

**STATE OF TENNESSEE
COUNTY OF HAMBLLEN
CORPORATION OF MORRISTOWN
DECEMBER 20, 2011**

The City Council for the City of Morristown, Hamblen County, Tennessee, met in regular session at the regular meeting place of the Council in the Morristown City Center at 5:00 p.m., Tuesday, December 20, 2011 with Honorable Mayor Danny Thomas, presiding and the following named Councilmembers present: Gene Brooks, Bob Garrett, Claude Jinks, Chris Bivens, Paul LeBel and Kay Senter.

Councilmember Jinks made a motion to approve the December 6, 2011 minutes as circulated. Councilmember Bivens seconded the motion and upon roll call, all voted "aye".

Councilmember Senter made a motion to approve Ordinance No. 3419.05 on second and final reading. Councilmember LeBel seconded the motion and upon roll call, Councilmembers Garrett, Jinks, Bivens, LeBel, Senter and Mayor Thomas voted "aye"; Councilmember Brooks voted "no".

Ordinance No. 3419.05

Being an Ordinance to Amend Ordinance Number 3419, The City of Morristown, Tennessee Annual Budget for the Fiscal Year 2011-2012 and Appropriate the Sum of \$5,000 for Dog Park.

Councilmember Jinks made a motion to approve Ordinance No. 3419.06 on second and final reading. Councilmember Bivens seconded the motion and upon roll call, all voted "aye".

Ordinance No. 3419.06

Being an Ordinance to Amend Ordinance Number 3419, The City of Morristown, Tennessee Annual Budget for the Fiscal Year 2011-2012 and Appropriate the Sum of \$23,200 for Mobile Equipment, ID Badge Machine and Tuition and Travel Expenditures for 3 New Officers.

Councilmember Senter made a motion to Award a Bid to M.G. Hall, LLC in the amount of \$137,067.00 for Sewer Extension, Highway 25E to Mark Sawyer Property subject to approval by TDOT and TDEC. Councilmember LeBel seconded the motion and upon roll call, all voted "aye".

Councilmember Senter made a motion to Award a Bid to Trent Excavating, LLC in the amount of \$199,325.00 for Jackson Street Sanitary and Storm Sewer Replacement and South High Street Sanitary Project subject to permits from Railroad and TDEC. Councilmember LeBel seconded the motion and upon roll call, all voted "aye".

Councilmember Bivens made a motion to Award a Contract to Lamar Dunn and Associates in the amount of \$66,750.00 for the Design of Miscellaneous Sewer Projects. Councilmember Senter seconded the motion and upon roll call, all voted "aye".

Councilmember Jinks made a motion to approve the following Resolution No. 31-11. Councilmember LeBel seconded the motion and upon roll call, all voted "aye".

**Resolution No. 31-11
A Resolution to approve the Developers Agreement for
The Downs at Wallace Farms Phase I.**

WHEREAS, the State of Tennessee is currently reconstructing Exit 8 of Interstate I-81 located on Davy Crockett Parkway; and

WHEREAS, this reconstruction is going to change access to existing businesses and construct new access roads onto property owned by Wallace Farms, Inc.; and

WHEREAS, Wallace Farms, Inc. is developing The Downs at Wallace Farms Phase 1 located around the access road constructed by the state; and

WHEREAS, The Downs at Wallace Farms Phase 1 is the proposed relocation of two existing businesses; and

WHEREAS, The subdivision regulations require that either a bond or a developers agreement providing for the infrastructure be in place prior to the recording of a final plat and the transfer of deeds creating new lots;

NOW, THEREFORE, BE IT RESOLVED, that The City of Morristown hereby enters into an agreement with Wallace Farms, Inc. for the development of Phase 1 of the Downs at Wallace Farms.

BE IT FURTHER RESOLVED that this Resolution shall become effective upon its passage and approval.

Adopted during regular session of City Council this 20th day of December, 2011.

Mayor

ATTEST:

City Administrator

**Morristown, Tennessee
DEVELOPMENT AGREEMENT
The Downs at Wallace Farms (Phase I)**

THIS AGREEMENT, entered into this 20th day of December, 2011 by and between The City of Morristown, a city under the laws of the State of Tennessee, governed by a City Charter, and the Wallace Farms, Inc. referred to herein as “Developer”;

WITNESSETH:

WHEREAS, Wallace Farms, Inc. is the fee owner and Developer of the real property described in attached Exhibit A, which real property is proposed to be subdivided and platted for development, and which subdivision, which is the subject of this Agreement, is intended to bear the name “The Downs at Wallace Farms Phase I” and shall hereinafter be referred to in its entirety as “Said Plat” or “Subject Property”; and

WHEREAS, Developer intends to subdivide approximately sixty-six (66) acres into twenty-six (26) new commercial lots; and

WHEREAS, the City of Morristown and the Morristown Regional Planning Commission have given preliminary approval of Developer’s plat of The Downs at Wallace Farms, Phase I contingent upon compliance with certain State, County and City requirements including, but not limited to, matters set forth herein; and

WHEREAS, the City requires that certain public improvements including, but not limited to streets, right turn and by pass lanes, grading, drainage, berming, street signs, traffic control signs, street cleanup during project development, storm sewer, drainage ponds and other site related improvements (hereafter “Infrastructure Improvements”) be installed to serve the Subject Property and at the cost of the Developer; and

WHEREAS, the City further requires that certain improvements be installed by the Developer as a condition of Said Plat approval, which improvements consist of streets, right turn and by pass lanes, top soil and sod, grading control per lot, drainage swales, berming, street signs, street cleanup during project development, erosion control, and other site-related items; and

WHEREAS, this Agreement is entered into for the purpose of setting forth and memorializing for the parties and subsequent owners, the understandings and covenants of the parties concerning the development of the Said Plat and the conditions imposed thereon;

NOW, THEREFORE, IT IS HEREBY AND HEREIN MUTUALLY AGREED, in consideration of each party's promises and considerations herein set forth, as follows:

1. **Construction of Infrastructure Improvements.**

- A. The Developer, at its sole expense, shall construct those Infrastructure Improvements located on and off Said Plat as detailed in the Plans and Specifications for The Downs at Wallace Farms, Phase I as prepared by Wilbur Smith and Associates and on file with the City Planning Department (collectively the "Approved Plans"). If the plans vary from the written terms of this Agreement, the written terms shall control. The Approved Plans are:
- a. Exhibit A - Description of real property
 - b. Exhibit B - Final Plat of The Downs at Wallace Farms Phase I.
 - c. Exhibit C - Final Wastewater Construction Plans as approved by the City of Morristown Wastewater Department
 - d. Exhibit D – Fees and Surety Requirements

Included by reference are the following documents:

- a. Morristown Regional Planning Commission's approved Subdivision Regulations.
- b. City of Morristown Zoning Ordinance

All such improvements shall be constructed according to the Approved Plans, City of Morristown, Tennessee Ordinances and the standards adopted by the State of Tennessee, along with all items required by the Morristown Regional Planning Commission. Any revisions to the Approved Plans shall be submitted to the Morristown Regional Planning Commission for prior approval. In addition, the roads within Said Plat shall be built in accordance with the City of Morristown Road Specifications.

Unless the Morristown Regional Planning Commission specifies a later date, said improvements shall be installed by March 30, 2013, with the exception of erosion control, drainage swales and berming, which shall be installed before and during initial grading of Said Plat.

- B. Developer warrants to the City of Morristown for a period of two years from the date the City accepts by resolutions their respective improvements, that all such improvements have been constructed to Morristown standards and specifications for the entity requiring the improvement and shall suffer no significant impairments, either to the structure or to the surface or other usable areas due to improper construction, said warranty to apply both to poor materials and faulty workmanship. Developer shall guarantee that all new plantings as shown on the Approved Plans shall survive for two full years from the time the planting has been completed or will be replaced at the expense of the Developer.

No Infrastructure Improvements shall be accepted by the City until such time as a licensed professional engineer, retained by the respective party requiring the improvement, has certified to the City, as the case may be, that the construction/installation of the Infrastructure Improvement(s) has been done and performed according to Approved Plans.

- C. Developer shall, at its own expense, also cause to be installed street signs and traffic control signs of such type and at such locations as required by the City Engineers and in conformance with the Manual on Uniform Traffic Control Devices.
 - D. An easement over storm water retention/water quality ponds and basins shall be dedicated to the City as per the stormwater ordinance. Said dedications shall be in a form and with legal descriptions acceptable to the City Engineer.
2. **Intended Use of Subdivision Lots.** The City and Developer agree that the numbered lots in said Plat are intended for commercial or residential use as labeled on the Master Plan. The City will work with the Developers to find appropriate zoning for the entire development and the Developers will construct a recorded set of covenants to be attached to the deed of each lot. These covenants shall be provided to the city by _____ (date) so that staff can begin to work on developing zoning codes compatible with the covenants; However, the Morristown Regional Planning Commission and the Morristown City Council will determine the final and most appropriate zoning for the site which may not include all of the items within the covenants and may require additional restrictions if deemed necessary.
3. **Surety Requirements.**
- A. **City Surety Requirements.** Prior to the City Council's consideration of this developer's Agreement, the Developer will provide the City with an irrevocable letter of credit (or other surety as approved by the City Attorney) as security that the obligations of the Developer under this Agreement shall be performed. Said letter of credit or surety shall be in the amount of \$_____ representing the sum of 150% of the estimated cost of the Infrastructure Improvements as determined by the City Engineer. Said letter of credit or surety must meet the approval of the City Attorney as to form.
 - B. **State Surety Requirements.** The Developer shall also submit the binding agreements entered into with the State of Tennessee or any other public agency to provide infrastructure for this development. These agreements shall act as the security that the obligations of the Developer under this contract shall be performed as to the subject matter of the agreements.
 - C. The City may draw on their respective letters of credit or surety to complete work not performed by Developer including, but not limited to, Infrastructure Improvements, described above, erosion control, to reimburse themselves for costs incurred in the drafting, execution, administration or enforcement of this Agreement, to repair or correct deficiencies or other problems which occur to the improvements during the warranty period, or to otherwise fulfill the obligations of Developer under this Agreement.

- D. In the event that any cash, irrevocable letter of credit, or other surety referred to herein is ever utilized and found to be deficient in amount to pay or reimburse the City in total as required herein, the Developer agrees that upon being billed by the City, Developer will pay within thirty (30) days of the mailing of said billing, the said deficient amount. If there should be an overage in the amount of utilized security, the City will, upon making said determination, refund to the Developer any monies which the City has in its possession which is in excess of the actual costs of the project as paid by the City.
- E. In the event any surety referred to herein is in the form of an irrevocable letter of credit, which by its terms may become null and void prior to the time at which all monetary or other obligations of the Developer are paid or satisfied, it is agreed that the Developer shall provide the City with a new letter of credit or other surety, acceptable to the City, at least forty-five (45) days prior to the expiration of the original letter of credit. If a new letter of credit is not received as required above, the City may without notice to Developer declare a default in the terms of this Agreement and thence draw in part or in total, at the City's discretion, upon the expiring letter of credit to avoid the loss of surety for the continued obligations. The form of any irrevocable letter of credit or other surety must be approved by the City Attorney prior to its issuance.

4. **Surety Release.**

- A. Periodically, as infrastructure is completed by the Developer for the completion of portions of the Infrastructure Improvements and when it is reasonably prudent, the Developer may request of the City that the surety be proportionately reduced for that portion of the Infrastructure Improvements and other requirements under this Agreement which have been fully completed and payment made therefore. All such decisions shall be at the discretion of the City.
- B. The Developer may request of the City a reduction or release of any surety as follows:
 - 1. When another acceptable letter of credit or surety is furnished to the City to replace a prior letter of credit or surety.
 - 2. When all or a portion of the Infrastructure Improvements have been installed, the letter of credit or surety may be reduced by the dollar amount attributable to that portion of Infrastructure Improvements so installed at such time as a licensed professional engineer, retained by the Developer, has certified to the City, as the case may be, that the construction/installation of the Infrastructure Improvement(s) has been done and performed according to Approved Plans.

3. As to all requests brought under this paragraph B, the City and The Morristown Regional Planning Commission shall have complete discretion whether to reduce or not to reduce said letter of credit or surety.

5. **Abandonment of Project - Costs and Expenses.** In the event Developer should abandon the proposed development of the Subject Property, the City's costs and expenses related to attorney's fees, engineering fees, professional review, drafting of this Agreement, preparation of the feasibility report, plans and specifications, costs for completion and any other expenses undertaken in reliance upon Developer's various representations shall be paid by said Developer within thirty (30) days after receipt of a bill for such costs from the City. In addition, in the event the Developer abandons the project, in whole or in part, ceases substantial field work for more than nine (9) months, fails to provide sufficient ground-cover to prevent continuing soil erosion from the Said Plat, or fails to leave the abandoned property in a condition which can be mowed using conventional lawn mowing equipment, Developer agrees to pay all costs the City may incur in taking whatever action is reasonably necessary to provide ground-cover and otherwise restore or replace and repair any structures damaged by frost in Said Plat to the point where undeveloped grounds are level and covered with permanent vegetation sufficient to prevent continuing soil erosion from Said Plat and to facilitate mowing of Said Plat.
6. **Erosion and Siltation Control.** Developer, its successors and assigns, shall install and maintain all erosion control measures deemed necessary by the City Engineer should the erosion control plan prove inadequate in any respect. All temporary erosion and sediment control measures shall be properly disposed of within thirty (30) days after final site stabilization is achieved or after the temporary measures are no longer needed, unless otherwise authorized by the City.

The Developer, its successors and assigns, shall be responsible for maintaining all erosion and sediment control measures in accordance with all City, County and State regulations until the responsibilities have been transferred to the Builder for individual lots. Upon transfer of responsibilities, the Builder shall become responsible for maintaining all erosion and sediment control measures on the lot in accordance with the Approved Plans until the completion of final stabilization.

7. **Maintain Public Property Damaged or Cluttered During Construction.**

Developer agrees to assume full financial responsibility for any damage which may occur to public property including but not limited to streets, street sub-base, base, bituminous surface, curb, utility system including but not limited to water mains, sewer mains, air release valves, shut-off valves, septic, well, sanitary sewer or storm sewer when said damage occurs as a result of the activity which takes place during the development of Said Plat including, but not limited to, construction of

improvements and home construction. The Developer further agrees to pay all costs required to repair the streets, utility systems and other public property damaged or cluttered with debris when occurring as a direct or indirect result of the construction that takes place in Said Plat.

Developer agrees that any damage to public property occurring as a result of construction activity including, but not limited to home construction, on Said Plat will be repaired within three (3) business days of being notified by the State and/or City of the deficiency. Developer further agrees that any damage to public property as a result of construction activity on Said Plat will be repaired immediately if deemed to be an emergency by the County or Township.

8. **Miscellaneous.**

- A. Developer agrees that all construction items required under this Agreement are items for which Developer is responsible for completing and all work shall be done at Developer's sole expense.
- B. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Agreement.
- C. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the Morristown City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- D. The Developer represents to the City that Said Plat complies with all County, State, City and Federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, building codes and environmental regulations. Developer agrees to obtain all required Federal, State, County, City and other local permits. If the City determines that work in Said Plat does not comply, the City may, at its option, refuse to allow construction or development work in Said Plat until the Developer so complies. Upon the City's demand, the Developer shall cease work until there is compliance as determined by the City.
- E. Developer, its successors or assigns, shall strictly comply with all weed control ordinances and keep the site free of debris, rock and hazardous waste as well as any additional requirements required by the City Engineer.

Should the Developer, its successors or assigns fail to promptly comply with the provisions of this paragraph, the Developer, its successor or assigns, hereby agrees to allow the City to enter onto the lot located within Said Plat that has failed to comply with said site requirements, to bring the lot into compliance with the site requirements as set forth in this document in addition to any requirements of the

City Engineer, and to be responsible for the City's maintenance and administrative costs to remove any weeds, debris, rock or hazardous waste.

Said Developer, its successor or assigns, hereby agrees to allow the City to specially assess Developer's property in Said Plat for any and all costs incurred by the City in maintaining said offending lots and/or enforcing any of the terms of this Agreement. Should the City assess Developer's property for said maintenance and administrative costs, Developer, its successor or assigns, agrees not to contest or appeal such assessment and waives all statutory rights of appeal.

9. **Violation of Agreement.**

- A. Except as otherwise provided in this Agreement, upon any default by Developer, its successors or assigns, of any of the covenants and agreements herein contained, the City shall give the defaulting party thirty (30) days mailed notice thereof (via certified mail), and if such default is not cured within said thirty (30) day period, the City is hereby granted the right and the privilege to declare any deficiencies governed by this Agreement due and payable to the City in full. The thirty (30) day notice period shall be deemed to run from the date of deposit in the United States Mail. Upon failure to cure by Developer, the City may thence draw on the Letter of Credit, complete the Developer's obligations under this Agreement.
- B. Breach of any of the terms of this Agreement by the Developer shall be grounds for denial of building permits.

10. **Fees to the City**

In addition to the expenses already identified in this Agreement, the Developer shall also be responsible for paying the following costs as outlined on attached Exhibit D.

11. **Phased Development.** If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases until public improvements for all prior phases have been satisfactorily completed. Development of subsequent phases may not proceed until approvals of such phases are approved by the Morristown Regional Planning Commission. Approval of this Master Plan of the Development shall not be construed as approval of future phases nor shall approval of this Master Plan bind the Morristown Regional Planning Commission to approve future Development phases. All future Development phases shall be governed by the City's Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, Building Codes and other Ordinances in effect at the time such future Development phases are approved by the City of Morristown.
12. **Assignment of Contract.** The obligations of the Developer under this Contract cannot be assigned without the express written consent of the City through resolution.
13. **Limited Approval.** Approval of this Agreement by the City in no way constitutes approval of anything other than that which is explicitly specified in this Agreement.
14. **Plans Attached as Exhibits.** All plans attached to this Agreement as Exhibits are incorporated into this Agreement by reference as they appear. Unless otherwise specified in this Agreement, Developer is bound by said plans and responsible for implementation of said plans as herein incorporated.
15. **Integration Clause, Modification by Written Agreement Only.** This Agreement represents the full and complete understanding of the parties and neither party is relying on any prior agreement or statement(s), whether oral or written. Modification of this Agreement may occur only if in writing and signed by a duly authorized agent of both parties.
16. **Agreement Effect.** This Agreement shall run with the land and be binding upon and extend to the representatives, heirs, successors and assigns of the parties hereto and shall be recorded against the title to the property.

IN WITNESS WHEREOF, the City of Morristown and the Developer have caused this Agreement to be duly executed on the day and year first above written.

City of Morristown

Mayor

City Administrator

DEVELOPER

Councilmember Jinks made a motion to approve Ordinance No. 3419.07 on first reading and schedule a public hearing relative to final passage of said Ordinance for January 17, 2012. Councilmember Bivens seconded the motion and upon roll call, all voted "aye".

**Ordinance No. 3419.07
Entitled an Ordinance to Amend Ordinance Number 3419, The City of
Morristown, Tennessee Annual Budget for the Fiscal Year 2011-2012
and Appropriate the Sum of \$24,000 of the City's Portion and \$16,000 for
County's Portion of Back Haul System Purchase.**

There was a consensus of Council to Defer Consideration of the Ordinance of the City of Morrystown Amending §§ 14-203 and 14-1003 of the Municipal Code (Zoning Ordinance) Relative to Pain Management Clinics.

Mr. Cox advised Council of the following budget appropriate line item transfers:

Transfer of \$1,320.00 from City Administrator's 110-41200-801 (Grants & Other Subsidies) to Morrystown Community Dev. Corp 110-41750-429 (General Operating Supplies).

Mr. Cox asked Mr. Branham and Mr. Corlew to advise Council on the status of the Medical District Street Improvement Project, a federal project approved for \$1 million dollars with 5 distributions of \$200,000 to TDOT for 5 years. In order to move forward a survey must be completed of the historical significance of 31 structures. The City will need to appropriate \$9,500 in order to complete the historical significance survey.

Councilmember Senter made a motion to approve the supplement cost of \$9,500.00 to Wilbur Smith and Associates to conduct a survey of historical structures associated with the Medical District Street Project and request \$9,500.00 from

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LAMPTO. Councilmember Bivens seconded the motion and upon roll call, all voted "aye".

Councilmember Senter made a motion to approve the Car Allowance Policy. Councilmember Jinks seconded the motion and upon roll call, all voted "aye".

Mayor Thomas nominated Steve Henrickson to the Morristown Utility Commission for a five year term to expire on July 31, 2016. Councilmember LeBel made a motion to disapprove the Mayors nomination. Councilmember Garrett seconded the motion and upon roll call, Councilmembers Garrett, Bivens, Senter, Jinks and LeBel voted "aye"; Councilmember Brooks and Mayor Thomas voted "no".

Councilmember Jinks made a motion to declare a Glock 31 LFL 904 handgun as surplus. Councilmember LeBel seconded the motion and upon roll call, all voted "aye".

Councilmember Senter made a motion to cancel the January 3, 2012 Council meeting. Councilmember Jinks seconded the motion and upon roll call, all voted "aye".

Mayor Thomas adjourned the December 20, 2011 meeting.

MAYOR

ATTEST

CITY ADMINISTRATOR