


DORCHESTER COUNTY, SOUTH CAROLINA


James Lex Byars, III
Chairman Dorchester County Council

(SEAL)

ATTEST:


Tracey L. Langley,
Clerk of Council, Dorchester County

| | |
|------------------------|------------|
| First Reading: | 06/18/2018 |
| Second Reading: | 07/16/2018 |
| Second Public Hearing: | 07/16/2018 |
| Third Reading: | 07/23/2018 |

EXHIBIT A

Amended Form District Master Plan

EXHIBIT B

First Amendment to Development Agreement

FIRST AMENDMENT TO THE EAST EDISTO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO THE EAST EDISTO DEVELOPMENT AGREEMENT (this "First Amendment") is made and entered into to be effective as of 23rd day of July 2018, by and between DORCHESTER COUNTY, a political subdivision of the State of South Carolina (the "County"), and WestRock-Charleston Land Partners, LLC a Delaware limited liability company, f/k/a MWV-East Edisto Dorchester, LLC ("Land Partners"), and MWV-EAST EDISTO SUMMERS CORNER, LLC, a Delaware limited liability company ("East Edisto", and together with Land Partners, the "Property Owner").

RECITALS:

WHEREAS, on or about December 12, 2012, Land Partners entered into that certain Development Agreement with the County, incident to the future development of approximately thirty-eight thousand six hundred ninety-nine (38,699) acres of real property, as further described on Exhibit "A" of the Development Agreement (the "Property"), which Development Agreement was recorded on December 19, 2012, in the Office of the Register of Deeds of Dorchester County, South Carolina (the "ROD"), in Book 8601, Page 1; and

WHEREAS, County and Land Partners entered into that certain Addendum to Development Agreement dated November 3, 2013, and recorded in the ROD in Book 9109 at Page 349 (the "Addendum"); and

WHEREAS, Land Partners and East Edisto entered into that certain Partial Assignment and Assumption of Rights and Obligations Under Development Agreement dated December 6, 2013, related to the conveyance of six-thousand four hundred forty-five (6,445) acres, commonly known as "Summers Corner", of the Property and recorded in the ROD in Book 9372, Page 139; and

WHEREAS, Land Partners retained a portion of the Property, including approximately eight-hundred sixty-one (861) acres that is subject to this First Amendment; and

WHEREAS, County and East Edisto entered into that Second Addendum to Development Agreement dated April 20, 2015, and recorded in the ROD in Book 9705 at Page 46 (the "Second Addendum"); and

WHEREAS, County and East Edisto entered into that Third Addendum to Development Agreement dated March 3, 2016, and recorded in the ROD in Book 10122, Page 289 (the "Third Addendum") (the "Development Agreement", "Addendum", "Second Addendum" and "Third Addendum" collectively the "Development Agreement"); and

WHEREAS, the County, acting by and through County Council adopted Ordinance Number 18-13 on July 23, 2018, amended the Form Based Code as it relates to those parcels

listed on the attached Exhibit A (the “Affected Property”) and authorized the execution and delivery of this First Amendment; and

WHEREAS, pursuant to the Code of Laws of South Carolina Section 6-31-60, as amended, the County conducted a public hearing regarding the consideration of this First Amendment on July 23, 2018, after publishing and announcing notice.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth in this First Amendment, the receipt and sufficiency of such consideration being acknowledged by the parties and pursuant to the South Carolina Local Government Development Agreement Act, codified as S.C. Code Section 6-31-10 through 6-31-166, as amended, County Ordinance No. 97-1-2, and County Ordinance No. 18-13, the parties to this First Amendment, intending to be legally bound, agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference.
2. Form Based Code Amendment. The County and Property Owner acknowledge and agree that the East Edisto Form District Master Plan has been amended to revise, among other things, certain garage placement and driveway width criteria with respect to the Affected Property. To effectuate this, the amended and restated East Edisto Form District Master Plan dated July 23, 2018, attached hereto as Exhibit F-1, shall replace in its entirety the Form Based Code included as Exhibit F of the Development Agreement, with the revisions indicated in red.
3. Fire Protection Services and Emergency Medical Services. Section 12.2(ii) of the Development Agreement is hereby amended and restated in its entirety as follows:

(ii) The Property Owner will donate approximately two (2) acres of highland generally in the shape of a square and fronting on a public road near the intersection of Summers Drive and the spine road that connects SC Highway 165 and US Highway 17A, unless an alternative site is mutually agreed upon in writing by the Parties, (the “Fire/EMS Site”) for the site of a joint fire/EMS facility (the “Fire/EMS Facility”). Property Owner shall donate the Fire/EMS Site to the County and contribute \$1,500,000 to the cost of construction (the “Contribution”) within sixty (60) days following the Property Owner’s receipt of written certification from the County that the County has obtained the necessary permitting needed to construct the Fire/EMS Facility. The County shall maintain the Contribution in one or more segregated, interest bearing accounts. Interest earned on the Contribution must be considered funds of the account on which it is earned and shall only be used for the cost of construction of the Fire/EMS Facility. The County shall promptly commence construction of the Fire/EMS Facility following the donation of the Fire/EMS Site and Contribution to the County and in no event shall such commencement occur later than ninety (90) days thereafter. The County shall complete construction of the Fire/EMS Facility, as evidenced by the County’s issuance of a certificate of occupancy, within twenty-four (24) months following commencement of construction; provided, however, that Section 27.11 specifically applies to this Section 12.2(ii).

4. Wastewater Treatment Facility. Section 10.5 is hereby added to Article X of the Development Agreement:

10.5 Wastewater Treatment Facility. The Property Owner agrees to reasonably cooperate with the County and use good faith efforts to identify a mutually agreeable site consisting of up to thirty (30) highland acres within the Property for a wastewater treatment facility (the "Treatment Facility"), said site to be donated by the Property Owner at no monetary cost to the County (the "Treatment Facility Site"). In the event a mutually agreeable location is identified in writing by the Property Owner and the County, Property Owner and the County shall continue to negotiate in good faith to agree upon any and all matters related to the conveyance of the Treatment Facility Site and the construction and on-going operation of the Treatment Facility, including but not limited to the location of buffers, easements, and access points. In the event the Property Owner and the County are unable to agree in writing on the location of the Treatment Facility Site, any matter related to the conveyance of the Treatment Facility Site, or the construction and on-going operations of the Treatment Facility within three (3) years following the date of this First Amendment, then the obligations under this Section 4 shall automatically terminate. Further, in the event the County acquires title to a Treatment Facility at an alternative location that is not located on the Property and receives the necessary permits therefor, then the obligations under this Section 4 shall automatically terminate.

5. Effect. Terms and provisions of the Development Agreement that are not expressly modified by this First Amendment shall remain in full force and effect. All of the provisions of the Development Agreement unambiguously affected by this First Amendment shall be deemed amended, whether or not actually specified herein, if such amendment is clearly necessary to effectuate the intent of the parties hereto. The Development Agreement, as modified hereby, is hereby ratified and approved in all respects.

6. Final Agreement. The Development Agreement, as amended by the First Amendment, represent the final agreement between the parties regarding the subject matter hereof and may not be contradicted by evidence of prior, subsequent or contemporaneous oral agreements of the parties. No amendment or modification hereto shall be valid and binding unless expressed in writing and executed by both parties hereto.

7. Counterparts. This First Amendment may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Amendment.

8. Severability. If any provision of this First Amendment is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Amendment and the Development Agreement shall nonetheless remain in full force and effect.

9. Applicable Law. This First Amendment is enforceable in the State of South Carolina and shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of the State of South Carolina.

10. Captions. The section headings appearing in this First Amendment are for convenience of reference only and are not intended, to any extent for the purpose, to limit or define the test of any section or any subsection hereof.

11. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Amendment and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Amendment or any exhibits or amendments hereto.

[SEPARATE SIGNATURE PAGES ATTACHED]

IN WITNESS WHEREOF, the parties have executed this First Amendment to be effective as of the day and year first written above.

Witnesses:

DORCHESTER COUNTY, SOUTH CAROLINA

Rebecca Yonke

By: James Lex Byars III
James Lex Byars, III, Chairman
Dorchester County Council

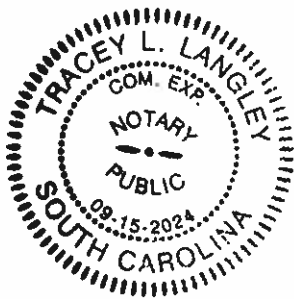
Clayton M...

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

ACKNOWLEDGMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that Dorchester County, South Carolina, a political subdivision of the State of South Carolina, by James Lex Byars, III, its Chairman of Dorchester County Council, who is personally known to me, or who was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this 34 day of July, 2018.



Tracey L. Langley
Notary Public for State of South Carolina
Print Name: Tracey L. Langley
My commission expires 09/15/2024

IN WITNESS WHEREOF, the parties have executed this First Amendment to be effective as of the day and year first written above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

WESTROCK-CHARLESTON LAND PARTNERS,
a Delaware Limited Liability Company

First Witness

By: _____ (SEAL)
Mark E. Lewis
Its: Senior VP & CFO, Land and Development

Second Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that WestRock-Charleston Land Partners, LLC, by Mark E. Lewis, its Senior VP & CFO, Land and Development, who is personally known to me, or who was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this ____ day of _____, 2018.

Notary Public for State of South Carolina
Print Name: _____
My commission expires: _____

IN WITNESS WHEREOF, the parties have executed this First Amendment to be effective as of the day and year first written above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

MWV-EAST EDISTO SUMMERS CORNER, LLC,
a Delaware Limited Liability Company

First Witness

By: WestRock-Charleston Development Holdings, LLC
Its: Sole Member

Second Witness

By: _____ (SEAL)
Mark E. Lewis
Its: Senior VP & CFO, Land and Development

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

ACKNOWLEDGEMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that MWV-East Edisto Summers Corner, LLC, a Delaware limited liability company, by WestRock-Charleston Development Holdings, LLC, its Sole Member, by Mark E. Lewis, its Senior VP & CFO, Land and Development, who is personally known to me, or who was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Subscribed to and sworn before me this ____ day of _____, 2018.

Notary Public for State of South Carolina
Print Name: _____
My commission expires: _____

EXHIBIT A

List of Affected Property

EXHIBIT F-1

Amended and Restated Form Based Code