

**PORT ROYAL TRACT
DEVELOPMENT AGREEMENT
BY AND BETWEEN**

**TOWN OF PORT ROYAL, SOUTH CAROLINA,
AND
SOUTH CAROLINA STATE PORTS AUTHORITY**

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EXHIBITS

- Exhibit A: Legal Description – Port Royal Tract
- Exhibit A-1: Boundary Depiction
- Exhibit B: Port Royal Regulating Plan
- Exhibit C: Development Schedule
- Exhibit D: Open Space Plan
- Exhibit E: Zoning Ordinance of Town of Port Royal, South Carolina
- Exhibit F: Development Agreement Ordinance
- Exhibit G: Planned Development Ordinance
- Exhibit H: Planned Unit Development Plan

DEVELOPMENT AGREEMENT

**BY AND BETWEEN
TOWN OF PORT ROYAL, SOUTH CAROLINA,
AND
SOUTH CAROLINA STATE PORTS AUTHORITY**

This DEVELOPMENT AGREEMENT (together with the Exhibits attached hereto, the "Agreement") is entered into effective as of the ___ day of _____, 2006 (the "Effective Date"), by and between Town of Port Royal, a political subdivision of the State of South Carolina (the "Town"), and South Carolina State Ports Authority, an instrumentality of the State of South Carolina created by 1942 Act No. 626 of the South Carolina General Assembly ("Property Owner"). The Town and Property Owner are sometimes separately referred to in this Agreement as a "party" or jointly referred to as the "parties."

RECITALS

This Agreement is predicated upon the following:

- I. The Code of Laws of South Carolina (the "S.C. Code") Sections 6-31-10 through 6-31-160, as it exists on the Effective Date of this Agreement (the "Act"), enables municipalities to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Act.

- II. The Town Council adopted Ordinance Number 2006-71 on November 8th, 2006, rezoning certain properties and amending the Official Map, Port Royal such that those properties identified as TMS # 110-10-183, TMS #110-10-075, TMS #110-10-079, TMS #110-10-184,

TMS #110-11-249, TMS #110-11-084, and TMS #110-10-299 were reclassified as Planned Unit Development (“PUD”). A copy of the Ordinance is attached hereto as Exhibit G.

III. Pursuant to the Act, the Town conducted public hearings regarding its consideration of this Agreement on November 1, 2006 and November 8, 2006, after publishing and announcing notice, in accordance with the Act.

IV. The Town Council adopted Ordinance Number 2006-72 on November 8th, 2006, (a) determining that this Agreement is consistent with the Town Comprehensive Plan and the Act; and (b) approving this Agreement. A copy of the Ordinance is attached hereto as Exhibit F.

V. The Town and Property Owner acknowledge that the redevelopment of the Port of Port Royal property represents an opportunity to redefine a major connection to the water within the Town of Port Royal and Beaufort County. The PUD designation will allow for development that introduces design principles from traditional neighborhood design practice, the State of South Carolina Ports Authority *Redevelopment Study* by Wood+Partners Inc. dated September 2006, the Town of Port Royals *A New Vision for the Port* study by Design Collective, Inc. dated July 2004, and the Traditional Town Overlay District within the Town of Port Royal Code of Ordinances. These documents defined a vision for preserving and extending the Town’s traditional character into the Port site through promoting a mix of land uses and residential types to support a variety of choices in lifestyles and needs of the citizens of the Town.

NOW THEREFORE, in consideration of the premises of this Agreement and the mutual benefits to the parties, the parties agree as follows:

1. The Property. The Property subject to this Agreement currently consists of approximately 317 acres, of which approximately 51 acres are highland. A legal description of the Property is set forth in Exhibit A, and the boundary lines of the Property are shown on Exhibit A-1.

2. Definitions. In this Agreement, unless the word or phrase is non-capitalized:

(a) “Agreement” means this Development Agreement, including the recitals and exhibits attached hereto.

(b) “Comprehensive Plan” means the Town of Port Royal Comprehensive Plan, adopted by Ordinance No. 2004-21, in accordance with S.C. Code §, 6-29-310, et seq. (1976), as amended, as the same may have been amended through the Effective Date.

(c) “Development” means the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into three or more parcels, and is intended by the Parties to include all uses of, activities upon or changes to the Real Property as are authorized by the Agreement.

“Development,” as designed in a land or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, “Development” refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not

development. Reference to particular operations is not intended to limit the generality of this item.

(d) “Development Parcel” means any tract of land on which Development may occur, including platted Lots and unplatted parcels, but excluding street rights-of-way.

(e) “Development Permit” includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, certificate of occupancy and any other official action of the Town having the effect of permitting the Development or use of property.

(f) “Dwelling Unit” means one or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with cooking, sleeping and sanitary facilities provided within the dwelling unit. Dwelling Unit shall not include, however, hotel rooms or other facilities for transient short term stays; assisted living facilities, or other commercial properties.

(g) “Facilities” means major capital or community improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, and potable water. Except as may be specifically provided for in this Agreement, the Owner is specifically exempted from any Town requirement for the provision of facilities relating to public education, public health systems and facilities, libraries, public housing, jails and other detention sites, courts, police and trash or garbage disposal sites. Such exemptions shall not, however, exempt Property Owner from payment of applicable user or impact fees for any such Facilities that are now or hereafter imposed by the Town or other governmental authority.

(h) “Land Development Regulations” means Ordinance No. 2006-71, attached hereto as Exhibit G, and the other ordinances and regulations enacted by the Town pertaining to the regulation of any aspect of Development including the Town’s zoning ordinance, subdivision regulations, overlay districts, landscaping, building construction, occupancy, and sign regulations,

which are attached hereto as Exhibit E, but specifically excluding any ordinances or regulations pertaining to processing fees, permit fees, user fees, impact fees and other fees and taxes or assessments.

(i) “Law” means all ordinances, resolutions, regulations, comprehensive plans, Land Development Regulations, policies and rules, custom and usage (formal and informal) adopted by a Local Government affecting the Development of property and includes laws governing permitted uses of the property, governing density, and governing design, improvement, and construction standards and specifications, but specifically excluding any ordinance or regulation pertaining to processing fees, permit fees, user fees impact and other fees and taxes or assessments.

(j) “Lot” means Development Parcel identified in a Subdivision Plat recorded in the Beaufort County RMC Office.

(k) “Master Developer” shall mean either: (a) the South Carolina State Ports Authority (“SCSPA”); (b) the initial person(s), firm(s), or entity that acquires title to the Port Village, as depicted on Exhibit B attached hereto, from the SCSPA (the “Initial Developer”); or (c) the successor in title or assignee of the Initial Developer, which successor or assignee must be approved by the Town.

(l) “Parties” means the Property Owner and Town.

(m) “Project” is the Development that will occur within and upon the Property described in Exhibit A, Exhibit A-1 and Exhibit B.

(n) “Property Owner” means SCSPA, its successors in title and/or assigns by virtue of assignment or other instrument pursuant to Section 26 hereof. Property Owner warrants that there are no other legal or equitable owners of the Real Property.

(o) “Real Property” is the real property referred to in Section 5 and includes any improvements or structures customarily regarded as part of real property.

(p) “Regulating Plan” means the development plan, attached hereto as Exhibit B.

(q) “Subdivision Plat” means a recorded graphic description of property prepared and approved in compliance with the Land Development Regulations, as modified in this Agreement.

(r) “Town” means Town of Port Royal, South Carolina.

(s) “Undeveloped Lands” in the existence on the date of execution of this Agreement is the Real Property indicated on Exhibits A and A-1.

(t) “Vested Units” means the new single family Lots and new non-single family Dwelling Units which may be approved for all Undeveloped Lands.

3. Parties. Parties to this Agreement are the Property Owner and the Town.

4. Relationship of the Parties. This Agreement creates a contractual relationship between the Parties. This Agreement is not intended to create, and does not create, the relationship of master/servant, principal/agent, independent contractor/employer, partnership, joint venture, or any other relationship where one party may be held responsible for acts of the other party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of the Property Owner constitutes “state action” for any purposes.

5. Legal Description of the Real Property. The Real Property which is the subject of this Agreement is described as follows:

- (a) A legal description of the Real Property is set forth in Exhibit A.
- (b) A boundary depiction of the Real Property is set forth in Exhibit A-1.

The Real Property currently consists of approximately 51 acres of highland and approximately 266 acres of wetlands, with a total gross acreage of approximately 317 acres.

The Property Owner may notify the Town from time to time of property proposed to be added to the legal description of Real Property by the filing of a legal description of subsequently acquired properties with the Town Clerk and the Planning Department; provided, however, that no other property shall be added to the Agreement unless this Agreement is duly amended to add the legal description of the subsequently acquired properties to the legal description of the Real Property, pursuant to S.C. Code Section 6-31-10 et seq.

6. Intent of the Parties. The Town and the Property Owner agree that the burdens of this Agreement bind, and the benefits of this Agreement shall inure to, each of them and to their successors in interest and, in the case of the Property Owner, its successors in title and/or assigns. The Town and the Property Owner are entering into this Agreement in order to secure benefits and burdens referenced in the Code of Laws of South Carolina, Sections 6-31-10 et seq.

7. Consistency with the Town's Comprehensive Plan and Land Development Regulations.
This Agreement is consistent with the Town's Comprehensive Plan.

Whenever express or implied substantive provisions of this Agreement are inconsistent with the applicable standards set forth in the Land Development Regulations, the standards set

forth in the Land Development Regulations and the standards set forth in this Agreement shall, to the extent possible, be considered in *pari materia* to give effect to both the Land Development Regulations and this Agreement; provided, however, that in the event of a conflict, and subject to the provisions of Section 6-31-80, the standards set forth in this Agreement shall govern. In the event of a dispute between the parties to this Agreement as to whether a provision in the Comprehensive Plan or Land Development Regulations is inconsistent with express or implied substantive provisions of this Agreement, the parties must first submit such disputed interpretation to Town Council and must wait seven days after such submittal before invoking the remedies afforded them under this Agreement.

8. Legislative Act. Any change in the standards established by this Agreement or to laws pertaining to the same shall require the approval of Town Council, subject to compliance with applicable statutory procedures and consistent with Section 9(a). This Agreement constitutes a legislative act of Town Council. Town Council adopted this Agreement only after following procedures required by S.C. Code Section 6-31-10, et seq. This Agreement shall not be construed to create a debt of the Town as referenced in Section 6-31-145.

9. Applicable Land Use Regulations.

(a) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by Section 6-31-10, et seq., the Laws applicable to Development of the Real Property subject to this Agreement are Ordinance No. 2006-71, attached hereto as Exhibit H, and the Land Development Regulations in force at the time of execution of this Agreement, attached hereto as Exhibit E, provided however, the Town may apply later enacted Laws to the Real Property

relating to Development applications, submittals and reviews so long as such laws apply town-wide. The Town shall not apply subsequently adopted Laws to the Real Property or the Project unless the Town has held a public hearing and has determined: (1) the proposed, subsequent Laws are not in conflict with Ordinance No. 2006-72 or the Land Development Regulations governing the Agreement and do not prevent the Development set forth in this Agreement; (2) the proposed, subsequent Laws are essential to the public health, safety, or welfare and the proposed, subsequent Laws expressly state that they apply to a development that is subject to a development agreement; (3) the proposed, subsequent Laws are specifically anticipated and provided for in this Agreement; (4) the Town demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement, which changes, if not addressed by the Town, would pose a serious threat to the public health, safety, or welfare; or (5) this Agreement is based on substantially and materially inaccurate information supplied by the Property Owner. Nothing herein shall preclude Property Owner from agreeing, on a case by case basis, to abide by such new Laws, regulations, or ordinances subsequently passed by the Town which it, in its sole discretion, deems appropriate; and in such case the Laws, regulations, or ordinances, so agreed to by Property Owner shall become part of the Land Development Regulations.

(b) Vested Rights. Subject to the provisions of subparagraph (a) above, all rights and prerogatives accorded the Property Owner by this Agreement shall immediately constitute vested rights for the Development of the Real Property.

Paragraph 9(a) of this Agreement does not abrogate any rights either preserved by S.C. Code Section 6-31-140 or that may have been vested pursuant to common law and otherwise in the absence of a development agreement.

10. Building Codes and Laws Other Than Land Use Regulations. The Property Owner, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any current or subsequently adopted building, housing, electrical, mechanical, and plumbing, gas or other standard codes adopted by the Town or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, mechanical, plumbing, gas or other standard codes subsequently adopted by the Town or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend in any way the rights, duties and privileges of the Town to exercise governmental powers and pass laws not applicable to Development of the Real Property including, but not limited to police power measures of general application, the power of eminent domain and the power to levy and collect taxes; provided, however, that Laws applicable to the Development of the Real Property shall be subject to Section 9(a).

11. Local Development Permits and Other Permits Needed. The Parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the Development of the Project:

Zoning permits, plat approvals (preliminary, conditional or final), roads and drainage construction plan approvals, building permits, certificates of occupancy, county water and/or sewer development contracts, and utility construction and operating permits.

The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Property Owner of the necessity of complying with the law governing, permit requirements, conditions, terms, or restrictions.

12. Vested Rights Governing the Development of the Real Property. The allowed uses and density shall be vested and governed by the provisions of this Agreement and the Planned Development set forth in Exhibit H to this Agreement.

13. Community Open Space/Seafood Facilities. The Property Owner shall convey portions of the Community Open Space, as established in Exhibit H, to the Town, as hereafter set forth. With the exception of Community Open Space conveyed to the Town, the Property Owner will at all times reserve to itself, its successors and assigns easements for access and infrastructure purposes (roads, walkways, paths, utility easements and rights of way, etc.) necessary for the Development.

A portion of the Marina Village, as depicted on the Regulating Plan attached hereto as Exhibit B, is now utilized as a seafood processing facility. Property Owner and Town acknowledge the significant contribution the seafood industry has made to the lowcountry in general, and the Town in particular, and that the continued presence of the industry in the Town is an important aspect of the Town's heritage and tradition. It is agreed that, should the ultimate owner of the portion of the Marina Village where the seafood processing center (including docks) is now located, determine to change the use of such property, such owner shall first accord the Town the opportunity to negotiate for the continuation of the processing center, to

include a land swap or purchase of the facility. Such owner shall provide the Town written notice of intention to change or discontinue the use of the facility, whereupon Town shall be required to submit a proposal to the owner within 90 days of receipt of such notice. In the event the owner and Town agree to a proposal for the continued operation of the facility that includes a land swap of Town-owned property that abuts the Marina Village portion of the Real Property as shown on the Regulating Plan, this Agreement and the PUD for the Real Property shall be amended to: (1) subject the Town-owned property to this Agreement and the provisions of the PUD pertaining to the Marina Village; and (2) delete the land (including docks) comprising the seafood facility from the provisions of this Agreement and the PUD. Should the owner and the Town be unable to agree to terms for the continuation of the seafood processing facility within 90 days of the Town submitting its proposal, the obligation of the owner to continue negotiations with the Town to continue the use of the property for a seafood facility shall terminate.

14. Facilities and Services. Although the nature of this long-term Project prevents the Property Owner from providing exact completion dates, the general phases of construction and Development are set forth in Section 15, and described in Exhibit C attached hereto and incorporated herein by reference. The Property Owner certifies that the services and Facilities will be fully completed (or if not fully completed, the cost of construction fully bonded or letter of credit posted pursuant to the Land Development Regulations) at the times provided herein, and as to roads, sewer, and water infrastructure, at the times Lots or Dwelling Units on approved plats or development plans are offered for purchase to the public. Subject to compliance with applicable Laws and with all provisions of this Agreement, the Town hereby authorizes the Master Developer to install the Facilities. Notwithstanding any provision herein to the contrary,

the Master Developer hereby assures the Town that adequate Facilities shall be available concurrent with the phases of Development.

(a) Roadway Improvements. The Master Developer shall develop and provide new roads in accordance with the Regulating Plan, improve existing roads, and provide other related infrastructure within the Project pursuant to and at such times as are required by the development plans for the Project and the Land Development Regulations. Such Roadway Improvements/Facilities shall be transferred to the Town. Payment for construction of the Roadway Improvements/Facilities shall be the responsibility of the Master Developer, subject to the provisions of subparagraph (e) hereof.

(b) Water and Sewer. Subject to approval by the South Carolina Department of Health and Environmental Control (“DHEC”), the service and Facilities for water and sewer shall be provided by Beaufort Jasper Water & Sewer Authority (“BJWSA”). The Town agrees to assist the Property Owner to ensure that adequate capacity for water and sewer is available in a timely manner so that the infrastructure may be continued in the Project by Property Owner without delay to Development of the Project, as described in this Agreement, and as subsequently modified by further agreement of the Property Owner and the Town. The Town agrees to use best efforts to assist in obtaining easements across properties not owned by Property Owner in order to facilitate timely connection to BJWSA service lines and facilities; provided, however, nothing herein shall be construed to require the Town to use its power of eminent domain for these purposes.

(c) Park Sites. The Master Developer shall improve at its expense, subject to paragraph (e) below, and transfer to the Town: (a) two (2) adjacent parcels of land: (1) an approximate two and 00/100 (2.00) acre parcel; and (2) an eight and 60/100 (8.60) acre parcel (collectively, the “London Avenue Park”), to be utilized solely as passive park sites, as more fully described in Exhibit D

attached hereto; and (b) an approximate one (1) acre parcel (the Paris Avenue Park) (collectively, the “Park Sites”), as shown on the Regulating Plan attached as Exhibit B.

Conveyance of the Park Sites, pursuant to the schedule hereafter set forth, shall be by way of appropriate warranty deeds, which shall convey insurable title to the Town for the consideration of one (\$1) Dollar, free and clear of encumbrances, with the exception of those permitted encumbrances mutually agreed upon by the parties, and Master Developer shall provide title insurance policies at no cost to the Town.

London Avenue Park

The London Avenue Park shall be passive and left substantially in its present, natural state. The Town, at its expense, may develop up to a zero and .24/100 (.24) acre parcel within the London Avenue Park as an interpretive museum open to the public. All other costs of improving and transferring the London Avenue Park to the Town shall be the responsibility of the Master Developer. The London Avenue Park shall be completed and transferred to the Town no later than four and one-half (4 ½) years from the commencement of the Term of this Agreement.

Paris Avenue Park

The Paris Avenue Park shall incorporate features specified in Exhibit H to which the Town and Master Developer agree. All costs of improving and transferring the Paris Avenue Park to the Town shall be the responsibility of the Master Developer. It is acknowledged that the timing of the improvement and transfer of the Paris Avenue Park is dependant on the timing of Development on the four landward sides of the Paris Avenue Park, the same being shown as

parcels PV-1, PV-2, PV-3 and PV-4 on the Regulating Plan. While the improvement and transfer of the Park may occur sooner, at the election of the Master Developer, it shall occur no later than pursuant to the following schedule.

Development may proceed on any or all of parcels designated on the Regulating Plan as parcels PV-1, PV-2, PV-3 and PV-4. Once there have been Development applications submitted on three of the four parcels designated as PV-1, PV-2, PV-3 or PV-4, upon a Development application thereafter being submitted on the last of such parcels (Last Abutting Parcel), the Master Developer shall be required to fully bond the costs of improving and transferring the Paris Avenue Park, in an amount and form and for such duration as required by the Town. The construction of improvements to the Paris Avenue Park shall be commenced when Development on the Last Abutting Parcel proceeds to the point where the buildings are dried in, and shall continue until completed. No certificate of occupancy for any Development on the Last Abutting Parcel shall be issued until the Paris Avenue Park has been fully completed and transferred to the Town, if commencement of the Paris Avenue Park improvements have not begun and been continued as described in the preceding sentence.

In the event there have been no Development Permit applications submitted for each of the parcels PV-1, PV-2, PV-3 and PV-4 within four and one-half (4 ½) years from the date of commencement of the Term of this Agreement, the Master Developer shall be required to fully bond the costs of improving and transferring Paris Avenue Park to the Town in an amount and form and for such duration as required by the Town, and enter into a contract of conveyance with the Town, the terms of which shall require the Paris Avenue Park to be fully completed and transferred to the Town and otherwise incorporate terms of transfer as set forth in this Development Agreement. The contract shall require the completion of improvements and the

transfer to occur no later than seven (7) years from the date of commencement of the Term of this Agreement, time being of the essence. The contract shall also provide, in addition to all available legal and equitable remedies, if Paris Avenue Park improvements have not commenced within six and one-half (6 ½) years after commencement of the Term of this Agreement (regardless of whether the Agreement has been extended or not) the Town shall be entitled to withhold or revoke permits and withhold certificates of occupancy on projects of the Master Developer until the Paris Avenue Park is completed and transferred.

(d) Promenade Pedestrian Waterfront Walkway.

Prior to the conveyance of any portion of the Real Property, the SCSPA shall convey to the Town a perpetual, non-exclusive, provable, transmittable and movable easement for commercial purposes, no less than 20 feet in width, along the critical area, as shown on Exhibit A-1, that allows the Town and members of the general public access to, over, across and upon the Promenade Pedestrian Waterfront Walkway (the “PPWW”) and trail as generally depicted on the Regulating Plan, attached hereto as Exhibit B (the “Promenade/Promenade Easement”). The terms of the Promenade Easement shall be subject to the review and approval of the Town, and shall incorporate provisions that permit the general public access to the Promenade and the right of use of the same, subject only to such rules and regulations as may be implemented by the Town, and that require mortgagees of the fee underlying the Promenade Easement to subordinate their interests to the rights of the Town and public in and to the Promenade Easement. The Promenade Easement granted by the SCSPA will provide that initial successors-in-title of the SCSPA may relocate and/or enlarge the Promenade Easement, with the prior approval of the Town, to accommodate good design standards for Development. To the extent any such relocation or enlargement impinges on property subject to

a mortgage, it shall be the responsibility of the Property Owner to secure the assent of the mortgagee to the relocation and/or enlargement and a subordination of the mortgagee's interest to the rights of the Town and the public in the Promenade Easement as relocated and/or enlarged.

The initial successor(s)-in-title to the SCSPA of the Port Village, Marina Village and Bluff Neighborhood parcels, as are collectively described in Exhibit B, shall be required to survey, dedicate by deed and plat and improve the Promenade Easement. The survey/plat of the Promenade Easement shall include a dedication thereof to the public and provide for acceptance by the Town, and include notice that all mortgagees of the fee underlying the Promenade Easement shall be required to subordinate their interests to the rights of the Town and public in and to the Promenade Easement. The survey and dedication of the Promenade Easement shall be required the earlier of: (1) prior to any Development Permit being issued on the applicable parcel(s); or (2) four and one-half (4 ½) years following the commencement of the Term of this Agreement. No certificates of occupancy shall be issued for any Development on Port Village, Marina Village, and the Bluff Neighborhood parcels until the Promenade Easement within such parcels has been dedicated and either been improved so as to allow public pedestrian access or appropriate financial assurances, which shall be satisfactory to the Town, are in place for its improvement in accordance with a schedule approved by the Town. At the request of the Town, the owner of parcels that include the Promenade Easement agree to execute such documents as may be necessary to assure the Town has or will have rights in an easement. The Town shall have the right to approve the plan for improvements within the easement and to require appropriate lighting, construction materials, consistency of design, safety features, trash disposal facilities, etc. to be incorporated in the improvements, which shall be constructed by the respective Property Owner at the earliest time feasible so as to facilitate the use by the public of the PPWW.

(e) Establishment of Special Districts. The Town acknowledges that the establishment of municipal improvement districts (“MID”) may be desirable by Property Owner and Town to facilitate timely implementation of the Facilities, Parks and the PPWW. To that end, upon request of Property Owner for establishment of such a district, the Town agrees to work with the Property Owner to create such a district to fund all or a portion of Facilities, Parks, and the PPWW as may be mutually agreed upon. In any and all events, the creation of a MID is contingent upon the financial feasibility of the same, without recourse to the Town’s resources or taxing authority, and upon all Real Property being included in said MID. Property Owner hereby gives its consent and written permission to the creation of such an MID. This consent and permission shall be binding on the successors and assigns of the Property Owner. It is further agreed that such MID or MIDs may, at the election of the Town, include other adjacent areas of the Town that are not within the Real Property.

(f) Acceptance of Facilities. The Road Improvements described in this Section 14 will be accepted by the Town, provided the same have been built in accordance with the specifications approved by the Town, and provided further that the Road Improvements are in good condition and not subject to any monetary lien. The Town shall accept the Park Sites upon their being improved in accordance with the provisions of subpart (c) of this Section 14, and the Promenade Easement in accordance with the provisions of subpart (d) of Section 14.

(g) Design Review Fee: Development plans for the Real Property shall be reviewed by the Town manager, planner, building codes staff and other retained design professionals, to include an architect and engineer (the “Port Redevelopment Design Review Staff”). In addition to fees charged town-wide for Development Permits, a Property Owner shall be required to pay a Port Redevelopment Design Review Staff fee, said fee for each Development Permit application being an

amount equal to the lesser of: (1) the actual costs incurred by the Town for the services of retained design professionals per Development application; or (2) \$250.00 per single family detached dwelling; \$100.00 per single family attached dwelling; or \$200 per thousand (or fraction thereof) square feet of all other types of Development (the “Port Redevelopment Design Review Fee”). No Redevelopment Design Review Fee shall be due for review of plans for the Facilities, including the Park Sites, PPWW and Battery Creek Road Improvements.

The Port Redevelopment Design Review Fee shall be due and payable upon receipt of an invoice from the Town. A late fee of 1% per month shall be added to Fees not paid within thirty (30) days of invoice. No building permit shall be issued for a Development Permit application until the fee has been fully paid.

15. Schedule for Project Development.

(a) Commencement Date. The Project will be deemed to commence upon both the execution and adoption of this Agreement and the beginning of the Term of this Agreement, as set forth in Section 16 below.

(b) Interim Completion Date. The Property Owner projects that during Term of this Agreement, Development shall occur pursuant to the following schedule:

<u>YEAR</u>	<u>% COMPLETE</u>
1	Bluff Neighborhood 10%, Marina Village 10%, Port Village 10%
2	Bluff Neighborhood 25%, Marina Village 20%, Port Village 20%

3	Bluff Neighborhood 60%, Marina Village 35%, Port Village 40%
4	Bluff Neighborhood 80%, Marina Village 75%, Port Village 80%
4.5	London Avenue Park completed and conveyed; Paris Avenue Park fully bonded; Promenade Easement 50% complete or fully bonded
5	Project 100%

(c) Completion Date. The Property Owner projects within five (5) years of commencement the Project should be substantially completed (i.e., the Park Sites being improved and conveyed to the Town as set forth above and all recreational amenities erected, built, and essentially all structures erected and/or all necessary infrastructure in place to serve the intended uses).

16. Term of the Agreement. The Term of this Agreement shall commence on the earlier of: (1) the first closing of the sale of the Real Property by SCSPA; or (2) July 1, 2007; and shall expire five (5) years thereafter unless extended by the mutual agreement of the Parties. The Development Schedule set forth as Exhibit C to this Agreement acknowledges that external causes could delay completion of the Project within the initial Term. The Town may extend the Term upon demonstration that the Master Developer and other Property Owners are diligently pursuing the Project; the Park Sites have been timely improved and/or bonded and, if applicable, conveyed; and the Promenade Easement has been definitively laid out, with the applicable owners thereof having executed the documents required by the Town to assure its rights to an

easement and that the Easement has been or will be improved as contemplated by this Agreement and the PUD.

17. Amending or Canceling the Agreement. Subject to the provisions of Section 6-31-80, this Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties in writing or by their successors in interest.

Any amendment to this Agreement shall comply with the provisions of Section 6-31-10, et seq. Any provision 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. A major modification of this Agreement shall occur only after public notice and a public hearing by the Town.

18. Modifying or Suspending the Agreement. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, the pertinent provisions of this Agreement shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations.

19. Periodic Review. The designated representative of the Town and Property Owner shall review the Project and this Agreement at least once every twelve (12) months, at which time the Property Owner shall demonstrate good-faith compliance with the terms of this Agreement.

If, as a result of its periodic review or at any other time, the Town finds and determines that the Property Owner has committed a material breach of the terms or conditions of this Agreement, the Town shall serve notice in writing upon the Property Owner setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Property Owner a reasonable time in which to cure the material breach. A material breach includes but is not limited to the failure of the Master Developer to timely complete and/or bond and transfer the Park Sites and the failure of the applicable Property Owner owning parcel(s) that include some or all of the Promenade Easement to improve and/or bond and transfer the same in accordance with the terms of this Agreement.

If the Property Owner fails to cure any material breach within the time given, then the Town unilaterally may terminate or modify this Agreement; provided, that the Town has first given the Property Owner the opportunity: (1) to rebut the Town's finding and determination; or (2) to consent to amend this Agreement to meet the concerns of the Town with respect to the findings and determinations.

20. Severability. Subject to the provisions of Section 6-31-150 if any word, phrase, sentence, paragraph or provision of this Agreement shall be finally adjudicated to be invalid, void, or illegal, it shall be deleted and in no way affect, impair, or invalidate any other provision hereof.

21. Merger. This Agreement, coupled with its Exhibits which are incorporated herein by reference, shall state the final and complete expression of the Parties' intentions. In return for the respective rights, benefits and burdens undertaken by the Parties, the Property Owner shall

be, and is hereby, relieved of obligations imposed by future land development laws, ordinances and regulations, except those which may be specifically provided for herein.

The Parties hereto agree to cooperate with each other to effectuate the provisions of this Agreement and to act reasonably and expeditiously in all performances required under the Agreement.

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.

22. Conflicts of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

23. Remedies. Each Party recognizes that the other Party would suffer irreparable harm from a material breach of this Agreement and that no adequate remedy at law exists to enforce this Agreement. Consequently, the Parties agree that any nonbreaching Party who seeks enforcement of the Agreement is entitled to the remedies of injunction and specific performance but not to any other legal or equitable remedies including, but not limited to, damages; provided, however, the Property Owner shall not forfeit its right to just compensation for any violation by the Town of Property Owner's Fifth Amendment rights, and the Town shall not be deemed to forfeit its rights to sue for monies to complete any or all of the Park Sites and/or to withhold or revoke permits and/or withhold certificates of occupancy. Further, nothing in this Agreement shall be deemed to preclude or otherwise affect the right of the Town to issue stop work orders or revoke

permits if Development is undertaken in a manner inconsistent with approved plans or is noncompliant with applicable Development and building regulations.

24. Recording. Within fourteen days after execution of this Agreement, the Property Owner shall record the agreement with Beaufort County Register of Deeds. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the Parties to this Agreement.

25. Third Parties. Notwithstanding any provision herein to the contrary, this Agreement shall not be binding and shall have no force or effect as to persons or entities who are not Parties or successors and assigns to this Agreement.

26. Town Approval of Agreement. The Town Council has approved the Project under the process set forth in Section 6-31-50 of the Act on the terms and conditions set forth in this Development Agreement.

27. Successors and Assigns.

(a) Binding Effect. This Agreement shall be binding on the successors and assigns of the Property Owner in the ownership or Development of any portion of the Real Property or the Project. A purchaser, lessee or other successor in interest of any portion of the Real Property shall be solely responsible for performance of Property Owner's obligations hereunder as to the portion or portions of the Real Property so transferred. Assignees of development tracts shall be required to execute a written acknowledgment accepting and agreeing to the Property Owner's obligations in this

Agreement, said document to be in recordable form and provided to the Town at the time of the recording of any deed transferring a development tract. Following delivery of such documents Property Owner shall be released of any further liability or obligation with respect to said tract; provided however and notwithstanding anything herein to the contrary, the Property Owner who is a Master Developer shall remain liable for improving and conveying the Park Sites in accordance with the provisions of this Agreement, unless the Town, in its sole discretion, agrees to a transfer of such authority to another party.

This paragraph shall not be construed to prevent Property Owner from obtaining indemnification of liability to the Town from third parties. Further, Property Owner shall not be required to notify the Town or obtain the Town's consent with regard to the sale of Lots in single family residential subdivisions or Lots in commercial areas which have been platted and approved in accordance with the terms of this Agreement. Property Owner shall be released from obligations as to sale of individual Lots in single-family subdivisions and individual building pad sites in commercial areas.

This Agreement shall also be binding on the Town and all future Town Councils for the duration of this Agreement, even if the Town Council members change.

(b) Transfer of Property. Property Owner shall be entitled to transfer any portion or all of the Real Property to a purchaser(s), subject to the following exceptions:

(i) Notice of Property Transfer. When the SCSPA intends to transfer all or a portion of the Port Village Parcel, as depicted on Exhibit B attached hereto, to a Master Developer the SCSPA shall notify the Town, in writing, thirty (30) days in advance of the transfer specifying the name, address, telephone number, facsimile number and contact

person for the Master Developer. Likewise, when the SCSPA transfers any or all portions of the remaining Real Property, the SCSPA shall notify the Town, in writing, within thirty (30) days of the transfer specifying the name, address, telephone number and contact person for the Property Owner.

(ii) Assignment of Development Rights. Any and all conveyances of any portion of the Real Property subject to the density unit totals and size limits set forth in Exhibit H herein to third party developers shall, by contract and covenant running with the land, assign a precise number of Vested Units, and/or commercial square footage, (in reduction of the minimum Vested Units, and/or vested commercial square footage provided for herein.)

(iii) Mortgage Lenders. Notwithstanding anything to the contrary contained herein, the exceptions to transfer contained in this Section shall not apply: (i) to any mortgage lender either as the result of foreclosure of any mortgage secured by any portion of the Real Property or any other transfer in lieu of foreclosure; (ii) to any third party purchaser at such a 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 Real Property as set forth above. Furthermore, nothing contained herein shall prevent, hinder or delay any transfer or any portion of the Real Property to any such mortgage lender or subsequent purchaser. Except as set forth herein, any such mortgage lender or subsequent purchaser shall be bound by and shall receive the benefits from this Agreement as the successor in title to the Property Owner or Master Developer, if applicable, and to the extent such lender or subsequent purchaser acquires title to some or all of the Park Sites or parcels subject to the Promenade Easement, or any portion

thereof, it shall be required to consult with the Town and formulate a schedule for the completion and conveyance of same in accordance with the terms of this Agreement.

(c) Release of Property Owner. With the exception of the Port Village Parcel, in the event of conveyance of all or a portion of the Real Property and compliance with the conditions set forth therein, the Property Owner shall be released from any further obligations with respect to this Agreement as to the portion of Real Property so transferred, and the transferee shall be substituted as the Property Owner under the Agreement as to the portion of the Real Property so transferred. As to the Port Village Parcel, the Master Developer shall not transfer any Real Property without the prior, written approval of the Town, which shall not be unreasonably withheld. The purpose of the preceding sentence is solely to assure that the Park Sites, the PPWW, and the new road (Battery Creek Dr.) are completed or that appropriate financial guarantees are in place, in the sole discretion of the Town, to assure timely completion of the Facilities in accordance with plans submitted to and approved by the Town. This is not intended to prevent the transfer of completed real estate product to end users, such as single family lots, town homes, condominiums, or retail and commercial facilities that have been completed and for which certificates of occupancy have been issued.

(d) Estoppel Certificate. Upon request in writing from an assignee or the Property Owner to the Town sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the Town will provide a certificate in recordable form that solely with respect to the portion of the Real Property described in the request, there are no violations or breaches of this Agreement, except as otherwise described in the Certificate. The Town will respond to such a request within thirty (30) days of the receipt of the request.

(e) The certificate issued by the Town will be binding on the Town in accordance with the facts and statements contained therein as of its date and may be relied upon by all persons having notice thereof.

If the Town does not respond to such request within thirty (30) days of the time of its receipt, the portion of the Real Property described in the request will be deemed in compliance with all of the covenants and terms of this Agreement. A certificate of such conclusion may be recorded by the Property Owner, including a copy of the request and the notice of receipt and it shall be binding on the Town as of its date. Such notice shall have the same effect as a Certificate issued by the Town under this Section.

28. General Terms and Conditions.

(a) Agreements to Run with the Land. This Agreement shall be recorded against the Real Property as described in Exhibit A and shown on Exhibits A-1 attached hereto. The agreements contained herein shall be deemed to run with the land for the Term hereof and any extensions of same. The burdens of this Agreement are binding upon, and the benefits of the Agreement shall inure to, all successors in interest to the Parties to the Agreement.

(b) Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of settlement of disputes, while protecting the public health, safety and welfare, including but not limited to ensuring the adequacy of Facilities and compatibility between Developed and undeveloped lands.

(c) State and Federal Law. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In the event

state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Development Agreement, the provisions of this Agreement shall be modified or suspended as may be necessary to comply with state or federal laws or regulations. The Parties further agree that if any provision of this Agreement is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

(d) No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the Town Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of the Town has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the Town by making any promise or representation contained herein. Any amendments are subject to Section 17 herein.

(e) Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

(f) Attorneys Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeal or rehearings, the prevailing Party shall be entitled to receive from the other party thereto reimbursement for all reasonable attorneys' fees and all costs and expenses.

Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified herein.

(g) Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the Town:

Mayor
Town of Port Royal
P.O. Drawer 9
Port Royal, SC 29935

With copies to:

Town Manager
Town of Port Royal
P.O. Drawer 9
Port Royal, SC 29935

To the Property Owner:

South Carolina State Ports Authority
Attn: Bernard F. Groseclose, President and CEO
P.O. Box 22287
Charleston, SC 29413-2287

With Copy to:

Neil C. Robinson, Jr., Esquire

Nexsen Pruet, LLC

205 King Street, Suite 400

Charleston, SC 29401

(h) Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

[SEPARATE SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

Witness:

TOWN OF PORT ROYAL

By: _____

Its: _____

Attest: _____

_____, Clerk of Council

STATE OF SOUTH CAROLINA)

COUNTY OF _____)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named Town of Port Royal, by _____, its _____, and _____, its Clerk of Council, sign and seal the within written Development Agreement, and as the act and deed of Town of Port Royal deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this

_____ day of _____, 2006

Notary Public for South Carolina

My Commission Expires: _____

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

Witness:

SOUTH CAROLINA STATE PORTS
AUTHORITY

By: _____

Its: _____

STATE OF SOUTH CAROLINA)

COUNTY OF _____)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named South Carolina State Ports Authority, by _____, its _____, sign and seal the within written Development Agreement, and as the act and deed of South Carolina State Ports Authority deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this

_____ day of _____, 2006

Notary Public for _____

My Commission Expires: _____

EXHIBITS

- Exhibit A: Legal Description – Port Royal Tract
- Exhibit A-1: Boundary Depiction
- Exhibit B: Port Royal Regulating Plan
- Exhibit C: Development Schedule
- Exhibit D: Open Space Plan
- Exhibit E: Zoning Ordinance of Town of Port Royal, South Carolina
- Exhibit F: Development Agreement Ordinance
- Exhibit G: Planned Development Ordinance
- Exhibit H: Planned Unit Development Plan

EXHIBIT C

The Port Royal

DEVELOPMENT SCHEDULE

Phases of Construction and Development

The Project will initially have a build-out program which will last 5 years. The timing of development within the Development Agreement and adjoining lands will be very much affected by the health of the national and local economies, as well as the demand for various housing types and commercial uses for the region. It is extremely difficult, if not impossible, to accurately project timing of future phases of development and demand for residential and/or commercial and retail product. The property owner has provided the following estimates which are based on information believed to be reasonable at this time. The estimates are subject to change substantially, from time to time, based on market conditions, the supply of competing properties within the area, and other factors, not under the control of the Developer.

Initial Construction 2007-2008 – During the initial phase of development, the actual construction of infrastructure will begin. Pending various approvals by the Town of Port Royal, the construction of various infrastructure improvements is scheduled to begin in the last quarter of 2007. Various mixed uses of land parcels should be available for sale by the middle to latter part of 2008. A park system will begin and expand from time to time to accommodate and link future phases of development.

2009 – 2010 – A large percentage of the various land uses should come under development during this period. The market demand will determine actual land use needs as well as the quantity of these different uses.

2011 – 2012 – This period should be the close-out period where a majority of all uses will be available and major infrastructure complete.

Potential Extension of Agreement.

South Carolina law only allows a five (5) year initial term for a Development Agreement on a tract of highland the size of the Real Property subject to this Agreement. Due to the uncertainties

of the development of such a unique project, including the state of the economy, availability of development funding, demand for the real estate products allowed by this Agreement and the zoning of the Real Property, if the build-out program is delayed and the Property Owner is in substantial compliance with the provisions of the Agreement, as set forth in paragraph 16 of the Agreement, the Town will negotiate with the Property Owner for a reasonable extension of the Agreement to allow for completion of construction and Development, as contemplated herein, and described in the PUD attached as Exhibit H.

EXHIBIT F

The Port Royal

DEVELOPMENT AGREEMENT ORDINANCE

EXHIBIT G

The Port Royal

PLANNED DEVELOPMENT ORDINANCE