

**PATRIOTS ANNEX  
DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE TOWN OF MOUNT PLEASANT, SOUTH CAROLINA,  
PATRIOTS POINT DEVELOPMENT AUTHORITY,  
AND  
PATRIOTS ANNEX, LLC,**

**DEVELOPMENT AGREEMENT**

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## **EXHIBITS**

Exhibit A-1: Legal Descriptions

Exhibit A-2: Boundary Plats

Exhibit B: Development Agreement Approval Ordinance

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Exhibit E: WG-C Zoning Ordinance

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## DEVELOPMENT AGREEMENT

### PATRIOTS ANNEX

This DEVELOPMENT AGREEMENT (together with the Exhibits attached hereto, the “Agreement”) is entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”), by and between the Town of Mount Pleasant, a political subdivision of the State of South Carolina (the “Town”), Patriots Point Development Authority, a body politic and corporate under the laws of the State of South Carolina (the “PPDA”), and Patriots Annex, LLC, a South Carolina limited liability company (“Patriots Annex”, individually, and together with the PPDA, the “Developer”). The Town and the Developer parties are sometimes separately referred to in this Agreement as a “Party” or jointly referred to as the “Parties.”

### RECITALS

This Agreement is predicated upon the following:

1. The Code of Laws of South Carolina (the “S.C. Code”) §§ 6-31-10 through 6-31-160, as it exists on the Effective Date of this Agreement (the “Act”), enables municipalities to enter into binding development agreements with entities intending to undertake any development on real property containing certain minimum acreage of highland and having a legal or equitable interest in the real property to be developed. The Town has adopted an ordinance pursuant to this legislation authorizing the Town to enter into development agreements; and

2. Under S.C. Code § 6-31-30, and pursuant to Town Ordinance No. 99-056, the Town Council of the Town has adopted Chapter 157 of Title 15 of the Town’s Code of Ordinances, establishing procedures and requirements for considering and entering development agreements; and

3. Under S.C. Code § 6-31-50, and Town Ordinance § 157.050 the Town conducted public hearings regarding its consideration of the Agreement on \_\_\_\_\_, 2019 and on \_\_\_\_\_, 2019 in satisfaction of provisions S.C. Code § 6-31-50, Town Ordinance § 157.050, and any other notice requirements; and

4. The Town Council of the Town has adopted Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2019 modifying the official Zoning and Development Standards Map for the Town of Mount Pleasant such that the Real Property, being a portion of the parcel identified as TMS#517-00-00-001 was reclassified as WG-C, Cooper River Waterfront Gateway District. A copy of the Ordinance is attached hereto as Exhibit E; and

5. The Town Council of the Town has adopted Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2019 modifying the official Height Map for the Town of Mount Pleasant such that the Real Property, being a portion of the parcel identified as TMS#517-00-00-001 was reclassified as eighty (80) feet height district. A copy of the Ordinance is attached hereto as Exhibit F; and

6. Pursuant to Town Ordinance No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2019, the Town Council of the Town approved this Agreement and found that this Agreement is consistent with the Town’s Comprehensive Plan and Land Usage Regulations pursuant to S.C.

Code § 6-31-70, Town Ordinance § 157.070. A copy of the Ordinance is attached hereto as Exhibit B;

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

1. The Real Property. The Real Property, as defined below, consists of approximately ~~30.32~~ acres. A legal description of the Real Property is set forth in Exhibit A-1 and the boundary lines of the Real Property are shown on the plats contained in Exhibit A-2. The PPDA is the fee simple owner of the Real Property and has entered into a Ground Lease with Patriots Annex for the Development of the Real Property.

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) “Comprehensive Plan” means the master plan for the Town and the official map adopted pursuant to S.C: Code §§ 6-29-510 through 6-29-530, inclusive, as amended from time to time, including the 2009 Comprehensive Plan adopted October 22, 2009 and updated on November 11, 2014.

(c) “Current Regulations” mean the Town of Mount Pleasant Zoning Code, as amended through the Effective Date, attached hereto as Exhibit D, and other Land Usage Regulations in force as of the Effective Date.

(d) “Developer” means the PPDA as the fee simple owner of the Real Property, and Patriots Annex as lessee pursuant to a Ground Lease with the PPDA as lessor, individually and collectively, and together with all subsidiaries thereof and other entities, its individual or corporate successors and any assignee, whereby such interest is assigned in writing, unless the context clearly implies a reference to a single Developer. “Developer” shall also apply to any and all successors in interest or successors in title or assigns or lessees of the above stated Developer, which successor, assign or lessee is specifically granted Developer rights under this Agreement in a recorded document.

(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 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 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.

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

(h) “Ground Lease” means any lease, as amended from time to time, for the Development of any portion of the Real Property between the PPDA, as lessor, and the applicable lessee, including, but not limited to, Patriots Annex.

(i) “Land Usage Regulations” means ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of Development and includes, but is not limited to, Town zoning, subdivision, building construction, occupancy, impact fees, aesthetics, road, or sign regulations or any other regulations controlling the Development or use of property.

(j) “Laws” means all ordinances, resolutions, regulations, Comprehensive Plans, Land Usage Regulations, policies and rules, custom and usage (formal or 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, except as provided in S.C. Code § 6-31-140(A).

(k) “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.

(l) “Open Space” means areas dedicated to parks, buffers, naturally occurring or developed wetlands, or other open spaces as set forth in the Current Regulations.

(m) “Project” is the Development that will occur within and upon the Property described in Exhibit A-1 and Exhibit A-2.

(n) “Real Property” or “Property” is the real property referred to in Paragraphs 1 and 5 of this Agreement and includes any improvements or structures customarily regarded as part of real property.

(o) “Town” means the Town of Mount Pleasant, South Carolina.

(p) “Vested Rights Act” means [S.C. Code §§ 6-29-1510 et seq.](#)

3. Parties. Parties to this Agreement are the Developer and the Town.

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 parties. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of the Developer constitutes “state action” for any purposes.

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

- (a) A legal description of the Real Property is set forth in Exhibit A-1
- (b) A boundary plat of the Real Property is set forth in Exhibit A-2.

The Real Property currently consists of approximately 30.32 acres of highland and approximately 0.00 acres of wetlands, with a total gross acreage of approximately 30.32 acres, as more fully depicted on Exhibit A-2.

The Developer may ~~notify~~ make a request to 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 Zoning Administrator; provided, however, that no ~~other~~ such property shall be added to the Agreement unless 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 Town Code of Ordinances § 157.010, et seq., and S.C. Code § 6-31-10, et seq. Notwithstanding the foregoing, nothing herein shall require the Town to add any property to the Agreement.

6. Intent of the Parties. The Town and the Developer 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 Developer, its successors in title and/or assigns. The Town and the Developer are entering into this Agreement in order to secure benefits and burdens referenced in Town Code of Ordinances § 157.010, et seq., and S.C. Code § 6-31-10 et seq.

7. Consistency with the Town's Comprehensive Plan and Land Usage Regulations. The Town and the Developer agree and acknowledge that the Development permitted pursuant to this Agreement is consistent with the Town's Comprehensive Plan, Current Regulations, and Land Usage Regulations.

8. Legislative Act. Any change in the standards established by this Agreement or to Laws pertaining to the same shall require the approval of the Town Council, subject to compliance with applicable statutory procedures and consistent with Paragraph 9(a) of this Agreement. This Agreement constitutes a legislative act of the Town Council of the Town. The Town Council adopted this Agreement only after following procedures required by S.C. Code §§ 6-31-10 et seq. and Town Ordinance §§ 157.010 et seq. This Agreement shall not be construed to create a debt of the Town as referenced in S.C. Code § 6-31-145. ~~This Agreement shall be subject to and have the benefits of the Vested Rights Act, S.C. Code §§ 6-29-1510 et seq. (the "Vested Rights Act").~~

9. Applicable Land Usage Regulations.

(a) Applicable Laws and Land Usage Regulations. Developer shall have rights to undertake Development of any or all of the Real Property in accordance with the Current Regulations and this Agreement, including all Exhibits, and as amended from time to time pursuant to this Agreement, for the entirety of the term of this Agreement, including any extension thereof, as set forth in Paragraph 16. Future enactments of, or changes or amendments to Town Code of Ordinances which conflict with the Current Regulations shall apply to the Real Property only pursuant to the public hearing and determination required by this Paragraph 9(a), and only if such change is made specifically applicable to the Real Property and the Developer is



given specific notice of such intended application of a new ordinance during the process of enactment thereof. Except as otherwise provided by this Agreement or by S.C. Code §§ 6-31-10 et seq. and Town Ordinances §§ 157.010 et seq., the Laws applicable to Development of the Real Property that is subject to this Agreement are those in force at the time of execution of this Agreement, including, but not limited to the Vested Rights Act. In the event state or federal laws or regulations are enacted after the Effective Date which prevent or preclude compliance with one or more provisions of the Agreement, including but not limited to the Development Schedule, the provisions of the Agreement shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations.

The Town shall not apply subsequently adopted Laws and Land Usage 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 Usage Regulations are not in conflict with the Laws or Land Usage Regulations governing the Agreement and do not prevent the Development set forth in this Agreement; (2) the proposed subsequent Laws or Land Usage Regulations are essential to the public health, safety, or welfare and the proposed subsequent Laws or Land Usage Regulations expressly state that they apply to a development that is subject to a development agreement; (3) the proposed subsequent Laws or Land Usage Regulations are specifically anticipated and provided for in this Agreement; (4) 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 Developer.

(b) Changes in Town Procedure for Administering Current Regulations. During the term of this Agreement the Town may modify procedures or composition of entities that review various matters under the Town's zoning and development procedures. If a review entity identified in the Current Regulations no longer exists, the Developer and the ~~Zoning Administrator~~ Town Planning Director shall agree upon an alternative review procedure. The alternate review procedure shall not be more demanding, more restrictive, or more costly to the Developer than the procedure existing under the Current Regulations. Such change shall be implemented pursuant to an amendment to this Agreement in accordance with Paragraph 17 of this Agreement.

(c) Election to Apply New Town Development Standards. In recognition of the fact that the Town may, in the future, improve the Town's Land Usage Regulations in existence at the Effective Date, the Developer, at its option, may notify the Town Zoning Administrator in writing that the Developer elects to have the modified provision(s) become a part of the Current Regulations. Thereafter, the modified provision(s) shall also apply to the Real Property and be considered part of the Current Regulations. Such election shall not constitute or require an amendment to this Agreement, said consent to be memorialized in a written acknowledgement ~~filed with the Town Zoning Administrator, who may record the document~~ promptly recorded in the Office of the Charleston County Register of Deeds with reference to this Agreement, a copy of which shall be delivered to the Town Zoning Administrator.

10. Building Codes and Laws Other Than Land Usage Regulations. The Developer, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any building, housing, electrical, mechanical, plumbing, gas codes and other standard 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 flood, 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:

Town plat approvals, road and drainage construction plan approvals, building permits, and certificates of occupancy, utility construction and operating permits, and permits from the South Carolina Department of Health and Environmental Control.

The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Developer 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. Subject to the provisions of Paragraph 9(a) of this Agreement, all rights and prerogatives accorded the Developer by this Agreement shall immediately also constitute vested rights for the Development of the Real Property including vested rights pursuant to the Vested Rights Act, for the term of this Agreement and the maximum period for vesting rights under the Vesting Rights Act. Paragraph 9(a) of this Agreement does not abrogate any rights either preserved by S.C. Code § 6-31-140, Town Ordinance § 157.140, or that may have vested pursuant to common law and otherwise in the absence of a development agreement.

(a) Allowable Uses. All uses allowed under the Present Zoning as set forth in the Current Regulations attached hereto as Exhibit D, shall be permitted.

(b) Building Development Standards. The criteria with respect to minimum parcel sizes, population densities, building intensities, setbacks, height and impervious coverage shall be those set forth in the Current Regulations attached hereto as Exhibit D.

(c) Buffers, Fencing and Signage. The criteria as set forth in the Current Regulations attached hereto as Exhibit D, shall apply with respect to buffers, fencing, and signage.

(d) Design Review and Approval. Development shall be subject to review by the Town's Commercial Design Review Board as set forth in the Current Regulations attached hereto as Exhibit D.

(e) Open Space. Developer agrees to preserve portions of the Property as Open Space as required by the Current Regulations attached hereto as Exhibit D.

13. Facilities, Services and Public Uses. 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 Developer, ~~on its own or through its affiliated companies,~~ shall install the requisite Facilities for its Development of the Property, as such Development proceeds in phases pursuant to Exhibit C attached hereto and Paragraph 15 below. Notwithstanding any provision herein to the contrary, Developer hereby assures the Town that adequate Facilities shall be available concurrent with the impacts of Development of the Property.

14. Streets and Drives. Developer shall pay for and construct all road improvements within the Real Property. Any roads whose standards are dictated by federal, state or county standards must be constructed according to the respective standards. Such road improvements shall be constructed in accordance with the Current Regulations. If requested by the PPDA and any other applicable Developer, certain road improvements located within the Real Property shall be accepted by the Town upon dedication by Developer provided the roadways are built in accordance with the Current Regulations and the roadways are in good condition and not subject to any monetary lien.

15. Schedule for Project Development. Although the nature of this long-term project prevents Developer from providing exact completion dates, the general phases of construction and Development with respect to the Property are described in Exhibit C, attached hereto and incorporated by reference herein. The Parties acknowledge that the Developer intends to develop the Project in phases. The failure of the Developer to meet a commencement or completion date shall not, in and of itself, constitute a material breach of this Agreement, but must be judged based upon the totality of the circumstances. If the Developer requests modifications of the dates set forth above and is able to demonstrate and establish there is good cause to modify these dates, these dates must be modified by the local government.

16. Term of the Agreement. The term of this Agreement shall be five (5) years, commencing on the Effective Date; provided, however, that this Agreement may be renewed upon the agreement of the Parties if the Developer has not materially breached any terms of the Agreement.

If the Developer is not in default of this Agreement at the conclusion of the term, and if the Developer shall provide to the Town a certification that highland within the Real Property Owned by the Developer at the conclusion of the term is twenty-five (25) acres or more acres of highland within the Real Property, and if the Town is satisfied with the progress made by the Developer in developing the Real Property, the Town and the Developer may consider a new development agreement or an amendment to this ~~agreement-Agreement~~ extending the same for an additional five (5) year term. Nothing in this Agreement shall be interpreted to preclude the Parties from extending the termination date by other mutual agreement or from entering into subsequent development agreements.

17. Amending or Canceling the Agreement. Subject to the provisions of Town Ordinance § 157.080, 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. In the event this Agreement is to be amended only with respect to certain portions and not all of the Real Property, such amendment shall require only the consent of the Developer(s) with a legal and/or equitable interest in the portion of the Real Property affected by the Amendment, and shall not require landlord consent

to the extent such amendment only affects a Developer's leasehold interest. Any amendment to this Agreement shall comply with the provisions of Town Ordinance § 157.010 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, and adoption of a Resolution by Town Council. Any Amendment to this Agreement shall be recorded with the Charleston County Register of Deeds Office within fourteen days following execution. For avoidance of doubt, this Agreement does not constitute the approval or adoption of any particular conceptual plan, site plan, sketch plan, or similar document, and no amendment or modification to this Agreement shall be required in connection with any approvals or revisions to plans for Development of the Real Property in accordance with the Current Regulations and Land Usage Regulations as provided herein.

18. Subsequent State or Federal Laws or Regulations. In the event state or federal laws or regulations are enacted after the execution of this Agreement or decisions are issued by a court of competent jurisdiction which prevent or preclude compliance with 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, regulations, or court decisions.

19. Periodic Review. The Zoning Administrator of the Town, or, if the Town has no Zoning Administrator, an appropriate officer of the Town shall review the Project and this Agreement at least once every twelve (12) months, at which time Developer shall demonstrate good faith compliance with the terms of this Agreement. [Annual findings by the Zoning Administrator will be reported to Town Council and the Planning Commission in public meetings.](#) If, as a result of its periodic review or at any other time, the Town finds and determines that the Developer has committed a material breach of the terms or conditions of this Agreement, the Town shall serve notice in writing upon the Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Developer a reasonable amount of time in which to cure the material breach. If the Developer 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 Developer 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. Each Developer shall be required to demonstrate compliance with regard to only the portion of the Real Property in which such Developer has a legal or equitable interest and any termination by the Town for failure to comply shall apply only to the applicable Developer and portion of the Real Property.

20. Severability. Subject to the provisions of Town Ordinance § 157.150, 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.

21. Merger. This Agreement, coupled with its Exhibits which are incorporated herein by reference, shall state the final and complete expression of the Parties' intentions with respect to

the matters set forth herein. All prior negotiations and representations are superseded and merged herein.

22. Cooperation. 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.

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

24. Remedies. Each Party recognizes that the other Parties 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 non-breaching Party who seeks enforcement of the Agreement is entitled to seek the equitable remedies of injunction and specific performance.

25. Recording. Within fourteen (14) days after execution of this Agreement, the Developer shall record this Agreement with the Charleston County Register of Deeds Office. 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.

26. 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 or assigns to this Agreement.

27. Town Approval of Agreement. The Town Council has approved the Project and this Agreement under the process set forth in § 157.010 et seq. of the Town's Ordinances.

28. Successors and Assigns.

(a) Binding Effect. This Agreement shall be binding on the successors and assigns of the Developer, including successors or assignees that are lessees pursuant to a replacement, amended or substituted Ground Lease, 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 Developer's obligations hereunder as to the portion or portions of the Real Property so transferred and shall be entitled to the benefits 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 Developer'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, the assigning Developer shall be released of any further liability or obligation with respect to said tract, [provided that the Town has consented thereto](#). Developer shall not be required to notify the Town or obtain the Town's consent with regard to the transfer of parcels that are individual building pad sites which have been platted and approved in accordance with the terms of this Agreement, and Developer shall

be released from obligations under this Agreement as to such parcels. 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. Developer shall be entitled to transfer any portion or all of its interest in the Real Property to a purchaser(s) and assign its rights and obligations under this Agreement, subject to the following exceptions:

(i) Notice of Property Transfer. If the Developer transfers all or a portion of the Real Property to a purchaser who, by virtue of assignment or other instrument, becomes the “Developer” with respect to such portion of the Real Property under and within the meaning of this Agreement, Developer shall notify the Town within thirty (30) days of the transfer and provide it a copy of the assignment of such status as a “Developer.”

(ii) Transfer of Facility and Service Obligations. If the Developer transfers any portion of the Real Property on which the Developer 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 Developer shall be required to obtain a written agreement from the transferee expressly assuming all such separate responsibilities and obligations with regard to the parcel conveyed, and the Developer shall provide a copy of such agreement to the Town. In order for the transferring Developer to be released from its obligations with respect to such required facilities or services, Developer shall be required to obtain the consent of the Town.

(iii) Mortgage Lenders. Notwithstanding anything to the contrary contained herein, the exceptions to transfer contained in this Paragraph 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 of 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 Developer.

~~(c) Release of Developer. In the event of the sale or other conveyance of all or a portion of the Real Property and compliance with the conditions set forth herein, the conveying Developer shall be released from any further obligations with respect to this Agreement as to the portion of the Real Property so transferred, and the transferee shall be considered as substituted as the Developer 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 Developer to the Town sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the Town will provide a 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. If the Town does not respond to such request within ~~thirty-fourty-five~~ (3045) 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 Developer, 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 Paragraph.

## 29. 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-1 and shown on Exhibit A-2. 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) 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 this 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.

(c) 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 taken with the same formality as the vote approving this Agreement, 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 not contained herein. Any amendments are subject to Paragraph 17 herein.

(d) 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 all Parties to this Agreement.

(e) Attorneys' 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 appeals or rehearings, the prevailing Party shall be entitled to receive from the non-prevailing 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 therein.

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

To the Town:

Mayor  
Town of Mt. Pleasant  
100 Ann Edwards Lane  
Mt. Pleasant, SC 29464

With copies to:

Planning Director  
Town of Mt. Pleasant  
100 Ann Edwards Lane  
Mt. Pleasant, SC 29464

Town Attorney  
Legal Department  
Town of Mt. Pleasant  
100 Ann Edwards Lane  
Mt. Pleasant, SC 29464

To the Developer:

Patriots Point Development Authority  
Attn: Executive Director  
40 Patriots Point Road  
Mount Pleasant, SC 29464

With copy to:

Craver Law Firm  
Attn: William E. Craver, III  
171 Church Street, Suite 120A  
Charleston, SC 29401

AND

Patriots Annex, LLC  
Attn: Tracy Ray  
Rice Mill Building  
17 Lockwood Drive  
Charleston, SC 29401



With copy to:

Womble Bond Dickinson (US) LLP  
Attn: James Wilson  
5 Exchange Street  
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 Parties 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: PATRIOTS POINT DEVELOPMENT AUTHORITY, a public body corporate and agency of the State of South Carolina,

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, \_\_\_\_\_, Notary of the Public of the State of South Carolina, do hereby certify that Patriots Point Development Authority, by \_\_\_\_\_, its \_\_\_\_\_, personally appeared before me this \_\_\_\_ day of \_\_\_\_\_, 2019, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

## **EXHIBITS**

Exhibit A-1: Legal Descriptions

Exhibit A-2: Boundary Plats

Exhibit B: Development Agreement Approval Ordinance

Exhibit C: Development Schedule

Exhibit D: Town of Mt. Pleasant Zoning Code

Exhibit E: WG-C Zoning Ordinance

Exhibit F: Height Ordinance

EXHIBIT A-1

Legal Descriptions

ALL that certain piece, parcel or lot of land, shown and designated as “Parcel 1” situate, lying and being in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, as shown on that certain survey prepared by Thomas & Hutton, entitled “BOUNDARY SURVEY OF PARCEL 1, PARCEL 2-A, PARCEL 2-B, PARCEL 3-A, PARCEL 3-B, PARCEL G & PARCEL G ROAD PATRIOTS POINT DEVELOPMENT AUTHORITY ABOUT TO BE LEASED TO PATRIOTS ANNEX, LLC TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA” dated June 14, 2016. Said parcel having such size, shape, buttings, boundings, and dimensions as will by reference to said survey more fully appear.

EXHIBIT A-2

Boundary Plats

**EXHIBIT B**

**Development Agreement Approval Ordinance**



## EXHIBIT C

### Development Schedule

Commencement Date. The Project will be deemed to commence Development upon the execution and adoption of this Agreement.

Interim Completion Dates. The Developer projects that during the years after the execution and adoption of this Agreement, the following percentages of the contemplated development will be completed:

<u>YEAR</u>	<u>% COMPLETE</u>
<u>5</u>	<u>35%</u>
<u>10</u>	<u>70%</u>
<u>15</u>	<u>100%</u>

EXHIBIT D

Town of Mount Pleasant Zoning Code

EXHIBIT E

WG-C Zoning Ordinance

EXHIBIT F  
Height Ordinance