

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

**AGREEMENT TO EXCHANGE
DEVELOPMENT RIGHTS**

THIS AGREEMENT TO EXCHANGE DEVELOPMENT RIGHTS (the “*Agreement*”) is made effective as of _____, 2025 (the “*Effective Date*”) by and between the **TOWN OF BLUFFTON**, a South Carolina municipal corporation (the “*Town*”) and **BEAUFORT MEMORIAL HOSPITAL**, a South Carolina nonprofit corporation (“*BMH*”); collectively hereinafter referred to individually as a “*Party*” and collectively as the “*Parties*.”

WITNESSETH:

WHEREAS, the Town presently owns certain development rights within the Buckwalter Planned Unit Development which are held in the Town’s Development Rights Bank which was established by the Transfer of Development Rights Ordinance 2007-19 approved by Town Council on November 6, 2007 (“*Town Owned Property*”); and,

WHEREAS, Beaufort County (the “*County*”) conveyed certain property located at 333 and 335 Buckwalter Parkway consisting of 10.09 acres, bearing Beaufort County Tax Map No. R610 030 000 0712 0000 (the “*Property*”) and assigned the associated 10.09 acres of general commercial development rights to BMH for the construction of a 120 unit multi-family development providing affordable housing as well as up to 6,000 square feet of medical facilities (collectively hereinafter the “*Project*”) pursuant to certain terms as set forth in County Ordinance 2024-36, as amended by County Ordinance 2025-08; and,

WHEREAS, in order to construct the 120 multi-family unit portion of the Project, BMH must acquire certain residential development rights (“*RDUs*”); and,

WHEREAS, BMH has submitted a request to the Town to acquire 60 RDUs owned by the Town which are associated with Buckwalter from the Development Rights Bank via approval pursuant to the Transfer of Development Rights Ordinance; and

WHEREAS, BMH also requested a 100% density bonus of 60 RDUs as 100% of the RDUs will be designated for affordable housing for households which qualify at up to 80% of the current Area Median Income (“*AMI*”); and

WHEREAS, the Town recognizes the need for additional affordable housing within the Town as throughout the County and, in particular, southern Beaufort County, a shortage of affordable housing remains a pressing issue for local businesses, residents, and governmental organizations; and,

WHEREAS, the Town and BMH suffer due to the difficulties caused by a lack of reasonable housing options in attracting and retaining well-trained and highly qualified employees; and

WHEREAS, the Town of Bluffton Comprehensive Plan (“*Blueprint Bluffton*”) adopted by Bluffton Town Council on November 8, 2022, as amended, identifies affordable housing as an Objective for the Town’s focus per Sections H1.4 and Sections H2.4; and

WHEREAS, the Town believes that it is in the best interests of the people of Bluffton to assign certain development rights to BMH for the construction of the Project subject to the terms and conditions set forth herein, and the Parties desire to enter into this Agreement for the purpose of memorializing the previously discussed terms and conditions associated with the exchange of the development rights between the Town and BMH.

NOW, THEREFORE, in consideration of the mutual benefits to the Parties, the premises herein contained and other valuable consideration, the receipt and adequacy of such consideration being acknowledged by the undersigned, the Parties agree as follows:

1. Incorporation of Recitals. The above recitals and all exhibits attached hereto are hereby incorporated herein as if restated fully and are hereby made an integral part hereof so that their contents are a substantive part of this Agreement.

2. Land Swap and Purchase of Development Rights. Subject to the terms and conditions set forth herein and in consideration of the other Party's obligations hereunder, the Parties hereby agree as follows, *to wit*:

- (a) *Assignment of Development Rights from the Town to BMH.* The Town shall transfer, assign, and convey to BMH all of the rights, titles, and interests of the Town in and to sixty (60) RDUs from the Development Rights Bank (the "*Town RDUs*").
 - a. **Limitations.** The Town RDUs may be used exclusively for the construction of affordable housing for the Project on the Property and may not be assigned or utilized anywhere else or for any other purpose, unless any unused Town RDUs are reacquired by the Town.
 - b. **Timing.** The affordable housing units to be constructed on the Property as part of the Project will be constructed as part of a number of multi-family housing structures. At the time of building permit approval for each of the multi-family housing structures to be constructed as part of the Project, the Town shall assign to BMH certain Town RDUs in a number that is equal to one-half (1/2) of the number of units in said structure (*i.e.*, 1 Town RDU per 2 units).
 - c. **Affordability Covenants.** Additionally, prior to the assignment of any Town RDUs, certain affordable housing covenants to which the Town is named as a party with full enforcement rights shall be recorded against the Property that restricts the use of the residential structures to be constructed on the Property to affordable and workforce housing, with such covenants to be in a form reasonably satisfactory to the Town. The terms of said covenants shall be consistent with the terms set forth in BMH's application to the Town for the receipt of the Town RDUs (*e.g.*, (i) Number of Units by number of bedrooms: 30 one-bedroom units, 60 two-bedroom units, 30 three-bedroom units; and, (ii) 30 units restricted to 40% Area Median Income, 60 units restricted to 60% Area Median Income, 30 units restricted to 80% Area Median Income, with income restrictions proportionally divided by unit types and sizes; and, (iii) annual rent and income limits to be determined by the Area Median Income by unit size for Beaufort County).

- d. **Document.** The assignment of the Town RDUs shall be pursuant to one or more Partial Assignment and Assumption of Development Rights in form and substance reasonably acceptable to the Parties.
 - (b) *Assignment of Development Rights from BMH to the Town.* BMH shall transfer, assign, and convey to the Town all of the rights, titles, and interests of BMH in and to the remainder of the 10.09 acres of general commercial development rights (the “*BMH Residual Rights*”) that BMH acquired from the County. The Parties recognize that total of the BMH Residual Rights to be conveyed by BMH to the Town will not be finalized until such time as the final development plans for the Project are completed and approved so that the Parties can confirm the amount of general commercial development rights required for the completion of the Project. The assignment of the BMH Residual Rights shall be pursuant to a Partial Assignment and Assumption of Development Rights in form and substance reasonably acceptable to the Parties.
 - a. **Timing.** The Parties recognize that total of the BMH Residual Rights to be conveyed by BMH to the Town will not be finalized until such time as the final development plans for the Project are completed and approved so that the Parties can confirm the amount of general commercial development rights required for the completion of the Project. The assignment of the BMH Residual Rights shall be on or before the same date that the first Town RDU is assigned to BMH.
 - b. **Document.** The assignment of the BMH Residual Rights shall be pursuant to one or more Partial Assignment and Assumption of Development Rights in form and substance reasonably acceptable to the Parties.
 - (c) *Recording Fees and Costs:* BMH shall pay all recording fees, transfer taxes, and other costs and expenses (collectively, the “*Recording Costs*”), if any, associated with the recordation of the assignments.
3. **Assignment.** Except for an assignment to an entity owned or controlled by a Party, neither Party may assign its rights under this Agreement to any other entity without the prior written consent of the other Party. Any approved assignment shall not relieve a Party of its obligations under this Agreement. In all instances of a permitted assignment, the requesting Party shall (i) provide the name, address, telephone and facsimile number of the assignee and the name of the contact person(s) for the assignee; and (ii) provide to a signed copy of such assignment, which assignment shall be in a form reasonably acceptable to the non-requesting Party.
4. **Representations.**
- (a) *Representations.* Except as is herein specifically set forth, neither Party has made, does not make and has not authorized anyone else to make, any representations as to: (i) the location of the Property or any portion thereof within any flood plain, flood-prone area, water shed or the designation of any portion thereof as “wetlands” or (ii) the present or future physical condition or suitability of its Property for any purpose. Parties acknowledge that no representations has been made by or on behalf of the conveying Party and, in entering into this Agreement, neither Party has relied on and does not rely on any representations other than those expressly set forth in this Agreement. Parties acknowledge and agree that the development rights being conveyed and accepted are in their “AS IS” condition.
 - (b) *Authority to Act.* Each Party represents that (i) it is duly organized and in good standing under the laws of the state of its formation or incorporation; (ii) the execution and delivery of this

Agreement by signatories and the performance of this Agreement by the Parties (including the execution and delivery of any documents at the Closing) have been or will be duly authorized by their respective company, corporate boards or governing councils, (iii) this Agreement is binding and enforceable against the Parties hereto in accordance with the terms hereof, and (iv) neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will result in a breach of or default under any agreement to which the representing party is a party or by which the representing party is bound, or violate any law, rule, regulation, restriction, court order agreement to which the representing party is subject.

(c) *Evidence of Authority.* Following a request from either Party, the other Party shall furnish evidence of that Party's authority to execute this Agreement and to consummate the transactions contemplated herein. Such evidence shall be in form and substance reasonably acceptable to the requesting Party and shall be delivered within fourteen (14) calendar days after the request or prior to the Closing Date, whichever shall occur first in time.

(d) *Party's Warranties and Representations.* Each Party conveying Property hereby represents and warrants that:

(1) The Property has good, indefeasible, marketable and insurable title and has the full power and authority to execute, deliver and perform this Agreement and all agreements and documents referred to in this Agreement; and,

(2) At the time of execution of this Agreement, there is no action, suit or proceeding pending or threatened against the Party or affecting the Property or relating to or arising out of the ownership or development of the Property, including without limitation, condemnation or eminent domain actions or proceedings; and,

(3) No notice by any governmental or other public authority has been served upon the Party relating to violations of any applicable safety, fire or other ordinances or any of the Applicable Laws.

5. Default.

(a) *Default by a Party.* If either Party defaults in its obligation to close and exchange the Properties as described herein, then the non-defaulting Party's remedy shall be to terminate this Agreement or seek any other remedy at law or in equity, including but not limited to, specifically enforce performance of this Agreement.

6. Miscellaneous.

(a) *Effective Date.* The Effective Date of this Agreement shall be the latest date on which both Parties have executed this Agreement as shown on the signature page.

(b) *Construction of Agreement.* Each Party acknowledges that it has participated in the negotiation and drafting of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party hereto or thereto by any court by reason of such Party having or being deemed to have structured, dictated, or drafted any provision in the Agreement.

(c) *Counterparts.* This Extinguishment may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

(d) *Good Faith.* The Parties shall act in good faith in performing and discharging their respective duties and obligations hereunder. Any provision requiring the approval of either Party shall

not be unreasonably withheld. The Parties shall execute and deliver such other instruments and documents as reasonably may be necessary to implement and effectuate the terms of this Agreement.

(e) *Waiver.* No provision, condition or covenant of this Agreement shall be waived by either Party hereto except by a written instrument delivered to the other Party and signed by the Party consenting thereto.

(f) *Successors and Assigns.* All provisions of this Agreement shall run with the land and bind and inure to the benefit of each Party and each Party's respective heirs, executors, legal representatives, successors, successors in title and assigns.

(g) *Time of the Essence.* Time is of the essence of this Agreement, although a request for additional time should not be unreasonably withheld when the additional time is needed by a Party to receive the approval and authority required by either local or state law.

(h) *Survival of Agreements.* All agreements, undertakings, hold harmless, and indemnifications contained in this Agreement shall expressly survive the Closing of the Property and delivery of the applicable Deed and such agreements, undertakings and indemnifications shall not be merged therein.

(i) *Captions.* The section headings appearing in this Agreement are for convenience of reference only and are not intended to any extent for the purpose, to limit or define the test of any section or any subsection hereof.

(j) *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.

(k) *Applicable Law.* This Agreement has been made in the State of South Carolina, and shall be interpreted in accordance with South Carolina law, and any enforcement of this Agreement shall be brought in the State of South Carolina.

{Remainder of Page Intentionally Omitted. Signature Page and Exhibits to Follow.}

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and sealed as of the dates below.

WITNESSES:

BEAUFORT MEMORIAL HOSPITAL

By: _____
Russell Baxley, *CEO*

Date Signed: _____

WITNESSES:

TOWN OF BLUFFTON

By: _____
Stephen Steese, *Town Manager*

Date Signed: _____

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