

DEVELOPMENT AGREEMENT

By and Between

COUNTRY CLUB ROAD ASSEMBLAGE, LLC

and

PENDER COUNTY, NORTH CAROLINA

Adopted

2008

Comment (tbl): No description of land to be dedicated for public purposes or provisions to protect environmentally sensitive property - 153A-179.6 says this is required.

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STATE OF NORTH CAROLINA
COUNTY OF PENDER

DEVELOPMENT AGREEMENT
(ST. GEORGE'S REACH DEVELOPMENT)

This Development Agreement ("Agreement") is made and entered this ____ day of _____ 2008, by and between Country Club Road Assemblage, LLC ("Owner" or "Developer") and the Pender County Board of Commissioners, as the governmental authority of Pender County, North Carolina ("County").

W I T N E S S E T H :

WHEREAS, the legislature of the State of North Carolina has authorized development agreements (the "Act") as set forth in G. S. 153A-379.1 through G. S. 153A-379.13 of the North Carolina General Statutes, as amended; and,

WHEREAS, the Act recognizes that "because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain standard throughout the extended period of the development." [G. S. 153-379.1 (4)]; and,

WHEREAS, the Act also states: "To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments." [G. S. 153-379.1 (6)]; and,

WHEREAS, the Act further authorizes local governments and agencies to enter into development agreements with developers to accomplish these and other goals as set forth in the Act; and,

WHEREAS, Owner has acquired or has under contract to acquire, approximately 412.3 acres, generally located off of Country Club Road, Hampstead, North Carolina, hereinafter referred to as "St. George's Reach," and proposes to develop, or cause to be developed, therein a mixture of residential, commercial and conservation uses; and,

WHEREAS, the County seeks to ~~protect and preserve the natural environment~~ and to secure for its citizens quality, well planned and designed development and a stable and viable tax base; and,

WHEREAS, this Development Agreement is being made and entered between Owner and the County, under the terms of the Act, for the purpose of providing assurances to Owner that it may proceed with its development plan under the terms hereof, as hereinafter defined, consistent with its approved **Planned Development Master Plan** (as hereinafter defined) without encountering future changes in the County's zoning regulations which would materially affect the ability to develop under the plan, and for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to the County, and for the purpose of providing certain funding and funding sources to assist the County in

Comment [th2]: Is this done in MP? Because there are no environmental provisions in this Agreement.

meeting the service and infrastructure needs associated with the development authorized hereunder;

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby acknowledged, the County and Owner hereby agree as follows:

This Development Agreement ("Agreement") is made and entered this ____ day of _____ 200__, by and between Country Club Road Assemblage, LLC ("Owner" or "Developer") and the Pender County Board of Commissioners, as the governmental authority of Pender County, North Carolina ("County").

I. INCORPORATION.

The above recitals are hereby incorporated into this Agreement.

II. DEFINITIONS.

As used herein, the following terms mean:

"Act" means the statutes allowing development agreements, as codified in G. S. 153A-379.1 through G. S. 153A-379.13 of the North Carolina General Statutes, as amended; incorporated herein by reference.

"Agreement" shall mean this Development Agreement as amended by the County and Developer in writing from time to time.

"County" shall mean Pender County, North Carolina.

"Developer" means Owner and all successors in title or lessees of the Owner who undertake Development of the Property, whether one or more, and are assigned in writing portions of the Development Rights from the Owner.

"Development Rights" means the rights of the Owner or Developer in accordance with the Zoning Regulations and this Development Agreement.

"Master Plan" or "Planned Development Master Plan" shall mean the Planned Development Master Plan as approved by the Planning Board on November 7, 2007, as same may be modified by agreement of the Owner and the County.

"Owner" means Country Club Road Assemblage, LLC, its corporate successors and any assignees, whereby such interest is assigned in writing.

"St. George's Reach," "Project" or "Property" means that certain tract of land described on Exhibit A. The Owner may add additional Property, subsequent to the execution of this Agreement, if the Agreement is duly amended to add the legal description of the subsequently acquired properties to Exhibit A.

"Zoning Regulations" means the St. George's Reach Planned Development Master Plan establishing a Planned Development District for the Property, and all the attachments thereto,

including but not being limited to the Master Plan, the traffic impact analysis, all narratives, applications, and site development standards thereof, (a copy of all of which is attached hereto marked Exhibit B and incorporated herein by reference), this Development Agreement, and the Pender County Ordinance(s) as amended through the date of this Agreement, except as the provisions thereof may be clarified or modified by the terms of the Master Plan and this Agreement.

III. TERM.

The term of this Agreement shall commence on the date this Agreement is executed by the County and Owner and terminate fifteen (15) years thereafter (the "Initial Term"); provided however, that this Agreement may be extended by Owner or any Developer for one successive five (5) year period following the Initial Term (the "Extended Term"), provided there is no material breach of this Agreement by the Owner or any Developer during the Initial Term. The Owner or Developer seeking to extend the term as contemplated hereby shall notify the County in writing of its intent to extend on or before the date that is six (6) months prior to the expiration of the Initial Term.

IV. DEVELOPMENT OF THE PROPERTY.

The Property shall be developed in accordance with this Agreement, the Master Plan, and the Zoning Regulations. In the event of a conflict, the hierarchy of documents is as follows:

1) this Agreement; 2) the Master Plan; 3) the Zoning Regulations. The County shall, throughout the Term, maintain or cause to be maintained, a procedure for the processing of reviews as contemplated by the Zoning Regulations and this Agreement.

V. CHANGES TO ZONING REGULATIONS.

The Zoning Regulations relating to the Property subject to this Agreement shall not be amended or modified during the Term, without the express written consent of the Owner except in accordance with the procedures and provisions of Section 153A-379.7 of the Act, which Owner shall have the right to challenge. Owner does, for itself and its successors and assigns, including Developers and notwithstanding the Zoning Regulations, agrees to be bound by the following:

The Owner shall be required to notify the County, in writing, as and when Development Rights are transferred to any other party. Such information shall include the identity and address of the acquiring party, a proper contact person, the location and number of acres of the Property transferred, and the number of residential units and/or commercial acreage, as applicable, subject to the transfer. Developers transferring Development Rights to any other party shall be subject to this requirement of notification, and any entity acquiring Development Rights hereunder shall be required to file with the County an acknowledgment of this Agreement and a commitment to be bound by it.

VI. SCHEDULE FOR PROJECT DEVELOPMENT

The Owner intends to develop the Property pursuant to the Schedule of Project Development attached as Exhibit C.

Comment [th3]: We can discuss this schedule is not binding in any way on the Developer. Further, §153A-379.6(b) requires a development schedule including commencement dates and interim completion dates at no greater than five-year intervals.

The schedule as set forth below is a planning and forecasting tool only, and shall not be interpreted as mandating the development pace initially forecasted or from preventing a faster pace if market conditions support a faster pace. The fact that actual development may take place at a different pace, based on future market forces, is expected and shall not be considered a default hereunder. Development activity may occur faster or slower than the forecast schedule, as a matter of right, depending upon market conditions. Furthermore, periodic adjustments to the development schedule which may be submitted unilaterally by Owner / Developers in the future shall not be considered a material amendment or breach of the Agreement.

A. Commencement Date. The Project will be deemed to commence upon the execution and adoption of this Agreement.

B. Interim Completion Date. The Owner projects and shall use good faith efforts to ensure that during the years after the execution and adoption of this Agreement, the following percentages of the undeveloped portions of the Property will be developed:

<u>YEAR</u>	<u>% COMPLETE</u>
2009	10%
2010	20%
2011	25%
2012	30%
2013	35%
2014	40%
2015	45%
2016	50%
2017	55%
2018	60%
2019	65%
2020	70%
2021	75%
2022	80%
2023	85%
2024	90%
2025	95%
2026- 2028	100%

Comment [th4]: Is the County interested in getting some min. commitment re: timing of development of uses?

C. Completion Date. The Owner projects that the Project should be substantially completed by the year 2028 (i.e., all recreational amenities erected, built, and essentially all structures erected and/or all necessary infrastructure in place to serve the intended uses). Nothing in this paragraph shall be interpreted to extend the term of this Agreement.

VII. DENSITY.

All uses permitted in the PD District per the Pender County Zoning Ordinance, Section 8.9, in effect as of the date of this Agreement, both permitted by right, or by Special Use Permit shall be allowed on the Property at the densities and uses as set forth in the Master Plan

approval, set forth below:

A. Residential Density. Up to a maximum of one thousand one hundred fifty (1,150) residential dwelling units. Owner shall have the right to have these residential units be attached or detached single family, multifamily, or any combination thereof in keeping with the tabulations reflected on the Master Plan.

B. Commercial/Office/Retail Density. Up to a maximum of two hundred fifty thousand (250,000) square feet of non-residential uses as defined in the Zoning Ordinance may be developed upon the Property with an additional one hundred twenty thousand (120,000) square feet of civic, recreational and other non-residential uses as described on the Master Plan and in the Zoning Ordinance in keeping with the density tabulations reflected on the Master Plan.

VIII. FLEXIBILITY OF USES AND TRACTS

The Master Plan is of a conceptual nature and may require some flexibility in order to accommodate future soil conditions, environmental concerns, physical constraints, and design parameters. As such, the exact location of roadways and boundary lines between land uses, and their subsequent location and size, shall be subject to change at the time preliminary development plan(s) are submitted for development.

IX. EFFECT OF FUTURE LAWS.

Owner and Developers, with the approval of Owner, shall have vested rights to undertake Development of any or all of the Property in accordance with the Zoning Regulations, as defined herein and modified hereby, and as may be modified in the future pursuant to the terms of this Agreement for the entirety of the Term (as may be extended). Future enactments of, or changes or amendments to the County ordinances affecting development of the Property, including zoning or development standards ordinances, which conflict with the Zoning Regulations shall not apply to the Property unless the procedures and provisions of Section 153A-379.7 are followed, which Owner shall have the right to challenge. Notwithstanding the above, the Property will be subject to any state and/or federal standards applicable to the Property, as the same may be amended from time to time.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present or future building, housing, electrical, plumbing, gas or other standard codes, or any ad valorem tax of general application throughout the County, found by the County Council to be necessary to protect the health, safety and welfare of the citizens of the County.

X. INFRASTRUCTURE AND SERVICES

Although the nature of this long-term project prevents the Owner from providing exact completion dates, the Owner certifies that roads, sewer, and water infrastructure, will be in place at the times Lots or Dwelling Units in subdivided real property or condominium units on recorded master deeds are scified with 3rd party home purchasers. Notwithstanding any provision herein to the contrary, the Owner hereby assures the County that adequate Facilities shall be available concurrent with the impacts of Development.

The County and Owner recognize that the majority of the direct costs associated with the Development of the Property will be borne by the Owner and Developers, and many other necessary services will be provided by other governmental or quasi-governmental entities, and

Comment [th5]: Does the Code have a definition for square footage??

Comment [th6]: as defined in the Ordinance??, probably advisable to attach the table of permitted uses, etc.

Comment [th7]: as defined in the Ordinance??, probably advisable to attach the table of permitted uses, etc.

Comment [th8]: as defined in the Ordinance??, probably advisable to attach the table of permitted uses, etc.

Comment [th9]: are there environmentally sensitive areas in the MP that we need to carve out of this flexibility of uses provision? Also, note that 153A-379.6(a)(3) requires that the agreement include development uses permitted on the property, including population densities and building types, intensities, placement in the site and design.

Comment [th10]: ? This is odd. Let's talk about this one. I have worked on DAS with other Counties where a water/sewer flow chart was established to ensure adequate public facilities.

not by the County. For clarification, the parties make specific note of and acknowledge the following:

A. **Private Roads.** All roads within the Property shall be constructed by the Owner, Developer or other parties and maintained by such party(ies) and/or Association(s), or dedicated for maintenance to the North Carolina Department of Transportation (NCDOT) unless specifically provided otherwise herein. Except as provided in this Agreement, the County will not be responsible for the construction of any private roads within the Property, unless the County specifically agrees to do so in the future. Owner acknowledges that it must comply with all applicable state statutes and rules and regulations of NCDOT or its successors regarding access, use and construction of all private roads. Deviations from NCDOT statutes, rules and regulations must be approved in advance by the County Engineer.

B. **Public Roads.** Owner acknowledges that it must comply with all applicable state statutes and rules and regulations of the NCDOT or its successor regarding access and use of public roads. Future public roads may serve the Property.

C. **Additional Roads.** Owner agrees to construct a public roadway from Country Club Road, through the St. George's Reach PD as depicted therein, and connecting through to US Highway 17 ("St. George's Reach Parkway"). In addition, Owner shall construct turn lanes on US Highway 17 and Country Club Road at its access points into the residential development and commercial development in accordance with the Traffic Impact Assessment performed as part of the PD approval and incorporated therein, subject to the approval of NCDOT. Funding to obtain all necessary easements and construct this roadway shall be paid by Owner. Further, Owner and/or an owners association shall be responsible for future maintenance of this public right of way, such maintenance to include without limitation maintaining landscaping and stormwater infrastructure for the roadway improvements. Upon dedication and consistent with NCDOT procedures, NCDOT shall provide maintenance for the roadway itself. Upon completion, new public roadways shall be dedicated to the State of North Carolina.

The parties agree that the Owners will transfer ownership and maintenance responsibility for St. George's Reach Parkway to NCDOT, and further agrees that it will be paved prior to any other roadways serving the Property. Construction traffic will be routed through St. George's Reach Parkway, and Owner will use reasonable efforts to ensure construction traffic on Country Club Road will be discouraged to the fullest extent.

D. **Potable Water.** Potable water will be supplied to the Property by a legally constituted public or private provider allowed to operate in the County. Owner will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the service provider as provided in any utility agreement between Owner and the service provider.

E. **Sewage Treatment and Disposal.** Sewage treatment and disposal will be provided by the Owner or Developer or some other legally constituted public or private provider allowed to operate in the County. Nothing herein shall be construed as precluding the County from providing sewer services to its residents in accordance with applicable provisions of law. Owner will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the provider as provided in any utility agreement between Owner and the service provider. The waste water treatment facility will be constructed in the mixed use area unless an alternative can be negotiated with the County for an offsite

location.

F. **Use of Effluent.** Owner agrees that treated effluent will be disposed of only in such manner as may be approved by the North Carolina Department of Environment and Natural Resources ("NCDENR"). The County will use good faith efforts to cooperate with the Owner to support Owner in its obtaining gray water in connection with providing irrigation water for the landscaped areas within the Property and for off-site effluent discharge. The Owner or its designee shall have the right to operate an irrigation system to provide irrigation services in connection with all or any portion of the Property, provided such is approved by NCDENR or other applicable regulatory authority.

G. **Police Services.** County shall provide police protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the County. Owner acknowledges jurisdiction of the sheriff of the County on the Property and shall not interfere or in anyway hinder law enforcement activities of either on the Property. Should owner desire an increased level of service above the normal County level of police service, Owner shall be responsible for either providing such services through the use of private security forces or shall pay the County's direct or indirect costs for providing such increased level of service.

H. **Fire Services.** County shall provide fire protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the County. Owner acknowledges the jurisdiction of the County's fire department on the Property and shall not interfere or in anyway hinder public safety activities on the Property regardless of whether such may be a restricted access community.

~~I. **Sanitation Services.** If the County provides sanitation services at any time in the future, the County shall provide these services to the Property on the same basis as is provided to other similarly situated residents and businesses in the County.~~

~~J. **Library Services.** Such services will be provided by the County on the same basis as elsewhere in the County.~~

~~K. **Emergency Medical Services (EMS).** Such services will be provided by the County, on the same basis as elsewhere in the County.~~

L. **Drainage System.** All stormwater runoff, treatment and drainage system improvements within the Property will be designed in accordance with the Zoning Regulations, the Coastal Area Management Act and state stormwater regulations as defined by NCDENR. All stormwater runoff, treatment and drainage system improvements for the Property shall be constructed by Owner or the Association. The County will not be responsible for any construction or maintenance cost associated with the stormwater runoff, treatment and drainage system within the Property.

M. **Stormwater Quality.** The Owners shall comply with all provisions of federal and state laws and regulations, including those established by NCDENR, CAMA, and their successors for the handling of storm water. If the County adopts a new County-wide stormwater ordinance, it shall apply to all development permitted after the effective date of such ordinance, except and to the extent that its implementation requires retrofitting to development

Comment [th11]: What is "normal" approx. deputies/100 residents?

Comment [th12]: Which is?

Comment [th13]: Which is?

Comment [th14]: Which is?

Comment [th15]: As defined by who? DENR right?

within the Property previously permitted by the County. Owner will use low impact development principles for the Project. Owner agrees to use the Universal Stormwater Management Program should Pender County adopt such program in the future, for stormwater permits not yet issued as of the time the Program is adopted. Owner agrees to impose a 100' setback for buildings from the mean high water mark of the Intracoastal Waterway (the "ICW") as is currently delineated. In the event that an inland basin marina is approved for the Property, such 100' setback will remain in effect from the ICW but will not be imposed upon buildings and structures fronting the waters of the marina channel and basin.

Comment [th16]: ??

Comment [th17]: Better define this more clearly.

Comment [th18]: Just the actual structure?

XI. CONVEYANCES AND CONTRIBUTIONS.

It is the intent of the parties that the fees and obligations contemplated by this Agreement are the only obligations which will be imposed upon the Property and that County shall not permit any other governmental entity, over which the County has Authority, to impose fees or obligations of a similar nature to that which are contemplated by this Agreement; provided, however, the provisions of this paragraph shall not preclude the County or another governmental authority from imposing a fee which are imposed on a consistent basis throughout the area regulated by such governmental authority imposing such obligations. The County or other governing body shall not be precluded by this Agreement from charging fees for delivery of services to citizens or residents (i.e., an EMS response fee or the like), nor from charging fees statutorily authorized in the future (i.e, a real estate transfer fee or the like) which are not collected as a prerequisite to approval of a plat, plan or construction.

XII. PERMITTING PROCEDURES.

A. The County agrees to allow the Developer the ability, to permit and construct model homes without utilities (i.e., "dry models") and to relocate the models as necessary within each subdivision.

B. The County agrees that the Owner and/or any Developer is not required to phase development but shall have the right to do so, consistent with applicable state and local law.

C. The County agrees to review all land use changes, land development applications, and plats in an expeditious manner in accordance with the County Regulations as modified by the Master Plan for this Project. Developer may submit these items for concurrent review with the County and other governmental authorities. County may give final approval to any submission, but will not grant authorization to record plats or begin development construction activities until all permitting agencies have completed their reviews.

D. The County agrees to issue building permits and permit sale of lots prior to completion of infrastructure in accordance with the County Regulations as modified by the PD for this Property.

E. The County agrees that the Property is approved and fully vested for density, development fees, uses and height, and shall not have any obligations for other facilities or improvements other than as specifically provided in this Agreement, but must adhere to the current Master Plan and subdivision plat and development plan procedural guidelines. The County may not impose additional development obligations or regulations in connection with the Property, except in accordance with the procedures and provisions of the Act, which the Owner

shall have the right to challenge.

F. All plan review fees shall be consistent with the fees charged generally in the County.

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

XIII. DEVELOPER ENTITLEMENTS.

In accordance with N.C.G.S. Section 153A-349.6(b), the following is a description and list of the local development permits approved or needed to be approved for development of the Property:

North Carolina Department of Environment and Natural Resources (NCDENR) Division of Water Quality (DWQ)

- Stormwater
- Wetlands
- Wastewater

NCDENR Division of Land Resources (DLR)

- Erosion & Sediment Control

NCDENR Division of Coastal Management (DCM)

- CAMA Major

NCDENR Division of Environmental Health (DEH)

- Water

US Army Corps of Engineers (USACOE)

- Wetlands

North Carolina Department of Transportation (NCDOT)

- Driveway
- Encroachment agreements

Pender County

- Preliminary Plat(s)
- Final Plat(s)
- Special Use Permit
 - Sewer/Water Treatment Facility
 - As required for uses as listed in 8.9 Table of Permitted Uses in Section 8 of the Pender County Zoning Ordinance
- Sign Permit(s)
- Zoning (for each Preliminary Plat approved by Planning Board)
 - Zoning determination
 - Final Zoning Permit

- Building Permit(s)
- Wastewater & Water
 - If public (Pender County) system, then Pender County will review and approve, but system still permitted through NCDENR DWQ and NCDENR DEH.
- Wastewater Disposal System (if applicable)
 - Septic Tank Improvement Permit
 - Construction Authorization Permit
 - Operation Permit

Provided, however, that the failure to include a required development permit in this Section XIII shall not relieve Owner and/or any Developer of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions of such permit.

XIV. PERIODIC REVIEW.

The Planning/Zoning Administrator of the County shall review the Project and this Agreement at least once every twelve (12) months, at which time the Owner shall demonstrate good-faith compliance with the terms of this Agreement. If, as a result of its periodic review or at any other time, the County finds and determines that the Owner has committed a material breach of the terms or conditions of this Agreement, the County shall serve notice in writing upon the Owner setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Owner a reasonable time in which to cure the material breach.

If the Owner fails to cure any material breach within the time given, then the County unilaterally may terminate or modify this Agreement; provided, however, that the notice of termination or notification or finding of breach may be appealed to the Pender County Board of Adjustment in the manner provided by N.C.G.S. 153A-395(b).

XV. DEFAULTS.

The failure of the Owner, Developer or the County to comply with the terms of this Agreement shall constitute a default, entitling the nondefaulting party to pursue such remedies as deemed appropriate, including specific performance; provided however no termination of this Agreement may be declared by the County absent its according the Owner and any relevant Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided any such termination shall be limited to the portion of the Property in default, and provided further that nothing herein shall be deemed or construed to preclude the County or its designee from issuing stop work orders or voiding permits issued for development when such development contravenes the provisions of the Zoning Regulations or this Agreement. A default of the Owner shall not constitute a default by Developers, and default by Developers shall not constitute a default by the Owner. The parties acknowledge that individual residents and owners of completed buildings within the Project shall not be obligated for the obligations of the Owner or Developer set forth in this Agreement.

XVI. MODIFICATION OF AGREEMENT.

This Agreement may be modified or amended only by the written agreement of the County and the Owner; such written agreement may be by resolution or ordinance at the

County's sole discretion. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part.

XVII. NOTICES.

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

To the County:

County Administrator of Pender County
805 South Walker Street
Burgaw, NC 28425

And to the Owner at:

Country Club Road Assemblage, LLC
1213 Culbreth Drive
Wilmington, NC 28405

With Copy To: Greg L. Hinshaw
Burns, Day & Presnell, P. A.
2626 Glenwood Avenue, Suite 560
Raleigh, NC 27608
Tel: 919-782-1441
Fax: 919-782-0244
Email: ghinshaw@bdppa.com

XVIII. ENFORCEMENT.

Any party hereto shall have the right to enforce the terms, provisions and conditions of this Agreement (if not cured within the applicable cure period) by any remedies available at law or in equity, including specific performance, and the right to recover attorney's fees and costs associated with said enforcement.

XIX. GENERAL.

A. Subsequent Laws. In the event state or federal laws or regulations are enacted after the execution of this Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement ("New Laws"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Should the parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner, developers and the County each shall have the right to challenge the New Law preventing compliance with

Comment [th19]: Mediate instead??

the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified, in full force and effect.

B. Estoppel Certificate. Upon request in writing from an assignee or the Property Owner to the County sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the County will provide a certificate in recordable form that solely with respect to the portion of the Real Property described in the request, there are no known violations or breaches of this Agreement, except as otherwise described in the Certificate. The County will respond to such a request within thirty (30) days of the receipt of the request. The reasonable costs and disbursements of private consultants will be paid by the person making the request.

If the County does not respond to such request within thirty (30) days of the time of its receipt, the portion of the Real Property described in the request will be deemed in compliance with all of the covenants and terms of this Agreement. A certificate of such conclusion may be recorded by the Property Owner, including a copy of the request and the notice of receipt and it shall be binding on the County as of its date. Such notice shall have the same effect as a Certificate issued by the County under this Section.

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

D. Assignment. Subject to the notification provisions hereof, Owner may assign its rights and responsibilities hereunder to a subsidiary or sister company, or subsequent land owners and Developers.

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

F. 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.

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

H. 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 North Carolina.

I. No Third Party Beneficiaries. The provisions of this Agreement may be enforced only by the County, the Owner and Developers. No other persons shall have any rights hereunder.

J. Recordation/Binding Effect. Within fourteen (14) days after the County enters into this Agreement, Owner shall record this Agreement with the Pender County Register

of Deeds. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors-in-interest to the parties hereto.

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

Country Club Road Assemblage, LLC

By: _____
H. Davis Orebaugh, Jr.
Its: Manager

County of Pender

By: _____

Title: Chairman of the Board of Commissioners

EXHIBIT A TO DEVELOPMENT AGREEMENT
PROPERTY DESCRIPTION OF ST. GEORGE'S REACH TRACT

St. George's Reach Parcels (Tract # per recorded maps):

Tract	Acreage	PIN #	Prior Owners
1	100.80 ac	#4204-20-8289-0000	Weathersbee
2	136.24 ac	#4203-64-4531-0000	O'Herring
3	30.52 ac	#4203-64-1002-0000	Bruton
4	N/A	remainder of Bruton property	
5	36.51 ac	#4203-53-9769-0000	Sowers
6	11.26 ac	#4203-53-7626-0000	Beaudoin
7	54.85 ac	#4203-44-4392-0000	Brongo/Turco
		#4203-53-3413-0000	Brongo/Turco
		#4203-43-8223-0000	Brongo/Turco
8	3.15 ac	#4203-53-8624-0000	Beaudoin
		#4203-53-8472-0000	Beaudoin
9	2.00 ac	#4203-45-2307-0000	Avila HOA
		#4203-45-2562-0000	Avila HOA
10	.99 ac	#4203-45-4049-0000	Free
11	27.01 ac	#4203-28-0853-0000	Bruton under Contract
	<u>10.00 ac</u>	#4203-37-1190-0000	Bruton under Contract
Total	413.68 ac		

EXHIBIT B
TO DEVELOPMENT AGREEMENT
ZONING REGULATIONS

1. The Pender County Zoning Ordinance, as codified through Supplements adopted as of the date of this Agreement
2. The Planned Development Master Plan dated October 30, 2007 (revised as of November 7, 2007) and adopted by Pender County on November 7, 2007

EXHIBIT C

DEVELOPMENT SCHEDULE

Comment [th20]: This is pretty much worthless.

Phases of Construction and Development

The Project will have a build-out program which should last 10-20 years. The timing of development within the Development Agreement and adjoining lands will be very much affected by the health of the national and local economies, as well as the demand for various housing types for the region. It is extremely difficult, if not impossible, to accurately project timing of future phases of development and lot demand. The property owner has provided the following estimates which are based on information believed to be reasonable at this time. The estimates are subject to change substantially, from time to time, based on market conditions, the supply of competing lots within the area, and other factors, not under the control of the Developer.

Initial Construction 2008-2009 — During the initial phase of development, the actual construction of infrastructure will begin. Pending various approvals by Pender County, the construction of various infrastructure improvements is scheduled to begin in the third quarter of 2008. The connector road between Highway 17 and Country Club Drive will be the first road paved, with construction of the road anticipated to begin in the second quarter of 2009. Various mixed uses of land parcels should be available for sale by the middle of 2009. Single family lot development during this period should be in the range of 100 to 150 per year.

2009 — 2010 — The development should continue during this period. A continuation of certain land uses such as residential, retail and commercial uses may become more favorable as the market demand for such uses becomes greater, and depending on the pace of home sales and the speed of lot absorption of those lots developed earlier. Construction of an inland marina and/or boat docks may occur during this timeframe. Residential lot absorption could range from 75 to potentially greater than 150 per year.

2011 — 2016 — A large percentage of the various land uses should come under development during this period. The market demand will determine actual land use needs as well as the quantity of these different uses.

2017 — 2020 — This period should be the close-out period where a majority of all uses will be available and major infrastructure complete.