

COUNTY COUNCIL OF BEAUFORT COUNTY

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AGENDA NATURAL RESOURCES COMMITTEE

Monday, March 3, 2014
2:00 p.m.
Executive Conference Room
Administration Building

Committee Members:

Brian Flewelling, Chairman
Cynthia Bensch, Vice Chairman
Gerald Dawson
William McBride
Jerry Stewart
Tabor Vaux
Laura Von Harten

Staff Support: Tony Criscitiello

1. CALL TO ORDER – 2:00 P.M.
2. TEXT AMENDMENT TO THE BEAUFORT COUNTY ZONING AND DEVELOPMENT STANDARDS ORDINANCE/ZDSO, ARTICLE V. USE REGULATIONS, SEC. 106-1287. COMMERCIAL RETAIL, REGIONAL (ADDS STANDARDS TO ALLOW ADAPTIVE RE-USE OF LIGHT INDUSTRIAL PROPERTIES), APPLICANT: DAVID TEDDER ([backup](#))
3. BLUFFTON GATE DEVELOPMENT AGREEMENT ([Development Agreement](#)) ([Blackline](#)) ([Exhibit B](#)) ([Exhibit C](#))
4. CHEROKEE FARMS DEVELOPMENT AGREEMENT / APPOINTMENT OF COMMITTEE ([backup](#))
5. DISCUSSION ON SOUTHERN BEAUFORT COUNTY MAP AMENDMENTS FOR R603-021-000-007B-0000, R603-021-000-007B-0000; R603-021-000-0195-0000; R603-021-000-0194-0000; R603-021-000-004A-0000; R603-021-000-06A-0000; R600-021-000-0075-0000; R600-021-000-002-0000 (7 PARCELS TOTALING 113+/- ACRES NORTH OF U.S. 278 AND WEST OF GRAVES ROAD); OWNERS/APPLICANTS: ROBERT GRAVES, JOHN GRAVES AND PAUL GRAVES ([backup](#))
 - A. Future Land Use Map Amendment from Community Commercial (approximately 21 acres fronting US 278) and Rural (for remainder of property) to Regional Commercial (approximately 65 acres front US 278) and Neighborhood Mixed-Use (approximately 48 acres at the rear of the properties);
 - B. Zoning Map Amendment / Rezoning Request from Rural with Transitional Overlay (approximately 33 acres fronting US 278) and Rural (80 acres of the remainder of the



properties) to Commercial Regional (approximately 65 acres fronting US 278) and Suburban (approximately 48 acres at the rear of the properties)

6. DISCUSSION REAPPOINTMENTS AND APPOINTMENTS

- A. Northern Corridor Review Board
- B. Rural and Critical Lands Preservation Review Board
- C. Southern Corridor Review Board
- D. Stormwater Management Utility Board

7. EXECUTIVE SESSION

- A. Discussion of negotiations incident to proposed contractual arrangements and proposed purchase of property

8. ADJOURNMENT



MEMORANDUM

To: Council Natural Resources Committee
From: Anthony Criscitiello, Planning Director
Subject: Proposed Amendment to the ZDSO
Date: February 27, 2014

SUMMARY OF REQUEST:

The applicant's attorney is requesting an amendment to the Limited and Special Use Standards section of the ZDSO to allow regional commercial retail uses, excluding outdoor retail uses such as flea markets, to be administratively approved for properties within the Light Industrial (LI) district that are developed but have been vacant for at least two years. The applicant states that the proposed changes are necessary to avoid the creation or continuation of blight caused by vacant properties. Currently, the LI district restricts regional commercial retail uses to no more than 5 percent of the floor area of an LI project, and requires that access to these uses be from a development's interior streets.

The applicant is proposing the following text amendments, shown as ~~strike through~~ for deletions and underlined for additions:

Article 5. Use Regulations **Division 2. Limited and Special Use Standards**

Sec. 106-1287. Commercial retail, regional

(a) *Limited/special standards for use in all applicable districts.* Limited/special standards for regional commercial retail uses in all applicable districts are as follows:

- (1) These uses may constitute no more than five percent of the total permitted floor area of the project in which they are located.
- (2) The access to these uses shall be from the development's interior streets. The uses shall not have frontage on arterial or collector streets.

(b) *Reports/studies required.* All applications for this use shall include a community impact statement.

(c) *Limited standards for regional commercial retail uses within rural business districts.* Limited standards for regional commercial retail uses within rural business districts are as follows:

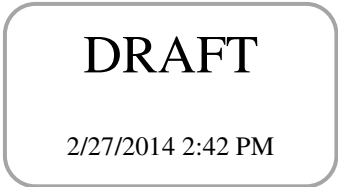
- (1) This use is limited to 3,500 square feet of floor area.
- (2) Drive-through facilities are not permitted as part of this use.
- (3) The following uses are not permitted as part of this use: vehicular sales, rental and service uses (NAICS 441); and hospitals and medical facilities (NAICS 621, 622, 623, 624).

(d) Limited standards for adaptive re-use: regional commercial retail uses in the Light Industrial zoning district. Limited standards for regional commercial retail establishments utilizing developed site uses which have been unoccupied by an operating business for more than two years are as follows:

- (1) It is the intent of this section to allow adaptive re-use of sites developed in conformity with allowable uses for the Light Industrial district, but which have become vacant and remained vacant for more than two years, thereby avoiding the creation or continuation of a blighted area.
- (2) The permitted floor space size limitations of Sec. 106-1287(a)(1) shall not be applicable; existing structures within the interior floor space of structures can be fully utilized for all uses qualifying as commercial retail, regional, and may utilize the permitted access to the site, notwithstanding Sec. 106-1287(a)(2), provided that:
- (i) Adequate parking is provided on-site or through shared parking, with on-site individual parking spaces delineated;
 - (ii) The site is located within 1,000 feet of an arterial road, and traffic impacts as measured by trips per day will not exceed by more than 10% the traffic impact of the former permitted use on the site;
 - (iii) The proposed use shall meet the Land Use Compatibility Recommendations of the United States Navy for the Accident Potential Zones (APZs) or Noise Zones, if the site is within such a zone; and
 - (iv) No flea market for an adaptive reuse shall be permitted within the APZs or Noise Zones, if the site is within such a zone. Structural additions shall not increase the existing floor space by more than 15%; if more than a 15% increase is proposed, the application will be treated as a special use.

Prepared by and after recording return to:

Walter J. Nester, III
 McNair Law Firm, P.A.
 Suite 400, 23-B Shelter Cove Lane
 Hilton Head Island, SC 29928



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **DEVELOPMENT AGREEMENT**
) **FOR**
) **BLUFFTON GATEWAY COMMERCIAL CENTER**

This Development Agreement (“Agreement” or “Development Agreement”) is made and entered as of and on the Effective Date, by and between Jaz 278, LLC, a Georgia limited liability company authorized to conduct business in South Carolina, and its successors and assigns (the “Owner”), and the governmental authority of Beaufort County, South Carolina (“Beaufort County”) a South Carolina municipal corporation.

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 “[t]he 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 County governments, to enter Development Agreements with owners to accomplish these and other goals described in Section 6-31-10 of the Act; and,

WHEREAS, Owner is the contract purchaser of certain adjacent tracts of real property consisting of a total of approximately sixty-six and 20/100 (66.20) acres, as more particularly described on Exhibit “A” attached hereto and made a part hereof (collectively hereinafter, the “Property”); and

WHEREAS, the Property is zoned Commercial Regional and is largely undeveloped, the only improvements being an eight thousand square foot (8,000 SF) building and associated parking formerly operated as a commercial printing operation and a two hundred fifty foot (250’) wide utility right-of-way area containing electrical utility lines and associated infrastructure (hereinafter, the “Powerline Easement Area”); and

WHEREAS, Owner is planning the development of the Property as a commercial center to be known as Bluffton Gateway Commercial Center (hereinafter “Bluffton Gateway”) with approximately three hundred twenty-two thousand square feet (322,000 SF) of commercial retail space, together with up to three (3) outparcels containing an additional approximate twenty thousand (20,000) square feet of commercial retail and restaurant space; and

WHEREAS, as provided in the May 2001 U.S. 278 Short Term Needs Study prepared by Wilbur Smith Associates for the Beaufort County Council (the “Short Term Needs Study”), Beaufort County identifies the need for road interconnectivity through the Property to the west with Sheridan Park commercial center and/or Red Cedar Street in Bluffton Park to S.C. Highway 46 to the east; and

WHEREAS, Beaufort County has requested and Owner has agreed to the construction generally as identified in the Short Term Needs Study of access roads to provide access to and interconnectivity to those properties adjacent to the Property, and the dedication to Beaufort County of certain road rights-of-way and road improvements on the Property in support of such interconnectivity; and

WHEREAS, Owner desires to modify certain aspects of the ZDSO (hereinafter defined), as more particularly described herein, to provide for and achieve the successful development of Bluffton Gateway pursuant to and as shown in a development plan (the “Development Plan”) to be approved by the DRT and the SCRB (each as hereinafter defined) in accordance with the ZDSO, which Development Plan is attached hereto as Exhibit “B” and made a part hereof; and

WHEREAS, the ZDSO provides for commercial subdivisions in Section 106-2540; and

WHEREAS, the development of the Property results in the imposition of certain impact fees (collectively, and not intending to be limiting, hereinafter “Impact Fees”) in accordance with applicable County ordinances and state law to the extent the development creates new impacts; and

WHEREAS, Owner has agreed to the construction of road infrastructure on the Property and the dedication of rights-of-way where such road infrastructure has been or shall be constructed on the Property in partial consideration of credits against any Impact Fees due to the increase in impacts resulting from the development during the term of this Agreement; and

WHEREAS, the Property is subject to a Non-Responsible Party Voluntary Cleanup Agreement (the “Brownfield Voluntary Cleanup Agreement”) between Owner and the South Carolina Department of Health and Environmental Control (“DHEC”) pursuant to Section 44-56-710, *et seq.* of the South Carolina Code of Laws (the “Brownfield Voluntary Cleanup Program”); and

WHEREAS, the Brownfield Voluntary Cleanup Program provides for the exemption of certain ad valorem taxes pursuant to and as more particularly described in Section 12-37-220 (44) of the South Carolina Code of Laws (the “Brownfield Voluntary Cleanup Exemption”); and

WHEREAS, the Brownfield Voluntary Cleanup Exemption provides for a five (5) year exemption from certain ad valorem taxes upon the issuance of a certificate of completion by DHEC (the “DHEC Certificate of Completion”) and upon the approval by resolution of the Beaufort County Council; and

WHEREAS, the county governing body contemplated in Section 12-37-220 (44) of the South Carolina Code of Laws is the Beaufort County Council, and Owner desires to confirm in this Agreement that the required resolution be issued by Beaufort County Council upon the issuance of the DHEC Certificate of Completion; and

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

WHEREAS, Beaufort County finds that Owner's plan for development proposed for this Property is consistent with Beaufort County's comprehensive land use plan and shall, together with the Brownfield Voluntary Cleanup Agreement, further the health, safety, welfare and economic well being of Beaufort County and its citizens; and,

WHEREAS, the plan for the development of the Property presents Beaufort County with an exceptional opportunity to receive completed road infrastructure consistent with and in compliance with the

Short Term Needs Study; secures quality planning and a well-constructed commercial retail center; provides for the voluntary cleanup of an existing Brownfield; provides for the enhanced protection of the environment; and strengthens and revitalizes its tax base; and,

WHEREAS, this Development Agreement is being made and entered between Owner and Beaufort County, under the terms of the Act for the purpose of providing assurances to Owner that it may proceed with its development of the Property under the terms hereof, consistent with the Development Plan, without encountering future changes in law which would materially affect the ability to complete the proposed development of the Property pursuant to the Development Plan, and for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to Beaufort County.

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

I. INCORPORATION.

The above recitals are hereby incorporated into and are made a part of 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.

“Beaufort County” or “County” means the municipal government of Beaufort County, South Carolina.

“Developer” means Owner and all successors in title or lessees of Owner who undertake Development of all or any portion of the Property or who are assigned Development Rights.

“Development” means the same as the definition of development as set forth in the ZDSO.

“Development Agreement Ordinance” means all terms and conditions of this Development Agreement for Bluffton Gateway Commercial Center and all the attachments thereto, including but not being limited to the Development Plan and all narratives, applications, site development, Sign Master Plan(s), standards, exhibits and applicable ordinances as same may be hereafter amended by mutual agreement of Beaufort County and Owner. Specifically, it is noted that the adoption of the Development Agreement Ordinance after public hearings shall have the effect of a properly adopted land use ordinance. To the extent that any provision of the Development Agreement Ordinance may be deemed to be a modification of presently existing Beaufort County law, such modification is hereby approved, ratified and adopted as binding upon the Property and the parties hereto by the approval of this Development Agreement.

“Development Fees” means any and all road facilities development impact fees incurred in the Development of all or any portion of the Property, whether or not such road facilities or system improvements are currently identified in the County’s adopted road capital improvement plans or other adopted plans, and/or any other similar fee now existing or hereinafter adopted by Beaufort County.

“Development Plan” means that certain site development plan for the Property, and related material and exhibits, depicting proposed lots, buildings and other infrastructure for the Property’s proposed development, which are entitled “Development Plan”, and which constitute vested Development Rights (as hereinafter defined) under this Agreement with respect to all applicable zoning and land development requirements under the ZDSO, and which have been reviewed and approved by the County in conjunction with the approval of this Development Agreement, which Development Plan is attached hereto as Exhibit “B” and made a part hereof.

“Development Rights” means vested land use and the right to the Development of the Property or portions thereof, undertaken by Owner or Developers in accordance with the Development Agreement Ordinance and the ZDSO.

“DRT” means Beaufort County’s Development Review Team or similar planning review authorized and described in the ZDSO.

“Effective Date” means the date of complete execution of this Agreement after the approval by the County of the Development Agreement Ordinance.

“Jaz 278, LLC” means a Georgia limited liability company authorized to conduct business in South Carolina, and its successors and assigns.

“**Owner**” means Jaz 278, LLC, a Georgia limited liability company authorized to conduct business in South Carolina, and its successors and permitted assigns.

“**Property**” means collectively those tracts of land described on Exhibit “A” attached hereto and made a part hereof.

“**SCRB**” means the Beaufort County Southern Corridor Review Board, which has given conceptual approval of the Development Plan.

“**Sign Master Plan**” means that certain signage master plan for the development of the Property as approved in this Agreement , and related materials and exhibits entitled “Sign Master Plan”, which has been approved by Beaufort County in conjunction with the approval of this Development Agreement, which Sign Master Plan is attached hereto as Exhibit “C” and made a part hereof.

“**Term**” means a period of five (5) years and an additional five (5) years, if extended as set forth in Article III of this Agreement.

“**USACE**” means United States Army Corps of Engineers.

“**ZDSO**” means the Zoning and Development Standards Ordinance of Beaufort County adopted April 26, 1999, existing as of the Effective Date and attached hereto as Exhibit “D” and made a part hereof. References in the ZDSO to the latest version of County manuals shall mean and refer to the latest version of such manual as of the date of this Agreement, and shall include any and all zoning and development ordinances subsequently adopted or approved by Beaufort County.

III. TERM.

The Term of this Agreement shall commence on the Effective Date and terminate five (5) years thereafter; or, if renewed, at the end of two (2) additional five (5) year periods. During the Term, the provisions of this Development Agreement shall be vested against any future changes to Beaufort County law or ordinances which would affect the ability of Owner to carry out the development approved in this Development Agreement. Further, at the end of the second five (5) year period, the provisions of this Development Agreement shall be vested against any future changes to Beaufort County law or ordinances if Owner shall have achieved Substantial Development. “Substantial Development” shall mean (i) the conveyance by Owner of any right-of-way to Beaufort County pursuant to the terms of Article XI of this Agreement, or (ii) the construction (being completed or under construction) of not less than twenty-five

percent (25%) of the total commercial building area on the Property as shown and depicted on the Development Plan.

IV. DEVELOPMENT OF THE PROPERTY.

The Property shall be developed in accordance with this Development Agreement. Beaufort County shall, throughout the Term, use its best efforts to maintain or cause to be maintained, a procedure for the expedited administrative processing and review of all Development on the Property as approved by the Development Agreement. All costs charged by or to Beaufort County for such reviews shall be paid by Owner or Developer, as applicable.

V. CHANGES TO THE ZDSO.

Any amendment or modification to the ZDSO, including any new or successor zoning and development standards ordinances adopted by Beaufort County, shall not be applicable to the Property without the express prior written consent of Owner and any Developer with respect to assigned Development Rights; provided, however, Beaufort County may apply such subsequently adopted laws to the Development if it holds a public hearing and it is determined that the subsequently adopted laws are: (a) not in conflict with laws governing this Agreement and do not prevent the Development approved in this Agreement; (b) essential to public health, safety or welfare, and the subsequently adopted laws expressly state that they apply to the Development of the Property; (c) specifically anticipated and provided for in the Development Agreement; (d) Beaufort County demonstrates that substantial changes have occurred to pertinent conditions regarding the Property existing as of the Effective Date and if not addressed by Beaufort County would pose a serious health risk to the public health, safety and welfare of its citizens; or (e) the Development Agreement is based on substantially inaccurate information supplied by Owner. Owner does, for itself and its successors and assigns, and notwithstanding the ZDSO, agrees to be bound by the following:

- A.** Owner shall be required to notify Beaufort County, in writing, as and when Development Rights are transferred to any Developer. Such information shall include the identity and address of the acquiring party, a proper contact individual, and the location and number of acres of the Property for which Development Rights are being transferred. 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 subject to the requirements of Article XVIII G.

- B. Owner agrees that all Development on the Property, with the exception of irrigation and incidental maintenance facilities, shall be served by potable water and sewer prior to occupancy, except for temporary use.

VI. DEVELOPMENT SCHEDULE.

The Property shall be developed in accordance with the development schedule, attached hereto as Exhibit "E" and made a part hereof (the "Development Schedule"), as the same may be modified or amended by Owner or any Developer(s) in the future to reflect market conditions as determined in the sole discretion of Owner or any Developer with respect to assigned Development Rights. In accordance with the Act, the failure of Owner or any Developer with assigned Development Rights to meet the Development Schedule shall not, in and of itself, constitute a material breach of this Agreement. The Development Schedules is a planning and forecasting tool only. The failure to meet the Development Schedule shall be judged by the totality of circumstances, including but not limited to Owner's and/or Developer's good faith efforts to attain compliance with the Development Schedule. The fact that Development of the Property may take place at a different pace, based on future market conditions, as determined in the sole reasonable discretion of Owner or any Developer with respect to assigned Development Rights, is expected and shall not be a default hereunder. Furthermore, periodic adjustments to the Development Schedule, which may be submitted to the County by Owner or Developer(s) in the future, shall not be considered a material amendment or breach of this Agreement.

VII. COMMERCIAL DENSITY AND USE.

- A. **Commercial Density.** Development on the Property shall be limited to a maximum of 350,000 commercial square feet. Any subsequent development on the Property of additional commercial square footage resulting in an increase of more than 50 additional daily trips, shall require an updated traffic impact analysis and an amendment to the Development Agreement in accordance with Article XV. The right to fully develop or construct all of the commercial density provided herein shall be binding on Owner and the County. It being specifically understood that Owner, its successors and assigns shall have the absolute right to develop the Property to the commercial square feet of density stated herein. Owner or any Developer with respect to assigned Development Rights shall have the right to make revisions to the Development Plan for matters including, but not limited to, adjustments to the dimensions of lots and buildings so long as the same are in keeping with the character and intent of the Development Agreement Ordinance and shall be administered and approved

by the DRT, and such revisions shall not require an amendment of this Agreement pursuant to an amendment to the Development Agreement Ordinance.

- B. Use.** The Development Plan vests certain proposed land uses within the Property. The specific uses allowed for the Property shall be all those uses allowed under the Commercial Regional zoning category provided in the ZDSO as of the Effective Date of this Agreement.

VIII. ACCESS.

The Property is bounded by U.S. Highway 278 to the north and S.C. Highway 46 to the east. Access to the Property to U.S. Highway 278 and S.C. Highway 46 is approved as depicted in the Development Plan and as described herein. At such time other interconnectivity to the west is completed as approved in this Development Agreement, the Property shall have the access as shown in the Development Plan.

IX. EFFECT OF FUTURE LAWS.

Owner and Developer(s) shall have vested rights to undertake Development of any portion or all of the Property in accordance with the Development Agreement Ordinance. Future enactments of, or changes or amendments to Beaufort County ordinances, including the ZDSO, shall not apply to the Property unless the same are adopted in accordance with Article V of this Development Agreement or unless Owner and any Developer(s) consent to such enactment, change or amendment.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present standard building, housing, electrical, plumbing or gas codes or future codes in compliance with Section 6-31-160 of the Act, or any tax or fee of general application throughout Beaufort County. No future development and/or aid to construction, impact fees or special assessments shall apply to the Property without the consent of Owner.

X. INFRASTRUCTURE AND SERVICES.

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

- A. Private Roads.** Except for those rights-of-way to be dedicated to Beaufort County as provided in this Agreement, any roads proposed to be constructed within the Property shall

be constructed by Owner, and maintained by it, or dedicated for maintenance to other appropriate entities. Except for those rights-of-way to be dedicated to Beaufort County as provided in this Agreement, Beaufort County shall not be responsible for the construction or maintenance of any roads within the Property, unless Beaufort County specifically agrees to do so in the future.

B. Public Roads.

- (i) The Property shall be served by direct access to U.S. Highway 278 and S.C. Highway 46 as shown on the Development Plan.
- (ii) The location of public access points to the Property, median cuts in the right-of-way, and signage shall be as set forth in the Development Plan.

C. Potable Water. Potable water shall be supplied to the Property by Jasper/Beaufort Water and Sewer Authority (“BJWSA”). Owner, to the extent necessary and not currently existing, shall construct or cause to be constructed all necessary water service infrastructure within the Property, which shall be owned and maintained by Owner or BJWSA. Owner shall be responsible for all financial arrangements with BJWSA with respect to the cost of construction, ownership and maintenance of all potable water and potable water utility infrastructure on the Property. An intent to serve letter from BJWSA is attached hereto as Exhibit “F” and made a part hereof.

D. Sewage Treatment and Disposal. Sewage treatment and disposal shall be provided by BJWSA. Owner, to the extent necessary and not currently existing, shall construct or cause to be constructed all necessary sanitary sewer service infrastructure within the Property, which shall be owned and maintained by Owner or BJWSA. Owner shall be responsible for all financial arrangements with BJWSA with respect to the cost of construction, ownership and maintenance of all sanitary sewer discharge and sanitary sewer utility infrastructure on the Property. An intent to serve letter from BJWSA is attached hereto as Exhibit “F” and made a part hereof.

E. Stormwater Treatment and Disposal. Stormwater treatment and disposal shall be in accordance with the ZDSO and the terms of this Agreement.

F. Other Services / Future Agreements. Development within the Property shall be served and entitled to any and all Beaufort County services, such as fire protection and police

protection, provided to other property within Beaufort County, with the understanding that the Property, except as otherwise herein provided, shall be subject to all Beaufort County taxes of universal application, as well as any special service district taxes which may apply to all other existing properties and development within the area, such as Fire District millage rates. Normal service shall be considered vested as a matter of right within this Property, on the same basis as all other property in Beaufort County.

XI. SYSTEM IMPROVEMENTS, CONVEYANCES, CREDITS AND CONTRIBUTIONS.

In addition to all other covenants, conditions and agreements set forth in this Agreement, the following are hereby agreed upon by the parties:

A. Rights-of-Way.

- (i) **Southern Connector Road.** Owner shall transfer to Beaufort County that certain parcel of real property shown and depicted as the “Southern Connector Road” on the Development Plan, which may be combined with other real property obtained by Beaufort County for the construction of a public right-of-way providing access to and through the Property from the west as generally depicted in the Development Plan. The parties acknowledge and agree that for the sole purpose of valuation of credits against Development Fees as described in this Article XI and for no other purpose, the value of the Southern Connector Road, standing alone and not as part of the entire Property, shall be at Owner’s option, either:
 - (a) one hundred percent (100%) of the most recent assessed value for such land, as shown in the County Assessor’s records, or
 - (b) the fair market value of the land established by a private appraiser acceptable to the County in an appraisal paid for by the Owner.

Together with credits for other system improvements, Owner and Developer(s) shall be entitled to credits for any and all Development Fees which may become payable with respect to the Property up to the total amount of the Southern Connector Road Land Value. Beaufort County agrees that it shall use best efforts to obtain property for and complete the construction of the portions of the right-of-way not located on this Property which connect to the Southern Connector Road to the west. The conveyance document which conveys title to the Southern Connector Road shall be

subject to a restrictive covenant that prohibits the use by Beaufort County of the Southern Connector Road for any use other than for a right-of-way for vehicular and pedestrian traffic and/or utility services and infrastructure.

(ii) **Sheridan Park and U.S. Highway 278 Interconnectivity and Access.** Owner shall transfer to Beaufort County that certain parcel of real property shown and depicted on the Development Plan as the “Sheridan Park/U.S. 278 Connector Road”, which may be combined with other real property obtained by Beaufort County for the construction of a connector road right-of-way with the Sheridan Park commercial center to the west of the Property, and to provide access to U.S. Highway 278, each as generally depicted in Development Plan. The parties acknowledge and agree that for the sole purpose of valuation of credits against Development Fees as described in this Article XI and for no other purpose, the value of the Sheridan Park/U.S. 278 Connector Road, standing alone and not as part of the entire Property, shall be at Owner’s option, either:

- (a) one hundred percent (100%) of the most recent assessed value for such land, as shown in the County Assessor’s records, or
- (b) the fair market value of the land established by a private appraiser acceptable to the County in an appraisal paid for by the Owner.

Together with credits for other system improvements, Owner and Developer(s) shall be entitled to credits for any and all Development Fees which may become payable with respect to the Property up to the total amount of the Sheridan Park/U.S. 278 Connector Road Value. Beaufort County agrees that it shall use best efforts to obtain real property for and complete construction of portions of the right-of-way not located on the Property which connect to the Sheridan Park/U.S. 278 Connector Road to the west. Notwithstanding anything else contained herein, the failure by the County to obtain real property for and complete construction of those portions of the right-of-way not located on the Property shall not waive, cancel or terminate its obligation to accept those rights-of-way constructed on the Property, as approved and contemplated by this Agreement. The conveyance of the document which conveys title to the Sheridan Park/U.S. 278 Connector Road shall be subject to a

restrictive covenant that prohibits the use of the Sheridan Park/U.S. 278 Connector Road for any use other than for a right-of-way.

- (iii) **Conveyances.** The portions of the Southern Connector Road and the Sheridan Park/U.S. 278 Connector Road located on the Property (collectively sometimes referred to herein as the “Road Rights-of-Way”) shall be conveyed to Beaufort County by fee simple title and shall be subject to all matters of record and the restrictive covenants described herein on or after the date on which the adoption of the Development Plan and this Development Agreement become final and unappealable (or if appealed such appeal has been resolved in a manner satisfactory to Owner in its sole discretion).

B. Road Facilities Improvements – Design and Construction.

- (i) **Roads.** Owner agrees to construct or pay the cost to construct the road infrastructure upon the Road Rights-of-Way (the “Road Rights-of-Way Construction”) to County road construction standards, such Road Rights-of-Way shown and depicted on the Development Plan. Owner and Developer(s) shall also be entitled to credits against Development Fees based on the cost of the design, engineering and construction of the Road Rights-of-Way. The value of the credit for the Road Rights-of-Way Construction shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner’s and County’s shared expense to develop alternative engineering or construction cost estimates (the “Road Rights-of-Way Construction Value”). Owner and Developer(s) shall be entitled to credits against Development Fees based on the Road Rights-of-Way Construction, which may be payable with respect to the Property up to the total amount of the Road Rights-of-Way Construction Value.

- (ii) **S.C. Highway 46 Intersection.** The Development Plan contemplates improvements to S.C. Highway 46, including construction of a fully signalized intersection. The value of the credit for the construction of road improvements to the S.C. Highway 46 Intersection shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner's and County's shared expense to develop alternative engineering or construction cost estimates (the "S.C. Highway 46 Intersection Improvement Value"). Owner and Developer(s) shall be entitled to credits against Development Fees based on the cost of the design, engineering and construction of the S.C. Highway 46 Intersection, which may be payable with respect to the Property up to the total amount of the S.C. Highway 46 Intersection Improvement Value.
- (iii) **S.C. Highway 46 and U.S. 278 Intersection Improvements.** The Development Plan contemplates improvements to the S.C. Highway 46 and U.S. 278 intersection, including modifying signalization and construction of dedicated turn lanes. The value of the credit for the construction of the S.C. Highway 46 and U.S. 278 intersection improvements shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner's and County's shared expense to develop alternative engineering or construction cost estimates (the "S.C. Highway 46/U.S. 278 Intersection Improvements Value"). Owner and Developer(s) shall be entitled to credits for any and all Development Fees which

may become payable with respect to the Property up to the total amount of the S.C. Highway 46/Highway 278 Intersection Improvements Value.

C. Signage.

(i) **Public.** As shown and depicted on the Development Plan, Owner has reserved a portion of the Property for the location of a public signage feature for Beaufort County and/or the Town of Bluffton (the “Public Sign Area”). Owner shall grant an easement in favor of Beaufort County and/or the Town of Bluffton for access to construct, repair, and maintain the signage constructed within the Public Sign Area, if any. Any signage constructed within the Public Sign Area shall be subject to the ZDSO. The signage constructed within the Public Sign Area shall exist for public signage only and shall be neither counted against nor included in the calculations for permitted private signage for the Property.

(ii) **Private.** Private signage for the Property shall be governed by a Sign Master Plan, attached hereto as Exhibit “C” and made a part hereof, which depicts three (3) monument signs at the signalized access points to the Property from S.C. Highway 46 and the access to U.S. Highway 278, and one at the intersection of U.S. Highway 278 and S.C. Highway 46. Beaufort County acknowledges and agrees that Owner shall be permitted to construct up to four (4) monument signs, not to exceed the maximum combined total of two hundred forty square feet (240 SF), in accordance with Section 106-3173 of the ZDSO, at the locations shown on the Sign Master Plan with size, color, design and architectural elements which are depicted in the Sign Master Plan. Furthermore, the structure shown as “Retail Store #2” in the Development Plan shall be permitted for one hundred sixty square feet (160 SF) of building signage upon Owner’s or Developer’s dedication of the Southern Connector Road in accordance with this Agreement. The Sign Master Plan has been approved by the DRT and the SCRB, and is approved by Beaufort County in conjunction with the approval of this Development Agreement.

D. Brownfield Voluntary Cleanup Exemption. The County agrees that upon the issuance of the DHEC Certificate of Completion for the Brownfield Voluntary Cleanup Program, it shall authorize and approve by resolution the exemption of the Property from ad valorem taxes for the period of time described in accordance with Section 12-37-220 (44) of the

South Carolina Code of Laws. The dollar amount of the exemption shall be limited to the actual cost of the Brownfield Voluntary Cleanup Program, which cost shall include but not be limited to Owner's legal, engineering and environmental consultants' costs and fees, as well as the actual cost of construction, remediation and testing required to obtain the DHEC Certificate of Completion. The exemption shall be in the form of a refund by the County to the Owner within ninety (90) days of the County's receipt of: (i) payment in full of all ad valorem taxes due for the Property; (ii) an itemized list with evidence of Owner's payment for the legal, engineering and environmental consultants' costs and fees incurred for permitting and the actual cost of demolition, construction, remediation and testing required to secure the DHEC Certificate of Completion; and (iii) a certified copy of the DHEC Certificate of Completion.

E. U.S. Highway 278 Beautification Fee. Owner agrees to a payment of a U.S. Highway 278 beautification fee in an amount equal to the annual cost to maintain the U.S. Highway 278 Right-of-Way landscaping fronting the Property for six (6) years.

F. No Other Dedications or Conveyances. Except with respect to the dedications and/or conveyances of the properties referred to in this Article XI , no other dedications or conveyances of lands for public facilities shall be required in connection with the Development of the Property.

G. Development Fees.

(i) Beaufort County acknowledges that in partial consideration of the conveyance of the Rights-of-Way and the cost of the Road Facilities Improvements thereon as described in Article XI A and XI B herein (collectively herein the "System Improvements") and notwithstanding any provision to the contrary contained within this Agreement, Owner shall receive a credit against the cost of any and all Development Fees up to the total value of the System Improvements.

(ii) Beaufort County or other governing body shall not be precluded by this Agreement from charging fees for delivery of services to citizens or residents (i.e., an EMS response fee or the like), nor from charging fees statutorily authorized in the future (i.e., a real estate transfer fee or the like) which are not collected as a prerequisite to approval of a plat, plan or construction permit and not otherwise contemplated hereunder.

(iii) The Development Fees are vested for the entire Property and no other Development Fee or obligation regarding Development is imposed in connection with the Property.

H. Stormwater Management Plan. The Southern Connector Road shall be dedicated and accepted as a County Road as provided in this Article XI. Accordingly, the Southern Connector Road shall not be included in calculations for the effective impervious area for the stormwater management plan prepared for the permitting and the Development of the Property contemplated in this Agreement (the “Stormwater Management Plan”). Furthermore, so long as the Stormwater Management Plan meets the nutrient degradation and detention requirements of the ZDSO, as determined by the County engineer, the goal to achieve a maximum of ten percent (10%) overall effective impervious area ratio shall be increased to twenty percent (20%).

I. Vested Rights. Beaufort County agrees that the Property is approved and fully vested for intensity, commercial density, Development Fees, uses and height, setbacks, parking and signage as set forth in the Development Plan and the Development Agreement Ordinance, and shall not have any obligations for on or off site transportation or other facilities or improvements other than as specifically provided in Article XI of this Agreement, but shall adhere to the Development Plan and the Sign Master Plan. Beaufort County shall 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 Owner shall have the right to challenge.

XII. PERMITTING PROCEDURES.

A. Beaufort County agrees that Owner shall have the unlimited right to phase the development of the Property in accordance with the Development Schedule.

B. Beaufort County agrees to use its best efforts to review in an expeditious manner all land use changes, land development applications, plats and subdivisions in accordance with applicable ordinances as modified by this Agreement for the Development of the Property. Owner may submit these items for concurrent review with Beaufort County and other governmental authorities. If the off-site USACE permits for interconnecting roads are not in place prior to DRT final approval, then Owner may proceed with on-site construction of the

Bluffton Gateway Commercial Center and provide a cash bond to insure construction of the Road Rights-of-Way once the USACE permits are obtained.

XIII. OWNER ENTITLEMENTS.

Beaufort County acknowledges that Owner is vested with the following items:

- A. Setbacks and Buffers.** Beaufort County agrees that the Property is vested and that the lot lines (which may be modified in accordance with Article VII A hereof), dimensions and location of setbacks and buffers shown and described in the Development Plan, as amended from time to time in accordance with this Agreement, are approved. Specifically, the County agrees to the modification of the buffers and setbacks approved in this Agreement.

- B. Access.** Beaufort County hereby approves the location of traffic signals, and curb and median cuts for access to the Property as shown in the Development Plan, subject to SCDOT permitting and approval, if any.

- C. External Setbacks and Buffers.**
 - (i)** As depicted in the Development Plan, the fifty foot (50') buffer described and required by the ZDSO shall be modified to allow landscaping in a twenty-five foot (25') portion of the perimeter buffer for the Property as described in this Article XIII C. Owner shall be authorized to install and maintain landscaping in the twenty-five foot (25') area between the U.S. Highway 278 Right-of-Way, the S.C. Highway 46 Right-of-Way and the balance of the buffer. The intent being that the first twenty-five feet (25') of the fifty foot (50') buffer shall be landscaped and maintained. Such landscaping may be manicured grass lawns or other installed landscape materials determined in the sole discretion of Owner or any Developer assigned Development Rights hereunder. The second twenty-five foot (25') portion of the buffer shall be left as a buffer, as that term is described and contemplated in the ZDSO. The resulting combined fifty foot (50') area fronting the U.S. Highway 278 Right-of-Way and S.C. Highway 46 Right-of-Way shall have a landscaped lawn and planting area of twenty-five feet (25') in width and a natural buffer of twenty-five feet (25').

 - (ii)** Furthermore, and as also depicted in the Development Plan, and notwithstanding anything contained herein or in the ZDSO, the buffer and setback along the southern

boundary of the Property shall be reduced to zero feet (0') in areas where the existence of drainage ditches or issues relating to the powerline utility infrastructure and access make the requirement of a buffer impractical. In such areas, the screening fence described in and shown in the Development Plan may be required.

(iii) The landscaping, buffers and fencing described in this Article XIII C shall be exempt from the Corridor Review Standards that are described in and required by the ZDSO.

D. Signage. Owner shall be entitled to all signage depicted and described in the Sign Master Plan.

E. Danger Tree Fall Area. Beaufort County acknowledges and agrees that any Development within the Powerline Easement Area shall be subject to restrictions on landscaping, which shall prohibit installation, planting or the existence of trees or structures that exceed certain height limitations imposed by applicable utility companies and agencies with jurisdiction over the Powerline Easement Area.

F. Other Services. Beaufort County services, including, but not limited to, police, fire, 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 Beaufort County. In the event Owner requires enhanced services beyond that which is routinely provided within Beaufort County, then Beaufort County agrees that upon the written request of Owner, it shall negotiate in good faith with Owner to provide such enhanced services to the Property.

G. Recycling. Owner agrees to use its best efforts to require its tenants, purchasers, Developers or secondary Developers to maintain a recycling program on the Property consistent with Beaufort County law and fees regarding recycling. Solid waste collection shall be provided to the Property on the same basis as is provided to other residents and businesses within Beaufort County.

H. Lawful Employment. Owner and Beaufort County recognize the importance of having legal workers only performing construction and other work on the Property. Owner agrees to comply with current Beaufort County and State laws and use its best reasonable efforts to require all of its contractors and subcontractors to comply with the same.

I. Wetlands Crossings. The two (2) wetlands crossings and associated infrastructures depicted in the Development Plan and shown in the approval letter from the U.S. Army Corp. of Engineers dated December 13, 2013 (the “ACOE Permit”), which ACOE Permit permits the wetlands crossings, shall be exempt from the requirements of the ZDSO. Accordingly, no special use permit or other requirement of the ZDSO or other Beaufort County Ordinance shall be required for the wetlands crossings and pipes or associated infrastructure shown in or contemplated by the Development Plan and/or the ACOE Permit, and such wetlands crossings are hereby approved by Beaufort County in this Development Agreement.

XIV. DEFAULTS.

The failure of Owner or Beaufort County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance and the termination of this Development Agreement in accordance with the Act; provided however no termination of this Development Agreement may be declared by Beaufort County absent affording Owner and any applicable Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided further that nothing herein shall be deemed or construed to preclude Beaufort County or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Development Agreement Ordinance or the ZDSO. Owner, or its designee, shall meet with Beaufort County, or its designee, at least once per year, at a time reasonably agreeable to the parties, during the Term of this Agreement to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year. Owner, or its designee, shall be required to provide such information as may reasonably be requested, to include, but not be limited to, commercial square footage completed, and any relevant information regarding the Development. This compliance review shall be in addition to, and not in lieu of, any other reporting or filing required by this Agreement, if any. If, as a result of a compliance review, Beaufort County determines that Owner has committed a material breach of the terms of this Development Agreement, Beaufort County shall serve such party in writing notice of such breach pursuant to the procedures set forth in Section 6-31-90 (B) of the Act, affording the breaching party the opportunity to respond as set forth in Section 6-31-90 (C) of said Act.

XV. MODIFICATION OF AGREEMENT.

This Development Agreement may be modified or amended only by the written agreement of Beaufort County and Owner. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part

unless such statement, action or agreement is in writing and signed by the party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

XVI. 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 tenth (10th) 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 shall be addressed as follows:

To Beaufort County: Office of Beaufort County Administrator
100 Ribaut Road
Room 156
Beaufort, SC 29902

With Copy To: Joshua A. Gruber, Esquire
Beaufort County Legal Department
P.O. Box 1228
Beaufort, SC 29901-1228

And to Owner: Jaz 278, LLC
c/o Jaz Management, LLC
4060 Peachtree Road, D-287
Atlanta, GA 30319

With Copy To: Walter J. Nester, III
McNair Law Firm, P.A.
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

XVII. ENFORCEMENT.

Any party hereto shall have the right to enforce the terms, provisions and conditions of the Agreement by any remedies available at law or in equity, including specific performance, and the right to recover reasonable, actual attorney's fees and costs associated with said enforcement.

XVIII. GENERAL.

- A. Subsequent Laws.** In the event state or federal laws or regulations are enacted after the execution of this Development 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 Laws, or court decision, Owner and any Developer with respect to assigned Rights and Beaufort County shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Laws 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, Beaufort County 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, Owner and any Developer with respect to assigned Rights, and Beaufort County each shall have the right to challenge the New Laws 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.** Beaufort County and Owner may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:
- (i) that this Agreement is in full force and effect,
 - (ii) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,
 - (iii) 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
 - (iv) 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 Beaufort County and 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 Beaufort County and Owner 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. Successors and Assigns.**
- (i) **Binding Effect.** This Agreement shall be binding upon Owner's successors and assigns in the ownership or Development of any portion of the Property. Except for Owner's continuing obligation as specifically stated in Article XVIII G (ii) (1) and G (iii) below, a purchaser or a party acquiring title to any portion of the Property or a party to whom Owner assigns Development Rights with respect to any portion of the Property (herein collectively referred to as a "Transferee") shall, during the Term of this Agreement, be solely responsible for the performance of Owner's obligations and entitled to the assigned Development Rights under this Development Agreement applicable to the portion of the Property transferred, or for which Development Rights are transferred. Each Transferee shall be required to execute a written acknowledgement assuming Owner's obligations under this Agreement, which are directly applicable to such portion of the Property. Such acknowledgment shall be in the form provided in Exhibit "G" attached hereto and made a part hereof (the "Notice of Transfer"), and provided to Beaufort County at the time of recording any instrument transferring title, and development rights, of the Property or any portion of the Property. This Section shall not be construed to prevent Owner from obtaining indemnification of liability to Beaufort County from Transferees. Except

as specifically set forth in Article XVIII G (ii)(1) and G (iii) below, upon transfer to a Transferee, Owner shall be released of all obligations assumed by such Transferee.

(ii) **Transfer of all of the Property.** Owner shall be entitled to transfer the Parent Parcel (i.e. all of the Property save and except the Road Rights-of-Way, the “Parent Parcel”) to a Transferee subject to the following requirements:

(1) **Owner Obligations.** Notwithstanding Owner’s right to transfer title and development rights provided in this Article XVIII G (ii) (1), Owner shall remain obligated to construct the road facilities upon and convey to Beaufort County the Road Rights-of-Way contemplated in Article XI of this Agreement. If such construction and conveyance has not occurred prior to the time of transfer of the Parent Parcel then, in such event, Owner may satisfy its obligations with respect to Owner Obligations by providing, or causing to be provided, a letter of credit, bond or other commercially acceptable form of security in an amount equal to 125% of the estimated cost for completion of such installation and/or construction.

(2) **Notification to County.** When Owner transfers the Parent Parcel to a Transferee, Owner shall be responsible for delivering, or causing to be delivered, to Beaufort County the Notice of Transfer together with the name, address, telephone number, facsimile number, and contact person for the Transferee.

(3) **Assignment of Development Rights.** Any and all conveyances of the Parent Parcel to a Transferee shall be by a recordable instrument with a covenant running with the land expressly stating the precise number of commercial square footage being assigned to the Transferee.

(iii) **Transfer of any Portion of the Property.** Owner shall have the right and the obligation to transfer the rights-of-way in accordance with Article XI hereof. Owner shall also have the right to transfer any portion of the Property to a Transferee in accordance with the requirements for transfer described for Article XVIII G (ii); provided however, upon any such transfer of a portion of the Property Owner shall (i) continue to be liable for Owner’s Obligations so long as Owner owns the Parent Parcel, (ii) delivers, or causes to be delivered, to County a Notice of Transfer

together with the name, address, telephone number, facsimile number, and contact person for the Transferee, and (iii) the transfer to a Transferee shall be by a recordable instrument with a covenant running with the land expressly stating the precise number of commercial square footage of density being assigned to the Transferee, which assigned number shall reduce Owner's number of commercial square footage of density provided for herein. The requirements of this Article XVIII G (iii) shall not apply to purchasers of lots or parcels within the Property unless such purchasers are assigned Development Rights approved by this Development Agreement.

(iv) **Mortgage Lenders.** Notwithstanding anything to the contrary contained herein, the requirements to transfer contained in Article XVIII G. concerning successors and assigns shall apply: (i) to any mortgage lender upon acquiring title to the Property or any portion thereof, either as a result of foreclosure of mortgage secured by any portion of the Property or to any other transfer in lieu of foreclosure; (ii) to any third-party purchaser at such foreclosure; or (iii) to any third-party purchaser of such mortgage lender's interest subsequent to the mortgage lender's acquiring ownership of any portion of the Property. Nothing contained herein shall prevent, hinder, or delay any transfer of any portion of the Property to any such mortgage lender or subsequent purchaser.

H. Assignment. Subject to the notification provisions hereof, Owner may assign its rights and responsibilities hereunder to subsequent land owners and Developers.

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

J. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

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

- L. **Eminent Domain.** Nothing contained in this Agreement shall limit, impair or restrict Beaufort County's right and power of eminent domain under the laws of the State of South Carolina.
- M. **No Third Party Beneficiaries.** The provisions of this Agreement may be enforced only by Beaufort County, Owner, Developers and Lessees. No other persons shall have any rights hereunder.
- N. **Attorneys' Fees and Costs.** Each party to this Agreement agrees to pay their own fees and costs incurred by them.

XIX. STATEMENT OF REQUIRED PROVISIONS.

- A. **Specific Statements.** The Act requires that a development agreement must include certain mandatory provisions, pursuant to Section 6-31-60 (A). Although certain of these items are addressed elsewhere in this Agreement, the following listing of the required provisions is set forth for convenient reference. The numbering below corresponds to the numbering utilized under Section 6-31-60 (A) for the required items:
 - (i) **Legal Description of Property and Legal and Equitable Owners.** The legal description of the Property is set forth in Exhibit "A" attached hereto and made a part hereof. The present legal owner of the Property is Georgia McCulloch and PAHH Development, LLC.
 - (ii) **Duration of Agreement.** The duration of this Agreement is five (5) years unless extended pursuant to Article III hereof.
 - (iii) **Permitted Uses, Densities, Building Heights and Intensities.** A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development-related standards, are contained in the Development Agreement Ordinance.
 - (iv) **Required Public Facilities.** The utility service available to the Property is described in Article X. The mandatory procedures of the Development Agreement Ordinance will ensure availability of public access and utilities to serve the Property.

- (v) **Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.**
The Development Agreement Ordinance contains provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws shall be complied with, except as otherwise set forth herein and in the Development Plan.
- (vi) **Local Development Permits.** The Development standards for the Property shall be as set forth in the Development Agreement Ordinance. Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Development Agreement Ordinance. Building Permits must be obtained under applicable law for any construction. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Owner, its successors and assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions, unless otherwise provided in the Development Agreement Ordinance.
- (vii) **Comprehensive Plan and Development Agreement.** The Development permitted and proposed under the Development Agreement Ordinance, is consistent with the Comprehensive Plan and with current development regulations of Beaufort County, South Carolina.
- (viii) **Terms for Public Health, Safety and Welfare.** The Council for Beaufort County finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of the Development Agreement Ordinance and existing laws.
- (ix) **Historical Structures.** No historical structures or features are present on the Property and therefore no specific terms relating to historical structures are pertinent to this Development Agreement.

[Signatures on following pages]

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

WITNESSES:

OWNER:

Jaz 278, LLC

By: Jaz Management, LLC
Its: Manager

By:
Its:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the undersigned Notary Public of the State and County stated below, personally appeared _____ 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 the capacity indicated.

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: _____

(Affix Notary Seal)

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

By:
Its:

STATE OF SOUTH CAROLINA.)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ___ day of _____, 20___, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate official of Beaufort County, 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.

(Affix Notary Seal)

Notary Public for South Carolina
My Commission Expires: _____

HILTONHEAD 789999v12

EXHIBIT "A"

Property Description

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, containing 56.407 acres, more or less, as shown on a survey entitled "Boundary Survey prepared for JAZ Development, LLC, U.S. Hwy 278 and S.C. Hwy 46" dated August 14, 2012, last revised November 20, 2012, prepared by Andrews & Burgess Inc., bearing the seal and certification of Gary Blair Burgess, SCPLS # 15229, recorded in the Beaufort County Records in Plat Book _____ at Page _____, more particularly described as follows:

Commencing at a 3"x3" concrete monument found near the intersection of the southern right of way of Fording Island Road (U.S. Hwy 278) (R/W varies) and the western right of way of Bluffton Road (S.C. Hwy 46) (R/W varies). Thence S 22°50'20" E a distance of 60.98 feet to an iron pin set. Thence S 04°32'32" W a distance of 80.26 feet to an iron pin set. Thence S 09°48'01" W a distance of 115.26 feet to an iron pin set. Thence S 09°04'47" W a distance of 33.39 feet to an iron pin set. Thence S 09°04'47" W a distance of 186.98 feet to an iron pin set. Thence S 10°27'49" W a distance of 275.00 feet to an iron pin set. Thence S 07°36'05" W a distance of 200.25 feet to an iron pin set. Thence S 10°27'49" W a distance of 183.90 feet to an iron pin set. Thence N 54°19'53" W a distance of 437.94 feet to an iron pin set. Thence S 35°27'44" W a distance of 401.63 feet to an iron pin found. Thence S 54°34'34" E a distance of 603.91 feet to an iron pin set. Thence S 15°47'18" W a distance of 64.75 feet to an iron pin set. Thence N 78°37'41" a distance of 218.41 feet to an iron pin set. Thence S 54°34'34" E a distance of 122.68 feet to an iron pipe found. Thence N 78°54'34" W a distance of 644.15 feet to a concrete monument found. Thence S 10°43'33" W a distance of 105.10 feet to an iron pin found. Thence N 80°43'05" W a distance of 864.03 feet to an iron pin set. Thence N 10°53'44" E a distance of 1,640.67 feet to a concrete monument found. Thence S 75°43'07" E a distance of 367.43 feet to a concrete monument found. Thence S 75°42'58" E a distance of 403.34 feet to a concrete monument found. Thence N 11°36'22" E a distance of 804.68 feet to a concrete monument found. Thence S 42°59'43" E a distance of 322.98 feet to a concrete monument found. Thence S 37°19'02" E a distance of 56.29 feet to a concrete monument found. Thence S 37°20'26" E a distance of 44.21 feet to a concrete monument found. Thence S 43°02'22" E a distance of 341.20 feet to a concrete monument found being the point of curvature of a tangent curve. Turning to the right, having a radius of 2,864.64 feet a delta angle of 3°45'40" and a chord length of 188.01 feet bearing S 41°09'01" E. Thence proceed along the arc of said curve 188.05 feet to a 3"x3" concrete monument found. Said point being the point of beginning.

LESS AND EXCEPT that portion of property shown on the above referenced survey as South Carolina Public Service Authority rights-of-way containing 4.958 acres, more or less, further described as follows:

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, containing 3.48 acres, more or less, as shown on a Plat entitled "Plat Showing Property to be acquired by the South Carolina Ports Authority from Malcolm Johnson" dated January 19, 1970, prepared by Davis & Floyd Engrs. Inc., bearing the seal and certification of Phil R. Floyd, SCRLS # 1573, recorded in the Beaufort County Records in Plat Book 18 at Page 73.

AND ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, shown as Parcel A on a Plat entitled "South Carolina Electric & Gas Co. for Hardeeville – Bluffton 115 K.V. Line Property in Beaufort County about to be conveyed from Malcolm Johnson to the South Carolina State Ports Authority" dated June 1976, last revised August 10, 1976, prepared by and bearing the seal and certification of Edward F. Owens, SCRLS # 2211, recorded in the Beaufort County Records in Plat Book 25 at Page 75.

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, containing 4.829 acres, more or less, as shown on a survey entitled "Boundary Survey prepared for JAZ Development, LLC, U.S. Hwy 278 and S.C. Hwy 46" dated August 14, 2012, last revised November 20, 2012, prepared by Andrews & Burgess Inc., bearing the seal and certification of Gary Blair Burgess, SCPLS # 15229, recorded in the Beaufort County Records in Plat Book ____ at Page ____, more particularly described as follows:

Commencing at a 3"x3" concrete monument found near the intersection of the southern right of way of Fording Island Road (U.S. Hwy 278) (R/W varies) and the western right of way of Bluffton Road (S.C. Hwy 46) (R/W varies). Thence S 22°50'20" E a distance of 60.98 feet to an iron pin set. Thence S 04°32'32" W a distance of 80.26 feet to an iron pin set. Thence S 09°48'01" W a distance of 115.26 feet to an iron pin set. Thence S 09°04'47" W a distance of 33.39 feet to an iron pin set. Thence S 09°04'47" W a distance of 186.98 feet to an iron pin set. Thence S 10°27'49" W a distance of 275.00 feet to an iron pin set. Thence S 07°36'05" W a distance of 200.25 feet to an iron pin set. Thence S 10°27'49" W a distance of 183.90 feet to an iron pin set. Said point being the point of beginning. Thence S 10°27'49" W a distance of 58.99 feet to an iron pin set being the point of curvature of a tangent curve. Turning to the right, having a radius of 3,769.72 feet a delta angle of

5°19'29" and a chord length of 350.21 feet bearing S 13°07'34" W. Thence proceed along the arc of said curve 350.33 feet to an iron pin set. Thence S 15°47'18" W a distance of 23.64 feet to a point. Thence N 54°34'34" W a distance of 603.91 feet to an iron pin found. Thence N 53°27'44" E a distance of 401.63 feet to an iron pin found. Thence S 54°19'53" E a distance of 437.94 feet to the point of beginning.

LESS AND EXCEPT all of that certain parcel of land containing 0.175 acre, more or less, as conveyed to South Carolina Department of Transportation by deed of PAHH Development, LLC, dated September 18, 2008 and recorded October 16, 2008 in Book 2775 at Page 223, Beaufort County Records.

EXHIBIT "B"

Development Plan

EXHIBIT "C"

Sign Master Plan

EXHIBIT "D"

**Zoning And Development Standards Ordinance of Beaufort County
Adopted April 26, 1999**

EXHIBIT "E"
Development Schedule

Development of the Property is expected to occur in Phases over the five (5) year term of the Development 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 as provided below:

<u>Percent of Completed Development</u>	<u>Date*</u>
80%	0 - 24 months
100%	24 - 60 months

In the event development of the prop has not achieved 80% completion within 24 months, from the date of issuance of all development permits required for development of such 80% of the property owner shall be required to commence annual meetings with the county administrator and the county planning director to provide annual status reports.

* Months after the issuance of all development permits for such percentage of development.

EXHIBIT "F"

BJWSA Intent to Serve Letter

EXHIBIT "G"

STATE OF SOUTH CAROLINA)	NOTICE OF TRANSFER AND
)	PARTIAL ASSIGNMENT AND ASSUMPTION
)	OF RIGHTS AND OBLIGATIONS UNDER
COUNTY OF BEAUFORT)	DEVELOPMENT AGREEMENT

THIS NOTICE OF TRANSFER AND PARTIAL ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT (“Partial Assignment” is dated this ____ day of _____, 20___, by and between Jaz 278, LLC, a Georgia limited liability company authorized to conduct business in South Carolina (“Assignor”), and _____, a _____ (“Assignee”).

WITNESSETH:

WHEREAS, on or about the ____ day of _____, 20___, Assignor entered into a Development Agreement (“Development Agreement”) with Beaufort County, South Carolina, incident to the development of certain real property known as the Bluffton Gateway Commercial Center, which Development Agreement, as amended, controls the Property (as defined herein); and

WHEREAS, Assignor entered into an Agreement For Purchase And Sale (“Agreement”) with Assignee dated _____, 20___ providing for the sale by Assignor and the purchase by Assignee of certain real property being more particularly described on Exhibit “A” attached hereto and made a part hereof (the “Property”); and

WHEREAS, an integral part of the conveyance of the 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 Property, thus necessitating the preparation and execution of this Partial Assignment.

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

1. Partial Assignment and Assumption of Rights, Privileges and Obligations Applicable to the Property Pursuant to The Development Agreement. Assignor does hereby transfer, assign, convey and deliver unto Assignee, its successors and assigns, such rights for the land uses on the Property that are defined in the Development Agreement (the “Assigned Land Use”). Assignee shall be entitled to all of the privileges and obligations as described in the Development Agreement applicable for the Assigned Land Use to the Property except for those certain excluded obligations, rights and privileges (“Excluded Obligations”) identified herein below, if any. Assignor is hereby released from and Assignee hereby assumes and agrees to perform all of Assignor’s rights, privileges and obligations as described in the Development Agreement applicable to the

Assigned Land Use for the Property, except for the Excluded Obligations, if any. Assignee acknowledges receipt of the Development Agreement and all Exhibits thereto and with respect to the Assigned Land Use and the Property agrees to be bound by the terms thereof, and to develop the 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.

2. **Option A - Alternate for Sale of Parent Parcel:** Excluded Obligations, Rights and Privileges (Sale of Parent Parcel). The following are hereby excluded from Assignor's assignment and Assignee's assumption herein:

- a. the terms of Article XVIII G concerning the construction and dedication of Road Rights-of-Way;

2. **Option B - Alternate for Sale of Portion of Property.** Excluded Obligations, Rights and Privileges. The following are hereby excluded from Assignor's assignment and Assignee's assumption herein:

- a. the terms of Article XVIII G concerning the construction and dedication of Road Rights-of-Way;

3. Estoppel Certificate. Pursuant to Article XVIII of the Development Agreement, Assignor hereby certifies the following, to wit:

- a. that the Development Agreement, as amended, is in full force and effect;
- b. that the Development Agreement has not been further amended or modified (or if it has the date of such amendment or modification);
- c. that to the best knowledge of Assignor, all parties to the Development Agreement are in full compliance with all obligations there under as of the date hereof; and
- d. that to the best knowledge of Assignor, no event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute an event of default under the terms of the Development Agreement.

4. Notices. Any notice, demand, request, consent, approval, or communication among any of the parties hereto or Beaufort County shall be in writing and shall be delivered as provided under Article XVI of the Development Agreement and shall be addressed as follows:

To Assignor: Jaz 278, LLC
c/o David Oliver, President
4060 Peachtree Road, D-287
Atlanta, GA 30319

With a Required Copy To: Walter J. Nester, III
McNair Law Firm, P.A.
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

And to Assignee: _____

With a Required Copy To: _____

5. Delivery. Assignor covenants and agrees to deliver a copy of this Partial Assignment to Beaufort County and cause the original to be recorded on the land records.

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

7. Governing Law. The within Partial Assumption shall be interpreted and constructed and conform to the laws of the state of South Carolina.

[Reminder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties have caused this Partial Assignment to be duly executed as of the ____ day of _____, 20__.

WITNESSES:

ASSIGNOR:

Jaz 278, LLC
a Georgia limited liability company authorized to conduct
business in South Carolina ,and its successors and assigns

By:
Its:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public for _____, do hereby certify that _____, as _____ of Jaz 278, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _____, 20__.

Notary Public for _____
My Commission Expires: _____

(Affix Notary Seal)

WITNESSES:

ASSIGNEE:

By:

Its:

STATE OF SOUTH CAROLINA)

)

COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public for _____, do hereby certify that
_____, as _____ of _____,
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 20____.

Notary Public for _____

My Commission Expires: _____

(Affix Notary Seal)

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

WHEREAS, Owner is the contract purchaser of certain adjacent tracts of real property consisting of a total of approximately sixty-six and 20/100 (66.20) acres, as more particularly described on Exhibit “A” attached hereto and made a part hereof (collectively hereinafter, the “Property”); and

WHEREAS, the Property is zoned Commercial Regional and is largely undeveloped, the only improvements being an eight thousand square foot (8,000 SF) building and associated parking formerly operated as a commercial printing operation and a two hundred fifty foot (250’) wide utility right-of-way area containing electrical utility lines and associated infrastructure (hereinafter, the “Powerline Easement Area”); and

WHEREAS, Owner is planning the development of the Property as a commercial center to be known as Bluffton Gateway Commercial Center (hereinafter “Bluffton Gateway”) with approximately three hundred twenty-two thousand square feet (322,000 SF) of commercial retail space, together with up to three (3) outparcels containing an additional approximate twenty thousand (20,000) square feet of commercial retail and restaurant space; and

WHEREAS, as provided in the May 2001 U.S. 278 Short Term Needs Study prepared by Wilbur Smith Associates for the Beaufort County Council (the “Short Term Needs Study”), Beaufort County identifies the need for road interconnectivity through the Property to the west with Sheridan Park commercial center and/or Red Cedar Street in Bluffton Park to S.C. Highway 46 to the east; and

WHEREAS, Beaufort County has requested and Owner has agreed to the construction generally as identified in the Short Term Needs Study of access roads to provide access to and interconnectivity to those properties adjacent to the Property, and the dedication to Beaufort County of certain road rights-of-way and road improvements on the Property in support of such interconnectivity; and

WHEREAS, Owner desires to modify certain aspects of the ZDSO (hereinafter defined), as more particularly described herein, to provide for and achieve the successful development of Bluffton Gateway pursuant to and as shown in a development plan (the “Development Plan”) to be approved by the DRT and the SCRB (each as hereinafter defined) in accordance with the ZDSO, which Development Plan is attached hereto as Exhibit “B” and made a part hereof; and

[WHEREAS, the ZDSO provides for commercial subdivisions in Section 106-2540; and](#)

WHEREAS, the development of the Property results in the imposition of certain impact fees (collectively, and not intending to be limiting, hereinafter “Impact Fees”) in accordance with applicable County ordinances and state law to the extent the development creates new impacts; and

WHEREAS, Owner has agreed to the construction of road infrastructure on the Property and the dedication of rights-of-way where such road infrastructure has been or shall be constructed on the Property in partial consideration of credits against any Impact Fees due to the increase in impacts resulting from the development during the term of this Agreement; and

WHEREAS, the Property is subject to a Non-Responsible Party Voluntary Cleanup Agreement (the “Brownfield Voluntary Cleanup Agreement”) between Owner and the South Carolina Department of Health and Environmental Control (“DHEC”) pursuant to Section 44-56-710, *et seq.* of the South Carolina Code of Laws (the “Brownfield Voluntary Cleanup Program”); and

WHEREAS, the Brownfield Voluntary Cleanup Program provides for the exemption of certain ad valorem taxes pursuant to and as more particularly described in Section 12-37-220 (44) of the South Carolina Code of Laws (the “Brownfield Voluntary Cleanup Exemption”); and

WHEREAS, the Brownfield Voluntary Cleanup Exemption provides for a five (5) year exemption from certain ad valorem taxes upon the issuance of a certificate of completion by DHEC (the “DHEC Certificate of Completion”) and upon the approval by resolution of the Beaufort County Council; and

WHEREAS, the county governing body contemplated in Section 12-37-220 (44) of the South Carolina Code of Laws is the Beaufort County Council, and Owner desires to confirm in this Agreement that the required resolution be issued by Beaufort County Council upon the issuance of the DHEC Certificate of Completion; and

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

WHEREAS, Beaufort County finds that Owner's plan for development proposed for this Property is consistent with Beaufort County's comprehensive land use plan and shall, together with the

Brownfield Voluntary Cleanup Agreement, further the health, safety, welfare and economic well being of Beaufort County and its citizens; and,

WHEREAS, the plan for the development of the Property presents Beaufort County with an exceptional opportunity to receive completed road infrastructure consistent with and in compliance with the Short Term Needs Study; secures quality planning and a well-constructed commercial retail center; provides for the voluntary cleanup of an existing Brownfield; provides for the enhanced protection of the environment; and strengthens and revitalizes its tax base; and,

WHEREAS, this Development Agreement is being made and entered between Owner and Beaufort County, under the terms of the Act for the purpose of providing assurances to Owner that it may proceed with its development of the Property under the terms hereof, consistent with the Development Plan, without encountering future changes in law which would materially affect the ability to complete the proposed development of the Property pursuant to the Development Plan, and for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to Beaufort County.

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

I. INCORPORATION.

The above recitals are hereby incorporated into and are made a part of 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.

“Beaufort County” or “County” means the municipal government of Beaufort County, South Carolina.

“Developer” means Owner and all successors in title or lessees of Owner who undertake Development of all or any portion of the Property or who are assigned Development Rights.

“Development” means the same as the definition of development as set forth in the ZDSO.

“Development Agreement Ordinance” means all terms and conditions of this Development Agreement for Bluffton Gateway Commercial Center and all the attachments thereto, including but not being limited to the Development Plan and all narratives, applications, site development, Sign Master Plan(s), standards, exhibits and applicable ordinances as same may be hereafter amended by mutual agreement of Beaufort County and Owner. Specifically, it is noted that the adoption of the Development Agreement Ordinance after public hearings shall have the effect of a properly adopted land use ordinance. To the extent that any provision of the Development Agreement Ordinance may be deemed to be a modification of presently existing Beaufort County law, such modification is hereby approved, ratified and adopted as binding upon the Property and the parties hereto by the approval of this Development Agreement.

“Development Fees” means any and all road facilities development impact fees incurred in the Development of all or any portion of the Property, whether or not such road facilities or system improvements are currently identified in the County’s adopted road capital improvement plans or other adopted plans, and/or any other similar fee now existing or hereinafter adopted by Beaufort County.

“Development Plan” means that certain site development plan for the Property, and related material and exhibits, depicting proposed lots, buildings and other infrastructure for the Property’s proposed development, which are entitled “Development Plan”, [and which constitute vested Development Rights \(as hereinafter defined\) under this Agreement with respect to all applicable zoning and land development requirements under the ZDSO.](#) and which have been reviewed and approved by the County in conjunction with the approval of this Development Agreement, which Development Plan is attached hereto as [Exhibit “B”](#) and made a part hereof.

“Development Rights” means vested land use and the right to the Development of the Property or portions thereof, undertaken by Owner or Developers in accordance with the Development Agreement Ordinance and the ZDSO.

“DRT” means Beaufort County’s Development Review Team or similar planning review authorized and described in the ZDSO.

“**Effective Date**” means the date of complete execution of this Agreement after the approval by the County of the Development Agreement Ordinance.

“**Jaz 278, LLC**” means a Georgia limited liability company authorized to conduct business in South Carolina, and its successors and assigns.

“**Owner**” means Jaz 278, LLC, a Georgia limited liability company authorized to conduct business in South Carolina, and its successors and permitted assigns.

“**Property**” means collectively those tracts of land described on Exhibit “A” attached hereto and made a part hereof.

“**SCRB**” means the Beaufort County Southern Corridor Review Board, which has given conceptual approval of the Development Plan.

“**Sign Master Plan**” means that certain signage master plan for the development of the Property as approved in this Agreement , and related materials and exhibits entitled “Sign Master Plan”, which has been approved by Beaufort County in conjunction with the approval of this Development Agreement, which Sign Master Plan is attached hereto as Exhibit “C” and made a part hereof.

“**Term**” means a period of five (5) years and an additional five (5) years, if extended as set forth in Article III of this Agreement.

“**USACE**” means United States Army Corps of Engineers.

“**ZDSO**” means the Zoning and Development Standards Ordinance of Beaufort County adopted April 26, 1999, existing as of the Effective Date and attached hereto as Exhibit “D” and made a part hereof. References in the ZDSO to the latest version of County manuals shall mean and refer to the latest version of such manual as of the date of this Agreement, and shall include any and all zoning and development ordinances subsequently adopted or approved by Beaufort County.

III. TERM.

The Term of this Agreement shall commence on the Effective Date and terminate five (5) years thereafter; or, if renewed, at the end of two (2) additional five (5) year periods. During the Term, the provisions of this Development Agreement shall be vested against any future changes to Beaufort County law or ordinances which would affect the ability of Owner to carry out the development approved in this Development Agreement. Further, at the end of the second five (5) year period, the provisions of this

Development Agreement shall be vested against any future changes to Beaufort County law or ordinances if Owner shall have achieved Substantial Development. “Substantial Development” shall mean (i) the conveyance by Owner of any right-of-way to Beaufort County pursuant to the terms of Article XI of this Agreement, or (ii) the construction (being completed or under construction) of not less than twenty-five percent (25%) of the total commercial building area on the Property as shown and depicted on the Development Plan.

IV. DEVELOPMENT OF THE PROPERTY.

The Property shall be developed in accordance with this Development Agreement. Beaufort County shall, throughout the Term, use its best efforts to maintain or cause to be maintained, a procedure for the expedited administrative processing and review of all Development on the Property as approved by the Development Agreement. All costs charged by or to Beaufort County for such reviews shall be paid by Owner or Developer, as applicable.

V. CHANGES TO THE ZDSO.

Any amendment or modification to the ZDSO, including any new or successor zoning and development standards ordinances adopted by Beaufort County, shall not be applicable to the Property without the express prior written consent of Owner and any Developer with respect to assigned Development Rights; provided, however, Beaufort County may apply such subsequently adopted laws to the Development if it holds a public hearing and it is determined that the subsequently adopted laws are: (a) not in conflict with laws governing this Agreement and do not prevent the Development approved in this Agreement; (b) essential to public health, safety or welfare, and the subsequently adopted laws expressly state that they apply to the Development of the Property; (c) specifically anticipated and provided for in the Development Agreement; (d) Beaufort County demonstrates that substantial changes have occurred to pertinent conditions regarding the Property existing as of the Effective Date and if not addressed by Beaufort County would pose a serious health risk to the public health, safety and welfare of its citizens; or (e) the Development Agreement is based on substantially inaccurate information supplied by Owner. Owner does, for itself and its successors and assigns, and notwithstanding the ZDSO, agrees to be bound by the following:

- A. Owner shall be required to notify Beaufort County, in writing, as and when Development Rights are transferred to any Developer. Such information shall include the identity and address of the acquiring party, a proper contact individual, and the location and number of acres of the Property for which Development Rights are being transferred. 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 subject to the requirements of Article XVIII G.

- B. Owner agrees that all Development on the Property, with the exception of irrigation and incidental maintenance facilities, shall be served by potable water and sewer prior to occupancy, except for temporary use.

~~VI. VII.~~

VI. ~~VIII.~~ **DEVELOPMENT SCHEDULE.**

The Property shall be developed in accordance with the development schedule, attached hereto as Exhibit "E" and made a part hereof (the "Development Schedule"), as the same may be modified or amended by Owner or any Developer(s) in the future to reflect market conditions as determined in the sole discretion of Owner or any Developer with respect to assigned Development Rights. In accordance with the Act, the failure of Owner or any Developer with assigned Development Rights to meet the Development Schedule shall not, in and of itself, constitute a material breach of this Agreement. The Development Schedules is a planning and forecasting tool only. The failure to meet the Development Schedule shall be judged by the totality of circumstances, including but not limited to Owner's and/or Developer's good faith efforts to attain compliance with the Development Schedule. The fact that Development of the Property may take place at a different pace, based on future market conditions, as determined in the sole reasonable discretion of Owner or any Developer with respect to assigned Development Rights, is expected and shall not be a default hereunder. Furthermore, periodic adjustments to the Development Schedule, which may be submitted to the County by Owner or Developer(s) in the future, shall not be considered a material amendment or breach of this Agreement.

VII. ~~IX.~~ **COMMERCIAL DENSITY AND USE.**

- A. **Commercial Density.** Development on the Property shall be limited to a maximum of 350,000 commercial square feet. Any subsequent development on the Property of additional commercial square footage resulting in an increase of more than 50 additional daily trips, shall require an updated traffic impact analysis and an amendment to the Development Agreement in accordance with Article XV. The right to fully develop or construct all of the commercial density provided herein shall be binding on Owner and the County. It being specifically understood that Owner, its successors and assigns shall have the absolute right to develop the Property to the commercial square feet of density stated herein. Owner or any Developer with respect to assigned Development Rights shall have the right to make revisions to the Development Plan for matters including, but not limited to, adjustments to the dimensions of lots and buildings so long as the same are in keeping with the character and intent of the Development Agreement Ordinance

and shall be administered and approved by the DRT, and such revisions shall not require an amendment of this Agreement pursuant to an amendment to the Development Agreement Ordinance.

- B. Use.** The Development Plan vests certain proposed land uses within the Property. The specific uses allowed for the Property shall be all those uses allowed under the Commercial Regional zoning category provided in the ZDSO as of the Effective Date of this Agreement.

VIII. ~~X.~~ ACCESS.

The Property is bounded by U.S. Highway 278 to the north and S.C. Highway 46 to the east. Access to the Property to U.S. Highway 278 and S.C. Highway 46 is approved as depicted in the Development Plan and as described herein. At such time other interconnectivity to the west is completed as approved in this Development Agreement, the Property shall have the access as shown in the Development Plan.

IX. ~~XI.~~ EFFECT OF FUTURE LAWS.

Owner and Developer(s) shall have vested rights to undertake Development of any portion or all of the Property in accordance with the Development Agreement Ordinance. Future enactments of, or changes or amendments to Beaufort County ordinances, including the ZDSO, shall not apply to the Property unless the same are adopted in accordance with Article V of this Development Agreement or unless Owner and any Developer(s) consent to such enactment, change or amendment.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present standard building, housing, electrical, plumbing or gas codes or future codes in compliance with Section 6-31-160 of the Act, or any tax or fee of general application throughout Beaufort County. No future development and/or aid to construction, impact fees or special assessments shall apply to the Property without the consent of Owner.

X. ~~XII.~~ INFRASTRUCTURE AND SERVICES.

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

Private Roads.

Except for those rights-of-way to be dedicated to Beaufort County as provided in this Agreement, any roads proposed to be constructed within the Property shall be constructed by Owner, and maintained by it, or dedicated for maintenance to other appropriate entities. Except for those rights-of-way to be dedicated to Beaufort County as provided in this Agreement, Beaufort County shall not be responsible for the construction or maintenance of any roads within the Property, unless Beaufort County specifically agrees to do so in the future.

B. Public Roads.

- (i) The Property shall be served by direct access to U.S. Highway 278 and S.C. Highway 46 as shown on the Development Plan.
- (ii) The location of public access points to the Property, median cuts in the right-of-way, and signage shall be as set forth in the Development Plan.

C. Potable Water. Potable water shall be supplied to the Property by Jasper/Beaufort Water and Sewer Authority (“BJWSA”). Owner, to the extent necessary and not currently existing, shall construct or cause to be constructed all necessary water service infrastructure within the Property, which shall be owned and maintained by Owner or BJWSA. Owner shall be responsible for all financial arrangements with BJWSA with respect to the cost of construction, ownership and maintenance of all potable water and potable water utility infrastructure on the Property. An intent to serve letter from BJWSA is attached hereto as Exhibit “F” and made a part hereof.

D. Sewage Treatment and Disposal. Sewage treatment and disposal shall be provided by BJWSA. Owner, to the extent necessary and not currently existing, shall construct or cause to be constructed all necessary sanitary sewer service infrastructure within the Property, which shall be owned and maintained by Owner or BJWSA. Owner shall be responsible for all financial arrangements with BJWSA with respect to the cost of construction, ownership and maintenance of all sanitary sewer discharge and sanitary sewer utility infrastructure on the Property. An intent to serve letter from BJWSA is attached hereto as Exhibit “F” and made a part hereof.

E. Stormwater Treatment and Disposal. Stormwater treatment and disposal shall be in accordance with the ZDSO and the terms of this Agreement.

F. Other Services / Future Agreements. Development within the Property shall be served and entitled to any and all Beaufort County services, such as fire protection and police protection, provided to other property within Beaufort County, with the understanding that the Property, except as otherwise herein provided, shall be subject to all Beaufort County taxes of universal application, as well as any special service district taxes which may apply to all other existing properties and development within the area, such as Fire District millage rates. Normal service shall be considered vested as a matter of right within this Property, on the same basis as all other property in Beaufort County.

XI. ~~XIII.~~ SYSTEM IMPROVEMENTS, CONVEYANCES, CREDITS AND CONTRIBUTIONS.

~~The~~In addition to all other covenants, conditions and agreements set forth in this Agreement, the following ~~items~~ are hereby agreed upon by the parties ~~to be provided~~:

A. Rights-of-Way.

- (i) **Southern Connector Road.** Owner shall transfer to Beaufort County that certain parcel of real property shown and depicted as the “Southern Connector Road” on the Development Plan, which may be combined with other real property obtained by Beaufort County for the construction of a public right-of-way providing access to and through the Property from the west as generally depicted in the Development Plan. The parties acknowledge and agree that for the sole purpose of valuation of credits against Development Fees as described in this Article XI and for no other purpose, the value of the Southern Connector Road, standing alone and not as part of the entire Property, shall be at Owner’s option, either:
- (a) one hundred percent (100%) of the most recent assessed value for such land, as shown in the County Assessor’s records, or
 - (b) the fair market value of the land established by a private appraiser acceptable to the County in an appraisal paid for by the Owner.

Together with credits for other system improvements, Owner and Developer(s) shall be entitled to credits for any and all Development Fees which may become payable with respect to the Property up to the total amount of the Southern Connector Road Land Value. Beaufort County agrees that it shall use best efforts to obtain property for and complete the construction of the portions of the right-of-way not located on this Property which connect to the Southern Connector Road to the west. The conveyance document which conveys title to the Southern Connector Road shall be subject to a restrictive covenant that prohibits the use by Beaufort County of the Southern Connector Road for any use other than for a right-of-way for vehicular and pedestrian traffic and/or utility services and infrastructure.

(ii) **Sheridan Park and U.S. Highway 278 Interconnectivity and Access.** Owner shall transfer to Beaufort County that certain parcel of real property shown and depicted on the Development Plan as the “Sheridan Park/U.S. 278 Connector Road”, which may be combined with other real property obtained by Beaufort County for the construction of a connector road right-of-way with the Sheridan Park commercial center to the west of the Property, and to provide access to U.S. Highway 278, each as generally depicted in Development Plan. The parties acknowledge and agree that for the sole purpose of valuation of credits against Development Fees as described in this Article XI and for no other purpose, the value of the Sheridan Park/U.S. 278 Connector Road, standing alone and not as part of the entire Property, shall be at Owner’s option, either:

- (a) one hundred percent (100%) of the most recent assessed value for such land, as shown in the County Assessor’s records, or
- (b) the fair market value of the land established by a private appraiser acceptable to the County in an appraisal paid for by the Owner.

Together with credits for other system improvements, Owner and Developer(s) shall be entitled to credits for any and all Development Fees which may become payable with respect to the Property up to the total amount of the Sheridan Park/U.S. 278 Connector Road Value. Beaufort County agrees that it shall use best efforts to obtain real property for and complete construction of portions of the right-of-way not located on the Property which connect to the Sheridan Park/U.S. 278 Connector Road to the west. Notwithstanding anything else contained herein, the failure by the County to obtain real property for and complete construction of those portions of the right-of-way not located on the Property shall not waive, cancel or terminate its obligation to accept those rights-of-way constructed on the Property, as approved and contemplated by this Agreement. The conveyance of the document which conveys title to the Sheridan Park/U.S. 278 Connector Road shall be subject to a restrictive covenant that prohibits the use of the Sheridan Park/U.S. 278 Connector Road for any use other than for a right-of-way.

- (iii) **Conveyances.** The portions of the Southern Connector Road and the Sheridan Park/U.S. 278 Connector Road located on the Property (collectively sometimes referred to herein as the “Road Rights-of-Way”) shall be conveyed to Beaufort County by fee simple title and shall be subject to all matters of record and the restrictive covenants described herein on or after the date on which the adoption of the Development Plan and this Development Agreement become final and unappealable (or if appealed such appeal has been resolved in a manner satisfactory to Owner in its sole discretion).

B. Road Facilities Improvements – Design and Construction.

- (i) **Roads.** Owner agrees to construct or pay the cost to construct the road infrastructure upon the Road Rights-of-Way (the “Road Rights-of-Way Construction”) to County road construction standards, such Road Rights-of-Way shown and depicted on the Development Plan. Owner and Developer(s) shall also be entitled to credits against Development Fees based on the cost of the design, engineering and construction of the Road Rights-of-Way. The value of the credit for the Road Rights-of-Way Construction shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner’s and County’s shared expense to develop alternative engineering or construction cost estimates (the “Road Rights-of-Way Construction Value”). Owner and Developer(s) shall be entitled to credits against Development Fees based on the Road Rights-of-Way Construction, which may be payable with respect to the Property up to the total amount of the Road Rights-of-Way Construction Value.
- (ii) **S.C. Highway 46 Intersection.** The Development Plan contemplates improvements to S.C. Highway 46, including construction of a fully signalized intersection. The value of the credit for the construction of road improvements

to the S.C. Highway 46 Intersection shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner's and County's shared expense to develop alternative engineering or construction cost estimates (the "S.C. Highway 46 Intersection Improvement Value"). Owner and Developer(s) shall be entitled to credits against Development Fees based on the cost of the design, engineering and construction of the S.C. Highway 46 Intersection, which may be payable with respect to the Property up to the total amount of the S.C. Highway 46 Intersection Improvement Value.

- (iii) **S.C. Highway 46 and U.S. 278 Intersection Improvements.** The Development Plan contemplates improvements to the S.C. Highway 46 and U.S. 278 intersection, including modifying signalization and construction of dedicated turn lanes. The value of the credit for the construction of the S.C. Highway 46 and U.S. 278 intersection improvements shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner's and County's shared expense to develop alternative engineering or construction cost estimates (the "S.C. Highway 46/U.S. 278 Intersection Improvements Value"). Owner and Developer(s) shall be entitled to credits for any and all Development Fees which may become payable with respect to the Property up to the total amount of the S.C. Highway 46/Highway 278 Intersection Improvements Value.

C. **Signage.**

- (i) **Public.** As shown and depicted on the Development Plan, Owner has reserved a portion of the Property for the location of a public signage feature for Beaufort County and/or the Town of Bluffton (the “~~Icon/Monument~~Public Sign Area”). Owner shall grant an easement in favor of Beaufort County and/or the Town of Bluffton for access to construct, repair, and maintain the signage constructed within the ~~Icon/Monument~~Public Sign Area, if any. Any signage constructed within the ~~Icon/Monument~~Public Sign Area shall be subject to the ZDSO. The signage constructed within the ~~Icon/Monument~~Public Sign Area shall exist for public signage only and shall be neither counted against nor included in the calculations for permitted private signage for the Property.
- (ii) **Private.** ~~Owner shall construct monument signs on the Property in locations and in the form shown in the icon/monument sign plan attached hereto as Exhibit “G” and made a part hereof (the “Icon/Monument Sign Plan”). The Icon/Monument Sign Plan shall be approved in conjunction with the approval of the Sign Master Plan and this Development Agreement. The signage allowed to Owner on the icon/monument sign shall be allocated from and reduce the maximum freestanding sign area on the freestanding project signs for the Development.~~ Private signage for the Property shall be governed by a Sign Master Plan, attached hereto as Exhibit “C” and made a part hereof, which depicts three (3) monument signs at the signalized access points to the Property from S.C. Highway 46 and the access to U.S. Highway 278, and one at the intersection of U.S. Highway 278 and S.C. Highway 46. Beaufort County acknowledges and agrees that Owner shall be permitted to construct up to four (4) monument signs, not to exceed the maximum combined total of two hundred forty square feet (240 SF), in accordance with Section 106-3173 of the ZDSO, at the locations shown on the Sign Master Plan with size, color, design and architectural elements which are depicted in the Sign Master Plan. Furthermore, the structure shown as “Retail Store #2” in the Development Plan shall be permitted for one hundred sixty square feet (160 SF) of building signage upon Owner’s or Developer’s dedication of the Southern Connector Road in accordance with this Agreement. The Sign Master Plan has been approved by

[the DRT and the SCRB, and is approved by Beaufort County in conjunction with the approval of this Development Agreement.](#)

- D. Brownfield Voluntary Cleanup Exemption.** The County agrees that upon the issuance of the DHEC Certificate of Completion for the Brownfield Voluntary Cleanup Program, it shall authorize and approve by resolution the exemption of the Property from ad valorem taxes for the period of time described in accordance with Section 12-37-220 (44) of the South Carolina Code of Laws. The dollar amount of the exemption shall be limited to the actual cost of the Brownfield Voluntary Cleanup Program, which cost shall include but not be limited to Owner's legal, engineering and environmental consultants' costs and fees, as well as the actual cost of construction, remediation and testing required to obtain the DHEC Certificate of Completion. The exemption shall be in the form of a refund by the County to the Owner within ninety (90) days of the County's receipt of: (i) payment in full of all ad valorem taxes due for the Property; (ii) an itemized list with evidence of Owner's payment for the legal, engineering and environmental consultants' costs and fees incurred for permitting and the actual cost of demolition, construction, remediation and testing required to secure the DHEC Certificate of Completion; and (iii) a certified copy of the DHEC Certificate of Completion.
- E. U.S. Highway 278 Beautification Fee.** Owner agrees to a payment of a U.S. Highway 278 beautification fee in an amount equal to the annual cost to maintain the U.S. Highway 278 Right-of-Way landscaping fronting the Property for six (6) years.

No Other Requirement Dedications or Conveyances.

Except with respect to the dedications and/or conveyances of the properties referred to in this Article XI , no other dedications or conveyances of lands for public facilities shall be required in connection with the Development of the Property.

G. Development Fees.

- (i) Beaufort County acknowledges that in partial consideration of the conveyance of the Rights-of-Way and the cost of the Road Facilities Improvements thereon as described in Article XI A and XI B herein (collectively herein the "System Improvements") and notwithstanding any provision to the contrary contained within this Agreement, Owner shall receive a credit against the cost of any and all Development Fees up to the total value of the System Improvements.
- (ii) Beaufort County or other governing body shall not be precluded by this Agreement from charging fees for delivery of services to citizens or residents (i.e., an EMS response fee or the like), nor from charging fees statutorily authorized in the future (i.e., a real estate transfer fee or the like) which are not

collected as a prerequisite to approval of a plat, plan or construction permit and not otherwise contemplated hereunder.

- (iii) The Development Fees are vested for the entire Property and no other Development Fee or obligation regarding Development is imposed in connection with the Property.

H. Stormwater Management Plan. The Southern Connector Road shall be dedicated and accepted as a County Road as provided in this Article XI. Accordingly, the Southern Connector Road shall not be included in calculations for the effective impervious area for the stormwater management plan prepared for the permitting and the Development of the Property contemplated in this Agreement (the “Stormwater Management Plan”). Furthermore, so long as the Stormwater Management Plan meets the nutrient degradation and detention requirements of the ZDSO, as determined by the County engineer, the goal to achieve a maximum of ten percent (10%) overall effective impervious area ratio shall be increased to twenty-five percent (25%).

I. Vested Rights. Beaufort County agrees that the Property is approved and fully vested for intensity, commercial density, Development Fees, uses and height, setbacks, parking and signage as set forth in the Development Plan and the Development Agreement Ordinance, and shall not have any obligations for on or off site transportation or other facilities or improvements other than as specifically provided in Article XI of this Agreement, but shall adhere to the Development Plan and the Sign Master Plan. Beaufort County shall 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 Owner shall have the right to challenge.

~~XII.~~ ~~XIV.~~

PERMITTING PROCEDURES.

- A. Beaufort County agrees that Owner shall have the unlimited right to phase the development of the Property in accordance with the Development Schedule.
- B. Beaufort County agrees to use its best efforts to review in an expeditious manner all land use changes, land development applications, plats and subdivisions in accordance with applicable ordinances as modified by this Agreement for the Development of the Property. Owner may submit these items for concurrent review with Beaufort County and other governmental authorities. If the off-site USACE permits for interconnecting roads are not in place prior to DRT final approval, then Owner may proceed with on-site construction of the Bluffton Gateway Commercial Center and provide a cash bond to insure construction of the Road Rights-of-Way once the USACE permits are obtained.
- ~~C. Signage for the Property shall be governed by a Sign Master Plan, which depicts two (2) monument signs at the signalized access points to the Property from S.C. Highway 46 and the access to U.S. Highway 278, respectively. Beaufort County acknowledges and agrees that Owner shall be permitted to construct up to four (4) monument signs, not to exceed the maximum combined total of 240 square feet, in accordance with Section 106-3173 of the ZDSO (subject to a pro rata reduction of sign area to be included on the Icon/Monument Sign), at the locations shown on the Sign Master Plan with size, color, design and architectural elements which are depicted in the Sign Master Plan attached hereto as Exhibit "C" and made a part hereof.~~
- ~~D. Beaufort County agrees that the Property is approved and fully vested for intensity, commercial density, Development Fees, uses and height, setbacks, parking and signage and shall not have any obligations for on or off site transportation or other facilities or improvements other than as specifically provided in Article XI of this Agreement, but shall adhere to the Development Plan and the Sign Master Plan. Beaufort County shall 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 Owner shall have the right to challenge.~~

~~XIII. XV.~~

OWNER ENTITLEMENTS.

Beaufort County acknowledges that Owner is vested with the following items:

- A. Setbacks and Buffers.** Beaufort County agrees that the Property is vested and that the lot lines (which may be modified in accordance with Article VII A hereof), dimensions and location of setbacks and buffers shown and described in the Development Plan, as amended from time to time in accordance with this Agreement, are approved. Specifically, the County agrees to the modification of the buffers and setbacks approved in this Agreement.
- B. Access.** Beaufort County hereby approves the location of traffic signals, and curb and median cuts for access to the Property as shown in the Development Plan, subject to SCDOT permitting and approval, if any.
- C. External Setbacks and Buffers.**
- (i) As depicted in the Development Plan, the fifty foot (50') buffer described and required by the ZDSO shall be modified to allow landscaping in a twenty-five foot (25') portion of the perimeter buffer ~~in certain areas~~ for the Property as described in this Article XIII C. Owner shall be authorized to install and maintain landscaping in the twenty-five foot (25') area between the U.S. Highway 278 Right-of-Way, the S.C. Highway 46 Right-of-Way and the balance of the buffer. The intent being that the first twenty-five feet (25') of the fifty foot (50') buffer shall be landscaped and maintained. Such landscaping may be manicured grass lawns or other installed landscape materials determined in the sole discretion of Owner or any Developer assigned Development Rights hereunder. The second twenty-five foot (25') portion of the buffer shall be left as a buffer, as that term is described and contemplated in the ZDSO. The resulting combined fifty foot (50') area fronting the U.S. Highway 278 Right-of-Way and S.C. Highway 46 Right-of-Way shall have a landscaped lawn and planting area of twenty-five feet (25') in width and a natural buffer of twenty-five feet (25').
- (ii) Furthermore, and as also depicted in the Development Plan, and notwithstanding anything contained herein or in the ZDSO, the buffer and setback along the

southern boundary of the Property shall be reduced to zero feet (0') in areas where the existence of drainage ditches or issues relating to the powerline utility infrastructure and access make the requirement of a buffer impractical. In such areas, the screening fence described in and shown in the Development Plan may be required.

(iii) The landscaping, buffers and fencing described in this Article XIII C shall be exempt from the Corridor Review Standards that are described in and required by the ZDSO.

- D. Signage.** Owner shall be entitled to all signage depicted and described in the Sign Master Plan.
- E. Danger Tree Fall Area.** Beaufort County acknowledges and agrees that any Development within the Powerline Easement Area shall be subject to restrictions on landscaping, which shall prohibit installation, planting or the existence of trees or structures that exceed certain height limitations imposed by applicable utility companies and agencies with jurisdiction over the Powerline Easement Area.
- F. Other Services.** Beaufort County services, including, but not limited to, police, fire, 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 Beaufort County. In the event Owner requires enhanced services beyond that which is routinely provided within Beaufort County, then Beaufort County agrees that upon the written request of Owner, it shall negotiate in good faith with Owner to provide such enhanced services to the Property.
- G. Recycling.** Owner agrees to use its best efforts to require its tenants, purchasers, Developers or secondary Developers to maintain a recycling program on the Property consistent with Beaufort County law and fees regarding recycling. Solid waste collection shall be provided to the Property on the same basis as is provided to other residents and businesses within Beaufort County.
- H. Lawful Employment.** Owner and Beaufort County recognize the importance of having legal workers only performing construction and other work on the Property. Owner agrees to comply with current Beaufort County and State laws and use its best reasonable efforts to require all of its contractors and subcontractors to comply with the same.

- I. ~~Wetland~~Wetlands Crossings. The ~~wetland~~two (2) wetlands crossings and associated infrastructures depicted in the Development Plan and shown in the approval letter from the U.S. Army Corp. of Engineers dated December 13, 2013 (the "ACOE Permit"), which ACOE Permit permits the wetlands crossings, shall be exempt from the requirements of the ZDSO. ~~No~~Accordingly, no special use permit or other requirement of the ZDSO or other Beaufort County Ordinance shall be ~~necessary or required, and such wetland~~ required for the wetlands crossings and pipes or associated infrastructure shown in or contemplated by the Development Plan and/or the ACOE Permit, and such wetlands crossings are hereby approved by Beaufort County ~~by~~in this Development Agreement.

XIV. ~~XVI.~~ DEFAULTS.

The failure of Owner or Beaufort County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance and the termination of this Development Agreement in accordance with the Act; provided however no termination of this Development Agreement may be declared by Beaufort County absent affording Owner and any applicable Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided further that nothing herein shall be deemed or construed to preclude Beaufort County or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Development Agreement Ordinance or the ZDSO. Owner, or its designee, shall meet with Beaufort County, or its designee, at least once per year, at a time reasonably agreeable to the parties, during the Term of this Agreement to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year. Owner, or its designee, shall be required to provide such information as may reasonably be requested, to include, but not be limited to, commercial square footage completed, and any relevant information regarding the Development. This compliance review shall be in addition to, and not in lieu of, any other reporting or filing required by this Agreement, if any. If, as a result of a compliance review, Beaufort County determines that Owner has committed a material breach of the terms of this Development Agreement, Beaufort County shall serve such party in writing notice of such breach pursuant to the procedures set forth in Section 6-31-90 (B) of the Act, affording the breaching party the opportunity to respond as set forth in Section 6-31-90 (C) of said Act.

XV. ~~XVII.~~ MODIFICATION OF AGREEMENT.

This Development Agreement may be modified or amended only by the written agreement of Beaufort County and Owner. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against

whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

XVI. ~~XVIII.~~ 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 tenth (10th) 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 shall be addressed as follows:

To Beaufort County: Office of Beaufort County Administrator
100 Ribaut Road
Room 156
Beaufort, SC 29902

With Copy To: Joshua A. Gruber, Esquire
Beaufort County Legal Department
P.O. Box 1228
Beaufort, SC 29901-1228

And to Owner: Jaz 278, LLC
c/o Jaz Management, LLC
4060 Peachtree Road, D-287
Atlanta, GA 30319

With Copy To: Walter J. Nester, III
McNair Law Firm, P.A.
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

XVII. ~~XIX.~~ ENFORCEMENT.

Any party hereto shall have the right to enforce the terms, provisions and conditions of the Agreement by any remedies available at law or in equity, including specific performance, and the right to recover reasonable, actual attorney's fees and costs associated with said enforcement.

XVIII. ~~XX.~~ GENERAL.

Subsequent Laws.

In the event state or federal laws or regulations are enacted after the execution of this Development 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 Laws, or court decision, Owner and any Developer with respect to assigned Rights and Beaufort County shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Laws 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, Beaufort County 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, Owner and any Developer with respect to assigned Rights, and Beaufort County each shall have the right to challenge the New Laws 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.

Estoppel Certificate.

Beaufort County and Owner may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

- (i) that this Agreement is in full force and effect,
- (ii) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,
- (iii) 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
- (iv) 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.

Entire Agreement.

This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings among Beaufort County and 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.

No Partnership or Joint Venture.

Nothing in this Agreement shall be deemed to create a partnership or joint venture between Beaufort County and Owner or to render such party liable in any manner for the debts or obligations of another party.

Exhibits.

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

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. Successors and Assigns.

- (i) **Binding Effect.** This Agreement shall be binding upon Owner's successors and assigns in the ownership or Development of any portion of the Property. Except for Owner's continuing obligation as specifically stated in Article XVIII G (ii) (1) and G (iii) below, a purchaser or a party acquiring title to any portion of the Property or a party to whom Owner assigns Development Rights with respect to any portion of the Property (herein collectively referred to as a "Transferee") shall, during the Term of this Agreement, be solely responsible for the performance of Owner's obligations and entitled to the assigned Development Rights under this Development Agreement applicable to the portion of the Property transferred, or for which Development Rights are transferred. Each Transferee shall be required to execute a written acknowledgement assuming

Owner's obligations under this Agreement, which are directly applicable to such portion of the Property. Such acknowledgment shall be in the form provided in Exhibit "HG" attached hereto and made a part hereof (the "Notice of Transfer"), and provided to Beaufort County at the time of recording any instrument transferring title, and development rights, of the Property or any portion of the Property. This Section shall not be construed to prevent Owner from obtaining indemnification of liability to Beaufort County from Transferees. Except as specifically set forth in Article XVIII G (ii)(1) and G (iii) below, upon transfer to a Transferee, Owner shall be released of all obligations assumed by such Transferee.

(ii) **Transfer of all of the Property.** Owner shall be entitled to transfer the Parent Parcel (i.e. all of the Property save and except the Road Rights-of-Way, the "Parent Parcel") to a Transferee subject to the following requirements:

(1) **Owner Obligations.** Notwithstanding Owner's right to transfer title and development rights provided in this Article XVIII G (ii) (1), Owner shall remain obligated to construct the road facilities upon and convey to Beaufort County the Road Rights-of-Way contemplated in Article XI of this Agreement. If such construction and conveyance has not occurred prior to the time of transfer of the Parent Parcel then, in such event, Owner may satisfy its obligations with respect to Owner Obligations by providing, or causing to be provided, a letter of credit, bond or other commercially acceptable form of security in an amount equal to 125% of the estimated cost for completion of such installation and/or construction.

(2) **Notification to County.** When Owner transfers the Parent Parcel to a Transferee, Owner shall be responsible for delivering, or causing to be delivered, to Beaufort County the Notice of Transfer together with the name, address, telephone number, facsimile number, and contact person for the Transferee.

(3) **Assignment of Development Rights.** Any and all conveyances of the Parent Parcel to a Transferee shall be by a recordable instrument with a covenant running with the land expressly stating the precise number of commercial square footage being assigned to the Transferee.

(iii) **Transfer of any Portion of the Property.** Owner shall have the right and the obligation to transfer the rights-of-way in accordance with Article XI hereof. Owner shall also have the right to transfer any portion of the Property to a Transferee in accordance with the requirements for transfer described for Article

XVIII G (ii); provided however, upon any such transfer of a portion of the Property Owner shall (i) continue to be liable for Owner's Obligations so long as Owner owns the Parent Parcel, (ii) delivers, or causes to be delivered, to County a Notice of Transfer together with the name, address, telephone number, facsimile number, and contact person for the Transferee, and (iii) the transfer to a Transferee shall be by a recordable instrument with a covenant running with the land expressly stating the precise number of commercial square footage of density being assigned to the Transferee, which assigned number shall reduce Owner's number of commercial square footage of density provided for herein. The requirements of this Article XVIII G (iii) shall not apply to purchasers of lots or parcels within the Property unless such purchasers are assigned Development Rights approved by this Development Agreement.

- (iv) **Mortgage Lenders.** Notwithstanding anything to the contrary contained herein, the requirements to transfer contained in Article XVIII G. concerning successors and assigns shall apply: (i) to any mortgage lender upon acquiring title to the Property or any portion thereof, either as a result of foreclosure of mortgage secured by any portion of the Property or to any other transfer in lieu of foreclosure; (ii) to any third-party purchaser at such foreclosure; or (iii) to any third-party purchaser of such mortgage lender's interest subsequent to the mortgage lender's acquiring ownership of any portion of the Property. Nothing contained herein shall prevent, hinder, or delay any transfer of any portion of the Property to any such mortgage lender or subsequent purchaser.

Assignment.

Subject to the notification provisions hereof, Owner may assign its rights and responsibilities hereunder to subsequent land owners and Developers.

Governing Law.

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

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.

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.

Eminent Domain.

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

No Third Party Beneficiaries.

The provisions of this Agreement may be enforced only by Beaufort County, Owner, Developers and Lessees. No other persons shall have any rights hereunder.

Attorneys' Fees and Costs.

Each party to this Agreement agrees to pay their own fees and costs incurred by them.

XIX. ~~XXI.~~ STATEMENT OF REQUIRED PROVISIONS.

Specific Statements.

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

- (i) **Legal Description of Property and Legal and Equitable Owners.** The legal description of the Property is set forth in Exhibit "A" attached hereto and made a part hereof. The present legal owner of the Property is Georgia McCulloch and PAHH Development, LLC.
- (ii) **Duration of Agreement.** The duration of this Agreement is five (5) years unless extended pursuant to Article III hereof.

- (iii) **Permitted Uses, Densities, Building Heights and Intensities.** A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development-related standards, are contained in the Development Agreement Ordinance.
- (iv) **Required Public Facilities.** The utility service available to the Property is described in Article X. The mandatory procedures of the Development Agreement Ordinance will ensure availability of public access and utilities to serve the Property.
- (v) **Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.** The Development Agreement Ordinance contains provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws shall be complied with, except as otherwise set forth herein and in the Development Plan.
- (vi) **Local Development Permits.** The Development standards for the Property shall be as set forth in the Development Agreement Ordinance. Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Development Agreement Ordinance. Building Permits must be obtained under applicable law for any construction. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Owner, its successors and assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions, unless otherwise provided in the Development Agreement Ordinance.
- (vii) **Comprehensive Plan and Development Agreement.** The Development permitted and proposed under the Development Agreement Ordinance, is consistent with the Comprehensive Plan and with current development regulations of Beaufort County, South Carolina.
- (viii) **Terms for Public Health, Safety and Welfare.** The Council for Beaufort County finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of the Development Agreement Ordinance and existing laws.

(ix) **Historical Structures.** No historical structures or features are present on the Property and therefore no specific terms relating to historical structures are pertinent to this Development Agreement.

[Signatures on following pages]

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

WITNESSES:

OWNER:

Jaz 278, LLC

By: Jaz Management, LLC
Its: Manager

By:
Its:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the undersigned Notary Public of the State and County stated below, personally appeared _____ 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 the capacity indicated.

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: _____

(Affix Notary Seal)

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

By:
Its:

STATE OF SOUTH CAROLINA.)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate official of Beaufort County, 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: _____

(Affix Notary Seal)

EXHIBIT "A"

Property Description

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, containing 56.407 acres, more or less, as shown on a survey entitled "Boundary Survey prepared for JAZ Development, LLC, U.S. Hwy 278 and S.C. Hwy 46" dated August 14, 2012, last revised November 20, 2012, prepared by Andrews & Burgess Inc., bearing the seal and certification of Gary Blair Burgess, SCPLS # 15229, recorded in the Beaufort County Records in Plat Book _____ at Page _____, more particularly described as follows:

Commencing at a 3"x3" concrete monument found near the intersection of the southern right of way of Fording Island Road (U.S. Hwy 278) (R/W varies) and the western right of way of Bluffton Road (S.C. Hwy 46) (R/W varies). Thence S 22°50'20" E a distance of 60.98 feet to an iron pin set. Thence S 04°32'32" W a distance of 80.26 feet to an iron pin set. Thence S 09°48'01" W a distance of 115.26 feet to an iron pin set. Thence S 09°04'47" W a distance of 33.39 feet to an iron pin set. Thence S 09°04'47" W a distance of 186.98 feet to an iron pin set. Thence S 10°27'49" W a distance of 275.00 feet to an iron pin set. Thence S 07°36'05" W a distance of 200.25 feet to an iron pin set. Thence S 10°27'49" W a distance of 183.90 feet to an iron pin set. Thence N 54°19'53" W a distance of 437.94 feet to an iron pin set. Thence S 35°27'44" W a distance of 401.63 feet to an iron pin found. Thence S 54°34'34" E a distance of 603.91 feet to an iron pin set. Thence S 15°47'18" W a distance of 64.75 feet to an iron pin set. Thence N 78°37'41" a distance of 218.41 feet to an iron pin set. Thence S 54°34'34" E a distance of 122.68 feet to an iron pipe found. Thence N 78°54'34" W a distance of 644.15 feet to a concrete monument found. Thence S 10°43'33" W a distance of 105.10 feet to an iron pin found. Thence N 80°43'05" W a distance of 864.03 feet to an iron pin set. Thence N 10°53'44" E a distance of 1,640.67 feet to a concrete monument found. Thence S 75°43'07" E a distance of 367.43 feet to a concrete monument found. Thence S 75°42'58" E a distance of 403.34 feet to a concrete monument found. Thence N 11°36'22" E a distance of 804.68 feet to a concrete monument found. Thence S 42°59'43" E a distance of 322.98 feet to a concrete monument found. Thence S 37°19'02" E a distance of 56.29 feet to a concrete monument found. Thence S 37°20'26" E a distance of 44.21 feet to a concrete monument found. Thence S 43°02'22" E a distance of 341.20 feet to a concrete monument found being the point of curvature of a tangent curve. Turning to the right, having a radius of 2,864.64 feet a delta angle of 3°45'40" and a chord

length of 188.01 feet bearing S 41°09'01" E. Thence proceed along the arc of said curve 188.05 feet to a 3"x3" concrete monument found. Said point being the point of beginning.

LESS AND EXCEPT that portion of property shown on the above referenced survey as South Carolina Public Service Authority rights-of-way containing 4.958 acres, more or less, further described as follows:

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, containing 3.48 acres, more or less, as shown on a Plat entitled "Plat Showing Property to be acquired by the South Carolina Ports Authority from Malcolm Johnson" dated January 19, 1970, prepared by Davis & Floyd Engrs. Inc., bearing the seal and certification of Phil R. Floyd, SCRLS # 1573, recorded in the Beaufort County Records in Plat Book 18 at Page 73.

AND ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, shown as Parcel A on a Plat entitled "South Carolina Electric & Gas Co. for Hardeeville – Bluffton 115 K.V. Line Property in Beaufort County about to be conveyed from Malcolm Johnson to the South Carolina State Ports Authority" dated June 1976, last revised August 10, 1976, prepared by and bearing the seal and certification of Edward F. Owens, SCRLS # 2211, recorded in the Beaufort County Records in Plat Book 25 at Page 75.

ALL that certain piece, parcel or tract of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, containing 4.829 acres, more or less, as shown on a survey entitled "Boundary Survey prepared for JAZ Development, LLC, U.S. Hwy 278 and S.C. Hwy 46" dated August 14, 2012, last revised November 20, 2012, prepared by Andrews & Burgess Inc., bearing the seal and certification of Gary Blair Burgess, SCPLS # 15229, recorded in the Beaufort County Records in Plat Book _____ at Page _____, more particularly described as follows:

Commencing at a 3"x3" concrete monument found near the intersection of the southern right of way of Fording Island Road (U.S. Hwy 278) (R/W varies) and the western right of way of Bluffton Road (S.C. Hwy 46) (R/W varies). Thence S 22°50'20" E a distance of 60.98 feet to an iron pin set. Thence S 04°32'32" W a distance of 80.26 feet to an iron pin set. Thence S 09°48'01" W a distance of 115.26 feet to an iron pin set. Thence S 09°04'47" W a distance of 33.39 feet to an pin set. Thence S 09°04'47" W a distance of 186.98 feet to an iron pin set.

Thence S 10°27'49" W a distance of 275.00 feet to an iron pin set. Thence S 07°36'05" W a distance of 200.25 feet to an iron pin set. Thence S 10°27'49" W a distance of 183.90 feet to an iron pin set. Said point being the point of beginning. Thence S 10°27'49" W a distance of 58.99 feet to an iron pin set being the point of curvature of a tangent curve. Turning to the right, having a radius of 3,769.72 feet a delta angle of 5°19'29" and a chord length of 350.21 feet bearing S 13°07'34" W. Thence proceed along the arc of said curve 350.33 feet to an iron pin set. Thence S 15°47'18" W a distance of 23.64 feet to a point. Thence N 54°34'34" W a distance of 603.91 feet to an iron pin found. Thence N 53°27'44" E a distance of 401.63 feet to an iron pin found. Thence S 54°19'53" E a distance of 437.94 feet to the point of beginning.

LESS AND EXCEPT all of that certain parcel of land containing 0.175 acre, more or less, as conveyed to South Carolina Department of Transportation by deed of PAHH Development, LLC, dated September 18, 2008 and recorded October 16, 2008 in Book 2775 at Page 223, Beaufort County Records.

EXHIBIT "B"

Development Plan

EXHIBIT "C"

Sign Master Plan

EXHIBIT "D"

**Zoning And Development Standards Ordinance of Beaufort County
Adopted April 26, 1999**

EXHIBIT “E”

Development Schedule

Development of the Property is expected to occur in Phases over the five (5) year term of the Development 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 as provided below:

<u>Percent of Completed Development</u>	<u>Date*</u>
80%	0 - 24 months
100%	24 - 60 months

In the event development of the prop has not achieved 80% completion within 24 months, from the date of issuance of all development permits required for development of such 80% of the property owner shall be required to commence annual meetings with the county administrator and the county planning director to provide annual status reports.

* Months after the issuance of all development permits for such percentage of development.

EXHIBIT "F"

BJWSA Intent to Serve Letter

EXHIBIT "G"

Icon/Monument Sign Plan

EXHIBIT "H"

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

THIS NOTICE OF TRANSFER AND PARTIAL ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT (“Partial Assignment” is dated this ____ day of _____, 20____, by and between Jaz 278, LLC, a Georgia limited liability company authorized to conduct business in South Carolina (“Assignor”), and _____, a _____ (“Assignee”).

WITNESSETH:

WHEREAS, on or about the ____ day of _____, 20____, Assignor entered into a Development Agreement (“Development Agreement”) with Beaufort County, South Carolina, incident to the development of certain real property known as the Bluffton Gateway Commercial Center, which Development Agreement, as amended, controls the Property (as defined herein); and

WHEREAS, Assignor entered into an Agreement For Purchase And Sale (“Agreement”) with Assignee dated _____, 20____ providing for the sale by Assignor and the purchase by Assignee of certain real property being more particularly described on Exhibit “A” attached hereto and made a part hereof (the “Property”); and

WHEREAS, an integral part of the conveyance of the 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 Property, thus necessitating the preparation and execution of this Partial Assignment.

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

1. Partial Assignment and Assumption of Rights, Privileges and Obligations Applicable to the Property Pursuant to The Development Agreement. Assignor does hereby transfer, assign, convey and deliver unto Assignee, its successors and assigns, such rights for the land uses on the Property that are defined in the Development Agreement (the “Assigned Land Use”). Assignee shall be entitled to all of the privileges and obligations as described in the Development Agreement applicable for the Assigned Land Use to the Property except for those certain excluded obligations, rights and privileges (“Excluded Obligations”) identified herein below, if any. Assignor is hereby released from and Assignee hereby assumes and agrees to perform all of Assignor’s rights, privileges and obligations as described in the Development Agreement applicable to the Assigned Land Use for the Property, except for the Excluded

Obligations, if any. Assignee acknowledges receipt of the Development Agreement and all Exhibits thereto and with respect to the Assigned Land Use and the Property agrees to be bound by the terms thereof, and to develop the 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.

2. **Option A - Alternate for Sale of Parent Parcel:** Excluded Obligations, Rights and Privileges (Sale of Parent Parcel). The following are hereby excluded from Assignor's assignment and Assignee's assumption herein:

- a. the terms of Article XVIII G concerning the construction and dedication of Road Rights-of-Way;

2. **Option B - Alternate for Sale of Portion of Property.** Excluded Obligations, Rights and Privileges. The following are hereby excluded from Assignor's assignment and Assignee's assumption herein:

- a. the terms of Article XVIII G concerning the construction and dedication of Road Rights-of-Way;

3. Estoppel Certificate. Pursuant to Article XVIII of the Development Agreement, Assignor hereby certifies the following, to wit:

- a. that the Development Agreement, as amended, is in full force and effect;
- b. that the Development Agreement has not been further amended or modified (or if it has the date of such amendment or modification);
- c. that to the best knowledge of Assignor, all parties to the Development Agreement are in full compliance with all obligations there under as of the date hereof; and
- d. that to the best knowledge of Assignor, no event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute an event of default under the terms of the Development Agreement.

4. Notices. Any notice, demand, request, consent, approval, or communication among any of the parties hereto or Beaufort County shall be in writing and shall be delivered as provided under Article XVI of the Development Agreement and shall be addressed as follows:

To Assignor: Jaz 278, LLC
c/o David Oliver, President
4060 Peachtree Road, D-287
Atlanta, GA 30319

With a Required Copy To: Walter J. Nester, III
McNair Law Firm, P.A.
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

And to Assignee: _____

With a Required Copy To: _____

5. Delivery. Assignor covenants and agrees to deliver a copy of this Partial Assignment to Beaufort County and cause the original to be recorded on the land records.

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

7. Governing Law. The within Partial Assumption shall be interpreted and constructed and conform to the laws of the state of South Carolina.

[Reminder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties have caused this Partial Assignment to be duly executed as of the ____ day of _____, 20__.

WITNESSES:

ASSIGNOR:

Jaz 278, LLC
a Georgia limited liability company authorized to
conduct
business in South Carolina ,and its successors and

assigns

By:
Its:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public for _____, do hereby certify that _____, as _____ of Jaz 278, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _____, 20__.

Notary Public for _____
My Commission Expires: _____

(Affix Notary Seal)

WITNESSES:

ASSIGNEE:

By:
Its:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public for _____, do hereby certify that _____, as _____ of _____, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _____, 20__.

Notary Public for _____
My Commission Expires: _____

(Affix Notary Seal)

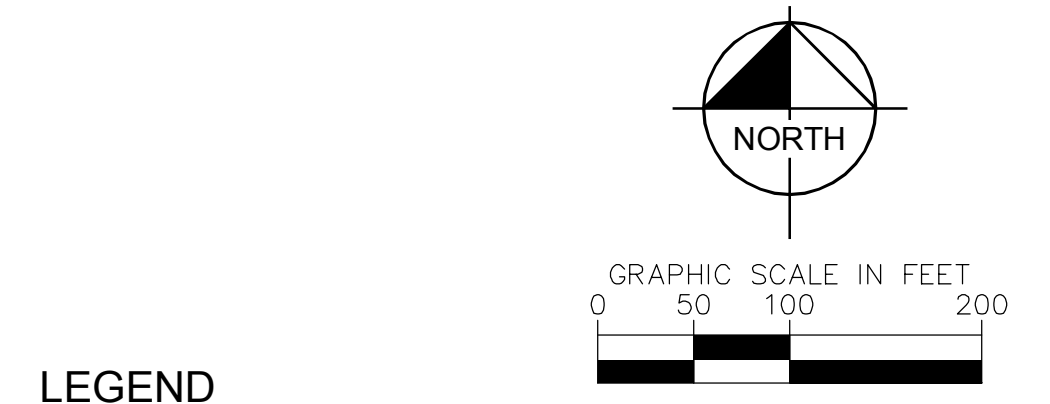
Document comparison by Workshare Professional on Thursday, February 27, 2014
3:40:03 PM

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Rendering set	Standard

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Insertion	
Deletion	
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Moved to	
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Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	46
Deletions	50
Moved from	8
Moved to	8
Style change	0
Format changed	0
Total changes	112

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



LEGEND

	PROPOSED BUILDING
	PROPOSED CURB AND GUTTER
	PROPOSED PARKING SPACES
	ASSOCIATE PARKING SPACES
	CART CORRAL
	WALMART PROPERTY LINE
	OUTPARCEL LINE
	STANDARD DUTY PAVEMENT: SEE "ASPHALT PAVEMENT PLAN" AND/OR "CONCRETE PAVEMENT PLAN" FOR MATERIALS
	HEAVY DUTY PAVEMENT: SEE "ASPHALT PAVEMENT PLAN" AND/OR "CONCRETE PAVEMENT PLAN" FOR MATERIALS
	ARCHITECTURAL CONCRETE APRON (SEE ARCH. PLANS)
	STANDARD DUTY CONCRETE FOR SIDEWALKS AND ISLAND BUFFER
	2' WIDE HEAVY DUTY CONCRETE BUFFER TYP.
	2' WIDE BUFFER FOR CAR OVERHANG (STABLE, NON-VEGETATED MATERIAL)



ALERT TO CONTRACTOR:
 1. THE PRESENCE OF GROUNDWATER SHOULD BE ANTICIPATED ON THIS PROJECT. CONTRACTORS BID SHALL INCLUDE CONSIDERATION FOR THIS ISSUE. WHEN PERFORMING GRADING OPERATIONS DURING PERIODS OF WET WEATHER, PROVIDE ADEQUATE DEWATERING, DRAINAGE AND GROUND WATER MANAGEMENT TO CONTROL MOISTURE OF SOILS. REFER TO MASTER SITE SPECIFICATIONS.
 2. ALL WM GENERAL CONTRACTOR WORK TO BE COMPLETED (EARTHWORK, FINAL UTILITIES, AND FINAL GRADING) BY THE MILESTONE DATE IN PROJECT DOCUMENTS. OUTLOT AREA TO BE KEPT FREE OF JOB TRAILERS AND STORAGE AFTER THE CONTRACT MILESTONE DATE FOR THE OUTLOT. WM GENERAL CONTRACTOR TO PROVIDE CLEAR ACCESS FOR OUTLOT CONTRACTOR TO THE SPECIFIC PARCEL AT ALL TIMES AFTER MILESTONE DATE. PURCHASER OF OUTLOT TO PROVIDE PERMIT DOCUMENTS AND SWPPP REQUIRED BY STATE/LOCAL REQUIREMENTS FOR SPECIFIC OUTLOT.

		STORE #6395-00 CITY (SITE), STATE WALL-MART REAL ESTATE BUSINESS TRUST BLUFFTON SC
OVERALL SITE PLAN		DATE: 02/20/2014 PROJECT NO.: 015476224 SHEET NUMBER: 6220
SCALE: DESIGNED BY: DRAWN BY: CHECKED BY:	Kimley-Horn and Associates, Inc. © 2014 KIMLEY-HORN AND ASSOCIATES, INC. 2000 SOUTH HARTLINE AVENUE, SUITE 100 RICHMOND, VA 23262 PHONE: 704-333-5331 WWW.KIMLEY-HORN.COM	REVISIONS NO. DATE

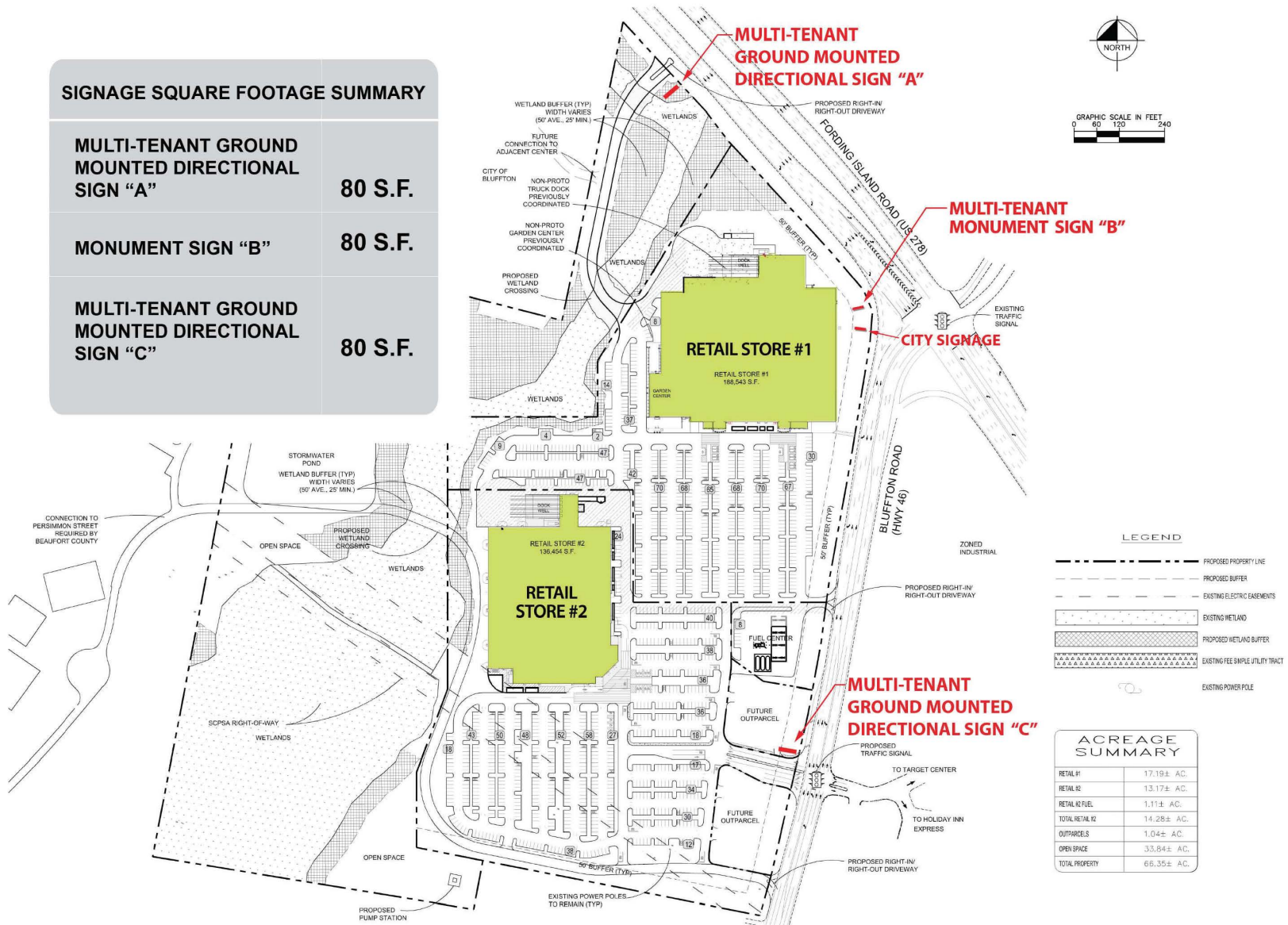
Bluffton Gateway Sign Master Plan



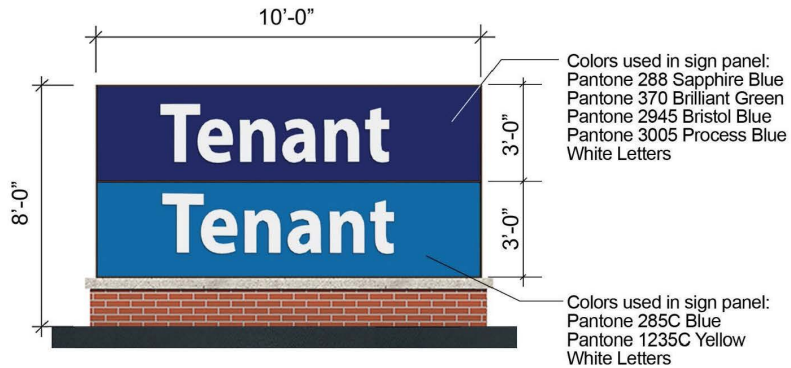
Issued

February 26, 2014

SIGNAGE SQUARE FOOTAGE SUMMARY	
MULTI-TENANT GROUND MOUNTED DIRECTIONAL SIGN "A"	80 S.F.
MONUMENT SIGN "B"	80 S.F.
MULTI-TENANT GROUND MOUNTED DIRECTIONAL SIGN "C"	80 S.F.

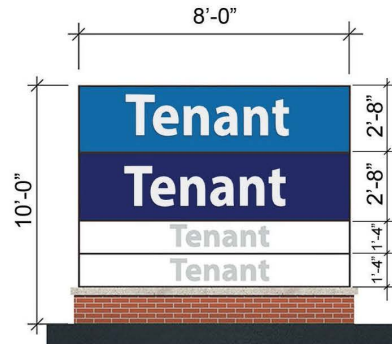


Tenant Sign: 80 S.F.



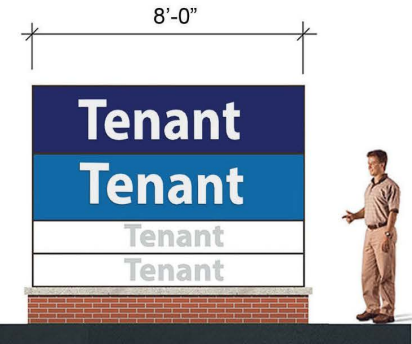
MONUMENT SIGN "B" - LEFT SIDE VIEW

Tenant Sign: 80 S.F.



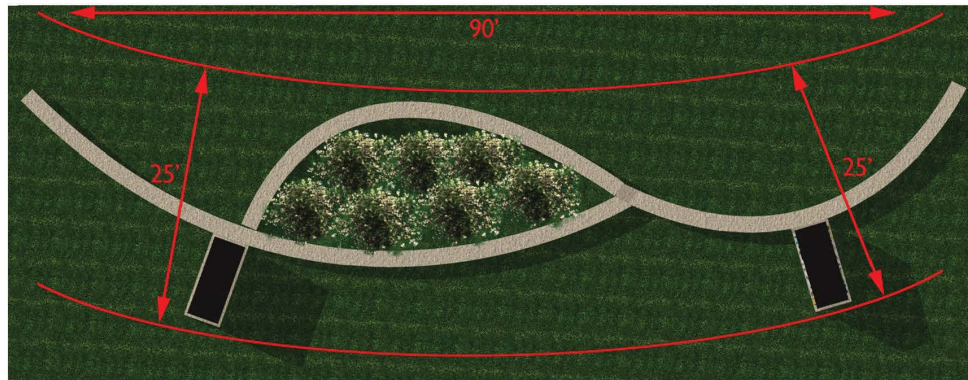
MULTI-TENANT GROUND MOUNTED DIRECTIONAL SIGN "A"

Tenant Sign: 80 S.F.

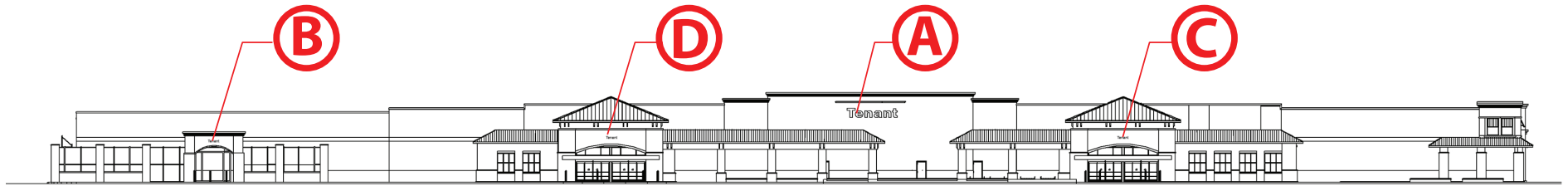


NOTE: RENDERINGS ARE NOT TO SCALE

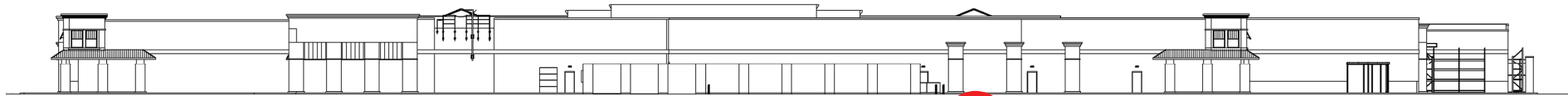
MULTI-TENANT GROUND MOUNTED DIRECTIONAL SIGN "C"



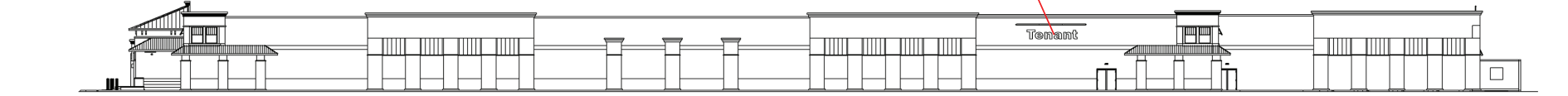
MONUMENT SIGN "B" - TOP VIEW



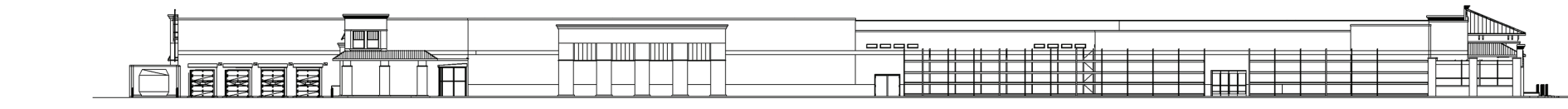
Front Elevation



Rear Elevation

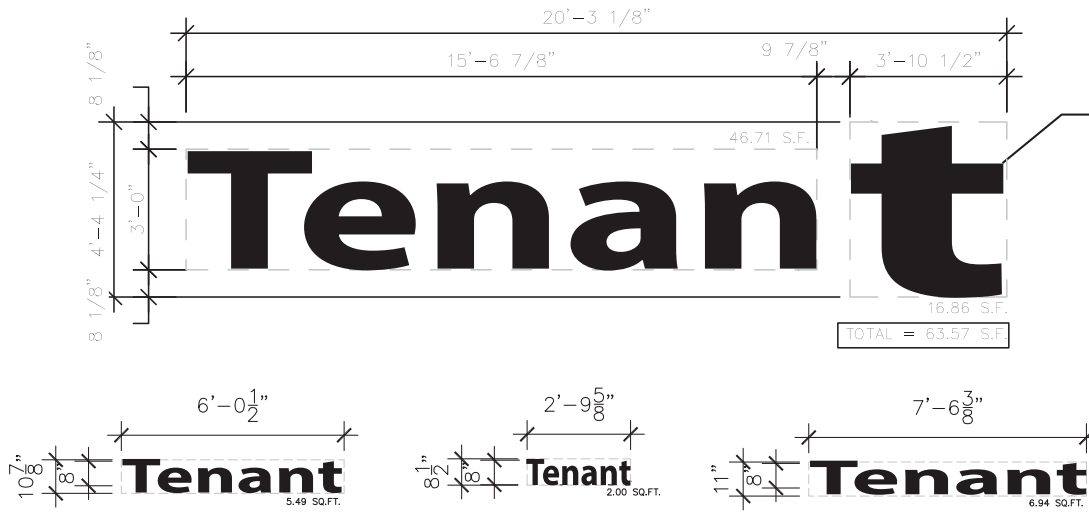


Right Elevation



Left Elevation

**Building design subject to
Corridor Review Board approval**

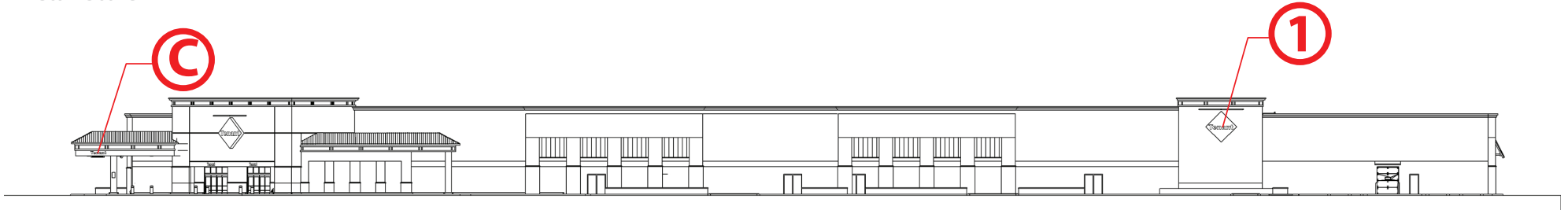


Colors used on building signs:
 White Letters
 Pantone1235C Yellow "t"

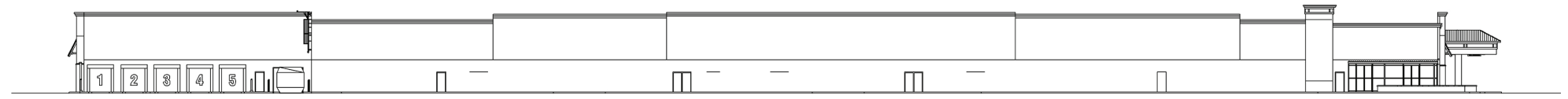
Sign	Qty	Height	Area (S.F.)	Total S.F.
A. Tenant	2	3'-0"	63.57	127.14
B. Tenant	1	0'-8"	5.49	5.49
C. Tenant	1	0'-8"	2.00	2.00
D. Tenant	1	0'-8"	6.94	6.94
Total Building Signage				141.57

Signage Totals Per Frontage	
Front (South)	78.00 s.f.
Right (East)	63.57 s.f.

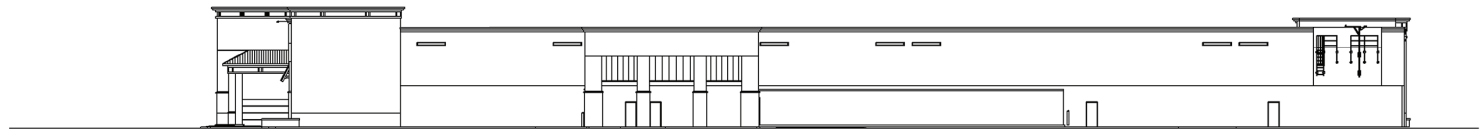
Retail Store #2



Front Elevation



Rear Elevation

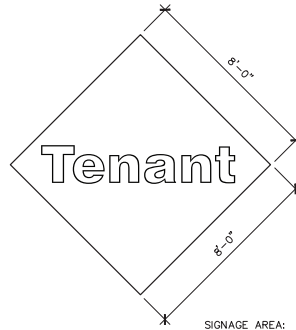


Right Elevation



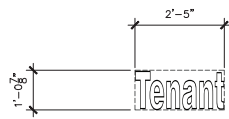
Left Elevation

**Building design subject to
Corridor Review Board approval**

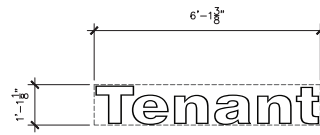


Colors used in Diamond Signs:
 Pantone 288 Sapphire Blue
 Pantone 370 Brilliant Green
 Pantone 2945 Bristol Blue
 Pantone 3005 Process Blue
 White Letters

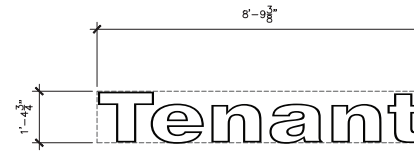
1 EXTERNALLY ILLUMINATED
 DIAMOND SIGN (TYP OF 2)



A TENANT SIGN
 AGGREGATE SIGN AREA: 2.59 SF



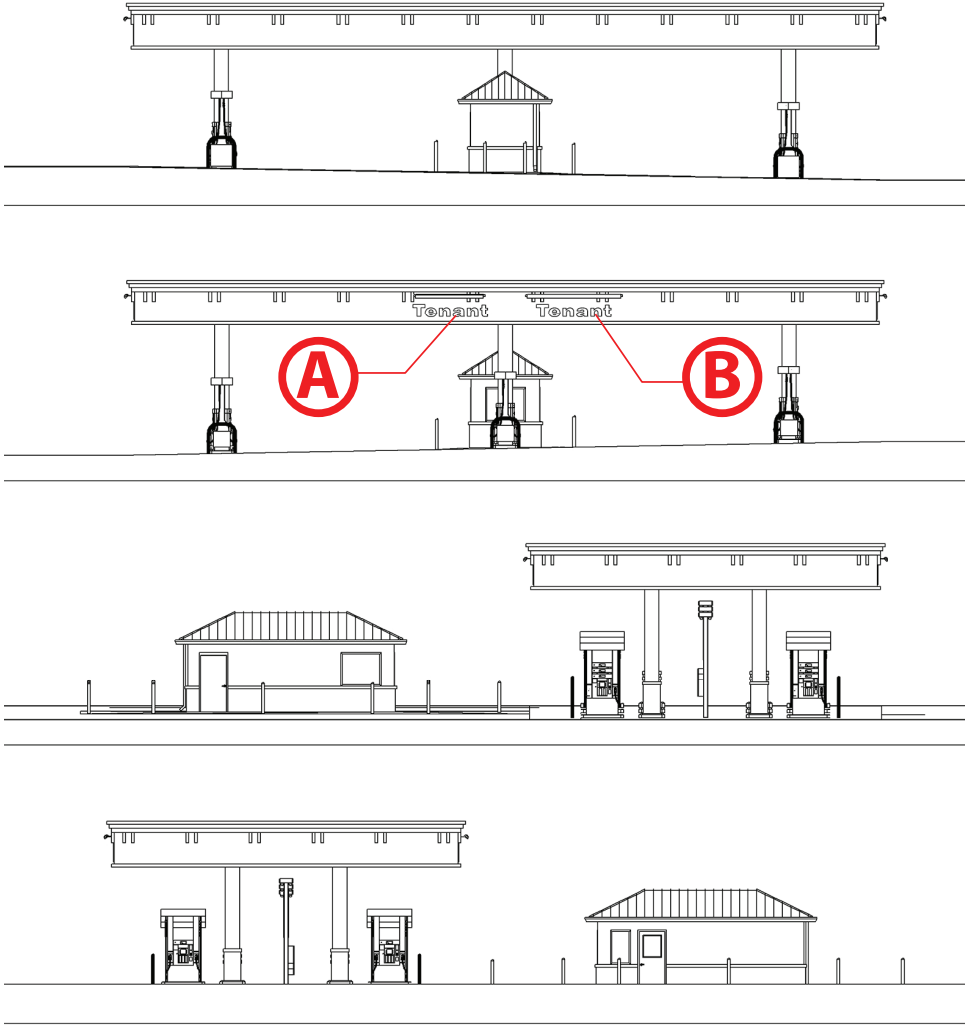
B TENANT SIGN
 AGGREGATE SIGN AREA: 6.68 SF



C TENANT SIGN
 AGGREGATE SIGN AREA: 12.26 SF

Signage Totals Per Frontage	
Front (East)	76.26 s.f.
Left (South)	73.27 s.f.

Sign	Qty	Height	Area (S.F.)	Total S.F.
1. Tenant	2	8'-0"	64.00	128.00
A. Tenant	1	1'-0"	2.59	2.59
B. Tenant	1	1'-0"	6.68	6.68
C. Tenant	1	1'-0"	12.26	12.26
Total Building Signage				149.53

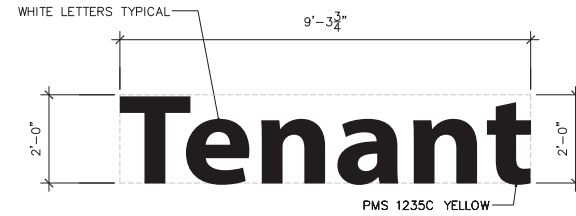


Fuel Station Canopy Signage



Colors used in Canopy Sign A:
 Pantone 370 Brilliant Green
 Pantone 2945 Bristol Blue
 Pantone 3005 Process Blue
 White Letters

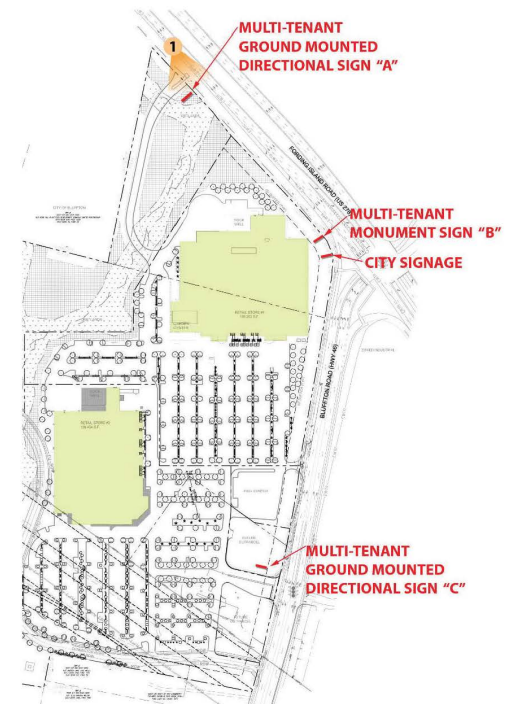
A TENANT SIGN AGGREGATE SIGN AREA: 19.01 SF

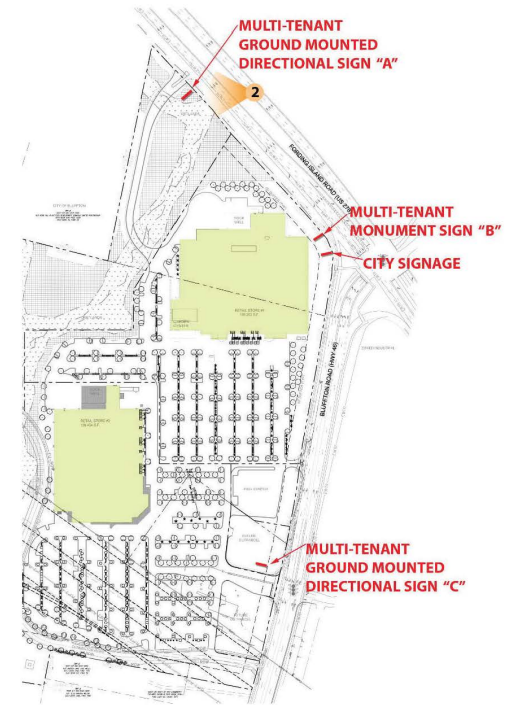


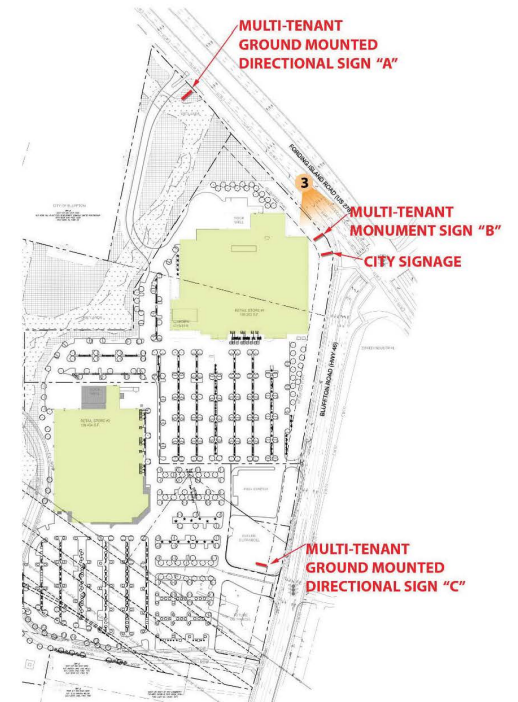
B TENANT SIGN AGGREGATE SIGN AREA: 18.63 SF

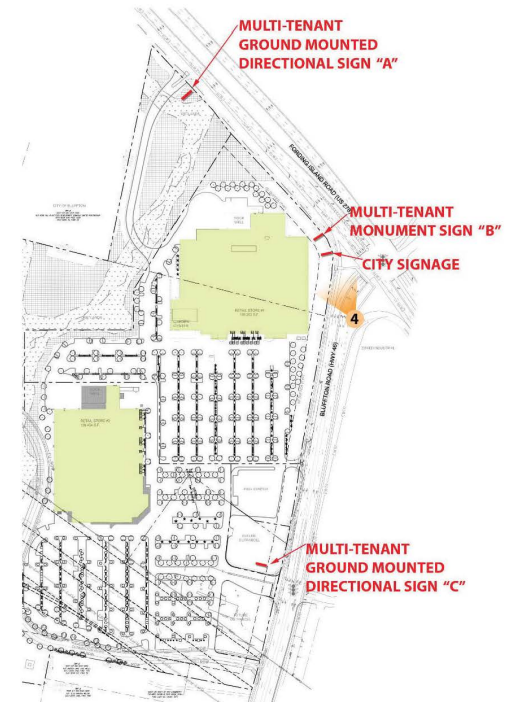
Sign	Qty	Height	Area (S.F.)	Total S.F.
A. Tenant Sign	1	2'-4"	19.01	19.01 SF
B. Tenant Sign	1	2'-0"	18.63	18.63 SF
Total Fuel Signage Proposed				37.64 SF

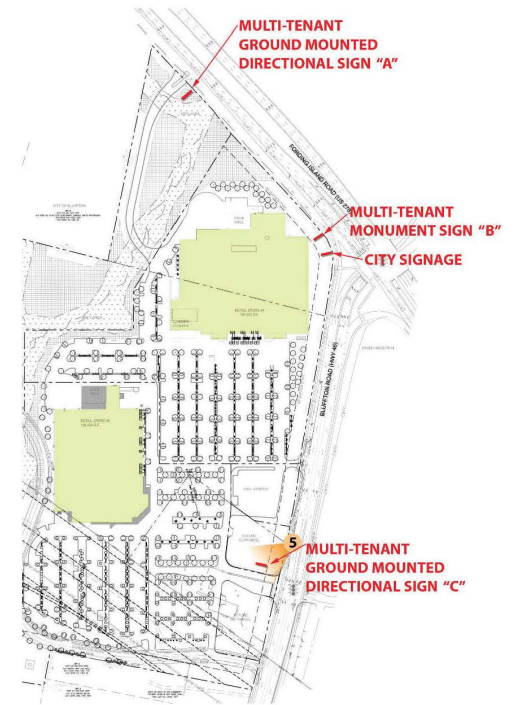
**Building design subject to
Corridor Review Board approval**

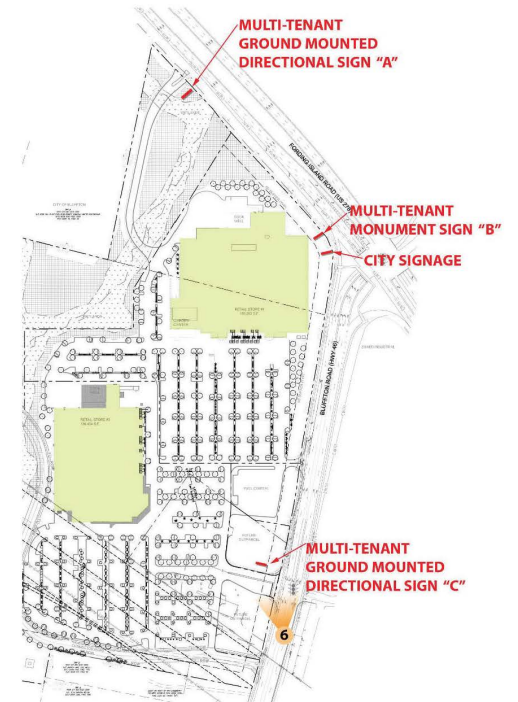












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2/27/2014 6:01 PM

DEVELOPMENT AGREEMENT

FOR

CHEROKEE FARMS

BEAUFORT COUNTY, SOUTH CAROLINA

_____, 2014

BURTON DEVELOPMENT, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

**DEVELOPMENT AGREEMENT
 FOR CHEROKEE FARMS**

This Development Agreement (the "**Development Agreement**" or the "**Agreement**") is made and entered into this ____ day of _____, 2014 (the "**Effective Date**"), by and between Cherokee Beaufort, LLC, a South Carolina limited liability company (hereinafter sometimes referred to as "**Cherokee Beaufort**"), Burton Development, LLC, a South Carolina limited liability company (hereinafter sometimes referred to as "**Burton Development**" or "**Developer**"), and the governmental authority of the County of Beaufort, South Carolina ("**Beaufort County**" or the "**County**").

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 Section 6-31-10 through Section 6-31-160 of the South Carolina Code of Laws (1976), as amended; and

WHEREAS, the Act recognized 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(BB)(1) of the Act); 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 counties, to enter into development agreements with developers to accomplish these and other goals as set forth in Section 6-31-10; and

WHEREAS, Cherokee Beaufort owns two (2) adjacent tracts of land, each as more particularly described in Exhibit "A", which is attached hereto and made a part hereof, which together consist of approximately 105 acres, more or less (collectively referred to as the "**Property**"), and Cherokee Beaufort has entered into a joint venture agreement with Cherokee Investments, which joint venture agreement resulted in the formation of Burton Development to serve as master developer for the Property (hereinafter, "**Owner**" or "**Developer**" shall refer collectively to Cherokee Farms, Cherokee Investments, and Burton Development, unless the context requires otherwise). The Owner proposes to sell, develop, or cause to be developed, a mixture of residential, commercial and/or other uses on the Property as more particularly described in this Agreement; and

WHEREAS, in February 2004, Cherokee Investments submitted a development agreement to the County in which certain matters, including traffic mitigation and Air Installations Compatible Use Zone ("**AICUZ**") application to the Property, were initially addressed (the "**2004 Draft Agreement**"); and

WHEREAS, the 2004 Draft Agreement was held in abeyance while certain matters were addressed, including: matters arising from revised impact traffic mitigation studies; the amendment of the

planned unit development adjacent to the south of the Property and known as Habersham (hereinafter “**Habersham**” or the “**Habersham PUD**”), which amendment included additional property in the planned unit development while the Property was re-zoned to a Suburban zoning district; discussions with Beaufort County regarding designing the Property in the same manner or in a similar manner as Habersham; discussions and negotiations regarding the need for the submission of a planned unit development rather than re-zoning to a Suburban zoning district; and, various other related matters; and

WHEREAS, to better adhere to the aesthetic quality, connectivity and continuity between the Property and the adjacent Habersham PUD, Cherokee Investments has developed and submitted to the County a Unified Development Plan (the “**Unified Development Plan**”), attached hereto as Exhibit “B”, for the Habersham PUD and the Property (collectively hereinafter sometimes referred to as the “**Unified Development**”), which was approved by the County on October 30, 2013; and

WHEREAS, the County acknowledges and agrees that in the area of the Property, the character of the land: supports the development proposed by the Unified Development Plan; furthers the objectives of the Beaufort County Comprehensive Land Use Plan; increases the number of available lots; creates affordable housing opportunities for its citizens; improves traffic conditions; and, secures for its citizens a quality, well-planned and well-designed real estate development, while also increasing the County’s tax base; and

WHEREAS, the Development of the Property results in the imposition of certain impact fees (collectively, and not intending to be limiting, hereinafter “**Impact Fees**”) in accordance with applicable County ordinances and state law; and

WHEREAS, the County finds that the Owner’s proposed development of the Property, as described in this Development Agreement and in the Unified Development Plan, is consistent with Beaufort County’s Comprehensive Land Use Plan and will further the health, safety, welfare and economic well-being of the County and its citizens; and

WHEREAS, Owner has proposed the construction of certain road infrastructure on and off the Property and has agreed to the dedication thereof to the County; and

WHEREAS, the proposed Development of the Property presents the County with an exceptional opportunity to receive public road system improvements; secures quality planning and a well-designed and constructed mixed use real estate development; enhanced protection of the environment; and, a strengthened and revitalized tax base; and,

WHEREAS, this Development Agreement is being made and entered into between the Owner and the County under the terms of the Act for the purpose of providing assurances to the Owner so that the Owner may proceed with Development of the Property according to the terms of this Agreement and as depicted in the Unified Development Plan without encountering future changes in law that may materially affect the Owner’s ability to develop the Property according to the terms of this Development Agreement and as depicted in the Unified Development Plan.

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 County and the Owner by entering this Agreement, and to encourage well-planned development by Owner, the receipt and sufficiency of such consideration being hereby acknowledged, the County 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(6) of the Act.

II. DEFINITIONS

In addition to the terms defined herein, the following terms shall be defined as follows:

“**Act**” means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976), as amended.

“**Covenants**” means and refers to one (1) or more declaration of covenants and restrictions for all of or portions of the Property to be recorded in the Office of the Register of Deeds Office for Beaufort County, South Carolina, and all amendments and supplements thereto.

“**Density**” means the total number of residential dwelling units (“**Dwelling Units**”, as herein defined) or the total area of commercial square feet permissible for a specific parcel of the Property or for the Property as a whole under the terms of this Agreement, as context dictates. No other density requirements shall be applicable to the Property.

“**Develop**” or “**Development**” means the definition of development as set forth in the ZDSO (as defined herein).

“**Developer**” means the Owner, the master developer, Burton Development, LLC, and all successors in title or lessees of the Owner who undertake Development (as defined herein) of the Property or who have transferred Development Rights (also as defined herein).

“**Development Agreement Ordinance**” means all terms and conditions of this Development Agreement and all attachments hereto, including but not being limited to the Unified Development Plan and all narratives, applications, site development plans, standards, exhibits and applicable ordinances as the same may be hereafter amended by mutual agreement of the County and the Owner. Specifically, it is noted that the adoption of the Development Agreement Ordinance after public hearings shall have the effect of a properly adopted land use ordinance. To the extent that any provision of the Development Agreement Ordinance may be deemed to be a modification of presently existing Beaufort County law, such modification shall be hereby approved, ratified and adopted as binding upon the Property and the parties hereto by the approval of this Development Agreement.

“**Development Application**” or “**Initial Development Application**” means an application for the Development of individual portions or phases of the Property, being the concept (if required) or preliminary application (if required) for land development or subdivision referenced in Sections 106-369 and 106-370 of the ZDSO (as defined herein).

“**Development Rights**” means the Owner’s or Developer’s right to Develop the Property, or portions thereof, in accordance with the ZDSO (as defined herein), this Development Agreement and the Unified Development Plan.

“**DRT**” means Beaufort County’s Development Review Team or a similar planning review authorized and described in the ZDSO (as defined herein).

“**Dwelling Units**” means residential dwellings.

“**Effective Date**” means the date of complete execution of this Agreement after the County’s approval of the Development Agreement Ordinance.

“**Impact Fees**” or “**Development Impact Fee**” means a payment of money imposed as a condition of approval for Development, as defined in Section 6-1-920(8) of the South Carolina Code of Laws, 1976, as amended.

“**Habersham Amended PUD**” means that certain planned unit development for Habersham, which was approved on December 9, 1996, as amended by that certain amendment thereto, which was approved on March 13, 2006.

“**ITE**” means Institute of Traffic Engineers.

“**Owner**” means Cherokee Beaufort, LLC, its successors and/or assigns.

“**Owners Association**” means an entity or entities formed pursuant to applicable law and/or restrictive land use covenants, which may be responsible for the construction and/or maintenance and/or upgrading of some or all of the infrastructure contemplated in this Development Agreement and the Unified Development Plan, to include, but not be limited to, some or all of the roads, common areas, water, sewer and stormwater management systems proposed to be constructed on or for the benefit of the Property.

“**Property**” means those certain parcels of land depicted on Exhibit “A” of the Development Agreement.

“**Term**” means the duration of this Agreement as set forth in Article III hereof.

“**Unified Development Plan**” means the document entitled “Habersham Unified Development Plan” as well as all exhibits and attachments thereto as approved by the DRT on October 30, 2013, and as the same may be modified or amended from time to time in accordance with this Development Agreement and the ZDSO (as defined herein).

“**ZDSO**” means the Zoning and Development Standards Ordinances (ZDSO) of Beaufort County adopted April 26, 1999, existing as of the Effective Date and attached hereto as Exhibit “H” and made a part hereof. References in the ZDSO to the latest version of County manuals shall mean and refer to the latest version of such manual as of the date of this Agreement, and shall include any and all zoning and development ordinances subsequently adopted or approved by Beaufort County.

III. TERM

The Term of this Development Agreement shall commence on the Effective Date and shall terminate five (5) years thereafter; or, if renewed and described herein, at the end of three (3) additional five (5) year periods. During the Term, the provisions of this Development Agreement shall be vested against any future changes to the ZDSO, Beaufort County law or ordinances and changes to any now existing or future airport overlay zoning district, including but not limited to any AICUZ noise zone or overlay district, which would affect the ability of Owner to carry out the Development contemplated in this Development Agreement and in the Unified Development Plan. Further, at the end of the third five (5) year period, the provisions of this Development Agreement shall be vested against any future changes to Beaufort County law or ordinances if Owner shall have achieved Substantial Development. “**Substantial Development**” shall mean the completion of construction (the receipt of a certificate of occupancy) or construction that is underway (the receipt of applicable building or development permits)

of not less than twenty-five percent (25%) of the total Development proposed for the Property, as shown and depicted on the Unified Development Plan.

IV. DEVELOPMENT OF THE PROPERTY

The Property shall be developed in accordance with this Development Agreement and the Unified Development Plan. Certain provisions of the ZDSO may be interpreted, enhanced, supplemented or modified by this Agreement and the Unified Development Plan in accordance with Article XIV of this Agreement.

V. DEVELOPMENT SCHEDULE

The Property shall be developed generally in accordance with the Development Schedule, which is attached hereto as Exhibit "C" of this Agreement. The Development Schedule is an estimate, and may be modified to acknowledge market conditions, permitting requirements, or other considerations. It is acknowledged that the Property is anticipated to be developed in phases which include the Development of one (1) block of the Property at a time, in order to provide flexibility for the Owner and Developer to meet market demands.

In accordance with the Act, the failure of the Owner and Developer to meet the terms of the Development Schedule shall not, in and of itself, constitute a material breach of this Agreement, and shall be judged by the totality of circumstances, including, but not limited to, the Owner's and Developer's good faith efforts toward compliance with the terms of the Development Schedule and the Owner's and Developer's proof of good cause for modifying the Development Schedule. Further, the acceleration of the Development Schedule shall not constitute a material breach of this Agreement. It is expected that the actual Development of the Property may occur at a different pace, as determined in the sole reasonable discretion of Owner and based upon market conditions, and shall not constitute a default of this Agreement. In the future, the Owner or Developer may submit unilaterally to the County periodic adjustments to the Development Schedule, which shall not be considered an amendment or breach of this Agreement.

VI. DENSITY AND USE

Mixed use, residential and commercial Development of the Property shall be in accordance with the densities and uses as set forth in the approved Unified Development Plan.

VII. ACCESS

The Property shall be accessed by Cherokee Farms Road (S-83), which runs along the southern boundary of the Property, and by Joe Frazier Road (S-40) to the northeast, as approved and depicted in the Unified Development Plan and as described herein. At such time other interconnectivity to the west is completed as contemplated in this Development Agreement, the Property shall have the access as shown in the Unified Development Plan.

VIII. INFRASTRUCTURE AND SERVICES

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

A. Roads/Facilities.

(a) **Private Roads.** Roads constructed within the Property may be constructed by the Owner and/or Developer, and shall be maintained by them and/or an Owners Association, or dedicated to other appropriate entities or the County, as provided in Article IX of this Agreement. Except as otherwise provided herein, the County shall not be responsible for the construction or maintenance of any private roads within the Property, unless the County specifically agrees to do so in the future.

(b) **Public Roads.** The Property shall not have restricted access roads and shall be served by direct access to Joe Frazier Road (S-40) and Cherokee Farms Road (S-83) provided, however, that portions of the Property shall be Developed as separate housing and/or parking areas.

B. Potable Water. Potable water shall be provided to the Property by the Beaufort Jasper Water and Sewer Authority (“BJWSA”) on the same basis as is provided to other residents and businesses within the County. Each Owner or Developer shall construct, or cause to be constructed, all necessary water service infrastructure within the Property (or such applicable portion thereof), which shall be maintained by it or the provider of the service. The County shall not be responsible for any construction, treatment, maintenance or costs associated with water service to the Property, except as set forth herein, unless it otherwise agrees. Nothing herein shall be construed as precluding the County or other local governmental entity from providing potable water to its residents in accordance with applicable provisions of law.

C. Sewage Treatment and Disposal. Sewage treatment and disposal shall be provided by BJWSA on the same basis as is provided to other residents and businesses within the County. Each Owner or Developer shall construct, or cause to be constructed, all necessary sewer-related service infrastructure within the Property (or such applicable portion thereof), which shall be maintained by it or the provider of the service. The County shall not be responsible for any treatment, maintenance or costs associated with sewage treatment within the Property, except as set forth herein, unless it otherwise agrees. Nothing herein shall be construed as precluding the County or other local governmental entity from providing sewer services to its residents in accordance with applicable provisions of law.

D. Stormwater Drainage System. All stormwater runoff and drainage improvements within the Property shall be designed in accordance with the ZDSO and the most current edition available of the Beaufort County Best Management Practices manual, and best efforts shall be made to coordinate such stormwater runoff and drainage systems with the County’s master drainage program. All stormwater runoff and drainage system improvements shall be constructed by the Owner or Developer and maintained by the Owner, Developer and/or an Owners Association, except as otherwise contained herein. The County shall not be responsible for any construction or maintenance costs associated with the stormwater runoff and drainage systems solely within the Property, unless proper dedications and easements are granted in accordance with the ZDSO.

E. Solid Waste Collection. The County shall provide solid waste collection to the Property on the same basis as it provides to other residents and businesses within the County. The Owner acknowledges that the County does not currently provide waste disposal on an individual basis for single, multi-family or commercial developments or uses.

F. Utility Easements. The Owner shall furnish necessary easements for water, sewer, gas, electricity, telephone, cable television, and other utilities when the Owner determines that the same are required. Adequate easements for utilities shall be reserved by the Owner in the conveyances of lots and parcels to be Developed. All utilities (except main electrical distribution lines) shall be installed underground.

G. Police Protection. The County shall provide police protection services to the Property on the same basis as it provides to other residents and businesses within the County. The Owner or a successor Owners Association may elect to provide private security services for all or a portion of the Property.

H. Recycling Services. The County shall provide recycling services to the Property on the same basis as it provides to the residents and businesses within the County. The County shall reserve the right to require that recycling materials generated from the Property comply with those standards promulgated by the County applicable to all residents and businesses within the County.

I. Emergency Medical Services. The County shall provide emergency medical services to the Property on the same basis as it provides to other residents and businesses within the County.

J. Fire Services. The County shall provide fire protection services to the Property on the same basis as it provides to other residents and businesses within the County; such services are currently provided by the Burton Township Fire District.

K. Library Services. The County shall provide library services to the Property on the same basis as it provides to other residents within the County.

L. School Services. The Beaufort County School District shall provide educational and school services to the Property on the same basis as it provides to other residents within the County.

M. AICUZ Requirements. Approximately 45.5 acres of the Property are located within AICUZ Noise Zone 2A (65-69 DNL), as defined in Appendix A1 of the ZDSO, Airport Overlay District, Section 3 et seq. No portion of the Property is located within any aircraft accident potential zone, as defined therein. In order to minimize the intrusion of noise into the proposed homes, Owner agrees that homes constructed within AICUZ Noise Zone 2A shall include construction measures, which should result in a 25db reduction of noise. Owner shall also notify any prospective purchaser of a property or lot within AICUZ Noise Zone 2A to comply with the notification requirements of Appendix A1, Section 4 of the ZDSO.

IX. FEES, DEDICATIONS, SYSTEM IMPROVEMENTS, CONVEYANCES, CREDITS AND RELATED AGREEMENTS

The following items are hereby agreed upon by the parties:

A. Impact Fees. Except as otherwise provided herein, Impact Fees which shall be payable to Beaufort County to support County infrastructure such as, but not limited to, fire, library, parks and roads, shall not be affected by this Agreement.

B. Dedications.

(a) Permissive. Except as otherwise contained herein, the County shall consider all requests to accept the dedication of any road or road right-of-way within the Property constructed to the standards contained in the Cherokee Farms Conceptual Master Plan approved on [REDACTED] (the "Cherokee Farms Conceptual Master Plan") or to the specific requirements of the County contained in this Agreement. The County shall also consider a request to take ownership of any drainage systems by dedication.

(b) No Implied Dedication. The recording of a final plat or a plan

subdividing any portion of the Property shall not constitute an offer to deed or dedicate any or all streets and rights-of-way shown thereon to the County, unless the plat or plan specifically and expressly makes such an offer, which offer is accepted by the County.

C. System Improvements. Beaufort County's Capital Improvement Program includes future improvements to Joe Frazier Road to accommodate new development; and Impact Fees are the major revenue source for costs incurred by the County for such improvements. As depicted in the Unified Development Plan, the Owner has proposed and obtained the design and engineering of a round-a-bout to access the Property directly from Joe Frazier Road. The engineering plans for the round-a-bout, prepared by Davis & Floyd, Inc., are attached hereto as Exhibit "D" (the "Joe Frazier Road Round-a-bout"). The Joe Frazier Road Round-a-bout also benefits Burton Wells Park by providing an improved entrance, an adjacent fire station, and other nearby residential developments. Also as depicted in the Unified Development Plan, the Property is accessed by Cherokee Farms Road (S-83). Owner shall improve Cherokee Farms Road with the addition of on-street parking, street landscaping and trees, and such improvements shall be constructed in accordance with the standards contained in the Cherokee Farms Conceptual Master Plan. All such improvements (the "Cherokee Farms Road Improvements") shall adhere to applicable road and right-of-way construction standards. To the extent that all or any portion of Cherokee Farms Road is not owned by the County or the State of South Carolina, the same shall be dedicated to and accepted by the County.

D. Credit for System Improvements. The County agrees that the Owner or Developer shall receive a credit for Impact Fees against the cost of and up to the total value of the Joe Frazier Road Round-a-bout, the intersection realignment and the Cherokee Farms Road Improvements (herein collectively the "System Improvements"). The total value of the System Improvements shall equal the cost of the design, engineering and planning of the System Improvements submitted to the County by the Owner. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner or Developer alternative design, engineering and planning cost estimates. If the alternative cost estimates are deemed by the Owner to be inaccurate or unreliable, a third party shall be hired at the shared expense of the Owner and the County to develop cost estimates.

E. Access. The Owner agrees to cooperate with the appropriate governmental entities in locating and dedicating to the County, or its assigns, sufficient rights-of-way on the Property, in order to construct the access point improvements as depicted in the Unified Development Plan.

F. Other Charges or Fees. Nothing herein shall be construed as relieving the Owner, its successors and assigns, from payment of any such fees or charges in effect at the time of collection as may be assessed by entities other than the County. Moreover, the Owner, its successors and assigns, shall be subject to the payment of any and all present or future fees enacted by the County that are of County-wide application and that relate to processing applications, development permits, building permits, review of plans, or inspections or other matters, other than Development Impact Fees.

G. Service Districts. Nothing in this Agreement shall be construed to prevent the establishment by the County of a tax increment or other district on the Property in accordance with applicable provisions of the Code of Law of South Carolina, 1976, as amended.

H. Landscaping. The Owner or Developer shall, at its own expense, install landscaping as generally depicted in the "Joe Frazier Road Round-a-bout Landscape Plan" attached hereto as Exhibit "F". The Owner, its successors and assigns shall be responsible for and shall maintain landscaping of both the Joe Frazier Road Round-a-bout and the intersection realignment.

X. PERMITTING PROCEDURES

A. Development Applications for the individual parcels or tracts, or portions or phases thereof, shall be submitted to the DRT for processing under the provisions of this Agreement. It is acknowledged that the Property is anticipated to be developed in multiple phases which includes the Development of one (1) block of the Property at a time, in order to provide the Owner or Developer flexibility to meet market demands. Developer has conducted traffic studies and created a master plan for the entire Property. Separate traffic studies shall not be required for individual residential phases of Development. Development Rights to the land encompassed by an Initial Development Application or master plan may be transferred to any other portion of the Property, or to another Developer of the Property, provided that such does not increase the proposed ranges of densities and intensities beyond that which would otherwise be allowed under the provisions of this Agreement. Such transfer of Development Rights shall require written notice to the County and written acknowledgment by the DRT, as set forth below, and which shall not be unreasonably withheld. The Unified Development Plan, which generally allocates building types, may be modified to accommodate market conditions, subject to the overall density and use maximums set forth in the ZDSO and in this Agreement.

B. The County agrees that the Owner shall have the unlimited right to phase the Development of the Property in accordance with the Development Schedule.

C. The County agrees to use its best efforts to review in an expeditious manner all reviews contemplated by or required by the ZDSO, including but not limited to land use changes, Development applications, and plats and subdivisions for the Development of the Property. The Owner may submit these items for concurrent review by Beaufort County and other governmental authorities.

D. The County agrees that the Property is approved and fully vested for intensity, commercial density, Impact Fees, uses and height, setbacks, and parking and signage, and shall not have any obligations for onsite or offsite transportation or other facilities or improvements other than as specifically provided in this Agreement, but shall adhere to the Unified Development Plan as modified or amended from time to time. The County shall not impose additional obligations or regulations in connection with the ownership or Development of the Property, 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.

XI. PROTECTION OF ENVIRONMENT AND QUALITY OF LIFE

Contained herein are those conditions, terms, restrictions or other requirements determined to be necessary by the County for the public health, safety and welfare of its citizens. Specifically, the County considers the protection of the natural environment and nearby waters and the preservation of Beaufort County's character and unique identity to be mandatory goals and to be achieved without compromise. The Owner shares this commitment and therefore agrees to the following:

A. **Stormwater Quality.** A primary goal of the County is the protection of the quality of nearby waters. The Owner and Developer shall be required to abide by all provisions of Federal, State and County laws and regulations for the handling of stormwater, including those established by the Department of Health and Environmental Control, the Office of Ocean and Coastal Resource Management, and their successors. In order to protect water quality of the rivers, the Owner agrees to prepare a master plan of the stormwater drainage systems, as defined in the ZDSO for all or any portion of the Property, for each Initial Development Application; to construct stormwater drainage systems in accordance with the approved master plan; and, to maintain the stormwater drainage systems ensuring proper operation and function. In order to meet the water quality and anti-degradation goals which are impacted by the amount of impervious surfaces, the Owner, its successors and assigns commit to design stormwater management systems in accordance with the County's current Best Management Practices ("BMP's"). Further, Owner agrees to provide BMP's for pre-treatment, including supplemental

open space (in accordance with the most current edition available of the Beaufort County Storm Water Best Management Practices manual, required by engineering design and calculations. In addition to the water quality safeguards committed to above by the Owner, notwithstanding Article IX hereof, the Owner and Developer shall adhere to any and all future ordinances or regulations of the County (or portions thereof) governing detention, filtration, and treatment of stormwater provided those ordinances and regulations apply County-wide and are consistent with sound engineering practices. It is specifically agreed, however, that any such ordinances of the County that directly or indirectly affect the setback, buffer or open space requirements permitted pursuant to the ZDSO and/or this Agreement shall not be applicable to the Owner, the Developer and the Property without the Owner's and Developer's express written consent thereto; provided, however, that open space requirements may be modified as a result of specific implementation requirements for future stormwater management BMP's related to detention and treatment of stormwater that are applicable County-wide and are consistent with sound engineering practices, unless such change in requirements is less than twenty percent (20%) and the appropriate increase in density/intensity is granted by the County to provide for no net loss of density or space.

B. Covenants. The Owner may record restrictive real property covenants that run with the Property that shall govern such matters as architectural control, permitted uses, setbacks, landscaping, trees, exterior lighting, pets and wildlife, maintenance of common areas or open space, and which shall specifically prohibit unsightly activities. The provisions of the covenants for portions of the Property may differ from the covenants applicable to the other portions of the Property.

C. Tree Protection. Except for lands used for silviculture, if any, which shall be controlled by State regulations and Beaufort County's BMP's, Owner, its successors and assigns, including the Developer, shall comply with the provisions of ZDSO appertaining to trees.

D. Legal Status of Workers. The Owner and the County recognize the importance of having legal workers undertake construction and other work on the Property only. Provided such is lawful, the Owner agrees to supplement current County and State laws by requiring all contractors and subcontractors to sign sworn affidavits stating that: (i) all workers in its employ have been verified as to legal status; and, (ii) that to the best of its knowledge, after reasonable diligence, the contractor and subcontractor has verified such legal status. Additionally, provided such is lawful, construction sites shall be posted with notices providing legal status requirements and providing that verification of status may be demanded on the construction site at any time by the Owner, Developer, secondary Developers and/or the County. Any provision of this Section D may be altered with consent of the County Administrator to reflect evolving legal and policy decisions on this subject without formal amendment hereto.

XII. COMPLIANCE REVIEWS

Pursuant to the requirements of Section 6-31-90 of the Act, the Owner or its designee(s), shall meet with the County or its designee, at least once per year during the Term, to review Development completed in the prior year and the Development anticipated to be commenced or completed in the ensuing year. The Owner or its designee(s) shall be required to 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, the number of certificates of occupancy anticipated to be issued in the ensuing year; the Development Rights transferred in the prior year; and, the Development Rights anticipated to be transferred in the ensuing year. The Owner or its designee(s) shall be required to compile this information for its respective Development and that of its Developer.

XIII. ASSIGNMENT AND TRANSFERS

A. **Notice of Assignment.** Owner shall be required to notify Beaufort County, in writing, as and when Development Rights are transferred to any Developer or successor Owner. Such information shall include the identity and address of the acquiring party, a proper contact individual, and the location and number of acres of the Property for which Development Rights are being transferred. Developers transferring Development Rights to any other party shall be subject to this requirement of notification.

B. **Release After Assignment.** In the event that the sale or other conveyance of all or a portion of the Property has been deemed to be compliant with this Agreement, the transferring Owner shall be released from any further obligations with respect to the Property being transferred, and the transferee shall, under this Agreement, be considered to be a substitute for the Owner for the Property transferred.

C. **Variations.** It is acknowledged that nothing in this Agreement shall be deemed or construed to affect the right of any person to seek a variance from those provisions of the ZDSO that are in accordance with applicable state and local laws in effect at the time of the variance application.

XIV. EFFECT OF FUTURE LAWS AND CHANGES TO THE ZDSO

A. **Vested Rights.** Beaufort County acknowledges that the Owner and Developer are relying upon this Agreement, and agrees that Owner and Developer shall have vested rights to undertake Development of all or any portion of the Property, as depicted in the Unified Development Plan and in accordance with the terms and conditions contained herein. Accordingly, Beaufort County agrees that the Owner's and Developer's reliance upon the terms and conditions contained herein shall create vested rights to undertake Development of all or any portion of the Property in accordance with this Development Agreement.

B. **Future Laws.** Any amendment or modification to the ZDSO, including any new or successor zoning and development standards ordinances adopted by Beaufort County, shall not be applicable to the Property without the Owner's express prior written consent, except as otherwise provided herein, provided that Beaufort County may apply such subsequently adopted laws to the Development if it holds a public hearing and it is determined that the subsequently adopted laws: (a) are not in conflict with laws governing this Agreement and do not prevent the Development contemplated in this Agreement; (b) are essential to public health, safety or welfare, and the subsequently adopted laws expressly state that they apply to the Development of the Property; and, (c) are specifically anticipated and provided for in the Development Agreement; and provided that: (i) Beaufort County demonstrates that substantial changes have occurred to pertinent conditions regarding the Property existing as of the Effective Date; and, if not addressed by Beaufort County, such conditions would pose a serious risk to the health, safety and welfare of its citizens; or (ii) the Development Agreement is based on substantially inaccurate information supplied by Owner. Beaufort County also acknowledges that a portion of the Property is located within AICUZ Noise Zone 2A and that boundaries and restrictions may change for AICUZ noise zones, but agrees that changes to any AICUZ noise zone shall not be considered a threat to the health, safety or welfare of the citizens within the Property.

C. **Future Laws of General Application.** The parties specifically acknowledge that this Agreement shall not prohibit the application of any present standard codes or future codes in compliance with Section 6-31-160 of the Act, or any tax or fee of general application throughout the County. No future development and/or aid to construction, Impact Fees or special assessments shall apply to the Property without the written consent of the Owner.

XV. DEFAULTS

The failure of the Owner, Developer or County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance and the termination of this Development Agreement in accordance with the Act; provided, however, that no termination of this Development Agreement may be declared by the County without the County providing to the Owner and Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided further that nothing herein shall be deemed or construed to preclude the County or its designee from issuing individual stop work orders or voiding specific permits issued for Development when such Development contravenes the provisions of the ZDSO or this Development Agreement.

A default of the Owner shall not constitute a default by the Developer; and a default by the Developer shall not constitute a default by the Owner; nor shall a default by one Owner or Developer constitute a default of the Owners collectively.

XVI. MODIFICATION OF AGREEMENT

This Development Agreement may be modified or amended only by the written agreement of the County and the Owner. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

If an amendment affects less than all the persons and entities comprising the Owner(s), then only the County and those affected persons or entities shall sign such written amendment. Because this Agreement constitutes the Unified Development Plan for the Property, minor modifications to a site plan or to Development provisions may be made without a public hearing or amendment to the Development Agreement Ordinance. 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. Wherever said consent or approval is required, the same shall not be unreasonably withheld.

The plans for Development of the Property are not intended to be a rigid, nor exact. The location of roads, buildings, recreational amenities and other elements may vary at the time of permit applications when more specific designs are available, as long as the maximum densities set forth herein and the general concept of residential/commercial Developments suggested is 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 party at the address set forth below or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile; or, if by mail, on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, consents, approvals or communications to the County shall be addressed as follows:

To Beaufort County: Office of Beaufort County Administrator
100 Ribaut Road
Room 156
Beaufort, SC 29902

With Copy To: Joshua A. Gruber, Esquire
Beaufort County Legal Department
Post Office Drawer 1228
Beaufort, SC 29901-1228

And to Owner: Burton Development, LLC
c/o Cherokee Beaufort, LLC
Attn: Mr. Robert Turner
22 Market Street
Beaufort, SC 29906

With Copy To: McNair Law Firm, P.A.
Post Office Drawer 3
Hilton Head Island, SC 29938
Attn: Walter J. Nester, III

XVIII. GENERAL

A. Subsequent Laws. In the event that State or Federal laws or regulations are enacted after the execution of this Development 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 Law” or “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, those parties designated by the Owner, the Developer and the County 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 of intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the County 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, the Developer and the County each shall have the right to challenge the New Laws 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 Owner, the Developer and the County may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

- (a) that this Agreement is in full force and effect;
- (b) that this Agreement has not been amended or modified, or if so amended, identify those amendments;

(c) whether, to the knowledge of such notifying 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

(d) whether, to the knowledge of such notifying 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 County, the Owner and the Developer 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 Owner, the Developer or the County or between the Owner(s), or the Owner and any Developer, or to render such party liable in any manner for the debts or obligations of another party.

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

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

G. Assignment. Other than as defined herein, no other rights, obligations, duties or responsibilities devolved by this Agreement on or to the Owner, Developer or the County shall be assignable to any other person, firm, corporation or entity.

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 County'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 County, the Owner and the Developer (including successors and/or assigns). No other persons shall have any rights hereunder.

XIX. STATEMENT OF REQUIRED PROVISIONS

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

1. **Legal Description of Property and Legal and Equitable Owner.** The legal description of the Property is set forth in Exhibit "A", attached hereto. The current legal Owner of the Property is Cherokee Beaufort, LLC.

2. **Duration of Agreement.** The duration of this Agreement shall be five (5) years, with three (3) five (5)-year renewal terms.

3. **Permitted Uses, Densities, Building Heights and Intensities.** A complete listing and description of permitted uses, Dwelling Unit densities, building intensities and heights, as well as other Development related standards, are contained in this Agreement.

4. **Required Public Facilities.** The utility services available to the Property are described generally above regarding electrical service, telephone and solid waste disposal. The mandatory procedures of the ZDSO and this Agreement, and/or the use of Development Impact Fees, fees in lieu, or other funding sources at the County's option shall ensure availability of roads, schools, parks and utilities to serve residents on a timely basis.

5. **Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.** All relevant State and Federal laws shall be fully complied with, in addition to the provisions set forth in this Agreement. Where required by State or Federal law, protective buffers for wetlands shall be created.

6. **Local Development Permits.** The Development is set forth in the Unified Development Plan, and must comply with the ZDSO. Specific permits shall be obtained prior to commencing Development, consistent with the standards set forth in the ZDSO. Building permits shall be obtained under County Ordinances for any vertical construction, and appropriate permits shall be obtained from the State of South Carolina (OCRM) and the Army Corps of Engineers, when applicable, prior to any impact upon salt or freshwater wetlands. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve the Owner, its successors and assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

7. **Comprehensive Land Use Plan and Development Agreement.** The Development permitted and proposed hereunder is consistent with the Beaufort County Comprehensive Land Use Plan and with the County's current land use regulations.

8. **Terms for Public Health, Safety and Welfare.** The Beaufort County Council finds that all issues currently relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of this Agreement, the ZDSO and existing law.

9. **Historical Structures.** No specific terms relating to historical structures shall be pertinent to this Development Agreement. All historic structures and issues shall be addressed through the permitting process of the ZDSO at the time of Development; and no exception from any existing standard shall be hereby granted.

[Signatures on following pages]

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

WITNESSES:

**OWNER:
Cherokee Beaufort, LLC**

By:
Its:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the undersigned Notary Public of the State and County stated below, personally appeared _____ 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 the capacity indicated.

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

(Affix Notary Seal)

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

DEVELOPER:
Burton Development, LLC

By:
Its:

STATE OF SOUTH CAROLINA.)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the undersigned Notary Public of the State and County stated below, personally appeared _____, 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 the capacity indicated.

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: _____

(Affix Notary Seal)

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

By:
Its:

STATE OF SOUTH CAROLINA.)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate official of Beaufort County, 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.

(Affix Notary Seal)

Notary Public for South Carolina
My Commission Expires: _____

Exhibit A

Property Description

Exhibit B

Unified Development Plan
(for Habersham PUD and Property)

Exhibit C

Development Schedule

Exhibit D

Plans prepared by Davis & Floyd, Inc.
(for Joe Frazier Road Round-a-bout)

Exhibit E

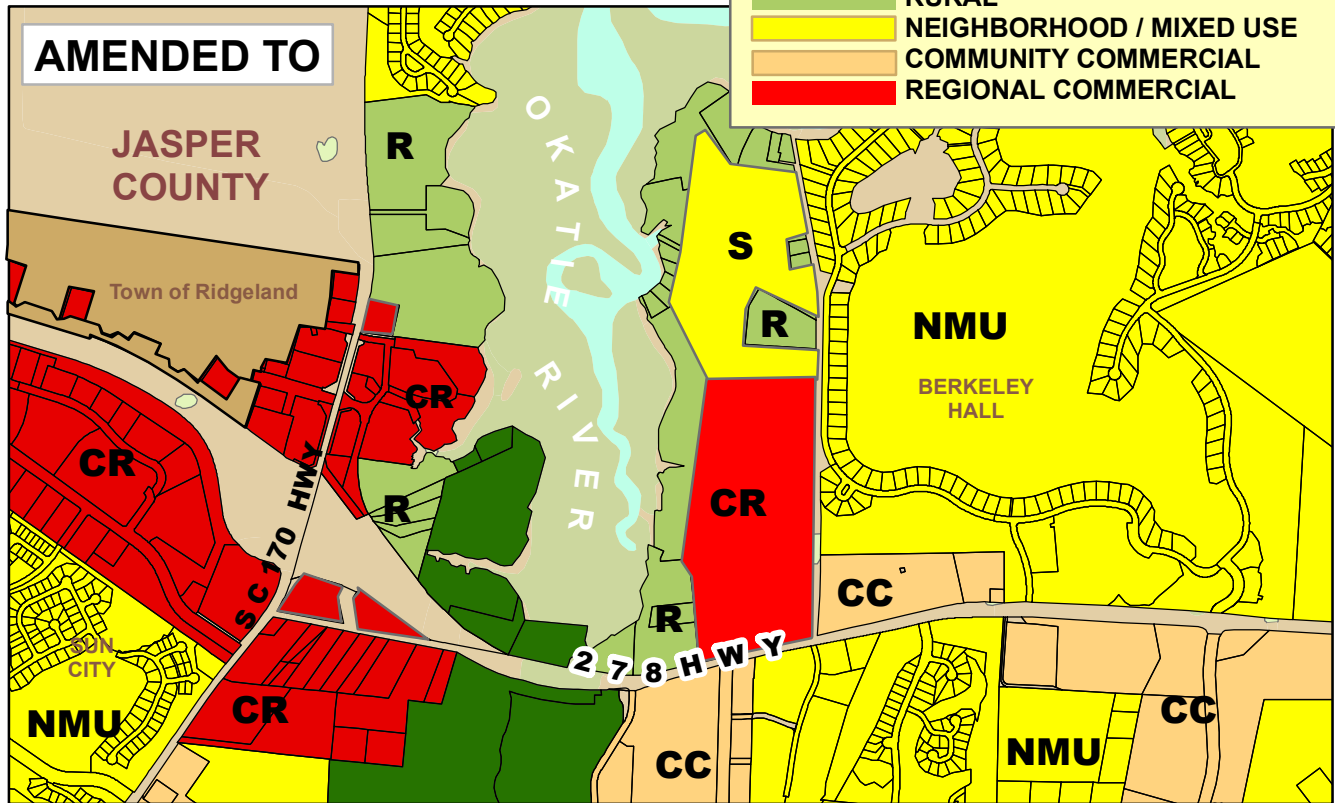
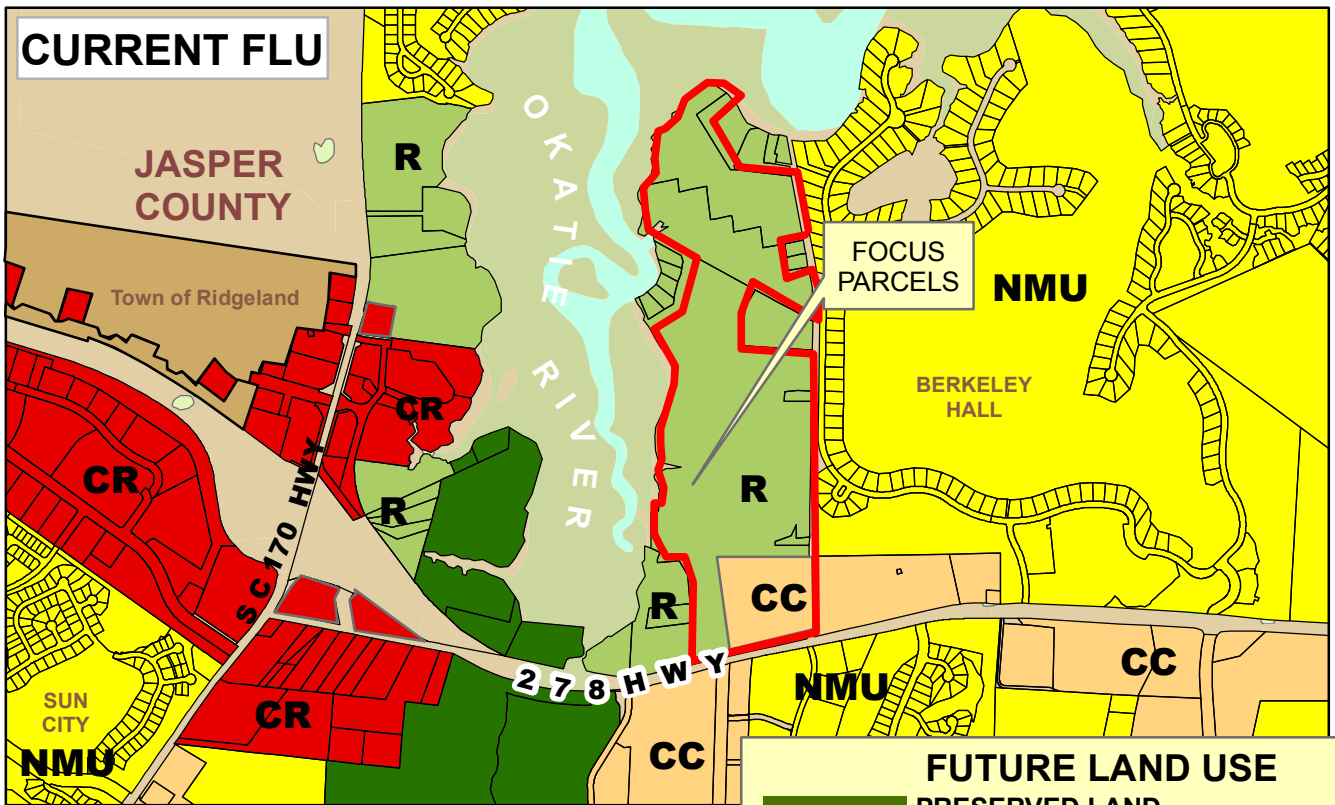
Cherokee Farms, Needles Road and Joe Frazier Road Improvements, Conceptual
Plan

Exhibit F

Joe Frazier Road Round-a-bout Landscape Plan

Exhibit G

Beaufort County Zoning and Development Standards Ordinances (“ZDSO”)

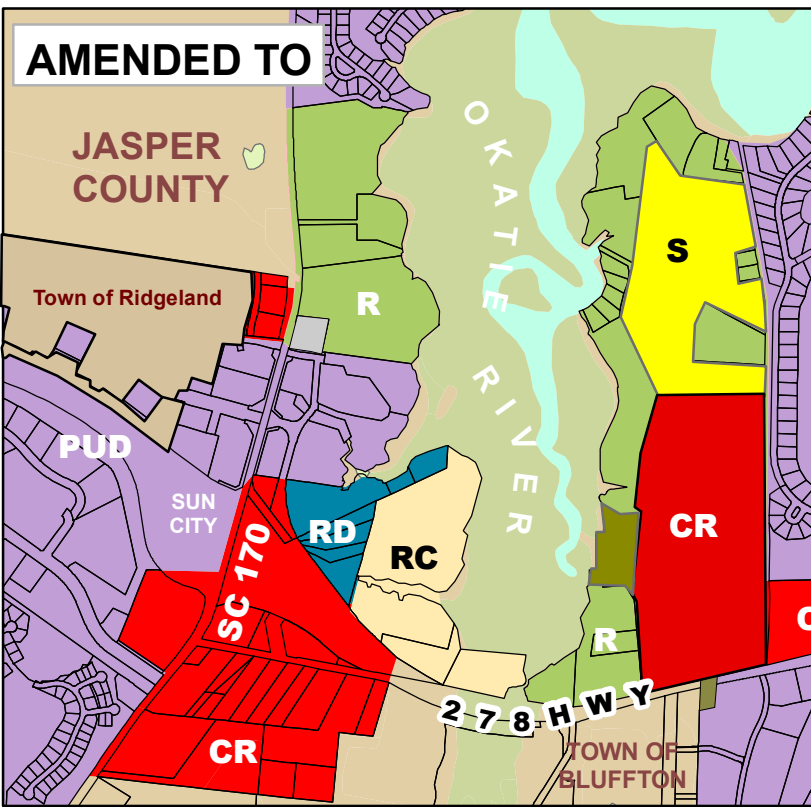
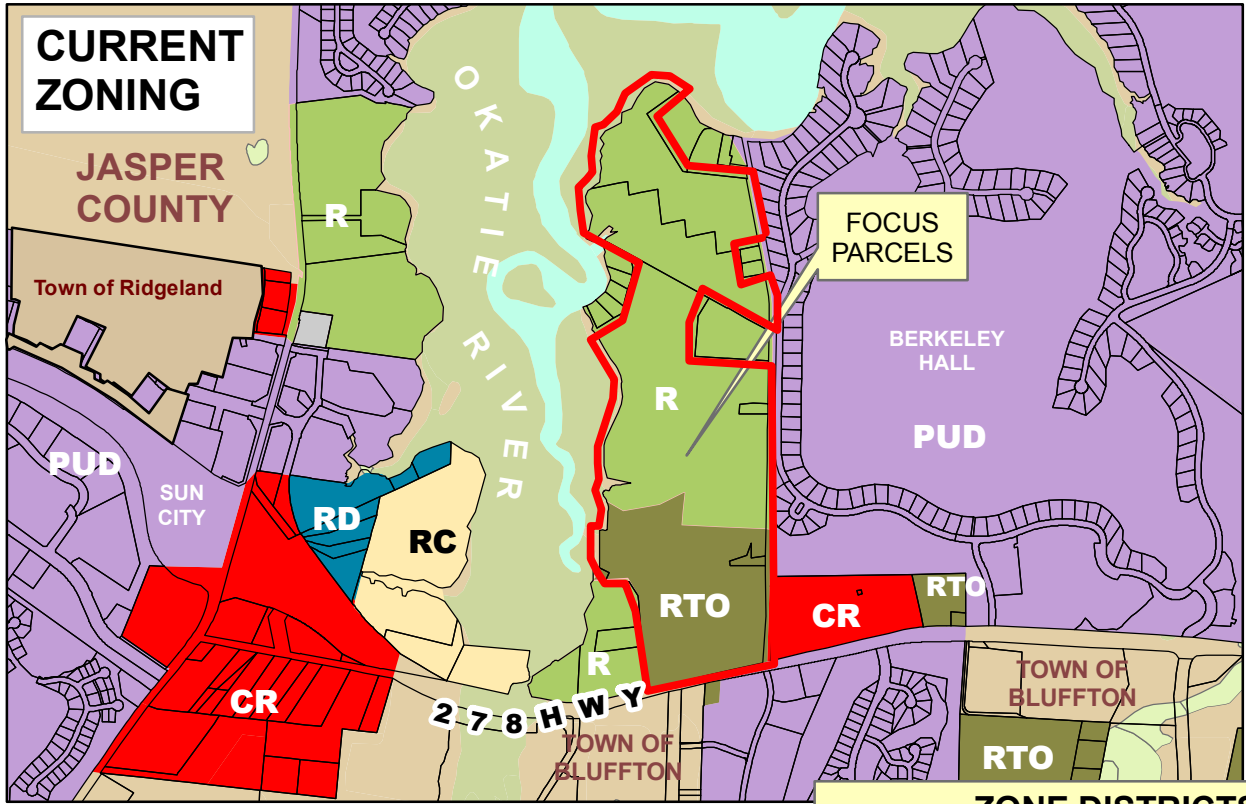


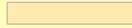
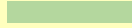







FUTURE LAND USE AMENDMENT

11/30/12

INVOLVING PARCELS:

- R600 021 000 0002 0000; R600 021 000 0075 0000;
- R603 021 000 004A 0000; R603 021 000 0194 0000
- R603 021 000 0195 0000; R603 021 000 006A 0000;
- R603 021 000 007B 0000



ZONE DISTRICTS	
	RESOURCE CONSERVATION
	RURAL
	RURAL W TRANSITIONAL OVERLAY
	SUBURBAN
	PLANNED UNIT DEVELOPMENT
	COMMERCIAL REGIONAL
	RESEARCH & DEVELOPMENT
	LIGHT INDUSTRIAL
	INCORPORATED



REZONING AMENDMENT

INVOLVING PARCELS:

- R600 021 000 0002 0000; R600 021 000 0075 0000;
- R603 021 000 004A 0000; R603 021 000 0194 0000
- R603 021 000 0195 0000; R603 021 000 006A 0000;
- R603 021 000 007B 0000