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**STATE OF SOUTH CAROLINA     )   DEVELOPMENT AGREEMENT**  
   )  
**COUNTY OF JASPER                     )   PORT LOGISTICS**

This Development Agreement (“Agreement”) is made effective \_\_\_\_\_, 2023, by and between **HCP Partners LLC**, a South Carolina limited liability company, (“Owner”) and the Governmental authority of the **City of Hardeeville, South Carolina** (“City”).

**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 city governments, to enter Development Agreements with owners to accomplish these and other goals as set forth in Section 6-31-10 of the Act; and,

**WHEREAS**, Owner is the owner of approximately 471.65 acres, generally to be known as Port Logistics, and proposes to develop, or cause to be developed a mixture of commercial and industrial uses, including accessory and complimentary uses as described in the Planned Development District Standards adopted herewith and attached as an Exhibit hereto; and,

**WHEREAS**, the City 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 City finds that the program of development proposed by Owner for this Property is consistent with the City’s comprehensive land use plan; and will further the health, safety, welfare and economic wellbeing of the City and its residents; and,

**WHEREAS**, the program for development of the Property presents an unprecedented opportunity for the City to secure quality planning and growth to protect the environment and strengthen and revitalize the tax base; and,

**WHEREAS**, this Development Agreement is being made and entered between Owner and the City, under the terms of the Act, for the purpose of providing assurances to Owner that it may proceed with its development plan under the terms hereof, as hereinafter defined, consistent with its approved PDD Standards, (as hereinafter defined) without encountering future changes in law which would materially affect the ability to develop under the PDD Standards, and for the purpose of providing important protection to the natural environment and long term financial stability and a viable tax base to the City, and for the purpose of providing certain funding and funding sources to assist the City in meeting the service and infrastructure needs associated with the development authorized hereunder;

**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 City and Owner by entering this Agreement, and to encourage well planned development by Owner, the receipt and sufficiency of such consideration being hereby acknowledged, the City and Owner hereby agree as follows:

**1. 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.

**2. 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 real property described in Exhibit A.

“**Adjustment Factor**” shall mean the percentage of either the Consumer Price Index (CPI) (All Urban Consumers) for the applicable year or three percent (3%) per annum simple interest, whichever is greater applied on July 1<sup>st</sup> of each year with the first adjustment being applied on July 1, 2023.

“**Agreement**” shall mean this Development Agreement as amended by the City and Developer in writing from time to time.

**“Association”** shall mean one (1) or more property owners’ associations established to maintain portions of the Property, if such is ever formulated, which is not expected if the Property is developed as a unified planned development under single ownership, as contemplated under the PDD.

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

**“City”** shall mean the City of Hardeeville, South Carolina.

**“Concept Plan”** shall mean the Concept Plan attached as Exhibit D to the PDD Standards as same may be modified by agreement of the Owner and the City.

**“County”** shall mean Jasper County, South Carolina.

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

**“Development”** means the development of portions of the Property as contemplated in the Zoning Regulations.

**“Development Fees”** shall have the meaning set forth in Section 12.

**“Development Rights”** means Development undertaken by the Owner or Developers in accordance with the Zoning Regulations and this Development Agreement.

**“DHEC”** shall mean the South Carolina Department of Health and Environmental Control

**“Municipal Improvement District”** shall mean a district that may be created by the City of Hardeeville for the public infrastructure required for the Development of the Property including, without limitation, road improvements, water and sewer infrastructure, and related infrastructure, pursuant to and as more particularly described in Section 5-37-10 et seq. of the South Carolina Code of Laws (1976), as amended.

**“Municipal Improvement District Bond”** shall mean any special assessment bond financing approved and obtained by the City of Hardeeville for the Property, the proceeds of which are to be used for public infrastructure improvements required for the Development of the Property, as more particularly described in Section 5-37-10 et seq. of the South Carolina Code of Laws (1976), as amended.

**“MZDO”** shall mean the Municipal Zoning and Development Ordinance of the City of Hardeeville, South Carolina dated March 20, 2008, as amended through the date of this Agreement.

**“Owner”** means HCP Partners, LLC, a South Carolina limited liability company, its successors, and any assignee, whereby such interest is assigned in writing.

**“Park Site”** shall have the meaning set forth in Section 11(A).

“PDD Standards” or “Planned Development District Standards” means the Planned Development District Standards approved by the City of Hardeeville contemporaneously herewith, and attached hereto as **Exhibit B** and incorporated herein by reference.

“Person” means any individual, limited liability company, limited liability partnership, partnerships, corporation, trust or other person or entity.

“Project” shall mean the Development to occur on the Property.

“Port Logistics” or the “Property” means that certain tract of land described on **Exhibit A**, as may be amended with the agreement of the City and Owner, Developer, or their successors or assigns, as applicable.

“Property” or “Port Logistics” means that certain tract of land described on **Exhibit A**, as may be amended with the agreement of the City and Owner, Developer, or their successors or assigns, as applicable.

“Term” means the duration of this Agreement as set forth in Section 3 hereof.

“Zoning Regulations” means the (a) PDD Standards adopted to establish a planned development district for the Property, and all the attachments thereto, including but not being limited to the Concept Plan, all narratives, applications, and site development standards thereof, all as same may be hereafter amended by mutual agreement of the City and the Owner, Developer, or their successors or assigns, as applicable; (b) this Development Agreement; (c) the MZDO except as the provisions thereof may be clarified or modified by the terms of the PDD Standards and this Agreement; (d) other applicable statutes, ordinances, and regulations governing development and uses for the Property. In the event of conflicts, the terms of the Development Agreement shall take precedence, followed by the PDD Standards, and then the MZDO.

### **3. TERM.**

The term of this Agreement commenced on the date this Agreement was executed by the City and Owner and terminates five (5) years thereafter (the “Term”). This is the maximum initial term permitted by law for the Property. The parties agree to extend the initial term by an additional five (5) years by an amendment executed by City and Owner, provided that both parties are in substantial compliance herewith.

### **4. DEVELOPMENT OF THE PROPERTY.**

The Property shall be developed in accordance with the Zoning Regulations and this Agreement. All costs charged by or to the City for reviews required by the MZDO shall be paid by the Owner or Developer or other party applying for such review as generally charged throughout the City for plan review. The City 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. Nothing herein shall obligate any Owner or Developer to undertake any Development of the Property.

### **5. CHANGES TO ZONING REGULATIONS; NOTICE OF ASSIGNMENT; WATER & SEWER SERVICE.**

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 City, 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 commercial square footage, 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 City an acknowledgment of this Agreement and a commitment to be bound by it.

B. The Owners and Developers, and their respective heirs, successors and assigns agree that all Development, with the exception of irrigation, incidental maintenance facilities, earthwork and similar amenities which exist from time to time, and facilities existing at the date of this Agreement 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 by BJWSA that such use for specific portions of the Property will comply with the overall environmental standards and any applicable federal or state requirements and the Zoning Regulations.

## **6. DEVELOPMENT SCHEDULE.**

The Property shall be developed in accordance with the development schedule, attached as **Exhibit C**, or as may be amended by Owner or Developer(s) in the future to reflect actual market absorption. Pursuant to the Act, the failure of the Owner and any Developer to meet the initial development schedule shall not, in and of itself, constitute a material breach of this Agreement. In such event, the failure to meet the development schedule shall be judged by the totality of circumstances, including but not limited to the Owners and Developer(s) good faith efforts to attain compliance with the development schedule. These schedules are planning and forecasting tools only and shall not be interpreted as mandating the development pace initially forecast or preventing a faster pace if market conditions support a faster pace. The fact that actual development may take place at a different pace, based on future market forces, is expected, and shall not be considered a default hereunder. Development activity may occur faster or slower than the forecast schedule, as a matter of right, depending upon market conditions. Furthermore, periodic adjustments to the development schedule which may be submitted unilaterally by Owner/Developers in the future, shall not be considered a material amendment or breach of the Agreement.

## **7. DENSITY.**

Uses and density on the Property shall be the densities and uses as set forth in the PDD Standards, and as set forth below:

The Property may be developed for uses including distribution center, warehouse, terminal and transload facilities, commercial and industrial uses, including related accessory and complimentary uses. The Concept Plan depicts the initially planned layout and expected uses and

the expected mix and general location of allowed uses, however, the Owner shall be allowed to alter location and product mix among all allowed uses under the PDD Standards, based upon ongoing project planning and market conditions. Any such changes to exact location, building size, or product mix shall not be considered a material amendment hereto, or an amendment to the PDD Standards or the initial master plan for the Property so long as the total allowed density is not exceeded. Such minor changes will be evaluated for compliance at the staff review level.

## **8. RESTRICTED ACCESS**

The Owner and/or each Developer shall have the right (but not the obligation) to create restricted access areas within the Property as long as such restricted access does not adversely affect in any material respect adjacent traffic patterns located on the public rights-of-way.

## **9. EFFECT OF FUTURE LAWS.**

Owner and Developers 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 City 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) of the Act are followed, which Owner shall have the right to challenge. No future moratorium on development approvals or building permit issuance shall apply to the Property. Notwithstanding the above, the Property will be subject to then current fire safety standards and state and/or federal environmental guidelines 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 City, found by the City Council to be necessary to protect the health, safety, and welfare of the citizens of Hardeeville.

## **10. INFRASTRUCTURE AND SERVICES**

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

A. **Private Roads.** All roads within the Property shall be constructed by the Owner, Developer or other parties and maintained by such party(ies) and/or Association(s) or dedicated for maintenance to other appropriate entities. Except as provided in this Agreement, the City will not be responsible for the construction of any private roads within the Property, unless the City specifically agrees to do so in the future. Private roads and any private road that may fall within South Carolina Department of Transportation (“SCDOT”) right of ways shall comply with all applicable federal and state statutes and regulations of the SCDOT. Roadway section details shall be submitted for review at the time of development permit applications, as provided in the PDD Standards.

B. **Public Roads.** All public roads outside the Property that serve the Property are under

the jurisdiction of the State of South Carolina or other governmental entities regarding access, construction, improvements, and maintenance. Owner and/or Developer acknowledge that it must comply with all applicable state statutes and rules and regulations of the South Carolina Department of Transportation or its successor regarding access and use of such public roads. Owner and/or Developer shall be required to conduct a Transportation Impact Analysis (“TIA”) that shall determine whether improvements are needed to mitigate impacts of the development to the road network. Owner and/or Developer shall be responsible for construction of property access improvements as required by the Transportation Impact Analysis and/or SCDOT in conjunction with access mitigation plans. Upon completion of construction of any such improvements within the SCDOT right of way, and acceptance by SCDOT, the SCDOT shall maintain all roadway improvements within the public road right of way. Owner and/or Developer and the City acknowledge and agree that Owner and/or Developer will be required to complete any off-site road improvements required for the Development of the Property as required by the TIA unless otherwise agreed upon by SCDOT, the City and Owner and/or Developer. The City agrees to cooperate with Owner and/or Developer in order to obtain a right of way if necessary for improvements pursuant to the TIA or alternative improvements if agreed upon by SCDOT, the City and Developer. Owner and/or Developer shall be responsible for any costs associated with such governmental action. In the event a roadway improvement is required that is not solely attributable to the subject development a pro rata share of the cost of said improvement shall be paid to the City as negotiated by all parties. Offsite road improvements may be modified as needed to avoid environmental impacts to wetlands or other environmentally sensitive areas, to stay within existing rights of way, and to avoid any relocation of existing utilities. To the extent the improvements are within existing rights of way, Owner and/or Developer will not be required to obtain additional right of way or be required to relocate utilities, unless such items are required by the TIA or alternative improvements are agreed upon by SCDOT, the City and Owner and/or Developer. City will assist Owner and/or Developer with coordination with SCDOT and utility providers to allow for modified roadway improvements without impact to wetlands. City also agrees to cooperate with Owner and/or Developer in order to obtain any necessary right of way to complete such improvements. Owner and/or Developer shall be responsible for any costs associated with such governmental action.

C. **Potable Water.** Potable water will be supplied to the Property by BJWSA, or some other legally constituted public or private provider allowed to operate in the City. The City shall not be responsible for any construction, treatment, maintenance, or costs associated with water service to the Property unless the City elects to provide such services with the agreement of the applicable utility authority then providing such service to the Property. Owner 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 Owner and the service provider.

D. **Sewage Treatment and Disposal.** Sewage treatment and disposal will be provided by BJWSA, or some other legally constituted public or private provider allowed to operate in the City. The City will not be responsible for any treatment, maintenance or costs associated with sewage treatment within the Property, unless the City 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 City from providing sewer services to its residents in accordance with applicable provisions of law. Owner 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 Owner and the service provider.

E. **Use of Effluent.** Owner agrees that treated effluent will be disposed of only in such manner as may be approved by South Carolina Department of Health and Environmental Control and BJWSA.

F. **Police Services.** City shall provide police protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the City. Owner acknowledges the concurrent jurisdiction of the City's police department and the Sheriff of Jasper County on the Property and shall not interfere with or in any way hinder public safety activities on the Property regardless of whether such Property may contain restricted access.

G. **Fire Services.** City shall provide fire protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the City. Owner acknowledges the jurisdiction of the City's fire department on the Property and shall not interfere or in any way hinder public safety activities on the Property regardless of whether such Property may contain restricted access.

H. **Sanitation Services.** City shall provide sanitation and trash collection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the City.

I. **Recreation Services.** City shall provide recreation services to the Property on the same basis as it provides to other similarly situated residents and businesses in the City.

J. **Library Services.** Library services shall be provided for the Property on the same basis as provided to other similarly situated residents and businesses in the City.

K. **Emergency Medical Services (EMS).** EMS services shall be provided to the Property on the same basis as provided to other similarly situated residents and businesses in the City.

L. **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 then current. All stormwater runoff, treatment and drainage system improvements for the Property shall be constructed by Owner or the Association, as applicable. The City will not be responsible for any construction or maintenance cost associated with the stormwater runoff, treatment, and drainage system within the Property.

M. **Storm Water Quality.** Protection of the quality in nearby waters and wetlands is a primary goal of the City. Owner and Developers shall be required to abide by all provisions of federal, state laws and regulations, and local rules and regulations (including but not limited to City Ordinances), now or in the future, and including those established by the South Carolina Department of Health and Environmental Control, the South Carolina Office of Ocean and Coastal Resource Management, and their successors for the handling of storm water, provided that such future regulations shall only apply to future development on the Property which has not been permitted and/or developed at the time such regulations are adopted. Further provisions regarding Storm Water are included within the PDD Standards.

N. **Municipal Improvement District.** Notwithstanding anything contained herein to the



contrary, in the event that (1) the Owner and the City may jointly agree that the construction of public infrastructure required for the Development of the Property will be defrayed from the proceeds of Municipal Improvement District Bonds or from the receipts of assessments imposed upon the Property; (2) the City creates the Municipal Improvement District; (3) the City is able to issue Municipal Improvement District Bonds which are non-recourse to the City; and (4) suitable arrangements are made by the Owner with the City to guarantee completion of the construction of such public infrastructure, then the Owner shall notify the City prior to the sale of the first parcel within the Property, whereupon the City shall take such action as necessary to implement a Municipal Improvement District with respect to the Property and issue Municipal Improvement District Bonds to provide such amount as then current, definitive plans indicate to be necessary to complete such public infrastructure improvements, which monies shall be made available to design, permit and construct such public infrastructure improvements. Upon obtaining such funding (which may be in phases), the City shall cause the design, permitting and construction of such required public infrastructure improvements (or phased portions of the public infrastructure improvements, as may be the case). Nothing herein shall preclude the submission of a design/build proposal for such public infrastructure improvements by Owner which complies with the procurement requirements of the City. Notwithstanding the above, Owner, with the prior written approval of the City, may begin construction of such public infrastructure improvements prior to the creation of the Municipal Improvement District, and provided the Municipal Improvement District Bonds are issued, Owner shall be reimbursed for any qualifying funds previously expended by Owner in the construction of such public infrastructure improvements.

## **11. CONVEYANCES AND CONTRIBUTIONS**

The City and Owner understand and agree that the Development of the Property shall result in additional public services being required to be provided by the City and other governmental agencies. The City and Owner acknowledge it is desirable that certain public facilities be located in the vicinity of the Property. The Owner agrees to participate in mitigating certain initial costs of the City for such services as provided in this Agreement. The following items are hereby agreed upon to be provided by Owner or Developer, its successors and assigns, and to offset the costs and expenditures created by the Development of the Property:

A. **Roads.** Owner, Developer or a Secondary Developer may transfer to the City certain rights-of-way and roads within the Property upon agreement by the City.

B. **Civic Site.** A Civic Site dedication will not be required for the Property.

C. **Park Site.** Owner shall transfer to City the parcel containing approximately 1.52 acres, which may include uplands and wetlands, along Highway 17 shown on the Concept Plan attached as Exhibit D to the PDD Standards to be utilized solely as a park site (“Park Site”). The Park Site shall be transferred to the City within one (1) year of the effective date of this Agreement. Owner may designate the transfer as a donation. The City shall construct park improvements (the “Park Improvements”) on the Park Site in accordance with a plan devised by the City. The City shall commence with the design, permitting and construction of such Park Improvements within five years from the date of transfer of the Park Site to the City. Any existing billboard leases affecting the Park Site will not be renewed and Owner shall be responsible for assuring such lease termination is complied with. If a Park Site is not feasible due to the location of wetlands and uplands the City shall not be required to design, permit or construct Park Improvements. The City

shall be free to utilize the property for another use or dispose of it by any method available to it per applicable local, state and federal laws.. Owner shall have a right of first refusal on the Park Site should the City determine development or usage of the Park Site is not feasible. The City shall provide written notice to the Owner of it's intent to sell the Park Site and Owner shall have 30 (thirty) days in order to respond. Upon expiration of the 30 (thirty) days the City shall be free to list the property for sale.

D. No other Dedications. Except with respect to the dedications and/or conveyances of the properties referred to in Section 11, no other dedications, or conveyances of lands for public facilities shall be required by the City in connection with the Development of the Property.

**12. DEVELOPMENT FEES**

To assist the City in meeting expenses resulting from ongoing development, a Developer shall pay development fees for direct capital expenses incurred by the City that it incurs related the property. (“Development Fees”) as follows, as set forth in the Table below.

<b>DEVELOPMENT FEES</b>	<b>AMOUNT</b>
Non-Residential per 1,000 SF	\$721.00

A. All Development Fees shall be collected at the time of a Developer obtaining a building permit and placed in separate interest-bearing accounts established for direct capital expenses. The City may expend these funds for any purposes designed to meet a discrete need of the property or a discrete need created by the development of the property.

B. Notwithstanding any provision to the contrary contained within this Agreement, the Development Fees are being paid in lieu of any other impact fees, development fees or any other similar fees presently existing or adopted by the City at any time hereafter during the term of this Agreement; provided, however, the Owner and/or Developers shall be subject to the payment of any and all present or future permitting fees enacted by the City that are of City-wide application and that relate to processing applications, development permits, building permits, review of plans, or inspections (but no other capital improvement related impact, development or other extractions).

C. Except as set forth in this Agreement, nothing herein shall be construed as relieving Owner, Developers, or their successors and assigns, from payment of any such fees or charges as may be assessed by entities other than the City imposes, or is permitted by City to impose, fees or obligations similar in nature to the provisions of this paragraph shall not preclude the City or another governmental authority from imposing a fee of a nature which is not for services or improvements contemplated under this Agreement (i.e., police, fire, and other obligations contemplated under this Agreement or services and improvements contemplated by this Agreement), which are imposed on a consistent basis throughout the area regulated by such governmental authority imposing such obligations. The City 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. The City shall, at Owner's request, together with Owner, challenge any developer fee, impact fee or other obligation imposed by other governmental authorities to the extent that such fees or obligations are not specifically permitted to be imposed pursuant to the terms of this Agreement. The Owner and/or Developer shall be responsible for all costs associated with such challenge and may be required to make a deposit of such costs in advance with the City.

D. The parties hereto recognize that Jasper County may, now or in the future, impose certain development impact fees upon the Property. The intent hereof is that the Owner shall not be charged in both jurisdictions for the same impact fee (development fee) categories, however, should a dispute arise as to whether Owner/Developer shall pay fees to the County or to the City, the Owner/Developer shall be responsible for settling such dispute with each party. The City shall not offset any development fee contained herein against such fees payable to Jasper County. The same principle shall apply regarding all applicable Development Fee categories hereunder. Owner and City Manager may meet and agree to resolve any issues that may arise in the future regarding the application of these principles to Development Fees due hereunder, and any such future agreement shall not be deemed a material amendment or breach hereof.

E. Any Development Fees paid and/or credits for Development Fees with respect to property conveyed, services performed and/or money paid as provided in this Agreement may be assigned by the Owner and/or Developer owning such credits and all such credits shall remain valid until utilized. The Owner and/or Developer shall provide written notice of transfer of such credits to the City. The City shall recognize all such written assignments of such rights and shall credit same against any Development Fees which are owned pursuant to this Agreement.

F. The Development Fees set forth in the Fee Chart are based upon 2022 figures. The Development Fee amounts shall be increased annually according to the Adjustment Factor.

G. The City, County, or other governmental entity, may establish, solely or in conjunction with each other, a Tax Increment, fee in lieu of tax (FILOT), Multi-County Business Park, or any other special tax district or financing vehicle authorized by applicable provisions of the Code of Laws of South Carolina (1976), as amended, which does not impose additional ad valorem taxes or assessments against the Project. The establishment by the City, County, or other governmental entity, solely or in conjunction with each other, of a special tax district or financing vehicle authorized by applicable provisions of the Code of Laws of South Carolina (1976), as amended, which increases the assessments within the Property solely, shall require the consent of the Owner, Developer, or a Secondary Developer, a Municipal Improvement District may be implemented with the consent of the City for the Project as set forth in this Agreement.

H. If the Property contains more wetlands than are necessary to meet Developer's requirements for open space or for wetlands mitigation on the Property, to the extent that there are excess wetlands available, if Owner, Developer or a Secondary Developer creates a mitigation bank with such excess wetlands and the City has a need for mitigation bank credits in connection with road improvements it is obligated to undertake, then the City may purchase such mitigation bank credits from Owner, Developer, or a Secondary Developer, as applicable. Such purchases shall be at the fair market value of such mitigation bank credits and shall be paid by the City in form of credit to Development Fees, cash, or in such other form as agreed upon by the parties.

I. Owner and/or Developer agrees to pay the actual costs and reasonable, actual expenses of the City's consultants and professionals incurred in negotiating, processing and evaluating the Development Agreement and the PDD Standards. Owner and/or Developer requesting amendments, assignments, estoppel letters or any other documentation as contemplated by this Agreement, shall pay the actual costs and reasonable, actual expenses of the City's consultant and professionals incurred in negotiating, processing and evaluating such documentation based upon the City's fee schedule available upon request. City will provide invoices and sufficient documentation of these charges. Owner and/or Developer, as applicable, shall pay such fees within sixty (60) days of the delivery by the City of the invoice(s).

### **13. PERMITTING PROCEDURES:**

A. Phasing Allowed. The City agrees that the Owner and/or any Developer is not required to phase development but shall have the right to do so.

B. Timely Review. The City agrees to review all land use changes, land development applications, and plats in an expeditious manner in accordance with the MZDO as modified by the PDD Standards. Developer may submit these items for concurrent review with the City and other governmental authorities. City 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. Signage for the Property is governed by the provisions of the PDD Standards and the Zoning Regulations.

D. Architectural Guidelines. The City acknowledges that the Owner/Developer has the exclusive right of architectural review regarding improvements and building upon the Property, which may be modified in the future at the discretion of Owner/Developer to meet market conditions. Any architectural guidelines must meet minimum standards set forth in the MZSO for architectural review. Owner/Developer shall be responsible for assuring such guidelines are in compliance with the Zoning Regulations.

E. Bond Plat for Recording. The City agrees to allow plat recording with a bond of 125% of the infrastructure cost prior to completion of infrastructure development and to issue building permits and permit sale of lots prior to completion of such bonded infrastructure; in accordance with the MZDO as modified by the PDD Standards for this Property.

F. Zoning Regulations. The City agrees the Property shall be governed by the Zoning Regulations.

G. No Additional Development Obligations. The City agrees that the Property is approved and fully vested for intensity, density, development fees, uses and height, and shall not have any obligations for on or off-site transportation or other facilities or improvements other than as provided in this Agreement, but must adhere to then current PDD Standards, any applicable master plan, and any development plan procedural guidelines in accordance with the then current MZDO. The City may 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 the Owner shall have the right to challenge

H. Roadway Drainage. Roadways (public or private) may utilize swale drainage systems and are not required to have raised curb and gutter systems. Roadway cross sections utilizing swale drainage will be designed, constructed, and maintained to meet BMP standards (imposed by regulatory agencies) 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 PDD Standards.

I. Plan Review Fees. All plan review fees shall be consistent with the fees charged generally in the City and shall be paid by the Person submitting an application to the City for such review.

#### **14. DEVELOPER ENTITLEMENTS:**

City acknowledges that Developer is vested with the following items:

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

B. Telecommunications. The City agrees to grant a non-exclusive franchise for an on-site telecommunications company to Owner on terms consistent with then current franchise agreements. The City acknowledges that the Owner shall not be required to provide easements to any utility companies other than over public streets which may be located within the Property. The City agrees that, upon the request of the Owner, the City will grant easements within public rights-of-way to telecommunication providers which Owner authorizes to provide service within the Property, upon payment of applicable franchise fees to the City. Additionally, the City agrees that it will franchise on terms consistent with then current franchise agreements to such party providing telecommunication services to the Property, a franchise to enable such company to perform such service; provided, however, the City shall have the right to grant other franchises to third party telecommunication companies providing telecommunication services within the City.

C. Drainage Systems. All drainage systems constructed within the Property shall be owned and maintained by the Owner, its assigns, or one (1) or more Association(s) which may be established for various portions of the Property and the City shall have no responsibility for the construction, operation, or maintenance of such systems. Such systems shall be constructed in compliance with any applicable federal, state, or local requirements, as set forth in the Zoning Regulations.

D. On-Site Burning. On-site burning will be permitted within the Property upon obtaining applicable permits.

E. Roadway Permitting. The City agrees to cooperate with the Owner and each Developer with county, state and federal roadway permitting in connection with the Development of portions of the Property.

F. City Services. City 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 City, subject to the limitations (if any) of Section 10 above. Subject to the limitations of Section 10 above (if any), should the Owner require enhanced services beyond that which is routinely provided within the

City, then the City agrees that upon the written request of Owner, it shall negotiate in good faith with the Owner to provide such enhanced services to the Property. Any enhanced services shall be at the sole cost of the Owner and/or Developer.

#### **15. COMPLIANCE REVIEWS.**

As long as Owner owns any of the Property, Owner, or its designee, shall meet with the City, or its designee, not more than once per year, during the Term to review Development completed by Owner in the prior year and the Development anticipated to be commenced or completed by Owner in the ensuing year. During the compliance review meeting, Owner, or its designee, shall provide such information as may reasonably be requested by City, to include but not be limited to, acreage of the Property sold in the prior year, acreage of the Property under contract, the number of certificates of occupancy issued to Owner in the prior year, and the number anticipated to be issued in the ensuing year, Development Rights transferred in the prior year, and anticipated to be transferred in the ensuing year. Owner shall provide to the City an estimate of the upcoming year's development schedule as provided in Exhibit C to the City during each compliance review meeting.

#### **16. DEFAULTS.**

The failure of the Owner, Developer or the City to comply with the terms of this Agreement not cured within thirty (30) 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 thirty [30] 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 City 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 City 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 shall not constitute a default by Developers, and default by Developers shall not constitute a default by the Owner. The parties acknowledge that owners of completed buildings within the Property shall not be obligated for the obligations of the Owner or Developer set forth in this Agreement unless the property remains under unified ownership, unless such owners of completed buildings have been assigned any rights under this Agreement. In such case, the owners of completed buildings shall also be obligated for obligations set forth in this Agreement.

#### **17. MODIFICATIONS.**

A. Development Agreement. This Agreement may be modified or amended only by the written agreement of the City and the Owner; such written agreement shall be by Ordinance of the City. 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.

B. Modification Application to Portion of Property. This Agreement may be modified or amended as to a portion of the Property only by the written agreement of the City and the 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 the Property Owners, then only the City and those affected persons or entities need to sign such written amendment.

C. Minor Modifications. Because this Agreement constitutes the plan for 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.

D. Concept Plan. The Concept Plan is not intended to be a rigid, exact site plan for future development. The location of roads, buildings, recreational amenities and other elements may vary at the time of permit applications when more specific designs are available, as long as the maximum densities set herein, and the general concept of development suggested by the Concept Plan, and master plans is followed and respected. Such variations are eligible to be approved at staff level in accordance with the Zoning Regulations.

## 18. 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 City shall be addressed to the City at:

All notices, demands, requests, consents, approvals or communications to the City shall be addressed to the City at:

City of Hardeeville, SC  
205 East Main Street  
P.O. Box 609  
Hardeeville, South Carolina 29927  
Attention: City Manager

And to Owner at: HCP Partners, LLC

65 Schinger Avenue, Suite 101  
Ridgeland, SC 29936

**19. 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 attorney's fees and costs associated with said enforcement.

**20. 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 Owner and Developer(s) and the City 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 City 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 City 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 and in full force and effect.

B. **Estoppel Certificate.** The City, the Owner or any Developer may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

- (1) that this Agreement is in full force and effect,
- (2) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,
- (3) 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,
- (4) 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, and
- (5) the density remaining.

C. **Entire Agreement.** This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings among the City 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 City, 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. **Assignment**. The sale, transfer or assignment of all or any portion of the Property, or creation of a joint venture or partnership shall not require the amendment of this Agreement. Subject to the notification provisions hereof, Owner may assign its rights and responsibilities hereunder to a subsidiary or sister company, or subsequent landowners and Developers.

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

I. **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.

J. **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. If the City's involvement in litigation or challenge is at the request of the Owner/Developer and not as a party to litigation or challenge, the Owner/Developer shall reimburse the City for legal costs up to \$10,000.00 in total for the term of the Development Agreement.

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

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

M. **Effective Date**. The Effective Date of this Agreement shall be the date the Agreement is signed by all parties, and if the parties do not sign on the same date, the date on which it is signed by the last party.

N. **Approvals**. For any approval required to be given by a party or their successors and/or assigns, such approval shall not be unreasonably withheld.

O. **Hierarchy of Documents.** In the event of a conflict among the documents, the hierarchy of documents is: 1) the Development Agreement; 2) the PDD Standards; and 3) the MZDO; and 4) other applicable statutes, ordinances, and regulations governing development and uses for the Property. In the event of an omission, the MZDO shall govern. To the extent of ambiguity, the parties shall attempt to review same consistent with the terms of the PDD Standards and the MZDO.

P. **Adjacent Property.** In the event Owner or a Developer, as applicable, acquires real property adjacent to the Property, City agrees to allow Owner or a Developer, as applicable, to subject such real property to the terms of this Development Agreement and the PDD Standards by an amendment to this Development Agreement subject to the approval of the City and Owner or Developer, as applicable.

## 21. **STATEMENT OF REQUIRED PROVISIONS**

A. **Specific Statements.** The Act requires that a development agreement must include certain mandatory provisions, pursuant to Section 6-31-60 (A) of the Act. 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) of the Act for the required items:

1. **Legal Description of Property and Legal and Equitable Owners.** The legal description of the Property is set forth in **Exhibit A** attached hereto. The present legal owner of the Property is HCP Partners, LLC..

2. **Duration of Agreement.** The duration of this Agreement shall be as provided in Section 3 above.

3. **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 Zoning Regulations, as supplemented by this Agreement.

4. **Required Public Facilities.** The utility services available to the Property are described generally above regarding water service, sewer service, cable and other telecommunication services, gas service, electrical services, telephone service and solid waste disposal. The mandatory procedures of the Zoning Regulations will ensure availability of roads and utilities to serve the Property on a timely basis.

5. **Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.** Any requirements relating to land transfers for public facilities are set forth in Section 11 above. The Zoning Regulations described above, and incorporated herein, contain numerous provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws will be fully complied with, in addition to the important provisions set forth in this Agreement.

6. **Local Development Permits.** The standards for Development for the Property shall be as set forth in the Zoning Regulations. Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Zoning Regulations. City building and land development permits must be obtained under applicable law for any vertical construction,

including but not limited to any state, federal and local permits and appropriate permits must be obtained from the South Carolina Office of Ocean and Coastal Resource Management and U.S. Army Corps of Engineers, 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 the Owner, its successors and assign, of the necessity of complying with the law governing the permitting requirements, conditions, terms, or restrictions, unless otherwise provided hereunder.

7. **Comprehensive Plan and Development Agreement.** The Development permitted and proposed under the Zoning Regulations and permitted under this Agreement is consistent with the comprehensive plan and with current land use regulations of the City, which include the Planned Development District Standards for the Property.

8. **Terms for Public Health, Safety and Welfare.** The City Council finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of this Agreement, the Zoning Regulations, and existing laws.

9. **Historical Structures.** Any cultural, historical structure or sites will be addressed through applicable federal and state regulations the permitting process at the time of development, as required by applicable state regulations.

**SIGNATURES AND ACKNOWLEDGMENTS BEGIN ON THE FOLLOWING PAGE**



WITNESSES:

**City of Hardeeville, South Carolina**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Michael J. Czymbor  
Title: City Manager

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Name: Delores Pomarico  
Title: City Clerk

STATE OF SOUTH CAROLINA

)

) ACKNOWLEDGMENT

COUNTY OF JASPER

)

I HEREBY CERTIFY, that on this \_\_\_\_ day of \_\_\_\_\_, 2023 before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Michael J. Czymbor and Delores Pomarico known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate officials of the City of Hardeeville, 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.

\_\_\_\_\_  
Notary Public for South Carolina  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A  
TO DEVELOPMENT AGREEMENT**

**PROPERTY DESCRIPTION OF PORT LOGISTICS**

ALL those certain pieces, parcels or lots of land, together with any improvements thereon, situate, lying and being in Jasper County, South Carolina and being known and designed as TRACT 1, (179.77 acres more or less) and TRACT 2 (291.88 acres more less), as shown on a plat entitled “Boundary Survey of 179.77 acres and 272 acres, formerly known as lands of A. Minus, Jr. and Donald R. Livingston ‘Monkey John Swamp’ located near the intersection of U.S. HWY 17A and U.S. HWY 170A, Jasper County, State of South Carolina”, prepared by Kern-Coleman & Co., dated October 11, 2001, and recorded in the Office of the Register of Deeds for Jasper County, South Carolina in Plat Book 25 at Page 286, said lots having such size, shape, dimensions, buttings and boundings, more or less, as will by reference to said plat more fully appear.

This being the property conveyed to Owner by deed from Salt Marsh Timberlands, LLC, a Georgia limited liability company, by deed dated July 18, 2022 and recorded on July 21, 2022 in Book 1106 at Page 1156 in the Office of the Register of Deeds for Jasper County, South Carolina.

Jasper County Tax Map Parcels 037-001-003 and 037-00-01-004

**EXHIBIT B  
TO DEVELOPMENT AGREEMENT**

**PLANNED DEVELOPMENT DISTRICT STANDARDS**

The Planned Development District Standards for Port Logistics (the Property hereunder), as approved by the City Council on \_\_\_\_\_, 2023, including all exhibits is attached.

**EXHIBIT C**  
**TO DEVELOPMENT AGREEMENT**  
**DEVELOPMENT SCHEDULE**

Development of the Property is expected to occur over the five (5) year term of the 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.

<b>Year(s) of Commencement / Completion</b>					
<b>Type of Development</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
Commercial Square Footage	Site work	Site work	500,000		

As stated in the Development Agreement, Section 6, actual development may occur more rapidly or less rapidly, based on market conditions and final product mix.