

STATE OF SOUTH CAROLINA) DEVELOPMENT AGREEMENT FOR
) GARVEY PRESERVE
COUNTY OF BEAUFORT)

This Development Agreement (“Agreement”) is made and entered this 6th day of January, 2009, by and between Quinnco Companies, LLC (hereinafter referred to as “Owner”) and the Town of Bluffton, South Carolina (“Bluffton or Town”).

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

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

WHEREAS, the Act also states: Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term of provision of the Development Agreement or in any way hinder, restrict, or prevent the development of the project. Development Agreements will provide a reasonable

certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State.” [Section 6-31-10(B) (6)]; and

WHEREAS, the Owner has committed that this project in its entirety, will utilize the land practices and technology available to develop Garvey Preserve as an environmentally friendly “green” community; and

WHEREAS, through the application of the Town’s Zoning and Development Standard Ordinances to the Property, the Town seeks to protect and preserve the natural environment and to secure for its citizens quality, well-planned and designed development and a stable and viable tax base; and

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

WHEREAS, the annexation of the Property and the resulting zoning classification presents an unprecedented opportunity for the Town to secure quality planning and growth, protection of the environment and a strengthened and revitalized tax base; and

WHEREAS, Owner has annexed into the Town approximately 87.17 acres, generally known as a portion of the Garvey Hall, and proposes to develop, or cause to be developed, thereon a mixture of residential and conservation uses.

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

I. INCORPORATION.

The above recitals are hereby incorporated into this Agreement, together with the South

Carolina General Assembly findings as set forth under Section 6-31-10(B) of the Act.

II. DEFINITIONS.

As used herein, the following terms mean:

“Act” means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-13-10 through 6-31-160 of the Code of Laws of South Carolina (1976), as amended.

"Dedicated Open Space" means an open space area within the Property intended for the shared use or enjoyment of residents, owners of the development, and their invitees and as shown on the Site Plan, attached hereto as Exhibit “B”. Dedicated open space may contain such complementary structures and improvements as are necessary and appropriate for the shared use or enjoyment of residents, owners of the development, and their invitees. Dedicated open space does not include road rights-of-way or vehicular access easements.

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

“Development” means the definition of development as set forth in the Zoning Regulations.

“Development Agreement Ordinance” means the ordinance ratified by the Town Council of Bluffton on June 10, 1998, establishing procedures for the execution of the Development Agreement in the Town of Bluffton.

“Development Rights” means Development undertaken by the Owner or Developer(s) in accordance with the Zoning Regulations and this Development Agreement.

"Dwelling Unit" means a building(s) or a portion of a building providing complete and permanent living facilities for one or more persons living together as a single household unit in a dwelling unit.

"Green Development" shall mean a pattern of development where resources and technology are used to meet human needs for residential and commercial development while preserving the environment and conserving energy so that these needs can not only be met not only in the present, but in the indefinite future. Green development shall meet, at a minimum,

the standards set forth by the US Green Building Council's Leadership in Energy and Environmental Design (LEED), Earthcraft, or some other certification program, with coastal development standards.

"Gross Site Pervious Coverage" means the percentage of total acreage or square footage that allows direct infiltration of water, including pervious surfaces in Dedicated Open Space, lots and road rights-of-way.

"New River Buffer" means a natural vegetated buffer measured landward from the river's edge mean high water line and meeting the selective cutting and use limitations stated in the Zoning Ordinance of the Town of Bluffton, Article V, Sections 5.25.7, 5.25.8, and 5.25.9.

"Open Space" means all areas not utilized for buildings, sidewalks, roads, parking, and/or bridges.

"Owners" means Quinnco Companies, LLC, its successors or assigns.

"Owners Association" means an entity formed by Owner and/or Developers which is responsible for the construction and/or maintenance and/or upgrading of the infrastructure on the Site Plan approved under the Zoning Regulations and this Development Agreement, to include but not be limited to roads, common areas, water, sewer and storm water management systems.

"Pervious Surface" means a surface which allows natural passage of air and water through it to the ground below including surfaces such as natural earth surfaces, porous and permeable paving, water bodies such as lakes and streams, and building roofs designed to detain stormwater flow, and excluding surfaces which do not absorb or percolate water including conventional building roofs and impervious asphalt or concrete parking areas, driveways, roads, sidewalks and patios.

"Property" means those certain tracts of land described as Exhibit "A"

"SC Highway 46/170 Buffer" means a naturally forested Dedicated Open Space measured from the SC Highway 46/170 right-of-way meant to retain the rural view shed to the property and with at least ninety percent (90%) summer month opacity, with exception for the right-of-way for the roadway access to SC Hwy 46/170 which shall be allowed to be non-forested.

"Site Plan" shall mean the planned uses, densities, lot sizes, general lot locations, Dedicated Open Spaces, set backs, buffers, roadways, easements and other features shown and described on the Site Plan, prepared by LandPlan Partnership, Inc., dated August 5, 2008, updated December 16, 2008, and attached hereto as Exhibit "B".

"Substantial Development" shall mean the commencement of construction on Thirty-five (35%) percent or more of the Property (in an approved Site Plan) after the issuance of appropriate Final Development Permits.

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

"Zoning Regulations" means Town of Bluffton Ordinances adopted by the Town Council of Bluffton on January 6, 2009 with Ordinance 2009-1 attached hereto as Exhibit "F" and 2009-2 attached hereto as Exhibit "G", annexing the Property into Town, zoning the Property and authorizing the Development Agreement, respectfully; the Site Plan as attached hereto and all attachments thereto, including the Town of Bluffton Zoning Ordinance attached hereto as Exhibit "D" and Development Standards Ordinances attached hereto as Exhibit "E", the Tree Preservation Ordinance (a section of the Development Standards Ordinance), as modified, and as may be hereafter amended by the Town and the Stormwater Ordinance (a section of the Development Standards Ordinance), as modified, and as may be hereafter amended by the Town. The Zoning Regulations shall also be deemed to include any future additional Ordinances of the Town of Bluffton applicable to the development of the Property that are authorized by this Development Agreement or the Act.

III. TERM.

The terms of this Agreement shall commence on the date this Agreement is executed by the Town and Owner or the effective date of the annexation of the Property, whichever occurs later, and terminate five (5) years thereafter. Consideration shall be given to extending the Term of an additional five (5) year period, absent a material breach of any term of this Agreement by Owner or any Developer during the initial term ("Extension Term). In determining whether or not to extend the Term, the Town shall take into consideration whether or not substantial development has occurred in accordance with the Development Agreement. If, at the end of the Extension Term, there has been no material breach of any term of this Agreement by Owner or any Developer, consideration shall be given to extending this Agreement for an additional five (5) year period. The fees contained herein shall also apply during all periods of extension.

IV. DEVELOPMENT OF THE PROPERTY.

The Owner and Town agree that notwithstanding the development rights applicable to the property established under the laws of Beaufort County, the Property shall hereafter be developed in accordance with the Site Plan attached hereto, the Zoning Regulations, and all ordinances of the Town involving health, safety and welfare, this Development Agreement and any future Ordinances of the Town applicable to the development of the Property that are authorized by the Development Agreement or the Act. The Town shall, throughout the Term, maintain or cause to be maintained, a procedure for the processing of reviews as contemplated by the Zoning Regulations. All costs charged by or to the Town for such reviews shall be paid by the Owner or Developer, as applicable. The Owner agrees that the Property shall be zoned as Transitional District. The Site Plan sets forth the Property's permitted uses (which include a clubhouse for the residents and their guests; and a community post office facility), density and the configuration of development and will supersede any provisions of Section 5.13.5 of the Zoning Ordinance inconsistent therewith. Approval of this Development Agreement and the Site Plan shall vest the development rights as shown thereon and will be effective to allow Owner to transfer ownership of developments tracts within the Property. Notwithstanding the vesting of development rights, Owner understands and acknowledges that prior to any Development,

Owner shall be required to obtain Development Plan approval.

V. CHANGES TO ZONING REGULATIONS.

The Zoning Regulations relating to the Property are the Zoning Regulations in effect as of the date of execution hereof and any such additional Ordinances of the Town of Bluffton that may be applicable to the development of the Property, as of the date of submission of the Development Plan, for all or any portion of the Property, provided that any such additional Ordinances shall not be applicable if they are not authorized by this Development Agreement or in the Act. Owner and/or Developer agree that the development will be subject to the Stormwater Ordinance, Stormwater Design Manual, and the Tree Preservation Ordinance (sections of the Town of Bluffton Development Standards Ordinance) and any amendments thereto until the filing of application for applicable Development Plan approval for the Property. The Owner shall be required to notify the Town, in writing for review, as and when Development Rights are transferred to a Developer. Such information shall include the identity and address of the Developer, a Developer Contact Person, the location and number of acres of the property transferred, and the number of residential dwelling units and/or commercial acreage, and/or conservation acres acreage as applicable, subject to this requirement of notification, and any developer acquiring Development Rights an acknowledgement of this Development Agreement and a commitment to be bound by it.

VI. DEVELOPMENT SCHEDULE.

The Property shall be developed in accordance with the development schedule, attached as Exhibit "C". Pursuant to the Act, the failure of the Owner and Developer(s) to meet the development schedule shall not, in and of itself, constitute a material breach of this agreement. In such event, the failure to meet the development schedule shall be judged by the totality of circumstances, including but not limited to the Owner's and Developer(s)'s good faith efforts made to attain compliance with the development schedule. These schedules are planning and forecasting tools only. The fact that actual development may take place at a slower pace, based on future market forces, is expected and shall not be considered a default hereunder. If Owner and/or Developers attempt to develop the Property faster than as set forth on Exhibit "C," then

the faster pace must have the approval of Town Council.

VII. LAND USES AND INTENSITY.

The Property shall be developed in accordance with the Transitional District category of the Zoning Regulations, as modified hereby.

The development intensity of the Property shall be limited and in conformance with the following:

- A. Maximum sixty three (63) residential dwelling units; and
- B. Minimum Dedicated Open Space of forty-five (45%) of the total property area; and
- C. Minimum Open Space of sixty-five percent (65%) of the total property area; and,
- D. Minimum Gross Site Pervious Coverage of seventy-five percent (75%); and
- F. The minimum New River Buffer will be seventy-five feet (75’); with at least twenty-five percent (25%) of the buffer’s river frontage having a minimum depth of one-hundred feet (100’); as shown on the Site Plan; and
- G. Minimum SC Highway 46/170 Buffer of one-hundred fifty feet (150’); and
- H. All development in the property shall incorporate Green Development building and land planning principles and shall be certified as such by an independent certification organization acceptable to the Town and the Developer.

Developer shall buy twenty-nine (29) residential dwelling units from the Town’s Development Rights Bank at a price of Four Thousand Five Hundred and No/100 (\$4,500.00) Dollars per unit. Payment for the residential dwelling units shall be made at the time said units are plotted for development. The Development Rights revenue received by the Town for these 29 dwelling units shall be utilized for the Affordable Housing program.

IX. EFFECT OF FUTURE LAWS.

Owner and Developers shall have vested rights to undertake Development of any or all of the Property in accordance with the Zoning Regulations, as defined herein and modified hereby, and as may be modified in the future pursuant to the terms hereof, and this Development Agreement for the entirety of the Term, and thereafter if Substantial Development has commenced in reliance upon a Master Plan, approved by the Town Council. Future enactments of, or changes or amendments to Town ordinances, including zoning or development standards ordinances, which conflict with the Zoning Regulations shall apply to the Property only if permitted pursuant to the Act or this Development Agreement.

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

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

A. Private Roads. All roads within the Property shall be constructed by the Owner and/or Developers, and maintained by them and/or an Owner's Association, or dedicated to other appropriate entities. The Town of Bluffton will not be responsible for the construction or maintenance of any roads within the Property, and the Owner and/or Developer and/or Owner's Association shall continue the maintenance.

B. Public Roads and Traffic Impacts. The public road that is contiguous to and presently serves the Property is identified as Highway 46/170 and is under jurisdiction of the State of South Carolina regarding access, construction, improvements and maintenance. The

Town of Bluffton is concerned with the traffic impact resulting from development on Highway 46/170. Owner must comply with all recommendations of the Town as a result of the traffic study.

C. **Potable Water.** Potable water will be supplied to the Property by Beaufort-Jasper Water and Sewer Authority or some other legally constituted provider allowed to operate in the Town, at the election of the Owner. Owner will construct or cause to be constructed all necessary water service infrastructure within the Property, which will be maintained by it or the provider. The Town of Bluffton shall not be responsible for any construction, treatment, maintenance or costs associated with water service to the Property. Nothing herein shall be construed as precluding the Town from providing potable water to its residents in accordance with applicable provisions of laws.

D. **Sewage Treatment and Disposal.** Sewage treatment and disposal will be provided by Beaufort-Jasper Water and Sewer Authority or some other legally constituted provider allowed to operate in the Town, at the election of the Owner. Owner will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the provider. The Town of Bluffton will not be responsible for any treatment, maintenance or costs associated with sewage treatment within the Property. Notwithstanding the above, should the Town of Bluffton elect to become a retailer or other provider of such services in the future, Owner agrees not to object and to affirmatively support such decision Bluffton may make in the future. Nothing herein shall be construed as precluding the Town from providing sewer services to its residents in accordance with applicable provisions of laws.

E. **Use of Effluent.** Owner agrees that treated effluent will be disposed of only in such manner as may be approved by applicable government agencies, and particularly as approved by DHEC and the Beaufort-Jasper Water and Sewer Authority.

F. **Water Conservation.** Owner agrees to encourage the use of indigenous plants for landscaping purposes, to help minimize irrigation requirements, and to encourage the use of other water conservation methods. Owner shall install, or cause to be installed, rain

sensors on automatic sprinkler systems within the common areas of the Property. Owner will agree in any automatic water systems to include rain sensors. Owner will include in its restrictive covenants a provision that requires the inclusion of rain sensors whenever irrigation is installed.

G. Drainage System. All storm water runoff and drainage improvements within the Property will be designed in accordance with the Town Stormwater Ordinance and Design Manual. All storm water runoff and drainage system improvements shall be constructed by Owner or Developers and maintained by Owner, Developers and/or an Owner's Association. The Town of Bluffton will not be responsible for any construction or maintenance costs associated with the drainage system within the Property.

H. Solid Waste Collection. Owners shall provide or cause to be provided solid waste collection services to the Property all until such time as: (1) the Town is requested to provide such services; and (2) ad valorem tax revenues generated from the Property, less such amount thereof as are applied to other Town-wide services, are sufficient to pay the costs the Town incurs to provide solid waste collection to the Property, at the level provided to other residents and businesses within the Town.

I. Police Protection. The Town shall provide police protection services to the Property on the same basis as is provided to other residents and businesses within the Town with the exception of restricted access communities. Owner acknowledges the concurrent jurisdiction of the Town's police department and the Sheriff of Beaufort County on the Property and shall not interfere or in any way hinder law enforcement activities of either on the Property.

J. Recycling Services. The Town shall not be obligated to provide recycling services to the Property. The Town reserves the right to require recycling materials generated from the Property to comply with standards promulgated by it or Beaufort County, as applicable, if the solid waste is to be deposited in a facility designated by Beaufort County.

Should recycling services ever be provided by the Town, they will be provided to the Property at a level consistent with the level of services being provided by the Town to other residences and businesses within the Town.

K. **Emergency Medical Services.** Such services are now provided by Beaufort County. The Town of Bluffton shall not be obligated to provide emergency medical services to the Property, absent its election to provide such services on a town-wide basis.

L. **Library Services.** Such services are now provided by Beaufort County. The Town of Bluffton shall not be obligated to provide library services to the Property, absent its election to provide such services on a town-wide basis.

M. **School Services.** Such services are now provided by Beaufort County. The Town of Bluffton shall not be obligated to provide school services to the Property, absent such services on a town-wide basis.

N. **Fire Services.** Such services are now provided by The Bluffton Township Fire District. The Town of Bluffton shall not be obligated to provide fire services to the Property, absent its election to provide such services on a town-wide basis.

XI. FEES.

The Town of Bluffton and Owner understand and agree that Development of the Property shall impose certain costs to the Town. Eventually, ad valorem taxes collected from the Property may meet or exceed the burdens placed upon the Town, but certain initial costs and capital expenditures are now required in order to ensure that the present residents of the Town are not called upon to pay higher taxes to accommodate the Development of the Property. The following fees are hereby agreed upon to be paid by Owner, its successors and assigns, to offset such future costs and expenditures:

A. **Administrative Fees for Professional Assistance.** The Town and Owner acknowledge that the increased development within the Bluffton area will create a need for additional administrative duties by the Town, including, without limitation, the need for professional staff to assist the Town in planning and permitting. Owner or Developer agrees to make payments to the Town in the amount of Fifty Thousand and No/100 (\$50,000.00) Dollars per year. The Administrative Fee shall be paid as follows: Twenty-Five Thousand and No/100 (\$25,000.00) Dollars payable when this Agreement is signed and Twenty-Five Thousand and No/100 (\$25,000.00) Dollars every six months thereafter during the term of this Agreement and

each year of any extension of the Development Agreement thereafter.-

Owner agrees that commencing on the third anniversary date of this Agreement and for each year thereafter, the Administrative Fee set forth above shall be increased on an annual basis in accordance with the CPI for the previous twelve (12) months.

B. Interim Development Fees.

1. To assist the Town in meeting expenses resulting from ongoing development, Developers shall pay development fees (“Development Fees”) as follows:

DEVELOPMENT FEES	AMOUNT
Residential Development	\$1,200.00 per single family dwelling unit
Non-Residential Development	\$ 1.00 per square foot

2. Owner agrees that commencing on the third anniversary date of this Agreement and for each year thereafter, the Development Fees set forth above shall be increased on an annual basis in accordance with the CPI for the previous twelve (12) months.

3. All Development Fees shall be collected according to the procedure set forth in Section XI (F).

4. The Owner and/or Developers shall be subject to the payment of any and all present or future fees enacted by the Town that are of town-wide application and that relate to processing applications, development permits, building permits, review of plans, or inspections or other matters.

C. Boat Ramp Repair Fund. As additional consideration for the covenants of the Town of Bluffton hereunder, Owner agrees to pay to the Town of Bluffton Two Hundred Twenty-Five and no/100 Dollars (\$225.00) per dwelling unit, paid according to the procedure set forth in Section XI (F), for a boat ramp repair fund which the Town hereby agrees shall be used exclusively for the repair of public access boat ramp facilities in or near the Town of Bluffton.

D. Special Districts.

1. The Owner agrees to pay the Municipal Improvement Development Fee in the amount Nine Hundred and 00/100 (\$900.00) Dollars per residential dwelling unit in Garvey Preserve shall be paid for the purpose of municipal improvements including, but not limited to, traffic and other infrastructure impacts, parks, and open spaces within the Town. All MIDFs shall be paid at the time of lot sale or building permit application, whichever comes first for each residential dwelling unit within Garvey Preserve for as long as the Town is in compliance with the terms hereof and those of the Development Agreement, which compliance includes, but is not limited to, no moratoriums or delays by the Town or any agency thereof in issuing permits, plat approvals, certificates of occupancies, or any other permits or certificates necessary for the building and completion of 68 dwelling units or other improvements on Owner's Property (other than for substantive non-compliance with existing regulations and laws). The guaranteed minimum and the maximum amount to be paid to the Town as MIDFs shall be \$61,200.00 Dollars, and in the event that the Town has not collected \$61,200.00 Dollars within five (5) years, Owner shall pay the difference between the total amount that has been collected and \$61,200.00 Dollars in complete satisfaction of all obligations hereunder. After the Town collects \$61,200.00 Dollars from the Owner's Property during the next five years from new taxes (as hereinafter defined) or MIDFs, any MIDFs collected thereafter shall be paid to the Owner.

2. It is hereby specifically acknowledged and agreed that the agreements, restrictions, donations, grants and MIDFs, as set forth in this Agreement shall serve as mitigation assistance for the greater Bluffton Area for present and future traffic infrastructure impacts within the Town arising from development of Garvey Preserve. Notwithstanding any provisions to the contrary, if any, contained in the Development Agreement, from and after the date hereof, the Town may seek, request or demand (directly or indirectly) any additional contributions of money, assessments, impact or other fees or development right concessions (“New Taxes”) from Garvey Preserve only if enacted pursuant to and in accordance with SC Code 6-31-80(B) (as amended) and the applicable tax enabling ordinance or State Statute. This limitation on new taxes shall not include site-specific project mitigation associated with specific projects that are within the jurisdiction of the Town and allowed under the appropriate Development Standards Ordinance applicable to Garvey Preserve. For a period of five (5) years from the date hereof, in the event the Town establishes new taxes within Garvey Preserve in accordance with SC Code 6-31-80(B) (as amended) and the applicable tax enabling ordinance or State Statute, the amount of any such New Taxes shall be offset (the “offset”) against the MIDFs, thereby reducing the nine-hundred and 00/100 (\$900.00) Dollars per Residential Dwelling Unit MIDF by the amount of the per unit per lot New Taxes. Provided however, the Offset shall not apply to any tax levied under a Municipal Tax District so long as the Tax does not exceed Seventy Five and 00/100 (\$75.00) per residential lot per year. In the event the Town enacts New Taxes during the five (5) year period, the combination of such New Taxes and MIDFs will be guaranteed to be no greater than, but no less than, \$61,200.00 Dollars over the five year period. Owner agrees to pay the Town any shortfall from the \$61,200.00 Dollars once all MIDFs and or any New Taxes collected over the next five years are reconciled. Owner further agrees that Garvey Preserve shall be subject to the established Town of Bluffton Tax Increment Financing District.

E. School Improvement Fee. The Owner agrees to pay the Beaufort County School Improvement Fee of Six Thousand and no/100 Dollars (\$6,000.00) per residential unit, said fee to be paid according to the procedure set forth in Section XI.F. Owner understands if there is a commercial use of the property as a result of a future rezoning, the school improvement fee will be \$2.50 per square foot.

F. Payment Schedule. Interim Development Fees, Boat Ramp Repair Fund, and the School Improvement Fee shall be paid as follows: The full Improvement Fee due may be paid at permit application **or** One-half (1/2) shall be paid at the time of building permit application and the remaining one-half (1/2) shall be paid before the request for Certificate of Occupancy or six (6) months after the building permit is issued, whichever comes first.

XII. PROTECTION OF ENVIRONMENT AND QUALITY OF LIFE.

The Town of Bluffton and Owner recognize that new development can have negative as well as positive impacts. Specifically, Bluffton considers the protection of the natural environment and nearby waters, and the preservation of the character and unique identity of the Town of Bluffton, to be mandatory goals, to be achieved without compromise. Owner shares this commitment and therefore agrees to the following:

A. Storm Water Quality. Protection of the quality in nearby waters is a primary goal of the Town of Bluffton. The Owner and Developers shall be required to abide by all provisions of federal and state laws and regulations, including those established by the Department of Health and Environmental Control, the Office of Ocean and Coastal Resource Management, and their successors for the handling of storm water. In order to protect water quality of the rivers, the Owner agrees to comply with the Town Stormwater Ordinance and Design Manual and any future revisions thereto.

B. Tree Preservation. All standards of the Town's Tree Protection Ordinance, as being amended, shall apply fully to development within the Property and standards shall be applied based upon the entire boundaries of the Property as the development (disturbed) area for purposes of replacement calculations and otherwise.

C. **Bluffton Character Protection.** Owner and the Town agree and recognize that it is imperative to preserve and enhance the basic character of Bluffton and the quality of life that has made Bluffton both unique and appealing. Accordingly, Owner and the Town agree and recognize the benefit of promoting an overall design theme for development within the Property. To this end, owner acknowledges the Town of Bluffton is currently attempting, through staff and community efforts, to define the "Bluffton Character." Owner agrees to cooperate and comply, to the maximum extent reasonably possible, with the defined Bluffton Character.

D. **Commitment to Employment Opportunity for Residents.** Owner recognizes that it is important that citizens of Bluffton have the opportunity for gainful employment and future advancement in the immediate Bluffton area. In order to facilitate opportunity for Bluffton residents, Owner agrees to post notices of all its job opportunities within the Property in a conspicuous location at Town Hall, and to review all applications of Bluffton applicants, to include Bluffton based contractors and businesses.

E. **Illegal Immigration Reform Act.** Owner agrees that it and any contractors and subcontractors hired by Owner will comply with all terms and conditions of the South Carolina Illegal Immigration Reform Act and the similar Beaufort County ordinance.

XIII. COMPLIANCE REVIEWS.

For the Term of this Agreement, the Owner, or its designee, shall meet with the Town Council, or its designee, at least once per year, to review Development completed in the prior year and the Development anticipated to be commenced or completed in the ensuing year. The Owner, or its designee, shall be required to provide such information as may reasonably be requested, to include but not be limited to, acreage of the Property sold in the prior year, acreage of the Property under contract, acreage of Property remaining for Development, the number of certificates of occupancy issued in the prior year, and the number anticipated to be issued in the ensuing year. The Owner, or its designee, shall be required to compile this information for its Development and that of Developers.

XIV. DEFAULTS.

The failure of the Owner, Developer or Town 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 the Town absent its giving the Owner and Developers 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 the Town or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of this Development Agreement.

A default of the Owner shall not constitute a default by a non-related Developer, and a default by a non-related Developer shall not constitute a default by the Owner. Notwithstanding the foregoing, it is acknowledge by all persons, firms or entities claiming or accorded interests in this Development Agreement that the following events shall constitute a default as to the Owner and all Developers, entitling the Town to pursue the termination of this Development Agreement, in accordance with the Act:

1. the failure of the Owner to timely remit payments required hereunder;
2. if at any time during the Term, prior to the Owner having fulfilled any of its payment obligations or land donations, there shall be filed by or against the Owner in any court, pursuant to any state or federal statute, a petition in bankruptcy or insolvency, or for reorganization or appointment of a receiver or trustee of all or part of the assets of Owner, or if Owner makes an assignment for the benefit of creditors.

XVI. MODIFICATION OF AGREEMENT.

This Development Agreement may be modified or amended only by the written agreement of the Town and the 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,

its remedies for any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

XX. LIMITED WAIVER OF SOVEREIGN IMMUNITY.

To the extent permitted by applicable laws, the Town voluntarily waives its right to assert sovereign immunity from suit or liability in response to an action by Owner seeking only the remedies specified in this Agreement. The Town does not otherwise waive immunities existing under applicable laws, and it is expressly understood that the waiver here granted is a limited and not a general waiver, and that its effect is limited to specific claims under this Agreement.

XXI. GENERAL.

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

effect.

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

1. that this Agreement is in full force and effect,
2. that this Agreement has not been amended or modified, or if so amended, identifying the amendments;
3. whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and
4. whether, to the knowledge of such party, any even has occurred or failed to occur which, with the passage of time or the giving of notice, would constitute a default and, if so, specifying each such event.

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

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

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

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

G. Assignment. Other than Development Rights as defined herein, no other

rights, obligations, duties or responsibilities devolved by this Agreement on or to the Owner, Developer(s) or the Town are assignable to any other person, firm, corporation or entity.

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

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

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

K. 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.

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

M. Limitation on Liability. No member, official or employee of the Town shall be personally liable to Owner for any default or breach by the Town, or for any amount which may become due to Owner or on any obligations under the terms of this Agreement.

N. No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall be in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

O. Time Is of the Essence. Time is of the essence for each provision of this Agreement for which time is an element.

P. Attorney's Fees and Interest. Should any legal action be brought by either party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and such other costs as may be found by the court or arbitrator. If any party hereto fails to pay any amount under this Agreement when it is due, that amount will bear interest from the date it is due until the date it is paid at the lesser of 18% per annum or the maximum rate of interest permitted under Legal Requirements.

Q. Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered by the parties, the Town and Owner agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at each Takedown or at such other time or times as may be necessary or appropriate under this Agreement any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated hereby.

R. Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the Town and Owner, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

XXII. STATEMENT OF REQUIRED PROVISIONS.

A. Specific Statements. The Act requires that a development agreement include certain mandatory provisions, pursuant to Section 6-31-60(A). Although certain of these items are addressed elsewhere in this Agreement, the following listing of the required provisions is set forth for convenient reference. The numbering below corresponds to the numbering utilized under Section 6-31-60(A) for the required items:

1. **Legal Description of Property and Legal and Equitable Owners.** The legal description of the Property is set forth in Exhibit “A” attached hereto. The present legal owner of the Property is Quinnco Companies, L.L.C.

2. **Duration of Agreement.** The duration of this Agreement is five (5) years plus any renewals pursuant to Section III.

3. **Permitted Uses, Densities, Building Heights and Intensities.** A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development related standards, are contained in the Zoning Regulations as modified by this Development Agreement.

4. **Required Public Facilities.** The utility service available to the Property are described generally above regarding electrical service, telephone and solid waste disposal.

5. **Provisions to Protect Environmentally Sensitive Areas.** Zoning Regulations described above, and incorporated herein, contains numerous provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws will be fully complied with, in addition to the provisions set forth in this Agreement.

6. **Local Development Permits.** Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Zoning Regulations. Building permits must be obtained for any vertical construction, and appropriate permits must be obtained from the State of South Carolina (OCRM) and the Army Corps of Engineers, when applicable, prior to any impact upon salt or freshwater wetlands. It is specifically understood that the failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the Owner, its successors and assigns, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions.

7. **Comprehensive Plan and Development Agreement.** The Development permitted and proposed under this Agreement is consistent with the Comprehensive Plan and with current land use regulations of Bluffton, South Carolina.

8. **Terms for Public Health, Safety and Welfare.** The Town

Council finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of this Agreement, the Zoning Regulations, and existing law.

9. **Historical Structures.** No specific terms relating to historical structures are pertinent to this Development Agreement. Any historic structure issues will be addressed through the permitting process of at the time of development the Zoning Regulations and no exception from any existing standard is hereby granted.

SIGNATURE PAGES TO FOLLOW

