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DEVELOPMENT AGREEMENT

ANDERSON TRACT

HARDEEVILLE, SOUTH CAROLINA

FINAL VERSION SUBMITTED AND APPROVED BY CITY COUNCIL

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WHEREAS, the City finds that the program of development proposed by Owner for this Property is consistent with the City's comprehensive land use plan; and will further the health, safety, welfare and economic well being of the City and its residents; and

WHEREAS, the program for development of the Property presents an opportunity for the City to secure quality planning and managed growth to protect the environment and strengthen and improve the tax base; and

WHEREAS, this Development Agreement is being made and entered between Owner and the City, under the terms of the Act, for the purpose of providing assurances to Owner that development of the Property may proceed in accordance with the development plan submitted for the Property under the terms hereof, as hereinafter defined, consistent with the approved Planned Development District (PDD) plan, (as hereinafter defined) without encountering future changes in law which would materially affect the ability to develop under the PDD, and for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to the City, and for the purpose of providing certain funding and funding sources to assist the City in 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, including the potential economic benefits to both the City and Owner by entering this Agreement, and to encourage well planned development by Owner, the receipt and sufficiency of such consideration being hereby acknowledged, the City and Owner hereby agree as follows:

I. RECITALS.

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

II. DEFINITIONS.

As used herein, the following terms mean:

"Act" means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-31-10 through 6-31-160 of the Code of Laws of South Carolina (1976), as amended; incorporated herein by reference.

"Adjacent Land" shall mean any real property adjacent to the Anderson Tract.

"Adjustment Factor" shall mean the percentage of either the Consumer Price Index (CPI) (All Urban Consumers) increase for the applicable year or three percent (3%) per annum simple interest, which ever is greater. All amounts in this Agreement which are subject to the Adjustment Factor are based upon amounts in effect prior to July 1, 2006. The Adjustment Factor effective July 1, 2006 was three percent (3%). Therefore, all fees and values herein affected by the Adjustment

Factor shall be 103.0% of the amount stated until June 30, 2007, at which time such fees and values shall be adjusted on the anniversary date of July 1, 2007 by either 3% or the CPI percentage increase, whichever is greater that year. Thereafter, annual adjustments to such amounts shall continue to be adjusted in like manner on July 1 of each year.

“Additional Adjustment Factor” shall mean that from and after the end of the twentieth (20th) year of the Term of this Agreement, the Development Fee set forth in Section XI(J) for any Development Fees that are payable after the twentieth (20th) year of the Term during the remainder of the Term (if extended) shall be adjusted as of the first day of the twenty-first (21st) year of the Term to an amount equal to the greater of (a) the Development Fee in effect on the last day of the twentieth (20th) year of the Term; or (b) an amount equal to the lesser of (x) one hundred fifty percent (150%) of the amount of the Development Fee in effect on the date of this Agreement, or (y) the Development Fee in effect on the date of this Agreement multiplied by the amount of the Consumer Price Index increase from the date of this Agreement through the first day of the twenty-first (21st) year of the Term.

“Agreement” shall mean this Development Agreement, as amended by the City and Owner and/or Owner’s successors and assigns in writing from time to time.

“Anderson Tract” or **“Property”** shall mean that certain tract of land described on Exhibit A, as may be amended upon the agreement of the City and Owner.

“Association” shall mean one (1) or more property owners’ associations established to maintain portions of the Property.

“BJWSA” shall mean the Beaufort/Jasper Water and Sewer Authority, its successors or assigns.

“Builder” shall mean any Person applying for a building permit to construct a structure on a portion of the Property.

“City” shall mean the City of Hardeeville, South Carolina.

“Concept Plan” shall mean the Concept Plan attached to the Planned Development District dated May 8, 2006 and last revised July 19, 2006.

“County” shall mean Jasper County, South Carolina.

“Developer” or **“Owner”** means Hilton Head Lakes, LLC, a South Carolina limited liability company.

“Development” means the development of all or portions of the Property and construction of improvements thereon in accordance with the Zoning Regulations.

“Development Fees” or **“Developer Fees”** shall have the meaning set forth in Section XI(J).

“Development Rights” means Development undertaken by the Owner or a Secondary Developer in accordance with the Zoning Regulations and this Development Agreement.

“DHEC” shall mean the South Carolina Department of Health and Environmental Control.

“Fire Fund” shall mean the segregated interest-bearing account held by the City into which all Fire Development Fees are contributed.

“Fire Site” shall have the meaning set forth in Section XI(C).

“Fire Site Value” shall have the meaning set forth in Section XI(C).

“Library Fund” shall mean the segregated interest-bearing account to be held by the City into which all Library Development Fees are contributed.

“Lot” shall mean an area designated as a separate and distinct parcel of land on a legally recorded subdivision/development plat as filed in the official records of Jasper County, South Carolina.

“Main Road” shall have the meaning set forth in Section X(B)(2).

“Municipal Improvement District Bond” shall mean any special assessment bond financing approved and obtained by the City of Hardeeville for the Property, the proceeds of which are to be used for public infrastructure serving the Property, as more particularly described in Section 5-37-10 et seq. of the South Carolina Code of Laws (1976), as amended.

“MZDO” shall mean the Municipal Zoning and Development Ordinance of the City of Hardeeville, South Carolina adopted March 20, 2003, as amended through the date of this Agreement.

“Off-Site Roadway Fund” shall mean the segregated interest-bearing account held by the City into which all Road Development Fees for construction of public rights-of-way not within the Property are contributed until utilized for construction.

“On-Site Roadway Fund” shall mean the segregated interest-bearing account held by the City into which all Road Development Fees for construction of the Main Road are contributed until utilized for construction by Owner of the Main Road in the Project.

“Owner” means Hilton Head Lakes, LLC, its successors and assigns.

“Park Fund” shall mean the segregated interest-bearing account to be held by the City into which all Park Development Fees are contributed.

“Park Sites” shall have the meaning set forth in Section XI(D).

"PDD" or **"Planned Development District"** shall mean the Anderson Tract Planned Development District approved by the City of Hardeeville on October 5, 2006 attached as Exhibit B and incorporated into this Agreement by reference.

"Person" means any individual, limited liability company, limited liability partnership, partnership, corporation, trust or other person or entity.

"Police Fund" shall mean the segregated interest-bearing account to be held by the City into which all Police Development Fees for the Police Site, police facility, and equipment, if applicable, are contributed.

"Police Site" shall have the meaning set forth in Section XI(B).

"Police Site Value" shall have the meaning set forth in Section XI(B).

"Presumed Density" shall have the meaning set forth in Section VII(A)(2).

"Project" shall mean the Development to occur on the Property.

"Property" shall mean that certain tract of land described in the attached Exhibit A, also known as the Anderson Tract, as may be amended upon the agreement of the City and Owner.

"Residential Dwelling Unit" shall mean a building or portion of a building arranged or designed to provide living quarters for one or more Persons.

"School Fund" shall mean the segregated interest-bearing account to be held by the City into which School Development Fees are contributed.

"School Price" shall have the meaning in Section XI(E).

"School Site" shall have the meaning set forth in Section XI(E).

"Secondary Developer" means any and all successors in title or lessees of Owner who (a) undertake Development of any portion of the Property; (b) are transferred in writing from Owner title to all or a portion of the Property; and (c) are assigned all or a portion of the Development Rights.

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

"Zoning Regulations" means the (a) Planned Development District established for the Property, and all the attachments thereto, including but not being limited to the Concept Plan, all narratives, applications, and site development standards thereof, all as same may be hereafter amended by mutual agreement of the City and the Owner; (b) this Development Agreement; and (c) the MZDO dated March 20, 2003 as amended through the date of this Agreement except as the

provisions thereof may be clarified or modified by the terms of the PDD and this Agreement (a copy of all of which is attached as Exhibit C and incorporated in this Agreement by reference).

III. TERM.

The term of this Agreement shall commence on the date this Agreement is executed by the City and Owner and terminate twenty (20) years thereafter; provided however, that the terms of this Agreement may be renewed for two successive five (5) year periods absent a material breach of any terms of this agreement by the Owner or any Secondary Developer during the initial or any renewal terms, as applicable. Furthermore, this Agreement may be terminated at the end of the tenth (10th) year upon written notice from the City to Owner delivered within thirty (30) days prior to the end of such ten (10)-year period if the average fair market value of the residences constructed within the Property as of the end of the of the tenth (10th) year from the date of this Agreement does not average at least \$180,000.00 per Residential Dwelling Unit (including the value of the Lot), as adjusted by the Adjustment Factor (for example, effective July 1, 2006, the average is equal to \$185,400.00 based upon the original \$180,000.00 figure plus the 3% annual Adjustment Factor).

IV. DEVELOPMENT OF THE PROPERTY.

The Property shall be developed in accordance with the Zoning Regulations and this Agreement. All costs charged by or to the City for reviews required by the MZDO shall be paid by the Owner or Secondary Developer or other party applying for such review as generally charged throughout the City for plan review. The City shall, throughout the Term, maintain or cause to be maintained, a procedure for the timely 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 § 6-31-80 (B) of the Act, which Owner shall have the right to challenge. Owner does, for itself and its successors and assigns, including Secondary Developers and notwithstanding the Zoning Regulations, agrees to be bound by the following:

A. **Transfer of Development Rights.** Owner shall be required to notify the City, in writing, as and when Development Rights are transferred to any other party, including Secondary Developers. Such information shall be on such forms as are approved by the City from time to time, and 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 Dwelling Units and/or commercial acreage and square footage of the building area, as applicable, subject to the transfer. Secondary 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 City an acknowledgment of this Agreement and a commitment to be bound by it.

B. Water and Sewer Required. Owner and Secondary Developers, and their respective heirs, successors and assigns agree that all Development, with the exception of irrigation, incidental maintenance facilities, golf courses, earthwork and similar amenities which exist from time to time, and facilities existing at the date of this Agreement will be served by potable water and sewer prior to occupancy, except as otherwise provided herein for temporary use, temporary being defined as one year or less. Septic tanks and/or wells may be allowed with the permission of BJWSA where there is a specific finding that such use for specific portions of the Property will comply with overall environmental standards.

C. Acreage Requirement for Each Submission. With the exception of the first Master Plan submission for the Property proposed by Owner or a Secondary Developer which addresses the entry area for the Project off of Highway 278, which may be less than ten (10) acres, or the platting of a road section, no initial Master Plan for any portion of the Property shall be submitted for processing unless that plan encompasses ten (10) or more acres of high land which are not jurisdictional wetlands.

VI. DEVELOPMENT SCHEDULE.

The Property shall be developed in accordance with the development schedule, attached as Exhibit D, or as may be amended by Owner or Secondary Developer(s) in the future to reflect actual market absorption. Pursuant to the Act, the failure of the Owner and any Secondary Developer to meet the initial development schedule shall not, in and of itself, constitute a material breach of this Agreement. In such event, the failure to meet the development schedule shall be judged by the totality of circumstances, including but not limited to the Owners and Secondary Developer(s) good faith efforts to attain compliance with the development schedule. These schedules are planning and forecasting tools only, and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace if market conditions support a faster pace. The fact that actual development may take place at a different pace, based on future market forces, is expected and shall not be considered a default hereunder. Development activity may occur faster or slower than the forecast schedule, as a matter of right, depending upon market conditions. Furthermore, periodic adjustments to the development schedule which may be submitted unilaterally by Owner or Secondary Developers in the future, shall not be considered a material amendment or breach of the Agreement.

VII. DENSITY.

Mixed use, residential and commercial development on the Property shall be in accordance with the densities and uses as set forth in the Planned Development District approval, as set forth below:

A. Number of Residential Dwelling Units.

1. Up to 3,888 Residential Dwelling Units shall be allowed on the 1,440 upland acres shown as residential on the Concept Plan for the Property, of which 600 units may be multifamily Residential Dwelling Units; provided, however, that Owner shall have the right to have

more than 600 multifamily Residential Dwelling Units, so long as at the time of such request for a building permit for multifamily units in excess of 600 multifamily Residential Dwelling Units, the average fair market value of all Residential Dwelling Units then constructed on the Property is at least \$180,000.00 (including the value of the Lot) plus the Adjustment Factor or more (for example, effective July 1, 2006, the average is equal to \$185,400.00 based upon the original \$180,000.00 figure plus the 3% annual Adjustment Factor).

2. The Developer requirements set forth in this Agreement are based upon a Presumed Density of 3,200 Residential Dwelling Units ("Presumed Density"). Additional density from conversions and additional units as provided below in Sections VII(C) and (D) which results in total units above the Presumed Density figure will require additional dedications for parks and schools sites on a pro rata basis, and continued payment of impact fees on the additional units for the various infrastructure and services set forth below in Section XI. Reductions in density may reduce the amount of required dedications for acreage for parks and schools sites on a pro rata basis, but such reductions shall be negotiated in good faith by both Owner and City based upon the need to provide required levels of service and facilities on a par with other residents and/or similar developments.

B. Commercial Acreage. Up to 71 acres of planned commercial or mixed use development shall be allowed on the Property; provided, however, that such acreage amount may be increased or decreased as deemed necessary by the Owner, subject to Section VII(C) below.

C. Conversion of Commercial. Owner and Secondary Developers (to the extent Secondary Developers have been expressly signed conversion rights by Owner) shall have the right to convert commercial acreage into additional density for Residential Dwelling Units, provided at least 20 acres of commercial acreage exists or remains available for Development on the Property. Conversely, Owner shall have the right to convert Residential Dwelling Units to commercial acreage at the rate of one commercial acre for 2.7 Residential Dwelling Units, and vice versa. Owner and Secondary Developers shall notify the City of conversions during the prior year during each annual compliance meeting.

D. Additional Units. In addition to the base maximum of Residential Dwelling Units set forth above:

1. up to a maximum of 2.7 additional Residential Dwelling Units shall be allowed for each acre of School Site within the Property, if any, that is not timely acquired by the City pursuant to Section XI(E) of this Agreement; and

2. up to a maximum of 100 additional Residential Dwelling Units shall be allowed if Owner, or its assigns, can demonstrate, through a traffic impact analysis acceptable to City, that the traffic generated by such additional density can be adequately handled by existing traffic infrastructure or infrastructure which the City forecasts to be constructed within a reasonable time, and further, that the City determines that adequate provisions have been made for the handling of governmental services, including fire, police, school and library services, to serve the additional density.

VIII. RESTRICTED ACCESS.

The Owner and/or each Secondary Developer shall have the right (but not the obligation) to create restricted access communities within the Property as long as such limited access does not adversely affect in any material respect adjacent traffic patterns located on public rights-of-way.

IX. EFFECT OF FUTURE LAWS.

Owner and Secondary Developers shall have vested rights to undertake Development of any portion or all of the Property in accordance with the Zoning Regulations, as may be modified in the future with the approval of the Owner pursuant to the terms hereof, or in accordance with this Agreement or statutory authority under the Act, for the entirety of the Term. Future enactments of, or changes or amendments to the City ordinances, including zoning or development standards ordinances (but not procedures), which conflict with the Zoning Regulations shall not apply to the Property unless the procedures and provisions of §6-31-80 (B) of the Act are followed, and which Owner and Secondary Developers shall have the right to challenge. Notwithstanding the above, the Property will be subject to then current fire safety standards and state and/or federal environmental quality standards of general application.

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 City found by the Hardeeville City Council to be necessary to protect the health, safety and welfare of the citizens of Hardeeville.

X. ROADS, INFRASTRUCTURE, AND SERVICES.

The City and Owner recognize that the majority of the direct costs associated with the Development of the Property will be borne by the Owner and Secondary Developers, and many other necessary services will be provided by other governmental or quasi-governmental entities, and not by the City. 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, Secondary Developer, or other parties and maintained by such party(ies) and/or Association(s), or dedicated for maintenance to other appropriate entities. The City will not be responsible for the construction or maintenance of any private roads within the Property, unless the City specifically agrees to do so in the future.

B. Public Roads.

1. Access to Property. All public roads outside the Property that serve the Property are under the jurisdiction of the State of South Carolina regarding access, construction, improvements and maintenance. Owner acknowledges that it must comply with all applicable state statutes and rules and regulations of the South Carolina Department of Transportation or its successor regarding access and use of such public roads. Future public roads may serve the Property. The City

shall not be responsible for construction, improvements or maintenance of the public roads which now or hereafter serve the Property, unless set forth in this Agreement or the City otherwise agrees. The Property shall be served by direct access to Highway 278 and the proposed roads as shown on the PDD Concept Plan and as described in Exhibit E. Timing of the proposed road improvements also is set forth in Exhibit E. Additional public roads may be planned on the Property in the future, upon written agreement between Owner and the City.

2. Main Road. Owner shall have the right to design and construct upon obtaining permits from applicable governmental authorities the primary roadway designated on the PDD Concept Plan ("Main Road"), provided such design is in conformance with this Agreement and capable of absorbing the traffic loading created by the Development of the Property. The Main Road is proposed to be designed and constructed as a four-lane limited access arterial roadway with appropriate turn storage and with a divided, landscaped median located within a right-of-way of at least 150 feet in width and in accordance with the road design standard as may be approved by the City at Master Plan submittal for such portion of the Main Road then being constructed. The 150 foot right-of-way is being provided by Owner (without charge for the land comprising such 150 right-of-way) to accommodate future road widenings that may be appropriate due to increased traffic loading resulting from off-Property impacts, with funding and responsibility for such widening and improvements beyond four (4) lanes necessitated by off-site traffic to be the responsibility of the City or other governmental entity(ies).

3. Construction of Main Road; Conveyance to City. In connection with the construction of such four (4) lanes of Main Road by Owner:

- a. Owner shall construct the outermost lanes of such roadway section first rather than the innermost lanes.
- b. Owner shall construct all four (4) lanes of the Main Road (which may be completed in phases pre-approved by City) and, upon completion of portions of the Main Road, Owner will dedicate the road and right-of-way and any adjacent sidewalks or pathways constructed by Owner to the City (or other governmental authority), and City shall assume maintenance responsibility for such portion of the Main Road, sidewalks and pathways when and in the manner hereafter provided.
- c. To the extent practical, Owner will utilize construction accesses and temporary construction roads to minimize the use by construction vehicles and construction supply trucks of the public roads to be constructed, to avoid undue wear and tear.
- d. Owner and City shall by mutual agreement establish the design speed and geometrics for the Main Road in accordance with South Carolina Department of Transportation guidelines.

4. Landscaping of Main Road. Owner shall install landscaping for the Main Road in a safe manner consistent with the landscape plan to be submitted by Owner and approved by the City. Owner shall establish an Association which shall have the perpetual maintenance obligation for maintaining the landscaping located within and adjacent to such Main Road right of way.

5. Maintenance of Main Road.

a. By Association. The Association shall maintain all aspects of the four (4) lane segments of the Main Road constructed by Owner, drainage, and rights of way of such portions of the Main Road as are constructed until two years after the Property has received its 1,000th certificate of occupancy, and for three (3) years after completion of any other portions completed after the expiration of the two (2) year period after the Property has received its 1,000th certificate of occupancy.

b. By City. On the date that is two years after the Property has received its 1,000th Certificate of occupancy, Owner, its successors or assigns, shall transfer title to the right of way for the constructed paved portions of the Main Road and any adjacent sidewalks and pathways constructed by Owner to the City, and the City shall take full maintenance responsibility with regard to the constructed paved portions of the Main Road (including curbing) and any adjacent sidewalks and pathways constructed by Owner which must be in reasonable condition at the time of transfer of responsibility (i.e. not in need of repair and with at least 50% of the useful life of the last applied pavement coating remaining). Any paved portions of the Main Road (including curbing) and any adjacent sidewalks and pathways constructed by Owner constructed after the expiration of the two year period after the Property has received its 1,000th certificate of occupancy shall be transferred to the City and shall become the maintenance responsibility of the City three (3) years after completion of such portions of the Main Road, upon the same terms regarding the condition of the Main Road as set forth above. Acceptance of the Main Road by the City may be accelerated to five (5) years after the date of completion of construction of the Main Road if the Main Road becomes a road of regional significance as shown on the Southern Jasper Regional Transportation Plan (e.g. the Main Road connecting Highway 278 with another public road such as Highway 46 or the extension of Alternate Highway 278/Bluffton Parkway). At such time, the condition of the Main Road must be as set forth above, and alternate provisions for construction access or additional warranties shall be made so construction vehicles do not damage the Main Road beyond general wear and tear of such roads.

6. Maintenance of Drainage System and Right of Way. Notwithstanding the foregoing, the Association will have perpetual maintenance responsibility for un-paved portions of the right of way and the entire drainage system serving the Main Road. Owner, its successors or assigns, shall reserve in the deeds of transfer to the City easements for access for Owner and/or the Association over the right of way for the Main Road in order to perform such maintenance obligations.

7. Utility Improvements in Right of Way. To the extent that any third party is permitted by the City to utilize any public road right-of-way within the Property to install underground utilities or other public services within such road right-of-way, then the City shall require that such party perform such work in a good and workmanlike manner, in conformity with all City permits, and to restore any damage to the right-of-way, including the Main Road and/or landscaping or other improvements in connection therewith promptly. All utility improvements within such road right-of-way(s) shall be located underground, except such above ground improvements related thereto, such as lift stations, meter boxes, etc.

8. Additional Roads. If either Owner or a Secondary Developer is required to construct two (2) lanes of a roadway within a right of way sized to accommodate more lanes, then Owner or Secondary Developer shall construct those lanes on one side of the right of way, in accordance with plans approved by the City.

9. Alternate Highway 278/Hardeeville-Bluffton Connector. Owner agrees to dedicate right of way to the City, County, SCDOT or other public entity for the construction of a public right of way known as alternate Highway 278 or the Hardeeville-Bluffton Connector to allow for the extension of the existing Bluffton Parkway right of way from the Town of Bluffton, South Carolina through the Property toward Interstate 95, if necessary. This right of way shall be 150 feet in width and will be generally located along the existing 100 foot South Carolina Electric & Gas Company Right of Way at the southern boundary of the Property as shown on the Concept Plan. The dedication of this right of way shall occur at such time as the construction of the Hardeeville-Bluffton Connector receives final approval and funding from the SCDOT or other appropriate governmental agency for construction. Until such dedication occurs, the Owner shall have the right to use the right of way area to service any development for the Property in accordance with the Master Plan covering such development. The City, County, SCDOT or other public entity, will be responsible for the construction of the Hardeeville-Bluffton Connector. The location of the Hardeeville-Bluffton Connector on the Property may be altered in the future with the consent of Owner and City.

C. Maintenance And Road Construction By The City. Maintenance for paved portions of roadways dedicated to the City (or other governmental authority) may be funded through an ad valorem tax applied City-wide, or such other mechanism as may be selected by the City that is applied City-wide. The parties agree that the City may transfer ownership and maintenance responsibility for the Main Road to Jasper County, the South Carolina Department of Transportation, or other public entity in the event the County, State, or another public entity agrees to accept same and has a reasonable maintenance program in place.

Provided funds are available, the City shall be responsible, in accordance with existing development agreements, for permitting and coordinating the construction to expand Highway 278 from a four lane road to a minimum of a six (6) lane, divided highway with median from the east ramp of the existing I-95 interchange at Exit 8 extending east to the western edge of the New River Swamp ("278 Construction"), which 278 Construction shall be completed by the City utilizing Development Fees which have been collected from the Owner and/or monies from other land owners, a traffic impact fee pursuant to a Jasper County impact fee ordinance, and/or other funding sources, which together are sufficient to design, permit and construct such 278 Construction; provided the South Carolina Department of Transportation permits such 278 Construction.

D. Potable Water. Potable water will be supplied to the Property by BJWSA or some other legally constituted public or private provider allowed to operate in the City. The City shall not be responsible for any construction, treatment, maintenance or costs associated with water service to the Property unless the City elects to provide such services with the agreement of the applicable utility authority then providing such service to the Property. 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 BJWSA or some other legally constituted public or private provider allowed to operate in the City. The City will not be responsible for any treatment, maintenance or costs associated with sewage treatment within the Property, unless the City elects to provide such service with the agreement of the applicable utility authority then providing such service to the Property. Nothing herein shall be construed as precluding the City 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.

F. Use of Effluent. Owner agrees that treated effluent will be disposed of only in such manner as may be approved by DHEC and the BJWSA. The City 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, golf courses, and the like, if any, within the Property. 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 DHEC or other applicable regulatory authority.

G. Police Services. City shall provide police protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the City with the exception of any restricted access communities, which may elect in writing to provide in-house patrol services by security forces and/or constables and to forego regular City patrol functions. Owner acknowledges the concurrent jurisdiction of the City's police department and the sheriff of Jasper County on the Property and shall not interfere or in anyway hinder law enforcement activities of either on the Property regardless of whether such may be a restricted access community.

H. Fire Services. City shall provide fire protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the City. Owner acknowledges the jurisdiction of the City'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.

Notwithstanding the foregoing, fees for fire protection will be charged as if the Owner of the Property was a non-resident under the fire protection fee ordinance (Section 8-120 of the City Code of Ordinances) until such time as a site specific development plan or subdivision plat is approved for an area of the Property, at which time the non-resident treatment shall be removed as to that area only.

I. Sanitation Services. City shall provide sanitation and trash collection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the City.

J. Recreation Services. City shall provide recreation services to the Property on the same basis as the City provides such services to other similarly situated residents and businesses in the City. Notwithstanding the above, the City shall not be obligated to improve any of the Park Sites until such time as Park Development Fees are adequate to fund the design and construction of the site. Should the Owner or Secondary Developer desire to have improvements constructed upon any of the Park Sites prior to these funds being adequate, Owner or Secondary Developer may elect to do so in accordance with the provisions of Section XI(D)(4) below.

K. Library Services. Library services currently are provided by Jasper County. City shall not be obligated to provide library services to the Property, absent its election to provide such services on a city-wide basis. City shall allocate, at its discretion, Library Development Fees to assist with library services in southern Jasper County.

L. Emergency Medical Services (EMS). EMS services currently are provided by Jasper County. City shall not be obligated to provide EMS services to the Property, absent its election to provide such services on a city-wide basis.

M. Drainage System. All storm water runoff, treatment and drainage system improvements within the Property will be designed in accordance with the then current Zoning Regulations and Best Management Practices ("BMP"). All storm water runoff, treatment and drainage system improvements for the Property shall be constructed by Owner or the Association. The City will not be responsible for any construction or maintenance cost associated with the storm water runoff, treatment and drainage system within the Property. The parties agree to coordinate the drainage for roads constructed by Owner to promote economies of scale and lessen environmental impacts.

N. Storm Water Quality. Protection of the quality in nearby waters and wetlands is a primary goal of the City. Owners shall be required to abide by all provisions of federal and state laws and regulations, including those established by DHEC, the Office of Ocean and

Coastal Resource Management ("OCRM"), and their successors for the handling of storm water. Further provisions regarding storm water are included within the PDD for this Project.

XI. CONVEYANCES AND CONTRIBUTIONS.

The City and Owner understand and agree that future development of the Property shall result in additional public services being required to be provided by the City and other governmental agencies. The City and Owner acknowledge it is desirable that certain public facilities be located in the vicinity of the Property. The Owner agrees to participate in mitigating certain initial costs of the City for such services as provided in this Agreement. The following items are hereby agreed upon to be provided by Owner, its successors and assigns, to offset such future costs and expenditures created by the Development of the Property:

A. **Roads.** Owner shall transfer to the City certain right of way and roads within the Property as described in Section X(B).

B. **Police Site.**

1. Unless the City chooses to locate a police station on adjacent property as set forth in Section XI(B)(4) below, which choice shall release Owner from this obligation, Owner shall transfer to the City two (2) acres within the Property at a location or locations mutually agreed upon to be utilized as a police station site or sites (collectively "Police Site") which may be combined with other public safety and support facilities, which site shall be dedicated to the City no later than the period between when the one thousandth (1,000th) residential certificate of occupancy is issued on the Property and prior to when the one thousand two hundredth (1,200th) residential certificate of occupancy is issued on the Property, unless dedication of the site and construction of a combined fire/police facility is required to preserve the City's ISO rating (currently a 3) for fire protection or otherwise agreed. It is acknowledged that if there are to be more than two (2) Police Sites, the additional site shall be identified as being necessary by City during this period and dedicated simultaneously. The value of the Police Site shall be deemed to be Thirty Thousand and 00/100 Dollars (\$30,000.00) per acre plus the Adjustment Factor from the date of such transfer until such amount is credited against Police Development Fees ("Police Site Value"). Owner shall be entitled to credits against the Police Development Fees in the amount of (a) the Police Site Value, if contributed, and (b) for the \$1,000,000.00 payment to the Police Fund described below. Notwithstanding anything to the contrary, if at the request of Owner a Municipal Improvement District or a Special Tax Assessment District is implemented and funded, the City may request and the Owner shall transfer such Police Site to the City and construction may begin when funds are available even if prior to when the 1,000th residential certificate of occupancy is issued on the Property.

2. It is agreed that the City will, within six (6) months after a Police Site is transferred to the City, either on or off the Property, design and permit a police facility on the Police Site. If more than one Police Site is transferred, the City shall only be obligated to design and permit one police facility within this time frame. Within thirty (30) days after the City has designed and permitted such police facility, Owner shall pay One Million and 00/100 Dollars (\$1,000,000.00) (less any Police Development Fees previously paid and the value of the Police Site, if contributed)

as a capital contribution into the Police Fund to be utilized by the City to construct and equip a police facility on the Police Site, and Owner shall receive credits against Police Development Fees for such payment. The City shall begin construction of the necessary facilities on the Police Site promptly upon City's receipt of Owner's payment of the One Million and 00/100 Dollars (\$1,000,000.00) into the Police Fund less any credits for the conveyance of the Police Site, if made, or for Police Development Fees previously paid for the Property.

3. It is specifically acknowledged that Owner's obligation as to the Police Site is limited to two (2) acres for a Police Site if located on the Property, and its capital contribution to the police facilities is One Million and 00/100 Dollars (\$1,000,000.00), less any credits for the conveyance of the Police Site, if made, or for Police Development Fees previously paid for the Property.

4. The Police Site shall be located as to be able to primarily provide police and other municipal services to residents and others located upon the Property in an efficient manner. The City may choose to combine the Police Site(s) with the dedications from the Owner for the Fire Site and other public infrastructure, and also may combine the Owner's dedications and payments with those from adjacent landowners/developers to maximize utilization of resources. The City and the Owner shall mutually agree as to the location of such Police Site and Fire Site.

5. All Police Development Fees collected as hereafter provided shall be placed in a segregated interest-bearing account Police Fund held by the City. The Police Development Fees may be combined with the Fire Development Fees to be allocated for the acquisition of the Police/Fire site and for construction and equipping of the police station(s) and the fire station(s) on the Police/Fire site or sites, as applicable, as the City determines in its discretion. These fees shall be utilized to construct and equip the Police facility or combined Police/Fire facility on the Police/Fire Site(s), and/or as a credit enhancement as set forth herein below in connection with obtaining bond financing by the City to construct such facilities on the site or sites.

6. Owner consents that any Police Development Fees collected may be available for both land acquisition, construction and equipment costs, and debt service as set forth below. Upon completion of construction, the City shall be entitled to utilize any excess funds in such account which are not needed in connection with the initial acquisition, construction, equipping and debt servicing of such site(s) in conjunction with other Development Fees to mitigate impacts relating to the Development of the Property.

C. Fire Site.

1. Unless the City chooses to locate a police station on adjacent property as set forth in Section XI(C)(4) below, which choice shall release Owner from this obligation, Owner shall transfer to the City two (2) acres within the Property at a location or locations mutually agreed upon to be utilized as a fire station or sites (collectively, "Fire Site") which may be combined with other public safety and support facilities, which site shall be dedicated to the City no later than the period between when the one thousandth (1,000th) residential certificate of occupancy is issued on the Property and prior to when the one thousand two hundredth (1,200th) residential certificate of occupancy is issued on the Property, unless dedication of the site and construction of the facility

is required to preserve the City's ISO rating (currently a 3), or as otherwise agreed. It is acknowledged that if there are to be more than two (2) Fire Sites, or combined Fire/Police sites, the additional sites shall be identified as being necessary by City during this period and dedicated simultaneously. The value of the Fire Site shall be deemed to be Thirty Thousand and 00/100 Dollars (\$30,000.00) per acre plus the Adjustment Factor from the date of such transfer until such amount is credited against Fire Development Fees ("Fire Site Value"). Owner shall be entitled to credits against the Fire Development Fees in the amount of (a) the Fire Site Value if contributed, and (b) for the \$1,000,000.00 payment to the Fire Fund described below. Notwithstanding anything to the contrary, if at the request of Owner a Municipal Improvement District or a Special Tax Assessment District is implemented and funded, the City may request and the Owner shall transfer such Fire Site to the City, and construction may begin when funds become available, even if prior to when the 1,000th residential certificate of occupancy is issued on the Property.

2. It is agreed that the City will, within six (6) months after the Fire Site is transferred to the City (either on or off the Property), design and permit a fire facility on the Fire Site. If more than one Fire Site is transferred, the City shall only be obligated to design and permit one fire facility within this time frame. Within thirty (30) days after the City has designed and permitted such fire facility, Owner shall pay One Million and 00/100 Dollars (\$1,000,000.00) (less any Fire Development Fees previously paid and the value of the Fire Site, if contributed) as a capital contribution into the Fire Fund to be utilized by the City to construct and equip the Fire facility on the Fire Site, and Owner shall receive credits against Fire Development Fees for such payment. The City shall begin construction of the necessary facilities on the Fire Site promptly upon City's receipt of Owner's payment of the One Million and 00/100 Dollars (\$1,000,000.00) into the Fire Fund less any credits for the conveyance of the Fire Site, if made, or for Fire Development Fees previously paid for the Property.

3. It is specifically acknowledged that Owner's obligation as to the Fire Site is limited to two (2) acres for a Fire Site if located on the Property, and its capital contribution to the fire facilities is One Million and 00/100 Dollars (\$1,000,000.00), less any credits for the conveyance of the Fire Site, if made, or for Fire Development Fees previously paid for the Property. Owner acknowledges that the City may elect to combine the Police Site and Fire Site.

4. The Fire Site shall be located as to be able to primarily provide fire and other municipal services to residents and others located upon the Property in an efficient manner. It is further agreed that the City may choose to combine this Fire Site with the dedications from the Owner for the Police Site and other public infrastructure, and also may combine the Owner's dedications and payments with those from adjacent landowners/developers to maximize utilization of resources. The City and Owner shall mutually agree as to the location of such Fire Site and Police Site.

5. All Fire Development Fees collected as hereafter provided shall be placed in a segregated interest-bearing account Fire Fund to be held by the City. The Fire Development Fees may be combined with the Police Development Fees to be allocated for the acquisition of a combined Police/Fire facility and for the construction and equipping of the police facility and fire facility on such combined Police/Fire Site, as the City determines in its discretion. These fees shall be utilized to construct and equip the fire facility or combined Fire/Police facility

upon the Fire Site(s) or combined Police/Fire site(s), as applicable, and/or as a credit enhancement as set forth herein below in connection with obtaining bond financing by the City to construct such facilities on the site or sites.

6. Owner consents that any Fire Development Fees collected may be available for both land acquisition, construction and equipment costs, and debt service as set forth below. Upon completion of construction, the City shall be entitled to utilize any excess funds in such account which are not needed in connection with the initial acquisition, construction, equipping and debt servicing of such site in conjunction with other Development Fees to mitigate impacts relating to the Development of the Property.

D. Park Sites.

1. Owner shall transfer to City up to twenty-six (26) acres based upon ultimate density figures for parks at locations as shown on the Concept Plan or as otherwise agreed upon to be utilized solely as park sites ("Park Sites"). A formula of one (1) acre of park site for each 125 Residential Dwelling Units shall be used to determine the total number of acres of Park Sites to be transferred by Owner to City. The 26 acres referenced above reflects the application of such formula to the Presumed Density, and the actual density as is eventually master planned for the Property shall result in the total acreage for parks being adjusted upward or downward, as applicable. The Park Sites shall be transferred to the City at such time after the one-thousandth (1,000th) residential certificate of occupancy is issued and prior to the twelve hundredth (1,200th) residential certificate of occupancy being issued on the Property. The Owner shall receive a credit against Park Development Fees in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00) per acre of the Park Sites, as adjusted by the Adjustment Factor from the date of such conveyance until such credits are utilized ("Park Value").

2. The City shall construct park improvements upon some or all of the Park Sites in accordance with a plan devised by the City and reasonably approved by Owner. If and to the extent that sufficient Park Development Fees are available, the City shall commence to design such park improvements within six (6) months after the Park Sites are transferred by Owner to the City, and the City shall proceed with all due diligence to permit and construct such Park Sites promptly thereafter, if and to the extent that sufficient Park Development Fees are available.

3. Park Development Fees shall be placed in a segregated interest-bearing Park Fund account to be held by the City, and monies in the Park Fund shall be utilized solely for the acquisition of Park Sites and to construct and equip the improvements within the Park Sites. Park Development Fees may be used jointly with adjoining tracts of land with similar agreements with the City. Any Park Development Fees collected prior to the commencement of construction will be available for construction and equipment costs. After the construction has commenced, the City will continue to collect Park Development Fees and issue the appropriate receipt for Park Development Fees credits due the Owner to fully reimburse the Owner the Park Value comprising the Park Sites. Upon completion of construction, the City shall be entitled to utilize any excess funds in such Park Fund which are not needed connection with the initial construction and equipping of such sites in conjunction with other Park Development Fees to mitigate impacts relating to the Development of the Property.

4. In the event that the Owner shall choose, at its exclusive option, to construct park improvements on one or more of the Park Sites prior to the date that the City can make such park improvements on the Park Sites, then the City shall make its design requirements for such park improvements available to the Owner, and the Owner may submit a design/permitting proposal in accordance with such design requirements. Upon the City's reasonable review and approval of such design and costs to construct such improvements, the City agrees that the Owner shall have the right to construct such park improvements on one or more of the Park Sites, whereupon the City shall make available all funds in the Park Fund, and, to the extent of any such approved costs or expenses incurred by Owner which are not reimbursed from funds in the Park Fund, then the Owner would be entitled to a credit for all such costs and expenses incurred by the Owner, plus an Adjustment Factor on such sums against Park Development Fees which are owed pursuant to this Agreement.

5. The Park Sites shall be located as to be able to primarily provide recreation services to residents and others located upon the Property in an efficient manner. Neighborhood or local parks may be integrated into master plan subdivisions within the Property and may be private or public as determined by the Owner or Secondary Developer creating such parks. Unless otherwise agreed by Owner and City, Park Development Fees shall not be used for neighborhood or local parks.

E. School Sites.

1. The Owner and the City acknowledge that all School Development Fees shall be collected and placed in a segregated interest bearing account ("School Fund") to be utilized for the acquisition of up to a total of twenty-six (26) acres based upon Presumed Density figures for elementary and middle public school site(s) to be selected by mutual agreement of the Owner and City ("School Sites") at a purchase price of Thirty Thousand Dollars (\$30,000) per acre ("School Price"), which School Site(s) shall be utilized as neighborhood school sites serving the Property and the surrounding area. A formula of one (1) acre of School Site for each 125 Residential Dwelling Units shall be used to determine the total number of acres of School Sites to be transferred by Owner to City. The 26 acres referenced above reflects the application of such formula to the Presumed Density, and the actual density as is eventually master planned for the Property shall result in the total acreage for schools being adjusted upward or downward, as applicable. The City shall be required to purchase at least thirteen (13) acres of the School Site(s) on or before 90 days after the one thousandth (1,000th) residential certificate of occupancy is issued and notice from the Owner to the City of the approaching threshold for exercising the option is issued with respect to the Property. The City shall be required to purchase any remaining acreage for the School Sites on or before the 90th day after the two thousandth (2,000th) residential certificate of occupancy is issued and notice from the Owner to the City of the approaching threshold for exercising the option is issued with respect to the Property, provided that the total number of acres required based on the total density as master planned, is available at that time. If the total density figure is not available, the City may extend its time to exercise such option until the 90th day after the total density for the Property is established, and notice from the Owner to the City of the approaching threshold for exercising the City's option is issued with respect to the Property. Should the City not timely acquire the School Site(s) pursuant to the terms of this paragraph, the City shall no longer have the

right to acquire such School Site(s), and such sites which are not timely acquired may then be utilized for and all purposes permitted under the Zoning Regulations, free and clear of any rights of the City to acquire such sites.

2. In the event any School Site is acquired by the City, but any such areas are not developed with school(s) thereon within ten (10) years after such School Site is conveyed to the City, the Owner shall have the right, during the term of this Agreement, to repurchase the School Site or a portion thereof, at the \$30,000.00 per acre purchase price, plus the City's documented costs of acquisition and the right to repurchase shall be included in the deed of conveyance for each such School Site.

3. All School Development Fees shall be solely utilized for schools and associated infrastructure. After purchase or waiver of right to purchase the School Site, the City shall be entitled to utilize any excess funds in such account which are not needed in connection with the land acquisition of such site for associated infrastructure costs, schools in the Southern Jasper County area, and/or enhancement of recreational and library services associated with Jasper County school(s).

F. Efficient Construction. In order to minimize disturbance to the Property and adverse impacts to public roads, Owner shall have the right to use and access the Police, Fire, and School Sites for use as staging areas and for the temporary storage of construction materials, equipment, supplies, soil, and cleared debris. Owner may reserve easements for such use and access in Owner's deeds of conveyance to the City for the Police, Fire, and School Sites. Following the City's acquisition of any of the Police, Fire, and School Sites, upon City providing to Owner ninety (90) days written notice, Owner shall remove all such materials stored on a particular site and shall grade such site, removing any unsuitable spoil as may have been deposited thereon. Owner's usage of the Police, Fire, and School Site shall be in such places and in such manner as provided in the PDD and grading of the sites shall be in accordance with the PDD. If the City intends to clear an area of the Park Sites for construction, Owner, with City's prior written consent, shall have the right to use and access such Park Site area pursuant to the terms of this paragraph.

G. No Other Dedications. Except with respect to the dedications and/or conveyances of the properties referred to in Section XI, sections A through E, inclusive, no other dedications or conveyances of lands for public facilities shall be required by the City in connection with the development of the Property.

H. Employment Costs. Owner agrees to contribute to the City, for a period of five (5) years commencing January 1, 2007, Eighty-Five Thousand and 00/100 Dollars (\$85,000.00) per year as a contribution to the employment costs of City. The City agrees to utilize its best efforts to attract and retain qualified personnel to staff the positions funded by this contribution. The City agrees that all submissions for governmental approvals with respect to the Property shall be expeditiously processed, in accordance with MZDO procedures as modified by the PDD for this Project. The City shall maintain personnel qualified to review plans and plats.

I. No Wetlands. All conveyances and dedications of lands pursuant to this Agreement shall mean upland gross acres of highlands, net of wetlands.

J. Development Fees.

1. Fee Chart. To assist the City in meeting expenses resulting from ongoing development, upon application for a building permit from the City for any portion of the Property, each Builder shall pay Development Fees for Road, Police, Fire, School, Library and Parks (“Development Fees”) (which shall be adjusted by the Additional Adjustment Factor (if the Term is extended) on the first day of the 21st year of the Term), as set forth in the table below. The Development Fees set forth below are based upon 2005 figures. The Development Fee amounts (including Exhibit F) were increased by the annual Adjustment Factor effective July 1, 2006 and shall increase henceforth per annum.

DEVELOPMENT TYPE	DEVELOPMENT FEE AMOUNT
Commercial and Retail Space	See attached <u>Exhibit F</u> which is incorporated into this Agreement
Single Family Residential Dwelling Units	<p>\$4,380 plus the Adjustment Factor per unit – Road* [\$2,400 is for internal, on-site roads; \$1,980 is for external, off-site roads]</p> <p>\$320 plus the Adjustment Factor per unit – Police** \$320 plus the Adjustment Factor per unit – Fire*** \$500 plus the Adjustment Factor per unit – School \$100 plus the Adjustment Factor per unit – Library \$636 plus the Adjustment Factor per unit – Park</p>
Multifamily Residential Dwelling Units	<p>\$3,046 plus the Adjustment Factor per unit – Road* [\$1,660 is for internal, on-site roads; \$1,386 is for external, off-site roads]</p> <p>\$224 plus the Adjustment Factor per unit – Police** \$224 plus the Adjustment Factor per unit – Fire*** \$250 plus the Adjustment Factor per unit – School \$70 plus the Adjustment Factor per unit – Library \$445 plus the Adjustment Factor per unit – Park</p>

- a. *Internal, On-Site Road Development Fees. Notwithstanding anything contained herein to the contrary, in the event that (i) the Owner and the City jointly agree to the construction of the Main Road by use of funds from assessments imposed upon the Property; (ii) the City consents to the creation of a special taxing or municipal improvement district; (iii) the City is able to obtain bond financing which is non-recourse as to the City; and (iv) suitable arrangements are made with the City to guarantee completion of the infrastructure with respect to raising proceeds to construct such Main Road, then the Owner shall notify the City prior to the sale of the first Residential Dwelling Unit from the Property ("Main Road Assessment Notice"), whereupon the City shall take such action as necessary to implement a municipal improvement district or special assessment taxing district with respect to the Property to provide up to Seven Million Two Hundred Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$7,222,500.00) of principal proceeds, or such greater amount as then current, definitive plans indicate to be necessary to complete the Main Road, which monies shall be made available to design, permit and construct such Main Road. Upon obtaining such funding (which may be in phases), the City shall cause the design, permitting and construction of Main Road (or phased portions of Main Road, as may be the case). Nothing herein shall preclude the submission of a design/build proposal for Main Road by Owner which complies with the procurement requirements of the City. Upon the creation of the municipal improvement district, issuance of bonds and funding, the Road Development Fees with respect to (A) commercial and retail space shall be as set forth in Exhibit F attached hereto; (B) single family residential dwelling units shall be reduced from Four Thousand Three Hundred Eighty and 00/100 Dollars (\$4,380.00) per residential units for Roads to One Thousand Nine Hundred Eighty and 00/100 Dollars (\$1,980.00) per residential unit for Roads, and (C) multi-family residential dwelling units shall be reduced from Three Thousand Forty-Six and 00/100 Dollars (\$3,046.00) per unit to One Thousand Three Hundred Eighty-Six and 00/100 Dollars (\$1,386.00) per multi-family unit. Notwithstanding the above, Owner may begin construction of the Main Road prior to the creation of the municipal improvement district, and if the municipal improvement district is created, Owner shall be reimbursed for any qualifying funds previously expended by Owner in the construction of the Main Road.
- b. **Police. In the event that prior to the sale of the first residential unit within the Project, (i) the Owner notifies the City that the Owner desires to impose a special assessment taxing district on the Property to raise the One Million and 00/100 Dollars (\$1,000,000.00) for

payment of the Police Site and improvements and facilities related thereto or for payment of the Police portion of the acquisition and improvements to a combined Police/Fire site ("Police Assessment Notice"), (ii) the City consents to the creation of a special taxing or municipal improvement district; (iii) the City is able to obtain bond financing which is non-recourse as to the City; and (iv) suitable arrangements are made with the City to guarantee completion of the infrastructure with respect to raising proceeds to construct, then upon delivery to the City of the Police Assessment Notice, the City shall take such action as is reasonably necessary to implement a municipal improvement district or special assessment taxing district to enable the City to obtain One Million and 00/100 Dollars (\$1,000,000.00) of principal proceeds, which monies shall be made available for the design, permitting and construction of the facility on the Police Site, or for the Police portion of improvements on a combined Police/Fire site. Upon obtaining such funding, the City shall cause the design, permitting and construction of the facility. Nothing herein shall preclude the submission of a design/build proposal for the police facility by the Owner which complies with the procurement requirements of the City. Upon the funding of the One Million and 00/100 Dollars (\$1,000,000.00) for the Police facility or combined Police/Fire facility, no Police Development Fees shall be payable with respect to the issuance of building permits as provided in this Section XI(J) and the City shall retain One Million and 00/100 Dollars (\$1,000,000.00) of such proceeds received by creating such municipal improvement district or special assessment district as payment in full for all Police Development Fees with respect to the Property to improve and equip the police facility on the Police Site or for the Police portion of improvements to a combined Police/Fire site, and simultaneous with receipt of such sums, the City shall pay to Owner at the rate of Thirty Thousand and 00/100 Dollars (\$30,000.00) per acre an amount equal to the acreage occupied by the police facility on the Police Site or the Police portion of a combined Police/Fire site.

- c. *****Fire.** In the event that prior to the sale of the first residential unit within the Project, (i) the Owner notifies the City that the Owner desires to impose a special assessment taxing district on the Property to raise the One Million and 00/100 Dollars (\$1,000,000.00) for payment of the Fire Site and improvements and facilities related thereto or for payment of the fire portion of the acquisition and improvements to a combined Police/Fire site ("Fire Assessment Notice"), (ii) the City consents to the creation of a special taxing or municipal improvement district; (iii) the City is able to obtain bond financing which is non-recourse as to the City; and (iv) suitable arrangements are made with the City to guarantee completion of the

infrastructure with respect to raising proceeds to construct, then upon delivery to the City of the Fire Assessment Notice, the City shall take such action as is reasonably necessary to implement a municipal improvement district or special assessment taxing district to enable the City to obtain One Million and 00/100 Dollars (\$1,000,000.00) of principal proceeds, which monies shall be made available for the design, permitting and construction of the facility on the Fire Site, or for the Fire portion of improvements on a combined Police/Fire site. Upon obtaining such funding, the City shall cause the design, permitting and construction of the facility. Nothing herein shall preclude the submission of a design/build proposal for the fire facility by the Owner which complies with the procurement requirements of the City. Upon the funding of the One Million and 00/100 Dollars (\$1,000,000.00) for the Fire facility or combined Police/Fire facility, no Fire Development Fees shall be payable with respect to the issuance of building permits as provided in this Section XI(J) and the City shall retain One Million and 00/100 Dollars (\$1,000,000.00) of such proceeds received by creating such municipal improvement district or special assessment district as payment in full for all Fire Development Fees with respect to the Property to improve and equip the Fire facility on the Fire Site or for the Fire portion of improvements to a combined Police/Fire site, and simultaneous with receipt of such sums, the City shall pay to Owner at the rate of Thirty Thousand and 00/100 Dollars (\$30,000.00) per acre an amount equal to the acreage occupied by the Fire facility on the Fire Site or the Fire portion of a combined Police/Fire site.

2. Payment of Fees. Except as provided in Section XI(J)(1) above, all Development Fees in this Section XI(J) shall be collected at the time of a Builder obtaining a building permit for any portion of the Property and placed in separate interest-bearing accounts held and established by the City for Roads, Police, Fire, School, Library and Parks which may be utilized for the purposes set forth in this Agreement.

3. No Other City Impact Fees. Notwithstanding any provision to the contrary contained within this Agreement, the Development Fees are being paid in lieu of any other impact fees, development fees or any other similar fees presently existing or adopted by the City at any time hereafter during the term of this Agreement; provided, however, the Owner, a Secondary Developer, or a Builder shall be subject to the payment of any and all present or future permitting fees enacted by the City that are of City-wide application and that relate to processing applications, development permits, building permits, review of plans, or inspections (but no other capital improvement related impact, development or other extractions).

4. Other Governmental Fees. Except as set forth in this Agreement, nothing herein shall be construed as relieving the Owner, a Secondary Developer, or a Builder, their successors and assigns, from payment of any such fees or charges as may be assessed by entities other than the City, provided however, if an entity other than the City imposes, or is permitted by

City to impose, fees or obligations similar in nature to those contemplated by this Agreement, the affected Owner, Secondary Developer, or Builder shall be entitled to an offset against the Development Fees of this Agreement the amount of such fees or obligations which are collected. 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 City shall not permit any other governmental authority to impose fees or obligations of a similar nature to that which are contemplated by this Agreement; provided, however, the provisions of this section shall not preclude the City or another governmental authority from imposing a fee of a nature which is not for services or improvements contemplated under this Agreement (i.e., police, fire, roads, parks, schools, libraries and other obligations contemplated under this Agreement for services and improvements contemplated by this Agreement), which are imposed on a consistent basis throughout the area regulated by such governmental authority imposing such obligations. The City 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. The City shall not oppose Owner's challenge to any developer fee, impact fee or other obligation imposed by other governmental authorities to the extent that such fees or obligations are not specifically permitted to be imposed pursuant to the terms of this Agreement.

5. Increase in Fees. The Development Fees set forth by the City above are vested for the entire Property and shall not be increased, and no other Development Fee or development obligation shall be imposed in connection with the Property, except for the Adjustment Factor and Additional Adjustment Factor as provided in this Agreement.

6. Assignment of Fees. Any Development Fees paid and/or credits for Development Fees with respect to property conveyed, services performed and/or money paid as provided in this Agreement may be assigned by the Owner and/or Secondary Developer owning such credits and all such credits shall remain valid until utilized. The City shall recognize all such written assignments of such rights and shall credit same against any Development Fees which are owned pursuant to this Agreement.

7. On-Site Roadway Fund and Reimbursement to Owner. All Road Development Fees for on-site, internal roads to be constructed within the Project which are collected shall be held by the City in a segregated interest-bearing account ("On-Site Roadway Fund"), and all such monies and accrued interest shall be utilized, unless otherwise agreed by the City and Owner, to reimburse Owner for construction of the Main Road if a municipal improvement district or special assessment district as set forth above is not utilized. City shall pay such reimbursement to Owner within thirty (30) days after Owner's substantial completion of each pre-approved phase of the Main Road (as described in Section X(B)(3)) out of the first funds in the On-Site Roadway Fund on a prorata basis of the current estimated amount of Seven Million Two Hundred Twenty-Two Thousand Five Hundred and 00/100 Dollars (\$7,222,500.00) or such greater amount as current definitive plans indicate to be necessary to complete the Main Road to the extent such funds are collected and as may be thereafter available.

8. Off-Site Roadway Fund. All Road Development Fees for roads to be constructed which are not located within the Project which are collected shall be held by the City in a separate segregated interest-bearing account ("Off-Site Roadway Fund") and all such monies shall be utilized, unless otherwise agreed by the City and Owner, for public roadway improvements in the following order of improvements: first for 278 Construction, then for extension of the Alternate Highway 278/Bluffton Parkway south of the Property if right-of-way is obtainable, and then to the improvements to Exit 8 on Interstate 95.

9. Special Tax District. The City, County, or other governmental entity, may establish, solely or in conjunction with each other, a Tax Increment, fee in lieu of tax (FILOT), Multi-County Business Park, or any other special tax district or financing vehicle authorized by applicable provisions of the Code of Laws of South Carolina (1976), as amended, which does not impose additional ad valorem taxes or assessments against the Property. The establishment by the City, County, or other governmental entity, solely or in conjunction with each other, of a special tax district or financing vehicle authorized by applicable provisions of the Code of Laws of South Carolina (1976), as amended, which increases the assessments within the Property solely, shall require the consent of the Owner or Secondary Developer unless such increase is otherwise expressly permitted pursuant to the terms of this Agreement. It is acknowledged that at the written election of Owner, a municipal improvement district and/or special taxing district may be implemented with the consent of the City for the Property as set forth in this Agreement.

10. Fees for Review of Agreement and PDD. Owner agrees to pay the actual fees, costs and expenses of the City's consultants and professionals incurred in negotiating, processing and evaluating this Agreement and the PDD. City will provide sufficient documentation of these charges. Owner shall pay such fees within sixty (60) days of the delivery by City of the invoice(s).

K. Wetlands Mitigation. City and Owner agree that the Property appears to contain more wetlands than are necessary to meet Owner's requirements for open space or for wetlands mitigation on the Property. To the extent that there are excess wetlands available, if Owner creates a mitigation bank with such excess wetlands and City has a need for mitigation bank credits in connection with road improvements it is obligated to undertake, then City may purchase such mitigation bank credits from Owner. Such purchase shall be at the fair market value for such mitigation bank credits and shall be paid by the City in form of credit to the Owner's off-site Road Development Fees, cash, or in such other form as the City and Owner agree upon.

L. Shared Public Facilities.

1. Owner contemplates acquiring real property adjacent to the Property, including, without limitation, certain real property known as the Karrh Tract in Jasper County, South Carolina. If Owner presents an amendment to this Agreement proposing to subject the Karrh Tract to this Agreement, City agrees to consider such Amendment.

2. If Owner acquires the Karrh Tract, the Main Road on which the Fire Site, Police Site, and School Site are located, will be extended through the Karrh Tract. City and Owner anticipate that the Fire Site, Police Site, and/or Park Sites also may serve the Karrh Tract.

3. Recognizing the potential interconnectivity of the Property and the adjacent Karrh Tract and Morgan Tract, Owner and the City acknowledge and agree that it may be practical for land planning and economical reasons to consider combining and/or sharing the Development Fees and associated land dedications for the Police, Fire, Park, Library, and/or School requirements under this Agreement with those required for the Morgan and Karrh Tracts, so as to meet similar needs of all three tracts in an efficient manner. If a reasonable basis is demonstrated for combining and/or sharing the Development Fees and associated land dedications for the Police, Fire, Park, Library, and/or School requirements for the Anderson, Karrh, and Morgan Tracts to better meet the combined needs of such tracts (such as preserving the City's ISO rating), the City and Owner agree to negotiate in good faith with the owner/developers of the other tracts for the joint use of such Development Fees and land dedications among the Anderson Tract, Karrh Tract, and Morgan Tract to more efficiently meet the collective needs of the properties.

XII. PERMITTING PROCEDURES.

A. **Model Homes.** The City agrees to allow the Owner and/or any Secondary 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; and the ability to permit and construct temporary sales and construction offices with temporary utilities, in accordance with the applicable zoning regulations.

B. **Phasing Allowed.** The City agrees that the Owner and/or any Secondary Developer is not required to phase development but shall have the right to do so.

C. **Timeframe for Review.** The City agrees to review all land use changes, land development applications, and plats in an expeditious manner in accordance with the MZDO as modified by the PDD for this Project. A Secondary Developer may submit these items for concurrent review with the City and other governmental authorities. City 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. **Signage.** Signage for the Project is governed by the provisions of the PDD for this Project.

E. **Architectural Review Guidelines.** The City acknowledges that the Owner and Secondary Developers have or will have an internal set of architectural guidelines and employs an architectural review board, which are to be adopted as provided in the PDD. These architectural guidelines must meet the minimum standards set forth in the MZDO for architectural review.

F. **Bond for Plat Recording.** The City agrees to allow plat recording with a bond of 125% of the infrastructure cost prior to completion of infrastructure development and to issue building permits and permit sale of lots prior to completion of such bonded infrastructure; in accordance with the MZDO as modified by the PDD for this Property.

G. **Zoning Regulations.** The City agrees the Property shall be governed by the Zoning Regulations. If future codes are more desirable to Property, then Owner or Secondary Developer may elect to have such regulations become applicable to any portion of the Project that Owner or Secondary Developer designates.

H. **No Additional Development Obligations.** The City agrees that the Property is approved and fully vested for intensity, density, development fees, uses and height, and shall not have any City obligations for on or off site transportation or other facilities or improvements other than as specifically provided in this Agreement, but must adhere to then current PDD, subdivision plat, and development plan procedural guidelines in accordance with the then current MZDO. The City may not impose additional development obligations or regulations in connection with the ownership or development of the Property, except in accordance with the procedures and provisions of § 6-31-80 (B) of the Act, which the Owner shall have the right to challenge.

I. **Roadway Drainage Systems.** Roadways (public or private) may utilize swale drainage systems and are not required to have raised curb and gutter systems in areas of less than one (1) unit per acre, unless otherwise agreed at master planning. Roadway cross sections utilizing swale drainage will be designed, constructed and maintained to meet BMP standards (imposed by regulatory agencies) for stormwater quality. Roadway cross sections will be reviewed for approval at the time of construction of such roadway based upon engineering and planning standards consistent with the Master Plan roadway submissions approved by City Council.

J. **Plan Review Fees.** All plan review fees shall be consistent with the fees charged generally in the City.

XIII. DEVELOPER ENTITLEMENTS.

City acknowledges that Owner is vested with the following items:

A. **Water and Sewer Capacity.** The City agrees to sell water and sewer capacity to the Owner, Secondary Developers, or Builders at the current city rates as shall be more particularly detailed in water and sewer agreements that may be entered into by the Owner and/or Secondary Developers with BJWSA plus a Two Hundred Fifty Dollar (\$250.00) administration fee so long as such is available. The Owner or Secondary Developer shall each have the right to assign any of its water and sewer capacity which it has acquired to third parties and collect administration fees in connection therewith in accordance with Section 5.6 of the City/BJWSA Agreement. The administrative fee is payable at the time BJWSA issues its capacity certificate acknowledging payment of its fees.

B. **Irrigation.** The Owner or its written designee may own and operate an internal irrigation company and system that serves the Property and the City will grant a franchise and such easements over public rights-of-way as may be reasonably required by the Owner (or its designee) to implement such irrigation system. The City agrees to cooperate with the Owner in connection with providing such irrigation water in connection with the Development of the Property.

C. **Public Transportation.** The City will, to the extent available, promote public transportation which exists within the City to service the Property.

D. **Telecommunications.** The City agrees to grant a non-exclusive franchise for an on-site telecommunications company to Owner on terms consistent with then current franchise agreements. The City acknowledges that the Owner shall not be required to provide easements to any utility companies other than over public rights of way which may be located within the Property. The City agrees that, upon the request of the Owner, the City will grant easements within public rights-of-way to telecommunication providers which Owner authorizes to provide service within the Property, upon payment of applicable franchise fees to the City. Additionally, the City agrees that it will enter into a franchise agreement, on terms consistent with then current franchise agreements to such party providing telecommunication services to the Property, to enable such company to perform such service; provided, however, the City shall have the right to grant other franchises to third party telecommunication companies providing telecommunication services within the City.

E. **Drainage Systems.** All drainage systems constructed within the Project shall be owned and maintained by one (1) or more Association(s) which may be established for various portions of the Property and the City shall have no responsibility for the construction, operation or maintenance of such systems.

F. **Sidewalks.** Sidewalks will be governed by the terms of the Zoning Regulations.

G. **On-Site Burning.** On-site burning will be permitted within the Property upon obtaining applicable permits.

H. **Roadway Permitting.** The City agrees to cooperate with the Owner and each Secondary Developer with county, state and federal roadway permitting in connection with the Development of portions of the Property.

I. **City Services.** City services, including, but not limited to, police, fire, sanitation, recreational parks and other governmental services shall be supplied to the Property in the same manner and to the same extent as provided to other properties within the City, subject to the limitations (if any) of Section X above. Subject to the limitations of Section X above (if any), should the Owner require enhanced services beyond those that are routinely provided within the City, then the City agrees that upon the written request of Owner, it shall negotiate in good faith with the Owner to provide such enhanced services to the Property.

J. **Private Schools.** The City shall not oppose private schools, charter schools, and other alternate educational systems which Owner may desire to have located within the Property.

XIV. COMPLIANCE REVIEWS.

As long as Owner owns any of the Property, Owner or its designee, shall meet with the City, or its designee, at least once, per year, during the Term to review Development completed by Owner in the prior year and the Development anticipated to be commenced or completed by Owner in the ensuing year. The Owner, or its designee, shall provide such information as may reasonably be requested, to include but not be limited to, acreage of the Property sold in the prior year, acreage of the Property under contract, and the number of permits anticipated to be issued in the ensuing year, Development Rights transferred in the prior year, and Development Rights anticipated to be transferred in the ensuing year. The Owner, or its designee, shall be required to compile this information, upon forms approved by the City, within a reasonable time after written request by the City.

XV. DEFAULTS.

The failure of the Owner, Secondary Developer or the City to comply with the terms of this Agreement not cured within fifteen (15) days after written notice from the non-defaulting party to the defaulting party (as such time period may be extended with regard to non-monetary breaches for a reasonable period of time based on the circumstances, provided such defaulting party commences to cure such breach within such fifteen (15) day period and is proceeding diligently and expeditiously to complete such cure) shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance; provided however no termination of this Agreement may be declared by the City absent its according the Owner and any relevant Secondary 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 City 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 as to construction of the Main Road and associated infrastructure improvements is a default hereunder, and Owner and Secondary Developers will have to cure such default, unless Owner and/or Secondary Developers, as applicable, are explicitly released by resolution of the City Council from such obligation for the construction of the Main Road and associated infrastructure improvements. Notwithstanding issues dealing with the construction of the Main Road, a default of the Owner shall not constitute a default by Secondary Developers, and default by Secondary 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 Secondary Developer set forth in this Agreement.

XVI. MODIFICATION OF AGREEMENT.

This Agreement may be modified or amended only by the written agreement of the City and the Owner; such written agreement may be by resolution or ordinance at the City'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 unless such statement, action or agreement is in writing and signed by the party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

This Agreement may be modified or amended as to a portion of the Property only by the written agreement of the City and the owner of said portion of the Property. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate, or effect an abandonment of this Agreement in whole or in part unless such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

If an amendment affects less than all the persons and entities comprising the Property Owners, then only the City and those affected persons or entities need to sign such written amendment. Because this Agreement constitutes the plan for certain planned unit development under the zoning ordinance, minor modifications to a site plan or to development provisions may be made without a public hearing or amendment to applicable ordinances. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment, and such approval or consent shall be in writing and signed by the affected parties. Wherever said consent or approval is required, the same shall not be unreasonably withheld.

The Concept Plan submitted to the City is not intended to be rigid, exact site plans for future development. The location of roads, buildings, recreational amenities and other elements may vary at the time of Master Plan submittal when more specific designs are available, as long as the maximum densities set herein and the general concept of environmentally sensitive residential developments suggested by the master plans are followed and respected.

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 City shall be addressed to the City at:

City Manager
City of Hardeeville, SC
205 East Main Street
P.O. Box 609
Hardeeville, South Carolina 29927

And to Owner at:

Mr. Ralph R. Teal, Jr.
Hilton Head Lakes, LLC
2002 Oak Street, Suite 200
Myrtle Beach, SC 29577

Mr. William Joseph Brinn, Jr.
23107 Umstead
Chapel Hill, NC 27517

With Copy To:

McNair Law Firm, P.A.
5 Belfair Village Drive
Bluffton, South Carolina 29910
Attention: Sarah F. Robertson, Attorney at Law
Telephone: (843) 815-2171
Fax: (843) 815-5991

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, which shall be the primary remedy, 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. Immediately after enactment of any such New Law, or court decision, a party designated by the Owners and Secondary Developer(s) and the City shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the City may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner, Secondary Developers and the City each shall have the right to challenge the New Law preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

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

1. that this Agreement is in full force and effect,
2. that this Agreement has not been amended or modified, or if so amended, identifying the amendments,
3. whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and
4. whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

C. Entire Agreement. This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings among the City 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. No Partnership or Joint Venture. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the City, the Owner or any Secondary Developer or to render such party liable in any manner for the debts or obligations of another party.

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

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

G. Assignment. The sale, transfer or assignment of all or any portion of the Property, or creation of a joint venture or partnership shall not require the amendment of this Agreement.

H. Right to Assign. Owner shall have the right to sell, transfer, ground lease, or assign Development Rights associated with the Property in whole or in part to any Person (an "Assignee") upon written notice to the City in accordance with the notification provisions of Section V(A) of this Agreement; provided, however, that the sale, transfer, or assignment of any right or interest under this Agreement shall be made only together with the sale, transfer, ground lease, or assignment of all or a portion of the Property subdivided in accordance with subdivision plats approved under the Zoning Regulations. Concurrently with such sale, transfer, ground lease, or assignment, Owner shall (i) notify City in writing of such sale, transfer, or ground lease, and (ii) Owner and Assignee shall provide a written assignment and assumption agreement in form reasonable acceptable to the city pursuant to which the Assignee shall assume and succeed to the rights, duties, and obligations of Owner with respect to the parcel or parcels of all or a portion of the Property so purchased, acquired, or leased. Owner shall continue to be obligated under this Agreement with respect to all portions of the Property retained by Owner. Owner shall remain obligated with respect to the dedication and installation of all associated infrastructure improvements regarding Main Road to be provided by Owner under this Agreement, unless (1) a Municipal Improvement District or special assessment district providing for the construction of the Main Road and associated infrastructure improvements has been created and funded; or (2) Owner assigns to a Secondary Developer such obligation for construction of the Main Road and associated infrastructure improvements upon written notice to the City in accordance with the notification provisions of Section V(A) of this Agreement and Owner is explicitly released by resolution of the City Council from such obligation for the construction of the Main Road and associated infrastructure improvements.

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

J. 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.

K. 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.

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

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

N. Effective Date. The Effective Date of this Agreement shall be the date the Agreement is signed by all parties, and if the parties do not sign on the same date, the date on which it is signed by the last party.

XX. STATEMENT OF REQUIRED PROVISIONS.

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

A. Legal Description of Property and Legal and Equitable Owners. The legal description of the Property is set forth in Exhibit A attached hereto. The present legal owner of the Property is Hilton Head Lakes, LLC.

B. Duration of Agreement. The duration of this Agreement shall be as provided in Section III.

C. Permitted Uses, Densities, Building Heights and Intensities. A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development – related standards, are contained in the Zoning Regulations, as supplemented by this Agreement. Based on prior experience with the type of Development contemplated by the Zoning Regulations, it is estimated that the average size household of the Property will be 2.2 persons. Based on maximum density build out, the population density of the Property is anticipated to be no more than 7,040 persons.

D. Required Public Facilities. The utility services available to the Property are described generally above regarding water service, sewer service, cable and other telecommunication services, gas service, electrical services, telephone service and solid waste disposal. The mandatory procedures of the Zoning Regulations will ensure availability of roads and utilities to serve the residents on a timely basis.

E. Dedication of Land and Provisions to Protect Environmentally Sensitive Areas. All requirements relating to land transfers for public facilities are set forth in Section XI above. The Zoning Regulations described above, and incorporated herein, contain numerous

provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws will be fully complied with, in addition to the important provisions set forth in this Agreement.

F. Local Development Permits. The Development standards for the Property shall be as set forth in the Zoning Regulations. Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Zoning Regulations. Building Permits must be obtained under applicable law for any vertical construction, and appropriate permits must be obtained from South Carolina Department of Health and Environmental Control and the U.S. Army Corps of Engineers, when applicable, prior to any impact upon freshwater wetlands. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Owner, its successors and assign, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions, unless otherwise provided hereunder.

G. Comprehensive Plan and Development Agreement. The Development permitted and proposed under the Zoning Regulations and permitted under this Agreement is consistent with the Comprehensive Plan and with current land use regulations of the City, which include a Planned Development District for the Property.

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

I. Historical Structures. Any cultural, historical structure or sites will be addressed through the applicable federal and state permitting process at the time of development.

[SIGNATURES ON FOLLOWING PAGES]

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

WITNESS:

Hilton Head Lakes, LLC

Adam Skates
Witness

By: William J. Brinn, Jr.
William J. Brinn, Jr., Manager

Teresa Stephens
Notary Public

STATE OF North Carolina
COUNTY OF Chatham }

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 2nd day of December, 2006 by William J. Brinn, Jr., Manager, of Hilton Head Lakes, LLC, a South Carolina limited liability company, on behalf of the company.

Teresa Stephens
Notary Public for Chatham County
My Commission Expires: 10.23.08

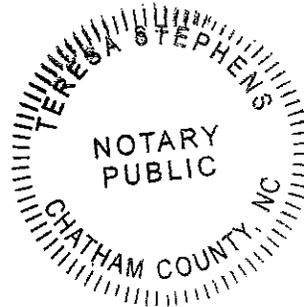


EXHIBIT A

TO DEVELOPMENT AGREEMENT

PROPERTY DESCRIPTION

ALL that certain piece, parcel or tract of land, with improvements thereon, located in Jasper County, South Carolina, known as the Anderson Tract, containing 2,739.188 Acres, more or less, as more particularly shown and described on a plat entitled A Boundary Plat of Parcel 3, Anderson Tract, Jasper County, South Carolina, Prepared for: Beazer Homes Corp. and Anderson Trust, dated July 27, 2005, last revised August 8, 2005, prepared by Thomas & Hutton Engineering Co., certified by Boyce L. Young, R.L.S. (S.C. #11079), and recorded in the Office of the Clerk of Court for Jasper County, South Carolina in Plat Book 28 at Page 302 on January 26, 2006 (the "Plat"). For a more detailed description as to metes and bounds, reference may be had to the above described Plat of record.

The above described property is a the same property conveyed to Hilton Head Lakes, LLC by deed from Paul H. Anderson, Sr. and Paul H. Anderson, Jr., as Trustees Under a Separate Trust f/b/o Marian F. Anderson as Income Beneficiary and Others under Item Five of the Will of J. A. Coleman dated January 24, 2006, and recorded in Deed Book 339 at Page 35 on January 26, 2006 in the Office of the Register of Deeds for Jasper County, South Carolina.

TM: 041-00-04-005

This legal description was prepared by Sarah F. Robertson, Attorney at Law, of McNair Law Firm, P.A., 5 Belfair Village Drive, Bluffton, SC 29910.

EXHIBIT B
TO DEVELOPMENT AGREEMENT
PLANNED UNIT DEVELOPMENT DISTRICT

The Planned Development District for the Anderson Tract (the Property hereunder), as approved by the City Council as of the date of this Agreement is hereby incorporated into this Agreement by reference, to include all drawings, plans, narratives and documentation submitted therewith, as fully as if attached hereto. The parties hereto may elect to physically attach said documents hereto, file separately with the Register of Deeds for Jasper County, South Carolina and provide recording information, or may rely upon the above stated incorporation by reference, at their discretion.