

STATE OF SOUTH CAROLINA                    )  
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 COUNTY OF BERKELEY                        )

**SECOND AMENDMENT TO THE  
 FOXBANK COMMERCIAL TRACT  
 DEVELOPMENT AGREEMENT**

This **SECOND AMENDMENT TO THE FOXBANK COMMERCIAL TRACT DEVELOPMENT AGREEMENT** (the “Second Amendment”) is made and entered into as of the \_\_\_ day of December, 2021, by and among **FOXBANK COMMERCIAL DEVELOPMENT, LLC**, a South Carolina limited liability company (“Foxbank” or “Property Owner”) and **THE TOWN OF MONCKS CORNER**, a political subdivision of the State of South Carolina (the “Town”).

**RECITALS**

**WHEREAS**, Property Owner and the Town entered into that certain Foxbank Commercial Tract Development Agreement, dated as of October 13, 2008, and recorded in Volume 7613, Page 1 of the Berkeley County Register of Deeds Office (the “ROD”) (the “Original Agreement”) as amended by that certain First Amendment to the Foxbank Commercial Development Agreement effective October 28, 2009, and recorded office of the ROD in Volume 8181, Page 89 (the “First Amendment” and together with the Original Agreement, the “Development Agreement”); and

**WHEREAS**, the Development Agreement provided that the Town would reimburse Property Owner for transportation impact fees collected pursuant to Berkeley County Ordinance No. 06-11-75; and

**WHEREAS**, Berkeley County Council repealed Ordinance No. 06-11-75, the Berkeley County Transportation Impact Fee Ordinance, thereby terminating the imposition and collection of traffic impact fees within Berkeley County; and

**WHEREAS**, Town agrees to provide certain development incentives to reimburse Property Owner for the cost of certain infrastructure improvements, and to mitigate the Property Owner’s cost of the annexation into the Town of Moncks Corner; and

**WHEREAS**, there was an error in Exhibit A of the First Amendment, and both Property Owner and Town desire to correct the error; and

**WHEREAS**, the revised Exhibit B to the First Amendment was erroneously excluded and both Property Owner and Town desire to include Exhibit B; and

**WHEREAS**, pursuant to the Code of Laws of South Carolina Section 6-31-60, the Town conducted a public hearing regarding its consideration of this Amendment on \_\_\_\_\_, 2021, after publishing and announcing notice; and

**WHEREAS**, the Town, acting by and through Town Council, adopted Ordinance Number on \_\_\_\_\_, 2021, approving this Amendment.

**NOW, THEREFORE**, in consideration of the foregoing and the terms and conditions set forth in this Amendment, the receipt and sufficiency of such consideration being acknowledged by the parties, and pursuant to the South Carolina Local Government Development Agreement Act, codified as S.C. Code §§ 6-31-10 to -160, the parties to this Amendment, intending to be legally bound, agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by this reference.

2. Future Road Improvements. Section 13(b) of the Development Agreement is hereby deleted in its entirety and replaced with the following:

Future Road Improvements. The Parties agree that in order to more effectively accommodate the vehicular traffic associated with the known development plans for the region, including the Project, additional road improvements shall be a top priority. As such, the Property Owner agrees to perform regular Traffic Impact Analyses in order to ensure that road improvements are made at such time they are warranted. Such analyses will include an eight (8) hour traffic signal warrant analysis for the intersection of Foxbank Plantation Boulevard and U.S. Highway 52 (the “Intersection”) and must be performed while school is in session. Such analyses are required at the following times; provided, however, that no more than one traffic study is required per year:

- (1) Foxbank shall provide a recent Traffic Impact Analysis by December 31, 2021. This TIA must incorporate all existing and permitted future development (i.e. Heartland Dental) and must be an 8 hour warrant analysis performed while school is in session and Parker’s is open.
- (2) At such time as the Property Owner applies for a building permit of 30,000 SF or more of gross floor area for one tenant.
- (3) At such time as the Property Owner reaches 25%, 50%, and 75% of the total acreage of 45.09 acres being developed.

The analyses shall be reviewed by SCDOT and the Property Owner shall be responsible to construct any improvements or mitigations required by SCDOT at their own expense, but subject to reimbursement by the terms of paragraph 4, below. Property Owner agrees to construct a traffic signal at the Intersection, which meets the Town’s design for mast arms, subject only to SCDOT approval. Design, engineering, and construction of said signal must occur in a timely fashion. Upon the completion of the installation of the traffic signal, the Town or SCDOT shall accept, operate, and maintain the traffic signal, and the Property Owner shall be released from all obligations, responsibility and liability for the traffic signal. Any delay in intersection improvements caused by the Property Owner may result in the Town withholding permits or Certificates of Occupancy to projects located on the property. At such time as a Traffic Impact Analysis is required by this amendment, no building permits shall be issued for any projects on the property until such time as the analysis is complete, reviewed by SCDOT, and measures are in place to meet any required improvements or mitigations.

3. Traffic Impact Fees. Section 13(c) of the Development Agreement is hereby deleted in its entirety.

4. Infrastructure Reimbursement. A new Section 12(d) is hereby added to the Development Agreement to read as follows:

(i) In order to achieve the Town’s goals of expanding the number of its citizens, land mass, property taxes, sales tax revenue, services and infrastructure capacity, the Town will reimburse the Property Owner up to 100% of the costs of public infrastructure, including but not limited to the costs of roads, sidewalks, off-site infrastructure improvements, traffic control devices, water and sewer infrastructure and any cost of engineering described in the following paragraph (the “Costs”) that has been, or is intended to be, accepted by, and therefore under, or to be under, the ownership of, Berkeley County, Berkeley County Water and Sewer, SCDOT, or the Town of Moncks Corner, from revenues generated by the property taxes of the increased property values (the “Tax Increment”). In determining the Tax Increment, the initial property value shall be that value for tax year 2018 as shown on Exhibit H, attached hereto and incorporated hereinby

reference (the “Initial Assessed Value”). Upon re-assessment or sale of a portion of the Real Property (Real Property to include all properties in the initial 45.09 acre tract(s) whether or not still owned by Foxbank) (the “Re-Assessment”), the Town shall establish a new property value for the Property (the “Re-Assessed Value”). Foxbank shall receive the Tax Increment generated by all Re-Assessed Values of the Property no later than April 15 of each year until it is fully reimbursed for the Costs or the end of this Agreement, whichever comes first.

(ii) Foxbank shall submit documentation of the expenses for which it is seeking reimbursement to the Town no later than January 31 for expenditures occurring in the previous year. The Town will engage a third party qualified engineering firm to review the reimbursement request for cost reasonableness and applicability to the above paragraph at Foxbank’s expense, and shall provide its determination of eligible expenses within sixty (60) days of receipt. The cost of each review shall not to exceed \$1,000. Once a reimbursement request is approved, the request will not need to be re-evaluated and shall be approved for funding until Property Owner is paid in full or this Agreement terminates.

(iii) Should the Town or its engineering representative require additional information, clarification, or any adjustments to the reimbursement request; the Town shall have an additional 30 days from the receipt of the above from Foxbank to make its determination and submit reimbursement.

(iv) If the Town’s determination differs from the third-party qualified engineering firm, Foxbank may appeal the Town’s determination to Town Council.

5. Term of the Agreement. Section 15 of the Development Agreement is amended and restated in its entirety to read as follows:

15. Term of the Agreement. This Agreement shall expire upon Property Owner’s receipt of the fifth (5<sup>th</sup>) anniversary of the Effective Date of this Agreement, as defined below (the “Termination Date”); provided, however, that the terms of this Agreement shall automatically renew for one (1) successive five (5) year payment period absent a material breach of any terms of the Agreement pursuant to S.C. Code Section 6-31-40, by the Property Owner during the initial term or renewal term as applicable. The first year of expenditures to be submitted by Foxbank shall be for the 2022 calendar year; which shall be reimbursed by the Town no later than April 15, 2023.

6. Revised Exhibits. Exhibits shall be revised as follows:

(i) Town and Property Owner agree to replace Exhibits A and B, respectively, to the Development Agreement and place in their stead new Exhibits A and B, a copy of said new Exhibits being attached to this Amendment as Exhibits A and B, and incorporated herein by reference.

(ii) The following line shall be stricken from Exhibit G: All commercial structures will be required to be approved by Foxbank Ventures, LLC.

(iii) Furthermore, the Property Owner agrees to attach an illustrated development plan to Exhibit G, showing the overall concept of the development at build-out. This plan will show structures with anchor tenants, outparcels, streets, parking, stormwater ponds and approximate square feet of commercial space at build-out. Town acknowledges that the development plan is conceptual in nature and is subject to change as the market dictates.

(iv) The Exhibit G Land Use Chart Footnote #5 shall be amended to state the following: A maximum of 50 multi-family units may be developed in Tract P-2. Multi-Family

units may be for rent or for sale and shall be listed at market rates.

7. Effective Date. The Effective Date of this Agreement shall commence on May 1, 2022.

8. Effect. Terms and provisions of the Development Agreement that are not expressly modified by this Second Amendment shall remain in full force and effect. All of the provisions of the Development Agreement affected by this Second Amendment shall be deemed amended, whether or not actually specified herein, if such amendment is clearly necessary to effectuate the intent of the parties hereto. The Development Agreement, as modified hereby, is hereby ratified and approved in all respects.

9. Final Agreement. This Second Amendment and the Development Agreement, as amended by the Second Amendment, represent the final agreement between the parties regarding the subject matter hereof and may not be contradicted by evidence of prior, subsequent or contemporaneous oral agreements of the parties. No amendment or modification hereto shall be valid and binding unless expressed in writing and executed by both parties hereto.

10. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall comprise the same instrument.

[SEPARATE SIGNATURE PAGES TO FOLLOW]





**EXHIBIT A**

**Legal Description**

ALL those certain pieces, parcels and tracts of land, together with any improvements located thereon, situate, lying and being in the County of Berkeley, State of South Carolina, containing 38.557 Acres, more or less, in the aggregate, and being identified as **“TMS 211-00-02-001, 3.630 Ac., AND RESIDUAL NEW TRACT 2, 34.927 Ac., TMS 197-00-01-020, TO CREATE NEW TRACT 2, 38.557 Ac., AND THE SUBDIVISION OF RESIDUAL NEW TRACT 2, 38.557 Ac. TMS 197-00-01-020 INTO RESIDUAL NEW TRACT 2, 37.625 Ac. AND PARCEL E, 0.932 Ac.”** as shown and delineated on plat entitled, *“PLAT SHOWING THE PROPERTY LINE ABANDONMENT BETWEEN TMS 211-00-02-001, 3.630 AC., AND RESIDUAL NEW TRACT 2, 34.927 AC., TMS 197-00-01-020, TO CREATE NEW TRACT 2, 38.557 AC., AND THEN SHOWING THE SUBDIVISION OF RESIDUAL NEW TRACT 2, 38.557 AC., TMS 197-00-01-020, INTO RESIDUAL NEW TRACT 2, 37.625 AC., AND PARCEL E, 0.932 AC., ALL PROPERTY OF FOXBANK COMMERCIAL DEVELOPMENT, LLC, LOCATED IN THE TOWN OF MONCKS CORNER, BERKELEY COUNTY, SOUTH CAROLINA,”* prepared by Richard A. Aldridge, SCPLS #20854 of Parker Land Surveying, LLC, dated January 8, 2019 and recorded January 23, 2019, in the Office of the Register of Deeds for Berkeley County in **Plat Cabinet T, Page 100-c**. Said tract of land having such size, shape, dimensions, buttings and boundings, more or less, as will more fully and at large appear by reference to said plat.

TMS No: 197-00-01-020	37.625 Ac.	[Residual New Tract 2]
TMS No: 197-00-01-104	0.932 Ac.	[Parcel E]

**ALSO**

ALL that certain piece, parcel and tract of land, together with any improvements thereon, situate, lying and being in the County of Berkeley State of South Carolina, containing **4.6 Acres, more or less, being identified as “NEW TRACT 1”** as shown and delineated on a boundary plat entitled *“Boundary Survey Showing Portion of TMS 197-00-01-008 Being Subdivided into Tract 1 (4.60 AC.) & Tract 2 (11.58 AC.) About to be Conveyed to Foxbank Commercial Development, LLC”* prepared by Sinclair & Associates, LLC dated September 18, 2007, and recorded on September 19, 2007, at **Plat Cabinet N, Page 127-H**, in the Office of the Register of Deeds for Berkeley County, South Carolina. Said tract of land having such size, shape, dimensions, buttings and boundings, more or less, as will more fully and at large appear by reference to said plat.

TMS No. 197-00-01-031

**EXHIBIT B**

**Boundary Plat**



**EXHIBIT H**

**Assessed Value**

**Initial Assessed Value**

Parcel	Acres	Tax Map #	2018	Moncks Corner	Appraisal	Assessment (6%)
Main and add.	36.86	197-00-01-020	\$43,138.91	\$7,399.97	\$2,158,600	\$129,520
Tharp	3.63	211-00-02-001	\$2,987.60	\$512.48	\$149,500	\$8,970
behind CVS #1	1.85	197-00-01-031	\$12,008.73	\$2,045.35	\$596,700	\$35,800
behind CVS #2	1	197-00-01-086	\$16,395.27	\$2,144.76	\$625,700	\$37,540
CVS	1.75	197-00-01-035	\$10,491.60	\$1,799.70	\$525,000	\$31,500
	<b>45.09</b>			<b>\$13,902.26</b>	<b>\$4,055,500</b>	

**Tax Increment Value for 2021**

Parcel	Acres	Tax Map #	2021	Moncks Corner	Appraisal	Assessment (6%)
Main, add Tharp	35.22	197-00-01-020	\$46,332.63	\$7,650.48	\$2,482,400	\$148,940
Waffle House	0.43	197-00-01-101	\$18,768.60	\$2,607.38	\$846,000	\$50,760
Sunshine House	1.5	197-00-01-102	\$56,462.75	\$8,661.38	\$2,810,400	\$168,620
Foxbank Retail 1	0.99	197-00-01-104	\$21,710.88	\$3,229.46	\$1,047,800	\$62,870
Parker's	1.53	197-00-01-107	\$17,459.95	\$2,734.69	\$887,400	\$53,240
between Parker & WH	0.82	197-00-01-108	\$5,400.47	\$891.76	\$289,300	\$17,360
Randolph #2	1.85	197-00-01-031	\$18,535.18	\$2,966.03	\$962,200	\$57,740
Randolph #1	1	197-00-01-086	\$17,256.18	\$1,932.99	\$627,100	\$37,630
CVS	1.75	197-00-01-035	\$11,306.60	\$1,861.04	\$603,800	\$36,230
	<b>45.09</b>			<b>\$32,535.21</b>	<b>\$10,556,400</b>	

Below is an example of how the Tax Increment is to be determined. 2021 is used as the Tax Increment Value year for this example since it is the latest tax information currently available. However, 2022 shall be the initial Tax Increment Value year as outlined in this Second Amendment. 2018 shall be the base (Initial Assessed Value) year for all calculations.

2021 taxes collected by Moncks Corner	\$32,535.21
2018 taxes collected by Moncks Corner (Initial Assessed Value)	<u>(\$13,902.26)</u>
<b>Tax Increment</b>	<b>\$18,632.95</b>

The rate used to calculate the 2018 taxes owed to the Town of Monck Corner is 361 mills with a credit factor of .001676. This millage rate shall be used for all calculations concerning the increase of valuation until the termination date of this agreement. This ensures that the tax increment reflects increases in the properties' values, not increases in the tax rate. Increased property taxes due to the Town due to increases in millage will be paid to the Town annually while increases due to tax increment will be refunded to the Developer under the terms of this agreement.