

**MAGNOLIA
DEVELOPMENT AGREEMENT
BY AND BETWEEN**

THE CITY OF CHARLESTON, SOUTH CAROLINA,

AND

**ASHLEY RIVER INVESTORS, LLC,
ST. MATTHEWS LUTHERAN CHURCH,
AND
THE BISHOP OF CHARLESTON**

**Prepared by:
George Bullwinkel, Esq.
Nexsen Pruet, LLC
205 King Street
Charleston, SC 29401**

DEVELOPMENT AGREEMENT

**BY AND BETWEEN THE CITY OF CHARLESTON, SOUTH CAROLINA,
AND
ASHLEY RIVER INVESTORS, LLC**

TABLE OF CONTENTS

RECITALS 1

1. The Property..... 2

2. Definitions..... 2

3. Parties..... 5

4. Relationship of the Parties 5

5. Legal Description of the Real Property 5

6. Intent of the Parties 5

7. Consistency with the City’s Comprehensive Plan and Land Development
Regulations 6

8. Legislative Act 6

9. Applicable Land use Regulations 6

10. Building Codes and Laws Other Than Land Use Regulations 7

11. Local Development Permits and Other Permits Needed 7

12. Vested Rights Governing the Development of the Real Property 8

13. Facilities and Services..... 9

14. Transportation 10

15. Schedule for Project Development 11

16. Term of the Agreement..... 11

17. Amending or Canceling the Agreement 11

18.	Modifying or Suspending the Agreement.....	12
19.	Periodic Review	12
20.	Severability	12
21.	Merger.....	12
22.	Conflicts of Law	12
23.	Remedies.....	12
24.	Recording.....	12
25.	Third Parties.....	12
26.	City Approval of Agreement	12
27.	Successors and Assigns.....	13
28.	General Terms and Conditions	15

EXHIBITS

- Exhibit A: Legal Descriptions and Boundary Plats
- Exhibit B: Magnolia Property Conceptual Land Use Plan (Color)
- Exhibit C: Magnolia Property Development Schedule
- Exhibit D: Charleston Century V Plan
- Exhibit E: City of Charleston Zoning Code
- Exhibit F: Magnolia Planned Unit Development Plan
- Exhibit G: Development Agreement Ordinance
- Exhibit H: Public Infrastructure Improvements Agreement
- Exhibit I: Magnolia Planned Unit Development Ordinance
- Exhibit J: Magnolia Property Traffic Impact Analysis
- Exhibit K: Tax Increment Financing District Ordinances
- Exhibit L: City Dedicated Open Space

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF CHARLESTON, SOUTH CAROLINA, AND ASHLEY RIVER INVESTORS, LLC

This DEVELOPMENT AGREEMENT (together with the Exhibits attached hereto, the "Agreement") is entered into effective as of the ___ day of _____, 2015(the "Effective Date"), by and between the City of Charleston, a political subdivision of the State of South Carolina (the "City"), Ashley River Investors, LLC, a South Carolina limited liability company ("Ashley River"); St. Matthews Lutheran Church ("St. Matthews"); and The Bishop of Charleston (the "Bishop") (collectively, with the City, the "Property Owner"). The City and Owner 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") Sections 6-31-10 through 6-31-160, as it exists on the Effective Date of this Agreement (the "Act"), enables cities to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Act.

2. Under S.C. Code Section 6-31-30, the Charleston City Council has enacted Charleston City Code Section 23-20, which establishes the procedures and requirements for considering and entering development agreements.

3. Pursuant to the Act, the City and its Planning Commission conducted public hearings regarding its consideration of this Agreement on October 21, 2015, and October 27, 2015, in accordance with the Act and the Charleston City Code.

4. The City Council adopted Ordinance Number _____, modifying the official Zoning and Development Standards Map for the City of Charleston City such that those properties identified as TMS# 464-00-00-012, 464-00-00-025, 464-00-00-026, 464-00-00-028, 464-00-00-029, 464-00-00-030, 464-00-00-039, 464-00-00-040, 464-13-00-008, 464-13-00-011, 464-13-00-012, 464-13-00-013, 464-13-00-023, 466-00-00-016, 466-00-00-017, 466-00-00-018, 466-00-00-019, 466-00-00-028, 466-00-00-029, 466-00-00-030, 466-00-00-031, 466-00-00-032, 466-00-00-033, 466-00-00-034, 466-00-00-035, 466-00-00-036, 466-00-00-037, 466-00-00-044, 466-00-00-049, and 466-00-00-051(collectively, the "Magnolia Property" as defined herein) were reclassified as Planned Unit Development (PUD). A copy of the ordinance is attached hereto as Exhibit I.

5. The City of Charleston owns TMS# 460-00-00-002, which consists of approximately 55 acres and is zoned Conservation District (C District); TMS# 464-02-00-051, which consists of approximately 16.5 acres and is zoned Heavy Industrial (HI); and TMS# 466-00-00-021, which consists of approximately 28 acres and is zoned Heavy Industrial (HI).

6. St. Matthews Lutheran Church owns TMS# 464-14-00-136, which consists of approximately 25 acres and is zoned Single Family Residential (SR-1).

7. The Bishop of Charleston owns TMS# 464-00-00-029, which consists of approximately 19.5 acres and is zoned Single Family Residential (SR-1).

8. The City Council adopted Ordinance Number _____ on _____, 2015, (a) determining that this Agreement is consistent with the City Comprehensive Plan, the Act, Charleston City Code Section 23-20, and the Current Regulations, hereinafter defined, of the City, and (b) approving this Agreement. A copy of the Ordinance is attached hereto as Exhibit G.

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.

(a) The Magnolia Property, as defined below, consists of approximately one hundred eighty-two (182) acres. A legal description of the Property is set forth in Exhibit A-1 and the boundary lines of the Property are shown on the plats contained in Exhibit A-2.

(b) The Park/Cemetery Property, as defined below, subject to this Agreement consists of approximately eighty-two (144) acres. A legal description of the Property is set forth in Exhibit A-3 and the boundary lines of the Property are shown on the plats contained in Exhibits A-4.

(c) The Real Property is the sum of the Magnolia Property and the Park/Cemetery Property and consists of approximately two hundred (326) acres.

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 minimum Lot area, width, depth, height, wall separation, setback, and yard requirements for Lots or Development Parcels, as specifically set forth in Exhibit E and Exhibit F and as more fully described in Section 12 (ii) hereof.

(c) “City” means the City of Charleston, South Carolina.

(d) “Comprehensive Plan” means the Charleston Century V Plan, Ordinance No. 2000-179, as amended by Ordinance No. 2003-37, 2008-37, 2011-__ , and 2015-074, adopted pursuant to S.C. Code Section 6-29-510, et seq., and the official map adopted pursuant to S.C.

Code Section 6-7-1210, et seq., attached hereto as Exhibit D and incorporated herein by reference.

(e) “Current Regulations” mean the Comprehensive Plan; City of Charleston Zoning Code, Ordinance Number ____-____, adopted _____, including Ordinance Number 2015-125, adopted September 22, 2015, both of which are attached hereto as Exhibit E and incorporated by reference herein; and the Development Plan, applicable solely to the Magnolia Property, attached hereto as Exhibit F.

(f) “Density” means the number of Dwelling Units per acre. Parcel Density equals the number of Dwelling Units divided by the gross acreage.

(g) “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.

“Development,” as designed 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.

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

(i) “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.

(j) “Development Plan” means the planned unit development for the Magnolia Property approved by Ordinance Number _____, adopted December 16, 2014, and attached hereto as Exhibit F and incorporated herein by reference.

(k) “Dwelling Unit” means one or more rooms, designed, occupied or intended for occupancy as a separate living quarter, 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, or other commercial properties.

(l) “Facilities” means major capital or community improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, and potable water. The Property Owner is specifically exempted from any City requirement for the provision of facilities relating to public education, public health systems and facilities, libraries, public housing, jails and other detention sites, courts, police and trash or garbage disposal sites. Such exemptions shall not, however, exempt Property Owner from payment of applicable user and impact fees for any such facilities.

(m) “Land Development Regulation” means ordinances and regulations enacted by the City of Charleston for the regulation of any aspect of Development and includes City of Charleston zoning, subdivision, building construction, occupancy or sign regulations or any other regulations controlling the Development or use of property.

(n) “Law” means all ordinances, resolutions, regulations, comprehensive plans, Land Development Regulations, policies and rules, custom and usage (formal and informal) adopted by the City 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.

(o) “Lot” means a Development Parcel identified in a Subdivision Plat recorded in the office of the Charleston County Register of Mesne Conveyances.

(p) “Magnolia Property” means all that property described on the attached Exhibit A-1 and depicted on the attached Exhibit A-2.

(q) “Open Space” means areas dedicated to parks, buffers, or naturally occurring or developed wetlands.

(r) “Park/Cemetery Property” means the property described on the attached Exhibit A-3 and depicted on the attached Exhibit A-4.

(s) “Parties” means the Property Owner and City.

(t) “Parcel” means any of those tracts of Real Property that are numbered and identified in Exhibit B, as same may be specifically identified by the filing of a subdivision application.

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

(v) “Property Owner” means Ashley Rivers Investors, LLC, a South Carolina limited liability company, who has an equitable interest in the Magnolia Property by way of that certain Purchase Option Agreement dated March 28, 2013, as amended by that certain First Amendment to Purchase Option Agreement dated September 23, 2014; the City of Charleston; St. Matthews Lutheran Church; and the Bishop of Charleston; 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 Property Owner. Property Owner shall also apply to any successor or assign of the above stated Property Owner(s), which successor or assign is specifically granted Property Owner rights in a recorded document. Unless the context dictates otherwise, “Property Owner” hereinafter refers collectively to all of the Owners, their successors and/or assigns, including Developers.

(w) “Public Infrastructure Improvements Agreement” or “Improvements Agreement” means that agreement by and between the City and Ashley River, dated _____, 2015, approved by the City Council of the City on August _____, 2015, via Ordinance No. 2015-____, a copy of which is attached hereto as Exhibit H and incorporated herein by reference.

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

(y) “Subdivision Plat” means a recorded graphic description of property prepared and approved in compliance with the Current Regulations, as modified in this Agreement.

(z) “Tax Increment Finance Revenue” means revenues generated pursuant to City of Charleston Ordinance No. 2004-151, adopted on December 21, 2004, as amended by Ordinance No. 2014-91, adopted on July 15, 2014, copies of which are attached as Exhibit K.

(aa) “Traffic Impact Analysis” means that certain Traffic Impact Analysis for the Magnolia Development by PB Americas, Inc., dated May 2007, attached as Exhibit J hereto and incorporated herein by reference.

(bb) “Vested Units” means the new multi-family Dwelling Units and commercial square footage which may be approved for all Undeveloped Lands.

3. Parties. Parties to this Agreement are the Property Owner and the City.

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. 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-1 and A-3.

(b) A boundary plat of the Real Property is set forth in Exhibit A-2 and A-4.

The Real Property currently consists of approximately two hundred sixty-four (264) acres of highland and approximately sixty-two (62) acres of wetlands, with a total gross acreage of approximately three hundred twenty-six (326) acres, as more fully depicted on Exhibit A-3 and A-4.

The Property Owner may notify the City 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 Director of the Department of Planning, Preservation and Sustainability; provided, however, that no other property shall be added to the Agreement unless: (1) the Development Plan is duly amended, as applicable; 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. Notwithstanding the foregoing, nothing herein shall require the City to add any property to the Agreement.

6. Intent of the Parties. The City 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 City 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 City's Comprehensive Plan and Land Development Regulations.

This Agreement is consistent with the City'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 City Council and must wait seven 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 City Council, subject to compliance with applicable statutory procedures and consistent with Paragraph 9(a). This Agreement constitutes a legislative act of City Council. City Council adopted this Agreement only after following procedures required by S.C. Code Section 6-31-10, et seq. and Charleston City Code Section 23-20. This Agreement shall not be construed to create a debt of the City as referenced in S.C. Code Section 6-31-145, or otherwise.

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. Notwithstanding the foregoing, the City may amend or enact Laws applicable to its properties subject to the Agreement without the consent of the Property Owner.

(b) Subsequent Regulations. The City may enact Subsequent Regulations pursuant to the provisions of the 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 Phasing Schedule and the Guiding Master Plan, the provisions of the Agreement shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations. Notwithstanding the above, the City shall not apply subsequently adopted Laws and Land Development Regulations to the Real Property or the Project for the Term of the Agreement, pursuant to South Carolina Code Section 6-31-80, unless the City 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 City 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 City, 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. In addition, the Property Owner has the sole discretionary right from time to time to consent in writing to a subsequent regulation adopted by the City not otherwise enforceable under this Agreement on the Real Property, which written approval shall not constitute or require an amendment to this Agreement or the Master Plan, said consent to be memorialized in a written acknowledgement filed with the Department of Planning, Preservation and Sustainability, who may record the document in the Office of the Charleston County Register of Mesne Conveyances.

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

Subparagraph 9(b) of this Agreement does 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 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 City 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 City 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 City 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, as well as permits from the South Carolina Department of Health and Environmental Control, South Carolina Department of Transportation, and the US Environmental Protection Agency.

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. USES AND DENSITY

(i) Permitted Uses/Density.

(a) Magnolia Property. All permitted uses and associated density set forth in Exhibit F are permitted on the Magnolia Property.

(b) Park/Cemetery Property. All permitted uses and density as set forth in Exhibit E, in accordance with the applicable zoning classification, are permitted on the Park/Cemetery Property.

(ii) Building Development Standards.

(a) Magnolia Property. The criteria as set forth in Exhibit F shall apply with respect to minimum Lot area, width, depth, height, wall separation, setback, and yard requirements within the Magnolia Property.

(b) The Park/Cemetery Property. The criteria set forth in Exhibit E shall apply with respect to minimum Lot area, width, depth, height, wall separation, setback and yard requirements in accordance with the applicable zoning classification on the Park/Cemetery Property.

B. PROPERTY OWNER’S ASSOCIATION

Prior to the sale by Ashley River of any portion of the Magnolia Property, a Master Property Owner’s Association (MPOA) will be established for the Magnolia Property will be established. Membership in the MPOA will be mandatory for any property owner. The MPOA will be funded by dues to be established in its recorded restricted covenants. The MPOA’s responsibility will be to manage the affairs of the MPOA including the enforcement of recorded documents and the maintenance of private common areas. The private common areas may include passive park space and nature trails, as well as areas for pools, playgrounds, and other active amenities. There may also be individual property owner associations (POAs) established for each development tract which will incorporate its own common areas and be managed by each POA and governed by the MPOA. The POAs may contract with the MPOA for maintenance and/or management services.

The MPOA’s documents will also establish design principles and an Architectural Review Board (ARB) to review and approve all structures including residential and commercial, and any additions or improvements such as fences, pods, etc. on the Magnolia Property. Design principles shall be approved by the City of Charleston Design Review Board or any successor board, and these guidelines shall be used for the evaluation of individual projects reviewed by City staff. Further, the City will maintain the roadways and drainage systems and any other dedicated property that is properly dedicated to and accepted by the City.

C. OPEN SPACE

Ashley River agrees to preserve portions of the Magnolia Property as Open Space, in accordance with the Development Plan, which shall be designated on each plat submitted to the City for final plat approval. Those open spaces designated on Exhibit L, attached hereto and incorporated herein by reference, shall be improved, in whole or in part, with Tax Increment Finance Revenue pursuant to the Public Works Improvement Agreement, attached as Exhibit H, shall be conveyed to the City by Ashley River, and shall be owned and maintained by the City. Open spaces not dedicated to the City will be owned and/or maintained by the MPOA or POA.

D. WORKFORCE HOUSING

Ashley Rivers agrees to include workforce housing in the Development of the Magnolia Property. The number of owner occupied workforce Dwelling Units and/or rental workforce Dwelling Units (individually, a “Workforce Housing Unit” or collectively, the “Workforce Housing Units”) shall be no less than fifteen (15%) of the total Dwelling Units (the “Workforce Housing Requirement”) constructed within the Magnolia Property and shall be made available as set forth below. The Workforce Housing Requirement shall be located throughout the Magnolia Property, and Property Owner and City acknowledge and agree that the Workforce Housing Requirement shall apply to the Magnolia Property as a whole and not to each Development Parcel within the Magnolia Property.

(i) Land Donation.

(1) Within three (3) years of the Effective Date, or unless otherwise extended by the City Council, Ashley Rivers agrees to donate one half (0.5) acre to the City, or an entity designated by the City, for construction of forty-one (41) rental and owner-occupied Workforce House Units. These units count towards the Workforce Housing Requirement.

(a) The rental Workforce Housing Units shall be made available to households having a household income between fifty (50%) and eighty (80%) of the area median family income (the “AMI”), as defined by the U.S. Department of Housing and Urban Development or its successor.

(b) The owner-occupied Workforce Housing Units shall be made available made available to households having a household income that does not exceed one hundred twenty (120%) percent of the AMI.

(2) Ashley Rivers, at its sole discretion, may donate additional land to the City, or an entity designated by the City, for the construction of additional affordable rental and owner-occupied Workforce Housing Units. Ashley Rivers shall receive a credit of eighty-two (82) Workforce Housing Units per donated acre that shall be counted toward the Workforce Housing Requirement.

(3) The City, or an entity designated by the City, shall execute covenants restricting the above units and, if applicable, ownership by qualified households for ninety-nine (99) years.

(ii) Balance of Workforce Housing Requirement. The balance of the Workforce Housing Requirement shall be developed either as:

(1) Owner-occupied Workforce Housing Units, which shall be made available to households having a household income that does not exceed one hundred twenty (120%) percent of the AMI; or

(2) Rental Workforce Housing Units, which shall be made available to households having a household income between eighty (80%) and one hundred twenty (120%) percent of the AMI.

(3) Covenants. Prior to the issuance of a certificate of occupancy for a Workforce Housing Unit that Ashley Rivers constructs and wishes to count toward the Workforce Housing Requirement, Ashley Rivers shall execute covenants restricting such unit to occupancy and, if applicable, ownership by qualified households for a period of fifteen (15) years for rental Workforce Housing Units and for a period of twenty (20) years for owner-occupied Workforce Housing Units. For the owner occupied Workforce Housing Units, the covenants shall identify the initial maximum allowable sales price, as defined in City of Charleston Zoning Code Section 54-299.1.B, and provide that the initial maximum allowable sales price may be adjusted annually for inflation based on the increase in the AMI or the Consumer Price Index, whichever is greater. In addition, the covenants shall provide that the City has the right to enforce the covenants.

13. Facilities, Services and Public Uses. Although the nature of this long-term project prevents Ashley River from providing exact completion dates, the general phases of Construction and Development with respect to the Magnolia Property are set forth in Paragraph 15 and described in Exhibit C, attached hereto and incorporated by reference herein. With regard to the Park/Cemetery Property, construction and Development is substantially complete. With respect to the Park/Cemetery Property, all required facilities and services are in place. Subject to compliance with applicable Laws, all provisions of this Agreement and prior approval of construction plans by the City or other applicable governmental entity, the City hereby authorizes Ashley River, on its own or through its affiliated companies, to install the Facilities on the Magnolia Property. Notwithstanding any provision herein to the contrary, Ashley River hereby assures the City that adequate Facilities shall be available concurrent with the impacts of Development of the Magnolia Property. The provisions of subparagraphs (a) through (d) below apply solely to the Magnolia Property.

(a) Rights-of-Way/Easement. With the exception of roads and other related infrastructure governed by the Improvements Agreement, attached as Exhibit H, Ashley River 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. Such Facilities may be transferred by Ashley River to the City, subject to proper dedication and acceptance by City, or the POA, as required by recorded covenants.

(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 Charleston Water System and North Charleston Sewer District, respectively, at their standard rates and tap fees for residential and commercial users in their service area.

(c) Public Infrastructure. In addition to the roads and other related infrastructure governed as set forth in subparagraph (a) and (b) above, Ashley River will construct or cause to be constructed certain Facilities pursuant to the Improvements Agreement.

(d) Acceptance of Facilities. The Facilities described in this Paragraph will be accepted by the City upon tender by Ashley River provided said Facilities are built in accordance with the specifications approved by the City, applicable regulations of the City, and provided further that the Facilities are in good condition and not subject to any monetary lien.

(e) Improvements Agreement. The City and Ashley River agree and acknowledge that the Improvements Agreement is essential and integral to the development of the Magnolia Property, and is included herein to satisfy, in part, the requirements of § 6-31-60(A)(4) of the Act. Pursuant to and subject to the provisions of the Improvements Agreement, the City agrees to reimburse Ashley River from the Tax Increment Finance Revenue for the construction costs of the Facilities that will serve the development, a list of which is attached to the Improvements Agreement, attached hereto as Exhibit H. The City and Ashley River agree to use best efforts to satisfy the conditional requirements set forth in said agreement. The term of the Improvements Agreement shall continue for the duration of this Agreement or until acceptance by the City of the final Facility to be constructed by Ashley River and receipt by Ashley River of reimbursement as contemplated by the Improvements Agreement.

14. Transportation.

(a) Infrastructure. Subject to and as identified in the Improvements Agreement, attached as Exhibit H, Ashley River shall pay for and construct all road improvements within the Magnolia Property. Any roads whose standards are dictated by federal, state or county standards must be constructed according to the respective standards. Transportation infrastructure shall be constructed in accordance with the Current Regulations.

(b) Ashley River Obligations for Transportation Infrastructure. The Traffic Impact Analysis, attached hereto as Exhibit J and incorporated by reference herein, was completed in 2007. Ashley River will complete a new traffic impact study (the "New Traffic Study") prior to the issuance of the first building permit for the Magnolia Property. Ashley River will provide internal roads and pathways within the Magnolia Property in accordance with the Traffic Impact Analysis and New Traffic Study, subject to the provisions of the Improvements Agreement, attached as Exhibit H.

If the New Traffic Study shows that the any phase of the Project will affect roads not on the Magnolia Property or intersections not adjoining the Magnolia Property such that, following the Development of the Magnolia Property, the roads would be operating below the no build level of service and the build level of service is less than level of service "E", the pro rata cost attributable to the Development of the Magnolia Property of road intersection improvements required to maintain the no build level of service shall be the responsibility of Ashley River; provided, however, this obligation does not apply in cases where it is not feasible to maintain the no build level of service or a build level of service "E". Notwithstanding anything contained in this Agreement, payment to the City of such pro-rata share prior to the issuance of the first Building Permit for the subject phase of Development shall fulfill all obligations of Ashley River for such mitigation improvements, and all Development Permits related to the subject phase of Development shall be issued after such payment.

(c) Acceptance of Facilities. The road improvements located with the Magnolia Property described above shall be accepted by the City upon dedication by Ashley River 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.

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

(b) Interim Completion Date. The Property Owner projects that during the years after the execution and adoption of this Agreement, the following percentages of the Undeveloped Lands within the Magnolia Property will be developed.

<u>YEAR</u>	<u>% COMPLETE</u>	<u>POPULATION</u>
5	25	
10	100	

The Park/Cemetery Property is substantially completed.

(c) Completion Date. Ashley River projects that by the year 2025 the Project should be substantially completed (i.e., all recreational amenities erected, built, and essentially all structures erected and/or all necessary infrastructure in place to serve the intended uses). Nothing in this paragraph shall be interpreted to extend the term of this Agreement.

16. Term of the Agreement. The term of this Agreement shall be ten (10) years, commencing on the Effective Date; provided, however, that this Agreement may be renewed upon the agreement of the Parties if the Property Owner has not materially breached any terms of the Agreement and has taken commercially reasonable steps and made commercially reasonable progress to fulfill the obligations set forth in Section 12.D of this Agreement.

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 City.

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 Zoning Administrator or their designee shall review the Project and this Agreement at least once every twelve (12) months, at which time Ashley River 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 City finds and determines that the Property Owner has committed a material breach of the terms or conditions of this Agreement, the City 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 City unilaterally may terminate or modify this Agreement; provided that the City has first given Property Owner the opportunity: (1) to rebut the City's finding and determination; or (2) to consent to amend this Agreement to meet the concerns of the City with respect to the findings and determinations.

20. 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.

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. 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 which 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.

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

23. 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 City of Property Owner's Fifth Amendment rights. The City 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 or agent of the Property Owner has any personal liability under this Agreement. Likewise, Property Owner agrees to look solely to the City's assets as to any rights it may have against the City under this Agreement, and hereby waives any right to assert claims for personal liability against individuals acting on behalf of the City, its City Council members, agencies, boards, or commissions. Nothing in this Agreement shall be construed as requiring or authorizing the creation or incurrence of general obligation debt on the part of the City.

24. Recording. Within fourteen days after execution of this Agreement, the Property Owner shall record the agreement with Charleston County Register of Mesne Conveyances. 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.

25. 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.

26. City Approval of Agreement. The City Council has approved the Agreement under the process set forth in S.C. Code Section 6-31-50 of the Act and Charleston City Code Section 23-20 on the terms and conditions set forth in this Development Agreement.

27. 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 City 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 City from third parties. Further, Property Owner shall not be required to notify the City or obtain the City's consent with regard to the sale of Lots in single family residential subdivisions or Lots in commercial areas which 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 Lots in single family subdivisions and individual building pad sites in commercial area.

This Agreement shall also be binding on the City and all future City Councils for the duration of this Agreement, even if the City 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 City by thirty (30) days prior written notice and provide it a copy of the assignment of such status as the “Property Owner.”

(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 City.

(iii) Assignment of Development Rights. Any and all conveyances of any portion of the Real Property subject to the density unit totals set forth in Exhibit F and the size limitations set forth in Paragraph 12A herein to third party developers shall, by contract and covenant running with the land, assign a precise number of Vested Units, and/or commercial square footage, (in reduction of the minimum Vested Units, and/or vested commercial square footage provided for herein.). The Property Owner shall notify the City within fifteen (15) days of the conveyance of the property, provide the City the applicable documents assigning the Vested Rights to the transferee along with the name and contact information of the transferee, and record the same in the office of the Charleston County Register of Mesne Conveyances.

(iv) Mortgage Lenders. Notwithstanding anything to the contrary contained herein, the exceptions to transfer contained in this Section shall 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 City sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the City 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 City will respond to such a request within thirty (30) days of the receipt of the request, and may employ such professional consultants, municipal, City 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 City will be binding on the City 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 City 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 City as of its date. Such notice shall have the same effect as a Certificate issued by the City under this Section.

28. 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 A-3 and shown on Exhibits A-2 and A-4. 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 City and the City's council members, officials, employees, agents, attorneys and consultants, and the City, on behalf of itself and the City'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 City Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of the City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the City by making any promise or representation contained herein. Any amendments are subject to Paragraph 18 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) 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 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) Property Taxes and Fees. Nothing contained herein shall preclude the City from levying and collecting ad valorem property taxes or any fees that are imposed in like manner upon other properties within the City.

(i) Contingency. The Agreement is contingent upon Ashley River acquiring title to the Magnolia Property.

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

City of Charleston
ATTN: Mayor
P.O. Box 304

Charleston, SC 29402

With copies to:

City of Charleston
ATTN: Zoning and Codes Director
P.O. Box 304
Charleston, SC 29402

City of Charleston
ATTN: Attorney
P.O. Box 304
Charleston, SC 29402

Ashley River Investors, LLC
201 Sigma Drive, Suite 400
Summerville, SC 29483

With copy to:

George Bullwinkel, Esquire
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, SC 29401

St. Matthews Lutheran Church
405 King Street
Charleston, SC 29403

The Bishop of Charleston
P.O. Box 818
Charleston, SC 29402

(k) 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:

CITY OF CHARLESTON

By: _____

Joseph P. Riley, Mayor

Attest: _____

Clerk of Council

STATE OF SOUTH CAROLINA)

)

ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

I, _____, Notary of the Public of the State of South Carolina, do hereby certify that Charleston, South Carolina, by _____, its _____ and _____, its Clerk of Council, personally appeared before me this ____ day of _____, 2015, and acknowledged the execution of the foregoing instrument.

Notary Public for South Carolina

My Commission Expires: _____

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

Witness:

ASHLEY RIVER INVESTORS, LLC,
a South Carolina limited liability company

By: MWV-MAGNOLIA/ARC I, LLC,
a Delaware limited liability company

Its: Authorized Director

By: _____

Kenneth T. Seeger
President and Chief Executive Officer

STATE OF SOUTH CAROLINA)

)

ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

I, _____, Notary of the Public of the State of South Carolina, do hereby certify that MWV-Magnolia/ARC I, LLC, by Kenneth T. Seeger, its President, personally appeared before me this ____ day of _____, 2015, and acknowledged the execution of the foregoing instrument.

Notary Public for South Carolina

My Commission Expires: _____

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

Witness:

SAINT MATTHEWS LUTHERAN CHURCH

By: _____

Its: _____

STATE OF SOUTH CAROLINA)

)

ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

I, _____, Notary of the Public of the State of South Carolina, do hereby certify that Saint Matthews Lutheran Church, by _____, its _____, personally appeared before me this ____ day of _____, 2015, and acknowledged the execution of the foregoing instrument.

Notary Public for South Carolina
My Commission Expires: _____

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

Witness:

THE BISHOP OF CHARLESTON

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 The Bishop of Charleston, by _____, its _____, personally appeared before me this ____ day of _____, 2015, and acknowledged the execution of the foregoing instrument.

Notary Public for South Carolina
My Commission Expires: _____

EXHIBITS

- Exhibit A: Legal Descriptions and Boundary Plats
- Exhibit B: Magnolia Property Conceptual Land Use Plan (Color)
- Exhibit C: Magnolia Property Development Schedule
- Exhibit D: Charleston Century V Plan
- Exhibit E: City of Charleston Zoning Code
- Exhibit F: Magnolia Planned Unit Development Plan
- Exhibit G: Development Agreement Ordinance
- Exhibit H: Public Infrastructure Improvements Agreement
- Exhibit I: Planned Unit Development Ordinance
- Exhibit J: Magnolia Property Traffic Impact Analysis
- Exhibit K: Tax Increment Financing District Ordinances
- Exhibit L: City Dedicated Open Space

EXHIBIT A

Legal Description and Boundary Plats

EXHIBIT B

Magnolia Property Conceptual Land Use Plan

EXHIBT C

Magnolia Property Development Schedule

EXHIBT D

Charleston Century V Plan

EXHIBT E

City of Charleston Zoning Code

EXHIBIT F

Magnolia Planned Unit Development Plan

EXHIBT G

Development Agreement Ordinance

EXHIBT H

Public Infrastructure Improvements Agreement

EXHIBT I

Planned Unit Development Ordinance

EXHIBIT J

Magnolia Property Traffic Impact Analysis

EXHIBT K

Tax Increment Financing District Ordinances

EXHIBIT L

City Dedicated Open Space