsible for the construction and costs of all roads, whether for public or private use, within the Property including but not limited to any necessary entrance and intersection improvements as required by the South Carolina Department of Transportation related to the development of the Property. All roads must be constructed in accordance with the County's road standards. The road improvements are expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development.

(b) Developer agrees, in accordance with the traffic impact analysis and in accordance with the requirements of the South Carolina Department of Transportation, to provide, at no cost to the County, the required if any road improvements along Barberville road associated with the Reserve at Barber Rock development. These road improvements shall be incorporated into the final site plan prior to County approval and the Developer is responsible for all costs of the road improvements.

(2) Developer is responsible for all construction and maintenance, and the costs thereof, associated with the roads within the Property. Developer may transfer the ownership of the roads and its obligations for the roads to a homeowners' or property owners' association or similar organization, provided, that the transfer is for perpetual maintenance.

(3) Developer agrees to maintain the landscaping at the entrance on Barberville Road Road to the Property and to obtain any necessary easements therefore from the South Carolina Department of Transportation. Developer's obligation to maintain the landscaping is limited to mowing and planting of grass, trimming and planting of shrubs, trees and other vegetation, and maintenance and operation of any associated irrigation system. County agrees to cooperate with Developer in obtaining an easement or other related approvals. Developer may transfer its maintenance obligation to a homeowners' or property owners' association, or similar organization, provided, that the transfer is for perpetual maintenance.

(4) County is not responsible for any construction, maintenance, or costs associated with the roads within the Property. Developer acknowledges that County will not accept the roads within the Property into the County road system for any purpose, including, but not limited to, maintenance.

(B) **Potable Water.** Potable water will be supplied to the Property by the Lancaster County Water and Sewer District. Developer will construct, or cause to be constructed, all

necessary water service infrastructure within the Property and the water service infrastructure will be maintained by the provider. County is not responsible for any construction, treatment, maintenance, or costs associated with water service or water service infrastructure to or within the Property. The water service infrastructure is expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development. Developer acknowledges that County has no authority or responsibility for providing potable water services in the County and that the Lancaster County Water and Sewer District is a governmental entity separate and distinct from the County.

(C) Sewage Treatment and Disposal. Sewage treatment and disposal will be provided by the Lancaster County Water and Sewer District. Developer will construct, or cause to be constructed, all necessary sewer service infrastructure within the Property and the sewer service infrastructure will be maintained by the provider. County is not responsible for any construction, treatment, maintenance, or costs associated with sewer service or sewer service infrastructure. Sewer service infrastructure is expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development. Developer acknowledges that County has no authority or responsibility for providing sewage treatment and disposal services in the County and that the Lancaster County Water and Sewer District is a governmental entity separate and distinct from the County.

(D) Storm Water Management. Developer will construct or cause to be constructed all storm water runoff and drainage improvements within the Property required by the development of the Property and such infrastructure will be maintained by Developer or a homeowners' association. County is not responsible for any construction, maintenance or costs associated with the storm water runoff and drainage for the Property. Storm water management improvements are expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development.

(E) 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 County. It is understood and acknowledged that the County does not presently provide solid waste disposal for single, multi-family or commercial developments. Residential units shall be served by a private waste hauling company.

(F) Law Enforcement Protection. The County shall provide law enforcement protection services to the Property on the same basis as is provided to other residents and businesses within the County.

(G) Recycling Services. The County shall provide recycling services to the Property on the same basis as is provided to other residents and businesses within the County.

(H) Emergency Medical Services (EMS). Emergency medical services shall be provided by the County to the Property on the same basis as is provided to other residents and businesses within the County.

(I) Fire Services. The Property is located in the Indian Land Fire Protection District. Fire protection services will be provided by the Indian Land Volunteer Fire Department, or its successor entities.

(J) Library Service. The County shall provide library services on the same basis as is provided to other residents within the County.

(K) School Services. Public school services are now provided by the Lancaster County School District. Developer acknowledges that County has no authority or responsibility for providing public school services in the County.

(L) Parks and Recreation. The County shall provide parks and recreation services on the same basis as is provided to other residents within the County.

ARTICLE V

MISCELLANEOUS

Section 5.01. Notices. Any notice, election, demand, request or other communication to be provided under this Agreement shall be in writing and shall be effective (i) when delivered to the party named below, (ii) when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, or (iii) when deposited in Federal Express (or any other reputable national “next day” delivery service) addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

To the County: County of Lancaster
Attn: County Administrator
101 N. Main St. (29720)
P.O. Box 1809 (29721)
Lancaster, SC

With a Copy to: County of Lancaster
Attn: County Attorney
101 N. Main St. (29720)
P.O. Box 1809 (29721)
Lancaster, SC

And to Developer: Bonterra Builders LLC.
Attn: Mike Kissel
5615 Potter Road
Matthews, NC 28104

With a Copy to: Helder, Helms, Roberson, & Lee P.A.
Attn: James Allen Lee, General Counsel
314 North Hayne Street
Monroe, NC 28112

Section 5.02. Amendments. (A) This Agreement may be amended or cancelled by mutual consent of the parties to the Agreement. An amendment to this Agreement must be in writing. No statement, action or agreement made after the Agreement Date 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 the change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

(B) An amendment to this Agreement must be processed and considered in the same manner as set forth in Ordinance No. 663 for a proposed development agreement. Any amendment to this Agreement constitutes a major modification and the major modification may occur only after public notice and a public hearing by the County Council.

(C) This Agreement must be modified or suspended as may be necessary to comply with any state or federal laws or regulations enacted after the Agreement Date which prevents or precludes compliance with one or more of the provisions of this Agreement but only to the extent necessary to effectuate compliance with the state or federal law.

Section 5.03. Periodic Review. At least every twelve months, the Chief Zoning Officer for the County or the designee of the Chief Zoning Officer for the County, or the successor to Chief Zoning Officer for the County, must review compliance with this Agreement by the Developer. At the time of review the Developer must demonstrate good faith compliance with the terms of the Agreement.

Section 5.04. Breach of Agreement. (A) If, as a result of the periodic review provided in Section 5.03 of this Agreement or at any other time, the Chief Zoning Officer for the County finds and determines that the Developer has committed a material breach of the terms or conditions of this Agreement, the Chief Zoning Officer for the County shall serve notice in writing, within a reasonable time after the periodic review, upon the Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Developer a reasonable time in which to cure the material breach.

(B) If the Developer fails to cure the material breach within a reasonable time and is not proceeding expeditiously and with diligence to cure the breach, then the County Council may unilaterally terminate or modify this Agreement. Prior to terminating or modifying this Agreement as provided in this section, the County Council must first give the Developer the opportunity (i) to rebut the finding and determination, or (ii) to consent to amend the Agreement to meet the concerns of the County Council with respect to the findings and determinations.

Section 5.05. Enforcement. The Parties shall each have the right to enforce the terms, provisions and conditions of this Agreement, if not cured within the applicable cure period, by any remedy available at law or in equity, including specific performance, and the right to recover attorney's fees and costs associated with enforcement.

Section 5.06. No Third Party Beneficiary. The provisions of this Agreement may be enforced only by the Parties. No other persons shall have any rights hereunder.

Section 5.07. Recording of Agreement. The Parties agree that Developer shall record this Agreement with the County Register of Deeds within fourteen (14) days of the date of execution of this Agreement.

Section 5.08. Administration of Agreement. County is the only local government that is a party to this Agreement and the County is responsible for the Agreement's administration.

Section 5.09. Effect of Annexation and Incorporation. The Parties agree that this Agreement remains in effect if the Property is, in whole or in part, included in a newly-incorporated municipality or is annexed into a municipality. The Parties acknowledge that upon incorporation or annexation the application and duration of this Agreement is controlled by Section 6-31-110 of the Act. County reserves the right to enter into an agreement with the newly-incorporated municipality or the annexing municipality for the administration and enforcement of this Agreement after the date of incorporation or annexation.

Section 5.10. Estoppel Certificate. Any of the Parties may, at any time, and from time to time, deliver written notice to the other party requesting the party to certify in writing (i) that this Agreement is in full force and effect, (ii) that this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) whether, to the knowledge of the party, the requesting party is in default or claimed default in the performance of its obligation under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and (iv) whether, to the knowledge of the 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.

Section 5.11. Entire Agreement. This Agreement sets forth, and incorporates by reference all of the agreements, conditions, and understandings among the Parties relative to the Property and its Development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed in this Agreement other than as set forth or as referred to in this Agreement.

Section 5.12. Covenant to Sign other Documents. County and Developer acknowledge that consummation of the transactions contemplated by this Agreement may require the execution contemporaneously with the execution of this Agreement and thereafter of certain documents in addition to this Agreement and County and Developer agree to cooperate with the execution thereof.

Section 5.13. Construction of Agreement. 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 to this Agreement.

Section 5.14. Assignment. The rights, obligations, duties and responsibilities devolved by this Agreement on or to the Developer are assignable to any other person, firm, corporation or entity except that the assignment must conform to the requirements of Section 1.09 and Section 3.05. County may assign its rights, obligations, duties and responsibilities devolved by this Agreement on or to the County to any other person, firm, corporation, or entity.

Section 5.15. Governing Law; Jurisdiction; and Venue. (A) This Agreement is governed by the laws of the State of South Carolina.

(B) The Parties agree that jurisdiction and venue for disputes relating to this Agreement is the Sixth (6th) Judicial Circuit of the State of South Carolina.

Section 5.16. 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.

Section 5.17. 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.

Section 5.18. Severability. If any provision in this Agreement or the application of any provision of this Agreement is held invalid, the invalidity shall apply only to the invalid provision, and the remaining provisions of this Agreement, and the application of this Agreement or any other provision of this Agreement, shall remain in full force and effect. However, if the invalid provision would prevent or materially impair Developer’s right or ability to complete performance of this Agreement, the Parties agree to use their best efforts to renegotiate that provision in order for Developer to complete performance of this Agreement.

Section 5.19. When Agreement takes Effect. This Agreement is dated as of the Agreement Date and takes effect when (i) the County and Developer have each executed the Agreement, and (ii) the Developer has delivered to the County Administrator clocked-in copies, with book and page numbers, of the recorded deeds conveying the Property to Developer. If the County Administrator has not received clocked-in copies of the deeds conveying the Property to Developer by 5pm _____, then this Agreement is automatically terminated without further action of either the County or Developer. The obligation of the Developer pursuant to Section 4.02 is effective on the date the last Party to sign this Agreement executes this Agreement and the obligations imposed on Developer pursuant to Section 4.02 survives the termination of this Agreement pursuant to this Section.

SIGNATURES FOLLOW ON NEXT PAGE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date below found.

WITNESSES:

DEVELOPER:

Bonterra Builders, LLC.,
a _____ corporation

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

WITNESSES:

COUNTY:

COUNTY OF LANCASTER,
SOUTH CAROLINA

By: _____
Larry McCullough, Chair, County Council
Date: _____

By: _____
Jack Estridge, Secretary, County Council
Date: _____

Exhibit A
Property Description

INSERT LEGAL DESCRIPTION.
Tax Map Nos..

Exhibit B

THIS EXHIBIT IS INTENTIONALLY LEFT BLANK.

(NOT APPLICABLE)

Exhibit C
Development Schedule

SCHEDULE NEEDS TO BE FILLED OUT

Years

Residential

_____ units

_____ units

Total

_____ units

This Development Schedule is an estimate. The provisions of Section 1.07 of this Agreement apply to this exhibit.

NOTE: County and Developer acknowledge that development of the Property is limited to one hundred and twenty five (125) residential units.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Exhibit D
Required Information

The Act and Ordinance No. 663 require a development agreement to include certain information. The following information is provided in conformance with the Act and Ordinance No. 663.

(A) *a legal description of the property subject to the agreement and the names of the property's legal and equitable owners.* The legal description of the Property is set forth in Exhibit A. As of the Agreement Date, Developer has contractual rights to acquire the Property and, following acquisition, Developer shall be the only legal and equitable owner of the Property. The legal and equitable owners of the Property are _____.

(B) *the duration of the agreement which must comply with Code Section 6-31-40.* See Section 1.10.

(C) *a representation by the developer of the number of acres of highland contained in the property subject to the agreement.* See Section 2.02.

(D) *the then current zoning of the property and a statement, if applicable, of any proposed re-zoning of the property.* See Section 1.05.

(E) *the development uses that would be permitted on the property pursuant to the agreement, including population densities, building intensities and height.* See Section 1.06.

(F) *a description of the public facilities that will service the development, including who provides the facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development construction timeline for those facilities. If the agreement provides that the County shall provide certain public facilities, the agreement shall provide that the delivery date of the public facilities will be tied to defined completion percentages or other defined performance standards to be met by the developer.* See Article IV, including specifically Section 4.06.

(G) *a description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property as may be required or permitted pursuant to laws in effect at the time of entering into the agreement.* Developer agrees to comply with all applicable environmental laws.

(H) *a description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.* See Section 3.04.

Exhibit E
Laws and Land Development Regulations

1. Ordinance No. 2014-1272 zoning the Property R-15P, Low Density Residential / Agricultural Panhandle District with a Cluster Subdivision Overlay District.
2. Ordinance No. 2014-_____, approving this Development Agreement.
3. The Development Agreement Ordinance for Lancaster County, South Carolina: Ordinance No. 663.
4. Unified Development Ordinance of Lancaster County (UDO): Ordinance No. 309, as amended as of the Agreement Date. The UDO includes Ordinance No. 328, as amended, as of the Agreement Date and which is cited as the Land Development Regulations of Lancaster County. A copy of the UDO has been signed by the Parties and is on file in the office of the County Planning Department.
5. Land Development Regulations of Lancaster County: See Unified Development Ordinance of Lancaster County.
6. Article V, Chapter 26, Lancaster County Code of Ordinances, Road Construction Standards.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

From: Jerry Holt <jerryholt813@gmail.com>
Sent: Tuesday, July 15, 2014 11:22 PM
To: Penelope Karagounis
Subject: Development Agreement comments / Barber Rock

I didn't look at both agreements, but since they use the same template I have some comments on some of the terms.

Article III. Section 3.01 (D)

I would define a time limit. If the developer completes the project within an allotted time period, (say 6 - 8 years, depending on the size of the project), then future regulations would not affect the project. If they exceed that timeframe, then they become subject to current regs.

Article IV Section 4.01A

Last sentence indicates that this section does not bind Bonterra's successors or assigns. This seems to indicate that if they sell to another developer, that developer is not obligated to make any of these contributions. I would strike that sentence.

Section 4.04 (A) (1)(a)

Last sentence states "The road improvements *are expected to be* implemented....."
That would not seem to be enforceable. It should state "The road improvements *shall be*....."

(4) County not responsible for roads.

This is a bad policy, but the planning commission isn't going to be able to change it.

--

Jerry L Holt
(973) 897-9251

DA-014-007 – Bonterra Builders (The Reserve at Barber Rock) has submitted an application to enter into a development agreement with Lancaster County. The site is located in the panhandle area of the County near the intersection of Pettus Road and Barberville Road (Tax Map 3, Parcels 63.01 and 68). The site contains a total of 35.10 acres. {Public Hearing} pgs. 173-204

Penelope Karagounis

Planning Staff Report

I. Facts

A. General Information

Bonterra Builders (The Reserve at Barber Rock) has submitted an application to enter into a development agreement with Lancaster County. The site is located in the panhandle area of the County near the intersection of Pettus Road and Barberville Road (Tax Map 3, Parcels 63.01 and 68). The site contains a total of 35.10 acres. The development uses proposed on the property are single-family residential. The zoning of the property is R-15P, Low Density Residential/Agricultural Panhandle District with a Cluster Subdivision Overlay District.

The plan is to develop the site with +/- 52 single-family lots. Under this development agreement, The Reserve at Barber Rock (Bonterra Builders LLC) would be vested for five years.

A development agreement is an agreement between the developer and the County. This development agreement needs to comply with the state and local requirements for development agreements. The state requirements and Ordinance #663, which establishes the county's requirements for a development agreement, are also attached.

TEXT:

See Attached Document – Exhibit 3

II. Findings

The attached document has been reviewed by Steve Willis, County Administrator, Mike Ey from McNair Law Firm, Morris Russell and Darren Player, Emergency Management and Fire Service; Jeff Catoe, Public Works Director, Kenneth Cauthen, Zoning Administrator, Clay Catoe, EMS and Penelope G. Karagounis, Lancaster County Planning Director.

Exhibits:

- 1) Comments from Staff Department Heads
- 2) Property Location
- 3) Development Agreement Process
- 4) Proposed Development Agreement
- 5) Email Comments from Planning Commissioner, Jerry Holt

Lancaster County Planning Department

101 N. Main St., Ste. 108

P.O. Box 1809

Lancaster, South Carolina 29721-1809

Telephone (803) 285-6005

Fax (803) 285-6007

Memo

To: Lancaster County Planning Commission

From: Penelope G. Karagounis, Planning Director

Date: August 6, 2014

Re: Development Agreement Staff Recommendations for the Reserve at Barber Rock

Message:

On Wednesday, July 23, 2014, County staff met to discuss recommendations for the Reserve at Barber Rock subdivision by Bonterra Builders. Steve Willis, County Administrator; Darren Player, Emergency Management and Fire Service; Jeff Catoe, Public Works Director, Kenneth Cauthen, Zoning Administrator and myself attended the meeting. Mr. Mike Ey was not able to attend but submitted his comments. Mr. Clay Catoe was not able to attend the meeting.

Steve Willis Comments:

- (1) Section 3.01 Vested Right to Develop- "The closing of the County road system is the only thing I know of."
- (2) Section 3.01A Connectivity: Road Widths – "I would defer to Penelope and Jeff on connectivity and stub outs. Road width needs to be standard or we will hit objections from the fire service."
- (3) Section 4.01A. Payment – "The payment to the School District will be an upfront payment like the Public Safety fee. We are doing rooftop fees any more."
- (4) Section 4.01B. Funds for Public Safety – "I think the Committee will be amenable to negotiating on the fee since it will all be upfront but I don't know how much as this will be our first one."

Jeff Catoe Comments: Regardless if road system is capped or not, there should be no language "automatically" accepting roads into the county system. Agreements should

not allow roads, regardless of private or public to be built below minimum standards. ROADS ARE PRIVATE and the minimum width of pavement is 22'.

Mike Ey Comments: JME – July 25, 2014

Initial Review of Bonterra Builders, LLC – Reserve at Barber Rock Development Agreement

- **General Editing.** A small amount of minor general editing is needed throughout the document. This editing would have little or no substantive effect.
- **Sec. 107. Development Schedule and Exhibit C.** A schedule is needed for the exhibit.
- **Sec. 1.09. Benefits and Burdens. Individual Lot Owners.** Subsection (B) needs to be revised to reflect the final language used in the Bent Creek and Southstone development agreements.
- **Sec. 1.10. Term.** The maximum term pursuant to state law is five (5) years.
- **Sec. 3.01. Vested Right to Develop. Future Laws.** Are there any ordinances that are in the “pipeline” that the County will want to apply to the property? If so, they need to be specifically identified. A possible change to financial guarantees is the only item listed in the Bent Creek and Southstone development agreements.
- **Section 3.01A. Connectivity; Road Widths.** Is the County willing to alter the normal requirements for stub outs and connectivity? If so, should the provision follow the language used in the Bent Creek development agreement?

Is the road width provision adequate?

- **Sec. 3.05. Transfer of Development Rights.** The section needs to be revised to reflect the final language used in the Bent Creek and Southstone development agreements.
- **Section 4.01A. Payment.** What is the dollar amount of this payment (School Payment)? Is it to be like the payment in the Bent Creek and Southstone development agreements?

- Section 4.01B. Funds for Public Safety. What is the dollar amount of this payment (Public Safety)? Is it to be like the payment in the Bent Creek and Southstone development agreements?
- Sec. 4.02. Payment of Costs. When is the reimbursement to the County due?
- Sec. 4.04(A)(1). Roads. Should the language from the Southstone development agreement be used? Are there any specific road improvements that should be listed? What about traffic signals and mast-arms?
- Sec. 5.19. When Agreement takes Effect. When will Bonterra Builders, LLC, take title to the property?
- Exhibit A, Property Description. Is a metes and bounds or other legal description of the property available?
- Exhibit B, Development Schedule. A development schedule is needed.
- Exhibit D, Required Information. Who are the current legal and equitable owners of the property?

Penelope Karagounis' Comments:

Section 3.01A. Connectivity; Road Widths – Our ordinance identifies that a stub out is required to a parcel that has more than 5 acres. In regards to not being able to meet the Connectivity Index, please supply documentation for topographic restraints to the property.

Section 5.07 Recording of Agreement: I would add that if the developer fails to record the development agreement, then County Council has the right to start the rezoning process back to the original zoning of the property.

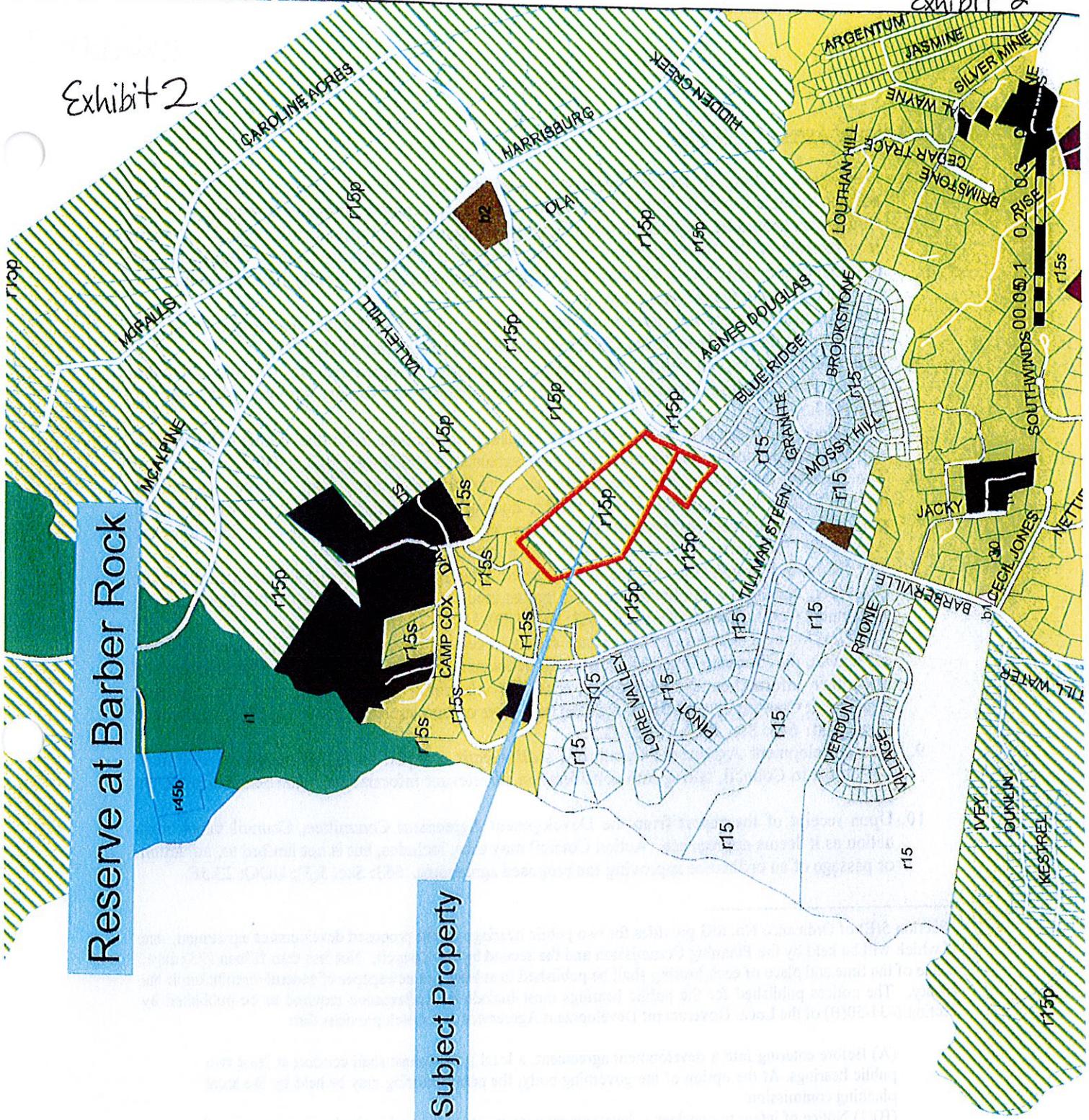
Morris Russell's Comments and Clay Catoe's Comments:

Darren Player met with Chief Greg Nicholson (Pleasant Valley FD) and Clay Catoe to discuss combined EMS and Fire Station on Harrisburg Rd at the location of Pleasant Valley FD's station 2. Below are the recommendations:

- PV is amenable to a combined department building as long as they have input on the construction and the two work/living spaces are completely separated with no adjoining doorways.
- The land slopes away from the roadway with approximately a 6 foot drop over a 300 foot area and continuing on back into the area of interest with the developer. Not a steep drop but not gentle slope either.
- PV had to have dirt removed and good fill hauled in to building the existing station. The land is elastic clay (Bull Tallow) and there is a very bad strata of that type soil in that area of the county. Any construction in this area should take bad bearing soil into consideration of cost variables.
- The building could be a metal type building with brick or stone façade to make it conducive to the architecture of the area and for the new development.
- Shared cost savings from a combined building are as follows: Sprinkler system vault would be shared cost rather than two; Building generator back up would be shared cost rather than two separate systems; paving/concrete work would be shared for parking areas and driveways; Single construction building with continuous roofline with a single contiguous wall separating living/work spaces for the two different departments giving a 2 hour or four hour fire separation depending on the materials used to construct the barrier wall;
- Land from the developer would include the finger area going out to Harrisburg Rd as well as the offset area and a strip across the rear of PVs current lot. This will allow a common driveway and room to drive around the rear of the new station building and drive into the bays as opposed to having to back into a bay, hopefully alleviating backing accidents that plague EMS.
- Cost on this will be in the \$750,000 to \$1,000,000 dollar range if not more based on soil conditions and construction market commodities.

The overall development of this site is approximately 35.10 acres and is located in the panhandle area of the County near the intersection of Pettus Road and Barberville Road (Tax Map #3, Parcels 63.01 and 68. The development use proposed for the property is for +/- 52 single family residential units. The property is zoned R-15P, Low Density Residential/ Agricultural Panhandle District with a Cluster Subdivision Overlay District. The development of this site will increase the need for a new EMS/Fire Station. Our recommendation is that a public facility for an EMS/Fire Station is needed at this site to help the future needs of the

development and the northern community of Indian Land. A financial contribution is needed for the School District as well to help accommodate new students.



Reserve at Barber Rock

Subject Property



Lancaster County is not responsible for the accuracy of the information provided on this map. The use of this information is at the user's own risk. Lancaster County is not liable for any damages or losses resulting from the use of this information. All rights reserved. 2017

Development Agreement Process

1. Developers seeking to rezone property containing twenty-five (25) acres or more should be advised that it is Council's practice for a development agreement to be agreed to for that property.
2. Developers should be prepared to submit a proposed development agreement that conforms to the requirements of the Development Agreement Ordinance for Lancaster County, South Carolina (Ordinance No. 663; UDO, Chapter 23). Word versions of recent development agreements are available from the County Attorney.
3. The proposed development agreement, including map, project description, and required items, are submitted by the developer to the Clerk to Council. 663: Sec. 5(A); UDO: 23.5a.
4. The Clerk to Council sends the proposed development agreement to Council, Planning Commission, Planning Department Director, Administrator and County Attorney. 663: Sec. 5; UDO: 23.5.
5. The Clerk to Council is responsible for ensuring compliance with the notice requirements applicable to the consideration of development agreements.¹ 663: Sec. 5(E); UDO: 23.5e.
6. The Planning Director reviews the documents, consulting with the County Attorney as needed, and staff (such as Fire, EMS, Public Works, Zoning and Planning) to develop a report on the proposed development agreement for use by the Planning Commission and Development Agreement Committee. 663: Sec. 5(C)(2); UDO: 23.5c2.
7. The Planning Commission reviews the proposed development agreement as received from the developer, conducts a public hearing and makes recommendations, if any, to the Development Agreement Committee and Council. 663: Sec. 5(D); UDO: 23.5d.
8. The Development Agreement Committee meets as needed to review the proposed development agreement, the Planning Director's report, the recommendations of the Planning Commission and any other information the committee considers relevant. Through staff, the Development Agreement Committee negotiates with the developer on any aspect of the proposed development agreement. 663: Sec. 5(C); UDO: 23.5c.
9. The Development Agreement Committee shall submit a report on the proposed development agreement to Council, taking into consideration all relevant information. 663: Sec. 5(C); UDO: 23.5c.
10. Upon receipt of the report from the Development Agreement Committee, Council takes such action as it deems appropriate. Action Council may take, includes, but is not limited to, no action or passage of an ordinance approving the proposed agreement. 663: Sec. 5(F); UDO: 23.5f.

¹ Section 5(E) of Ordinance No. 663 provides for two public hearings on the proposed development agreement, one of which will be held by the Planning Commission and the second by the Council. Not less than fifteen (15) days' notice of the time and place of each hearing shall be published in at least one newspaper of general circulation in the county. The notices published for the public hearings must include the information required to be published by Section 6-31-50(B) of the Local Government Development Agreement Act which provides that:

(A) Before entering into a development agreement, a local government shall conduct at least two public hearings. At the option of the governing body, the public hearing may be held by the local planning commission.

(B)(1) Notice of intent to consider a development agreement must be advertised in a newspaper of general circulation in the county where the local government is located. If more than one hearing is to be held, the day, time, and place at which the second public hearing will be held must be announced at the first public hearing.

(2) The notice must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.

Memorandum

To: Members of Lancaster County Council
 Members of the Lancaster County Planning Commission
 Penelope Karagounis, Planning Director and Staff Liaison for the Planning Commission
 Judy Barrineau, Clerk to the Planning Commission
 Steve Willis, County Administrator
 Mike Ey, County Attorney

From: Debbie C. Hardin, Clerk to Council

Date: 6/30/2014

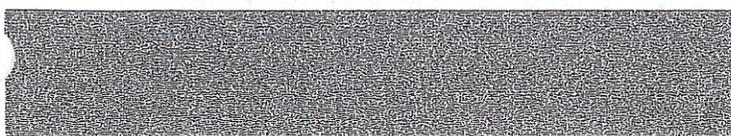
Re: Proposed Development Agreement for The Reserve at Barber Rock / Bonterra Builders

The attached proposed Development Agreement was delivered to me on Friday, June 27, 2014.

As per Ordinance 663 regarding the procedures and requirements for consideration of and entering into development agreements, I am forwarding a copy to the Planning Director and Planning Commission for review.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you



Subdivision Overlay District for the duration of this Agreement; (2) that upon receipt of its development and construction permits it may proceed with the planned development and construction; and (3) that the development rights will be vested for the duration of this Agreement.

WHEREAS, in connection with the proposed development, Developer and County recognize that the scope and term of the planned development under this Agreement accomplish the statutory aims of comprehensive, orderly planning and development within the County, thus providing benefits to the citizens of the County and providing public benefits through, among other things, the donation of funds or financing of those public facilities and services described and identified in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth in this Agreement, the receipt and sufficiency of such consideration being acknowledged by the parties, and pursuant to the South Carolina Local Government Development Agreement Act, codified as Sections 6-31-10 to -160, Code of Laws of South Carolina 1976, as amended (the “Act”) and the Development Agreement Ordinance for Lancaster County, South Carolina (“Ordinance No. 663”), the parties to this Agreement, intending to be legally bound to a development agreement in accordance with the Act and Ordinance No. 663, agree as follows:

ARTICLE I

GENERAL

Section 1.01. Incorporation. The above recitals are incorporated in this Agreement as if the recitals were set out in this Agreement in its entirety. The findings contained in the Act are incorporated into this Agreement as if it were set out in this Agreement in its entirety.

Section 1.02. Definitions. (A) As used in this Agreement:

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

(2) “Agreement” means this Development Agreement.

(2A) “Agreement Date” means [DATE OF THIRD READING APPROVAL] , 2014.

(3) “County” means the County of Lancaster, a body politic and corporate, a political subdivision of the State of South Carolina.

(4) “County Council” means the governing body of the County.

(5) “Developer” means Bonterra Builders, LLC., a North Carolina Limited Liability Corporation, and its successors in title to the Property who undertake Development of the Property or who are transferred Development Rights.

(6) “Development Rights” means the right of the Developer to develop all or part of the Property in accordance with this Agreement.

(7) Reserved.

(8) “Laws and Land Development Regulations” means the County’s applicable rules and regulations governing development of real property as set forth on Exhibit E hereto.

(9) "Ordinance No. 663" means Ordinance No. 663 of the County which is cited as the Development Agreement Ordinance for Lancaster County, South Carolina.

(10) "Ordinance No. 2014-1272" means Ordinance No. 2014-1272 of the County zoning the Property R-30P, Low Density Residential / Agricultural Panhandle District with a Cluster Subdivision Overlay District.

(11) Reserved.

(12) "Ordinance No. 2014-____" means Ordinance No. 2014-____ of the County approving this Agreement.

(13) Reserved.

(14) "Parties" means County and Developer.

(15) "Property" means the land, and any improvements thereon, described in Section 1.04.

(16) Reserved.

(17) "UDO" means Ordinance No. 309, as amended, as of the Agreement Date and which is cited as the Unified Development Ordinance of Lancaster County. The UDO includes Ordinance No. 328, as amended, as of the Agreement Date and which is cited as the Land Development Regulations of Lancaster County. A copy of the UDO has been signed by the Parties and is on file in the office of the County Planning Department.

(B) Unless the context clearly indicates otherwise, terms not otherwise defined in this Agreement have the meanings set forth in the Act and Ordinance No. 663.

Section 1.03. Parties. The parties to this Agreement are County and Developer.

Section 1.04. Property. This Agreement applies to the land described in Exhibit A, attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety. The Property is generally known as the Reserve at Barber Rock development.

Section 1.05. Zoning. The Property is zoned R-15P, Low Density Residential / Agricultural Panhandle District with a Cluster Subdivision Overlay District pursuant to Ordinance No. 2014-1272.

Section 1.06. Permitted Uses. (A) The UDO provides for the development uses on the Property, including population densities, building intensities and height.

(B) All lots for the Development must meet all of the standards contained in this Agreement and if no specific standard is contained in this Agreement, then the standards contained in the UDO apply.

Section 1.07. Development Schedule. (A) The estimated development schedule for the Property is set forth on Exhibit C, attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety.

(B) County and Developer acknowledge that the development schedule is an estimate. The failure of the Developer to meet a commencement or completion date does not, in and of itself, constitute a material breach of this Agreement, but must be judged based on the totality of the circumstances. The development schedule is a planning and forecasting tool only. County

and Developer acknowledge that actual development is likely to take place at a different pace than set forth in the development schedule because of future market forces.

(C) County agrees that if Developer requests an adjustment to the development schedule, including commencement dates and interim completion dates, then the dates must be modified if the Developer is able to demonstrate and establish that there is good cause to modify those dates. "Good cause" includes, but is not limited to, changes in market conditions.

(D) Periodic adjustments to the development schedule do not require a formal amendment to this Agreement and are not considered a major modification. To adjust the development schedule, the Developer shall submit a proposed adjustment to the Clerk to Council who shall forward copies of the proposed adjustment to each member of County Council. The proposed adjustment must be accompanied by an explanation and justification. The proposed adjustment is effective sixty (60) days from receipt by the Clerk to Council unless the County Council has disapproved the proposed adjustment by passage of a resolution to that effect within the sixty (60) day period.

Section 1.08. Relationship of Parties. This Agreement creates a contractual relationship among the Parties. This Agreement is not intended to create, and does not create, the relationship of partnership, joint venture, or any other relationship wherein any one of the parties may be held responsible for the acts of any other party. This Agreement is not intended to create, and does not create, a relationship whereby any one of the parties may be rendered liable in any manner for the debts or obligations of any other party, to any person or entity whatsoever, whether the debt or obligation arises under this Agreement or outside of this Agreement.

Section 1.09. Benefits and Burdens. (A) The Parties agree that the burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interests to the Parties to this Agreement.

(B) Any purchaser or other successor in title is responsible for performance of Developer's obligations pursuant to this Agreement as to the portion of the Property so transferred. Developer must give notice to the County of the transfer of property to any purchaser or other successor in title in the manner prescribed in Section 3.05.

(C) Developer acknowledges and agrees that it and its successors and assigns (i) are responsible for the development of the Property when Developer acquires title to or Development Rights for the Property, and (ii) will develop the Property in accordance with the terms and conditions of this Agreement. It is the express intention of the Parties that the obligations of this Agreement are intended to run with the Property. If the Property is sold, either in whole or in part, and the Developer's obligations are transferred to a purchaser or successor in title to the Property as provided herein and in Section 3.05 below, Developer shall be relieved of any further liability for the performance of Developer's obligations as provided in this Agreement as it relates to the portion of the Property sold if the Developer is then current with its obligations pursuant to this Agreement.

Section 1.10. Term. The term of this Agreement commences on the Agreement Date and terminates ____ () years thereafter.

Section 1.11. Required Information. Ordinance No. 663 requires a development agreement to include certain information. Exhibit D contains the required information or identifies where the information may be found in this Agreement. Exhibit D is incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties of County. (A) The County represents that it finds the development permitted by this Agreement is consistent with the County's comprehensive plan and land development regulations.

(B) The County represents that it has approved this Agreement by adoption of Ordinance No. 2014-____ in accordance with the procedural requirements of the Act, Ordinance No. 663 and any other applicable state law.

(C) The County represents that prior to the final reading of Ordinance No. 2014-____ that at least two public hearings were held after publication of the required notice and the publication of a notice of intent to consider a proposed development agreement.

Section 2.02. Representations and Warranties of Developer. (A) Developer represents that the number of acres of highland contained in the Property is more than twenty-five (25).

(B) Developer represents that, as of the Agreement Date, it has contractual rights to acquire the Property.

(C) Developer represents and warrants that the execution, delivery and performance by the respective individual or entity signing this Agreement on behalf of the party has been duly authorized and approved by all requisite action on the part of Developer.

ARTICLE III

DEVELOPMENT RIGHTS

Section 3.01. Vested Right to Develop. (A) County agrees that the Developer, upon receipt of its development permits as identified in Section 3.04, may proceed to develop the Property according to the terms and conditions of this Agreement. The right of Developer to develop the Property as set forth in this Agreement is deemed vested with Developer for the term of this Agreement when the Developer has complied with all of the requirements of Section 5.19 of this Agreement.

(B) County agrees that the specific Laws and Land Development Regulations in force as of the Agreement Date as set forth in Exhibit E to this Agreement, attached hereto and incorporated herein by reference as if the exhibit were set out in this Agreement in its entirety, shall govern all aspects of the development of the Property, according to the terms and standards as stated in this Agreement, for the term of this Agreement.

(C) The Developer has a vested right to proceed with the development of the Property in accordance with the zoning classification set forth in Ordinance No. 2014-1272, the UDO and

the terms of this Agreement when the Developer has complied with all of the requirements of Section 5.19 of this Agreement.

(D) Except as may be otherwise provided for in this Agreement, the Act or Ordinance No. 663, no future changes or amendments to the Laws and Land Development Regulations shall apply to the Property, and no other local land development legislative enactments shall apply to the development, the Property, or this Agreement which have a direct or indirect adverse effect on the ability of the Developer to develop the Property in accordance with the Laws and Land Development Regulations.

(E) To the extent that this Agreement may contain zoning and development standards which conflict with existing zoning and development standards, including zoning and development standards contained in the UDO, the standards contained in this Agreement supersede all other standards and this Agreement is deemed controlling.

(F) For purposes of Subsection (D) of this Section 3.01 and Section 3.03(A)(3), the UDO is anticipated to be amended subsequent to the Agreement Date to provide that financial guarantees will no longer be accepted for water, sewer and storm water infrastructure and the water, sewer and storm water infrastructure must be installed, tested and in acceptable condition before final plat approval and, these provisions as amended, will apply to the Property.

Section 3.01A. Connectivity; Road Widths.

ACRES
A) **Connectivity** Notwithstanding the provisions of Sections 13.7.10.3 and 13.7.9.1 of the UDO relating to connectivity as further set forth in Sections 2.1.5 (6)(i).2 and 2.1.5.6.(i) relating to the Cluster Subdivision Overlay District Ordinance, Developer and County agree that the Developer is not required to provide a stubbed out street for any adjacent undeveloped parcel or parcel used for single family home that contains a minimum of five (5) ~~acres~~ and is not required to provide a minimum connectivity index of 1.4 due to inherent constraints associated with the property.

B) **Road Widths.** Notwithstanding the provisions of Section 26-61 of the Lancaster County Code of Ordinances, the standard for pavement width for local (closed drainage) and local (open drainage) roads is twenty-two feet (22').

Section 3.02. Effect on Vested Rights Act and County Ordinance No. 673. The Parties agree that vested rights conferred upon Developer in this Agreement are not affected by the provisions of the Vested Rights Act, codified as Sections 6-29-1510 to -1560, Code of Laws of South Carolina 1976, as amended, or the provisions of Ordinance No. 673, the County's ordinance relating to the Vested Rights Act.

Section 3.03. Applicability of Subsequently Adopted Laws and Land Development Regulations. (A) County may apply laws adopted after the execution of this Agreement to the development of the Property only if the County Council holds a public hearing and determines:

- (1) the laws are not in conflict with the laws governing this Agreement and do not prevent the development set forth in this Agreement;
- (2) the laws are essential to the public health, safety, or welfare and the laws expressly state that they apply to the development that is subject to this Agreement;
- (3) the laws are specifically anticipated and provided for in this Agreement;

(4) that substantial changes have occurred in pertinent conditions existing at the time this Agreement was approved which changes, if not addressed by County, would pose a serious threat to the public health, safety, or welfare; or

(5) that this Agreement was based on substantially and materially inaccurate information supplied by the Developer that materially affected the terms and provisions of this Agreement.

(B) Notwithstanding the provisions of subsection (A) of this section, the County agrees that if County Council imposes a moratorium or other similar restriction that would curtail or hinder the rate at which development can occur, then the moratorium or other similar restriction shall not apply to the Development of the Property.

(C) Developer agrees to comply with any county-wide building, housing, electrical, plumbing, and gas codes adopted by County Council after the Agreement Date and in force at the time plans for buildings are submitted to the County for review. Nothing in this Agreement is intended to supersede or contravene the requirements of any building, housing, electrical, plumbing, or gas code adopted by County Council.

Section 3.04. Development Permits. (A) Developer agrees to obtain all local development permits for the development of the property. Local development permits, approvals and processes, some of which may have been obtained or complied with as of the Agreement Date, include, but are not limited to:

- (1) Development Review Committee process;
- (2) Preliminary plan approval
- (3) Final plat approval;
- (4) Zoning permits;
- (5) Building permits; and
- (6) Sign permits.

(B) The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

Section 3.05. Transfer of Development Rights. Developer may, at its sole discretion, transfer its Development Rights to other developers. The transferring Developer must give notice to the County of the transfer of any Development Rights. The notice to the County must include the identity and address of the transferring Developer, the identity and address of the acquiring Developer, the acquiring Developer's contact person, the location and number of acres of the Property associated with the transfer and the number of residential units or commercial acreage subject to the transfer. If the acquiring Developer is an entity, then, at the request of the County, the acquiring Developer shall provide the County the opportunity to view a listing of the names and addresses of the entity's officers and owners. Any Developer acquiring Development Rights is required to file with the County an acknowledgment of this Agreement and the transfer of Development Rights is effective only when the County receives a commitment from the acquiring Developer to be bound by it. As used in this section and Section 1.09, "Developer" includes an individual or entity who acquires one or more lots and will be the end-user of the lot.

ARTICLE IV

DEDICATIONS AND FEES AND RELATED AGREEMENTS

Section 4.01. Purpose of Article. The Parties understand and agree that Development of the Property imposes certain burdens and costs on the County, including those for certain services and infrastructure improvements. Eventually, *ad valorem* taxes collected from the property may meet or exceed the burdens and costs placed upon the County, but certain initial costs and capital expenditures are now required that are not to be funded by any increase in taxes paid by existing residents of the County. The purpose of this article is to identify the matters agreed upon to be provided by the Developer to mitigate such burdens and costs.

Section 4.01A. Payment. Developer agrees to pay to the County for the benefit of the Lancaster County School District _____/100 dollars (\$____) for each lot created from the Property for residential dwelling units (the “School Payment”). Except as otherwise provided in this section, from the Agreement Date until the end of the _____ (____) month of the Agreement, the School Payment is due and payable at the same time that the County building permit fees for the lot are due and payable. Payment of the School Payment is a condition for the issuance of a building permit. For the period after the _____ (____th) month, Developer agrees to pay County by the end of the _____ (____th) month for the benefit of the Indian Land Schools, in the Lancaster County School District an amount equal to _____ and No/100 dollars (\$____) times the number of lots for which a building permit has not been issued. If the Developer sells a portion of the Reserve at Barber Rock development, whether subdivided or not, the Developer shall pay not later than closing on the sale an amount equal to _____ and No/100 dollars (\$____) times the number of lots associated with the portion of the Reserve at Barber Rock development that is sold. The School Payment is separate and distinct from any fees or amounts payable to the County for a building permit. Monies received from the School Payment shall be remitted by the County to the Lancaster County School District by the end of the month following the month in which the School Payment is received by the County. Developer acknowledges and agrees that County is responsible only for the remittance of the School Payment to the Lancaster County School District and that the County has no other obligation or responsibility for the School Payment. As used in this section, “Developer” means Bonterra Builders, LLC., a North Carolina Limited Liability Corporation, and does not include its successors or assigns.

Section 4.01B. Funds for Public Safety. Developer agrees to pay County _____ dollars (\$____) by _____ to be used for public safety purposes (the “Public Safety Payment”). The determination of the specific uses for the Public Safety Payment is at the discretion of the County Council but should be utilized for improvements within a ten (10) mile radius of the Reserve at Barber Rock Development .

Section 4.02. Payment of Costs. Upon submission of appropriate documentation of the expenditure, Developer agrees to reimburse the County, not later than _____, for the County’s reasonable unreimbursed actual costs related to this Agreement. The foregoing cost reimbursement is capped at _____ dollars (\$____) and is limited to County payments to third-

party vendors and service providers that have not been otherwise reimbursed from the fee paid by Developer pursuant to Section 10 of Ordinance No. 663.

Section 4.03. Other Charges or Fees. (A) Nothing in this Agreement shall be construed as relieving Developer from the payment of any fees or charges in effect at the time of collection as may be assessed by entities other than the County.

(B) Developer is subject to the payment of any and all present or future fees enacted by the County that are of County-wide application and that relate to the County's costs of processing applications, issuing development permits, reviewing plans, conducting inspections or similar type processing costs.

Section 4.04. Infrastructure and Services. The Parties recognize that the majority of the direct costs associated with the Development of the Property will be borne by Developer, and many necessary infrastructure improvements and services will be provided by Developer or other governmental or quasi-governmental entities, and not by the County. For clarification, the Parties make specific note of and acknowledge the following:

(A) **Roads.** (1)(a) Developer is responsible for the construction and costs of all roads, whether for public or private use, within the Property including but not limited to any necessary entrance and intersection improvements as required by the South Carolina Department of Transportation related to the development of the Property. All roads must be constructed in accordance with the County's road standards. The road improvements are expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development.

(b) Developer agrees, in accordance with the traffic impact analysis and in accordance with the requirements of the South Carolina Department of Transportation, to provide, at no cost to the County, the required if any road improvements along Barberville road associated with the Reserve at Barber Rock development. These road improvements shall be incorporated into the final site plan prior to County approval and the Developer is responsible for all costs of the road improvements.

(2) Developer is responsible for all construction and maintenance, and the costs thereof, associated with the roads within the Property. Developer may transfer the ownership of the roads and its obligations for the roads to a homeowners' or property owners' association or similar organization, provided, that the transfer is for perpetual maintenance.

(3) Developer agrees to maintain the landscaping at the entrance on Barberville Road Road to the Property and to obtain any necessary easements therefore from the South Carolina Department of Transportation. Developer's obligation to maintain the landscaping is limited to mowing and planting of grass, trimming and planting of shrubs, trees and other vegetation, and maintenance and operation of any associated irrigation system. County agrees to cooperate with Developer in obtaining an easement or other related approvals. Developer may transfer its maintenance obligation to a homeowners' or property owners' association, or similar organization, provided, that the transfer is for perpetual maintenance.

(4) County is not responsible for any construction, maintenance, or costs associated with the roads within the Property. Developer acknowledges that County will not accept the roads within the Property into the County road system for any purpose, including, but not limited to, maintenance.

(B) Potable Water. Potable water will be supplied to the Property by the Lancaster County Water and Sewer District. Developer will construct, or cause to be constructed, all necessary water service infrastructure within the Property and the water service infrastructure will be maintained by the provider. County is not responsible for any construction, treatment, maintenance, or costs associated with water service or water service infrastructure to or within the Property. The water service infrastructure is expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development. Developer acknowledges that County has no authority or responsibility for providing potable water services in the County and that the Lancaster County Water and Sewer District is a governmental entity separate and distinct from the County.

(C) Sewage Treatment and Disposal. Sewage treatment and disposal will be provided by the Lancaster County Water and Sewer District. Developer will construct, or cause to be constructed, all necessary sewer service infrastructure within the Property and the sewer service infrastructure will be maintained by the provider. County is not responsible for any construction, treatment, maintenance, or costs associated with sewer service or sewer service infrastructure. Sewer service infrastructure is expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development. Developer acknowledges that County has no authority or responsibility for providing sewage treatment and disposal services in the County and that the Lancaster County Water and Sewer District is a governmental entity separate and distinct from the County.

(D) Storm Water Management. Developer will construct or cause to be constructed all storm water runoff and drainage improvements within the Property required by the development of the Property and such infrastructure will be maintained by Developer or a homeowners' association. County is not responsible for any construction, maintenance or costs associated with the storm water runoff and drainage for the Property. Storm water management improvements are expected to be implemented on a schedule consistent with the development of the Property as contained in the development schedule and as necessary to serve the development.

(E) 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 County. It is understood and acknowledged that the County does not presently provide solid waste disposal for single, multi-family or commercial developments. Residential units shall be served by a private waste hauling company.

(F) Law Enforcement Protection. The County shall provide law enforcement protection services to the Property on the same basis as is provided to other residents and businesses within the County.

(G) Recycling Services. The County shall provide recycling services to the Property on the same basis as is provided to other residents and businesses within the County.

(H) Emergency Medical Services (EMS). Emergency medical services shall be provided by the County to the Property on the same basis as is provided to other residents and businesses within the County.

(I) Fire Services. The Property is located in the Indian Land Fire Protection District. Fire protection services will be provided by the Indian Land Volunteer Fire Department, or its successor entities.

(J) Library Service. The County shall provide library services on the same basis as is provided to other residents within the County.

(K) School Services. Public school services are now provided by the Lancaster County School District. Developer acknowledges that County has no authority or responsibility for providing public school services in the County.

(L) Parks and Recreation. The County shall provide parks and recreation services on the same basis as is provided to other residents within the County.

ARTICLE V

MISCELLANEOUS

Section 5.01. Notices. Any notice, election, demand, request or other communication to be provided under this Agreement shall be in writing and shall be effective (i) when delivered to the party named below, (ii) when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, or (iii) when deposited in Federal Express (or any other reputable national “next day” delivery service) addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

To the County: County of Lancaster
Attn: County Administrator
101 N. Main St. (29720)
P.O. Box 1809 (29721)
Lancaster, SC

With a Copy to: County of Lancaster
Attn: County Attorney
101 N. Main St. (29720)
P.O. Box 1809 (29721)
Lancaster, SC

And to Developer: Bonterra Builders LLC.
Attn: Mike Kissel
5615 Potter Road
Matthews, NC 28104

With a Copy to: Helder, Helms, Roberson, & Lee P.A.
Attn: James Allen Lee, General Counsel
314 North Hayne Street
Monroe, NC 28112

Section 5.02. Amendments. (A) This Agreement may be amended or cancelled by mutual consent of the parties to the Agreement. An amendment to this Agreement must be in writing. No statement, action or agreement made after the Agreement Date 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 the change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

(B) An amendment to this Agreement must be processed and considered in the same manner as set forth in Ordinance No. 663 for a proposed development agreement. Any amendment to this Agreement constitutes a major modification and the major modification may occur only after public notice and a public hearing by the County Council.

(C) This Agreement must be modified or suspended as may be necessary to comply with any state or federal laws or regulations enacted after the Agreement Date which prevents or precludes compliance with one or more of the provisions of this Agreement but only to the extent necessary to effectuate compliance with the state or federal law.

Section 5.03. Periodic Review. At least every twelve months, the Chief Zoning Officer for the County or the designee of the Chief Zoning Officer for the County, or the successor to Chief Zoning Officer for the County, must review compliance with this Agreement by the Developer. At the time of review the Developer must demonstrate good faith compliance with the terms of the Agreement.

Section 5.04. Breach of Agreement. (A) If, as a result of the periodic review provided in Section 5.03 of this Agreement or at any other time, the Chief Zoning Officer for the County finds and determines that the Developer has committed a material breach of the terms or conditions of this Agreement, the Chief Zoning Officer for the County shall serve notice in writing, within a reasonable time after the periodic review, upon the Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Developer a reasonable time in which to cure the material breach.

(B) If the Developer fails to cure the material breach within a reasonable time and is not proceeding expeditiously and with diligence to cure the breach, then the County Council may unilaterally terminate or modify this Agreement. Prior to terminating or modifying this Agreement as provided in this section, the County Council must first give the Developer the opportunity (i) to rebut the finding and determination, or (ii) to consent to amend the Agreement to meet the concerns of the County Council with respect to the findings and determinations.

Section 5.05. Enforcement. The Parties shall each have the right to enforce the terms, provisions and conditions of this Agreement, if not cured within the applicable cure period, by any remedy available at law or in equity, including specific performance, and the right to recover attorney’s fees and costs associated with enforcement.

Section 5.06. No Third Party Beneficiary. The provisions of this Agreement may be enforced only by the Parties. No other persons shall have any rights hereunder.

Section 5.07. Recording of Agreement. The Parties agree that Developer shall record this Agreement with the County Register of Deeds within fourteen (14) days of the date of execution of this Agreement.

Section 5.08. Administration of Agreement. County is the only local government that is a party to this Agreement and the County is responsible for the Agreement's administration.

Section 5.09. Effect of Annexation and Incorporation. The Parties agree that this Agreement remains in effect if the Property is, in whole or in part, included in a newly-incorporated municipality or is annexed into a municipality. The Parties acknowledge that upon incorporation or annexation the application and duration of this Agreement is controlled by Section 6-31-110 of the Act. County reserves the right to enter into an agreement with the newly-incorporated municipality or the annexing municipality for the administration and enforcement of this Agreement after the date of incorporation or annexation.

Section 5.10. Estoppel Certificate. Any of the Parties may, at any time, and from time to time, deliver written notice to the other party requesting the party to certify in writing (i) that this Agreement is in full force and effect, (ii) that this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) whether, to the knowledge of the party, the requesting party is in default or claimed default in the performance of its obligation under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and (iv) whether, to the knowledge of the 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.

Section 5.11. Entire Agreement. This Agreement sets forth, and incorporates by reference all of the agreements, conditions, and understandings among the Parties relative to the Property and its Development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed in this Agreement other than as set forth or as referred to in this Agreement.

Section 5.12. Covenant to Sign other Documents. County and Developer acknowledge that consummation of the transactions contemplated by this Agreement may require the execution contemporaneously with the execution of this Agreement and thereafter of certain documents in addition to this Agreement and County and Developer agree to cooperate with the execution thereof.

Section 5.13. Construction of Agreement. 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 to this Agreement.

Section 5.14. Assignment. The rights, obligations, duties and responsibilities devolved by this Agreement on or to the Developer are assignable to any other person, firm, corporation or entity except that the assignment must conform to the requirements of Section 1.09 and Section 3.05. County may assign its rights, obligations, duties and responsibilities devolved by this Agreement on or to the County to any other person, firm, corporation, or entity.

Section 5.15. Governing Law; Jurisdiction; and Venue. (A) This Agreement is governed by the laws of the State of South Carolina.

(B) The Parties agree that jurisdiction and venue for disputes relating to this Agreement is the Sixth (6th) Judicial Circuit of the State of South Carolina.

Section 5.16. 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.

Section 5.17. 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.

Section 5.18. Severability. If any provision in this Agreement or the application of any provision of this Agreement is held invalid, the invalidity shall apply only to the invalid provision, and the remaining provisions of this Agreement, and the application of this Agreement or any other provision of this Agreement, shall remain in full force and effect. However, if the invalid provision would prevent or materially impair Developer's right or ability to complete performance of this Agreement, the Parties agree to use their best efforts to renegotiate that provision in order for Developer to complete performance of this Agreement.

Section 5.19. When Agreement takes Effect. This Agreement is dated as of the Agreement Date and takes effect when (i) the County and Developer have each executed the Agreement, and (ii) the Developer has delivered to the County Administrator clocked-in copies, with book and page numbers, of the recorded deeds conveying the Property to Developer. If the County Administrator has not received clocked-in copies of the deeds conveying the Property to Developer by 5pm _____, then this Agreement is automatically terminated without further action of either the County or Developer. The obligation of the Developer pursuant to Section 4.02 is effective on the date the last Party to sign this Agreement executes this Agreement and the obligations imposed on Developer pursuant to Section 4.02 survives the termination of this Agreement pursuant to this Section.

SIGNATURES FOLLOW ON NEXT PAGE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date below found.

WITNESSES:

DEVELOPER:

Bonterra Builders, LLC.,
a _____ corporation

By: _____
Name:
Title:
Date: _____

By: _____
Name:
Title:
Date: _____

WITNESSES:

COUNTY:

COUNTY OF LANCASTER,
SOUTH CAROLINA

By: _____
Larry McCullough, Chair, County Council
Date: _____

By: _____
Jack Estridge, Secretary, County Council
Date: _____

Exhibit A
Property Description

INSERT LEGAL DESCRIPTION.

Tax Map Nos..

Exhibit B

THIS EXHIBIT IS INTENTIONALLY LEFT BLANK.

(NOT APPLICABLE)

Exhibit C
Development Schedule

SCHEDULE NEEDS TO BE FILLED OUT

Years

Residential

_____ units

_____ units

Total

_____ units

This Development Schedule is an estimate. The provisions of Section 1.07 of this Agreement apply to this exhibit.

NOTE: County and Developer acknowledge that development of the Property is limited to Fifty two (52) residential units.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Exhibit D
Required Information

The Act and Ordinance No. 663 require a development agreement to include certain information. The following information is provided in conformance with the Act and Ordinance No. 663.

(A) *a legal description of the property subject to the agreement and the names of the property's legal and equitable owners.* The legal description of the Property is set forth in Exhibit A. As of the Agreement Date, Developer has contractual rights to acquire the Property and, following acquisition, Developer shall be the only legal and equitable owner of the Property. The legal and equitable owners of the Property are _____.

(B) *the duration of the agreement which must comply with Code Section 6-31-40.* See Section 1.10.

(C) *a representation by the developer of the number of acres of highland contained in the property subject to the agreement.* See Section 2.02.

(D) *the then current zoning of the property and a statement, if applicable, of any proposed re-zoning of the property.* See Section 1.05.

(E) *the development uses that would be permitted on the property pursuant to the agreement, including population densities, building intensities and height.* See Section 1.06.

(F) *a description of the public facilities that will service the development, including who provides the facilities, the date any new facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development construction timeline for those facilities. If the agreement provides that the County shall provide certain public facilities, the agreement shall provide that the delivery date of the public facilities will be tied to defined completion percentages or other defined performance standards to be met by the developer.* See Article IV, including specifically Section 4.06.

(G) *a description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property as may be required or permitted pursuant to laws in effect at the time of entering into the agreement.* Developer agrees to comply with all applicable environmental laws.

(H) *a description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.* See Section 3.04.

(I) a finding that the development permitted or proposed is consistent, or will be consistent by the time of execution of the agreement, with the County's comprehensive plan and land development regulations. See Section 2.01(A).

(J) a description, where appropriate, of any provisions for the preservation and restoration of historic structures. Developer agrees to comply with all laws applicable to the preservation and restoration of historic structures within the Property.

(K) a development schedule including commencement dates and interim completion dates at no greater than five year intervals. See Section 1.07 and Exhibit C.

(L) if more than one local government is made party to the agreement, a provision stating which local government is responsible for the overall administration of the agreement. See Section 5.08.

(M) a listing of the laws and land development regulations that will apply to the development of the property subject to the agreement, including citation to specific ordinance numbers or portions of the County Code of Ordinances or both. See Section 3.01(B) and Exhibit E.

(N) a provision, consistent with Code Section 6-31-80, addressing the circumstances under which laws and land development regulations adopted subsequent to the execution of the agreement apply to the property subject to the agreement. See Section 3.03.

(O) a provision stating whether the agreement continues to apply to the property or portions of it that are annexed into a municipality or included in a newly-incorporated area and, if so, that the provisions of Code Section 6-31-110 apply. See Section 5.09.

(P) a provision [relating to the amendment, cancellation, modification or suspension of the agreement]. See Section 5.02.

(Q) a provision for periodic review, consistent with the provisions of Section 8 of Ordinance No. 663. See Section 5.03.

(R) a provision addressing the effects of a material breach of the agreement, consistent with the provisions of Section 9 of Ordinance No. 663. See Section 5.04.

(S) a provision that the developer, within fourteen days after the County enters into the agreement, will record the agreement with the County Register of Deeds. See Section 5.07.

(T) a provision that the burdens of the agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement. See Section 1.09(A).

(U) a provision addressing the conditions and procedures by which the agreement may be assigned. See Section 1.09(B), Section 3.05 and Section 5.14.

Exhibit E
Laws and Land Development Regulations

1. Ordinance No. 2014-1272 zoning the Property R-15P, Low Density Residential / Agricultural Panhandle District with a Cluster Subdivision Overlay District.
2. Ordinance No. 2014-_____, approving this Development Agreement.
3. The Development Agreement Ordinance for Lancaster County, South Carolina: Ordinance No. 663.
4. Unified Development Ordinance of Lancaster County (UDO): Ordinance No. 309, as amended as of the Agreement Date. The UDO includes Ordinance No. 328, as amended, as of the Agreement Date and which is cited as the Land Development Regulations of Lancaster County. A copy of the UDO has been signed by the Parties and is on file in the office of the County Planning Department.
5. Land Development Regulations of Lancaster County: See Unified Development Ordinance of Lancaster County.
6. Article V, Chapter 26, Lancaster County Code of Ordinances, Road Construction Standards.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Penelope Karagounis

Exhibit 5

From: Jerry Holt <jerryholt813@gmail.com>
Sent: Tuesday, July 15, 2014 11:22 PM
To: Penelope Karagounis
Subject: Development Agreement comments / Barber Rock

I didn't look at both agreements, but since they use the same template I have some comments on some of the terms.

Article III. Section 3.01 (D)

I would define a time limit. If the developer completes the project within an allotted time period, (say 6 - 8 years, depending on the size of the project), then future regulations would not affect the project. If they exceed that timeframe, then they become subject to current regs.

Article IV Section 4.01A

Last sentence indicates that this section does not bind Bonterra's successors or assigns. This seems to indicate that if they sell to another developer, that developer is not obligated to make any of these contributions. I would strike that sentence.

Section 4.04 (A) (1)(a)

Last sentence states "The road improvements *are expected to be* implemented....."
That would not seem to be enforceable. It should state "The road improvements *shall be*....."

(4) County not responsible for roads.

This is a bad policy, but the planning commission isn't going to be able to change it.

--

Jerry L Holt
(973) 897-9251