

MEMORANDUM OF UNDERSTANDING

for the Acquisition of the Willow Run Tract in Bluffton, SC, and Its Future Development

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of the latter date of execution below by and between the TOWN OF BLUFFTON, a South Carolina municipal corporation ("*Bluffton*" and/or the "*Town*") and BEAUFORT COUNTY SCHOOL DISTRICT, a political subdivision of the State of South Carolina (the "*District*"). The Town and the District may from time to time be referred to individually as a "*Party*" and collectively as the "*Parties*."

ARTICLE I:

(Intent, Purpose, Background)

Section 1.1. Non-Binding Intent. The Parties hereto intend this MOU to constitute an outline of the major terms, conditions and understandings of the Parties, which may be set forth more thoroughly in a definitive agreement between the Parties relating to the subject matter of this MOU; however, this MOU shall not and is not intended to be a binding and enforceable agreement of the Parties. This MOU reflects the mutual understandings of the Parties regarding those actions and/or agreements lawful and necessary to accomplish the acquisition, potential development, construction, maintenance, ownership, use and occupancy of the "*Willow Run Tract*" (defined below) in Bluffton, South Carolina, and its associated development rights (the "*Project*"). The Parties intend to actively participate and to work together collaboratively, in good faith and with due diligence, to negotiate the terms of the development of the Project through one or more agreements. These undertakings are personal to the Parties and neither this MOU nor its terms shall be assigned to any other person or entity without the unanimous consent of the Parties.

Section 1.2. Background.

(a) *Population Growth and Increased School Development Costs.* From 2010 to 2022, the population 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. 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. 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.

(b) *Affordable Housing.* Throughout Beaufort County and, in particular, southern Beaufort County, a shortage of affordable and workforce housing remains a pressing issue for local businesses, residents, and governmental organizations. Both the Town and the District suffer due to the difficulties caused by a lack of reasonable housing options in attracting and retaining well-trained and highly qualified employees.

(c) *Buckwalter Development Agreement.* The Buckwalter Development Agreement (the "*Development Agreement*") 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). The Development Agreement permits the transfer of 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.

Section 1.3. Willow Run Tract. 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.

(a) *Indian Hill Property*. The three parcels owned by Indian Hill (collectively, the "*Indian Hill Property*") are as follows: (i) A parcel of approximately 102.511 acres assigned Beaufort County Tax Map No. R610-022-000-013A-0000; (ii) a parcel of approximately 10.040 acres assigned Beaufort County Tax Map No. R610-022-000-0035-0000; and, (iii) a parcel of approximately 30.000 acres assigned Beaufort County Tax Map No. R610-022-000-0049-0000.

(b) *Town Property*. The remaining parcel consists of 19.753 acres, more or less, identified as Beaufort County Tax Map No. R610-022-000-1094-0000 and is owned by the Town of Bluffton (the "*Town Property*").

(c) *Indian Hill Development Rights*. Indian Hill is also the record owner and holder of 162 acres of commercial density development rights allocated to the Indian Hill Property, plus similarly allocated rights for up to two (2) 150-unit hotels and 260 residential dwelling units (collectively, the "*Development Rights*").

Section 1.4. Purpose. The Parties desire to use this MOU as a framework for describing preliminary activities intended by the Parties involved until such time as a more definitive and binding agreement amongst the Parties can be developed and executed, if deemed necessary. The Parties, having established the basic tenets of a collaborative working agreement for the development and completion of the Project, wish to execute this Agreement to memorialize the essential terms of their mutual understandings, however, without imposing any legal obligation on either Party. A successful conclusion of this MOU would include the development of school facilities, civic infrastructure, affordable housing, and accessory components within the Willow Run Tract in such amounts as determined in the best judgment of the governing bodies of the District and the Town.

ARTICLE II:

(Land and Development Rights Purchase; Land Exchange)

Section 2.1. Acquisition of the Indian Hill Property by the District. The District has identified the Willow Run Tract as a potentially suitable development site for needed school facilities, which may include a lower school complex (K-8)/Middle School and/or associated athletic fields, courts, administrative offices, and other structures intended to support school operations (the "*School Facilities*"). The District reserves the right to develop any portion of the Willow Run Tract owned by the District for such institutional/civic uses permitted by the Development Agreement to meet the future needs of the District. The District will enter or has entered into an agreement with Indian Hill to purchase the Indian Hill Property and the Development Rights, for an amount to be mutually agreed upon by the District and Indian Hill, with all title to the Indian Hill Property being conveyed to the District on such date (the "*Closing Date*") as determined by Indian Hill and the District pursuant to a separately executed purchase and sale agreement (the "*Purchase and Sale Agreement*").

Section 2.2. Acquisition of the Development Rights by the Town. As a material condition of the District's acquisition of the Indian Hill Property that is to be memorialized in the Purchase and Sale Agreement, the Town shall enter into an agreement with the District to purchase the Development Rights 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 on the Closing Date but after the District's acquisition of the Development Rights.

Section 2.3. Land Exchange Between District and Town. On the Closing Date, but after the District's acquisition of the Indian Hill Property and the sale of the Development Rights to the Town as set forth herein, the Town shall convey to the District the Town Property for \$10.00 consideration and exclusive of any development rights. In consideration thereof, the District shall convey to the Town, for \$10.00 consideration and exclusive of any development rights, a total of at least 10 acres of upland property created before Closing by mutual agreement of the Parties from (a) a portion of the 10.040-acre parcel assigned Beaufort County Tax Map No. R610-022-000-0035-0000, and (b) a portion of the adjacent 102.511-acre tract (collectively, the "*Future Town Property*") based upon a boundary survey to be prepared by the District prior to the expiration of the District's Inspection Period established by the Purchase and Sale Agreement. The boundary survey for the Future Town Property shall be subject to the Town's final written consent and approval. This land exchange between the Parties is intended to allow the District to develop the School Facilities further away from U.S. Highway 278 and the Town's future housing development to be located nearer to U.S. Highway 278's frontage. Simultaneously, the Town, as owner of the Town Property, shall consent to the termination of that Easement Agreement recorded with the Beaufort County ROD in Record Book 3019 at Page 1655, which provides the Town with access to the Town Property over the Indian Hill Property through a "Proposed 50' Access Easement" as depicted on that plat recorded in Plat Book 131 at Page 156 (the "*Access Easement*") with such termination to be accomplished by written instrument acceptable in form to both the Town and the District; provided, however, the Town shall not be obligated to terminate the Access Easement unless equivalent access to the Future Town Property from Highway 278 through an approved access point is affirmed by the District via recorded easement if necessary.

Section 2.4. Development Rights for School Facilities. The Town represents to the District that civic and institutional structures, like the contemplated School Facilities, do not require any development rights under the Development Agreement. For this reason, this MOU contemplates the acquisition of any of the Development Rights by the District and subsequent assignment to the Town. If, however, the District either decides to (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 Dollars per acre of commercial Development Rights, with such figure being subject to adjustments for CPI increases after the Closing Date. The District acknowledges that the Town shall be under no obligation to sell or transfer any of the Residential Development Rights and/or the Development Rights for up to two (2) 150-unit hotels to the District under this Option. The Option shall be memorialized by an instrument of record with the ROD and shall become available after five (5) years and expire either twenty-five (25) years after the Closing Date or upon the development of any portion of the School Facilities upon the Willow Run Tract whichever occurs first.

ARTICLE III:
(Development of the Willow Run Tract)

Section 3.1. Development of North-South Connector Right-of-Way. Under the Development Agreement, certain parties are required to construct a multi-lane right-of-way that spans from U.S. Highway 278 to the Bluffton Parkway once the Parkway is realigned by the completion of Extension Phase 5B. This right-of-way is commonly referred to as the "*North-South Connector*" and is depicted in plats and exhibits of record with the Ninth Amendment to the Development Agreement. As currently configured, the North-South Connector traverses three parcels near or adjacent to the Willow Run Tract: (i) an approximately 22.39-acre parcel assigned Beaufort County Tax Map No. R610-022-000-1095-0000 and owned by Mooney Enterprises, LLC (the "*Mooney Property*"); (ii) an approximately 221.43-acre parcel assigned Beaufort County Tax Map No. R610-030-000-0138-0000 and owned by Southeast Regional Land Conservancy, Inc. (the "*Conservancy Property*"); and, (iii) an approximately 55.18-acre parcel assigned Beaufort County Tax Map No. R610-030-000-1970-0000 and owned by Inland Bluffton, LLC (the "*Inland Bluffton Property*").

(a) *Town Obligations.* Prior to the Closing Date, the Town shall use commercially reasonable efforts to

(1) coordinate with Mooney with the District's approval to establish by recorded easement the location of the right of way required by the Development Agreement for the North-South Connector that will traverse the Mooney Property to connect U.S. Highway 278 to the Indian Hill Property at a location determined by the District ("*Indian Hill Connection Point*"), and the Town will provide to the District a copy of the recorded easement; and

(2) amend the Development Agreement with written consent by Indian Hill and Mooney Enterprises, LLC, and any other affected parties to conditionally remove the requirement for the owner of the Indian Hill Property to construct the North-South Connector beyond the Indian Hill Connection Point if School Facilities are constructed on the Indian Hill Property by the District but preserving the requirement if any other development is constructed thereon, and the Town will provide to the District a copy of the recorded amendment to the Development Agreement.

(b) *District North-South Connector Obligation.* At the time of the development of any portion of the School Facilities, the District shall develop and construct at its cost and expense a new intersection for U.S. Highway 278 and the North-South Connector from the intersection with U.S. Highway 278 to the Indian Hill Connection Point. The North-South Connector and the intersection shall be constructed in compliance with any and all applicable SCDOT, Beaufort County, and/or Town of Bluffton requirements, including but not limited to those set forth in the Development Agreement. Upon the completion of the North-South Connector and the School Facilities by the District, the District shall execute such documents necessary to publicly dedicate said portions of the North-South Connector to the Town and the Town shall accept the same, including any future maintenance requirements. Additionally, the District shall provide a right of way layout plan for the extension of the North-South Connector to the southern boundary of the Mooney Property.

Section 3.2. Development of Affordable Housing. The Parties acknowledge that the Town intends to develop and construct affordable housing on the Future Town 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 Future Town Property that may provide priority for occupancy to qualified District employees.

Section 3.3 St. Gregory Drive Intersection. At the time of development of the Future Town Property, the Town shall construct at its cost and expense a public access road aligned with the intersection of St. Gregory Drive and U.S. Highway 278 extending to and connecting to a roadway providing access to the School Facilities. If, however, the School Facilities are developed before the Future Town Property, and the SC DOT requires two intersections on Highway 278 for the School Facilities, the District shall construct at its cost and expense the same with the Town providing the reasonably necessary easements and licenses to permit such work on the Future Town Property. If only one intersection is required for the development of the School Facilities by the SC DOT, then the District shall not be required to develop the St. Gregory Drive/U.S. Highway 278 intersection.

**ARTICLE IV:
(Miscellaneous)**

Section 4.1. No Partnership or Joint Venture. The Parties shall not, by virtue of this MOU, in any way or for any purpose, be deemed to be partners or joint venturers or members of a joint enterprise with the other Parties.

Section 4.2. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument; provided, however, nothing contained herein shall render the terms or provisions of this MOU as binding on either Party even after its execution.

Section 4.3. Confidentiality. The Parties hereby agree and acknowledge that the Town and the District, as statutorily defined "public bodies," are required to comply with the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the South Carolina Code of Laws; and as such, nothing in this Agreement shall interfere with the Town or the District's rights and responsibilities under said Act.

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

THE TOWN

THE TOWN OF BLUFFTON, a South Carolina
municipal corporation

BY: 

STEPHEN STEESE, TOWN MANAGER

DATE: July 10, 2024.

THE DISTRICT

BEAUFORT COUNTY SCHOOL DISTRICT, a
political subdivision of the State of South
Carolina

BY: 

FRANK RODRIGUEZ, SUPERINTENDENT

DATE: 7/24/24, 2024.