

**STATE OF SOUTH CAROLINA
COUNTY OF JASPER**

ORDINANCE 2022-__

**AN ORDINANCE
OF JASPER COUNTY COUNCIL**

APPROVING A DEVELOPMENT AGREEMENT FOR 95 LOGISTICS CENTER PURSUANT TO THE SOUTH CAROLINA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT AND ARTICLE IV, TITLE 20 OF THE CODE OF ORDINANCES OF JASPER COUNTY, AND AUTHORIZING THE CHAIRMAN OF JASPER COUNTY COUNCIL TO EXECUTE SAID DEVELOPMENT AGREEMENT

WHEREAS, the South Carolina Local Government Development Agreement Act, South Carolina Code of Laws, Title 6, Chapter 31 (1976, as amended) (the "Act"), authorizes local governments to enter into development agreements with a developer as therein defined; and

WHEREAS, Jasper County Council ("Council"), the governing body of Jasper County, South Carolina (the "County" has adopted Article IV, Title 20 of the Code of Ordinances of Jasper County governing Jasper County's participation in development agreements (the "Ordinance"); and

WHEREAS, SL Hardeeville Industrial Park LLC, its successors or assigns has an equitable interest in certain lands suitable for development; and

WHEREAS, pursuant to the Act and the Ordinance, the County is authorized to enter into binding development agreements with entities having legal or equitable interest in real property; and

WHEREAS, the County and the Owner have now concluded their negotiations with respect to the terms for a development agreement for the real property subject to the development agreement; and

WHEREAS, the County has provided for and held the statutorily required public hearings, finds that the development agreement is consistent with the Comprehensive Plan for Jasper County, as amended, and that approval of the development agreement would be in the best interests of the County.

NOW THEREFORE BE IT ORDAINED by the Jasper County Council in council duly assembled and by the authority of the same:

1. The Development Agreement, in substantially the form attached hereto as Exhibit A, with such minor or grammatical changes as the Chairman of Jasper County Council shall approve upon the advice of the County Attorney and County Administrator, his execution of a definitive Development Agreement to be conclusive evidence of such approval, is hereby approved.

2. The Chairman of Jasper County Council is hereby authorized to execute and deliver, on behalf of Jasper County, the Development Agreement on behalf of the County and the Clerk to Council is authorized to attest the signature of the Chairman of the Jasper County Council.

3. This ordinance shall take effect upon approval by Council.

JASPER COUNTY COUNCIL

By: _____
Barbara Clark, Chairperson

ATTEST:

Wanda Simmons, Clerk to Council

First Reading: _____
Second Reading: _____
Public Hearings: _____ and _____
Third Reading and Adoption: _____

It is required that the Development Agreement be attached as Exhibit A prior to Second Reading.

Reviewed for form and draftsmanship by the Jasper County Attorney:

David Tedder

Date

EXHIBIT A
95 Logistics Center Development Agreement

STATE OF SOUTH CAROLINA)
)
COUNTY OF JASPER) **DEVELOPMENT AGREEMENT**
)
) **95 LOGISTICS CENTER**

This Development Agreement ("Agreement") is made and entered this _____ day of _____, 2022, by and between **SL Hardeeville Industrial Park LLC** ("Owner"), and the governmental authority of **Jasper County, South Carolina** ("County").

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

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

WHEREAS, the Act also states: "Development agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the Development Agreement or in any way hinder, restrict, or prevent the development of the project. Development Agreements will provide a reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of government to enforce laws and regulations which promote the public safety, health, and general welfare of the citizens of our State." [Section 6-31-10 (B)(6)]; and,

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

WHEREAS, Owner will acquire approximately 226.94 acres, generally to be known as 95 Logistics Center, proposes to develop, or cause to be developed therein distribution center uses, related warehousing and light industrial uses, including accessory and complimentary uses as

described in the Planned Development District Zoning and Conceptual Master Plan adopted herewith and attached as an Exhibit hereto; and,

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

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

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

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

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

I. **INCORPORATION.**

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

II. **DEFINITIONS.**

As used herein, the following terms mean:

"Act" means the South Carolina Local Government Development Agreement Act, as codified in Sections 6-31-10 through 6-31-160 of the Code of Laws of South Carolina (1976), as amended; incorporated herein by reference.

"Adjacent Land" shall mean any real property adjacent to the 95 Logistics Center.

"Agreement" shall mean this Development Agreement as amended by the County and Developer in writing from time to time.

"Association" shall mean one (1) or more property owners' associations established to maintain portions of the Property.

"BJWSA" shall mean the Beaufort/Jasper Water and Sewer Authority, its successors or assigns.

"County" shall mean Jasper County, South Carolina.

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

"Development" means the development of portions of the Property and construction of improvements thereon as contemplated in the Zoning Regulations.

"Development Fees" or **"Developer Fees"** shall have the meaning set forth in Paragraph X.I.

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

"95 Logistics Center", "PDD", "Project" or "Property" means that certain tract of land described on Exhibit A, as may be amended with the Agreement of the County and Owner.

"Owner" means SL Hardeeville Industrial Park LLC, its corporate successors and any assignee, whereby such interest is assigned in whole or in part in writing.

"PDD Plan" shall mean the Conceptual Master Plan attached to the Planned Development District as same may be modified by agreement of the Owner and the County.

"Planned Development District" or "PDD Ordinance" means the PDD approved by the Jasper County on _____, 2022, attached hereto as part of Exhibit B.

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

"Zoning Regulations" means the PDD establishing a Planned Development District for the Property, and all the attachments thereto, including but not being limited to the PDD Plan, all narratives, applications, and site development standards thereof (a copy of all of which is attached hereto marked Exhibit C and incorporated herein by reference), all as same may be hereafter amended by mutual agreement of the County and the Owner, this Development Agreement, and the Jasper County Development Ordinance(s) dated _____ as amended through the date of this Agreement except as the provisions thereof may be clarified or modified by the terms of the PDD and this Agreement.

III. TERM.

The term of this Agreement shall commence on the date this Agreement is executed by the County and Owner and terminate ten (10) years thereafter; provided however, that the terms of this Agreement may be renewed for one successive ten (10) year period absent a material breach of any terms of this agreement by the Owner or any Developer during the initial renewal term.

IV. DEVELOPMENT OF THE PROPERTY.

The Property shall be developed in accordance with the Zoning Regulations and this Agreement. All costs charged by or to the County for reviews required by the Jasper County Zoning Ordinance shall be paid by the Owner or Developer or other party applying for such review as generally charged throughout the County for plan review. The County shall, throughout the Term, maintain or cause to be maintained, a procedure for the processing of reviews as contemplated by the Zoning Regulations and this Agreement.

V. CHANGES TO ZONING REGULATIONS.

The Zoning Regulations relating to the Property subject to this Agreement shall not be amended or modified during the Term, without the express written consent of the Owner, except in accordance with the procedures and provisions of § 6-31-80 (B) of the Act, which Owner shall have the right to challenge. Owner does, for itself and its successors and assigns, including Developers and notwithstanding the Zoning Regulations, agrees to be bound by the following:

1. The Owner shall be required to notify the County, in writing, as and when Development Rights are transferred to any other party. Such information shall include the identity and address of the acquiring party, a proper contact person, the location and number of acres of the Property transferred, and the number of residential units and/or commercial acreage, as applicable, subject to the transfer. Developers transferring Development Rights to any other party shall be subject to this requirement of notification, and any entity acquiring Development Rights hereunder shall be required to file with the County an acknowledgment of this Agreement and a commitment to be bound by it.

2. The Owners and Developers, and their respective heirs, successors and assigns agree that all Development, with the exception of irrigation, incidental maintenance facilities, golf courses, earthwork and similar amenities which exist from time to time, and facilities existing at the date of this Agreement will be served by potable water and sewer prior to occupancy, except as otherwise provided herein for temporary use, temporary being defined as one year or less. Septic tanks and/or wells may be allowed with the permission of BJWSA where there is a specific finding that such use for specific portions of the Property will comply with the overall environmental standards.

VI. DEVELOPMENT SCHEDULE.

The Property shall be developed in accordance with the development schedule, attached as **Exhibit D**, or as may be amended by Owner or Developer(s) in the future to reflect actual market absorption. Pursuant to the Act, the failure of the Owner and any Developer to meet the initial development schedule shall not, in and of itself, constitute a material breach of this Agreement. In such event, the failure to meet the development schedule shall be judged by the totality of circumstances, including but not limited to the Owners and Developer(s) good faith efforts to attain compliance with the development schedule. These schedules are planning and forecasting tools only, and shall not be interpreted as mandating the development pace initially

forecast or preventing a faster pace if market conditions support a faster pace. The fact that actual development may take place at a different pace, based on future market forces, is expected and shall not be considered a default hereunder. Development activity may occur faster or slower than the forecast schedule, as a matter of right, depending upon market conditions. Furthermore, periodic adjustments to the development schedule which may be submitted unilaterally by Owner / Developers in the future shall not be considered a material amendment or breach of the Agreement.

VII. DENSITY.

Uses and density on the Property shall be the densities and uses as set forth in the Planned Development District approval, Initial Master Plan, and as set forth below:

Up to a maximum of 2,600,000 square feet of distribution center, warehouse, and other related accessory and light industrial uses. The attached PDD depicts the initially planned lay out and expected uses and the expected mix and general location of allowed uses, however, so long as the total square footage of allowed uses does not exceed 2,600,000 square feet, the Owner shall be allowed to alter location and product mix among all allowed uses under the PDD, based upon ongoing project planning and market conditions. Any such changes to exact location, building size, or product mix shall not be considered a material amendment hereto, or an amendment to the attached PDD or the subsequent Initial Master Plan, so long as the total allowed density is not exceeded. Such minor changes will be approved at the staff review level.

VIII. RESTRICTED ACCESS

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

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 with the approval of the Owner pursuant to the terms hereof, and of this Agreement for the entirety of the Term. Future enactments of, or changes or amendments to the County ordinances, including zoning or development standards ordinances, which conflict with the Zoning Regulations shall not apply to the Property unless the procedures and provisions of §6-31-80 (B) of the Act are followed, which Owner shall have the right to

challenge. Notwithstanding the above, the Property will be subject to then current fire safety standards and state and/or federal environmental quality standards of general application.

The parties specifically acknowledge that this Agreement shall not prohibit the application of any present or future building, housing, electrical, plumbing, gas or other standard codes, or any ad valorem tax of general application throughout the County found by the Jasper County Council to be necessary to protect the health, safety and welfare of the citizens of Hardeeville.

X. INFRASTRUCTURE AND SERVICES

The County 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 County. For clarification, the parties make specific note of and acknowledge the following:

A. Private Roads. All roads within the Property shall be constructed by the Owner, Developer or other parties and maintained by such party(ies) and/or Association(s), or dedicated for maintenance to other appropriate entities. The County will not be responsible for the construction of any private roads within the Property, unless the County specifically agrees to do so in the future.

B. Public Roads. All public roads outside the Property that serve the Property are under the jurisdiction of the State of South Carolina regarding access, construction, improvements and maintenance. Owner acknowledges that it must comply with all applicable state statues and rules and regulations of the South Carolina Department of Transportation or its successor regarding access and use of such public roads. Developer shall be responsible for construction of property access improvements as required by SCDOT in conjunction with access mitigation plans. Upon Completion of construction of any such improvements within the SCDOT right of way, and acceptance by SCDOT, the SCDOT shall maintain all roadway improvements within the public road right of way.

C. Potable Water. Potable water will be supplied to the Property by BJWSA or some other legally constituted public or private provider allowed to operate in the County. The County shall not be responsible for any construction, treatment, maintenance or costs associated with water service to the Property unless the County elects to provide such services with the

agreement of the applicable utility authority then providing such service to the Property. Owner will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the service provider as provided in any utility agreement between Owner and the service provider.

D. Sewage Treatment and Disposal. Sewage treatment and disposal will be provided by BJWSA or some other legally constituted public or private provider allowed to operate in the County. The County will not be responsible for any treatment, maintenance or costs associated with sewage treatment within the Property, unless the County elects to provide such service with the agreement of the applicable utility authority then providing such service to the Property. Nothing herein shall be construed as precluding the County from providing sewer services to its residents in accordance with applicable provisions of law. Owner will construct or cause to be constructed all related infrastructure improvements within the Property, which will be maintained by it or the provider as provided in any utility agreement between Owner and the service provider.

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

F. Police Services. County shall provide police protection services to the Property on the same basis as is provided to other similarly situated residents and businesses in the County.

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

H. Sanitation Services. County shall provide sanitation services and trash collection services to all properties within the Property on the same basis as provided to other similarly situated residents and businesses within the County.

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

J. Library Services. Such services shall be provided to residents of the Property on the same basis as provided to all other citizens of the County.

K. Emergency Medical Services (EMS). Such services shall be provided to residents of the Property on the same basis as provided to all other citizens of the County.

L. Drainage System. All stormwater runoff, treatment and drainage system improvements within the Property will be designed in accordance with the Zoning Regulations and Best Management Practices then current. All stormwater runoff, treatment and drainage system improvements for the Property shall be constructed by Owner or the Association. The County will not be responsible for any construction or maintenance cost associated with the stormwater runoff, treatment and drainage system within the Property.

M. Storm Water Quality. Protection of the quality in nearby waters and wetlands is a primary goal of the County. The Owners shall be required to abide by all provisions of federal and state laws and regulations, including those established by the Department of Health and Environmental Control, the Office of Ocean and Coastal Resource Management, and their successors for the handling of storm water. Further provisions regarding Storm Water are included within the PDD for this Project.

XI. DEVELOPMENT FEES.

1. To assist the County in meeting expenses resulting from ongoing development, Owner shall pay development fees for Police, Fire, Public Works, Recreation, Administrative, and Community Facilities ("Development Fees") as follows, as set forth in the Table below:

DEVELOPMENT FEES	AMOUNT
Non-Residential per 1,000 sf	\$250.00 Police \$250.00 Fire \$100.00 Public Works \$50.00 Recreation \$20 Administrative \$10 Community Facilities

2. All Development Fees shall be collected at the time of obtaining a building permit and placed in separate interest bearing accounts established for Police, Fire, Public Works, Recreation, Administrative and Community Facilities. The County may expend these funds for any purposes designed or provide or enhance such service to the Property.

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

4. Except as set forth in this Agreement, nothing herein shall be construed as relieving the Owner, its successors and assigns, from payment of any such fees or charges as may be assessed by entities other than the County. The provisions of this paragraph shall not preclude the County or another governmental authority from imposing a fee of a nature which is not for services or improvements contemplated under this Agreement (i.e., police, fire, and other obligations contemplated under this Agreement or services and improvements contemplated by this Agreement), which are imposed on a consistent basis throughout the area regulated by such governmental authority imposing such obligations. The County or other governing body shall not be precluded by this Agreement from charging fees for delivery of services to citizens or residents (i.e., an EMS response fee or the like), nor from charging fees statutorily authorized in the future (i.e., a real estate transfer fee or the like) which are not collected as a prerequisite to approval of a plat, plan or construction. The County shall, at Owner's request, together with Owner, challenge

any developer fee, impact fee or other obligation imposed by other governmental authorities to the extent that such fees or obligations are not specifically permitted to be imposed pursuant to the terms of this Agreement. The Owner and/or Developer shall be responsible for all costs associated with such challenge and may be required to make a deposit of such costs in advance with the County.

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

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

7. **Tree Planting Fund.** In addition to the Development Fees described above, Owner agrees to make a one-time contribution of one hundred thousand dollars (\$100,000.00) payable within 30 days of approval of this Development Agreement (approval being defined as adoption of an ordinance by Jasper County Council approving the development agreement) or before the first development permit is issued by the City for the project site, whichever comes first, to the County to establish a tree planting fund, so that trees may be planted by the County at the County's discretion near or adjacent to the Property, to help offset air pollution and to help generally beautify the County. Funds shall be maintained in a separate interest bearing account. This contribution is in addition to any tree plantings which may be otherwise required on site as part of any development activity laws applicable hereunder.

XI. PERMITTING PROCEDURES:

1. The County agrees that the Owner and/or any Developer is not required to phase development but shall have the right to do so.

2. The County agrees to review all land use changes, land development applications, and plats in an expeditious manner in accordance with County Regulations as modified by the PDD for this Project. Plans will be processed in accordance with the then current County PDD Plan, subdivision plat and development plan procedural requirements. Developer may submit these items for concurrent review with the County and other governmental authorities. County may give final approval to any submission, but will not grant authorization to record plats or begin development construction activities until all permitting agencies have completed their reviews.

3. Signage for the Project is governed by the provisions of the PDD for this Project.

4. The County acknowledges that the Owner and/or Developer has the exclusive right of architectural review regarding improvements and building upon the Property, which may be modified in the future at the discretion of Owner and/or Developer to meet market conditions. Owner and/or Developer shall be responsible for assuring such modifications are in compliance with the Zoning Regulations.

5. The County agrees that the Property is approved and fully vested for intensity, density, development fees, uses and height, and shall not have any obligations for on or off site transportation or other facilities or improvements other than as provided in this Agreement, but must adhere to then current PDD Plan, Master Plan, and subdivision plat and development plan procedural guidelines. The County may not impose additional development obligations or regulations in connection with the ownership or development of the Property, except in accordance with the procedures and provisions of § 6-31-80 (B) of the Act, which the Owner shall have the right to challenge.

6. Roadways (public or private) may utilize swale drainage systems and are not required to have raised curb and gutter systems. If applicable, pedestrian and non-vehicular pathways or sidewalks shall be provided in order to provide interconnectivity between commercial or institutional areas and public gathering areas. Roadway cross sections utilizing swale drainage will be designed, constructed and maintained to meet BMP standards (imposed by regulatory

agencies) for stormwater quality. Roadway cross sections will be reviewed at time of proposed construction of such Roadway based upon engineering and planning standards consistent with the PDD Plan prepared by Developer subject to the approval of the County Planning Administrator.

7. All plan review fees shall be consistent with the fees charged generally in the County.

XII. DEVELOPER ENTITLEMENTS

County acknowledges that Developer is vested with the following items:

1. The County will, to the extent available, promote public transportation which exists within the County to service the Property.

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

3. All drainage systems constructed within the Project shall be owned and maintained by one (1) or more Association(s) which may be established for various portions of the Property and the County shall have no responsibility for the construction, operation or maintenance of such systems. Such systems shall be constructed in compliance with any applicable federal, state, or local requirement.

4. On-site burning will be permitted within the Property upon obtaining applicable permits.

5. The County agrees to cooperate with the Owner and each Developer with county, state and federal roadway permitting in connection with the Development of portions of the Property.

6. County services, including, but not limited to, police, fire, sanitation, recreational parks and other governmental services shall be supplied to the Property in the same manner and to the same extent as provided to other properties within the County, subject to the limitations (if any) of Section X above. Subject to the limitations of Section X above (if any), should the Owner require enhanced services beyond that which is routinely provided within the County, then the County agrees that upon the written request of Owner, it shall negotiate in good faith with the Owner to provide such enhanced services to the Property. Any enhanced services shall be at the sole cost of the Owner and/or Developer.

XIII. COMPLIANCE REVIEWS.

As long as Owner owns any of the Property, Owner or its designee, shall meet with the County, or its designee, at least once, per year, during the Term to review Development completed by Owner in the prior year and the Development anticipated to be commenced or completed by Owner in the ensuing year. The Owner, or its designee, shall provide such information as may reasonably be requested, to include but not be limited to, acreage of the Property sold in the prior year, acreage of the Property under contract, and the number anticipated to be issued in the ensuing year, Development Rights transferred in the prior year, and anticipated to be transferred in the ensuing year. The Owner, or its designee, shall be required to compile this information within a reasonable time after written request by the County.

XIV. DEFAULTS.

The failure of the Owner, Developer or the County to comply with the terms of this Agreement not cured within thirty (30) days after written notice from the non-defaulting party to the defaulting party (as such time period may be extended with regard to non-monetary breaches for a reasonable period of time based on the circumstances, provided such defaulting party commences to cure such breach within such period and is proceeding diligently and expeditiously to complete such cure) shall constitute a default, entitling the non-defaulting party to pursue such remedies that are deemed appropriate, including specific performance; provided however no termination of this Agreement may be declared by the County absent its according the Owner and

any relevant Developer the notice, hearing and opportunity to cure in accordance with the Act; and provided any such termination shall be limited to the portion of the Property in default, and provided further that nothing herein shall be deemed or construed to preclude the County or its designee from issuing stop work orders or voiding permits issued for Development when such Development contravenes the provisions of the Zoning Regulations or this Agreement. A default of the Owner shall not constitute a default by Developers, and default by Developers shall not constitute a default by the Owner. The parties acknowledge that owners of completed buildings within the Project shall not be obligated for the obligations of the Owner or Developer set forth in this Agreement, unless the Property remains under unified ownership or unless such owners of completed buildings have been assigned any rights under this Agreement. In such case, the owners of completed buildings shall also be obligated for obligations set forth in this Agreement.

XV. MODIFICATION OF AGREEMENT.

This Agreement may be modified or amended only by the written agreement of the County and the Owner; such written agreement may be by resolution. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

This Agreement may be modified or amended as to a portion of the Property only by the written agreement of the County and the Owner of said portion of the Property. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate, or effect an abandonment of this Agreement in whole or in part unless such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

If an amendment affects less than all the persons and entities comprising the Property Owners, then only the County and those affected persons or entities need to sign such written amendment. Because this Agreement constitutes the plan for certain planned development under the zoning ordinance, minor modifications to a site plan or to development provisions may be made without a public hearing or amendment to applicable ordinances. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment, and such approval or consent shall be

in writing and signed by the affected parties. Wherever said consent or approval is required, the same shall not be unreasonably withheld.

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

XVI. NOTICES.

Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals or communications to the County shall be addressed to the County at:

To the County: County Administrator
 Jasper County
 PO Box 1149
 Ridgeland, SC 29936

With Copy to: County Attorney
 Jasper County
 PO Box 1149
 Ridgeland, SC 29936

And to the Owner at: The Silverman Group
 195 Morristown Road
 Basking Ridge, NJ 07920
 ATTN: Jimmy Constankis, Vice President
 Email: Jimmymc@silvermangroup.net

And: The Silverman Group

195 Morristown Road
Basking Ridge, NJ 07920
ATTN: Holden Sabato, Development Coordinator
Email: holdensabato@silvermangroup.net

And with Copy to: Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401
ATTN: Nicole A. Scott

XVII. ENFORCEMENT.

Any party hereto shall have the right to enforce the terms, provisions and conditions of this Agreement (if not cured within the applicable cure period) by any remedies available at law or in equity, including specific performance, and the right to recover attorney's fees and costs associated with said enforcement.

XVIII. GENERAL.

A. Subsequent Laws. In the event state or federal laws or regulations are enacted after the execution of this Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with the Act or one or more provisions of this Agreement ("New Laws"), the provisions of this Agreement shall be modified or suspended as may be necessary to comply with such New Laws. Immediately after enactment of any such New Law, or court decision, a party designated by the Owners and Developer(s) and the County 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 County may take reasonable action to comply with such New Laws. Should these parties be unable to agree to a modification or suspension, either may petition a court of competent jurisdiction for an appropriate modification or suspension of this Agreement. In addition, the Owner, Developers and the County 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 County, the Owner or any Developer may, at any time, and from time to time, deliver written notice to the other applicable party requesting such party to certify in writing:

1. that this Agreement is in full force and effect,

2. that this Agreement has not been amended or modified, or if so amended, identifying the amendments,

3. whether, to the knowledge of such party, the requesting party is in default or claimed default in the performance of its obligations under this Agreement, and, if so, describing the nature and amount, if any, of any such default or claimed default, and

4. whether, to the knowledge of such party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute a default and, if so, specifying each such event.

C. **Entire Agreement.** This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings among the County 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 County, the Owner or any Developer or to render such party liable in any manner for the debts or obligations of another party.

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

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

G. **Assignment.** Subject to the notification provisions hereof, Owner may assign its rights and responsibilities hereunder to a subsidiary or sister company, or subsequent land owners and Developers.

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

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

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

K. **Eminent Domain.** Nothing contained in this Agreement shall limit, impair or restrict the County'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 County, the Owner and Developers. No other persons shall have any rights hereunder.

M. **Contingencies.** This Agreement is contingent on Owner acquiring title to the Property and the approval of the Board of Directors of Owner and the County Council of the Jasper County, South Carolina. Notwithstanding the above, Owner agrees to remain responsible for the payment of the processing fees incurred by the County in reviewing and approving the Planned Development District application and Development Agreement as set forth in Section X (xi) above.

XIX. STATEMENT OF REQUIRED PROVISIONS

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

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 Eagle Associates of Niagara Frontier, INC., a New York Corporation, or its affiliated entity.

2. **Duration of Agreement.** The duration of this Agreement shall be as provided in Article III.
3. **Permitted Uses, Densities, Building Heights and Intensities.** A complete listing and description of permitted uses, population densities, building intensities and heights, as well as other development – related standards, are contained in Zoning Regulations, as supplemented by this Agreement.
4. **Required Public Facilities.** The utility services available to the Property are described generally above regarding water service, sewer service, cable and other telecommunication services, gas service, electrical services, telephone service and solid waste disposal. The mandatory procedures of the Zoning Regulations will ensure availability of roads and utilities to serve the residents on a timely basis.
5. **Dedication of Land and Provisions to Protect Environmentally Sensitive Areas.** All requirements relating to land transfers for public facilities are set forth in Article XI above. The Zoning Regulations described above, and incorporated herein, contain numerous provisions for the protection of environmentally sensitive areas. All relevant State and Federal laws will be fully complied with, in addition to the important provisions set forth in this Agreement.
6. **Local Development Permits.** The Development standards for the Property shall be as set forth in the Zoning Regulations. Specific permits must be obtained prior to commencing Development, consistent with the standards set forth in the Zoning Regulations. Building Permits must be obtained under applicable law for any vertical construction, and appropriate permits must be obtained from the State of South Carolina (OCRM) and Army Corps of Engineers, when applicable, prior to any impact upon freshwater wetlands. It is specifically understood that the failure of this

Agreement to address a particular permit, condition, term or restriction does not relieve the Owner, its successors and assign, of the necessity of complying with the law governing the permitting requirements, conditions, terms or restrictions, unless otherwise provided hereunder.

7. **Comprehensive Plan and Development Agreement.** The Development permitted and proposed under the Zoning Regulations and permitted under this Agreement is consistent with the Comprehensive Plan and with current land use regulations of the County, which include a Planned Development District for the Property.
8. **Terms for Public Health, Safety and Welfare.** The County Council finds that all issues relating to public health, safety and welfare have been adequately considered and appropriately dealt with under the terms of this Agreement, the Zoning Regulations and existing laws.
9. **Historical Structures.** Any cultural, historical structure or sites will be addressed through the applicable federal and state permitting process at the time of development, as required by applicable State regulations. No such structures or sites are known to exist.

[SEPARATE SIGNATURE PAGES TO FOLLOW]

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

WITNESSES:

COUNTY OF JASPER, SOUTH CAROLINA

By: _____

Its: _____

STATE OF SOUTH CAROLINA.

)

COUNTY OF JASPER.

)

ACKNOWLEDGMENT

)

I HEREBY CERTIFY, that on this ____ day of _____, 2022. before me, the undersigned Notary Public of the State and County aforesaid, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, as the appropriate officials of Jasper County, South Carolina, who acknowledged the due execution of the foregoing document.

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

Notary Public for South Carolina

My Commission Expires: _____

EXHIBIT A
TO DEVELOPMENT AGREEMENT
PROPERTY DESCRIPTION

Being all those certain pieces, parcels, or tracts of land located in Jasper County, South Carolina, containing_____.

EXHIBIT B
TO DEVELOPMENT AGREEMENT
PLANNED DEVELOPMENT DISTRICT

The Planned Development District approval for the 95 Logistics Center (the Property hereunder), as approved by the County Council on _____, is hereby incorporated herein by reference, to include all drawings, plans, narratives and documentation submitted therewith, as fully as if attached hereto. The parties hereto may elect to physically attach said documents hereto, or may rely upon the above stated incorporation by reference, at their discretion.

EXHIBIT C
TO DEVELOPMENT AGREEMENT
ZONING REGULATIONS

1. The Jasper County Zoning Ordinance, as codified through Supplement ____
2. The Planned District Development (PDD) dated _____ and adopted by Jasper County by Ordinance Number _____ on _____.
3. This Development Agreement, which shall control in the event of any conflict with the above referenced Ordinance or PDD.

EXHIBIT D
TO DEVELOPMENT AGREEMENT
DEVELOPMENT SCHEDULE

Development of the Property is expected to occur over the 10-year term of the Agreement, with the sequence and timing of development activity to be dictated largely by market conditions. The following estimate of expected activity is hereby included, to be updated by Owner as the development evolves over the term:

Year(s) of Commencement / Completion					
Type of Development	2022	2023	2024	2025	2026
	Site Work				Any Remaining

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

EXHIBIT E

TO DEVELOPMENT AGREEMENT

Commercial Fees

(Attached)