

COUNTY COUNCIL OF BEAUFORT COUNTY

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CLERK TO COUNCIL

AGENDA NATURAL RESOURCES COMMITTEE

Thursday, April 24, 2014

1:00 p.m.

Executive Conference Room
Administration Building

Committee Members:

Brian Flewelling, Chairman
Paul Sommerville
Jerry Stewart
Tabor Vaux

Staff Support: Tony Criscitiello

1. CALL TO ORDER – 1:00 P.M.
2. CONSIDERATION / DEVELOPMENT AGREEMENT BLUFFTON GATEWAY ([backup](#))
3. ADJOURNMENT



AN ORDINANCE TO APPROVE A DEVELOPMENT AGREEMENT BETWEEN BEAUFORT COUNTY AND JAZ 278, LLC, A GEORGIA LIMITED LIABILITY COMPANY AUTHORIZED TO CONDUCT BUSINESS IN SOUTH CAROLINA PURSUANT TO SECTION 6-31-30 OF THE *CODE OF LAWS OF SOUTH CAROLINA*, 1976, AS AMENDED.

WHEREAS, the General Assembly of the State of South Carolina has enacted the “South Carolina Local Government Development Agreement Act” as set forth in Section 6-31-10 through 6-31-160 of the *Code of Laws of South Carolina*, 1976, as amended; and

WHEREAS, the Act authorizes local governments, including Beaufort County through its County Council, to enter Development Agreements with developers for the purpose of providing a continuous agreement for development of projects and for the protection and advance payments for the impact upon the citizens of Beaufort County.

NOW, THEREFORE, in consideration and pursuant to Section 6-31-10, of the *Code of Laws of South Carolina*, 1976, as amended, Beaufort County Council herein adopts this Ordinance, which is necessary to provide the authority to execute a Development Agreement with Jaz 278, LLC, a Georgia Limited Liability Company authorized to conduct business in South Carolina.

Adopted this _____ day of _____, 2014.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

Joshua A. Gruber, County Attorney

ATTEST:

Suzanne M. Rainey, Clerk to Council

First Reading: October 14, 2013

Second Reading: April 14, 2014

Public Hearings: March 24, 2014 and April 14, 2014

Third and Final Reading:

**Consideration of Second Reading Approval Postponed
Until April 14, 2014 Meeting of Council**

2/27/2014 2:42 PM

HILTONHEAD 789999v12

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

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

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

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

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

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

WHEREAS, Owner desires to modify certain aspects of the ZDSO (hereinafter defined), as more particularly described herein, to provide for and achieve the successful development of Bluffton Gateway pursuant to and as shown in a development plan (the "Development Plan") to be approved by the DRT and the SCRB (each as hereinafter defined) in accordance with the ZDSO, which Development Plan is attached hereto as Exhibit "B" and made a part hereof; and

WHEREAS, the ZDSO provides for commercial subdivisions in Section 106-2540; and

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

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

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

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

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

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

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

WHEREAS, Beaufort County finds that Owner's plan for development proposed for this Property is consistent with Beaufort County's comprehensive land use plan and shall, together with the Brownfield Voluntary Cleanup Agreement, further the health, safety, welfare and economic well being of Beaufort County and its citizens; and,

WHEREAS, the plan for the development of the Property presents Beaufort County with an exceptional opportunity to receive completed road infrastructure consistent with and in compliance with the

Short Term Needs Study; secures quality planning and a well-constructed commercial retail center; provides for the voluntary cleanup of an existing Brownfield; provides for the enhanced protection of the environment; and strengthens and revitalizes its tax base; and,

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

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

I. INCORPORATION.

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

II. DEFINITIONS.

As used herein, the following terms mean:

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

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

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

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

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

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

“Development Plan” means that certain site development plan for the Property, and related material and exhibits, depicting proposed lots, buildings and other infrastructure for the Property’s proposed development, which are entitled “Development Plan”, and which constitute vested Development Rights (as hereinafter defined) under this Agreement with respect to all applicable zoning and land development requirements under the ZDSO, and which have been reviewed and approved by the County in conjunction with the approval of this Development Agreement, which Development Plan is attached hereto as Exhibit “B” and made a part hereof.

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

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

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

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

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

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

“SCRB” means the Beaufort County Southern Corridor Review Board, which has given conceptual approval of the Development Plan.

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

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

“USACE” means United States Army Corps of Engineers.

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

III. TERM.

The Term of this Agreement shall commence on the Effective Date and terminate five (5) years thereafter; or, if renewed, at the end of two (2) additional five (5) year periods. During the Term, the provisions of this Development Agreement shall be vested against any future changes to Beaufort County law or ordinances which would affect the ability of Owner to carry out the development approved in this Development Agreement. Further, at the end of the second five (5) year period, the provisions of this Development Agreement shall be vested against any future changes to Beaufort County law or ordinances if Owner shall have achieved Substantial Development. “Substantial Development” shall mean (i) the conveyance by Owner of any right-of-way to Beaufort County pursuant to the terms of Article XI of this Agreement, or (ii) the construction (being completed or under construction) of not less than twenty-five

percent (25%) of the total commercial building area on the Property as shown and depicted on the Development Plan.

IV. DEVELOPMENT OF THE PROPERTY.

The Property shall be developed in accordance with this Development Agreement. Beaufort County shall, throughout the Term, use its best efforts to maintain or cause to be maintained, a procedure for the expedited administrative processing and review of all Development on the Property as approved by the Development Agreement. All costs charged by or to Beaufort County for such reviews shall be paid by Owner or Developer, as applicable.

V. CHANGES TO THE ZDSO.

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

- A.** Owner shall be required to notify Beaufort County, in writing, as and when Development Rights are transferred to any Developer. Such information shall include the identity and address of the acquiring party, a proper contact individual, and the location and number of acres of the Property for which Development Rights are being transferred. Developers transferring Development Rights to any other party shall be subject to this requirement of notification, and any entity acquiring Development Rights hereunder shall be subject to the requirements of Article XVIII G.

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

VI. DEVELOPMENT SCHEDULE.

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

VII. COMMERCIAL DENSITY AND USE.

- A. **Commercial Density.** Development on the Property shall be limited to a maximum of 350,000 commercial square feet. Any subsequent development on the Property of additional commercial square footage resulting in an increase of more than 50 additional daily trips, shall require an updated traffic impact analysis and an amendment to the Development Agreement in accordance with Article XV. The right to fully develop or construct all of the commercial density provided herein shall be binding on Owner and the County. It being specifically understood that Owner, its successors and assigns shall have the absolute right to develop the Property to the commercial square feet of density stated herein. Owner or any Developer with respect to assigned Development Rights shall have the right to make revisions to the Development Plan for matters including, but not limited to, adjustments to the dimensions of lots and buildings so long as the same are in keeping with the character and intent of the Development Agreement Ordinance and shall be administered and approved

by the DRT, and such revisions shall not require an amendment of this Agreement pursuant to an amendment to the Development Agreement Ordinance.

- B. Use.** The Development Plan vests certain proposed land uses within the Property. The specific uses allowed for the Property shall be all those uses allowed under the Commercial Regional zoning category provided in the ZDSO as of the Effective Date of this Agreement.

VIII. ACCESS.

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

IX. EFFECT OF FUTURE LAWS.

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

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

X. INFRASTRUCTURE AND SERVICES.

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

- A. Private Roads.** Except for those rights-of-way to be dedicated to Beaufort County as provided in this Agreement, any roads proposed to be constructed within the Property shall

be constructed by Owner, and maintained by it, or dedicated for maintenance to other appropriate entities. Except for those rights-of-way to be dedicated to Beaufort County as provided in this Agreement, Beaufort County shall not be responsible for the construction or maintenance of any roads within the Property, unless Beaufort County specifically agrees to do so in the future.

B. Public Roads.

- (i) The Property shall be served by direct access to U.S. Highway 278 and S.C. Highway 46 as shown on the Development Plan.
- (ii) The location of public access points to the Property, median cuts in the right-of-way, and signage shall be as set forth in the Development Plan.

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

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

E. Stormwater Treatment and Disposal. Stormwater treatment and disposal shall be in accordance with the ZDSO and the terms of this Agreement.

F. Other Services / Future Agreements. Development within the Property shall be served and entitled to any and all Beaufort County services, such as fire protection and police

protection, provided to other property within Beaufort County, with the understanding that the Property, except as otherwise herein provided, shall be subject to all Beaufort County taxes of universal application, as well as any special service district taxes which may apply to all other existing properties and development within the area, such as Fire District millage rates. Normal service shall be considered vested as a matter of right within this Property, on the same basis as all other property in Beaufort County.

XI. SYSTEM IMPROVEMENTS, CONVEYANCES, CREDITS AND CONTRIBUTIONS.

In addition to all other covenants, conditions and agreements set forth in this Agreement, the following are hereby agreed upon by the parties:

A. Rights-of-Way.

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

- (a) one hundred percent (100%) of the most recent assessed value for such land, as shown in the County Assessor's records, or
- (b) the fair market value of the land established by a private appraiser acceptable to the County in an appraisal paid for by the Owner.

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

subject to a restrictive covenant that prohibits the use by Beaufort County of the Southern Connector Road for any use other than for a right-of-way for vehicular and pedestrian traffic and/or utility services and infrastructure.

(ii) **Sheridan Park and U.S. Highway 278 Interconnectivity and Access.** Owner shall transfer to Beaufort County that certain parcel of real property shown and depicted on the Development Plan as the "Sheridan Park/U.S. 278 Connector Road", which may be combined with other real property obtained by Beaufort County for the construction of a connector road right-of-way with the Sheridan Park commercial center to the west of the Property, and to provide access to U.S. Highway 278, each as generally depicted in Development Plan. The parties acknowledge and agree that for the sole purpose of valuation of credits against Development Fees as described in this Article XI and for no other purpose, the value of the Sheridan Park/U.S. 278 Connector Road, standing alone and not as part of the entire Property, shall be at Owner's option, either:

- (a) one hundred percent (100%) of the most recent assessed value for such land, as shown in the County Assessor's records, or
- (b) the fair market value of the land established by a private appraiser acceptable to the County in an appraisal paid for by the Owner.

Together with credits for other system improvements, Owner and Developer(s) shall be entitled to credits for any and all Development Fees which may become payable with respect to the Property up to the total amount of the Sheridan Park/U.S. 278 Connector Road Value. Beaufort County agrees that it shall use best efforts to obtain real property for and complete construction of portions of the right-of-way not located on the Property which connect to the Sheridan Park/U.S. 278 Connector Road to the west. Notwithstanding anything else contained herein, the failure by the County to obtain real property for and complete construction of those portions of the right-of-way not located on the Property shall not waive, cancel or terminate its obligation to accept those rights-of-way constructed on the Property, as approved and contemplated by this Agreement. The conveyance of the document which conveys title to the Sheridan Park/U.S. 278 Connector Road shall be subject to a

restrictive covenant that prohibits the use of the Sheridan Park/U.S. 278 Connector Road for any use other than for a right-of-way.

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

B. Road Facilities Improvements – Design and Construction.

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

- (ii) **S.C. Highway 46 Intersection.** The Development Plan contemplates improvements to S.C. Highway 46, including construction of a fully signalized intersection. The value of the credit for the construction of road improvements to the S.C. Highway 46 Intersection shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner's and County's shared expense to develop alternative engineering or construction cost estimates (the "S.C. Highway 46 Intersection Improvement Value"). Owner and Developer(s) shall be entitled to credits against Development Fees based on the cost of the design, engineering and construction of the S.C. Highway 46 Intersection, which may be payable with respect to the Property up to the total amount of the S.C. Highway 46 Intersection Improvement Value.
- (iii) **S.C. Highway 46 and U.S. 278 Intersection Improvements.** The Development Plan contemplates improvements to the S.C. Highway 46 and U.S. 278 intersection, including modifying signalization and construction of dedicated turn lanes. The value of the credit for the construction of the S.C. Highway 46 and U.S. 278 intersection improvements shall be equal to the cost based on complete engineering drawings, specifications, and actual construction costs or estimates submitted by Owner to the County. In the event the information submitted is deemed by the County to be inaccurate or unreliable, the County may prepare and provide to Owner alternative engineering or construction cost estimates. If the alternative engineering or construction cost estimates submitted by the County are deemed by Owner to be inaccurate or unreliable, a third party engineer, acceptable in the reasonable discretion of both the County and Owner, shall be hired at Owner's and County's shared expense to develop alternative engineering or construction cost estimates (the "S.C. Highway 46/U.S. 278 Intersection Improvements Value"). Owner and Developer(s) shall be entitled to credits for any and all Development Fees which

may become payable with respect to the Property up to the total amount of the S.C. Highway 46/Highway 278 Intersection Improvements Value.

C. **Signage.**

- (i) **Public.** As shown and depicted on the Development Plan, Owner has reserved a portion of the Property for the location of a public signage feature for Beaufort County and/or the Town of Bluffton (the "Public Sign Area"). Owner shall grant an easement in favor of Beaufort County and/or the Town of Bluffton for access to construct, repair, and maintain the signage constructed within the Public Sign Area, if any. Any signage constructed within the Public Sign Area shall be subject to the ZDSO. The signage constructed within the Public Sign Area shall exist for public signage only and shall be neither counted against nor included in the calculations for permitted private signage for the Property.
- (ii) **Private.** Private signage for the Property shall be governed by a Sign Master Plan, attached hereto as Exhibit "C" and made a part hereof, which depicts three (3) monument signs at the signalized access points to the Property from S.C. Highway 46 and the access to U.S. Highway 278, and one at the intersection of U.S. Highway 278 and S.C. Highway 46. Beaufort County acknowledges and agrees that Owner shall be permitted to construct up to four (4) monument signs, not to exceed the maximum combined total of two hundred forty square feet (240 SF), in accordance with Section 106-3173 of the ZDSO, at the locations shown on the Sign Master Plan with size, color, design and architectural elements which are depicted in the Sign Master Plan. Furthermore, the structure shown as "Retail Store #2" in the Development Plan shall be permitted for one hundred sixty square feet (160 SF) of building signage upon Owner's or Developer's dedication of the Southern Connector Road in accordance with this Agreement. The Sign Master Plan has been approved by the DRT and the SCRB, and is approved by Beaufort County in conjunction with the approval of this Development Agreement.

- D. **Brownfield Voluntary Cleanup Exemption.** The County agrees that upon the issuance of the DHEC Certificate of Completion for the Brownfield Voluntary Cleanup Program, it shall authorize and approve by resolution the exemption of the Property from ad valorem taxes for the period of time described in accordance with Section 12-37-220 (44) of the

South Carolina Code of Laws. The dollar amount of the exemption shall be limited to the actual cost of the Brownfield Voluntary Cleanup Program, which cost shall include but not be limited to Owner's legal, engineering and environmental consultants' costs and fees, as well as the actual cost of construction, remediation and testing required to obtain the DHEC Certificate of Completion. The exemption shall be in the form of a refund by the County to the Owner within ninety (90) days of the County's receipt of: (i) payment in full of all ad valorem taxes due for the Property; (ii) an itemized list with evidence of Owner's payment for the legal, engineering and environmental consultants' costs and fees incurred for permitting and the actual cost of demolition, construction, remediation and testing required to secure the DHEC Certificate of Completion; and (iii) a certified copy of the DHEC Certificate of Completion.

E. U.S. Highway 278 Beautification Fee. Owner agrees to a payment of a U.S. Highway 278 beautification fee in an amount equal to the annual cost to maintain the U.S. Highway 278 Right-of-Way landscaping fronting the Property for six (6) years.

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

G. Development Fees.

(i) Beaufort County acknowledges that in partial consideration of the conveyance of the Rights-of-Way and the cost of the Road Facilities Improvements thereon as described in Article XI A and XI B herein (collectively herein the "System Improvements") and notwithstanding any provision to the contrary contained within this Agreement, Owner shall receive a credit against the cost of any and all Development Fees up to the total value of the System Improvements.

(ii) Beaufort County or other governing body shall not be precluded by this Agreement from charging fees for delivery of services to citizens or residents (i.e., an EMS response fee or the like), nor from charging fees statutorily authorized in the future (i.e., a real estate transfer fee or the like) which are not collected as a prerequisite to approval of a plat, plan or construction permit and not otherwise contemplated hereunder.

- (iii) The Development Fees are vested for the entire Property and no other Development Fee or obligation regarding Development is imposed in connection with the Property.

H. **Stormwater Management Plan.** The Southern Connector Road shall be dedicated and accepted as a County Road as provided in this Article XI. Accordingly, the Southern Connector Road shall not be included in calculations for the effective impervious area for the stormwater management plan prepared for the permitting and the Development of the Property contemplated in this Agreement (the "Stormwater Management Plan"). Furthermore, so long as the Stormwater Management Plan meets the nutrient degradation and detention requirements of the ZDSO, as determined by the County engineer, the goal to achieve a maximum of ten percent (10%) overall effective impervious area ratio shall be increased to twenty percent (20%).

I. **Vested Rights.** Beaufort County agrees that the Property is approved and fully vested for intensity, commercial density, Development Fees, uses and height, setbacks, parking and signage as set forth in the Development Plan and the Development Agreement Ordinance, and shall not have any obligations for on or off site transportation or other facilities or improvements other than as specifically provided in Article XI of this Agreement, but shall adhere to the Development Plan and the Sign Master Plan. Beaufort County shall not impose additional development obligations or regulations in connection with the ownership or development of the Property, except in accordance with the procedures and provisions of § 6-31-80 (B) of the Act, which Owner shall have the right to challenge.

XII. PERMITTING PROCEDURES.

- A. Beaufort County agrees that Owner shall have the unlimited right to phase the development of the Property in accordance with the Development Schedule.
- B. Beaufort County agrees to use its best efforts to review in an expeditious manner all land use changes, land development applications, plats and subdivisions in accordance with applicable ordinances as modified by this Agreement for the Development of the Property. Owner may submit these items for concurrent review with Beaufort County and other governmental authorities. If the off-site USACE permits for interconnecting roads are not in place prior to DRT final approval, then Owner may proceed with on-site construction of the

Bluffton Gateway Commercial Center and provide a cash bond to insure construction of the Road Rights-of-Way once the USACE permits are obtained.

XIII. OWNER ENTITLEMENTS.

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

- A. **Setbacks and Buffers.** Beaufort County agrees that the Property is vested and that the lot lines (which may be modified in accordance with Article VII A hereof), dimensions and location of setbacks and buffers shown and described in the Development Plan, as amended from time to time in accordance with this Agreement, are approved. Specifically, the County agrees to the modification of the buffers and setbacks approved in this Agreement.
- B. **Access.** Beaufort County hereby approves the location of traffic signals, and curb and median cuts for access to the Property as shown in the Development Plan, subject to SCDOT permitting and approval, if any.
- C. **External Setbacks and Buffers.**
 - (i) As depicted in the Development Plan, the fifty foot (50') buffer described and required by the ZDSO shall be modified to allow landscaping in a twenty-five foot (25') portion of the perimeter buffer for the Property as described in this Article XIII C. Owner shall be authorized to install and maintain landscaping in the twenty-five foot (25') area between the U.S. Highway 278 Right-of-Way, the S.C. Highway 46 Right-of-Way and the balance of the buffer. The intent being that the first twenty-five feet (25') of the fifty foot (50') buffer shall be landscaped and maintained. Such landscaping may be manicured grass lawns or other installed landscape materials determined in the sole discretion of Owner or any Developer assigned Development Rights hereunder. The second twenty-five foot (25') portion of the buffer shall be left as a buffer, as that term is described and contemplated in the ZDSO. The resulting combined fifty foot (50') area fronting the U.S. Highway 278 Right-of-Way and S.C. Highway 46 Right-of-Way shall have a landscaped lawn and planting area of twenty-five feet (25') in width and a natural buffer of twenty-five feet (25').
 - (ii) Furthermore, and as also depicted in the Development Plan, and notwithstanding anything contained herein or in the ZDSO, the buffer and setback along the southern

boundary of the Property shall be reduced to zero feet (0') in areas where the existence of drainage ditches or issues relating to the powerline utility infrastructure and access make the requirement of a buffer impractical. In such areas, the screening fence described in and shown in the Development Plan may be required.

- (iii) The landscaping, buffers and fencing described in this Article XIII C shall be exempt from the Corridor Review Standards that are described in and required by the ZDSO.

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

- I. **Wetlands Crossings.** The two (2) wetlands crossings and associated infrastructures depicted in the Development Plan and shown in the approval letter from the U.S. Army Corp. of Engineers dated December 13, 2013 (the "ACOE Permit"), which ACOE Permit permits the wetlands crossings, shall be exempt from the requirements of the ZDSO. Accordingly, no special use permit or other requirement of the ZDSO or other Beaufort County Ordinance shall be required for the wetlands crossings and pipes or associated infrastructure shown in or contemplated by the Development Plan and/or the ACOE Permit, and such wetlands crossings are hereby approved by Beaufort County in this Development Agreement.

XIV. DEFAULTS.

The failure of Owner or Beaufort County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as deemed appropriate, including specific performance and the termination of this Development Agreement in accordance with the Act; provided however no termination of this Development Agreement may be declared by Beaufort County absent affording Owner and any applicable Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided further that nothing herein shall be deemed or construed to preclude Beaufort County or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Development Agreement Ordinance or the ZDSO. Owner, or its designee, shall meet with Beaufort County, or its designee, at least once per year, at a time reasonably agreeable to the parties, during the Term of this Agreement to review development completed in the prior year and the development anticipated to be commenced or completed in the ensuing year. Owner, or its designee, shall be required to provide such information as may reasonably be requested, to include, but not be limited to, commercial square footage completed, and any relevant information regarding the Development. This compliance review shall be in addition to, and not in lieu of, any other reporting or filing required by this Agreement, if any. If, as a result of a compliance review, Beaufort County determines that Owner has committed a material breach of the terms of this Development Agreement, Beaufort County shall serve such party in writing notice of such breach pursuant to the procedures set forth in Section 6-31-90 (B) of the Act, affording the breaching party the opportunity to respond as set forth in Section 6-31-90 (C) of said Act.

XV. MODIFICATION OF AGREEMENT.

This Development Agreement may be modified or amended only by the written agreement of Beaufort County and Owner. 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.

XVI. NOTICES.

Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the tenth (10th) 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 shall be addressed as follows:

To Beaufort County:	Office of Beaufort County Administrator 100 Ribaut Road Room 156 Beaufort, SC 29902
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With Copy To:	Joshua A. Gruber, Esquire Beaufort County Legal Department P.O. Box 1228 Beaufort, SC 29901-1228
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And to Owner:	Jaz 278, LLC c/o Jaz Management, LLC 4060 Peachtree Road, D-287 Atlanta, GA 30319
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With Copy To:	Walter J. Nester, III McNair Law Firm, P.A. 23-B Shelter Cove Lane, Suite 400 Hilton Head Island, SC 29928
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XVII. ENFORCEMENT.

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

XVIII. GENERAL.

- A. **Subsequent Laws.** In the event state or federal laws or regulations are enacted after the execution of this Development Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement ("New Laws"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Laws, or court decision, Owner and any Developer with respect to assigned Rights and Beaufort County shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Laws would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, Beaufort County may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, Owner and any Developer with respect to assigned Rights, and Beaufort County each shall have the right to challenge the New Laws preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.
- B. **Estoppel Certificate.** Beaufort County and Owner may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:
- (i) that this Agreement is in full force and effect,
 - (ii) that this Agreement has not been amended or modified, or if so amended, identifying the amendments,
 - (iii) whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and
 - (iv) whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.
- C. **Entire Agreement.** This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings among Beaufort County and Owner relative to

the Property and its Development and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

- D. **No Partnership or Joint Venture.** Nothing in this Agreement shall be deemed to create a partnership or joint venture between Beaufort County and Owner or to render such party liable in any manner for the debts or obligations of another party.
- 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. **Successors and Assigns.**
 - (i) **Binding Effect.** This Agreement shall be binding upon Owner's successors and assigns in the ownership or Development of any portion of the Property. Except for Owner's continuing obligation as specifically stated in Article XVIII G (ii) (1) and G (iii) below, a purchaser or a party acquiring title to any portion of the Property or a party to whom Owner assigns Development Rights with respect to any portion of the Property (herein collectively referred to as a "Transferee") shall, during the Term of this Agreement, be solely responsible for the performance of Owner's obligations and entitled to the assigned Development Rights under this Development Agreement applicable to the portion of the Property transferred, or for which Development Rights are transferred. Each Transferee shall be required to execute a written acknowledgement assuming Owner's obligations under this Agreement, which are directly applicable to such portion of the Property. Such acknowledgment shall be in the form provided in Exhibit "G" attached hereto and made a part hereof (the "Notice of Transfer"), and provided to Beaufort County at the time of recording any instrument transferring title, and development rights, of the Property or any portion of the Property. This Section shall not be construed to prevent Owner from obtaining indemnification of liability to Beaufort County from Transferees. Except

as specifically set forth in Article XVIII G (ii)(1) and G (iii) below, upon transfer to a Transferee, Owner shall be released of all obligations assumed by such Transferee.

(ii) **Transfer of all of the Property.** Owner shall be entitled to transfer the Parent Parcel (i.e. all of the Property save and except the Road Rights-of-Way, the "Parent Parcel") to a Transferee subject to the following requirements:

(1) **Owner Obligations.** Notwithstanding Owner's right to transfer title and development rights provided in this Article XVIII G (ii) (1), Owner shall remain obligated to construct the road facilities upon and convey to Beaufort County the Road Rights-of-Way contemplated in Article XI of this Agreement. If such construction and conveyance has not occurred prior to the time of transfer of the Parent Parcel then, in such event, Owner may satisfy its obligations with respect to Owner Obligations by providing, or causing to be provided, a letter of credit, bond or other commercially acceptable form of security in an amount equal to 125% of the estimated cost for completion of such installation and/or construction.

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

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

(iii) **Transfer of any Portion of the Property.** Owner shall have the right and the obligation to transfer the rights-of-way in accordance with Article XI hereof. Owner shall also have the right to transfer any portion of the Property to a Transferee in accordance with the requirements for transfer described for Article XVIII G (ii); provided however, upon any such transfer of a portion of the Property Owner shall (i) continue to be liable for Owner's Obligations so long as Owner owns the Parent Parcel, (ii) delivers, or causes to be delivered, to County a Notice of Transfer

together with the name, address, telephone number, facsimile number, and contact person for the Transferee, and (iii) the transfer to a Transferee shall be by a recordable instrument with a covenant running with the land expressly stating the precise number of commercial square footage of density being assigned to the Transferee, which assigned number shall reduce Owner's number of commercial square footage of density provided for herein. The requirements of this Article XVIII G (iii) shall not apply to purchasers of lots or parcels within the Property unless such purchasers are assigned Development Rights approved by this Development Agreement.

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

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

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 Beaufort County'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 Beaufort County, Owner, Developers and Lessees. No other persons shall have any rights hereunder.
- N. **Attorneys' Fees and Costs.** Each party to this Agreement agrees to pay their own fees and costs incurred by them.

XIX. STATEMENT OF REQUIRED PROVISIONS.

- 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:
 - (i) **Legal Description of Property and Legal and Equitable Owners.** The legal description of the Property is set forth in Exhibit "A" attached hereto and made a part hereof. The present legal owner of the Property is Georgia McCulloch and PAHH Development, LLC.
 - (ii) **Duration of Agreement.** The duration of this Agreement is five (5) years unless extended pursuant to Article III hereof.
 - (iii) **Permitted Uses, Densities, Building Heights and Intensities.** A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development-related standards, are contained in the Development Agreement Ordinance.
 - (iv) **Required Public Facilities.** The utility service available to the Property is described in Article X. The mandatory procedures of the Development Agreement Ordinance will ensure availability of public access and utilities to serve the Property.

- (v) **Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.**
The Development Agreement Ordinance contains provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws shall be complied with, except as otherwise set forth herein and in the Development Plan.
- (vi) **Local Development Permits.** The Development standards for the Property shall be as set forth in the Development Agreement Ordinance. Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Development Agreement Ordinance. Building Permits must be obtained under applicable law for any construction. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Owner, its successors and assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions, unless otherwise provided in the Development Agreement Ordinance.
- (vii) **Comprehensive Plan and Development Agreement.** The Development permitted and proposed under the Development Agreement Ordinance, is consistent with the Comprehensive Plan and with current development regulations of Beaufort County, South Carolina.
- (viii) **Terms for Public Health, Safety and Welfare.** The Council for Beaufort County finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of the Development Agreement Ordinance and existing laws.
- (ix) **Historical Structures.** No historical structures or features are present on the Property and therefore no specific terms relating to historical structures are pertinent to this Development Agreement.

[Signatures on following pages]

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

WITNESSES:

OWNER:

Jaz 278, LLC

By: Jaz Management, LLC
Its: Manager

By:
Its:

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the undersigned Notary Public of the State and County stated below, personally appeared _____ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, who acknowledged the due execution of the foregoing document in the capacity indicated.

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

(Affix Notary Seal)

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

BEAUFORT COUNTY, SOUTH CAROLINA

By:
Its:

STATE OF SOUTH CAROLINA.)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this ____ day of _____, 20____, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate official of Beaufort County, 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.

(Affix Notary Seal)

Notary Public for South Carolina
My Commission Expires: _____

EXHIBIT "A"

Property Description

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

Commencing at a 3"x3" concrete monument found near the intersection of the southern right of way of Fording Island Road (U.S. Hwy 278) (R/W varies) and the western right of way of Bluffton Road (S.C. Hwy 46) (R/W varies). Thence S 22°50'20" E a distance of 60.98 feet to an iron pin set. Thence S 04°32'32" W a distance of 80.26 feet to an iron pin set. Thence S 09°48'01" W a distance of 115.26 feet to an iron pin set. Thence S 09°04'47" W a distance of 33.39 feet to an iron pin set. Thence S 09°04'47" W a distance of 186.98 feet to an iron pin set. Thence S 10°27'49" W a distance of 275.00 feet to an iron pin set. Thence S 07°36'05" W a distance of 200.25 feet to an iron pin set. Thence S 10°27'49" W a distance of 183.90 feet to an iron pin set. Thence N 54°19'53" W a distance of 437.94 feet to an iron pin set. Thence S 35°27'44" W a distance of 401.63 feet to an iron pin found. Thence S 54°34'34" E a distance of 603.91 feet to an iron pin set. Thence S 15°47'18" W a distance of 64.75 feet to an iron pin set. Thence N 78°37'41" a distance of 218.41 feet to an iron pin set. Thence S 54°34'34" E a distance of 122.68 feet to an iron pipe found. Thence N 78°54'34" W a distance of 644.15 feet to a concrete monument found. Thence S 10°43'33" W a distance of 105.10 feet to an iron pin found. Thence N 80°43'05" W a distance of 864.03 feet to an iron pin set. Thence N 10°53'44" E a distance of 1,640.67 feet to a concrete monument found. Thence S 75°43'07" E a distance of 367.43 feet to a concrete monument found. Thence S 75°42'58" E a distance of 403.34 feet to a concrete monument found. Thence N 11°36'22" E a distance of 804.68 feet to a concrete monument found. Thence S 42°59'43" E a distance of 322.98 feet to a concrete monument found. Thence S 37°19'02" E a distance of 56.29 feet to a concrete monument found. Thence S 37°20'26" E a distance of 44.21 feet to a concrete monument found. Thence S 43°02'22" E a distance of 341.20 feet to a concrete monument found being the point of curvature of a tangent curve. Turning to the right, having a radius of 2,864.64 feet a delta angle of 3°45'40" and a chord length of 188.01 feet bearing S 41°09'01" E. Thence proceed along the arc of said curve 188.05 feet to a 3"x3" concrete monument found. Said point being the point of beginning.

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

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

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

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

Commencing at a 3"x3" concrete monument found near the intersection of the southern right of way of Fording Island Road (U.S. Hwy 278) (R/W varies) and the western right of way of Bluffton Road (S.C. Hwy 46) (R/W varies). Thence S 22°50'20" E a distance of 60.98 feet to an iron pin set. Thence S 04°32'32" W a distance of 80.26 feet to an iron pin set. Thence S 09°48'01" W a distance of 115.26 feet to an iron pin set. Thence S 09°04'47" W a distance of 33.39 feet to an iron pin set. Thence S 09°04'47" W a distance of 186.98 feet to an iron pin set. Thence S 10°27'49" W a distance of 275.00 feet to an iron pin set. Thence S 07°36'05" W a distance of 200.25 feet to an iron pin set. Thence S 10°27'49" W a distance of 183.90 feet to an iron pin set. Said point being the point of beginning. Thence S 10°27'49" W a distance of 58.99 feet to an iron pin set being the point of curvature of a tangent curve. Turning to the right, having a radius of 3,769.72 feet a delta angle of

5°19'29" and a chord length of 350.21 feet bearing S 13°07'34" W. Thence proceed along the arc of said curve 350.33 feet to an iron pin set. Thence S 15°47'18" W a distance of 23.64 feet to a point. Thence N 54°34'34" W a distance of 603.91 feet to an iron pin found. Thence N 53°27'44" E a distance of 401.63 feet to an iron pin found. Thence S 54°19'53" E a distance of 437.94 feet to the point of beginning.

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

EXHIBIT "B"

Development Plan

EXHIBIT "C"

Sign Master Plan

EXHIBIT "D"

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

EXHIBIT "E"
Development Schedule

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

<u>Percent of Completed Development</u>	<u>Date*</u>
80%	0 - 24 months
100%	24 - 60 months

In the event development of the prop has not achieved 80% completion within 24 months, from the date of issuance of all development permits required for development of such 80% of the property owner shall be required to commence annual meetings with the county administrator and the county planning director to provide annual status reports.

* Months after the issuance of all development permits for such percentage of development.

EXHIBIT "F"

BJWSA Intent to Serve Letter

EXHIBIT "G"

STATE OF SOUTH CAROLINA)	NOTICE OF TRANSFER AND
)	PARTIAL ASSIGNMENT AND ASSUMPTION
)	OF RIGHTS AND OBLIGATIONS UNDER
COUNTY OF BEAUFORT)	DEVELOPMENT AGREEMENT

THIS NOTICE OF TRANSFER AND PARTIAL ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT ("Partial Assignment" is dated this ____ day of _____, 20____, by and between Jaz 278, LLC, a Georgia limited liability company authorized to conduct business in South Carolina ("Assignor"), and _____, a _____ ("Assignee").

WITNESSETH:

WHEREAS, on or about the ____ day of _____, 20____, Assignor entered into a Development Agreement ("Development Agreement") with Beaufort County, South Carolina, incident to the development of certain real property known as the Bluffton Gateway Commercial Center, which Development Agreement, as amended, controls the Property (as defined herein); and

WHEREAS, Assignor entered into an Agreement For Purchase And Sale ("Agreement") with Assignee dated _____, 20____ providing for the sale by Assignor and the purchase by Assignee of certain real property being more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, an integral part of the conveyance of the Property by Assignor to Assignee, it is the desire and intention of Assignor to assign to Assignee, and it is the desire and intention of Assignee to assume, certain rights, privileges, and obligations under the terms of the Development Agreement applicable to the Property, thus necessitating the preparation and execution of this Partial Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy whereof is herewith acknowledged, parties hereby agree as follows, to writ:

I. Partial Assignment and Assumption of Rights, Privileges and Obligations Applicable to the Property Pursuant to The Development Agreement. Assignor does hereby transfer, assign, convey and deliver unto Assignee, its successors and assigns, such rights for the land uses on the Property that are defined in the Development Agreement (the "Assigned Land Use"). Assignee shall be entitled to all of the privileges and obligations as described in the Development Agreement applicable for the Assigned Land Use to the Property except for those certain excluded obligations, rights and privileges ("Excluded Obligations") identified herein below, if any. Assignor is hereby released from and Assignee hereby assumes and agrees to perform all of Assignor's rights, privileges and obligations as described in the Development Agreement applicable to the

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

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

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

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

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

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

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

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

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

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

And to Assignee:

With a Required Copy To:

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

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

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

[Reminder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties have caused this Partial Assignment to be duly executed as of the ____ day of _____, 20__.

WITNESSES:

ASSIGNOR:

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

By:
Its:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public for _____, do hereby certify that
_____, as _____ of Jaz 278, LLC, personally appeared before
me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _____, 20__.

Notary Public for _____
My Commission Expires: _____

(Affix Notary Seal)

WITNESSES:

ASSIGNEE:

By:
Its:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public for _____, do hereby certify that
_____, as _____ of _____,
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _____, 20__.

Notary Public for _____
My Commission Expires: _____

(Affix Notary Seal)

Project: Walmart Supercenter #6395-00, 10000 Highway 17, Columbia, SC 29210. Date: 02/02/2014. Drawn by: J. Smith. Checked by: M. Jones. Scale: 1" = 100'. Notes: See separate sheets for details. All dimensions are in feet unless otherwise noted. All work shall be in accordance with the latest edition of the South Carolina Building Code and all applicable local ordinances. The owner warrants that the site is free of all existing structures and utilities. The contractor shall be responsible for obtaining all necessary permits and for coordinating with all utility companies. The contractor shall also be responsible for protecting all existing structures and utilities that remain on the site. The contractor shall also be responsible for maintaining access to all adjacent properties at all times. The contractor shall also be responsible for maintaining the site in a safe and sound condition at all times. The contractor shall also be responsible for maintaining the site in a clean and sanitary condition at all times. The contractor shall also be responsible for maintaining the site in a secure condition at all times. The contractor shall also be responsible for maintaining the site in a quiet condition at all times. The contractor shall also be responsible for maintaining the site in a peaceful condition at all times. The contractor shall also be responsible for maintaining the site in a healthy condition at all times. The contractor shall also be responsible for maintaining the site in a safe and sound condition at all times. The contractor shall also be responsible for maintaining the site in a clean and sanitary condition at all times. The contractor shall also be responsible for maintaining the site in a secure condition at all times. The contractor shall also be responsible for maintaining the site in a quiet condition at all times. The contractor shall also be responsible for maintaining the site in a peaceful condition at all times. The contractor shall also be responsible for maintaining the site in a healthy condition at all times.



LEGEND

	EXISTING BUILDING
	PROPOSED BUILDING
	EXISTING PARKING LOT
	PROPOSED PARKING LOT
	EXISTING ROAD
	PROPOSED ROAD
	EXISTING UTILITY LINE
	PROPOSED UTILITY LINE
	EXISTING EASEMENT
	PROPOSED EASEMENT
	EXISTING FENCE
	PROPOSED FENCE
	EXISTING TREE
	PROPOSED TREE
	EXISTING WATER FEATURE
	PROPOSED WATER FEATURE
	EXISTING LANDSCAPE
	PROPOSED LANDSCAPE



ALERT TO CONTRACTOR
The City of Columbia, South Carolina, is providing this notice to alert contractors of the location of underground utilities in the project area. Contractors are responsible for obtaining all necessary permits and for coordinating with all utility companies. The contractor shall also be responsible for protecting all existing structures and utilities that remain on the site. The contractor shall also be responsible for maintaining access to all adjacent properties at all times. The contractor shall also be responsible for maintaining the site in a safe and sound condition at all times. The contractor shall also be responsible for maintaining the site in a clean and sanitary condition at all times. The contractor shall also be responsible for maintaining the site in a secure condition at all times. The contractor shall also be responsible for maintaining the site in a quiet condition at all times. The contractor shall also be responsible for maintaining the site in a peaceful condition at all times. The contractor shall also be responsible for maintaining the site in a healthy condition at all times.

Walmart STORE #6395-00	
CITY (SITE), STATE	
WAL-MART REAL ESTATE BUSINESS TRUST	
SUCTION	
DATE	02/02/2014
PROJECT NO	015475224
NEXT REVIEW	
6220	

Bluffton Gateway Sign Master Plan



Issued

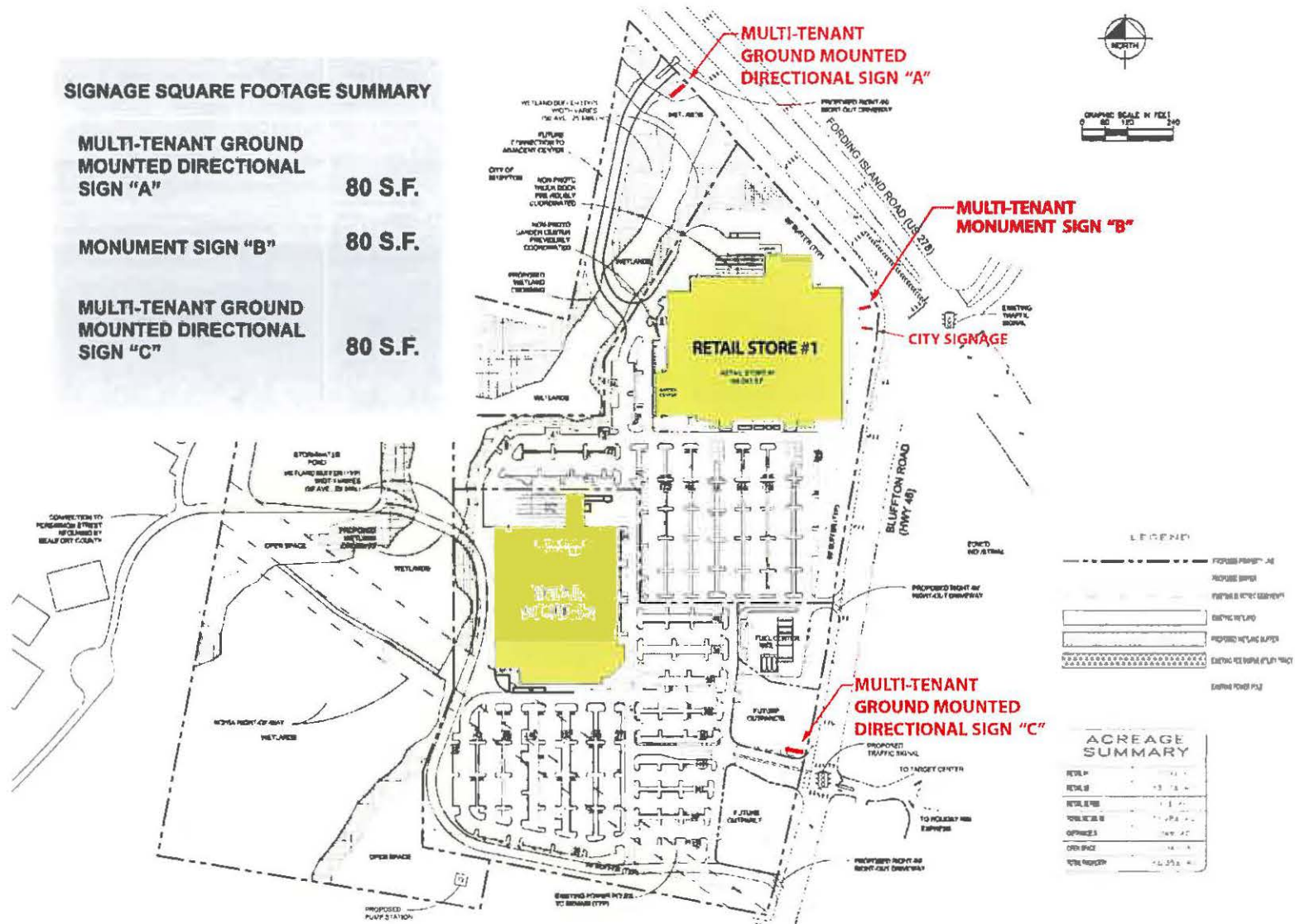
February 26, 2014

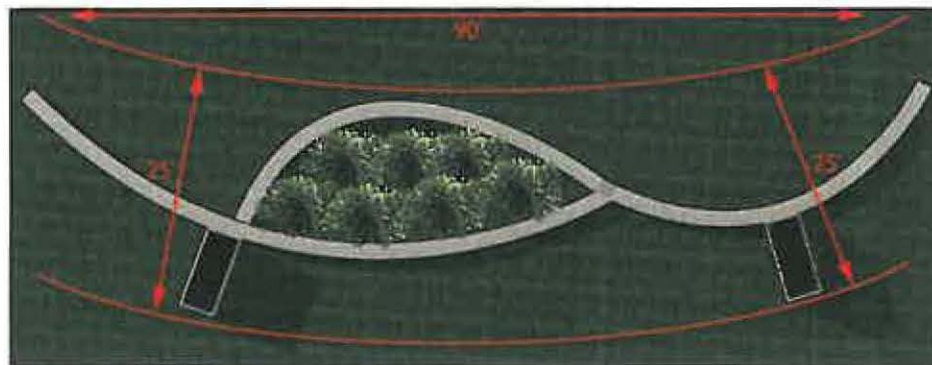
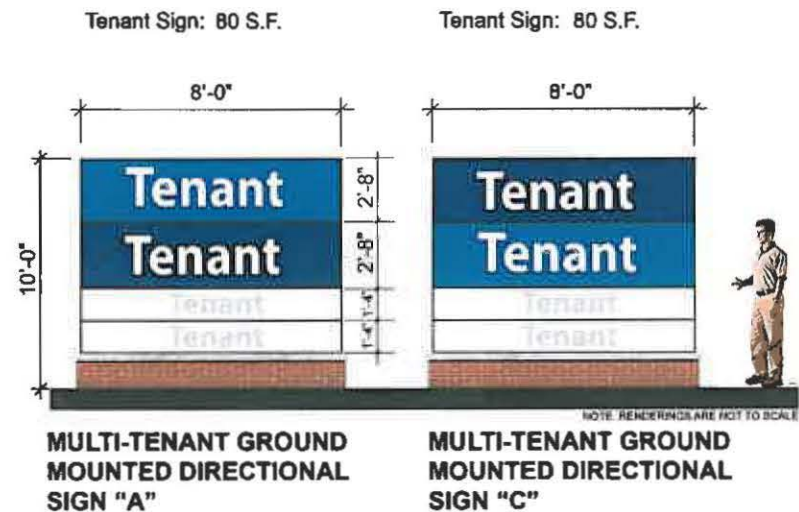
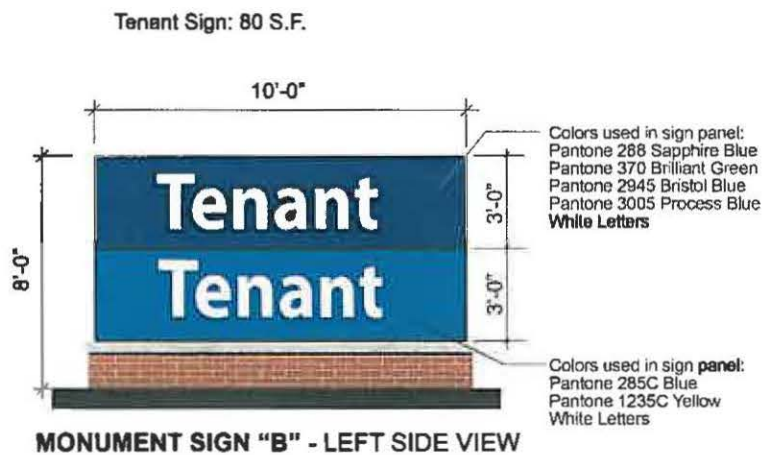
SIGNAGE SQUARE FOOTAGE SUMMARY

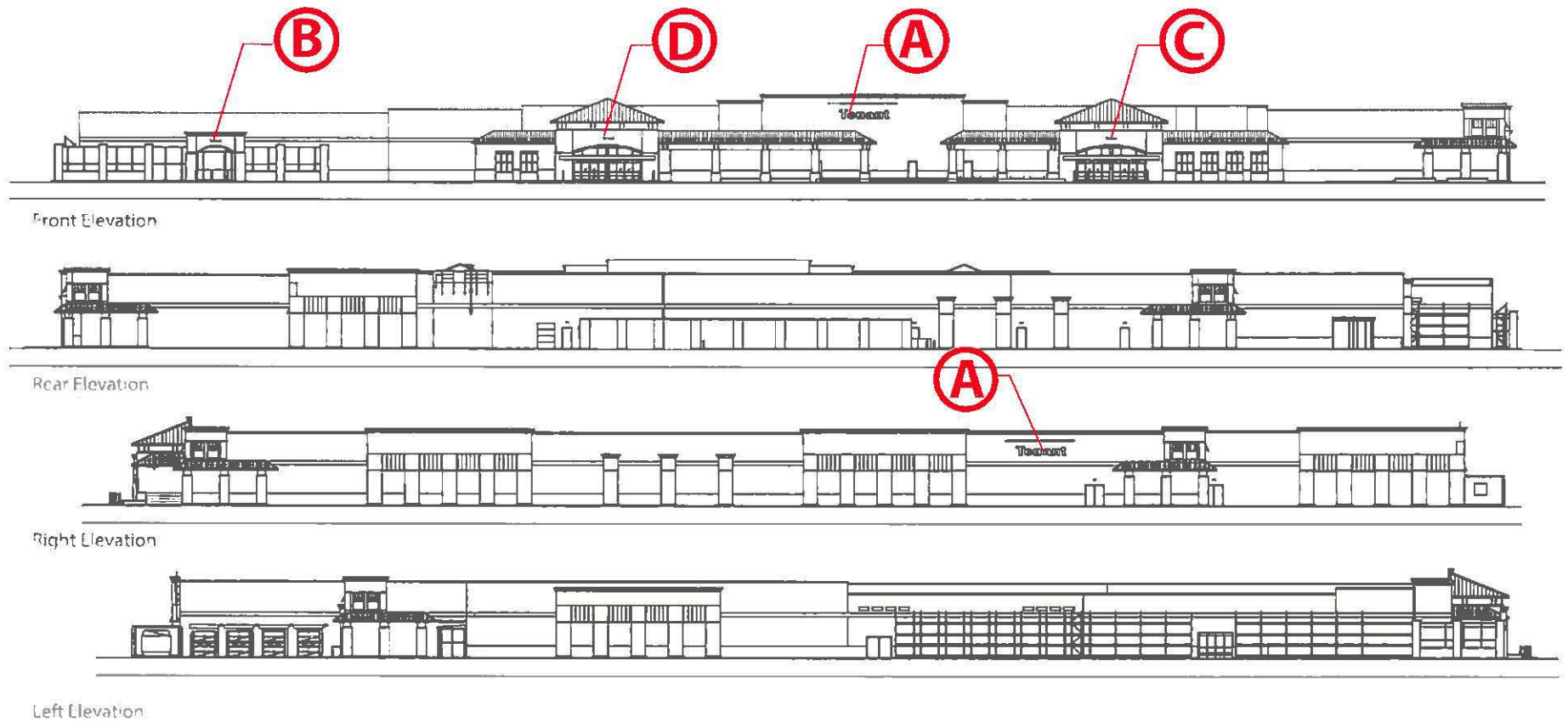
MULTI-TENANT GROUND MOUNTED DIRECTIONAL SIGN "A" 80 S.F.

MONUMENT SIGN "B" 80 S.F.

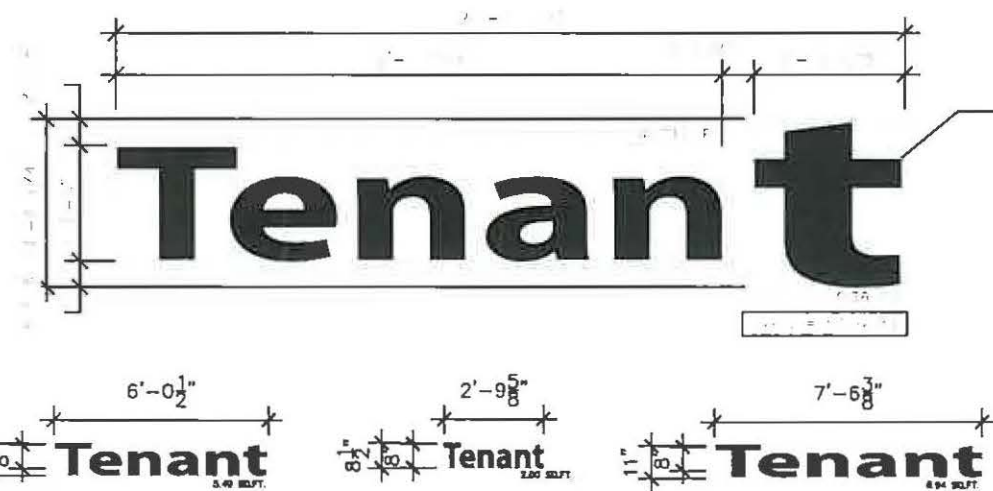
MULTI-TENANT GROUND MOUNTED DIRECTIONAL SIGN "C" 80 S.F.







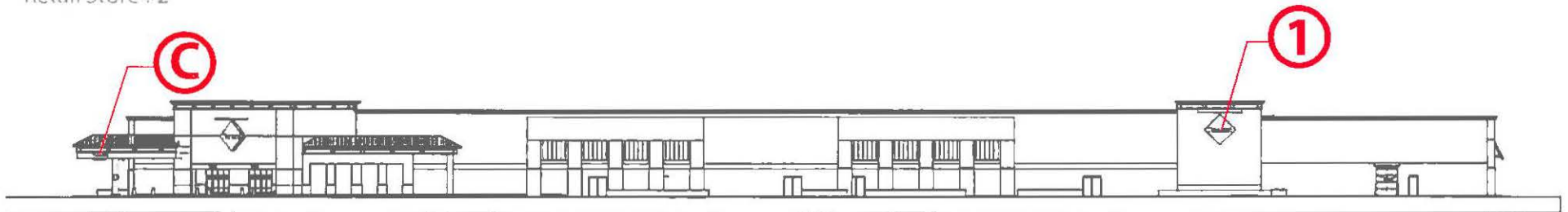
**Building design subject to
Corridor Review Board approval**



Sign	Qty	Height	Area (S.F.)	Total S.F.
A. Tenant	2	3'-0"	63.57	127.14
B. Tenant	1	0'-8"	5.49	5.49
C. Tenant	1	0'-8"	2.00	2.00
D. Tenant	1	0'-8"	6.94	6.94
Total Building Signage				141.57

Signage Totals Per Frontage	
Front (South)	78.00 s.f.
Right (East)	63.57 s.f.

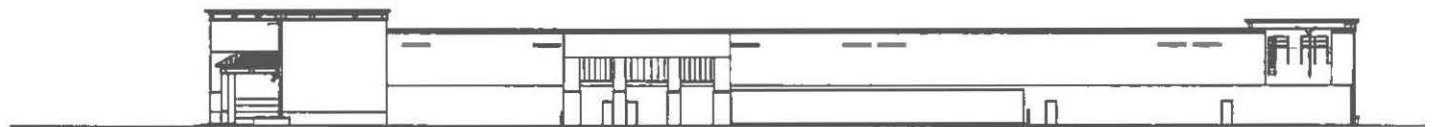
Retail Store #2



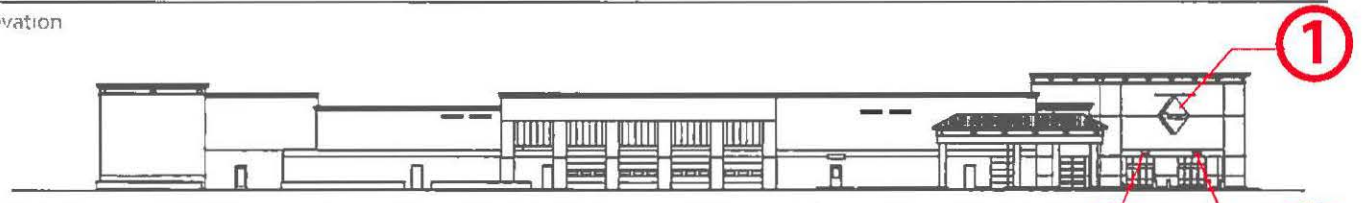
Front Elevation



Rear Elevation

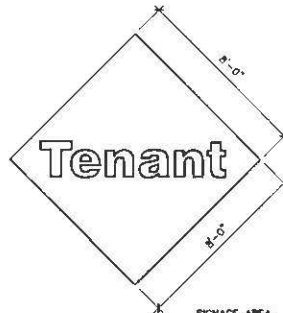


Right Elevation



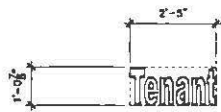
Left Elevation

**Building design subject to
Corridor Review Board approval**

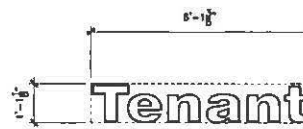


Colors used in Diamond Signs:
 Pantone 288 Sapphire Blue
 Pantone 370 Brilliant Green
 Pantone 2945 Bristol Blue
 Pantone 3005 Process Blue
 White Letters

1 EXTERNALLY ILLUMINATED
 DIAMOND SIGN (TYP OF 2)
 SIGNAGE AREA 64.0 SF



A TENANT SIGN
 AGGREGATE SIGN
 AREA: 2.59 SF



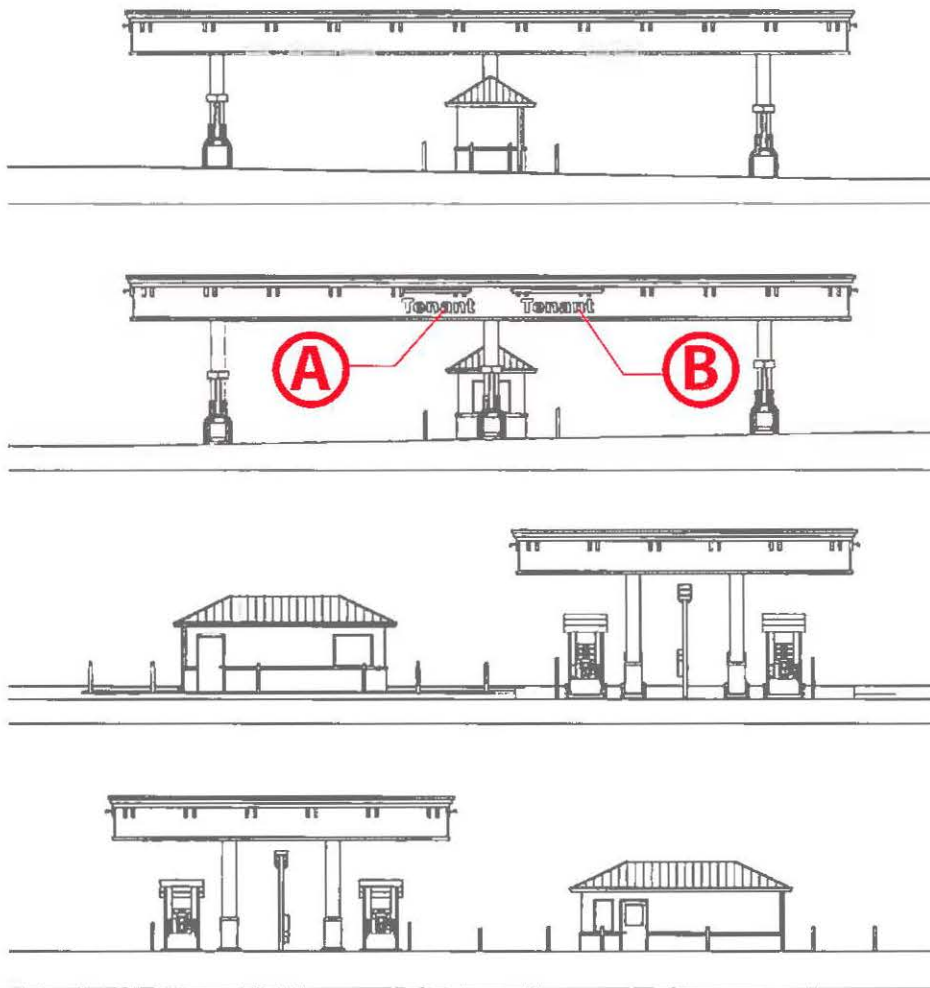
B TENANT SIGN
 AGGREGATE SIGN
 AREA: 6.68 SF



C TENANT SIGN
 AGGREGATE SIGN
 AREA: 12.26 SF

Signage Totals Per Frontage
Front (East) 76.26 s.f.
Left (South) 73.27 s.f.

Sign	Qty	Height	Area (S.F.)	Total S.F.
1. Tenant	2	8'-0"	64.00	128.00
A. Tenant	1	1'-0"	2.59	2.59
B. Tenant	1	1'-0"	6.68	6.68
C. Tenant	1	1'-0"	12.26	12.26
Total Building Signage				149.53

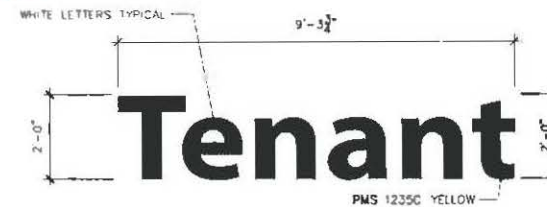


Fuel Station Canopy Signage



Colors used in Canopy Sign A:
 Pantone 370 Brilliant Green
 Pantone 2945 Bristol Blue
 Pantone 3005 Process Blue
 White Letters

A TENANT SIGN AGGREGATE SIGN AREA: 19.01 SF



B TENANT SIGN AGGREGATE SIGN AREA: 18.63 SF

Sign	Qty	Height	Area (S.F.)	Total S.F.
A. Tenant Sign	1	2'-4"	19.01	19.01 SF
B. Tenant Sign	1	2'-0"	18.63	18.63 SF
Total Fuel Signage Proposed				37.64 SF

**Building design subject to
 Corridor Review Board approval**



February 26, 2014

Bluffton Gateway Sign Master Plan

Fuel Station Building Signage and Details

