

4. Adding a component of 210 multi-family dwelling units and related recreation and club facilities; and
5. Adding gas sales which will include not more than 200 square feet of incidental merchandise and cigarettes in accordance with LMO Section 16-4-209(E)(6) and a maximum of eight (8) fuel pumps;
6. Liquor store in accordance with LMO Section 16-4-209(E)(8); and
7. A Community Park.
8. Provide the Town with an approximately 5.11 acre community park (“Community Park”) bordering on Broad Creek connecting with and becoming an integral part of the Town’s proposed Chaplin Park Linear Trail, which will provide a location and venue for various purposes, including but not limited to walking, entertainment and educational activities, picnicking, and non-organized sports activities; and
9. Allow development on Outparcels I and C, all as more fully shown on the Concept Plan; and

WHEREAS, this Agreement is entered into by and between SCTC and the Town pursuant to, and in accordance with, the terms of the Act for the purpose of providing assurances to SCTC that it may proceed with its proposed development, and for the further purpose of memorializing certain agreements between the Town and SCTC with respect to the Mall Tract and its redevelopment.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and of other good and valuable consideration, including economic and other benefits inuring to both the Town and SCTC as a result of this Agreement with regard to the future development and modification of Shelter Cove Mall by SCTC, the receipt and sufficiency of such consideration being hereby mutually acknowledged, and intending to be legally bound, the Town and SCTC hereby agree as follows:

I. RECITALS.

This Agreement is predicated upon the following:

- A. The Code of Laws of South Carolina (the “SC Code”) Section 6-31-10 through 6-31-160 as it exists on the Effective Date of this Agreement (the

“Act”) enabling municipalities to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the agreement.

- B. Resolution Number 2012-13 adopted by the Town on the 1st day of May, 2012, authorizing SCTC to apply for a rezoning of Town-owned land for the Exchange Parcel. A copy of the Resolution is attached hereto as Exhibit “C”.
- C. Public hearings regarding the consideration of this Agreement conducted by the Town on the 7th day of August, 2012, and the 16th day of October, 2012, after publishing and announcing notice in accordance with the Act.
- D. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, (a) determining that this Agreement is consistent with the Town’s Comprehensive Plan and the Act; and (b) approving this Agreement.
- E. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, approving and allowing for the Town to execute a deed transferring ownership of the Exchange Parcel as further defined herein to SCTC in return for the acceptance of the Community Park as further defined herein.
- F. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, approving the re-zoning of the Mall Tract, pursuant to ZMA 120006.
- G. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, approving the dissolution of the Restrictions referred to in Paragraph V.(C) hereafter.
- H. Ordinance Number _____ adopted by the Town on the 16th day of October, 2012, authorizing the Covenants provided of in Paragraph VI.(N) hereafter.

II. INCORPORATION.

The above recitals are hereby incorporated into this Agreement, together with the findings of the South Carolina General Assembly as set forth in Section 6-31-10(B) of the Act, and the definitions as set forth in Section 6-31-20 of the Act.

III. DEFINITIONS.

Capitalized terms used in this Agreement shall have the following definitions:

- A. Act: The South Carolina Local Government Development Agreement Act, Section 6-31-10, *et seq.* of the South Carolina Code of Laws (1976) as amended.
- B. Administrator: The person designated as the “LMO Administrator” or “LMO Official” under the applicable provisions of the LMO.
- C. Agreement: This Development Agreement.
- D. ALTA Survey: That certain ALTA/ACSM Land Title survey of Shelter Cove Mall, a section of Shelter Cove, prepared by Surveying Consultants, dated the 27th day of July, 2011 and identified as Exhibit “A” attached hereto.
- E. Certificate of Compliance: A Certificate of Compliance issued by the Administrator pursuant to Chapter 3, Article VII of the LMO.
- F. Commercial: Those Commercial uses as more fully described in LMO Sections 16-4-209 and 16-4-217.
- G. Community Park: That certain approximately 5.11 (including the .14 acre gore resulting from the reconfiguration of Shelter Cove Lane) acre parcel of land fronting on Broad Creek originally being part of the Mall Tract being exchanged to the Town as shown on the Concept Plan.
- H. Comprehensive Plan: The Comprehensive Plan for the Town of Hilton Head Island dated May 4, 2010, as amended, including other adopted supplements, referred to in LMO Chapter 1, Article II.
- I. Concept Plan: That certain Conceptual Master Plan of Shelter Cove Mall Redevelopment dated May 18, 2012, prepared by Wood

& Partners, LLC, and any other exhibits attached hereto and marked Exhibit “B”.

- J. Developer: Shelter Cove Towne Center, LLC, a South Carolina limited liability company referred to herein from time to time as SCTC, its successors or assigns.
- K. Easement: An interest in land of another that entitles the holder to a specified limited use.
- L. Effective Date: The later of (i) the date of final approval and enactment of an ordinance approving the Rezoning Application by the Town Council of the Town, and (ii) the date of final approval and enactment of an ordinance approving this Agreement by the Town Council of the Town.
- M. Exchange Parcel: An approximately 4.9 acre parcel owned by the Town fronting Broad Creek and lying to the northeast of the Mall Tract to be exchanged to the Developer for the Community Park as more fully shown on that certain plat entitled “Boundary Reconfiguration of 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park”, prepared by Surveying Consultants dated the 12th day of June, 2012, and attached hereto as Exhibit “G”.
- N. Gross Floor Area: The area within the inside perimeter of the exterior walls with no deduction for corridors, stairs, closets, thickness of walls, columns or other features, exclusive of areas open and unobstructed to the sky and the public restrooms and 1,000 square foot storage area serving the Community Park, to be provided by SCTC.
- O. Impact Fees: Fees paid, either to the Town (“Town Impact Fees”) or to Beaufort County, South Carolina (“County Impact Fees”) by SCTC in connection with new development and intended to be proportional to the impact that the new development will have on the types of facilities for which the fees are charged. The Town

Impact Fees are more fully described in LMO Chapter 5, Article XVIII. Except as otherwise provided for in the LMO, Impact Fees are in addition to any other requirements, taxes, fees, or assessments imposed by the Town or County on new development or on the issuance of building permits or certificates of occupancy, or which are imposed on and due against property within the jurisdiction of the Town or County.

- P. Land Development Regulations: Ordinance Number _____, attached hereto as Exhibit “D”, of the Town of Hilton Head Island, including but not limited to (a) this Development Agreement, (b) the Conceptual Master Plan of Shelter Cove Mall Redevelopment dated May 18, 2012, prepared by Wood & Partners, LLC, (c) the Shelter Cove Mall Redevelopment Conceptual Land Use Plan dated May 18, 2012, prepared by Wood & Partners, LLC, (d) the Zoning Map Amendment, (e) Modifications to the Town of Hilton Head Island Land Management Ordinance (applicable only to the Shelter Cove Mall Tract), (f) the Town of Hilton Head Island LMO, as currently in effect, (g) proposed Ordinance No. 2012-19 relative to the Zoning Map Amendment entitled “An Ordinance to Amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, by Amending Section 16-4-102, The Official Zoning Map and The Palmetto Dunes Resort Master Plan With Respect to the Certain Parcels Identified as Parcel 26, on Beaufort County Tax Map #12B, and a 9.3 Acre Portion of Parcel 12 on Beaufort County Tax Map #12C, within the Palmetto Dunes Resort Master Plan Under the PD-1 Planned Development Mixed Use District, to Amend the Uses and Associated Density for Parcel 26, Tax Map #12B to 295,000 Square Feet of Commercial Uses, Excluding Uses Listed in LMO 16-4-209, But Permitting Liquor Store and Gas Sales, Community Park and 76 Multi-Family Dwelling Units; and the Portion of Parcel 12, Tax Map #12C to

134 Multi-Family Dwelling Units and Community Park; and Providing for Severability and an Effective Date”, and (except as otherwise provided herein) (h) any other Ordinances and/or Regulations enacted by the Town specifically and exclusively pertaining to the regulation of any aspect of the redevelopment of the Mall Tract as approved by the Administrator or other LMO Official under the applicable provisions of the LMO, and (i) Declaration of Covenants, Conditions and Restrictions Running With Certain Land of Greenwood Development Corporation in Beaufort County, South Carolina, and Provisions For Membership in the Shelter Cove Harbour Company, Inc., a South Carolina Non-Profit Corporation, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 342 at Page 1726, as amended.

- Q. LMO: The Land Management Ordinance of the Town, Title 16 of the Municipal Code of the Town attached hereto as Exhibit “D”.
- R. Mall Facility/Facilities: The Mall at Shelter Cove.
- S. Mall Tract: Those certain parcels of land originally containing approximately 41.85 acres, as shown on Exhibit “F”, located within the Town of Hilton Head Island, which includes the Exchange Parcel containing 4.90 acres and the revised Multi-Family Parcel containing 4.62 acres as shown on Exhibit “F”.
- T. Owner: SCTC, its successors or assigns.
- U. Palmetto Dunes Resort Master Plan (including Shelter Cove): That certain Master Plan for Palmetto Dunes Resort dated February 10, 1984, last revised on April 22, 1986, and stamped as approved by the Town on May 7, 1986, and the accompanying text, as amended.
- V. Parking Agreement: That certain Parking License Agreement dated November 8, 2001 by and between the Town and PVI Shelter Cove Limited Partnership, its successors and assigns.

- W. Park Improvement Plan: That certain Plan to be entered into between the Town and SCTC within sixty (60) days following the Effective Date of this Agreement and the Zoning Map Amendment (which time period can be extended as deemed necessary by both the Town and SCTC) which will identify the elements and improvements to be placed on the Community Park.
- X. Park Management Plan. That certain Plan to be entered into between the Town and SCTC within six (6) months following the Effective Date of this Agreement and the Zoning Map Amendment (which time period can be extended as deemed necessary by both the Town and SCTC) which shall provide, among other things, a process to avoid use conflicts of the Community Park between SCTC and the Town as hereinafter described.
- Y. Project. The redevelopment that will occur within and upon the Mall at Shelter Cove Tract, including the Exchange Parcel, as exemplified in the Concept Plan.
- Z. Rezoning Application: That certain Zoning Map Amendment Application filed with the Town by SCTC on April 20, 2012 to amend the Master Plan.
- AA. Shelter Cove Towne Centre, LLC: A South Carolina limited liability company, which owns the Mall at Shelter Cove.
- BB. Shopping Center: That certain shopping center commonly known as The Mall at Shelter Cove, located on the Mall Tract.
- CC. Third-Party Developer: A developer developing portions of the Project that are not the Developer.
- DD. Town: The Town of Hilton Head Island, South Carolina.
- EE. Zoning Map Amendment. The proposed Amendment to the current zoning designation of the Mall Tract, also referred to herein as “ZMA” or “ZMA120006”.

IV. DEVELOPMENT RIGHTS.

A. Density and Permitted Uses. Subject to approval by the Town of ZMA120006, the Town agrees that permitted commercial density for the Mall Tract shall be measured in terms of Gross Floor Area of Mall Facilities totaling 295,000 square feet, of which no more than 1,500 square feet can be used for up to ten (10) kiosks; 210 multi-family residential units; an approximately 5.11 acre Community Park (to be owned by the Town pursuant to a land swap as hereinafter described); and additional uses on the Property of gas sales, which may include not more than 200 square feet of incidental merchandise; liquor sales; and the right to develop Outparcels I and C.

B. Land Subject to Agreement. The real property which is the subject of this Agreement is described as:

(i) a legal description of the real property is set forth in Exhibit “E” and “E-1”.

The real property will ultimately consist of approximately 41.85 acres (including the Community Park) after adjustment to Exhibit “F” for realignment of Shelter Cove Lane and addition of the Exchange Parcel pursuant to Section III(S) above.

C. Land Swap. The Town and SCTC recognize that a Community Park is desirable, needed and appropriate to be owned by and serve the Town. The location provides ample parking and desirable vistas on the edge of Broad Creek connecting with and becoming an integral link to the Town’s proposed Chaplin Park Linear Trail providing a location for walking, entertainment, educational activities, picnicking, and non-organized sports activities and playground areas, resulting from the relocation of Shelter Cove Lane. The creation of a Town-owned Community Park in this location is also consistent with the terms and conditions of the Broad Creek Management Plan. The Community Park is shown on the Concept Plan and more fully shown and described on that certain plat thereof entitled “Boundary Reconfiguration of Shelter Cove Mall Area, a Section of Shelter Cove“ dated July 5, 2012, prepared by Surveying Consultants, and identified on said Plat as “New Parcel To Be Conveyed By Shelter Cove Towne Centre, LLC, to Town of Hilton Head Island For Use As A Community Park” and that certain .14 acre parcel identified as “Area A-4, Old 60-foot Right-of-Way of Shelter Cove Lane”, a copy of which is attached hereto and marked as Exhibit “F”.

As hereinabove more fully described, in addition to the conveyance of the Community Park to the Town, it is contemplated that SCTC will also use best efforts to obtain and add to the Community Park site an approximately .14 acre parcel lying and being within the multi-family parcel being rezoned by the Town of Hilton Head Island at the intersection of Mall Boulevard and Shelter Cove Lane, consisting of a portion of the roadbed of Shelter Cove Lane in its original configuration as more fully shown on Exhibit “F” attached hereto. As more fully described in Paragraph V (D), in exchange for the Community Park the Town has agreed to convey to SCTC, to become a part of the Mall Tract, a 4.90 acre tract (“Exchange Parcel”) lying on Broad Creek and adjacent to the northeastern boundary line of the existing Mall Tract as shown on the Concept Plan and as more fully shown and described on that certain plat thereof entitled “Boundary Reconfiguration, 4.90 Acres, New Multi-Family Parcel, Shelter Cove Lane, A Portion of Shelter Cove Community Park“, prepared by Surveying Consultants, dated the 12th day of June, 2012, said parcel identified on this plat as “New Multi-Family Parcel To Be Conveyed to Shelter Cove Towne Centre, LLC, 4.90 acres”, a copy of which is attached hereto and marked Exhibit “G”. The Exchange Parcel shall be used to construct multi-family dwelling units and related recreation and club facilities as shown on the Concept Plan and in accordance with Ordinance Number _____.

D. Applicable Land Use Regulations.

(i) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by Section 6-31-10, *et seq.*, the laws applicable to the development of the real property subject to this Agreement are contained by reference in Ordinance No. ____ of the Town of Hilton Head Island, including but not limited to (a) this Development Agreement, (b) the Conceptual Master Plan of Shelter Cove Mall Redevelopment dated May 18, 2012, prepared by Wood & Partners, LLC, (c) the Shelter Cove Mall Redevelopment Conceptual Land Use Plan dated May 18, 2012, prepared by Wood & Partners, LLC, (d) the Zoning Map Amendment, (e) Modifications to the Town of Hilton Head Island Land Management Ordinance (applicable only to the Shelter Cove Mall Tract), (f) the Town of Hilton Head Island LMO, as currently in effect, (g) proposed Ordinance No. 2012-19 relative to the Zoning Map Amendment entitled “An

Ordinance to Amend Title 16 of the Municipal Code of the Town of Hilton Head Island, South Carolina, by Amending Section 16-4-102, The Official Zoning Map and The Palmetto Dunes Resort Master Plan With Respect to the Certain Parcels Identified as Parcel 26, on Beaufort County Tax Map #12B, and a 9.3 Acre Portion of Parcel 12 on Beaufort County Tax Map #12C, within the Palmetto Dunes Resort Master Plan Under the PD-1 Planned Development Mixed Use District, to Amend the Uses and Associated Density for Parcel 26, Tax Map #12B to 295,000 Square Feet of Commercial Uses, Excluding Uses Listed in LMO 16-4-209, But Permitting Liquor Store and Gas Sales, Community Park and 76 Multi-Family Dwelling Units; and the Portion of Parcel 12, Tax Map #12C to 134 Multi-Family Dwelling Units and Community Park; and Providing for Severability and an Effective Date”, (h) any other Ordinances and/or Regulations enacted by the Town specifically and exclusively pertaining to the regulation of any aspect of the redevelopment of the Mall Tract as approved by the Administrator or other LMO Official under the applicable provisions of the LMO, provided however, the Town may apply later enacted laws to the real property relating to the development applications, submittals and reviews, so long as such laws apply Town-wide, and (i) Declaration of Covenants, Conditions and Restrictions Running With Certain Land of Greenwood Development Corporation in Beaufort County, South Carolina, and Provisions For Membership in the Company, a South Carolina Non-Profit Corporation, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Book 342 at Page 1726, as amended. The Town shall not apply subsequently adopted laws to the Mall Tract or the Project unless the Town has held a public hearing and has determined:

- a. the proposed, subsequent laws are not in conflict with Ordinance No. _____ or the Land Development Regulations governing the Agreement and do not prevent the Development set forth in this Agreement;
- b. the proposed, subsequent laws are essential to the public health, safety, or welfare and the proposed, subsequent laws expressly state that they apply to a development that is subject to a development agreement;
- c. the proposed, subsequent laws are specifically anticipated and provided for in this Agreement;

d. the Town demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement, which changes, if not addressed by the Town, would pose a serious threat to the public health, safety or welfare; or

e. this Agreement is based on substantially and materially inaccurate information supplied by SCTC. Nothing herein shall preclude SCTC from agreeing, on a case by case basis, to abide by such new laws, regulations, or ordinances subsequently passed by the Town which it, in its sole discretion, deems appropriate; and in such case the laws, regulations, or ordinances, so agreed by SCTC shall become part of the Land Development Regulations.

(ii) Vesting Rights. Subject to the provisions of sub-paragraph D(i) above, all rights, entitlements and prerogatives accorded to SCTC by this Agreement shall immediately constitute vested rights for the redevelopment of the Mall Tract, including the Exchange Parcel.

Paragraph IV (D) of this Agreement does not abrogate any rights either preserved by S.C. Code Section 6-31-40 or that may have been vested pursuant to common law and otherwise in the absence of a development agreement.

(iii) Building Codes and Laws Other Than Land Use Regulations. SCTC, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any current or subsequently adopted building, housing, electrical, mechanical, and plumbing, gas or other standard codes adopted by the Town or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. This Agreement shall not be construed to supersede or contravene the requirements of any building, housing, electrical, mechanical, plumbing, gas or other standard codes subsequently adopted by the Town or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend in any way the rights, duties and privileges of the Town to exercise governmental powers and pass laws not applicable to redevelopment of the Mall Tract including, but not limited to, police power measures of general application, the power of eminent domain and the power to levy and collect taxes; provided, however that laws applicable to the Development of the real property shall be subject to Section IV(D).

(iv) Local Development Permits and Other Permits Needed. The parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the development of the Project:

(a). Zoning Map Amendment, plat approvals (preliminary, conditional or final), roads, drainage construction plan approvals, building permits, certificates of occupancy, water and/or sewer development contracts, and utility construction and operating permits, as well as approval by various entities under the LMO, including but not limited to the Development Plan Review process and the Design Review Board.

(b). The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve SCTC of the necessity of complying with the law governing permit requirement, conditions, terms or restrictions.

V. INFRASTRUCTURE COSTS.

The Town and SCTC recognize that the preponderance of the direct costs associated with the implementation of this Development Agreement will be borne by SCTC, and certain specific other necessary services and improvements will be provided by separate governmental or quasi-governmental entities, and not by the Town, except as hereinafter set forth. For clarification, the parties make specific notes of the following:

A. Facilities and Services. Although the nature of this project prevents SCTC from providing exact completion dates, the general phases and approximate timing of construction and development are set forth in Exhibit "I" attached hereto and incorporated herein by reference. SCTC certifies that the services and facilities will be in place at the time provided herein, and as to road, sewer, and water infrastructure, at the time commercial facilities or multi-family dwelling units are offered for occupancy to the public. It is understood that SCTC will be required to comply with all requirements of the LMO and Town Municipal Code to obtain a Certificate of Compliance ("COC") and/or Certificate of Occupancy ("CO") and that any occupancy of the units prior to receipt of said COC or CO shall be deemed a violation of the LMO, Municipal Code, and this Agreement. Subject to compliance with applicable laws and all provisions of this Agreement, the Town hereby authorizes SCTC, on its own or through its affiliated

companies, to install the facilities. Notwithstanding any provision herein to the contrary, SCTC hereby assures the Town that adequate facilities shall be available concurrent with the phase of development.

B. Shelter Cove Lane Relocation. Shelter Cove Lane, as presently depicted on Exhibit “A“, is an existing private road owned and maintained by Shelter Cove Harbour Company, Inc., a private, non-profit property owners association of which SCTC is a member. In order to provide for the Community Park, as hereinabove described, and with the consent of the Shelter Cove Harbour Company, Inc., SCTC intends to relocate Shelter Cove Lane in conformity with the Concept Plan at its sole cost and expense and to be responsible for all costs associated with the creation, installation and design of the on-street parking, including all landscaping, all as shown in the Concept Plan for that portion of Shelter Cove Lane between the entrance to the Newport Community and the currently existing Veterans’ Memorial. All on-street parking shall remain public and shall be constructed with pervious material, such as pervious pavers, pervious concrete, or other material approved by the Administrator and Shelter Cove Harbour Company, Inc. Parcel B-4 as shown on Exhibit “F” shall be conveyed by the Town to the Shelter Cove Harbour Company, Inc., or its designee for on-street parking.

The Town, at its option, may choose to build additional on-street parking along Shelter Cove Lane northeast of its intersection with Mall Boulevard as indicated on the Concept Plan, but is under no obligation to do so. The roadbed of the original Shelter Cove Lane that is shown on Exhibit “F“ in its current configuration shall be abandoned by the Shelter Cove Harbour Company, Inc., its current owner, and quit-claimed to SCTC, in exchange for a quit-claim deed for the right-of-way of the reconfigured Shelter Cove Lane as shown on the Concept Plan and Exhibit “F”. At the discretion of the Town, upon the exchange of right-of-way as set forth above, Shelter Cove Harbour Company, Inc. shall enter into a Maintenance Agreement for the right-of-way of Shelter Cove Lane (from the southwestern terminus of Shelter Cove Lane with Hwy. 278 to the northern terminus of Shelter Cove Lane with Hwy. 278), with the Town and the Town shall assume all maintenance responsibility for the same with the consent of Shelter Cove Harbour Company, Inc.

C. Development of Outparcels I and C. SCTC recognizes and acknowledges that previous amendments to the Palmetto Dunes Resort Master Plan of Parcels I and C, as shown on the Concept Plan, prohibited any development on the property. The Concept Plan contemplates the utilization by SCTC for development on these parcels and mutually agrees that an Order of Settlement pursuant to Civil Action No.: 91-CP-07-1071 dated the 30th day of March, 1992, placed conditions on the development of these parcels and subsequently a Declaration of Covenants and Restrictions provided limited development on the aforementioned parcels (“Restrictions”). The Restrictions provided that the Declarant, Owner and Town of Hilton Head Island, South Carolina, would have the right to enforce each and all of the Restrictions, Conditions and Covenants imposed by the Declaration by any proceeding in law or in equity. Further, the restrictions provided, among other things, that the Restrictions would inure to the benefit of and be enforceable by the Declarant, Owner and Town of Hilton Head Island, South Carolina, for a period of twenty (20) years and for automatic terms of twenty (20) years thereafter. Accordingly, the Town has found and SCTC agrees that it is in the best interest of the parties to extinguish the Restrictions and allow the development contemplated herein and each party agrees to execute appropriate restriction extinguishments on Outparcels I and C. In addition to the above, subject to the approval of the Town and the extinguishment of any restrictions prohibiting such, SCTC shall be permitted to locate signage in accordance with the applicable sign ordinances of the LMO on Outparcel II as shown on Exhibit “J”.

D. Community Park Improvements and Maintenance. It has been agreed between the Town and SCTC that the Community Park will create a benefit to both parties hereto. SCTC, as the current owner of the Community Park, shall comply with the following requirements relative to development and sale of the Community Park (as hereinafter described) to the Town upon the completion of improvements to the Community Park:

(i) Park Design Plan. Prior to the commencement of any construction on the Community Park, SCTC will cause the development of a Park Design Plan (“Park Design Plan”) for the Community Park. The Town and SCTC will jointly agree on the Park Design Plan for the Community Park to satisfy the needs and

requirements of the Town, SCTC and the general public. This Park Design Plan shall include the Park Improvement Plan as well as Design and Construction standards and all necessary documents to construct the Community Park;

(ii) Cost Estimate. Prior to the commencement of any construction on the Community Park, the Town and SCTC will develop and jointly approve a Cost Estimate (“Cost Estimate”) which will include all elements associated with the Park Design Plan as set forth in sub-paragraph (i) above, including all projected costs of site work, costs of improvements, equipment costs, building costs, pier installation, engineering, architectural costs, landscape architectural, construction management fees, and any other fees, including permit fees, payment and performance bonds, construction interest, and any and all other costs required to complete the Community Park. In the event the Cost Estimate exceeds \$4.5 Million Dollars, SCTC and the Town will work together to make such changes as are necessary to meet the \$4.5 Million Dollars maximum Cost Estimate unless otherwise agreed by the Town and SCTC;

(iii) Responsibility for Park Improvement. SCTC, as owner of the Community Park, will be responsible for the implementation of the Park Design Plan upon receiving written acknowledgment from the Town that all Cost Estimate and design issues have been resolved and agreed upon, and upon delivery to the Town of a Payment and Performance Bond for the improvements to be made to the Community Park. SCTC shall thereafter seek construction contracts with the various vendors and contractors. The individual contracts, in addition to the normal terms and conditions, will include a minimum of a one year warranty with each vendor or builder for all construction elements at the Community Park. All contracts entered into between SCTC and vendors or contractors shall specifically provide that the Town is not acting as General Contractor or Design Professional or as a partner during the planning/construction process of the Community Park;

(iv) Information/Change Orders. During the period of design and construction of the Community Park, SCTC shall forward to the Town all submittals, notices and correspondence associated with the design, construction

and improvements to the Community Park. The Town must approve any and all change orders pursuant to the vendor or construction contracts. Additionally, the Town and SCTC shall meet during the course of construction a minimum of every two weeks and at the time of any other significant events, to address any issues or problems;

(v) Conformance Certification. Upon completion of all Park Improvements landward of the OCRM Critical Line, SCTC will submit to the Town certifications (“Conformance Certifications”) to be provided by building professionals or certified engineers that the Community Park has been completed in conformance with the Park Design Plan;

(vi) Park Completion and Conformance Certifications. Within thirty days upon receipt of the Conformance Certifications by the Town for all Park Improvements made by SCTC landward of the OCRM Critical Line described in sub-paragraph (v) above, the Town will notify SCTC in writing of any discrepancies, deviations or exceptions from the established Park Design Plan, and SCTC shall take such appropriate action with the various vendors and/or contractors to correct any deviations, or in the alternative, the Town will notify SCTC within such thirty day period after receipt of such Conformance Certifications that it accepts the Conformance Certifications as presented;

(vii) Closing Date. Thirty days following either the correction of any discrepancies identified by the Town in the Conformance Certifications or acknowledgment by the Town that the Community Park has been completed in accordance with the Park Design Plan, the Town and SCTC shall complete the purchase/sale of the Community Park (the “Closing”) for a purchase price calculated in accordance with sub-paragraph (viii) hereafter;

(viii) Purchase Price. The purchase price to be paid by the Town to SCTC for the Community Park will be equal to one-half of the construction cost (“Construction Cost”) plus the exchange of the Exchange Parcel as more fully described in Paragraph IV (C) above. Construction Cost shall be deemed to include all costs incurred by SCTC in constructing the Community Park and all improvements thereon including, but not necessarily being limited to, all

infrastructure and site work, all costs of improvements, equipment costs, engineering and design costs, architectural and landscape architectural costs, construction management fees, permit fees, construction interest, any cost for payment and performance bonds required by the Town, and any and all other costs not included in the Cost Estimate but incurred or expected to be incurred by SCTC and deemed reasonable and necessary by the Town for completion of the Community Park, including but not limited to any proposed piers, docks, or similar structures, the construction of which may be delayed by the obtaining of permits or other requirements from applicable regulatory agencies. In regard to the transfer of the Exchange Parcel, the Exchange Parcel shall be conveyed free and clear of liens and encumbrances, except for the Covenants and Restrictions described in Paragraph VI (N). Any and all ad valorem property taxes, if applicable, shall be prorated between the parties and each party will be responsible for those costs normally incurred by a Buyer and Seller in a typical sale of real property with improvements in Beaufort County, South Carolina. The Town will be responsible to pay the transfer tax on the Deed for the Exchange Parcel and SCTC shall be responsible to pay the cost of transfer tax on the Community Park Site as valued prior to the installation of improvements. Title to both the Exchange Parcel and the Community Park shall be by general warranty deed, copies of which are attached hereto as Exhibit "H".

(ix) Permits. The Town shall be responsible to obtain all permits for improvements to the Community Park required by OCRM or any other regulatory agency for those areas of the Community Park within the Critical Area.

(x) Park Management Plan. A Park Management Plan shall be entered into by and between the parties, and shall establish a system which will allow both parties hereto to utilize the Community Park for special events to avoid any conflicts of use and shall provide that upon completion of the improvements to the Community Park, the Town shall assume responsibility for its maintenance, including all of the amenities or facilities placed thereon.

E. Relocation of Santee Cooper Power Line Easement. SCTC and the Town have mutually agreed that the current location of the 100-foot power line easement

owned by Santee Cooper Cooperative within the Community Park as currently shown on Exhibit “A” will impair the ability for the enjoyment and use of the Community Park by the general public. Accordingly, SCTC shall use best efforts to relocate the power line easement within an easement not to exceed a 100-foot wide right-of-way designated as “Relocated Power Easement” on the Concept Master Plan and the Town and SCTC have agreed that the only impact to Specimen Trees as defined in LMO Section 16-6-408 shall be that considered necessary by a utility company pursuant to LMO Section 16-3-402(3). The relocation of the Santee Cooper power line easement shall be at the sole cost and expense of SCTC. The relocation of the power line easement as set forth above shall be consistent with those certain recommendations from Santee Cooper Cooperative entitled “Shelter Cove Project Recommendations”, a copy of which is attached hereto and marked Exhibit “K”.

F. Road and Transportation Improvements. In the event the Traffic Study or other unforeseen circumstances resulting from road and transportation improvements impact specimen trees as defined in LMO Section 16-6-408, the impact of such improvements shall be exempt from the specimen trees requirements as provided for in the LMO.

G. Additional Infrastructure. SCTC has agreed to accommodate the needs of the Town’s visitors to the Community Park and to those utilizing the Mall Facilities to construct publicly accessible restrooms on the Mall Tract in a location convenient to the commercial center and Community Park. Additionally, SCTC shall provide covered storage space of approximately 1,000 square feet for storage of Community Park equipment as part of the Mall Tract in a location adjacent to Shelter Cove Lane as shown on the Concept Plan. SCTC shall be responsible for the total cost of the restrooms and storage area. SCTC shall also be responsible for the construction of all of the pathways shown on the Concept Plan that are not located within the Community Park and the remaining Town-owned portion of the Shelter Cove Community Park (not included within the Exchange Parcel), to provide public access easements over all such pathways to provide for the use and enjoyment of same by the general public. The Town and SCTC agree to evenly split all County Impact Fees such that SCTC will receive credit to be applied to the Community Park or the parties will agree on a mechanism to act as a

credit for SCTC. The storage for Community Park equipment and the public restrooms shall not be a deduction of the commercial density of 295,000 square feet. SCTC may enter into a Maintenance Agreement with the Town for the pathways used for public purposes located within the Mall Tract, and the Town shall assume all maintenance responsibility for same at its discretion.

H. Public Roads. William Hilton Parkway is an existing public road adjacent to the Mall Tract, which is under the jurisdiction of the South Carolina Department of Transportation. The Town will not be responsible for construction or maintenance of William Hilton Parkway or any other public roads adjacent to or within the Mall Tract; provided, however, the Town agrees to cooperate and support a new corridor entranceway into the Mall Tract from William Hilton Parkway to the Community Park with a “right-in, right-out” turn into William Hilton Parkway for the purposes of providing additional access to the Community Park and the Mall Tract and allowing a public corridor of view through the Mall Tract to Broad Creek furthering the objective of opening up the Mall Tract to allow additional vistas to Broad Creek and the surrounding marshes as exemplified on the Concept Master Plan. The additional ingress and egress into the Mall Tract shall be built in accordance with all S.C. Department of Transportation standards, including acceleration and deceleration lanes. The Town and SCTC agree that there will not be a median cut across from the new corridor entranceway into the Mall Tract.

I. Potable Water. Potable water currently is, and will continue to be, supplied to the Mall Tract by the Broad Creek Public Service District pursuant to its availability letter attached hereto and marked Exhibit “L”. SCTC will construct or cause to be constructed all necessary potable water service infrastructure within the Mall Tract which is required as part of the future development and modification of the commercial area and multi-family dwelling units, which will be maintained by Broad Creek Public Service District. The Town will not be responsible for any construction or maintenance of potable water service infrastructure serving, or the treatment of potable water supplied to the Mall Tract. The Town agrees to use best efforts to assist in obtaining easements across properties not owned by SCTC and relocating easements as necessary in order to

facilitate timely connection to the Broad Creek Public Service District service lines and facilities.

J. Sanitary Sewer Collection. Sanitary sewer treatment and disposal currently is, and will continue to be, provided to the Mall Facilities and the multi-family dwelling units by Broad Creek Public Service District pursuant to its availability letter attached hereto and marked Exhibit “L”. SCTC will construct or cause to be constructed all necessary sanitary sewer collection infrastructure within the Mall Tract which is required as part of the redevelopment and modification of the Mall Tract, which will be maintained by Broad Creek Public Service District. The Town will not be responsible for any construction or maintenance of sanitary sewer service disposal infrastructure serving, or the treatment of sanitary sewer generated by, the Mall Tract. The Town agrees to use best efforts to assist in obtaining easements across properties not owned by SCTC and relocating easements as necessary in order to facilitate timely connection to the Broad Creek Public Service District service line and facilities.

K. Drainage System and Stormwater Master Plan. The redevelopment of Shelter Cove Mall and associated surrounding properties will include the design and implementation of a new Stormwater Master Plan, the elements of which must be fully compliant with the LMO and/or otherwise approved by the Town. The Master Plan will propose modifications to the existing stormwater infrastructure to meet the stormwater standards in the Town of Hilton Head Island’s Land Management Ordinance. The Town agrees to use best efforts to assist in approving and implementing the Master Plan.

Notwithstanding US Army Corps of Engineers (USACE) and OCRM determinations, the three (3) existing stormwater management ponds within the Shelter Cove Mall area shall be treated as stormwater management facilities and shall not be considered tidal or freshwater wetlands for the purposes of application of the Town of Hilton Head Island LMO. The ponds remain subject to all requirements of USACE and OCRM.

Since modifications will be made to the three (3) existing stormwater management ponds within the Shelter Cove Mall area that will significantly improve stormwater management for water quality improvement by providing for first-flush retention with 48-hour drawdown, no prior or additional filtration on site will be required.

Best efforts will be made to incorporate prior or additional on-site treatment where practical.

L. Solid Waste. All solid waste collection services within the Mall Tract currently are, and will continue to be, supplied under private contract by SCTC. The Town will not be responsible for solid waste collection services within the Mall Tract, with the exception of the Community Park.

M. Other Utility Services. All other utility services, including telephone and electric, currently are, and will continue to be, supplied directly to the Mall Tract by the applicable utility companies pursuant to the availability letters attached hereto and marked Exhibits “L-1”, “L-2” and “L-3”. SCTC will construct or cause to be constructed all other necessary utility service infrastructure which is required as part of the future development and modification of the Mall Tract. The Town will not be responsible for any construction or maintenance of such utility services infrastructure serving, or the providing of any utility services to, the Mall Tract.

N. Impact Fees.

i) Town Impact Fees. Town Impact fees shall be applicable to the multi-family dwelling units in accordance with Chapter 5, Article XVIII of the LMO including any and all available offsets and all other provisions contained therein. Due to the public/private nature of the Project, specifically including the Community Park, all Town Impact Fees received by the Town as a result of the redevelopment of the Mall Tract may be applied by the Town to the public roadway modification, including the multi-purpose pathway adjacent to William Hilton Parkway as shown on the Concept Plan, and further including any public improvements required at the entrances off William Hilton Parkway onto the through road currently identified as Mall Boulevard on the Concept Plan but recognizing that such street name must be approved by the Planning Commission of the Town.

ii) County Impact Fees. The Town and SCTC agree to evenly split all County Park Impact Fees, such that SCTC will receive credit to be applied to the Community Park or the parties will agree on a mechanism to act as a credit for SCTC.

O. Establishment of Special Districts. The Town agrees that it will reasonably cooperate with SCTC to attempt to identify alternative funding mechanisms to assist in the timely implementation of the above-referenced infrastructure, services, and Community Park Improvements described herein. SCTC shall be responsible for the initial cost of the public infrastructure but will work with the Town, at the Town's discretion, for the establishment of a district which may allow all or a portion of cost reimbursement to SCTC of the public infrastructure developed by SCTC.

P. Open Space and Pervious Area Requirements. All parks and other public facilities conveyed to the Town or retained by SCTC shall be deemed Open Space in accordance with the terms of the LMO. It is mutually agreed between the Town and SCTC that the Community Park and the remaining portions of the Shelter Cove Community Park being rezoned by the Town not included within the boundaries of the Exchange Parcel shall be counted in calculating any open space and pervious area requirements that may be required in the redevelopment of the Mall Tract.

VI. SPECIFIC CONDITIONS OF FURTHER REDEVELOPMENT OF THE MALL TRACT.

In further consideration for the commitments made to SCTC by the Town under this Agreement, SCTC agrees to the following specific conditions regarding further development and modification of the Mall Tract. The conditions which follow are in addition to the commitments made elsewhere herein by SCTC, and under this Agreement:

A. Community Park Site. Both the Town and SCTC recognize that a Community Park is desirable, needed and appropriate to serve the Town of Hilton Head Island community in a location that provides ample parking, desirable vistas on the edge of Broad Creek connecting with and becoming an integral open space link to the Town's proposed Chaplin Park Linear Trail in order to provide a location for walking, cultural, entertainment and educational activities, picnicking, non-organized sports activities, and playground areas. The Community Park may be used by SCTC for any of the permitted uses described in the Park Improvement Plan provided such activities do not interfere with any of the Town's designated uses and prearranged times. In accordance with the terms of Paragraph V (D) above, as a portion of the Purchase Price

that the Town shall pay SCTC for the improved Community Park, the Town will convey by general warranty deed an approximately 4.90 acre parcel within Shelter Cove Community Park owned by the Town, generally to the east of the Community Park, all as more clearly shown on Exhibits “F” and “G” attached hereto. The Town shall own (in accordance with the Park Improvement Plan) and maintain the Community Park but shall have the right to convey the site to another political subdivision of South Carolina or private not-for-profit entity mutually agreed upon by SCTC and the Town (the “Park Organization”), subject to mutually agreed upon covenants and restrictions. In accordance with Paragraph V (D), the Town shall purchase the Community Park from SCTC at the Purchase Price and at the time more fully described in Paragraph V (D), including the transfer by the Town to SCTC of the Exchange Parcel. It is mutually agreed between the Town and SCTC that the Community Park shall be counted in calculating any open space or pervious area requirements of the LMO within the Mall Tract.

B. Shelter Cove Lane. As exemplified on the Concept Plan, SCTC proposes to reconfigure Shelter Cove Lane in order to allow the creation of a new waterfront Community Park paralleling Broad Creek. The public functions that will occur on the Community Park anticipate large numbers of individuals and cars utilizing all of the Mall’s parking facilities and therefore the Town and SCTC agree that on-street parking will be provided for and that the right-of-way of the reconfigured Shelter Cove Lane, denoted as “Area B-1” on Exhibit “F” shall have an 80-foot right-of-way to allow for such on-street parking and the anticipated pedestrian crosswalks at the most appropriate locations. The Town agrees, to the extent necessary, to obtain title to the existing roadbed of the original Shelter Cove Lane shown on Exhibit “F”, whether through its powers of eminent domain or otherwise, and that portion of the original Shelter Cove Lane roadbed that is southwest of the 4.82 acre multi-family to the Veterans’ Memorial as shown on Exhibit “F” and on the Concept Master Plan.

C. Buffers and Setbacks within the Mall Tract. SCTC agrees to maintain at all times an adjacent use buffer in accordance with LMO Section 16-5-904 (as amended) adjacent to the Newport Community, the Veterans’ Memorial, The Plaza at Shelter Cove Shopping Center, and William Hilton Parkway as shown on the Concept Plan. The

buffer along the Veterans' Memorial shall be measured from the northeastern most line that designates the area rezoned by the Town of Hilton Head pursuant to Ordinance No. _____. In accordance with LMO Section 16-5-904, and as a result of the redevelopment scheme approved by the Town in the Zoning Map Amendment and in this Development Agreement, the standards for pervious area and open space within the Mall Tract shall be fully satisfied within the Mall Tract as a whole, including the Community Park, but do not have to be satisfied on a site-specific basis.

SCTC agrees to have an average 50-foot or greater setback between the Broad Creek marsh critical line and proposed multi-family buildings. The overall design and landscaping of the public pathway between the multi-family dwelling units and Broad Creek shall be sufficiently designed and landscaped to provide users with a sense of separation from the multi-family dwelling units with an emphasis on trail-wide open space wide enough to accommodate emergency vehicles where necessary.

D. Traffic Study. SCTC has conducted a traffic study to determine the Level of Service at the lighted entranceway into the Mall Tract to determine the impact resulting from the modifications to the Mall Tract resulting from the Zoning Map Amendment. This traffic study shall be agreed by the Town to be in lieu of the traffic study provided for under LMO Section 16-3-1301, *et seq.* The traffic study of SCTC indicates the possibility of certain existing deficiencies at the entrances of Mall Boulevard and Shelter Cove Lane. The correction of such deficiencies may be paid for by the Town at its discretion.

E. Outside Dining. As a result of the redevelopment of the Mall Tract and the emphasis placed on its reconfiguration toward Broad Creek, the parties agree that outside dining shall be permitted upon notification by SCTC to the Town and provided such outside dining does not interfere with ingress and egress to other commercial retail shops and establishments and does not block or encroach into any road right-of-way impacting pedestrian circulation on the Mall Tract.

F. Park Edge. In order to provide the users of the Community Park the benefit of its location on the edge of Broad Creek, the Town and SCTC agree to cooperate to allow selective clearing of the buffer adjacent to Broad Creek and to use best efforts through the use of additional fill and plant material, and the location of irrigation

facilities to prevent stormwater drainage from the Community Park draining into Broad Creek to the degree feasible. Additionally, SCTC and the Town shall utilize pervious surfaces wherever possible in walkways and pathways within wetland buffers.

G. Pathway Easements. SCTC agrees that all pathway easements shall include the right of the Town to utilize same for emergency vehicle entry, particularly behind the Exchange Parcel and other multi-family parcels, to ensure that emergency vehicles, including fire trucks, have access to all areas of the Mall Tract.

H. Acceptance of Facilities. The facilities described in this section will be accepted by the Town upon tender by SCTC, provided the facilities are built in accordance with the specifications approved by the Town, and provided further that the facilities are in good condition and not subject to any monetary lien.

I. Lighting. Prior to applying for a Certificate of Compliance for the redevelopment of the Mall Tract as contemplated by this Agreement, SCTC will adhere to all applicable provisions of the LMO.

J. Pedestrian Crossings. Prior to applying for a Certificate of Compliance for the development and modification of the Mall Tract as contemplated by this Agreement, and upon approval by Shelter Cove Harbour Company, Inc., SCTC will provide painted pedestrian crossings, pavers, or stamped crosswalks approved by the LMO Administrator on the relocated Shelter Cove Lane between the parking areas contemplated by this Agreement across Shelter Cove Lane for use by patrons of the Mall and visitors to the Community Park.

K. Existing Parking Agreement. Prior to applying for a Certificate of Compliance for the development and modification of the Mall Tract as contemplated by this Agreement, the Parking Agreement will be revised by the Town and SCTC to accurately reflect the shared parking on the Mall Tract.

L. Parking Data. In connection with an application to the Town for development plan review approval for the redevelopment of the Mall Tract pursuant to Ordinance No. _____ of the Town of Hilton Head Island, SCTC will provide developer submitted parking data to comply with LMO Section 16-5-1209.

M. Local Vendor Preference. SCTC shall make good faith, commercially reasonable efforts to utilize the services of local vendors for all work connected with this

Agreement, including but not limited to the design, permitting, construction and landscaping as may be necessary to implement the re-development authorized by this Agreement on the Mall Tract. SCTC agrees to post notices of all job or project opportunities that have an estimated value of \$20,000.00 or more within the Mall Tract in a conspicuous location at the Hilton Head Island Town Hall, and to review all applications of Hilton Head Island located applicants to include Hilton Head based contractors and businesses.

N. Covenants and Restrictions. As evidenced in the Declarations of Covenants, Conditions and Restrictions as set forth in Exhibit “M” to this Agreement, the Community Park, the Exchange Parcel, and Parcel “C” as referenced on Exhibit “J” and any transfers of property within the re-developed Mall Tract categorized as multi-family dwellings shall be subject to various covenants and restrictions, notably prohibitions on (1) converting apartments to condominiums, (2) rentals of apartments for less than twelve (12) months per lease, and (3) sub-letting of apartments by tenants.

O. Donation of Right(s) of Way. SCTC agrees to donate any and all property owned by SCTC to the Town which may be needed in connection with the correction of any deficiencies related to required improvements or reconstruction to the existing intersections providing access to the Mall Tract.

P. Modifications to the Concept Plan. In addition to any requirements provided for in the LMO, including any approved modifications thereto, it is reasonable to anticipate that certain changes may occur in the development and construction that differ from the Concept Plan within the Mall Tract caused by changes or matters that become apparent to SCTC when the improvements are laid out within the Mall Tract. In order to provide guidance as to minor modifications (Minor Changes) in the Concept Plan as opposed to or in contrast to major modifications (Major Changes) to the Concept Plan, any Minor Changes that become necessary therefrom can be approved by the LMO Administrator and any Major Changes will require an appropriate amendment to the Development Agreement subject to the provisions of the Act.

Modifications to Approved Concept Plan.

Whenever an application is made to modify the Concept Plan, the modification shall be classified as either a major or minor modification.

Major Modifications (Major Changes). In addition to any required approvals under the Land Management Ordinance of the Town or any other applicable land development regulations, Major modifications require approval of the Town Council in accordance with the Act.

The following shall be deemed a Major modification:

- a. An increase in the height of the multi-family buildings greater than sixty (60) feet;
- b. A reduction in the wetland buffers adjacent to the multi-family buildings;
- c. Increase beyond 210 multi-family units; or
- d. Any other modifications to the Land Management Ordinance of the Town other than those found in Exhibit “D” to this Agreement.

Minor Modifications (Minor Changes). All other changes not specifically listed as a Major modification above shall be considered Minor modifications and may be approved by the LMO Administrator.

VII. COMPLIANCE REVIEWS.

As long as SCTC owns any of the Mall Tract, SCTC, its successors or assigns, shall meet with the Town, or its designee, at least once per year during the Term to review development completed by SCTC in the prior year and the development anticipated to be commenced or completed by Developer in the ensuing year. SCTC or its designee shall provide such information as may reasonably be requested, to include but not be limited to, the occupancy of the commercial areas of the Mall and the multi-family dwelling units and any development rights transferred in the prior year and anticipated to be transferred in the ensuing year, if any. SCTC or its designee shall be required to compile this information for the entire Mall Tract within a reasonable time after written request by the Town.

VIII. TERMINATION AND ASSIGNMENT.

The Town shall have the right to unilaterally terminate this Agreement should development and modification of the Mall Tract, as contemplated by this Agreement, not be substantially complete within five (5) years of the Effective Date; *provided, however*, if any litigation or appeal is instituted by one or more third parties against the Town or SCTC, or both, regarding this Agreement, the Rezoning Application, or the development

or modification of the Mall Tract, the Town and SCTC shall take such actions are permitted under 6-31-60(A)(2) of the Act to extend the termination date of this Agreement during the pendency of such litigation or appeal. This Agreement may be assigned by SCTC to a good faith purchaser of the Mall Tract.

IX. DEFAULT AND ENFORCEMENT.

The failure of the Owner, Developer or the Town to comply with the terms of this Agreement shall constitute a Default. In the event such Default is not cured within sixty (60) 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 Default within such sixty (60) day period and is proceeding diligently and expeditiously to complete such cure), the non-defaulting party shall be entitled to pursue all remedies available at law or equity, including but not limited to specific performance; provided however no termination of this Agreement may be declared by the Town absent its according the 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 Project in default, and provided further that nothing herein shall be deemed or construed to preclude the Town or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Land Development Regulations or this Agreement. A Default of the Owner shall not constitute a Default by Third-Party Developers, and default by Third-Party Developers shall not constitute a default by the Owner. The parties acknowledge that individual residents and owners of completed buildings within the Property shall not be obligated for the obligations of the Owner or developer set forth in this Agreement.

X. 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 deposit thereof in the United States Mail, postage pre-paid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals, or communications to the Town shall be addressed to the Town at:

Stephen G. Riley
Town Manager, Town of Hilton Head Island
One Town Center Court
Hilton Head Island, South Carolina 29928

With a copy to:

Gregory M. Alford, Esquire
Alford Wilkins & Coltrane, LLC
P.O. Drawer 8008
Hilton Head Island, South Carolina 29938

and to the Owner at:

Mark Senn
President, Blanchard & Calhoun Commercial Corporation
2743 Perimeter Parkway
Building 200, Suite 370
Augusta, Georgia 30909

With a copy to:

William W. Jones, Jr., Esquire
Jones, Simpson & Newton
P.O. Box 1938
Bluffton, South Carolina 29910

**XI. ENTIRE AGREEMENT, AMENDMENT, MODIFICATION,
GOVERNING LAW, PARTIES IN INTEREST.**

This Agreement constitutes the entire agreement between the parties regarding the matters set forth herein. No amendment or modification to this Agreement shall be effective unless reduced to writing, executed by both parties and approved by the Town Council of the Town. This Agreement shall be interpreted pursuant to the laws of the State of South Carolina generally, and more specifically, pursuant to the Act. If any provision of this Agreement shall be held by a court of competent jurisdiction after a final appeal to be illegal, unenforceable, or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force

and effect. Nothing contained in this Agreement, express or implied, is intended or shall be construed to confer upon or give any person (other than the parties hereto, their successors and permitted assigns) any rights or remedies under or by reason of this Agreement, or any term, provision, condition, undertaking, warranty, representation, indemnity, covenant, or agreement contained herein.

The Town will approve changes in the location of roads, buildings, recreational amenities, and other elements which may vary at the time of permit application when more specific designs are available, provided the maximum densities and Land Development Regulations are followed.

XII. 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 SCTC and other Third-Party Developer(s) (if any) and the Town shall meet and confer in good faith in order to agree upon such modification or suspension based on the effect such New Law would have on the purposes and intent of this Agreement. During the time that these parties are conferring on such modification or suspension or challenging the New Laws, the Town may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, SCTC, Third-Party Developers and the Town each shall have the right to challenge the New Law preventing compliance with the terms of this Agreement. In the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

B. Estoppel Certificate. The Town, SCTC or any Third-Party 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:

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

D. Force Majeure. No Party shall be liable for any failure to perform its obligations under this Agreement where such failure is as a result of Acts of God or nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), orders of any kind of the government of the United States or the State of South Carolina or the courts thereof, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or industrial disturbances, and no other Party will have a right to terminate this Agreement under Section IX (Default) in such circumstances. Any Party asserting Force Majeure as an excuse for non-performance in whole or in part of its obligations under this Agreement shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excusable obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated and implemented.

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

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

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

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

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

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

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

L. Transfers of Interest. Owner shall notify the Town, in writing, each time that it transfers any Development Rights hereunder to any other owner or developer. Such information shall include the legal name of the acquiring owner or developer, the current address and the name of a contact person at that entity, the location and number of acres of property transferred, a description of the Development Rights transferred and the allocation of any rights or responsibilities arising under this Agreement transferred to the acquiring owner or developer. The notification shall also include an updated Development Summary Schedule reflecting the transferred rights. The entity acquiring Development Rights hereunder shall file with the Town an acknowledgment of this Agreement as well as a commitment to be bound by them, all in a form reasonably satisfactory to the Town of Hilton Head Island.

M. Agreements to Run with the Land. This Agreement shall be recorded against the Real Property. The Agreements contained herein shall be deemed to run with the land for the Term hereof and any extensions of same. The burdens of this Agreement are binding upon, and benefits of the Agreement shall inure to, all successors in interest to the Parties to this Agreement.

N. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right as it may have hereunder. Unless this Agreement is amended by vote of the Town Council taken with the same formality approving this Agreement, no officer, official or agent of the Town has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the Town by making any promise or representation contained herein.

O. Attorney's Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeal or rehearings, the prevailing Party shall be entitled to receive from the other party thereto reimbursement for all reasonable attorney's fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

XIII. STATEMENT OF REQUIRED PROVISIONS.

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:

A. Legal Description of the Property and the Legal and Equitable Owners. The legal description of the property is set forth in Exhibit "E" and "E-1" attached hereto. The present legal owner of the Mall Tract is Shelter Cove Towne Centre, LLC, a South Carolina limited liability company. Shelter Cove Towne Centre, LLC, is also the developer of the Mall Tract under this Agreement upon the Effective Date. The total acreage for the Mall Tract shall be 41.85 after the reconfiguration of Shelter Cove Lane,

the addition of the 4.90 acre Exchange Parcel, and the revised multi-family parcel of 4.62 acres as defined in Section III(S) above.

B. Duration of Agreement. The duration of this Agreement is five (5) years, unless extended or terminated by the parties, as may be permitted by the Act; *provided, however,* that the Town and Shelter Cove Towne Centre, LLC, acknowledge and agree that the initial term of the Agreement may be renewed for two additional five (5) year periods absent a default under the terms of the Agreement pursuant to Section IX hereof.

C. Permitted Uses, Population, 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 Land Development Regulations, as supplemented by this Agreement and the uses on the Mall Tract are those allowed by the PD Master Plan, as amended by the approval of the Rezoning Application, this Agreement and the LMO.

D. Utility Services. The utility services available to the property are described generally above regarding water service, sewer service, cable and other telecommunications service, gas service, electrical service, telephone service, and solid waste disposal. The mandatory procedures of the Land Development Regulations will ensure availability of roads and utilities to serve the residents and tenants on a timely basis.

E. Required Public Facilities. All requirements relating to land transfers for public facilities are set forth herein. The Land Development Regulations described above and incorporated herein contain numerous provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws will be complied with, in addition to the important provisions set forth in this Agreement. The environmentally sensitive areas located on the Mall Tract adjacent to the marshes of Broad Creek will be protected in accordance with the terms of the Land Development Regulations set forth herein.

F. Land Development Permits. The development standards for the Project shall be as set forth in the Land Development Regulations. Specific permits must be obtained prior to commencing development, consistent with the standards set forth in the Land Development 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, among other required entities, when applicable, prior to any impact on jurisdictional wetlands. It is specifically understood that failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer, its successors and assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms, or restrictions, unless otherwise provided hereunder. This Agreement is contingent upon the Developer obtaining approval from the Town of the Rezoning Application.

G. Comprehensive Plan and Development Agreement. The Town has determined that the development and modification of the Mall Tract contemplated by this Agreement is consistent with the Town's Comprehensive Plan, as recently amended, and with the Land Development Regulations.

H. Terms for Public Health, Safety, and Welfare. The legal process which resulted in the approval of the Rezoning Application for the Mall Tract included considerable input to assure the Town that the redevelopment and modification of the Shelter Cove Mall contemplated by this Agreement adequately addresses applicable issues of public health, safety, and welfare. The terms and conditions of the approval of the Rezoning Application serve that purpose, together with other terms and conditions contained in this Agreement.

I. Historic Structures. No specific terms relating to historic structures are pertinent to this Agreement. No historic structures exist on the Mall Tract.

[Signature pages follow]

IN WITNESS WHEREOF, Shelter Cove Towne Centre, LLC, has caused this Agreement to be signed and sealed this ____ day of _____, 2012.

**SIGNED, SEALED AND
DELIVERED IN THE PRESENCE
OF:**

**Shelter Cove Towne Centre, LLC,
a South Carolina limited liability
company**

By: _____

STATE OF)
)
COUNTY OF)

ACKNOWLEDGEMENT

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

Witness my hand and seal this ____ day of _____, 2012.

Notary Public for South Carolina
My Commission Expires: _____