



Staff Report

Amendment to the Zoning Map

DATES: Town Council First Reading & Public Hearing: September 17, 2024
Town Council Second Reading & Public Hearing: October 15, 2024

TO: Irmo Town Council

FROM: Douglas Polen, Assistant Town Administrator

SUBJECT: Development Agreement

SUBJECT PROPERTY: Approximately 65.12 acres located along Dreher Shoals Road, Salem Church Road, and Muskrat Run; specifically, TMS R03201-01-02, R03201-01-06, R03202-01-01, R03202-01-03, R03202-01-05, R03202-01-06, R03202-01-07, R03202-01-11, R03202-01-15, R03203-02-04, and R03203-02-05

ACTION REQUESTED: Approve a Development Agreement for the Water Walk Development

Background

This item covers the Development Agreement for the Water Walk project. Details on the project are below, and are more fully covered in the following rezoning ordinance, 24-13.

Per the South Carolina Local Government Development Agreement Act, municipalities are allowed to enter into development agreements with developers in order to better protect both sides of the agreement as regards the development. The Town receives assurances that the development will follow a certain pattern, style, and timing, while the developer is locked into the current version of the Zoning Ordinance, which will not change as the edits are made to the Zoning Ordinance for other, future developments.

The attached Development Agreement has been reviewed by Will Edwards, Town Attorney, and meets all requirements of local and state law.

More information on the Water Walk project follows.

The Town of Irmo has been approached by Material Capital Partners and Palmetto Alliance Property Group to rezone eleven properties totaling 65.12 acres at the corner of Dreher Shoals Road, Salem Church Road, and Muskrat Run from their current zoning designations of RG, General Residential; CG, General Commercial; and FA, Fringe Agriculture, to MD, Mixed-Use Development. The resulting development, known as Water Walk, is proposed to consist of 52 acres of residential land with a maximum of 550 residential units and an additional 13.2 acres of commercial land.

The applicants have submitted a development agreement and descriptive statement with bonus density calculation, as outlined in Article 7 of the Zoning Ordinance.

The subject properties are as follows:

TMS	Address/Location	Zone	Acreeage
R03201-01-02	Dreher Shoals Road	RG	13.80
R03201-01-06	2909 Dreher Shoals Road	RG	10.27
R03202-01-01	Muskrat Run	RG	2.77
R03202-01-03	Dreher Shoals Road	FA	10.61
R03202-01-05	Dreher Shoals Road	RG	2.76
R03202-01-06	Dreher Shoals Road	CG	3.00
R03202-01-07	Dreher Shoals Road	CG	4.64
R03202-01-11	Muskrat Run	FA	10.42
R03202-01-15	Muskrat Run	FA	1.00
R03203-02-04	3025 Dreher Shoals Road	RG	1.56
R03203-02-05	Salem Church Road	RG	4.29

The developer is proposing a maximum of 550 residential units on the property (500 +/- 10% with a minor amendment). At present, the property could conceivably be developed with 711 units, assuming 16 units per acre in the RG zones, 16 units per acre in the CG zones as residential above commercial, and one (1) unit per acre in the FA zone. Additionally, the developer is proposing a maximum of 150,000 sf of commercial, possibly including a hotel with a maximum of 75 rooms.

Staff Findings

Staff has been working with the developer for months and feels that the development is in the best interest of the Town of Irmo. For this reasons, Staff recommends **APPROVAL** of the Water Walk Development Agreement.

STATE OF SOUTH CAROLINA)
)
TOWN OF IRMO)

ORDINANCE 24 – 12

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT FOR WATER WALK PURSUANT TO THE SOUTH CAROLINA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT AUTHORIZING THE TOWN OF IRMO TO EXECUTE SAID DEVELOPMENT AGREEMENT

WHEREAS, the South Carolina Local Government Development Agreement Act, South Carolina Code of Laws, Title 6, Chapter 31 (1976, as amended) Sections 6-31-10 through 6-31-160 (the “Act”), authorizes local governments to enter into development agreements with a developer as therein defined; and

WHEREAS, Monts Farms Properties, LLC; William Joseph Monts, Jr.; Linda M. Duffie; Wanda M. Dial; Loretta M. McEntire; and Ronald P. Monts (“Owners”) own certain lands suitable for a mixed use planned development; and

WHEREAS, pursuant to the Act, the Town of Irmo (“Town”) is authorized to enter into binding development agreements with property owners having legal or equitable interests in real property; and

WHEREAS, the Town and the Owners have now concluded their negotiations with respect to the terms for a development agreement for the property owned by the Owners referenced as the following:

R03201-01-06	R03202-01-01	R03202-01-07	R03203-02-04
R03201-01-02	R03202-01-15	R03202-01-06	R03203-02-05
R03202-01-03	R03202-01-11	R03202-01-05	

NOW, THEREFORE, BE IT ORDAINED and ordered by the Mayor and Town Council of the Town of Irmo, South Carolina, in Council duly assembled on this 15th day of October, 2024, that the development agreement, in substantially the form attached hereto as Exhibit A, this execution of a definitive development agreement to be conclusive evidence of such approval, is hereby approved.

PASSED AND ADOPTED this 15th day of October, 2024.

William O. Danielson, *Mayor*

ATTEST:

Renee Caviness, *Municipal Clerk*

1st Reading & Public Hearing: September 17, 2024

2nd Reading & Public Hearing: October 15, 2024

**WATER WALK
DEVELOPMENT AGREEMENT
BY AND BETWEEN
MONTS FARM PROPERTIES, LLC,
a South Carolina limited liability company,
WILLIAM JOSEPH MONTS, JR.,
LINDA M. DUFFIE,
WANDA M. DIAL,
LORETTA M. McENTIRE,
RONALD P. MONTS,
AND
TOWN OF IRMO, SOUTH CAROLINA
_____, 2024**

**Prepared by:
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Nelson Mullins Riley & Scarborough LLP
151 Meeting Street, 6th Floor
Charleston, SC 29401**

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BY AND BETWEEN
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RONALD P. MONTS
AND
TOWN OF IRMO, SOUTH CAROLINA
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EXHIBITS

- Exhibit A: Legal Description
- Exhibit B: Survey
- Exhibit C: Water Walk Development Agreement Ordinance
- Exhibit D: Current Regulations
- Exhibit E: Form of Partial Assignment and Assumption of Rights and Obligations under
Development Agreement
- Exhibit F: General Development Plan
- Exhibit G: Design Guidelines

DEVELOPMENT AGREEMENT
BY AND BETWEEN
MONTS FARM PROPERTIES, LLC,
a South Carolina limited liability company,
WILLIAM JOSEPH MONTS, JR.,
LINDA M. DUFFIE,
WANDA M. DIAL,
LORETTA M. McENTIRE,
RONALD P. MONTS
AND
TOWN OF IRMO, SOUTH CAROLINA

This DEVELOPMENT AGREEMENT (together with the Exhibits attached hereto and incorporated by reference herein, the “Agreement”) is entered into effective as of the ____ day of _____, 2024 (the “Effective Date”), by and between Monts Farm Properties, LLC, a South Carolina limited liability company, William Joseph Monts, Jr., Linda M. Duffie, Wanda M. Dial, Loretta M. Mcentire, Ronald P. Monts (collectively, “Property Owner”) and the Town of Irmo, a political subdivision of the State of South Carolina (the “Town”) (collectively, the "Parties").

RECITALS

WHEREAS, it is the desire of the Town and its citizens to foster the development of a distinctive, attractive community, with a strong sense of place, grow the Town by promoting mixed-use, infill development opportunities, provide a range of housing types, support a diverse and resilient economic base, and preserve the Town’s natural and cultural heritage;

WHEREAS, the Town has determined that its objectives can be best achieved by allowing the development of certain property comprising approximately Sixty-five (65) acres and described on Exhibit A (the “Real Property”) into a traditional mixed-use community containing residential, commercial and hospitality parcels (the “Project”);

WHEREAS, in connection with the development of the Project by the Property Owner, Property Owner submitted a General Development Plan to the Planning Commission, which was approved by Town Council by Town Ordinance No. 2024-____ in accordance with the Development Code and as set forth herein (the “PD Ordinance”);

WHEREAS, from and after the date of this Agreement, the Project shall be referred to as “Water Walk”;

WHEREAS, the Project is consistent with the Town’s Comprehensive Plan and Land Development Regulations;

WHEREAS, the Company possesses particular qualifications to develop the Project as desired by the Town;

WHEREAS, The Code of Laws of South Carolina, 1976, as amended (the “S.C. Code”), Sections 6-31-10 through 6-31-160, as it exists on the Effective Date (the “Act”), enables political subdivisions of the State of South Carolina to enter into binding development agreements with entities intending to develop real property under certain conditions set forth in the Act;

WHEREAS, the Act recognizes the benefit of providing developers with “reasonable certainty as to the lawful requirements that must be met in protecting vested property rights, while maintaining the authority and duty of the government to enforce the laws and regulations which promote the public safety, health and general welfare”;

WHEREAS, the Property Owner intends to develop the Project in accordance with the PD Ordinance;

WHEREAS, the Parties have agreed that public facilities must be available and adequate to serve the development concurrent with the impacts of the Project, and have assumed responsibilities as to such facilities, as set forth in this Agreement;

WHEREAS, Pursuant to the Act, the Town conducted public hearings regarding its consideration of this Agreement on _____, 2024, and _____, 2024, after publishing and announcing notice, in accordance with the Act;

WHEREAS, the Town Council adopted Ordinance No. 24-__ on _____, 2024, (a) determining that this Agreement is consistent with the Town Comprehensive Plan, the Act, and the Current Regulations of the Town, and (b) approving this Agreement; and

WHEREAS, the Town and the Company both deem it to be in their best interests, and the best interests of the citizens of the Town, to enter into this Agreement.

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 property subject to this Agreement currently consists of approximately sixty-five (65) acres, of which approximately [_____ (____)] acres are highland. A legal description of the property is set forth in Exhibit A, attached hereto and incorporated by reference herein, and the boundary lines of the property are shown on the survey attached hereto as Exhibit B, and incorporated by reference herein.

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 Town of Irmo, SC Comprehensive Plan, adopted on August 15, 2023, by Ordinance No. 23-18, as amended, and is included in the Current Regulations, which are attached hereto as Exhibit D.

(c) “Current Regulations” mean the Comprehensive Plan, the Development Code, as amended through the Effective Date, and all other applicable Town ordinances, all as amended through the Effective Date, and attached hereto as Exhibit D and incorporated herein by reference.

(d) “Development” means the planning for or carrying out of a building activity, 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 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. For purposes of the Development Agreement, the term “Development” shall be defined pursuant to the Act.

(e) “Development Code” means the Town of Irmo, SC Code of Zoning and Land Development Regulations adopted by Ordinance No. 20-01 dated February 4, 2020, [updated through August 20, 2024], and is included in the Current Regulations, which are attached hereto as Exhibit D.

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

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

(h) “Development Phasing Schedule” means the schedule of proposed Development of the Real Property as shown in Section VIII of the General Development Plan.

(i) “Development Rights” means all rights to the use and Development of the Real Property derived from this Agreement and the PD Ordinance.

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

(k) “General Development Plan” means the Concept Plan and Descriptive Statement setting forth the land use and general development plan for the Project, which was approved by the PD Ordinance by Town Council and is attached hereto as Exhibit C.

(l) “Land Development Regulations” means ordinances and regulations enacted by the Town for the regulation of any aspect of Development and includes, but is not limited to, the PD Ordinance, Town zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the Development or use of real property.

(m) “Law” means all statutes, ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies and rules, custom and usage (formal and informal) adopted by the State and/or the Town affecting the Development of real property, and includes laws governing permitted uses of the real property, governing density, and governing design, improvement, and construction standards and specifications.

(n) “Official Zoning Map” means the Town of Irmo Official Zoning map as outlined in the Development Code.

(o) “PD Ordinance” has the meaning ascribed in the Recitals.

(p) “Project” is the Development that will occur within and upon the Real Property described in Exhibit A and depicted on Exhibit B.

(q) “Property Owner” means, collectively, Monts Farm Properties, LLC, a South Carolina limited liability company, William Joseph Monts, Jr., Linda M. Duffie, Wanda M. Dial, Loretta M. Mcentire, Ronald P. Monts, and includes each of their successors in interest, successors in title (as to any portion of the Real Property) and/or assigns by virtue of assignment or other instrument compliant with this Agreement. When used herein with reference to a specific property within the Real Property or other portion of the Real Property, Property Owner shall mean and refer to that specific person or entity that has legal title to such portion of the Property.

(r) “Real Property” is the real property referred to in Section 4 and includes any improvements or structures customarily regarded as part of real property.

(s) “Water Walk Development Agreement Ordinance or Development Agreement Ordinance” means the Town Ordinance No. 24-____, adopted on _____, 2024, approving this Agreement and attached hereto as Exhibit C and incorporated herein by reference.

(t) “Term” shall have the meaning set forth in Section 13 of this Agreement.

(u) “Town” means Town of Irmo, South Carolina.

3. 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.

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

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

The Real Property currently consists of approximately [_____ (____)] acres of highland and approximately [_____ (____)] acres of wetlands, with a total gross acreage of approximately sixty-five (65) acres.

5. Intent of the Parties. The Town and the Property Owner agree that the burdens of this Agreement bind, and the benefits of this Agreement shall inure, to each of them and to their successors in interest and, in the case of the Property Owner, its successors in title and/or assigns. The Town and the Property Owner are entering into this Agreement in order to secure benefits and burdens referenced in the Act. To that end, the Parties agree to work cooperatively to accomplish the purposes of this Agreement during the Term of this Agreement.

6. Consistency with the Town’s Comprehensive Plan and Land Development Regulations. Town represents and warrants that this Agreement is consistent with the Town’s Comprehensive Plan and Current Regulations. Whenever expressed 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 *part 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 § 6-31-80, the standards set forth in this Agreement shall govern. Town further represents and warrants that Town Council has approved the Project under the process set forth in S.C. Code § 6-31-50 of the Act and the Development Code on the terms and conditions set forth in this Agreement.

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

8. Laws and Regulations Governing Development of the Real Property.

(a) Current 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 are the Current Regulations. Nothing contained herein shall abrogate any rights either preserved by S.C. Code Section 6-31-140 or that may be available or may become available pursuant to common law and otherwise in the absence of a development agreement.

(b) Subsequent Regulations. The Town may enact subsequent regulations pursuant to S.C. Code § 6-31-80. In recognition of the fact that the Town may, in the future, implement zoning and land development ordinances and procedures that may be improvements over those set forth in the Current Regulations, Property Owner may notify the Town in writing that it elects to be bound by a modified provision. The delivery and recording in the Office of the Richland County, South Carolina Register of Deeds shall constitute a minor modification to the Agreement. Thereafter, the modified provision shall also apply to the Real Property and be considered part of the Current Regulations.

(c) State and Federal Law. Pursuant to S.C. Code Ann. § 6-31-130, 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.

(d) Building Codes and Laws Other Than Land Development Regulations. Notwithstanding any provision which may be construed to the contrary in this Agreement, Property Owner shall comply with, and this Agreement shall not be construed to supersede or contravene any building, housing, electrical, mechanical, plumbing, gas and energy 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 Section 8(b).

(e) Vested Rights. The benefits that inure to the Property Owner under this Agreement shall, commencing on the Effective Date and during the Term of this Agreement, constitute vested Development Rights for the Development of the Real Property, and the Property Owner shall have the vested right to undertake Development of the Real Property, or any portion thereof, in accordance with the Development Rights and consistent with the terms of this Agreement and the Current Regulations during the Term of this Agreement. The Parties acknowledge and agree that as of

the Effective Date, the Property Owner has a legal interest in the Real Property and is vested with all Development Rights arising out of this Agreement.

9. Local Development Permits and Other Permits Needed. The Parties anticipate that local Development Permits and other regulatory permits will be needed to complete the Project, including, but not limited to, plat approvals (preliminary, conditional or final), road and drainage construction plan approvals, building permits, certificates of occupancy, county water and/or sewer development contracts, and utility construction and operating permits. The failure of this Agreement to address a particular permit, condition, term, or restriction does not relieve the Property Owner of the necessity of complying with the Law governing permit requirements, conditions, terms, or restrictions.

10. Land Uses and Intensities. The General Development Plan, including the PD Ordinance and Current Regulations, establish the zoning and land development regulations for the Real Property, as well as the Development uses permitted on the Real Property, population densities, and building intensities and heights.

(a) Any future amendment by the Town of the Comprehensive Plan shall not constitute or require an amendment of this Agreement. Any and all Development authorized by this Agreement pursuant to the PD Ordinance shall be deemed consistent with the Comprehensive Plan.

(b) The PD Ordinance shall survive the Term of this Agreement, and the provisions of the General Development Plan, including without limitation those that pertain to the validity of any and all Development Permits issued pursuant to the General Development Plan, shall remain effective after the expiration of the Term of this Agreement unless and until amended by Town Council pursuant to the zoning process in effect at the time.

11. Facilities and Services. The Town hereby authorizes the Property Owner to install or cause to be installed, in accordance with the Current Regulations, the Facilities on the Real Property.

(a) Rights-of-Way/Easement. Except as expressly provided herein, the Property Owner or a third party shall at its expense develop and provide roads, streets, thoroughfares and other transportation and drainage related facilities and infrastructure within the Project and pursuant to and at such time required by the development plans for the Project and/or the Current Regulations. Such facilities may be transferred by the Property Owner, in fee or by easement, subject to proper dedication and acceptance by the South Carolina Department of Transportation (“SCDOT”), the Town, or a property owners association, as governed by recorded covenants, conditions, and restrictions regarding the ownership and maintenance thereof. Rights-of-way and easements may also remain privately owned and maintained.

(b) Potable Water. Subject to approval by the South Carolina Department of Health

and Environment Control (“DHEC”), the service and Facilities for water for all phases of the Project shall be provided by Columbia Water insofar as its rights allow. If the Property Owner initiates an effort to form a public service district to support future water service needs of the Project, the Town agrees, without limiting its police powers or legislative authority, to cooperate with the Property Owner in Property Owner’s development of a water service district under all applicable local and State laws.

(c) Sanitary Sewer. Subject to approval by DHEC, the service and Facilities for sanitary sewer for all phases of the Project shall be provided by Blue Granite insofar as its rights allow. If the Property Owner wishes to form a public service district to support future sewer service needs of the Project, Property Owner shall coordinate with the Town in development of sewer service district under applicable state law and shall comply with all applicable county and state requirements and procedures.

(d) Public Services. The Project is eligible to receive county services at a level and in a manner that is consistent with other similarly situated developed areas of the county within the vicinity of Water Walk.

(e) Financing for Infrastructure and Other Public Facilities. The Property Owner may request that special assessment districts or other financing mechanisms be utilized on portions or all of the Real Property to finance infrastructure improvements and other public facilities for the Real Property, or to finance Facilities that benefit the Real Property.

12. Schedule for Project Development; Annual Update. The Property Owner anticipates commencing Development of the Project by March 31, 2026. The Property Owner projects that by the year 2035 the Project should be substantially completed (i.e., essentially all structures erected and/or all necessary infrastructure in place to serve the intended uses). The Parties acknowledge that the Property Owner intends to develop the Real Property in phases. In accordance with the Act, the Property Owner shall develop the Real Property in a manner consistent with the Development Phasing Schedule set forth in Section VIII of the General Development Plan. As the timing of the Development will be affected by the health of the national and local economics as well as demand for various housing types and commercial uses in the region, it is difficult to accurately project the timing and scope of the Project. A failure by the Property Owner to comply with the Development Phasing Schedule 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 Property Owner requests a modification in the dates as set forth in the Development Phasing Schedule and is able to demonstrate that there is good cause to modify these dates, these dates shall be modified by the Town. Property Owner shall, at a

minimum, update the Development Phasing Schedule on an annual basis and submit it to the Town prior to the periodic reviews required pursuant to Section 15.

13. Term of the Agreement. The term of this Agreement shall be five (5) years, commencing on the Effective Date. The Parties agree that the Real Property contains more than twenty-five acres and less than two hundred fifty acres as required by S.C. Code Section 6-31-40 for a term of five (5) years. Absent a material breach of this Agreement, the term of this Agreement shall automatically be extended by an additional five (5) years. Nothing in this Agreement shall be interpreted to preclude the Parties from extending the termination date by mutual agreement or from entering into subsequent development agreements.

14. Amending or Canceling the Agreement. Subject to the provisions of S.C. Code Section 6-31-80 and Section 15 below, this Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties in writing 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. A major modification of this Agreement shall occur only after public notice and a public hearing by the Town pursuant to S.C. Code Section 6-31-60(B).

The Concept Plan is not intended to be rigid, nor to identify exact site plans for future development. The location of roads, buildings, recreational amenities and other elements may vary at the time of permit applications when more specific designs are available, as long as the maximum densities set forth herein and the general concept of environmentally sensitive residential developments suggested by the Concept Plan is followed and respected, however, reductions in buffers and setbacks in relation to external properties and roadways are major modifications. Such minor variations are eligible to be approved at staff level in accordance with the Zoning Regulations without a public hearing or amendment to applicable ordinances.

15. Periodic Review. The Town Planning Official shall conduct annual reviews to assess the progress of Development for the purposes of determining if the Property Owner is demonstrating good faith compliance with the terms of this Agreement. The Town shall prepare a written report to the Planning Commission, Town Council, and the Property Owner within thirty (30) days following the annual review.

When the annual review reveals a material breach of this Agreement, the following steps shall be taken:

- (a) The Town Planning Official shall include in the report a notice of breach setting out the specific nature of the breach and the evidence supporting this determination.
- (b) The Property Owner shall have thirty (30) days to respond with a corrective action

plan with the time frame to cure the material breach. The Property Owner should be given a reasonable time to correct the breach, commensurate with the nature of the breach. The Town Planning Official may approve the corrective action plan. A decision of the Town Planning Official may be appealed to Town Council.

(c) Upon failure of the Property Owner to respond to the notice of breach within thirty (30) days, or to correct the breach within the time given, the Town Council may unilaterally terminate or modify this Agreement. However, failure of the Property Owner to meet a commencement or completion date shall not, in and of itself, automatically constitute a material breach of this Agreement, but must be judged based on the totality of the circumstances. The Property Owner shall have an opportunity to rebut the determination in executive session of Town Council, or consent to amend this Agreement to meet the concerns raised by the findings and determination of the breach.

16. 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.

17. 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.

18. Conflicts of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina, and the Fifth Judicial Circuit, Richland County, shall be the proper venue for any disputes,

19. Remedies. In addition to the remedies found in Section 15 above, 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 non-breaching Party who seeks enforcement of the Agreement is entitled to all remedies available at law and equity, including, but not limited to, actual damages; however, the Parties agree that neither Party is entitled to punitive damages. The Town hereby agrees that no shareholder, employee, or agent of the Property Owner has any personal liability under this Agreement.

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

21. 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 that are not Parties or successors and assigns to this Agreement.

22. 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 a Development Parcel shall be solely responsible for performance of obligations hereunder as to the Development Parcel so transferred. .

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

i. Transfer of Property Owner Obligations. Simultaneously with the Property Owner's conveying any Development Parcel to a third party, the Property Owner shall be required to obtain a written agreement in substantially the same form as Exhibit E, attached hereto and incorporated herein by reference, expressly assuming the Property Owner's obligations with regard to the Development Parcel and the potential Development of same. The Property Owner shall notify the Town within fifteen (15) days after the conveyance of the Development Parcel, provide the Town the applicable documents assigning the development obligations to the transferee and record the same in the office of the Aiken County Register of Deeds.

ii. Assignment of Development Rights. Any and all conveyances of a Development Parcel to third-party developers shall, by written agreement in substantially the same form as Exhibit E, assign a precise number of residential units and/or commercial/industrial/office square footage along with the permitted land uses that may be constructed on the Development Parcel. The Property Owner shall notify the Town within fifteen (15) days of the conveyance of the Development Parcel, provide the Town the applicable documents assigning the Development Rights to the transferee and record the same in the office of the Richland County Register of Deeds.

iii. Mortgage Lenders. Notwithstanding anything to the contrary contained herein, the exceptions to transfer contained in this Section shall not apply: (i) to any mortgage lender either as the result of foreclosure of any mortgage secured by any portion of the Real Property or any other transfer in lieu of foreclosure; (ii) to any third party purchaser at such a foreclosure; or (iii) to any third

party purchaser of such mortgage lender's interest subsequent to the mortgage lender's acquiring ownership of any portion of the Real Property as set forth above. Furthermore, nothing contained herein shall prevent, hinder or delay any transfer or any portion of the Real Property to any such mortgage lender or subsequent purchaser.

(c) Reserved.

(d) Residential Lots Exempted. Property Owner shall not be required to notify the Town or obtain the Town's consent with regard to the sale of lots in residential areas which have been platted and approved in accordance with the terms of this Agreement.

(e) Estoppel Certificate. Upon request in writing from an assignee or the Property Owner to the Town sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the Town will provide a certificate (the "Certificate") in recordable form stating that solely with respect to the Development Parcel described in the request, there are no violations or breaches of this Agreement of which the Town has actual knowledge, 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. If the Town is unable to confirm the statements in the Certificate are truthful and complete, Town will notify the Property Owner in writing and will not be required to sign 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 (30) days of the time of its receipt, the Development Parcel described in the request will be deemed in compliance with all of the covenants and terms of this Agreement. A certificate of such conclusion may be recorded by the Property Owner, including a copy of the request and the notice of receipt and it shall be binding on the Town as of its date. Such notice shall have the same effect as a Certificate issued by the Town under this Section.

23. General Terms and Conditions.

(a) Agreements to Run with the Land. This Agreement shall be recorded against the Real Property. 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) 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 so as to bind the Town by making any promise or representation contained herein.

(c) 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.

(d) 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, each Party shall be responsible for its attorneys' fees and all costs and expenses. Notwithstanding the foregoing, should any judgment or final order be issued in that proceeding which provides for reimbursement of attorneys' fees and all costs and expenses, each Party shall be responsible for said reimbursement as specified in such judgment or final order.

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

To the Town:

Town of Irmo

Attn: _____

With copy to:

Attn: _____

To the Property Owner:

C/O Standard Properties Real Estate Ventures

Attn: Loretta McEntire

216 Montclair Road

Irmo, SC 29063

With copy to:

Lindsay S. Van Slambrook, Esq.

Nelson Mullins Riley & Scarborough LLP

151 Meeting Street, 6th Floor

Charleston, SC 29401

(f) 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 SIGNATURE PAGES ATTACHED]

EXHIBITS

- Exhibit A: Legal Description
- Exhibit B: Survey
- Exhibit C: Water Walk Development Agreement Ordinance
- Exhibit D: Current Regulations
- Exhibit E: Form of Partial Assignment and Assumption of Rights and Obligations
under Development Agreement
- Exhibit F: General Development Plan
- Exhibit G: Design Guidelines

Exhibit A
Legal Description

Exhibit B
Survey

Exhibit C

Water Walk Development Agreement Ordinance

[To Be Inserted at Execution]

Exhibit D

Current Regulations

[To Be Inserted at Execution]

assumes and agrees to perform all of Assignor's rights, privileges and obligations as described in the Development Agreement, applicable to the Transferred Property, including without limitation, the Assumed Obligations (as defined below). Assignee acknowledges receipt of the Development Agreement and all Exhibits thereto and agrees to be bound by the terms thereof and to develop the Transferred Property in accordance with such terms. The rights and obligations hereby assigned and assumed shall be covenants running with the land, binding upon the parties hereto and their successors and assigns.

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

- (i) _____
- (ii) _____

3. Default and Enforcement of Provisions. As provided in Section 19 of the Development Agreement and as herein provided, upon the failure of Assignor or Assignee to comply with the terms of the Development Agreement and this Partial Assignment and Assumption incident to the Property, the non-defaulting party may pursue the remedies in accordance with Section 19 of the Development Agreement.

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

5. Notices. Any notice, demand, request, consent, approval or communication among any of the parties hereto shall be in writing and shall be delivered or addressed as provided under Section 22(b) of the Development Agreement and shall also be addressed as follows:

As to Assignee:

ATTN: _____

With copy to:

ATTN: _____

To Assignor:

ATTN: _____

With copy to:

ATTN: _____

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

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

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

Exhibit F

General Development Plan

[Approved Concept Plan and Descriptive Statement to be attached]

Exhibit G
Design Guidelines