

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)

**LAND SWAP AGREEMENT and
AGREEMENT TO PURCHASE CERTAIN
DEVELOPMENT RIGHTS**

THIS LAND SWAP AGREEMENT and AGREEMENT TO PURCHASE CERTAIN DEVELOPMENT RIGHTS (the “*Agreement*”) is made effective as of the Effective Date as defined below by and between the **TOWN OF BLUFFTON**, a South Carolina municipal corporation (the “*Town*”) and **BEAUFORT COUNTY SCHOOL DISTRICT**, a political subdivision of the State of South Carolina (the “*District*”); collectively hereinafter referred to individually as a “*Party*” and collectively as the “*Parties*.”

WITNESSETH:

WHEREAS, from 2010 to 2022, the population of the Town of Bluffton grew by approximately 179%, increasing the demand on civic infrastructure and public services, including but not limited to those public services provided by the District and, as such, many of the District's facilities in the greater Bluffton area are either at capacity, near capacity, or unable to reasonably accommodate additional new students; and,

WHEREAS, recent land development in the area has also dramatically increased property values and reduced local inventory for large civic facilities, such as new schools and athletic fields, furthering the urgency with which the District must identify and acquire new potential development sites; and,

WHEREAS, the “*Willow Run Tract*” is an approximately 163-acre tract of land in the Buckwalter Commons planning area of the Town of Bluffton, consisting of four parcels, three of which are owned by Indian Hill Associates, LLC (“*Indian Hill*”) and one of which is owned by the Town; and,

WHEREAS, Indian Hill is also the record owner and holder of 162 acres of commercial density development rights and development rights for up to two (2) 150-unit hotels and 260 residential dwelling units (collectively, the “*Development Rights*”) pursuant to the Buckwalter Development Agreement (the “*Development Agreement*”), which governs the long-term development of all of the land in the Buckwalter area of the Town, including but not limited to the Willow Run Tract (as defined herein); and,

WHEREAS, the Development Agreement permits the transfer of the Development Rights within the Willow Run Tract and the remaining Buckwalter area, dedicates certain land for public purposes including civic facilities and affordable housing, and imposes certain requirements and obligations on landowners regarding the construction of roadways and other infrastructure; and,

WHEREAS, the District has entered into a purchase and sale agreement with Indian Hill for the acquisition of Indian Hill's portion of the Willow Run Tract and Indian Hill's Development Rights (collectively, the "*Indian Hill Property*"); and,

WHEREAS, the District's purchase of the Indian Hill Property is contingent upon the Town adopting a Fourteenth Amendment to the Buckwalter Development Agreement in form and substance substantially similar to that document attached hereto as **Exhibit "E"**, to be recorded prior to or in

connection with the District's closing on the purchase of the Indian Hill Property (the "*14th Amendment*"); and,

WHEREAS, the Development Agreement does not require any development rights for the construction of the school facilities contemplated by the District within the Willow Run Tract, and the Town has agreed to purchase the Development Rights from the District for Two Million, Five Hundred Thousand and No/100 (\$2,500,000.00) Dollars (the "*Development Rights Purchase Price*"), with all titles, rights, and interests to such Development Rights being conveyed by the District to the Town after the District's acquisition of the Development Rights from Indian Hill and on the Closing Date (as defined herein) and subject to the terms and provisions of this Agreement; and,

WHEREAS, the Town is the fee simple owner of that certain parcel of real property consisting of approximately 19.753 acres, more or less, located within the Willow Run Tract of the Town of Bluffton, South Carolina, assigned Beaufort County Tax Map No. R610-022-000-1094-0000, and described as "Proposed Parcel, A Portion of Parcel 13A" on that certain plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 131 at Page 156, which parcel is more particularly described on **EXHIBIT "A"** hereto and which is incorporated herein by reference (the "*Town Property*"); and,

WHEREAS, the Town is cognizant of the public's need for affordable housing and has identified the Town Property as a potentially suitable development site for the much-needed development of affordable housing (the "*Housing Facilities*"); and,

WHEREAS, the District has identified the Willow Run Tract as a potentially suitable site for needed school facilities which may include a school complex and associated athletic facilities, administrative offices, or other structures intended to support school operations (the "*School Facilities*"); and,

WHEREAS, in support of each Party's desired development, the Parties have discussed an exchange of real properties to allow the District to develop the School Facilities further away from U.S. Highway 278 and the Town's Housing Facilities or civic facilities to be located closer to U.S. Highway 278's frontage; and,

WHEREAS, the Parties have determined that the Town Property is in a location more suitable for the District's use as potential School Facilities and, as such, have agreed that upon the District's acquisition of the Indian Hill Property, the Town shall convey to the District for nominal consideration the Town Property and the District shall convey to the Town for nominal consideration a parcel from the Indian Hill Property located within the Town of Bluffton, South Carolina, being a portion of Beaufort County TMS No. R610 022 000 0035 0000 and/or R610 022 000 013A 0000 consisting of at least at least 10 acres of upland property created before the Closing Date by mutual agreement of the Parties (the "*District Property*") based upon a subdivision boundary plat to be prepared by the District that is subject to the review and approval of the Town of Bluffton and subject to the other terms and conditions set forth herein; and,

WHEREAS, upon completion and approval by the District and the Town of the subdivision boundary plat for the District Property, such boundary plat shall be attached hereto prior to the Closing Date as **EXHIBIT "B"** and incorporated herein by reference; and,

WHEREAS, the Parties intend to grant reciprocal easements for construction, utilities, access, and maintenance over access roads for the District Property and the Indian Hill Property from U.S. Highway 278; and

WHEREAS, for purposes of this Agreement the Town Property and District Property may generally be referred to collectively as the “*Properties*” or individually as the “*Property*”; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of memorializing the previously negotiated terms and conditions associated with the exchange of the Town Property and District Property and the Town’s purchase of the Development Rights.

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. Definitions. As used in this Agreement, these terms shall have these meanings (besides any other terms defined in the above preamble, recitals or elsewhere in this Agreement):

(a) *Closing.* Shall mean the time that each of the deliveries to be made by the District and the Town, as provided herein, are made and each of the Closing conditions of the Parties has been fully satisfied or waived.

(b) *Purchaser.* The term “Purchaser” shall refer to the party acquiring a property. The Town is deemed the Purchaser of the District Property, and the District is deemed the Purchaser of the Town Property.

(c) *Seller.* The term “Seller” shall refer to the party conveying a property. The Town is deemed the Seller of the Town Property, and the District is deemed the Seller of the District Property.

(d) *Settlement Agent.* Burr & Forman LLP, 4 Clarks Summit Drive, Suite 200, Bluffton, SC 29910; Attn: Sarah Robertson.

3. Land Swap; Purchase of Development Rights; Reciprocal Easement. 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) *Land Swap.* On the Closing Date, the Town agrees to convey to the District its fee simple interest in the Town Property, together with all appurtenances, rights, easements, rights-of-way, tenements and hereditaments incident thereto, and all title and interest, if any, of the Town in and to all strips, gores, and any land lying in the bed of any street, road, or avenue open, proposed in front or adjoining the property; *and* the District agrees to convey to the Town its fee simple interest in the District Property, together with all appurtenances, rights, easements, rights-of-way, tenements and hereditaments incident thereto, and all title and interest, if any, of the Town in and to all strips, gores, and any land lying in the bed of any street, road, or avenue open, proposed in front or adjoining the District Property (collectively, the “*Land Swap*”).

(1) Potential Uses. The Parties acknowledge and agree that the Town Property and the District Property have equal value and that the Land Swap benefits each Party because it allows for the completion of the desired School Facilities and the Housing Facilities or civic facilities. The Parties acknowledge that the Town intends to develop and construct civic facilities or affordable housing on the District Property using all or a portion of the residential component of the Development Rights in accordance with the Development Agreement's density standards and allocations for affordable housing, as the same may be amended from time to time. The Town will use all reasonable efforts to explore affordable housing development options on the District Property that may provide priority for occupancy to qualified District employees. Notwithstanding the foregoing or anything contained herein to the contrary, the Parties recognize that they are not bound or committed to using the acquired Properties for the respective reasons and that each Party shall have the right and authority to utilize their respective properties for purposes other than the School Facilities and/or civic facilities or Housing Facilities.

(2) AS IS, WHERE IS. The Parties jointly acknowledge and agree that: (i) except as otherwise provided in this Agreement (including, without limitation, the representations and warranties set forth herein) and any document executed or delivered by a Party at Closing, the Parties are purchasing the Properties on an "AS-IS, WHERE IS, WITH ALL FAULTS BASIS" and, except as otherwise provided in this Agreement or any document executed or delivered by a Party at Closing, each Party is relying solely upon their own independent factual, physical and legal examinations, inquiries, inspections, investigations, tests and studies and the materials and information prepared by them or by third parties at their request in electing to purchase the Properties; and (ii) the Parties are not making, has not made and expressly disclaims any representation, warranty or other assurance whatsoever, except as expressly set forth in this Agreement or in any other documents to be executed or delivered in connection with this Agreement or at Closing. Notwithstanding anything to the contrary contained herein, the provisions of this Section shall not exculpate or release a Party from any liability for losses arising from fraud, willful concealment or a breach by seller of any covenant, indemnity, representation or warranty set forth in this Agreement or in any of the other certificates, instruments and documents executed by a Party in connection herewith and delivered to a Party at closing.

(b) Purchase of Development Rights. On the Closing Date, the District shall sell and the Town shall purchase from the District all of the rights, titles, and interests of the District in and to no less than 162 acres of commercial density development rights and development rights for up to two (2) 150-unit hotels and 260 residential dwelling units formerly belonging to Indian Hill and allocated pursuant to the Development Agreement (collectively, the "*Development Rights*") for the purchase price of TWO MILLION, FIVE HUNDRED AND NO/100 (\$2,500,000.00) DOLLARS (the "*Development Rights Purchase Price*"). The Development Rights Purchase Price shall be payable to the District in immediately available funds (by wire transfer or delivery of other immediately available funds) to the Settlement Agent (as defined herein) on or before 5:00 PM EST on the day of Closing (as defined herein).

(1) District Option. If the District decides to either (i) construct something other than the contemplated School Facilities within the Willow Run Tract that will require the expenditure of development rights under the Development Agreement, or (ii) sell all or a portion of the Willow Run Tract to a third party, the District shall have the one-time option (the "*Option*") to purchase from the Town any or all of the 162 acres of commercial

Development Rights for a price of FOURTEEN THOUSAND, FOUR HUNDRED THIRTY-TWO AND NO/100 (\$14,432.00) DOLLARS per acre of commercial Development Rights, with such figure being subject to adjustments for CPI increases after the Closing Date.

(2) Limitations. The District acknowledges that the Town shall be under no obligation to sell or transfer any of the 260 residential development rights and/or the development rights for up to two (2) 150-unit hotels to the District under this Option.

(3) Duration of Option. The Option shall be incorporated within the Assignment (as defined herein) and shall become available five (5) years after the Closing Date and shall expire either (i) twenty-five (25) years after the Closing Date or (ii) upon the development of any portion of the School Facilities upon the Willow Run Tract whichever occurs first.

(c) *Reciprocal Easement.*

(1) At the time of development of the District Property, the Town shall construct at its cost and expense a public access road aligned with the intersection of Eagles Pointe Drive and U.S. Highway 278 extending to and connecting to a roadway providing access to the District Property. If, however, the School Facilities are developed before the intersection and access road to the District Property, and the South Carolina Department of Transportation requires two intersections on Highway 278 for the School Facilities, the District may construct at its cost and expense the same with the Town providing the reasonably necessary easements and licenses to permit such work on property owned by the Town.

(2) At the time of the District's development of the School Facilities, the District shall construct at its cost and expense a public access road aligned with the intersection of the St. Gregory Drive and U.S. Highway 278 extending to School Facilities. If, however, the Town develops the District Property before the intersection and access road to the School Facilities, the Town may construct at its cost and expense the same with the District providing the reasonably necessary easements and licenses to permit such work property owned by the District.

(3) The Parties shall execute a Reciprocal Easement Agreement (the "Reciprocal Easement") for access for the Properties to and from U.S. Highway 278, construction, utilities, and maintenance specifying additional details regarding the easements to be granted as described herein in form mutually acceptable to the Parties to be finalized prior to Closing.

(d) *Right of First Refusal.* The District Deed (defined below) shall include a reservation by the District for a 60 day right of first refusal in the event that the Town sells any portion of the District Property.

4. Closing. Subject to the satisfaction of all closing conditions set forth herein, the closing of the transaction set forth herein (the "Closing") shall be held on or before thirty (30) days from the date that the District closes on the purchase of the Indian Hill Property (the "Closing Date"); provided, however, either party can extend the Closing Date an additional ten (10) calendar days by providing written notice to the other party no less than twenty-four (24) hours prior to the Closing Date. The Closing shall occur through an escrow with the Settlement Agent, as supervised by the attorneys for the Parties, and upon terms acceptable to the Parties and customary for similar closings in the State of South Carolina. It is understood that neither Party nor their respective counsel need be physically present at the Closing so long as (i) all documents described in this Agreement or elsewhere herein that are

required to be delivered at Closing are fully executed, delivered in escrow and available on the Closing Date, (ii) any authorized signatory of the affected Party is available either in person or by telephone and facsimile at Closing, (iii) all necessary Closing funds have been wire transferred to the Settlement Agent on or prior to Closing; and (iv) the Parties, through their respective counsel, acknowledge that the Closing has occurred in accordance with the laws of the State of South Carolina regarding the unauthorized practice of law.

(a) *Escrow Deposits.* At Closing, the Parties shall deliver to and deposit with the Settlement Agent the following documents, instruments, and other items (collectively, the “*Escrow Items*”), all of which shall be duly executed, shall be in form and substance reasonably acceptable to the Parties (or the Party to whom any such document or instrument is to be delivered upon the closing of the Escrow), and shall be in recordable form if such document or instrument is to be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, upon the closing of Escrow:

(1) *Limited Warranty Deed* executed by the District conveying the District Property to the Town (the “*District Deed*”) in form and substance substantially similar to that document attached hereto as **EXHIBIT “C”**, along with a corresponding *Affidavit of True Consideration (Exempt Transfer)* for the conveyance; and,

(2) *Limited Warranty Deed* executed by the Town conveying the Town Property to the District (the “*Town Deed*”) in form and substance substantially similar to that document attached hereto as **EXHIBIT “D”**, along with a corresponding *Affidavit of True Consideration (Exempt Transfer)* for the conveyance; and,

(3) Reserved.

(4) *Assignment and Assumption of Development Rights* executed by the Town and the District (the “*Assignment*”) in form and substance substantially similar to that document attached hereto as **EXHIBIT “F”**, assigning all Development Rights to the Town; and,

(5) *Extinguishment of Easement Agreement* executed by the Town and the District (the “*Extinguishment*”) in form and substance substantially similar to that document attached hereto as **EXHIBIT “G”**, along with a certified copy of the ordinance adopting said Extinguishment by the Town; and,

(6) *Reciprocal Easement Agreement* executed by the Town and the District; and

(6) If required by the Parties’ respective title companies, evidence reasonably acceptable to the Title Company, authorizing the consummation by the other Party of the transaction contemplated hereby and the execution and delivery of the closing documents, including but not limited to appropriate tax compliance certificates dated within 30 days of Closing or SC Department of Revenue Transferor Affidavits, if applicable, and appropriate certified resolutions/ordinances; FIRPTA certificates; and, South Carolina Withholding Tax Affidavit; and

(7) The *Development Rights Purchase Price* from the Town in accordance with this Agreement.

The Settlement Agent shall compile and assemble the counterparts of the Escrow Items, as necessary, so that the Settlement Agent has fully executed documents. Thereafter, the Settlement Agent shall

hold and disburse the Escrow Items and the Development Rights Purchase Price in accordance with this Agreement.

(b) *Escrow Disbursement.* Upon receipt of all of the Escrow Items, the Settlement Agent is and shall be irrevocably bound, obligated, directed, and authorized by the Parties to take the following actions as soon as reasonably possible:

(1) Disburse the Development Rights Purchase Price. The Settlement Agent shall disburse the Development Rights Purchase Price to the District, minus any prorations or costs as set forth in this Agreement.

(2) Record Documents with the ROD. The Settlement Agent shall file for record with the Office of the Register of Deeds for Beaufort County, South Carolina, the following Escrow Items in the following order:

- i. The District Deed;
- ii. The Town Deed;
- iii. The Assignment;
- iv. Extinguishment of Easement Agreement; and
- v. Reciprocal Easement

(c) *Recording Fees and Costs:* The Town and the District shall each pay one-half (1/2) of all recording fees, transfer taxes, and other costs and expenses (collectively, the "*Recording Costs*"), if any, associated with the recordation of the Escrow Items. Real property ad valorem taxes applicable to the Properties for the calendar year in which the closing occurs shall be prorated as of the date of the closing between the Parties and said proration shall be based upon the most recently available tax information and evaluation with respect to the Properties or upon the actual tax bill if they have been prepared and issued. The Parties shall make adjustments between themselves post-closing if necessary based on the actual tax bill for the Properties to correct the proration of taxes at closing. Each Party shall bear its own attorney's fees and expenses of closing, including but not limited to any title policies, endorsements or due diligence materials.

5. Covenants, Agreements, and Conditions.

(a) *Interim Covenants.* The Parties hereby covenant and agree that after the Effective Date and prior to Closing (or any earlier termination of this Agreement pursuant to its terms) neither Party will or will allow another Party to (i) enter into or execute any Leases or otherwise allow the Properties to be subject to or encumbered by any Lease; (ii) make any material alterations or improvements to any portion of the Properties; (iii) assign, convey, transfer, encumber or otherwise dispose of any of the Development Rights; (iv) without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned, place any easement, covenant, condition, right-of-way or restriction on the Properties, or modify or amend any existing easement, covenant, condition, right-of-way restriction, or other encumbrance affecting the Properties, that would, in either event, have a material and adverse effect on the other Party or the Properties following the Closing.

(b) *Conditions.* The Parties recognize and agree that the obligation of the Parties to consummate the transactions contemplated hereby, including but not limited to the Land Swap, are expressly subject to the following conditions:

- (1) The other Party shall have timely complied in all material respects with its

obligations hereunder.

(2) The District shall have closed on and acquired title to the Indian Hill Property, the District Property, and the Development Rights prior to the Closing Date.

(3) The 14th Amendment shall have been recorded prior to the Closing Date.

(4) The Parties shall have agreed upon the form of the Reciprocal Easement.

(5) The transactions contemplated under this Agreement to be effected on the Closing Date shall not have been 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 a Party seeks to restrain such transactions, provided that any such proceeding or action contemplated by this Section shall not include any proceeding or action brought by, through or under the other Party.

(4) At Closing, all Escrow Items have been fully executed and delivered to the Settlement Agent by the Parties.

(5) The respective governing bodies for the Parties have adopted and approved all requisite resolutions and/or ordinances required by South Carolina law to enter into and finalize the transactions contemplated hereunder.

(c) *Availability of Documents.* Parties agrees to promptly transmit or make available to each other all prior title policies, surveys, existing reciprocal easement agreement(s), plats, and any and all other title and survey related information in its possession immediately following the Effective Date.

6. 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.

7. Brokerage Commission. Parties represent and warrant there is no real estate broker, salesperson, nor finder in connection with this transaction. Parties acknowledge and agree that if there is a claim for a commission from a real estate broker, salesperson, finder or any other third party then the Party associated with the claim is solely responsible for payment of any commission related to the transaction.

8. Notices.

(a) *Addresses and Procedures.* Whenever notice is required or permitted under the terms of this Agreement, it shall be in writing and personally delivered or sent postage or delivery charges prepaid by either (a) United States mail, certified, return receipt requested, in which case notice shall be deemed given on the certified date of delivery or rejection of delivery, or (b) by any national express delivery service which provides evidence of delivery. All notices shall be addressed to the following address (or at such other address as may hereafter be substituted by notice in writing thereof):

The District: **Beaufort County School District**
Attn: Robert Oetting, COO
PO Drawer 309
Beaufort, SC 29901
Phone: 843.521.2399
Email: Robert.Oetting@beaufort.k12.sc.us

With Copy to: **Sarah Robertson, Esq.**
Burr & Forman
4 Clarks Summit Drive, Suite 200
Bluffton, South Carolina 29910
Phone: 843.815.2171
Email: SRobertson@burr.com

The Town: **Town of Bluffton**
Attn: Stephen Steese, Town Manager
20 Bridge St.
Bluffton, SC 29910
Phone: 843-706-4520
Email: ssteese@townofbluffton.com

With Copy to: **E. Richardson LaBruce, Esq.**
Finger, Melnick, Brooks & LaBruce,
P.A.
P.O. Box 24005
Hilton Head Island, SC 29925
Phone: 843.681.7000
Email: erlabruce@fingerlaw.com

(b) *Time Periods and Changes.* The time period in which a response to any notice must be given, if any, shall commence on the date of receipt of the notice by the addressee thereof, except as otherwise provided herein. Rejection or failure to claim delivery of any such notice, or the inability to deliver because of changed address of which no prior written notice was given as required hereinafter, shall be deemed received in such instances as of the date of attempted delivery or two (2) business days from the date of deposit in the United States Mail, whichever is applicable. A party may change its address by giving at least three (3) business day's prior written notice thereof. Notices sent by U.S. Certified Mail, return receipt requested, postage prepaid for which no return receipt is received from the U.S. Post Office or is returned undelivered or unsigned for shall be deemed given two (2) business days from the date deposited in the U. S. mail.

9. 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 each Property is being conveyed and accepted in its "AS IS" condition.

(b) *Authority to Act.* Each Party represents that (i) RESERVED; (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 governing boards or 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 the Party 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 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) Neither the entering into of this Agreement or the consummation of the conveyance has or will constitute a violation or breach of any of the terms of any contract or other instrument to which a Party is a party or to which the other Party is subject to; and,

(4) To the best of the Party's actual knowledge, no portion of the Property contains petroleum or any substance which may be classified as a hazardous, toxic, chemical or radioactive substance, or a contaminant or pollutant (collectively "*Hazardous Substances*") under applicable federal, state or local law, ordinance, rule or regulation ("*Applicable Laws*") or which may require any cleanup, remediation or other corrective action pursuant to such Applicable Laws and no portion of the Property has been used by the Party for the use, disposal or storage of Hazardous Substances. Further, the Party has no actual knowledge of underground storage tanks located on the Property; and,

(5) 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.

10. 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.

(b) *Costs of Litigation.* In any action to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such action, including reasonable attorneys' fees and expenses through any final appeal.

11. 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) *Sole Agreement, Merger, and Amendments.* This Agreement contains all of the terms and conditions agreed to between the Parties and supersedes all prior agreements, and there are no oral agreements relating to the transaction covered hereby. All other discussions, proposals, agreements or offers are merged into this Agreement. This Agreement cannot be amended, altered, changed or modified unless each such alteration, amendment, change or modification shall have been set forth in writing in its entirety and signed and delivered by each Party.

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

(e) *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.

(f) *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.

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

(h) *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.

(i) *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.

(j) *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.

(k) *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.

(l) *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.

(m) *No Recording.* The Parties agree that neither this Agreement nor a memorandum of this Agreement shall be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

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

The undersigned have caused this Agreement to be duly executed and sealed as of the dates below.

BEAUFORT COUNTY SCHOOL DISTRICT

By: _____
Dr. Frank Rodriguez, *Superintendent*

Date Signed: _____

TOWN OF BLUFFTON

By: _____
Stephen Steese, *Town Manager*

Date Signed: _____

Exhibit "A"
(Legal Description of Town Property)

ALL that certain piece, parcel or tract of land located in the Town of Bluffton, Beaufort County, South Carolina, and containing approximately 19.753 acres, and shown and described as PROPOSED PARCEL, A PORTION OF PARCEL 13A on a plat of survey entitled "A Proposed Boundary Subdivision of Parcel 13A, District 610, Tax Map #22," dated December 28, 2009, prepared by T-Square Group, Inc. and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 131 at Page 156. For a more complete description, reference may be had to said plat of record.

This being the same property conveyed to Town of Bluffton by deed dated December 13, 2010 from Indian Hill Associates, LLC recorded in Book 3019 at Page 1613 the Office of the Register of Deeds for Beaufort County, South Carolina

R610-022-000-1094-0000

**Exhibit “B”
(Legal Description of District Property)**

**[Final legal description will be determined once the subdivision boundary plat is complete.
Attach copy of subdivision boundary plat.]**

DRAFT

Exhibit “C”

(District Deed)

Limited Warranty Deed executed by the District conveying the District Property to the Town

DRAFT

Exhibit “D”

(Town Deed)

Limited Warranty Deed executed by the Town conveying the Town Property to the District

DRAFT

Exhibit “F”

(Assignment and Assumption of Rights and Obligations and Development Agreement)

DRAFT

Exhibit “G”
(Extinguishment)

DRAFT