

HALSTEAD
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE TOWN OF MONCK'S CORNER, SOUTH CAROLINA,
AND
ASHTON CHARLESTON RESIDENTIAL, LLC

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EXHIBITS

- Exhibit A: Legal Description
- Exhibit A-1: Boundary Survey
- Exhibit B: Conceptual Land Use Plan
- Exhibit C: Development Schedule
- Exhibit D: The Town of Moncks Corner Land Development Regulations Ordinance
- Exhibit E: Development Agreement Ordinance
- Exhibit F: Halstead Planned Development Guidelines
- Exhibit G: Form Partial Assignment

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE TOWN OF MONCKS CORNER, SOUTH CAROLINA,

AND

ASHTON CHARLESTON RESIDENTIAL, LLC

This DEVELOPMENT AGREEMENT (together with the Exhibits attached hereto, the "Agreement") is entered into effective as of the ___ day of _____, 2021 (the "Effective Date"), by and between the Town of Moncks Corner, a political subdivision of the State of South Carolina (the "Town") and Ashton Charleston Residential, LLC, a South Carolina limited liability corporation (the "Property Owner").

RECITALS

This Agreement is predicated upon the following:

I. The Code of Laws of South Carolina (the "S.C. Code") Sections 6-31-10 through 6-31-160, as it exists on the Effective Date of this Agreement (the "Act"), enables local governments to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Act.

II. Pursuant to the Act, the Town conducted public hearings regarding its consideration of this Agreement on _____, 2021, and _____, 2021, after publishing and announcing notice, in accordance with the Act and the current Town of Moncks Corner Land Development Regulations Ordinance adopted October 16, 2012, as amended.

III. The Town Council adopted Ordinance Number _____, thereby rezoning it Planned Development, PD and approving the Halstead Planned Development Guidelines (the "Development Guidelines"). A copy of the Ordinance and Development Guidelines is attached hereto as Exhibit F.

IV. The Town Council adopted Ordinance Number _____ on _____, 2021, (a) determining that this Agreement is consistent with the Town Comprehensive Plan, the Act, and the Current Regulations, hereinafter defined, of the Town, and (b) approving this Agreement. A copy of the Ordinance is attached hereto as Exhibit E.

NOW THEREFORE, in consideration of the premises of this Agreement and the mutual benefits to the parties, the parties agree as follows:

1. Legal Description of the Real Property. The Real Property which is the subject of this Agreement is described as follows:

- (a) A legal description of the Real Property is set forth in Exhibit A.
- (b) A boundary survey of the Real Property is set forth on Exhibit A-1.

The Real Property currently consists of consists of approximately thirty-eight and seventeen thousandths (38.017) acres of highland acres and approximately thirty-one and two hundred ninety-three thousandths (31.293) acres of wetlands, for a total acreage of approximately sixty-nine and twenty-eight hundredths (69.28) acres, as more fully depicted on Exhibit A-1.

The Property Owner may notify the Town from time to time of property proposed to be added to the legal description of Real Property by the filing of a legal description of subsequently acquired properties with the Clerk of Council and the Planning and Zoning Administrator; provided, however, that no other property shall be added to the Agreement unless: (1) the Development Plan is duly amended; and (2) this Agreement is duly amended to add the legal description of the subsequently acquired properties to the legal description of the Real Property, pursuant to S.C. Code Section 6-31-10, et seq.

2. Definitions. In this Agreement, unless the word or phrase is non-capitalized:

(a) “Agreement” means this Development Agreement, including the recitals and exhibits attached hereto.

(b) “Building Development Standards” mean minimum standards for the area, width, building coverage, building setback, and yard requirements for Lots or Development Parcels.

(c) “Comprehensive Plan” means the Town of Moncks Corner Comprehensive Plan, adopted May 16, 2017, as amended through the Effective Date, and adopted pursuant to S.C. Code Section 6-7-510, et seq., 5-23-490, et seq., 6-29-310, et seq., or 4-27-600 and the official map adopted pursuant to S.C. Code Section 6-7-1210, et seq.

(d) “Current Regulations” mean the Comprehensive Plan; Town of Moncks Corner Land Development Regulations Ordinance, adopted October 16, 2012, as amended through the Effective Date, which is attached as Exhibit D, and the Development Guidelines, attached as Exhibit F.

(e) “Development” means the planning for or carrying out of a building activity or mining operation, the making of a material change in the use or appearance of any structure or property, or the dividing of land into three or more parcels, and is intended by the Parties to include all uses of, activities upon or changes to the Real Property as are authorized by the Agreement. This definition does not include commercial timbering, which may continue on Undeveloped Tracts during the Term of this Agreement.

“Development,” as designated in a land or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, “Development” refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(f) “Development Parcel” means any tract of land on which Development may occur, including platted Lots and unplatted parcels, but excluding street rights-of-way and Open Space.

(g) “Development Permit” includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, certificate of occupancy and any other official action of Local Government having the effect of permitting the Development or use of property.

(h) “Dwelling Unit” means one or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit. Dwelling Unit shall not include, however, hotel rooms or other facilities for transient short term stays, assisted living facilities, nursing homes, or other commercial properties.

(i) “Facilities” means major capital or community improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, and potable water.

(j) “Green Space” means areas dedicated to buffers, or naturally occurring or developed wetlands.

(k) “Land Development Regulation” means ordinances and regulations enacted by the Town or the State of South Carolina for the regulation of any aspect of Development and includes the Town’s zoning, subdivision, building construction, occupancy or sign regulations or any other regulations controlling the Development or use of property.

(l) “Law” means all ordinances, resolutions, regulations, comprehensive plans, Land Development Regulations, policies and rules, custom and usage (formal and informal) adopted by a Local Government affecting the Development of property and includes laws governing permitted uses of the property, governing density, and governing design, improvement, and construction standards and specifications.

(m) “Local Government” means any county, municipality, special district, or governmental entity of the State, county, municipality, or region established pursuant to law which exercises regulatory authority over, and grants Development Permits for land Development or which provides public Facilities.

(n) “Lot” means Development Parcel identified in a Subdivision Plat recorded in the Berkeley County Register of Deeds Office.

- (o) “Open Space” means areas dedicated to roadways and Green Space.
- (p) “Parties” means the Property Owner and Town.
- (q) “Parcel” means any of those tracts of Real Property that are identified in Exhibit B, as same may be specifically identified by the filing of a subdivision application.
- (r) “Project” is the Development that will occur within and upon the Property described in Exhibit A and Exhibit A-1.
- (s) “Property Owner” means Ashton Charleston Residential, LLC, a Kentucky limited liability corporation, together with all subsidiaries thereof and other related entities, which have a legal or equitable interest on the date of execution hereof in any of the Real Property as described in Paragraph 5 and includes Ashton Charleston Residential’ successors in interest or successors in title and/or assigns by virtue of assignment or other instrument pursuant to Paragraph 29 hereof.
- (t) “Property Owners Association” means one or more Property Owners Associations that may be established pursuant to Section 12B.
- (u) “Real Property” is the real property referred to in Paragraph 5 and includes any improvements or structures customarily regarded as part of real property.
- (v) “Subdivision Plat” means a recorded graphic description of property prepared and approved in compliance with the Current Regulations, as modified in this Agreement.
- (w) “Undeveloped Lands” in existence on the date of execution of this Agreement is the Real Property indicated on Exhibit A and Exhibit A-1. Undeveloped Lands shall, during the Term of this Agreement, include Real Property that (i) has not received final plat approval or (ii) has received preliminary, conditional or final plat approval but consists of five (5) or more contiguous acres of Real Property, depicted as Lots or parcels thereon, and has not had a building permit issued for it.

3. Compliance with South Carolina Code Section 6-31-60. The Property Owner has an equitable interest in the property by way of its purchase option agreement with Addlestone International Corporation, who is the current fee simple owner of the Property.

4. Relationship of the Parties. This Agreement creates a contractual relationship between the Parties. This Agreement is not intended to create, and does not create, the relationship of master/servant, principal/agent, independent contractor/employer, partnership, joint venture, or any other relationship where one party may be held responsible for acts of the other party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of the Property Owner constitutes “state action” for any purposes.

5. Reserved.

6. Intent of the Parties. The Town and the Property Owner agree that the burdens of this Agreement bind, and the benefits of this Agreement shall inure, to each of them and to their successors in interest and, in the case of the Property Owner, its successors in title and/or assigns. The Town and the Property Owner are entering into this Agreement in order to secure benefits and burdens referenced in S. C. Code Sections 6-31-10 et seq.

7. Consistency with the Town's Comprehensive Plan and Land Development Regulations.
This Agreement is consistent with the Town's Comprehensive Plan and Current Regulations. Whenever express or implied substantive provisions of this Agreement are inconsistent with the applicable standards set forth in the Current Regulations, the standards set forth in the Current Regulations and the standards set forth in this Agreement shall, to the extent possible, be considered in *pari material* to give effect to both the Current Regulations and this Agreement; provided, however, that in the event of a conflict, and subject to the provisions of S.C. Code Section 6-31-80, the standards set forth in this Agreement shall govern. In the event of a dispute between the parties to this Agreement as to whether a provision in the Comprehensive Plan or Current Regulations is inconsistent with express or implied substantive provisions of this Agreement, the parties must first submit such disputed interpretation to Town Council and must wait fourteen (14) days after such submittal before invoking the remedies afforded them under this Agreement.

8. Legislative Act. Any change in the standards established by this Agreement or to Laws pertaining to the same shall require the approval of Town Council, subject to compliance with applicable statutory procedures and consistent with Paragraph 9(a). This Agreement constitutes a legislative act of Town Council. Town Council adopted this Agreement only after following procedures required by S.C. Code Section 6-31-10, et seq. This Agreement shall not be construed to create a debt of the Town as referenced in S.C. Code Section 6-31-145.

9. Applicable Land Use Regulations.

(a) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by S.C. Code Section 6-31-10, et seq., the Laws applicable to Development of the Real Property, subject to this Agreement, are those in force at the time of execution of this Agreement, defined as the Current Regulations. The Town shall not apply subsequently adopted Laws and Land Development Regulations to the Real Property or the Project unless the Town has held a public hearing and has determined: (1) the proposed, subsequent Laws or Land Development Regulations are not in conflict with the Laws or Land Development Regulations governing the Agreement and do not prevent the Development set forth in this Agreement; (2) the proposed, subsequent Laws or Land Development Regulations are essential to the public health, safety, or welfare and the proposed, subsequent Laws or Land Development Regulations expressly state that they apply to a development that is subject to a development agreement; (3) the proposed, subsequent Laws or Land Development Regulations are specifically anticipated and provided for in this Agreement; (4) the Town demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement, which changes, if not addressed by the Town, would pose a serious threat to the public health, safety, or welfare; or (5) this Agreement is based on substantially and materially

inaccurate information supplied by the Property Owner. Nothing herein shall preclude Property Owner from agreeing to abide by such new Laws, regulations, or ordinances subsequently passed by the Town that it, in its sole discretion, deems appropriate; and in such case the Laws, regulations, or ordinances, so agreed to by Property Owner shall become part of the Current Regulations.

(b) Vested Rights. Subject to the provisions of subparagraphs (a) and (b) above, all rights and prerogatives accorded the Property Owner by this Agreement shall immediately constitute vested rights for the Development of the Real Property.

(c) Subparagraphs 9(a) and 9(b) of this Agreement do not abrogate any rights either preserved by S.C. Code Section 6-31-140 or that may have been vested pursuant to common law and otherwise in the absence of a development agreement.

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

11. Local Development Permits and Other Permits Needed. The Parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the Development of the Project:

Zoning permits, plat approvals (preliminary, conditional or final), road and drainage construction plan approvals, building permits, certificates of occupancy, county water and/or sewer development contracts, and utility construction and operating permits.

The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Property Owner of the necessity of complying with all laws governing permit requirements, conditions, terms, or restrictions.

12. Vested Rights Governing the Development of the Real Property.

A. LAND USE

1. Allowable Uses. All uses allowed in the Halstead Planned Development Guidelines as set forth in Exhibit F.

2. Density. The permitted density as set forth in Exhibit F; specifically, Property Owner has a vested right to develop 144 townhome lots.
3. Building Development Standards. The criteria with respect to minimum lot sizes, setbacks, height and impervious coverage are set forth in Exhibit F.
4. Buffers and Signage. The criteria as set forth Exhibit F shall apply with respect to buffers and signage.

B. PROPERTY OWNER’S ASSOCIATION

A Property Owner’s Associations may be established. Membership in the POA will be mandatory for any property owner. The POA will be funded by dues to be established in its recorded restricted covenants. The POA’s responsibility will be to manage the affairs of the MPOA including the enforcement of recorded documents and the maintenance of common areas. The POA’s documents may also establish an Architectural Review Board (ARB) to review and approve all structures and any additions or improvements. This review will be for aesthetic purposes (e.g., height, architectural detail, materials, and colors) and does not replace the building permit review and approval by the Town. The Town agrees that it will not establish an architectural review body during the term of this Agreement that replaces or duplicates the jurisdiction of the ARB as reserved under this paragraph.

C. OPEN SPACE

1. The Property Owner agrees to preserve portions of the Real Property as Open Space pursuant to Section 6-12 of the Town’s Land Development Regulations. Open Space shall be designated on each plat submitted to the Town for final plat approval.
2. Dedication of Open Space. The Property Owner may convey portions of the Open Space to one or more qualified organizations under 26 U.S.C. Section 501(c)(3) in a form required by state or federal law and may subsequently transfer all or portions of such Open Space to such entity. The Property Owner will at all times reserve to itself, its successors, and assigns water rights, easements for access and infrastructure purposes (e.g.: roads, walkways, paths, drainage, utility easements and rights of way) necessary, convenient, or desirable for the Development.

D. FLEXIBILITY OF USES AND TRACTS

The Conceptual Land Use Plan, attached as Exhibit B, of the Project must maintain flexibility to accommodate specific soil conditions, environmental concerns, physical constraints, market conditions, and design parameters. Accordingly, the exact location of boundary lines between tracts, the location and size of land uses indicated within the planned areas, and the preliminary design concepts shall be subject to change as phases of the Conceptual Land Use Plan are submitted for final plan review over the life of the Project; provided, however, that the maximum densities and allowed land uses set forth in this Ordinance shall be strictly adhered to.

E. SUBDIVISION PLAN REVIEW AND APPROVAL

Preliminary Plans and Final Plats for each phase of the Development shall be submitted for review and approved at staff level by the Town Administrative Officer pursuant to the provisions of Current Regulations. However, in instances where submitted plans can show where certain physical constraints impose a hardship, as defined under the South Carolina Code, or show where implementation of alternative method(s) will meet or exceed the intentions of the applicable Town Ordinance, the appropriate Administrative Officer may grant minor variances at staff level (i.e. reductions up to ten (10%) percent of any zoning requirement). Furthermore, Town agrees that within thirty (30) days of Property Owner's submittal of Preliminary Plans and/or Final Plans for each phase, respectively, the Town Staff shall review said plans and respond to Property Owner with comments or notice of approval, as is applicable. If Town responds with comments, the Town agrees to approve Property Owners revised plans, which incorporate and reasonably address said comments, within fifteen (15) days of their submittal.

13. Facilities, Services and Public Uses. Although the nature of this long-term project prevents the Property Owner from providing exact completion dates, the general phases of construction and Development are set forth in Paragraph 15 and described in Exhibit C. The Property Owner certifies that the following services and Facilities will be in place (or if not fully in place, the cost of construction fully bonded or letter of credit posted pursuant to the Current Regulations) at the times provided herein, and as to roads, sewer, and water infrastructure, prior to the date that Certificates of Occupancy are issued by the Town for Dwelling Units, commercial and/or industrial buildings in subdivided real property. Subject to compliance with applicable Laws, all provisions of this Agreement and prior approval of construction plans by the Town or other applicable governmental entity, the Town hereby authorizes the Property Owner, on its own or through its affiliated companies, to install the Facilities. Notwithstanding any provision herein to the contrary, the Property Owner hereby assures the Town that adequate Facilities shall be available concurrent with the impacts of Development.

(a) Rights-of-Way/Easement. The Property Owner shall at its expense develop and provide roads and other related infrastructure within the Project and pursuant to and at such time required by the development plans for the Project and the Current Regulations.

(b) Water and Sewer. Subject to approval by the South Carolina Department of Health and Environmental Control ("DHEC"), the service and Facilities for water and sewer, shall be provided by the Berkeley County Water and Sanitation Department ("BCWS").

(c) Stormwater. Stormwater facilities shall be maintained by the Property Owner; however, Property Owner has the right to assign such maintenance responsibilities to the Property Owners' Association.

14. Traffic Considerations.

(a) Planning. Long-term planning is essential to assuring safe and convenient ingress and egress for the Project. It is equally essential that this planning may be done on a regional basis, which includes other significant developments that are either underway, or soon to commence. The Property Owner is working and will continue to work with all appropriate planning agencies to ensure that the safe ingress and egress for the Project and the surrounding community is addressed.

(b) Future Road Improvements. Property Owner acknowledges and agrees that is responsible for the design, construction, and installation for any roadway improvements required for the Development of the Project. Roads shall be constructed in accordance with Section 4.2 of the Development Guidelines.

(c) Median Plantings. In order to assist the Town with its efforts on landscaping the medians on Highway 52, Property Owner agrees to contribute Three Thousand (\$3,000) Dollars (the “Landscaping Contribution”), which shall be paid within thirty (30) days of receipt of notification from the Town that it has obtained an encroachment permit to install the landscaping.

15. Schedule for Project Development.

(a) Commencement Date. The Project will be deemed to commence Development upon the Effective Date.

(b) Completion Date. The Property Owner projects that by the year 2028 the Project should be substantially completed (i.e., essentially all structures erected and/or all necessary infrastructure in place to serve the intended uses).

16. Term of the Agreement. The Term of this Agreement shall commence on the date this Agreement is executed by the Town and Property Owner and terminate five (5) years thereafter (the “Termination Date”); provided, however, that the terms of this Agreement shall be automatically renewed for one (1) successive five (5) year 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 or any renewal Terms as applicable.

17. Amending or Canceling the Agreement. Subject to the provisions of S.C. Code Section 6-31-80, this Agreement may be amended or canceled in whole or in part only by written mutual consent of the Parties or by their successors in interest.

Any amendment to this Agreement shall comply with the provisions of S.C. Code Section 6-31-10, et seq. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment. Wherever said consent or approval is required, the same shall not be unreasonably withheld. A major modification of this Agreement shall occur only after public notice and a public hearing by the Town.

18. Modifying or Suspending the Agreement. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, the pertinent provisions of this Agreement shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations.

19. Periodic Review. The Mayor or their designee shall review the Project and this Agreement at least once every twelve (12) months, at which time the Property Owner shall demonstrate good-faith compliance with the terms of this Agreement.

If, as a result of its periodic review or at any other time, the Town finds and determines that the Property Owner has committed a material breach of the terms or conditions of this Agreement, the Town shall serve notice in writing upon the Property Owner setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Property Owner a reasonable time in which to cure the material breach.

If the Property Owner fails to cure any material breach within the time given, then the Town unilaterally may terminate or modify this Agreement; provided that the Town has first given the Property Owner the opportunity: (1) to rebut the Town's finding and determination; or (2) to consent to amend this Agreement to meet the concerns of the Town with respect to the findings and determinations.

Severability. Subject to the provisions of S.C. Code Section 6-31-150, if any word, phrase, sentence, paragraph or provision of this Agreement shall be finally adjudicated to be invalid, void, or illegal, it shall be deleted and in no way affect, impair, or invalidate any other provision hereof.

20. Merger. This Agreement, coupled with its Exhibits, which are incorporated herein by reference, shall state the final and complete expression of the Parties' intentions. In return for the respective rights, benefits, and burdens undertaken by the Parties, the Property Owner shall be, and is hereby, relieved of obligations imposed by future land development laws, ordinances and regulations, except those that may be specifically provided for herein.

The parties hereto agree to cooperate with each other to effectuate the provisions of this Agreement and to act reasonably and expeditiously in all performances required under the Agreement.

In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending such action.

21. Conflicts of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

22. Remedies. Each Party recognizes that the other Party would suffer irreparable harm from a material breach of this Agreement and that no adequate remedy at law exists to enforce this Agreement. Consequently, the Parties agree that any nonbreaching Party who seeks enforcement of the Agreement is entitled to the remedies of injunction and specific performance but not to any other legal or equitable remedies including, but not limited to, damages; provided, however, the Property Owner shall not forfeit its right to just compensation for any violation by the Town of Property Owner's Fifth Amendment rights. The Town will look solely to the Property Owner as to any rights it may have against the Property Owner under this Agreement, and hereby waives any right to assert claims against limited partners or members of the Property Owner, and further agrees that no limited partner, member, agent, officer, employee or representative of the Property Owner has any personal liability under this Agreement. Likewise, Property Owner agrees to look solely to the Town's assets as to any rights it may have against the Town under this Agreement, and hereby waives any right to assert claims for personal liability against

individuals acting on behalf of the Town, including employees, its Town Council members, agencies, boards, or commissions.

23. Recording. Within fourteen (14) days after execution of this Agreement, the Property Owner shall record the agreement with Berkeley County Register of Deeds. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the Parties to this Agreement.

24. Third Parties. Notwithstanding any provision herein to the contrary, this Agreement shall not be binding and shall have no force or effect as to persons or entities who are not Parties or successors and assigns to this Agreement.

25. Town Approval of Agreement. The Town Council has approved the Project under the process set forth in S.C. Code Section 6-31-50 of the Act on the terms and conditions set forth in this Agreement.

26. Successors and Assigns.

(a) Binding Effect. This Agreement shall be binding on the successors and assigns of the Property Owner in the ownership or Development of any portion of the Real Property or the Project. A purchaser, lessee or other successor in interest of any portion of the Real Property shall be solely responsible for performance of Property Owner's obligations hereunder as to the portion or portions of the Real Property so transferred. Assignees of development tracts shall be required to execute a written acknowledgment accepting and agreeing to the Property Owner's obligations in this Agreement, said document to be in recordable form and provided to the Town at the time of the recording of any deed transferring a development tract. Following delivery of such documents Property Owner shall be released of any further liability or obligation with respect to said tract.

This paragraph shall not be construed to prevent Property Owner from obtaining indemnification of liability to the Town from third parties. Further, Property Owner shall not be required to notify the Town or obtain the Town's consent with regard to the sale of Lots in multi-family residential subdivisions, Lots in commercial areas or Lots in industrial areas that have been platted and approved in accordance with the terms of this Agreement. Property Owner shall be released from obligations as to sale of individual Dwelling Units in multi-family subdivisions individual building pad sites in commercial area, and individual building pad sites in light industrial areas.

This Agreement shall also be binding on the Town and all future Town Councils for the duration of this Agreement, even if the Town Council members change.

(b) Transfer of Project. Property Owner shall be entitled to transfer any portion or all of the Real Property to a purchaser(s), subject to the following exceptions:

(i) Notice of Property Transfer. If the Property Owner intends to transfer all or a portion of the Real Property to a purchaser who, by virtue of assignment or other instrument, becomes the "Property Owner" under and within the meaning of this

Agreement, Property Owner shall notify the Town by written notice and provide it a copy of the assignment of such status as the “Property Owner” within thirty (30) days of the transfer.

(ii) Transfer of Facility and Service Obligations. If the Property Owner transfers any portion of the Real Property on which the Property Owner is required to provide and/or construct certain Facilities or provide certain services, distinct from those provided throughout the Project and which are site-specific to the portion of the Real Property conveyed, then the Property Owner shall be required to obtain a written agreement from purchaser expressly assuming all such separate responsibilities and obligations with regard to the parcel conveyed and the Property Owner shall provide a copy of such agreement to the Town.

(iii) Assignment of Development Rights. Any and all conveyances of any portion of the Real Property subject to the intensities/square footage set forth in Section 12A herein to third party developers shall, by written agreement in substantially the same form as Exhibit G, assign a precise number of residential units, commercial/office square footage, and/or industrial square footage. The Property Owner shall notify the Town within thirty (30) days of the conveyance of the property, provide the Town the applicable documents assignment the development rights to the transferee, and record the same in the office of the Berkeley County Register of Deeds.

(iv) Mortgage Lenders. Notwithstanding anything to the contrary contained herein, the exceptions to transfer contained in this Section shall not apply: (i) to any mortgage lender either as the result of foreclosure of any mortgage secured by any portion of the Real Property or any other transfer in lieu of foreclosure; (ii) to any third party purchaser at such a foreclosure; or (iii) to any third party purchaser of such mortgage lender’s interest subsequent to the mortgage lender’s acquiring ownership of any portion of the Real Property as set forth above. Furthermore, nothing contained herein shall prevent, hinder or delay any transfer or any portion of the Real Property to any such mortgage lender or subsequent purchaser. Except as set forth herein, any such mortgage lender or subsequent purchaser shall be bound by and shall receive the benefits from this Agreement as the successor in title to the Property owner.

(c) Release of Property Owner. In the event of conveyance of all or a portion of the Real Property and compliance with the conditions set forth therein, the Property Owner shall be released from any further obligations with respect to this Agreement as to the portion of Real Property so transferred, and the transferee shall be substituted as the Property Owner under the Agreement as to the portion of the Real Property so transferred.

(d) Estoppel Certificate. Upon request in writing from an assignee or the Property Owner to the Town sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the Town will provide a certificate (the “Certificate”) in recordable form that solely with regard to the portion of the Real Property described in the request, there are no violations or breaches of this Agreement, except as otherwise described in the Certificate. The Town will respond to such a request within thirty (30) days of the receipt of the request, and may employ such professional consultants, municipal, county and state agencies and staff as may be necessary to assure the truth and completeness of the statements in the Certificate.

The reasonable costs and disbursements of private consultants will be paid by the person making the request.

The Certificate issued by the Town will be binding on the Town in accordance with the facts and statements contained therein as of its date and may be relied upon by all persons having notice thereof. No claim or action to enforce compliance with this Agreement may be brought against the Property Owner or its assignees properly holding rights hereunder, alleging any violation of the terms and covenants affecting such portion of the Real Property except as otherwise described in the Certificate.

If the Town does not respond to such request within thirty (30) days of its receipt, the portion of the Real Property described in the request will be deemed in compliance with all of the covenants and terms of this Agreement. A certificate of such conclusion may be recorded by the Property Owner, including a copy of the request and the notice of receipt and it shall be binding on the Town as of its date. Such notice shall have the same effect as a Certificate issued by the Town under this Section.

27. General Terms and Conditions.

(a) Agreements to Run with the Land. This Agreement shall be recorded against the Real Property as described in Exhibit A hereto and shown on Exhibits A-1 attached hereto. The agreements contained herein shall be deemed to run with the land. The burdens of this Agreement are binding upon, and the benefits of the Agreement shall inure to, all successors in interest to the Parties to the Agreement.

(b) Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of settlement of disputes, while protecting the public health, safety and welfare, including but not limited to ensuring the adequacy of Facilities and compatibility between Developed and Undeveloped Lands.

(c) Mutual Releases. At the time of, and subject to (i) the expiration of any applicable appeal period with respect to the approval of this Agreement without any appeal having been filed or (ii) the final determination of any court upholding this Agreement, whichever occurs later, and excepting the parties' respective rights and obligations under this Agreement, Property Owner, on behalf of itself and Property Owner's partners, officers, directors, employees, agents, attorneys, consultants, hereby releases the Town and the Town's council members, officials, employees, agents, attorneys and consultants, and the Town, on behalf of itself and the Town's council members, officials, employees, agents, attorneys and consultants, hereby releases Property Owner and Property Owner's partners, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the date of this Agreement in connection with the Real Property or the application, processing or approval of the Project; provided, however, that each party shall not be released from its continuing obligation to comply with the law, including the Current Regulations.

(d) State and Federal Law. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In the event State or federal laws or regulations prevent or preclude compliance with one or more provisions of the development agreement, the provisions of this Agreement shall be

modified or suspended as may be necessary to comply with State or federal laws or regulations. The Parties further agree that if any provision of this Agreement is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

(e) No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the Town Council through the adoption of a resolution, no officer, official or agent of the Town has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the Town by making any promise or representation contained herein. Any amendments are subject to Paragraph 17 herein.

(f) Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

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

(h) Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the Town:

Mayor of Moncks Corner
(P.O. Box 700)
118 Carolina Avenue
Moncks Corner, SC 29461

With copies to:

Moncks Corner Town Administrator
(P.O. Box 700)
118 Carolina Avenue
Moncks Corner, SC 29461

To the Property Owner:

Ashton Charleston Residential, LLC
508 Meeting Street
West Columbia, SC 29169

With copy to:

Nicole Scott
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401

(i) Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

[SEPARATE SIGNATURES PAGES ATTACHED]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the day and year first above written.

Witness:

TOWN OF MONCKS CORNER

By: _____

Michael A. Locklear, Mayor

Attest: _____

Marilyn M. Baker, Clerk of Council

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

ACKNOWLEDGMENT

The within instrument was acknowledged before me this _____ day of _____, 2021, by the Town of Moncks Corner, by Michael A. Locklear, its Mayor, and attested to by Marilyn M. Baker, its Clerk of Council.

SWORN to before me this
_____ day of _____, 2021

Notary Public for South Carolina

Printed Name of Notary Public

My Commission Expires: _____

EXHIBITS

- Exhibit A: Legal Description
- Exhibit A-1: Boundary Survey
- Exhibit B: Conceptual Land Use Plan
- Exhibit C: Development Schedule
- Exhibit D: The Town of Moncks Corner Land Development Regulations Ordinance
- Exhibit E: Development Agreement Ordinance
- Exhibit F: Halstead Planned Development Guidelines
- Exhibit G: Form Partial Assignment

Exhibit A
Legal Description

Exhibit A-1
Boundary Survey

Exhibit B
Conceptual Land Use Plan

Exhibit C
Development Schedule

Exhibit D
Town of Moncks Corner Land Development Regulations

Exhibit E
Development Agreement Ordinance

Exhibit F
Halstead Planned Development Guidelines

Exhibit G
Form Partial Assignment

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

**PARTIAL ASSIGNMENT AND
ASSUMPTION OF RIGHTS AND
OBLIGATIONS UNDER
DEVELOPMENT AGREEMENT**

This **PARTIAL ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT** ("Partial Assignment and Assumption") is dated as of this ____ day of _____, 20__, by and between Ashton Charleston Residential, a _____ limited liability corporation ("Assignor") and _____ ("Assignee").

RECITALS:

WHEREAS, on or about _____, Assignor entered into that certain Addlestone Development Agreement ("Development Agreement") with the Town of Moncks Corner, South Carolina (the "Town"), incident to the future development of approximately three hundred forty-two (342) acres of real property, as further described on Exhibit "A" attached to the Development Agreement (the "Property"), which Development Agreement was recorded in the Office of the Register of Deeds of Berkeley County, South Carolina (the "ROD") in Volume ____ at Page ____; and

WHEREAS, simultaneously herewith, Assignor conveyed approximately _____ (____) acres of real property (the "Transferred Property") as more particularly described on the attached Exhibit "A", which is attached hereto and incorporated herein by reference; and

WHEREAS it is the desire and intention of Assignor to assign to Assignee, and it is the desire and intention of Assignee to assume certain rights, privileges and obligation under the terms of the Development Agreement applicable to certain real property described the Transferred Property, thus necessitating the preparation and execution of the within Partial Assignment and Assumption.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy whereof is herewith acknowledged, the parties hereby agree as follows, to wit:

1. Partial Assignment and Assumption of Rights Privileges and Obligations Applicable to the Transferred Property Pursuant to the Development Agreement. Assignor does hereby transfer, assign, convey and deliver unto Assignee, its successors and assigns, all of Assignor's rights, privileges and obligations as described in the Development Agreement with respect to _____ (____) acres with a _____ density not to exceed _____ (as further described in Section 12.A of the Development Agreement) (the "Allocated Rights"). Assignee hereby assumes and agrees to perform all of Assignor's rights, privileges and obligations as described in the Development Agreement, applicable to the Transferred Property, including without limitation, the Assumed Obligations (as defined below). Assignee acknowledges receipt of the Development Agreement and all Exhibits thereto and agrees to be bound by the terms thereof and to develop the Transferred Property in accordance with such terms. The rights and obligations hereby assigned and assumed shall be covenants running with the land, binding upon the parties hereto and their successors and assigns.

2. Assumed Obligations. In connection with this Partial Assignment and Assumption, Assignee agrees to assume, and release Assignor from any liability for, the following obligations (the "Assumed Obligations") arising under the Development Agreement:

(i) _____

(ii) _____

3. Default and Enforcement of Provisions. As provided in Section 25 of the Development Agreement and as herein provided, upon the failure of Assignor or Assignee to comply with the terms of the Development Agreement and this Partial Assignment and Assumption incident to the Property, the non-defaulting party may pursue the remedies of injunction and specific performance, but not any other legal or equitable remedies, including, but not limited to, damages.

4. Indemnification. Assignee agrees to indemnify, defend and hold harmless Assignor, its agents, principals, successors and assigns, and their affiliates from and against all losses, costs, damages, and reasonable attorney fees arising out of any breach by Assignee of the Development Agreement from and after the Closing Date, including without limitation the Assumed Obligations set forth in Section 2 hereof.

5. Notices. Any notice, demand, request, consent, approval or communication among any of the parties hereto shall be in writing and shall be delivered or addressed as provided under Section 30(h) of the Development Agreement and shall also be addressed as follows:

As to Assignee:

To Assignor:

Ashton Charleston Residential, LLC

ATTN: _____

With copy to:

Nicole Scott

Nexsen Pruet, LLC

205 King Street, Suite 400

Charleston, SC 29401

6. Binding Effect. This Partial Assignment and Assumption shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

7. Governing Law. The within Partial Assignment and Assumption shall be interpreted and construed and conform to the laws of the State of South Carolina.

8. Reaffirmation of Terms. All other terms, conditions, rights and privileges contained in the Development Agreement not specifically referenced herein shall remain in full force and effect and binding upon the parties hereto and their successors and assigns.

Witness:

ASHTON CHARLESTON RESIDENTIAL

By: _____

Name: _____

Its: _____

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF BERKELEY)

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named Ashton Charleston Residential, by _____, its _____, sign and seal the within written Development Agreement, and as the act and deed of Ashton Charleston Residential deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this
_____ day of _____, 20__

Notary Public for South Carolina

Printed Name of Notary Public

My Commission Expires: _____

Exhibit A to Assignment and Assumption
Transferred Property