Council

Samuel E. Murray
Mayor

Jerry Ashmore
Mary Beth Heyward
Darryl Owens

PORT ROYAL
EST. 1562
COOL. COASTAL. FAR FROM ORDINARY.

Van Willis
Town Manager

T. Alan Beach
Chief of Police

Jeffrey S. Coppinger
Operations

Linda Bridges
Planning

ORDINANCE 2017 - 19

AN ORDINANCE TO AMEND THE DEVELOPMENT AGREEMENT GOVERNING THE REDEVELOPMENT OF THE PORT OF PORT ROYAL. THIS TRACT IS COMMONLY KNOWN AS THE PORT OF PORT ROYAL TRACT, HAVING TAX MAP NOS. 110-10-183, 110-10-075, 110-10-079, 110-10-077, 110-11-249, 110-11-084, AND 110-10-299, INCLUDING A CONCEPTUAL MASTER PLAN OF DEVELOPMENT AND CONTAINS APPROXIMATELY 317 ACRES LOCATED ON BATTERY CREEK IN THE TOWN OF PORT ROYAL, AND DEPICTED IN THAT PLAT ENTITLED : "PLAT OF 51.60 ACRES OF HIGHLAND AT SOUTH CAROLINA STATE PORTS AUTHORITY, PORT ROYAL TERMINAL" PREPARED BY THOMAS & HUTTON ENGINEERING CO DATED DECEMBER 20, 2006 AND RECORDED IN PLAT BOOK 0122 AT PAGES 0032-0035 ON OCTOBER 17, 2007, IN THE OFFICE OF THE BEAUFORT COUNTY REGISTER OF DEEDS. DEVELOPMENT USES INCLUDE RESIDENTIAL, COMMERCIAL, MARINE AND CIVIC OPEN SPACES.

STATE OF SOUTH CAROLINA	)	**FIRST AMENDMENT**
	)	**TO**
COUNTY OF BEAUFORT	)	**DEVELOPMENT AGREEMENT**

Reference Document: Book 3217 Page 631

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "**First Amendment**") is made and entered into this 9 day of AUGUST, 2017, by and between the Town of Port Royal, a South Carolina municipal corporation (the "**Town**") and Grey Ghost Properties, LLC, a South Carolina limited liability company (herein "**GGP**").

WHEREAS, the Town and the South Carolina State Ports Authority (the "**SPA**") as "Owner" therein entered into a Development Agreement dated February 14, 2013, recorded in the Register of Deeds Office for Beaufort County, South Carolina, in Book 3217 at page 631, approved by Ordinance 2013-____ of the Town to govern the development of certain real property described therein in **Exhibit "A"** (the "**Property**"); and

WHEREAS, the SPA, pursuant to state statute, conveyed the Property to the South Carolina Department of Administration ("**SCDoA**") by deed dated March 15, 2016, recorded in Book 3486 at Page 2442 at the Register of Deeds Office for Beaufort County, South Carolina; and

WHEREAS, The SCDoA has entered into a contract of sale with GGP for the purchase and sale of the Property, and has consented to the terms of the within First Amendment; and

WHEREAS, the Town also adopted and approved for the Property, a Planned Unit Development, dated November 9, 2011 (the "**PUD**") and Regulating Plan (the "**Regulating Plan**") to govern the redevelopment of the Property; and

WHEREAS, the Town, with the cooperation of Beaufort County, also approved a Tax Increment Financing District applicable to the Property (the "**TIF**") to assist the Town in financing certain public improvements associated with the Property; and

WHEREAS, due to: the passage of time not anticipated when the Development Agreement was approved, the PUD was adopted, and the TIF" and Regulatory Plan were adopted; and the loss of certain improved properties subject to these documents and plans by casualty, certain amendments to the Development Agreement, the PUD, the TIF and the Regulatory Plan are necessary to allow the redevelopment of the Property; and

WHEREAS, Section XV of the Development Agreement provides for the modification thereof, and further provides that if an amendment affects less than all of the Property, then only the Town and those affected Owners are required to sign such amendment, and also allows for minor amendments to the Regulatory Plan without the need for public hearings or amendments to the applicable ordinances; and

WHEREAS, so as to avoid confusion or doubt, certain of the proposed amendments which may qualify as minor amendments are nonetheless being incorporated herein, but such inclusion does not mean that future minor amendments shall require public hearings or formal amendment to applicable ordinances; and

WHEREAS, after giving the matter consideration, the Town, the SCDoA, and GGP have agreed to amend the Development Agreement as hereinafter set forth, to modify the TIF documents to reflect the changed circumstances and the passage of time, and to amend the PUD, provided that the amendments made pursuant to this First Amendment shall only become binding on the Property in the event GGP acquires the Property under the contract of sale with the SCDoA and becomes the Owner of the Property.

NOW, THEREFORE, for and in consideration of the sum Three and 00/100 Dollars ($3.00), the promises, covenants and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the Town and GGP, with the consent of the SCDoA, agree as follows:

1. The Development Agreement is hereby amended as follows:

A. Section II. **Definitions**.

(i) The definition of "Owner" is changed to: "Grey Ghost Properties, LLC, a South Carolina limited liability company, its successors and assigns".

(ii) The definition "Transferring and Ratifying Owner" is added and means: "the State of South Carolina, through its Department of Administration (herein "**SCDoA**")".

(iii) The definition of "Zoning Regulations" is deleted in its entirety and replaced with the following: "Zoning Regulations" means the Planned Unit Development for the Property (the "**PUD**") and all attachments thereto, including but not limited to the PUD Regulating Plan, attached as **Exhibit "B"** thereto, all narratives, applications and site development standards thereof, a copy of which is attached hereto as **Exhibit "E"** and made a part hereof, the Development Agreement, as amended; the Town Zoning and Development Ordinances, dated January 10, 1979, as amended, through the date of the adoption of the PUD, being November 9, 2011, said ordinances being attached hereto as **Exhibit "C"**,

and made a part hereof, except as otherwise modified by the PUD, as amended, the Development Agreement, as amended, and as either or both may be amended by written agreement of the parties hereto.

B. Section III. **Term.** Section III of the Development Agreement is deleted in its entirety and replaced with the following:

"The Term of this Agreement shall commence on the date the First Amendment is executed by the Town and terminate five (5) years thereafter. The Term of this Agreement, originally set to be for five (5) years commencing on February 14, 2013, has been tolled by action of the South Carolina Legislature in Joint Resolutions enacted in 2012, and as interpreted by the South Carolina Attorney General's Office, so as to extend the Term for a period beginning on February 14, 2013 until December 31, 2017. Therefore, the Term shall begin running on January 1, 2018. Notwithstanding the foregoing, nothing shall be interpreted to prevent the Town, in its sole discretion, from renewing or extending the Term of this Agreement for such period of time as it may deem appropriate and is consistent with the Act."

C. Section V. **Changes to Zoning Regulations**. Subsection V(C) of the Development Agreement is deleted in its entirety and replaced with the following:

"C. Owner, for itself and its successors and assigns, covenants and agrees that any future dry stack boat storage facility may not be constructed such that it impairs the view of the water within the extended right of way boundaries of London Avenue. The PUD, as amended, provides additional time for the existing dry stack storage unit to be aesthetically improved and re-opened for use. Owner, for itself and its successors and assigns, further covenants and agrees that any future dry stack storage shall be located only in areas south of the northern boundary of the Marina Village, and consistent with the covenant of the first sentence of this Section V(C) of this Agreement."

D. Section VI. **Schedule for Project Development**. The first sentence of Section VI is deleted in its entirety and replaced with the following: "The schedule for Project Development is set forth in amended **Exhibit "D"**, amended August, 2017, and incorporated by reference."

E. Section IX. **Infrastructure and Services**. The first sentence of Section IX is deleted in its entirety and replaced with the following: "Although the nature of the Project prohibits the Owner from

providing exact completion dates, the general phases of construction and development are set forth in **Exhibit "D"**, amended August, 2017, and incorporated by reference."

F. Section IX **Roads**. Subsection IX(A) is deleted in its entirety and replaced with the following:

"All roads within the Property shall be constructed by the Developer or other parties and maintained by such party(ies) and/or owner association(s), or dedicated for maintenance to other appropriate entities, unless specifically provided otherwise herein. Except as provided in this Agreement, the Town will not be responsible for the construction or maintenance of any roads within the Property, unless the Town specifically agrees to do so in the future; a list of public roads and associated infrastructure agreed to be constructed using public funds, including those identified in the TIF Redevelopment Plan to be paid for with TIF funding, is attached as **Exhibit "G"** and incorporated by reference. Owner acknowledges and agrees that it must comply with all applicable state statutes and rules and regulations of the South Carolina Department of Transportation ("**SCDOT**") or its successors regarding access, use and construction of all roads. Deviations from SCDOT statutes, rules and regulations must be approved in advance by the Town. As may be required for the development of the Property in accordance with the Regulating Plan, the Town agrees to deed to Owner by quit-claim deed certain unnamed roads within the Elevator and Compress lot (TMS R110-010-011-0000-0000, and other areas shown on the plat prepared by Thomas and Hutton Engineering Co., recorded in Plat Book 122 at Pages 32-35 as portions of London Avenue, South 6th Street, etc., and IV and V Streets west of the southward extension of 9th Street."

G. Section X. **Conveyances and Contributions**.

(i) Subsection X(C), **Other Authorities**, is amended to correct a typographical error in the first sentence to change the words "Multi-Town Business Park" to "Multi-County Business Park". The second paragraph of Subsection X(C) is deleted in its entirety and replaced with the following:

"The Town has previously, with the cooperation of Beaufort County, created a Multi-County Business Park and approved a Tax Increment Financing District ("**TIF**"), Redevelopment Plan ("**RDP**")

and Fee in Lieu of Taxes ("**FILOT**") financing structure (collectively the "**TIF RDP Plan**") for the Property. Due to the passage of time and the necessary adjustment of the initial tax assessment to reflect the current purchase price, the assumptions, predictions, and allocations of funds contemplated at the time of creation of the TIF, RDP and FILOT require adjustment. The Town agrees to use its best efforts to obtain consents, agreements, ordinances, or other documents necessary or desirable to adjust the TIF RDP Plan to conform to the phasing of the infrastructure installation, and the infrastructure components of each phase as set forth in **Exhibit "D"** as amended August 2017 and attached hereto, and to "reset" the time parameters in the existing documents from the initial "commencement date" of the enactment of the enabling ordinances to September 1, 2017 recognizing that no implementation of the TIF RDP Plan has occurred, due to, among other things, the inability to effectuate a transfer of title to the Property to a tax paying entity or person. The Town has also agreed to fund through TIF funds the Phase I and Phase II public infrastructure as set forth in the TIF RDP Plan in the order of priority set forth in in **Exhibit "G"** attached hereto and made a part hereof. To the extent other public funds are made available, or Owner or Developer provides funding for the Phase I and Phase II infrastructure as an accommodation to expedite construction prior to TIF funds being available, the Town will reimburse the supplier of the other public funds, Owner or Developer from TIF funds or revenues the documented expenditures for qualifying public infrastructure as said funds become available to the extent authorized by or under the TIF RDP Plan or applicable law.

Owner acknowledges that the success of a Tax Increment Financing District is dependent on the timely payment of property tax bills. In the event a Tax Increment Financing District is established on some or all of the Property, the Owner agrees that a failure to timely pay any and all tax bills generated by the Property (real or personal) shall constitute a material breach of this Agreement entitling the Town to pursue any and all remedies available to it in such instances and that are consistent with the Act as to the defaulting taxpayer. In addition and at its election, upon a material breach, the Town shall be entitled to revoke building permits and withhold processing of Development applications as to the properties owned

within the Property by the defaulting taxpayer until the breach is cured. For purposes hereof, the timely payment of taxes shall mean the payment of those taxes prior to the date when penalties begin accruing."

(ii)

(ii) Section X. **Conveyances and Contributions**. Subsection X(D) **Town Costs** is amended to change the cap on costs and expenses to be paid by Owner from "$64,500.00" to "$65,500.00" in the two (2) sentences where that amount is specified.

(iii) Section X. **Conveyances and Contributions.** Subsection X(E) **Civic Open Space/Seafood – Fuel Facilities**, is deleted in its entirety and replaced with the following:

"The Owner shall convey portions of the Civic Open Space, as established in **Exhibit "B"**, to the Town, as hereafter set forth. With the exception of the Civic Open Space conveyed to the Town, The 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 necessary for the Development. As to the Civic Open Space conveyed to the Town, the Town shall consider reservations by, or grants to, the Owner of such easements as may be necessary or desirable for the Development of the Property, which reservations or grants shall not be unreasonably withheld or objected to by the Town, provided such do not materially interfere with the use of the Civic Open Space conveyed to the Town.

A portion of the Marina Village, as depicted on the Regulating Plan attached hereto as **Exhibit "B"**, was under license to the Town and utilized as a seafood processing facility (the "**Seafood Facility**"). An area adjacent thereto currently houses fuel facilities (the "**Fuel Facilities**"). 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. Since the time of the execution of the original Development Agreement, the Seafood Facility which was to be conveyed to the Developer in a land swap arrangement was destroyed by fire, and insurance proceeds representing the casualty loss were received by the Town. The Town has determined that the insurance proceeds should be used, in part, to rebuild the Seafood Facility, and/or for infrastructure improvements within the Property that were included in the

Redevelopment Plan and intended to be funded by the TIF. Further, the destruction of the Seafood Facility provides an opportunity to reconfigure the Marina Village described in the PUD and Regulating Plan that contains the restaurant, Fuel Facilities, dock ("**Dock Facility**") and Seafood Facility.

In consideration of the foregoing, the Town shall convey to Developer certain real property, described as "Property Owned by the Town of Port Royal", abutting the Marina Village as shown on the Regulating Plan, consisting of approximately 0.50 acres. GGP shall contemporaneously convey to the Town the adjacent Fuel Facility and Dock Facility as shown and depicted on **Exhibit "F"** (as amended, August 2017), with an appurtenant easement for access and shared parking. Said easement and shared parking shall be documented in a Shared Parking Easement Agreement, to be created in accordance with the requirements of the Zoning Regulations. Further, the Town and GGP shall enter into a lease agreement for a portion of the building currently being used as the Seafood Facility as shown on **Exhibit "F"** in the form of the Commercial Lease (the "**Lease**") attached hereto as **Exhibit "H"** and made a part hereof.

During the term of the Lease, the Town and Owner shall determine the best site in the vicinity of the Dock Facility and Fuel Facilities to build a replacement for the Seafood Facility, approximately the same size as that which was destroyed by fire, taking into consideration the opportunity now presented to allow space for the existing restaurant building to be improved and potentially expanded in the area where the Seafood Facility was located prior to the casualty, or for an additional restaurant to be constructed. To that end, the Owner shall reserve within the area shown on amended **Exhibit "F"** sufficient space to accommodate a replacement Seafood Facility to be built, and the Town and Owner shall mutually agree upon the site; failing Agreement, the Owner will transfer the area shown on the original **Exhibit "F"** to the Town.

The Lease shall provide, among other commercially reasonable terms and conditions, an initial rent-free term of up to two (2) years, and the Town's provision of commercially reasonable liability and casualty loss insurance with the Owner as an additional loss payee. The Town shall also procure liability insurance for the Dock and Fuel Facilities and appurtenant areas. The Lease will provide the Town the

ability to terminate the lease on one hundred eighty (180) days' notice to the Owner/Developer, without penalty for the remaining term of the Lease, and shall be non-assignable without the consent of the Owner, which consent shall not be unreasonably withheld or delayed. Further, Owner shall be granted a right to purchase the Seafood Facility in the event the Town ceases to operate the Seafood Facility, or elects not to construct the Seafood Facility. The purchase price shall be equal to the construction cost of the building plus or minus any realized depreciation or increases in value due to additional capital improvements, or if the Seafood Facility area has not been improved, the pro-rata value based on the acreage in relation to the initial purchase price of the Property, as adjusted by the annual CPI index provided by the State of South Carolina annually to local governments for use in determining allowable increases in ad valorem taxes,.

The insurance proceeds being held by the Town, are to be held by the Town to be used as follows: for the repayment of funds previously advanced by the Town for maintenance and related items in the amount of $50,000.00; payment of up to $200,000.00 of the costs of repairs to the building which formerly was occupied by the Dockside Restaurant which were caused by the fire which destroyed the Seafood Facility (such payment contingent on payment by the Owner of an amount at least equal to the amount paid by the Town); $1,000,000.00 to be used for certain of the Phase I Infrastructure, identified in Exhibit "G" hereto and made a part hereof; and, the remainder being reserved for the potential future construction and associated infrastructure for the replacement Seafood Facility, or other infrastructure within the Project as the Town may direct. Amounts allocated above which are not used as designated may be used to supplement the other Phase I or Phase II Infrastructure, subject to approval by the Town.

The conveyances described in this Section X(E) shall occur as soon as reasonably practical, but not later than six (6) months from the date of acquisition of the Property by GGP. The Lease shall be completed and signed within sixty (60) days of the acquisition of the Property by GGP. Transfer of the Seafood Facility Site to the Town may be delayed up to two (2) years as determined by the Town to allow sufficient time for the Town to determine whether it intends to rebuild the Seafood Facility, and if so, time to finalize the site to be conveyed."

(v) Section X. **Conveyances and Contributions**. Subsection X(G), **Pedestrian Promenade**, is deleted in its entirety and replaced with the following:

"The Owner shall improve and convey to the Town by way of a special warranty deed, insurable title to the Pedestrian Promenade as generally depicted on the Regulating Plan of the PUD.

Improvements to the Pedestrian Promenade shall be consistent with those set forth in the PUD.

All expenses of improvements and transfer, including but not limited to surveys, title insurance and recording costs, shall be the responsibility of the Owner; costs of improvements are to be funded through the TIF RDP, in accordance with the attached **Exhibit "G"**. Owner acknowledges that the Town received a grant which may be utilized by the Town to assist in the construction of improvements to this amenity and agrees to take all reasonable and practical steps to assure the grant can be used for this purpose, including granting an easement or conveying title to the envelope within which the Pedestrian Promenade is to be constructed. Owner acknowledges that the grant was to be utilized by November 2013, and may no longer be available.

The Park Sites and other portions of the Pedestrian Promenade being improved in accordance with the attached **Exhibit "G"** and included in Section 3.5.5 (a) and (c) of the PUD shall be completed within three (3) years of September 1, 2017, provided sufficient funding is provided through the TIF or other public funds in a timely manner. The failure by Owner to construct the Park Sites and Pedestrian Promenade contemplated herein and transfer title to the Town within this three (3) year period where funding has been provided shall constitute a material breach of this Agreement entitling the Town to pursue any and all remedies available to it as provided in this Agreement, or under the Act. In addition, the Town shall be allowed to revoke outstanding permits applicable to the Owner's Property and/or refuse to process any permit, development or subdivision application for the Property until such time as arrangements satisfactory to the Town have been made to assure the completion of construction and consummation of the transfers. Nothing herein shall be construed to prevent the Town from extending the timing of the improvements and conveyances on such terms and with such conditions as it may deem appropriate. All expenses of the transfer, including but not limited to surveys, title insurance, and

recording costs shall be the responsibility of the Owner; costs of improvements are to be funded through the TIF RDP, in accordance with the attached **Exhibit "G"**."

As to the Additional Open Space required per Sec. 3.4 of the PUD, the Town shall have the option, but not the obligation, to accept title to that acreage. The Owner of the acreage or any portion thereof shall notify the Town when the improvements to such acreage or portion, as applicable, are substantially completed. The Town shall provide notice of its intent to accept title within forty-five (45) days of its receiving written notice from the Owner that the improvements to the acreage or such applicable portion thereof have been substantially completed. In the event the Town elects to accept title, written notice shall be given to the Owner and conveyance to the Town by special warranty deed of insurable title to such acreage shall be consummated within forty-five (45) days of the Town's notice of election to accept title. All expenses of the transfer, including but not limited to surveys, title insurance, and recording costs shall be the responsibility of the Owner; costs of improvements are to be funded through the TIF RDP, in accordance with the attached **Exhibit "G".**

(vi) Section X. **Conveyances and Contributions**. Subsection X(H), **Existing Drystack Facility**, is deleted in its entirety and replaced with the following:

"Notwithstanding anything in this Agreement or the PUD to the contrary, no drystack use is permitted in the building on the Property that formerly housed this use unless, within five (5) years from September 1, 2017, such use has re-commenced within said building; provided, however, such use shall cease if, within five (5) years from September 1, 2017, the building has not been aesthetically improved in a manner that adheres to the general concept plan for landscaping and architectural improvement submitted to the Town for approval; and provided further, if the use of the building as a drystack facility is ever abandoned, then such use shall no longer be permitted and cannot be re-established in said building. For purposes of this subsection, "abandoned" shall mean the failure to operate the drystack facility in the building for a period of three (3) consecutive months or for a period of six (6) months over a period of twelve (12) consecutive months, provided, however, that if such non-use is due to damage as a result of a fire, natural disaster, or other force majeure condition, reconstruction and re-establishment of

this use will be allowed, provided reconstruction begins within the latter of a twelve (12) months after the damage is suffered, or four (4) months after any insurance claims regarding payment for the casualty loss or settled. Neither shall this "abandonment" provision be triggered by any closure necessary to accommodate normal maintenance time.

In the event the existing drystack facility is abandoned, the Owner shall within twelve (12) months of the expiration of those time limits dismantle and remove the drystack facility from the Property. This obligation shall survive the initial Term of this Agreement."

H. Section XII. **Developer Entitlements**. Subsection XII(E) is deleted in its entirety and replaced with the following: "On-site burning of site preparation debris will not be permitted within the Property."

I. Section XIV. **Defaults**. Section XIV is amended to correct a reference to "Section X(E), (F) and (H)" in the second sentence to "Section X(E), (F) and (G)".

J. Section XV. **Modification of Agreement**. Section XV is amended by inserting the following sentence after the first sentence of the fourth paragraph:

"To avoid doubt, in the case the Town staff is unsure if a modification is minor or major, whether to the PUD or this Agreement, the matter may be submitted directly to Town Council which may decide by resolution whether the proposed change is a minor or major modification, without review by the Planning Commission. It is hereby acknowledged and agreed that there are numerous supporting documents to the Exhibits and incorporated documents for this Agreement, the PUD, the Regulating Plan, and the RDP (the "**Supporting Documents**"). Recognizing that the order of precedence contained in the incorporated PUD, Section 1.2, Principles of the PUD is: this Agreement; the PUD; the Regulating Plan; and, the Town of Port Royal Ordinances at the time of the adoption of the PUD (being November 9, 2011), it is the intent of this Agreement as amended to resolve any conflict between these documents and the provisions of this Agreement as amended, and the contemporaneous amendments to the PUD contained in Ordinance 2017-20, Town staff is hereby authorized to deem any change in the Supporting Documents necessary to implement the terms and/or intent of this Agreement as minor amendments."

K. Section XVI. **Notices**. Section XVI is amended by substituting and adding the following notice addresses:

To the Town:	Walter J. Nester, III McNair Law Firm P.O. Drawer 3 Hilton Head, SC 29938
And to the Owner at:	Grey Ghost Properties, LLC c/o Mr. Chris Butler, Managing Member 8 Indigo Loop Beaufort, SC 29902
With copies to:	David L. Tedder, P.A. Attn: David L. Tedder, Esq. P.O. Box 1282 Beaufort, SC 29901
And to Transferring and Ratifying Owner at:	State of South Carolina c/o Department of Administration 1200 Senate Street, Suite 460 Columbia, SC 29201 Attn: Real Property Services Email: Ashlie.Lancaster@admin.sc.gov cc: David.Avant@admin.sc.gov

L. **Exhibits "D", "E",** and **"F"** are amended and replaced by the Amended Exhibits attached hereto, and new **Exhibits "G"** and **"H"** as attached are incorporated into the First Amended Development Agreement.

2. Except as otherwise modified or amended herein, the Development Agreement is reaffirmed in its entirety.

3. By affixing their respective signatures thereto, the Town and GGP affirmatively acknowledge their consent to this First Amendment; by affixing their signatures hereto, the Town, GGP, and the SCDoA, acknowledge and agree the amendments made pursuant to this First Amendment shall only become binding on the Property in the event GGP completes its closing under the purchase agreement with the SCDoA and becomes the Owner of the Property, with the effective date of the First Amendment

to be no later than fourteen (14) days after the recording of the deed into GGP, notwithstanding the approval by Ordinance of this First Amendment prior to such time.

4. In the event that any provision of this Amendment is deemed to be unlawful or unenforceable, such shall not affect those provisions that can be given lawful force and effect.

5. This Amendment shall be construed in accordance with the laws of the State of South Carolina.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Town of Port Royal, South Carolina, duly assembled and with authority of same, that the ordinance sections set forth above be adopted, the amendments be incorporated into a conformed "restated" complete Agreement, and that the Mayor of the Town of Port Royal be authorized to execute the First Amendment to Development Agreement on behalf of the Town, with leave to the Town Manager and the Town's legal counsel to make non-substantive, grammatical, and corrective edits to the approved documents and applicable exhibits to ensure continuity and consistency.

This ordinance shall become effective and binding on the Property only in the event GGP closes on the purchase of the Property in accordance with the Contract of Sale and becomes the Owner of the Property, and this Amendment to is filed of record within the time limits as specified in the Development Agreement.

Requested:

Milton E. Willis
Town Manager

Approved:

Samuel E. Murray
Mayor

Attest:

Brooke Plank-Buccola
Municipal Clerk

Introduced: 07/19/2017
Final Reading: 08/09/2017

EXHIBIT D
Amended August, 2017
(Schedule of Anticipated Development)

The Project's initial build-out program is 5 to 7 years. The rate and timing of Development within the Development Project 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. Recognizing the difficulty of accurately projecting timing of Development and demand for residential and/or commercial and retail product, Owner has provided the following estimates which are based on information believed to be reasonable at this time.

Years 2017 – 2019 – Construction of infrastructure will begin. Various mixed uses of land parcels and buildings are anticipated to be available for sale by the middle to latter part of 2013. The Park Sites and Boardwalk system will begin and be designed to time to accommodate and link future phases of Development. The transfers at the Marina Village regarding the Town Property and the Dock and Fuel Facilities will be conveyed. The Drystack Storage will resume operations.
Estimated population: 0

Years 2019 – 2022 – As much as 50% of various land uses should come under Development during this period. The Park Sites and Boardwalk will be completed and conveyed to the Town.
Estimated population: 499.375

Years 2022 – 2014 – This period should be the close-out period where a majority of the Property will be available and major infrastructure complete.
Estimated population: 998.75

EXHIBIT E
Amendments to the PUD
(Copy of Ordinance 2017-20)

The Planned Unit Development, as approved by the Town Council on November 9, 2011, and thereafter amended by Ordinance 2017-20, adopted contemporaneously herewith, is hereby incorporated herein by reference, to include all drawings, plans, narratives and documentation submitted therewith, as fully as if attached hereto. The parties hereto may elect to physically attach said documents hereto, or may rely upon the above stated incorporation by reference, at their discretion.

EXHIBIT F
TO DEVELOPMENT AGREEMENT
Amended August, 2017

SEAFOOD FACILITY AND DOCK LICENSE
And
SKETCH

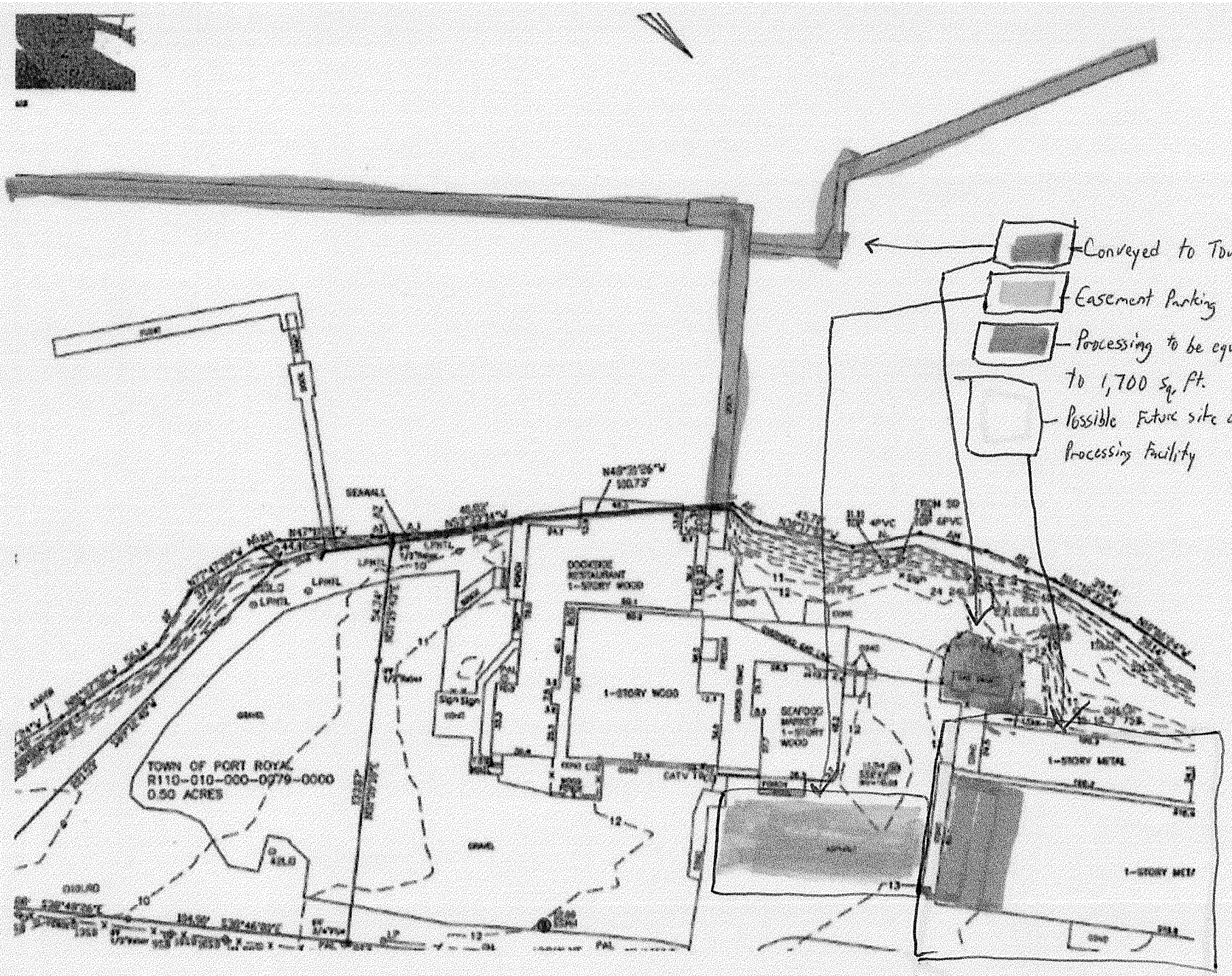
Conveyed to Town
Easement Parking
Processing to be equal to 1,700 sq. ft.
Possible Future site of Processing Facility
TOWN OF PORT ROYAL
R110-010-000-0979-0000
0.50 ACRES
1-STORY WOOD
1-STORY METAL

EXHIBIT G
Proposed Phasing and Infrastructure Components of the TIF RDP

PHASE ONE IMPROVEMENT DESCRIPTIONS

1) **Road Improvements:** **$2,510,000**

Phase One road improvements include the construction of new public roads, estimated at ±3,200 linear feet of new roads, from 13th at Marina Village (MV) and integration of existing adjacent public street network into Port Village (PV) including 6th street. Public parking areas will be constructed adjacent to 6th Street in PV and public parking near the restaurant site at MV. The remaining infrastructure will support these public services. The primary road width will be ±22 feet wide through MV and PV. Public walking pathways will be constructed through MV and PV to allow for public pedestrian connections from one side to the other.

2) **Curbing:** **$99,000**

Phase One improvements will allow for paving edge control curbing at approximately ±3,200 linear feet of roadway area through the MV and PV areas.

3) **Storm Water:** **$363,000**

Storm water improvements include all aspects of storm water infrastructure, including but not limited to earth work, silt fences, clearing and grubbing, curb inlets, and sub grade drains. Phase One storm water improvements are mostly for the MV area. There will be subterranean storage in the swales with some outfall for the development of the MV area. Expansion of the existing retention pond will be also be needed. Phase one is estimated at ±6,400 linear feet of subgrade Drain with sock and sand backfill.

4) **Water, Sewer & Dry Utilities:** **$446,000**

Phase One water improvements will consist of approximately five 10 inch sleeves under the road right away for future expansion and development. Water/Sewer improvements include the construction of additional community main lines, estimated at ±9,000 linear feet and a new pump station when project is complete. This will serve the entire real property in the Redevelopment Project Area.

5) **Paris Avenue Park:** **$480,000**

The Paris Avenue Park shall include a ±1.0 acre civic open space. The initial phase 1A will include clean-up, stabilization, and primary access to connect the ±450 LF pathway to the promenade and public streets. The Park may ultimately include but not be limited to plazas, fountains, landscape, pavilions, gazebos, shelters, boardwalks/promenades and open lawn for community events, parking and other recreational facilities. The design and elements of the park shall be approved by the PRDS.

6) **London Avenue Park:** **$27,500**

London Avenue Park will require initial site cleanup in Phase 1A to include taking the existing stockpile material on site, clean, spread and grass area behind the critical line. The final design and elements of the park shall be approved by the PRDS.

7) **Waterfront Promenade:** **$220,000**

Phase One waterfront promenade will be approximately 1500 linear feet. The Promenade construction material will be a mix of tumble brick, aggregate, concrete, wood and restoration of existing walkways to provide public access (safety, pathways, connections, etc.)

8) **Sidewalks, Signs and Lights:** **$239,500**

Phase One will have approximately 4000 linear feet of pathway walks including both sides of the street. This area will include from 13th Street through MV to the beginning of the PV. The walk will be ±6 foot wide with a pervious strip area between the road and public walk.

9) **Rehab on existing wooden pier:** **$70,000**

Phase One work will involve removing existing dilapidated cross members on support pies for the existing Sands Beach Boardwalk and replacing them with new timbers and hardware.

10) **Tree Improvements / Pocket Parks / Landscaping:** **$220,000**

Tree improvements include the movement and replanting of existing trees and the acquisition and planting of additional trees on public real property. Phase One tree improvements includes approximately 20 new trees planted throughout the Redevelop site, mostly dispersed along the promenade in the Port Village.

Total Estimated Project Costs: $4,625,000

EXHIBIT G
PRIORITY OF INFRASTRUCTURE
PHASE I

			Cash Phase 1A	TIF ANTICIPATION NOTE Phase 1B	TIF Phase 1 Projects	TOTAL
1	ROADS IMPROVEMENTS	Phase One road improvements include the construction of new public roads, estimated at ±3,200 linear feet of new roads, from 13th at Marina Village (MV) and integration of existing adjacent public street network into Port Village (PV) including 6th street. Public parking areas will be constructed adjacent to 6th Street in PV and public parking near the restaurant site at MV. The remaining infrastructure will support these public services. The primary road width will be ±22 feet wide through MV and PV. Public walking pathways will be constructed through MV and PV to allow for public pedestrian connections from one side to the other.	$ 627,500.00	$ 627,500.00	$ 1,255,000.00	$ 2,510,000.00
2	CURBING	Phase One improvements will allow for paving edge control curbing at approximately ±3,200 linear feet of roadway area through the MV and PV areas.	$ -	$ 70,500.00	$ 28,500.00	$ 99,000.00
3	STORMWATER	Storm water improvements include all aspects of storm water infrastructure, including but not limited to earth work, silt fences, clearing and grubbing, curb inlets, and sub grade drains. Phase One storm water improvements are mostly for the MV area. There will be subterranean storage in the swales with some outfall for the development of the MV area. Expansion of the existing retention pond will be also be needed. Phase one is estimated at ±6,400 linear feet of subgrade Drain with sock and sand backfill.	$ -	$ 90,000.00	$ 273,000.00	$ 363,000.00
4	WATER, SEWER, DRY UTILITIES	Phase One water improvements will consist of approximately five 10 inch sleeves under the road right away for future expansion and development. Water/Sewer improvements include the construction of additional community main lines, estimated at ±9,000 linear feet and a new pump station when project is complete. This will serve the entire real property in the Redevelopment Project Area.	$ -	$ 27,500.00	$ 418,500.00	$ 446,000.00
5	PARIS AVENUE PARK	The Paris Avenue Park shall include a ±1.0 acre civic open space. The initial phase 1A will include clean-up, stabilization, and primary access to connect the ±450 LF pathway to the promenade and public streets. The Park may ultimately include but not be limited to plazas, fountains, landscape, pavilions, gazebos, shelters, boardwalks/promenades and open lawn for community events, parking and other recreational facilities. The design and elements of the park shall be approved by the PRDS.	$ 50,000.00	$ 250,000.00	$ 180,000.00	$ 480,000.00
6	LONDON AVE PARK	London Avenue Park will require initial site cleanup in Phase 1A to include taking the existing stockpile material on site, clean, spread and grass area behind the critical line. The final design and elements of the park shall be approved by the PRDS.	$ 27,500.00	$ -	$ -	$ 27,500.00
7	WATERFRONT PROMENADE	Phase One waterfront promenade will be approximately 1500 linear feet. The Promenade construction material will be a mix of tumble brick, aggregate, concrete, wood and restoration of existing walkways to provide public access (safety, pathways, connections, etc.)	$ 220,000.00	$ -	$ -	$ 220,000.00
8	SIDEWALKS, SIGNS,AND LIGHTS	Phase One will have approximately 4000 linear feet of pathway walks including both sides of the street. This area will include from 13th Street through MV to the beginning of the PV. The walk will be ±6 foot wide with a pervious strip area between the road and public walk.	$ 75,000.00	$ 74,500.00	$ 90,000.00	$ 239,500.00
9	REHAB EXISTING WOODEN PIER	Phase One work will involve removing existing dilapidated cross members on support pies for the existing Sands Beach Boardwalk and replacing them with new timbers and hardware.	$ -	$ -	$ 70,000.00	$ 70,000.00
10	TREE, POCKET PARKS	Tree improvements include the movement and replanting of existing trees and the acquisition and planting of additional trees on public real property. Phase One tree improvements includes approximately 20 new trees planted throughout the Redevelop site, mostly dispersed along the promenade in the Port Village.	$ -	$ 110,000.00	$ 110,000.00	$ 220,000.00
		TOTALS	$ 1,000,000.00	$ 1,250,000.00	$ 2,425,000.00	$ 4,675,000.00
					CASH	$ 1,000,000.00
					TIF TOTAL PHASE 1	$ 3,675,000.00

NOTE

Amounts allocated for a specific project which are not used for that project may be used to supplement any shortfall in the other projects, subject to approval by the Town.

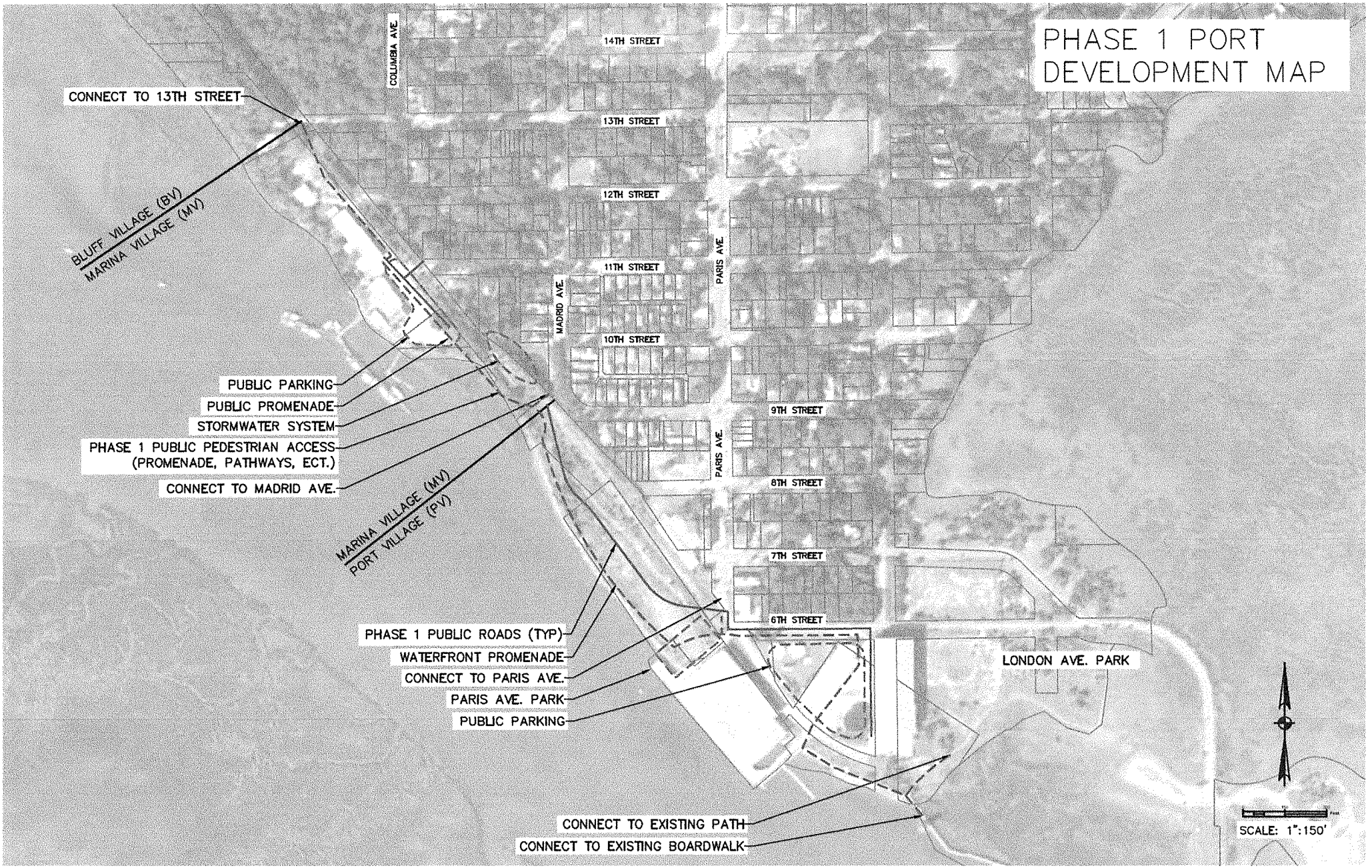
PHASE 1 PORT DEVELOPMENT MAP
CONNECT TO 13TH STREET
BLUFF VILLAGE (BV)
MARINA VILLAGE (MV)
PUBLIC PARKING
PUBLIC PROMENADE
STORMWATER SYSTEM
PHASE 1 PUBLIC PEDESTRIAN ACCESS (PROMENADE, PATHWAYS, ECT.)
CONNECT TO MADRID AVE.
MARINA VILLAGE (MV)
PORT VILLAGE (PV)
PHASE 1 PUBLIC ROADS (TYP)
WATERFRONT PROMENADE
CONNECT TO PARIS AVE.
PARIS AVE. PARK
PUBLIC PARKING
CONNECT TO EXISTING PATH
CONNECT TO EXISTING BOARDWALK
COLUMBIA AVE
MADRID AVE
PARIS AVE
PARIS AVE
14TH STREET
13TH STREET
12TH STREET
11TH STREET
10TH STREET
9TH STREET
8TH STREET
7TH STREET
6TH STREET
LONDON AVE. PARK
SCALE: 1":150'

EXHIBIT H
(Form of Lease between the Town and Owner)
(To be mutually agreed upon; if not agreed to, substantially in accord with the terms of the SC State Ports Authority Agreement)

SIGNATURES AND ACKNOWLEDGMENTS

WITNESS our hand(s) and seals(s) this 7 day of September, 2017.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GREY GHOST PROPERTIES, LLC

Witness Signature

By: Chris Butler
Its: Managing Member

Attested by: _____
Its: member

Notary Signature

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned notary public, do hereby certify that Chris Butler and Julie Riley, personally appeared before me this day and having satisfactorily proven to me to be the persons whose names are subscribed above, has acknowledged the due execution of the foregoing instrument.

SWORN to before me this
7th day of Sept., 2017.

Notary Public

My Commission Expires: Feb. 24, 2024
Seal

SIGNATURES AND ACKNOWLEDGMENTS CONTINUE

WITNESS our hand(s) and seals(s) this 7 day of September 2017.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

Witness Signature

TOWN OF PORT ROYAL

By: Samuel E. Murray
Its Mayor

Attested: _____
Its: Town Clerk

Notary Signature

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned notary public, do hereby certify that Samuel E. Murray, personally appeared before me this day and having satisfactorily proven to me to be the person whose name is subscribed above, acknowledged the due execution of the foregoing instrument.

SWORN to before me this
7th day of September 2017.

Notary Public

LINDA K BRIDGES
Notary Public-State of South Carolina
My Commission Expires
July 27, 2025

My Commission Expires: _____
Seal

WITNESS our hand(s) and seals(s) this _____ day of _____, 2017.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

STATE OF SOUTH CAROLINA

_____
Witness Signature

_____
By: The Department of Administration
By:
Its:

_____
Notary Signature

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

I, the undersigned notary public, do hereby certify that _____, personally appeared before me this day and having satisfactorily proven to me to be the persons whose names are subscribed above, has acknowledged the due execution of the foregoing instrument.

SWORN to before me this
_____ day of _____, 2017.

_____
Notary Public

My Commission Expires: _____
Seal