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AGREEMENT 236.00
OR Volume 507 Page 25 - 254

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

DEVELOPMENT AGREEMENT

(MORGAN TRACT)

This Development Agreement ("Agreement") is made and entered this 22nd day of Dec 2006, by and between MFM Properties, LLC ("Owner") and the governmental authority of the City of Hardeeville, South Carolina ("City").

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

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CITY OF HARDEEVILLE
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HARDEEVILLE SC 29927

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DATE 1-10-07
AUDITOR JASPER COUNTY SC

Section 6-31-10 of the Act; and,

WHEREAS, Owner owns approximately 2624 acres, generally known as the Morgan Tract, and proposes to develop, or cause to be developed, therein a mixture of residential, 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 Owner for this Property is consistent with the City 's comprehensive land use plan; and will further the health, safety, welfare and economic well being of the City and its residents; and,

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

WHEREAS, this Development Agreement is being made and entered between Owner and the City, under the terms of the Act, for the purpose of providing assurances to Owner that it may proceed with its development plan under the terms hereof, as hereinafter defined, consistent with its approved Planned Unit Development (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

Owner by entering this Agreement, and to encourage well planned development by Owner, the receipt and sufficiency of such consideration being hereby acknowledged, the City and Owner hereby agree as follows:

I. 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.

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 Morgan Tract.

"Adjustment Factor" shall mean the percentage of either the Consumer Price Index (CPI)(All Urban Consumers) increase for the applicable year or three percent (3%) per annum simple interest, which ever is greater. All amounts in this Agreement which are subject to the Adjustment Factor are based upon amounts in effect prior to July 1, 2006. The Adjustment Factor effective July 1, 2006 was three percent (3%). Therefore, all fees and values herein affected by the Adjustment Factor shall be 103.0% of the amount stated until June 30, 2007, at which time such fees and values shall be adjusted on the anniversary date of July 1, 2007 by either 3% or the CPI percentage increase rate, whichever is greater that year. Thereafter, annual adjustments to such amounts shall continue to be adjusted in like manner on July 1 of each year.

"Additional Adjustment Factor" shall mean that from and after the end of the twentieth (20th) year of the Term of this Agreement, the Development Fee set forth in Section XI(I) for any

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

"Agreement" shall mean this Development Agreement as amended by the City and Owner and/or Secondary Developer, or their successors and assigns in writing from time to time.

"Morgan Tract PDD" or **"Property"** means that certain tract of land described on **Exhibit A**.

"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.

"**Concept Plan**" shall mean the Concept Plan attached to the Planned Development District adopted by the City by ordinance on November 16, 2006.

"County" shall mean Jasper County, South Carolina.

"Developer" or "Owner" means MFM Properties, LLC, a South Carolina Limited Liability

Company.

"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 Xl(H)

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

"Fire Site" shall have the meaning set forth in Article Xl(B)

"Fire Site Value" shall have the meaning set forth in Article Xl(B)

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

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

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

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

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

"**Off-Site Roadway Fund**" shall mean the segregated interest-bearing account held by the City into which all Road Development Fees for construction of public roadways are contributed until utilized for construction, either within or without the Property.

"**On-Site Roadway Fund**" shall mean the segregated interest-bearing account held by the City into which all Road Development Fees for construction of the Spine and other roads referenced herein are contributed until utilized for construction..

"**Owner**" means MFM Properties, LLC, its successors and assigns.

"Park Site" shall have the meaning set forth in Article Xl(C)

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

"PDD Plan" shall mean the Conceptual Master Plan attached to the Planned Development District, as same may be modified by agreement of the Owner and/or Secondary Developer(s) and the City.

"Planned Development District" or **"PDD Ordinance"** means the PDD approved by the City of Hardeeville on November 16, 2006, attached hereto as part of **Exhibit B**.

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

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

"Police Site" shall have the meaning set forth in Article Xl(A)

"Police Site Value" shall have the meaning set forth in Article Xl(A)

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

"**Property**" shall mean that certain tract of land described in the attached Exhibit A, also known as the Morgan Tract.

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

"School Site" shall have the meaning set forth in Article Xl(D)

"School Price" shall have the meaning in Article Xl(D)

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

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

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

"Zoning Regulations" means the Morgan Tract Planned Development District and PDD adopted by establishing a Planned Unit Development for the Property, and all the attachments thereto, including but not being limited to the PDD Plan, its narratives, applications, and site development standards therein, (a copy of all of which is attached hereto marked Exhibit C and incorporated herein by reference); this Development Agreement; and the MDZO dated March 20, 2003 as amended through the date of this Agreement, except as the provisions thereof may be clarified or modified by the terms of the PDD and this Agreement.

Other capitalized terms within this Development Agreement shall have the same definitions as set forth in the PDD, attached hereto.

III. TERM.

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

IV. DEVELOPMENT OF THE PROPERTY.

The Property shall be developed in accordance with the Zoning Regulations and this Agreement. All costs charged by or to the City for reviews required by the MZDO shall be paid by

the Owner or Secondary Developer or other party applying for such review as generally charged throughout the City for plan review. The City shall, throughout the Term, maintain or cause to be maintained, a procedure for the processing of reviews as contemplated by the Zoning Regulations and this Agreement. In the event that MFM Properties, LLC transfers any interest in the Morgan Tract or any development to any successor or assign, MFM Properties, LLC and such successor or assign may, by written agreement that is submitted to and approved by the City, allocate any of the duties or benefits placed upon MFM Properties, LLC by this Agreement between them, in which event the duties and benefits shall apply separately to each of them in accordance with the property owned by each, under the terms of the assignment agreement approved by the City. The Partial Assignment of Rights and Obligations, attached hereto as Exhibit H, is hereby approved by the City as allowable and acceptable hereunder, so long as the Assignee thereunder is approved by Hardeeville City Council prior to the release of Owner from Owner obligations under the Development Agreement, which approval will be based upon the financial ability of the proposed Assignee, and which approval will not be unreasonably withheld, and the property conveyed to such Assignee is substantially the same as the Transferred Property described in Exhibit H hereto.

V. CHANGES TO ZONING REGULATIONS.

The Zoning Regulations relating to the Property subject to this Agreement shall not be amended or modified during the Term, without the express written consent of the Owner except in accordance with the procedures and provisions of Section 6-31-80(B) of the Act, which Owner shall have the right to challenge. Owner does, for itself and its successors and assigns, including Secondary Developers and notwithstanding the Zoning Regulations, agrees to be bound by the following:

A. Transfer of Development Rights. The Owner shall be required to notify the City, in writing, as and when Development Rights are transferred to any other party, including Secondary Developers. Such information shall include the identity and address of the acquiring party, a proper contact person, the location and number of acres of the Property transferred, and the number of

Residential Dwelling Units and/or commercial acreage and square footage of building area, as applicable, subject to the transfer. Secondary Developers transferring Development Rights to any other party shall be subject to this requirement of notification, and any entity acquiring Development Rights hereunder shall be required to file with the City an acknowledgment of this Agreement and a commitment to be bound by it.

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

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

VI. DEVELOPMENT SCHEDULE.

The Property shall be developed in accordance with the development schedule, attached as Exhibit D, or as may be amended by Owner or Secondary Developer(s) in the future to reflect actual market absorption. Pursuant to the Act, the failure of the Owner and any Secondary Developer to meet the initial development schedule shall not, in and of itself, constitute a material breach of this Agreement. In such event, the failure to meet the development schedule shall be judged by the

totality of circumstances, including but not limited to the Owners and Secondary Developer(s) good faith efforts to attain compliance with the development schedule. These schedules are planning and forecasting tools only, and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace if market conditions support a faster pace. The fact that actual development may take place at a different pace, based on future market forces, is expected and shall not be considered a default hereunder. Development activity may occur faster or slower than the forecast schedule, as a matter of right, depending upon market conditions. Furthermore, periodic adjustments to the development schedule which may be submitted unilaterally by Owner / Secondary Developers in the future, shall not be considered a material amendment or breach of the Agreement.

VII. DENSITY.

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

A. **Acreage.** Including wetlands, the Conceptual Master Plan for the Morgan Tract PDD consists of approximately 1,467 acres within the Residential Tracts, 116 acres within the Light Industrial Tracts, 969 acres within the Commercial and Mixed Use Tracts, and 80 acres of future public road right of way, as generally depicted on the Conceptual Master Plan. The Conceptual Master Plan includes approximately 565 upland and nonjurisdictional wetland acres of commercial and mixed use development, located primarily in the Commercial Tracts and Mixed Use Tracts. The Residential Tracts consist of approximately 1,061 acres of uplands and nonjurisdictional wetlands, and 406 acres of jurisdictional wetlands. The Conceptual Master Plan and PDD also includes some commercial development in the Residential Tracts.

B. **Wetland Acreage.** Notwithstanding any other provision of the PDD or this Development Agreement to the contrary, the parties understand that the wetlands shown on the Conceptual Master Plan, and the acreages of wetlands and non-wetlands set forth in the PDD and

this Development Agreement, are based upon the jurisdiction assumed by the US Army Corps of Engineers (the "Corps") at the present time, and in the event that it is determined that the jurisdiction of the Corps is less than under its present assumptions, the wetlands shown in the Conceptual Master Plan and the acreage of wetlands and non-wetlands set forth in the PDD and this Development Agreement shall be adjusted accordingly.

C. Number of Residential Dwelling Units.

1. Presumed Density/Multi-Family Units. Recognizing the increased tax revenue resulting from the amount and location of commercial development proposed and reserved within the Morgan Tract, upon compliance with the terms and conditions of this Agreement, up to 6,700 Residential Dwelling Units ("Presumed Density" or "base units") shall be allowed on the Morgan Tract, of which 1,000 units may be multifamily Residential Dwelling Units; provided, however, that Owner shall have the right to have more than 1,000 multifamily Residential Dwelling Units, so long as at the time of such request for a building permit for multifamily units in excess of 1,000 multifamily Residential Dwelling Units, the average fair market value of all Residential Dwelling Units then constructed on the Property is at least $180,000.00 (including the value of the Lot) plus the Adjustment Factor or more (for example, effective July 1, 2006, the average is equal to $185,400.00 based upon the original $180,000.00 figure plus the 3% Annual Adjustment Factor).

2. Adjustments to Density. The Developer requirements set forth in this Agreement are based upon a Presumed Density of 6,700 Residential Dwelling Units. Additional density from conversions and additional units as provided below in Sections VII(D) and (E) which results in total units above the Presumed Density figure will require additional dedications for parks and schools sites on a pro rata basis, and continued payment of impact fees on the additional units for the various infrastructure and services set forth below in Section XI. Reductions in density may reduce the amount of required dedications for acreage for parks and schools sites on a pro rata basis, but such reductions shall be negotiated in good faith by both Owner and City based upon the need to provide required levels of service and facilities on a par with other residents and/or similar

developments.

D. Commercial Acreage. The factors which contribute to the successful development of commercial real estate will be prevalent to a larger degree at the Morgan Tract than any other large land parcel in the greater Hardeeville Joint Planning Area. Both the Owner and the City of Hardeeville recognize the unique opportunity to enhance the tax base of Hardeeville through commercial development in the Morgan Tract. The Conceptual Master Plan is therefore incorporating a 406 acre Commercial Tract adjacent to the confluence of US 278, the Highway 278-A Extension/Spine Road (Road A and B), and US 278 Frontage Road, in addition to a small amount of commercial land use along SC 46 and other mixed use areas. The proximity of the Commercial Tract to major collector and arterial roads is intended to enhance its viability.

D. Commercial Reserved Acreage/Conversions. To further ensure additional tax revenues resulting from the proposed commercial development the Owner agrees to reserve and provide a minimum of 200 upland acres of commercial or light industrial development (of which a minimum of 150 acres will be within Tracts "D", "E" and/or "F" as noted on the Conceptual Master Plan). 100 upland acres of the 200 acres listed above must consist of only the uses specified in Section II, *Land Use Designation and Definition*), subsection 5(a)(items 14 through 33 only) of the PDD.

Of the 200 acres reserved, and subject to the provisions of Section VII (E) below, Owner and Secondary Developers (to the extent Secondary Developers have been expressly assigned conversion rights by Owner), 50 acres may be converted to mixed use at any time and 50 acres may be converted to any other allowable land use within the PDD after a period of 5 years from the issuance of the first development permit within the Property, including additional density for Residential Dwelling Units at the rate of 2.7 units per acre of commercial converted. These conversions shall be allowed, provided the Owner documents that no less than 100 upland acres in Tracts D, E and F remain reserved for commercial or light industrial land uses as described above, and the residential requirements of Section VII(E) below are met.

There shall be no cap on commercial or mixed-use acreage within the PDD, provided the overall residential unit cap is not exceeded. Any additional commercial, mixed use or light industrial acreage over the 1,184 acres shown on the Conceptual Master Plan that is added to the PDD will not require a conversion of residential units.

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

E. Additional Residential Units. Subject to Section VII(D) above, the Owner and/or Secondary Developers (to the extent Secondary Developers have been expressly signed conversion rights by Owner) shall have the right to convert up to 365 acres of commercial or mixed use acreage to residential acreage at a unit density of 2.7 residential units per acre, provided an overall cap of 7,685 residential units is not exceeded, no less than 100 acres of commercial development and 50 acres of Mixed Use remain in the areas as set forth above, and the overall average fair market value of the Residential Dwelling Units is no less than $180,000.00 per residential unit as adjusted by the Annual Adjustment Factor from July 1, 2005 (for example, effective July 1, 2006, the average is equal to $185,400.00 based upon the original $180,000.00 figure plus the 3% annual Adjustment Factor). The Owner must demonstrate 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.

F. Non-residential Intensity. Non-residential uses shall have no cap placed on building intensity (building square footage/acre), provided compliance with height, storm-water, parking, buffering, landscaping and other site design requirements of the MZDO and PDD are met. Hotel/Inn/Bed and Breakfast Properties, and assisted living, congregate care, and nursing home

facilities shall not have a specified dwelling unit per acre maximum, provided compliance with height, storm-water, parking, buffering, landscaping and other site design requirements of the MZDO and PDD are met. All non-residential development shall be subject to the provisions of the City of Hardeeville MZDO unless specifically exempted by this document.

VIII. RESTRICTED ACCESS.

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

IX. EFFECT OF FUTURE LAWS.

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

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

to protect the health, safety and welfare of the citizens of Hardeeville.

X. ROADS, INFRASTRUCTURE AND SERVICES.

The City and Owner recognize that the majority of the direct costs associated with the Development of the Property will be borne by the Owner and Secondary Developers, and many other necessary services will be provided by other governmental or quasi-governmental entities, and not by the City. For clarification, the parties make specific note of and acknowledge the following:

A. Private Roads. All private roads within the Property shall be constructed by the Owner, Secondary Developer or other parties and maintained by such party(ies) and/or Association(s), or dedicated for maintenance to other appropriate entities. The City will not be responsible for the construction or maintenance of any private roads within the Property, unless the City specifically agrees to do so in the future.

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B. Public Roads / Future Improvements.

1. Access to Property. All public roads outside the Property that serve the Property are under the jurisdiction of the State of South Carolina regarding access, construction, improvements and maintenance. Owner acknowledges that it must comply with all applicable state statues and rules and regulations of the South Carolina Department of Transportation or its successor regarding access and use of such public roads. Future public roads may serve the Property. The City shall not be responsible for construction, improvements or maintenance of the public roads which now or hereafter serve the Property, unless set forth in this Agreement or the City otherwise agrees. The Property shall be served by direct access to Highway 278, Highway 46, and the proposed roads as shown on the PDD Concept Plan and as described in Exhibit E. Timing and other requirements for the proposed road improvements are also set forth in Exhibit E. Additional public roads may be

planned on the Property in the future, upon written agreement between Owner and the City. To the extent practical, Owner will utilize construction accesses and temporary construction roads to minimize the use by construction vehicles and construction supply trucks of the public roads to be constructed, to avoid undue wear and tear. In connection with the construction of such of the roads which are designed or expected to be at least four-lane roads, except as set forth herein, if only two lanes of such four or more lane roads are proposed to be initially constructed, the outermost lanes of such shall be constructed first, rather than the innermost, unless otherwise agreed at Master Plan approval. Existing public roads and future improvements and right of way dedications are as follows.

2. **Contiguous Public Roads**. There are five public roads contiguous to the Morgan Tract; US 278, SC Highway 141, South Carolina Highway 46, Interstate 95 and Pine Arbor Road. All are under the jurisdiction of South Carolina Department of Transportation (SCDOT) regarding access, construction, improvements and maintenance with the exception of Interstate 95, which is also under the jurisdiction of the Federal Highway Administration. Establishing safe and reasonable ingress and egress for the property is a priority for the Owner, SCDOT, and the City of Hardeeville. Full access shall be defined as access which allows any and all possible vehicular traffic movements into and out of a development. Limited access shall be defined as access which limits the movement of traffic into and out of a development (i.e. right-in-right-out only).

3. **Spine Road.**

a. **Design of Spine Road**. Owner shall design and construct upon obtaining permits from applicable governmental authorities the primary roadway and its intersections designated on the PDD Concept Plan ("Spine Road"), provided such design is in conformance with this Agreement and capable of absorbing the traffic loading created by the Development of the Property. If constructed in accordance with SCDOT standards and in accordance with the terms and conditions of this Agreement, Owner shall have the right to dedicate the road and right-of-way and any

adjacent sidewalks or pathways constructed by Owner to the City (or other governmental authority), and City shall assume maintenance responsibility for such portion of the Main Road, sidewalks and pathways when and in the manner hereafter provided. The width of the right of way shall be a maximum of 150 feet. The 150 foot right-of-way is being provided by Owner (without charge for the land comprising such 150 right-of-way) to accommodate future road widenings that may be appropriate due to increased traffic loading resulting from either off-Property or on-property impacts, with funding and responsibility for such widening and improvements necessitated by off-site traffic to be the responsibility of the City or other governmental entity(ies), and those necessitated by on-site improvements to the responsibility of Owner and/or Secondary Developer(s).

b. **Initial Construction of Spine Road**. The Spine Road will be initially constructed as two, twelve foot wide lanes with shoulders and turn lanes providing primary access to the Morgan Tract, except that 1,000 foot section extending from the intersection of Spine Road and Highway 278 southward beyond the intersection with the proposed commercial 278 Frontage Road, as shown on the PDD Concept Plan, which will be constructed as a four lane limited access arterial roadway with appropriate turn storage and with a divided, landscaped median. Until such time as appropriate wetland mitigation/filling and other permits can be obtained to allow all four lanes of this segment to be constructed, Owner will be allowed (upon receiving appropriate permits) to initially build two 12 foot wide lanes, side by side, until Section 404 wetland permits can be issued, after which, a four lane limited access arterial roadway with appropriate turn storage and with a divided, landscaped median must be constructed. Owner agrees to simultaneously apply for the wetland permits needed to build the initial phase as well as the wetland permits needed to build all four lanes. the outermost two lanes of this segment. The design speed and geometrics for the Spine Road will be establish in accordance with South Carolina Department of Transportation guidelines, as more particularly set forth in Exhibit E.

Final roadway design including amount of clearing, additional lanes and typical roadway section(s) will be determined as set forth in Exhibit E.

c. **Phasing**. The northern terminus of the Spine Road shall be the easternmost approved full access point with US 278. The Spine Road consists of two segments, Road A and Road B, and their general location is shown on the Conceptual Master Plan. The actual location of the Spine Road will be established by the Owner in conjunction with the City at the time of Master Plan approval. Final design and construction of the Spine Road will be phased. The minimum extent of Spine Road design and construction for each phase will be determined only by the amount of road facility needed to serve the total anticipated development. The Owner is not obligated to construct any portion of the Spine Road beyond what is required to maintain a Level of Service C from traffic impacts associated with the Property. In the event on-site development traffic impacts do not lower the level of service below level C on the road constructed by Owner, the City of Hardeeville or the Owner shall have nevertheless have the right to expand Road A and/or Road B beyond that needed, in addition to constructing any uncompleted section at their discretion and expense. A traffic analysis in an approved format will be provided by the Owner to the City of Hardeeville to establish the amount of road facility needed to meet the above standard. Sequencing of road construction will be determined as set forth in the attached Exhibit E.

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

e. **Maintenance of Spine Road**.

i. **By Association**. The Association shall maintain all aspects of all segments of the Spine Road constructed by Owner, drainage and rights of way of such portions of Spine Road as are constructed until two years after the Property has received its 1,500th Certificate of Occupancy, and for three years after completion of any other portions completed after the expiration of the two year period after the Property has received its 1,500th Certificate of Occupancy.

ii. **By City**. On the date that is two years after the Property has received its 1,500th Certificate of Occupancy, the Owner, its successors or assigns, shall transfer title to the right of way for the constructed paved portions of the Spine Road and any adjacent sidewalks and pathways constructed by Owner to the City, and the City shall take full maintenance responsibility with regard to the constructed paved portions of the Spine Road including curbing) and any adjacent sidewalks and pathways constructed, which must be in reasonable condition at the time of transfer of responsibility, i.e., not in need of repair and with at least 50% of the useful life of the last applied pavement coating remaining. Any paved portions of the Spine Road (including curbing) and any adjacent sidewalks and pathways constructed by Owner after the expiration of the two year period after the Property has received its 1,500th Certificate of Occupancy shall become the maintenance responsibility of the City three (3) years after completion of such portions of the Spine Road, upon the same terms regarding its condition as set forth above . Acceptance of the Spine Road by the City shall be accelerated to one (1) year after the date of completion of construction of the Spine Road if the Spine Road becomes a road of regional significance as shown on the Southern Jasper Regional Transportation Plan (e.g. the Spine Road connecting Highway 278 with the extension of the Highway 278Aand/or SC 46). At such time, the condition

of the road must be as set forth above, and alternate provisions for construction access or additional warranties shall be made so construction vehicles do not damage the Spine Road beyond general wear and tear of such roads.

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

4. **US Highway 278 A Connector**. The Spine Road may incorporate a potential extension of the US 278A Connector through the Morgan Tract. This road will be referred to as the US 278A Connector. Additional right of way shall be dedicated to the City, County, SCDOT or other public entity extending from the eastern property boundary of the Morgan Tract to the intersection of Road A and Road B as shown on the Conceptual Master Plan. This road will be referred to as Road C. This right of way shall be 150 feet in width and will be generally located as shown on the Conceptual Master Plan. The dedication of this right of way shall occur at such time as the construction of the US 278 A Connector receives programming approval from the SCDOT or other appropriate governmental agency for construction of the Road C, unless otherwise agreed. Until such dedication occurs, the Owner shall have the right to use the right of way of Road C to service any development along Road C in accordance with the Master Plan covering such development area. Should the Owner make improvements to Road C prior to dedication of the US 278 A Connector, construction costs for such improvements shall be at the sole cost of the Owner. The City, County, SCDOT or other public entity, will be responsible for the construction of Road C not already constructed by the Owner, unless, in the alternative, such construction alleviates traffic impacts from within the Property which would otherwise require additional road improvements to

prevent a Level of Service below C on the roads servicing the Property, in which event an equitable and proportionate division of expenses shall be made between Owner and the City, County, SCDOT or other public entity. The Road C location may be altered in the future with the consent of Owner and City.

5. **Access Points**. Full access points along the Spine Road and future Highway 278A shall be spaced no closer than 1500 feet unless approved at Master Plan phase for commercial zones. Additional full access points may be allowed provided they are consistent with the future access management plan currently being developed by the City. A traffic impact assessment must be provided that demonstrates the additional access points meet the applicable City of Hardeeville and SCDOT access management plans. These accesses may be relocated to accommodate traffic modeling information, wetlands, site specific characteristics and adjacent land uses as part of a traffic management plan.

6. **Frontage Road**. A US 278 frontage road will be constructed by the Owner. This road will be referred to as the US 278 Frontage Road. The width of the right of way shall be a maximum of 120 feet, and the maximum design speed for the Frontage Road shall be determined as set forth in Exhibit E. The actual location and design of the US 278 Frontage Road will be established by the Owner in conjunction with the City and SCDOT at the time of Master Plan submittal. The location of the road will be in the Commercial Tract and Mixed Use Tract as shown on the Conceptual Master Plan. The US 278 Frontage Road will extend from Road A, more or less parallel to US 278, to the western boundary of the Morgan Tract at SC 141. The actual location of the US 278 Frontage Road and its points of connection to adjacent property will also be determined by the Owner at the time of Master Plan submittal. The design of the US 278 Frontage Road cross sections and ingress/egress points will be sufficient to maintain a Level of Service "C" for traffic generated by development within the Morgan Tract. The Owner will have the right to dedicate the Frontage Road to the City at any time within three years of the completion of the Frontage Road, and shall transfer title to the right of way for the constructed paved portions of the Frontage Road and any adjacent sidewalks and pathways constructed by Owner to the City, and the City shall take full

maintenance responsibility with regard to the constructed paved portions of the Frontage Road (including curbing) and any adjacent sidewalks and pathways constructed, which must be in reasonable condition at the time of transfer of responsibility, i.e., not in need of repair and with at least 50% of the useful life of the last applied pavement coating remaining. The City agrees to accept the dedication of the Frontage Road provided that it has been constructed in accordance with this Agreement and SCDOT standards, or other standards approved at the time of Master Plan submittal. Additional roadway expansion needed to accommodate traffic impacts not associated with the Morgan Tract shall be the responsibility of the City of Hardeeville or other public entity. The City shall have the right to expand the roadway within the 120 foot right of way. Full access points along the US 278 Frontage Road shall be spaced at 500 feet. Additional full access points may be allowed provided they are consistent with the future access management plan currently being developed by the City and are approved at Master Plan. A traffic analysis must be provided that demonstrates the additional access points meet the applicable City of Hardeeville and SCDOT access management plans. These accesses may be relocated to accommodate traffic modeling information, site specific characteristics and adjacent land uses as part of a traffic management plan.

7. **Pine Arbor Access**. Both the Owner and City of Hardeeville recognize the benefit of ingress and egress from the Mixed Use Tract and Residential Tract to Pine Arbor Road. Although potential access from these tracts to Pine Arbor Road must cross property not owned by the City of Hardeeville or the Owner, The Owner agrees to work with the City of Hardeeville to establish access, provided such access will not negatively impact development within the Morgan Tract. The proposed access to Pine Arbor Road would be provided by one full access point as generally indicated on the Conceptual Master Plan and is subject to SCDOT approval and permitting

8. **Access to Highway 278**. Ingress and egress for the Morgan Tract to US 278 will be provided by a combination of two full access points and one limited access point (right in/right out only) as generally shown on the Conceptual Master Plan map. The two full access points may be signaled when actual traffic volumes or other contributing factors warrant their installation, subject to SCDOT approval.

9. **Access to Highway 141**. Access to SC 141 will be provided by two full access points and three limited access points (right in/right out only) as generally indicated on the Conceptual Master Plan. These access points are in addition to the existing Pine Arbor Rd access to SC 141 and are subject to SCDOT approval and permitting.

10. **Access to Highway 46**. Access to SC 46 will be provided by up to four full access points and two limited access points (right in/right out only) as generally indicated on the Conceptual Master Plan, subject to approval and permitting by SCDOT. The Spine Road will utilize one of the full access points described above.

11. **Final location and modification of access points**. The final location of all access points described above will be determined at the time of a Master Plan submittal for these areas. These accesses may be relocated to accommodate traffic modeling information, site specific characteristics, and adjacent land uses as part of a traffic management plan, the future access management plan currently being developed by the City, and are approved as part of a Master Plan submittal. Additional access points may be allowed, provided they are consistent with the future access management plan currently being developed by the City and are approved as part of a Master Plan submittal. A traffic impact assessment in the City approved format must be provided that demonstrates the additional access point(s) meet the applicable City of Hardeeville and SCDOT access management plans. If traffic signals are warranted, they shall be installed with funding, if available, as outlined in Exhibit E hereto and are subject to SCDOT approval and permitting. Additional frontage and interconnecting roads will be used to the maximum practical extent to lessen the need for access points and travel on major roads. Planning, design and construction of these accesses will be accomplished in a manner consistent with SCDOT standards, traffic impact assessments and PDD standards. Typical roadway sections will be submitted for review at Master Plan approval stage.

12. **Wetland Crossings**. Potential accesses across the jurisdictional wetlands may be allowed if approved by OCRM and the U.S. Army Corps of Engineers.

13. **Design standards**. The Spine Road (Road A and B) and Frontage Road will be designed and constructed to the standards of SCDOT and this Agreement. Other public roadway design and construction will be in accordance with SCDOT standards unless otherwise agreed at Master Plan Approval, and private roadways and interior subdivision roadways shall be in accordance with SCDOT standards or other engineering standards acceptable to the City Engineer and City of Hardeeville standards. Applicable roadway cross sections will be submitted for review and approval at time of Master Plan submittal.

14. **Funding**. The Morgan Tract PDD may have roads designed and/or constructed with funding as outlined in this Agreement and Exhibit E hereto. Road location indicated on the Conceptual Master Plan are subject to modification at the time of each Parcel's Development Plan approval based upon specific soil conditions, environmental concerns, physical constraints and design parameters.

15. **Roadway/Subdivision Linkage**. Roadway and sidewalk/pathway linkage of major land use areas, including internal linkage between residential, commercial and recreational uses, shall be provided. A master sidewalk/pathway plan shall be submitted as part of the Master Plan submittal, which shall meet the standards of the MZDO unless otherwise approved..

16. **Modifications to Preserve Environment**. Notwithstanding the provisions of this Section, roadway design standards may be modified at Master Plan to reduce environmental impacts and increase tree preservation, provided safety concerns are not compromised. To protect and preserve significant trees, such design is hereby encouraged.

17. **Funding for Maintenance for Dedicated Roadways**. Maintenance for roadways dedicated to the City (or other governmental authority) may be funded through an ad valorem tax applied Citywide, or such other mechanism as may selected by the City that is applied City-wide. The parties agree that the City may transfer ownership and maintenance responsibility

for the public roads described above to Jasper County, the SC Dept. of Transportation, or other public entity, in the event the County, State or public entity agrees to accept same and has a reasonable maintenance program in place.

18. Timing of Road Improvements. Timing of road improvements within the Property, and responsibility therefor, is further described and set forth in Exhibit E hereto.

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

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

D. Potable Water. Potable water will be supplied to the Property by BJWSA or some other legally constituted public or private provider allowed to operate in the City. The City shall not be responsible for any construction, treatment, maintenance or costs associated with water service to the Property unless the City elects to provide such services with the agreement of the applicable utility authority then providing such service to the Property. Owner will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the service provider as provided in any utility agreement between Owner and the service provider.

E. **Sewage Treatment and Disposal.** Sewage treatment and disposal will be provided by BJWSA or some other legally constituted public or private provider allowed to operate in the City. The City will not be responsible for any treatment, maintenance or costs associated with sewage treatment within the Property, unless the City elects to provide such service with the agreement of the applicable utility authority then providing such service to the Property. Nothing herein shall be construed as precluding the City from providing sewer services to its residents in accordance with applicable provisions of law. Owner will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the provider as provided in any utility agreement between Owner and the service provider.

F. **Use of Effluent.** Owner agrees that treated effluent will be disposed of only in such manner as may be approved by DHEC and the BJWSA. The City will use good faith efforts to cooperate with the Owner to support Owner in its obtaining gray water in connection with providing irrigation water for the golf courses, and other landscaped areas within the Property. The Owner or its designee shall have the right to operate an irrigation system to provide irrigation services in connection with all or any portion of the Property, provided such is approved by DHEC or other applicable regulatory authority.

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

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

acknowledges the jurisdiction of the City's fire department on the Property and shall not interfere or in anyway hinder public safety activities on the Property regardless of whether such may be a restricted access community.

Not withstanding the foregoing, fees for fire protection will be charged as if the Owner of the Property was a "non-resident" under the fire protection fee ordinance (Section 8-120 of the City Code of Ordinances) until such time as a site specific development plan is approved for an area of the Property, at which time the non-resident treatment shall be removed as to that area only.

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

J. Recreation Services. City shall provide recreation services to the Property on the same basis as it provided to other similarly situated residents and businesses in the City. Notwithstanding the above, the City shall not be obligated to improve any of the Park Sites until such time as Park Developer Fees are adequate to fund the design and construction of the site. Should the Owner or Secondary Developer desire to have improvements constructed upon any of the Park Sites prior to these funds being adequate, Owner or Secondary Developer may elect to do so, in accordance with the provisions of Section XI(D)(5) below.

K. 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 citywide basis. City shall allocate, at its discretion, Library Developer Fees to assist with library services in Southern Jasper County.

L. 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 is election to provide such services on a citywide basis.

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

N. **Storm Water Quality.** Protection of the quality in nearby waters and wetlands is a primary goal of the City. 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. Further provisions regarding Storm Water are included within the PDD for this Project.

XI. CONVEYANCES AND CONTRIBUTIONS.

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

A. **Police Site.**

1. **Number of Sites/Value**. Unless the City chooses to locate on adjacent property as

set forth in paragraph 4 below, the Owner shall transfer to the City 2.1 acres of land at a location as shown on the Conceptual Master Plan, or as otherwise mutually agreed upon, to be utilized as a police station site or sites (collectively "Police Site") which may be combined with other public safety and support facilities, which site shall be dedicated to the City no later than the period between when the one-thousandth (1,000th) residential certificate of occupancy is issued and prior to the twelve hundredth (1,200th) residential certificate of occupancy being issued on the Property, unless dedication of the site and construction of a combined fire/police facility is required to preserve the City's ISO rating (currently a 3) for fire protection or otherwise agreed. It is acknowledged that if there are to be more than two (2) Police Sites, the additional site shall be identified as being necessary by City during this period and dedicated simultaneously. The parties acknowledge that the value of the Police Site 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 Police Development Fees ("Police Site Value"), if contributed, and the Owner shall be entitled to credits against the Police Development Fees payable with respect to the Property in the amount of the Police Site Value. If at the request of Owner a Municipal Improvement District or a special tax assessment district is implemented and funded the City may request and the Owner shall transfer such Police Site to the City, and construction may begin when funding becomes available, even if prior to the one thousandth (1,000th) residential certificate of Occupancy is issued.

2. **Design/Permitting/Construction**. It is agreed that the City will, within six (6) months after the Police Site is transferred to the City, either on or off the Property, design and permit such police facility. If more than one site is transferred, the City shall only be obligated to design and permit one police facility within this timeframe. Within thirty (30) days after such police facility has been designed and permitted, the Owner shall pay $1,763,000.00 (less any Development Fees-Police previously paid and the value of the Police Site, if contributed) into the Police Fund (and Owner will receive Development Fee–Police credits for such payment) to be utilized by the City to construct and equip such Police Site (recognizing that the City may elect to combine the Police Site and Fire Site as a joint facility and that there may be more than two sites), and the City will construct and equip such Police Site/Fire Site promptly after Owner has funded $1,763,000.00 (as adjusted) into the

Police Fund.

3. **Number of Acres**. It is specifically acknowledged that the Owner's obligation as to the Police Sites is 2.1 acres, regardless of the number of sites, and its capital contribution to the police facilities is $1,763,000.00, less the Police Site Value if contributed, and any Development Fees previously paid.

4. **Location**. The Police Site shall be located as shown on the Conceptual Land Use Master Plan, or as otherwise mutually agreed, in order to primarily provide police and other municipal services to residents and others located upon the Property in an efficient manner. It is further agreed that the City may choose to combine the Police Site(s) with the dedications from the Owner for the Fire Site and other public infrastructure, and also may combine the Owner's dedications and payments with those from adjacent landowners/developers to maximize utilization of resources. The City and the Owner may mutually agree as to a relocation of such Police Site and Fire Site, 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.

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

6. **Use of Development Fees**. Owner consents that any Developer Fees collected for Police 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.

B. Fire Site.

1. Number of Sites/Value. Unless the City chooses to locate on adjacent property as set forth in paragraph 4 below, Owner shall transfer to the City two (2) acres within the Property at a location or locations mutually agreed upon to be utilized as a fire station or sites (collectively, "Fire Site") which may be combined with other public safety and support facilities, which site shall be dedicated to the City no later than the period between when the one thousandth (1,000th) residential certificate of occupancy is issued on the Property and prior to when the one thousand two hundredth (1,200th) residential certificate of occupancy is issued on the Property, unless dedication of the site and construction of the facility is required to preserve the City's ISO rating (currently a 3), or as otherwise agreed. It is acknowledged that if there are to be more than two (2) Fire Sites, or combined Fire/Police sites, the additional sites shall be identified as being necessary by City during this period and dedicated simultaneously. The value of the Fire Site shall be deemed to be Thirty Thousand and 00/100 Dollars ($30,000.00) per acre plus the Adjustment Factor from the date of such transfer until such amount is credited against Fire Development Fees ("Fire Site Value"). Owner shall be entitled to credits against the Fire Development Fees in the amount of (a) the Fire Site Value if contributed, and (b) for the Seven Hundred and Sixty Three $1,763,000.00 payment to the Fire Fund described below. Notwithstanding anything to the contrary, if at the request of Owner a Municipal Improvement District or a Special Tax Assessment District is implemented and funded, the City may request and the Owner shall transfer such Fire Site to the City, and construction may begin when funds become available, even if prior to when the 1,000th residential certificate of occupancy is issued on the Property.

2. Design/Permitting/Construction. It is agreed that the City will, within six (6) months after the Fire Site is transferred to the City(either on or off the Property), design and permit

a fire facility on the Fire Site. If more than one Fire Site is transferred, the City shall only be obligated to design and permit one Fire facility within this time frame. Within thirty (30) days after the City has designed and permitted such Fire facility, Owner shall pay One Million Seven Hundred and Sixty Three and 00/100 Dollars ($1,763,000.00) (less any Fire Development Fees previously paid and the value of the Fire Site, if located on the Property) as a capital contribution into the Fire Fund to be utilized by the City to construct and equip the Fire facility on the Fire Site, and Owner shall receive credits against Fire Development Fees for such payment. The City shall begin construction of the necessary facilities on the Fire Site promptly upon City's receipt of Owner's payment of the One Million Seven Hundred and Sixty Three and 00/100 Dollars ($1,763,000.00) into the Fire Fund less any credits for the conveyance of the Fire Site, if made, or for Fire Development Fees previously paid for the Property.

3. **Number of Acres**. It is specifically acknowledged that Owner's obligation as to the Fire Site is limited to two (2) acres for a Fire Site if located on the Property, and its capital contribution to the fire facilities is One Million Seven Hundred and Sixty Three and 00/100 Dollars ($1,763,000.00), less any credits for the conveyance of the Fire Site, if made, or for Fire Development Fees previously paid for the Property. Owner acknowledges that the City may elect to combine the Police Site and Fire Site.

4. **Location**. The Fire Site shall be located as shown on the Conceptual Land Use Master Plan, or as otherwise mutually agreed in order to primarily provide fire and other municipal services to residents and others located upon the Property in an efficient manner. It is further agreed that the City may choose to combine this Fire Site with the dedications from the Owner for the Police Site and other public infrastructure, and also may combine the Owner's dedications and payments with those from adjacent landowners/developers to maximize utilization of resources. The City and Owner may mutually agree as to a relocation of such Fire Site and Police Site. Such a selection may delay or reduce the need for the total acreage reserved.

5. **Development Fees**. All Fire Development Fees collected as hereafter provided shall

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

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

C. **Park Sites.**

1. **Acreage/Time of Transfer**. Owner shall transfer to City up to 53.6 acres based upon ultimate density figures for parks at locations as shown on the Concept Plan or as otherwise agreed upon to be utilized solely as park sites ("Park Sites"). A formula of one (1) acre of park site for each 125 Residential Dwelling Units shall be used to determine the total number of acres of Park Sites to be transferred by Owner to City. The 53.6 acres referenced above reflects the application of this formula to the Presumed Density of 6,700 units, and the actual density as is eventually master planned for the Property shall result in the total acreage for parks being adjusted upward or downward, as applicable. The Park Sites shall be transferred to the City at such time after the one-thousandth (1,000th) residential certificate of occupancy is issued and prior to the twelve hundredth (1,200th) residential certificate of occupancy being issued on the Property. The Owner shall receive a credit against Park Development Fees in the amount of Thirty Thousand and 00/100 Dollars

($30,000.00) per acre of the Park Sites, as adjusted by the Adjustment Factor from the date of such conveyance until such credits are utilized ("Park Value").

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

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

4. **Construction by Owner**. In the event that the Owner shall choose, at its exclusive option, to construct park improvements on one or more of the Park Sites prior to the date that the City can make such park improvements on the Park Sites, then the City shall make its design requirements for such park improvements available to the Owner, and the Owner may submit a design/permitting proposal in accordance with such design requirements. Upon the City's reasonable

review and approval of such design and costs to construct such improvements, the City agrees that the Owner shall have the right to construct such park improvements on one or more of the Park Sites, whereupon the City shall make available all funds in the Park Fund, and, to the extent of any such approved costs or expenses incurred by Owner which are not reimbursed from funds in the Park Fund, then the Owner would be entitled to a credit for all such costs and expenses incurred by the Owner, plus an Adjustment Factor on such sums against Park Development Fees which are owed pursuant to this Agreement.

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

D. School Sites.

1. **Acreage/Time of Acquisition**. The Owner and the City acknowledge that all School Development Fees shall be collected and placed in a segregated interest bearing account ("School Fund") to be utilized for the acquisition of up to a total of 53.6 acres based upon Presumed Density figures for public school site(s) to be selected by mutual agreement of the Owner and City ("School Sites") at a purchase price of Thirty Thousand Dollars ($30,000) per acre ("School Price"), which School Site(s) shall be utilized as neighborhood school sites serving the Property and the surrounding area. The School Site(s) shall be located as shown on the Conceptual Master Plan, or as otherwise mutually agreed, in order to provide services to residents and others located upon the Property in an efficient manner. It is further agreed that the City may choose to combine the Owner's dedications and payments with those from adjacent landowners/developers to maximize utilization of resources. The formula of one (1) acre of School Site for each 125 Residential Dwelling Units in the Presumed Density shall be used to determine the total number of acres of School Sites to be

transferred by Owner to City. The 53.6 acres referenced above reflects the application of such formula to the base density, and such actual density as is eventually master planned shall adjust the total either upward or downward, as applicable. The City may obtain school sites in phases from the total acreage reserved at any time after execution of this Agreement, and shall be required to purchase the School Site(s) on or before 90 days after the four thousand five hundredth (4,500th) residential certificate of occupancy is issued and notice from the Owner to the City of the approaching threshold for exercising the option with respect to the Property is given, provided the total number of acres required based on the total density as master planned is available at that time. If not available, the City may extend its time to exercise such option until the 90th day after the total density is established, and notice from the Owner 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 Site(s) pursuant to the terms of this paragraph, the City shall no longer have the right to acquire such School Site(s), and such sites which are not timely acquired may then be utilized for and all purposes permitted under the Zoning Regulations, free and clear of any rights of the City to acquire such sites.

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

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

E. **No Other Dedications.** Except with respect to the dedications and/or conveyances of the properties referred to in Article X(B), Article XI subsections A through D, inclusive, and Exhibit E, no other dedications or conveyances of lands for public facilities shall be required in connection with the development of the Property.

F. **Administrative Charges for Professional Assistance and Interim Services.** Owner and Hardeeville agree that certain cost may be incurred early in the development, or pre-development process, making it difficult for Hardeeville to provide the necessary funds for professional services and interim government services prior to actual development and the eventual collection of funds through property taxes and other sources provided hereunder. Owner hereby agrees that an Administrative and Services Fee shall be paid to Hardeeville, based upon a charge of $105.00 per residential unit for an ultimate total of $703,500.00. This fee is payable at the time that residential density assigned to acreage is transferred by Owner to a Secondary Developer, or at the time of Master Plan approval for any portion of the Property developed by Owner or a related entity. Alternatively, a fee based upon bulk acreage transfers (rather than residential units) may be paid, based upon $404.00 per upland acre (1,740 total upland acres, or $268.00 per gross acre including wetlands). Election of which methodology is selected by Owner must be made prior to the transfer of any pf the property by the Owner. In any event, Owner will guarantee that at least a minimum of $140,700.00 per year, cumulatively, shall be paid to City by June 1, 2007, and each June 1st thereafter, until paid in full. If total payments of $703,500.00 have not been made by June 1, 2011, remaining payments 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.

The City agrees to utilize its best efforts to attract and retain qualified personnel to staff the positions funded by this contribution. The City agrees that all submissions for governmental approvals with respect to the Property shall be expeditiously processed, in accordance with MZDO procedures as modified by the PDD for this Project. The City shall maintain personnel qualified to review plans and plats.

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

H. **Development Fees.**

1. **Fee Chart**. To assist the City in meeting expenses resulting from ongoing development, upon application for a building permit from the City for any portion of the Property, each Builder shall pay Development Fees for Road, Police, Fire, School, Library and Parks ("Development Fees") (which shall be adjusted by the Additional Adjustment Factor (if the Term is extended) on the first day of the 21st year of the Term), as set forth in the table below. The Development Fees set forth below are based upon 2005 figures. The Development Fee amounts (including Exhibit F) were increased by the annual 3% Adjustment Factor effective July 1, 2006 and shall increase henceforth per annum.

DEVELOPMENT FEES	AMOUNT
Commercial and Retail Space	See **Exhibit G** attached hereto and made a part hereof.
Residential Dwelling Units	$4,295 plus the Adjustment Factor per unit – Road* [$2315 is for internal, on-site or nearsite roads; $1980 is for external, off-site roads] $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	$3,006 plus the Adjustment Factor per unit – Road*[$1620 is for internal, on-site or nearsite roads; $1386 is for external, off-site roads]$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

a. ***Internal, On-Site Road Development Fees**. All Development Fees collected under the category of Roads, Internal, as set forth in the table above, shall be for the construction and/or maintenance of the roads designated on the Conceptual Master Plan as Road A, Road B, and Frontage Road, and such roads as are fully described in Paragraphs X (B)(2)(3) and (4) above and in Exhibit E hereto. Notwithstanding anything contained herein to the contrary, in the event that (i)the Owner and the City jointly agree to the construction of these road components by use of funds from assessments imposed upon the Property; (ii) the City consents to the creation of a special taxing or municipal improvement district; (iii) the City is able to obtain bond financing which is non-recourse as to the City; and (iv) suitable arrangements are made with the City to guarantee completion of the infrastructure with respect to raising proceeds to construct such Main Road, then the Owner shall notify the City prior to the sale of the first Residential Dwelling Unit from the Property ("Road Assessment Notice"), whereupon the City shall take such action as necessary to implement a municipal improvement district or special assessment taxing district with respect to the Property to provide up to Seven Million Two Hundred Twenty-Two Thousand Five Hundred and 00/100 Dollars ($7,222,500.00) of principal proceeds, or such greater amount as then current, definitive plans indicate to be necessary to complete the Road Components, which monies shall be made available to design, permit and construct such Road components. Upon obtaining such funding (which may be in phases), the City shall cause the design, permitting and construction of the Road components (or phased portions of the Road components, as may be the case). Nothing herein shall preclude the submission of a design/build proposal by the Owner which complies with the

procurement requirements of the City. Upon the creation of the District, issuance of bonds and funding, the Road Development Fees with respect to (A) commercial and retail space shall be as set forth in Exhibit G attached hereto; (B) single family residential dwelling units shall be reduced from Four Thousand Three Hundred Eighty and 00/100 Dollars ($4,380.00) per residential units for Roads to One Thousand Nine Hundred Eighty and 00/100 Dollars ($1,980.00) per residential unit for Roads, and (C) multi-family residential dwelling units shall be reduced from Three Thousand Forty-Six and 00/100 Dollars ($3,046.00) per unit to One Thousand Three Hundred Eighty-Six and 00/100 Dollars ($1,386.00) per multi-family unit. Notwithstanding the above, Owner may begin construction of the Spine Road prior to the creation of the municipal improvement district, and if the municipal improvement district is created, Owner shall be reimbursed for any qualifying funds previously expended by Owner in the construction of the Main Road

b. ****Police**. In the event that prior to the sale of the first residential unit within the Project, (i) the Owner notifies the City that the Owner desires to impose a special assessment taxing district on the Property to raise One Million Seven Hundred Sixty-Three Thousand and 00/100 Dollars ($1,763,000.00) for payment of the Police Site and improvements and facilities related thereto, or for payment of the Police portion of the acquisition and improvements to a combined Police/Fire site ("Police Assessment Notice"), (ii) the City consents to the creation of a special taxing or municipal improvement district; (iii) the City is able to obtain bond financing which is non-recourse as to the City; and (iv) suitable arrangements are made with the City to guarantee completion of the infrastructure with respect to raising proceeds to construct, then upon delivery to the City of the Police Assessment Notice, the City shall take such action as is reasonably necessary to implement a municipal improvement district or special assessment taxing district to enable the City to obtain One Million Seven Hundred Sixty-Three Thousand and 00/100 Dollars ($1,763,000.00) of principal proceeds, which monies shall be made available for the design, permitting and construction of the facility on the Police Site, or for the police portion of improvements to a combined Police/Fire site. Upon obtaining such funding, the City shall cause the design, permitting and construction of the facility. Nothing herein shall preclude the submission of a design/build proposal by the Owner which complies with the procurement requirements of the City.

Upon the funding of the One Million Seven Hundred Sixty-Three Thousand and 00/100 Dollars ($1,763,000.00) for the Fire Facility, or combined Police Fire Facility, no Fire Development Fees shall be payable with respect to the issuance of building permits as provided in this Section XI.J and the City shall retain One Million Seven Hundred Sixty-Three Thousand and 00/100 Dollars ($1,763,000.00) of such proceeds received by creating such municipal improvement district or special assessment district as payment in full for all Police Development Fees for the Presumed Density with respect to the Property to improve and equip the police facility on the Police Site, or for the police portion of improvements to a combined Police/Fire site, and simultaneous with receipt of such sums, the City shall pay to Owner at the rate of Thirty Thousand and 00/100 Dollars ($30,000.00) per acre an amount equal to the acreage occupied by the police facility on the Police Site or the police portion of a combined Police/Fire site.

c. ***__Fire__. In the event that prior to the sale of the first residential unit within the Project, (i) the Owner notifies the City that the Owner desires to impose a special assessment taxing district on the Property to raise One Million Seven Hundred Sixty-Three Thousand and 00/100 Dollars ($1,763,000.00) for payment of the Fire Site and improvements and facilities related thereto or for payment of the fire portion of the acquisition and improvements to a combined Police/Fire site ("Fire Assessment Notice"), (ii) the City consents to the creation of a special taxing or municipal improvement district; (iii) the City is able to obtain bond financing which is non-recourse as to the City; and (iv) suitable arrangements are made with the City to guarantee completion of the infrastructure with respect to raising proceeds to construct the facility, then the City shall take such action as is reasonably necessary to implement a municipal improvement district or special assessment taxing district to enable the City to obtain One Million Seven Hundred Sixty-Three Thousand and 00/100 Dollars ($1,763,000.00) of principal proceeds, which monies shall be made available for the design, permitting and construction of the facility on the Fire Site, or for the Fire portion of improvements to a combined Police/Fire site. Upon obtaining such funding, the City shall cause the design, permitting and construction of the facility. Nothing herein shall preclude the submission of a design/build proposal by the Owner which complies with the procurement requirements of the City. Upon the funding of the One Million Seven Hundred Sixty-Three

Thousand and 00/100 Dollars ($1,763,000.00) for the Fire Facility, or combined Police/Fire facility, no Fire Development Fees shall be payable with respect to the issuance of building permits as provided in this Section XI.J and the City shall retain One Million Seven Hundred Sixty-Three Thousand and 00/100 Dollars ($1,763,000.00) of such proceeds received by creating such municipal improvement district or special assessment district payment in full for Fire Development Fees for the Presumed Density with respect to the Property, and simultaneous with receipt of such sums, the City shall pay to Owner at the rate of Thirty Thousand and 00/100 Dollars ($30,000.00) per acre an amount equal to the acreage occupied by the fire facility on the Fire Site or the fire portion of a combined Police/Fire site.

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

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

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

or obligations similar in nature to those contemplated by this Agreement, the affected Owner, Secondary Developer, or Builder shall be entitled to an offset against the Development Fees of this Agreement the amount of such fees or obligations which are collected. 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.

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

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

7. **Special Tax District**. 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. It is acknowledged that at the written election of Owner and a Secondary Developer, either 1), a collective municipal improvement district and/or special taxing district for such of the Property as they designate; 2), two separate districts which include properties designated by Owner and a Secondary Developer; or 3), a collective district which issues bonds in series and applies differing assessment rates may be implemented with the consent of the City for the Property as set forth in this Agreement and the Partial Assignment and Assumption of Rights and Obligations under development Agreement attached hereto as Exhibit H.

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

9. **Fees for Review of Agreement and PDD**. Owner agrees to pay the costs and expenses of the City for consultants and professionals incurred in negotiating, processing and evaluating this Agreement and the accompanying PDD, not to exceed $75,000.00.. City will provide sufficient documentation of these charges. Owner 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 an Adjacent Owner owns adjacent real property known as the Anderson Tract, which id subject to a Development Agreement with the City, and contemplates acquiring other adjacent real property known as the Karrh Tract in Jasper County, South Carolina, which may be subjected to a Development Agreement.

2. **Combination of Fees//Sites**. Recognizing the potential interconnectivity of the Property and the adjacent Karrh and Morgan Tracts, 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 Anderson and Karrh Tracts, so as to meet similar needs of all three 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 Anderson, Karrh and Morgan Tracts to better meet their combined needs, the City and Owner agree to negotiate in good faith with the Owner/Developers of the other tracts for the joint use of such Development Fees and land dedications among the Anderson Tract, Karrh Tract, and Morgan Tract to more efficiently meet the collective needs of the properties.

XII. PERMITTING PROCEDURES:

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

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

C. Timing of Reviews. The City agrees to review all land use changes, land development applications, and plats in an expeditious manner in accordance with the MZDO as modified by the PDD for this Project. Owner and/or Secondary Developers may submit these items for concurrent review with the City and other governmental authorities. City may give final approval to any submission, but will not grant authorization to record plats or begin development construction activities until all permitting agencies have completed their reviews.

D. Signage. Signage for the Project is governed by the provisions of the PDD.

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

F. Bond for Plat Recording. The City agrees to allow final subdivision 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 as modified by the PDD for this Property.

G. No Additional Development Obligations. The City agrees that the Property is

approved and fully vested for intensity, density, development fees, uses and height, and shall not have any obligations for on or off site transportation or other facilities or improvements other than as provided in this Agreement and its Attachments or Exhibits, but must adhere to then current PDD, subdivision plat, and development plan procedural guidelines in accordance with the then current MZDO. The City may not impose additional development obligations or regulations in connection with the ownership or development of the Property, except in accordance with the procedures and provisions of § 6-31-80 (B) of the Act, which the Owner shall have the right to challenge.

H. Roadway Drainage. 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. Roadway cross sections utilizing swale drainage will be designed, constructed, and maintained to meet BMP standards (imposed by regulatory agencies) for storm-water quality. Roadway cross sections will be submitted for approval at time of proposed construction of such Roadway based upon engineering and planning standards consistent with the Master Plan submissions approved by the City Council.

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

XIII. DEVELOPER ENTITLEMENTS.

City acknowledges that Developer is vested with the following items:

A. Water and Sewer Capacity. The City agrees to sell water and sewer capacity to the Owner and Secondary Developers at the current city rates, as provided under the City/BJWSA Agreement, as shall be more particularly detailed in water and sewer agreements that may be entered into by the Owner and/or Secondary Developers with BJWSA plus a Two Hundred Fifty Dollar ($250) administration fee (due at time of purchase or reservation of capacity), so long as such is available. The Owner or Secondary Developer shall each have the right to assign any of its water and

sewer capacity which it has acquired to third parties and collect administration fees in connection therewith in accordance with Section 5.6 of the City/BJWSA Agreement. The administrative fee is payable at the time BJWSA issues its capacity certificate acknowledging payment of its fees.

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

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

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

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

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

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

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

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

XIV. COMPLIANCE REVIEWS.

As long as Owner owns any of the Property, Owner or its designee, shall meet with the City, or its designee, at least once, per year, during the Term to review Development completed by Owner in the prior year and the Development anticipated to be commenced or completed by Owner in the ensuing year. The Owner, or its designee, shall provide such information as may reasonably be requested, to include but not be limited to, acreage of the Property sold in the prior year, acreage of the Property under contract, 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 Owner, or its designee, shall be

required to compile this information within a reasonable time after written request by the City.

XV. DEFAULTS.

The failure of the Owner, Secondary Developer or the City to comply with the terms of this Agreement not cured within fifteen (15) days after written notice from the non-defaulting party to the defaulting party (as such time period may be extended with regard to non-monetary breaches 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 Owner and any relevant Secondary Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided any such termination shall be limited to the portion of the Property in default, and provided further that nothing herein shall be deemed or construed to preclude the City or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Zoning Regulations or this Agreement. A default as to construction of the Spine Road is a default hereunder, and Owner and Secondary Developers will have to cure such default. Notwithstanding issues dealing with the construction of the Spine Road ,a default of the Owner shall not constitute a default by Secondary Developers, and default by Secondary Developers shall not constitute a default by the Owner. The parties acknowledge that individual residents and owners of completed buildings within the Project shall not be obligated for the obligations of the Owner or Secondary Developer set forth in this Agreement.

XVI. MODIFICATION OF AGREEMENT.

This Agreement may be modified or amended as to a portion of the Property only by the written agreement of the City and the Owner of said portion of the Property. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge,

terminate, or effect an abandonment of this Agreement in whole or in part unless such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

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

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

City Administrator
City of Hardeeville, SC
205 East Main Street
Post Office Box 609
Hardeeville, South Carolina 29927

And to the Owner:

MFM Properties, LLC
c/o John F. Morgan
Suite 202, Waters Edge
19 Shelter Cove Lane
Hilton Head Island, South Carolina 29928

MFM Properties, LLC
c/o James H. Morgan, Jr.
Smith, Gambrell & Russell, LLP
Suite 3100, Promenade II
1230 Peachtree St. N.E.
Atlanta, Georgia 30309-3592

With Copy To:

McNair Law Firm, PA
Suite 400, 23-B Shelter Cove Lane
Hilton Head Island, South Carolina 29928
Attention: Cary S. Griffin

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 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 and/or Secondary Developer shall not forfeit its right to just compensation for any violation by City of Owner's or Secondary 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 Secondary Developer(s) and the City shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the City may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner, Secondary Developers and the City each shall have the right to challenge the New Law preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

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

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

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

the amendments,

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

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

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

D. No Partnership or Joint Venture. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the City, the Owner or any Secondary Developer or to render such party liable in any manner for the debts or obligations of another party.

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

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

G. Assignment. No sale, transfer or assignment of all portion of the Property, or

creation of a joint venture or partnership, shall require the amendment of this Agreement.

H. Right to Assign. Owner shall have the right to sell, transfer, ground lease, or assign Development Rights associated with the Property in whole or in part to any Person (an "Assignee") upon written notice to the City in accordance with the notification provisions of Section V(A) 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, Owner shall (i) notify City in writing of such sale, transfer, or ground lease, and (ii) Owner and Assignee shall provide a written assignment and assumption agreement in form reasonable acceptable to the City pursuant to which the Assignee shall assume and succeed to the rights, duties, and obligations of Owner with respect to the parcel or parcels of all or a portion of the Property so purchased, acquired, or leased. Owner shall continue to be obligated under this Agreement with respect to all portions of the Property retained by Owner. Owner shall also remain obligated with respect to the dedication and installation of all associated infrastructure improvements regarding Spine Road and the other public infrastructure to be provided by Owner under this Agreement, unless a Municipal Improvement District or special assessment district providing for the construction of such has been created and funded. A default as to construction of Spine Road, its associated infrastructure or other public infrastructure is a default hereunder, and Owner shall have to cure such default, unless it shall have been explicitly released from responsibility for such in whole or in part by resolution of City Council. It is expressly acknowledged that Owner intends to assign certain rights and obligations for public infrastructure to Secondary Developers, and the form of Partial Assignment of Rights and Obligations Under Development Agreement attached as Exhibit H is accepted and approved by the City as being effective to transfer the obligations and rights as set forth therein, with Owner released from those responsibilities enumerated, if, and only if, Hardeeville City Council approves any such Owner release in the future, based upon the financial ability of the proposed Assignee to perform such obligations, which approval shall not be unreasonably withheld.

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 Owner and Secondary Developers. No other persons shall have any rights hereunder.

M. Tax Status of Real Property. Notwithstanding any provision hereof or of the PDD to the contrary, and to the extent allowed by statute, the Parties hereto agree that the present classification of the entire Property for real estate tax purposes shall continue indefinitely as Agriculture/Silviculture until the Property, or any portion of such Property, is committed to a different use by the then Owner of such Property. The change in use status for real estate tax purposes shall apply only to the portion of the Property for which actual change in use occurs, and not to any remaining portion for which actual use has not changed. The approval and filing of a plat or plats for the transfer of title only, and the subsequent transfer of title, to all or a portion of the Property, shall not be considered a change in use for these purposes, unless such plat(s) is submitted and approved as a residential or commercial subdivision plat under the Zoning Regulations.

Furthermore, the commencement of development activity on any portion of the Property, pursuant to a development approval under the Zoning Regulations, shall be considered a change in use as to the Property which is submitted to final development approval only, and not to the balance of the Property. For these tax status purposes, the obtaining of a Conceptual Master Plan approval or Master Plan approval shall not be considered a change in use. These principles shall govern the issue of when a change in use occurs for tax purposes under the laws of the City, and the parties agree that these same principles are the correct principles to define any future change in use under Jasper County law as well, and the parties will cooperate to ensure such an interpretation by Jasper County.

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 ser 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 A** attached hereto. The present legal Owner of the Property is MFM Properties, LLC.

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 Zoning Regulations, as supplemented by this Agreement. Based on prior experience with the type of Development contemplated by the Zoning

Regulations, it is estimated that the average size household of the Property will be 2.2 persons. Based on maximum density build out, the population density of the Property is anticipated to be no more than 14,740 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 X, XI, and Exhibit E herein. 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 Owner, its successors and assign, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions, unless otherwise provided hereunder.

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 the date first above written.

SIGNATURES BEGIN ON FOLLOWING PAGE

WITNESSES:

MFM Properties, LLC

By:

Its: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 21st day of Dec, 2006, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared the duly authorized official of MFM Properties, LLC., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, 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: March 30, 2014

SIGNATURES AND ACKNOWLEDGMENTS CONTINUE ON THE FOLLOWING PAGE

WITNESSES:

HARDEEVILLE, SOUTH CAROLINA

By: _____
Rodney C. Cannon, Mayor

Attest: _____
Cynthia Thompson, Clerk to Council

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF JASPER)

I HEREBY CERTIFY, that on this 22nd day of Dec, 2006, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Rodney C. Cannon, Mayor, and Cynthia Thompson, Clerk to Council, 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: March 30, 2014

EXHIBIT A

TO DEVELOPMENT AGREEMENT

PROPERTY DESCRIPTION OF MORGAN TRACT

Parcel 2 & the Remaining Portion of Parcel 2A New River Plantation
Property Description
(Attached)

Being all those certain pieces, parcels, or tracts of land located in the City of Hardeeville, Jasper County, South Carolina, containing 2632.32 acres, and being more particularly described as:

Parcel 2 (516.78 acres) and the remaining portion of Parcel 2A (2115.54 acres) as shown on ("Plat") dated December 20, 2005, entitled "A Boundary Plat of Parcel 2 and the remaining portion of Parcel 2A New River Plantation" prepared by Thomas & Hutton Engineering Co., and certified by Wright C. Powers, Jr. SCPLS No. 19895, being recorded in the Office of the Clerk of Court for Jasper County in Plat Book 28 at Page 120.

For more complete description as to the metes, bounds and distances, reference may be had to said plat.

EXHIBIT B

TO DEVELOPMENT AGREEMENT

PLANNED DEVELOPMENT DISTRICT

The Planned Development District approval for the Morgan Tract (the Property hereunder), as approved by the City Council on November 16, 2006, 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 C

TO DEVELOPMENT AGREEMENT

Zoning Regulations

The Municipal Zoning and Development Ordinance of the City of Hardeeville, as codified through Supplement 24 and enacted and on file with the City Clerk as the date of this Agreement.

The Planned Development District (PDD) Conceptual Master Plan adopted by the City of Hardeeville on November 16, 2006 by Ordinance Number 2006-9-7D.

EXHIBIT D

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 Owner as the development evolves over the term:

Year(s) of Commencement / Completion

Type of Development	2006 - 2010	2011 - 2015	2021 - 2020	2021 - 2025
Commercial	400,000 SF	600,000SF	800,000SF	760,000SF
Residential, Single Family	800 units	2,800 units	1,700 units	400 units

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.

C. Road "A" and its associated intersection and transportation system mitigation improvements may be constructed in phases in a manner which is consistent with the conclusions and design/construction requirements resulting from the preparation of the traffic impact assessment. Each phase of Road "A" and its associated transportation system mitigation improvements will be designed to adequately manage the projected traffic loadings resulting from the phased development of the Project. Completion of the entirety of the initial two lanes of Road "A" is required by issuance of the 1,500th certificate of occupancy, or such earlier time as may be determined through the preparation of the comprehensive traffic impact assessment. The objective of the proposed improvements as a function of development construction (commercial and residential) and occupancy is to maintain acceptable Levels of Service on the transportation system, including segments and intersections. The adequacy of Road "A" and its associated intersection and transportation system mitigation improvements, including, but not limited to geometrics, capacity, operations, safety and context sensitivity will be demonstrated at each Master Plan submission to the satisfaction of the City and approved by Council.

2. ROAD "B"

A. Road "B" will extend from the southern terminus of Road "A" in a southwesterly direction terminating at SC 46, as more generally shown on the Conceptual Master Plan map included in the PDD. Estimated Cost is $2.5 million. It is assumed for the purposes of this Development Agreement that Road "B" will consist of, at a minimum, two twelve foot wide lanes with turn lanes, shoulders and intersection improvements as needed to provide access to between Road "A" and SC46. Road "B" will be initially classified as a Suburban/Urban Arterial (minor) as defined in the May 2003 South Carolina Department of Transportation Highway Design Manual; it may be reclassified upon completion of the traffic impact assessment.

B. The estimation of projected traffic loadings, the sequencing of constructed improvements, the analysis of significant impacts and the adequacy of the design of Road "B" will be fully quantified and validated prior to each Master Plan submission and approval. This inventory and analysis of conditions will be assessed and documented through the preparation of a comprehensive traffic impact assessment by a qualified professional in accordance with the City of Hardeeville's Traffic Impact Assessment Requirements (a copy of the Traffic Impact Assessment Requirements is attached hereto as part of this Exhibit). The Traffic Impact Assessment (TIA) will evaluate the adequacy of the transportation system to serve the proposed development and determine the expected effects of the proposed development on the transportation system. The format, content and breadth of scope of the traffic impact assessment will be in accordance with the Traffic Impact Assessment Requirements and will assess, at a minimum, the facility performance and operational characteristics based upon industry-accepted measures which include, but are not limited to Levels of Service, Volume/Capacity ratios and Control Delay. The traffic impact assessment will document and assess existing traffic volumes, forecast volumes, trip generations, trip distributions and assignments.

C. Road "B" and its associated intersection and transportation system mitigation improvements may be constructed in phases in a manner which is consistent with the conclusions and design/construction requirements resulting from the preparation of the traffic impact assessment. Each phase of Road "B" and its associated transportation system mitigation improvements will be designed to adequately manage the projected traffic loadings resulting from the phased development of the Project. Completion of the entirety of the initial two land design of Road "B" is required by issuance of the 2,500th certificate of occupancy, or such earlier time as may be determined through the preparation of the comprehensive traffic impact assessment. The objective of the proposed improvements as a function of development construction (commercial and residential) and occupancy is to maintain acceptable Levels of Service on the transportation system, including segments and intersections. The adequacy of Road "B" and its associated intersection and transportation system mitigation improvements, including, but not limited to geometrics, capacity, operations, safety and context sensitivity will be demonstrated at each Master Plan submission to the satisfaction of the City and approved by Council.

3. FINAL DESIGN OF ROAD "A" AND ROAD "B"

A. At the discretion of the City, but no later than the issuance of the 2,500th certificate of occupancy, the initial traffic impact assessments will be updated by the Owner. The purpose of this update to the traffic impact assessments is to determine the extent of Road "A" and Road "B" and their associated intersection and transportation system mitigation improvements that will be required to maintain acceptable Levels of Service. These Road "A" and Road "B" improvements are to be constructed in a manner which is consistent with the conclusions and design/construction requirements resulting from the preparation of the updated traffic impact assessment.

B. The estimation of projected traffic loadings, the sequencing of constructed improvements, the analysis of significant impacts and the adequacy of Road "A" and Road "B" will be fully quantified and validated prior to further Master or Development Plan submission and approval. The updated traffic impact assessment will be prepared by a qualified professional in accordance with the City of Hardeeville's Traffic Impact Assessment Requirements. The updated traffic impact assessment will evaluate the adequacy of the existing transportation system to serve the proposed development, determine the expected effects of the proposed development on the transportation system and the resulting design/construction requirements. The format, content and breadth of scope of the traffic impact assessment will be in accordance with the Traffic Impact Assessment Requirements and will assess, at a minimum, the facility performance and operational characteristics based upon industry-accepted measures which include, but are not limited to Levels of Service, Volume/Capacity ratios and Control Delay. The traffic impact study will document and assess existing traffic volumes, forecast volumes, trip generations, trip distributions and assignments.

C. Since the completion and joinder of Road "A" and Road "B" will result in external (vehicle trips not coming from or going to development sites within the Property) traffic using the roads in addition to internal (vehicle trips coming from or going to development sites within the Property) traffic within the PDD, the City agrees to be responsible for an equitable portion of the

EXHIBIT E

TO DEVELOPMENT AGREEMENT

ROAD AND IMPROVEMENT DESCRIPTIONS, ESTIMATED COST AND SCHEDULING

1. ROAD "A"

A. Road "A" begins at and includes the easternmost full access intersection for the Morgan Tract on US Highway 278, as provided for in the US 278 Corridor Access Management Plan, and extends south terminating at the proposed route of the future Hardeeville/Bluffton Connector (Highway 278A), as more generally shown on the Conceptual Master Plan map included in the PDD. Estimated Cost is $6.3 million for two lanes; $ 15 Million for a completed 4-lane roadway with divided median, turn lanes, shoulders and connecting sidewalks and pathways. It is assumed for the purposes of this Development Agreement that Road "A" will consist of, at a minimum, two twelve foot wide lanes with turn lanes and shoulders and intersection improvements as needed to provide access to the Morgan Tract, until such time as a traffic impact assessment as provided below is completed. Road "A" will be initially classified as a Suburban/Urban Arterial (minor) as defined in the May 2003 South Carolina Department of Transportation Highway Design Manual; it may be reclassified upon completion of the traffic assessment.

B. The estimation of projected traffic loadings, the sequencing of constructed improvements, the analysis of significant impacts and the adequacy of the design of Road "A" will be fully quantified and validated prior to Master Plan submission and approval. This inventory and analysis of conditions and improvements will be assessed and documented through the preparation of a comprehensive traffic impact assessment by a qualified professional in accordance with the City of Hardeeville's Traffic Impact Assessment Requirements (a copy of the Traffic Impact Assessment Requirements is attached hereto as part of this Exhibit). The Traffic Impact Assessment (TIA) will evaluate the adequacy of the transportation system to serve the proposed development and determine the expected effects of the proposed development on the transportation system. The format, content and breadth of scope of the traffic impact assessment will be in accordance with the Traffic Impact Assessment Requirements and will assess, at a minimum, the facility performance and operational characteristics based upon industry-accepted measures which include, but are not limited to Levels of Service, Volume/Capacity ratios and Control Delay. The traffic impact assessment will document and assess existing traffic volumes, forecast volumes, trip generations, trip distributions and assignments.

improvements to Road "A" and Road "B" attributable to the additional external traffic demand as determined by the City based upon allocation of capacity. Upon assignment of funding responsibilities for the pro-rata shares of Road "A" and Road "B" improvements, permitting and construction for the required improvements to Road "B" and Road "A" will commence at that time. Completion of the entirety of the final configuration of Road "A" is required by issuance of the 4,000th certificate of occupancy, and completion of the entirety of the final configuration of Road "B" by the 5,000th certificate of occupancy, or such earlier times as are determined through the preparation of the updated traffic impact assessment. The objective of the proposed improvements as a function of development construction (commercial and residential) and occupancy is to maintain acceptable Levels of Service on the transportation system, including segments and intersections. Adequacy of Road "A" and Road "B", including but not limited to geometrics, capacity, operations, safety and context sensitivity will be demonstrated at each Master Plan submission to the satisfaction of the City and approved by Council.

4. US 278 FRONTAGE ROAD

A. The US 278 Frontage Road begins at and includes its intersection with Road "A" on the east and extends to the west terminating at SC 141, as more generally shown on the Conceptual Master Plan included in the PDD. Estimated Cost is $4.3 million for the two lanes described below; $ 5 Million for a completed 4-lane roadway with divided median, turn lanes, shoulders and connecting sidewalks and pathways. It is assumed for the purposes of this Development Agreement that the US 278 Frontage Road will consist of, at a minimum, two twelve foot wide lanes with turn lanes and shoulders as needed to provide access to the Morgan Tract, until such time as a traffic impact assessment as provided below is completed. The US 278 Frontage Road will be initially classified as a Suburban/Urban Collector as defined in the May 2003 South Carolina Department of Transportation Highway Design Manual; it may be reclassified upon completion of the traffic impact assessment.

B. The estimation of projected traffic loadings, the sequencing of constructed improvements, the analysis of significant impacts and the adequacy of the US 278 Frontage Road will be fully quantified and validated prior to Master Plan submission and approval. This inventory and analysis of conditions will be assessed and documented through the preparation of a comprehensive traffic impact assessment by a qualified professional in accordance with the City of Hardeeville's Traffic Impact Assessment Requirements (a copy of the Traffic Impact Assessment Requirements is attached hereto as part of this Exhibit). The traffic impact assessment will evaluate the adequacy of the transportation system to serve the proposed development and determine the expected effects of the proposed development on the transportation system. The format, content and breadth of scope of the traffic impact assessment will be in accordance with the Traffic Impact Assessment Requirements and will assess, at a minimum, the facility performance and operational characteristics based upon industry-accepted measures which include, but are not limited to Levels of Service, Volume/Capacity ratios and Control Delay. The traffic impact study will document and assess existing traffic volumes, forecast volumes, trip generations, trip distributions and assignments.

C. The US 278 Frontage Road and associated intersection and transportation system mitigation improvements may be constructed in phases in a manner which is consistent with the conclusions and design/construction requirements resulting from the preparation of the traffic impact assessment. Since the completion of the US 278 Frontage Road will result in external traffic (vehicle trips not coming from or going to development sites within the Property) using the roads in addition to internal traffic (vehicle trips coming from or going to development sites within the Property) within the PDD, the City be responsible for an equitable portion of the improvements to the US 278 Frontage Road to accommodate external traffic demand as determined by the City based upon an allocation of capacity. Completion of the entirety of the US 278 Frontage Road is required by the completion of 75% of Commercial Tract F and/or at least 50 % of Mixed Use Tract E and/or 50% of Mixed Use Tract F, or such earlier time as determined through the preparation of the comprehensive traffic impact assessment. The adequacy of the US 278 Frontage Road improvements and its associated intersection and transportation system improvements, including, but not limited to, geometrics, capacity, operations, safety and context sensitivity will be demonstrated at each Master Plan submission to the satisfaction of the City and approved by Council.

5. COMMERCIAL AND MIXED USE TRACT COLLECTOR ROAD SYSTEM

A. The Commercial and Mixed Use Tract Collector Road System will be constructed within these Tracts. Its primary function will be to distribute traffic within those tracts by providing connectivity to Road "A" and the US 278 Frontage Road. Estimated cost is $2.45 Million for the two lanes described below; $ 8 Million for a completed 4-lane roadway with divided median, turn lanes, shoulders and connecting sidewalks and pathways. It is assumed for the purposes of the Development Agreement that these roads will generally initially consist of two lanes with turn lanes and shoulders as needed to provide access to the development within the Commercial and Mixed Use Tracts, until such time as a traffic impact assessment as provided below is completed, it may be reclassified upon completion of the traffic impact assessment and may be constructed in a sequenced fashion.

B. The estimation of projected traffic loadings, the sequencing of constructed improvements, the analysis of significant impacts and the adequacy of the Commercial and Mixed Use Tract Collector Road System will be fully quantified and validated prior to Master Plan submission and approval. This inventory and analysis of conditions will be assessed and documented through the preparation of a comprehensive traffic impact assessment by a qualified professional in accordance with the City of Hardeeville's Traffic Impact Assessment Requirements (a copy of the Traffic Impact Assessment Requirements is attached hereto as part of this Exhibit). The traffic impact assessment will evaluate the adequacy of the transportation system to serve the proposed development and determine the expected effects of the proposed development on the transportation system. The format, content and breadth of scope of the traffic impact assessment will be in accordance with the Traffic Impact Assessment Requirements and will assess, at a minimum, the facility performance and operational characteristics based upon industry-accepted measures

which include, but are not limited to Levels of Service, Volume/Capacity ratios and Control Delay. The traffic impact study will document and assess existing traffic volumes, forecast volumes, trip generations, trip distributions and assignments.

C. The Commercial and Mixed Use Tract Collector Road System and associated intersection and transportation system mitigation improvements may be constructed in phases in a manner which is consistent with the conclusions and design/construction requirements resulting from the preparation of the traffic impact assessment. The adequacy of the Commercial and Mixed Use Tract Collector Road System improvements and its associated intersection and transportation system improvements, including, but not limited to, geometrics, capacity, operations, safety and context sensitivity will be demonstrated at each Master Plan submission to the satisfaction of the City and approved by Council.

6. ROAD "C"

A. Road "C" will become a portion of the future US 278A Connector within the Morgan Tract PDD, and its general location is shown on the Conceptual Master Plan of the PDD. The final location of Road "C" will be determined and reserved for public transportation purposes by mutual agreement between the Owner and City within one year of the execution of this Development Agreement, unless otherwise agreed. The 150 foot right of way for Road "C" will be dedicated to the City at such time as the Highway 278A Connector receives programming approval from the SCDOT or other appropriate governmental agency. Until such dedication occurs, the Owner shall have the right to use the right of way of Road C to service any development along Road C in accordance with the Master Plan covering such development area. Should the Owner make improvements to Road C prior to dedication of the US 278 A Connector, construction costs for such improvements shall be at the sole cost of the Owner. The City, County, SCDOT or other public entity, will be responsible for the construction of Road C not already constructed by the Owner, unless, in the alternative, such construction alleviates traffic impacts from within the Property which would otherwise require additional road improvements to prevent a Level of Service below C on the roads servicing the Property, in which event an equitable and proportionate division of expenses shall be made between Owner and the City, County, SCDOT or other public entity, based upon allocation of capacity. The Road C location may be altered in the future with the consent of Owner and City. Road "C" shall likewise be designed and constructed in accordance with the findings and results of a traffic impact assessment, in the same manner as for the US 278 Frontage Road.

7. FUNDING/MISCELLANEOUS

A. The City agrees to consider inclusion of the costs for these on-site and near-site improvements required as a result of the traffic impact assessments in a Municipal Improvement District, in the same manner as set forth in the Development Agreement in Section XI(H)(a). The City will also consider including in a Municipal Improvement District the various access points for Pine Arbor, Highway 46, and Highway 141 as set forth in the Development Agreement in Section

X(B). All required public road facility improvements not designated the responsibility of the Owner or determined to be the Owner's responsibility through a traffic impact assessment shall be the responsibility of the City of Hardeeville or other designated governmental entity.

B. Interconnectivity between the Morgan Tract and the adjacent Karrh and Anderson Tracts is important to reduce the placement of traffic on Highway 278 and Highway 46 from these developments, which have the potential to create unacceptable levels of service on these roads, even with the proposed improvements under this and other development agreements. In the event Highway 278A is not completed in a timely manner, or Highway 278 and/or 46 are adversely impacted, it may become necessary to provide alternate means of interconnection of these properties for access to commercial areas or as a function of traffic distribution. Owner agrees that it will cooperate in exploring potential alternative and supplemental connections, and City agrees to seek like cooperation from the other adjacent property owners. Where interconnection can be achieved, City agrees to consider an equitable apportionment of costs of construction of such interconnecting routes and resultant improvements to internal road systems, including a potential tax increment financing district with the County, a municipal improvement district, or other public funding mechanism.

EXHIBIT F

TO DEVELOPMENT AGREEMENT

Hardeeville Planning District Map

As depicted on attached Map "F", the Hardeeville Planning District encompasses the southern most areas of Jasper County.

EXHIBIT G
TO DEVELOPMENT AGREEMENT
COMMERCIAL FEES**

	Offsite Roads	Police	Fire	Park	Library	Schools	TOTAL
LAND USE TYPE							
GENERAL							
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
OFFICE							
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
RETAIL/COMMERCIAL							
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
INDUSTRIAL							
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.**

EXHIBIT H

TO DEVELOPMENT AGREEMENT

Partial Assignment of Rights and Obligations

DRAFT

STATE OF SOUTH CAROLINA	)	**PARTIAL ASSIGNMENT AND**
	)	**ASSUMPTION OF RIGHTS AND**
COUNTY OF JASPER	)	**OBLIGATIONS UNDER**
	)	**DEVELOPMENT AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT ("Partial Assignment and Assumption") is dated this _____ day of _____, 200_, by and between **MFM Properties, LLC**, a South Carolina Limited Liability Company ("Assignor"), _____, ("Assignee") and the **City of Hardeeville, South Carolina** ("City").

WHEREAS, on or about _____, 2006, MFM Properties, LLC and the City entered into a Development Agreement ("Development Agreement") with the City of Hardeeville, South Carolina, incident to the annexation and future development of certain real property generally known and described as the "Morgan Tract", which development Agreement was recorded in the Office of the Clerk of Court for Jasper County, South Carolina, in Book ____ at Page _____; and,

WHEREAS, on _____, 200_, Assignor and Assignee entered into an Agreement of Sale ("Agreement") providing for the sale by Assignor to Assignee of _____ acres ("Transferred Property") as described on Exhibit "A" attached hereto; and,

WHEREAS, the remaining balance of the original Property made subject to the Development Agreement, containing approximately _____ acres, and all development rights and obligations specifically associated therewith, is hereby presently retained by the Assignor ("Retained Property") as described in Exhibit "B" attached hereto; and,

WHEREAS, as an integral part of the conveyance of a portion of the original Property by Assignor to Assignee, it is the desire and intention of Assignor to assign to Assignee, and it is the desire and intention of Assignee to assume certain rights, privileges and obligations under the terms of the Development Agreement applicable to the Transferred Property, thus necessitating the preparation and execution of the within Partial Assignment and Assumption.

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 Development Agreement and Morgan Tract 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 Development Agreement and the Morgan Tract 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

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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 to pay fees set forth in the Development Agreement, includes:

i. the obligation to pay any and all Development Fees identified in Article XI (H) of the Development Agreement, as said Development Fees relate to the Retained Property only; and,

ii. the obligation of the Owner to comply with the terms of Article XI, Section F, concerning the payment of Administrative Charges, as said Administrative Charges relate to the Retained Property, only; and,

b. the obligations of Owner to construct and convey the US 278 Frontage Road, as said obligations are set forth in Article X (B)(4) and Exhibit E of the Development Agreement; provided, however, Assignee assumes the obligations to pay any and all Development Fees identified in Article XI(H) of the Development Agreement as they relate to the Transferred Property, and to pay any and all Administrative Charges related to the Transferred Property and the transfer of it by Assignor to Assignee, as said obligations are set forth in Article XI (F) of the Development Agreement.

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, Development Fees, of the Development Agreement, as they relate to the Transferred Property, other than as set forth in Paragraph 2(a)(i) and (ii) above; and

c. Assignee assumes a proportionate obligation of Owner to construct and/or convey

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Road A, Road B and Road C, as said obligations are set forth under Article X (B)(2) and (3), and Exhibit E, of the Development Agreement, in the amount of _____%; and

d. Assignee assumes a proportionate obligation of Owner to convey and construct, if applicable, the Police Site, the Fire Site, the Park Site, and the School Site(s), as said obligations are set forth under Article XI (A)(B)(C) and (D) 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

e. 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

f. 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

IV. 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 MFM Properties, LLC, 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, MFM Properties, LLC, or by Assignee, must be approved by City, consistent with the terms of the Development Agreement.

V. Default and Enforcement of Provisions. As provided in Paragraph 1 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.

VI. 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.

VII. Notices. Any notice, demand, request, consent, approval or communication among any of

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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:

With a required copy to:

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To Assignor:
MFM Properties, LLC
c/o John F. Morgan
Suite 202, Waters Edge
19 Shelter Cove Lane
Hilton Head Island, South Carolina 29928

MFM Properties, LLC
c/o James H. Morgan, Jr.
Smith, Gambrell & Russell, LLP
Suite 3100, Promenade II
1230 Peachtree St. N.E.
Atlanta, Georgia 30309-3592

With a required copy to:

McNair Law Firm, PA
Suite 400, 23-B Shelter Cove Lane
Hilton Head Island, South Carolina 29928
Attention: Cary S. Griffin

VIII. 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.

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

X. Reaffirmation of Terms. All other terms, conditions, rights and privileges contained in the Development Agreement not specifically referenced herein shall remain in full force and effect and binding upon the parties hereto and their successors and assigns.

SIGNATURES BEGIN ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have caused this Partial Assignment and Assumption to be duly executed as of the date set forth above.

Signed, sealed and delivered
in the presence of:

ASSIGNEE:

_____

By: DRAFT
Printed Name:
Its:

_____

By: DRAFT
Printed Name:
Its:

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF _____)

I, the undersigned Notary Public for South Carolina, do hereby certify that _____, as _____ of _____, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 200_.

DRAFT
Notary Public for South Carolina
My commission expires:

Signed, sealed and delivered
in the presence of:

ASSIGNOR:

MFM PROPERTIES, LLC, a South Carolina Limited Liability Company

By: John F. Morgan, Sr.
Printed Name:
Its:

By:
Printed name:
Its:

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned Notary Public for South Carolina, do hereby certify that John Morgan, as owner of MFM Properties, personally appeared before me this day and, in the presence of the two witnesses above named, acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 22nd day of December, 2006

Notary Public for South Carolina
My commission expires: March 30, 2014

FINAL TO COUNCIL FOR EXECUTION

ACKNOWLEDGED AND APPROVED:

Signed, sealed and delivered
in the presence of:

WITNESSES:

HARDEEVILLE, SOUTH CAROLINA

By: _____
Printed Name: Rodney Cannon
Mayor of Hardeeville

Attest: Cynthia Thompson
Printed Name: Cynthia Thompson
Clerk to Council

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF JASPER)

I HEREBY CERTIFY, that on this 22nd day of December, 2006 before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Rodney Cannon, and Cynthia Thompson known to me (or satisfactorily proven) to be the persons whose names are 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: March 30, 2014

FINAL TO COUNCIL FOR EXECUTION