

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER) MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") represents the non-binding understanding between and among Dorchester County, South Carolina, a political unit of the state of South Carolina ("County"), BRD Land & Investment, a South Carolina general partnership (BRD), Anna S. Seago, Trustee and George H. Seago, III, Trustee and AGG, LLC, a South Carolina limited liability company, (collectively being "Seago", and with BRD the "Developer"). The County, BRD and Seago are sometimes referred to individually as a "Party" or collectively as the "Parties". Nothing contained herein shall obligate either party until a final Development Agreement regarding the subjects set forth herein is reached and approved.

WHEREAS, BRD is the contract buyer of that certain property located within the County consisting of approximately 212.618 Acres which is a portion of that certain property bearing TMS Number 127-00-00-074.000 ("Parcel 1");

WHEREAS, BRD is the contract buyer of that certain property located within the County consisting of approximately 130.245 Acres bearing TMS # 127-00-00-099.000 and certain created easement parcels for water, sewer, road and/or stormwater infrastructure to be granted within that property bearing of TMS # 127-00-00-137.000 and 127-00-00-077.000 ("Parcel 2");

WHEREAS, BRD is the contract buyer of that certain property located within the County consisting of approximately 133.75 Acres bearing TMS Number 120-00-00-017.000 ("Parcel 3");

WHEREAS, ANNA S. SEAGO, TRUSTEE AND GEORGE H. SEAGO, III, TRUSTEE, are the owners of that certain property located within the County consisting of approximately 101.184 Acres bearing TMS # 128-00-00-086.000 ("Parcel 4");

WHEREAS, AGG, LLC, is the owner of that certain property located within the County consisting of approximately 30.992 Acres bearing TMS # 128-00-00-088.000 ("Parcel 5");

WHEREAS, Parcels 1, 2, 3, 4 and 5 (collectively, the "Property") are wholly incorporated within the combined areas consisting of a total area of approximately 608.789 acres as shown on that community plan which is attached hereto as Exhibit I.

WHEREAS, Developer and County intend that the Property be developed into a community (the "Community") containing single family owned detached residences, and related improvements, common areas and a Land for Community Facilities parcel (as such term is defined in later herein); and

WHEREAS, County desires the development of the Community and County is willing to partner in the construction of certain onsite and offsite improvements and take such other actions as are herein below stated to facilitate the development of the Community.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT, for and in consideration of the foregoing premises and mutual promises made one to the other, Developer and County agree as follows:

1. The recitals above are incorporated into this MOU.
2. Phasing of the Community and Infrastructure Improvements. County and Developer acknowledge the Community will be developed in multiple phases and that certain onsite and offsite infrastructure improvements will be necessary before the construction of the initial phases and some will not be necessary until later phases of the Community are constructed. County and Developer specifically agree to the general schedule for infrastructure improvements set forth herein and generally agree to work together to create a more detailed schedule regarding improvement construction.
3. Homes.
 - a. Estimated Number of Homes. County and Developer estimate that the Community will consist of no less than 1,367 and no more than 1,709 homes (each a "Home" and collectively, the "Homes") and that the actual number of Homes may vary due to application of the R-2 Zoning classification in conjunction with the Cluster Subdivision Development standards promulgated in the Dorchester County Zoning and Land Development Standards Ordinance Number 04-13 (the "Ordinance").
 - b. Building Permit Availability. County agrees building permits shall be available for the construction of each Home. Developer and County shall agree in the Development Agreement to a maximum number of building permits that shall be available in each calendar year of the project.
 - c. Owner Occupied and Renter Occupied Homes. Each Home shall initially be intended for occupancy by an owner of the Home ("Owner Occupied Home") or by a renter of the Home ("Renter Occupied Home"). County and Developer agree that Owner Occupied Homes will not be built for the purpose of being occupied by renters but that each future owner of an Owner-Occupied Home shall be permitted to rent such home consistent with the covenants, restrictions and by laws (the "CCR") that will govern the Community. County and Developer agree that no more than 25% of the homes constructed will be constructed with the sole purpose of being renter-occupied homes. The CCR shall be provided to the County for its review and approval to accomplish this restriction and shall be made a part of any final Agreement.
 - d. Annual Tracking of Home Building Permits and Certificates of Occupancy. No later than January 31st of each year, Developer shall provide County with an updated schedule indicating the number of building permits and Certificates of Occupancy (each a "CO", and collectively the "CO's") issued for the previous calendar year and for the Community to date.

4. Zoning. County and Developer agree that as part of the development of the Community, staff supports the rezoning of Parcels 1, 2, 3, 4 and 5 to R-2 Single-Family and the Developer commits to Developing the Property using the Cluster Subdivision Development Standards of the Ordinance.

5. Developer Payment, County Installed Road Improvements.

a. Developer shall make a payment in the amount of **Ten Million Three Hundred Thousand and No/100 Dollars (\$10,300,000.00)** (the "Developer Payment") to County. The Developer Payment is intended for County's use to engineer, improve, construct and maintain certain improvements to the intersection of Orangeburg Road and Mallard Road (the "Orangeburg/Mallard Road Improvements"). Developer shall deposit **Two Million and No/100 Dollars (\$2,000,000.00)** of the Developer Payment with the County prior to Developer's receipt of a land disturbance permit authorizing the development of the first phase of the Community. Developer shall deposit the remaining **Eight Million Three Hundred Thousand and No/100 Dollars (\$8,300,000.00)** of the Developer Payment prior to the County's issuance of the 100th CO for a home constructed in the Community. Failure to pay will suspend the issuance of any additional building permits or CO's.

b. Notwithstanding anything to the contrary herein, Developer shall have no liability for any additional economic contributions and the County shall not be limited to using these funds on the Orangeburg/Mallard Road Improvements. County shall be entitled to utilize the Developer Payment on any public improvement located within the County.

6. Developer Installed Road Improvements.

a. Developer shall, at its cost, engineer, improve, construct Yerby Road right-of-way ("ROW") and wear surface, to be defined by Public Works, to County standards as required to serve as the main entrance into the Community and the Developer shall submit a Road Maintenance Acceptance Application to the County and the County shall have accepted such Application prior to the County's issuance of the 41st CO for a Home constructed in the Community. Failure to comply will suspend the issuance of any additional building permits or certificates of occupancy. Should the Developer choose to use Yerby Road as a construction entrance for the development of any phase of the project, including, but not limited to the construction of homes, the installation of infrastructure, or any other development purpose, the Developer shall provide to the County a bond in such form as is acceptable to the County to provide funding should it be necessary to perform any repaving or repairs to such road as a result of its use as a construction entrance. The bond shall be in such an amount as requested by the County to ensure sufficient funding for such purpose.

b. The County agrees to participate in condemnation process for ROW for Yerby Road. The Developer agrees to pay all costs associated with such condemnations, including

but not limited to, legal fees, costs, experts, and the payment to the landowner. Outside counsel will be employed by the County for any such condemnations.

- c. Developer shall, at its cost, engineer, improve, construct a spine road from Yerby Road to Sinclair Road (the "Interior Spine Road") consisting of a 75' right-of-way and wear surface, to be defined by Public Works. Developer has discretion to construct the Interior Spine Road as either curb and gutter or road and ditch. Alley loaded Homes shall be permitted to front upon the Interior Spine Road but only along curb and gutter sections and when fronting a sidewalk or improved trail. The Interior Spine Road shall be completed and the Developer shall have submitted a Road Maintenance Acceptance Application to the County prior to the County's issuance of the 343rd CO for a Home. Failure to comply with the foregoing requirements set forth in this Section 6.c. will suspend the issuance of any additional building permits or certificates of occupancy. The location of the Interior Spine Road is roughly depicted on the drawing which is attached hereto as Exhibit 1 and incorporated herein by reference. The County agrees to participate in the condemnation process for ROW for Sinclair Road. Outside counsel will be employed by the County for any such condemnations. The Developer agrees to pay all costs associated with such condemnations, including but not limited to, legal fees, costs, experts, and the payment to the landowner(s).
- d. Developer shall, at its cost, engineer, improve, construct Sinclair Road right-of-way and wear surface, to be defined by Public Works, to such extent necessary to support regular vehicular traffic into the Community. This shall be completed by the Developer and the Developer shall submit and the County shall have accepted a Road Maintenance Acceptance Application to the County prior to the County's issuance of the 343rd CO for a home constructed in the Community. Failure to comply with the foregoing requirements of this Section 6.d. will suspend the issuance of any additional building permits or certificates of occupancy. The County agrees to participate in condemnation process for ROW for Sinclair Road. The Developer agrees to pay all costs associated with such condemnations, including but not limited to, legal fees, costs, experts, and the payment to the landowner. Outside counsel will be employed by the County for any such condemnations.
- e. Developer shall, at its cost, engineer, improve and construct all other interior roads of the Community.
- f. All roads located within the Community shall be dedicated to, and accepted by, the County pursuant to the County's road dedication and acceptance process.
- g. The Developer shall conform with the most current Dorchester County ordinances and regulations, as may be amended from time to time, as it pertains to stormwater improvements. Each party recognizes that this property is located within a Special Protection Area according to the Dorchester County Storm Water Management Program Ordinance (7-21) and the Dorchester County Stormwater Management Design Manual (the "Design Manual").

- h. The Developer has completed all required traffic studies and the Road Improvements described in this Section 6.h. constitute all improvements required by the Developer. Updated traffic studies will be provided at the 300th CO and each additional 300th thereafter.
- i. Developer shall dedicate a 100' right of way for the extension of Yerby Road to Ridgeville.

7. Sewer Improvements.

- a. In order to provide sewer service to the Homes constructed in the Community, the County shall permit Developer to connect a sewer force main (the "Phase I Sewer Force Main") to the existing Pump Station Number 33. Developer commits to providing the County with the number of ERU's in each phase of the Project prior to execution of the Development Agreement. Developer shall, at its cost, engineer and construct the Phase I Sewer Force Main which shall be conveyed, with appropriate easements, to the County by Developer. After the conveyance, County shall maintain the Phase I Sewer Force Main at County's cost. County shall permit and Developer shall engineer and upgrade and improve, at Developer's cost, Pump Station Number 33 (the "Pump Station") and any other related improvements reasonably related to the County's obligation to serve the Homes (the "Upgrade and Improvements") to the County wastewater conveyance to be identified through hydraulic modeling by the County in order to serve an additional 1,700 ERU but in all cases such improvements and costs shall be borne by the Developer. Upon payment of all customary fees, rates, and charges, Developer shall have the right to the additional capacity created by the Upgrade and Improvements up to and including the requirements of the development. In any event Developer shall provide capacity to serve 50 Equivalent Residential Units (ERU's) to serve the Land for Community Facilities. Developer shall construct the Upgrade and Improvements to accommodate the required additional capacity.
- b. The County reserves the right to require the construction of additional capacity in the lines within the Community ("Community Water Lines") constructed by Developer and the improvements set forth in Section 7.a. at the County's expense so long as the additional capacity can be achieved without in Developer's reasonable opinion materially delaying the construction of the Upgrade and Improvements.
- c. The Developer shall conform with the most current Dorchester County ordinances and regulations, as may be amended from time to time after the Development Agreement is executed, as it pertains to sewer improvements. Developer agrees to pay impact fees in amounts in effect at the time of the approval of the Phase of Construction. The Developer can prepay impact fees for all proposed units to avoid increases in impact fees.

- d.** In the event that it is necessary to acquire utility easements related to the Sewer Improvements, County agrees to participate in the condemnation process for any easements required by County. Outside counsel may be employed by the County for such condemnations and the Developer agrees to pay all costs associated with such condemnations, including but not limited to, legal fees, costs, experts, and the payment to the landowner.

8. Land for Community Facilities.

- a.** Developer agrees to deed a total of approximately 51.5 acres (the “Land for Community Facilities”), including 36.5 upland acres, to the County for public use prior to the County’s issuance of the first CO for a home constructed in the Community. The Land for Community Facilities shall be derived from the Property as roughly depicted on Exhibit 1. Pursuant to Section 10.7.7(D) of the Ordinance, the Land for Community Facilities shall count for Land for Community Facilities Bonus calculation upon execution of the Development Agreement as approved by County Council. None of the Land for Community Facilities will count for open space under the Ordinance.
- b.** Developer shall provide a pedestrian connection to the to the Land for Community Facilities, the design of which will conform with the intent of the Bonus Density Provision.

9. Assessment District.

- a.** County agrees to establish an assessment district (the “Assessment District”) over the Property and adjacent public property that is improved in conjunction with the development of the Community. Assessment District revenues and any proceeds from bonds supported by assessment revenues shall be used to directly fund public infrastructure installed by Developer or to reimburse Developer for its previous expenses relating to publicly owned improvements. All costs associated with the creation of the Assessment District and/or the issuance of bonds such shall be paid by the Developer.
- b.** The Assessment District shall assess annual fees in the amount of not more than \$800.00 per year for the equivalent of one (1) ERU as defined by the rate and method of apportionment and these fees shall increase by two percent (2%) each year thereafter for a term of thirty (30) years.
- c.** County commits to use best efforts to issue assessment revenue bonds, with capitalized interest allowed, at times and in amounts as requested by Developer, subject to standard bond market constraints. Notwithstanding anything to the contrary herein, the assessment revenue bonds shall be supported solely by the assessment revenues with no County backstop or security required.

- d. All Developer expenditures relating to publicly owned improvements and cost associated therewith shall be eligible for assessment district funding or reimbursement, as may be allowed by applicable law or regulation .
- e. The assessments shall be billed using the standard methodology as determined by MUNCAP fully to parcels upon award of building permit and only billed to undeveloped property as needed to fund debt service.
- f. Developer, its successors and assigns, shall provide disclosures and require signed disclosure acknowledgements detailing the Assessment District from all Purchasers of lots or homes.
- g. The Land for Community Facilities will be excluded from the Assessment District.

10. No Third-Party Beneficiaries. Nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns any rights or remedies under or by reason of this MOU.

11. Counterparts. This MOU may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement

IN WITNESS WHEREOF, BRD LAND & INVESTMENT, a South Carolina General Partnership has executed this Memorandum of Understanding as of the date set forth above.

BRD LAND & INVESTMENT

DocuSigned by:
By: Lindsay Jarvis
544225BC84554AE
Its: Senior Partner
Date: 12/9/2022

IN WITNESS WHEREOF, ANNA S. SEAGO, TRUSTEE and GEORGE H. SEAGO, III, TRUSTEE have executed this Memorandum of Understanding as of the date set forth above.

A S Seago, Trustee

Anna S. Seago, Trustee of the George H. Seago, III Irrevocable Trust dated August 25, 2009

Date: 12-8-22

G H Seago, Trustee

George H. Seago, III Trustee of the Ponderosa Irrevocable Trust dated September 29, 2008

Date: ~~12/8/22~~ 12/8/22

IN WITNESS WHEREOF, AGG, LLC, has executed this Memorandum of Understanding as of the date set forth above.

AGG, LLC

By: *Jonathan J. Jorgensen*

Its: Managing member

Date: 12/8/22

IN WITNESS WHEREOF, DORCHESTER COUNTY has executed this Memorandum of Understanding as of the date set forth above.

DORCHESTER COUNTY


By: 
Its: County Administrator
Date: 12/05/2022

EXHIBIT 1



YERBY ROAD R-2 CLUSTER CALCULATIONS (IN ACRES)



TOTAL SITE AREA:	608.0
NEW TOTAL SITE AREA	608.0
- REQUIRED BUFFERS	3.7
- WETLANDS & STREAMS	13.1
- EXISTING EASEMENTS	1.0
GROSS CALCULATED DEVELOPABLE ACRES:	543
X 20 OPEN SPACE MULTIPLIER:	109
NET CALCULATED DEVELOPABLE ACRES:	434
X 1.15 CLUSTER BASE DENSITY MULTIPLIER:	1,367 BASE UNITS
X 25% BONUS =	1,709 UNITS ALLOWED

BONUS DENSITY CALCULATIONS (1.15 CLUSTER BASE DENSITY)

- (B) Additional Buffers: these areas cannot count toward requirement for additional open spaces
 - 1. For every 12.5 feet of additional roadside buffer (up to 100 feet in total including the required 50 feet) a 1% bonus density may be applied.
- (C) Land for Community Facilities Uses
 - 1. For land set aside totaling above ten (10) acres a 2.5% bonus density may be applied.
- (E) Community Consideration Neighborhood
 - 1. If cul-de-sac or dead end roads (not including connections for future connectivity) are not utilized within the subdivision, a 5% bonus density may be applied.
 - 2. For every point of connection to an existing subdivision neighborhood, or a secondary entrance, not including the main entrance, a 2.5% bonus density may be applied per connection, not to exceed 7.5%.
 - 3. If the development includes a trail system throughout the neighborhood passive open space, a 2% bonus density may be applied per the Zoning Administrator.
 - 5. If pedestrian connections to nearby community facilities such as schools, parks, churches and other community facilities are provided, a 2.5% bonus density may be applied per the Zoning Administrator.

Public County Use Property: Developer agrees to deed approximately 53.5 including 30 upland acres to the County for public use prior to the County's issuance of the final CO for a home constructed in the Community. The County Public Use Property shall be deemed from the Property as roughly depicted on most recent land use plan. Developer shall provide a pedestrian connection to the County Use Property which the design shall conform with the intent of Bonus Density Provision.