

STATE OF SOUTH CAROLINA	)	INTERGOVERNMENTAL
	)	AGREEMENT
COUNTY OF GREENVILLE	)	
	)	
CITY OF GREENVILLE	)	AN INTERGOVERNMENTAL
	)	AGREEMENT BETWEEN
	)	GREENVILLE COUNTY, SOUTH
	)	CAROLINA AND THE CITY OF
	)	GREENVILLE, SOUTH CAROLINA
	)	PERTAINING TO THE ADDITION
	)	OF CERTAIN PROPERTY TO A JOINT
	)	COUNTY INDUSTRIAL AND BUSINESS
	)	PARK WITHIN GREENVILLE COUNTY
	)	AND THE CITY OF GREENVILLE
	)	(PROJECT MCCLAREN)

WHEREAS, Greenville County, South Carolina (the “County”), acting by and through its County Council (the “County Council”) is empowered under and pursuant to the provisions of the Code of Laws of South Carolina, 1976, as amended, and specifically, Title 4, Chapter 1 (the “Multi-County Park Act”) to enter into agreements with other counties within the State of South Carolina (the “State”) for the purpose of creating joint county industrial and business parks (“MCIP”), pursuant to which certain state tax credits are made available to investors locating, improving, or expanding projects within such parks, through which the economic development of the County and the State will be promoted and trade developed by inducing manufacturing and certain other business enterprises to locate in and remain in the State, and thus utilize and employ the manpower and resources of the State; and

WHEREAS, a to-be-formed entity currently known to the County as Project McClaren, (the “Company”), has represented to the County that the Company intends to develop, install or operate, as applicable, a commercial enterprise as a mixed-use project (the “Project”) located at a leased site identified in Exhibit A attached hereto (the “Land”) located in the City of Greenville, South Carolina (the “City”); and

WHEREAS, the County, pursuant to certain negotiations heretofore undertaken with the Company with respect to the Project intends to enter into a Fee-in-Lieu of Tax and Special Source Credit Agreement (the “FILOT Agreement”) with the Company, pursuant to which the County has agreed, among other things, to use its best efforts to cause the Land and the Project to be included in a MCIP (the “2020 Park”) to be established by and between the County and Anderson County or another adjoining county (Anderson County or such other adjoining county, as applicable, being referred to herein as, the “Partner County”) pursuant to an agreement entered into by and between the County and the Partner County (the “2020 Park Agreement”); and

WHEREAS, because the Land is located within the corporate limits of the City, the Multi-County Park Act requires the consent of the City before the Land may be included in the Park; and

WHEREAS, the City desires to consent to the County including the Land and the Project into the Park, provided that the County agrees to distribute a portion of the fees in lieu of taxes paid on behalf of the Land and all property located therein, including the Project, to the City as more particularly described herein; and

WHEREAS, the County agrees with the City's position regarding distribution of the fee in lieu of tax revenues, and desires to include the Land and the Project in the Park in accordance with that understanding; and

WHEREAS, the County and the City have reduced their mutual understandings regarding the City's consent to the County's addition of the Land to the Park, to include the Company's investment in the Project located on the Land, and the mutual understanding regarding distribution of fee in lieu of tax revenues paid on behalf of the Land and all property located therein, including the Project, to this Intergovernmental Agreement (the "Intergovernmental Agreement") which is a material inducement to the City's consent to include the Land and the Project in the Park.

NOW, THEREFORE, it is hereby agreed between Greenville County and the City of Greenville that:

1. Effective upon expiration of the West End Tax Increment Financing District (the "TIF") which such termination shall occur on or about September 8, 2021 at which point the Land and the Project shall no longer be included in the TIF, the City consents to the inclusion of the Land and the Project in the Park for so long as (1) the City receives from the County a distribution of fees in lieu of taxes paid on behalf of the Land and all property located therein, including the Project, based on the percentage that the City's millage bears to the total millage applicable to the Land for the applicable tax year, such calculation to be made after (i) application of special source credits (consisting solely of a fifty percent (50%) special source credit for a twenty (20) year period) (the "Credit") to the fees in lieu of taxes to be paid on behalf of the Project in accordance with the provisions of the FILOT Agreement, and after (ii) distribution of a portion of the fees in lieu of taxes paid on behalf of the Land and the property located therein to the Partner County in accordance with the 2020 Park Agreement.

2. Upon the expiration or earlier termination of the FILOT Agreement, the Land and the Project shall be automatically removed from the 2020 Park

3. The County agrees not to consent to any assignment of the FILOT Agreement (to the extent the County's consent is required under the FILOT Agreement), or agree to any amendment or modification of the FILOT Agreement which increases the percentage of the Credit or the term over which it is granted, without obtaining the written consent of the City.

4. The FILOT Agreement will terminate after any portion of the Project is placed in service, should the Company fail to make any of the payments required Section 1 or be in compliance with the Affordable Housing Requirement; provided, however, the Company shall not be deemed to have failed to satisfy the Affordable Housing Requirement in the event there are vacancies in the Affordable Units due to the inability of the Company to lease the Affordable Units to Low Income Residents, so long as the Company has continuously reserved or made available the required percentages of Total Residential Units for use by 60% Low Income Residents and 80% Low Income Residents, respectively, under the Affordable Housing Requirement. The FILOT Agreement shall require that the Company provide the County and the City with an annual certification and reasonable backup documentation, on an annual basis, to confirm Developer's compliance with the Affordable Housing Requirement. The FILOT Agreement shall provide audit rights to the County and the City to confirm such compliance.

For purposes of this Intergovernmental Agreement, the following definitions shall apply:

**"60% Low Income Resident"** means a resident of the Project having a household income that is less than Sixty Percent (60%) of AMI.

**“80% Low Income Resident”** means a resident of the Project having a household income between Sixty Percent (60%) and Eighty Percent (80%) of AMI.

**“Affordable Housing Requirement”** shall mean the requirement that the Company and any Sponsor Affiliates continuously rent at least 20% of the Total Residential Units at the Project as Affordable Units to Low Income Residents, as follows: (i) Ten Percent (10%) of the Total Residential Units located at the Project shall be rented continuously to 60% Low Income Residents; and (ii) Ten Percent (10%) of the Total Residential Units located at the Project shall be rented continuously to 80% Low Income Residents. The rent for each of the 60% Low Income Residents and the 80% Low Income Residents, shall not exceed 30% of the Low Income Residents’ gross income per the requirement of the U.S. Department of Housing and Urban Development guidelines.

**“Affordable Unit”** shall mean an apartment unit located within the Project reserved for lease or leased to a Low Income Resident in accordance with the Affordable Housing Requirement.

**“Area Median Income”** or **“AMI”** shall mean the median family income for Greenville County as determined annually by the U.S. Department of Housing and Urban Development.

**“FILOT Act”** shall mean Title 12, Chapter 44, of the Code, and all future acts successor or supplemental thereto or amendatory thereof.

**“Low Income Resident”** shall mean a resident of the Project that is either a 60% Low Income Resident or an 80% Low Income Resident.

**“Sponsor Affiliate”** shall mean an entity that joins with the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the FILOT Act to be entitled to the benefits of the FILOT Agreement with respect to its participation in the Project, all in accordance with the requirements of the FILOT Agreement.

**“Total Residential Units”** shall mean the greater of (a) the total number of units leased or reserved for residential use at the Project as of the applicable date of determination of whether the Company has satisfied the Affordable Housing Requirement, or (b) 246 units.

5. The FILOT Agreement shall provide that no multi-family residential unit of the Project will be used as a “short term rental” during the term of the FILOT Agreement. For purposes of this Section 4, “short term rental” shall mean a multiple-family dwelling, or any portion thereof, which is rented for occupancy for dwelling, lodging, or sleeping purposes for any period of less than thirty (30) consecutive days.

6. The FILOT Agreement will terminate if it is determined that the Project cannot lawfully be included in a MCIP, or that it is unlawful for Credits to be provided in connection with the Project, whether as a result of a final and unappealable decision of the South Carolina Court of Appeals or the South Carolina Supreme Court or as a result of a change in or modification of the Multi-County Park Act, the FILOT Act or any other provision of the Code of Laws of South Carolina 1976, as amended, or the Constitution of the State (any such court decision or change or modification being a “Change in Law”). In the event of a Change in Law, neither the County nor the City shall be obligated to the Company to provide any substitute form of financial incentive, tax incentive, or any other alternative relief whatsoever.

7. The FILOT Agreement shall contain a provision requiring the Company to reimburse all legal fees and expenses of the City associated with the review of matters contemplated herein. Likewise, the FILOT Agreement shall provide for reimbursement by the Company of the City’s legal fees and

expenses in the event of any dispute regarding the terms of the FILOT Agreement or the incentives provided thereby. If the Company fails to pay such expenses within thirty (30) days of receipt of City's written invoice therefore, then such failure shall constitute an event of default under the FILOT Agreement, subject to the cure rights provided therein.

8. Should any part, term, or provision of this Intergovernmental Agreement be finally declared to be invalid or otherwise enforceable by any court of competent jurisdiction, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder, all of which are hereby declared to be separable.

[signature page follows]

Agreed upon and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020.

GREENVILLE COUNTY, SOUTH CAROLINA

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

Its: County Administrator

CITY OF GREENVILLE, SOUTH CAROLINA

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

Its: City Manager

EXHIBIT A

LAND

322 Rhett Street

**Parcel 1:** All that certain piece, parcel or tract of land lying and being in the City of Greenville, Greenville County, South Carolina, and being more particularly described as follows: Beginning at a nail (POB 1) forming the corner of the intersection of the Northerly margin of the right-of-way of Rhett Street (50 foot public right-of-way) and the easterly margin of the right-of-way of Wardlaw Street (50 foot public right-of-way) and having SC Grid coordinates of N 1,098,595.144 E 1,577,768.789; thence along the Easterly margin of the right-of-way of Wardlaw Street N 17-35-26 W a distance of 275.93 feet to an iron pin, thence along the common line of BC&C of Greenville, LLC N 71-54-29 E a distance of 150.54 feet to an iron pin, thence along the common lines of S E Allen Enterprises, LLC and PED Leasing, General Partnership S 18-16-37 E a distance of 275.94 feet to a nail in an iron pipe, thence along the Northerly margin of the right-of-way of Rhett Street S 71-54-54 W a distance of 153.84 feet to the point of beginning and containing 41,994 SF or 0.964 acres, more or less.

106 Wardlaw Street

**Parcel 2:** All certain piece, parcel or tract of land lying and being in the City of Greenville, Greenville County, South Carolina, and being more particularly described as follows: Beginning at an iron pin (POB 2) on the Easterly margin of the right-of-way of Wardlaw Street (50 foot public right-of-way) and having SC Grid coordinates of N 1,098,858.172 E 1,577,685.400; thence along said right-of-way N 17-35-26 W a distance of 48.87 feet to a railroad spike, thence along the common line of Akua Boyenne Trust N 72-08-22 E a distance of 151.44 feet to an iron pin, thence along the common line of S E Allen Enterprises, LLC S 16-31-00 E a distance of 48.27 feet to an iron pin, thence S 71-54-29 W a distance of 150.54 feet to the point of beginning and containing 7,332 SF or 0.168 acres, more or less.

108 Wardlaw Street

All that piece, parcel or lot of land in Greenville Township, Greenville County, State of South Carolina, facing Wardlaw Street, having a frontage of 100 feet and depth of 150 feet. Beginning at the Northwest corner of the aforesaid lot, and running back with it North 72 degrees East 150 feet to the Old Ferguson and Park Division line, thence with that line North 18 degrees West 100 feet to a stake; thence South 72 degrees West parallel with the first call thereof 150 feet to Wardlaw Street; thence with said Street South 18 degrees East 100 feet to the beginning.

110 Wardlaw Street

All that piece, parcel and lot of land located on Wardlaw Street, in the County of Greenville, State of South Carolina, being shown as 15,281 square feet, 0.350 acres, more or less, on plat of survey prepared for Akua Boyenne Trust, 110 Wardlaw Street, City of Greenville, Greenville County, South Carolina, by Survey Matters, LLC, PLS 27454, dated May 29, 2018, recorded in Plat Book 1313 at Page 31 in the ROD Office for Greenville County, South Carolina. Said plat is incorporated herein for a more full and complete description as to the metes and bounds of said property.