

1STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER) **DEVELOPMENT AGREEMENT**
)
) **(GARR TRACT)**

This Development Agreement ("Agreement") is made and entered this _____ day of _____, 2008, by and between Ice Plus Properties, LLC ("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 owns approximately 228 acres, and proposes to develop, or cause to be developed, therein a mixture of commercial, resort, residential and conservation uses; 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 well being of the City and its residents; and,

WHEREAS, the program for development of the Property presents an 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 Planned Development District (PDD) plan, (as hereinafter defined) without encountering future changes in law which would materially affect the ability to develop under the PDD plan, 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:

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 Garr Tract.

"Adjustment Factor" shall mean the percentage of either the Consumer Price Index (CPI) (All Urban Consumers) increase for the applicable year or three percent (3%) per annum simple interest, which ever is greater. All amounts in this Agreement which are subject to the Adjustment Factor are based upon amounts in effect prior to July 1, 2006. The Adjustment Factor effective July 1, 2006 was three percent (3%). Therefore, all fees and values herein affected by the Adjustment Factor shall be 103.0% of the amount stated until June 30, 2007, at which time such fees and values shall be adjusted on the anniversary date of July 1, 2007 by either 3% or the CPI percentage increase rate, whichever is greater that year. Thereafter, annual adjustments to such amounts shall continue to be adjusted in like manner on July 1 of each year.

"Agreement" shall mean this Development Agreement as amended by the City and Owner and/or Secondary Developer, or their successors and assigns in writing from time to time.

"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.

“Builder” shall mean any person or entity applying for a building permit to construct any structure on a portion of the Property.

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

“Conceptual Master Plan” shall mean the schematic Conceptual Master Plan dated _____, attached to the PDD Standards and adopted by the City ordinance on _____, 2008.

“County” shall mean Jasper County, South Carolina.

“Developer” or “Owner” means Ice Plus Properties, LLC, a South Carolina Limited Liability Company.

“Development” means development, as defined in the Hardeeville Municipal Zoning and Development Ordinance (MZDO), undertaken on all or portions of the Property and construction of improvements thereon.

“Development Fees” shall have the meaning set forth in Paragraph XI(H).

“Development Rights” means the right to undertake Development by the Owner or a Secondary Developer in accordance with the Zoning Regulations and this Development Agreement, as measured by Residential Dwelling Units, Equivalent Residential Units, commercial square footage, or acreage.

“Equivalent Residential Unit” means _____.

“Fire Fund” shall mean the segregated interest bearing account to be held by the City into which all Development Fees for Fire are contributed.

“Garr Tract” means that certain tract of land described on Exhibit A, also defined herein as **“Property”**.

“Industrial / Commercial Credit” shall mean that allowance made against the \$180,000 minimum fair market value for a Residential Dwelling Unit or the Equivalent Residential Unit provided for herein below and in the attached Exhibit H.

“Library Fund” shall mean the segregated interest-bearing account to be held by the City into which all Development Fees for Library are contributed.

“Lot” shall mean an area designated as a separate and distinct parcel of land on a legally recorded subdivision/development plat as filed in the official records of Jasper County, South Carolina.

“Master Plan” shall mean any subsequently submitted Master Plan for a portion of the Property under the terms of the MZDO and Garr Tract PDD Standards.

“Municipal Improvement District” shall mean any special assessment bond financing approved and obtained by the City of Hardeeville for the Property pursuant to the Municipal Improvement Act of 1999, the proceeds of which are to be used for public infrastructure serving 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 adopted March 20, 2003, as amended through the date of this Agreement.

“Off-Site Roadway Fund” shall mean the segregated interest-bearing account to be held by the City into which all Road Development Fees for construction of public roadways are contributed until utilized for construction, either within or without the Property.

“On-Site Roadway Fund” shall mean the segregated interest-bearing account held by the City into which all Road Development Fees for construction of the Primary Road and other roads referenced herein are contributed until utilized for construction.

“Owner” means Ice Plus Properties, LLC, its successors and assigns.

“Park Fund” shall mean the segregated interest-bearing account to be held by the City into which all Park Development Fees are contributed.

“PDD” or “Planned Development District” means the property included in the Garr Tract Planned Development District by ordinance approved by the City of Hardeeville on _____.

“PDD Plan” shall mean the Conceptual Master Plan adopted as part of the Planned Development District Standards approved by the City by adoption of an ordinance on _____, a copy of which is attached as an Exhibit to the Garr Tract PDD Standards.

“PDD Standards” or “Garr Tract PDD Standards” means the land development regulations for the Property attached as Exhibit B as adopted by the City through the PDD Ordinance.

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

“Police Fund” shall mean the segregated interest-bearing account to be held by the City into which all Police Development Fees for police facility and equipment, if applicable, are contributed.

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

“Property” shall mean that certain tract of land described in the attached Exhibit A, also known as the “Garr Tract.”

“Residential Dwelling Unit” shall mean a building or portion of a building arranged or designed to provide living quarters for one or more Persons, including provisions for living, sleeping, eating, cooking and sanitation and for valuation purposes hereunder shall include the value of the lot on which such building is located.

“School Fund” shall mean the segregated interest bearing account into which the Development Fees for School are contributed.

“Secondary Developer” means any and all successors in title or lessees of Owner who (a) undertake Development of any portion of the Property; (b) are transferred in writing from Owner title to all or a portion of the Property; and (c) are assigned all or a portion of the Development Rights for the Property.

“Term” means the duration of this agreement as set forth in Section III hereof.

“Zoning Regulations” or “Land Development Regulations” means the development standards for the Property as set forth in : a) the Garr Tract PDD Standards adopted by the City , and all the attachments thereto, including but not being limited to the Conceptual Master Plan, and all narratives, applications, and site development standards therein, (a copy of all of which is attached hereto marked Exhibit B and incorporated herein by reference); b) this Development Agreement; and c) the MZDO dated March 20, 2003 as amended through the date of this

Agreement, except as the provisions thereof may have been clarified or modified by the terms of the PDD.

Other capitalized terms within this Development Agreement, if not defined within the section or subsection including the term, shall have the same definitions as set forth in the PDD, or as may be defined in the MZDO, as the context indicates.

III. TERM.

The term of this Agreement shall commence on the date this Agreement is executed by the City and Owner and terminate five (5) years thereafter; provided however, that the terms of this Agreement may be renewed for two successive five (5) year periods absent a material breach of any terms of this Agreement by the Owner or any Secondary Developer during the initial or any renewal terms, as applicable. Furthermore, this Agreement may be terminated at the end of the fifth (5th) year, without further renewal, upon written notice from the City to Owner delivered within thirty (30) days prior to the end of such five (5) year period if the average fair market value of the residences constructed within the Property as of the end of the fifth (5th) year from the date of this Agreement does not average \$180,000.00 per Residential Dwelling Unit, as adjusted by (1) the Adjustment Factor (for example, effective July 1, 2006, the average was equal to \$185,400.00 based upon the original \$180,000.00 figure plus the 3% annual Adjustment Factor), and (2) any credit for the Industrial / Commercial Credit as provided herein below.

IV. 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 Secondary 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.

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

A. Transfer of Development Rights. The Owner shall be required to notify the City, in writing, as and when Development Rights are transferred to any other party, including Secondary Developers. 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 Dwelling Units and/or commercial acreage and square footage of building area, as applicable, subject to the transfer. Secondary 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. Water and Sewer Required. The Owner and Secondary Developers, and their respective heirs, successors and assigns agree that all Development, with the exception of irrigation, incidental maintenance facilities, golf courses, 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 that such use for specific portions of the Property will comply with the overall environmental standards.

C. Acreage Requirement for Each Submission. With the exception of the first Master Plan submission for the Property proposed by Owner or a Secondary

Developer which addresses the entry area for the Project off of Highway 278, which may be less than ten (10) acres, or the platting of a road section, no Master Plan for any portion of the Property shall be submitted for processing unless that plan encompasses ten or more acres of high land which acres are not jurisdictional wetlands.

VI. DEVELOPMENT SCHEDULE.

The Property shall be developed in accordance with the development schedule, attached as **Exhibit D**, or as may be amended by Owner or Secondary Developer(s) in the future to reflect actual market absorption. Pursuant to the Act, the failure of the Owner and any Secondary 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 Secondary 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 / Secondary Developers in the future shall not be considered a material amendment or breach of the Agreement.

VII. DENSITY AND USES.

Subject to the requirements of this Agreement and the Zoning Regulations, mixed use, residential and commercial development on the Property shall be in accordance with the densities and uses as set forth below, as further described in the Planned Development District Standards and Conceptual Master Plan:

A. Acreage. Including wetlands, the Conceptual Master Plan for the Garr Tract PDD consists of approximately 228 acres, including approximately 50 acres within

the I-95 Tract, approximately 114 acres within the Lake Tract, approximately 43 acres within the Future Development Tract, and approximately 21 acres of public road right of way, all as more particularly shown on the Conceptual Master Plan. Approximately 64 acres consist of freshwater wetlands.

B. Wetland Acreage. Notwithstanding any other provision of the PDD or this Development Agreement to the contrary, the parties understand that the wetlands shown on the Conceptual Master Plan, and the acreages of wetlands and non-wetlands set forth in the PDD and this Development Agreement, are based upon the jurisdiction assumed by the US Army Corps of Engineers (the "Corps") at the present time, and in the event that it is determined that the jurisdiction of the Corps is less than under its present assumptions, the wetlands shown in the Conceptual Master Plan and the acreage of wetlands and non-wetlands set forth in the PDD and this Development Agreement shall be adjusted accordingly.

C. Number of Residential Dwelling Units. Subject to the terms and conditions of this Agreement and the Zoning Regulations, up to 300 Residential Dwelling Units ("Presumed Density" or "base units") shall be allowed within Garr Tract, which may consist of either single family or multifamily residential units. Owner shall have the right to have more than 200 multifamily Residential Dwelling Units, if at the time of such request for approval of multifamily units in excess of 200 multifamily Residential Dwelling Units, the average fair market value of all Residential Dwelling Units then constructed on the Property is at least \$180,000.00 (including the lot values) plus the Adjustment Factor or more (for example, effective July 1, 2006, the average is equal to \$185,400.00 based upon the original \$180,000.00 figure plus the 3% annual Adjustment Factor), as further adjusted by the Industrial / Commercial Credit.

D. Commercial / Acreage. In order to enhance the tax base of Hardeeville through commercial development in the Garr Tract PDD, the Conceptual Master Plan is incorporating up to 148 upland acres of Commercial Development. Within the

Commercial Development a maximum of _____ square feet of Commercial / Retail development shall be allowed with up to ____ hotel/motel rooms. Hotel/motel rooms or other short-term transient lodging facilities shall be considered commercial development for the purpose of Development Fees, and shall not count against residential density allocation.

E. Commercial Reserved Acreage. There shall be no cap on commercial or mixed-use acreage within the PDD, provided the overall residential unit cap is not exceeded. Any additional commercial, mixed use, light industrial, or hotel acreage or hotel / motel rooms over the amount shown on the Conceptual Master Plan that is added to the PDD will not require a conversion of residential units.

Owner and Secondary Developer shall notify the City of conversions during the prior year during each annual compliance meeting.

F. Non-residential Intensity. Non-residential uses shall have no cap placed on building intensity (building square footage/acre), provided compliance with height, storm-water, parking, buffering, landscaping and other site design requirements of the MZDO and PDD are met. Hotel/Inn/Bed and Breakfast Properties, and assisted living, congregate care, and nursing home facilities shall not have a specified dwelling unit per acre maximum, provided compliance with height, storm-water, parking, buffering, landscaping and other site design requirements of the MZDO and PDD are met. All non-residential development shall be subject to the provisions of the City of Hardeeville MZDO unless specifically exempted by this document.

VIII. RESTRICTED ACCESS.

The Owner and/or each Secondary Developer shall have the right (but not the obligation) to create restricted access communities within the Property as long as such limited access does not adversely affect in any material respect adjacent traffic patterns located on public rights-of-way, and provides for interconnectivity of both internal and external residential

developments with the non residential areas of the Property open to the general public so as to minimize the need for road trips off of the Property.

IX. EFFECT OF FUTURE LAWS.

Owner and Secondary Developers shall have vested rights to undertake Development of any or all of the Property in accordance with the Zoning Regulations, as may be modified in the future with the approval of the Owner pursuant to the terms hereof, or in accordance with this Agreement or statutory authority under the Act, for the entirety of the Term. Future enactments of, or changes or amendments to the City ordinances, including zoning or development standards ordinances (but not procedures), which conflict with the Zoning Regulations shall not apply to the Property unless the procedures and provisions of §6-31-80 (B) of the Act are followed, and which Owner and Secondary Developers shall have the right to challenge. Notwithstanding the above, the Property will be subject to then current fire safety standards and state and/or federal environmental quality 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 City, found by the City Council to be necessary to protect the health, safety and welfare of the citizens of Hardeeville.

X. ROADS, 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 Secondary 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 private roads within the Property shall be constructed by the Owner, Secondary Developer or other parties and maintained by such party/ies and/or Association(s), or dedicated for maintenance to other appropriate entities. The City will

not be responsible for the construction or maintenance of any private roads within the Property, unless the City specifically agrees to do so in the future. The recording of a final plat or plan subdividing a portion of the Property shall not constitute an offer to deed or dedicate any or all streets and rights of ways shown thereon to the City, or any other person or entity, nor as acceptance by the City of the dedication, absent an express written agreement to do so.

B. Public Roads / Future Improvements. Specific provisions relating to the construction and/or improvement of public roads are set forth under Section I (G) of the PDD Narrative, and said provisions are hereby incorporated herein by reference. Additional provisions relating to the funding and timing of required road improvements are set forth in Exhibit E of this Development Agreement.

C. Additional Roads / Improvements. If either Owner or a Secondary Developer is required to construct two (2) lanes of a roadway within a right of way sized to accommodate more lanes, then Owner or Secondary Developer shall construct those lanes on one side of the right of way, in accordance with plans approved by the City, unless otherwise agreed by City and Owner at the time of Master Plan approval. If necessary to achieve connections from planned public roadways within the Property to other public roadways, the City agrees to the concept of utilizing its powers of eminent domain to secure adequate road right of ways, provided that such acquisitions are at no cost to the City and subject to the right of the City to approve or disapprove of any proposed acquisition. Also, the City agrees to cooperate in acquiring state or federal funding for any required intersection improvements on Highway 278 at the main entrance to the Property.

D. 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.

E. 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.

F. Use of Effluent. Owner agrees that treated effluent will be disposed of only in such manner as may be approved by DHEC and the BJWSA. The City will use good faith efforts to cooperate with the Owner to support Owner in its obtaining gray water in connection with providing irrigation water for the golf courses, and other landscaped areas within the Property. The Owner or its designee shall have the right to operate an irrigation system to provide irrigation services in connection with all or any portion of the Property, provided such is approved by DHEC or other applicable regulatory authority.

G. 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 with the exception of any restricted access communities, which may elect in writing to provide in-house patrol services by security forces and/or constables and elect in writing to forego regular City patrol functions. Owner acknowledges the

concurrent jurisdiction of the City's police department and the sheriff of Jasper County on the Property and shall not interfere or in anyway hinder law enforcement activities of either on the Property regardless of whether such may be a restricted access community.

H. 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 anyway hinder public safety activities on the Property regardless of whether such may be a restricted access community.

Notwithstanding the foregoing, fees for fire protection will be charged as if the Owner of the Property was a "non-resident" under the fire protection fee ordinance (Section 8-120 of the City Code of Ordinances) until such time as a site specific development plan is approved for an area of the Property, at which time the non-resident treatment shall be removed as to that area only.

I. 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.

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

K. Library Services. Library services are now provided by Jasper County. City shall not be obligated to provide library services to the Property, absent its election to provide such services on a citywide basis. City shall allocate, at its reasonable discretion, Library Developer Fees to assist with library services in Southern Jasper County.

L. Emergency Medical Services (EMS). EMS services are now provided by Jasper County. City shall not be obligated to provide EMS services to the Property, absent its election to provide such services on a citywide basis.

M. Drainage System. All storm-water runoff, treatment and drainage system improvements within the Property will be designed in accordance with the then current Zoning Regulations and Best Management Practices. All storm-water runoff, treatment and drainage system improvements for the Property shall be constructed by Owner or the Association. The City will not be responsible for any construction or maintenance cost associated with the storm-water runoff, treatment and drainage system within the Property. The parties agree to coordinate the drainage for roads constructed by Owner to promote economies of scale and lessen environmental impacts.

N. Storm Water Quality. Protection of the quality in nearby waters and wetlands is a primary goal of the City. The Owners 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, and their successors for the handling of storm water. Further provisions regarding Storm Water are included within the PDD for this Project.

XI. CONVEYANCES AND CONTRIBUTIONS.

The City and Owner understand and agree that future 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, its successors and assigns, to offset such future costs and expenditures created by the Development of the Property:

A. **No Other Dedications.** Except with respect to the dedications and/or conveyances of the properties referred to in Article X(B), and Exhibit E, no other dedications or conveyances of lands for public facilities shall be required in connection with the development of the Property.

B. **Administrative Charges for Professional Assistance and Interim Services.** Owner and the City agree that certain cost may be incurred early in the development, or pre-development process, making it difficult for the City to provide the necessary funds for professional services and interim government services prior to actual development and the eventual collection of funds through property taxes and other sources provided hereunder. Owner hereby agrees that an Administrative and Services Fee shall be paid to the City, based upon a charge of \$404.00 per upland acre for an ultimate total of \$65,448.00, for the total of 162 upland acres. This fee is payable at the time that upland acreage is transferred by Owner to a Secondary Developer, or at the time of Master Plan approval for any portion of the Property developed by Owner or a related entity, such payment(s) to be made for the upland acreage so transferred or approved at Master Plan, whichever first occurs. In any event, Owner will guarantee that at least a minimum of \$13,089.60 per year, cumulatively, shall be paid to City by June 1, 2008, and each June 1st thereafter, until paid in full. If total payments of \$65,448.00 have not been made by June 1, 2012, as the result of payments made at the time of acreage transfer or Master Plan approval, remaining payments shall be adjusted by a cost of living factor to put the City in the same position, ultimately, as would have been the case for a five year payout, utilizing the Consumer Price Index for such adjustments.

The City agrees to utilize its best efforts to attract and retain qualified personnel to staff the positions funded by this contribution. The City agrees that all submissions for governmental approvals with respect to the Property shall be expeditiously processed, in accordance with MZDO procedures as modified by the PDD for this Project. The City shall maintain personnel qualified to review plans and plats.

C. **No Wetlands.** All conveyances and dedications of lands pursuant to this Agreement shall mean upland gross acres of highlands, net of wetlands.

D. **Development Fees.**

1. **Fee Chart.** To assist the City in meeting expenses resulting from ongoing development, upon application for a building permit from the City for any portion of the Property, each Builder shall pay Development Fees for Road, Police, Fire, School, Library and Parks (“Development Fees”), as set forth in the table below. The Development Fees set forth below are based upon 2005 figures. The Development Fee amounts (including Exhibit F) were increased by the annual 3% Adjustment Factor effective July 1, 2006 and shall increase each July 1 hereafter by the Adjustment Factor.

DEVELOPMENT FEES	AMOUNT
Commercial and Retail Space	See <u>Exhibit G</u> attached hereto and made a part hereof.
Residential Dwelling Units	\$4,295 plus the Adjustment Factor per unit – Road* [\$2,315 is for internal, on-site or nearsite roads; \$1,980 is for external, off-site roads] \$320 plus the Adjustment Factor per unit – Police \$320 plus the Adjustment Factor per unit – Fire \$500 plus the Adjustment Factor per unit – School \$100 plus the Adjustment Factor per unit – Library \$636 plus the Adjustment Factor per unit – Park
Multifamily Dwelling Units	\$3,006 plus the Adjustment Factor per unit – Road* [\$1620 is for internal, on-site or nearsite roads; \$1386 is for external, off-site roads] \$224 plus the Adjustment Factor per unit – Police

\$224 plus the Adjustment Factor per unit – Fire
\$250 plus the Adjustment Factor per unit – School
\$70 plus the Adjustment Factor per unit – Library
\$445 plus the Adjustment Factor per unit – Park

a. *Internal, On-Site or Nearsite Road Development Fees. All Development Fees collected under the category of Roads, Internal, as set forth in the table above, shall be for the construction and/or maintenance of the roads designated on the Conceptual Master Plan, and such roads as are fully described in Section I (G) of the PDD Narrative and in Exhibit E hereto. Notwithstanding anything contained herein to the contrary, in the event that (i) the Owner and the City jointly agree to the construction of these road components by use of funds from assessments imposed upon the Property; (ii) the City consents to the creation of a special taxing district or Municipal Improvement District; (iii) the City is able to obtain Municipal Improvement District Bond financing which is non-recourse as to the City; and (iv) suitable arrangements are made with the City to guarantee completion of the infrastructure with respect to raising proceeds to construct such roads, then the Owner shall notify the City prior to the sale of the first Residential Dwelling Unit or prior to the transfer of any commercial development parcel to a Secondary Developer, from the Property (“Road Assessment Notice”), whereupon the City shall take such action as necessary to implement a Municipal Improvement District or Special Taxing District with respect to the Property to provide up to \$_____ of principal proceeds, or such greater amount as then current, definitive plans indicate to be necessary to complete the Road Components, which monies shall be made available to design, permit and construct such Road components. Upon obtaining such funding (which may be in phases), the City shall cause the design, permitting and construction of the Road components (or phased portions of the Road components, as may be the case). Nothing herein shall preclude the submission of a design/build proposal by the Owner which complies with the procurement requirements of the City. Upon the creation of the Municipal Improvement or Special Taxing District, issuance of Municipal Improvement District Bonds and funding, the Road Development Fees with respect to (A) commercial and retail space shall be as set forth in Exhibit G attached hereto; (B) single family residential dwelling units shall be reduced from Four Thousand Three Hundred Eighty and 00/100 Dollars (\$4,380.00) per residential units for Roads to One Thousand Nine Hundred Eighty and 00/100 Dollars (\$1,980.00) per residential unit for Roads, and (C) multi-family residential dwelling units shall be reduced from Three Thousand Forty-Six and 00/100 Dollars (\$3,046.00) per unit to One Thousand Three Hundred Eighty-Six and 00/100 Dollars (\$1,386.00) per multi-family unit. Notwithstanding the above, Owner may begin construction of the On-Site and Near-Site Road components prior to the creation of the Municipal

Improvement District or Special Taxing District upon presentation of appropriate documentation as may be required by the Municipal Improvement District or Special Taxing District statutes to become eligible for reimbursement, and if the Municipal Improvement District or Special Taxing District is created, Owner shall be reimbursed for any qualifying expenditures for the design, permitting and construction of the On-Site and Near-Site Roads made prior to the creation of the Municipal Improvement District or Special Taxing District. Any On-Site and/or Near-Site Road Development Fees replaced by a Municipal Improvement District or Special Taxing District assessment shall be returned to the Payor.

2. Payment of Fees. Except as provided in Section XI(B) above, all Development Fees in this Section D shall be collected at the time of a Builder obtaining a building permit for any portion of the Property and placed in separate interest-bearing accounts held and established by the City for Roads, Police, Fire, School, Library and Parks, which may be utilized for the purposes set forth in this Agreement.

3. No Other City Impact Fees. 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 solely by the City at any time hereafter during the term of this Agreement; provided, however, the Owner, a Secondary Developer, or a Builder 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).

4. Other Governmental Fees. Except as set forth in this Agreement, nothing herein shall be construed as relieving the Owner, a Secondary Developer, or a Builder, their successors and assigns, from payment of any such fees or charges as may be assessed by entities other than the City, provided however, if an entity other than the City imposes, or is permitted by City to impose, fees or obligations similar in nature to those in this Agreement, the affected Owner, Secondary Developer, or Builder shall be entitled to an offset against the Development Fees of this Agreement the amount of such fees or obligations which are collected. The provisions of this section 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, roads, parks, schools, libraries and other obligations or services and improvements under 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).. The City shall not oppose Owner's challenge to 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.

5. Increase in Fees. The Development Fees set forth by the City above are vested for the entire Property and shall not be increased by the City except for the Adjustment Factor as provided in this Agreement.

6. Assignment of Fees. 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 Secondary Developer owning such credits and all such credits shall remain valid until utilized. 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.

7. Special Tax District. The City, County or other governmental entity may establish, solely or in conjunction with each other, a Tax Increment, 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 Property. 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 or Secondary Developer (as applicable) unless such is otherwise expressly permitted pursuant to the terms of this Agreement. It is acknowledged that at the written election of Owner and a Secondary Developer, either 1), a collective municipal improvement district and/or special taxing district for such of the Property as they designate; 2), two separate districts which include properties designated by Owner and a Secondary Developer; or 3), a collective district which issues bonds in series and applies differing assessment rates, may be implemented with the consent of the City for the Property as set forth in this Agreement.

8. On-Site / Nearsite Roadway Fund and Reimbursement to Owner. All Road Development Fees for on-site, internal roads to be constructed within the Project which are collected shall be held by the City in a segregated interest-bearing account (“On-Site / Nearsite Roadway Fund”), and all such monies and accrued interest shall be utilized, unless otherwise agreed by the City and Owner, to reimburse Owner for construction of the Road Improvements if a municipal improvement district or special assessment district as set forth above is not utilized. City shall pay such reimbursement to Owner within thirty (30) days after substantial completion and delivery of such customary construction and engineering documentation and pay requests by Owner of each pre-approved phase of the On-Site Roads, (as described above in Section X(B) out of the first funds in the On-Site and Near-Site Road Fund on a pro rata basis as then current definitive plans indicate to be necessary to complete the On-Site and Near-Site Roads to the extent such funds are collected, and as may be thereafter available.

9. Fees for Review of Agreement and PDD. Owner agrees to pay the costs and expenses of the City for consultants and professionals incurred in negotiating, processing and evaluating this Agreement and the accompanying PDD, not to exceed \$_____. City will provide sufficient documentation of these charges. Owner shall pay such fees within 60 days of the delivery of the invoice(s).

E. Shared Public Facilities. All Development Fees paid hereunder for Fire, Police, Parks and/or Schools may be utilized by City for the expenses of acquisition, construction, equipping, maintaining or operating any such facilities in the area nearby the

Property, to the extent that such facilities provide services to the Property. No such facilities are currently envisioned to be located on the Property.

XII. PERMITTING PROCEDURES:

A. Model Homes. The City agrees to allow the Developer the ability to permit and construct model homes without utilities (i.e., “dry models”) and to relocate the models as necessary within any residential subdivision.

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

C. Timing of Reviews. 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 for this Project. Owner and/or Secondary Developers 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.

D. Signage. Signage for the Project is governed by the provisions of the PDD.

E. Architectural Review. The City acknowledges that the Owner and Secondary Developers have or will have an internal set of architectural guidelines and will employ an architectural review board, which is to be adopted as provided in the PDD. These architectural guidelines must meet the minimum standards set forth in the MZDO for architectural review.

F. Bond for Plat Recording. The City agrees to allow final subdivision plat recording with a bond 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 for this Property.

G. No Additional Development Obligations. The City agrees that the Property is approved and fully vested for its intensity, density, development fees, uses and height, and Owner shall not have any obligations for on or off site transportation or other facilities or improvements other than as provided in this Agreement and its Attachments and Exhibits, but must adhere to then current PDD, subdivision plat, and 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 in residential areas of less than one (1) unit to the acre. Roadway cross sections utilizing swale drainage will be designed, constructed, and maintained to meet BMP standards (imposed by regulatory agencies) for storm-water quality. Roadway cross sections will be submitted for approval at time of proposed construction of such Roadway based upon engineering and planning standards consistent with the Master Plan submissions approved by the City Council. Pavers may be utilized in lieu of asphalt if acceptable performance criteria are demonstrated, for both public and private road areas within the Property.

I. Plan Review Fees. All plan review fees shall be consistent with the fees charged generally in the City.

XIII. DEVELOPER ENTITLEMENTS.

City acknowledges that Developer is vested with the following items:

A. **Water and Sewer Capacity.** The City agrees to sell or authorize the sale of water and sewer capacity to the Owner and Secondary Developers at the current city rates, as provided under the City/BJWSA Agreement, plus a Two Hundred Fifty Dollar (\$250) administration fee, so long as such is available. The Owner or Secondary Developer shall each have the right to assign any of its water and sewer capacity which it has acquired to third parties and collect administration fees in connection therewith in accordance with Section 5.6 of the City/BJWSA Agreement. The administrative fee is payable at the time BJWSA issues its capacity certificate acknowledging payment of its fees.

B. **Irrigation.** The Owner or its written designee may own and operate an internal irrigation company and system that serves the Property and the City will grant a franchise and such easements over public rights-of-way as may be reasonably required by the Owner (or its designee) to implement such irrigation system. The City agrees to cooperate with the Owner in connection with providing such irrigation water in connection with development of the Property.

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

D. **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.

E. Drainage Systems. 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 City shall have no responsibility for the construction, operation or maintenance of such systems.

F. On-site Burning. On-site burning will be permitted within the Property upon obtaining applicable permits, subject to the requirement that any concerns raised by the proximity of the Property to Interstate 95 and the hospital shall be addressed to the satisfaction of the City and any applicable regulatory agencies.

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

H. 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 X above. Subject to the limitations of Section X 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.

XIV. COMPLIANCE REVIEWS.

As long as Owner owns any of the Property, Owner or its designee, shall meet with the City, or its designee, at least 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. The Owner, or its designee, shall provide such information as may reasonably be requested, 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 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. The Owner, or its designee, shall be required to compile this information within a reasonable time after written request by the City.

XV. DEFAULTS.

The failure of the Owner, Secondary Developer or the City 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 provided in Section XVIII, including specific performance; provided however no termination of this Agreement may be declared by the City absent its according the Owner and any relevant Secondary 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 as to construction of the Primary Road is a default hereunder, and Owner and Secondary Developers will have to cure such default. Notwithstanding issues dealing with the construction of the Primary Road, a default of the Owner shall not constitute a default by Secondary Developers, and default by Secondary 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 Secondary Developer set forth in this Agreement.

XVI. MODIFICATION OF AGREEMENT.

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. Because this Agreement constitutes the plan for certain planned 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 pursuant to the MZDO. 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.

XVII. 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:

City Manager
City of Hardeeville, SC
205 East Main Street
Post Office Box 609
Hardeeville, South Carolina 29927

And to the Owner at: Ice Plus Properties, LLC

With Copy To: Law Office of Lewis J. Hammet, PA
Post Office Box 2960
Bluffton, South Carolina 29910

XVIII. ENFORCEMENT.

Each Party recognizes that the other Party would suffer irreparable harm from a material breach of this Agreement, and that no adequate remedy at law exists to enforce this Agreement. Consequently, the Parties agree that any Party who seeks enforcement of the Agreement is entitled to the remedies as provided in the Act, and is entitled to the remedies of injunction and specific enforcement but not to any other legal or equitable remedies, including, but not limited to damages; provided, however, the Owner and/or Secondary Developer shall not forfeit its right to just compensation for any violation by City of Owner's or Secondary Developers' Fifth Amendment rights.

XIX. 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 Secondary 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, Secondary 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 Secondary 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, and
- (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.

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 Secondary 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.** No sale, transfer or assignment of all portion of the Property, or creation of a joint venture or partnership, shall require the amendment of this Agreement. In the event that Ice Plus Properties, LLC transfers any interest in the Property or any development to any successor or assign, Ice Plus Properties, LLC and such successor or assign may, by written agreement that is submitted to and approved by the City, allocate any of the duties or benefits placed upon Ice Plus Properties, LLC by this Agreement between them, in which event the duties and benefits shall apply separately to each of them in accordance with the property owned by each, under the terms of the assignment agreement approved by the City.

H. Right to Assign. Owner shall have the right to sell, transfer, ground lease, or assign Development Rights associated with the Property in whole or in part to any Person (an “Assignee”) upon written notice to the City in accordance with the notification provisions of Section V(A) herein; provided, however, that the sale, transfer, or assignment of any right or interest under this Agreement shall be made only together with the sale, transfer, ground lease, or assignment of all or a portion of the Property subdivided in accordance with subdivision plats approved under the Zoning Regulations. Concurrently with such sale, transfer, ground lease, or assignment, Owner shall (i) notify City in writing of such sale, transfer, or ground lease, and (ii) Owner and Assignee shall provide a written assignment and assumption agreement in form reasonably acceptable to the City pursuant to which the Assignee shall assume and succeed to the rights, duties, and obligations of Owner with respect to the parcel or parcels of all or a portion of the Property so purchased, acquired, or leased. Owner shall continue to be obligated under this Agreement with respect to all portions of the Property retained by Owner. Owner shall also remain obligated with respect to the dedication and installation of all associated infrastructure improvements regarding Primary Road and the other public infrastructure to be provided by Owner under this Agreement, unless a Municipal Improvement District or special assessment district providing for the construction of such has been created and funded. A default as to construction of Primary Road, its associated infrastructure or other public infrastructure is a default hereunder, and Owner shall have to cure such default, unless it shall have been explicitly released from responsibility for such in whole or in part by resolution of City Council.

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

J. 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.

K. 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.

L. 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.

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

N. Tax Status of Real Property. Notwithstanding any provision hereof or of the PDD to the contrary, and to the extent allowed by statute, the Parties hereto agree that the present classification of the entire Property for real estate tax purposes shall continue indefinitely as Agriculture/Silvaculture until the Property, or any portion of such Property, is committed to a different use by the then Owner of such Property. The change in use status for real estate tax purposes shall apply only to the portion of the Property for which actual change in use occurs, and not to any remaining portion for which actual use has not changed. The approval and filing of a plat or plats for the transfer of title only, and the subsequent transfer of title, to all or a portion of the Property, shall not be considered a change in use for these purposes, unless such plat(s) is submitted and approved as a residential or commercial subdivision plat under the Zoning Regulations. Furthermore, the commencement of development activity on any portion of the Property, pursuant to a development approval under the Zoning Regulations, shall be considered a change in use as to the Property which is submitted to final development approval only, and not to the balance of the Property. For these tax status purposes, the obtaining of a Conceptual Master Plan approval or Master Plan approval shall not be considered a change in use.

These principles shall govern the issue of when a change in use occurs for tax purposes under the laws of the City, and the parties agree that these same principles are the correct principles to define any future change in use under Jasper County law as well, and the parties will cooperate to ensure such an interpretation by Jasper County.

XX. 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). Although certain of these items are addressed elsewhere in this Agreement, the following listing of the required provisions is set forth for convenient reference. The numbering below corresponds to the numbering utilized under Section 6-31-60 (A) for the required items:

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 Ice Plus Properties, LLC.

2. Duration of Agreement. The duration of this Agreement shall be as provided in Article III.

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. Based on prior experience with the type of Development contemplated by the Zoning Regulations, it is estimated that the average size household of the Property will be 2.2 persons. Based on maximum density build out, the population density of the Property is anticipated to be no more than 660 persons (unless optional additional density is granted).

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 residents on a timely basis.

5. Dedication of Land and Provisions to Protect Environmentally Sensitive Areas. All requirements relating to land transfers for public facilities are set forth in Article X, XI, and Exhibit E herein. 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 Development standards 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. Building Permits must be obtained under applicable law for any vertical construction, and appropriate permits must be obtained from the State of South Carolina (OCRM) and 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 a Planned Development District 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

Notary Public for South Carolina
My Commission Expires: _____

SIGNATURES AND ACKNOWLEDGMENTS CONTINUE ON THE FOLLOWING PAGE

WITNESSES:

HARDEEVILLE, SOUTH CAROLINA

By: _____
Rodney C. Cannon, Mayor

Attest: _____
_____, Clerk to Council

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ____ day of _____, 2008. before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Rodney C. Cannon, Mayor, and _____, Clerk to Council, 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
My Commission Expires: _____

EXHIBIT A

TO DEVELOPMENT AGREEMENT

PROPERTY DESCRIPTION OF GARR TRACT PROPERTY

**Property Description
(Attached)**

July 8, 2008

EXHIBIT B
TO DEVELOPMENT AGREEMENT
PLANNED DEVELOPMENT DISTRICT

The Planned Development District approval for the Garr Tract (the Property hereunder), as approved by the City Council on _____, 2008, is hereby incorporated herein by reference, to include all drawings, plans, narratives and documentation submitted therewith, as fully as if attached hereto. The parties hereto may elect to physically attach said documents hereto, or may rely upon the above stated incorporation by reference, at their discretion.

EXHIBIT C
TO DEVELOPMENT AGREEMENT

Zoning Regulations

The Municipal Zoning and Development Ordinance of the City of Hardeeville, as adopted through the date of this Agreement (Supplement.____)

The Planned Development District (PDD) Conceptual Master Plan dated _____ and adopted by the City of Hardeeville on _____ by Ordinance Number _____.

EXHIBIT D
TO DEVELOPMENT AGREEMENT
DEVELOPMENT SCHEDULE

Development of the Property is expected to occur over the five (5) year term of the Agreement, and the two five (5) year extension terms, 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:

Year(s) of Commencement / Completion

<u>Type of Development</u>	<u>2008 - 2012</u>
Commercial	_____
Residential	_____

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

EXHIBIT E

TO DEVELOPMENT AGREEMENT

**ROAD AND IMPROVEMENT DESCRIPTIONS, ESTIMATED COST AND
SCHEDULING**

July 8, 2008

EXHIBIT F
TO DEVELOPMENT AGREEMENT

Hardeeville Planning District Map

As depicted on attached Map “F”, the Hardeeville Planning District encompasses the southern most areas of Jasper County.

EXHIBIT G
TO DEVELOPMENT AGREEMENT

Commercial Fees

July 8, 2008

EXHIBIT H
TO DEVELOPMENT AGREEMENT
INDUSTRIAL / COMMERCIAL CREDIT

The Garr Tract PDD contains a significant portion of industrial and/or commercial acreage, which is in excess of the amount of acreage, proportionate to residential development, which is guaranteed by other Planned Development Districts in Hardeeville, including East Argent, West Argent, Morgan Tract, Anderson Tract and others. To recognize the additional tax base that industrial and commercial development provides in excess of residential development, credits against the average \$180,000 market value of residential property required in this Development Agreement will be provided as set forth below:

1. Based upon the initial commitment, hereby made by Owner, that a minimum of 60% of the upland acreage of the overall Property will be devoted to commercial or industrial development (including the road, parking and open space designed to serve such commercial and/or industrial development), a credit is hereby given to reduce the required \$180,000.00 market value for residential property, as required under certain provisions of this Development Agreement, to \$140,000.00.

2. To the extent that Owner may ultimately commit more than 60% of the Property to commercial and/or industrial development (including the road, parking and open space designed to serve such commercial and/or industrial development), the Owner may seek further credits from the City against the \$140,000.00 minimum market value for residential property established above. If Owner elects to seek such further credit, such further credit may only be given when 100% of the overall Property has been submitted for Master Plan approval, thus fixing the final ratio of residential to commercial / industrial acreage. Owner will be required to submit a complete analysis of projected tax revenue based upon the final development plan vs. the 60% commercial / industrial development commitment hereby made by Owner. Any further credit will be given at the discretion of the City, if City confirms to its satisfaction that projected increased tax revenue justifies a further credit against the minimum required residential market value.