

# Town of Port Royal, South Carolina

## Council

Samuel E. Murray  
Mayor

Vernon DeLoach  
Mayor Pro Tempore

Mary Beth Heyward  
Tom Klein  
Joe Lee



Van Willis  
Town Manager

T. Alan Beach  
Chief of Police

Jeffrey S. Coppinger  
Daniel G. Lemieux  
Operations

Linda Bridges  
Planning

## ORDINANCE 2012-24

**AN ORDINANCE AUTHORIZING THE MAYOR OF PORT ROYAL TO EXECUTE ON BEHALF OF THE TOWN A DEVELOPMENT AGREEMENT WITH THE SOUTH CAROLINA STATE PORTS AUTHORITY PERTAINING TO APPROXIMATELY 317 ACRES OF HIGHLAND AND WETLANDS LOCATED IN THE TOWN AND GENERALLY KNOWN AS THE SOUTH CAROLINA STATE PORTS AUTHORITY PORT ROYAL TERMINAL.**

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Town of Port Royal, South Carolina, duly assembled and by authority of same:

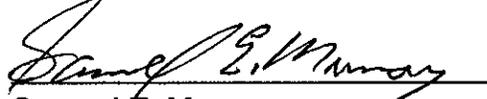
Section 1. The Mayor of Port Royal is hereby authorized to execute on behalf of the Town a Development Agreement with the South Carolina State Ports Authority pertaining to approximately 317 acres of highland and wetlands located in the Town and generally known as the South Carolina State Ports Authority Port Royal Terminal, a copy of said Development Agreement being attached hereto as Exhibit A and incorporated herein by reference.

Section 2. This Ordinance shall become effective upon adoption by Town Council.

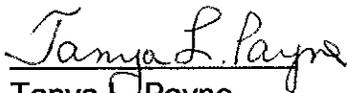
### REQUESTED BY:

  
Milton E. Willis  
Town Manager

### APPROVED BY:

  
Samuel E. Murray  
Mayor

### ATTEST:

  
Tanya L. Payne  
Municipal Clerk

Introduced: December 12, 2012

Final Reading: January 9, 2013

# DEVELOPMENT AGREEMENT

By and Between

TOWN OF PORT ROYAL, SOUTH CAROLINA,

AND

SOUTH CAROLINA STATE PORTS AUTHORITY

Adopted February 14, 2013

Prepared By:  
Neil C. Robinson, Jr., Esquire  
George J.R. Bullwinkel, III, Esquire  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, S.C. 29401

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EXHIBIT A - PROPERTY DESCRIPTION

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EXHIBIT F – SEAFOOD-FUEL FACILITIES

STATE OF SOUTH CAROLINA

) DEVELOPMENT AGREEMENT

COUNTY OF BEAUFORT

) (PORT PROPERTY)

This Development Agreement ("Agreement") is made and entered this 14<sup>th</sup> day of February, 2013 (the "Effective Date"), by and between the Town of Port Royal, a political subdivision of the State of South Carolina (the "Town"), and the South Carolina State Ports Authority, an instrumentality of the State of South Carolina created by 1942 Act No. 626 of the South Carolina General Assembly (the "Owner").

**WHEREAS**, the legislature of the State of South Carolina has enacted the "South Carolina Local Government Development Agreement Act," (the "Act") as set forth in Sections 6-31-10 through 6-31-160 of the South Carolina Code of Laws (1976), as amended; and,

**WHEREAS**, the Act recognizes that "The lack of certainty in the approval of development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and development to escalate, and can discourage commitment to comprehensive planning." [Section 6-31-10 (B)(1)]; and,

**WHEREAS**, the Act also states: "Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the Development Agreement or in any way hinder, restrict, or prevent the development of the project. Development Agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State." [Section 6-31-10 (B)(6)]; and,

**WHEREAS**, the Act further authorizes local governments, including Town governments, to enter into Development Agreements with land owners to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and,

**WHEREAS**, Owner owns approximately 317 acres of highland and wetlands, generally known as the South Carolina State Ports Authority Port Royal Property, as more particularly depicted on that certain plat by Thomas & Hutton Engineering dated December 20, 2006 and recorded in the Beaufort County RMC Office on October 17, 2007 in Book 122, pages 32-35 (the "Property"); and,

**WHEREAS**, the Town 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**, the Town and the Owner acknowledge that the redevelopment of the Property represents an opportunity to redefine a major public connection to the water within the Town of Port Royal and Beaufort County; and,

**WHEREAS**, the approved Planned Unit Development (PUD) plan (as hereinafter defined) will allow for development that preserves and extends the Town's traditional character into the Property by promoting a mix of land uses and residential types to support a variety of choices in lifestyles and needs of the citizens of the Town; and,

**WHEREAS**, the Town finds the PUD and this Agreement are consistent with the Town's Comprehensive Land Use Plan;

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

**I. INCORPORATION.**

The above recitals are hereby incorporated into this Agreement, together with the South Carolina General Assembly findings as set forth under Section 6-31-10(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; incorporated herein by reference.

**"Adjacent Land"** shall mean any real property adjacent to The Project.

**"Agreement"** shall mean this Development Agreement as it may be amended from time to time in accordance with the Act.

**"Association"** shall mean one (1) or more property owners' associations established to maintain portions of the Property.

**"BJWSA"** shall mean the Beaufort/Jasper Water and Sewer Authority, its successors or assigns.

**"Civic Open Space"** shall mean areas dedicated to landscaped areas including manicured village greens, forest, wildlife preserves/corridors, conservation areas and greenbelts, community garden plots, recreation areas including but not limited to: swimming pools, tennis courts, playgrounds, ball fields, lawn game fields, gardens, and pedestrian/bicycle trails as set forth in the PUD.

**"Developer"** means all successors in title or lessees of the Owner who undertake Development of the Property and are assigned in writing portions of the Development Rights from the Owner.

**"Development"** means the development of portions of the Property and construction of improvements thereon as contemplated in the Zoning Regulations.

**"Development Rights"** means the rights of the Owner or Developer accorded by the Zoning Regulations and this Development Agreement.

**"Facilities"** means major capital or community improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, electricity and potable water.

**"Marina Village"** is the area so designated "MV" on the Regulating Plan of the PUD.

**"Open Space/Seafood-Fuel Facilities"** means the areas designated "COS" on the Regulating Plan of the PUD, to include the existing seafood processing facility and dock system located generally at the west end of 11<sup>th</sup> Street along Battery Creek that is currently under license to the Town, and the area adjacent thereto containing fuel facilities.

**"Owner"** means South Carolina State Ports Authority, its successors and assigns.

**"PUD Plan"** is the Regulating Plan attached to the PUD, as same may be modified by agreement of the Owner and the Town.

**"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, attached hereto as part of Exhibit E.

**"Public Safety Services"** shall mean the Town's Police and Fire services.

**"Term"** means the duration of this agreement as set forth in Section III hereof.

**"The Project" "PUD," or "Project"** means the Redevelopment of the Property, as described on Exhibit A, as may be amended with the agreement of the Town and Owner.

**"Town"** shall mean Town of Port Royal, South Carolina.

**"Zoning Regulations"** means the Planned Unit Development for the Property establishing a planned unit development for the Property, and all the attachments thereto, including but not limited to the PUD Regulating Plan, all narratives, applications, and the site development standards thereof, a copy of which is attached hereto as Exhibit B and made a part hereof, this Development Agreement, and the Town of Port Royal Zoning and Development

Ordinances dated January 10, 1979 as amended through the date of this Agreement, except those provisions thereof that are clarified or modified by the PUD and this Agreement, said ordinances being attached hereto as Exhibit C and made a part hereof.

**III. TERM.**

The term of this Agreement shall commence on the date this Agreement is executed by the Town and terminate five (5) years thereafter; provided however, that the Town, in its sole discretion, may renew or extend the term of this Agreement for such period of time as it may deem appropriate and as is consistent with the Act.

**IV. DEVELOPMENT OF THE PROPERTY.**

The Property shall be developed in accordance with the Zoning Regulations, the PUD Plan and this Agreement. All costs charged by or to the Town for reviews required by Town Zoning Ordinance shall be generally charged throughout the Town for plan review and shall be paid by the applicant requesting such review. The Town shall, throughout the Term, maintain or cause to be maintained, a procedure for the processing of reviews as contemplated by the Zoning Regulations and this Agreement.

Owner acknowledges that certain permits may be required prior to the initiation of Development to include permits or authorization from the Town's planning commission, board of zoning appeals, building code official and design review entity as hereafter established, the South Carolina Department of Transportation, the Department of Health and Environmental Control and its Office of Coastal Resource Management and the U.S. Army Corps of Engineers. Owner further acknowledges, for itself and its successors in title, that the failure of this listing of permits to be all inclusive does not relieve it or Developers from the necessity of complying with laws or regulations governing permitting requirements, conditions, terms or restrictions.

**V. CHANGES TO ZONING REGULATIONS.**

The Zoning Regulations relating to the Property subject to this Agreement shall not be amended or modified during the Term, without the express written consent of the Owner except in accordance with the procedures and provisions of Section 6-31-80(B) of the Act, which Owner shall have the right to challenge. Owner does, for itself and its successors and

assigns, including Developers and notwithstanding the Zoning Regulations, agrees to be bound by the following:

A. The Owner shall be required to notify the Town, in writing, as and when Development Rights are transferred to any other party. Such information shall include the identity and address of the acquiring party, a proper contact person, the location and number of acres of the Property transferred, and the number of residential units and/or commercial acreage, as applicable, subject to the transfer. 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 required to file with the Town an acknowledgment of this Agreement and a commitment to be bound by it.

B. The Owner and Developers, and their respective heirs, successors and assigns agree that all Development will be served by potable water and sewer prior to occupancy, except as otherwise provided herein for temporary use, temporary being defined as one year or less. Septic tanks and/or wells may be allowed with the permission of BJWSA where there is a specific finding that such use for specific portions of the Property will comply with the overall environmental standards. .

C. Owner, for itself and its successors and assigns, covenants that any future dry stack boat storage facility may not be built such that it impairs the view of the water within the extended right of way boundaries of London Avenue. Owner and Town agree that within twelve (12) months of execution of this Agreement the PUD will be amended to provide that dry stack storage is an approved use only in areas of the Property south of the northern boundary of the Marina Village, and consistent with the covenant set forth in the preceding sentence. Additionally, at the same time the PUD shall also be amended to revise Regulating Plan attached hereto as Exhibit B to accurately reflect the location and size of each zoning district as is more fully described therein.

## **VI. SCHEDULE FOR PROJECT DEVELOPMENT.**

The schedule for Project Development is set forth in Exhibit D, incorporated herein by reference. The schedule is a planning and forecasting tool only, and shall not be interpreted as

mandating the development pace initially forecasted or from preventing a faster pace if market conditions support a faster pace. In accordance with the Act, the failure of the Owner to meet the commencement or completion dates, with the exception of (i) the defined performance standards relating to improving and conveying the Civic Open Spaces and Seafood–Fuel Facilities as set forth in Section X(E) of this Agreement and (ii) the failure to timely pay property taxes in the event a Tax Increment Financing District is established on some or all of the Property, shall not, in and of itself, constitute a material breach of this Agreement, but shall be judged based on the totality of circumstances.

## VII. DENSITY.

Mixed use, residential and commercial Development and other uses on the Property shall be allowed at the densities and intensities as set forth in the PUD, to wit:

A. **Residential Density.** Up to a maximum of 425 residential density units, plus any conversion allowed under the PUD.

B. **Commercial Density.** Up to a maximum of 35 acres of commercial Development, upon which up to 250 thousand square feet of ground (first) floor commercial density may be located, plus any conversion allowed under the PUD.

Property converted from commercial land to residential land, or vice versa, pursuant to this paragraph shall be subject to the permitted uses, as described in the PUD, Permitted Land Use Matrix. Owner and Developer shall notify the Town of conversions during the prior year during each annual compliance meeting.

## VIII. EFFECT OF FUTURE LAWS.

Owner and Developers, with the approval of Owner, shall have vested rights to undertake Development of any or all of the Property in accordance with the Zoning Regulations, as defined herein and modified hereby, and as may be modified in the future pursuant to the terms of this Agreement for the entirety of the Term. Future enactments of, or changes or amendments to the Town ordinances, including zoning or development standards ordinances which conflict with the Zoning Regulations shall not apply to the Property unless the procedures

and provisions of § Section 6-31-80(B) are followed, which Owner shall have the right to challenge. Notwithstanding the above, the Property will be subject to the most current fire safety standards, the most current stormwater regulations and any state and/or federal environmental guidelines standards of general application.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present or future building, housing, electrical, plumbing, gas or other standard codes, or any ad valorem tax of general application throughout the Town, found by the Town to be necessary to protect the health, safety and welfare of the citizens of the Town.

#### **IX. INFRASTRUCTURE AND SERVICES**

Although the nature of the Project prevents the Owner from providing exact completion dates, the general phases of Construction and Development are set forth in Exhibit D. The Owner certifies that the following services and Facilities will be in place (or if not fully in place, the cost of construction fully bonded or letter of credit posted as approved by the Town pursuant to Section XI.F herein) at the times provided herein, and as to roads, sewer, and water infrastructure, at the times lots or dwelling units in subdivided real property or condominium units on recorded master deeds are offered for purchase to the public. Subject to compliance with applicable laws and with all provisions of this Agreement, the Town consents to the installation of the Facilities. Notwithstanding any provision herein to the contrary, adequate Facilities shall be available concurrent with the impacts of Development.

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

**A. Roads.** All roads within the Property shall be constructed by the Developer or other parties and maintained by such party(ies) and/or Association(s), or dedicated for maintenance to other appropriate entities, unless specifically provided otherwise herein. Except as provided in this Agreement, the Town will not be responsible for the construction or maintenance of any roads within the Property, unless the Town specifically agrees to do so in the future. Owner acknowledges that it must comply with all applicable state statutes and rules and regulations of the South Carolina Department of Transportation (SCDOT)

or its successors regarding access, use and construction of all roads. Deviations from SCDOT statutes, rules and regulations must be approved in advance by the Town.

**B. Public Roads.** All public roads outside the Property that serve the Property are under the jurisdiction of the Town of Port Royal regarding access, construction, improvements and maintenance. Owner acknowledges that it must comply with all applicable statutes and rules and regulations of the Town or its successors regarding access and use of such public roads. Future public roads may serve the Property. The Town shall be responsible for construction, improvements or maintenance of the public roads which now or hereafter serve the Property, except as set forth in this Agreement or it otherwise agrees, in conformance with SCDOT specifications or as otherwise specified by the Town. If public roads are constructed in the future, with the consent of the Town, at the request of Owner, Owner or an established property owners' association may be given responsibility for the maintenance of all landscaping. If the Town, through the exercise of its condemnation authority, constructs public roads within the Property in the future, the Owner or an established property owners' association may, at its request, be responsible for the maintenance of all landscaping but shall have no obligation to do so. The Property shall be served by direct access to the existing roads, and the proposed roads or offsite road improvements as shown on the PUD Plan. The Owner shall have the right to design and construct, upon obtaining permits from applicable governmental authorities, roadways designated on the PUD Plan, provided such design is in conformance with and capable of absorbing the traffic load created by the development of the Property. To the extent that any third party is permitted by the Town to utilize any public road right-of-way within the Property to install underground utilities or other public services within such road right-of-way, then the Town shall require that such party perform such work in a good and workmanlike manner and to promptly restore any damage to the right-of-way and/or landscaping or other improvements in connection therewith. To the extent practical, Developer will utilize construction accesses and temporary construction roads to minimize the use by construction vehicles and construction supply trucks of the public roads to be constructed, to avoid undue wear and tear.

**C. Potable Water.** Potable water shall be supplied to the Property by BJWSA which is allowed to operate in the Town. The Town shall not be responsible for any construction, treatment, maintenance or costs associated with water service to the Property unless the Town elects to provide such services with the agreement of the applicable utility

authority then providing such service to the Property. Developer will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the service provider as provided in any utility agreement between Developer and the service provider.

**D. Sewage Treatment and Disposal.** Sewage treatment and disposal shall be provided by BJWSA which is allowed to operate in the Town. The Town will not be responsible for any treatment, maintenance or costs associated with sewage treatment within the Property, unless the Town elects to provide such service with the agreement of the applicable utility authority then providing such service to the Property. Nothing herein shall be construed as precluding the Town from providing sewer services to its residents in accordance with applicable provisions of law. Developer will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the provider as provided in any utility agreement between Developer and the service provider.

**E. Police Services.** Town shall provide police protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the Town. Owner acknowledges jurisdiction of the Town Police on the Property and shall not interfere or in any way hinder law enforcement activities on the Property.

**F. Fire Services.** Town shall provide fire protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the Town. Owner acknowledges the jurisdiction of the Town's fire department on the Property and shall not interfere or in any way hinder public safety activities on the Property.

**G. Sanitation Services.** The Town will provide sanitation services to the Property on the same basis as is provided to other similarly situated residents and businesses in the Town.

**H. Drainage System.** All stormwater runoff, treatment and drainage system improvements within the Property will be designed in accordance with the Zoning Regulations and Best Management Practices or as otherwise stipulated in the PUD and agreed upon by the parties pursuant to this Agreement. All stormwater runoff, treatment and drainage system improvements for the Property shall be constructed and maintained by Developer. The Town

will not be responsible for any construction or maintenance cost associated with the stormwater runoff, treatment and drainage system within the Property.

**I. Stormwater Quality.** Protection of the quality of nearby waters and wetlands is a primary goal of the Town. The Owner and Developers shall be required to abide by all provisions of federal and state laws and regulations, including those established by the Department of Health and Environmental Control, the Office of Ocean and Coastal Resource Management, future Town Stormwater Management Programs and Regulations as may be dictated by Phase 2 Small MS4 regulations, and their successors, for the handling of storm water. If the Town adopts new Town-wide stormwater ordinances, such ordinances shall apply to all Development permitted after their effective dates. Further provisions regarding stormwater are included within the PUD for this Project.

#### **X. CONVEYANCES AND CONTRIBUTIONS.**

The Town and Owner understand and agree that future development of the Property shall result in additional public services being required to be provided by the Town. The Developer may also wish to convey ownership of certain infrastructure to the Town for operation and maintenance. The Town will maintain the full authority to accept or decline conveyance of infrastructure. Conveyances may include roadways, drainage systems, parks, stormwater management systems and waterfront facilities.

**A. Full Satisfaction.** Except with respect to the dedications and/or conveyances of the properties referred to in Subsection E below, no other dedications or conveyances of lands for public facilities shall be required in connection with the development of the Property.

**B. Upland Gross Acres.** All conveyances and dedications of lands pursuant to this Agreement shall mean upland gross acres of highlands, net of wetlands.

**C. Other Authorities.** 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 Tax Increment, FILOT, Multi-Town Business Park, 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

subject Property is located in an area of the Town which has a 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 Owner acknowledges the Property is currently located in a Multi-County Business Park.

Upon request of the Owner to establish or amend a Tax Increment Financing and/or a Municipal Improvement District for all or part of the Property subject to this Agreement, the Town agrees to implement such a District, provided it is satisfied with the improvements to be funded thereby and the economic feasibility thereof. The Town has the option, but not the obligation, to assist with the construction of the Park Sites and Pedestrian Waterfront Boardwalk/Promenade/Trail, as more fully defined in Section X(E), with monies generated by a Tax Increment Financing or Municipal Improvement District.

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

**D. Town Costs.** Owner agrees to pay the reasonable costs and expenses of the Town's consultants and professionals incurred in negotiating, processing and evaluating this Agreement and the accompanying PUD and in forming and implementing any Tax Increment Financing (TIF) or Municipal Improvement District (MID) up to a total of \$64,500.00. Town will provide sufficient documentation of these charges. Owner shall pay such fees within 60 days of the delivery of the invoice(s). Notwithstanding the above, the Town acknowledges that the Owner has advanced \$22,039.43 of the reasonable costs and expenses referenced above and this shall be credited toward the total \$64,500.00 cap on reimbursement.

**E. Civic Open Space/Seafood - Fuel Facilities.** The Developer shall convey portions of the Civic Open Space, as established in Exhibit B, to the Town, as hereafter set forth. With the exception of Civic Open Space conveyed to the Town, the Developer will at all times reserve to itself, its successors and assigns easements for access and infrastructure

purposes (roads, walkways, paths, utility easements and rights of way, etc.) necessary for the Development.

A portion of the Marina Village, as depicted on the Regulating Plan attached hereto as Exhibit B, is now under license to the Town and is utilized as a seafood processing facility. An area adjacent thereto currently houses fuel facilities (herein "Seafood-Fuel Facilities") Owner and Town acknowledge the significant contribution the seafood industry has made to the Lowcountry in general, and the Town in particular, and that the continued presence of the industry in the Town is an important aspect of the Town's heritage and tradition. It is agreed that within six (6) months of acquiring title to the Property from the current Owner, the Developer and the Town shall consummate a land swap whereby the Developer shall convey to the Town insurable title by special warranty deed and bills of sale, as appropriate, to the Seafood-Fuel Facilities, the same being the land and portion of the building now occupied by the Town under a licensee from the SPA and the fixed dock under said license, and the adjacent fuel facilities all as shown on Exhibit E, and the Town shall convey to the Developer insurable title by special warranty deed to the Town-owned property that abuts the Marina Village portion of the Property as shown on the Regulating Plan. The consideration for each transaction will be three (\$3.00) dollars. The costs of the transactions shall be the sole responsibility of the Developer, to include, but not limited to, costs of surveys, title insurance and any improvements as may be necessary to subdivide and secure the property being conveyed to the Town from the property to be retained by the Developer. At the time of conveyance, this Agreement and the PUD shall be amended to: (1) subject the Town-owned property to this Agreement and the provisions of the PUD pertaining to the Marina Village; and (2) delete the Seafood-Fuel Facilities (including docks) being conveyed to the Town from the provisions of this Agreement and the PUD. The Town shall continue to have the right to use the Seafood-Fuel Facilities until consummation of the swap on the same terms and conditions as it currently uses said facilities.

**F. Park Sites:** The Developer shall improve and transfer to the Town: (1) an approximate 9.80 acre parcel (the "London Avenue Park"); and (2) an approximate one (1) acre parcel (the "Paris Avenue Park") (collectively, the "Park Sites"), as shown on the Regulating Plan attached as Exhibit B.

Improvements to the London Avenue Park shall include design and construction of a grading plan that will allow the London Avenue Park to function as an open recreational space. Such improvements will be completed in phases which may include such activities as site grading, filling, construction of sloped banks, retaining walls or revetments to contain fill and

define the park boundaries. All fencing and other vertical security structures will be removed and properly disposed of. Existing stockpiled fill material on site will be spread and graded to create a usable surface that meets the elevation requirements noted below. The final grade will be cleaned of any debris or rubble. All disturbed areas will be stabilized with perennial grass. Established final grade shall be a minimum of six (6) inches above the level of the highest seasonal high tide elevation and constructed in a manner to allow proper drainage. Remaining areas will be retained for future public recreational use. Electricity, potable water and sewer will be stubbed in and made available in the park.

Improvements to the Paris Avenue Park shall include design and construction of a grading plan that will allow the Paris Avenue Park to function as an open recreational space. Such improvements may include, but not be limited to, grading, filling, construction of retaining walls or revetments to contain fill and define the park boundaries. All fencing and other vertical structures will be removed and properly disposed of. All exposed rubble or other non-native materials along the first ten (10) feet of shoreline shall be removed from the site. The park will be designed to provide both active and passive recreation, scheduled and unscheduled recreation activities and a social gathering place. Facilities will be pedestrian-oriented and provide visual enhancement, a sense of identity, opportunities for social interactions, enjoyment of outdoor open space and performing and visual arts. Features may include urban style plazas, water features and trail connections, oriented to pedestrian and/or bicycle use. Park architectural characteristics will reflect the nearby built environment. The park will be designed to have high visibility, easy access, incorporate basic utilities to include bathrooms and potable water, landscaped vegetated areas, ample seating, high quality materials, a focal point or identity, and an inviting and safe atmosphere.

Conveyance of the Park Sites shall be by way of special warranty deeds, which shall convey insurable title to the Town for the consideration of one (\$1) Dollar, free and clear of encumbrances, with the exception of those permitted encumbrances mutually agreed upon by the parties. All expenses of transfer, including but not limited to surveys, title insurance and recording costs, shall be the responsibility of the Developer.

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

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

All expenses of improvements and transfer, including but not limited to surveys, title insurance and recording costs, shall be the responsibility of the Developer. Notwithstanding the preceding sentence, Owner acknowledges that the Town has received a grant which may be utilized by the Town to assist in the construction of improvements to this amenity and agrees to take all reasonable and practical steps to assure the grant can be used for this purpose, including granting an easement or conveying title to the envelope within which the Pedestrian Promenade is to be constructed. Owner acknowledges that the grant must be utilized by November 2013.

The Park Sites and any remaining portion of the Pedestrian Promenade not previously conveyed to the Town per the preceding paragraph shall be improved and conveyed to the Town no later than the second anniversary of the conveyance of the Property to a Developer by the current Owner. This obligation will be incorporated in the deed of conveyance and will provide for enforcement rights by the Town. The failure to timely complete and convey the Park Sites and Pedestrian Waterfront Boardwalk/Promenade/Trail shall constitute a material breach of this Agreement, entitling the Town to pursue any and all remedies available to it in such instances and that are consistent with the Act. In addition, upon a material breach, the Town shall be entitled to revoke building permits and withhold the processing of any Development applications pending Developer's compliance with the provisions hereof. Nothing herein shall be construed to prevent the Town from modifying the timing of the improvements and conveyances on such terms and with such conditions as it may deem appropriate. Notwithstanding the foregoing, if no conveyance has occurred prior to expiration of the initial term of this Agreement, the London Avenue Park Site will be conveyed to the Town by the current Owner within two (2) months of the expiration of the initial Term, and this obligation shall survive the initial Term of the Agreement.

As to the Additional Open Space required per Sec. 3.4 of the PUD, the Town shall have the option, but not the obligation, to accept title to that acreage. The Owner of the acreage or any portion thereof shall notify the Town when the improvements to such acreage or portion, as applicable, are substantially completed. The Town shall provide notice of its intent to accept title within forty-five (45) days of its receiving written notice from the Owner that the improvements to the acreage or such applicable portion thereof have been substantially completed. In the event the Town elects to accept title, written notice shall be given to the Owner and conveyance to the Town by special warranty deed of insurable title to such acreage shall be consummated within forty-five (45) days of the Town's notice of election to accept title. All expenses of conveyance,

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

H. Existing Drystack Facility – Within twelve (12) months of the conveyance of the Property by the current Owner, the existing drystack facility on the Property must be dismantled and removed from the Property. If the current Owner has not conveyed the Property at the expiration of the initial Term of this Agreement, the current Owner shall dismantle and remove the drystack facility from the Property within two (2) months of the expiration of the initial Term, and this obligation shall survive the initial Term of the Agreement.

#### XI. PERMITTING PROCEDURES.

A. The Town agrees that any Developer is not required to phase development but shall have the right to do so.

B. The Town agrees to review all land use changes, land development applications, and plats in an expeditious manner in accordance with the Town Regulations as modified by the PUD for this Project. Developer may submit these items for concurrent review with the Town and other governmental authorities. Town may give final approval to any submission, but will not grant authorization to record plats or begin development construction activities until all permitting agencies have completed their reviews.

C. Signage for the Project is governed by the provisions of the PUD, attached as Exhibit E, for this Project.

D. The Town will maintain full authority to approve the design and architectural aspects of Development associated with the Project. The Town may employ, at its sole discretion, the services of outside professionals for assisting the Town with architectural reviews. Developer will be required to reimburse the Town for all outside professional services costs associated with such outside professional services. Owner shall pay such fees within 30 days of the delivery of an invoice from the Town as more fully set forth in Subsection E below.

E. Development plans for the Property shall be reviewed by the Town planner, building codes staff and other retained design professionals, to include an architect and

engineer (the "Port Redevelopment Design Review Staff" or "PRDRS"). In addition to fees charged town-wide for Development Permits, Developer shall be required to pay a Port Redevelopment Design Review Staff fee, said fee for each Development Permit application being an amount equal the actual costs incurred by the Town for the services of retained design professionals per Development application.

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

F. The Town agrees: (i) to allow plat recording at any time with a bond in the amount of one hundred twenty-five percent (125%) of the Developer's engineer's estimated cost of completion of the infrastructure development, that has been reviewed and approved by the Town; and (ii) to issue building permits and permit sale of lots prior to completion of such bonded infrastructure, in accordance with the Town Regulations for this Property.

G. The Town agrees the Property shall be governed by Zoning Regulations. If future regulations are more desirable to Owner, then Owner may elect to have such regulations become applicable to any portion of the Project that Owner designates.

H. The Town agrees that the Property is approved and fully vested for intensity, density, uses and height, and shall not have any obligations for on or off site transportation or other facilities or improvements other than as specifically provided in this Agreement. All Development must adhere to the then current PUD Plan and subdivision plat and development plan procedural guidelines. The Town may not impose additional development obligations or regulations in connection with development of the Property, except in accordance with the procedures and provisions of § 6-31-80 (B) of the Act, which the Owner shall have the right to challenge.

I. Roadways may utilize swale drainage systems and are not required to have raised curb and gutter systems, provided that pedestrian and non-vehicular pathways or sidewalks as required by Article 5.0 of the PUD are provided to achieve interconnectivity between interior subdivisions, commercial or institutional areas and public gathering areas. Roadway cross sections utilizing swale drainage will be designed, constructed and maintained

to meet BMP standards as stipulated by the Town for stormwater quality. Roadway cross sections will be reviewed at time of proposed construction of such roadway based upon engineering and planning standards consistent with the PUD Plan prepared by Developer, subject to the approval of the Town Planning Administrator.

J. All other plan review fees, except as noted in Item E above, shall be consistent with the fees charged generally in the Town.

## XII. DEVELOPER ENTITLEMENTS.

Town acknowledges that Developer is vested with the following items:

A. The Town will, to the extent available, promote public transportation which exists within the Town to service the Property.

B. The Town agrees that, upon the request of the Owner, the Town will grant easements within public rights-of-way to utility providers which provide service within the Property.

C. All drainage systems constructed within the Project shall be owned and maintained by one (1) or more Association(s) which may be established for various portions of the Property and the Town shall have no responsibility for the construction, operation or maintenance of such systems.

D. Sidewalks will be required within the Property as set forth in the PUD.

E. On-site burning will not be permitted within the Property.

F. The Town agrees to cooperate with the Owner and each Developer with roadway permitting in connection with the Development of portions of the Property.

G. Town services, including, but not limited to, police, fire, sanitation, recreational parks 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 the Town.

### XIII. PERIODIC REVIEW.

The Planning/Zoning Administrator of the Town shall review the Project and this Agreement at least once every twelve (12) months, at which time the Owner shall demonstrate good-faith compliance with the terms of this Agreement. If, as a result of its periodic review or at any other time, the Town finds and determines that the Owner has committed a material breach of the terms or conditions of this Agreement, the Town shall serve notice in writing upon the Owner setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Owner a reasonable time in which to cure the material breach.

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

### XIV. DEFAULTS.

The failure of the Owner, Developer or the Town to comply with the terms of this Agreement not cured within fifteen (15) days after written notice from the non-defaulting party to the defaulting party (as such time period may be extended with regard to non-monetary breaches or a reasonable period of time based on the circumstances, provided such defaulting party commences to cure such breach within such fifteen (15) day period and is proceeding diligently and expeditiously to complete such cure) shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance; provided however no termination of this Agreement may be declared by the Town absent its according the Owner and any relevant Developer the notice, hearing and opportunity

to cure in accordance with the Act; and provided any such termination shall be limited to the portion of the Property in default, and provided further that nothing herein shall be deemed or construed to preclude the Town or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Zoning Regulations or this Agreement. A default of the Owner, with the exception of a default under Section X(E), (F) and (H) of this Agreement, shall not constitute a default by Developers, and default by Developers shall not constitute a default by the Owner. The parties acknowledge that individual residents and owners of completed buildings within the Project shall not be obligated for the obligations of the Owner or Developer set forth in this Agreement.

**XV. MODIFICATION OF AGREEMENT.**

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

Notwithstanding the foregoing, this Agreement may be modified or amended as to a portion of the Property by the written agreement of the Town and the then owner of said portion of the Property. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate, or effect an abandonment of this Agreement in whole or in part unless such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

If an amendment affects less than all the persons and entities comprising owners of the Property, then only the Town and those affected persons or entities need to sign such written amendment.

Because this Agreement constitutes the plan for a certain planned unit development under the zoning ordinance, minor modifications to a site plan or to development provisions may be made without a public hearing or amendment to applicable ordinances. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment, and such approval or consent

shall be in writing and signed by the affected parties. Wherever said consent or approval is required, the same shall not be unreasonably withheld.

**XVI. NOTICES.**

Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the Town shall be addressed to the Town at:

To the Town: Van Willis  
Town Manager  
P O Drawer 9  
Port Royal, SC 29935

With copies to: Linda Bridges  
Planning Administrator  
P O Drawer 9  
Port Royal, SC 29935

And to the Owner at: South Carolina State Ports Authority  
P.O. Box 22287  
Charleston, SC 29413  
Attn: Peter Lehman

With copies to: Philip Lawrence, Esq.  
South Carolina State Ports Authority  
P.O. Box 22287  
Charleston, SC 29413

With copies to: Neil C. Robinson, Jr., Esq.  
George Bullwinkel, Esq.  
Nexsen Pruet, LLC  
P.O. Box 486

**XVII. ENFORCEMENT.**

Any party hereto shall have the right to enforce the terms, provisions and conditions of this Agreement (if not cured within the applicable cure period) by any remedies available at law or in equity, including specific performance, and the right to recover reasonable attorney's fees and costs associated with said enforcement.

**XVIII. GENERAL.**

**A. Subsequent Laws.** In the event state or federal laws or regulations are enacted after the execution of this 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 Law, or court decision, a party designated by the Owners and Developer(s) and the Town shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the Town may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner, Developers and the Town each shall have the right to challenge the New Law preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified, in full force and effect.

**B. Estoppel Certificate.** Upon request in writing from an assignee or the Owner to the Town sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the Town will provide a certificate in recordable form that solely with respect to the portion of the Property described in the request, there are no known

violations or breaches of this Agreement, except as otherwise described in the Certificate. The Town will respond to such a request within thirty (30) days of the receipt of the request, and may employ such professional consultants, state agencies and staff as may be necessary to assure the truth and completeness of the statements in the certificate. The reasonable costs and disbursements of private consultants will be paid by the person making the request.

The certificate issued by the Town will be binding on the Town in accordance with the facts and statements contained therein as of its date and may be relied upon by all persons having notice thereof. No claim or action to enforce compliance with this Agreement may be brought against the Owner or its assignees properly holding rights hereunder, alleging any violation of the terms and covenants affecting such portion of the Property except as otherwise described in the Certificate.

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

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

**D. No Partnership or Joint Venture.** Nothing in this Agreement shall be deemed to create a partnership or joint venture between the Town, the Owner or any Developer or to render such party liable in any manner for the debts or obligations of another party.

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

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

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

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

**I. 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.

**J. Eminent Domain.** Nothing contained in this Agreement shall limit, impair or restrict the Town's right and power of eminent domain under the laws of the State of South Carolina.

**K. No Third Party Beneficiaries.** The provisions of this Agreement may be enforced only by the Town, the Owner and Developers. No other persons shall have any rights hereunder.

**L. Statement of Required Provisions:** In accordance with § 6-31-60 of the Act, the following findings are made:

1. Legal Description of Property Subject to this Agreement: See Exhibit A.
2. Duration of this Agreement: five (5) years.

3. Development uses permitted and estimated population densities, densities and building intensities and height: See PUD and Section VI of this Agreement.
4. Public Facilities to serve the Property/Service Providers/Timing of Facilities: See Section IX of this Agreement.
5. Public land dedications: See Section X of this Agreement.
6. Local Development Permits required: See Section IV of this Agreement.
7. Town Council hereby finds that the development permitted or proposed on the Property is consistent with the Town's comprehensive plan and land development regulations.
8. The terms of this Agreement embody those conditions, terms, restrictions and other requirements deemed necessary by the Town for the public, health, safety and welfare of its citizens.
9. The Property contains no known historic structures.

[SEPARATE SIGNATURE PAGE ATTACHED]

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

WITNESSES:

Marsha A. Read

[Signature]

South Carolina State Ports Authority

By: [Signature]

Its: PRESIDENT & CEO

STATE OF SOUTH CAROLINA )

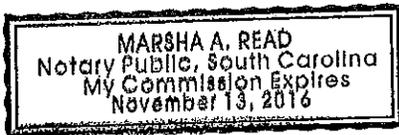
TOWN PORT ROYAL )

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 13<sup>TH</sup> day of February, 2013, before me, the undersigned Notary Public of the State and Town aforesaid, personally appeared the duly authorized official of the South Carolina State Ports Authority, known to me to be the person whose name is subscribed to the within document, who acknowledged the due execution of the foregoing document.

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

Marsha A. Read  
Notary Public for South Carolina



My Commission Expires: Nov. 13, 2016

WITNESSES:

[Signature]  
Linda Bridges

TOWN OF PORT ROYAL, SOUTH CAROLINA

By: Samuel E. Murray

Its: Mayor

STATE OF SOUTH CAROLINA.

TOWN OF PORT ROYAL

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ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 14th day of February, 2013, before me, the undersigned Notary Public of the State and Town aforesaid, personally appeared Samuel E. Murray, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate officials of Town Of Port Royal, South Carolina, who acknowledged the due execution of the foregoing document.

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

Tanya L. Payne  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

