

**When recorded, return to:**  
**Capstone Collegiate Communities, LLC**  
**431 Office Park Drive**  
**Birmingham, Alabama 35223**

**DEVELOPMENT AGREEMENT PARTIAL ASSIGNMENT,  
ASSUMPTION AND CITY CONSENT AGREEMENT**

This Development Agreement Partial Assignment, Assumption and City Consent Agreement ("Agreement") is entered into by and among Craddock Avenue Partners LLC ("Assignor"), Capstone Collegiate Communities, LLC ("Assignee"), and the City of San Marcos ("City"), with reference to the following recitals of fact and intention:

A. Assignor and City have executed that certain that certain Development Agreement regarding the Buie Tract Property dated November 24, 2009 and recorded in Volume 3914, Page 871 of the Official Public Records of Hays County, Texas, (the "Original Agreement"), concerning certain real property located in the City of San Marcos, County of Hays, State of Texas as further described on Exhibit "A" to the Development Agreement (the "Overall Property"), as such Original Agreement was approved by the City pursuant to Resolution No. 2009-166R dated December 1, 2009 (the "Resolution") and as corrected by the Correction to Recorded Development Agreement dated October 26, 2012, recorded on November 7, 2012 in the Official Records as Document Number 1203224 (the "Correction"; the Original Agreement, Resolution and Correction collectively, the "Development Agreement").

B. Assignee is under contract to purchase from Assignor a portion of the Overall Property as further described on Exhibit "1" attached hereto (the "Capstone Property"). As a condition to Assignee's purchase of the Capstone Property, Assignor desires to assign all of its right, title and interest under the Development Agreement with respect to the Capstone Property to Assignee, and Assignee desires to assume all of Assignor's obligations under the Development Agreement with respect to the Capstone Property, and City desires to consent to such assignment and assumption, upon the terms that follow.

C. Assignor desires to retain all of its right, title and interest under the Development Agreement with respect to all portions of the Overall Property other than the Capstone Property ("Assignor's Remaining Property").

D. City, Assignor and Assignee (referred to herein individually as a "Party" and collectively as the "Parties") also wish to confirm the status of and clarify certain matters addressed in the Development Agreement.

E. The Parties do not intend to alter or amend the terms of the Development Agreement, but only to set forth how the rights and obligations of Assignor under the Development Agreement will be split between Assignor and Assignee following the sale and transfer of the Capstone Property to Assignee.

## **AGREEMENT**

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment of Rights. Effective upon closing of the sale of the Capstone Property from Assignor to Assignee (the "Closing"), and only if the Closing occurs, Assignor hereby assigns to Assignee all of its right, title and interest in, to and under the Development Agreement with respect to the Capstone Property. Assignor hereby represents and warrants that Assignor is not currently in default under the Development Agreement, and, to Assignor's knowledge, the City is not currently in default under the Development Agreement. City hereby confirms that, to its knowledge, Assignor is not currently in default under the Development Agreement and that the City is not currently in default under the Development Agreement .

2. Assumption of Responsibilities. Effective upon the Closing, and only if the Closing occurs, Assignee assumes and agrees to be bound by and liable for all of the covenants, warranties, representations and agreements to be observed or performed under the Development Agreement with respect to the Capstone Property from and after the Closing, with the same effect as though Assignee was the original and named developer under the Development Agreement with respect to the Capstone Property. Assignee acknowledges receipt of a copy of the Development Agreement which was previously provided to Assignee, and Assignee has read and fully understands the Development Agreement.

3. Retained Rights and Responsibilities. Assignor retains all right, title and interest in, to and under the Development Agreement with respect to Assignor's Remaining Property. Assignee has no liability whatsoever for performance of Assignor's covenants, warranties, representations and agreements to be observed or performed by the Assignor under the Development Agreement with respect to Assignor's Remaining Property, whether required to be performed before or after the Closing. Assignor has no liability whatsoever for performance of Assignee's covenants, warranties, representations and agreements to be observed or performed by the Assignee under the Development Agreement with respect to the Capstone Property after the Closing. Assignee has no liability whatsoever for performance of Assignor's covenants, warranties, representations and agreements to be observed or performed by the Assignor under the Development Agreement with respect to the Capstone Property prior to the Closing. No failure by Assignor to fully comply with any and/or all requirements under the Development Agreement applicable to Assignor's Remaining Property after the Closing shall constitute a default under the Development Agreement with respect to the Capstone Property or in any other manner suspend, delay, terminate, modify the right of Assignee to pursue development of the Capstone Property in accordance with the Development Agreement.

4. Density Allocation. Effective upon Closing:

4.1. Of the Permitted Project Density set forth in Section 2(a) of the Development Agreement, 194 Lots/Units are exclusively allocated to the Capstone Property. The remaining Lots/Units are allocated to Assignor's Remaining Property, subject to the requirements of the

Development Agreement and any applicable deed restrictions, covenants or other conditions running with the land.

4.2. Of the Phase 1 Density set forth in Section 2(b) of the Development Agreement, 194 Lots/Units are exclusively allocated to the Capstone Property. The remaining Lots/Units are allocated to Assignor's Remaining Property within Phase 1, subject to the requirements of the Development Agreement and any applicable deed restrictions, covenants or other conditions running with the land.

5. Impervious Cover Allocation. Effective upon Closing:

5.1. Of the Permitted Project Impervious Cover set forth in Section 3(a) of the Development Agreement, 16.50 acres of the permitted project impervious cover are exclusively allocated to the Capstone Property, with the remaining 14.13 acres of permitted project impervious cover allocated to Assignor's Remaining Property in whatever manner Assignor desires in accordance with the Development Agreement.

5.2. Any remaining permitted project impervious cover not utilized by Assignee following completion of development of the Capstone Property may be used on Assignor's Remaining Property in accordance with the terms of the Development Agreement.

6. City Consent to Assignment and Assumption and Effective Date of Agreement. Subject to the satisfaction of those certain conditions as approved by the San Marcos City Council on June 18, 2013, attached hereto and made a part hereof as Exhibit "2" (the "City's Conditional Approval"), City hereby consents to such partial assignment and assumption in conformance with the terms and conditions of the Development Agreement. This Agreement shall be effective upon the full satisfaction of the City's Conditional Approval (the "Effective Date"), and City hereby agrees that, from and after the Effective Date of this Agreement, it shall recognize Assignee as the "Owner" of the Capstone Property for all purposes under the terms of the Development Agreement.

7. Notice Address. If any notice is given by the City to either the Assignor or the Assignee, the City shall also give such notice to the other Party. For purposes of notices under the Development Agreement, the address for Assignee is Capstone Collegiate Communities, LLC, 431 Office Park Drive, Birmingham, Alabama 35223, Attention: John Vawter, with a copy to David A. Ryan, Esq., Hand Arendall LLC, 71 N. Section Street, Suite B, Fairhope, Alabama 36532 and the address for Assignor is P.O. Box 50324, Austin, Texas 78763, with a copy to Douglas Bender, Esq., 1208 West Avenue, Austin, Texas 78701.

8. Notice and Cure Rights of Designees. If any notice is given by the City to the Assignor or the Assignee, the City shall also give such notice to Assignee's construction lender and any other party requested in writing by Assignee (such lender or other party, an "Assignee Designee"). Any written designation of an Assignee Designee will include a notice address for such Assignee Designee. The City further acknowledges that any Assignee Designee has a right (but not the obligation) to remedy or cure any default by the Assignee under the Development

Agreement on behalf of the Assignee, and that the City will accept such remedy or cure by the Assignee Designee on behalf of the Assignee.

9. Indemnification. Assignor shall indemnify and hold harmless Assignee from any claims, obligations, or liabilities related to the Development Agreement for any actions or events that occurred prior to the Closing. Assignee shall indemnify and hold harmless Assignor from any claims, obligations, or liabilities related to the Development Agreement with respect to the Capstone Property for any actions or events that shall occur after the Closing. Assignor shall indemnify and hold harmless Assignee from any claims, obligations, or liabilities related to the Development Agreement with respect to Assignor's Remaining Property for any actions or events that shall occur after the Closing.

10. Assignor's Representations and Warranties. Assignor does hereby represent and warrant to Assignee and City as follows:

(a) The Development Agreement is in full force and effect in all respects, and has not been amended or modified (except as specifically contemplated in this Agreement) and has not been terminated;

(b) Assignor has performed all of its obligations under the Development Agreement as of the Effective Date, and no condition, act, or omission that constitutes or would constitute, with notice, the passage of time, or both, a default by Assignor under the Development Agreement has occurred; and

(c) Assignor has full power and authority to enter into this Agreement and assign all of its rights and remedies under the Development Agreement with respect to the Capstone Property to Assignee.

11. Further Assignment. The Parties acknowledge that prior to Closing, Assignee intends to assign all of its rights with respect to the Capstone Property to a special purpose entity managed or otherwise controlled by Assignee. Assignee may assign its rights under the Development Agreement and this Agreement to a special purpose entity managed or otherwise controlled by Assignee without further consent by Assignor or the City, provided that (i) Assignee gives the City prior written notice of the assignment, including a copy of the special purpose entity's organizational documents or other evidence showing the entity is managed or controlled by Assignee, (ii) such assignment is done in connection with the purchase of the Capstone Property by such entity, and (iii) the assignment instrument is recorded in the public records where this Agreement and the Development Agreement are recorded. Assignee, or the special purpose entity to which the Development Agreement is assigned, may further collaterally assign Assignee's rights under the Development Agreement to a lender providing construction financing for the Capstone Property without further consent by Assignor or the City, provided that (i) Assignee gives the City prior written notice of the assignment and (ii) the assignment instrument is recorded in the public records where this Agreement and the Development Agreement are recorded.

12. Defined Terms. All defined terms used herein shall have the meanings ascribed to them in the Development Agreement, unless otherwise defined herein.

13. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signature of each of the parties to one of such counterpart signature pages and all such counterpart signature pages shall be attached to one Agreement and read having the same force and effect as though all the signatories had signed a single page.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

15. Attorney's Fees. In any action brought by a Party hereto to enforce the obligations of any other party hereto, the substantially prevailing Party shall be entitled to collect from the opposing party to such action such substantially prevailing Party's reasonable litigation costs and attorney's fees and expenses (including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation).

16. Recitals. The recitals of fact and intention set forth on the first page of this Agreement are incorporated herein by this reference and are acknowledged by the parties to be true and correct.

17. Full Force and Effect. All terms, covenants, conditions and provisions set forth in the Development Agreement shall remain in full force and effect as supplemented and/or clarified by this Agreement.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.**

**SIGNATURE PAGE OF ASSIGNOR TO  
DEVELOPMENT AGREEMENT PARTIAL ASSIGNMENT,  
ASSUMPTION AND CITY CONSENT AGREEMENT**

**ASSIGNOR:**

Craddock Avenue Partners, LLC

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

Name: \_\_\_\_\_

As Its: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 2013 by  
\_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of  
Craddock Avenue Partners, LLC, and known to me, or proved to me by photo identification, to be  
the person who executed this instrument.

\_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My Commission Expires \_\_\_\_\_

**SIGNATURE PAGE OF ASSIGNEE TO  
DEVELOPMENT AGREEMENT PARTIAL ASSIGNMENT,  
ASSUMPTION AND CITY CONSENT AGREEMENT**

**ASSIGNEE:**

Capstone Collegiate Communities, LLC

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

Name: \_\_\_\_\_

As Its Authorized Member

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 2013 by  
\_\_\_\_\_, in his capacity as an Authorized Member of  
Capstone Collegiate Communities, LLC, and known to me, or proved to me by photo identification,  
to be the person who executed this instrument.

\_\_\_\_\_

Notary Public, State of \_\_\_\_\_

My Commission Expires \_\_\_\_\_

**SIGNATURE PAGE OF CITY TO  
DEVELOPMENT AGREEMENT PARTIAL ASSIGNMENT,  
ASSUMPTION AND CITY CONSENT AGREEMENT**

**CITY CONSENT:**

City of San Marcos, Texas

By \_\_\_\_\_  
Name: \_\_\_\_\_  
As Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 2013 by  
\_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of the  
City of San Marcos, Texas, and known to me, or proved to me by photo identification, to be the  
person who executed this instrument.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission Expires \_\_\_\_\_



**EXHIBIT "1"**  
**CAPSTONE PROPERTY**

**FIELD NOTE DESCRIPTION OF 35.429 ACRES OF LAND OUT OF THE THOS. JEFFERSON CHAMBERS SURVEY ABSTRACT No. 2 AND THE JOHN WILLIAMS SURVEY, ABSTRACT No. 471, BOTH IN HAYS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN (174.27 ACRE) TRACT OF LAND AS CONVEYED TO CRADDOCK AVENUE PARTNERS, L.L.C. BY GENERAL WARRANTY DEED RECORDED IN VOLUME 3198 PAGE 68 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:**

BEGINNING FOR REFERENCE at a capped iron rod found (marked "Byrn") at an angle corner of that certain (174.27 acre) tract of land as conveyed to Craddock Avenue Partners, L.L.C. by General Warranty Deed recorded in Volume 3198, Page 68 of the Official Public Records of Hays County, Texas, and for the Southeast corner of Lot 5, Block B, Section One Bishop Crossing Subdivision, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Volume 9 Page 261 of the Plat Records of Hays County, Texas, and from which a 60D nail found for the Southwest corner of Lot 9, Block C, of said Section One Bishop Crossing Subdivision, bears S 86 deg. 16' 45" W 576.44 ft., and also from which a capped iron rod found (marked "Byrn") in the curving South right-of-way line of Bishop Street for the Northeast corner of Lot 1, Block B, of said Section One Bishop Crossing Subdivision bears N 03 deg. 51' 12" W 353.26 ft.;

THENCE entering the interior of said Craddock Avenue Partners (174.27 acre) tract, S 03 deg. 58' 40" E 85.76 ft. to a ½" iron rod set with a plastic cap imprinted "Holt Carson, Inc." for an angle corner and the **PLACE OF BEGINNING** of the herein described tract;

THENCE continuing across the interior of said Craddock Avenue Partners (174.27 acre) tract with a Northeasterly line of this tract, S 47 deg. 03' 06" E 109.21 ft. to a ½" iron rod set with a plastic cap imprinted "Holt Carson, Inc." for a Northeasterly angle corner of this tract, same being a point in the Northwestern right-of-way line of Craddock Lane as described in General Warranty Deed to the City of San Marcos as recorded in Volume 3753, Page 565 of the Official Public Records of Hays County, Texas;

THENCE continuing across the interior of said Craddock Avenue Partners (174.27 acre) tract with the Northwestern right-of-way line of Craddock Lane and with the Southeasterly line of this tract, the following six (6) courses;

- 1) along a curve to the left with a radius of 994.00 ft. for an arc length of 175.56 ft. and which chord bears S 37 deg. 41' 38" W 175.33 ft. to a ½" iron rod set with a plastic cap imprinted "Holt Carson, Inc." at a point of tangency;
- 2) S 32 deg. 38' 03" W 196.28 ft. to a ½" iron rod set with a plastic cap imprinted "Holt Carson, Inc." at a point of curvature;
- 3) along a curve to the right with a radius of 916.00 ft. for an arc length of 217.16 ft. and which chord bears S 39 deg. 25' 33" W 216.65 ft. to a ½" iron rod set with a plastic cap imprinted "Holt Carson, Inc." at a point of tangency;
- 4) S 46 deg. 13' 02" W 176.40 ft. to a ½" iron rod set with a plastic cap imprinted "Holt Carson, Inc." at a point of curvature;

- 5) along a curve to the right with a radius of 916.00 ft. for an arc length of 402.29 ft. and which chord bears S 58 deg. 47' 57" W 399.06 ft. to a ½" iron rod set with a plastic cap imprinted "Holt Carson, Inc." at a point of tangency;
- 6) S 71 deg. 22' 24" W 144.14 ft. to a ½" iron rod set with a plastic cap imprinted "Holt Carson, Inc." at a point of intersection with a Southwesterly line of said Craddock Avenue Partners (174.27 acre) tract for a Southerly angle corner of this tract, and from which a capped iron rod found (marked "Byrn") for the called most easterly Southeast corner of said Craddock Avenue Partners (174.27 acre) tract bears S 55 deg. 45' 56" E 426.23 ft.;

**THENCE** with a Southwesterly line of said Craddock Avenue Partners (174.27 acre) tract, the following four (4) courses;

- 1) N 55 deg. 45' 56" W 360.50 ft. to a capped iron rod found (marked "Solis Kanak");
- 2) N 55 deg. 33' 48" W 49.88 ft. to a ½" iron rod found;
- 3) S 58 deg. 28' 47" W 43.88 ft. to a ½" iron rod found with a plastic cap imprinted "Holt Carson, Inc.", set in place of a capped iron rod found (marked "Solis Kanak") found on December 9, 2009 by Holt Carson, Inc.;
- 4) S 58 deg. 27' 17" W 271.82 ft. to a PK Nail found at the base of a metal fence post in the Northeast right-of-way line of Wonder World Drive, 100.00 ft. left of record engineers station 118+57.37, for an angle corner of this tract, and from which a capped iron rod found (marked "TxDOT") bears S 55 deg. 01' E 113.68 ft.;

**THENCE** entering the interior of said Craddock Avenue Partners (174.27 acre) tract with the Northeast right-of-way line of Wonder World Drive, N 55 deg. 01' 00" W passing a capped iron rod found (marked "Savory") at a distance of 557.55 ft., continuing along said bearing for a total distance of 898.78 ft. to a ½" iron rod found with a plastic cap imprinted "Holt Carson, Inc." for a Southwesterly angle corner of this tract;

**THENCE** leaving the Northeasterly right-of-way line of Wonder World Drive and continuing across the interior of said Craddock Avenue Partners (174.27 acre) tract, the following six (6) courses;

- 1) N 62 deg. 49' 27" E 743.43 ft. to a ½" iron rod found with a plastic cap imprinted "Holt Carson, Inc.";
- 2) N 43 deg. 01' 51" E 324.83 ft. to a ½" iron rod found with a plastic cap imprinted "Holt Carson, Inc.";
- 3) N 50 deg. 22' 14" E 87.07 ft. to a ½" iron rod found with a plastic cap imprinted "Holt Carson, Inc.";
- 4) N 62 deg. 32' 36" E 142.16 ft. to a ½" iron rod found with a plastic cap imprinted "Holt Carson, Inc.";
- 5) S 54 deg. 21' 25" E 704.79 ft. to a ½" iron rod found with a plastic cap imprinted "Holt Carson, Inc.";
- 6) N 84 deg. 47' 42" E 574.00 ft. to the PLACE OF BEGINNING, containing 35.429 acres of land.

## EXHIBIT “2” CITY’S CONDITIONAL APPROVAL

The following are conditions to the consent of the City of San Marcos to the Development Agreement Partial Assignment and Assumption granted herein. This Agreement and the City’s consent hereto shall not be effective until each of said conditions below have been satisfied and/or incorporated into recorded restrictive covenants.

1. Approximately 94 acres (Phases 2 and 3) of the 153 acre tract will be dedicated to the City as parkland.
2. 8.804 acres of land in Phase 1 along Wonder World Drive as indicated in the Phase 1, Section 1 Final Plat will be dedicated to the City as parkland.
3. The density on the Phase 1 multi-family residential tract will be reduced from 382 units as originally allowed to 194 units with a population density of 899.
4. 71 units will be assigned to the Mixed Use area of Phase 1 with a limit of three bedrooms per unit. No leased or rented by the bedroom multi-family dwelling units will be allowed on any portion of such Mixed Use area. In addition, building heights shall not exceed one story in the portion of the Mixed Use area on the west side of Craddock Avenue that abuts the Franklin Square neighborhood.
5. An amendment to the Concept Plat for consideration by the San Marcos Planning and Zoning Commission will be initiated to modify the Conceptual Land Plan Summary Table as follows:

Phasing Plan	Zoning Acreage	Zoning	Number of Dwelling Units Previously Approved	Existing Concept Plat Population Density	Potential Population Including Phase 2	Number of Dwelling Units Proposed	Population Density Proposed
Phase 1	33.2+/-	MF-12	382	802	802	194	899
	12.88 +/-	MU	71	149	149	71	213
			<b>453</b>	<b>951</b>	<b>951</b>	<b>265</b>	<b>1,112</b>
Phase 2	18.81 +/-	TBD	Transfer of Unused Phase I Units	Not Addressed in Concept Plat	476*	010	027
Phase 3	75.15+/-	TBD	4	11	11	04	011
<b>All Phases Total</b>			<b>457</b>	<b>962</b>	<b>1,438**</b>	<b>265279</b>	<b>1,150 1,122</b>
* Note: 188 units transferred from Phase 1 x (4.63 bedrooms/ units in Capstone project minus 2.1 bedrooms per unit per existing Concept Plat).							
**(382 x 2.1= 802) + (71 x 2.1= 149)+ (188 x 2.53= 476)+ 11 = 1,438.							

Approval of the amendment to the Concept Plat is a condition of the City's consent granted herein.

6. The developer of the multi-family 35 acre portion of Phase 1 shall enter into a contract deemed acceptable to City staff to have a private company provide shuttle service to transport residents of the multi-family development to and from Texas State University-San Marcos (Texas State) until such time that the Texas State shuttle system provides shuttle service.

7. Craddock Avenue Partners, L.L.C. agrees to update the Traffic Impact Analysis ("TIA") prior to final plat submittal of the Mixed Use portion of Phase 1 and to implement such improvements as are recommended by the TIA in relation to its proportionate responsibility under applicable City Ordinances.

8. No leased or rented by the bedroom multi-family dwelling units will be allowed on any portion of the Assignor's Remaining Property.

9. The owners of all the property subject to the Development Agreement will execute and record restrictive covenants in favor of the City and in a form acceptable to the City Attorney reflecting the above terms (the unit allocations and population densities listed in the Concept Plat as amended will be included within the restrictive covenants).