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AGENDA  
DEVELOPMENT AGREEMENT SUBCOMMITTEE

OF  
NATURAL RESOURCES COMMITTEE

Monday, October 7, 2013  
10:30 a.m.

Executive Conference Room  
Administration Building

Committee Members:  
Brian Flewelling, Chairman  
Paul Sommerville  
Jerry Stewart  
Tabor Vaux

Staff Support: Tony Criscitiello

1. CALL TO ORDER – 10:30 A.M.
2. CONSIDERATION / DEVELOPMENT AGREEMENT BLUFFTON GATEWAY  
(Development Agreement)  
(Section 106-2796)  
(Sections 106-2536 and 106-2540)  
(Sections 106-3173 and 106-3174)
3. ADJOURNMENT



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

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

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

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

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

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

**WHEREAS**, Owner desires to modify certain aspects of the ZDSO [\(hereinafter defined\)](#), as more particularly described herein, to provide for and achieve the successful development of Bluffton Gateway pursuant to and as shown in a development plan (the “Development Plan”) to be approved in accordance with the ZDSO; and

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

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

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

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

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

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

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

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

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

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

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

**NOW THEREFORE**, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic benefits to both Beaufort County and Owner by entering this Agreement, and to encourage well planned development by Owner, the receipt and sufficiency of such consideration being hereby acknowledged, Beaufort County and Owner hereby agree as follows:

**I. INCORPORATION.**

The above recitals are hereby incorporated into and are made a part of this Agreement, together with the South Carolina General Assembly findings as set forth under Section 6-31-10(B) of the Act.

**II. DEFINITIONS.**

**As used herein, the following terms mean:**

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

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

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

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

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

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

**“Development Plan”** means that certain site development plan for the Property, and related material and exhibits, depicting proposed lots, buildings and other infrastructure for the Property’s proposed development, which are entitled “Development Plan”, and which have been reviewed and approved by the County in conjunction with the approval of this Development Agreement, which Development Plan is attached hereto as **Exhibit “B”** and made a part hereof.

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

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

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

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

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

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

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

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

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

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

### III. TERM.

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

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

#### **IV. DEVELOPMENT OF THE PROPERTY.**

The Property shall be developed in accordance with this Development Agreement. Beaufort County shall, throughout the Term, use its best efforts to maintain or cause to be maintained, a procedure for the expedited administrative processing and review of all Development on the Property as contemplated by the Development Agreement. All costs charged by or to Beaufort County for such reviews shall be paid by Owner or Developer, as applicable. However, the same shall be credited against the value of the conveyances and costs of construction for certain rights-of-way more particularly set forth in Article XI hereof.

#### **V. CHANGES TO THE ZDSO.**

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

- A.** Owner shall be required to notify Beaufort County, in writing, as and when Development Rights are transferred to any Developer. Such information shall include the identity and address of the acquiring party, a proper contact individual, and the location and number



of acres of the Property for which Development Rights are being transferred. Developers transferring Development Rights to any other party shall be subject to this requirement of notification, and any entity acquiring Development Rights hereunder shall be subject to the requirements of Article XVIII G.

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

VI. ~~VI.~~ DEVELOPMENT SCHEDULE.

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

VII. ~~VII.~~ COMMERCIAL DENSITY AND USE.

- A. **Commercial Density.** Development on the Property shall be limited to the ~~total densities as set forth in this Agreement, which shall be binding upon Owner and Beaufort County in the future~~ maximum commercial square feet of density available under the ZDSO as of the Effective Date. Development beyond the total commercial square feet of density described and depicted in the Development Plan shall require an updated traffic impact analysis, and availability of additional commercial density shall be limited to that allowed under such traffic impact analysis. The right to fully develop or construct all of the commercial density provided ~~for herein, notwithstanding the submission or approval of a development plan or otherwise, shall not limit the right to such stated density, nor prohibit subsequent or future construction up to the stated amount~~ herein shall be binding on Owner and the County. It being specifically understood that Owner, its successors and assigns shall have the absolute right to develop the Property to the commercial square feet of density stated herein. Owner shall have the right to make revisions to the Development Plan for matters including, but not limited to, adjustments to the dimensions of lots and buildings so long as the same are in keeping with the character and intent of the Development Agreement Ordinance and shall be administered and approved by the DRT.

~~The maximum density for the Property shall be equal to the maximum density available under the ZDSO as of the Effective Date.~~

- B. **Use.** The Development ~~Agreement Ordinance~~ Plan suggests proposed land uses within the Property. ~~These land~~ The specific uses ~~are~~ allowed for the Property shall be all those uses allowed under the Commercial Regional zoning category provided in the ZDSO as

of the Effective Date of this Agreement.

**VIII. ~~VIII.~~ ACCESS.**

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

~~IX. X.~~

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

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

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

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

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

**Private Roads.**

Except for those rights-of-way to be dedicated to Beaufort County as provided [herein in this Agreement](#), any roads proposed to be constructed within the Property shall be constructed by Owner, and maintained by it, or dedicated for maintenance to other appropriate entities. Except for those rights-of-way to be dedicated to Beaufort County as provided [herein in this Agreement](#), Beaufort County shall not be responsible for the

construction or maintenance of any roads within the Property, unless Beaufort County specifically agrees to ~~such~~do so in the future.

**B.** ~~**B.**~~ **Public Roads.**

- (i) The Property shall be served by direct access to U.S. Highway 278 and S.C. Highway 46 as shown on the Development Plan. ~~Except as otherwise contained herein, Owner shall not be responsible for construction of, or payment for any construction or improvements to public roads.~~
- (ii) The location of public access points to the Property, median cuts in the right-of-way, and signage shall be as set forth in the Development Plan.

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

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

**E.** ~~**E.**~~ **Stormwater Treatment and Disposal.** Stormwater treatment and disposal shall be in accordance with the ZDSO.

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

~~XIII. XIV.~~

**XI. SYSTEM IMPROVEMENTS, CONVEYANCES, CREDITS AND CONTRIBUTIONS.**

The following items are hereby agreed upon by the parties to be provided:

**A. Rights-of-Way and Easement.**

(i) **Southern Connector Road.** Owner shall transfer to Beaufort County that certain parcel of real property shown and depicted as the “Southern Connector Road” on the Development Plan, which may be combined with other real property obtained by Beaufort County for the construction of a public right-of-way providing access to and through the Property from the west as generally depicted in the Development Plan. The parties acknowledge and agree that for the sole purpose of valuation of credits against Development Fees as described in this Article XI and for no other purpose, the value of the Southern Connector Road, standing alone and not as part of the entire Property, shall be at Owner’s option, either:

(a) one hundred percent (100%) of the most recent assessed value for such land, as shown in the County Assessor’s records, or

(b) the fair market value of the land established by a private appraiser acceptable to the County in an appraisal paid for by the Owner.

~~Owner shall transfer to Beaufort County that certain approximate [redacted] acre portion of real property shown and depicted as the “Southern Connector Road” on the Development Plan, which may be combined with other real property obtained by Beaufort County for the construction of a public right-of-way providing access to and through the Property from the west as generally depicted in the Development Plan. The parties acknowledge and agree that for the sole purpose of calculation of credits against Development Fees as described in this Article XI and for no other purpose, the value of the Southern Connector Road, standing alone and not as part of the entire Property, shall be deemed to be [redacted] Hundred Thousand and 00/100 Dollars (\$ [redacted]) per acre (the “Southern Connector Road Land Value”) (or a total of \$ [redacted]).~~ Together with credits for other system improvements,

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





(a) one hundred percent (100%) of the most recent assessed value for such land, as shown in the County Assessor's records, or

(b) the fair market value of the land established by a private appraiser acceptable to the County in an appraisal paid for by the Owner.

Together with credits for other system improvements, Owner and Developer(s) shall be entitled to credits for any and all Development Fees which may become payable with respect to the Property up to the total amount of the Sheridan Park/U.S. 278 Connector Road Value. Beaufort County agrees that it shall use best efforts to obtain property for and complete construction of portions of the right-of-way not located on the Property which connect to the Sheridan Park/U.S. 278 Connector Road to the west. The conveyance of the document which conveys title to the Sheridan Park/U.S. 278 Connector Road shall be subject to a restrictive covenant that prohibits the use of the Sheridan Park/U.S. 278 Connector Road for any use other than for a right-of-way.

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

**B. ~~Traffic~~ Road Facilities Improvements – Design and Construction.**

(i) **Roads.** Owner agrees to construct or pay the cost to construct the road infrastructure upon the Road Rights-of-Way (the "Road Rights-of-Way Construction") to County road construction standards, such Road Rights-of-Way ~~being~~ shown and depicted on the Development Plan. Owner and Developer(s) shall also be entitled to credits against Development Fees based on the cost of the design, engineering and construction of the Road Rights-of-Way. The ~~total cost for this road and road infrastructure construction the purpose of this Agreement is~~ \_\_\_\_\_ (\$ \_\_\_\_\_) value of the

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

- (ii) **S.C. Highway 46 Intersection.** The Development Plan contemplates improvements to S.C. Highway 46, including construction of a fully signalized intersection. The ~~cost of the engineering, design and construction for the purposes of this Agreement is~~ [REDACTED] ~~(\$ [REDACTED])~~ value of the credit for the construction of road improvements to the S.C. Highway 46 Intersection shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner's and County's shared expense to develop alternative engineering or construction cost estimates (the "S.C. Highway 46 Intersection Improvement Value"). Owner and Developer(s) shall be entitled to credits against Development Fees based on the cost of the design, engineering and construction of the S.C. Highway 46 Intersection, which may be payable with

respect to the Property up to the total amount of the S.C. Highway 46 Intersection Improvement Value.

- (iii) **S.C. Highway 46 and U.S. 278 Intersection Improvements.** The Development Plan contemplates improvements to the S.C. Highway 46 and U.S. 278 intersection, including modifying signalization and construction of dedicated turn lanes. The ~~cost of the engineering, design and construction for the purposes of this Agreement is~~ \_\_\_\_\_ (\$ \_\_\_\_\_) ~~value of the credit for the construction of the S.C. Highway 46 and U.S. 278 intersection improvements shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner's and County's shared expense to develop alternative engineering or construction cost estimates~~ (the "S.C. Highway 46/U.S. 278 Intersection ~~Improvement Value~~"). ~~The parties acknowledge and agree that for the sole purpose of calculating credits against Development Fees described in this Article XI, and for no other purpose, the S.C. Highway 46/U.S. 278 Intersection Improvement Value shall be deemed to be~~ \_\_\_\_\_ (\$ \_\_\_\_\_) ~~Improvements Value~~". Owner and Developer(s) shall be entitled to credits for any and all Development Fees ~~described herein~~ which may become payable with respect to the Property up to the total amount of the S.C. Highway 46/Highway 278 Intersection ~~Improvement~~Improvements Value.

- C. **Public/Private Signage.** Owner shall construct a monument sign feature for Beaufort County and/or the Town of Bluffton ~~and upon~~ the Property described as Icon/Monument Sign as shown in the plan attached hereto as **Exhibit "G"** and made a part hereof (the "Icon/Monument Sign Plan"). The Icon/Monument Sign Plan has been approved in conjunction with the approval of the Sign Master Plan and this Development Agreement. ~~Easements for the use, access, maintenance and repair of the Icon/Monument Sign shall be conveyed to Beaufort County (or some other governmental~~

organization) (the "Icon/Monument Sign Easement"). The parties acknowledge and agree that for the sole purpose of calculating credits against Development Fees described in this Article XI and for no other purpose, the value of the Icon/Monument Sign Easement shall be deemed to be \_\_\_\_\_ (\$ \_\_\_\_\_) (the "Icon/Monument Sign Easement Value"). Owner and Developer(s) shall be entitled to credits against Development Fees based on the cost of the design, engineering and construction of the Icon/Monument Sign Easement, which may be payable with respect to the Property up to the total amount of the Icon/Monument Sign Easement Value. The signage allowed to Owner on the Icon/Monument Sign shall be allocated from and reduce the maximum freestanding sign area on the freestanding project signs for the Development.

**D.** Brownfield Voluntary Cleanup Exemption. The County agrees that upon the issuance of the DHEC Certificate of Completion for the Brownfield Voluntary Cleanup Program, it shall authorize and approve by resolution the exemption of the Property from ad valorem taxes for the period of time described in accordance with Section 12-37-220 (44) of the South Carolina Code of Laws. The dollar amount of the exemption shall be equal to the actual cost of the Brownfield Voluntary Cleanup Program, which cost shall include but not be limited to Owner's legal, engineering and environmental consultants' costs and fees, as well as the actual cost of construction, remediation and testing required to obtain the DHEC Certificate of Completion.

**D.** No Other Requirement.

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

**E.** Development Fees.

- (i) Beaufort County acknowledges that in partial consideration of the conveyance of the ~~Road~~ Rights-of-Way and the cost of the Road ~~Rights-of-Way Construction thereon as contemplated herein~~ Facilities Improvements thereon as described in Article XI A and XI B herein (collectively herein the "System Improvements") and notwithstanding any provision to the contrary contained within this Agreement, Owner shall receive a credit with a value of \$ \_\_\_\_\_ against the cost

of any and all Development Fees up to the total value of the System Improvements.

- (ii) Beaufort County or other governing body shall not be precluded by this Agreement from charging fees for delivery of services to citizens or residents (i.e., an EMS response fee or the like), nor from charging fees statutorily authorized in the future (i.e., a real estate transfer fee or the like) which are not collected as a prerequisite to approval of a plat, plan or construction permit and not otherwise contemplated hereunder.
- (iii) The Development Fees are vested for the entire Property and no other Development Fee or obligation regarding Development is imposed in connection with the Property.

## XII. PERMITTING PROCEDURES.

- A. Beaufort County agrees that Owner shall have the unlimited right to phase the development of the Property in accordance with the Development Schedule.
- B. Beaufort County agrees to use its best efforts to review in an expeditious manner all land use changes, land development applications, plats and subdivisions in accordance with applicable ordinances as modified by this Agreement for the Development of the Property. Owner may submit these items for concurrent review with Beaufort County and other governmental authorities. If the off-site USACE permits for interconnecting roads are not in place prior to DRT final approval, then Owner may proceed with on-site construction of the Bluffton Gateway Commercial Center and provide a cash bond to insure construction of the Road Rights-of-Way once the USACE permits are obtained.
- C. Signage for the Property shall be governed by a Sign Master Plan, which depicts two (2) monument signs at the signalized access points to the Property from S.C. Highway 46 and the access to U.S. Highway 278, respectively. Beaufort County acknowledges and agrees that Owner shall be permitted to construct up to four (4) monument signs, each at a maximum of 80 square feet, in accordance with Section 106-3173 of the ZDSO (subject to a pro rata reduction of sign area to be included on the Icon/Monument Sign), at the locations shown on the Sign Master Plan with size, color, design and architectural elements which are depicted in the Sign Master Plan attached hereto as **Exhibit "C"** and made a part hereof.
- D. Beaufort County agrees that the Property is approved and fully vested for intensity, commercial density, Development Fees, uses and height, setbacks, parking and signage and shall not have any obligations for on or off site transportation or other facilities or improvements other than as specifically provided in Article XI of this Agreement, but shall adhere to the Development Plan and the Sign Master Plan. Beaufort County shall not impose additional development obligations or regulations in connection with the ownership or development of the Property, except in accordance with the procedures and provisions of § 6-31-80 (B) of the Act, which Owner shall have the right to challenge.

### XIII. OWNER ENTITLEMENTS.

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

- A. Setbacks and Buffers.** Beaufort County agrees that the Property is vested and that the lot lines (which may be modified in accordance with Article VII A hereof), dimensions and location of setbacks and buffers shown and described in the Development Plan, as amended from time to time in accordance with this Agreement, are approved.
- B. Access.** Beaufort County hereby approves the location of traffic signals, and curb and median cuts for access to the Property as shown in the Development Plan, subject to SCDOT permitting and approval, if any.
- C. U.S. 278 and S.C. Highway 46 Buffer.** As depicted in the Development Plan, the fifty foot (50') buffer described and required by the ZDSO shall be modified to allow landscaping in a twenty-five foot (25') portion of the buffer in certain areas. Owner shall be authorized to and shall landscape and maintain the twenty-five foot (25') area between U.S. Highway 278, the S.C. Highway 46 Right-of-Way and the balance of the buffer. The intent being that the first twenty-five feet (25') of the fifty foot (50') buffer shall be landscaped and maintained. The second twenty-five foot (25') portion of the buffer shall be left as a buffer as described and contemplated in the ZDSO. The combined fifty foot (50') area shall have a natural buffer of twenty-five feet (25') and a landscaped lawn and planting area integrated with the architectural icon signage area of twenty-five feet (25') in width. Furthermore, and as depicted in the Development Plan, the buffer and setback along the southern boundary of the Property may be reduced to ~~a minimum of ten~~zero feet (~~100'~~0') ~~because of~~in areas where the existence of ~~a drainage ditch.~~The drainage ditches or issues relating to the powerline utility infrastructure and access make the requirement of a buffer impractical. In such areas, the screening fence described in and shown in the Development Plan ~~shall~~may be required.
- D. Signage.** Owner shall be entitled to all signage depicted and described in the Sign Master Plan.
- E. Voluntary Brownfield Cleanup Exemption.** ~~The County agrees that upon the issuance of the DHEC Certificate of Completion for the voluntary Brownfield Cleanup, it shall issue a resolution approving the exemption of the Property from ad valorem taxes for the~~

~~period of time described in accordance with Section 12-37-220 (44) of the South Carolina Code of Laws.~~

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

#### **XIV. DEFAULTS.**

The failure of Owner or Beaufort County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance and the termination of this Development Agreement in accordance with the Act; provided however no termination of this Development Agreement may be declared by Beaufort County absent affording Owner and any applicable Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided further that nothing herein shall be deemed or construed to preclude Beaufort County or its designee from issuing stop work orders or voiding permits issued for





With Copy To:

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

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

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

## **XVII. ENFORCEMENT.**

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

## **XVIII. GENERAL.**

### **Subsequent Laws.**

In the event state or federal laws or regulations are enacted after the execution of this Development Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement ("New Laws"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Laws, or court decision, Owner and Beaufort County shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Laws would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, Beaufort County may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, Owner, and Beaufort County each shall have the right to challenge the New Laws preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

### **Estoppel Certificate.**

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

- (i) that this Agreement is in full force and effect,
- (ii) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,
- (iii) whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and
- (iv) whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

**Entire Agreement.**

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

**No Partnership or Joint Venture.**

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

**Exhibits.**

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

**Construction.**

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

**G. Successors and Assigns.**

- (i) **Binding Effect.** This Agreement shall be binding upon Owner’s successors and assigns in the ownership or Development of any portion of the Property. Except for Owner’s continuing obligation as specifically stated in Article XVIII G (ii) (1) and G (iii) below, a purchaser or a party acquiring title to any portion of the Property or a party to whom Owner assigns Development Rights with respect to any portion of the Property (herein collectively referred to as a “Transferee”) shall, during the Term of this Agreement, be solely responsible for the performance of Owner’s obligations under this Development Agreement applicable to the portion of the Property transferred, or for which Development Rights are transferred. Each Transferee shall be required to execute a written acknowledgement assuming Owner’s obligations under this Agreement, which are directly applicable to such portion of the Property. Such acknowledgment shall be in the form provided in **Exhibit “H”** attached hereto and made a part hereof (the “Notice of Transfer”), and provided to Beaufort County at the time of recording any instrument transferring title, and development rights, of the Property or any portion of the Property. This Section shall not be construed to prevent Owner from obtaining indemnification of liability to Beaufort County from Transferees. Except as specifically set forth in Article XVIII G (ii)(1) and G (iii) below, upon transfer to a Transferee, Owner shall be released of all obligations assumed by such Transferee.
- (ii) **Transfer of all of the Property.** Owner shall be entitled to transfer the Parent Parcel (i.e. all of the Property save and except the ~~rights-of-way depicted in the Development Plan~~Road Rights-of-Way, the “Parent Parcel” ) to a Transferee subject to the following requirements:
- (1) **Owner Obligations.** Notwithstanding Owner’s right to transfer title and development rights provided in this Article XVIII G (ii) (1), Owner shall remain obligated to construct the ~~rights-of-way~~road facilities upon and convey to Beaufort County the ~~rights~~Road Rights-of-wayWay contemplated in Article XI of this Agreement. If such construction and conveyance has not occurred prior to the time of transfer of the Parent Parcel then, in such event, Owner may satisfy its obligations with respect to Owner Obligations by providing, or causing to be provided, a letter of credit, bond or other commercially acceptable form of security in an amount equal to 125% of the estimated cost for completion of such installation and/or construction.

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

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

(iii) **Transfer of any Portion of the Property.** Owner shall have the right and the obligation to transfer the rights-of-way in accordance with Article XI hereof. Owner shall also have the right to transfer any portion of the Property to a Transferee in accordance with the requirements for transfer described for Article XVIII G (ii); provided however, upon any such transfer of a portion of the Property Owner shall (i) continue to be liable for Owner's Obligations so long as Owner owns the Parent Parcel, (ii) delivers, or causes to be delivered, to County a Notice of Transfer together with the name, address, telephone number, facsimile number, and contact person for the Transferee, and (iii) the transfer to a Transferee shall be by a recordable instrument with a covenant running with the land expressly stating the precise number of commercial square footage of density being assigned to the Transferee, which assigned number shall reduce Owner's number of commercial square footage of density provided for herein.

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

**Assignment.**

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

**Governing Law.**

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

**Counterparts.**

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

**Agreement to Cooperate.**

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

**Eminent Domain.**

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

**No Third Party Beneficiaries.**

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

**Attorneys' Fees and Costs.**

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

**XIX. STATEMENT OF REQUIRED PROVISIONS.**

**Specific Statements.**

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

- (i) **Legal Description of Property and Legal and Equitable Owners.** The legal description of the Property is set forth in Exhibit “A” attached hereto and made a part hereof. The present legal owner of the Property is Georgia McCulloch and PAHH Development, LLC.
- (ii) **Duration of Agreement.** The duration of this Agreement is five (5) years unless extended pursuant to Article III hereof.
- (iii) **Permitted Uses, Densities, Building Heights and Intensities.** A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development-related standards, are contained in the Development Agreement Ordinance.
- (iv) **Required Public Facilities.** The utility service available to the Property is described in Article X. The mandatory procedures of the Development Agreement Ordinance will ensure availability of public access and utilities to serve the Property.
- (v) **Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.** The Development Agreement Ordinance contains provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws shall be complied with, except as otherwise set forth herein and in the Development Plan.
- (vi) **Local Development Permits.** The Development standards for the Property shall be as set forth in the Development Agreement Ordinance. Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Development Agreement Ordinance. Building Permits must be obtained under applicable law for any construction, and appropriate permits must be obtained from the State of South Carolina (OCRM) and the USACE, when applicable, prior to any impact upon freshwater wetlands. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Owner, its successors and assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions, unless otherwise provided in the Development Agreement Ordinance.



- (vii) **Comprehensive Plan and Development Agreement.** The Development permitted and proposed under the Development Agreement Ordinance, is consistent with the Comprehensive Plan and with current land use regulations of Beaufort County, South Carolina.
  
- (viii) **Terms for Public Health, Safety and Welfare.** The Council for Beaufort County finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of the Development Agreement Ordinance and existing laws.
  
- (ix) **Historical Structures.** No historical structures or features are present on the Property and therefore no specific terms relating to historical structures are pertinent to this Development Agreement.

~~[This page left intentionally blank.]~~ [Signatures on following pages](#)





## EXHIBIT "A"

### **Property Description**

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

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

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

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

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

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

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

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

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

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

**EXHIBIT "B"**

**Development Plan**

**EXHIBIT “C”**

**Sign Master Plan**



**EXHIBIT "D"**

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

**EXHIBIT "E"**

**Development Schedule**

Development of the Property is expected to occur in Phases over the five (5) year term of the Development Agreement, with the sequence and timing of development activity to be dictated largely by market conditions. The following estimate of expected activity is hereby included, to be updated by Owner as the development evolves over the term:

<u>Type of Development</u>	<u>Date of Commencement / Completion</u>
Phase I	0 - 15 months
Phase II	16 - 24 months
Phase III	25 - 36 months
Phase IV	37 - 48 months

As stated in Article VI of the Development Agreement, actual development may occur more or less rapidly based on market conditions and other factors.

**EXHIBIT "F"**

**BJWSA Intent to Serve Letter**

**EXHIBIT "G"**

**Icon/Monument Sign Plan**



Development Agreement applicable to the Assigned Land Use for the Property, except for the Excluded Obligations, if any. Assignee acknowledges receipt of the Development Agreement and all Exhibits thereto and with respect to the Assigned Land Use and the Property agrees to be bound by the terms thereof, and to develop the Property in accordance with such terms. The rights and obligations hereby assigned and assumed shall be covenants running with the land, binding upon the parties hereto and their successors and assigns.

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

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

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

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

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

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

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

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

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

And to Assignee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a Required Copy To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

*[Reminder of page left intentionally blank.]*







Document comparison by Workshare Professional on Friday, October 04, 2013  
12:45:28 PM

Input:	
Document 1 ID	PowerDocs://HILTONHEAD/789999/7
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Document 2 ID	PowerDocs://HILTONHEAD/789999/8
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Rendering set	Standard

Legend:	
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<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	121
Deletions	93
Moved from	12
Moved to	12
Style change	0
Format changed	0
Total changes	238

## DIVISION 2. - STREET STANDARDS

Sec. 106-2796. - Access.

Sec. 106-2797. - Street design standards.

Secs. 106-2798—106-2825. - Reserved.

### Sec. 106-2796. - Access.

(a) *Access to county, state and federal thoroughfares.* In subdivisions access to county, state, and federal thoroughfares shall be provided as follows:

(1) Street, driveway, or other access separation along county, state and federal highways shall be in accordance with the SCDOT, "Access and Roadside Management Standards," and county-approved access management plans. In no event, however, shall individual driveways and nonresidential curb cuts be permitted at spacing less than follows:

a. Major arterial road (divided four-lane): 1,500 feet.

b. Arterial road (two-lane): 800 feet.

c. Collector road and all others: 400 feet.

(2) Where existing conditions warrant, individual driveways and nonresidential curb cut spacing described in ~~article XIII, division 2, section 106-2796~~ subsection (a)(1) may be varied by the Beaufort County Traffic Engineer to provide essential site access where supported by an approved traffic impact analysis.

(3) If a road can be provided for lots (parcels), they shall be required, rather than permitting the stripping of lots (parcels) along the road frontage with individual and direct access to the roadway. The rural subdivision (subdivision II of division 4 of article XII of this chapter) is specifically designed to eliminate stripping of lots. If a property cannot be provided access through adjoining properties, a temporary access may be permitted as provided in subsection (b) of this section.

(4) Where a new internal road cannot be provided due to the depth and/or configuration of a parcel, lots (parcels) created along public road rights-of-way shall utilize shared access drives to meet the separation standards in subsection (1).

(5) Where lots (parcels) within a major subdivision are created along unpaved public road rights-of-way, the developer shall be required to either pave the portion of the road that fronts the lots per county standards or provide in escrow to the county an amount equal to the paving of that portion of the road.

## **DIVISION 3. - TYPES OF SUBDIVISIONS**

Sec. 106-2536. - Scope.  
Sec. 106-2537. - Major subdivision.  
Sec. 106-2538. - Minor subdivision.  
Sec. 106-2539. - Rural small lot subdivision.  
Sec. 106-2540. – Commercial subdivision.  
Secs. 106-2541 - 106-2565. - Reserved.

### **Sec. 106-2536. - Scope.**

There are four types of subdivisions permitted under this chapter: major, minor, ~~and rural~~ small lot, and commercial. Refer to article III of this chapter regarding review procedures for ~~major or minor~~ subdivisions.

*(Ord. No. 99-12, § 1 (div. 13.200), 4-26-1999)*

### **Sec. 106-2537. - Major subdivision.**

Major subdivisions are land developments that include subdividing any tract or parcel of land into five or more lots. Refer to section 106-18 for a detailed explanation of major subdivision. Major subdivisions shall comply with this article and article XIII and other applicable sections of this chapter. Administration for major subdivisions begins with the ZDA and receives final approval by the DRT. Refer to articles II and III of this chapter for review responsibility and procedures for major subdivisions.

*(Ord. No. 99-12, § 1 (13.210), 4-26-1999)*

### **Sec. 106-2538. - Minor subdivision.**

Minor subdivisions are land developments that include subdividing any tract or parcel of land into four or less lots. Refer to section 106-1 for a detailed explanation of minor subdivisions. Minor subdivisions shall comply with this article XII and article XIII and other applicable sections of this chapter. Administration for minor subdivisions begins and ends with the ZDA, who retains final approval authority for them. Refer to articles II and III of this chapter for review responsibility and procedures for minor subdivisions. Refer to section 106-7 for exemption options for certain types of subdivisions.

*(Ord. No. 99-12, § 1 (13.220), 4-26-1999)*

### **Sec. 106-2539. - Rural small lot subdivision.**

(a) The rural small lot subdivision is designed to allow owners of small rural lots greater flexibility to subdivide land that would normally be restricted with the application of the rural

density as prescribed in table 106-1526. The rural small lot subdivision allows a designated number of "by-right lots" to be subdivided from a parent parcel with the rural density as prescribed in table 106-1526 applying to the remainder of the parent parcel. The number of by-right lots that can be subdivided from a parent parcel are limited by the following geographic restrictions:

(1) Port Royal Island. For land zoned rural on Port Royal Island outside of the airport overlay district, parcels of record are permitted to have two by-right subdivided lots, after which the base underlying density prescribed in Table 106-1526 shall apply to the remainder of the parent parcel pursuant to the requirements of this section.

(2) Sheldon Township. For land zoned rural located north of the Whale Branch and Coosaw Rivers parcels of record are permitted to have three by-right subdivided lots, after which the base underlying density prescribed in table 106-1526 shall apply to the remainder of the parent parcel pursuant to the requirements of this section.

(3) St. Helena Island. For land zoned rural located on St. Helena Island east of Chowan Creek and the Beaufort River and south of Morgan River, parcels of record are permitted to have three by-right subdivided lots, after which the base underlying density prescribed in table 106-1526 shall apply to the remainder of the parent parcel pursuant to the requirements of this section.

(4) Applicability. The small lot rural subdivision option does not apply to rural and rural residential properties located south and west of the Broad River, on Lady's Island, and in the airport overlay district for MCAS Beaufort.

(b) Use of the small lot rural subdivision option is limited to parcels of record at July 1, 2010, and cannot be transferred to any other parcel. The requirements in subdivision II of division 4 of this chapter must be met for a development to qualify as a rural small lot subdivision. Administration for rural small lot subdivisions begins and ends with the ZDA who retains final approval authority for them. Refer to articles II and III of this chapter for review responsibility and procedures for rural small lot subdivisions.

*(Ord. No. 99-12, § 1 (13.230), 4-26-1999; Ord. No. 2010/25, 10-11-2010 )*

#### **Sec. 106-2540. – Commercial Subdivision.**

(a) Commercial subdivisions are land developments that include master planning and subdividing into two or more lots any tract or parcel of land located in commercial regional, commercial suburban, research and development, light industry, and industrial park districts. ~~The~~ These subdivisions are limited to commercial and/or industrial uses only. This type of subdivision shall be based on ~~includes all of the following:~~

(1) Separate ownership of lots, coupled with undivided interest in common property;

(2) Restrictive land use covenants or easements that govern use of both the common

area and separate ownership interests; and

- (3) Management of common property and enforcement of restrictions by a property owners' association.

(b) A master development plan for the commercial subdivision, which shall ~~comply with the ZDSO and be approved~~ show buildout of the project, including proposed lots and outparcels, shall be submitted for Conceptual Development Plan review and approval by the DRT. The master development plan shall be accompanied by a traffic impact analysis (TIA) and include a master signage plan depicting signage to be used by the owners of lots in the commercial subdivision.

(bc) Commercial subdivisions shall be subject to restrictive land use covenants or easements, which provide for the installation, maintenance, and shared use of infrastructure and common areas among the lots depicted in a commercial subdivision master development plan. Such restrictive covenants or easements shall provide for shared access, ingress, egress, parking, common area ownership and maintenance, utility and stormwater infrastructure, signage in accordance with the master signage plan and landscaping among the lots in the commercial subdivision. Said restrictive land use covenants or easements ~~shall provide that any and all amendments thereto~~ shall comply with the ZDSO and shall be recorded ~~on the land records prior to the recording of any~~ concurrent with the sale or transfer of any lot within the commercial subdivision plat. Once the,

(d) Except for outparcels, unless such outparcels are shown and included in the master development plan ~~is approved in accordance with this article, the~~ for the commercial subdivision of individual lots in the commercial subdivision shall be exempt from the ZDSO within a commercial subdivision are exempt from the open space and density, lot and building intensity, and bufferyard and landscaping standards of Article VI; the site capacity and resource protection standards in Article VII, except for tree protection and removal; and parking standards in Article XIII. The intent being that the commercial development will meet these standards as a whole during review of the master development plan, and that subsequent to subdivision, the lots depicted in the master development plan for a commercial subdivision shall be used and shall operate together as a single master planned development. ~~(e) Administration of subdivisions of land~~ Where applicable; however, individual lots within a commercial subdivision ~~with a development plan approved in accordance with this article, begins and ends with the ZDA who retains final approval authority,~~ shall meet the Corridor Overlay District Guidelines in Appendix B, except that perimeter buffer requirements (See Appendix B, Sec. 5.A.2.d) shall not apply between individual lots in the commercial subdivision.

(e) Amendments to the commercial subdivision, including but not limited to the size, dimension and number of lots depicted therein, shall be approved by the DRT.

(f) The original developer of a commercial subdivision may or may not actually develop the entire project to completion. As an exception to the subdivision process outlined in this Chapter,

the developer of a commercial subdivision may sell or transfer ownership of lots with the commercial subdivision in accordance with the following procedures and provisions:

(1) Prior to the sale or transfer of lots, the developer shall build any necessary off-site improvements for the development, including those identified in the traffic impact analysis (TIA), water/sewer extensions to the site, etc., or the developer may elect to provide surety in the amount of 125% of the cost estimates for such improvements in accordance with Article XIII, Division 7 (Performance Guarantees).

(2) Property covenants and restrictions (see subsection (c) above), must accompany the sale or transfer of any lot with the commercial subdivision restricting the new owner to the development shown on the approved master development plan.

(3) The developer shall submit to the ZDA a sworn affidavit from the prospective purchaser of a lot wherein the purchaser waives his or her right to the guarantee of the installation of required improvements afforded through this Chapter for the subdivision of land, and further states that he or she understands that a final development plan application must be submitted and approved, and a development permit issued by the County in accordance with the procedures in Article III (Administrative Procedures) prior to commencement of any development on the lot;

~~(d) Amendments to the commercial subdivision development plan, including but not limited to the size, dimension and number of lots depicted therein, shall be approved by the DRT.~~  
4) The developer shall submit a plan for certification for recording to the ZDA and subsequently record such plat prior to sale or transfer of any lot in the commercial subdivision.

*(Ord. No. 99-12, § 1 (13.230), 4-26-1999; Ord. No. 2010/25, 10-11-2010)*

**Secs. 106-2541—106-2565. - Reserved.**

(1) Wall sign. The maximum sign area shall be the lesser of 15 percent of the area of the wall or 80 square feet. The area of letters only signs shall be computed as the area of an imaginary rectangle enclosing the lettering.

(2) Projecting sign. One projecting sign per business frontage perpendicular to the wall of a building and consisting of an area not exceeding 32 square feet. Signs attached perpendicular to the wall of a building shall not extend outward from the wall more than 8½ feet.

(3) Ground sign (freestanding). One per each highway frontage, not exceeding ten feet in overall height, 15 feet in width, with a maximum allowable area of 80 square feet.

(b) On-premises signs shall be erected so as not to obstruct or impair driver vision at business or other use's ingress-egress points and intersections.

(c) When necessary to facilitate traffic movement, such on-premises signs stating "enter," "exit," "drive-in," "service entrance," "no parking," etc., without any other advertising words or phrases, may be installed without a permit fee after proper notification to the inspection department. The maximum area of each sign shall not exceed six square feet.

(Ord. No. 99-12, § 1 (16.220), 4-26-1999)

**Sec. 106-3173. - Shopping centers, commercial subdivisions or multiple-tenant buildings.**

(a) *Identification sign.* Shopping centers, commercial subdivisions, malls and multiple-tenant buildings may erect either one 80-square-foot freestanding ground sign, which may be used as an identification sign, directory listing, or combination thereof, on each street or highway frontage except where the frontage exceeds 500 feet. An additional sign may be allowed provided it does not exceed 80 square feet in area, and the total area of all freestanding signs do not exceed the maximum allowable area as specified in subsection (b) of this section.

(b) *Total maximum allowable area.* The total maximum allowable area shall be as follows:

(1) For shopping centers, commercial subdivisions, and/or multiple-tenant buildings fronting on one street or highway, the maximum total freestanding area is 160 square feet.

(2) For shopping centers, commercial subdivisions, and/or multiple-tenant buildings fronting on two streets or highways, the maximum total freestanding area is 240 square feet.



(3) Individual businesses within a shopping center, commercial subdivisions, and/or multiple-tenant ~~building~~buildings may erect wall and/or projecting signs consistent with section 106-~~3172~~3172.

(4) Individual businesses within a complex and individual lots within a commercial subdivision (excluding outparcels) shall not be allowed to have separate freestanding signs.

(Ord. No. 99-12, § 1 (16.230), 4-26-1999)

### **Sec. 106-3174. - Off-premises signs.**

(a) *Generally.* Standards for off-premises signs are as follows:

(1) Except for commercial subdivisions, subject to the provisions of section 106-3173, and except as provided for in subsections (a)(7) and (8) of this section, all commercial, off-premises signs are banned in the areas of the ~~County~~county to which this chapter applies.

(2) Noncommercial, off-premises signs shall be limited to the location and design standards set forth in this section; provided, however, that noncommercial off-premises signs and noncommercial on-premises signs may be placed on any premises where on the placement of commercial on-premises signs is allowed, and such noncommercial off-premises signs and noncommercial on-premises signs shall be subject to the size standards set forth in section 106-3173

(3) Subject to subsections (a)(1) and (2) of this section, the following shall apply to all noncommercial off-premises signs:

a. Off-premises signs may be located only within 600 feet of a commercial business or industrial operation measured from the centerline of the commercial or industrial structure and only on the same side of the highway as the commercial use.

b. Commercial business or industrial operation does not include the following:

1. Such activities not visible from the main-traveled thoroughfare;
2. Transient or temporary activities;
3. Outdoor advertising structures;
4. Agricultural, forestry, ranching, grazing or farming activities;

(1) Wall sign. The maximum sign area shall be the lesser of 15 percent of the area of the wall or 80 square feet. The area of letters only signs shall be computed as the area of an imaginary rectangle enclosing the lettering.

(2) Projecting sign. One projecting sign per business frontage perpendicular to the wall of a building and consisting of an area not exceeding 32 square feet. Signs attached perpendicular to the wall of a building shall not extend outward from the wall more than 8½ feet.

(3) Ground sign (freestanding). One per each highway frontage, not exceeding ten feet in overall height, 15 feet in width, with a maximum allowable area of 80 square feet.

(b) On-premises signs shall be erected so as not to obstruct or impair driver vision at business or other use's ingress-egress points and intersections.

(c) When necessary to facilitate traffic movement, such on-premises signs stating "enter," "exit," "drive-in," "service entrance," "no parking," etc., without any other advertising words or phrases, may be installed without a permit fee after proper notification to the inspection department. The maximum area of each sign shall not exceed six square feet.

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