
AGENCY: Department of Administration, Facilities Management and Property Services

SUBJECT: Real Property Conveyance - Union Pier Terminal – State Ports Authority

The SC State Ports Authority (Port) requests approval to dispose of surplus property consisting of approximately 69.2 acres known as the Union Pier Terminal. The Union Pier Terminal (UPT) has been used for different types of commercial shipping for more than 100 years. UPT also has accommodated passenger vessel calls for nearly 100 years. Passenger vessels, including cruise vessels, have called on the cruise terminal at UPT every year since 1973.

The Port has declared the UPT property as unnecessary for future operations or to carry out its purposes and approved the engagement of the Lowe Enterprises Real Estate Group (Lowe) to provide services to entitle, market, and effectuate the sale of the UPT property. The Port is currently finalizing negotiations with Lowe for a disposition services agreement and a property agreement. The parties are continuing to negotiate the details of the property agreement. A copy of the contract in substantive form will be provided as soon as these details are substantively finalized.

The sale of the UPT property is anticipated to occur with individual parcels after entitlement. The proceeds from the sale of the property will be retained by the State Ports Authority pursuant to 2019-2020 Appropriations Bill H.4000, Part 1B, §93.15.

AUTHORITY ACTION REQUESTED:

As requested by the SC State Ports Authority, through the Department of Administration, approve the future sale of the Union Pier pursuant to the attached Agreement Related To Disposition Of Real Property, so long as the sales price for each individual parcel is no less than then-current fair market value. The property approved for sale appears as parcels one through ten on the attached tax map. Notwithstanding the agreement, the Ports Authority is not approved to transfer any interest in real property below the mean high water mark.

ATTACHMENTS:

Tax Map of Union Pier - Charleston County ROD
Agreement Related To Disposition Of Real Property
Development Services Agreement
Agenda item worksheet and attachments

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▼ Enter address, road, parcel # or 🔍

Charleston County GIS Viewer



AGREEMENT RELATED TO DISPOSITION OF REAL PROPERTY

THIS AGREEMENT RELATED TO DISPOSITION OF REAL PROPERTY (including all exhibits attached hereto and made a part hereof, this "Agreement") is made and entered into by and between SOUTH CAROLINA STATE PORTS AUTHORITY ("Owner"), and LOWE ENTERPRISES REAL ESTATE GROUP a California corporation ("Developer") as of October 8, 2020. Owner and Developer may each be referred to herein as a "Party" and, collectively, the "Parties". The date of the approval by the South Carolina State Fiscal Accountability Authority of this Agreement or acceptance by the Parties of the Initial Appraisal, whichever is later, shall be this Agreement's "Effective Date".

RECITALS:

WHEREAS, Owner has as its purpose, among others, to contribute to the economic development of the State of South Carolina (the "State") by fostering and stimulating waterborne commerce, including both cargo and passengers, to develop and improve the harbors or seaports of the State and to construct, equip, maintain, develop and improve such harbors or seaports and their port facilities, to the increase of waterborne commerce, foreign and domestic, through such harbors and seaports;

WHEREAS, Owner, among its powers, may rent, lease, buy, own, exchange, acquire, mortgage, and dispose of such property, real or personal, as Owner may deem proper to carry out its purposes;

WHEREAS, Owner has determined that the Property is not necessary for future operations of Owner's terminals or to carry out its purposes as set forth in Section 54-3-130 of the South Carolina Code of Laws;

WHEREAS, Owner is the owner of certain real property located in the City of Charleston, South Carolina ("City"), as more particularly described on Exhibit "A", attached hereto and incorporated herein by reference, less (1) such real property as may be designated by the Owner as necessary to provide services for the cruise industry, provided such real property shall not extend beyond the boundary of the real property depicted on Exhibit "B" and (2) land below the mean high water (the "Property");

WHEREAS, simultaneously herewith, Owner has entered into a Development Services Agreement with Developer (the "Development Services Agreement"), pursuant to which Owner seeks to entitle the Property as a master-planned, mixed use project (collectively, the "Project") and prepare the Property for sale; and

WHEREAS, as additional consideration for providing the Development Services (as defined in the Development Services Agreement) Owner desires to grant Developer certain rights with respect to the disposition of the Property as more particularly provided herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Owner mutually covenant and agree as follows:

Section 1. Payment of Portion of Sale Proceeds. Owner, upon the occurrence of any sale ("Sale Proceeds Event") of any lawfully subdivided portion of the Property ("Parcel"), shall determine the amount, including the value of any exchange or non-cash consideration, received by Owner in such Sale Proceeds Event after deducting the sum of all actual Project Expenses (as defined in the Development Services Agreement) expended by Owner as of the date of the Sale Proceeds Event ("Sale Proceeds"). Owner shall disburse all Sale Proceeds between Owner and Developer in the following order of priority:

(a) first, to Owner until Owner has received one hundred percent (100%) of the Appraised Value of the Property ("Pre-Entitlement Property Value") as determined by that certain Appraisal to be obtained prior to Developer's providing the Development Services ("Initial Appraisal");

(b) second, in addition, to Owner until Owner has received aggregate payments in an amount necessary to reimburse Owner for one hundred percent (100%) of the Project Expenses (as defined in the Development Services Agreement) expended by Owner as of the date of the Sale Proceeds Event; and

(c) third, from the remaining sum after the payments in Section 1(a) and Section 1(b) above are made, (i) eighty percent (80%) to Owner and (ii) twenty percent (20%) to Developer (the Developer's "Incentive Fee").

Notwithstanding the foregoing, Developer may elect to receive credit for a Projected Incentive Fee in lieu of payment of the Incentive Fee as provided in Section 3.

Section 2. Put Right of Developer. At any time following the date that is four (4) years after the date of receipt of the last of the entitlement approvals ("Entitlement Approvals"), as set forth on the Approved Project Plan (as defined in the Development Services Agreement), required for the Project ("Completion"), Developer shall have the right to receive payment from the Owner, and Owner hereby agrees to pay to Developer, the projected Incentive Fee owed to Developer for the Parcels of the Property owned by Owner as of the date of the Liquidity Rights Notice ("Remaining Parcels"), subject to satisfaction of the order of priority for the distribution of the Sales Proceeds. In order to initiate the process set forth in this Section 2, Developer shall deliver a notice (a "Liquidity Rights Notice") to Owner after the date set forth above, demanding such payment.

The Parties shall obtain an Appraisal of the Remaining Parcels in accordance with the Appraisal Procedures to determine the Appraised Value of the Remaining Parcels, which Appraised Value shall be used to calculate, finally and conclusively, the projected Incentive Fee owed to Developer for the Remaining Parcels, subject to satisfaction of the order of priority for the distribution of the Sales Proceeds. Owner shall pay to Developer any portion of the projected Incentive Fee unpaid as of the date of the Liquidity Rights Notice no later than ninety (90) days

after the Appraisal of the Remaining Parcels has been finalized for calculation of the projected Incentive Fee. The Right of First Refusal shall be unaffected by Developer's exercise of its put right as provided in this Section 2.

"Appraisal" means an appraisal of the Property or a Parcel(s), as the context may require, prepared by a Qualified Appraiser pursuant to the Appraisal Procedures.

"Appraised Value" means the appraised value of the Property or a Parcel(s), as the context may require, determined by the Appraisal Procedures.

"Qualified Appraiser" means a real estate licensed MAI appraiser or equivalent with at least ten (10) years' full time commercial appraisal experience in the Charleston, South Carolina market.

The "Appraisal Procedures" to determine an Appraised Value shall be as follows. First, the Parties shall endeavor to mutually select a Qualified Appraiser to prepare the required Appraisal to determine the Appraised Value, which Appraised Value shall be subject to the mutual approval of the Parties. If the Parties fail to mutually select a Qualified Appraiser or mutually approve an Appraised Value within fifteen days after notice from one Party to the other that a Qualified Appraiser or an Appraisal has not been mutually selected or approved, as applicable, then either Party may notify the other Party of such failure and invoke these Appraisal Procedures ("Invocation Notice"). If invoked, each Party then shall select (and notify the other Party of the selection and identity of) a Qualified Appraiser within fifteen (15) days after delivery of the Invocation Notice (the "Selection Period"). If either Party fails to select its Qualified Appraiser within the Selection Period, then the Qualified Appraiser selected by the other Party shall determine the Appraised Value within thirty (30) days after the end of the Selection Period. If each Party selects its Qualified Appraiser within the Selection Period, each such Qualified Appraiser shall independently determine the Appraised Value and complete and forward to each Party such Qualified Appraiser's report within thirty (30) days after the end of the Selection Period (the "Valuation Period"). The Parties and such Qualified Appraisers shall work in good faith to agree upon an Appraised Value for the Property and/or Parcel(s). If no agreement is reached on an Appraised Value within fifteen (15) days of the end of the Valuation Period, then, within ten (10) days the Parties shall notify the nationally recognized Qualified Appraiser which was mutually selected by the Parties within thirty (30) days of the signing of this Agreement ("Tiebreaker Appraiser"). In such case, the original two (2) Qualified Appraisers shall share with the Tiebreaker Appraiser all documents, research and other information requested by the Tiebreaker Appraiser that is in their possession regarding their determination of Appraised Value. The Appraised Value shall be the valuation chosen by the Tiebreaker Appraiser. Each Party shall pay for the cost of its selected Qualified Appraiser. The cost and expense of the Tiebreaker Appraiser shall be split equally between the Owner and Developer (and shall not constitute a Project Expense or be a Reimbursable Cost to Developer). The determination of the Appraised Value made in accordance with these Appraisal Procedures shall be binding and non-appealable on each Party and any other person having an interest in such determination, and such determination shall be self-effectuating and shall not require confirmation by any court or other body.

Section 3. Right of First Refusal; Run with the Land. Owner does hereby grant and convey to Developer a right of first refusal in connection with the sale, exchange, or other disposition of title for each Parcel (whether sold together or individually), on the terms and conditions more particularly set forth herein (such rights, individually and collectively as the

context may require, the “Right of First Refusal”). The Right of First Refusal is a covenant intended to and shall run with title to the Property.

(a) Memorandum. Developer shall be entitled to record (at its sole expense) a memorandum of this Agreement (“Memorandum”) in the land records of Charleston County, South Carolina, with Owner being obligated to execute and deliver the Memorandum promptly after request by Developer and otherwise cooperate with the recording thereof as and when needed. Upon (i) the sale by Owner to an unrelated party of the last remaining Parcel owned by Owner or (ii) termination of this Agreement by the Owner for a Developer Event of Default, the Owner shall have the right to record a termination of the Agreement, (which termination shall be effective without Developer joining in the execution of the same), which termination shall operate to terminate the Agreement, including the Right of First Refusal contained herein; *provided, however*, the same shall not extinguish any Right of First Refusal exercised, noticed, or issued by the Developer or Incentive Fee earned prior to the expiration or termination of this Agreement.

(b) Sale Notices. Owner agrees that the sole procedure by which Owner will dispose of any interest in a Parcel(s) is a public call (each, a “Sale Notice”) for third-party offers (each a “Third-Party Offer”) to purchase such Parcel(s) (each a “Sale Notice Site”), which Sale Notice Owner may publish from time-to-time and as to any Sale Notice Site in Owner’s sole discretion. Owner, in its sole discretion, may establish the rules, deadlines, bidding procedures and all other aspects of the sale of such Parcel(s) consistent with the terms and conditions of this Agreement. Owner shall disclose in the Sale Notice the existence of the Right of First Refusal. Developer, in Developer’s sole discretion, may offer to purchase the Sale Notice Site. Subject to Developer’s Right of First Refusal, Owner, in its sole discretion, may accept any Third-Party Offer received in response to a Sale Notice. It is understood and agreed by the Parties that no term or condition of a Sale Notice shall materially adversely affect any other Parcel or bind any other Parcel then-owned by Developer or any third party to any obligations related to the Sale Notice Site. Each Parcel shall be conveyed by Owner only by quit-claim deed.

(c) Developer’s Right to Match Selected Offer. After receipt of all Third-Party Offers to acquire a Sale Notice Site in response to a Sale Notice, if any, Owner shall notify Developer as to which Third-Party Offer Owner desires to accept and provide to Developer a written copy of such Third-Party Offer that includes all terms and conditions of such Third-Party Offer (“Selected Offer”). At any time during a fifteen (15) calendar day period following the date of notification by Owner to Developer of the Selected Offer for such Sale Notice Site, Developer shall have the right to exercise its Right of First Refusal by matching the terms and conditions of the Selected Offer to purchase (subject to Developer’s right for a credit of the Projected Incentive Fee) and providing a written notice of acceptance delivered to Owner during such fifteen (15) calendar day period (a “Developer’s Purchase Notice”). In the event Developer provides a Developer’s Purchase Notice within such fifteen (15) calendar day period, Owner, on the one hand, and Developer on the other, shall promptly enter into a definitive agreement with respect to the transaction contemplated by the applicable Sale Notice on the same terms set forth in the Selected Offer subject to Developer’s right for a credit of the Projected Incentive Fee (each such sale agreement, a “New PSA”). The acquisition of the Parcel(s) contemplated in such New PSA shall thereafter be governed by the terms and conditions of such executed New PSA.

(d) Right to Market and Transfer.

(i) In the event Developer elects not to exercise the Right of First Refusal and does not provide a Developer's Purchase Notice to Owner with respect to any Sale Notice by 5:00 pm EST on the fifteenth calendar day following notification of the Developer by the Owner as set forth above, such Sale Notice will be deemed to have been rejected by Developer, whereupon Owner shall be entitled to accept the Selected Offer for the applicable Sale Notice (any such transaction, a "Third Party Sale") free and clear of any Right of First Refusal of Developer, which shall be automatically terminated upon the closing of and as to such Sale Notice Site.

(ii) If the binding agreement for such Selected Offer is not entered into by Owner within sixty (60) days after notification from the Developer to the Owner as set forth above or is subsequently terminated or amended in any "material" respect, or if the closing of the Third Party Sale has not occurred within sixty (60) days of the originally agreed upon closing date for the Selected Offer, then the Right of First Refusal shall again be applicable and Owner shall be thereafter obligated to comply with the provisions hereof for the balance of the Term. For purposes of this subsection, "material" means a change in the purchase price or any other amendment to the Selected Offer that results in a lesser economic effect on Owner (e.g. the amendment shifts costs to Owner).

(iii) In connection with any Third Party Sale, Developer shall deliver a written termination and waiver of the Developer's Right of First Refusal and the rights associated thereto as to the subject Sale Notice Site ("Developer's ROFR Termination"). The Right of First Refusal shall remain applicable to all portions of the Property then owned by Owner for the balance of the Term. If requested by Owner (which request shall be in writing), Developer shall either (a) execute and deliver the Developer's ROFR Termination to Owner, or (b) provide a written response detailing good faith objections and claims of breach of this Agreement by the Owner with respect to the subject Sale Notice Site, in either instance, within five (5) business days of the aforesaid written request.

(e) Credit for Projected Incentive Fee. Notwithstanding anything to the contrary in this Agreement, if (i) Owner elects to sell a Sale Notice Site, (ii) Owner receives Third-Party Offers for the Sale Notice Site, (iii) Owner selects a Selected Offer for the Sale Notice Site and notifies Developer of the Selected Offer, and (iv) Developer's offer is the Selected Offer or Developer elects to exercise the Right of First Refusal with respect to the Sale Notice Site, then Developer, in its sole and exclusive discretion, may (and is hereby granted the sole and exclusive power, right, and authority to) elect to apply all or a portion of the Projected Incentive Fee (as defined below) for such Parcel as a discount to the purchase price Developer would pay in connection with the acquisition of the Sale Notice Site or exercise of the Right of First Refusal for such Sale Notice Site. In such event, the purchase price that Developer would pay for such Sale Notice Site shall be reduced by the amount of the portion (or all) of the Projected Incentive Fee that Developer elects to apply, and the remaining terms of the sale of the Sale Notice Site by Owner to Developer shall apply and shall be memorialized in the New PSA. If Developer elects not to exercise the Right of First Refusal with respect to a Sale Notice Site and Owner accepts the Selected Offer and proceeds with the Third Party Sale, then Owner remains obligated to pay the Incentive Fee with respect to such Sale Notice Site. If Developer's offer is the Selected Offer or Developer elects to exercise the Right of First Refusal with respect to a Sale Notice Site and apply

all or less than all the Projected Incentive Fee as a discount to the purchase price which Developer would pay for such Sale Notice Site, then Owner shall pay to Developer the remaining portion of the Projected Incentive Fee that Developer has not elected to apply as a discount to the purchase price for such Sale Notice Site.

For calculation of the Incentive Fee prior to the full and complete payment as provided in Section 1(a) and Section 1(b) (“Projected Incentive Fee”), the Projected Incentive Fee for a Parcel shall be calculated as twenty percent (20%) of the difference between (A) the Sale Proceeds Owner would have received in a Third Party Sale for such Parcel if the Developer’s offer is the Selected Offer or if Developer had not exercised the Right of First Refusal for such Parcel and (B) the Pre-Entitlement Parcel Value for such Parcel. The Developer, in its sole discretion, may apply a portion or all of the Projected Incentive Fee as a discount to the purchase price which Developer would pay for such Sale Notice Site.

“Pre-Entitlement Parcel Value” shall mean the value of a Parcel obtained by multiplying the sum of (1) the value of the Property, as determined by the Initial Appraisal and (2) the aggregate amount of Entitlement Expenses plus all projected Disposition Expenses (as defined in the Development Services Agreement) in the most recent approved Project Budget (as defined in the Development Services Agreement) for the Project, by the ratio of the Appraised Value of the Parcel to the Appraised Value of the Property (as each of such Appraised Values are provided in the most recent update of the Subsequent Appraisal). Upon completion of the Subsequent Appraisal and determination of the Pre-Entitlement Parcel Value for each Parcel, the Pre-Entitlement Parcel Values shall be established and shall not change until such Subsequent Appraisal is updated as provided herein, at which time the Pre-Entitlement Parcel Value for each Parcel shall be recalculated based on the updated Subsequent Appraisal.

“Subsequent Appraisal” shall mean an Appraisal in accordance with the Appraisal Procedures. An initial Subsequent Appraisal shall be prepared within sixty (60) days after Completion, but in any event prior to Owner’s issuing a Sale Notice for the initial Sale Notice Site. Thereafter, and from time-to-time, an updated Subsequent Appraisal shall be prepared incorporating the sales data from all prior sales of Parcels prior to Owner’s issuing a Sale Notice for another Sale Notice Site until all Incentive Fee has been paid or all Projected Incentive Fee has been credited, as provided herein, to determine the value of each unsold Parcel as of the date of, or date of the update of, as applicable, the Subsequent Appraisal, and which will be used to determine the relative Appraised Value of each unsold Parcel to the Appraised Value of the Property for purposes of this section.

(f) Clawback Event. In the event of any over-credit to Developer of a Projected Incentive Fee (each, a “Clawback Event”), Developer shall repay to Owner such amount which Developer has received as an over-credit of the Projected Incentive Fee in the amount necessary to eliminate such over-credit within thirty (30) days after Owner has given notice of the Clawback Event to Developer. If not paid within thirty (30) days of such notice, the amount of any over-credit shall thereafter accrue interest at the lesser of (a) eighteen percent (18%) per annum or (b) the maximum rate permitted by applicable law.

Section 4. Term. The term of this Agreement shall be a period beginning on the Effective Date and ending upon sale by Owner to an unrelated party of the last remaining Parcel owned by Owner unless earlier terminated pursuant to the terms of this Agreement (the "Term").

(a) Termination by Owner for Default. Owner may, in addition to its other remedies, terminate this Agreement by notice to Developer following the occurrence of a Developer Event of Default. The occurrence of any of the following shall constitute a "Developer Event of Default" under this Agreement: (i) any material breach of this Agreement or the Development Services Agreement by Developer which remains uncured for more than thirty (30) days following written notice from Owner (plus, with respect to breaches which cannot reasonably be cured within 30 days, such additional period as is reasonably required to cure such breach); (ii) the filing by or against Developer of any petition in bankruptcy, reorganization, dissolution, liquidation or insolvency and such petition is not dismissed within sixty (60) days of the date of filing; or (iii) willful misconduct, gross negligence or fraud by Developer against Owner. In the event of termination of this Agreement for a Developer Event of Default, Owner shall pay to Developer any amounts payable to Developer pursuant to the Development Services Agreement as of the date of termination and the Right of First Refusal of the Developer shall terminate.

(b) Termination by Developer for Default. Developer may, in addition to its other remedies, terminate this Agreement by notice to Owner following the occurrence of an Owner Event of Default. The occurrence of any of the following shall constitute an "Owner Event of Default" under this Agreement: (i) failure to timely pay any sum owed to Developer which remains unpaid for more than ten (10) days after written notice from Developer that such sums owed are past due; (ii) any other material breach of this Agreement or the Development Services Agreement by Owner which remains uncured for more than thirty (30) days following written notice from Developer (plus, with respect to breaches which cannot reasonably be cured within 30 days, such additional period as is reasonably required to cure such breach); and (iii) willful misconduct, gross negligence or fraud by Owner against Developer. In the event of termination of this Agreement for an Owner Event of Default, Owner shall pay to Developer all sums payable to Developer pursuant to the Agreement included in the most recently approved plan for the Project (including any projected Incentive Fee) together with interest on all sums not paid when due as provided herein. The Right of First Refusal of the Developer shall survive termination of this Agreement by Developer for an Owner Event of Default.

(c) Developer's Obligations. Upon the expiration or earlier termination of this Agreement, Developer shall:

(i) at the request of the Owner and subject to Developer's obtaining any consent of any third party required therefore, assign all existing contracts relating to the Project to Owner or such other person as Owner shall designate;

(ii) furnish all such information, take all such other action, and cooperate with Owner as Owner shall reasonably require in order to effectuate an orderly and systematic termination of Developer's services, duties, obligations and activities hereunder; and

(iii) within sixty (60) days after the expiration or termination of this Agreement, cause to be furnished to Owner a report as provided in the Development Services Agreement.

(d) Owner's Obligations. Upon the expiration or earlier termination of this Agreement, the Owner shall promptly:

(i) assume (or cause another party to assume) any contracts which may have been entered into by Developer in accordance with this Agreement in its own name relating to the Project; and

(ii) pay to Developer any amounts properly due and owing.

(e) Termination for Failure of Conditions. Either Party can terminate this Agreement in the event that (i) approval by the South Carolina State Fiscal Accountability Authority of this Agreement and (ii) acceptance by the Parties of the Initial Appraisal are not obtained prior to the one year anniversary of the date of signing this Agreement.

Section 5. Representations and Warranties. As of the Effective Date, each Party hereby represents and warrants to the other Party as follows:

(a) Such Party is duly formed and validly existing under the laws of the jurisdiction of its organization with full power and authority to enter into this Agreement and to conduct its business to the extent contemplated in this Agreement.

(b) This Agreement has been duly authorized, executed and delivered by such Party and constitutes the valid and legally binding agreement of such Party, enforceable in accordance with its terms against such Party, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws relating to creditors' rights generally, by general equitable principles and by any implied covenant of good faith and fair dealing.

(c) The execution and delivery of this Agreement by such Party and the performance of its duties and obligations hereunder do not result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, credit agreement, note or other evidence of indebtedness, or any lease or other agreement, or any license, permit, franchise or certificate to which such Party is a party or by which it is bound or to which any of its property is subject, or require any authorization or approval under or pursuant to any of the foregoing, or violate any statute, regulation, law, order, writ, injunction, judgment or decree to which such Party is subject.

(d) There is no consent, approval or authorization of, or filing, registration or qualification required to be obtained from or made to any court or governmental authority on the part of such Party for the execution and delivery of this Agreement by such Party and the performance of its obligations and duties hereunder which has not been obtained other than the approval of the South Carolina State Fiscal Accountability Authority.

(e) To each Party's knowledge, there is no pending or threatened litigation or other proceeding pertaining to the Property.

Section 6. Miscellaneous.

(a) Assignment. Owner may not assign this Agreement. Developer may not assign or otherwise transfer all or any portion of its interest in this Agreement or delegate its duties hereunder without the prior written consent of Owner; *provided, however*, Developer shall have the right to assign its interest hereunder to an Affiliate of Developer without the prior written consent of Owner. In the event of an assignment of Developer's interest hereunder, Developer shall not be released from liability. An "Affiliate" refers to any entity which is directly controlled or under common control of the Developer such that the Developer maintains the power to direct or to cause the direction of the management or policies of such entity, whether through ownership of voting securities or other ownership interests, by contract or otherwise.

(b) Notices. All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and delivered personally or by certified mail, return receipt requested, postage prepaid, by e-mail, or by overnight courier (such as Federal Express), addressed as follows:

If to Owner:

South Carolina State Ports Authority
200 Ports Authority Drive
Mount Pleasant, SC 29464
Attn: James I. Newsome, III
Telephone: (843) 577-5608
Email: JNewsome@SCSPA.com

With a copy to:

South Carolina State Ports Authority
Attn: General Counsel
200 Ports Authority Drive
Mount Pleasant, SC 29464
Telephone: (843) 577-8765
Email: rlowell@scspa.com

If to Developer:

Lowe Enterprises Real Estate Group
Attn: Dan Battista
5757 Palm Boulevard
Isle of Palms, SC 29451
Telephone: (843) 886-2068
Email: dbattista@lowe-re.com

and

Lowe Enterprises Real Estate Group
Attn: General Counsel
11777 San Vicente Blvd
Los Angeles, CA 90049
Telephone: (310) 571-4286
Email: jdemarco@lowe-re.com

With a copy to:

Nelson Mullins Riley & Scarborough LLP
Attn: Jay S. Claypoole
151 Meeting Street, Suite 600
Charleston, South Carolina 29201
Telephone: (843) 534-4211
Email: jay.claypoole@nelsonmullins.com

If notice is given in person, via courier or via email, such notice is deemed to have been received on the earlier of: (i) when actually received, (ii) when delivered to the street address set forth above, or (iii) when sent to the email address set forth above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any notice, however delivered, that is confirmed or acknowledged (excluding any automatically generated electronic acknowledgment) by a party above to have been received by such party is effective notice.

(c) Entire Agreement; Amendments; Governing Law. This Agreement, together with the Development Services Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and negotiations with respect thereto. This Agreement may be amended only by a written instrument signed by both Parties. This Agreement shall be governed by the laws of the State of South Carolina.

(d) No Drafting Presumption. In interpreting the provisions of this Agreement, no presumption shall apply against any Party that otherwise would operate against such Party by reason of such document having been drafted by such Party or at the direction of such Party or an Affiliate of such Party.

(e) Severability. If any provision in this Agreement is held to be unenforceable, the remainder of this Agreement shall continue in full force and effect and, to the extent permitted by law, this Agreement shall be interpreted so as to give effect to the original written intent of the Parties. If any portion of a provision is held to be unenforceable, the remainder shall be enforced to the maximum extent so as to give effect to the original written intent of the Parties.

(f) Attorneys' Fees. In any litigation between Developer and Owner, the prevailing party shall receive from the non-prevailing party all of its costs and fees to the extent permitted by law.

(g) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

(h) Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same agreement.

(i) Pronouns. The pronouns used in this Agreement referring to Developer or Owner shall be understood and construed to apply whether such party is an individual, partnership, corporation, limited liability company or other business entity or an individual or individuals doing business under a firm or trade name, and the masculine and neuter pronouns shall each include the other and may be used interchangeably with the same meaning.

(j) Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

(k) No Waiver. The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed as waiver of such terms and conditions on any future occasion. No waiver shall be implied by any isolated or repeated action or non-action. To be effective, any waiver must be in writing executed by the party to be bound thereby.

(l) No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties hereto and their permitted successors and assigns and are not for the benefit of any other person or entity.

(m) Further Assurances. Each party agrees to execute, acknowledge, deliver, file, record and publish such further instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the purposes and intent of this Agreement.

(n) Force Majeure. In the event that either Party is temporarily unable to perform any obligations under this Agreement, in whole or in part, or in the event that any information with respect to the Property or the Project becomes unavailable or unattainable from independent third-Parties, in each case, due to a Force Majeure Event (as hereinafter defined), then the time for performing such obligations and/or obtaining such information will be extended until such time (i) as the Force Majeure Event has been resolved or otherwise mitigated or eliminated, such that such obligation can then be performed or information obtained, or (ii) as mutually agreed by Developer and Owner. The Party claiming the existence of a Force Majeure Event shall provide to the other Party prompt written notice and reasonable evidence of the occurrence of such Force Majeure Event, and shall use reasonable efforts as may be necessary or appropriate to mitigate, avoid, or lessen the adverse effects of such Force Majeure Event, as it may relate to the performance of obligations hereunder. Until such Force Majeure Event is so resolved, mitigated, or eliminated (as reasonably determined by the Party claiming the existence of a Force Majeure Event) or until expiration of the time period mutually agreed by Developer and Owner, the Party claiming the existence of a Force Majeure Event shall not be deemed to be in default under or in breach of any provision of this Agreement. As used herein, a "Force Majeure Event" shall mean any cause

beyond the reasonable control of the Party claiming the existence of a Force Majeure Event, including, but not limited to: (i) acts of God, acts of war, unusual adverse weather conditions, acts of terrorism, civil disturbance, governmental action, governmental shut-downs, strikes, fire, flood, typhoon, walkouts or lock-outs or other labor disputes; (ii) the occurrence of any pandemic, epidemic, or prevalent disease or illness with an actual or probable threat to human life; (iii) adherence to any travel restriction, warning, advisory issued in relation thereto, or any government shut-down by any local, city, county or state governmental entities, as applicable, or the federal government of the United States; or (iv) any quarantine, isolation, or similar measure taken in relation thereto by any governmental agency or authority to prevent the spread of any communicable disease.

(o) WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES HERETO.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement Related to Disposition of Real Property.

DEVELOPER:

LOWE ENTERPRISES REAL ESTATE GROUP, a California corporation

By: _____

Name: Christopher Currie
Title: Senior Vice President, CFO

By: _____

Name: Dan Battista
Title: Senior Vice President

OWNER:

SOUTH CAROLINA STATE PORTS AUTHORITY

By: _____

Name: James I. Newsome, III
Title: Chief Executive Officer

EXHIBIT A

PROPERTY

All those certain pieces, parcels and tracts of land, located in the City of Charleston, State of South Carolina, and described as follows:

Parcel #1:

TMS No.: 459-00-00-009

Address: 186 Concord Street, Charleston, SC 29401 (49.4 acres, more or less)

AND

Parcel #2:

TMS No.: 458-05-04-015

Address: 238 East Bay Street, Charleston, SC 29401 (3 acres, more or less)

AND

Parcel #3:

TMS No.: 458-05-04-016

Address: 246 East Bay Street, Charleston, SC 29401 (3 acres, more or less)

AND

Parcel #4:

TMS No.: 458-01-04-014

Address: Concord Street, Charleston, SC 29401 (2.83 acres, more or less)

AND

Parcel #5:

TMS No.: 458-01-04-005

Address: 19 Concord Street, Charleston, SC 29401 (8.3 acres, more or less)

AND

Parcel #6:

TMS No.: 458-01-04-006

Address: Marsh Street, Charleston, SC 29401 (0.2 acres, more or less)

AND

Parcel #7:

TMS No.: 458-01-04-025

Address: Laurens Street, Charleston, SC 29401 (0.064 acres, more or less)

AND

Parcel #8:

TMS No.: 458-01-04-024

Address: Laurens Street, Charleston, SC 29401 (0.4 acres, more or less)

AND

Parcel #9:

TMS No.: 458-01-04-009

Address: Concord Street, Charleston, SC 29401 (0.53 acres, more or less)

AND

Parcel #10:

TMS No.: 458-01-04-007

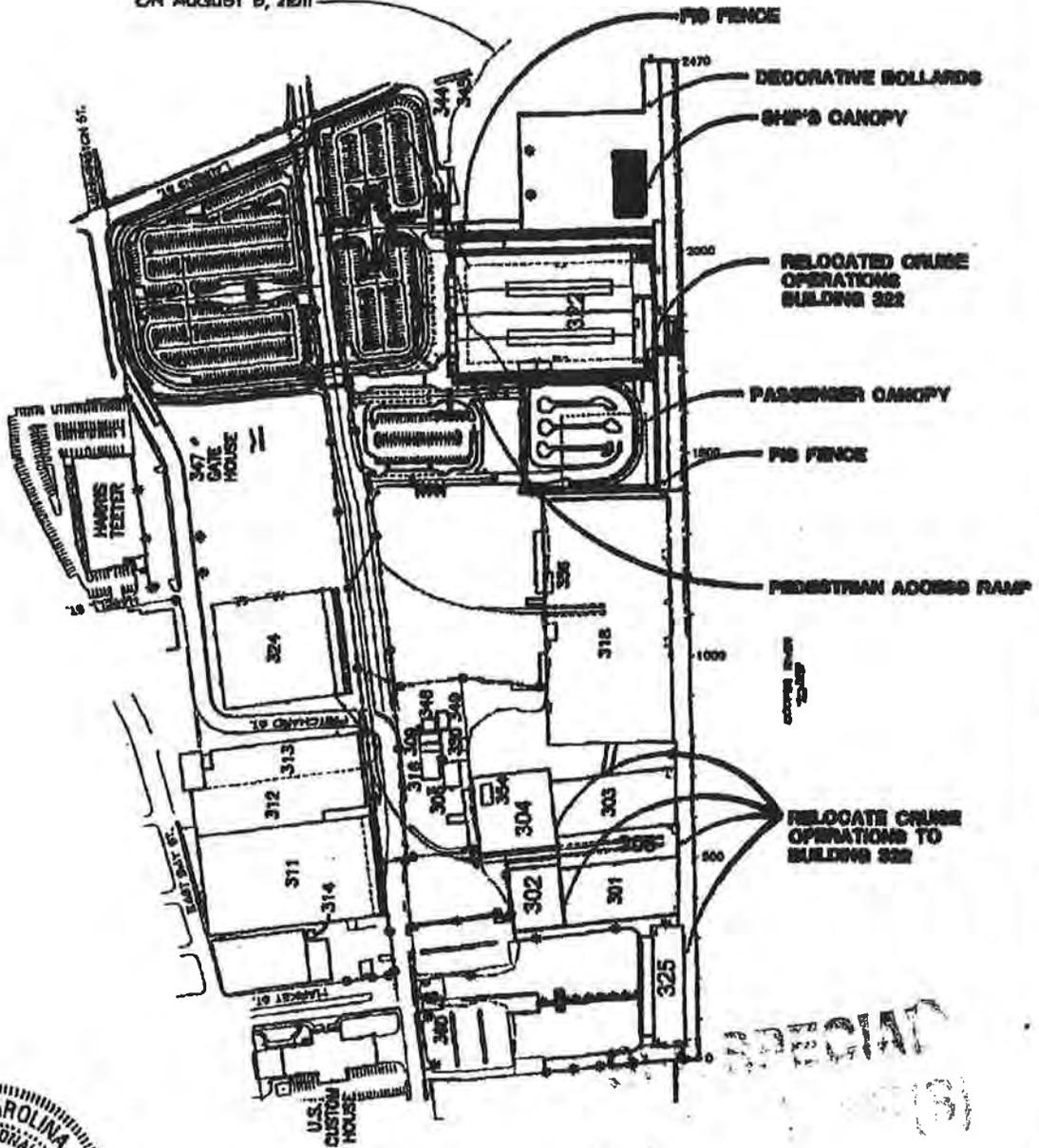
Address: Concord Street, Charleston, SC 29401 (1.5 acres, more or less)

EXHIBIT B

PROPERTY FOR CRUISE INDUSTRY

[see attached]

DHEC/OCRM CRITICAL LINE
 LOCATED JUNE 2011
 APPROVED BY S. BROOKS
 ON AUGUST 5, 2011



**NEW BUILDING LOCATION PLAN
 UNION PIER TERMINAL**

South Carolina State **PORTS AUTHORITY**
 176 CONCORD STREET
 P.O. BOX 22287
 CHARLESTON, S.C. 29413-2287

OERM-12-054-B
 PROJECT NO.: CF11E008B
 FILE NAME: Upcp1.p3
 DATE: MARCH 2012
 SHEET: 3 OF 11

SPECIAL
 (9)

DEVELOPMENT SERVICES AGREEMENT

THIS DEVELOPMENT SERVICES AGREEMENT (including all exhibits attached hereto and made a part hereof, this "Agreement") is made and entered into by and between SOUTH CAROLINA STATE PORTS AUTHORITY ("Owner"), and LOWE ENTERPRISES REAL ESTATE GROUP a California corporation ("Developer") as of October 8, 2020. Owner and Developer may each be referred to herein as a "Party" and, collectively, the "Parties". The date of the approval by the South Carolina State Fiscal Accountability Authority of the Real Property Agreement or acceptance by the Parties of the Initial Appraisal (as defined in the Real Property Agreement), whichever is later, shall be this Agreement's "Effective Date".

RECITALS:

WHEREAS, Owner has as its purpose, among others, to contribute to the economic development of the State of South Carolina (the "State") by fostering and stimulating waterborne commerce, including both cargo and passengers, to develop and improve the harbors or seaports of the State and to construct, equip, maintain, develop and improve such harbors or seaports and their port facilities, to the increase of waterborne commerce, foreign and domestic, through such harbors and seaports;

WHEREAS, Owner, among its powers, may rent, lease, buy, own, exchange, acquire, mortgage, and dispose of such property, real or personal, as Owner may deem proper to carry out its purposes;

WHEREAS, Owner is the owner of certain real property located in the City of Charleston, South Carolina ("City"), as more particularly described on Exhibit "A", attached hereto and incorporated herein by reference, less (1) such real property as may be designated by the Owner as necessary to provide services for the cruise industry, provided such real property shall not extend beyond the boundary of the real property depicted on Exhibit "C" and (2) land below the mean high water mark (the "Property");

WHEREAS, Owner has determined that the Property is not necessary for future operations of Owner's terminals or to carry out its purposes as set forth in Section 54-3-130 of the South Carolina Code of Laws;

WHEREAS, Owner seeks to prepare the Property for sale and, in connection therewith, intends to entitle the Property as a master-planned, mixed use project (collectively, the "Project");

WHEREAS, Developer has expertise in the entitlement, development, marketing and sale of real property;

WHEREAS, Owner desires to engage Developer to manage the entitlement, development, marketing and sale of the Property and to compensate Developer pursuant to the terms hereof and such other consideration as the Parties may otherwise agree; and

WHEREAS, this Agreement is related to the sale or disposition or contemplated sale or disposition of real property owned by Owner.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Owner mutually covenant and agree as follows:

Section 1. Retention of Developer.

(a) Retention. Owner hereby retains Developer to perform, or cause to be performed, the services described below (all services described in this Section 1(a) collectively referred to as the “Development Services”), and Developer accepts such engagement, all in accordance with the terms of this Agreement:

(i) General Strategy. Developer shall analyze the economic viability of the Project, advise Owner with respect to the practical aspects of the development of the Project and work with Owner to develop a strategy for the future development, marketing and sale of the Property.

(ii) Entitlement Services. With respect to future development, Developer shall coordinate and with the consent of Owner and engage the necessary consultants to accomplish the following (collectively, the “Entitlement Services”):

1. Explore the zoning, flood zone, building code, environmental, and other governmental permitting and compliance issues and prepare a plan for addressing any such issues;
2. Obtain surveys of the Property;
3. Obtain title reports for the Property and prepare a plan for addressing title matters;
4. Obtain environmental reports and studies designated by Owner or recommended by Developer in connection with the Project, and develop environmental strategies and proposed remedial plans or other actions recommended by Developer’s environmental consultants;
5. Obtain any necessary appraisals of the Property, including updates;
6. Secure any necessary market studies for the Property;
7. Investigate potential public subsidies or tax incentives, including, but not limited to, formation of a tax increment financing or other assessment district for the Property and Project;
8. Develop and present for Owner’s Approval a master plan for the Project (the “Master Plan”), which Master Plan shall include proposed land uses and infrastructure, including any water related structures or uses adjoining the Property that may be permitted;

9. Attempt to obtain the granting or dedication of such rights-of-way, easements, licenses, restrictions or other rights or covenants from the appropriate governing authorities, including but not limited to the City of Charleston and the South Carolina Department of Transportation, as may be necessary or appropriate to enable utility or other services or facilities to be provided for the Project in accordance with the Master Plan, and negotiate all municipal improvement agreements required for such purposes;

10. Engage with the City of Charleston leadership and planning department, neighborhood associations, historic and preservation organizations and other organizations and stakeholders for the purpose of community outreach and soliciting input and support for the Project, which engagement may include public or private meetings and design charettes;

11. Manage the media and public relations for the Project on behalf of the Owner, with the Owner's Approval regarding any public statement;

12. Serve as the general manager of the Project, hire (with the Approval of Owner) and manage the Project Contractors and Consultants, and be responsible for the day-to-day operations of the Project and performance of the Entitlement Services;

13. Analyze the entitlements, permits and approvals required to develop the Project in accordance with the Master Plan;

14. Prepare a budget for the Entitlement Services (the "Entitlement Budget") in accordance with Section 2(b), showing, by specified categories, the total amount of expenses and Reimbursable Costs associated with performance of the Entitlement Services, including a contingency line item (the "Entitlement Expenses"), which Entitlement Budget is attached hereto as Exhibit "B" and shall be updated within ninety (90) days after the Effective Date and thereafter in accordance with Section 2(b) during the term of this Agreement;

15. Prepare and submit a preliminary estimated project schedule for completion of the Entitlement Services, which shall include at least a general indication of the Entitlement Services and the approximate timing of the commencement and completion of such activities (the "Entitlement Schedule") within ninety (90) days after the Effective Date and thereafter as provided herein during the term of this Agreement; and

16. Perform any and all other tasks and services reasonably necessary to secure the entitlements required to develop the Project in accordance with the Master Plan.

(iii) Disposition Services. Upon completion of the Entitlement Services, Developer shall coordinate and with the consent of Owner to provide any or all of the following services, as determined by and with the Approval of the Owner in its sole discretion (collectively the "Disposition Services"):

1. Aid in the selection of an investment sales professional to market the Property for sale and identify potential buyers for the Property;
2. Provide investment sales professional and prospective buyers with the necessary materials to properly analyze and understand the Project;
3. Answer any and all questions posed by the investment sales professional and prospective buyers;
4. Provide any and all assistance reasonably necessary or appropriate to consummate the sale or disposition of the Property; *provided, however*, Owner acknowledges that Developer is not a licensed real estate broker or salesperson and Developer shall not perform any services which require a real estate license, but may engage such services as may be necessary;
5. Manage the media and public relations for the Project on behalf of the Owner, with the Owner's Approval regarding any public statement;
6. Prepare a budget for the Disposition Services (the "Disposition Budget"; the Disposition Budget and the Entitlement Budget may be referred to individually as a "Project Budget" or, collectively, the "Project Budgets") in accordance with Section 2(b), showing, by specified categories, the total amount of expenses and Reimbursable Costs, including a contingency line item (the "Disposition Expenses" and, together with the Entitlement Expenses, the "Project Expenses"). This Disposition Budget will be provided within ninety (90) days after completion of the Entitlement Services; and
7. Prepare and submit a preliminary estimated project schedule for the timing of the various Disposition Services, which shall include at least a general indication of the Disposition Services scope of work and the approximate timing of the commencement and completion of such activities (the "Disposition Schedule"; the Disposition Schedule and the Entitlement Schedule may be referred to individually as a "Project Schedule" or, collectively, the "Project Schedules"). This Disposition Schedule will be provided within ninety (90) days after completion of the Entitlement Services. Developer shall revise the Disposition Schedule from time to time throughout the term of this Agreement.

(iv) Completion of Entitlement Services. For purposes of this Agreement, the Entitlement Services shall be deemed "complete" upon the receipt of approval from the appropriate governing authorities of the Master Plan, including any development agreement to be entered into or planned unit development to be approved in connection with the Master Plan, and expiration of any applicable appeal periods with respect to the Master Plan, provided that Owner shall compensate Developer as provided in Section 3(a) for so long as Developer performs Entitlement Services not related to approval of the Master Plan.

(b) Staffing of Project Work, Developer Representative. Developer shall provide a project team to perform its duties hereunder (as existing from time-to-time, the "Project Team"), the members of which shall be employees of Developer or third parties engaged by Developer. Developer shall designate from time to time an individual to act as representative of Developer for the Project (the "Developer's Representative"). Dan Battista is hereby designated as the initial

Developer's Representative for Developer for the Project, until Developer otherwise notifies Owner in writing.

(c) Owner Representative. The Owner shall designate from time-to-time one or more individuals to act as representative of Owner (the "Owner's Representative" and, together with the Developer's Representative, the "Authorized Representatives"). James I. Newsome, III, is hereby designated as the initial Owner's Representative for Owner until Owner otherwise notifies Developer in writing. Developer shall report only to the Owner's Representative, as such representative may be changed by written notice from Owner.

(d) Project Contractors and Consultants. Developer and Owner acknowledge that a variety of third-party contractors, consultants and operators will be involved with the Project and performance of the Development Services, including, but not limited to, planners, architects, civil engineers, coastal engineers, traffic consultants, environmental consultants, media and public relations consultants, operators, marketing and sales consultants and other operations consultants (collectively, the "Project Contractors and Consultants"). Project Contractors and Consultants will execute contracts with Owner or Developer as agent and on behalf of Owner, as determined by Owner, subject to the prior Approval of Owner. All contracts with Project Contractors and Consultants shall contain a requirement to maintain confidentiality of information obtained in the course of performing their services. To minimize the Owner's and Developer's exposure to liability, all agreements with the Project Contractors and Consultants (including any subcontractors), to the extent feasible, shall contain an indemnification in favor of Owner and Developer acceptable to both of them and, to the extent feasible, the Project Contractors and Consultants shall be required to maintain errors and omissions insurance acceptable to Owner and Developer, in the forms and with the limits set forth below:

i. general liability insurance each with policy limits of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate; including coverage for Personal and Advertising Injury and for Products and Completed Operations;

ii. umbrella/excess liability insurance with policy limits of not less than \$5,000,000 per occurrence and in the aggregate;

iii. workers' compensation insurance affording thirty (30) days written notice of cancellation to Developer. The amount of insurance shall be in an amounts and scope required by statute or other governing law including employer's liability coverage greater than or equal to and include a waiver of subrogation;

iv. Bodily Injury by accident - \$1,000,000 each accident;

v. Bodily Injury by disease - \$1,000,000 policy limit;

vi. Bodily Injury by disease - \$1,000,000 each employee;

vii. automobile liability insurance for all hired, owned and non-owned vehicles with policy limits of not less than \$1,000,000.00 combined single limit; umbrella policy shall sit excess of the automobile policy;

viii. personal property insurance in an amount sufficient to cover the full replacement value of their on-site property; and

ix. with respect to engineers, architects and their consultants, contractors and operators, errors and omissions liability insurance with policy limits of not less than \$5,000,000. Furthermore, Owner and Developer are to be named as additional insured on any such party's liability insurance policy.

Developer shall select Project Contractors and Consultants with the Approval of Owner, and shall assist Owner in the negotiation of contracts for their engagement by Owner. With the Approval of Owner's Authorized Representative(s), Developer may permit Project Contractors and Consultants to have insurance coverages with policy limits which do not meet or exceed the amounts as outlined in items i. through ix. above. Owner and Developer shall each be named as an additional insured on any Project Contractors and Consultants' general liability insurance, auto and umbrella policies and receive certificates of insurance as proof thereof. Developer will assume responsibility of collection, verification and maintenance of current insurance certificates outlining coverage in section (d)(i-ix) above for all active Project Contractors and Consultants. Such insurance shall, to the extent feasible, contain waivers wherein the applicable insurer waives its right of subrogation against Owner and Developer and each of their respective directors, officers, agents and employees.

Owner's Project Contractors and Consultants are responsible to Owner for providing (1) services and advice regarding matters including, but not limited to, land use planning, development, architectural, and engineering means, methods, sequences or techniques, and environmental, historical, tax and other matters for which Project Contractors and Consultants are being engaged and (2) other services which require a professional engineer's, architect's or other license. Owner understands and agrees that Developer is not responsible for or liable to Owner with respect to such contracted services and advice. Developer shall not be liable for any failure of performance of any of the Project Contractors and Consultants or any other third party and shall not be liable to Owner for any defects in any plans, specifications, studies or reports prepared by any Project Contractors and Consultants so long as such contract was Approved by the Owner.

Section 2. Management.

(a) Generally.

(i) Subject to any Approval rights of Owner or consultation or coordination obligations of Developer required under this Agreement or as required by law, the Project shall be managed by Developer. Except as otherwise provided in this Agreement, Developer shall make all decisions affecting, and take all actions required to conduct, the day-to-day operations of the Project and shall implement the Major Decisions and other decisions that have been Approved by Owner. Except to the extent the Approval of Owner is required under this Agreement or applicable law, no consent or Approval of any other party shall be required with respect to any action or

decision of Developer regarding the Project. Whenever the Approval of any Party is required, such Party shall act through its Authorized Representatives. Each Party shall cause each of its Authorized Representatives to devote as much time as is reasonably necessary to fulfill such Party's obligations under this Agreement. No compensation or reimbursements shall be payable by Developer unless provision for such compensation is made in the Approved Project Plan (as hereafter defined), including the applicable Approved Budget, or as otherwise expressly agreed upon.

(ii) Developer shall exercise its good faith efforts in providing the Development Services and shall use its commercially reasonable efforts to implement the Approved Project Plan in accordance with the terms of this Agreement. Developer shall be obligated to devote as much of its business time to the Project as shall be reasonably required to perform the Development Services and conduct the Project in an efficient manner and to meet Developer's obligations hereunder. Without limiting the generality of the foregoing and notwithstanding anything to the contrary contained in this Agreement, Developer shall, in carrying out its obligations under this Agreement, exercise such care and skill as a prudent owner with sophistication and experience in owning, developing and managing property like the Project would exercise in dealing with its own property.

(iii) Developer shall provide to Owner any additional information in the possession of Developer concerning the Project, and/or the Development Services promptly after written request therefor is received from Owner. Further, Developer shall use commercially reasonable efforts to obtain and provide to Owner (within a reasonable time after request therefor has been made by Owner) any information that Developer reasonably deems appropriate (or that Owner has reasonably requested) with respect to the Project, the Property and/or the performance of the Development Services.

(iv) Developer shall (1) cause proposed entitlement and disposition plans and Budgets to be prepared and submitted to Owner for Approval, and (2) undertake its other obligations under this Agreement.

(v) Subject to the other provisions of this Agreement (including required Approvals of Owner), Developer is hereby authorized:

(1) To implement the Approved Project Plan in the ordinary course of business; and

(2) To make expenditures in accordance with the then-current Approved Budgets.

(vi) For purposes of this Agreement, the terms "Approval", "Approved", "Approved by" or "consented to by" or "consent of" with respect to a Party means a decision or action which has been affirmatively consented to in writing (which may be by e-mail) by an Authorized Representative of such Party. In order for a decision or action to be "Approved" (or any variation thereof), the decision or action must be Approved in writing (which may be by e-mail) by the Authorized Representative of such Party who then continues to have Approval rights

with respect to such action or decision under this Agreement. Section 2(c) sets forth the procedure for obtaining Approvals.

(vii) Any and all work product related to the Project or the Property in the possession of, procured by, or contracted by the Developer shall be the property of and under the ownership of the Owner.

(b) Budgets and Schedules.

(i) Entitlement Budget. Developer has prepared and attached hereto as Exhibit "B", (which shall be refined within ninety (90) days after the Effective Date), an initial Entitlement Budget for the Project showing Entitlement Expenses through completion of the Entitlement Services included in the Approved Project Plan. Once Approved by Owner, the Entitlement Budget shall become the "Approved Entitlement Budget".

(ii) Disposition Budget. Developer shall prepare a Disposition Budget for the Project showing Disposition Expenses through completion of the Disposition Services included in the Approved Project Plan. The Disposition Budget shall be submitted to Owner for Approval within ninety (90) days after completion of the Entitlement Services. Once Approved by Owner, the Disposition Budget shall become the "Approved Disposition Budget".

(iii) The Approved Entitlement Budget and the Approved Disposition Budget may be referred to individually herein as an "Approved Budget" or, collectively, the "Approved Budgets".

(iv) Thirty (30) days prior to June 30 of each fiscal year during the term of this Agreement, Developer shall prepare (1) an update of the Project Budget, (2) an update of the Project Schedule and (3) an update to the Approved Project Plan, and Developer shall deliver the same to Owner for its Approval no later than July 1 of such fiscal year.

(v) Each proposed updated Project Budget shall project (1) by specified categories the amount of the Project Expenses for each month of the coming year and (2) the total Project Expenses.

(vi) Owner will Approve or object to a Project Budget (or update or amendment to a previously Approved Budget) within ten (10) business days following its receipt of the Project Budget (or update or amendment to a previously Approved Budget). In the event Owner timely objects to a proposed Project Budget (or the proposed modification, amendment or update to a previously Approved Budget, as the case may be) in accordance with the foregoing, Developer shall promptly revise, or cause to be revised, such Project Budget (or the proposed modification, amendment or update to a previously Approved Budget, as the case may be) and resubmit the same to Owner. If the Owner's Representative Approves a proposed updated Project Budget, such Budget shall constitute an "Approved Budget" for the Project for the applicable fiscal year covered thereby.

(vii) When a Project Budget is Approved by Owner, then Developer may not expend funds in excess of the total amount of such Approved Budget, other than to the extent such

expense is caused by a Force Majeure Event or constitutes an Emergency expense; provided, that notice of Emergency expenses or actions shall be given by Developer to Owner as soon as reasonably practicable after such expenditures are made or actions are taken. “Emergency” shall mean an event which reasonably requires immediate action involving the expenditure of funds or the incurrence of an obligation or liability by Developer on behalf of Owner in order to avert or mitigate significant immediate damage to the Property or the Project or to avoid jeopardizing the health, safety or welfare of persons located thereon, in each case if it is not reasonably practicable to reach or obtain the Approval of Owner to take such action if Owner’s Approval otherwise would be required hereunder to take such action. Developer may expend contingency amounts, reallocate amounts between line items or expend any realized cost savings in the Approved Budget so long as the total amount of the Approved Budget does not increase, no funds in excess of the total amount of the Approved Budget are expended, and such expenditures are consistent with the Approved Project Plan and the scope of the Project.

(viii) Developer shall prepare supplements or revisions to each Project Budget and the Approved Budget from time-to-time prior to the completion of the ensuing fiscal quarter if (but only if) it is reasonably likely that such Project Budget or the Approved Budget will not be met or after a request for such a supplement or revision is received by Developer from Owner, or if Developer otherwise desires to do so, which supplements or revisions shall be submitted to Owner for Approval in the same manner as that which is provided for the Approval of Project Budgets.

(c) Approved Project Plan.

(i) The “Approved Project Plan” shall mean the overall plan for completion of the Development Services in accordance with this Agreement, and shall include, among other items, the Project Budgets, Project Schedules, and the Master Plan. Developer shall deliver a proposed project plan for Approval by Owner within twelve (12) months after the Effective Date and, upon Approval by Owner, such proposed project plan shall be the Approved Project Plan. Developer, with Approval by Owner, may revise the Approved Project Plan from time-to-time throughout the term of this Agreement.

(ii) Developer shall deliver to Owner (within a reasonable time after the same are available), for Owner’s Approval, all proposed modifications to the Approved Project Plan and shall also deliver to Owner such other details and information regarding the Property and/or the Project as Owner shall reasonably request from time to time.

(iii) Developer shall modify and update any Approved Project Plan as needed, but no less frequently than annually, and submit such proposed modification or update to such Approved Project Plan to Owner for its Approval.

(d) Major Decisions.

(i) The following are major decisions with respect to the Project (the “Major Decisions”) that shall require the Approval of Owner in its sole and absolute discretion:

(1) Any change to an Approved Budget, or any material change to the Approved Project Plan, the Master Plan, or the scope of the Project;

(2) Entering into contracts or agreements with any Project Contractor and Consultant that is an Affiliate (as hereafter defined) of Developer including, but not limited to, agreements for development, property management, asset management and general contracting, as applicable;

(3) Transferring or otherwise selling or disposing of all or any portion of the Property or the Project or permitting any encumbrance of any kind to be placed on all or any portion of the Property or the Project;

(4) Any modification to a Project Schedule that would cause completion of the Development Services set forth in the Project Schedule to occur more than three (3) months after the then-scheduled completion date, except, in each case, if such modification is the result of an Emergency or Force Majeure event;

(5) Entering into any brokerage, sales agency, marketing or other similar contracts or agreement with respect to the sale of all or any portion of the Project;

(6) Entering into any lease pursuant to the terms set forth in an Approved Project Plan or the Approved Budgets;

(7) Taking any act in contravention of this Agreement or any action that is otherwise required to be Approved by Owner under this Agreement; or

(8) Except as set forth in the Approved Project Plan, making or agreeing to make any material changes to the zoning of the Project or any portion thereof or approving the terms of any material restrictive covenant or easement agreement affecting the Project or any portion thereof, including variance with respect to special use permits.

(ii) The enumeration of the foregoing rights shall not diminish or affect the existence or exercise of other rights expressly granted to each of the Parties under this Agreement. Notwithstanding anything to the contrary herein, Owner shall have the sole and exclusive power, right, authority and discretion to Approve or disapprove any Major Decision proposed by Developer.

(e) Approval Procedure. Notice of the request for Owner's Approval of any matter for which Approval is required pursuant to this Agreement shall be delivered by Developer to Owner in writing (which may include e-mail), together with Developer's summary and analysis of any matter for which such Approval is requested and Developer's recommendations with respect to any matter for which Approval is requested. The Owner's Representative shall, upon request to Developer, be furnished promptly with access to or, if feasible, copies of such additional pertinent information which has become available to Developer that is requested by Owner. Owner will Approve or object to any matter for which Approval is required within ten (10) business days following its receipt thereof. In the event Owner timely objects to a matter in accordance with the

foregoing, Developer shall promptly revise, or cause to be revised, such matter and resubmit the same to Owner in accordance with the foregoing process until Approval is provided.

(f) Meetings. Meetings shall be held at the record-keeping office of Owner or at any other reasonably convenient location within the United States as the requesting Party may reasonably require and specify in such notice. The Parties may adopt a course of conduct that provides for such meetings to be held telephonically.

(g) Financial and Status Reports and Press Releases.

(i) Developer shall cause a status report to be issued to Owner on the last day of every fiscal quarter during the term of this Agreement, summarizing Development Services provided and Project Expenses incurred during the previous calendar quarter and comparing such Development Services and Project Expenses against the Project Budget and Project Schedule on a year-to-date basis (each quarterly report referred to herein as a "Status Report").

(ii) Developer shall keep Owner reasonably apprised of pending due diligence, entitlement, development, leasing, marketing and disposition efforts with respect to the Project within a reasonable time after any material new development has occurred or after any Party requests an update, and Developer's Representative shall meet with Owner's Representative no less frequently than quarterly and at any other time reasonably requested by Owner (telephonically or in person) to discuss the status of the Project.

(iii) Developer shall provide copies to Owner of any proposed press releases and proposed plans for any speaking or media engagements prior to issuing any press releases or otherwise speaking with the press concerning the terms of this Agreement, and all such press releases and speaking or media engagements require Approval of Owner.

(iv) In preparing reports required under this Agreement, Developer may rely on information furnished by third parties to the extent that it is reasonable to do so.

(h) Limited Agency. Owner makes, constitutes and appoints Developer, as the true and lawful agent of Owner, to do and execute, all or any (i) contracts with Project Contractors and Consultants which have been Approved by Owner and (ii) applications for permits and approvals associated with the Project to the extent permitted by law and which have been Approved by Owner.

Section 3. Management Fee; Reimbursable Costs. In consideration of Developer's performance of the Development Services, the Owner shall pay to Developer the following fees and costs:

(a) A management fee (the "Entitlement Management Fee") equal to Twenty Thousand and 00/100 Dollars (\$20,000.00) per month, payable monthly beginning on the Effective Date, and continuing on the 15th day of each calendar month thereafter, for so long as Developer performs the Entitlement Services; and

(b) A management fee (the “Disposition Management Fee” and, together with the Entitlement Management Fee, the “Management Fees”) equal to Ten Thousand and 00/100 Dollars (\$10,000.00) per month, payable monthly beginning in the month after completion of the Entitlement Services and continuing on the 15th days of each calendar month thereafter, for so long as Developer is performing the Disposition Services.

(c) In addition to the Management Fees, Owner shall reimburse Developer for all direct and indirect costs and reasonable, actual out-of-pocket expenses of Developer personnel incurred by Developer in connection with the Project, to the extent set forth in an Approved Budget or otherwise expressly Approved by Owner, which may include salaries, performance-based bonuses and employee benefits of employees of Developer directly related to the Project (or the prorated salaries of employees of Developer for such employees who simultaneously work on the Project and matters other than the Project) and general, administrative and accounting expenses attributable to Developer’s regional or corporate office (“Reimbursable Costs”). All requests for payment of the Reimbursable Costs shall be accompanied by invoices and/or other supporting documentation reasonably satisfactory to Owner. Payment of the Reimbursable Costs shall occur with the same frequency as payment of the Management Fees. Any costs the Developer submits as reimbursable and incurred prior to the Effective Date shall be included in the Project Budget and the first monthly invoice submitted to Owner for reimbursement after the Effective Date.

(d) Any Entitlement Management Fee, Disposition Management Fee, and Reimbursable Costs (as it relates to Developer employee salaries) payable for a portion of a calendar month shall be prorated based upon the number of days in the applicable calendar month.

Section 4. Term. The term of this Agreement shall commence as of the Effective Date and automatically terminate upon the disposition of all of the Property to one or more persons or entities unaffiliated with Owner, unless earlier terminated pursuant to the terms of this Agreement.

Section 5. Owner’s Obligations.

(a) Project Information. Owner shall provide all material information to Developer regarding Owner’s requirements for the Project, including Owner’s objectives, schedule, constraints, site requirements and criteria throughout the development of the Project and shall promptly review all material submitted to Owner and make decisions in a timely manner to the end of satisfying Owner’s budgets, scheduling and other objectives.

(b) Certain Tests and Services. Owner shall provide to Developer copies of all survey, title reports, structural, mechanical, chemical, site, traffic, engineering, environmental, master plans and other tests, inspections, studies and reports in Owner’s possession or control.

(c) Coordination through Developer. Owner shall cause all instructions from all Project Contractors and Consultants to be coordinated through Developer to the end of providing consistent instructions and communications. It is essential that Developer be the principal point of contact and conduit of all information and instructions between Owner and the Project Contractors and Consultants. Accordingly, Owner agrees that Developer shall be a representative of Owner for such purpose and shall be so designated in the contracts with the Project Contractors and

Consultants. Owner shall designate Developer as a party to receive communications and documents from the Project Contractors and Consultants.

(d) Project Obligations. Owner shall bear the costs and expenses of the Project, including any obligations under any written contracts or other agreements or documents which are entered into by Developer as agent of Owner with the Approval of Owner, and the services performed by Developer under this Agreement shall be performed at the cost and expense of, and for the account of, Owner.

(e) Permit/Approval Applications. To the extent Approved by Owner, Owner shall execute any permit or approval application requiring Owner's signature.

Section 6. Books and Records; Access; Audit; Payments.

(a) Books and Records. Developer shall keep or cause to be kept accurate, just and true books of account, in which shall be entered fully and accurately each and every transaction of the Project, and shall exercise such controls as may be necessary for proper financial management under this Agreement and to permit audits pursuant to subsection (b) below. The books and records shall separately identify, and account for, the expenses of the Project. The books shall be kept in accordance with Developer's method of reporting for federal income tax purposes (which shall be the accrual method of accounting). Tax accounting elections, including methods of depreciation and deduction or capitalization of interest, taxes and insurance premiums shall be made only to the extent that Owner Approves the same. The Project financial statements shall be prepared in accordance with generally accepted accounting principles in the United States, consistently applied. Developer shall preserve such books and records for a minimum of three (3) years after final payment, or for such longer period as may be required by law.

(b) Access; Audit. Developer shall permit Owner to review and copy, during normal business hours and upon reasonable advance written notice to Developer at the office of Developer, all financial records and information. Owner shall have the right to have such records and information audited at Owner expense; provided, however, if such audit reveals material errors or omissions in such records and information due to a breach by Developer of this Agreement, Developer shall reimburse Owner for the expense of audit. Developer shall maintain reports required or otherwise prepared and delivered hereunder for a minimum of three (3) years, copies of which shall be furnished to Owner as soon as reasonably available following the date on which such reports are prepared, together with such supplementary records and reports as necessary.

(c) Payments.

(i) Developer shall provide a detailed invoice to Owner for any Management Fee, Reimbursable Cost, or Project Expense, as appropriate, on a monthly basis during the Term of this Agreement. Receipts, and other similar supporting documentation shall be provided with each monthly invoice. Each monthly invoice shall include an attestation that all requested fees, costs or expenses are within the Approved Budgets, and should any fee, cost or expense requested for payment or reimbursement be outside of an Approved Budget then such fee, cost or expense should be clearly noted.

(ii) Owner shall review each monthly invoice within fifteen (15) days of receipt of the invoice, and shall tender payment for any Management Fee, Reimbursable Cost, or Project Expense that is included within an Approved Budget and has sufficient supporting documentation within thirty (30) days of receipt of the invoice.

(iii) Owner will endeavor to resolve in good faith any dispute with any invoiced fee, cost, or expense within thirty (30) days of the receipt of the invoice.

(iv) Developer may, but shall have no duty to, advance funds for the account of Owner. If so advanced, Developer may seek reimbursement of such funds as provided herein.

Section 7. Insurance and Indemnity.

(a) Insurance by Developer. Developer shall maintain the following insurance policies:

(i) if Developer hires employees, workers' compensation insurance sufficient to satisfy applicable statutory requirements and employer's liability insurance in an amount of not less than \$500,000.00;

(ii) commercial general liability insurance with contractual liability coverage in an amount of not less than \$1,000,000.00 per occurrence and a \$2,000,000.00 aggregate;

(iii) automobile liability insurance for all hired, owned and non-owned vehicles with policy limits of not less than \$1,000,000.00 combined single limit;

(iv) personal property insurance in an amount sufficient to cover the full replacement value of its on-site property;

(v) director's and officer's insurance in an amount of not less than \$1,000,000.00;

(vi) employment practices liability in the amount of \$1,000,000.00 per occurrence, if applicable;

(vii) crime and employee dishonesty in the amount of \$200,000.00 per occurrence;

(viii) excess general, auto and employers liability insurance in the amount of \$5,000,000.00, per occurrence and in the aggregate; and

(ix) waiver of subrogation pursuant to Section 7(d) below.

Owner shall be named as an additional insured on all of Developer's general, excess, and auto liability insurance policies maintained with respect to the Project, and each policy shall be endorsed to provide Owner with at least thirty (30) days' advance written notice of non-renewal or cancellation. Upon request, Developer shall provide Owner with certificates of insurance

outlining evidence of Developer's insurance and the terms thereof. Developer's liability policies shall be primary and non-contributory (vis-à-vis any insurance carried by Owner) as to claims arising out of activities of Developer with respect to the Project.

(b) Insurance Standards. The insurance required to be maintained by each party shall be maintained with financially responsible insurance carriers with a minimum AM Best Rating of A-VIII that are licensed to do business in the state in which the Project is located. Each party may carry its insurance as part of a blanket insurance policy and in a combination of primary and umbrella coverage. Either party may self-insure for workers' compensation insurance in accordance with statutory requirements.

(c) WAIVER OF CLAIMS AND SUBROGATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EACH PARTY WAIVES ALL CLAIMS AGAINST THE OTHER PARTY, AND THE AFFILIATES, PARTNERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS AND AGENTS OF SUCH OTHER PARTY, FOR ALL LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES ON ACCOUNT OF FIRE, ACCIDENT OR OTHER CASUALTY, THE CAUSE OF WHICH IS INSURED AGAINST, OR WHICH IS INSURABLE UNDER A STANDARD "ALL RISK" PROPERTY INSURANCE POLICY AVAILABLE IN THE STATE IN WHICH THE PROJECT IS LOCATED, REGARDLESS OF CAUSE OR ORIGIN, INCLUDING THE NEGLIGENCE OF ANY OTHER PARTY HERETO, ITS AFFILIATES, PARTNERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS AND AGENTS.

(d) NO INDEMNITY OF DEVELOPER. DEVELOPER HEREBY RECOGNIZES AND AGREES THAT OWNER SHALL HAVE NO OBLIGATION TO INDEMNIFY, DEFEND OR HOLD DEVELOPER HARMLESS PURSUANT TO THIS AGREEMENT. HOWEVER, OWNER, WITHIN THE LIMITS OF THE SOUTH CAROLINA TORTS CLAIMS ACT, SHALL BE RESPONSIBLE FOR, ANY LOSS RESULTING FROM BODILY INJURY (INCLUDING DEATH) OR DAMAGE OF PROPERTY ARISING DIRECTLY OR INDIRECTLY OUT OF ANY NEGLIGENT OR WILLFUL ACT OR FAILURE TO ACT OF OWNER WITH RESPECT TO THE PROPERTY.

(e) INDEMNITY OF OWNER. DEVELOPER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER, AND ITS AFFILIATES, PARTNERS, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS AND AGENTS (INDIVIDUALLY AND COLLECTIVELY, THE "OWNER INDEMNITEES"), FROM AND AGAINST ALL SUITS, PROCEEDINGS, CLAIMS, DAMAGES, LIABILITIES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND OTHER DEFENSE COSTS, ARISING FROM THE FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF DEVELOPER IN THE PERFORMANCE OF ITS EXPRESS OBLIGATIONS CONTAINED IN THIS AGREEMENT. DEVELOPER SHALL ASSUME ON BEHALF OF THE OWNER INDEMNITEES THE DEFENSE OF ANY ACTION AT LAW OR IN EQUITY WHICH MAY BE BROUGHT AGAINST THE OWNER INDEMNITEES BASED ON A CLAIM FOR WHICH INDEMNIFICATION IS REQUIRED BY THIS SECTION 7(e). THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS

AGREEMENT WITH RESPECT TO ANY MATTERS FIRST OCCURRING BEFORE THE TERMINATION.

Section 8. Default and Termination.

(a) Termination by Owner for Default. Owner may, in addition to its other remedies, terminate this Agreement by notice to Developer following the occurrence of a Developer Event of Default. The occurrence of any of the following shall constitute a “Developer Event of Default” under this Agreement: (i) any breach of this Agreement by Developer which remains uncured for more than thirty (30) days following written notice from Owner (plus, with respect to breaches which cannot reasonably be cured within 30 days, such additional period as is reasonably required to cure such breach); (ii) the filing by or against Developer of any petition in bankruptcy, reorganization, dissolution, liquidation or insolvency and such petition is not dismissed within sixty (60) days of the date of filing; or (iii) willful misconduct, gross negligence or fraud by Developer against Owner. Upon the date of such termination specified in Owner’s notice, Owner shall pay to Developer all sums earned by or payable to Developer as of such date, including the Management Fees and Reimbursable Costs, less the actual damages incurred by Owner as a result of such breach (subject to the limitations on damages provided for in this Agreement).

(b) Termination by Developer. Developer may, in addition to its other remedies available at law or in equity, terminate this Agreement by notice to Owner following the occurrence of an Owner Event of Default. The occurrence of any of the following shall constitute an “Owner Event of Default” under this Agreement: (i) failure to timely pay any sum owed to Developer which remains unpaid for more than ten (10) days after written notice from Developer; (ii) any other breach of this Agreement by Owner which remains uncured for more than thirty (30) days following written notice from Developer (plus, with respect to breaches which cannot reasonably be cured within 30 days, such additional period as is reasonably required to cure such breach); (iii) the filing by or against Owner of any petition in bankruptcy, reorganization, dissolution, liquidation or insolvency and such petition is not dismissed within sixty (60) days of the date of filing; and (iv) willful misconduct, gross negligence or fraud by Owner against Developer. Upon the date of termination specified in Developer’s notice, Owner shall pay to Developer all sums payable to Developer pursuant to the Agreement included in the Approved Project Plan, including the entire amount of the Management Fees that would have been payable to Developer in accordance with the Approved Budget and Project Schedules in effect at the time of such Owner Event of Default, plus any sums earned by or payable to Developer as of such date, including any Reimbursable Costs, together with interest on all sums not paid when due as provided herein.

(c) Developer’s Obligations. Upon the expiration or earlier termination of this Agreement, Developer shall:

(i) subject to Developer’s obtaining any consent of any third party required therefore and upon Owner’s request, assign all existing contracts relating to the Project to Owner or such other person as Owner shall designate;

(ii) furnish all work product associated with the Project and the Property and all such information, take all such other action, and cooperate with Owner as Owner shall reasonably

require in order to effectuate an orderly and systematic termination of Developer's services, duties, obligations, and activities hereunder; and

(iii) within sixty (60) days after the expiration or termination of this Agreement, cause to be furnished to Owner a report similar in form and content to Developer's periodic Status Reports covering the period from the last previous quarterly report to the date of expiration or termination of this Agreement.

(d) Owner's Obligations. Upon the expiration of this Agreement, the Owner shall promptly pay to Developer any accrued but unpaid installments of the Management Fees and Reimbursable Costs, together with all other sums earned by or payable to Developer as of such date.

(e) Owner Event of Default After Completion of Entitlement Services. If an Owner Event of Default occurs after the completion of Entitlement Service and prior to completion of the disposition of the Property, then Developer shall be entitled to the Project Incentive Fee for the Property, as calculated in the Real Property Agreement.

(f) Termination for Failure of Conditions. Either Party can terminate this Agreement in the event that (i) approval by the South Carolina State Fiscal Accountability Authority of that certain Agreement Related to Disposition of Real Property by and between Owner and Developer entered into simultaneously herewith ("Real Property Agreement") and (ii) acceptance by the Parties of the Initial Appraisal (as defined in the Real Property Agreement) are not obtained prior to the one year anniversary of the date of signing this Agreement.

Section 9. Representations, Warranties and Covenants. As of the Effective Date, each Party hereby represents and warrants to the other Party as follows:

(a) Such Party is duly formed and validly existing under the laws of the jurisdiction of its organization with full power and authority to enter into this Agreement and to conduct its business to the extent contemplated in this Agreement.

(b) This Agreement has been duly authorized, executed and delivered by such Party and constitutes the valid and legally binding agreement of such Party, enforceable in accordance with its terms against such Party, except as such enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws relating to creditors' rights generally, by general equitable principles and by any implied covenant of good faith and fair dealing.

(c) The execution and delivery of this Agreement by such Party and the performance of its duties and obligations hereunder do not result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, credit agreement, note or other evidence of indebtedness, or any lease or other agreement, or any license, permit, franchise or certificate to which such Party is a party or by which it is bound or to which any of its property is subject, or require any authorization or approval under or pursuant to any of the foregoing, or violate any statute, regulation, law, order, writ, injunction, judgment or decree to which such Party is subject.

(d) There is no consent, approval or authorization of, or filing, registration or qualification required to be obtained from or made to any court or governmental authority on the part of such Party for the execution and delivery of this Agreement by such Party and the performance of its obligations and duties hereunder which has not been obtained other than the approval of the South Carolina State Fiscal Accountability Authority and the Board of Directors of Owner.

(e) To each Party's knowledge, there is no pending or threatened litigation or other proceeding pertaining to the Property.

Section 10. Miscellaneous.

(a) Assignment. Owner may not assign this Agreement. Developer may not assign or otherwise transfer all or any portion of its interest in this Agreement or delegate its duties hereunder without the prior written consent of Owner; *provided, however*, Developer shall have the right to assign its interest hereunder to an Affiliate of Developer without the prior written consent of Owner. In the event of an assignment of Developer's interest hereunder, Developer shall not be released from liability. An "Affiliate" refers to any entity which is directly controlled or under common control of the Developer such that the Developer maintains the power to direct or to cause the direction of the management or policies of such entity, whether through ownership of voting securities or other ownership interests, by contract or otherwise.

(b) Liability of the Parties. No Party shall be liable, responsible or accountable in damages or otherwise to the other Party for (i) any act performed by it in good faith within the scope of authority conferred on such Party by this Agreement, except for the gross negligence or willful misconduct of such Party (or its Affiliate or any officers, directors, employees, agents or representatives of such Party or such Affiliate) in carrying out its obligations hereunder, (ii) such Party's performance of, or failure to perform, any act on the reasonable reliance on advice of legal counsel retained in accordance with the terms hereof or (iii) the negligence, dishonesty or bad faith of any agent, consultant or broker of a Party selected, engaged or retained in good faith and in accordance with the terms hereof.

(c) No Constraint on Competition. Developer may engage in other activities for profit, whether in the real estate business or otherwise, including, without limitation, the ownership, operation, development, leasing and/or management of other properties similar to the Project, including those of a competitive nature, and may in the future enter into development, management, and leasing agreements or participate in partnerships or other ventures for such purposes. Owner shall not have any right by virtue of this Agreement in or to such independent ventures or to the income or profits derived there from.

(d) Notices. All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and delivered personally or by certified mail, return receipt requested, postage prepaid, by e-mail, or by overnight courier (such as Federal Express), addressed as follows:

If to Owner:

South Carolina State Ports Authority
200 Ports Authority Drive
Mount Pleasant, SC 29464
Attn: James I. Newsome, III
Telephone: (843) 577-8608
Email: JNewsome@SCSPA.com

With a copy to:

South Carolina Ports Authority
Attn: General Counsel
200 Ports Authority Drive
Mount Pleasant, SC 29464
Telephone: (843) 577-8765
Email: rlowell@scspa.com

If to Developer:

Lowe Enterprises Real Estate Group
Attn: Dan Battista
5757 Palm Boulevard
Isle of Palms, SC 29451
Telephone: (843) 886-2068
Email: dbattista@lowe-re.com

and

Lowe Enterprises Real Estate Group
Attn: General Counsel
11777 San Vicente Blvd
Los Angeles, CA 90049
Telephone: (310) 571-4286
Email: jdemarco@lowe-re.com

With a copy to:

Nelson Mullins Riley & Scarborough LLP
Attn: Jay S. Claypoole
151 Meeting Street, Suite 600
Charleston, South Carolina 29201
Telephone: (843) 534-4211
Email: jay.claypoole@nelsonmullins.com

If such notice is given in person, via courier or via email, such notice will be deemed to have been received, on the earlier of, when actually received, when delivered to the street address set forth above or when sent to the email address set forth above. If such notice is given by overnight delivery service, such notice will be deemed received one business day after the notice is delivered to the overnight delivery service prior to the specified delivery deadline for next business-day

service, specifying an address to which such service makes overnight deliveries. If such notice is given by certified mail, such notice will be deemed received three (3) days after a certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any notice, however delivered, that is confirmed or acknowledged (excluding any automatically generated electronic acknowledgment) by a party above to have been received by such party is effective notice.

(e) Entire Agreement; Amendments; Governing Law. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and negotiations with respect thereto. This Agreement may be amended only by a written instrument signed by both parties. This Agreement shall be governed by the laws of the State of South Carolina.

(f) No Drafting Presumption. In interpreting the provisions of this Agreement, no presumption shall apply against any Party that otherwise would operate against such Party by reason of such document having been drafted by such Party or at the direction of such Party or an Affiliate of such Party.

(g) Severability. If any provision in this Agreement is held to be unenforceable, the remainder of this Agreement shall continue in full force and effect and, to the extent permitted by law, this Agreement shall be interpreted so as to give effect to the original written intent of the parties. If any portion of a provision is held to be unenforceable, the remainder shall be enforced to the maximum extent so as to give effect to the original written intent of the parties.

(h) Attorneys' Fees. In any litigation between the Developer and Owner, the prevailing party shall receive from the non-prevailing party all of its costs and fees to the extent permitted by law.

(i) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(j) Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original of this Agreement but all of which, taken together, shall constitute one and the same agreement.

(k) Pronouns. The pronouns used in this Agreement referring to Developer or Owner shall be understood and construed to apply whether such party is an individual, partnership, corporation, limited liability company or other business entity or an individual or individuals doing business under a firm or trade name, and the masculine and neuter pronouns shall each include the other and may be used interchangeably with the same meaning.

(l) Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

(m) No Waiver. The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed as waiver of such terms and conditions on any

future occasion. No waiver shall be implied by any isolated or repeated action or non-action. To be effective, any waiver must be in writing executed by the party to be bound thereby.

(n) No Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the parties hereto and their permitted successors and assigns and are not for the benefit of any other person or entity.

(o) Further Assurances. Each party agrees to execute, acknowledge, deliver, file, record and publish such further instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the purposes and intent of this Agreement.

(p) Force Majeure. In the event that either Party is temporarily unable to perform any obligations under this Agreement, in whole or in part, or in the event that any information with respect to the Property or the Project becomes unavailable or unattainable from independent third-parties, in each case, due to a Force Majeure Event (as hereinafter defined), then the time for performing such obligations and/or obtaining such information will be extended until such time (i) as the Force Majeure Event has been resolved or otherwise mitigated or eliminated, such that such obligation can then be performed or information obtained, or (ii) as mutually agreed by Developer and Owner. The Party claiming the existence of a Force Majeure Event shall provide to the other Party prompt written notice and reasonable evidence of the occurrence of such Force Majeure Event, and shall use reasonable efforts as may be necessary or appropriate to mitigate, avoid, or lessen the adverse effects of such Force Majeure Event, as it may relate to the performance of obligations hereunder. Until such Force Majeure Event is so resolved, mitigated, or eliminated (as reasonably determined by the Party claiming the existence of a Force Majeure Event) or until expiration of the time period mutually agreed by Developer and Owner, the Party claiming the existence of a Force Majeure Event shall not be deemed to be in default under or in breach of any provision of this Agreement. As used herein, a "Force Majeure Event" shall mean any cause beyond the reasonable control of the Party claiming the existence of a Force Majeure Event, including, but not limited to: (i) acts of God, acts of war, unusual adverse weather conditions, acts of terrorism, civil disturbance, governmental action, governmental shut-downs, strikes, fire, flood, typhoon, walkouts or lock-outs or other labor disputes; (ii) the occurrence of any pandemic, epidemic, or prevalent disease or illness with an actual or probable threat to human life; (iii) adherence to any travel restriction, warning, advisory issued in relation thereto, or any government shut-down by any local, city, county or state governmental entities, as applicable, or the federal government of the United States; or (iv) any quarantine, isolation, or similar measure taken in relation thereto by any governmental agency or authority to prevent the spread of any communicable disease.

(q) WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES HERETO.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the undersigned have duly executed this Development Services Agreement.

LOWE:

LOWE ENTERPRISES REAL ESTATE GROUP, a California corporation

By: _____

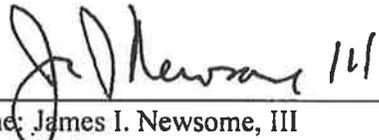
Name: Christopher Currie
Title: Senior Vice President, CFO

By: _____

Name: Dan Battista
Title: Senior Vice President

AUTHORITY:

SOUTH CAROLINA STATE PORTS AUTHORITY

By:  _____

Name: James I. Newsome, III
Title: Chief Executive Officer

EXHIBIT A

PROPERTY

All those certain pieces, parcels and tracts of land, located in the City of Charleston, State of South Carolina, and described as follows:

Parcel #1:

TMS No.: 459-00-00-009

Address: 186 Concord Street, Charleston, SC 29401 (49.4 acres, more or less)

AND

Parcel #2:

TMS No.: 458-05-04-015

Address: 238 East Bay Street, Charleston, SC 29401 (3 acres, more or less)

AND

Parcel #3:

TMS No.: 458-05-04-016

Address: 246 East Bay Street, Charleston, SC 29401 (3 acres, more or less)

AND

Parcel #4:

TMS No.: 458-01-04-014

Address: Concord Street, Charleston, SC 29401 (2.83 acres, more or less)

AND

Parcel #5:

TMS No.: 458-01-04-005

Address: 19 Concord Street, Charleston, SC 29401 (8.3 acres, more or less)

AND

Parcel #6:

TMS No.: 458-01-04-006

Address: Marsh Street, Charleston, SC 29401 (0.2 acres, more or less)

AND

Parcel #7:

TMS No.: 458-01-04-025

Address: Laurens Street, Charleston, SC 29401 (0.064 acres, more or less)

AND

Parcel #8:

TMS No.: 458-01-04-024

Address: Laurens Street, Charleston, SC 29401 (0.4 acres, more or less)

AND

Parcel #9:

TMS No.: 458-01-04-009

Address: Concord Street, Charleston, SC 29401 (0.53 acres, more or less)

AND

Parcel #10:

TMS No.: 458-01-04-007

Address: Concord Street, Charleston, SC 29401 (1.5 acres, more or less)

EXHIBIT B

ENTITLEMENT BUDGET¹

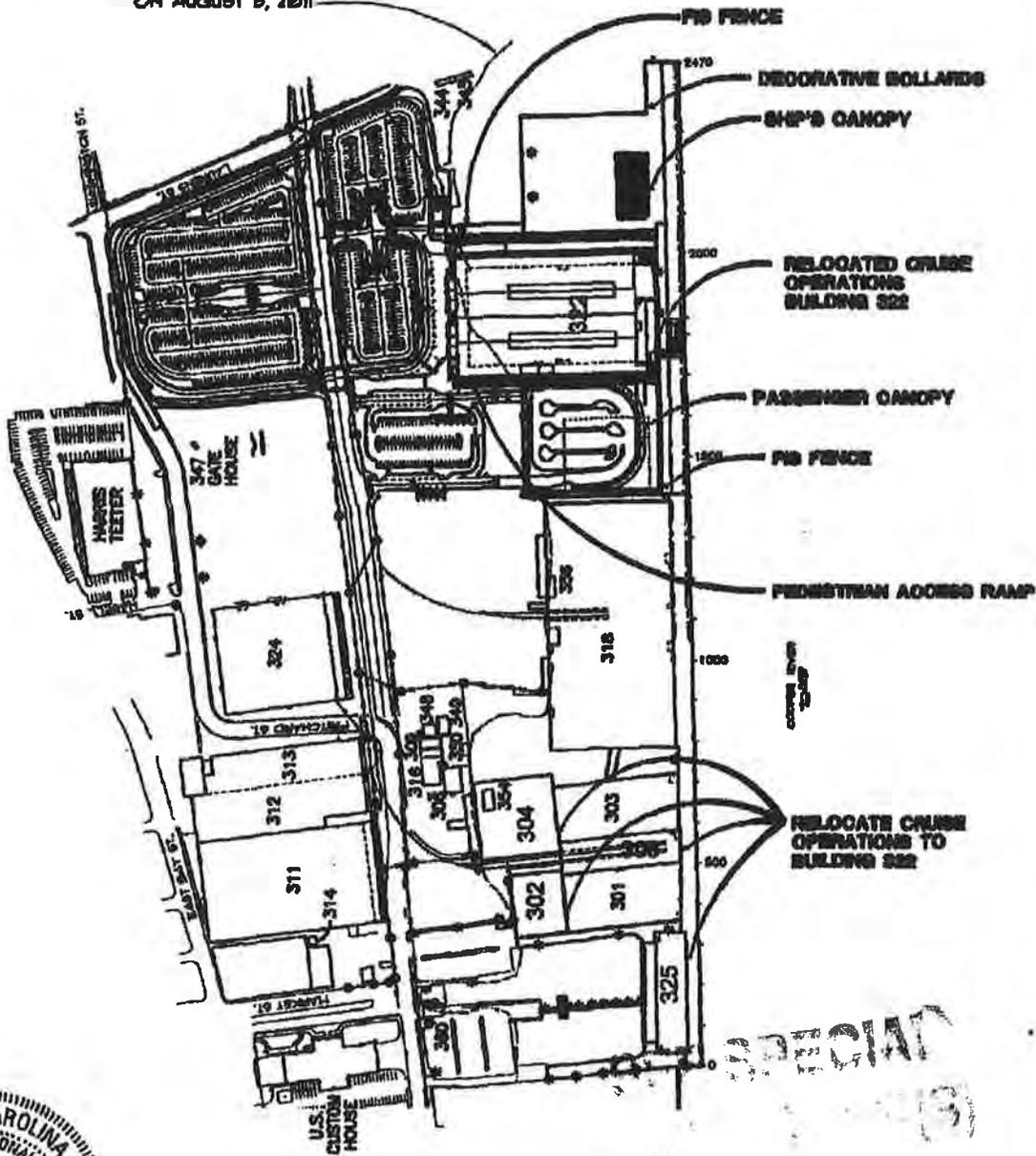
Due Diligence Costs	Total
Legal	
Survey/Title Legal	55,000
Environmental Legal	30,000
Zoning/PUD Legal	20,000
Reimbursables	10,000
Total Legal	115,000
Design & Engineering/Physical	
Upland Survey	75,000
Environmental Phase I	21,000
Asbestos & Lead Paint Study	45,000
Archeological/Historical Assessment	12,500
Initial Appraisal	30,000
Total Design & Engineering/Physical	183,500
Contingency	50,000
Total Due Diligence Costs	348,500

¹ This budget reflects the approximate costs to obtain an Initial Appraisal of the Property. An Entitlement Services Budget will be provided in accordance with Section 1, (a), (ii), 14, of this Agreement.

EXHIBIT C

PROPERTY FOR CRUISE INDUSTRY

DHEC/OCRM CRITICAL LINE
 LOCATED JUNE 2011
 APPROVED BY S. BROOKS
 ON AUGUST 9, 2011



**NEW BUILDING LOCATION PLAN
 UNION PIER TERMINAL**

South Carolina State **PORTS AUTHORITY**
 176 CONCORD STREET
 P.O. BOX 22287
 CHARLESTON, S.C. 29413-2287

OCRM-12-054-B
 PROJECT NO.: CF11E006B
 FILE NAME: Upcpts
 DATE: MARCH 2012
 SHEET: 3 OF 11

SECRET

**STATE FISCAL ACCOUNTABILITY AUTHORITY
AGENDA ITEM WORKSHEET**

Meeting Scheduled for: October 13, 2020

Regular Agenda

1. Submitted by:

- (a) Agency: Department of Administration
- (b) Authorized Official Signature:



Ashlie Lancaster, Director

2. Subject: Real Property Conveyance – Union Pier Terminal

3. Summary Background Information:

The SC State Ports Authority (Port) requests approval to dispose of surplus property consisting of approximately 69.2 acres known as the Union Pier Terminal. The Union Pier Terminal (UPT) has been used for different types of commercial shipping for more than 100 years. UPT also has accommodated passenger vessel calls for nearly 100 years. Passenger vessels, including cruise vessels, have called on the cruise terminal at UPT every year since 1973.

The Port has declared the UPT property as unnecessary for future operations or to carry out its purposes and approved the engagement of the Lowe Enterprises Real Estate Group (Lowe) to provide services to entitle, market, and effectuate the sale of the UPT property. The Port is currently finalizing negotiations with Lowe for a disposition services agreement and a property agreement. The parties are continuing to negotiate the details of the property agreement. A copy of the contract in substantive form will be provided as soon as these details are substantively finalized.

The sale of the UPT property is anticipated to occur with individual parcels after entitlement. The proceeds from the sale of the property will be retained by the State Ports Authority pursuant to 2019-2020 Appropriations Bill H.4000, Part 1B, §93.15.

- 4. What is the Authority asked to do?** Consider approval of the SC State Ports Authority's proposed property conveyances as requested at not less than pre-entitlement cumulative appraised values and the right of first refusal for Lowe Enterprises Real Estate Group.
-

5. What is recommendation of the division of Facilities Management and Property Services? Consider approval of the SC State Ports Authority's proposed property conveyances as requested at not less than pre-entitlement cumulative appraised values and the right of first refusal for Lowe Enterprises Real Estate Group.

6. Private Participant Disclosure – Check one:

- No private participants will be known at the time the Authority considers this agenda item.
- A Private Participant Disclosure form has been attached for each private participant.
As referenced on the Disclosure forms, a private participant is a natural person or non-governmental legal entity which may directly benefit from, and is participating in or directly associated with, the requested approval.
-

7. Recommendation of other office (as required)?

- (a) Authorized Signature: _____
- (b) Office Name: Click or tap here to enter text.
-

8. List of Supporting Documents:

- (a) Letter from Randolph R. Lowell of Willoughby & Hoefler, P.A., General Counsel for the SC State Ports Authority dated September 11, 2020
- (b) SC State Ports Authority Resolution Authorizing Professional Services Agreement with Lowe Enterprises Real Property Group
- (c) SC Code of Laws Section 54-3-155
- (d) 2019-2020 Appropriations Bill H4000, Part 1B, Proviso 93.15
-

9. Upload Agenda Item Worksheet and supporting documentation in PDF and native format to the SFAA Authority File Drop.

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
CHAD N. JOHNSTON
JOHN W. ROBERTS
ELIZABETH ZECK*
ELIZABETHANN L. CARROLL
ANDREW J. D'ANTONI
R. WALKER HUMPHREY, II***
ANDREW R. HAND****
J. JOSEPH OWENS

ELIZABETH S. MABRY
J. PATRICK HUDSON
OF COUNSEL

JOSEPH H. FARRELL, III
SPECIAL COUNSEL

*ALSO ADMITTED IN TEXAS
**ALSO ADMITTED IN WASHINGTON, D.C.
***ALSO ADMITTED IN CALIFORNIA
****ALSO ADMITTED IN NORTH CAROLINA

September 11, 2020

Mr. Delbert Singleton
State Fiscal Accountability Authority
Wade Hampton Building, Ste 600
Columbia, SC 29201

Ms. Ashlie Lancaster
South Carolina Department of Administration
1200 Senate Street, Ste. 460
Columbia, SC 29201

Dear Mr. Singleton and Ms. Lancaster:

The purpose of this letter is to notify you of the intention of the South Carolina State Ports Authority (Port) to seek the approval of the State Fiscal Accountability Authority (SFAA) and/or the South Carolina Department of Administration (DOA) for the sale of certain real property located in Charleston County, South Carolina. A Real Property Transaction Submission & Approval Form relating to this request is attached as **Exhibit A**.

By way of a brief background and introduction, the Union Pier Terminal (UPT) has been used for different types of commercial shipping for more than 100 years. UPT also has accommodated passenger vessel calls for nearly 100 years. Passenger vessels—including cruise vessels—have called on the cruise terminal at UPT every year since 1973.

Through a resolution adopted by the Port Board on March 17, 2020, a copy of which is attached as **Exhibit B**, the Port declared the UPT property as unnecessary for future operations or to carry out its purposes and approved the engagement of the Lowe Enterprises Real Estate Group¹ (Lowe) to provide services to entitle, market, and effectuate the sale of the UPT property.² The Port is currently finalizing negotiations with Lowe for a disposition services agreement and a property agreement (Property Agreement). The parties are continuing to negotiate the details of the Property Agreement. A copy of the contract in substantive form will be provided as soon as these details are substantively finalized.

¹ A copy of the Private Participant Disclosure—Legal Entity form will be provided as soon as available.

² This is subject to accommodating a cruise terminal at UPT, either in the existing facility or a new facility that currently being permitted.

OFFICES:

COLUMBIA | 930 RICHLAND STREET, COLUMBIA, SC 29201 | 803.252.3300 FAX 803.256.8062
CHARLESTON | 133 RIVER LANDING DRIVE, SUITE 200, CHARLESTON, SC 29492 | 843.619.4426 FAX 843.619.4490

However, the substantive deal terms are generally as follows:

1. Lowe will provide the services necessary to entitle the UPT property.
2. An appraisal will be performed to establish a pre-entitlement value.
3. As partial consideration for the entitlement and disposition services, Lowe will have a right of first refusal for the sale of any parcel of the UPT property.
4. As partial consideration for the entitlement and disposition services, Lowe will be paid 20% of the sale price that exceeds the pre-entitlement value for any parcel of the UPT property.³

Although the specific boundaries may be slightly modified in order to accommodate a final development plan upon entitlement of the UPT property, which is still under review, the primary boundaries for the UPT property is reflected on the plats and in the deeds and related documents attached as **Exhibit C**. In addition, this property sale agreement will be approved by the Port Board at its next scheduled Board meeting on September 23, 2020.

The sale of the UPT property is anticipated to occur with individual parcels after entitlement. The Port seeks approval of the right of first refusal for Lowe and for the future sale of all these individual parcels as they occur, so long as the cumulative sales price of the parcels exceeds the pre-entitlement value established by an appraisal.

Furthermore, the Port further notes that the property sale, for which the Port is presently seeking approval, will be undertaken with the resources available to the Port and has not impacted and will not impact the State's General Fund.

Accordingly, and as more fully described above, the Port respectfully requests that SFAA and/or the DOA approve the property sale.

Thank you for your assistance with this matter and, if you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,

WILLOUGHBY & HOEFER, P.A.



Randolph R. Lowell

³ For example, if the pre-entitlement value of a parcel is \$1,000,000 and after entitlement it sells for \$2,200,000, then the Port will retain \$1,960,000 and Lowe will be paid \$240,000 (the \$1,200,000 differential times 20%).

**RESOLUTION OF THE SOUTH CAROLINA STATE PORTS AUTHORITY
AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT
WITH LOWE ENTERPRISES REAL PROPERTY GROUP**

WHEREAS, the South Carolina State Ports Authority has, as its mission and purposes, among others, to contribute to the economic development of South Carolina by fostering and stimulating waterborne commerce, including both cargo and passengers, to develop and improve the harbors or seaports of the State and to construct, equip, maintain, develop and improve such harbors or seaports and their port facilities, to the increase of waterborne commerce, foreign and domestic, through such harbors and seaports;

WHEREAS, the South Carolina State Ports Authority, among its powers, may rent, lease, buy, own, exchange, acquire, mortgage, and dispose of such property, real or personal, as the Authority may deem proper to carry out its purposes;

WHEREAS, the South Carolina State Ports Authority has title interest in certain parcels of real property in the County of Charleston, South Carolina, comprising the Union Pier Terminal and supporting parcels, referred to herein as the "Property";

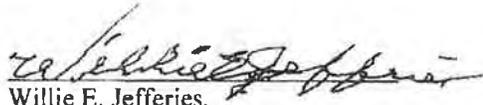
WHEREAS, the South Carolina State Ports Authority has determined that the Property is not necessary for future operations of the South Carolina State Ports Authority's terminals or to carry out its purposes as set forth in Section 54-3-130 of the South Carolina Code of Laws;

WHEREAS, the South Carolina State Ports Authority seeks to have the Property entitled and offered, in whole or in part, for sale; and

NOW THEREFORE BE IT RESOLVED, that the Board of the South Carolina State Ports Authority, in a meeting duly assembled, authorizes the South Carolina State Ports Authority's President and Chief Executive Officer, James I. Newsome, III, in consultation with Board Member Bill H. Stern, to take any and all steps and do any and all things necessary, including the execution of all contracts and documents, including but not limited to a services agreement, to provide that Lowe Enterprises Real Estate Group or an affiliate shall entitle the Property, and to take any and all steps and do any and all things necessary to effectuate the marketing and sale(s) of the Property, in whole or in part, with such sale(s) of the Property being subject to final approval by the Board and the State Fiscal Accountability Authority.

ADOPTED at the regular meeting of Board of Directors of the South Carolina State Ports Authority held March 17, 2020.

WITNESS the hand and seal of the Secretary of the South Carolina State Ports Authority.


Willie E. Jefferies,
Secretary

SECTION 54-3-155. Sale of real property, building, terminals, or other permanent structures.

Without prior approval from the State Fiscal Accountability Authority or the Department of Administration, as applicable, the authority may not sell any real property or any buildings, terminals, or other permanent structures, excluding equipment, appurtenant to real property that are or may be used to carry out the purposes of the authority as provided in Section 54-3-130.

HISTORY: 2009 Act No. 73, Section 8, eff June 16, 2009.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

South Carolina General Assembly
123rd Session, 2019-2020

H. 4000
General Appropriations Bill for fiscal year 2019-2020
As Ratified by the General Assembly

PART IB

OPERATION OF STATE GOVERNMENT

SECTION 93 – D500-DEPARTMENT OF ADMINISTRATION

93.15. (DOA: Sale of Surplus Real Property) Up to fifty percent of the proceeds, net of selling expenses, from the sale of surplus real properties shall be retained by the Department of Administration and used for the deferred maintenance of state-owned buildings. The remaining fifty percent of the net proceeds shall be returned to the agency that the property is owned by, under the control of, or assigned to and shall be used by that agency for nonrecurring purposes. This provision applies to all state agencies and departments except: institutions of higher learning; the Public Service Authority; the Ports Authority; the MUSC Hospital Authority; the Myrtle Beach Air Force Redevelopment Authority; the Department of Transportation; the Columbia State Farmers Market; the Department of Agriculture's Columbia Metrology Lab building and property; the Charleston Naval Complex Redevelopment Authority; the Department of Commerce's Division of Public Railways; the Midlands Technical College Enterprise Campus Authority; the Trident Technical College Enterprise Campus Authority; the Commissioners residence at the Department of Corrections and the Educational Television Commission's Key Road property.

The Educational Television Commission shall be authorized to retain the net proceeds from the sale of its property on Key Road, and such proceeds may be used for the renovation of the ETV Telecommunications Center and other maintenance and operating expenses. If it is determined that sufficient net proceeds are not to be derived from the sale of its property on Key Road to cover the cost of all renovations of the Telecommunications Center, the property on Key Road shall not be sold. Any proposed sale hereunder shall, prior to said sale, be submitted to the Department of Administration for approval as being in compliance with the requirements of this subsection.

The Department of Corrections shall be authorized to retain the net proceeds from the sale of the residence provided for the Commissioner of the Department of Corrections and use such proceeds for deferred maintenance needs at the Department of Corrections.

The Forestry Commission shall be authorized to retain the net proceeds from the sale of surplus land for use in firefighting operations and replacement of firefighting equipment.

The Department of Natural Resources shall be authorized to retain the net proceeds from the sale of existing offices originally purchased with a federal grant or with restricted revenue from hunting and fishing license sales for the improvement, consolidation, and/or establishment of regional offices and related facilities.

The Department of Agriculture, the Educational Television Commission, the Department of Corrections, the Department of Natural Resources, and the Forestry Commission shall annually submit a report, within sixty days after the close of the fiscal year, to the Senate Finance Committee and the House Ways and Means Committee on the status of the sale of the identified property and a detailed accounting on the expenditure of funds resulting from such sale.

This provision is comprehensive and supersedes any conflicting provisions concerning disposition of state-owned real property whether in permanent law, temporary law or by provision elsewhere in this act.

Any unused portion of these funds may be carried forward into succeeding fiscal years and used for the same purposes.