NOTICE OF MEETING

A meeting of the Committee on Real Estate will be held beginning at 3:00 p.m. Monday, March 8, 2021, Conference Call: 1-929-205-6099; Access Code: 835 678 884. The agenda will be as follows:

AGENDA

Invocation – Councilmember Jackson

Approval of Minutes:

February 22, 2021

a. Approval of a three-year lease with MUSC with two one-year options to renew. The property will be used as a parking lot. The property is owned by the City of Charleston. [Southeast corner of Fishburne Street and Hagood Avenue and known as the 1,143 parking spaces Fishburne Ballpark Parking Lot; TMS: 4600000008 and 4600000022]. This proposed lease is being re-submitted after its February 9, 2021 initial approval by the City Council. After ongoing review at several levels, the SC Department of Administration subsequently amended the proposed Lease by deleting original Paragraph 8.1.(g), submitting that the omitted language is inconsistent with other articles. The SCDOA also amended the proposed lease by adding Paragraphs 11.2 through 11.5 to provide an actual process for handling, continuing, or termination of the lease in the cases of damage/destruction or condemnation of the property. (Ordinance)

b. Approval of an ordinance authorizing the Mayor to execute, on behalf of the City of Charleston, a Memorandum of Agreement with Palmetto Railways; the South Carolina Department of Commerce; and the South Carolina State Ports Authority regarding the Navy Base Intermodal Facility (NBIF) project in Charleston County, South Carolina, under which the City will accept $11.5 million for (1) the City’s conveyance of certain real property, being a portion of Charleston County TMS No. 464-02-00-051, commonly known as the W.R. Grace Site, through separate Purchase Agreement; and (2) mitigation of existing and future impacts related to the construction and operation of the NBIF, including but not limited to freight rail movement in the vicinity of the southern access component of the NBIF.

c. An ordinance authorizing the Mayor to execute a Third Amendment to the Memorandum
of Understanding between the City of Charleston and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO"), a copy of which is attached hereto as Exhibit 1, under which (a) EDCHDO will convey back to the City certain real property located at 83 Hanover Street (TMS No. 459-05-04-124); (b) the City will execute a Quitclaim Deed and release of possibility of reverter as to all properties previously conveyed to EDCHDO and sold as affordable housing; and (c) the City will authorize EDCHDO to utilize any remaining funds provided by the City to EDCHDO to develop and sell affordable housing units on EDCHDO’s properties designated as Charleston County TMS No. 4600801215 (24 Humphrey Court) and 4600801216 (28 Humphrey Court).

d. (i) Update on Crown Castle applications and recent Order

(ii) Request authorization for Mayor to execute Limited Pole Agreement, in a form approved by legal staff, between City of Charleston and Crown Castle (216 Ashley Avenue, 80 Ashley Avenue, and 147 Broad Street).

e. Request for Mayor to approve a Memorandum of Understanding between Fetter Health Care Network, Inc., and the City of Charleston to establish a temporary COVID-19 Vaccination Site for the community vaccination administration (265 Fishburne Street). *(To be sent under separate cover by the Legal Department)*

f. Consider the following annexations:

(i) 2138 Golfview Drive (0.22 acre) (TMS No. 343-06-00-013), James Island, Charleston County (District 11). The property is owned by Greg White.

(ii) 114 Magnolia Road (0.20 acre) (TMS No. 418-13-00-166), West Ashley, Charleston County (District 3). The property is owned by Matt Prendergast.

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) Interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to schumacherj@charleston-sc.gov three business days prior to the meeting.
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee

DATE: March 9, 2021

FROM: Real Estate

DEPT: BFRC

Southwest corner of Fishburne Street and Hagood Avenue and known as the 1,143 parking spaces Fishburne Ballpark Parking Lot, Charleston, SC

ADDRESS: 29403 in the County of Charleston, State of South Carolina.

TMS: 4600000008 and 4600000022

PROPERTY OWNER: City of Charleston

** Recommend Council approval of 3 year lease, w/ 2 one-year options to renew, to MUSC as parking lot. (See Below **) 

ACTION REQUEST: 

ORDINANCE: Is an ordinance required? Yes [x] No [ ]

COORDINATION: The request has been coordinated with:

All supporting documentation must be included

<table>
<thead>
<tr>
<th>Department Head</th>
<th>Signature</th>
<th>Attachments</th>
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<tr>
<td>Legal Department</td>
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<td>Chief Financial Officer</td>
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<td>Director Real Estate Management</td>
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FUNDING: Was funding needed? Yes [ ] No [x]

If yes, was funding previously approved?* Yes [ ] No [x]

*If approved, provide the following: Dept/Div. ____________ Acct: ____________

Balance in Account ______________, Amount needed for this item ______________

NEED: Identify any critical time constraint(s).

** This proposed lease is being re-submitted after its February 9, 2021 initial approval by the City Council. After ongoing review at several levels, the SC Department of Administration subsequently amended the proposed Lease by deleting original Paragraph 8.1.(g), submitting that the omitted language is inconsistent with other (con’t) Articles. THE SCDOA also amended the proposed

*Commercial Property and Community & Housing Development have an additional form.
(con’t)

Lease by adding Paragraphs 11.2 through 11.5 to provide an actual process for handling continuing or termination of the lease in the cases of damage/destruction or condemnation of the property.

*Commercial Property and Community & Housing Development have an additional form.
COMMERCIAL REAL ESTATE FORM

TO: Real Estate Committee DATE: March 9, 2021
FROM: Real Estate DEPT: BFRC
Southwest corner of Fishburne Street and Hagood Avenue and known as the
1,143 parking spaces Fishburne Ballpark Parking Lot, Charleston, SC 29403 in
the County of Charleston, State of South Carolina
ADDRESS: 

TMS: 4600000008 and 4600000022

PROPERTY OWNER: City of Charleston

ACTION REQUEST: ** Recommend Council approval of 3-year lease, w/ 2 one-year options,
to MUSC as parking lot. (See Below**) 

ORDINANCE: Is an ordinance required? Yes ☒ No ☐

ACTION: What action is being taken on the Property mentioned?

☐ ACQUISITION
Seller (Property Owner) ______________________ Purchaser ______________________

☐ DONATION/TRANSFER
Donated By: ________________________________________________________________

☐ FORECLOSURE
Terms: ___________________________________________________________________

☐ PURCHASE
Terms: ___________________________________________________________________

☐ CONDEMNATION
Terms: ___________________________________________________________________

☐ OTHER
Terms: ___________________________________________________________________

☐ SALE
Seller (Property Owner) ______________________ Purchaser ______________________

☐ NON-PROFIT ORG, please name
Terms: ___________________________________________________________________

☐ OTHER
Terms: ___________________________________________________________________

☐ EASEMENT
Grantor (Property Owner) ______________________ Grantee ______________________

☐ PERMANENT
_________________________________________________________________________
COMMERCIAL REAL ESTATE FORM

Terms:

☐ TEMPORARY
Terms: 3 years, with two 1

☒ LEASE

☒ INITIAL
Terms: 3 years at 45.02 per space with annual CPI increase, capped at 3% annually.
No CPI decreases.

☒ RENEWAL
Terms: 2 one (1) year renewals

☐ AMENDMENT
Terms:

☐ Improvement of Property

Owner:
Terms:

BACKGROUND CHECK: If Property Action Request is for the sale or lease of city property, has a background check been completed?

Yes ☐ No ☐ N/A ☒

Results: ________________________________________________________________

Signature: _____________________________________________________________
Director Real Estate Management

ADDITIONAL: Please identify any pertinent detail (Clauses, Agreement Terms, Repeals, etc.) regarding City Property.

__________________________________________________________

NEED: Identify any critical time constraint(s).

** This proposed lease is being re-submitted after its February 9, 2021 initial approval by the City Council. After ongoing review at several levels, the SC Department of Administration subsequently amended the proposed Lease by deleting original Paragraph 8.1.(g), skipping that the omitted language is inconsistent with other (con’t) Articles. THE SCDOA also amended the proposed Lease by adding Paragraphs 11.2 through 11.5 to provide an actual process for
handling continuing or termination of the lease in the cases of damage/destruction or condemnation of the property.
AN ORDINANCE

AMENDING ORDINANCE NO. 2021-020, ADOPTED BY CITY COUNCIL ON FEBRUARY 23, 2021, AND AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON ("CITY") THAT CERTAIN GOVERNMENTAL REAL ESTATE LEASE TO MEDICAL UNIVERSITY OF SOUTH CAROLINA ("TENANT"), FOR 1,143 PARKING SPACES AND A COVERED BUS SHELTER LOCATED AT THE SOUTHWEST CORNER OF FISHBURNE STREET AND HAGOOD AVENUE, KNOWN AS THE FISHBURNE BALLPARK PARKING LOT.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That the Mayor is hereby authorized to execute, on behalf of the City of Charleston (the "City"), that certain Governmental Real Estate Lease (the "Lease") to the Medical University of South Carolina (the "Tenant") for 1,143 parking spaces and a covered bus shelter on the City’s real property located at the southwest corner of Fishburne Street and Hagood Avenue and known as the Fishburne Ballpark Parking Lot.

Section 2. That Ordinance No. 2021-020, adopted by City Council on February 23, 2021, is hereby amended to substitute the Lease is attached hereto and incorporated herein by reference as Exhibit 1, for the lease attached to Ordinance No. 2021-020.

Section 3. The Mayor is further authorized to execute all other documents necessary to consummate the transaction set forth in the Lease without further approval by City Council; provided, however, the form of any such documents necessary to consummate the transaction set forth in the Lease shall first be approved by Corporation Counsel.
Section 4. This Ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of ___________ in the year of Our Lord, 2021, in the 246th Year of the Independence of the United States of America.

By: ______________________________
    John J. Tecklenburg
    Mayor, City of Charleston

ATTEST: __________________________
     Jennifer Cook
     Clerk of Council
GOVERNMENTAL REAL ESTATE LEASE

THIS LEASE AGREEMENT (the “Lease”) is made as of the Effective Date (which is the date on which the Department of Administration, Real Property Services, approves this Lease as set forth on the signature page) by and between: The City of Charleston (the “Landlord”) having an address at 2 George Street, Suite 2601, Charleston, SC 29401, and the Medical University of South Carolina (MUSC) (the “Tenant”), an agency, institution, department (including any division or bureau thereof) or political subdivision of the State of South Carolina having an address at 1180 Sam Rittenberg Blvd, Suite 200, Charleston SC 29407.

ARTICLE 1 - DEMISE OF PREMISES

1. Landlord hereby leases and lets to Tenant and Tenant hereby takes and hires from Landlord, upon and subject to the terms, covenants and provisions hereof, 1,143 parking spaces and a covered bus shelter located at the southeast corner of Fishburne Street and Hagood Avenue and known as the Fishburne Ballpark Parking Lot, Charleston, SC 29403 in the County of Charleston, State of South Carolina (the “Parking Lot”), together with the benefit of any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto.

ARTICLE 2 - TERM

2. The term of this Lease shall be three (3) years (the “Term”) beginning on June 1, 2021 (the “Commencement Date”) and, unless terminated or extended, shall end on May 31, 2024, (the “Termination Date”). Provided there is no continuing event of default hereunder by Tenant, Tenant shall have the right to extend the term of this Lease for up to 2 consecutive terms of one (1) year each (the “Extended Term”) upon the same terms and conditions contained herein, by giving written notice to Landlord of Tenant’s intent to extend the then existing term at least one hundred and twenty (120) days prior to the expiration of the then existing term.

ARTICLE 3 - RENT

3. Tenant shall pay rent (the “Rent”) to Landlord during the first year of the Term at the rate of $45,02 per parking space, an annual aggregate amount of $617,494.32, payable in equal monthly installments of $51,457.86 in advance on or before the tenth (10th) day of each consecutive calendar month. Rent for the Term shall be increased annually as of the anniversary dated of the Commencement Date of each year for any change in the U.S. Consumer Price Index for all Urban Consumers (CPI-U) based on the percent change in the monthly index for April of each year, subject, however, to a 3% cap on annual increases over the immediately preceding year, regardless of whether the percent change in the CPI-U is higher than said cap. In no event shall rent shall be decreased due to any decrease in a CPI-U monthly index.

3.2 All rental payments to be made by Tenant pursuant to this Lease shall be apportioned and prorated as of the Commencement Date and the Termination Date or as of the date of an earlier termination pursuant to this Lease, as the case may be.

3.4. Unless notified otherwise in writing, all payments of Rent shall be mailed to Landlord at:

City of Charleston
2 George Street, Suite 2601
Charleston, SC 29401
ARTICLE 4 - USE

4.1. Tenant shall have the right to use the parking spaces in the Parking Lot for surface parking only.

4.2. Tenant shall have the right to use the parking spaces in the Parking Lot for parking Monday through Friday between the hours of 5:00 AM and 1:00 AM of the following day; provided, however, Tenant may use no more than 150 parking spaces at any one time in the Parking Lot between the hours of 5:00 PM and 1:00 AM of the following day.

4.3. If during the Term the application of any statute, code or ordinance of any government, authority, agency, official or officer applicable to the Parking Lot makes it impossible or not economical for Tenant to operate in the Parking Lot in accordance with subparagraph 4.1 or 4.2, then Tenant, at its option, may terminate this Lease, whereupon the Rent and all other charges payable hereunder by Tenant shall be apportioned as of such date of termination.

ARTICLE 5 - ASSIGNMENT AND SUBLETTING

5.1. Tenant shall have the absolute right to assign this Lease or sublet the bus shelter and parking spaces in the Parking Lot to any State agency, institution, department, bureau, political subdivision or State-operated entity, and, with the prior written consent of Landlord, which shall not be unreasonably withheld, to any other person or party, provided that any such assignment or sublease shall be upon the same terms and conditions as this Lease.

ARTICLE 6 - SERVICES

6.1. The services provided by the Landlord to Tenant as part of Rent shall include, but are not limited to, providing and making payment for all lighting, including all repairs, of the Parking Lot and for all maintenance and repairs to the Parking Lot, including but not limited to, the repair of any pot holes and maintaining all gravel and paved areas in good condition.

6.2. Tenant is responsible for obtaining and making payment for security services and trash pick-up, and for keeping the grounds of the Parking Lot in a clean condition.

ARTICLE 7 - LANDLORD'S REPRESENTATIONS AND WARRANTIES

7.1. Landlord represents and warrants to Tenant that:

(a) Landlord is the owner of the Parking Lot in fee simple, that title is marketable and not subject to any defects or encumbrances which could adversely affect the use of the Parking Lot as contemplated by this Lease; that Landlord has full right, power and authority to execute and deliver this Lease and to grant to Tenant the exclusive use and possession of the parking spaces and bus shelter in the Parking Lot;

(b) The use of the Parking Lot contemplated by the Lease will be a permitted use under all applicable statutes, codes, rules, regulations and ordinances now in effect and, to the best of the Landlord's knowledge, there are no pending proceedings or plans to change such statutes, codes, rules, regulations and ordinances;

(c) Neither the Parking Lot, nor any portion thereof, is being condemned or taken by eminent domain and, to the best of the Landlord's knowledge, no such proceedings are contemplated by any lawful authority;

(d) Landlord will keep the Parking Lot in good order and repair and make all reasonable improvement to maintain the Parking Lot for its intended purpose, normal wear and tear accepted, with the exception or damage to the Parking Lot which is caused by Tenant;
7.2. Landlord acknowledges that Tenant is relying upon each of the representations and warranties set forth in subparagraph 7.1 and that the matters represented and warranted by Landlord are substantial and material to Tenant. In the event such representations and warranties shall be breached by Landlord, Tenant, at its sole election, may terminate this Lease in accordance with subparagraph 13.1(e).

ARTICLE 8 – TENANT’S COVENANTS

8.1. Tenant covenants and agrees that it shall:

(a) Pay Rent when due provided, however, that should any rent become more than fifteen (15) days past due, Landlord shall give Tenant notice in writing to pay the same within fifteen (15) days of receipt of such notice;

(b) Maintain the parking spaces in the Parking Lot in a clean and good condition and return the same to Landlord at the termination of this Lease in a good and clean condition. Tenant shall not be obligated to make any repairs arising out of or in any way caused by 1) settling, 2) defects in labor, workmanship, materials, fixtures or equipment employed, supplied or installed by or on behalf of Landlord, or 3) the negligence of Landlord, its agents or employees.

(c) Comply with all statutes, codes, ordinances, rules and regulations applicable to the Parking Lot;

(d) Give Landlord reasonable notice of any accident, damage, destruction or occurrence affecting the Parking Lot; and

(e) Allow Landlord reasonable access to the parking spaces and bus shelter in the Parking Lot for inspections.

(f) Provide general liability insurance coverage on the Parking Lot for personal injury, property damage, or death arising out of the Tenant’s use and enjoyment of premises. The limits of such insurance coverage shall be $300,000.00 for personal injury, per person per occurrence, $600,000.00 for personal injury in the aggregate per occurrence, and $300,000.00 for property damage, per occurrence. A certificate of insurance evidencing the coverage required herein shall be provided to the Landlord upon the execution of the Lease. Landlord reserves the right to increase the limits of coverage required to maintain compliance with limits of liability attributable to Tenant under S.C. Code of Laws Ann. Sec. 15-78-10, et. seq., the South Carolina Tort Claims Act; and

8.2 Tenant acknowledges that Landlord is relying upon each of the representations and covenants set forth in subparagraph 8.1 and that the matters represented and covenants by Tenant are substantial and material to Landlord. In the event such representations shall be breached by Tenant, Landlord, at its sole election, may terminate this Lease in accordance with subparagraph 13.1(d).

ARTICLE 9 – INTENTIONALLY OMITTED

ARTICLE 10 - ADDITIONS, IMPROVEMENTS AND ALTERATIONS

10.1. Tenant may, with the prior written consent of Landlord, which shall not be unreasonably withheld, make nonstructural additions, improvements or alterations to the Parking Lot (“Improvements”) at its sole cost and
expense. Each such improvement shall be completed in a good and workmanlike manner and in accordance with all applicable codes, rules and regulations. Tenant shall advise Landlord, when requesting consent to install Tenant Improvements, whether Tenant will remove the Improvements at the termination of this Lease. If Tenant elects not to remove the Improvements, the Improvements shall become part of the Parking Lot and subject to this Lease. If the Improvements will be removed by Tenant, Tenant shall restore the Parking Lot to its condition prior to such installation.

10.2. Landlord agrees that all trade fixtures, signs, equipment, furniture or other personal property of whatever kind or nature kept or installed at the Parking Lot by Tenant shall not become the property of Landlord or a part of the realty no matter how affixed to the Parking Lot and may be removed by Tenant at any time and from time to time during the Term of this Lease.

ARTICLE 11 - CONDEMNATION AND CASUALTY

11.1. If there is any damage to or destruction of the Parking Lot or any portions thereof, or if any proceedings or negotiations are instituted which do or may result in a taking by condemnation or eminent domain ("Taking"), each party will promptly give notice thereof to the other, describing the nature and extent thereof.

11.2. If the restoration, replacement or rebuilding of the Parking Lot or any portion thereof as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking ("Restoration") can be completed within ninety (90) days after the occurrence, Landlord will promptly commence and complete Restoration of the Parking Lot.

11.3. If Restoration cannot be completed within ninety (90) days after the occurrence, then Tenant may terminate this Lease by notice to Landlord given within ten (10) days following the earlier to occur of (a) the date the Restorations should have been completed, or (b) the date on which Landlord advises Tenant that the Restorations cannot be completed within ninety (90) days of the occurrence, whereupon Rent and any other payments by Tenant hereunder shall be apportioned as of the date of the damage, destruction or Taking.

11.4. Upon damage or destruction to the Parking Lot or upon a Taking thereof which does not result in termination pursuant to subparagraph 10.3 of this Lease, Rent and any other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence, or in the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Parking Lot as contemplated herein, the Rent and any other payments and charges shall be equitably apportioned.

11.5. Nothing contained herein shall be deemed or construed to prevent Tenant from asserting and prosecuting a claim for the value of its leasehold estate, its leasehold improvements or moving and related costs in the event of any Taking.

ARTICLE 12 - TENANT CANCELLATION PRIVILEGE

12.1. Notwithstanding the Commencement Date and Termination Date set forth in subparagraph 2.1 of this Lease, Tenant shall have the right to cancel this Lease or to relinquish any portion of the Parking Lot upon giving Landlord thirty (30) days written notice of its cancellation hereof upon the occurrence of any one or more of the following:

(a) If appropriations, revenue, income, grants or other funding, from any source (including but not limited to Federal, State and/or County sources), are not provided to the Tenant in an amount sufficient to carry out the purposes and programs of Tenant, including the payment of Rent and all other payment obligations of Tenant pursuant to this Lease, the sufficiency of such funds to be determined solely by the Department of Administration, Real Property Services; or
(b) If the Tenant or Landlord is dissolved or no longer performs the functions and purposes ascribed to it; or

(c) If at any time during the Term the area in the Parking Lot is, in the sole opinion of the Department of Administration, Real Property Services, inadequate, insufficient or unnecessary for the normal operations and maximum efficiency of Tenant; or

(d) If either party shall have breached any covenant, condition, representation or warranty made by them in this Lease and such breach shall have continued uncured or uncorrected for a period of thirty (30) days after notice by the non-breaching party to the breaching party of such breach and request to cure or correct.

12.2. In addition to the cancellation privileges set forth in subparagraph 12.1, Tenant and Landlord shall each have the right to terminate leasing some or all of the parking spaces under this Lease for convenience at any time by giving one hundred twenty (120) days’ written notice to the other of its intention to do so.

ARTICLE 13 – LANDLORD CANCELLATION

13.1 In addition to any and all other cancellation privileges as may be set forth herein, Landlord shall be entitled to cancel this Lease and take full possession of the parking spaces and bus shelter on the failure of the Tenant to pay Rent within the timeframe as set for in Article 8.1 (a).

13.2 Landlord shall be entitled to cancel this Lease and take full possession of the parking spaces and bus shelter upon the failure of Tenant to honor the representations and covenants contained in Article 8.1 (b) – (g) and Article 8.2 after 30 days’ notice from Landlord to cure or correct the deficiency.

ARTICLE 14 - SURRENDER

14.1. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Parking Lot to Landlord in good order and condition, except for ordinary wear and tear. Tenant shall remove from the Parking Lot on or prior to such expiration or earlier termination all of its property situated therein.

14.2 Upon damage or destruction to the Parking Lot which renders it unusable or upon a Taking thereof which results in termination, Rent and other payments and charges payable by Tenant hereunder shall abate as of the date of the occurrence. In the case of partial damage, destruction or Taking which does not cause Tenant to discontinue use of the Parking Lot as contemplated herein, the Basic Rent and any other payments and charges shall be equitably apportioned.

ARTICLE 15 - NOTICES

15.1. All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when either (i) personally delivered, or (ii) sent by first class mail, postage prepaid, or (iii) delivered, costs prepaid, by any reputable delivery service that provides written evidence of delivery, or (iv) sent during normal business hours by facsimile transmission or other electronic transmission, including e-mail, that is evidenced by written mechanical confirmation of delivery or written confirmation from the recipient that the transmission was received, in which case notice shall be deemed given on the date of facsimile or electronic transmission. Notice shall be given at the addresses appearing below:

Landlord:
The City of Charleston
2 George Street, Suite 2601
ARTICLE 16 - AMENDMENTS

16.1. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purposes unless it is in writing and signed by the party against whom enforcement thereof is sought.

ARTICLE 17 - HOLDOVER

17.1. In the event Tenant shall remain in the Parking Lot after the Term, or Extended Term, as the case may be, has expired Tenant shall be deemed to be a tenant from month to month and Tenant shall continue to pay the Rent last in effect under the Lease for the Term plus twenty-five (25) percent of such Rent (hereinafter referred to as “125% Rent”) until either Landlord or Tenant, by ninety (90) days’ written notice to the other, shall terminate this Lease, whereupon the 125% Rent and all other charges payable by Tenant hereunder shall be apportioned as of such date of termination.

ARTICLE 18 - MISCELLANEOUS

18.1. If any provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

18.2. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

18.3. This Lease may be executed in counterparts, each of which when so executed and delivered, shall constitute an original, fully executed counterpart for all purposes, but such counterparts shall constitute but one instrument.

18.4. The article headings of this Lease are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.
18.5. This Lease shall be governed by and construed in accordance with the laws of the State of South Carolina.

18.6. In the event Landlord or Tenant is involved in any bankruptcy or insolvency proceedings and trustee fails to perform or rejects any of the bankrupt party’s obligations under this Lease, the non-bankrupt party shall have the option to terminate this Lease.

18.7. Tenant will be responsible for providing and maintaining signage to identify the leased parking spaces.

18.8. Any amendment, renewal, subordination, non-disturbance, attornment, estoppel or other agreement affecting a change to the terms and conditions herein and requiring the signature of Tenant requires the approval of Real Property Services.

18.9. This Lease is subject to and conditioned upon the approval of Real Property Services and shall be of no force or effect until the consent of such office shall be endorsed herein.

18.10 The parties acknowledge and agree that notwithstanding any law or presumption to the contrary, an electronic or telesfaxed signature (hereinafter, an “Electronic Signature”) of any party or approver on this Lease shall be deemed valid and binding and admissible by any party against any other party as if same were an original ink signature. The parties further acknowledge and agree that they (a) intend to be bound by any Electronic Signatures affixed to this Lease, (b) are aware that the other party or parties will rely on any such Electronic Signatures, (c) such an electronically signed Lease may not be denied legal effect or enforceability solely because it is in electronic form or signed with an Electronic Signature, and (d) the foregoing provisions regarding Electronic Signature apply solely to the execution of this Lease, and shall in no event be deemed to amend any other written obligations of any party (including, but not limited to, any notice provisions) set forth in this Lease.

**ARTICLE 19 – WAIVER OF CONTRACTUAL RIGHTS**

19.1 The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party’s right to subsequently enforce and compel strict compliance with every provision of this Lease.

[Remainder of page intentionally left blank; signature page to follow.]
IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year indicated under their signature.

LANDLORD:
City of Charleston

_________________________
(signature for landlord)

_________________________
(printed name and title of signatory)

_________________________
(date signed by landlord)

TENANT:
Medical University of South Carolina

_________________________
(signature for tenant)

_________________________
(printed name and title of signatory)

_________________________
(date signed by tenant)

This Lease is approved in accordance with the South Carolina Code of Regulations §19-447.1000 by the Department of Administration, Real Property Services, this _____ day of ________________, 20__. This Lease was approved by the Joint Bond Review Committee at its ____________, 20__ meeting and by the State Fiscal Accountability Authority at its ____________, 20__ meeting.
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON, A MEMORANDUM OF AGREEMENT WITH PALMETTO RAILWAYS; THE SOUTH CAROLINA DEPARTMENT OF COMMERCE; AND THE SOUTH CAROLINA STATE PORTS AUTHORITY REGARDING THE NAVY BASE INTERMODAL FACILITY (NBIF) PROJECT IN CHARLESTON COUNTY, SOUTH CAROLINA, UNDER WHICH THE CITY WILL ACCEPT $11.5 MILLION FOR (1) THE CITY'S CONVEYANCE OF CERTAIN REAL PROPERTY, BEING A PORTION OF CHARLESTON COUNTY TMS NO. 464-02-00-051, COMMONLY KNOWN AS THE W.R. GRACE SITE, THROUGH SEPARATE PURCHASE AGREEMENT; AND (2) MITIGATION OF EXISTING AND FUTURE IMPACTS RELATED TO THE CONSTRUCTION AND OPERATION OF THE NBIF, INCLUDING BUT NOT LIMITED TO FREIGHT RAIL MOVEMENT IN THE VICINITY OF THE SOUTHERN ACCESS COMPONENT OF THE NBIF.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That the Mayor is hereby authorized to execute, on behalf of the City of Charleston, a Memorandum of Agreement with Palmetto Railways, the South Carolina Department of Commerce, and the South Carolina State Ports Authority, a copy of which is attached hereto and incorporated herein by reference as Exhibit 1, pursuant to which the City will accept $11.5 million for (1) the City's conveyance of certain real property, being a portion of Charleston County TMS No. 464-02-00-051, commonly known as the W.R. Grace site, through separate purchase agreement; and (2) mitigation of existing and future impacts related to the construction and operation of the Navy Base Intermodal Facility ("NBIF"), including but not limited to freight rail movement in the vicinity of the southern access component of the NBIF.
Section 2. That this Ordinance shall become effective upon ratification.

Ratified in City Council this ____ day of ______________ in the Year of Our Lord, 2021, and in the 245th Year of the Independence of the United States of America.

By: ________________________________

John J. Tecklenburg
Mayor, City of Charleston

ATTEST: ________________________________

Jennifer Cook
Clerk of Council
EXHIBIT 1
MEMORANDUM OF AGREEMENT AMONG PALMETTO RAILWAYS; THE CITY OF CHARLESTON; THE SOUTH CAROLINA DEPARTMENT OF COMMERCE; AND THE SOUTH CAROLINA STATE PORTS AUTHORITY REGARDING THE NAVY BASE INTERMODAL FACILITY PROJECT IN CHARLESTON COUNTY, SOUTH CAROLINA

This Memorandum of Agreement (MOA) is made and entered into this _____ day of __________, 2021, by and between Palmetto Railways (Palmetto Railways), the City of Charleston (City), the South Carolina Department of Commerce (Commerce), and the South Carolina State Ports Authority (Ports Authority) (each a party and collectively Parties).

WHEREAS, Palmetto Railways and the Ports Authority have proposed to construct and operate the Navy Base Intermodal Facility (NBIF) at the former Charleston Naval Complex (CNC);

WHEREAS, the Parties acknowledge the importance of the proposed equal, dual-access NBIF to ensure the efficient, cost-effective movement of goods to and from the Port of Charleston, which is vital to the local, regional, and statewide economy;

WHEREAS, Palmetto Railways has applied for and received from the United States Army Corps of Engineers, Charleston District (USACE), a permit for the construction and operation of the proposed NBIF, Department of the Army Permit SAC-2012-00960;

WHEREAS, the City has an interest in ensuring an adequate and functioning transportation system within its jurisdiction specifically, and the region generally;

WHEREAS, Commerce is authorized pursuant to S.C. Code Ann. § 13-1-20 to implement a statewide program for the stimulation of economic activity to develop the potentialities of the State, and enhance the economic growth and development of the State through strategic planning and coordinating activities, among other activities;

WHEREAS, the Ports Authority has as its purpose, among others, to contribute to economic development by fostering and stimulating waterborne commerce; to develop and improve the harbors or seaports of the State; to construct, equip, maintain, develop and improve such harbors or seaports and their port facilities; and to increase waterborne commerce, foreign and domestic, through such harbors and seaports;

WHEREAS, the construction and operation of a near-dock intermodal container transfer facility furthers the above-referenced purpose of the Ports Authority;

WHEREAS, in order to allow connection between existing rail infrastructure in the area, the NBIF includes proposed trackage constructed as a southern access (the “Southern Access”) passing through property within the City; 

WHEREAS, numerous locations for the NBIF and the Southern Access have been evaluated, and after such evaluations, the only feasible site for the NBIF and the Southern Access
is the site approved and determined by the USACE to be the least environmentally damaging practicable alternative in the Record of Decision issued concurrently with DA Permit No. SAC-2012-00960;

WHEREAS, the Parties seek to facilitate and enhance economic growth and development and foster a vibrant marketplace for the City and its surrounding communities; and

WHEREAS, the Parties are committed to engaging in a dialogue to discuss the minimization of impacts, and the overall functionality and safety, of all NBIF-specific grade crossings within the corporate limits of the City.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the sufficiency of which is herein acknowledged, and intending to be legally bound thereby, the Parties agree hereto as follows:

1. SCSPA will contribute Eleven Million Five Hundred Thousand and 00/100 Dollars ($11,500,000.00) towards:
   a. the purchase of land from the City, through separate purchase agreement, such land being a portion of the property designated as Charleston County TMS No. 464-02-00-051 (the “Grace Site”); and
   b. mitigation of existing and future impacts related to the construction and operation of the NBIF, including but not limited to freight rail movement in the vicinity of the “Southern Access” component of the NBIF.

2. The City shall be responsible for designing, permitting, and constructing mitigation improvements or projects. The City shall retain sole discretion as to the type and location of all mitigation improvements or projects. The City shall utilize at least Four Million Nine Hundred Fifteen Thousand and 00/100 Dollars ($4,915,000.00) of the SCSPA’s contribution toward such improvements or projects. The remaining funds shall be utilized for (1) designing, permitting, constructing, and/or maintaining mitigation improvements or projects; and/or (2) purchasing of land, designing, permitting, constructing, and/or maintaining facilities to replace the City’s public services facilities currently located at Milford Street (the “Replacement Facilities”). The Replacement Facilities may include land and improvements for public works, fire training, the police fleet, and/or other municipal services. Except as specifically provided otherwise, the City shall retain sole discretion as to the allocation of funds for mitigation improvements/projects and
Replacement Facilities, as well as the specific use of the funds for the referenced purposes as to location, type, and scope.

3. The City hereby consents to the construction and operation of the NBIF, and specifically the location and grade level crossings for the permitted NBIF, including the Southern Access.

4. City staff will support all reasonable rezoning, permitting, road closures, and other administrative approvals necessary for the implementation of the NBIF, including the Southern Access, associated railway lines, and roadways.

5. This MOU is conditioned on the adoption of Joint Resolution, S.4911 of the 124th Session, 2021-22. If such general obligation state economic development bond is not issued, then this MOU shall be null and void.

6. **General Provisions.**

   A. This MOA constitutes the entire agreement between the Parties pertaining to the subject matter hereof and embodies, merges, and integrates all prior and current agreements and understandings of the Parties. No interpretation, clarification, modification, change, amendment, termination or waiver of any provision pursuant to this MOA shall be binding upon a Party except in writing signed by each of the signatories hereto or their authorized representatives.

   B. All notices or other communications required or permitted under this MOA shall be in writing to the Parties at the addresses below:

   To Palmetto Railways: President & CEO
   Palmetto Railways
   540 East Bay Street
   Charleston, SC 29403

   To Commerce: Chief Legal Counsel
   S.C. Department of Commerce
   1201 Main Street, Ste. 1600
   Columbia, SC 29201

   To Ports Authority: President and CEO
   200 Ports Authority Drive
   Mount Pleasant, SC 29464

   To City of Charleston: Mayor
   City of Charleston
   80 Broad Street
   Charleston, SC 29401

   C. This MOA shall be binding on the Parties, their successors, and assigns.
D. This MOA is made solely for the benefit of the Parties and does not and is not intended to confer any interests, benefits, rights, or remedies, whether direct or indirect, or incidental, upon any other person(s), corporation(s), or governmental entity and does not create any rights in any third parties.

E. This MOA may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

F. All modifications or amendments to this MOA must be approved by the Parties hereto in a signed writing.

G. This MOA contains all the promises, covenants, agreements, and understandings between the Parties concerning the subject matter herein, and the execution of this MOA has not been induced by either Party by any representations, promises, or understandings not expressed herein. There are no collateral agreements, stipulations, promises, or undertakings that are not expressly referenced herein.

H. This MOA and the legal relationship between the Parties shall be governed by and construed in accordance with the laws of the State of South Carolina.

[REMAINDER OF PAGE INTENTIONALLY BLANK]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed when signed and dated below.

WITNESSES: The City of Charleston

Print Name: __________________________

By: __________________________
Print Name: John J. Tecklenburg
Its: Mayor
Date: __________________________
Print Name: __________________________

WITNESSES: SOUTH CAROLINA DEPARTMENT OF COMMERCE

Print Name: __________________________

By: __________________________
Print Name: Robert M. Hitt, III
Its: Secretary
Date: __________________________
Print Name: __________________________

WITNESSES: PALMETTO RAILWAYS

Print Name: __________________________

By: __________________________
Print Name: Jeffrey McWhorter
Its: President and CEO
Date: __________________________
Print Name: __________________________

WITNESSES: SOUTH CAROLINA STATE PORTS AUTHORITY

Print Name: __________________________

By: __________________________
Print Name: James L. Newsome, III
Its: President and CEO
Date: __________________________
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE A THIRD AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHARLESTON AND THE EPISCOPAL DIOCESE OF SOUTH CAROLINA COMMUNITY HOUSING DEVELOPMENT ORGANIZATION ("EDCHDO"), A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT 1, UNDER WHICH (A) EDCHDO WILL CONVEY BACK TO THE CITY CERTAIN REAL PROPERTY LOCATED AT 83 HANOVER STREET (TMS NO. 459-05-04-124); (B) THE CITY WILL EXECUTE A QUITCLAIM DEED AND RELEASE OF POSSIBILITY OF REVERTER AS TO ALL PROPERTIES PREVIOUSLY CONVEYED TO EDCHDO AND SOLD AS AFFORDABLE HOUSING; AND (C) THE CITY WILL AUTHORIZE EDCHDO TO UTILIZE ANY REMAINING FUNDS PROVIDED BY THE CITY TO EDCHDO TO DEVELOP AND SELL AFFORDABLE HOUSING UNITS ON EDCHDO'S PROPERTIES DESIGNATED AS CHARLESTON COUNTY TMS NOS. 4600801215 (24 HUMPHREY COURT) AND 4600801216 (28 HUMPHREY COURT).

INCIDENT TO THE ADOPTION OF THIS ORDINANCE, CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT:

1. On September 26, 2006, City Council adopted Ordinance No. 2006-431, under which the City and EDCHDO (collectively, the “Parties”) entered into a Memorandum of Understanding (the “MOU”) requiring the City to convey certain properties to EDCHDO for EDCHDO to develop as affordable housing, said properties being located in the City of Charleston, Charleston County, South Carolina. A copy of the MOU is attached hereto and incorporated herein by reference as Exhibit 2.

2. On July 19, 2011, City Council adopted Ordinance No. 2011-054, pursuant to which the Parties entered into an Amendment to Memorandum of Understanding (the “First Amendment”), amending certain provisions of the MOU, including without limitation the description of the properties to be conveyed from the City to EDCHDO and developed by EDCHDO for affordable housing. The First Amendment required the City to convey eight (8) properties to EDCHDO, with EDCHDO agreeing to develop an affordable housing unit on each of the properties to convey to qualified purchasers. In the event any of the eight (8) affordable housing units were not designed, constructed, and sold on or before September 30, 2016, title to any unsold properties would revert to the City. A copy of the First Amendment, with any duplicative exhibits omitted, is attached hereto and incorporated herein by reference as Exhibit 3.
3. In 2015, EDC HDO conveyed two (2) of the properties as affordable housing units to qualified purchasers.

4. On November 10, 2016, City Council adopted a resolution to approve a Second Amendment to Memorandum of Understanding (the “Second Amendment”). As a result, on November 10, 2016, the Parties executed the Second Amendment, under which (a) EDC HDO agreed to convey four (4) of the properties back to the City; (b) the City granted EDC HDO an extension of the time in which to obtain a certificate of occupancy for and to sell the two (2) remaining properties, to on or before December 31, 2017; and (c) if necessary, the City agreed to grant an extension to EDC HDO of the time in which to sell the two (2) remaining properties, to on or before April 30, 2018, so long as a certificate of occupancy was obtained for affordable housing units on the properties on or before December 31, 2017. A copy of the Second Amendment, with any duplicative exhibits omitted, is attached hereto and incorporated herein by reference as Exhibit 4.

5. EDC HDO subsequently constructed an affordable housing unit on the property located at 32 Nassau Street (TMS No. 459-09-02-030) and conveyed the property to a qualified purchaser.

6. EDC HDO seeks to convey the property located at 79 Cooper Street (formerly 83 Hanover Street) (TMS No. 459-04-05-124) back to the City.

7. Pursuant to the First Amendment, the City also transferred $1,096,000.00 (the “Funds”), including $502,652 plus accrued interest from the Morris Square Developer, $300,000 from Parcel B funds and $293,348 in CDBG funds (multi-year allocations), to EDC HDO to (a) provide permanent subsidies for the affordable housing units developed in accordance with the MOU; and (b) pay construction costs, including architectural, engineering, and legal expenses associated with EDC HDO’s development of the affordable housing under the MOU.

8. EDC HDO has obtained title to certain lots on Humphrey Court, designated as Charleston County TMS Nos. 460-08-01-215 and 460-08-01-216 (the “Humphrey Court Properties) and desires to utilize the remaining Funds, which included $161,362.33 as of February 28, 2021, to (a) provide permanent subsidies for the affordable housing units to be developed thereon; and (b) pay construction costs, including architectural, engineering, and legal expenses associated with EDC HDO’s development of the affordable housing thereon.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute on behalf of the City the Third Amendment to the Memorandum of Agreement (the “Third Amendment”), a copy of which is attached hereto and incorporated herein by reference as Exhibit 1.

Section 2. The Mayor is hereby authorized to execute and/or accept any and all deeds or other documents as may be necessary to consummate the transactions and agreements set forth in the MOU, as amended by the First Amendment, Second Amendment, and Third Amendment, without
further action by City Council; provided, however, the form of such documents must be approved by Corporation Counsel, and further provided that the form of such documents shall comply with all terms and conditions of the MOU, as amended by the First Amendment, the Second Amendment, and the Third Amendment.

Section 3. This Ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of ____________________ in the Year of Our Lord, 2021, and in the 245th Year of the Independence of the United States of America.

By:

John J. Tecklenburg
Mayor, City of Charleston

ATTEST:

Jennifer Cook
Clerk of Council
EXHIBIT 1

[THIRD AMENDMENT]
STATE OF SOUTH CAROLINA )
) THIRD AMENDMENT
) TO
COUNTY OF CHARLESTON ) MEMORANDUM OF UNDERSTANDING

This Third Amendment to Memorandum of Understanding (the "Third Amendment") is entered into by and between the City of Charleston ("City") and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") this ___ day of __________________, 2021 (the "Effective Date").

RECITALS

WHEREAS, on September 26, 2006, City Council adopted Ordinance No. 2006-431, under which the City and EDCHDO (collectively, the "Parties") entered into a Memorandum of Understanding (the "MOU") granting certain rights to EDCHDO to develop affordable housing units on certain properties owned by the City and more fully described in Section 1(d)(i) of the MOU, said properties being located in the City of Charleston, Charleston County, South Carolina;

WHEREAS, on July 19, 2011, City Council adopted Ordinance No. 2011-054, under which the Parties entered into an Amendment to Memorandum of Understanding (the "First Amendment"), amending certain provisions of the MOU, including the description of the properties subject to the MOU under Section 1(d)(i) of the MOU, to include the following properties: 87 Cooper Street; 83 Hanover Street (now designated as 79 Cooper Street); 32 Nassau Street; 176 Fishburne Street; 475 Race Street; 4 Nunn Street; 4 Grants Court (now designated as 4 Nats Court); and 26 Reid Street (the "First Amendment Properties");

WHEREAS, under the First Amendment, the City also agreed to (i) convey the First Amendment Properties to EDCHDO to be developed as affordable housing units; and (ii) transfer $1,096,000.00 (the "Funds"), including $502,652 plus accrued interest from the Morris Square Developer; $300,000 from Parcel B funds and $293,348 in CDBG funds (multi-year allocations), to EDCHDO to (a) provide permanent subsidies for the affordable housing units developed in accordance with the MOU; and (b) pay construction costs, including architectural, engineering, and legal expenses associated with EDCHDO's development of the affordable housing under the MOU;

WHEREAS, the First Amendment provides that, in the event EDCHDO is unable to sell any of the eight (8) affordable housing units on the First Amendment Properties by September 30, 2016, title to such units would revert to the City and all obligations for the sale of such unsold or incomplete units due on or after September 30, 2016, would also revert to the City;

WHEREAS, the First Amendment provides that EDCHDO would pay to the City any of the Funds that had not been expended for affordable housing units completed and/or sold by September 30, 2016;

WHEREAS, on June 30, 2015, EDCHDO conveyed 176 Fishburne Street for $205,538.00, to a qualified purchaser for use as affordable housing;
WHEREAS, on October 9, 2015, EDCHDO conveyed 475 Race Street for $202,982.00, to a qualified purchaser for use as affordable housing;

WHEREAS, the Parties executed a Second Amendment to Memorandum of Understanding dated November 10, 2016 (the “Second Amendment”), under which EDCHDO relinquished EDCHDO’s interest in 87 Cooper Street; 4 Nunan Street; 4 Grants Court; and 26 Reid Street and agreed to re-convey these properties to the City, free and clear of all liens and encumbrances;

WHEREAS, the Second Amendment also provides that EDCHDO would complete construction of affordable housing units on its retained properties at 32 Nassau Street and 79 Cooper Street (the “Retained Properties”), to be evidenced by a certificate of occupancy for the units, and sell such units to qualified purchasers on or before December 31, 2017; provided, however, if EDCHDO completes construction of the affordable housing units on the Retained Properties on or before December 31, 2017, but is unable to sell one or all of the Retained Properties by December 31, 2017, EDCHDO will receive another extension to April 30, 2018, to sell the unsold Retained Properties or Retained Property;

WHEREAS, the Second Amendment provides that, if EDCHDO does not construct and convey the Retained Properties, or any of them, in accordance with the Second Amendment, EDCHDO would be required to re-convey any unsold Retained Properties to the City free and clear of all liens and encumbrances and return all of the remaining Funds, including program income, to the City after payment of the verified design and construction costs for the affordable housing units on the Retained Properties, or any of them;

WHEREAS, EDCHDO subsequently conveyed 87 Cooper Street; 4 Nunan Street; 4 Grants Court; and 26 Reid Street back to the City, and EDCHDO conveyed 32 Nassau Street for $230,000.00, to a qualified purchaser for use as affordable housing;

WHEREAS, EDCHDO has obtained title to certain lots on Humphrey Court, designated as Charleston County TMS Nos. 4600801215 and 4600801216, as more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the “Humphrey Court Properties) and desires to utilize the remaining Funds to (a) provide permanent subsidies for the affordable housing units to be developed thereon; and (b) pay construction costs, including architectural, engineering, and legal expenses associated with EDCHDO’s development of the affordable housing thereon; and

WHEREAS, the City and EDCHDO desire to further amend the MOU, as amended by the First Amendment and the Second Amendment, in order to revise certain provisions therein as hereinafter provided.

NOW, THEREFORE, in consideration of the benefits flowing from this Third Amendment to the MOU, as amended by the First Amendment and Second Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:
1. The MOU, as amended by the First Amendment and the Second Amendment, is hereby amended as follows:

a. Within fifteen (15) days, EDCHDO shall release any right, title or interest EDCHDO may have or claim in 83 Hanover Street (now known as 79 Cooper Street) and re-convey same to the City free and clear of all liens and encumbrances.

b. The Mayor is authorized to execute a release of the property located at 176 Fishburne Street from the Assignment of Leases, Rents and Profits recorded in Deed Book 0303 at Page 929 in the ROD Office for Charleston County, South Carolina.

c. The Mayor is authorized to execute a release of the properties located at 176 Fishburne Street and 475 Race Street from the Mortgage recorded in Deed Book 0303 at Page 927 in the ROD Office for Charleston County, South Carolina.

d. The Mayor is authorized to execute a release of the City’s rights-of-reverter and/or quitclaim deed in favor of the current owners of 176 Fishburne Street, 475 Race Street, and 32 Nassau Street, except that the Single Family Affordable Housing Restrictive Covenants applicable to such properties shall not be released.

e. EDCHDO shall develop the Humphrey Court Properties in accordance with the terms and conditions of this Third Amendment, the City’s Declaration of Transfer Restrictions and Development Agreement used for the development of first-time home ownership affordable housing units under the City’s Homeownership Initiative program, and all other requirements of the City’s Homeownership Initiative program, as same may be amended from time to time. The Mayor is authorized to execute the Declaration of Transfer Restrictions and Development Agreement upon approval for the form by the Director of the Department of Housing and Community Development and the City’s Corporation Counsel without further approval by City Council.

f. EDCHDO shall use the Funds, together with any other funds now or hereafter made available by the City to EDCHDO, solely for the following purpose:

   (1) To provide permanent subsidies for the affordable housing units developed on the Humphrey Court Properties; and

   (2) To pay construction costs, including architectural, engineering, and legal expenses associated with EDCHDO’s development of affordable housing on the Humphrey Court Properties.

g. EDCHDO shall continue to maintain the Funds in an interest-bearing account to be held in trust and separate from any other funds of EDCHDO.
h. EDCHDO shall make all records related to the Funds, including without limitation banking records, available to the City for inspection upon request during normal business hours. At least quarterly, EDCHDO shall provide to the City unaudited financial reports of the Funds. On an annual basis, EDCHDO shall provide the City with audited financial reports with respect to all activity associated with the Funds for the period covered into the audited financial reports. EDCHDO agrees that the City, HUD, and any other entity having jurisdiction over the Funds shall have the right to inspect and audit EDCHDO’s records with respect to the Funds at reasonable times upon request.

i. EDCHDO shall:

1. Retain ownership of the Humphrey Court Properties; and
2. Complete construction of affordable housing units thereon, as evidenced by certificates of occupancy issued thereon by the City of Charleston; and
3. Sell the Humphrey Court Properties in accordance with this Third Amendment, on or before December 31, 2022.

j. If EDCHDO completes construction of the affordable housing units on the Humphrey Court Properties in accordance with Section 1.i of this Third Amendment, but is unable to sell one or all of the affordable housing units by December 31, 2022, then EDCHDO shall receive an extension until April 30, 2023 to sell any unsold affordable housing unit(s).

k. If EDCHDO does not sell or have a binding contract to sell the unsold affordable housing units on the Humphrey Court Properties in accordance with Section 1.j of this Third Amendment, then EDCHDO shall return all remaining Funds, including program income, to the City after payment of the verified design and construction costs for the affordable housing units constructed on the Humphrey Court Properties.

l. If either of the Humphrey Court Properties is sold for an amount less than the amount of Funds that EDCHDO expended to design and construct affordable housing units thereon ("Sold at a Loss"), then EDCHDO shall not be entitled to receive a Development Fee.

m. If EDCHDO complies with the terms and provisions of this Third Agreement in selling affordable housing units on the Humphrey Court Properties, then the Parties shall begin negotiations for EDCHDO to utilize any remaining Funds for the development and sale of affordable housing units on other properties owned by EDCHDO or the City. In the event the Parties fail to reach an agreement approved by City Council within ninety (90) days of the closing of the sale of the last of the Humphrey Court Properties, any remaining portion of the Funds shall be returned to the City.

2. Sections 4, 5, 6, 7, 8, and 9 of the MOU shall apply to this Third Amendment.
IN WITNESS WHEREOF, the parties have executed this Third Amendment to the Memorandum of Understanding as of the date first written above and after due authorization by the City Council of Charleston.

WITNESSES: Episcopal Diocese of South Carolina Community Housing Development Organization

By: ____________________________

Print Name: ____________________________
Print Name: ____________________________
Its: ____________________________

Print Name: ____________________________

WITNESSES: City of Charleston

By: ____________________________

Print Name: ____________________________
Print Name: John J. Tecklenburg
Its: Mayor

Print Name: ____________________________
EXHIBIT A

[DESCRIPTION OF THE HUMPHREY COURT PROPERTIES]

All those certain pieces, parcels, or lots of land, together with any improvements thereon, being designated as “Lot 2, 1,941 Sq.Ft., 0.045 Ac., TMS No. 460-08-01-215, No. 24 Humphrey Court,” and “Lot 3, 1,941 Sq.Ft., 0.045 Ac., TMS No. 460-08-01-216, No. 28 Humphrey Court,” on that certain plat entitled, “PLAT SHOWING THE PROPERTY LINE ADJUSTMENT BETWEEN LOTS 1, 2, 3 AND 4, OWNED BY THE EPISCOPAL DIOCESE OF SOUTH CAROLINA COMMUNITY HOUSING DEVELOPMENT ORGANIZATION, LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA,” prepared by F. Steven Johnson (SCPLS No. 110038), dated November 15, 2010, and recorded December 17, 2010, in Plat Book L10 at Page 0345 in the ROD Office for Charleston County, South Carolina.

TMS Nos. 460-08-01-215
460-08-01-216
EXHIBIT 2

[MEMORANDUM OF UNDERSTANDING]
MEMORANDUM OF UNDERSTANDING

STATE OF SOUTH CAROLINA  }  
COUNTY OF CHARLESTON  )

This Memorandum of Understanding is entered into by and between the City of Charleston ("City") and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") on the 26th day of September, 2006.

WHEREAS, the City of Charleston ("City") and Civitas, LLC previously entered into a Memorandum of Understanding dated March 25, 2003, and thereafter amended on September 28, 2004 (the "Morris Square MOU") which provided for, inter alia, the development of six (6) affordable housing units by Civitas, LLC for the City at Morris Square, a residential development on Morris Street in the City and County of Charleston, State of South Carolina; and

WHEREAS, Smith Morris Company, LLC is the successor of Civitas, LLC and Smith Morris is now the developer of Morris Square (the "Developer"); and

WHEREAS, the City and Developer have come to realize that a more advantageous agreement can be structured with respect to the six (6) affordable housing units to be built in Morris Square by virtue of Developer: (1) being able to sell such units at market rates and in exchange therefor, transferring the net sales proceeds therefrom, which are expected to generate a guaranteed minimum of $900,000, to the City in order to create a funding source for the development of a significantly greater number of affordable housing units in the City of Charleston; and

WHEREAS, as additional consideration for the proposed Second Amendment to the Morris Square MOU, Developer has agreed to provide to the City title to three (3) home sites in the Phase II section of the Morris Square development and final construction documents and all necessary permits for the construction of such affordable housing units in the Phase II section of the Morris Square development; and

WHEREAS, the City and Developer are minded to enter into a Second Amendment to the Morris Square MOU in order to realize this opportunity; and

WHEREAS, prior to approval of the Second Amendment to the Morris Square MOU, the City is minded to enter into this Memorandum of Understanding with EDCHDO in order to designate EDCHDO as the non-profit organization to develop the three (3) affordable housing units in the Phase II section of the Morris Square development and to receive the net proceeds from the sale of the six (6) market rate units, three (3) in Phase I and three (3) in Phase II of the Morris Square development in accordance with the terms and conditions herein.

NOW, THEREFORE, in consideration of the benefits flowing from the Second Amendment to the Morris Square MOU and for other good and valuable consideration,
the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Obligations of City, subject to the satisfaction of the contingencies and other requirements and conditions contained herein:**

   (a) Transfer of Net Proceeds from the sale of six (6) units in the Morris Square development in accordance with the Second Amendment to the Morris Square MOU. Net Proceeds shall be defined as the gross sales price, less commissions and closing costs, and less hard construction costs (including construction interest and bank loan fees); provided that all soft costs, including architectural engineering and design fees for the six (6) units shall be paid by Developer and Developer shall not be entitled to any credit or reimbursement therefore. Developer has agreed to guarantee that the net proceeds from the sale of the six (6) units shall be at least Nine Hundred Thousand and no/100 ($900,000.00) Dollars, although Developer anticipates that that the Net Proceeds shall be approximately $950,000.00. Upon receipt by the City of any Net Proceeds from the sale of the six (6) market rate units, three (3) in Phase I and three (3) in Phase II, in the Morris Square development, the City shall transfer such proceeds to the EDC-HDO.

   (b) Transfer from the City to the EDC-HDO, within ninety (90) days of the effective date hereof, of certain Charleston Housing Trust funds totaling One Hundred Ninety Six Thousand and No/100 Dollars ($196,000.00).

   (c) The funds described in Paragraphs 1(a) and 1(b), together with any other funds now or hereafter made available by the City to the EDC-HDO for the purposes set forth in subparagraphs (i) and (ii) below, shall be referred to collectively herein as the “Funds.” Subject to the remaining terms of this MOU, the Funds shall be used as follows:

   (i) To provide permanent subsidies for the affordable housing units developed in accordance with this MOU;

   (ii) To pay construction costs, including architectural, engineering and legal expenses associated with EDC-HDO’s development of the affordable housing in accordance with this MOU.

   (d) Convey to EDC-HDO the following properties on which affordable housing units shall be constructed or renovated, as applicable:

   (i) 9 Sheppard Street, 56 South Street, 87 Cooper Street, 85 Hanover Street, 30.5 and 32 Nassau Street, 2323 Birdie Garrett Lane, 2311 Odessa Street, 2310 Peonie Street, 1903 Doscher Street, 475 Race Street, 176 Fishburne Street, 10
Lames Street and 188.5 Line Street, all of which are located in the City and County of Charleston, State of South Carolina.

(ii) The properties listed in 1(d)(i) above shall be developed in accordance with the terms and conditions of this MOU and the City's Transfer and Development Agreements used for the development of first-time home ownership affordable housing units under the City's Homeownership Initiative program.

(iii) The properties listed in 1(d)(i) above shall be transferred to the EDCHDO on a timeline as agreed upon by the parties; provided that the parties anticipate the properties shall be completed by the end of 2012.

(iv) The City shall require that a note and mortgage in the amount of the City's land acquisition costs for each property listed in 1(d)(i) shall be executed by EDCHDO upon the transfer of such properties to EDCHDO. It is the intention of the parties that the notes and mortgages required pursuant to this section shall remain as permanent subsidies in the properties upon their sale to first-time home buyers and shall be subordinated in favor of the first-time home buyer's permanent lender.

2. Obligations of EDCHDO, subject to the satisfaction of the contingencies and other requirements and conditions contained herein:

(a) Upon receipt of all or any portion of the Funds in accordance with Section 1(a) and 1(b) above, EDCHDO shall deposit such Funds in an interest-bearing account to be held in trust and separate from any other funds of EDCHDO. EDCHDO shall use the Funds in accordance with the provisions of Section 1(c)(i) and (ii) above.

(b) EDCHDO shall make all records related to the Funds, including banking records, available to the City for inspection upon request during normal business hours. At least quarterly, EDCHDO shall provide to the City unaudited financial reports of the Funds. On an annual basis, EDCHDO shall provide the City with audited financial reports with respect to all activity of the Funds for that given year. EDCHDO agrees that the City, HUD and any other entity having jurisdiction over the Funds shall have the right to inspect and audit its records with respect to the Funds at reasonable times upon request.
(c) Develop the properties listed in 1(d)(1) above and the three (3) units in the Phase II portion of the Morris Square development as first-time homeownership affordable housing units in accordance with the City’s Transfer and Development Agreements, the attached Restrictive Covenants marked as Exhibit A, attached hereto and incorporated by reference herein, and all other requirements of the City’s Homeownership Initiative program, as same may be hereafter amended from time to time. It is expressly understood that EDCHDO shall not be responsible for taxes, insurance or maintenance of the properties listed in 1(d)(1) above until such time as title to said property is conveyed to the EDCHDO in accordance with the Transfer and Development Agreement.

(d) Market and sell the properties listed in 1(d)(1) and the three (3) units in the Phase II portion of the Morris Square development in accordance with the requirements of the City’s Homeownership Initiative program.

(e) To the extent that any of the Funds are remaining after the completion of EDCHDO’s obligations set forth above, EDCHDO agrees to use the balance of the Funds for the development of affordable housing units in the City of Charleston.

(f) With the exception of the City’s permanent subsidies as described in Section 1(d)(iv) above, the parties shall not be responsible for any additional subsidies for the properties that are developed pursuant to this MOU. To the extent the Funds are insufficient to cover to cost to construct the properties described herein and subsidize the properties after their completion, the parties agree that they will work together in good faith to: (1) partner in the permitting process for their rehabilitation; and (2) secure funding to cover any subsidy or construction cost shortfalls.

3. **Contingencies.** The obligations of the City and EDCHDO hereunder are contingent upon the requirements and contingencies being satisfied by Developer in the Second Amendment to the Morris Square MOU, marked as Exhibit B, attached hereto and incorporated by reference herein.

4. **Assignment.** This Memorandum of Understanding shall not be assigned or otherwise transferred by either party without the other party’s prior written consent.

5. **Closing Costs and Property Taxes.** In the event EDCHDO receives title to the properties listed in Section 1(d)(1) above, EDCHDO agrees to pay its own legal expenses and all closing costs in connection to any conveyance contemplated herein,
including deed preparation costs, deed stamps, deed recording fees, the cost of obtaining and recording of any releases of any nature and survey costs. All property taxes (if any) on the property contemplated to being conveyed shall be the responsibility of EDCHDO, provided however, that any payment made by the EDCHDO in accordance with this Section 5 may be paid from the Funds.

6. **Brokerage Commission.** The City and EDCHDO represent to each other than no other entity is entitled, as a result of the action of the representing party, to a real estate commission or other fee resulting from the execution of this MOU or the conveyances contemplated herein.

7. **Notices.** Any notice, demand, request or other correspondence (a "notice") required or permitted to be given hereunder shall be in writing and shall be deemed delivered when either (i) personally delivered, (ii) sent by US Certified or Registered Mail, return receipt requested, postage prepaid, or (iii) delivered, costs prepaid, by any reputable delivery service that provides written confirmation of delivery. Notice shall be given at the following addresses:

   **To City:**
   
   The City of Charleston
   
   PO Box 304
   (Delivery) 50 Broad Street
   Charleston, SC 29402
   Fax: 843.724.3706
   Attention: Legal Department

   **To EDCHDO:**
   
   EDCHDO
   c/o Calvary Episcopal Church
   Charleston, SC 29403
   Fax: 
   Attention: 

8. **Default and Remedies.**

   (a) **Events of Default.** It shall be an Event of Default if a party shall fail to perform or observe any provision or condition to be performed or observed by such party under this MOU and shall fail to cure the default within seven (7) days after receipt of notice of the default from the non-defaulting party (or such additional time as may be expressly authorized in writing by the non-defaulting party).

   (b) **Remedies.** If there is an uncured Event of Default, the non-defaulting party shall have the right to pursue any remedies available at law or in equity, including the right of specific performance. In any action at law or in equity to enforce any provision of this MOU, the prevailing party shall be entitled to recover all costs of such
action, including reasonable attorney’s fees and expenses through any final appeal from the non-prevailing party.

9. **Miscellaneous.**

   (a) **Other Understandings.** This MOU 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. This MOU cannot be altered, amended, 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.

   (b) **Successors and Assigns.** This MOU shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

   (c) **Cooperation and Other Documents.** The parties shall act in good faith in performing and discharging their respective duties and obligations hereunder. The parties hereto shall execute and deliver such other and further instruments, documents and applications for permits and approvals as reasonably may be necessary to implement and effectuate the terms of this MOU.

   (d) **Applicable Law.** This MOU has been made in the State of South of South Carolina, and shall be interpreted in accordance with South Carolina law, and any enforcement of this Agreement shall be brought in the County of Charleston, State of South Carolina.
IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 21st day of September, 2006.

WITNESSES: 

Episcopal Diocese of South Carolina Community Housing Development Organization

By: ____________________________
   Its: CHAIRMAN

City of Charleston

By: ____________________________
   Its: Mayor

[Signatures]
EXHIBIT A

(City's HI Restrictive Covenants)

Single Family Affordable Housing Restrictive Covenants

City of Charleston

1.0. Covenant and Purpose. The Property shall be conveyed subject to the conditions, covenants, restrictions and limitations set forth below (collectively, the "Restrictive Covenants"). The Restrictive Covenants shall be considered as covenants running with the land, and shall be binding on the Developer, its heirs, successors and assigns, together with all successors in title to the Property (the Developer, its heirs, successors and assigns, together with all successors in title to the Property, being collectively referred to herein as the "Owner"). Each Owner covenants and agrees, in the event the Property is sold, conveyed or otherwise disposed of, the Property shall be sold subject to these Restrictive Covenants and that the recording information for this deed shall be inserted in the deed of conveyance or other instrument disposing of the Property.

2.0. Definitions. As used in these covenants, conditions, and restrictions the following terms shall have the meaning set forth:

2.1. "Area Median Income" shall mean and have reference to the median family income, based upon applicable family size of a Qualified Purchaser (or of a Qualified Renter, if applicable), for the Charleston-North Charleston metropolitan statistical area as published by the United States Department of Housing and Urban Development. If the United States Department of Housing and Urban Development should no longer compile and publish such statistical information, the most similar information compiled and published by said Department or any other branch or department of the federal government or by the State of South Carolina shall be used for the purpose of determining Area Median Income.

2.2. "Base AMI" shall mean the Area Median Income for a family of four persons as of the date of the deed from the Developer to the first Qualified Purchaser of the Property. The Base AMI for this deed is $__________.

2.3 "Base Purchase Price" shall mean the Purchase Price paid to the Developer by the first Qualified Purchaser of the Property. The Base Purchase Price for this deed is $__________.
2.4 "AMI Increase" shall mean the Area Median Income for a family of four persons at the date of calculation divided by the Base AMI. By way of example only and solely for purposes of illustration, if the Developer conveyed the Property in July, 2002 to the first Qualified Purchaser and the Area Median Income for a family of four persons were $39,400 in July, 2002 (the "Base AMI" for purposes of this illustration only) and if the Area Median Income for a family of four persons were $43,340 in September, 2005 when an Owner proposed to sell the Property, the AMI Increase would be $43,340 divided by $39,400 or 1.10.

2.5. "City" shall mean and have reference to the City of Charleston, South Carolina or such other municipality that has geographic jurisdiction over Daniel Island.

2.6. "Developer" shall mean and have reference to

2.7. "Qualified Purchaser" shall mean and have reference to a proposed purchaser of the Property whose income is between fifty percent (50%) and one hundred and twenty percent (120%) of Area Median Income as of the anticipated date of purchase of the Property by the Qualified Purchaser and who is certified in writing by the City as having the requisite income.

2.8. "Owner" shall mean and have reference to, at any particular point in time, the owner in fee simple of the Property. The Owner shall initially be the Grantee, and shall subsequently be the Grantee's heirs, devisees, successors and assigns, as owners in fee simple of the Property. Owner shall include any party that acquires fee simple ownership of the property by virtue of foreclosure of mortgage or deed of trust conveying the Property as security for an obligation or any transfer in lieu of such foreclosure.

2.9. "Property" shall mean and have reference to that certain tract or parcel of land conveyed by this deed, together with all improvements, fixtures and equipment located thereon.

2.10. "Resale Price" shall mean and have reference to an amount determined as the product of the Base Purchase Price multiplied by the AMI Increase, or such higher amount as may be determined in accordance with Section 5 herein. By way of example and solely for purposes of illustration, if the Base Purchase Price were $140,000 (solely for purposes of this Illustration only) when the Developer transferred the Property to the first Qualified Purchaser in July, 2002 and the AMI Increase were 1.10 at the time of a proposed sale in September, 2005, the Resale Price would be $140,000 times 1.10 or $154,000.

2.11 "City Subsidy" shall mean $________________

2.12 "City Subsidy Percentage" shall mean the City Subsidy divided by the Base Purchase Price. By way of example only and solely for purposes of
illustration, if the Base Purchase Price were $150,000 and the City Subsidy were $45,000, the City Subsidy Percentage would be $45,000 divided by $150,000 or 30%.

2.13 "Lien Limitation Percentage" shall mean 100% minus the City Subsidy Percentage. By way of example only and solely for purposes of illustration, if the City Subsidy Percentage were 30%, the Lien Limitation Percentage would be 70%.

2.14 "Lien Limit" shall mean the amount that equal the Lien Limitation Percentage times the Resale Price as calculated at the time of recordation of the mortgage.

2.15 "Adjusted City Subsidy" shall mean the City Subsidy Percentage times the Resale Price.

2.16 "Non-City Share of the Resale Price" shall mean the Resale Price minus the Adjusted City Subsidy.

2.17 "Default Option Price" shall mean 80% of the Resale Price.

2.18 "Option Term" shall mean 90 years from the date of the deed from the Developer to the first Qualified Purchaser. All provisions relating to the City's Right of First Refusal and the City's right to purchase the Property for the Default Option Price shall automatically terminate upon the expiration of the Option Term. If the South Carolina Uniform Statutory Rule Against Perpetuities (Section 27-6-10 of Code of Laws Of South Carolina, 1976, as amended) is amended, the Option Term shall automatically be modified to the longest period authorized by South Carolina law.

2.19 "Qualified Renter" shall mean and have reference to a proposed renter of the Property whose income is does not exceed eighty percent (80%) of Area Median Income and who is certified by the City as having the requisite income.

2.20 Qualified Rent" shall mean the monthly rent approved by the City as affordable rent in accordance with applicable federal guidelines.

2.21 "Qualified Lease" means a lease form approved by the City for use to a Qualified Renter for a Qualified Rent. The lease must be for a term approved by the City and must include periodic recertification by the City of the income of the tenant if the lease is for more than 12 months.

2.22 "City Transfer Certificate" shall mean the written certification to be provided by the City in connection with each transfer of the Property and each granting of a mortgage on the Property. In the event of a transfer, the City Certificate shall be in a recordable form and shall state the maximum Resale Price, the names of the approved Qualified Purchasers, the amount of the Adjusted City Subsidy, the amount of the Non-City Share of the Resale Price and the City's waiver of its right of first refusal. In the event of a mortgage, the City Certificate shall be in a
recordable form and shall state the amount of the Resale Price as of the date of the mortgage, the Lien Limit Percentage, the Lien Limit, the City Subsidy Percentage, the Adjusted City Subsidy as of the date of the mortgage, together with a written acknowledgement by the City that the new mortgage does not exceed the Lien Limit. In the event that the City has given a one time waiver of any requirements in accordance with the procedures set forth in these Restrictive Covenants, the City Transfer Certificate shall set forth the existence and terms of such waiver.

3.0 City Subsidy The City has made an investment in the Property equal to the City Subsidy and the City has agreed that each successive Owner of the Property shall have the benefit of the Adjusted City Subsidy for so long as these Restrictive Covenants remain in effect.

3.1 City's Equitable Interest in the Property Each Owner covenants and agrees that the City has an equitable interest in the Property equal to the Adjusted City Subsidy. Each Owner covenants and agrees that the portion of any Resale Price as equals the Adjusted City Subsidy Amount belongs to the City and that the Owner's interest in the Resale Price is limited to the Non-City Share of the Resale Price. If these Restrictive Covenants are terminated for any reason, the City shall be entitled to receive payment in full of the Adjusted City Subsidy.

3.2 Transfer and Mortgage: Procedures All transfers of, and all mortgages on, the Property shall be made in accordance with these Restrictive Covenants.

(A) In the event that an Owner seeks to sell the Property the Owner shall provide written notice of such proposed sale to the City. Such written notice shall request assistance from the City to identify potential Qualified Purchasers and shall request the City to calculate the maximum Resale Price.

(B) Each Owner covenants and agrees that no transfer of the Property shall take place and no mortgage of the Property shall be granted unless it is in conformance with these Restrictive Covenants and unless the City has delivered a City Transfer Certificate.

(C) The Owner and its mortgagees shall not receive in the aggregate more than the Non-City Share of the Resale Price upon the sale of the Property. No Qualified Purchaser shall pay more than the Non-City Share of the Resale Price for the purchase of the Property. By way of example and solely for purposes of illustration, if the Resale Price is $165,000 and the Adjusted City Subsidy is $49,500, the Qualifying Purchaser would pay no more than $115,500 and the maximum amount that would be available to pay closing costs, to satisfy any outstanding liens and to pay the selling Owner would be the Non-City Share of the Resale Price or $115,500.

3.3 City Lien The City shall have a continuing lien against the Property in the amount of the Adjusted City Subsidy which lien shall survive the foreclosure of any mortgage or other lien on the Property.
4.0. **Resale Only to Qualified Purchasers.** Each Owner covenants and agrees that the Property shall be sold, transferred and conveyed only to such individual, party, or entity as described in this paragraph.

4.1. **Qualified Purchasers** The Property shall be conveyed only to Qualified Purchasers who are certified by the City in accordance with subparagraph 4.4 (City Certification) or to such persons, parties or entities who are deemed Qualified Purchasers in accordance with subparagraphs 4.2 (Inheritance), 4.3 (Foreclosure), or 4.5 (City Waiver) of this paragraph or in accordance with Paragraph 6 (City Right of First Refusal).

4.2. **Inheritance** a transfer that occurs by virtue of the death of an Owner, and testate or intestate administration of the estate of the Owner shall be deemed a transfer to a Qualified Purchaser.

4.3. **Foreclosure** A transfer that occurs by virtue of foreclosure of a mortgage encumbering the Property or a transfer that occurs by reason of a deed in lieu of foreclosure shall be deemed to be a transfer to a Qualified Purchaser.

4.4. **City Certification** An Owner shall submit, or cause to be submitted, to the City for certification as a Qualified Purchaser, any proposed purchaser of the Property. An Owner shall sell, transfer and convey the Property only to a purchaser who has been certified by the City as a Qualified Purchaser in the City Transfer Certificate. The City shall not decline, refuse or fail to certify as a Qualified Purchaser any potential purchaser of the Property except on the sole ground that the City is unable to verify that the income of such proposed purchaser is within the income limits required of a Qualified Purchaser.

4.5. **City Waiver** The City in its sole discretion shall have the right to waive, in its sole discretion, the requirement for a specific purchaser that the purchaser be a Qualified Purchaser. A waiver shall apply to only one transfer and shall not apply to subsequent transfers. Upon receipt of a City Transfer Certificate that contains the written waiver from the City, the specific purchaser shall be deemed to be a Qualified Purchaser.

5. **Resale Price.** No Owner shall sell, transfer, or convey the Property for an amount in excess of the Resale Price and no Owner shall receive from the sale, transfer or conveyance of the Property proceeds in excess of the Non-City Share of the Resale Price.

5.1. **Adjustment to Resale Price** The Resale Price may be adjusted to a higher amount if the nature and circumstances of the Owner, and the nature and condition of the Property, warrant such a higher amount so long as such adjusted amount does not preclude the ability to certify a potential purchaser as a Qualified Purchaser. The determination of any such adjustment in the Resale Price shall be in
the sole discretion of the City, which may elect to refuse to adjust the Resale Price for any reason.

5.2 Documentation of Adjustment. No adjustment in the Resale Price shall be permitted or authorized unless the basis for the adjustment, and the amount of the Resale Price as adjusted, is set forth in the City Transfer Certificate. Such an adjustment to the Resale Price shall apply only for a period of 12 months from the date of the writing and shall not apply to subsequent transfers.

6. Right of Refusal. In the event that an Owner shall receive an offer to purchase the Property from a Qualified Purchaser or a person who is deemed to be a Qualified Purchaser pursuant to Section 3 for an amount equal to or less than the Resale Price which is acceptable to the Owner (the "Offer"), the City shall have a right to purchase the Property from the Owner for the price set forth in the Offer (the "Right of First Refusal"). Upon the receipt of an Offer, the Owner shall promptly forward a copy of the Offer to the City. In the event that the City elects to exercise the Right of First Refusal, the City shall give written notice thereof to the Owner within sixty (60) days of receipt of the Offer and the closing of such purchase shall occur no later than ninety (90) days following the delivery of the Offer to the City. In such circumstances, the sale and transfer of the Property to the City shall be subject to all other provisions of these Restrictive Covenants, and the City shall be deemed to be a Qualified Purchaser. In the event that the City does not exercise its Right of First Refusal within the time periods set forth above, the City Transfer Certificate shall include a waiver of the City's Right of First Refusal. This Right of First Refusal shall be a continuing right that applies to each proposed transfer of the Property. This Right of First Refusal shall automatically terminate upon the expiration of the Option Term.

7. Single Family Use and Leases. The Owner covenants and agrees that the Property shall be used and occupied solely as an Owner occupied, single family residential dwelling. The Owner shall not lease, nor permit to be leased, the Property, except as expressly authorized by this Section 7.

7.1 City Inspection. The City shall have the right to inspect the Property from time to time to insure compliance with these Restrictive Covenants.

7.2 Obligation to Sell. If an Owner ceases to occupy the Property, the Owner agrees to give prompt written notice to the City that the Property is no longer Owner occupied and agrees to sell the Property to a Qualified Purchaser for the Resale Price. The Owner agrees to actively list and market the Property and agrees that the City and its agents shall be entitled to show the Property to prospective purchasers.

7.3 Obligation to Rent to Qualified Renter. If an Owner ceases to occupy the Property, the Property may be occupied only by a Qualified Renter pursuant to a Qualified Lease for a Qualified Rent during the period of time that the Property is being marketed for resale to a Qualified Purchaser.
8. **Lien Limitation** The equity in the Property represented by the Adjusted City Subsidy shall not be mortgages or otherwise encumbered by the Owner. The Owner agrees that the aggregate liens on the Property shall not exceed the Lien Limitation. The Owner agrees that City shall have the right to review any proposed mortgage or other encumbrance on the Property and that no lien shall be placed on the Property unless the City delivers a City Transfer Certificate. The City may in the exercise of its sole discretion authorize a higher level of encumbrances on the Property in the City Transfer Certificate. Any lien amount waiver by the City shall apply only to the current level of indebtedness of the existing encumbrances and shall not apply to any new obligations, judgments or debts.

9. **Enforcement of Covenants.** Grantor, Grantee, and each Owner hereby acknowledge and agree that the covenants, conditions and restrictions set forth herein are imposed for the benefit of residential community of the City of Charleston, and that the City has interests in real property and social, cultural and economic interests that benefit from the imposition of these covenants and restrictions. The benefits of these covenants, conditions and restrictions run with the Property, and bind and burden the Property. These Restrictive Covenants shall be enforceable by the City. Grantor, Grantee and each Owner further acknowledge and agree that a breach of the covenants, conditions, and restrictions set forth herein shall potentially result in a broad range of economic, social, cultural and residential damages to a large number of parties, that such damages are difficult if not impossible to determine, and that the City shall be entitled to seek such remedies as may be available at law or in equity including but not limited to injunctive relief and specific performance. The City shall be entitled to reasonable attorney fees and costs in the event of a breach by the Owner of these Restrictive Covenants.

9.1 **Default Option Price** During the Option Term and as an additional remedy in the event of an Owner's breach of these Restrictive Covenants, the City shall have the right to purchase the Property for the Default Option Price from the current Owner:

(A) if a selling Owner sells the Property to a purchaser who is not a Qualified Purchaser or who is not deemed to be a Qualified Purchaser under the provisions of these Restrictive Covenants;

(B) if a selling Owner sells the Property for a purchase price in excess the Resale Price and the City has not agreed in writing to an increased purchase price pursuant to Section 5;

(C) if an Owner rents the Property to someone who is not a Qualified Renter, or for rent in excess of the Qualified Rent.

If the City purchases the Property pursuant to Section 9.1(A) or 9.1(B), the result will be that the current Owner is obligated to sell the Property to the City for a purchase price that is less than the price the current Owner paid for the Property. The City shall have no obligation to the current Owner or its mortgagee to provide legal assistance in
seeking redress against the selling Owner who participated in the breach of these Restrictive Covenants. Each purchaser and mortgagee is advised to request from a selling Owner a copy of the City's determination of the Resale Price for the transaction and a copy of the City's certification of the Qualified Purchaser.

10. Maintenance and Insurance Obligations The exterior appearance of the Property shall be maintained in an attractive and orderly condition and shall be kept free from trash, salvage, rubbish, garbage, and other unsightly or offensive material. The buildings now or hereafter located on the said premises shall be maintained in an attractive and sound condition and repairs as necessary to prevent damage to the building(s) or any part thereof shall be made promptly. The Owner shall keep the Property insured against casualty, fire, and flood loss.

11. No Subdivision Without the prior express written consent of the City, the Property shall not be subdivided, nor converted to any form of horizontal property regime, nor any portion less than all the Property be conveyed, nor shall any form of interval ownership of or time sharing of the Property be permitted.

12. Prevention of Heirs Property The Owner shall maintain a current will and will use reasonable efforts to prevent the Property from transferring upon the Owner's death pursuant to the laws of intestacy.

13. Payment of Ad Valorem Taxes The Owner shall promptly pay each year the ad valorem taxes on the Property and shall deliver a copy of the paid receipt for such taxes to the City within 30 days of payment. In order to protect the City's equitable interest in the Property, the City shall have the right to pay any delinquent taxes on the Property and shall lien against the Property, which is separate and distinct from its lien for the Adjusted City Subsidy (“Tax Lien”). In addition to any other remedies provided by law or equity for the breach of these Restrictive Covenants, the City shall have the right to foreclose on its Tax Lien in the event that the Owner fails to reimburse the City within sixty (60) days of written notice from the City.

14. Duration and Amendment This Restrictive Covenants shall bind all persons claiming any interest in the Property and run with the land for a period of ninety (90) years from the date of recording, after which time these Restrictive Covenants shall be automatically extended for successive periods of ten (10) years unless amended as provided in this Section. These Restrictive Covenants may be amended only by a writing executed by both the Owner and the City, which is filed in the land records office of the County where the Property is located.

15. Severability. Whenever possible, each provision of these Restrictive Covenants shall be interpreted in such manner as to be effective and valid, but if the application of any provision of these Restrictive Covenants shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of these Restrictive Covenants are declared
to be severable. Notwithstanding anything contained herein to the contrary, if any of provision of these Restrictive Covenants shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until ninety (90) years from the date of first recordation.
EXHIBIT B

(Amendment to Morris Square MOU)
December 5, 2005

Mr. Steve Bedard, CFO
City of Charleston
116 Meeting Street
Charleston, SC 29401

Re: Ordinance #2005-448: Amendment to Memorandum of Understanding with Smith-Morris Company, LLC

Dear Mr. Bedard:

City Council ratified the above captioned ordinance at the September 27, 2005, meeting to authorize the Mayor to execute an Amendment to the Memorandum of Understanding between the City of Charleston and Smith-Morris Company, LLC for the Smith-Morris Project. Enclosed please find a copy of the following ordinance and a fully executed agreement for your records:

2005-448 An ordinance authorizing the Mayor to execute the necessary documents to enter into that certain Amendment to Memorandum of Understanding between the City of Charleston and Smith-Morris Company, LLC, said Amendment to Memorandum of Understanding being marked as Exhibit 1, attached hereto and incorporated by reference herein.

Along with a copy of this letter, I am returning one original agreement to Adelaide Andrews for distribution to the vendor.

Sincerely,

Vanessa Turner-Maybank, CMC
Clerk of Council

VTM11w

Enclosure: As Stated

c: Mayor Joseph P. Riley, Jr. (w/o documents)
   Colleen Carducci (w/one copy of ordinance and one copy agreement)
   Geona Johnson (w/one copy of ordinance and one copy agreement)
   Adelaide Andrews (w/one copy of ordinance and one original agreement)
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHARLESTON AND SMITH-MORRIS COMPANY, LLC, SAID AMENDMENT TO MEMORANDUM OF UNDERSTANDING BEING MARKED AS EXHIBIT I, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREBIN.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute the necessary documents to enter into that certain Amendment to Memorandum of Understanding between the City of Charleston and Smith-Morris Company, LLC, said Amendment to Memorandum of Understanding being marked as Exhibit I, attached hereto and incorporated by reference herein.

Section 2. This Ordinance shall become effective upon ratification.

Ratified in City Council this 27th day of September in the year of Our Lord, 2005, in the 230th Year of the Independence of the United States of America.

Joseph P. Riley, Jr., Mayor
Mayor, City of Charleston

Vanessa Turner-Maybank
Clerk of Council
WHEREAS, the City of Charleston ("City") and Civitas, LLC entered into that certain Memorandum of Understanding dated May 20, 2003, as amended ("MOU") relating to the development of certain property known as Morris Square (the "Project"); and

WHEREAS, Smith-Morris Company, LLC ("Developer") has assumed the obligations of Civitas, LLC under the MOU; and

WHEREAS, the MOU required the Developer to include six (6) units of affordable housing in the Project, three (3) in Phase I and three (3) in Phase II (the "6 Units"); and

WHEREAS, the Developer had anticipated utilizing the Episcopal Diocese Community Housing Organization (the "EDCHDO") to build the six (6) affordable houses for the Developer; and

WHEREAS, the demand for market rate housing units at Morris Square has been high; and

WHEREAS, instead of providing six (6) units of affordable housing in the Project, the Developer has proposed that the six (6) units be sold at market rate and the net proceeds of sale be used to provide other affordable housing in the City and further that the Developer deed land for three (3) residential units in Phase II of the Project (the "3 EDCHDO Units") and provide architectural construction documents approved by the City's Board of Architectural Review (BAR) and all other necessary permits (excluding building permits) and approvals, including TRC approval, to the EDCHDO for the construction of the 3 EDCHDO Units; and

WHEREAS, it appears that more affordable housing could be provided in the City under this proposal than as set forth in the original MOU; and

WHEREAS, the City and Developer have agreed to amend the MOU as set forth herein.

NOW, THEREFORE, for and in consideration of the approval by the City of the Project, the promises of the Developer as set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Effective January 1, 2006, Paragraph 1(a) of the MOU is deleted and the following substituted therefor: "(a) Residential and Mixed Use Development. Developer shall develop the City Land and the land acquired from third parties as set forth herein for the uses designated in the PUD and for constructing residential units as permitted by the PUD, including three (3) units which shall constitute affordable housing under those terms agreed to by the Developer and the City and generally described in Exhibit B attached hereto; provided that none of the 3 EDCHDO Units shall be located on either the 2,474 square feet of YMCA property purchased by the Developer in 2005 or the 13,200 square feet of YMCA property purchased by the Developer in 2003. Further, Developer shall contribute to the City the net proceeds from the sale of six (6) units in the Project, three (3) in Phase I and three (3) in Phase II, such funds to be
used by EDCDO for affordable housing development in the City, including the 3 EDCDO Units, it being the intention of the Developer to enhance the opportunity for affordable housing both in the Project and in other locations in the City for the benefit of low to moderate income first-time home buyers whose household incomes are less than one hundred twenty (120%) of the area median income as the same shall be established or modified by the Department of Housing and Urban Development. The Developer agrees to work with the EDCDO during the design and permitting process of the 3 EDCDO Units and to assist EDCDO in obtaining construction drawings acceptable to the EDCDO which shall be paid for by the Developer. Developer similarly agrees to cooperate in good faith to assist EDCDO in selecting a construction contractor for the 3 EDCDO units, including discussing the construction project with Developer’s construction contractor if requested to do so by EDCDO. In addition to all other Boards and Commissions which shall have jurisdiction over the proposed development of the 3 EDCDO Units, the 3 EDCDO Units shall be submitted to the City’s BAR and TRC by the Developer for review and approval prior to construction. The 3 EDCDO Units shall also be subject to the restrictive covenants more fully set forth in Exhibit “H” attached hereto and incorporated herein by reference, which restrictive covenants shall be recorded with the deeds of conveyance to the EDCDO and which restrictive covenants shall run with the land.

2. Exhibit “B” to the MOU is deleted and Exhibit “B” attached hereto and incorporated herein by reference is substituted therefor.

3. The references in Exhibit “F” to three (3) affordable housing units in Phase I are deleted.

4. The MOU shall be further amended to add a new section 9(e) thereto, which shall provide that the MOU, as amended, including this amendment, shall be recorded in the RMC Office for Charleston County and the parties shall execute the necessary documents to effectuate this provision.

5. Except as amended herein, the MOU shall remain in full force and effect.
IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 2nd day of December, 2005.

WITNESSES:

[Signatures]

SMITH-MORRIS COMPANY, LLC

By: [Signature]

Its: Manager

WITNESSES:

[Signatures]

CITY OF CHARLESTON

By: [Signature]

Its: Mayor
EXHIBIT "B"

AFFORDABLE HOUSING

Developer Commitments:

1. The 6 Units in Morris Square which were originally designated as affordable housing will be sold by the Developer at market rates. The Net Proceeds (as defined below) from the sale of these units will be placed in escrow with the City as the closings thereon occur. These funds shall be used by EDCHDO, a City-qualified affordable housing non-profit organization, to build affordable housing units in the City of Charleston, including the 3 EDCHDO Units. The City shall release the funds to EDCHDO for affordable housing upon terms as agreed to between the City and EDCHDO.

2. The Developer has assisted the Charleston Housing Trust ("CHT") in obtaining approximately Four Hundred Thousand and no/100 ($400,000.00) Dollars in federal grant money as a part of the 2005 federal budget process. Approximately one-half of these funds ($196,800.00) shall be donated to the EDCHDO. Additionally, Developer is assisting CHT in applying for additional grant money in the 2006 federal budget and one-half of such funds received, if any, shall be donated to the EDCHDO and used by EDCHDO for affordable housing in the City, however, the total grant money donated to CHDO will not exceed Five Hundred Thousand and no/100 ($500,000.00) Dollars. It is anticipated that the Net Proceeds from the sale of the 6 Units plus the grant money will enable more than six (6) affordable housing units to be constructed in the City of Charleston.

3. While market conditions may change and there can be no guaranty of the purchase price obtained for the 6 Units, it is anticipated that the Net Proceeds available for affordable housing will be approximately Nine Hundred Ninety Thousand and no/100 ($990,000.00) Dollars. The Developer guarantees that the Net Proceeds from the sale of the 6 Units shall be at least Nine Hundred Thousand and no/100 ($900,000.00) Dollars, such that if the Net Proceeds from the sale of the 6 Units are less than Nine Hundred Thousand and no/100 ($900,000.00) Dollars, the Developer shall deposit with the City within thirty (30) days of the closing of the last of the 6 Units the difference between the Net Proceeds and Nine Hundred Thousand and no/100 ($900,000.00) Dollars. Accordingly, the minimum amount of funds available for affordable housing shall be One Million Ninety-Six Thousand Eight Hundred and no/100 ($1,096,800.00) Dollars (the minimum amount of grant money in the amount of One Hundred Ninety-Six Thousand Eight Hundred and no/100 ($196,800.00) Dollars plus the Nine Hundred Thousand and no/100 ($900,000.00) Dollar Developer guarantee).

4. The Developer shall deed land in Phase II to the EDCHDO sufficient in size and location as approved by the EDCHDO for the construction by the EDCHDO of the 3 EDCHDO Units Units. In addition to fee simple title to the land, the Developer shall provide BAR and TRC approved construction drawings and all other necessary permits and approvals (with the exception of building permits) to EDCHDO which the EDCHDO shall be able to use to construct the 3 EDCHDO Units.
5. "Net Proceeds" shall mean the gross sales price, less commissions and closing costs, and less hard construction costs (including construction interest and bank loan fees). All soft costs, including architectural, engineering and design fees and costs associated with obtaining BAR and TRC approval, shall be paid by the Developer and the Developer shall not be entitled to any credit or reimbursement therefor. The Net Proceeds will be placed in escrow with the City as each of the 6 units are sold.

6. It is the intention of the parties that the 3 EDCHDO Units in Phase II shall be completed by CHDO as soon as practical.
AN ORDINANCE

AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS TO ENTER INTO THAT CERTAIN AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CHARLESTON AND THE EPISCOPAL DIOCESE OF SOUTH CAROLINA COMMUNITY HOUSING DEVELOPMENT ORGANIZATION ("EDCHDO") FOR THE CONVEYANCE OF CERTAIN PROPERTIES TO THE EDCHDO WHICH ARE SITUATE, LYING AND BEING IN THE CITY AND COUNTY OF CHARLESTON, STATE OF SOUTH CAROLINA, SAID AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BEING MARKED AS EXHIBIT I, ATTACHED HERETO AND INCORPORATED BY REFERENCE HEREIN (AS AMENDED).

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. The Mayor is hereby authorized to execute the necessary documents to enter into that certain Amendment to the Memorandum of Understanding between the City of Charleston and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") which includes the conveyance of certain properties to the EDCHDO which are situate, lying and being in the City and County of Charleston, State of South Carolina, said Amendment to the Memorandum of Understanding being marked as Exhibit I, attached hereto and incorporated by reference herein.

Section 2. This Ordinance shall become effective upon ratification.
ATTEST:

Ratified in City Council this 19th day of April in the year of Our Lord, 2016, in the 236th Year of the Independence of the United States of America.

Joseph P. Riley, Jr., Mayor
Mayor, City of Charleston

Vanessa Turner-Maybank
Clerk of Council
STATE OF SOUTH CAROLINA   )  
COUNTY OF CHARLESTON    ) 

AMENDMENT TO 
MEMORANDUM OF UNDERSTANDING

This Amendment to the Memorandum of Understanding is entered into by and between the City of Charleston ("City") and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") this ____ day of July, 2011.

WHEREAS, the City and the EDCHDO previously entered into a Memorandum of Understanding dated September 26, 2006 ("MOU"), wherein EDCHDO was granted certain rights to develop, inter alia, affordable housing unitson properties owned by the City more fully described in Section 1(d)(i) of the MOU and located in the City and County of Charleston, State of South Carolina; and,

WHEREAS, the City and EDCHDO have come to realize that a more advantageous agreement can be structured with respect to the affordable housing units to be developed on certain properties owned by the City more fully described herein and are minded to enter into this Amendment to the MOU in order to modify Section 1(d)(i) of the MOU and create a new Section 2 to identify the properties that the City shall convey to the EDCHDO for the construction of eight (8) affordable housing units and to modify Section 1(a) and create a new Section 2 of the MOU to establish the City's funding commitments to the EDCHDO for the cost of constructing and subsidizing such affordable housing units on the properties owned by the City to be conveyed to the EDCHDO more fully set forth in Section 1(d)(i) and Section 2 in accordance with this Amendment to the MOU, said properties being located in the City and County of Charleston, State of South Carolina.

NOW, THEREFORE, in consideration of the benefits flowing from this Amendment to the MOU and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The MOU is hereby amended by deleting Section 1(a) in its entirety and substituting in its place and stead the following Section 1(a), which shall read as follows:

   "1(a). Transfer of the sum of $500,000 plus accrued interest from the Morris Square Developers and $300,000 from Parcel B funds to the EDCHDO at the closing of the eight (8) properties more fully described in Section 1(c)(i) herein, said closing to occur no later than 30 days from the execution of this Amendment to the MOU by the parties."

2. The MOU is further amended by deleting Sections 1(c), 1(c)(i) and 1(c)(ii) in their entirety and substituting in their place and stead the following Sections 1(c), 1(c)(i) and 1(c)(ii), which shall read as follows:

   "1(c). The funds described in Paragraphs 1(a) and 1(b), together with any other funds now or hereafter made available by the City to the EDCHDO for the purposes set forth in Subparagraphs (i) and (ii) below, shall be referred to collectively herein as the "Funds." Subject to the remaining terms of this MOU, as amended, the Funds shall be used as follows:

   (i) To provide permanent subsidies for the affordable housing units developed in accordance with this MOU, as amended, and,
(ii) To pay construction costs, including architectural, engineering and legal expenses associated with EDCHDO's development of the affordable housing in accordance with this MOU, as amended."

3. The MOU is further amended by deleting Section 1(d)(i) in its entirety and substituting in its place and stead the following Section 1(d)(i) which shall read as follows:

"Section 1(d)(i).87 Cooper Street, 83 Hanover Street, 32 Nassau Street, 176 Fishburne Street, 475 Race Street, 4 Nunan Street, 4 Grants Court; and 26 Reid Street situate, lying and being in the City and County of Charleston, State of South Carolina."

4. The MOU is further amended by deleting Section 1(d)(ii) in its entirety and substituting in its place and stead the following Section 1(d)(ii), which shall read as follows:

"Section 1(d)(ii). The properties listed in 1(d)(i) above shall be transferred to the EDCHDO within thirty (30) days of the execution of this Amendment to the MOU by the parties at the real estate closing for the conveyance of the properties listed in Section 1(d)(i) above; provided that the parties anticipate that the properties shall be completed and sold no later than September 30, 2016. Upon the completion and sale of any of the affordable housing units on the properties described in Section 1(d)(i), the EDCHDO shall be entitled to receive a development fee in the sum of 10% of the EDCHDO's cost to construct the affordable housing unit, including the architectural, engineering, contractor, permitting and related costs incurred by the EDCHDO to complete such unit and obtain a certificate of occupancy therefor (the "Development Fee"). The EDCHDO shall be entitled to receive the Development Fee from the first-time homebuyer of the property at the closing of such unit."

5. The MOU is further amended by renumbering Sections 2, 3, 4, 5, 6, 7, 8 and 9 to Section 3, 4, 5, 6, 7, 8, 9 and 10.

6. The MOU is further amended by creating a new Section 2, which shall read as follows:

"Section 2. The City shall pay the EDCHDO the sum of $100,000 from CDBG funds payable in two (2) annual installments of $50,000 each, the first installment being due on or before September 30, 2013 and the second installment being due one (1) year after the payment of the first annual installment on September 30, 2014. These funds shall also be used by the EDCHDO in accordance with Section 1(c)(i) and Section 1(c)(ii) herein."

7. The MOU is further amended by adding a new Section 3(g) (formerly Section 2) which shall read as follows:

"Section 3(g). Notwithstanding the foregoing, in the event that the EDCHDO is unable to sell any of the eight (8) affordable housing units as set forth in Section 1(d)(i) by September 30, 2016, title to such units or land shall revert to the City and all obligations for the sale of such unsold or incomplete units, including the payment of ad valorem taxes and insurance on such units due on or after September 30, 2016, shall also revert to the City. Any amount of the Funds that have not been expended by the EDCHDO for the eight (8) affordable
housing units that are not completed and/or sold by September 30, 2016, shall also revert to
the City as set forth herein; provided that any property that reverts to the City in accordance
with this Section 3(g) that has received its certificate of occupancy prior to the occurrence of
the reverter as set forth herein and is subsequently sold by the City shall be subject to the
payment of the Development Fee as defined in Section 1(d)(iii) herein to the EDCHDO
from the first-time homebuyer of the property at the closing of such unit.”

In all other respects, the MOU entered into by and between the City and the EDCHDO remains
unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Memorandum of
Understanding as of the date first written above and after due authorization by the City of Charleston City
Council.

WITNESSES:

Episcopal Diocese of South Carolina Community Housing
Development Organization

By: [Signature]
Its: Chairman, Lonnie Hamilton, III

The City of Charleston

By: [Signature]
Its: Mayor, Joseph P. Riley, Jr.

Omnipine A. Hargrave
Administrator Public of SC
My Commission Expires: 6.12.20
As to Lonnie Hamilton, III Daily
EXHIBIT 4

[SECOND AMENDMENT, WITH DUPLICATIVE EXHIBITS OMITTED]
STATE OF SOUTH CAROLINA  )
COUNTY OF CHARLESTON    )

SECOND AMENDMENT
TO
MEMORANDUM OF UNDERSTANDING

This Second Amendment to the Memorandum of Understanding is entered into by and between the City of Charleston ("City") and the Episcopal Diocese of South Carolina Community Housing Development Organization ("EDCHDO") this [___] day of November, 2016.

WHEREAS, the City and EDCHDO previously entered into a Memorandum of Understanding dated September 26, 2006 ("MOU") which was amended on July 19, 2011 ("MOU Amendment"); and

WHEREAS, the City and EDCHDO desire to further amend the MOU, as amended by the MOU Amendment, in order to revise certain provisions therein as hereinafter provided.

NOW, THEREFORE, in consideration of the benefits flowing from this Second Amendment to the MOU, as amended by the MOU Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The MOU, as amended by the MOU Amendment, is hereby amended as follows:

   a. Upon the execution of this Second Amendment, EDCHDO shall relinquish its interest in the following properties located in the City and County of Charleston, State of South Carolina and re-convey same to the City free and clear of all liens and encumbrances:

      i. 4 Nunn Street;
      ii. 4 Grants Court;
      iii. 87 Cooper Street; and
      iv. 26 Reid Street.

   b. EDCHDO shall:

      i. Retain ownership of 32 Nassau Street and 83 Hanover Street located in the City and County of Charleston, State of South Carolina ("Retained Properties" or "Retained Property"); and
      ii. Complete construction of the affordable housing units on the Retained Properties, as evidenced by certificates of occupancy issued thereon by the City of Charleston ("Affordable Housing Units"), and sell the Retained Properties in accordance with the MOU, as amended by the MOU Amendment, no later than December 31, 2017 ("1st Extension Date").

   c. If EDCHDO completes construction of the Retained Properties in accordance with Section 1.b above but is unable to sell one or all of the Retained Properties by the 1st Extension Date a/k/a December 31, 2017, EDCHDO shall receive one (1) additional extension of time until April 30, 2018 to sell the unsold Retained Properties or Retained Property ("2nd Extension Date").
d. If EDCHDO does not sell or have a binding contract to sell the unsold Retained Properties or Retained Property in accordance with Section 1.c above by April 30, 2018, EDCHDO shall re-convey the unsold Retained Properties or Retained Property to the City free and clear of all liens and encumbrances as well as provide all design and construction documents, certificate(s) of occupancy issued for the Affordable Housing Unit(s), and any other documentation regarding EDCHDO's design and construction of the Affordable Housing Unit(s) to the City and return all of the remaining Funds, including program income, to the City after payment of the verified design and construction costs for the Affordable Housing Unit(s) on the Retained Properties or Retained Property.

2. If either of the Retained Properties is sold for an amount less than the amount of Funds that EDCHDO expended to design and construct the Affordable Housing Unit(s) thereon ("Sold at a Loss"), including the architectural, engineering, contractor, permitting and related costs incurred by EDCHDO to complete such unit(s) and obtain a certificate of occupancy therefor, EDCHDO shall not be entitled to receive a Development Fee from the first-time homebuyer at closing for the sale thereof; provided, if EDCHDO believes it can demonstrate why the Retained Properties or Retained Property Sold at a Loss through no fault of EDCHDO, it may appear before the City’s Redevelopment and Preservation Commission ("RPC") to request payment of some or all of the Development Fee(s) prohibited by this Section which the RPC can approve or deny in its sole discretion.

3. If EDCHDO completes construction of all of the Affordable Housing Units on and sells the Retained Properties by December 31, 2017 or April 30, 2018, as applicable, in accordance with the requirements set forth in Section 1.b or 1.c above, it shall immediately provide the City within 5 days of such sales with a copy of all binding contract(s) of sale it has procured to purchase additional property on which to build affordable housing unit(s) that shall satisfy the affordable housing requirements of the MOU, as amended by the MOU Amendment, which are estimated to exhaust all remaining Funds to complete. In the event EDCHDO fails to provide such documentation to the City in compliance with this Section, EDCHDO shall immediately return all remaining Funds, including program income, to the City.

In all other respects, the MOU, as amended by the MOU Amendment, entered into by and between the City and EDCHDO remains unmodified and in full force and effect.

(Remainder of Page Left Intentionally Blank)
IN WITNESS WHEREOF, the parties have executed this Second Amendment to the Memorandum of Understanding as of the date first written above and after due authorization by the City of Charleston City Council.

WITNESSES:

Episcopal Diocese of South Carolina Community Housing Development Organization
By: William Schandall
Its: Chairman, William Schandall

11/16/2016

WITNESSES:

The City of Charleston
By: John J. Tecklenburg
Its: Mayor, John J. Tecklenburg
REAL ESTATE COMMITTEE
GENERAL FORM

TO: Real Estate Committee DATE: March 1, 2021
FROM: Julia P. Copeland DEPT: Legal
ADDRESS: 216 Ashley Avenue, 80 Ashley Avenue, and 147 Broad Street
TMS: N/A
PROPERTY OWNER: City of Charleston

ACTION REQUEST: Request Authorization for Mayor to execute limited pole agreement, in a form approved by legal staff, between City of Charleston and Crown Castle

ORDINANCE: Is an ordinance required? Yes [ ] No [ x ]

COORDINATION: The request has been coordinated with:
All supporting documentation must be included

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<tr>
<th>Department Head</th>
<th>Signature</th>
<th>Attachments</th>
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<td>Legal Department</td>
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<td>Chief Financial Officer</td>
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<td>Director Real Estate Management</td>
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FUNDING: Was funding needed? Yes [ ] No [ ]
If yes, was funding previously approved?* Yes [ ] No [ ]

*If approved, provide the following:
Dept/Div. [ ] Acct. [ ]
Balance in Account [ ] Amount needed for this item [ ]

NEED: Identify any critical time constraint(s).

*Commercial Property and Community & Housing Development have an additional form.
To: Mayor and Council  
From: Stephen L. Brown  
Date: March 2, 2021  
Re: District Court rules on City’s denial and conditional approval of Crown Castle’s small wireless facility applications

Four Small Cell Permit Denials Upheld By Federal Court  
On February 15, 2021 Judge David Norton upheld the City’s denials of four (4) small cell wireless facilities (commonly called nodes which are used for 5g service). The location of the permit applications which were denied are:

**CHS-026** - Application CHS-026 relates to a new tower to be placed at 82 East Bay Street at the intersection of Vanderhorst Warf. It is adjacent to Rainbow Row.

**CHS-027** - Application CHS-027 is located at the intersection of Rutledge Blvd. and Gibbes Street. This location, as proposed by Crown, would place a 35-foot large black metal tower next to a side porch on a residential home.

**CHS-028** Application CHS-028 is located at the intersection of Tradd and Limehouse streets. The proposed new tower and small wireless facility substantially impinge on all views from the front windows of the home which are located within ten (10) feet from the new tower. The sidewalk in this area is very narrow. As a result the proposed tower stood out significantly.

**CHS-032** Application CHS-032 is located on Broad Street as it intersects with Meeting Street. This area is our famous Four Corners of Law.

All applications were independently denied with a factual basis for each provided by the DRC in writing. In sum, the DRC found each of these proposed towers:

1. Did not preserve the character of the neighborhood in issue.
2. Failed to minimize the visual impact and bulk in the right of way; by architecturally integrating the proposed tower with its surroundings;
3. Did not provide a uniform look and feel with the adjoining historical area in that each stands out significantly when compared to its historical setting.

Judge Norton affirmed all four denials issued by the DRC and the City, finding:

- Each denial was supported by substantial evidence in the record;
- The process used by the City and the DRC was not subject to judicial review; and
- The City’s design guidelines provided proper standards for consideration by the DRC.

Federal law and the FCC significantly limit our rights to prohibit nodes. Each of these locations had unique features which ran afoul of the guidelines established under the limited power the City retains. While all areas of our City contain unique features, the City was pleased with the detail and attention the court demonstrated in reviewing and affirming these denials.
POLE AGREEMENTS REQUIRED

With regard to applications CHS-001, CHS-016 and CHS 023, these applications would require new black towers in areas which the City believes are inappropriate. Photo simulations of the proposed towers are attached. The City owns wooden poles adjacent to each of these locations. Because the City owned poles at each of these locations that could accommodate the small cell wireless facilities, it indicated Crown could utilize these poles for the fees set by the FCC, on the condition that a limited pole attachment agreement was entered into and approved by City Council. Such an agreement is to go before the Real Estate Committee and will come before Council at its next meeting. If we do not approve the limited pole attachment agreement within thirty (30) days of Judge Norton’s ruling, we will in all likelihood have the court approve the three black towers shown on CHS-23, CHS-01 and CHS-16 which are attached.

Other nodes attached to existing wooden poles have attracted far less opposition and complaints from adjoining property owners. Faced with a potential court order and unsightly towers, passage of the limited pole attachment agreement is needed immediately.
LIMITED, NON-EXCLUSIVE POLE ATTACHMENT AGREEMENT (FIBER-BASED SMALL WIRELESS NETWORK)

ACCESS TO POLES

THIS LIMITED, NON-EXCLUSIVE POLE ATTACHMENT AGREEMENT (this “Agreement”) is entered into as of the date fully executed below (the “Effective Date”), by and between the City of Charleston, a government unit in the State of South Carolina (“City”), and Crown Castle Fiber LLC, a New York limited liability company (“Utility”). City and Utility may be referred to collectively herein as the “Parties” and each a “Party”.

RECITALS

WHEREAS, Utility, a telecommunication carrier as defined in 47 U.S.C. §153(51), intends to install its Utility Facilities within the Right-of-Way to be located on certain City Facilities;

WHEREAS City desires to grant access to Utility to certain City-owned Facilities subject to the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

(1) Definitions: In addition to terms otherwise defined herein, the following definitions shall apply generally to the provisions of this Agreement

a) City Facilities: City-owned or maintained poles specifically described in Exhibit A to this Agreement.

b) City Attachments: All street signs, traffic signals, streetlight luminaires, pedestrian luminaires, pedestrian crosswalk signals, and traffic signs attached to City Facilities.

c) Default: Any failure to fulfill the terms, conditions and obligations of this Agreement after the right to cure period set forth in Section 8 has expired.

d) Fiber Network: The fiber-optic cable, manholes, handholes and related equipment to be installed and operated by Utility in the Right-of-Way, pursuant to the Non-Exclusive Franchise Agreement dated July 30, 2019 between the Parties hereto by which Utility provides telecommunications within the City (the “Franchise Agreement”). A copy of the Franchise Agreement is attached hereto as Exhibit B.

e) Laws: Any and all applicable constitutions, charters, by-laws, statutes, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificating, orders, or other requirements of the City or any Agency, in effect at any time during the Term.

f) Make-Ready: The modification or replacement of certain City Facilities, or of the lines or equipment attached to such facilities, to accommodate additional facilities thereon.

g) Permit Fee: The fee as published by the City in Ordinance 2018-154.

h) Annual Fee: The fee to be paid by Crown Castle to the City annually for the use of each City Facility listed in Exhibit A to this Agreement.

i) Right-of-Way: The space in, upon, above, along, and under the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including all public utility easements and public service easements as the same now or hereafter may exist, that are under the jurisdiction of the City. This term shall not include county, state, or federal rights-of-way or any property owned or controlled by any person or Agency other than the
City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or Agency.

j) **Small Wireless Facility**: A wireless facility installed at a single location that meets both of the following qualifications: (i) each antenna could fit within an enclosure of no more than three (3) cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume regardless of whether the facility is ground-mounted or pole-mounted. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecom demarcation boxes, grounding equipment, power transfer switches, cut-off switches, fiber optic cables and vertical cable runs for connection of power and other services. A distributed antenna system (DAS) node is a type of Small Wireless Facility. The Small Wireless Facility also includes fiber-optic and electrical connections (i.e., laterals or service drops) required to connect the Small Wireless Facility to the Utility’s Fiber Network.

k) **Street Sign Poles**: City Facilities with City or SCDOT street signs attached.

(2) **Term**: This Agreement shall commence on the Effective Date and extend for an initial term of five (5) years (the "Initial Term") unless it is earlier terminated by either Party in accordance with the terms of this Agreement. This Agreement shall automatically renew for up to six (6) additional terms of 5 years each (a "Renewal Term", together with the Initial Term, the "Term") upon the terms and conditions set forth herein, unless Utility gives written notice to City or City gives written notice to Utility of either’s intent not to renew this Agreement at least six (6) months prior to the expiration of the Initial Term or the current Renewal Term. Notwithstanding, Utility may terminate this Agreement at any time by providing City with sixty (60) days prior written notice. Utility shall remove all of its Small Wireless Facilities from City Facilities subject to this Agreement in the Right-of-Way not less than one hundred eighty (180) days following expiration or termination of the Term. City may terminate this Agreement at any time for Default as provided in Section 8 hereof.

(3) **Scope of Agreement**

a) **Access to City Facilities**: City hereby authorizes and permits Utility to access the City Facilities listed in Exhibit A to this Agreement to attach, install, operate, remove, relocate, repair, and maintain Small Wireless Facilities during the Term. Utility understands that this Agreement does not provide Utility the exclusive use of the City Facilities subject to this Agreement. All such Small Wireless Facilities shall be constructed and placed in accordance with permits issued by the City and all applicable Laws. Any pole replaced shall be with a pole of a like kind.

i) **Future Attachments**: Attachments of Small Wireless Facilities to additional City Facilities, as agreed to by the Parties, shall be documented in an amended Exhibit "A" to this Agreement.

b) **Conditions to Rights**: Nothing in this Agreement shall be deemed to grant, convey, create, or vest in Utility a real property interest in land, including any fee, leasehold interest, or easement.

c) **No Interference**: Utility shall not interfere with any other use of City Facilities, City Attachments to City Facilities or SCDOT attachments to City Facilities. The Parties shall fully comply with the provisions of Schedule 1 to this Agreement.

(4) **Relocation**: At no cost to City, Utility shall relocate or adjust the Small Wireless Facilities as required in connection with any future improvements to City Facilities constructed on behalf of the City ("Public Project") as requested in writing by the City within a reasonable time under the circumstances. If Utility fails to timely relocate the Small Wireless Facilities, City may relocate the Small Wireless Facilities at Utility’s sole cost and shall notify utility promptly upon completion. The City will use its best efforts to accommodate Utility's request for relocation of the Small Wireless Facilities. Any costs related to projects other than Public Projects which require the relocation or adjustment of the Small Wireless Facilities shall be borne by the applicable party funding the project. Where a Public Project requires that utilities be undergrounded, Utility will underground its facilities at its expense to the extent technologically feasible. If undergrounding is technically impossible (such as Small Wireless Facilities which are used for RF transmission), Utility and City will cooperate on a pole structure and design in accordance with the provisions of Ordinance 2018-154.
Maintenance and Damage

a) Damage: Subject to the terms of Exhibit C attached to this Agreement, if Utility materially damages City Facilities it shall promptly repair and return the City Facilities to a condition as good as existed prior to the damage at its expense, normal wear and tear excepted. If Utility does not timely complete the repairs, the City shall have the option, upon five (5) days' written notice to Utility, to perform such reasonable and necessary repair work on behalf of Utility and to charge Utility for the actual and itemized costs incurred by the City. Upon the receipt of the demand for payment, Utility shall promptly reimburse the City for such cost within thirty (30) days of receipt of a written invoice. Failure to pay such written invoice within thirty (30) days shall constitute a Default of this Agreement.

b) Casualty: In the event of damage to a City Facility rendering it unusable for the support of the Small Wireless Facilities (collectively, "Casualty"), applicable Annual Fees shall abate during the period the City Facility is unusable to Utility due to the Casualty unless caused in whole or in part by Utility, its agents, contractors, or subcontractors. If the Casualty cannot reasonably be repaired within thirty (30) days, Utility may terminate its use of the City Facility by written notice to City and Utility's obligation to pay Annual Fees with respect to the City Facility shall terminate upon such notice provided the Casualty was not caused in whole or in part by Utility, its agents, contractors, or subcontractors.

(5) Indemnification and Waiver

a) Indemnification: Utility agrees to indemnify, defend and hold harmless the City, its officers, employees and agents from and against any and all claims, demands, losses, damages, liabilities, fines, and penalties, excepting Acts of God, and all costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense (collectively, the "Losses") arising in whole or in part out of this Agreement or any breach by Utility of its obligations described in this Agreement or any careless, negligent or willful act or omission of Utility, its officers, employees and agents or its independent contractors, except to the extent any Losses arise from the willful misconduct or negligent acts or omissions of the City, its officers, employees or agents. This indemnification provision does not abrogate or waive any defense(s) available to the City under the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10, et seq.

(6) Insurance:

Utility shall procure and maintain, for the Term of this Agreement, primary non-contributory insurance against claims for injuries to persons or damages to property which may arise from or in connection with work performed by Utility, its agents, representatives, employees or subcontractors. The cost of such insurance shall be the responsibility of Utility.

a) General Liability - public liability, including premises, products and complete operations.
   (1) Bodily injury liability $1,000,000 each person
       $1,200,000 each occurrence
   (2) Property damage liability $1,200,000 each occurrence, or
   (3) Bodily injury and property damage combined $1,200,000 single limit

b) Comprehensive - Automobile Liability Insurance, including owned, non-owned and hired vehicles.
   (1) Bodily injury liability $1,000,000 per person
   (2) Property damage liability $1,200,000 each occurrence, or
   In lieu of (1) and (2)
   Bodily injury and property damage combined $1,200,000 single limit

c) Utility shall furnish the City with Certificates of Insurance noting the coverage endorsements and listing the City of Charleston as an additional insured. The certificates and endorsements for each insurance
policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All
certificates and endorsements are to be received and approved by the City before work commences. The
City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Required certificates and requested policies should be mailed to:

City of Charleston Legal Department
Attn: Corporation Counsel
30 Broad Street
Charleston, SC 29402-0304

(7) Notices: All notices pursuant to this Agreement shall be in writing and delivered personally or delivered at the
locations below by: (i) U.S. Postal Service registered or certified mail; or (ii) overnight delivery service. Notices
shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the
next day in the case of overnight delivery. Either Party may change or add any address by written notice to the
other Party delivered in the same manner.

If to City: If to Utility:

Mayor
City of Charleston
P.O. Box 304
Charleston, South Carolina 29403-0304

Crown Castle Fiber LLC
2000 Corporate Drive
Canonsburg, PA 15317

Attn: Ken Simon, General Counsel

With a copy to: With a copy to:

Corporation Counsel
City of Charleston
P.O. Box 304
Charleston, SC 29402-0304

Crown Castle Fiber LLC
2000 Corporate Drive
Canonsburg, PA 15317

Attn: SCN Contracts Management

Director
Department of Public Service
2 George Street, Suite 2100
Charleston, South Carolina 29401

Director
Department of Public Service
2 George Street, Suite 2100
Charleston, South Carolina 29401

24/7 emergency contact number: 24/7 emergency contact information:

[Insert number] Telephone: (888) 632-0931 E-Mail: SCN.NOC@crowncastle.com

(8) Default: Upon written notice of a violation of any portion of this Agreement by either Party, the other Party shall
have forty-five (45) days to cure the violation. This time period may be extended by the consent of the Parties.
Either Party may terminate this Agreement upon an uncurt Default.

(9) Assignment: This Agreement shall not be assigned by Utility without the written consent of City. This
Agreement is binding upon the successors and assigns of the Parties.

(10) Governing Law

a) Choice of Law: This Agreement shall be governed and construed by and in accordance with the laws of the
state of South Carolina, without reference to its conflict of law principles.
b) **Venue:** Any litigation commenced under this Agreement shall be brought exclusively in the federal or state courts with authority in the City. The prevailing Party shall be entitled to recover its cost of suit, including reasonable attorneys' fees.

**IN WITNESS WHEREOF,** the Parties intending to be bound have executed this Agreement as of the Effective Date.

**CITY:**
City of Charleston

**UTILITY:**
Crown Castle Fiber LLC

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________
**Exhibit A**

The City Facilities subject to this Limited Pole Attachment Agreement are City-owned poles located at:

<table>
<thead>
<tr>
<th>Address</th>
<th>Annual Fee $270</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 216 Ashley Avenue</td>
<td></td>
</tr>
<tr>
<td>2. 80 Ashley Avenue</td>
<td></td>
</tr>
<tr>
<td>3. 147 Broad Street</td>
<td></td>
</tr>
</tbody>
</table>
Exhibit B

Non-Exclusive Franchise Agreement dated July 30, 2019 between
Crown Castle Fiber LLC and the City of Charleston, SC
Exhibit C

City Facilities: Maintenance and Make Ready Work

1. **General Maintenance:** During the Term, Utility shall be responsible for keeping all of its Small Wireless Facilities in good order and repair. City shall be responsible for keeping all City Attachments on City Facilities utilized by Utility, in good order and repair including replacement of any damaged or defective City Attachments unless such damage was caused in whole or in part by the Utility, its agents, contractors or subcontractors. If City changes, replaces or adds any City Attachments to City Facilities utilized by Utility, City shall first consult with Utility to confirm the structural integrity of the affected City Facilities to support such changed, replaced, or additional City Attachments.

2. **No Interference:** Utility shall not, at all times, interfere with and shall allow the City to comply with SCDOT Signal Maintenance Agreement regardless of the ownership of the pole(s) in issue provided the Signal Maintenance Agreement is applicable to such pole. Before undertaking any such obligations, inspections, or repairs to a Utility owned pole containing City or SCDOT attachments, City shall first consult with Utility to confirm the scope of work to be performed and the scheduling thereof. On Utility Poles where the City is proposing such obligations, inspections or repairs, City shall be liable to Utility for any damage to the affected Utility Pole(s) attributable to such work.

3. **Make-Ready Work:** If a City Facility requires Make-Ready work, then Utility shall be responsible for all architectural and engineering design and plans for such Make-Ready work. If replacement is necessary, Utility shall replace the City Facility at Utility's expense in accordance with the plans. Utility shall be responsible for performing the Make-Ready work using agreed-upon contractors.
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 2138 GOLFWAY DRIVE (0.22 ACRE) (TMS# 343-06-00-013), JAMES ISLAND, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 11. THE PROPERTY IS OWNED BY GREG WHITE.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 11 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 2138 Golfview Drive, (0.22 acre) is identified by the Charleston County Assessors Office as TMS# 343-06-00-013, (see attached map) and includes public rights-of-way, shown within the area annexed upon a map attached hereto and made a part hereof.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this ______ day of ____________, in the Year of Our Lord, ____________, in the ______ Year of the Independence of the United States of America.

By:

John J. Tecklenburg
Mayor

Attest:

Jennifer B. Cook
Clerk of Council
Annexation Profile

Parcel Address: 2138 Golfview Drive

Owner Names: Greg White

Parcel ID: 3430600013

Presented to Council: 3/9/2021
Status: Received Signed Petition
Year Built: 1958
Number of Units: 1
Number of Persons: 3
Race: Caucasian
Acreage: 0.22
Current Land Use: Residential
Current Zoning: R-4
Requested Zoning: SR-1
Recommended Zoning: SR-1
Appraised Value: $406,500.00
Assessed Value: $12,650.00
Stormwater Fees: To Be Calculated

<table>
<thead>
<tr>
<th>Police</th>
<th>Located in existing service area - Team 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire</td>
<td>Located in existing service area - Station 13</td>
</tr>
</tbody>
</table>

Public Service

Sanitation Located in existing service area. One additional stop.
Storm Water Contiguous to existing service area.
Streets and Sidewalks Additional State-maintained right-of-way

Traffic and Transportation

Signalization None
Signage None
Pavement Markings None

Charleston Water System CWS provides water. James Island PSD provides sewer.

Planning

Urban Growth Line Property is a developed site within the line.
City Plan (Century Five) Suburban
Elevation Range 15-19 ft

Parks Already being served.

Notes/Comments:

City Plan Recommendation: The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.
STATE OF SOUTH CAROLINA  )
COUNTY OF CHARLESTON    )  PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the annexation of an area or property which is contiguous to a City by filing with the municipal governing body a petition signed by all persons owning real estate in the area requesting annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located on James Island (0.22 acre) to be annexed is identified by the Charleston County Assessors Office as Property Identification Number: TMS# 343-06-00-013 (2138 Golfview Drive).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the above described area into the municipal limits of the City of Charleston.

Dated this 9th day of March, 2020

FREEHOLDERS (OWNERS) SIGNED

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date of Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greg White</td>
<td>2.3.2021 (Date)</td>
</tr>
<tr>
<td>(Print Name)</td>
<td>(Signature)</td>
</tr>
<tr>
<td>Greg White</td>
<td>2.3.2021 (Date)</td>
</tr>
<tr>
<td>(Print Name)</td>
<td>(Signature)</td>
</tr>
<tr>
<td>Veronica White</td>
<td>2.3.2021 (Date)</td>
</tr>
<tr>
<td>(Print Name)</td>
<td>(Signature)</td>
</tr>
</tbody>
</table>
Annexation Map

Location: James Island

Property Address: 2138 Golfview Dr

Tax Map # (TMS): 3430600013

Area (Acres): approx. 0.22

Council District: 11
AN ORDINANCE

TO PROVIDE FOR THE ANNEXATION OF PROPERTY KNOWN AS 114 MAGNOLIA ROAD (0.20 ACRE) (TMS# 418-13-00-166), WEST ASHLEY, CHARLESTON COUNTY, TO THE CITY OF CHARLESTON, SHOWN WITHIN THE AREA ANNEXED UPON A MAP ATTACHED HERETO AND MAKE IT PART OF DISTRICT 3. THE PROPERTY IS OWNED BY MATT PRENDERGAST.

BE IT ORDAINED BY THE MAYOR AND THE MEMBERS OF CITY COUNCIL, IN CITY COUNCIL ASSEMBLED:

Section 1. As an incident to the adoption of this Ordinance, City Council of Charleston finds the following facts to exist:

A) Section 5-3-150, Code of Laws of South Carolina (1976) as amended, provides a method of annexing property to a city or town upon a Petition by all persons owning real estate in the area requesting annexation.

B) The City Council of Charleston has received a Petition requesting that a tract of land in Charleston County hereinafter described be annexed to and made a part of the City of Charleston, which Petition is signed by all persons owning real estate in the area requesting annexation.

C) The area comprising the said property is contiguous to the City of Charleston.

Section 2. Pursuant to Section 5-3-150, Code of Laws of South Carolina (1976) as amended, the following described property be and hereby is annexed to and made part of the City of Charleston and is annexed to and made part of present District 3 of the City of Charleston, to wit:

SAID PROPERTY to be annexed, 114 Magnolia Road, (0.20 acre) is identified by the Charleston County Assessors Office as TMS# 418-13-00-166, (see attached map).

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of ____________________________ in the Year of Our Lord, ____________________________ in the ______ Year of the Independence of the United States of America.

By:

John J. Tecklenburg
Mayor

Attest:

Jennifer B. Cook
Clerk of Council
# Annexation Profile

**Parcel Address:** 114 Magnolia Road  
**Owner Names:** Matt Prendergast  
**Parcel ID:** 4181300166  
**Presented to Council:** 3/9/2021  
**Status:** Received Signed Petition  
**Year Built:** 1948  
**Number of Units:** 1  
**Number of Persons:** 3  
**Race:** Caucasian  
**Acreage:** 0.20  
**Current Land Use:** Residential  
**Current Zoning:** R-4  
**Requested Zoning:** SR-1  
**Recommended Zoning:** SR-1  
**Appraised Value:** $276,500.00  
**Assessed Value:** $10,810.00  
**Stormwater Fees:** To Be Calculated

| **Mailing** | 114 Magnolia Rd  
| **Address:** | Charleston, SC 29407  
| **City Area:** | West Ashley  
| **Subdivision:** | Carolina Terrace  
| **Council District:** | 3  
| **Within UGB:** | Yes |  
| **Police** | Located in existing service area - Team 4  
| **Fire** | Located in existing service area - Station 10  
| **Public Service** |  
| **Sanitation** | Located in existing service area. One additional stop.  
| **Storm Water** | Contiguous to existing service area.  
| **Streets and Sidewalks** | No additional City-maintained right-of-way  
| **Traffic and Transportation** |  
| **Signalization** | None  
| **Signage** | None  
| **Pavement Markings** | None  
| **Charleston Water System** | CWS service area.  
| **Planning** |  
| **Urban Growth Line** | Property is a developed site within the line.  
| **City Plan (Century Five)** | Suburban  
| **Elevation Range** | 10-13 ft  
| **Parks** | Already being served.  

**Notes/Comments:**

**City Plan Recommendation:** The existing development and proposed zoning is consistent with the City Plan. Recommend annexation.
STATE OF SOUTH CAROLINA )
COUNTY OF CHARLESTON )

PETITION FOR ANNEXATION

TO THE HONORABLE MAYOR AND CITY COUNCIL OF CHARLESTON

WHEREAS, SECTION 5-3-150 (3) Code of laws of South Carolina provides for the
annexation of an area or property which is contiguous to a City by filing with the municipal
governing body a petition signed by all persons owning real estate in the area requesting
annexation, and

WHEREAS, the undersigned are all persons owning real estate in the area requesting
annexation, and

WHEREAS, the area requesting annexation is described as follows, to wit:

SAID PROPERTY, located in West Ashley (approximately 0.20 acre) to be annexed
is identified by the Charleston County Assessors Office as Property Identification Number:
TMS# 418-13-00-166 (Address: 114 Magnolia Road).

NOW, THEREFORE, the undersigned petition the City Council of Charleston to annex the
above described area into the municipal limits of the City of Charleston.

Dated this 10th day of
February, 2021

FREETHOLDERS (OWNERS) SIGNED DATE OF SIGNATURE

(Signature) 2/11/2021
(Print Name)

(Signature) (Date)

(Print Name)
Annexation Map

Location: West Ashley

Property Address: 114 Magnolia Rd

Tax Map # (TMS): 4181300166

Area (Acres): approx. 0.20

Council District: 3