

STATE OF SOUTH CAROLINA            )  
  )  
COUNTY OF JASPER                    )     **DEVELOPMENT AGREEMENT**  
  )  
  )     **(HARDEEVILLE-SAVANNAH TRACT)**

This Development Agreement ("Agreement") is made and entered this \_\_\_\_ day of \_\_\_\_\_, 2011, by and among William Monroe, Jr., John S. Poindexter, III and Margaret Poindexter Varner, Scott Rhodes, Chrystal R. Brunson, Elizabeth E. Queen, Jennifer S. Rhodes, Kevin F. Mathis, Miles McCarten Elliott, Jr., Michael A. Mathis, Shannon R. Miller, William T. Rhodes, Freddie L. West and Leroy E. West, (hereinafter collectively referred to as "Owners") and the governmental authority of the City of Hardeeville, South Carolina ("City").

**WHEREAS**, William Monroe, Jr. is the legal owner of approximately 1,366 acres of real property more fully described as the Monroe Parcel 1 on the attached Exhibit A (*Parcel Exhibit*) and further described as the Monroe Parcel 1 on the attached Exhibit B (*Property Description*); and,

**WHEREAS**, John S. Poindexter, III and Margaret Poindexter Varner are the legal owners of approximately 373 acres of real property more fully described as the Poindexter Parcel 2 on the attached Exhibit A (*Parcel Exhibit*) and further described as the Poindexter Parcel 2 on the attached Exhibit B (*Property Description*); and,

**WHEREAS**, Scott T. Rhodes, Chrystal R. Brunson, Elizabeth E. Queen, Jennifer S. Rhodes, Kevin F. Mathis, Miles McCarten Elliott, Jr., Michael A. Mathis, Shannon R. Miller and William T. Rhodes are the legal owners of approximately 207 acres of real property more fully described as the Rhodes Parcel 3 on the attached Exhibit A (*Parcel Exhibit*) and further described as the Rhodes Parcel 3 on the attached Exhibit B (*Property Description*); and,

**WHEREAS**, Freddie L. West is the legal owner of approximately 19 acres of real property more fully described as the West Parcel 5 on the attached Exhibit A (*Parcel Exhibit*) and further described as the West Parcel 5 on the attached Exhibit B (*Property Description*); and,

**WHEREAS**, Freddie L. West and Leroy E. West are the legal owners of approximately 24 acres of real property more fully described as the West Parcel 6 on the attached Exhibit A (*Parcel Exhibit*) and further described as the West Parcel 6 on the attached Exhibit B (*Property Description*); and,

**WHEREAS**, the legislature of the State of South Carolina has enacted the "South Carolina Local Government Development Agreement Act," (the "Act") as set forth in Sections 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976), as amended; and,

**WHEREAS**, the Act recognizes that "The lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning." [Section 6-31-10 (B)(1)]; and,

**WHEREAS**, the Act also states: "Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the Development Agreement or in any way hinder, restrict, or prevent the development of the project. Development Agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State." [Section 6-31-10 (B)(6)]; and,

**WHEREAS**, the Act further authorizes local governments, including city governments, to enter Development Agreements with owners to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and,

**WHEREAS**, the legal Owners have acquired approximately 1989 acres, generally known as the Hardeeville-Savannah Tract, and propose to develop, or cause to be developed, therein a mixture of residential, industrial, commercial and conservation uses; and,

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

**WHEREAS**, the City finds that the program of development proposed by Owners 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 excellent opportunity for the City to secure quality planning and growth to protect the environment and strengthen and revitalized the tax base; and,

**WHEREAS**, this Development Agreement is being made and entered between Owners and the City, under the terms of the Act, for the purpose of providing assurances to Owners that they may proceed with their development plan under the terms hereof, as hereinafter defined, consistent with its 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 plan, and for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to the 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 Owners by entering this Agreement, and to encourage well planned development by Owners, the receipt and sufficiency of such consideration being hereby acknowledged, the City and Owners hereby agree as follows:

**I. INCORPORATION.**

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

**II. DEFINITIONS.**

A. 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 Hardeeville-Savannah Tract.

"Adjustment Factor" shall mean shall mean the percentage of either the Consumer Price Index (CPI)(All Urban Consumers) increase or three percent (3%) simple interest per annum, whichever is greater. All amounts in this Agreement which are subject to the Adjustment Factor are based upon amounts in effect on July 1, 2005. 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 tenth (10<sup>th</sup>) year of the Term of this Agreement, the Development Fee set forth in Article XI.I for any Development Fees that are payable after the tenth (10<sup>th</sup>) year of the Term during the remainder of the Term shall be adjusted as of the first day of the eleventh (11<sup>th</sup>) year of the Term to an amount

equal to the greater of (a) the Development Fee in effect on the last day of the tenth (10<sup>th</sup>) 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 eleventh (11<sup>th</sup>) year of the Term.

**"Agreement"** shall mean this Development Agreement as amended by the City and Owner(s) in writing from time to time.

**"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.

**"City"** shall mean the City of Hardeeville, South Carolina.

**"County"** shall mean Jasper County, South Carolina.

**"Developer"** means Owners and all successors in title or lessees of the Owners who undertake Development of the Property who are transferred in writing from the Owners portions of the Development Rights.

**"Development"** means the development of portions of the Property as contemplated in the Zoning Regulations.

**"Development Fees"** shall have the meaning set forth in Paragraph XI.1, and are based upon amounts in effect on July 1, 2005, with an initial date for adjustment of July 1, 2006.

**"Development Rights"** means Development undertaken by the Owners or Developers in accordance with the Zoning Regulations and this Development Agreement.

**"Fire Fund"** shall mean the segregated interest bearing Escrow Account into which all Development Fees for Fire are contributed.

**"Hardeeville-Savannah Tract PDD"** or **"Property"** means that certain tract of land described on Exhibit B.

**"Nearsite Road Improvement Areas,"** shall mean public road areas which are within one quarter of a mile from any planned development access from the Property to an adjacent public road, plus public road areas from the nearest access point from the Property to the major public road intersections located at the junction of US Highway 17 and SC Highway 170, The intersection of Levy Road and SC Highway 170, and the junction of SC Highway 170A and Levy Road (which latter distances may exceed one quarter mile).

**"Owners"** means William Monroe, Jr., John S. Poindexter, III and Margaret Poindexter Varner, Scott T. Rhodes, Chrystal R. Brunson, Elizabeth E. Queen, Jennifer S. Rhodes, Kevin F. Mathis, Miles McCarten Elliott, Jr., Michael A. Mathis, Shannon R. Miller, William T. Rhodes, Freddie L. West and Leroy E. West, their individual or corporate successors and any assignee, whereby such interest is assigned in writing, unless the context clearly implies a reference to a single Owner. Consequently, each of the foregoing are Owners, as to their respective holdings. Scott T. Rhodes is authorized by Powers of Attorney to act on behalf of all owners of Rhodes Parcel 3, and therefore executes this Development Agreement and the Petition for Annexation on behalf of all such Owners. Owner shall also apply to any successor or assign of the above stated Owner(s), which successor or assign is specifically granted Owner rights in a recorded document. Unless the context dictates otherwise, "Owner" hereinafter refers collectively to all of the Owners, their successors and/or assigns, including Developers.

**“Park Site”** shall have the meaning set forth in Article XI.C.

**“Planned Development District Plan” or “PDD Plan”** shall mean the Conceptual Master Plan adopted as part of the Planned Development District Standards by the City and attached hereto as Exhibit C.

**“Planned Development District”** means the area designated as the Hardeeville - Savannah Tract Planned Development District (“PDD” or “Hardeeville – Savannah Tract PDD”) approved by the City of Hardeeville on May 19, 2011, as more particularly described as Exhibit B attached hereto.

**“Planned Development District Standards” or “PDD Standards”** means the development standards applicable to the Hardeeville-Savannah Tract PDD, included in the PDD Conceptual Master Plan.

**“Police Fund”** shall mean the segregated interest bearing Escrow Account into which all Development Fees for Police are contributed.

**“Police/Fire Shortfall”** shall have the meaning set forth in Article XI.E.

**“Police / Fire Site”** shall have the meaning set forth in Article XI.A.

**“Police / Fire Site Value”** shall have the meaning set forth in Article XI.A.

**“Roadway Fund”** shall mean the segregated interest bearing account into which all Development Fees for Roads are contributed until utilized for public roadway improvements within the Specified Area.

**"School Fund"** shall mean the segregated interest bearing Escrow Account into which the Development Fees for School are contributed.

**"School Site"** shall have the meaning set forth in Article XI.D.

**"School Price"** shall have the meaning in Article XI.D.

**"School Option Site"** shall have the meaning set forth in Article XI.D.

**"Specified Area"** shall have the meaning set forth in Article XI.J(ix).

**"Subparcel"** shall refer to a defined area of a portion of an Owner Parcel as said Owner Parcels and Subparcels are depicted on the Conceptual Master Plan attached hereto as Exhibit C.

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

**"Unacceptable Level of Service" or "Unacceptable LOS"** shall mean a level of service below level C, as determined by the standards of the ASHTO Highway Capacity Manual.

**"Zoning Regulations"** means (i) the PDD Standards for the Property, and all the attachments thereto, including but not being limited to the PDD Plan, its narratives and site development standards included therein (a copy of all of which is attached hereto marked Exhibit C and incorporated herein by reference), and (ii) the MZDO as amended through May 19, 2011, except as the provisions thereof may have been specifically clarified or modified by the terms of the PDD and this Agreement.

**B. Other Definitions.** Other capitalized terms within this Development Agreement, if not defined within the section or subsection including the term, shall have the same definitions

as set forth in the PDD, or as may be defined in the MZDO or Zoning Regulations, as the context indicates.

### **III. TERM.**

The term of this Agreement shall commence upon the date of execution hereof by all parties and terminate Twenty (20) years thereafter. Furthermore, this Agreement may be terminated at the end of the tenth (10<sup>th</sup>) year, as to any one or more Parcel Owner(s), or Subparcel Owner(s) as defined elsewhere herein if separately owned by a party who has been assigned Owner rights hereunder, upon written notice from the City to such Parcel or Subparcel Owner(s) 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 any Parcel or Subparcel within the Property as of the end of the of the tenth (10<sup>th</sup>) year from the date of this Agreement does not average \$180,000.00 per residential dwelling unit, as adjusted by the annual adjustment factor. Failure of one or more Parcel or Subparcel Owners to meet the required residential fair market threshold shall not affect the status hereunder of any other Owner who has met the required threshold for residential value.

### **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 Owners or 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 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 Owners of any Parcel or Subparcel to be directly effected by the modification, except in accordance with the procedures and provisions of Section 6-31-80(B) of the Act, which Owners shall have the right to challenge. Owners do, for themselves and their successors and assigns, including Developers and notwithstanding the Zoning Regulations, agree to be bound by the following:

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

2. The Owners and 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 the overall environmental standards.

3. No Initial Master Plan for any portion of the Property shall be submitted for processing unless that plan encompasses ten or more acres of developable high land (exclusive of wetlands), with the exception of the platting of road sections.

## **VI. DEVELOPMENT SCHEDULE.**

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

## **VII. DENSITY.**

**A. Number of Residential Dwelling Units.** Based upon there being 1,299 highland acres within this Property, the "Presumed Density" or "base density" for this Property is 3,507 residential units, which Presumed Density is based upon 2.7 units per highland acre, which

Presumed Density is hereby allocated to the separate Parcels or Subparcels within the overall Property as provided under VII.C.(a) through VII.C.(h) below.

In recognition of the increased tax revenue resulting from the amount and location of commercial and industrial development proposed to be reserved within the Hardeeville – Savannah Tract, which is no less than 100 acres of commercial and industrial development, and may be as much as 214 acres, up to 4,316 Residential Dwelling Units (“Enhanced Density” or “enhanced base units”) shall be allowed within the Hardeeville – Savannah Tract, which Enhanced Density is based upon 3.6 units per highland acre (a total of 1,199 being allocated for possible residential development), which Enhanced Density is hereby allocated to the separate Parcels or Subparcels within the overall Property as provided under VII.C.(a) through VII.C.(h) below, upon compliance with the terms and conditions of this Agreement. These terms and conditions include, but are not limited to a demonstration by the Owner through a traffic impact analysis acceptable to the City, that traffic generated by such additional density over the base density can be adequately handled by existing area traffic infrastructure or infrastructure which the City forecasts to be constructed within a reasonable time. Furthermore, the City must determine that adequate provisions to serve the additional density have been made for the handling of governmental services, including Public Safety, School and Library services,

Within each Parcel or Subparcel, up to a maximum of 25% of the residential units may be multifamily units; provided, however, that Owner(s) shall have a right to have more than 25% multifamily Residential Dwelling Units on a Parcel or Subparcel, so long as at the time of such request for a building permit for multifamily units in excess of 25% of the Presumed Density for a given Parcel or Subparcel, the average fair market value of all Residential Dwelling Units then constructed on the Parcel or Subparcel is at least \$180,000.00 (including the value of the Lot), plus the Adjustment Factor as provided hereunder, and the Owner has demonstrated through a traffic impact analysis acceptable to the City, that traffic generated by such additional density over the base density can be adequately handled by existing area traffic infrastructure or infrastructure which the City forecasts to be constructed within a reasonable time. Furthermore, the City must determine that adequate provisions to serve the additional density have been made for the handling of governmental services, including Public Safety, School and Library services.

**B. Commercial and Industrial Reserved Acreage / Conversions.** To further economic development, foster employment opportunities and promote a beneficial tax base for the City of Hardeeville, and as a justification for the allowance of enhanced base residential density of 3.6 Residential Dwelling Units per upland acre rather than 2.7 Residential Dwelling Units per upland acre which would be otherwise allowed, Parcel Owners agree to the following minimum reservation of industrial and / or commercial acreage within the Hardeeville – Savannah Tract:

Within the Poindexter Tract, a minimum of 70 acres of Commercial use shall be reserved for a period of 10 years for development within the Poindexter Tract. After the 10 year reservation period, up to 30 acres of the reserved areas may be used for any other use allowed under the PDD, leaving 40 acres as commercial or industrial.

Within the Monroe Tract, a minimum of 100 acres of Commercial and / or Industrial use shall be reserved within the Monroe Subparcel B area for a period of 10 years. After the 10 year reservation period, up to 40 acres of the reserved areas may be used for any other use allowed under the PDD, leaving 60 acres as commercial or industrial.

**C. Mixed use, residential, industrial and commercial development on the Property** shall be the densities and uses as set forth in the Planned Development District Standards, as summarized below. Total residential density for the entire Hardeeville-Savannah Tract shall be limited to 4,316 dwelling units, plus any conversion units or bonus units provided elsewhere herein. The PDD Concept Plan depicts initial use forecasts only. Provisions of the summary of expected uses below do not alter the provisions of the PDD Concept Plan which allow commercial, mixed use and industrial uses to be located as part of a Master Plan submittal on any Parcel and Subparcel of the Property. Subject to the reservations of commercial and/or industrial acreage in Section VII.B above, and approval at Master Plan submission by City Council, the initial allocations of density per Parcel are as follows:

(a) **Monroe Parcel 1.** The Monroe Parcel, consisting of approximately 974 upland acres, is divided into four separate Subparcels for the purpose of initial land use designation and density allocation, as more particularly described in the PDD and the accompanying Conceptual Master Plan. The designations and density allocations are generally as follows:

- Monroe Subparcel A – Up to a maximum of 644 residential density units on approximately 184 upland acres.
- Monroe Subparcel B – Up to a maximum of approximately 214 acres of industrial development, as more fully described in the PDD, and a maximum of 554 residential density units on 154 upland acres, with 60 acres being reserved for commercial or industrial development.
- Monroe Subparcel C – Up to a maximum of 1,799 residential density units on approximately 514 upland acres.
- Monroe Subparcel D – Up to a maximum of 217 residential density units on approximately 62 upland acres.

(b) **Poindexter Parcel 2.** The Poindexter Parcel, consisting of approximately 198 upland acres, is divided into four separate Subparcels for the purpose of initial land use designation and density allocation, as more particularly described in the PDD and the accompanying Conceptual Master Plan. The designations and density allocations are generally as follows:

- Poindexter Subparcel A – Up to a maximum of approximately 92 upland acres of mixed-use development, as more fully described in the PDD approval, which may include up to 322 residential density units.
- Poindexter Subparcel B – Up to a maximum of 203 residential density units on approximately 58 upland acres.
- Poindexter Subparcel C – Up to a maximum of approximately 26 upland acres of commercial development, as more fully described in the PDD, and up

to a maximum of 91 residential dwelling units, with \_\_\_ acres being reserved for commercial or industrial development.

- Poindexter Subparcel D – Up to a maximum of approximately 22 upland acres of commercial development, as more fully described in the PDD, and up to a maximum of 77 residential dwelling units.

(c) **Rhodes Parcel 3.** Up to a maximum of 350 residential density units on approximately 100 upland acres.

(d) **Freddie L. West Parcel 5.** Up to a maximum of 42 residential density units on approximately 12 upland acres.

(e) **Freddie L. West / Leroy E. West Parcel 6.** Up to a maximum of 53 residential density units on approximately 15 upland acres.

(f) Owners and Developers shall have the right to convert commercial density into residential density, and residential density into commercial density, subject to the limitations set forth in Section 2(c) of the PDD Conceptual Master Plan. There shall be no maximum limit on the amount of acreage devoted to Industrial and Business Park uses.

Owners and Developers shall notify the City of conversions during the prior year during each annual compliance meeting.

(g) Enhanced Residential Density as allocated above may be transferred from one Owner Parcel or Subparcel to another Owner Parcel or Subparcel hereunder, so long as total Presumed Density allocations for the entire PDD are not exceeded, so long as the respective Parcel or Subparcel Owners, which are directly involved in such density transfer(s), or their Assigns, demonstrate consent to such transfer(s) at the time of any Master Plan approval which utilizes a density transfer, and the commercial or industrial area reservations are maintained.. If

a density transfer raises the Presumed Density for a Parcel or Subparcel more than 15% above the initial allocation, Owner must demonstrate at the time of Master Plan approval that infrastructure and service needs are not overly burdened by the density transfer, including traffic, schools, fire, police and the like. Additional mitigation may be required at Master Plan approval to address these matters.

(h) In addition to the enhanced base maximum number of residential units of 4,316 units set forth above, up to a maximum of 1,500 additional residential units shall be allowed for the Monroe and Poindexter Parcels if Owners, or their assigns, develop or preserve for development the total initial acreage set forth above of 170 acres of commercial or industrial acreage, and can demonstrate, through a traffic impact analysis acceptable to the City, that traffic generated by such additional density can be adequately handled by existing area traffic infrastructure or infrastructure which the City forecasts to be constructed within a reasonable time, and further, that the City determines that adequate provision has been made for the handling of governmental services, including traffic, fire, police, school and library services, to serve the additional density. Traffic mitigation may be required as part of the traffic analysis. Unless otherwise agreed between the Monroe Parcel and Poindexter Parcel Owners, or Subparcel Owners, or their assigns, the additional 1,500 residential units shall be assigned as 750 units for the Monroe Parcels and 750 units for the Poindexter Parcels, as maximum increases, subject to the above conditions. The maximum additional residential units for the Monroe Parcel shall be allocated as a maximum 750 additional units for Subparcel 250 and 500 additional units for Subparcel C. The maximum additional residential density for the Poindexter Parcel may be allocated among Subparcels at the discretion of Subparcel Owners, so long as the appropriate showing has been made for the handling of governmental services as required above.

#### **VIII. RESTRICTED ACCESS**

The Owners and/or each 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 or prohibit access to the, Fire, Police, Park and School site(s) conveyed to the City.

**IX. EFFECT OF FUTURE LAWS.**

Owners and Developers shall have vested rights to undertake Development of any or all of the Property in accordance with the Zoning Regulations, as defined herein and modified hereby, and as may be modified in the future pursuant to the terms of this Agreement for the entirety of the Term. Future enactments of, or changes or amendments to the City ordinances, including zoning or development standards ordinances, which conflict with the Zoning Regulations shall not apply to the Property unless the procedures and provisions of Section 6-31-80 (B) are followed, which Owners 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 guidelines 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 City Council to be necessary to protect the health, safety and welfare of the citizens of Hardeeville.

**X. INFRASTRUCTURE AND SERVICES**

The City and Owners recognize that the majority of the direct costs associated with the Development of the Property will be borne by the Owners and 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 Owners, Developers or other parties and maintained by such party(ies) and/or Association(s), or dedicated for maintenance to other appropriate entities. Except as provided in this Agreement, the City will not be responsible for the construction of any private roads within the Property, unless the City specifically agrees to do so in the future. The recording of a final plat or plan subdividing a portion of the Property shall not constitute an offer to deed or dedicate any or all streets and rights of ways shown thereon to the City, or any other person or entity, nor as acceptance by the City of the dedication absent an express written agreement to do so.

**B. Public Roads.** 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. Owners acknowledge that they must comply with all applicable state statutes and rules and regulations of the South Carolina Department of Transportation or its successor regarding access and use of such public roads. Future public roads may serve the Property. Additional public roads on the Property may be planned in the future, upon written agreement between the applicable Owner(s) and the City. 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 it otherwise agrees. The recording of a final plat or plan subdividing a portion of the Property shall not constitute an offer to deed or dedicate any or all streets and rights of ways shown thereon to the City, or any other person or entity, nor as acceptance by the City of the dedication absent an express written agreement to do so. The Property shall be served by direct access to the existing roads, as more fully described in the PDD, which sets forth standards for public road access and specific numbers of allowed full movement access onto adjacent public roads. It is acknowledged that traffic analyses acceptable to the City must be provided no later than Master Plan approval, and traffic mitigation, including but not limited to acceleration and deceleration lanes, and potential road widening within defined Nearsite Road Improvement Areas, may be required to reach the desired density or commercial intensity. In addition to private road improvements within a submitted Master Plan Area, which improvements are necessary to provide an acceptable level of service pursuant to the Traffic

Analysis submitted at the time of Master Plan submittal, an applicant must also provide road improvements to the public road within the Nearsite Road Improvement Areas which may be indicated by the Traffic Analysis as mitigation to off-set projected traffic generation from the Master Plan Area. Such Nearsite Road Improvements may potentially involve intersection improvements and road widening of public roads (within the Nearsite Road Improvement Area only) to the extent that such improvements have not been scheduled and funded for construction by governmental entities or Offsite Road Fees paid hereunder, with the further understanding that Owner(s) shall only be responsible for their fair share of public road improvements, as may be established by the Traffic Analysis.

In order to fund the necessary road improvements (both Onsite and Nearsite) which may be indicated by the Traffic Analysis provided at the time of Master Plan submittal, an Owner or Developer of the submitted Master Plan area shall have the following options:

- i. The Owner or Developer may elect to fund and construct the Onsite and Nearsite road improvements which are required to off-set projected traffic generation from the Master Plan Area; or
- ii. The Owner or Developer may elect, prior to the transfer of any property within the Master Plan area, to establish an Onsite/Nearsite Fund, and the City shall collect such Onsite/Nearsite Development Fees as may be established to construct such improvements according to the schedule of improvements established by the Traffic Analysis, which Fees shall be held in an interest bearing account by the City for the purpose of funding such improvements or reimbursement to an Owner/Developer who may elect to fund such improvements prior to the collection of sufficient Onsite/Nearsite Development Fees; or,
- iii. The Owner/Developer may elect, prior to the transfer of any property within the Master Plan area, to work with the City to establish a Municipal Improvement District (MID) within the

Master Plan area, to generate sufficient funds for the construction of the indicated Onsite/Nearsite road improvements, under such terms as may be agreed upon by City and Owner/Developer. The parties agree that the MID shall be established in similar fashion, under the same terms and conditions for MID creation, as were adopted under Development Agreements for the Anderson Tract (Hilton Head Lakes), the Morgan Tract, and other Development Agreements entered by the City.

If the mitigation improvements set forth above are not sufficient to avoid a failing level of service on the near-site and adjacent public roads servicing the Property, Parcels or Subparcels of the Property utilizing these roads will be constrained to a total residential density of 110% of the residential density which would be available utilizing the Jasper County zoning and development standards in effect as of the date of this Agreement, until such time as further improvements are constructed or are reasonably forecast to be constructed in time to alleviate the impacts of increased density, at which time density will be allowed to increase to either the limits otherwise imposed by this Agreement, or that which a new traffic analysis acceptable to the City indicates can be accommodated without again causing a failing level of service. If Owner or Developer chooses to install road improvements beyond those identified in the Near-Site Improvement Areas, to the extent it is legally and practically able, the City will cooperate in implementing a reimbursement methodology by which other owners or developers obtaining the benefit of these additional improvements will reimburse the Owner or Developer funding these additional improvements on an equitable basis, taking into account the proportionate traffic generation from such other developments.

**C. 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. Owners 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 Owners and the service provider.

**D. 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. Owners will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by them or the provider as provided in any utility agreement between Owners and the service provider.

**E. Use of Effluent.** Owners agree 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 Owners to support Owners in their obtaining gray water in connection with providing irrigation water for the landscaped areas within the Property. The Owners or their designees 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.

**F. 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 restricted access communities, which may elect to provide in-house patrol services by security forces and/or constables and elect in writing to forego regular City patrol functions. Owners acknowledge the concurrent jurisdiction of the City's police

department the sheriff of Jasper County on the Property and shall not interfere or in any way hinder law enforcement activities of either on the Property regardless of whether such may be a restricted access community.

**G. 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, specifically being the Southern Hardeeville area more than five miles from the existing City fire stations. It is recognized that the present ISO rating for this area is less than the “core” area of Hardeeville lying within five miles of the existing fire stations which have a current ISO rating of 3, and the City shall not be required to provide that same level of service until such time as the area outside of the core area and within five miles of the proposed new fire station on the Riverport Project generates sufficient *ad valorem* taxes to fund and operate the fire stations and equipment necessary to provide that higher level of fire protection. Owners acknowledge the jurisdiction of the City’s fire department on the Property and shall not interfere or in any way hinder public safety activities on the Property regardless of whether such may be a restricted access community.

Owners acknowledge that once a fire station has been constructed to serve the Property (either exclusively or in conjunction with nearby properties), the City may need to collect additional funds to operate such facilities until such time as ad valorem taxes are sufficient. [See XI.E below regarding such operating funds.]

Notwithstanding the forgoing, fees for fire protection will be charged as if the Owners of the Property were “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 is approved for an area of the Property, at which time the non-resident treatment shall be removed as to that area only. Furthermore, should the Owners require enhanced fire protection services beyond that which is routinely provided within the City, the Owners shall negotiate in good faith with the City an equitable methodology to fund, acquire, and support the enhanced services. See also Article XI (G) hereinbelow.

**H. 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.

**I. Recreation Services.** City shall provide recreation services to the Property on the same basis as it provided to other similarly situated residents and businesses in the City. Notwithstanding the above, the City shall not be obligated to improve the Park Site until such time as Developer Fees-Park are adequate to fund the design and construction of the site or bond such improvement. Should the Owners desire to construct such Park Site or park thereon prior to these funds being adequate, it may do so, upon electing in writing to pay to the City the cost of providing such services and improvements. Should the Owners make such election, Developer Fees-Park then collected shall be made available to Owners for such improvements and services and Owners shall receive a credit against future Development Fees-Parks for expenditures in excess of then collected Development Fees-Parks to construct and operate such park improvements, provided such expenditures are approved in advance by the City, which approval shall not be unreasonably withheld. City may allocate, at its discretion, unallocated Developer Fees-Park to assist with library and park services in Southern Jasper County.

**J. Library Services.** Such services are now 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 may allocate, at its discretion, Library Developer Fees to assist with library and park services in Southern Jasper County.

**K. Emergency Medical Services (EMS).** Such services are now 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.

**L. Drainage System and Storm Water Quality** Protection of the quality in nearby waters and wetlands is a primary goal of the City. All stormwater runoff, treatment and drainage system improvements within the Property will be designed in accordance with the Zoning Regulations and Best Management Practices then current, and the Owners shall be required to abide by all provisions of federal and state laws and regulations, including those established by the Department of Health and Environmental Control, the Office of Ocean and Coastal Resource Management, and their successors for the handling of storm water. All stormwater runoff, treatment and drainage system improvements for the Property shall be constructed by Owners or the Association. The City will not be responsible for any construction or maintenance cost associated with the stormwater runoff, treatment and drainage system generated by or within the Property, or from required road improvements to service the Property. Further provisions regarding Storm Water are included within the PDD Conceptual Master Plan.

## **XI. CONVEYANCES AND CONTRIBUTIONS.**

The City and Owners 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 Owners acknowledge it is desirable that certain public facilities be located in the vicinity of the Property. The Owners agree to participate in mitigating certain costs of the City for such services as provided in this Agreement. The following items are hereby agreed upon to be provided by Owners, their successors and assigns, to offset such future costs and expenditures created by the Development of the Property:

**A.** The Owners shall transfer to the City up to five (5) acres of land at up to 3 locations mutually agreed upon to be utilized as combined police station / fire station sites (collectively "Police / Fire Sites") which may be combined with other public safety and support facilities, with the initial site to be dedicated to the City no later than the period between when the five hundredth (500<sup>th</sup>) residential certificate of occupancy is issued and prior to the seven hundred

fiftieth (750<sup>th</sup>) residential certificate of occupancy being issued on the Property, unless otherwise agreed or such becomes necessary so as to preserve the City's ISO rating. Unless otherwise agreed between the City and the affected Owner(s) in the future, the initial Police / Fire Site shall be located within the Poindexter Parcel or the Monroe Parcel. The City may combine the Owner's dedications and payments with those from adjacent landowners/developers to maximize utilization of resources. The parties acknowledge that the value of the Police / Fire Sites shall be deemed to be Thirty Thousand Dollars (\$30,000) per acre plus the Adjustment Factor from the date of such transfer until such amount is credited against Development Fees-Police / Fire ("Police / Fire Site Value") and the Owners shall be entitled to credits against the Development Fees-Police / Fire payable with respect to the Property in the amount of the Police / Fire Site Value. If at the request of Owners a Municipal Improvement District or a special tax assessment district is implemented, the City may request and the Owners shall transfer such Police / Fire Site to the City, and construction may begin prior to the one thousandth (500<sup>th</sup>) residential certificate of Occupancy is issued.

It is agreed that within six (6) months after the initial Police / Fire Site is transferred to the City the City will use its best efforts to design and permit such police / fire facility. If more than one site is transferred, the City shall only be obligated to design and permit one police / fire facility within this timeframe. Within thirty (30) days after such police / fire facility has been designed and permitted, the Owners shall pay Two Million Five Hundred Thousand Dollars (\$2,500,000) (less any Development Fees-Police / Fire previously paid) into the Police / Fire Fund (and Owners will receive Development Fee-Police / Fire credits for such payment) to be utilized by the City to construct and equip such Police / Fire Site, and the City will construct and equip such Police Site/Fire Site promptly after Owners has funded Two Million Five Hundred Thousand Dollars (\$2,500,000) into the Police / Fire Fund. It is specifically acknowledged, except as set forth in subsection (C) below, that the Owner's obligation as to Police / Fire Sites is five (5) acres, regardless of the number of sites, and its total capital contribution for these police / fire facilities is based upon total residential density. In the event additional acreage is needed to preserve the City's ISO rating and provide coverage to this Property, the additional acreage shall

be dedicated to the City in the same manner as the other sites, but the acreage to be dedicated for parks shall be reduced by the amount provided for the additional Police / Fire site.

The Police / Fire Sites shall be located as to be able to primarily provide police and fire services to residents and others located upon the Property in an efficient manner. The City and Owners shall mutually agree as to the location of the initial Police / Fire Site within the Poindexter or Monroe Parcels. The City and the Owner may mutually agree as to a relocation of such initial Police Site and Fire Site, or other required sites, which may include off-site, combined, or shared facilities as described in Section XI.I below. Such a selection may delay or reduce the need for the total acreage reserved.

All Development Fees for Police / Fire as hereafter provided shall be placed in a segregated interest bearing account and such funds ("Police / Fire Fund") may be combined with the Development Fees for Fire to be allocated for police/fire services for construction and equipping of the police / fire station on the Police / Fire Site. These fees shall be utilized to construct and equip the Police / Fire facility upon the site or sites, and/or as a credit enhancement as set forth hereinbelow in connection with obtaining bond financing by the City to construct such site or sites.

Owners consent that any Developer Fees collected for Police / Fire purposes 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 Developer Fees to mitigate impacts relating to the Property. Funds not necessary for capital improvements may be used to offset operational costs.

The City agrees upon payment to the Police / Fire Fund of Two Million Five Hundred Thousand Dollars (\$2,500,000) to promptly construct and equip the initial Police / Fire facility on the Police / Fire Site. If less than all Owners participate in funding the \$2,500,000 Police / Fire facility construction, the City agrees to reimburse such participating Owners from Police /

Fire Fees collected in the future from development within the overall Property, including development of property of non-participating Owners, based upon the proportionate share of residential density units within each Parcel. Regarding selection of an appropriate site for Police / Fire facilities, only the City and the Parcel Owner or Subparcel Owner of the property where the site is to be located are required and entitled to participate in the decision. Notwithstanding any other provision above stated, the parties recognize that a temporary facility, smaller facility or shared facility arrangement may be appropriate in the future, and the parties agree to cooperate and negotiate in good faith toward such interim or more economical solutions, for the short or long term, so long as the fire service needs of the City are satisfied. This Agreement specifically allows such future agreements, without modification hereto, upon agreement of the relevant Parcel or Subparcel Owner(s) and the City Manager.

**B.** The Developer shall transfer to the City a twenty-two (22) acre site at a location to be mutually agreed upon to be utilized solely as a park site ("Park Site"). Unless otherwise agreed between the City and the affected Owner(s) in the future, the Park Site(s) shall be located within the Monroe 1 Parcel, Subparcel A, for 17 acres, and the Poindexter Parcel, for 6 acres. The Park Site(s) shall be transferred to the City at such time after the one-thousandth (1,000<sup>th</sup>) residential certificate of occupancy is issued and prior to the twelve hundredth (1,200<sup>th</sup>) residential certificate of occupancy being issued on the Property. The donating Owner(s) shall receive a credit against Developer Fees-Park in the amount of \$30,000.00 per acre of the Park Site, as adjusted by the Adjustment Factor from the date of such conveyance until such credits are utilized ("Park Value"). The Conceptual Master Plan (Exhibit C hereto) indicates a potential Park Site location only, subject to final location by agreement of the City and affected Owner(s) at the time of Master Plan. In the event additional Fire/ Police sites are needed beyond the initial five acres provided for hereinabove in Article XI. A, the required park acreage of twenty-two (22) acres will be reduced by the amount of acreage converted to such Police/Fire site usage.

The City shall construct park improvements upon the Park Site in accordance with a plan devised by the City and reasonably approved by Owners. The City shall commence to design such park improvements within six (6) months after the Park Site being transferred to the City and shall proceed with all due diligence to design, permit and construct such Park Site promptly thereafter, if and to the extent that sufficient Developer Fees-Park are available.

Developer Fees-Park shall be placed into the Park Fund and monies in the Park Fund shall be utilized to construct and equip the Park upon the Park Site. Any Developer 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 Developer Fees-Park and issue the appropriate receipt for Development Fees-Park credits due the Owners to fully reimburse the Owners the Park Value comprising the Park Site. Upon completion of construction, the City shall be entitled to utilize any excess funds in such Park Account which are not needed connection with the initial construction and equipping of such site(s) in conjunction with other Developer Fees to mitigate impacts relating to the Property.

In the event that the Owners shall choose, at its exclusive option, to construct the park improvements on the Park Site prior to the date that the City can make such park improvements on the Park Site, then the City shall make its design requirements for such park improvements available to the Owners and the Owners may submit a design/permitting proposal in accordance with such design requirements and, upon the City's reasonable review and approval of such design and costs to construct such improvements, the City agrees that the Owners shall have the right to construct such park improvements on the Park Site, whereupon the City shall make available all funds in the Park Fund and, to the extent of any costs or expenses incurred by Owners which are not reimbursed from funds in the Park Fund, then the Owners participating in such advance funding would be entitled to a credit for all such costs and expenses incurred by such Owners, plus an Adjustment Factor on such sums against Development Fees-Parks which are owed pursuant to this Agreement from the property of such participating Owners, and to receive reimbursement from Park Fees paid in the future from development of the property of

non-participating Owners, based upon the proportionate share of residential units within each Parcel.

The Park Site shall be located as to be able to primarily provide recreation services to residents and others located upon the Property in an efficient manner.

All Development Fees-Parks shall be placed in a segregated interest bearing account to be utilized for the acquisition of the Park Site and for the approved park improvements to the Park Site and within the Property ("Park Fund"), and any unallocated Development Fees -Park may be used for either park or library uses, or to mitigate impacts from development of this Property. Neighborhood or local parks may be integrated into master plan subdivisions within the Property and may be private or public as determined by the Owners or Developer creating such parks. Unless otherwise agreed, Developer Fees-Park shall not be used for restricted access neighborhood or local parks.

C. The Owners and the City acknowledge that all Development Fees for School shall be collected and placed in a segregated interest bearing account ("School Fund") to be utilized for the acquisition of a total of thirty (30) acres for public school site(s) to be selected by mutual agreement of the Owners and City ("School Sites") at a purchase price of Thirty Thousand Dollars (\$30,000) per gross acre ("School Price"), which School Site(s) shall be utilized as neighborhood school sites or site serving the Property and the surrounding area. Unless otherwise agreed between the City and the affected Owner(s) in the future, the School Site shall be located within the Monroe 1 Parcel, Subparcel A. The City shall be required to purchase the School Site(s) on or before 90 days after the two thousandth (2,250<sup>th</sup>) residential certificate of occupancy and notice from the Owners to the City of the approaching threshold for exercising the option is issued with respect to the Property. Should the City not timely acquire the School Sites pursuant to the terms of this paragraph, the City shall no longer have the right to acquire such School Site, 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.

In the event that the school site is acquired, but any such areas are not developed with school thereon within 10 years after such site is conveyed to the City, the donating Owner(s) shall have the right, during the term of this Agreement, to repurchase the Site(s) 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 site.

All Development Fees for Schools shall be solely utilized for schools and associated infrastructure. After purchase of the School Site, or expiration of the term to acquire 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(s) for associated infrastructure costs, schools in the Southern Jasper County area, and/or enhancement of recreational and library services associated with the school(s).

(a) **Private Schools and Release of Option to Purchase.** The City shall not oppose private schools, charter schools, and other alternate educational systems which Owner may desire to have located within the Property. In the event the Owner desires to sell a portion of the reserved School Site or sites within the Initial School Site or Second School Site to a private school operator for an elementary, middle, high or combination of such schools, (not including a standalone pre-school or day care facility) that is not a charter school under state statutes, upon notice of such request, the City shall release such option on up to fifteen (15) acres of the reserved property, but no School Development Fees shall be due or payable towards such transfer or construction. In the event a statutory charter school is proposed for the property, the City may authorize payment or reimbursement of the acquisition costs of such property as may be needed from the School Fund in such amounts and upon such terms and conditions as it may see

fit in its sole discretion, including, without limitation, the completion of a probationary operating period.

D. Except with respect to the dedications and/or conveyances of the properties referred to in Article XI and the PDD Conceptual Master Plan, no other dedications or conveyances of lands for public facilities shall be required in connection with the development of the Property.

E. **Administrative Charges for Operational Expenses and Interim Services.**

Owners and Hardeeville agree that certain costs may be incurred early in the development, or predevelopment process, making it difficult for Hardeeville to provide the necessary funds for government services prior to actual development and the eventual collection of funds through property taxes and other sources provided hereunder. Owners hereby agree that an Operational and Services Fee shall be paid to Hardeeville based upon bulk acreage transfers of \$ 468.37 per upland acre (1,199 total upland acres) for a total of \$ 561,575.63 ("Total Operational and Services Fees"). Each Owner shall be responsible for payment of a portion of the Total Operational and Services Fees, such portion being based on the percentage that the upland acres owned by each Owner bears to all upland acres. If an Owner has not paid the City his share of the Total Operational and Services Fees by the end of 5 years from the execution hereof, any remaining Operational and Services Fees due from such Owner shall be adjusted by a cost of living factor to put the City in the same position, ultimately, as would have been the case for a five year payout, utilizing the Consumer Price Index for such adjustments. In addition, at such time as the Police / Fire station is constructed and manned, each Owner on whose Parcel or Subparcel substantial development has commenced, shall begin making annual payments to the City in an amount equal to one fifth of the Owner's share of Total Operational and Services Fees then outstanding, and shall continue to make such payments for a period of five years, at which time such Owner's share of Total Operational and Services Fees shall be paid in full. For the purpose of this provision, "commencement of substantial development" shall be defined as

the issuance of development plan approval(s) for 10 acres or more of the Owner's Parcel or Subparcel, or ten residential units or more on the Owner's Parcel or Subparcel, whichever is less.

The parties hereto recognize that if the City is required to staff and operate a Fire Station within a five mile radius of the Property in order to preserve the City's ISO rating of 3 in the core areas of the City prior to the time that sufficient ad valorem tax revenues allocated for fire services are generated within such area to provide the necessary operating funds, additional funds will be necessary on a temporary basis beyond the Operational and Services Fees provided above until the ad valorem tax revenues allocated to fire services are sufficient to operate the station ("Police/Fire Shortfall"). In the event of a Police/Fire Shortfall, Owners on whose Property substantial development has commenced, as defined above, shall be required to fund the Police/Fire Shortfall. Such Owner's share of the Police/Fire Shortfall shall be calculated annually, the amount due from the Owner being the proportion that such Owner's maximum potential buildout bears to the maximum potential buildout of all other Owners on whose Property substantial development has commenced. The Owner's contribution to the Police/Fire Shortfall shall be paid directly to the City within 30 days of notice from the City of the amount due. Failure of an Owner to timely remit his share of the Police/Fire Shortfall shall constitute default by such Owner under this Development Agreement. An Owner's outstanding share of the Police/Fire Shortfall shall constitute a lien on the Owner's Property, which lien shall be collectable in the same manner as taxes.

The City agrees that all submissions for governmental approvals with respect to the Property and review building plans and inspect construction shall be expeditiously processed in accordance with MZDO procedures.

The Owners agree to reimburse the City for any and all reasonable expenses incurred by the City for consultants employed by the City associated with review of any submissions for Master Plans or site development plans of the development of the Property.

F. All conveyances and dedications of lands pursuant to this Agreement shall mean upland gross acres of highlands, net of wetlands.

**G. Development Fees.**

(i) To assist the City in meeting expenses resulting from ongoing development, Owners shall pay development fees for Road, Police, Fire, School, Library and Parks (“Development Fees”) as follows, as set forth in the Table below. These amounts are those in effect on July 1, 2005, and are increased by the annual Adjustment Factor implemented each subsequent year thereafter on July 1.

DEVELOPMENT FEES	AMOUNT
Commercial and Retail Space	See <u>Exhibit F</u> attached hereto and made a part hereof.
Residential Dwelling Units	\$1,980 plus the Adjustment Factor per unit – Road* \$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
Multifamily Dwelling Units	\$1,386 plus the Adjustment Factor per unit – Road* \$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

\*\*Police / Fire. If prior to the sale of the first residential unit on any of the Property,, (i) the Owners notify the City that the Owners desire to impose a municipal improvement district on the Property to raise Two Million Five Hundred Thousand Dollars (\$2,500,000) for payment of the Police / Fire Site and improvements and facilities related thereto (“Police / Fire Assessment Notice”); (ii) the City consents to the creation of the municipal improvement district; and (iii) the City is able to obtain bond financing which is non-recourse as to the City with respect to raising proceeds to construct such Police / Fire Facilities, then, upon delivery to the City of the Police / Fire Assessment Notice, the City agrees to take such action as is reasonably necessary to implement a municipal improvement district to enable the City to obtain Two Million Five Hundred Thousand Dollars (\$2,500,000) of principal proceeds, which monies shall be made available for the design, permitting and construction of the facility on the Police Site, and thereafter the Owners shall have no obligation for payment of any residential Development Fees with regard to Police / Fire. In the event that such Police / Fire Assessment Notice is given by the Owners to the City and the Municipal Improvement District is created and bonds issued, no Development Fees-Police / Fire shall be payable with respect to the issuance of residential building permits as provided in Article XI.G and the City shall retain Two Million Four Hundred Forty Thousand Dollars (\$2,440,000) of such proceeds received by creating such municipal improvement district in the Police / Fire Fund (as payment in full for all residential Development Fees-Police / Fire) with respect to the Property for use to improve and equip the Police / Fire Site, and simultaneous with receipt of such sums, the City shall pay to Owners Sixty Thousand Dollars (\$60,000) as payment for the Police / Fire Site. If the Police / Fire Assessment Notice is provided, and such municipal improvement district is created to obtain such Two Million Five Hundred Thousand Dollars (\$2,500,000), the funding, transfer of the site and construction shall be upon a date in accordance with Section XI.A above. Any excess funds after the construction and equipping of the Fire/Police Site shall be available for operational costs associated with Fire and Police Services, as well as mitigation of any other impact related to this Project as the City may deem appropriate.

Notwithstanding anything to the contrary herein, in the event additional public safety site(s) or equipment is required to protect the City's ISO rating of 3 for the core City area as a result of the annexation or development of the Property, and/or to provide required enhanced fire protection services, additional protection of industrial or commercial sites, or increased density, the amount necessary to acquire, construct, equip, or operate such public safety site(s) or equipment, or finance a Police/Fire Shortfall, such may be included in a municipal improvement district, should the Owner or Developer choose to use such financing vehicle rather than providing the funds itself.

(ii) Except as provided in Article XI above, all Development Fees shall be collected at the time of obtaining a building permit and placed in separate interest bearing accounts established for Roads, Police, Fire, School, Library and Parks which may be utilized for the purposes set forth in this Agreement.

(iii) 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 Owners and/or Developers 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, other than any traffic mitigation required by the City in response to the traffic impact analyses required under this Agreement and the PDD Concept Master Plan).

(iv) Except as set forth in this Agreement, nothing herein shall be construed as relieving the Owners, 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 for Fire, Police, Roads, Parks, Schools or Library similar in nature to those contemplated by this Agreement, the Owners shall be entitled to an offset against the Development Fee of this Agreement the amount of such

similar fee or obligation which is collected. 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 or 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.

(v) The Development Fees set forth above are vested for the entire Property and shall not be increased and no other Development Fee or development obligation imposed in connection with the Property, except for the Adjustment Factor and Additional Adjustment Factor as provided in this Agreement. Notwithstanding the foregoing, it is acknowledged that road improvements (within the Property or the Nearsite Road Improvement Areas) indicated as necessary by the traffic impact analyses required under the Concept Master Plan to address impacts arising from the development of the Property are the responsibility of the relevant Owner, in the event such improvements are not funded by the County, State or federal governments.

(vi) 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 Owners and/or Developer owning such credits within this Property 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.

(vii) All Development Fees for Off-Site Roads which are collected shall be held by the City in a separate interest bearing account (“Off-Site Roadway Fund”) and all such monies shall be utilized, unless otherwise agreed by the City and Owners, for public roadway improvements for public roads which run adjacent to or in the nearby vicinity of the Property, which public roadways are directly impacted by development of the Property.

(viii) The City, County or other governmental entity may establish, solely or in conjunction with each other, a Tax Increment, 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 (as applicable) unless such is otherwise expressly permitted pursuant to the terms of this Agreement.

(ix) Owners agree to pay the costs and expenses of the City’s consultants and professionals incurred in negotiating, processing and evaluating this Agreement and the accompanying PDD. City will provide sufficient documentation of these charges. Owners shall pay such fees within 60 days of the delivery of the invoice(s).

**I. Shared Public Facilities.**

**1. Adjacent Property.** It is acknowledged that certain real property known as the Riverport Tract or Hardeeville Tract (hereinafter the Riverport/Hardeeville Tract) is adjacent to this Property. This Riverport/Hardeeville Tract is subject to a Development Agreement with the City, and there are similar provisions regarding dedications and fees within that Development Agreement.

2. **Combination of Fees/Sites.** Recognizing the potential interconnectivity and proximity of this Property and the adjacent Riverport/Hardeeville 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 Riverport/Hardeeville Tract, so as to meet similar needs of these tracts in a more 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 RiverPort/Hardeeville Tract and the Hardeeville – Savannah Tract to better meet their combined needs, the City and Owner agree to negotiate in good faith with the Owner/Developers of the other tract for the joint use of such Development Fees and land dedications to more efficiently meet the collective needs of the properties.

## **XII. PERMITTING PROCEDURES:**

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

2. The City agrees that the Owners and/or any Developers are not required to phase development but shall have the right to do so.

3. The City agrees to review all land use changes, land development applications, and plats in an expeditious manner in accordance with procedures set forth in the MZDO. Plans will be processed in accordance with then current City PDD Master Plan, subdivision plat and development plan procedural requirements. 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.

4. Signage for the Project is governed by the provisions of the PDD Conceptual Master Plan.

5. The City acknowledges that the Developers will have internal sets of architectural guidelines and employ an architectural review board, which are to be adopted as provided in the PDD, to be submitted to the City for approval at the time of Master Plan submission for each Parcel or Subparcel.

6. The City agrees to allow plat recording with a bond 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.

7. The City agrees that the Property is approved and fully vested for intensity, density, development fees, uses and height, and shall not have any obligations for on or off site transportation or other facilities or improvements other than as provided in this Agreement and the Hardeeville - Savannah PDD, but must adhere to then current PDD Master Plan and subdivision plat and development plan procedural guidelines. 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 Owners shall have the right to challenge. Notwithstanding the foregoing, it is acknowledged that road improvements (within the Property or the Nearsite Road Improvement Areas) indicated as necessary by the traffic impact analyses required under the Concept Master Plan to address impacts arising from the development of the Property are the responsibility of the Owner, in the event such improvements are not funded by the County, State or federal governments.

8. 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 to the acre, provided that pedestrian and non-vehicular pathways or sidewalks are provided in order to provide interconnectivity between interior subdivisions, commercial or institutional areas and public gathering areas. 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 submitted for approval at the time of proposed construction of such Roadway, based upon engineering and planning standards consistent with the PDD Master Plan approved by the City Council.

9. All plan review fees shall be consistent with the fees charged generally in the City.

### **XIII. DEVELOPER ENTITLEMENTS:**

City acknowledges that Developer is vested with the following items:

1. The City agrees to sell or authorize the sale of water and sewer capacity to the Owners and Developers at the current city rates as shall be more particularly detailed in water and sewer agreements that may be entered into by the Owners and/or Developers with BJWSA plus a Two Hundred Fifty Dollar (\$250) administration fee so long as such is available. The Owners or Developers 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/BJSWA Agreement. The administrative fee is payable at the time BJWSA issues its capacity certificate acknowledging payment of its fees.

2. The Owners or their 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 under its jurisdiction as may be reasonably required by the Owners (or their designee) to implement such irrigation system. The City agrees to cooperate with the Owners in connection with providing such irrigation water in connection with development of the Property.

3. The City will, to the extent available, promote public transportation which exists within the City to service the Property.

4. The City agrees to grant a non-exclusive franchise for an on-site telecommunications company to Owners on terms consistent with then current franchise agreements. The City acknowledges that the Owners shall not be required to provide easements to any utility companies other than over public streets which may be located within the Property. The City agrees that, upon the request of the Owners, the City will grant easements within public rights-of-way to telecommunication providers which Owners authorize to provide service within the Property, upon payment of applicable franchise fees to the City. Additionally, the City agrees that it will franchise on terms consistent with then current franchise agreements to such party providing telecommunication services to the Property, a franchise 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.

5. 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.

6. **Roadway / Subdivision Linkage/ Sidewalks.** Roadway, Subdivision and sidewalk / pathway linkage of major land use areas, including internal linkage between residential, commercial and recreational uses, is required, when practical. A master sidewalk / pathway plan for any given Parcel or Subparcel being proposed for development shall be submitted as part of the Master Plan Traffic Impact Analysis submittal, which sidewalk / pathway design shall meet the standards of the MZDO unless otherwise approved by City Council. .

7. On-site burning will be permitted within the Property upon obtaining applicable permits.

8. The City agrees to cooperate with the Owners and each Developer with county, state and federal roadway permitting in connection with the Development of portions of the Property.

9. 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 of Section X above, including without limitation, the level of service differential for the Southern Hardeeville area outside of the core area of the City. Subject to the limitations of Section X above, should the Owners require enhanced services beyond that which is routinely provided within the City, then the City agrees that upon the written request of Owners, it shall negotiate in good faith with the Owners to provide such enhanced services to the Property. See also Section XI G hereinabove.

10. The City shall not oppose private schools, charter schools, and other alternate educational systems which Owners may desire to have located within the Property.

11. Notwithstanding any current City restrictions on such activities, it is the intention of the Owners and City to continue certain traditional property uses on the Property, such as farming, forestry, and hunting, (including game and habitat management) until the character of such portion of the Property is changed by development. These traditional uses shall be allowed to be continued on the Property, or portions of the Property, until the Property or such portion thereof is converted to uses other than agricultural and forestry purposes. "Preserves" may also be established on the Property that allow for these traditional activities to be continued, with the present land conditions enhanced or modified to accommodate the use of the land as a preserve. As to the forestry element, it will allow for and promote the management of the

“working forest” to include controlled burning, while protecting site specific conservation values such and adhere to best management practices for forestry. Working forest management will include forest management plans written by professional foresters in conformity with the requirements of Section 5.15 of the MZDO (incorporated into the Zoning Regulations for the Property) and will guide the management of the property over time. Discharge of firearms while hunting is allowed in areas which are: 1) used as forest/agricultural land or conservation/preservation and/or classified by the county assessor of Jasper County as agriculture land or forest preserve; 2) with the permission of the landowner; 3) which is a minimum of twenty (20) contiguous acres or more in size; and 4) the hunting activity is done in accordance with the Code of Laws of South Carolina and the administrative rules and regulations for discharge of firearms and hunting adopted by the South Carolina Department of Natural Resources.

#### **XIV. COMPLIANCE REVIEWS.**

As long as Owners own any of the Property, Owners or their designee, shall meet with the City, or its designee, at least once, per year, during the Term to review Development completed by Owners in the prior year and the Development anticipated to be commenced or completed by Owners in the ensuing year. The Owners, or their 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, the number of certificates of occupancy issued in the prior year, and the number anticipated to be issued in the ensuing year, Development Rights transferred in the prior year, and anticipated to be transferred in the ensuing year. The Owners, or their designee, shall be required to compile this information within a reasonable time after written request by the City.

#### **XV. DEFAULTS.**

The failure of the Owners, 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 or 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 Owners and any relevant Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided any such termination shall be limited to the portion of the Property in default, and provided further that nothing herein shall be deemed or construed to preclude the 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 of one Owner shall not constitute a default by separate Parcel or Subparcel Owner(s) hereunder or Developers, and default by Developers shall not constitute a default by the Owners. Notwithstanding the foregoing, a default of an Owner in providing infrastructure necessary to service another Owner's Property, will not preclude the City from restricting further development of those Parcels utilizing such infrastructure until the required infrastructure is provided. Any Owner which is by necessity required to provide infrastructure otherwise the responsibility, in whole or in part, of another Owner, whether such other Owner be in default or not, shall be entitled to reimbursement from such other Owner, based upon a reasonable apportionment of the infrastructure costs to each Parcel. Furthermore, additional development shall not be allowed on the Parcel or Parcels owing reimbursement until such time as the Owner providing the infrastructure is reimbursed or otherwise agrees to allow development to proceed. The City reserves the right to conditionally revoke all permits, approvals and plans for a defaulting Owner, or an Owner owing reimbursement to another Owner, until such time as the default is cured and/or reimbursement is made. The parties acknowledge that individual residents and owners of completed buildings within the Project shall not be obligated for the obligations of the Owners or Developers 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 Owners; 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(s) 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 involves property owned by less than all the persons and entities comprising the Property Owners, then only the City and those persons or entities which own the property which is subject to the requested amendment 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, as provided in the MZDO. 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 master plans are not intended to be a rigid, exact site plan for future development. The location of roads, buildings, recreational amenities and other elements may vary at the time of permit applications when more specific designs are available, as long as the maximum densities set herein and the general concept of environmentally sensitive residential, commercial or industrial 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  
Post Office Box 609  
Hardeeville, South Carolina 29927

Owners representative  
William Monroe, Jr.

With Copy To: Law Office of Lewis J. Hammet, PA  
301 Central Avenue, Suite A-389 Hilton Head, South Carolina  
29926

[Add other Parties]

## **XVIII. ENFORCEMENT.**

Each Party recognizes that the other Party would suffer irreparable harm from a material breach of this Agreement, and that no adequate remedy at law exists to enforce this Agreement. Consequently, the Parties agree that any Party or their successors and/or assigns who seeks enforcement of the Agreement is entitled to the remedies as provided in the Act, and is entitled to the remedies of injunction and specific enforcement but not to any other legal or equitable remedies, including, but not limited to damages; provided, however, the Owner, Developer, or Subsequent Developer, as applicable, shall not forfeit its right to just compensation for any violation by City of Owner's, Developer's, or Subsequent Developers' Fifth Amendment rights.

## **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 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 Owners, 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 Owners or any Developer may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

(1) that this Agreement is in full force and effect,

(2) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,

(3) whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and

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

**C. Entire Agreement.** This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings between the City and the Owners relative to the City regulations and conditions of development required by the City, 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. This provision does not preclude or pre-empt separate private agreements or covenants which the parties may enter or may have entered, but no such private agreements may affect the rights of the City hereunder.

**D. No Partnership or Joint Venture.** Nothing in this Agreement shall be deemed to create a partnership or joint venture between the City, the Owners or any 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.** Owners or Developers 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 herein; 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, Owners, Developers or Subsequent Developers shall (i) notify City in writing of such sale, transfer, or ground lease, and (ii) Owners, Developers or Subsequent Developers and Assignees shall provide a written assignment and assumption agreement in form reasonably acceptable to the City pursuant to which the Assignee shall assume and succeed to the rights, duties, and obligations of Owners, Developers or subsequent Developers with respect to the parcel or parcels of all or a portion of the Property so purchased, acquired, or leased.

Owners or Developers shall continue to be obligated under this Agreement with respect to all portions of the Property retained by Owners, Developers or Subsequent Developers. Owners, Developers or Subsequent Developers shall also remain obligated with respect to the dedication and installation of all associated infrastructure improvements regarding the roads and the other public infrastructure to be provided by Owners and/or Developers under this Agreement, unless a Municipal Improvement District or special assessment district providing for

the construction of such infrastructure has been created and funded. A default as to construction of the public infrastructure required under this Agreement and the PDD Concept master Plan or subsequently approved Master Plan is a default hereunder, and the Responsible Owner shall have to cure such default, unless it or they shall have been explicitly released from responsibility for such in whole or in part by resolution of City Council.

It is expressly acknowledged that Owners intend to assign certain rights and obligations for public infrastructure to Developers, and Developers to Subsequent Developers, and the form of the Partial Assignment of Rights and Obligations Under Development Agreement attached as Exhibit G is accepted and approved by the City as being effective in transferring the obligations and rights to be set forth therein, with Owners, Developers or Subsequent Developers released from those responsibilities enumerated, if, and only if, Hardeeville City Council approves any such Owners', Developers' or Subsequent Developers' release in the future, based upon the financial ability of the proposed Assignee to perform such obligations, which approval shall not be unreasonably withheld. Notwithstanding the above provisions, the City hereby approves and consents to the future assignment of all or a portion of the rights and obligations of Owners of the Poindexter and Monroe Parcels to Reed – HTI, LLC, or any entity in which John P. Reed is a principal, and the Assignor shall be entitled to the release of all Owner obligations as to such transferred Property upon the assumption of such obligations by such Assignee, except for the Owner's obligation to pay upon transfer the Administrative Charges pursuant to Section XI (E) above regarding any high ground acreage conveyed to such Assignee.

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

**I. 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.

**J. 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.

**K. 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.

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

## **XX. STATEMENT OF REQUIRED PROVISIONS**

**A. Specific Statements.** 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:

**1. Legal Description of Property and Legal and Equitable Owners.** The legal description of the Property is set forth in Exhibit B attached hereto. The legal Owners of the property are as set forth herein above.

**2. Duration of Agreement.** The duration of this Agreement shall be as provided in Article III.

**3. 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. 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 9,495 persons (unless optional additional density is granted).

**4. 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.

**5. Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.** All requirements relating to land transfers for public facilities are set forth in Article 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.

**6. 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 the State of South Carolina (OCRM) and 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 Owners, their successors and assigns, of the necessity of

complying with the law governing the permitting requirements, conditions, terms or restrictions, unless otherwise provided hereunder.

**7. 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.

**8. 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.

**9. Historical Structures.** Any cultural, historical structure or sites will be addressed through applicable federal and state regulations the permitting process at the time of development, as required by applicable state regulations.

**IN WITNESS WHEREOF**, the parties hereby set their hands and seals, effective as of the date first above written, and by doing so, agree to be bound by the terms of this First Amended and Restated Development Agreement.

The undersigned party agrees to be bound by the terms of this First Amended and Restated Development Agreement:

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_  
**WILLIAM MONROE, JR.**

\_\_\_\_\_











The undersigned party agrees to be bound by the terms of this Development Agreement:

**WITNESSES:**

**HARDEEVILLE, SOUTH CAROLINA**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: \_\_\_\_\_

**STATE OF SOUTH CAROLINA.     )**

**)**

**ACKNOWLEDGMENT**

**COUNTY OF JASPER.             )**

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate officials of the City of Hardeeville, South Carolina, who acknowledged the due execution of the foregoing document.

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

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**TO DEVELOPMENT AGREEMENT**  
**PARCEL EXHIBIT OF HARDEEVILLE-SAVANNAH TRACT**

May 13, 2011

**EXHIBIT B**  
**TO DEVELOPMENT AGREEMENT**  
**PROPERTY DESCRIPTION OF HARDEEVILLE-SAVANNAH TRACT**

**EXHIBIT C**  
**TO DEVELOPMENT AGREEMENT**  
**PLANNED DEVELOPMENT DISTRICT**

The Planned Development District Conceptual Master Plan for the Hardeeville-Savannah Tract (the Property hereunder), as approved by the City Council on May 19, 2011, is hereby incorporated herein 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, or may rely upon the above stated incorporation by reference, at their discretion.

**EXHIBIT D**  
**TO DEVELOPMENT AGREEMENT**  
**Zoning Regulations**

1. The Municipal Zoning and Development Ordinance of the City of Hardeeville, as modified through May 19, 2011.
2. The Planned Development District (PDD) Conceptual Master Plan dated April 11, 2011, and adopted by the City of Hardeeville on May 19, 2011.

**EXHIBIT E**  
**TO DEVELOPMENT AGREEMENT**  
**DEVELOPMENT SCHEDULE**

Development of the Property is expected to occur over the twenty (20) year term of the Agreement, with the sequence and timing of development activity to be dictated largely by market conditions. The following estimate of expected activity is hereby included, to be updated by Owners as the development evolves over the term:

<u>Type of Development</u>	<u>Year(s) of Commencement / Completion</u>			
	<u>2011/15</u>	<u>2016/20</u>	<u>2021/25</u>	<u>2026/30</u>
Commercial	10%	40%	40%	10%
Residential, Single Family	10%	40%	40%	10%
Residential, Multi Family	10%	40%	40%	10%
Industrial	10%	40%	40%	10%

As stated in the Development Agreement, Section VI, actual development may occur more rapidly or less rapidly, based on market conditions and final product mix. The above development estimates are percentages of total allowed development under this Development Agreement and the PDD, and are expected to vary among Parcels and Subparcels and depend heavily on the economic and market conditions over the Term hereof.

**EXHIBIT F**  
**TO DEVELOPMENT AGREEMENT**

**Commercial Fees \*\***

	Offsite Roads	Police	Fire	Park	Library	Schools	TOTAL
<b>LAND USE TYPE</b>							
<b>GENERAL</b>							
Hotel/Motel (per room)	\$990.00	\$320.00	\$320.00	\$318.00	\$0.00	\$0.00	\$1,948.00
Bed & Breakfast (per room)	\$742.00	\$320.00	\$320.00	\$318.00	\$0.00	\$0.00	\$1,700.00
<b>OFFICE</b>							
General Office (per 1,000 sq. ft.)	\$990.00	\$320.00	\$320.00	\$0.00	\$0.00	\$0.00	\$1,630.00
Medical Office (per 1,000 sq. ft.)	\$1,980.00	\$320.00	\$320.00	\$0.00	\$0.00	\$0.00	\$2,620.00
<b>RETAIL/COMMERCIAL</b>							
Retail under 100,000 sq. ft. (per 1,000 sq. ft.)	\$1,237.50	\$320.00	\$320.00	\$0.00	\$0.00	\$0.00	\$1,877.50
Retail 100,001 to 499,999 sq. ft. (per 1,000 sq. ft.)	\$1,188.00	\$320.00	\$320.00	\$0.00	\$0.00	\$0.00	\$1,828.00
Retail over 500,000 sq. ft. (per 1,000 sq. ft.)	\$1,138.50	\$320.00	\$320.00	\$0.00	\$0.00	\$0.00	\$1,778.50
Gasoline/Convenience Store (per pump)	\$2,970.00	\$320.00	\$320.00	\$0.00	\$0.00	\$0.00	\$3,610.00
Day Care Center (each)	\$1,732.50	\$96.00	\$160.00	\$0.00	\$0.00	\$0.00	\$1,988.50
Hospital (per bed)	\$792.00	\$96.00	\$160.00	\$0.00	\$0.00	\$0.00	\$1,048.00
Nursing Home & Assisted Living (per bed)	\$148.50	\$96.00	\$160.00	\$0.00	\$0.00	\$0.00	\$404.50
Movie Theater (per seat)	\$35.00	\$4.80	\$4.80	\$0.00	\$0.00	\$0.00	\$44.60
Golf Course (per acre)	\$247.50	\$80.00	\$240.00	\$0.00	\$0.00	\$0.00	\$567.50
<b>INDUSTRIAL</b>							
Warehousing (per 1,000 sq. ft.)	\$396.00	\$48.00	\$500.00	\$0.00	\$0.00	\$0.00	\$944.00
General Industrial (per 1,000 sq. ft.)	\$495.00	\$48.00	\$500.00	\$0.00	\$0.00	\$0.00	\$1,043.00

\*Uses not listed above will be compared against the listed uses and the most appropriate category will be applied.

\*\*All fees are based upon 2005 values and are subject to the annual Adjustment Factor from that date.



NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy whereof is herewith acknowledged, the parties hereby agree as follows, to wit:

I. Partial Assignment and Assumption of Rights, Privileges and Obligations Applicable to the Transferred Property Pursuant to the Hardeeville – Savannah Tract Development Agreement and PDD Concept Plan. Assignor does hereby transfer, assign, convey and deliver unto Assignee, its successors and assigns, all of Assignor’s rights, privileges and obligations as described in the Hardeeville – Savannah Tract Development Agreement and the PDD Concept Plan (“Concept Plan”) to develop up to \_\_\_\_\_ Dwelling Units applicable to the Transferred Property, together with up to \_\_\_\_\_ acres of Commercial development rights, except for those certain excluded obligations, rights and privileges (“Excluded Obligations”) identified below. Assignee hereby assumes and agrees to perform all of Assignor’s rights, privileges and obligations as described in the Development Agreement, applicable to the Transferred Property, except for the Excluded Obligations. Assignee acknowledges receipt of the Development Agreement and all Exhibits thereto and agrees to be bound by the terms thereof and to develop the Transferred Property in accordance with such terms. The rights and obligations hereby assigned and assumed shall be covenants running with the land, binding upon the parties hereto and their successors and assigns.

II. Excluded Obligations. The following are hereby excluded from Assignor’s assignment and Assignee’s assumption herein:

- a. the obligations of Owner/Assignor to pay fees set forth in the Development Agreement, including:
  - i. the obligation to pay any and all Development Fees identified in Article XI of the Development Agreement or elsewhere, as said Development Fees relate to the Retained Property of Assignor; and,
  - ii. the obligation of the Owner/Assignor to comply with the terms of Article XI, Section E, concerning the payment of Administrative Charges upon transfer as to the Transferred Property; and,
- b. the obligations of Owner/Assignor to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

provided, however, Assignee assumes the obligations to pay any and all Development Fees identified in Article XI of the Development Agreement or

elsewhere as they relate to the Transferred Property, and to pay any and all Administrative Charges related to the Transferred Property.

III. Enumeration of Specific Rights, Privileges and Obligations Being Assigned and Assumed. For purposes of illustration only, and not as a limitation on the assignment and assumption effectuated by Paragraph 1 above, Assignor hereby assigns and Assignee hereby assumes and agrees to perform and be bound by the following:

- a. Assignor shall assign and does hereby transfer to Assignee all of Assignor's rights, title and interest to develop up to \_\_\_\_\_ Dwelling Units and up to \_\_\_\_\_ acres of Commercial development ("Development Rights"); and
- b. Assignee assumes the obligation to pay any fees identified in Article XI *Conveyances and Contributions*, of the Development Agreement or elsewhere in the development Agreement, as they relate to the Transferred Property, other than as set forth in Paragraph 2(a)(i) and (ii), and 2 (b) above; and
- c. Assignee assumes a proportionate obligation of Owner to convey and construct, if applicable, the Police / Fire Site, the Park Site, and the School Site(s), as said obligations are set forth under Article XI (A)(B) and (C) of the Development Agreement, as said sites are depicted on the Conceptual Master Plan or as may be otherwise mutually agreed between Assignee and City in the future, in the amount of \_\_\_\_\_ %; and
- d. The parties hereto agree that Assignor and Assignee may cooperate toward a joint Municipal Improvement District for infrastructure improvements, as provided in the Development Agreement, or alternatively, either may pursue such financing options separately as to their respective properties as described hereunder, subject to approval by the City of specific terms thereof; and
- e. Assignor reserves the rights to certain credits against development fees as set forth in separate agreement by Assignor and Assignee. Assignee and Assignor will cooperate and take all steps necessary to reflect this arrangement as it relates to the allocation of credits and provide that information to the City on an ongoing and as needed basis.

4. Consent and Release by City. By its signature below, City hereby acknowledges the assignment of development rights and obligations as set forth herein, and specifically releases Assignor \_\_\_\_\_ from all obligations of the Development Agreement which are assumed by Assignee under this Partial Assignment and Assumption Agreement, provided that the

Transferred Property is actually conveyed to Assignee within \_\_\_\_\_ months hereof. Any further assignments by the original Owner, \_\_\_\_\_, or by Assignee, must be approved by City, consistent with the terms of the Development Agreement.

5. Default and Enforcement of Provisions. As provided in Articles XV, XVIII and XIX (G) of the Development Agreement and as herein provided, upon the failure of Assignor or Assignee to comply with the terms of the Development Agreement and this Partial Assignment and Assumption incident to the Property, the non-defaulting party may pursue any and all legal or equitable remedies, including specific performance, against the defaulting party.

6. Indemnification. Assignee agrees to indemnify, defend and hold harmless Assignor, its agents, principals, successors and assigns, and their affiliates from and against all losses, costs, damages or other matters arising out of any breach by Assignee of the Development Agreement.

7. Notices. Any notice, demand, request, consent, approval or communication among any of the parties hereto shall be in writing and shall be delivered or addressed as provided under Paragraph VI of the Development Agreement and shall be addressed as follows:

As to Assignee:

As to the City:

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

As to Assignor:

8. Binding Effect. This Partial Assignment and Assumption shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

9. Governing Law. The within Partial Assignment and Assumption shall be interpreted and construed and conform to the laws of the State of South Carolina.

10. Reaffirmation of Terms. All other terms, conditions, rights and privileges contained in the Development Agreement not specifically referenced





Signed, sealed and delivered  
in the presence of:

WITNESSES:

**HARDEEVILLE, SOUTH CAROLINA**

\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF JASPER

)  
) ACKNOWLEDGMENT  
)

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate official of the City of Hardeeville, South Carolina, who acknowledged the due execution of the foregoing document.

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

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_