

RESOLUTION FOR PURCHASE OF 140 BUCK ISLAND ROAD

A RESOLUTION AUTHORIZING THE PURCHASE AND CONVEYANCE OF
A PARCEL OF REAL PROPERTY LOCATED IN BLUFFTON, SOUTH
CAROLINA, CONSISTING OF APPROXIMATELY 15.517 ACRES OF REAL
PROPERTY IDENTIFIED AS TAX MAP NO. R610-031-000-0003-0000, AND
SELLER'S RIGHT, TITLE AND INTERESTS IN 15.517 ACRES OF DEVELOPMENT
RIGHTS, FROM
F & D, LLC TO THE TOWN
OF BLUFFTON, SOUTH CAROLINA, FOR THE PURCHASE PRICE OF
\$2,500,000.00; AND, AUTHORIZING THE EXECUTION AND RECORDATION OF
CERTAIN DOCUMENTS IN CONNECTION THEREWITH

WHEREAS, F & D, LLC, (the "*Owner*") is the record owner of that certain parcel of real property located in the Town of Bluffton, South Carolina, as more particularly described on Exhibit "**A**" attached hereto and fully incorporated herein (collectively, the "*Property*"); and,

WHEREAS, Owner desires to convey the Property to the Town of Bluffton, a South Carolina municipal corporation (the "*Town*"), and all improvements thereon, if any, to be owned by the Town; and,

WHEREAS, the Town desires to purchase the Property in accordance with the terms and conditions of the Purchase and Sale Agreement and all exhibits thereto, which is substantially in final form attached hereto as Exhibit "**B**" (the "*Agreement*"), and Town Council has determined that it is in the public interest for the Town to enter into the Agreement and consummate the purchase of the Property; and,

WHEREAS, Town Council desires to authorize the Town Manager to execute such documents and to expend such funds as are necessary to complete the purchase and conveyance of the Property to the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, AS FOLLOWS:

1. The Town Council hereby authorizes the purchase and conveyance of the Property from the Owner to the Town for the purchase price of \$2,500,000.00, and hereby confirms that the Town Manager is authorized to execute the Agreement, the form of which is attached hereto as Exhibit "**B**", subject to such reasonable amendments as deemed necessary by the Town Manager, and does hereby ratify the execution of the Agreement.

2. The Mayor, Town Manager, and Town Clerk are each hereby authorized to execute any and all documents necessary to consummate the purchase and conveyance of the Property to the Town, including, without limitation, the acceptance and recordation of any

deed with the Office of the Register of Deeds for Beaufort County, South Carolina. The Town Manager is hereby authorized to pay such reasonable costs of the transaction as may be necessary.

**THIS RESOLUTION SHALL BE EFFECTIVE IMMEDIATELY UPON ADOPTION,
SIGNED, SEALED AND DELIVERED AS OF THIS 9th DAY OF JANUARY, 2024.**

Larry Toomer, Mayor
Town of Bluffton, South Carolina

ATTEST:

Marcia Hunter, Town Clerk
Town of Bluffton, South Carolina

EXHIBIT "A"
(The Property)

ALL that certain piece, parcel and lot of land, situate, lying and being in the Bluffton Township, Beaufort County, South Carolina containing 15.517 acres of land, more or less, comprised of:

ALL that certain piece, parcel and lot of land, situate, lying and being in the Bluffton Township, Beaufort County, South Carolina containing 24.02 acres of land, more or less, being shown and described as "Parcel 3 1,046, 507 sq.ft. 24.02 acres" on that certain plat entitled "A Boundary Survey of Parcel 3, Ball Field Road, Tax Map 29, Dist. 600, Bluffton Township, Beaufort County, South Carolina" dated February 7, 2001, prepared by Forrest F. Baughman, PLS # 4922 in Plat Book 109, Page 83.

This being the same property conveyed to F & D, LLC on October 11, 2005 and recorded in the Beaufort County Register of Deeds on October 20, 2005 at Book 2254, Page 21.

MINUS that certain piece, parcel and lot of land, situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina containing 8.514 acres of land, more or less as acquired by Beaufort County via settlement of a condemnation action for the Bluffton Parkway right-of-way dated December 13, 2007 and recorded in the Beaufort County Register of Deeds on January 28, 2008 at Book 2676, Page 1304.

TMS No. R610-031-000-0003-0000
140 Buck Island Road
Bluffton, South Carolina 29910

EXHIBIT “B”
(The Purchase and Sale Agreement)

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT FOR PURCHASE AND SALE (herein, the “*Agreement*”) is entered into the latter date of execution below (the “*Effective Date*”), by and between the **Town of Bluffton**, a South Carolina municipal corporation, whose address is 20 Bridge Street, Bluffton, South Carolina 29910 (herein, the “*Buyer*” or “*Town*”) and **F & D, LLC**, a South Carolina limited liability company, whose address is 14 Wedgefield Drive, Hilton Head Island, South Carolina 29928 (herein, the “*Seller*” or “*F & D*”). Seller and Buyer are sometimes severally referred to in this Agreement as a “party”, or jointly referred to as the “parties.”

STATEMENT OF BACKGROUND INFORMATION

Seller intend to sell and Buyer intends to purchase “AS IS, WHERE IS, AND WITH ALL FAULTS” the land identified by Beaufort County tax map number R610 031 000 0003 0000, consisting of approximately 15.517 acres as depicted on the unsigned survey attached hereto as Exhibit “A”, together with all applicable development rights, easements and any and all rights benefitting such property (reference plats recorded in Plat Book 109 at Page 83 and Plat Book 124 at Page 175) (the “*Property*”).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

ARTICLE 1 DEFINITIONS; RULES OF CONSTRUCTION

1.1 **Definitions.** In addition to any other terms whose definitions are fixed and defined by this Agreement, each of the following defined terms, when used in this Agreement with an initial capital letter or initial capital letters, shall have the meaning ascribed thereto by this Article 1. The following terms shall have the indicated meanings:

- (a) “*Agreement*” means this Purchase and Sale Agreement, together with all exhibits attached hereto.
- (b) “*Broker*” shall mean ROI REAL ESTATE, as representative broker for Seller.
- (c) “*Business Day*” means each and every day which is not a Saturday, Sunday, Federal holiday, or legal holiday officially recognized by the state of South Carolina.
- (d) “*Closing*” shall mean the time that each of the deliveries to be made by Seller (as provided in Section 5.3) and Buyer (as provided in Section 5.4) are made and each of the Closing conditions of Buyer and Seller in Section 5.2, respectively, have been satisfied or waived.
- (e) “*Closing Date*” shall mean thirty (30) days following the expiration of the Due Diligence Period (as defined herein); or, upon such date set by the Buyer, provided the Buyer has delivered

notice to Seller via the notice provisions herein at least three (3) Business Days prior to the proposed Closing Date.

(f) "*Deed*" shall mean a special warranty deed, in form and substance satisfactory to Buyer, conveying the title of Seller to the Property, with such grant or warranty covenants of title from Seller to Buyer as are customary in the State of South Carolina, subject only to Permitted Title Exceptions. If there is any difference between the description of the Property, as shown on **EXHIBIT "A"** attached hereto and the description of the Property as shown on the Survey, if any, the description of the Property to be contained in the Deed and the description of the Property set forth in the Owner's Title Policy (as defined herein) shall conform to the description shown on the Survey. The term Deed as used in this Agreement shall also include a quitclaim deed from the Seller to the Buyer for the Property based upon the Survey, if requested by Buyer.

(g) "*Due Diligence Period*" means the period commencing on the Effective Date and ending on that date which is ninety (90) days following the Effective Date.

(h) *Intentionally Omitted.*

(i) "*Effective Date*" shall mean the date that this Agreement is executed by both Parties.

(j) "*Escrow Agent*" shall mean the law offices of FINGER, MELNICK, BROOKS & LABRUCE, P.A., 35 Hospital Center Common, Suite 200, Hilton Head Island, South Carolina 29925, Attn: E. Richardson LaBruce.

(k) "*Owner's Title Policy*" shall mean an American Land Title Association extended coverage owner's policy of title insurance issued to Buyer by the Title Company (*e.g.*, First American Title Company), pursuant to which the Title Company insures Buyer's ownership of fee simple title to the Property (including the marketability thereof) subject only to Permitted Title Exceptions. The Owner's Title Policy shall insure Buyer in the amount of the Purchase Price and shall be acceptable in form and substance to Buyer.

(l) "*Permitted Title Exceptions*" shall mean those exceptions to title to the Real Property that are satisfactory to Buyer as determined under this Agreement.

(m) *Intentionally Omitted.*

(n) "*Survey*" shall mean the survey, if any, prepared pursuant to Section 2.4(c).

(o) "*Title Objections*" shall have the meaning set forth in Section 2.4(d).

1.2 Rules of Construction. The following rules shall apply to the construction and interpretation of this Agreement:

(a) *Gender.* Singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

(b) *Headings.* The headings contained herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(c) *Construction.* Each party hereto and its counsel have reviewed and revised (or requested revisions of) this Agreement and have participated in the preparation of this Agreement, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto.

1.3 **Recitals.** The Recitals set forth above and all exhibits are incorporated herein by reference as if set forth in their entirety herein.

ARTICLE 2

PURCHASE AND SALE; PAYMENT OF PURCHASE PRICE

2.1 **Purchase and Sale.** Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price subject to the provisions below.

2.2 **Earnest Money.** See Section 2.3(b) below.

2.3 **Purchase Price.**

(a) *Amount of Purchase Price.* The total Purchase Price to be paid by Buyer for the Property is TWO MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,500,000.00) (the “**Purchase Price**”), subject to the adjustments and prorations set forth in this Agreement.

(b) *Earnest Money.* Within three (3) business days following the Effective Date (as hereinafter defined), Buyer shall deposit with Escrow Agent” the sum of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) (“**Earnest Money**”). The disposition of the Earnest Money shall be in accordance with the terms and conditions of this Agreement. Upon the expiration of the Due Diligence Period, the Earnest Money shall be non-refundable to Buyer except in the event of a Seller default and except as otherwise provided in this Agreement.

(c) *Balance of the Purchase Price.* The TWO MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$2,475,000.00) balance of the Purchase Price shall be paid by the Buyer at Closing by wire transfer of immediately available U.S. Funds.

2.4 **Due Diligence Period.**

(a) *Site Inspection.* Buyer shall have the right during the Due Diligence Period and thereafter if Buyer does not terminate this Agreement prior to the end of the Due Diligence Period, to enter upon the Property and to perform, at Buyer’s expense, such physical inspections, surveying, engineering, and environmental studies and investigations (including a wetland delineation and a Phase 1, if Buyer deems it prudent to conduct such an investigation) as Buyer may deem appropriate. Buyer shall not conduct a Phase 2 environmental inspection without Seller’s written consent, which consent may be withheld at Seller’s discretion. All such site inspections shall be conducted at reasonable times and should be conducted in such a manner as to limit interference with the enjoyable use of the Property by the Seller. Buyer shall not cut any trees or remove any brush or vegetation from the Property, shall back-fill any test holes, soil

borings, and shall repair any damage to the Property and shall indemnify Seller for any loss or damages caused by Buyer or its agents resulting from or relating to Buyer's exercise of its rights of entry. Buyer shall conduct any investigations of the structure on the Property at its own risk and, further, Buyer agrees that any consultant or agent of Buyer performing any due diligence activity on the Property, including but not limited to an inspection of the historic structure located on the Property, shall be licensed by the State of South Carolina, if applicable, and bonded and insured. If within the Due Diligence Period, the Buyer requires access inside of the structure on Property, any modification to structure shall be the cost of the Buyer and structure shall be returned to its pre-contract condition following the completion of said Due Diligence Period.

(b) *Inspection of Documents.* Within ten (10) business days after the Effective Date, Seller shall provide to Buyer, for use by Buyer, its agents, auditors, engineers, attorneys and other designees, copies of all existing surveys, environmental audits and reviews, plans, studies and reports affecting or relating to the Property which are in, or come into, Seller's possession or control, or which Seller may attain, including but not limited to any surveys and/or title policies, if any. During the Due Diligence Period, Buyer shall have the right to review all zoning, land use and other governmental regulations, laws, permits and approvals that apply to the Property.

(c) *Survey.* During the Due Diligence Period, Buyer, at Buyer's sole expense, may, in addition to any boundary survey, subdivision plat, or consolidation plat that Buyer wishes to procure, obtain an ALTA/ACSM survey of the Real Property, prepared by a surveyor licensed to practice as such in the State, certified to both Buyer, Seller and the Title Company (and any lender or other party designated by Buyer), showing the legal description of the Real Property, all dimensions thereof, and showing the location of Improvements on the Land, the setbacks thereof from the property line, as well as the setbacks required by applicable zoning laws or regulations or as otherwise required to meet ALTA/ACSM requirements (the "**Survey**"). The Survey shall locate all easements which serve and affect the Land. The Survey shall reflect that no buildings or improvements located on any other property encroach upon the Land and that the Improvements located upon the Land do not encroach upon any other property. The surveyor preparing the Survey shall certify that its work has been prepared in accordance with the Survey Requirements and such Certificate shall be included on the Survey. Buyer shall deliver a copy of the Survey to Seller, and Seller shall have ten (10) days to review the Survey and approve the Survey or provide any comments or objections to Buyer. Seller's failure to respond in such then (10) day period shall be deemed an approval of the Survey. Buyer shall be responsible for the expense of recording any Survey.

(d) *Due Diligence Objections.* Without waiving its rights pursuant to paragraph (e) of this Section 2.3, ten (10) days prior to the expiration of the Due Diligence Period (the "**Objection Period**"), Buyer may, but shall not be obligated to, notify Seller of any objections concerning its due diligence inspection that Buyer is unwilling to accept which shall be designated as the "**Due Diligence Objections.**" Within five (5) days after such notification, Seller shall notify Buyer in writing whether Seller are willing to cure such defects. If Seller are willing to cure such defects, Seller shall act promptly and diligently to cure such defects at its expense. If any of such defects consist of mortgages, deeds of trust, construction or mechanics' liens, tax liens or other liens or charges in a fixed sum or capable of computation as a fixed sum, then, to that extent, and notwithstanding the foregoing, Seller may elect, in their sole discretion, to pay and discharge such defects at Closing. For such purposes, Seller may use all or a portion of the cash to close. If Seller are unable or unwilling to cure such defects prior to Closing, Buyer may elect (1) to waive such defects and proceed to Closing, or (2) to terminate this Agreement. After the date of this Agreement, Seller shall not subject the Property to any liens, encumbrances, leases, covenants, conditions, restrictions, easements or other title matters or seek any zoning changes or take any other action which may

affect or modify the status of title without Buyer's prior written consent, which consent Buyer may withhold in its sole discretion for any reason or no reason. All title matters revealed by Buyer's title examination and not objected to by Buyer as provided above shall be deemed Permitted Title Exceptions. If Buyer shall fail to examine title and notify Seller of any such Title Objections by the end of the Due Diligence Period, all such title exceptions shall be deemed Permitted Title Exceptions.

(e) *Termination Without Cause.* Prior to the expiration of the Due Diligence Period, Buyer, in its sole and absolute discretion, shall have the right to terminate the Agreement for any reason or no reason, by notifying the Seller and Escrow Agent thereof. Within five (5) business days of Buyer's termination of the Agreement, Buyer shall deliver to Seller copies of all studies, reports, permits, plats, plans, and development documentation related to the Property obtained by Buyer during the Due Diligence Period. If Buyer terminates the Agreement during the Due Diligence Period, this Agreement shall terminate with no further action of the Parties, the Earnest Money shall be promptly returned to Buyer, in full, and the Parties shall have no further obligations to each other by virtue of this Agreement or in any way related to this transaction, save and except any provisions of this Agreement which expressly survive the termination of this Agreement.

ARTICLE 3

SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

To induce Buyer to enter into this Agreement and to purchase the Property, and to pay the Purchase Price, Seller hereby, to the best of their knowledge, make the following representations with respect to the Property and this transaction which representations are true and correct as of the effective date and, except where specifically noted otherwise, will be true and correct, as of the Closing:

3.1 **Organization and Power.** Seller has all requisite powers and all governmental licenses, authorizations, consents and approvals to carry on their businesses as now conducted and to enter into and perform their obligations under this Agreement and under any document or instrument required to be executed and delivered by or on behalf of themselves under this Agreement.

3.2 **Authorization and Execution.** This Agreement has been, and each of the agreements and certificates of Seller to be delivered to Buyer at Closing will be, duly authorized by all necessary action on the part of Seller, have been duly executed and delivered by Seller, constitutes the valid and binding agreement of Seller and are enforceable against each Seller in accordance with its terms. All action required pursuant to this Agreement necessary to effectuate the transactions contemplated herein has been, or will at Closing be, taken promptly and in good faith by Seller and their representatives and agents.

3.3 **Noncontravention.** The execution and delivery of, and the performance by Seller of their obligations under, this Agreement do not and will not contravene, or constitute a default under, any provision of applicable law or regulation, Seller's Organizational Documents or any agreement, judgment, injunction, order, decree or other instrument binding upon Seller, or result in the creation of any lien or other encumbrance on any asset of Seller, except as may be set forth in the Permitted Exceptions. There are no outstanding agreements (written or oral) pursuant to which Seller (or any predecessor to or representative of Seller) have agreed to contribute or have granted an option or right of first refusal to purchase the Property or any part thereof.

3.4 **Compliance with Existing Laws.** Seller has no knowledge, nor have they received notice, of any existing or threatened violation of any provision of any applicable building, zoning, subdivision, watershed, or other governmental ordinance, resolution, statute, rule, order or regulation with respect to the ownership, operation, use, maintenance or condition of the Property or any part thereof.

3.5 **Real Property.** Seller have not received any written notice which is still in effect that there is, and, to the best of Seller's knowledge, there does not exist, any violation of a condition or agreement contained in any easement, restrictive covenant or any similar instrument or agreement affecting the Property, or any portion thereof.

3.6 **Foreign Person.** Seller is not a "foreign person," "foreign trust" or "foreign corporation" within the meaning of the United States Foreign Investment in Real Property Tax Act of 1980 and the Internal Revenue Code of 1986, as subsequently amended (the "**Code**").

3.7 **Warranties and Guaranties.** *Intentionally omitted.*

3.8 **Title.** Seller are the owners of all or a portion of the Property and have not assigned or otherwise transferred any rights with respect thereto other than as shown by utilities easements, access easements or licenses, and other similar documents, or any liens or encumbrances on the Property. Further, there are no unrecorded agreements relating to entrances, exits, access and service roads affecting the Property or otherwise with respect to the Property.

3.9 **Condemnation Proceedings; Roadways.** Seller has received no notice of any condemnation or eminent domain proceeding pending or threatened against the Property or any part thereof.

3.10 **Litigation.** There is no action, suit or proceeding pending or known to be threatened against or affecting Seller or any of their properties in any court, before any arbitrator or before or by any Governmental Body which (a) in any manner raises any question affecting the validity or enforceability of this Agreement, (b) could materially and adversely affect the business, financial position or results of operations of Seller, (c) could materially and adversely affect the ability of Seller to perform their obligations under this Agreement, or under any document to be delivered pursuant hereto, (d) could create a lien on the Property, any part thereof or any interest therein, or (e) could otherwise adversely materially affect the Property, any part thereof or any interest therein or the use, operation, condition or occupancy thereof.

3.11 **Operation of Property.** Except as otherwise permitted hereby, from the Effective Date until Closing, Seller shall not take any action or fail to take action the result of which would have a material adverse effect on the Property, or which would cause any of the representations contained in this Article III to be untrue as of Closing.

3.12 **Hazardous Substances.** Seller represent, to the best of their knowledge, that (i) no pollutants or other toxic or hazardous substances, materials or wastes ("**Substances**"), including, without limitation, any solid, liquid, gaseous or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or wastes (including materials to be recycled, reconditioned or reclaimed), petroleum and petroleum products, asbestos and asbestos-containing materials, radon gas, methane gas, polychlorinated biphenyls ("PCBs") including PCBs in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils or any other device or form and any other substance, material, waste or condition, which Substances may be regulated or prohibited by, or may be the subject of a cause of action,

claim or proceeding under, any Federal, state or local environmental statute (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Hazardous Materials Transportation Act, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, and the Federal Underground Storage Tank Regulations), law, ordinance, regulation, rule or requirement (“*Statutes*”) have been or shall, prior to the Closing, be used, installed, located, spilled, discharged, dispersed, released, stored, treated, generated, transported to or from, disposed of or allowed to escape on the Property, except in accordance with applicable laws, (ii) no underground storage tanks (“USTs”) are located on the Property, (iii) no investigation, administrative order, consent order and agreement, civil or criminal litigation or settlement with respect to Substances, Fuel Burning Devices or USTs is proposed, threatened, anticipated or in existence with respect to the Property, (iv) Seller have received no notice of violation with respect to the Property and Seller’s operations thereon being in violation of any applicable Statutes, and Seller are not aware of any substance on or situation related to the Property that is in violation of the Statutes and (v) there are no landfills or dumping grounds containing decomposable materials located on the Property. The Seller will not, after the Effective Date and up through Closing, place or allow to be placed or installed on or under the Property any such toxic or hazardous wastes or materials, decomposable materials or underground facilities. To the best of Seller’s knowledge, there are not any archaeological sites, burial grounds or cemeteries existing on the Property. If, after the date of this Agreement and on or prior to Closing, Seller obtain knowledge or receives notice of a fact, matter or circumstance, which fact, matter or circumstance causes any of Seller’s representations made in this Section to be inaccurate in any material respect, Seller shall submit written notice thereof to Buyer (a “*Disclosure Memorandum*”) specifying in reasonable detail the fact, matter or circumstance causing such inaccuracy. Seller agrees to disclose any such inaccuracy in good faith as soon as possible and Seller shall not knowingly fail to promptly disclose to Buyer any such inaccuracy. Seller’s “knowledge” is limited to the actual knowledge of Rona Cross, without investigation.

3.13 Utilities. *Intentionally Omitted.*

3.14 Public Improvement Obligations. To the best of Seller’s knowledge, there are no pending or threatened governmental proceedings, lawsuits, investigations, bond issuances, or proposals for public improvements, assessments or moratoriums affecting the Property.

3.15 OFAC Sanction List. Seller and, to the best of Seller’s knowledge, each person or entity owning a direct interest in Seller, are (a) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury (“OFAC”) and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the “*List*”), (b) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, and (c) not an Embargoed Person (as hereinafter defined). To the best of Seller’s knowledge, none of the funds or other assets of Seller constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person, and to the best of Seller’s knowledge, no Embargoed Person has any interest of any nature whatsoever in Seller (whether directly or indirectly). The term “Embargoed Person” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§1701, et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder.

3.16 **Prohibited Transactions.** Seller is not engaging in the transactions contemplated by this Agreement, directly or indirectly, in violation of any laws relating to drug trafficking, money laundering or predicate crimes to money laundering. None of the funds of Seller has been or will be derived from any unlawful activity with the result that the investment of direct or indirect equity owners in Seller are prohibited by law or that the transactions contemplated by this Agreement, or this Agreement is or will be in violation of applicable law. Seller has and will continue to implement procedures and have consistently and will continue to consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times prior to Closing.

3.17 **Bankruptcy.** Seller has not filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by their creditors, suffered the appointment of a receiver to take possession of substantially all of their assets, or suffered the attachment or other judicial seizure of substantially all of their assets.

3.18 **Third-Party Rights.** Seller has not entered into any agreements currently in effect pursuant to which Seller have granted any rights of first refusal to purchase all or any part of the Property, options to purchase all or any part of the Property or other rights whereby any individual or entity has the right to purchase all or any part of the Property.

3.19 **Tax Appeal.** Seller has not filed any tax appeal contesting any portion of the real estate taxes and/or personal property taxes for the Property due and payable during the tax year in which Closing occurs (the “**Closing Tax Year**”) or any tax years prior to the Closing Tax Year that have not been concluded.

3.20 **Survival of Representations.** All of the Seller representations contained in this Agreement shall be true and correct in all material respects as of the Closing and, upon Closing, shall be deemed to have been remade in all material respects by Seller as of the Closing Date, and shall survive the Closing for twelve (12) months following the Closing Date.

ARTICLE 4

BUYER’S REPRESENTATIONS, WARRANTIES AND COVENANTS

To induce Seller to enter into this Agreement and to sell the Property, Buyer hereby makes the following representations, warranties and covenants, upon each of which Buyer acknowledges and agrees that Seller is entitled to rely and has relied:

4.1 **Organization and Power.** Buyer is duly formed or organized, validly existing under the laws of the state of its formation and has all governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted and to enter into and perform its obligations under this Agreement and any document or instrument required to be executed and delivered on behalf of Buyer under this Agreement.

4.2 **Noncontravention.** The execution and delivery of this Agreement and the performance by Buyer of its obligations hereunder do not and will not contravene, or constitute a default under, any provisions of applicable law or regulation, or any agreement, judgment, injunction, order, decree or other instrument binding upon Buyer or result in the creation of any lien or other encumbrance on any asset of Buyer.

4.3 **Litigation.** There is no action, suit or proceeding, pending or known to be threatened, against or affecting Buyer in any court or before any arbitrator or before any administrative panel or otherwise that (a) could materially and adversely affect the business, financial position or results of operations of Buyer, or (b) could materially and adversely affect the ability of Buyer to perform its obligations under this Agreement, or under any document to be delivered pursuant hereto.

4.4 **Bankruptcy.** No Act of Bankruptcy has occurred with respect to Buyer.

4.5 **Authorization and Execution.** This Agreement has been, and each of the agreements and certificates of Buyer to be delivered to Seller at Closing will be, duly authorized by all necessary action on the part of Buyer, has been duly executed and delivered by Buyer, constitutes the valid and binding agreement of Buyer and is enforceable against Buyer in accordance with its terms. All action required pursuant to this Agreement necessary to effectuate the transactions contemplated herein has been, or will at Closing be, taken promptly and in good faith by Buyer and its representatives and agents.

ARTICLE 5 CLOSING; CONDITIONS AND ADDITIONAL COVENANTS

5.1 **Closing.** Closing shall take place on or before the Closing Date, via escrow funds and fully executed documents. The Closing shall occur through an escrow with the Escrow Agent as supervised by the Title Company (*via* E. Richardson LaBruce, an attorney licensed and in good standing in South Carolina) on terms acceptable to the parties and customary for similar closings in the State of South Carolina. If the Closing Date falls on a Saturday, Sunday, or other legal holiday, the Closing shall take place on the first following Business Day thereafter.

5.2 **Conditions to the Parties' Obligations to Close.** Notwithstanding any other provision of this Agreement to the contrary, the obligation of Seller, on the one hand, and Buyer, on the other hand, to consummate the transaction contemplated hereunder is contingent upon the following:

(a) *Buyer's Conditions Precedent.* Buyer's obligation to close the transactions hereunder shall be subject to the satisfaction of the following conditions precedent, provided that Buyer, at its election, upon written notice delivered to Seller at or prior to the Closing, may waive all or any of such conditions:

(i) Seller shall have executed and delivered to Escrow Agent all of the documents required of Seller under this Agreement.

(ii) Seller shall have performed all of their material covenants, agreements and obligations under this Agreement.

(iii) All of Seller's representations set forth in Article 3 of this Agreement remain true and correct in all material respects on the Closing Date.

(iv) At Closing, Title Company shall be committed, pursuant to the terms of the Title Commitment and subject to the payment of the required premium and satisfaction of all requirements and conditions set forth in the Title Commitment, to issue an ALTA Owner's Policy of Title Insurance with liability in an amount equal to the Purchase Price showing title to the Real Property vested in Buyer free and clear of any third party rights of possession, other than the

Permitted Encumbrances; provided that Buyer shall be responsible for and shall satisfy the requirements thereto related to payment of the premium and those conditions imposed upon Buyer with respect to the Title Commitment, and Buyer's failure to do so shall not result in a failure of this condition to be satisfied.

(v) The transactions contemplated under this Agreement to be effected on the Closing Date shall not be restrained or prohibited by any injunction or order or judgment rendered by any court or other governmental agency of competent jurisdiction and no proceeding shall have been instituted and be pending in which any creditor of Seller or any other person seeks to restrain such transactions or otherwise to attach any of the Property, provided that any such proceeding or action contemplated by this Section shall not be brought by, through or under Buyer.

Each of the conditions and additional covenants contained in this subsection 5.2(a) are intended for the benefit of Buyer and may be waived in whole or in part by Buyer, but only by an instrument in writing signed by Buyer.

(b) *Seller's Conditions Precedent.* Seller's obligation to close the transaction hereunder shall be subject to the satisfaction of the following conditions precedent, provided that Seller, at their election, upon written notice delivered to Buyer at or prior to the Closing, may waive all or any of such conditions:

(i) Buyer shall have executed and delivered to Escrow Agent all of the documents required of Buyer under this Agreement.

(ii) Buyer shall have performed all of its material covenants, agreements and obligations under this Agreement.

(iii) All of Buyer's representations and warranties set forth in Article 4 of this Agreement shall be true and correct in all material respects on the Closing Date.

(iv) Buyer shall have delivered to Escrow Agent the Purchase Price, subject to all such prorations and adjustments as set forth herein.

Each of the conditions and additional covenants contained in this Section are intended for the benefit of Seller and may be waived in whole or in part, by Seller, but only by an instrument in writing signed by Seller.

5.3 Seller's Deliveries in Escrow. On or before the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(a) *Deed.* The Deed (including a quitclaim deed based upon the Survey if requested by Buyer), executed and acknowledged by Seller, conveying Seller's title to the Property for the Purchase Price, subject only to the Permitted Title Exceptions in a form reasonably acceptable to the Parties and their counsel.

(b) *Bill of Sale.* A Bill of Sale for any personal property related to the Property, if any and if requested by Buyer, executed by the Seller, in a form reasonably acceptable to the Parties and their counsel.

(c) *Representations.* A reaffirmation of Seller's representations set forth in this Agreement.

(d) *FIRPTA.* A Foreign Investment in Real Property Tax Act affidavit executed by Seller, if required by law.

(e) *Authority.* Evidence of the existence, organization and authority of the Seller, including but not limited to (i) certificate of existence from the state of Seller's organization and, if applicable, South Carolina, dated within 30 days of Closing, (ii) appropriate tax compliance certificates dated within 30 days of Closing or a South Carolina Department of Revenue transferor affidavit; and/or (iii) appropriate resolutions signed by the manager/members of the Seller authorizing the execution of all Closing Documents.

(f) *Additional Documents.* Any additional documents that Escrow Agent or the Title Company may reasonably and customarily require, and in a form reasonably acceptable to Seller and their counsel, for the proper consummation of the transaction contemplated by this Agreement, including without limitation (i) a Seller's affidavit, (ii) a lien waiver executed by Broker (if applicable), (iii) an affidavit regarding brokerage commission executed by Seller in form provided by Buyer or the Title Company, and (iv) affidavit of withholding (I-295 Form) (if applicable).

5.4 Buyer's Deliveries in Escrow. On or before the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(a) *Purchase Price.* The Purchase Price (payable as set forth in Article 2 hereof), less the Earnest Money that is applied to the Purchase Price, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent.

(b) *Representations.* A reaffirmation of Buyer's representations set forth in Article 4 of this Agreement.

(c) *Additional Documents.* Any additional documents that Escrow Agent or the Title Company may require for the proper consummation of the transaction contemplated by this Agreement, including without limitation an affidavit regarding brokerage executed by Buyer and such evidence of the proper corporate authority of Buyer.

5.5 Closing Statements. At the Closing, Seller and Buyer shall deposit with the Escrow Agent executed closing statements prepared by Escrow Agent consistent with this Agreement.

5.6 Possession. The Seller shall deliver possession of the Property to Buyer at the Closing, subject to the rights of the other parties under the Permitted Encumbrances.

5.7 Closing Costs. Except as is otherwise provided in this Agreement, each party hereto shall pay its own legal fees and expenses. Seller shall pay the cost of documentary tax stamps on the Deed, if any, and any and all transfer fees to any governmental authority or property owners association and any such other fees or expenses that are usually and customarily the responsibility of Seller in the sale of real estate in Beaufort County. Buyer shall be solely responsible for the payment of (i) any and all other filing fees for the Deed and recording costs, (ii) the cost of any Owner's Title Policy and the cost of any

endorsements to the Owner's Title Policy, (iii) the costs of any of the Buyer's Due Diligence materials, and (iv) any such other fees or expenses that are usually and customarily the responsibility of the Buyer in the sale of real estate in the area in which the Property is located in Beaufort County.

5.8 **Allocations.** The following items shall be allocated as of the Closing Date as follows:

(a) *Taxes.* As the Buyer is a municipal corporation exempt from ad valorem real property taxes pursuant to S.C. Code Ann. § 12-37-220(A)(1), the Parties hereby acknowledge and agree that all real property ad valorem taxes applicable to the Property for the calendar year in which Closing occurs shall be the responsibility of the Seller. Buyer agrees to be responsible for any taxes assessed by Beaufort County which result from subsequent assessments for prior years due to a change in land usage or ownership of the Property ("**Roll-Back Taxes**").

(b) *Utilities. Intentionally Omitted.*

(c) *Miscellaneous Prorations.* Such other items as are usually and customarily prorated between Buyer and Seller of properties in the area in which the Property is located shall be prorated as of the Closing Date.

5.9 **Sales Taxes.** Seller shall be required to pay all sales, use, and excise taxes, if any, taxes and like impositions arising from the ownership and operation of the Property through the Closing Date.

ARTICLE 6 EARNEST MONEY AND ESCROW AGENT PROVISIONS

6.1 **Investment and Use of Funds.** Escrow Agent may deposit any funds received in its custodial or escrow accounts which may result in the funds being commingled with escrow funds of others, including in an IOLTA real estate account. Deposits held by Escrow Agent shall be subject to the provisions of applicable state statutes governing unclaimed property. The Parties do hereby certify that each is aware that the Federal Deposit Insurance Corporation coverages apply to a legally specified maximum amount per depositor. Further, the Parties understand that Escrow Agent assumes no responsibility for, nor will the Parties hold the Escrow Agent liable for any loss occurring which arises from a situation or event under the Federal Deposit Insurance Corporation coverages.

6.2 **Interpleader.** Seller and Buyer mutually agree that in the event of any controversy regarding the Earnest Money, unless mutual written instructions are received by the Escrow Agent directing the Earnest Money's disposition, the Escrow Agent shall not take any action, but instead shall await the disposition of any proceeding relating to the Earnest Money or, at the Escrow Agent's option, the Escrow Agent may interplead all parties and deposit the Earnest Money into the registry of the applicable court in Beaufort County, South Carolina, in which event the Escrow Agent may recover all of its court costs and reasonable and actual attorneys' fees. Seller or Buyer, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Escrow Agent, as well as the reasonable and actual attorneys' fees of the prevailing party in accordance with the other provisions of this Agreement.

6.3 **Liability of Escrow Agent.** The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and that the Escrow Agent shall not be liable to either of the parties for any action or omission on its part taken or made in good faith, and not in disregard of this Agreement,

but shall be liable for its negligent acts and for any loss, cost or expense incurred by Seller or Buyer resulting from the Escrow Agent's mistake of law respecting the Escrow Agent's scope or nature of its duties. Seller and Buyer shall jointly and severally indemnify and hold the Escrow Agent harmless from and against all costs, claims and expenses, including reasonable and actual attorneys' fees, incurred in connection with the performance of the Escrow Agent's duties hereunder, except with respect to actions or omissions taken or made by the Escrow Agent in bad faith, in disregard of this Agreement or involving negligence on the part of the Escrow Agent.

ARTICLE 7 GENERAL PROVISIONS

7.1 **Condemnation.** In the event of any actual or threatened taking, pursuant to the power of eminent domain, of all or any portion of the Real Property, or any proposed sale in lieu thereof, Seller shall give written notice thereof to Buyer promptly after Seller learn or receive notice thereof. If all or any part of the Real Property is, or is to be, so condemned or sold, Seller and Buyer shall have the unilateral right to terminate this Agreement pursuant to Article VIII. If Buyer elects not to terminate this Agreement, all proceeds, awards and other payments arising out of such condemnation or sale (actual or threatened) shall be paid or assigned, as applicable, to Buyer at Closing. Seller will not settle or compromise any such proceeding without Buyer's prior written consent.

7.2 **Risk of Loss.** If, prior to the Closing, there is any material damage to or destruction of any part of the Property, then Buyer may terminate this Agreement upon written notice to Seller, in which case neither party shall have any further rights or obligations under this Agreement.

7.3 **Real Estate Broker.** Seller and Buyer represent and warrant each to the other that it has not described this Agreement or the subject matter hereof and has not otherwise dealt with any real estate broker, salesperson or finder in connection with this transaction other than Broker. If this transaction is closed in accordance with the terms of this Agreement and only in such event, Seller shall pay Broker a real estate commission in accordance with their separate agreement and Seller shall indemnify Buyer against any claims made by Broker in connection with this Agreement. The provisions of this Section 7.3 shall survive Closing.

ARTICLE 8 LIABILITY OF BUYER; INDEMNIFICATION BY SELLER; TERMINATION RIGHTS

8.1 **Liability of Buyer.** Except for any obligation expressly assumed or agreed to be assumed by Buyer under this Agreement, Buyer does not assume any obligation of Seller or any liability for claims arising out of any event, action, circumstance, or occurrence prior to Closing.

8.2 **Seller's Indemnity of Buyer.** Seller shall indemnify, and hold Buyer (together with its officers, employees and agents, and successors, heirs and assigns) harmless from, against or in respect of the aggregate of all Indemnifiable Buyer's Damages. For this purpose, the term "Indemnifiable Buyer's Damages" means the aggregate of any and all damage, loss, deficiency, liability, expense (including, but not limited to, any reasonable attorney's fees, court costs and expenses), action, suit, proceedings, demand, assessment, or judgment to or against Buyer arising out of or in connection with (i) any debt, obligation or liability of Seller, which is not expressly assumed by Buyer pursuant to this Agreement, whether arising prior to, on, or after the Closing; and/or (ii) any inaccuracy, breach or violation of, or non-performance by,

Seller or any of their representation, warranties, covenants or agreements contained in this Agreement or in any document, certificate or schedule required to be furnished pursuant to this Agreement.

8.3 **Default by Buyer.** If Buyer defaults in the payment of the Purchase Price, or if Buyer shall default in the performance of any of its other material obligations to be performed on or before the Closing Date, and Buyer fails to cure any such matter within ten (10) business days after notice thereof from Seller, Seller's sole remedy by reason thereof shall be to terminate this Agreement upon notice to Buyer and Escrow Agent and, upon such termination, Escrow Agent shall disburse the Earnest Money to Seller as liquidated damages for Buyer's default hereunder, it being agreed that the damages by reason of Buyer's default are difficult, if not impossible, to ascertain, and thereafter Buyer and Seller shall have no further rights or obligations under this Agreement except for those that are expressly provided in this Agreement to survive the termination hereof.

8.4 **Default by Seller.** If Seller defaults in any of its obligations to be performed on or before the Closing Date, Buyer as its sole remedy by reason thereof (in lieu of prosecuting an action for damages or proceeding with any other legal course of conduct, the right to bring such actions or proceedings being expressly and voluntarily waived by Buyer) shall have the right, subject to the other provisions of this Section 8.4, (i) to seek specific performance of Seller's obligations hereunder (it being expressly acknowledged by Buyer that the remedy of specific performance is an appropriate remedy in the event of a default by Seller under this Agreement), provided that any action for specific performance shall commence within sixty (60) days after Buyer's actual knowledge of such default, or (ii) to terminate this Agreement upon notice to Seller and Escrow Agent and receive a return of the Earnest Money. Upon such return and delivery of the Earnest Money, this Agreement shall terminate and neither party hereto shall have any further obligations hereunder except for those that are expressly provided in this Agreement to survive the termination hereof. The foregoing notwithstanding, if the Buyer elects to undertake an action for specific performance and such action is barred or otherwise unavailable as a result of the intentional act of Seller of conveyance of title to the Property to a party other than Buyer after the Effective Date, Buyer shall be entitled to all available remedies at law or in equity. The provisions of this Section 8.4 shall survive the termination hereof.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 **Completeness; Modification.** This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto. This Agreement may be modified only by a written instrument duly executed by the parties hereto.

9.2 **Assignments.** Neither Seller nor Buyer may assign its rights under this Agreement without the prior written consent of the other party, which consent may be withheld in such party's sole and absolute discretion; provided however, that Buyer may assign all or a portion of its rights hereunder to Beaufort County and/or the Beaufort County Open Land Trust without the consent of Seller.

9.3 **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

9.4 **Days.** If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the jurisdiction in which

the action is required to be performed or in which is located the intended recipient of such notice, consent or other communication, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first business day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not business days. Time is of the essence of this Agreement.

9.5 **Governing Law.** This Agreement and all documents referred to herein shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.

9.6 **Counterparts.** To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

9.7 **Severability.** If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.8 **Costs.** Regardless of whether Closing occurs under this Agreement, and except as otherwise expressly provided in this Agreement, each party to this Agreement shall be responsible for its own costs in connection with this Agreement and the transactions contemplated hereby, including without limitation, fees of attorneys, engineers and accountants.

9.9 **Notices.** Except as may be expressly provided otherwise herein, any notices, demands, requests or other communications which the parties are required or desired to give to the other hereunder shall be in writing and shall be given by (i) hand delivery, (ii) a widely recognized national overnight courier service (e.g. Federal Express, DHL, UPS) for next business day priority delivery, (iii) the United States Postal Service when sent registered or certified mail, return receipt requested, postage prepaid, or (iv) email. If such notice is given in via hand delivery or via email, such notice will be deemed received, on the earlier of, when actually received, or when delivered to the street address or the email address, respectively, as set forth below. If such notice is given by overnight courier service, such notice will be deemed received, on the earlier of, when actually received or one business day after the notice is delivered to such overnight courier service prior to the specified deadline for such next business day priority delivery, specifying an address to which the courier makes such overnight deliveries. If such notice is given by registered or certified mail, such notice will be deemed received, on the earlier of, when actually received, or five (5) days after a registered or certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail. Any notice, however delivered, that is confirmed or acknowledged (excluding any automatically generated electronic acknowledgment) by a party to have been received by such party is effective notice. Any correctly addressed notice that is rejected, refused, unclaimed or undeliverable because of an act or omission of the party to be notified (including, without limitation, lack of acceptance or inability to deliver because of changed address of which no notice has been received) shall be deemed delivered as of the first date that the notice was rejected, refused, unclaimed or considered undeliverable by the party making or attempting to make the delivery; provide, however, that if the address for notice of a party shall be duly changed as hereinafter provided, such notice shall be delivered as aforesaid to such party at such changed address. Either party hereto, or any such holder, may from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent. The parties shall copy the respective brokers and/or attorneys on all notices sent hereunder, and a copy to an

attorney named below shall serve as notice to the party, but failure to notify any broker or attorney shall not be deemed a failure of notice to a party to whom notice has otherwise been properly given. Notice will go to the parties at the following addresses:

If to Buyer: Town of Bluffton
Attn: Stephen Steese
20 Bridge Street, Bluffton, South Carolina 29910
Phone: 843-706-4520
Email: ssteese@townofbluffton.com

With a copy to
and as
Escrow Agent: Finger, Melnick, Brooks & LaBruce, P.A.
Attn: E. Richardson LaBruce
35 Hospital Center Common, Suite 200
Hilton Head Island, South Carolina 29925
Phone: 843-681-7000
Email: erlabruce@fingerlaw.com

If to Seller: F & D, LLC
Attn: Frank X. Fotia III
14 Wedgefield Drive
Hilton Head Island, SC 29926
Phone: 843-247-3247
Email: frank.fotia@yearroundpool.com

With a copy to: Burr & Forman LLP
Attn: Sarah F. Robertson, Attorney at Law
4 Clarks Summit Drive, Suite 200
Bluffton, SC 29910
Phone: (843) 815-2171
Email: srobertson@burr.com

9.10 **Incorporation by Reference.** All of the exhibits attached hereto are by this reference incorporated herein and made a part hereof.

9.11 **Survival.** Except as expressly provided in Section 3, all of the representations, warranties, covenants and agreements of Seller and Buyer made in, or pursuant to, this Agreement shall survive Closing and shall not merge into the Deed or any other document or instrument executed and delivered in connection herewith.

9.12 **Further Assurances.** Seller and Buyer each covenant and agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon the written request of the other party, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required by either party hereto for the purpose of or in connection with consummating the transactions described herein.

9.13 **No Partnership.** This Agreement does not and shall not be construed to create a partnership, joint venture or any other relationship between the parties hereto except the relationship of Seller and Buyer specifically established hereby.

9.14 **Tax-Deferred Exchange.** With regard to any sale or transfer hereunder, the parties acknowledge and agree that, upon request by one or both parties, the non-requesting party shall cooperate with the requesting party and execute such documentation as may be reasonably necessary for the requesting party to effectuate the purchase of the Property pursuant to a “like-kind” exchange in accordance with §1031, or such other pertinent provisions, of the Internal Revenue Code of 1986, as amended, (“1031 Exchange”); provided such 1031 Exchange shall be at no additional risk or expense to the non-requesting party nor shall it delay the Closing (except as may be expressly provided for herein or agreed to by the parties in writing). Accordingly, upon request, the non-requesting party agrees to timely cooperate to facilitate such 1031 Exchange, including the execution of such documents as may be reasonably necessary to effectuate the same. In addition, if necessary as determined solely by either party, the parties shall enter into a contract containing the same terms and conditions for the sale of the Property with a §1031 qualified intermediary or consent to the Agreement being assigned to the §1031 qualified intermediary; however, the requesting party shall remain liable under the Agreement.

9.15 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, then this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

9.16 **DISCLAIMER DUE TO PURCHASE OF REAL PROPERTY BY MUNICIPALITY.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, PURSUANT TO SECTION 5-7-260 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, AND SECTIONS 2-13 AND 2-19 OF THE CODE OF ORDINANCES FOR THE TOWN OF BLUFFTON, SOUTH CAROLINA, THE SELLER ACKNOWLEDGES AND AGREES THAT THE BUYER, AS A SOUTH CAROLINA MUNICIPAL CORPORATION, MAY ONLY PURCHASE REAL PROPERTY BY THE ADOPTION OF A WRITTEN RESOLUTION OF THE BLUFFTON TOWN COUNCIL AT A DULY HELD PUBLIC MEETING OF TOWN COUNCIL.

9.17 **Time is of the Essence.** Time is of the Essence for the performance of all obligations of each Party hereunder, unless waived in writing by the other Party. Notwithstanding any contrary provision of this Agreement, the Closing Deadline Date and the time for performance of the Buyer’s obligations hereunder shall be extended by a period of time equal to any period that such performance or progress in construction of the Improvements is delayed due to any strike, riot, act of war, act of terrorism, pandemic, act of violence, weather, act of God, or any other act, occurrence or non-occurrence beyond the Buyer’s reasonable control (each, an “**Uncontrollable Event**”). If the Buyer claims a delay due to an Uncontrollable Event, then the Buyer shall provide written notice to the Seller of the occurrence of a condition that constitutes an Uncontrollable Event, which notice shall reasonably detail the reason(s) giving rise to the Uncontrollable Event and the duration of the delay that was caused by the Uncontrollable Event. The Buyer will make reasonable efforts to minimize the delay from any such Uncontrollable Event. For the purposes of this Agreement, the current novel coronavirus (“**COVID-19**”) pandemic shall not constitute an Uncontrollable Event absent an order/proclamation/ordinance from a federal regulatory agency, the Governor of the State of South Carolina, or the County Council for Beaufort County closing local governmental offices and/or businesses.

[Remainder of Page Intentionally Omitted. Signature Page(s) and Exhibits to Follow.]

IN WITNESS WHEREOF, authorized agents of Seller and Buyer have hereunder affixed their signatures to this Purchase and Sale Agreement, all as of the dates below.

SELLER:

F & D, LLC, a South Carolina limited liability company

By: Frank X. Fotia, III

Name: FRANK X. FOTIA, III

As: Member

Date: 10/31/2023, 2023

BUYER:

THE TOWN OF BLUFFTON, a South Carolina
municipal corporation

By: _____

Name: STEPHEN STEESE

Its: Town Manager

Date: _____ November 3, 2023

EXHIBIT "A" The Property

