

THIS CONTRACT IS SUBJECT TO ARBITRATION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

SECOND AMENDMENT TO THE
DEVELOPMENT AGREEMENT
FOR
CAINHOY PLANTATION-PLJ TRUSTS
(Southern Timber and Tract 7)

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (the "Amendment") is made and entered into as of the ____ day of _____, 2014 by the CITY OF CHARLESTON, South Carolina, a political subdivision of the State of South Carolina ("City") and SOUTHERN TIMBER, LLC, a Delaware limited liability company and TRACT 7, LLC, a Delaware limited liability company (collectively the "Owner"), the successors in interest to PETER O. LAWSON-JOHNSTON AND THE MORGAN GUARANTY TRUST COMPANY OF NEW YORK, AS TRUSTEES OF THE TRUST CREATED UNDER PARAGRAPH (E) OF ARTICLE FIRST OF THE WILL OF HARRY F. GUGGENHEIM, DECEASED ("Trust #1"), and PETER O. LAWSON-JOHNSTON, AND PETER O. LAWSON-JOHNSTON, II AS TRUSTEES UNDER THAT CERTAIN TRUST AGREEMENT DATED JULY 27, 1987 (the "1987 Trust") and PETER O. LAWSON-JOHNSTON, SR. INDIVIDUALLY (collectively, the "Prior Owners").

WHEREAS, the City and the Prior Owners entered into that certain development agreement dated August 20, 1996 (the "Development Agreement for Cainhoy Plantation-PLJ Trusts" or the "Development Agreement") which Development Agreement was recorded in the Register of Deeds for Berkeley County in Book 1544, Page 11; and

WHEREAS, the City and the Prior Owners amended the Development Agreement by the First Amendment to the Development Agreement dated October 9, 2001 which amendment was recorded on October 11, 2001 in Book 2444, Page 120; and

WHEREAS, Trust #1 conveyed to Southern Timber, LLC all of its interest in the lands subject to the Development Agreement by deed recorded on August 12, 2013 in Book 10308, Page 307; and

WHEREAS, the 1987 Trust and Peter O. Lawson-Johnston, Sr. conveyed to Tract 7, LLC all of their interest in the lands subject to the Development Agreement by deed recorded May 16, 2007 in Book 6622, Page 0001; and

WHEREAS, contemporaneously with this Amendment, the City is adopting the Cainhoy-ST PUD Master Plan and Zoning Text and the Cainhoy-T7 PUD Master Plan and Zoning Text ; and

WHEREAS, the City and the Owner desire to further amend the Development Agreement to accomplish, among other things, the substitution of the Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text for the Cainhoy District Zoning, the substitution of Southern Timber, LLC for Trust #1, the substitution of Tract 7, LLC for the 1987 Trust and Peter O. Lawson-Johnston, Sr., the amendment of certain aspects of the Term of the Agreement, the termination of the No Transfer Restrictions, and the amendment of the estimated Development Schedule.

NOW, THEREFORE, in consideration of the provisions of this Amendment and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Development Agreement for Cainhoy Plantation-PLJ Trusts (Southern Timber and Tract 7), as amended, as follows:

1. The Cainhoy-ST PUD Master Plan and Zoning Text and the Cainhoy-T7 PUD Master Plan and Zoning Text shall govern the development of the Property and shall remain vested for the Term of the Development Agreement. All references to the “Cainhoy Zoning District Ordinance” and the “Cainhoy Zoning District” are replaced by the “Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text.” To this end, the following specific amendments are made to the Development Agreement:

Section 2.11 is amended to read: “Reserved”.

Section 2.12 is amended to read: “Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text. The Cainhoy-ST PUD Master Plan and Zoning Text and the Cainhoy-T7 PUD Master Plan and Zoning Text adopted by Ordinance No. 2014 - _____, on _____, 2014, attached hereto as Amended Exhibit 2.12.”

Section 2.27 is amended by deleting the words “Cainhoy Zoning District Ordinance” wherever they appear sequentially therein and replacing them with “Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text”.

Article 4 is amended to read: “Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text”.

Section 4.1 is amended to read: “Cainhoy-ST PUD and Cainhoy-T7 PUD. The City has adopted the Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text. All of the Property shall be within and subject to the Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text”.

Section 4.4 is amended by deleting the words “Cainhoy Zoning District Ordinance” wherever they appear sequentially therein and replacing them with “Cainhoy-ST PUD

Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text”.

Section 4.5 is amended to read: “Reserved”.

Section 4.6 is amended by deleting the words “Cainhoy Zoning District Ordinance” wherever they appear sequentially therein and replacing them with the words “Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text”.

Section 4.7 is amended by deleting the words “Cainhoy Zoning District Ordinance” wherever they appear sequentially therein and replacing them with the words “Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text”.

Exhibits 2.12 and 2.12A of the Development Agreement are replaced by Amended Exhibit 2.12 (Cainhoy-ST PUD Master Plan and Zoning Text and Cainhoy-T7 PUD Master Plan and Zoning Text) attached hereto.

2. Section 2.26 of the Development Agreement is amended by adding thereto the following: “An Economic Development Project, as defined in the Cainhoy-ST PUD Master Plan and Zoning Text and the Cainhoy-T7 PUD Master Plan and Zoning Text, may, but not necessarily does, constitute Industrial Development”.
3. Section 3.1 of the Development Agreement is amended to read: “The City’s obligations under Article 6 shall terminate on the earlier of: (i) August 20, 2046, (ii) thirty (30) years after the Initial Commercial Activity and (iii) development of eighty (80%) per cent of the usable acreage of the Property. All other provisions of this Development Agreement shall terminate on December 31, 2063.”
4. Section 6.1 of the Development Agreement is amended by deleting the words “Cainhoy Plantation – PLJ Trusts” from the 7th and 8th lines thereof and substituting in their place the words “Cainhoy Plantation – Trust # 2”.
5. Section 6.3 of the Development Agreement is amended by deleting the words “Cainhoy Plantation – PLJ Trusts” from the 10th line thereof and substituting in their place the word “Cainhoy Plantation – Trust #2”. Section 6.3 of the Development Agreement is further amended by adding at the end thereof: “The City and the Owner agree to work together in coordinating the timing of payment of the Industrial Recruitment Contribution, or any part thereof, so as to allow the City sufficient opportunity to budget or otherwise identify a source of funding for the Industrial Recruitment Contribution”.
6. Section 15.2 of the Development Agreement is amended to change the City and Owner addresses for notices to:

City of Charleston
80 Broad Street
Charleston, South Carolina 29401
Attn: Mayor

With a copy to:
City of Charleston Legal Department
80 Broad Street
Charleston, South Carolina 29401

Tract 7, LLC
330 Madison Avenue
18th Floor
New York NY 10017
Attn: Peter Lawson-Johnston II

Southern Timber, LLC
330 Madison Avenue
18th Floor
New York NY 10017
Attn: Peter Lawson-Johnston II

With a copy to:
Womble Carlyle Sandridge & Rice LLP
5 Exchange Street
Charleston, SC 29401
Attn: Susan M. Smythe

7. Southern Timber, LLC, a Delaware limited liability company and Tract 7, LLC, a Delaware limited liability company shall be substituted as the Owner. All references to “Trust #1” shall be amended to read “Southern Timber” and all references to the 1987 Trusts and Peter Lawson-Johnston, Sr. shall be amended to read Tract 7, LLC, a Delaware limited liability company”. To this end, the following provisions of the Development Agreement are amended:

Section 2.2 is amended to read: “Tract 7, LLC. Tract 7, LLC, a Delaware limited liability company.”

Section 2.33 is amended to read: “Owner. Southern Timber, LLC, a Delaware limited liability company and Tract 7, LLC, a Delaware limited liability company.”

Section 2.43 is amended to read: “Southern Timber. Southern Timber, LLC,, a Delaware limited liability Company.”

8. Exhibit 5.5 of the Development Agreement is replaced with Amended Exhibit 5.5 (Development Schedule), attached hereto.

9. The No Transfer Covenant and any other transfer restrictions created by the First Amendment to the Development Agreement are hereby terminated.

10. All other terms, conditions and provisions of the Development Agreement as amended shall remain in full force and effect, except as expressly modified by the terms of this Amendment.

Signature Pages Follow

AMENDED EXHIBIT 2.12
CAINHOY-ST PUD MASTER PLAN AND ZONING TEXT
and
CAINHOY-T7 PUD MASTER PLAN AND ZONING TEXT

(attached)

AMENDED EXHIBIT 5.5
DEVELOPMENT SCHEDULE

After development commences, the Owner contemplates that the Property may be developed for a multiple of uses, including residential, commercial and industrial uses.

The Owner has conducted studies only sufficient for the adoption of the two PUD Master Plans. The Owner estimates that it will take not less than thirty-five (35) years to fully develop the approximately 3,433 acres which comprise the Property and that an average of approximately 500 acres will be developed during each five (5) year period year after material development commences.