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Mayor Pro Tempore

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Town Manager

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Chief of Police

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Operations

Noah Krepps
Planning

ORDINANCE 2021-26

AN ORDINANCE TO FURTHER AMEND THAT CERTAIN DEVELOPMENT AGREEMENT DATED FEBRUARY 14, 2013, AS AMENDED ON AUGUST 9, 2017 GOVERNING THE REDEVELOPMENT OF THE PORT OF PORT ROYAL; THIS TRACT IS COMMONLY KNOWN AS THE PORT OF PORT ROYAL TRACT, INCLUDING A CONCEPTUAL MASTER PLAN OF DEVELOPMENT AND CONTAINING APPROXIMATELY 317 ACRES LOCATED ON THE 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; AND OTHER MATTERS RELATED THERETO.

NOW THEREFORE, be it ordained by the Town Council of the Town of Port Royal (the "**Town Council**"), the governing body of the Town of Port Royal, South Carolina (the "**Town**"), in a meeting duly assembled as follows:

Section 1 Findings.

1. Heretofore, the Town Council approved and authorized that certain development agreement entitled "Development Agreement" by and between the Town and South Carolina State Ports Authority dated February 14, 2013, as amended by that certain "First Amendment to Development Agreement" by and between the Town and Grey Ghost Properties, LLC ("Current Developer") dated August 17, 2017 (together, the "Development Agreement") related to the development and redevelopment of the Port of Port Royal (the "Property"), which is located within the Town.

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2. The Current Developer is under contract to sell a portion of the Property to a new development team (the “New Developer”), and the New Developer has approached the Town about amending and extending the Development Agreement.

3. Subject to the successful sale of the Property to the New Developer, the Town, acting through the terms of this Ordinance, has determined to authorize the extension of and amendments to the Development Agreement under the terms of that certain “Second Amendment to Development Agreement” by and between the Town and the New Developer (the “Second Amendment”), the form of which is attached hereto as Exhibit A.

Section 2 Approval.

A. The Town Council has reviewed the Second Amendment and authorizes the Town Manager and the Town’s legal counsel to finalize the Second Amendment.

B. The Second Amendment, in substantially the same form attached hereto as Exhibit A, shall be executed and delivered on behalf of the Town by the Town Manager. The consummation of the transactions and undertakings described in the Second Amendment, and such additional transactions and undertakings as may be determined necessary by the Town Manager to be necessary to fully implement the Second Amendment are hereby approved. **However, it is specifically recited that the provisions of the Second Amendment are expressly intended for the benefit of the New Developer. To the extent the Property is not conveyed to the New Developer by the Current Developer by November 15, 2021, then the Second Amendment shall be void, regardless of any execution and delivery by the Town Manager on behalf of the Town.**

C. In providing its approval of the Second Amendment, the Town Council explicitly reserves, and does not delegate, all rights, duties or actions respecting substantive revisions to the Second Amendment. The Town Council is authorizing and directing the ministerial completion of any minor details reflected in the current form of the Second Amendment and the action of executing and delivering the Second Amendment on behalf of the Town.

D. Material deviations of the Second Amendment shall require subsequent approval of the Town Council. Should the Second Amendment require a material revision after the approvals granted by this Ordinance, such revisions shall be presented to the Town Council for its consideration and approval prior to any execution and delivery of the Second Amendment.

E. As used herein, material revision means any change or adjustment to the economic terms of the Agreement and the rights and responsibilities of the Town thereunder different from that shown in the form of the Second Amendment provided to the Town Council on the date of enactment of this Ordinance.

Section 3 Other Documents; Ratification of Prior Actions; No Limitation.

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A. In connection with the execution and delivery of the Second Amendment, the Town Manager is fully authorized to prepare, review, negotiate, execute, deliver, and agree to such additional agreements, certifications, documents, closing proofs, and undertakings as he shall deem necessary or advisable. This authorization explicitly includes the authorization for the Town Manager to do those things necessary to comply with the conditions in the Second Amendment.

B. Any actions previously undertaken by the Mayor, Town Manager, Town Council or Town staff in connection with the execution and delivery of the Second Amendment, including the negotiation of the terms related thereto and any other agreements prior to the enactment of this Ordinance are ratified and confirmed.

Section 4 Severability

If any one or more of the provisions of this Ordinance should be contrary to law, then such provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of the other provisions of this Ordinance.

Section 5 Inconsistency

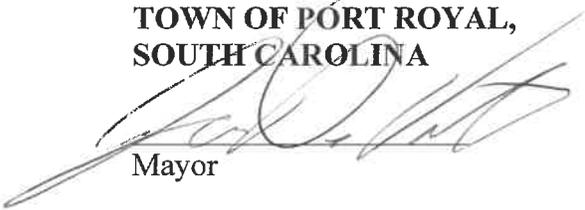
All ordinances, resolutions or parts of any ordinances or resolutions inconsistent or in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict or inconsistency.

Section 6 Effect

This Ordinance shall be enacted upon second reading by the Town Council.

DONE AND ENACTED in a meeting duly assembled this 14th day of July 2021.

**TOWN OF PORT ROYAL,
SOUTH CAROLINA**



Mayor

(SEAL)

ATTEST:



Clerk to Council

First Reading: July 7, 2021
Second Reading: July 14, 2021

Ordinance 2021-26

EXHIBIT A

Second Amendment to Development Agreement

[Agreement Begins on Following Page]

in Book 3217 at page 631 (the “**Original Agreement**”) related to certain real property located in the and generally located along Battery Creek and consisting of approximately 51.44 acres of highland and 265.91 acres of tidal marshes (the “**Property**”); and

WHEREAS, Grey Ghost Properties, LLC (“**GGP**”) acquired the Property from SPA, and subsequent to such acquisition, GGP and the Town entered into that certain “First Amendment to Development Agreement” dated August 9, 2017, which is recorded in Book 3608 at Page 1 at the Register of Deeds Office for Beaufort County, SC (the “**First Amendment**” and together with the Original Agreement, the “**Development Agreement**”). Terms using initial capitals herein and not otherwise defined shall have the meanings ascribed thereto in the Development Agreement; and

WHEREAS, subsequent to GGP’s acquisition of the Property, GGP sold portions of the Property (the “**Sold Properties**”) for development to Triple B Holding, LLC, 11th Street Investments, LLC and Port Royal Waterfront, LLC; and

WHEREAS, the Property, less the Sold Properties, plus any additional properties of GGP as applicable, shall be referred to herein as the “**GGP Properties**”; and

WHEREAS, so as to avoid confusion or doubt, certain provisions of the proposed amendments which might qualify as minor amendments are nonetheless being incorporated herein, without pre-determining by inclusion herein that similar amendments in the future would require formal amendment of the Development Agreement; and

WHEREAS, in consideration of the acquisition of the Affected Properties by SH, SH has approached the Town to amend the Development Agreement by the terms of this Second Amendment; and

WHEREAS, the Town finds it in the best interest of the citizens and the Town to further amend the Development Agreement as provided herein; and

NOW THEREFORE, in consideration of the finding of fact above and of the promises and other good and valuable consideration recited herein, the receipt and sufficiency of which are hereby acknowledged, the undersigned signatories to this Second Amendment hereby covenant and agree as follows:

1. Subject to the condition that the Affected Properties be acquired by SH by no later than November 15, 2021, the Development Agreement is hereby amended as provided below. The Section references herein refer to the Original Agreement as previously amended by the First Amendment:

A. Section II - Definitions is amended by amending and restating the following definitions:

“Owner” means SH Marina, LLC, and shall include all future successors, assigns and transferees.

“Planned Unit Development” or “PUD Ordinance” means the Planned Unit Development for SC SPA Port of Port Royal Tract, approved by Town of Port Royal, SC on November 9, 2011, with an effective date of July 1, 2012, as amended on August 9, 2017 and July 14, 2021, a copy of which is attached as **Exhibit “E”** hereto.

“Transferring and Ratifying Owner” means GGP, Progeny and SK, each of whom is responsible for conveying the Affected Properties to SH.

B. Section III – Term This Section shall be amended and restated in its entirety, as follows:

The term of this agreement shall commence on the date this Second Agreement is executed by the Town and terminate five (5) years thereafter. 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. Further, in the event SH Marina, LLC does not acquire all of the Affected Properties by November 15, 2021, this Second Amendment shall automatically terminate and

thereafter the term will be controlled by the term provisions reflected in the First Amendment.

C. Section VI - Schedule for Project Development. The first sentence of this section shall be amended and restated as follows:

The schedule for project development is set forth in amended Exhibit D, as such Exhibit is amended and restated by this Second Amendment, and incorporated by reference.

D. Section VII – Density. Subsection A of this section entitled, “Residential Density” is amended and restated as follows:

Up to a maximum of 575 residential density units.

E. Section VII - Density. Subsection B of this section entitled “Commercial Density” is amended and restated as follows:

No square footage restriction or site design will restrict size.

F. Section IX - Infrastructure and Services. The first sentence of this Section is amended and restated as follows:

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”, as amended by this Second Amendment, and incorporated by reference.”

G. Section IX - Infrastructure and Services. Subsection (A) – “Roads” is amended and restated in its entirety, as follows:

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 of any roads within the Property. Owner acknowledges and agrees that it must comply with all applicable state statutes and rules and regulations of the Town and 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, or similar conveyance, any unnamed or un-opened roads and other areas lying within the footprint of the Affected Properties, such that the Town relinquishes any right, title or interest in and to the properties lying to the west of the easternmost boundary line of Affected Properties,

running from the Affected Properties' intersection with Ribaut Road along the marshes of Battery Creek to the western terminus of the Affected Properties near Sands Beach Road, all as shown and depicted on that Plat of Survey entitled "Lot Line Reconfiguration Lot Consolidation" by David Youmans, RLS, dated December 27, 2017, and recorded in the Register of Deeds Office for Beaufort County in Plat Book 148 at Pages 66-70 (the "**Youmans Plat**"); such areas belonging to Owner being depicted as solid shaded areas on the Youmans Plat, and including those lined areas shown on the Youmans Plat as street ends at London and Paris Avenues, South 6th Street, and other streets westward of the boundary line of Owner's property all as shown on the Youmans Plat.

Subsequent to the construction of any roads by the Developer under the terms and conditions of this Section, such road and the maintenance obligations therefor may be transferred by the Town. Prior to accepting any road or maintenance obligations hereunder, each road shall be constructed and maintained in conformance with the standards recited herein for a minimum of two years from the date of completion thereof. Thereafter, and upon a review of the road by the Town or a consultant hired by the Town in its discretion, the Town shall accept the transfer of the road and the maintenance obligation therefor provided the road is publicly accessible and in good condition, reasonable wear and tear excepted.

H. Section X - Conveyances and Contributions, Subsection (C) –

“Other Authorities” is amended and restated in its entirety, as follows:

Nothing in this Agreement shall be construed to prevent the establishment by the Town or other governmental entity, solely or in conjunction with each other, of a TIF (as defined herein), Multi-County Business or Industrial Park (“MCIP”) or other fee in lieu of tax (“FILOT”) arrangement, Municipal Improvement District or other special tax district or financing vehicle authorized by applicable provisions of the Code of Laws of South Carolina (1976), as amended. The Owner and the Town recognize that the Property is located in an area of the Town that has great need for economic growth, expansion of tax base and creation of jobs, and agree to work together in the future to foster and encourage infrastructure and development to support these goals.

The Town has previously, with the cooperation of Beaufort County, created a MCIP for the Property, which MCIP requires certain further approvals and agreements for the Town to utilize any FILOT revenues derived therefrom to support the Project. The Town has additionally approved and implemented a Tax Increment Financing District, expiring in 2032 (“TIF”), that is governed by that certain Redevelopment Plan dated February 8, 2012 (“RDP”) for the Property. To the extent funding sources are legally appropriated by the Town and MCIP or TIF funding

(via bonds, pay as you go financing or other sources) can be secured and/or issued by the Town, the Town will use its best efforts to issue and thereafter make available the maximum available amount of bond funds (resulting from TIF bonds maturing no later than 2032) to defray infrastructure costs described in the RDP as may be further provided for and described herein (the “**TIF Commitment**”).

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 **Exhibit “G”** to the First Amendment is outdated and requires adjustment. As a result, the parties agree that **Exhibit “G”** shall be deleted in its entirety from the Development Agreement and hereafter, the Town’s funding commitment for infrastructure under the RDP shall be limited to the TIF Commitment.

Should the parties determine that funds in excess of the TIF Commitment are needed, the Town agrees to use its best efforts to obtain consents, agreements, ordinances, or other documents necessary or desirable to adjust the RDP to conform to the phasing of the infrastructure installation, and the infrastructure components of each phase as set forth in **Exhibit “D”** as attached to this Second Amendment, and to “reset” or “extend” the time parameters in the TIF as necessary to maximize the public resources and financing options derived from the TIF.

Owner acknowledges that the success of the TIF and/or the MCIP is dependent on the timely payment of property tax bills. During the pendency of this Development Agreement, the Owner acknowledges and agrees that a failure to timely pay any and all tax (or FILOT) bills generated by the Property (real or personal) shall constitute a material breach of this Development 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 such 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.

I. Section X - Conveyances and Contributions. Subsection (D) – “Town Costs” is amended and restated in its entirety, as follows:

[Reserved].¹

¹ Prior hereto, all funds have been paid in full. However, it is anticipated that an agreement wherein SH agrees to pay a portion of the Town’s professional legal and consulting costs shall be separately negotiated by the parties outside of this Second Amendment.

J. Section - Conveyances and Contributions: Subsection (E) – “Civic Open Space/Seafood – Fuel Facilities” is amended and restated in its entirety as follows:

1. *Civic Open Space*. Within 60 days of a written request from the Town, 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.

All Civic Open Space, upon conveyance, shall be conveyed to the Town by way of limited warranty deeds. The Developer or Owner, as applicable, shall convey insurable title to the Town for the consideration of one dollar (\$1.00), free and clear of encumbrances, with the exception of those permitted encumbrances mutually agreed upon by the parties. All

expenses of transfer, including but not limited to surveys, title insurance and recording costs, shall be the responsibility of the Developer.

In event the event any Civic Open Space is not timely conveyed to the Town under the terms hereof, 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.

2. *Fuel Facilities.* In accordance with the provisions of the First Amendment, certain land swaps were completed and remuneration and other consideration paid for the Fuel Facilities. By these actions, no further action is required for the Fuel Facilities.

3. *Dock Facility.* Further, prior to the execution and delivery of this Second Amendment, the Town acquired the Dock Facility, including certain personal property and cross-shared parking rights associated therewith.

4. *Seafood Facility.* Under the First Amendment, the Owner, in recognition of the Town's desire for seafood processing operations to be held on the Property, committed to providing a location to provide the Seafood Facility (with a minimum square footage of 1,700 square feet). To date, neither a location nor full funding for the Seafood Facility has

been determined. To the extent that a final location for the Seafood Facility is not determined to the Town's satisfaction by December 31, 2022, the Owner shall pay the Town the sum of \$150,000.

5. *Future and Further Actions for the Dock Facility and Seafood Facility.* The parties recognize that many issues remain with respect to the final location of the Dock Facility and the Seafood Facility, each of which may be affected by the ultimate development of the Property. The Owner and the Town understand that separate determinations may be made with respect to the Dock Facility and the Seafood Facility. Nothing herein shall prohibit one or more separate agreements between the Town the Developer regarding the future locations and operation of the Dock Facility and/or the Seafood Facility.

6. *First Refusal.* During the pendency of this Second Amendment and regardless of any payments made under subsection (E)(4) above, on or prior to acquisition of the Affected Properties by SH, the Town shall execute and delivery a right of first refusal agreement with SH wherein the SH shall have the option to match the offer of any third-party lessee or purchaser of the Dock Facility and/or the Seafood Facility in the event the Town elects to lease, sell, transfer or otherwise alienate such facilities during the term of this Second Amendment.

K. Section - Conveyances and Contributions: Subsection (F) – “Park Site” is amended by amending and restating the fourth paragraph, as follows:

Within 60 days of a written request from the Town, the Owner shall convey each of the Park Sites, as established in **Exhibit "B"**, to the Town as hereafter set forth. Notwithstanding the foregoing sentence and in the absence of the written approval of the Owner for an earlier transfer, in no event shall the Owner be required to transfer the area for the (i) London Avenue Park on or prior to December 31, 2022, or (ii) the Paris Avenue Park on or prior to December 31, 2025.

With the exception of the Park Sites 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 Park Sites 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 Park Sites conveyed to the Town.

The Park Sites shall be conveyed to the Town by way of limited warranty deeds. The Developer or Owner, as applicable, shall convey insurable title to the Town for the consideration of one dollar (\$1.00), free and clear of encumbrances, with the exception of those permitted encumbrances mutually agreed upon by the parties. All expenses of transfer, including

but not limited to surveys, title insurance and recording costs, shall be the responsibility of the Developer.

From the TIF Commitment, an amount not exceeding \$750,000 shall be allocated to the construction of the Park Sites (the “**Park Funds**”), with the sum of up to \$375,000 being allocated to the London Avenue Park, with such improvements undertaken by the Town or its assigns, which may include the Owner, and the sum of up to \$375,000 being allocated to the Paris Avenue Park, with such improvements being undertaken by the Developer or its assigns, which may include the Town. Upon completion of the parks, as may be determined in the sole discretion of the Town, any remaining Park Funds may be allocated to other publicly owned infrastructure described herein as permitted by the RDP.

In event the event any Park Site is not timely conveyed to the Town under the terms hereof, 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.

L. Section X - Conveyances and Contributions: Subsection (G), “Pedestrian Promenade” is amended and restated in its entirety as follows:

Within 60 days of a written request from the Town, the Owner, upon full funding and completion of the Pedestrian Promenade, or any phase thereof

as may be determined by the Town, shall convey the Pedestrian Promenade, as established in **Exhibit "B"**, to the Town, as hereafter set forth. The Pedestrian Promenade shall be conveyed to the Town by way of limited warranty deeds. The Developer or Owner, as applicable, shall convey insurable title to the Town for the consideration of one dollar (\$1.00), free and clear of encumbrances, with the exception of those permitted encumbrances mutually agreed upon by the parties. All expenses of transfer, including but not limited to surveys, title insurance and recording costs, shall be the responsibility of the Developer.

Funding for the Pedestrian Promenade shall be paid from the TIF Commitment, less the Park Funds. To the extent the residual TIF Commitment is insufficient to fully fund the costs of the Pedestrian Promenade, the Owner shall be responsible for fully funding the balance of such costs. Notwithstanding a failure of the Town to supply the balance of the TIF Commitment hereunder, the full funding, construction and operation of the Pedestrian Promenade shall be completed by no later than December 31, 2025. Further, upon completion of the Pedestrian Promenade or any portion thereof, any remaining TIF Commitment funds (including any surplus Park Funds) may be allocated to other publicly owned infrastructure described herein as permitted by the RDP.

In event the event any Pedestrian Promenade (or any requested phase thereof) is not timely completed and thereafter conveyed to the Town

under the terms hereof, 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.

M. Section X, Conveyances and Contributions: Subsection (H) – “Existing Dry Stack Facility” is amended and restated in entirety as follows:

Dry stack use shall cease if, by no later than December 31, 2022, the dry stack building has not been aesthetically improved and upgraded in a manner agreeable to the Town in conformance with the PUD Ordinance. A sum, in an amount not less than \$30,000 but no more than \$100,000, shall be expended by the Developer within the time limit described in the prior sentence to accomplish the required aesthetic improvements. However, nothing herein shall prohibit the Developer from spending in excess of \$100,000 if acting within the parameters of the general concept plan.

Provided further, if the use of the building as a dry stack 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 (i) fully complete the aesthetic improvements by December 31, 2022 as provided above, or (ii) operate the dry stack facility in the building for a period of three consecutive months or for a period of

six months over a period of twelve (12) consecutive months, provided, however (and excepting the definitive deadline for completion of the aesthetic improvements under (i) above), that if such non-use is due to damage as a result of a fire, natural disaster, or other unforeseen and unpreventable accident or occurrence, reconstruction and re-establishment of this use will be allowed, provided reconstruction begins within the latter of a twelve month period after the damage is suffered, or four 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 or construction time.

In the event the existing dry stack facility is abandoned, the Owner shall, within 12 months of the expiration of the above-noted time limits, dismantle and remove the dry stack facility from the Property. This obligation shall survive the Term of this Second Amendment.

N. Section X - Conveyances and Contributions: A new subsection, Subsection (I) – “Additional Open Space” is added as follows:

As to the Additional Open Space required per Sections 3.4 and 3.5.5(c) of the PUD Ordinance, 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 sixty (60) 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 limited warranty deed of insurable title to such acreage shall be consummated within sixty (60) 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; absent the availability of excess funds of the TIF Commitment, the costs of improvements to the Additional Open Space are to be funded solely by the Owner.

O. Section X - Conveyances and Contributions: A new subsection, Subsection (J) – “Park Swap” is added as follows:

It is currently anticipated that certain properties, notated as “PV-6” and “COS” (as limited to the COS property adjacent to and south of the PV-6 property) owned by the Owner and Town, respectively and as shown on the Regulating Plan, a copy of which is attached hereof as **Exhibit “B”**, to the Town, as hereafter set forth, may be exchanged by the Owner and the Town; nothing herein shall prohibit or otherwise limit such exchange. In the event of such exchange, the swapped properties, as described herein

above, shall be constructed and funded at the swapped location *mutatis mutandis*.

P. Section XVI - Notices: Section XVI – “Notices” is amended and restated in its entirety as follows:

To the Town: Town of Port Royal
 Attn: Town Manager
 700 Paris Avenue
 Port Royal, SC 29935

With copy to: Lawrence Flynn III
 Pope Flynn, LLC
 PO Box 11509
 Columbia, SC 29211

To the Owner: SH Marinas, LLC
 14785 Preston Road, Suite 975
 Dallas, TX 75254

With copy to Nicole Scott
 Nexsen Pruet
 205 King St, Suite 400
 Charleston, SC 29401

Q. Exhibit A hereto shall supplement Exhibit A to the Development Agreement. Exhibits B, D, and E of the Development Agreement are amended and replaced by the amended Exhibits attached to this Second Amendment. Exhibits F, G and H to the Development Agreement are deleted and removed in their entirety.

2. Except as amended, modified or revised by the terms of this Second Amendment, the Development Agreement, as recorded in the Register of Deeds Office for Beaufort County in Book 3217 at page 631 and amended in Book 3608 at Page 1, is reaffirmed in its entirety.

3. By affixing their respective signatures thereto, the Town and GGP and SH, as contract purchaser having an equitable interest in the Affected Properties, affirmatively acknowledge their consent to and approval of this Second Amendment; The effective date of the Second Amendment shall be the date that this Second Amendment is signed by all applicable parties and filed in the land records of Beaufort County, South Carolina, which in not event shall be later than fourteen days after the approval by Ordinance of the Town approving this Second Amendment.

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.

EXHIBIT A

Description of SH Properties

From Book 3607 at Page 2615:

That certain property in Beaufort County, Town of Port Royal, State of South Carolina, as shown on the certain 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, Beaufort County Register of Deeds Office, consisting of approximately 51.60 Acres of highland and 265.91 Acres of marsh. Parcels designated on said Plat as: SP 21-1, SP 21-3, SP 21-4, SP 21-5, SP 21-6, SP 21-10, SP 21-11, SP 21-12, SP 21-13, SP 21-14, SP 21-15, SP 21-16, SP 21-17, SP 21-18, SP 21-19, SP 21-20, MARSH-1, MARSH-2, MARSH-3, and MARSH-4, as more particularly shown and delineated by reference to said plat.

LESS AND EXCEPTING Parcel SP 21-2, that certain piece, parcel or lot of land situate, lying and being in the Town of Port Royal, County of Beaufort, Sate of South Carolina, being shown and designated as PARCEL "A" on that plat prepared for David W. Harden and Elisabeth S. Harden by David E. Gasque, R.L.S., dated June 2, 2000, which was recorded August 28, 2000, in Plat Book 75 at Page 165 in the Office of the Register of Deeds of Beaufort County, SC. The said PARCEL "A" contains 0.09 acres, more or less.

ALSO

From Book 3607 at Page 2615:

That certain piece, parcel or lot of land, in Beaufort County, Town of Port Royal, State of South Carolina, designated as "**OUT PARCEL #1 HOOD DOWLING 6,969 SQ.FT. 0.16 Acre,**" more or less, on 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, Beaufort County Register of Deeds Office, as more particularly shown and delineated by reference to said plat.

ALSO

From Book 3629 at Page 159:

That certain piece, parcel or tract of land situate, lying and being in the Town of Port Royal, Beaufort County, South Carolina, containing 0.161 acres, more or less, and being more particularly shown and described a "0.161 Acres, Town of Port Royal, AOC Plat 3D; "Portion of Port Royal, S.C." Dated Oct. 21, 1953 & Nov. 13, 1953" on that certain plat prepared by R. D. Trogdon, Jr., R.L.S., recorded in Plat Book 42 at Page 192 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat of record.

For avoidance of doubt, the above properties include:

- (a) That property conveyed to Special K Holdings, LLC by deed from Grey Ghost Properties, LLC recorded in Book 3634 at Page 270 in the Office of the Register of Deeds for Beaufort County, South Carolina (2.78 acres Fee Real Property, 1.31 acres Fee Submerged Property), as re-recorded in Book 3644 at Page 1845 to correct a plat reference error.
- (b) That property conveyed to Progeny Corporation by deed from Grey Ghost Properties, LLC recorded in Book 3664 at Page 481 in the Office of the Register of Deeds for Beaufort County, South Carolina (1.80 acres Fee Real Property).

SAVE AND EXCEPTING from the aforementioned properties:

- (a) That property conveyed to 11th Street Investments, LLC by deed from Grey Ghost Properties, LLC recorded in Book 3632 at Page 40 in the Office of the Register of Deeds for Beaufort County, South Carolina (1.09 acres Fee Real Property, 0.04 Fee Submerged Property);
- (b) That property conveyed to Triple B Restaurant Holdings, LLC by deed from Grey Ghost Properties, LLC recorded in Book 3806 at Page 1628 in the Office of the Register of Deeds for Beaufort County, South Carolina (0.59 acres Fee Real Property);
- (c) That property conveyed to Port Royal Waterfront, LLC by deed from Grey Ghost Properties, LLC recorded in Book 3807 at Page 428 in the Office of the Register of Deeds for Beaufort County, South Carolina (0.45 acres Fee Real Property, 0.10 acres Fee Submerged Property).

These being a portion of the same properties conveyed to Grey Ghost Properties, LLC by (a) deed from South Carolina Department of Administration, Division of General Services, recorded in Book 3607 at Page 2615 in the Office of the Register of Deeds for Beaufort County, South Carolina; and (b), deed from Town

of Port Royal recorded in Book 3629 at Page 159 in the Office of the Register of Deeds for Beaufort County, South Carolina.

EXHIBIT D

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 2021 – 2023 – Construction of infrastructure will continue. Construction on the Marina and the Bluff Neighborhood will commence. Various mixed uses of land parcels and buildings are anticipated to be available for sale by the middle to latter part of 2023. The Park Sites and Pedestrian Promenade system will begin and be designed to accommodate and link future phases of development. The development and/or public private projects at the Marina Village regarding the Dock Facilities and Seafood Facilities will be finalized. The dry stack facility will continue operations and the aesthetic enhancements will be completed.
Estimated population: 20

Years 2023 – 2025 – As much as 50% of various land uses should come under Development during this period. The Park Sites, Pedestrian Promenade and Additional Open Space will be completed and conveyed to the Town.
Estimated population: 500

Years 2025 – 2028 – This period should be the close-out period where a majority of the Property will be available and major infrastructure complete.
Estimated population: 1,000

EXHIBIT E

PUD Ordinance

The Planned Unit Development, as approved by the Town Council on November 9, 2011, as recorded and as attached as Exhibit E to the Development Agreement recorded at Book 3217 at Pages 631 – 1534, thereafter amended by Ordinance 2017-20, as recorded and as attached as Exhibit E to the First Amended Development Agreement dated August 9, 2017 recorded at Book 3608 at Pages 1-66, and thereafter amended by Ordinance 2021-25 adopted contemporaneously herewith, are hereby incorporated herein by reference, to include all drawings, plans, narratives and documentation submitted therewith, as fully as if attached hereto.

Additionally, the parties are including for incorporation into the Planned Unit Development a copy of Chapter 20, *Trees*, of the Town's Code of Ordinances, as most recently amended by Ordinance 2018-14 dated October 10, 2018; such copy is reproduced in its entirety and attached hereto.

EXHIBIT F

[RESERVED]

EXHIBIT G
[RESERVED]

EXHIBIT H
[RESERVED]

IN WITNESS WHEREOF, the undersigned representative of the Progeny, LLC, as a Transferring and Ratifying Owner, acknowledges the execution and delivery of the foregoing Second Amendment to Development Agreement by and between the Town of Port Royal, South Carolina and SH Marinas, LLC as of this 23 day of July 2021.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

PROGENY, LLC

[Signature]
Witness Signature

[Signature]
By: Christopher A. Butler
Its: Managing Member

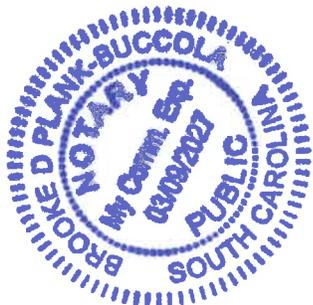
[Signature]
Notary Signature

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that Chris Butler, 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 by the Progeny, LLC acting through Chris Butler, as the duly authorized agent of the Progeny, LLC.

SWORN to before me this
23 day of July, 2021.

[Signature]
Notary Public
My Commission Expires: 03/09/2027
(Seal)



Chapter 20 - TREES¹¹

Footnotes:

--- (1) ---

Editor's note— Ord. No. 2018-14, adopted October 10, 2018, repealed the former chapter 20, §§ 20-1 and 20-26—20-34, and enacted a new chapter 20 as set out herein. The former chapter 20 pertained to similar subject matter and derived from the Code of 1980, § 4-50—4-58; Ord. No. 83-19, adopted September 14, 1983; Ord. No. 90-91, adopted September 12, 1990 and Ord. No. 2015-23, adopted October 14, 2015.

Cross reference— Buildings, construction and related activities, Ch. 4.

ARTICLE I. - TREE PROTECTION

Sec. 20-1. - Tree coverage requirements.

- (a) *Applicability and standards.* In addition to the standards laid out in this section, land or property shall maintain a minimum baseline canopy coverage area based on the zoning district and lot size. This canopy can be comprised of existing trees, new trees or a combination of both, and shall be per the table below:

Zone	Minimum Number/Type of Trees Required Based on Zone and Lot Size
	1 broad-leaved overstory tree required
T3 Edge	Per 3,000 square feet of lot size
T3 Suburban Neighborhood	Per 3,000 square feet of lot size
T3 Neighborhood	Per 3,000 square feet of lot size
T4 Neighborhood Center	Per 6,000 square feet of lot size
T4 Urban	Per 6,000 square feet of lot size
T5 Main	No Minimum

- (b) *Approach to meeting requirements.* This tree coverage requirement may be met through the retention of existing trees, supplemental plantings, or a combination of both. Removal of trees must be in accordance with section 20-2 (Tree Removal). New trees planted to satisfy the tree canopy coverage requirement, as set forth above, must meet the standards found in division 5.7.70 of the Port Royal Code. If lot size is smaller than listed above, tree planting shall be done if possible, but may not be

required. If it is not possible to plant overstory trees, two (2) understory trees may count as one (1) overstory tree.

- (c) *Plan requirements.* Compliance with these tree coverage standards must be clearly shown on all submitted applications.

(Ord. No. 2018-14, 10-10-18)

Sec. 20-2. - Tree removal.

- (a) *A tree removal/pruning permit is required for the following tree modifications:*

- (1) *Permit required for removal.* A permit shall be required for the removal or relocation of any tree eight (8) inches caliper or larger at DBH, or any tree designated as a specimen or landmark tree, as established in section 20-3(a)(3)g. An exception is granted in single-family and two- and three-family building on existing lots of record wherein a permit is only required for the removal of specimen or landmark trees.
- (2) *Permit required for pruning.* A permit shall be required for the pruning of any tree designated as a landmark tree, as established in section 20-3(a)(3)g. Pruning must be done by, or under the guidance of, a certified arborist.
- (3) *Trees designated for retention.* A permit shall be required for the removal, relocation, or pruning of any tree previously designated to be retained on an approved development plan.

- (b) *Criteria for reviewing applications for tree removal.* The following criteria shall be considered by the building official or his designee in determining whether or not to issue a tree removal/pruning permit:

- (1) *Health.* Whether or not the tree is in good health, according to a certified arborist report or staff evaluation.
- (2) *Development potential.* Whether or not the tree constrains reasonable development of the specific site, considering lot size, applicable setbacks, context, building type and use, stormwater requirements and other relevant site development considerations.
- (3) *Access.* Whether or not the tree is a hazard to pedestrian, bicycle, or vehicular traffic.
- (4) *Structural interference.* Whether or not the tree presents a hazard to buildings, structures, or utility lines.
- (5) *Cost.* Whether or not there are cost effective alternatives to tree removal.

- (c) *Tree removal in conjunction with development.* If trees are to be removed in conjunction with the physical development of a site, submission of a tree retention/removal schedule is required to accompany the site plan. All trees, both to be saved and removed, shall also be noted on the landscaping plan. This schedule and plan must be reviewed and approved by the appropriate design review body prior to the issuance of a project permit. No tree removal may commence without a project permit.

- (1) *Buffer areas.* Preserved trees in the buffer areas shall be counted toward the minimum tree conservation requirements of any required buffers. Recognizing that the perimeter buffers lie outside of the buildable area, the intent of this provision is to preserve as many of these trees as possible while allowing for access, reasonable visibility, and other uses permitted in the buffer area that practicably are best located within the buffer.
- (2) In exceptional cases where the building official determines that the species of a tree or grouping of trees is on an official state or federal list of endangered species, then approval is specifically required for removal.

- (d) *Exceptions.*

- (1) *Waiver for emergency.* In the event that a tree poses a threat to public safety due to death, disease or damage resulting from events including, but not limited to fires, floods, hurricanes, other natural disasters, intentional harm, or negligence, the building official may waive the requirements of this section. As soon as it is feasible after the waiver, the building official shall issue written findings outlining the threat to public safety that prompted the waiver. The building official may require that the owner of the site replace the tree when the findings conclude that the removal was necessitated by intentional harm or negligence.
- (2) *Normal tree maintenance.* Nothing in this Code shall restrict normal tree maintenance by a property owner (including removal of dead wood and branches or limbs that endanger life or property) for any tree except landmark trees upon which any pruning must be done according to section 20-2(a)(2).

(Ord. No. 2018-14, 10-10-18)

Sec. 20-3. - General landscape design.

New plantings provided in accordance with this article shall comply with the following standards:

- (1) *General.*
 - a. *Plant types.* Plantings are grouped into five (5) types: Overstory trees, understory trees, shrubs, grasses, and ground cover.
 - b. *Document existing vegetation.* Type, size, and limits of existing vegetation shall be identified on the landscape plan.
 - c. *Definitions.* The following definitions shall apply when determining both the size and number of plantings necessary to fulfill the requirements of this article:
 1. *American Standard for Nursery Stock (ASNS).* In 2004 the American Nursery and Landscape Association established industry standards that provide buyers and sellers with a common terminology in order to facilitate transactions involving nursery stock. The standard defines terms and numerical relationships among tree parts.
 2. *ACI or aggregate caliper inches.* A measure of the total combined number of inches of existing and proposed trees used to meet landscaping requirements.
 3. *Caliper.* Diameter of the trunk measured six (6) inches above the ground for trees up to and including four-inch diameter, and measured twelve (12) inches above the ground for larger trees. This measurement is used for proposed or nursery-grown trees.
 4. *DBH or diameter at breast height.* The diameter (in inches) of the trunk of a tree (or, for multiple trunk trees, the aggregate diameters of the multiple trunks measured four and one-half (4½) feet from the existing grade at the base of the tree. This measurement is used for existing trees.
 5. *Overstory tree.* A tree that, when mature, reaches a height of at least thirty-five (35) feet.
 6. *Understory tree.* A tree that, when mature, reaches a height of twelve (12) to thirty-five (35) feet.
 7. *Landmark and specimen trees.* Certain trees, because of their species and size, are an asset to both the town and individual property owners and are designated as "specimen" and "landmark" trees. Such trees shall be defined as those trees which meet the criteria in the following table:

Species	Common Name	Specimen Tree (Min. DBH)	Landmark Tree (Min. DBH)
<i>Cornus florida</i>	Flower Dogwood	4 inches	18 inches
<i>Cercis Canadensis</i>	Redbud	4 inches	18 inches
<i>Magnolia grandiflora</i>	Southern Magnolia	4 inches	24 inches
<i>Ilex opaca</i>	American Holly	4 inches	14 inches
<i>Juniperus virginiana</i>	Eastern Red Cedar	12 inches	24 inches
<i>Quercus virginiana</i>	Live Oak	12 inches	24 inches
<i>Sabal palmetto</i>	Cabbage Palm	18 feet tall	36 feet tall
<i>Taxodium distichum</i>	Bald Cypress	16 inches	24 inches
<i>Quercus velutina</i>	Eastern Black Oak	16 inches	24 inches
<i>Nyssa sylvatica</i>	Tupelo/Black Gum	16 inches	24 inches
<i>Quercus alba</i>	White Oak	16 inches	36 inches
<i>Quercus falcate</i>	Southern Red Oak	16 inches	24 inches
<i>Acer rubrum</i>	Red Maple	16 inches	24 inches
<i>Ulmus Americana</i>	American Elm	16 inches	36 inches
<i>Pinus palustris</i>	Longleaf Pine	16 inches	36 inches
<i>Fagus grandifolia</i>	American Beech	16 inches	36 inches
All other species of overstory trees except for Laurel Oaks, Sweet Gum, Pecan and other species of Pines - those species are never considered specimen or landmark trees, regardless of their size		24 inches	36 inches

(b) *Existing landscape preservation.* Preservation of existing trees and vegetation is the preferred means of landscaping. Existing, healthy trees and vegetation shall count toward all planting and canopy requirements, and must be shown on the landscape plan.

(1) *Preservation of specimen and landmark trees.* Reasonable design alternatives shall be explored to preserve those trees to the extent practicable. A certified arborist report shall be required when sites contain specimen trees that will be impacted by or removed due to development, unless the building official determines that the report would not change the outcome of the plan. A certified arborist report shall always be required for all landmark trees that will be impacted by or removed due to development. The certified arborist report shall be incorporated into the project submission as part of the site plan.

(2) *Mitigation for preserving existing trees.* To incentivize saving a variety of species and sizes of existing trees, credits shall be awarded for their preservation at a ratio of 1:1. All trees, except for Laurel Oaks, Sweet Gums, and non-Longleaf Pines, may be used as mitigation credits for that same species.

Example: If a twelve-inch magnolia tree is removed, but three (3) three-inch magnolias are saved (nine (9) total inches of magnolia), only three (3) inches of magnolia trees would be included in the mitigation calculation.

(Ord. No. 2018-14, 10-10-18)

ARTICLE II. - MITIGATION

Sec. 20-4. - Replacement planting and mitigation.

(a) This section applies:

- (1) Where the building official approves removal of specimen and landmark trees for new development.
- (2) Where any vegetation, existing or proposed, used to comply with the requirement of this section, does not survive in a healthy condition.
- (3) When a specimen and/or landmark tree is removed from a property without permission from the building official, is significantly damaged during construction, or significantly declines and is recommended for removal by a certified arborist at the end of the two-year maintenance guarantee period.

(b) *Additional mitigation options.* Where a certified arborist determines that a site cannot sustainably support all, or a portion of, the required replacement, due to the size and shape and/or structures and/or viable site constraints, the following options are available to the applicant to fulfill the mitigation requirements:

- (1) *Fee in lieu of planting on-site.* A fee based on the mitigation schedule in section 20-4(d) shall be paid to the town for the purposes of tree planting and tree maintenance.
- (2) *Planting on an alternative site.* Trees may be planted on town-owned property, including parks or other property owned by the applicant; all property shall be in town limits. The alternative sites shall be approved by a certified arborist and shall be in accordance with previously approved plans, streetscapes, etc.

(c) *Exceptions:*

- (1) Mitigation for tree removal is not required for single-family and two-to three- family dwelling units if the required tree coverage requirements set out in section 20-1(a) are still met.

(2) A specimen and/or landmark tree that fails due to a natural catastrophe does not require mitigation.

(d) *Replacement and mitigation schedule.* Replacement plantings and fee in-lieu-of shall be according to the following chart:

Replacement and Mitigation Schedule

<i>Tree Type</i>	<i>Replacement % Caliper Inches</i>	<i>Mitigation Cost/Caliper Inch</i>
Landmark Tree*	50%*	\$100.00
Specimen Tree	33%*	\$50.00
All other trees 8-inch caliper or greater	24%	None

*Any tree removed per Section 20-5 (a) shall require 100% replacement of caliper inches, and the fee in-lieu-of cost/caliper inches shall be doubled.

	Approved Removal	Approved Removal	Damage During Construction	Damage During Construction
EXAMPLES	Specimen Tree — A 12-inch Live Oak in a transect zone needs to be removed to accommodate a building. The applicant may choose to either plant back (1) 4-inch Live Oak, or pay a fee in lieu of \$600.00 (12 inches x \$50.00/inch).	Landmark Tree — A 30-inch Live Oak in a transect zone needs to be removed to accommodate a building. The applicant may choose to either plant back (5) 3-inch Live Oaks, or pay a fee in lieu of \$3,000.00 (30 inches x \$100.00/inch).	Specimen Tree — A 12-inch Live Oak was damaged during construction in a transect zone. It may either be replaced with 12 caliper inches of similar species, or a fee-in-lieu of \$2,400.00 (12 inches x \$100.00/inch x 2) may be paid.	Landmark Tree — A 30-inch Live Oak intended to be preserved was damaged during construction in a transect zone. It may either be replaced with 30 caliper inches of similar species, or a fee-in-lieu of \$6,000.00 (30 inches x \$100.00/inch x 2) may be paid.

See section 20-3(b)(2) for possible mitigation credits for saving eligible specimen and landmark trees.

(Ord. No. 2018-14, 10-10-18)

Sec. 20-5. - Violations.

It shall be a violation of this Code to:

- (1) Remove existing trees from a site or parcel of land without first obtaining the appropriate permits and development approvals, and complying with their terms and conditions.
 - a. The clear cutting of trees by any developer for the sole purpose of clearing land or offering land for sale shall be prohibited. If an owner cuts all or any portion of his or her property under the claim of good faith forestry practice, and then seeks a development permit for any portion of the property within two (2) years of the cut, a rebuttable presumption shall arise that the cut was done in anticipation of future development, and the permit shall be denied. This applies to properties that were cleared in another jurisdiction and then annexed into the town as well. Any person seeking to rebut the presumptions shall have the burden of proving their claim by clear and convincing evidence.

(Ord. No. 2018-14, 10-10-18)