

RECEIVED

Mar 13 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2025-002327
Case No. 2025-CP-10-02139

Boris Van Dyck and Boris Van Dyck, LLC, ... Respondents,

v.

Woodlock Capital, LLC, ...Appellant.

RECORD ON APPEAL

Clayton B. McCullough, Esq. (SC Bar #13722)
McCULLOUGH KHAN, LLC
2036 eWall Street
Mount Pleasant, SC 29464
(843) 937-0400
(843) 937-0706 (fax)
clay@mklawsc.com

Counsel for Appellant

Ellis R. Lesemann, Esq. (SC Bar #15315)
Michelle A. Stewart, Esq. (SC Bar #100685)
LESEMAN & ASSOCIATES LLC
418 King Street, Suite 301
Charleston, SC 29403
(843) 724-5155
erl@lalawsc.com
mas@lalawsc.com

Counsel for Respondents

INDEX

Orders

Order Denying Defendant’s Motion to Dismiss, dated November 12, 2025 1

Pleadings

Summons and Complaint, dated April 17, 2025 5

 Exhibit A: Real Estate Consulting Fee Agreement 18

 Exhibit B: Letter of Intent from Southern Waters Capital 20

Defendant’s Motion to Dismiss, dated April 28, 2025 26

 Exhibit A: Real Estate Consulting Fee Agreement 30

 Exhibit B: Demand for Arbitration with Exhibit.....32

 Exhibit C: Affidavit of Andrew Batkins with Exhibits 40

Plaintiffs’ Opposition to Defendant’s Motion to Dismiss, dated June 25, 2025 130

Transcripts

Transcript of Record, dated June 27, 2025 137

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
BORIS VAN DYCK, and BORIS VAN DYCK, LLC	)	Case No.: 2025-CP-10-02139
	)	
Plaintiffs,	)	
	)	ORDER DENYING DEFENDANT'S
vs.	)	MOTION TO DISMISS
	)	
WOODLOCK CAPITAL LLC,	)	
	)	
Defendant.	)	
	)	
	)	

This matter comes before the Court on a Motion to Dismiss filed by Defendant Woodlock Capital, LLC (“Defendant”) pursuant Rule 12(b)(1) of the South Carolina Rules of Civil Procedure. A hearing on Defendant’s Motion to Dismiss was held on Friday, June 27, 2025 via WebEx Virtual Courtroom. Plaintiffs Boris Van Dyck and Boris Van Dyck, LLC (“Plaintiffs”) were represented during the hearing by S. Grace Heaton Benko of Lesemann & Associates. Defendant was represented by Clayton B. McCullough of McCullough Khan Appel.

The issue presented by Defendant’s Motion is whether this fee dispute is subject to mandatory arbitration. Defendant asserts that it is subject to mandatory arbitration because the underlying Real Estate Consulting Fee Agreement includes an arbitration clause. In response, Plaintiff argues that the arbitration clause is unenforceable because: (i) it fails to comply with the requirements of the South Carolina Uniform Arbitration Act; (ii) the transaction at issue does not involve interstate commerce such that the Federal Arbitration Act is inapplicable.

The Court has reviewed the pleadings, the Real Estate Consulting Fee Agreement, applicable law, and the arguments presented by counsel during the hearing. The matter is now ready for determination.

LEGAL STANDARD

“The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.” *See Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001), *citing AT & T Techs., Inc. v. Communications Workers of America*, 475 U.S. 643 (1986). Under the South Carolina Uniform Arbitration Act, “[n]otice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.” *See* S.C. Code § 15-48-10(a). Although the Federal Arbitration Act (the “FAA”) does not have the same notice requirements, the FAA is not applicable unless “the commerce involved in the contract [is] interstate or foreign.” *See Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 454, 730 S.E.2d 312, 315–16 (2012).

FINDINGS AND CONCLUSIONS

Neither party disputes the fact that the arbitration provision in the Real Estate Consulting Fee Agreement fails to satisfy the requirements of the South Carolina Uniform Arbitration Act (the “SCUAA”) and is therefore invalid for purposes of the SCUAA. Defendant concedes this point. Defendant’s argument is that the mandatory arbitration provision is nonetheless valid under the FAA. The Court disagrees. In order to activate federal preemption by the FAA, the commerce involved in the Real Estate Consulting Fee Agreement must be interstate or foreign. *See Bradley*, 398 S.C. at 454, 730 S.E.2d at 315–16 (“to activate the application of the FAA, the commerce involved in the contract must be interstate or foreign.”); *see also Hicks Unlimited, Inc. v. UniFirst Corp.*, 439 S.C. 623, 630, 889 S.E.2d 564, 567 (2023) (*citing* 9 U.S.C. § 2 and confirming that the FAA did not apply to a uniform rental contract because “the uniform supply business is not an activity that is, in general, subject to federal control”).

South Carolina courts have recognized that where a proposed transaction is focused on the sale of real property, firmly planted in one particular state, the transaction does not involve interstate commerce. *See Bradley*, 398 S.C. at 457, 730 S.E.2d at 317. In *Bradley*, the transaction involved the sale and purchase of a constructed residence on a lot. This dispute involves the sale of undeveloped acreage. On that basis, the commerce involved in this case is even more localized than the facts presented in *Bradley*. A local transaction of undeveloped acreage has no substantial or direct connection to interstate commerce that would be sufficient to trigger the application of the FAA. It is inherently “intrastate” commerce to which the FAA does not apply.

For these reasons, the Court finds that the arbitration provision is invalid and, therefore, does not require the parties to arbitrate their claims (or counterclaims) relating to the Real Estate Consulting Fee Agreement. It is undisputed that the arbitration provision fails to meet the notice requirements under the SCUAA. Furthermore, the Court has determined that the transaction at issue does not involve interstate commerce, such that the FAA is inapplicable. Therefore, the arbitration provision is ineffective and unenforceable as a matter of law.

CONCLUSION

THEREFORE, it is hereby ORDERED that Defendant Woodlock Capital LLC’s Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

November ____, 2025

Charleston, South Carolina

The Honorable Marvin H. Dukes, III
Circuit Court Judge, 14th Judicial Circuit



Charleston Common Pleas

Case Caption: Boris Van Dyck , plaintiff, et al VS Woodlock Capital Llc

Case Number: 2025CP1002139

Type: Order/Dismissal

So Ordered

s/Marvin H. Dukes III #2785

Electronically signed on 2025-11-10 16:24:22 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
BORIS VAN DYCK, and BORIS VAN	)	Case No.: 2025-CP-10-_____
DYCK, LLC	)	
	)	
Plaintiffs,	)	
	)	SUMMONS
vs.	)	
	)	
WOODLOCK CAPITAL LLC,	)	
	)	
Defendant.	)	
	)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the same on counsel for the Plaintiffs, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to appear and defend this action by answering the Petition and Complaint, judgment by default will be rendered against you for the relief demanded in the Petition and Complaint.

Respectfully submitted,

By: s/ Ellis R. Lesemann
 Ellis R. Lesemann (S.C. Bar No. 15315)
erl@lalawsc.com
 S. Grace Heaton Benko (S.C. Bar No. 106331)
ghb@lalawsc.com
 LESEMANN & ASSOCIATES LLC
 418 King Street, Suite 301
 Charleston, SC 29403
 (843) 724-5155

***Attorneys for Plaintiffs Boris Van Dyck and
 Boris Van Dyck, LLC***

April 1, 2025
 Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
BORIS VAN DYCK and BORIS VAN	)	Case No.: 2025-CP-10-_____
DYCK, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	COMPLAINT
	)	(Declaratory Judgment – Jury Trial
	)	Demanded)
WOODLOCK CAPITAL LLC,	)	
	)	
Defendant.	)	
	)	

COME NOW Plaintiffs Boris Van Dyck and Boris Van Dyck, LLC (collectively, the “Plaintiffs”), by and through their undersigned counsel, and state this Complaint against Defendant Woodlock Capital LLC as follows:

PARTIES AND JURISDICTION

1. Plaintiff Boris Van Dyck (“Mr. Van Dyck”) is a citizen and resident of Charleston County, South Carolina.
2. Plaintiff Boris Van Dyck, LLC (“BVD”) is a limited liability company organized and existing under the laws of the State of South Carolina and was the owner of real property located in Charleston County, South Carolina that relates to the subject matter of this action.
3. Defendant Woodlock Capital LLC (“Woodlock Capital”) is a South Carolina limited liability company with a principal place of business located in Charleston County, South Carolina. It is not registered with the South Carolina Real Estate Commission as a real estate office, but purports to provide “real estate consulting services.”
4. Based on the subject matter of this dispute and the location of the parties in Charleston County, South Carolina, jurisdiction and venue are proper in this Court.

SUMMARY OF CASE

5. This dispute relates to a contract for “real estate consulting services” entered into by Woodlock Capital, a company that is not authorized or licensed under state law to provide real estate consulting services, did not obtain a valid listing agreement with Plaintiffs, and did not act or participate as a broker of the sale of the underlying property previously owned by BVD to Southern Waters Capital.

6. For these reasons, Plaintiffs are entitled to a declaratory judgment that Woodlock Capital: (i) is not entitled to enforce the arbitration provision in the “Real Estate Consulting Fee Agreement;” (ii) engaged in unauthorized and illegal practices in violation of South Carolina law; (iii) did not act or participate as the broker of the subject transaction; and (iv) is not entitled to any payment of any kind.

BACKGROUND OF DISPUTE

7. In 2022, Woodlock Capital presented Plaintiffs with a one-page document that was entitled “Real Estate Consulting Fee Agreement,” which was signed by Mr. Van Dyck and R. Elliott Calhoun.

8. The Real Estate Consulting Fee Agreement related to a potential real estate transaction regarding two parcels of real property located at the intersection of Windsor Mill Road and N. Goose Creek Boulevard, Goose Creek, South Carolina 29445 (TMS Nos. 234-00-00-044 and 234-00-00-021) (the “Property”).

9. Under South Carolina law, a “real estate transaction” means an activity involving the sale, purchase, exchange, lease, or other disposition of real estate. *See* S.C. Code § 40-57-30. On this basis, Woodlock Capital was purporting to act as a real estate broker even though it is not registered as a real estate office. Although Mr. Calhoun is a licensed real estate broker, the real

estate company with which he is affiliated is Woodlock Brokerage, LLC, a different entity than the one that has demanded a “real estate consulting fee” in an unlawful manner.

10. A true and accurate copy of the Real Estate Consulting Fee Agreement between is attached as Exhibit A. Woodlock Capital is identified as “Broker” even though Woodlock Capital is not authorized to act as a real estate broker. Under South Carolina law, it is unlawful to provide real estate services (which includes providing consulting services relating to a real estate transaction) to an owner of real estate without a license.

11. The Real Estate Consulting Fee Agreement states that a “real estate consulting fee” in the amount of \$200,000.00 would be due to Woodlock Capital “at the time of closing.” Based on the listing price of the Property, this amount is between 6% and 7% of the listing price, which is the same typical range for a real estate commission payable to a licensed real estate office who obtains a valid listing agreement and otherwise conducts itself as a broker in accordance with South Carolina law, which Woodlock Capital did not do.

12. The Real Estate Consulting Fee Agreement identifies Woodlock Capital as the “Broker,” even though this entity is not a licensed or registered broker.

13. There are several other deficiencies with the Real Estate Consulting Fee Agreement that violated South Carolina law.

14. There is no stated duration, term, expiration date or time limitation on the Real Estate Consulting Fee Agreement. As a result, the duration is indefinite and perpetual, which violates South Carolina law. Specifically, state law requires that “a listing agreement or buyer’s representation agreement clearly must state that it terminates on the definite expiration date unless a written extension is signed.” See S.C. Code § 40-57-135(I)(2)(h).

15. Furthermore, the Real Estate Consulting Fee Agreement does not include a description or explanation of what specific services or duties that Woodlock Capital would perform to earn the “consulting fee.” This also violates South Carolina law, which requires that “a description of the agent’s duties or services to be performed for the client including, but not limited to, an explanation of the office policy regarding dual agency, designated agency, and transaction brokerage if offered by the real estate brokerage firm.” *See* S.C. Code § 40-57-135(I)(2)(a).

16. Woodlock Capital presented a potential buyer of the Property to Plaintiffs. However, the potential buyer fell through.

17. On or about June 12, 2023, Southern Waters Capital sent a Letter of Intent (the “LOI”) to purchase the Property on behalf of SWC Management, LLC. A copy of the LOI is attached as Exhibit B.

18. The LOI containing the terms of the proposal was sent to Woodlock Capital via email only. The LOI stated that the offer would no longer be valid after June 19, 2023, at 5:00 p.m. The LOI expired on June 19, 2023, at 5:00 p.m., without any response from Woodlock Capital, who engaged in no follow up or follow through.

19. Following the expiration of the LOI, Mr. Van Dyck was contacted by the managing partner of Southern Waters Capital, Raymond Mazzie, who established Southern Waters Capital’s interest in purchasing the Property.

20. Over the course of several months, Mr. Mazzie and Mr. Van Dyck engaged in discussions and negotiations in connection with the acquisition and sale of the Property and the proposed Windsor Mill Project.

21. Woodlock Capital had no involvement in the discussions and negotiations between Plaintiffs and Southern Waters Capital.

22. After months of negotiating the terms of the deal, BVD and Southern Waters Capital executed a purchase and sale agreement dated October 12, 2023.

23. Upon information and belief, the closing took place on or about July 31, 2024.

24. Woodlock Capital did not participate in any way in due diligence, negotiations, or the closing on the Property.

25. On or about September 9, 2024, Woodlock Capital sent an invoice to Plaintiffs in the amount of \$200,000.00, for the consulting fee purportedly due under the Real Estate Consulting Fee Agreement.

26. Plaintiffs acknowledged receipt of the invoice but did not believe a “consulting fee” was owed to Woodlock Capital under the circumstances.

27. The Parties agreed to mediation taking place on March 20, 2025, but were unable to reach a settlement.

28. On March 21, 2025, Woodlock Capital initiated an arbitration proceeding against Plaintiffs and asserted causes of action for breach of contract and all available equitable remedies.

29. For the reasons set forth below, Plaintiffs are entitled to declaratory relief.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as to Invalidity of Arbitration Provision)

30. Plaintiffs restate and reallege each and every allegation above as if fully set forth herein.

31. Plaintiffs are entitled to a declaration from the Court pursuant to the Uniform Declaratory Judgments Act, S.C. Code §§ 15-53-10, *et seq.* (the “Declaratory Judgment Act”), which provides in relevant part that “courts of record within their respective jurisdiction shall have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” *Id.* The Declaratory Judgment Act states that “[a]ny person [...] whose rights, status

or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined **any question of construction or validity** arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” See S.C. Code § 15-53-30 (emphasis added).

32. Plaintiffs and Woodlock Capital are interested parties and a genuine, substantial and justiciable controversy exists between them relating to rights, status, and other legal relations arising under the Real Estate Consulting Fee Agreement and South Carolina law. All necessary parties are joined to this action.

33. South Carolina law recognizes that, where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. See *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007) (citing S.C. Code § 15-48-20(a)).

34. The question of the arbitrability of a claim is an issue for judicial determination.

35. The fourth paragraph of the Real Estate Consulting Fee Agreement, which is in the same font, color, size, and type as the preceding paragraphs, states as follows:

Unless otherwise agreed upon by both parties, any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof and both parties agree to be bound by any such decision rendered.

36. The arbitration provision violates the South Carolina Uniform Arbitration Act, which is applicable to real estate transactions as they are considered inherently local and “intrastate,” as opposed to interstate, in nature. It lacks the required language, placement, bolded type, and other requirements in order for a mandatory arbitration provision to be binding and enforceable on the parties.

37. Plaintiffs seek an order declaring the arbitration provision in Real Estate Consulting Fee Agreement invalid on the basis that: (i) the proposed transaction involving purely intrastate commerce is not subject to the Federal Arbitration Act (“FAA”); and (ii) the arbitration provision does not meet the requirements of the South Carolina Uniform Arbitration Act (the “SCUAA”), S.C. Code §§ 15-48-10 *et seq.*

38. In order to activate the application of the FAA, the commerce involved must be interstate or foreign. *See Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 454, 730 S.E.2d 312, 315 (2012).

39. The South Carolina Supreme Court has held that “[t]o ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts.” *See Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 455, 730 S.E.2d 312, 316 (2012) (“Our courts consistently look to the essential character of the contract when applying the FAA”).

40. The proposed transaction contemplated in the Real Estate Consulting Fee Agreement relates to real property which is firmly planted in South Carolina. The contract was entered between South Carolina limited liability companies each having a principal place of business located in Charleston County.

41. The essential character of the Real Estate Consulting Fee Agreement relates to a transaction involving real property that has historically been deemed by the courts of South Carolina to be *intrastate*, which does not satisfy the interstate commerce requirement under the FAA. *See* 9 U.S.C. § 2 (making enforceable arbitration agreements in a “maritime transaction or a contract evidencing a transaction involving commerce”); *see also Hicks Unlimited, Inc. v. UniFirst Corp.*, 439 S.C. 623, 630, 889 S.E.2d 564, 567 (2023) (“The FAA is a sequential whole whose

enforcement and preemption power may only be called upon when the dispute arises against the backdrop of a written provision in a ‘maritime transaction or a contract evidencing a transaction involving commerce’”).

42. The arbitration provision in the Real Estate Consulting Fee Agreement does not meet the technical requirements of the SCUAA. *See* S.C. Code § 15-48-10(a) (“Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration”).

43. The arbitration provision of the Real Estate Consulting Fee Agreement is not typed in “underlined capital letters,” as required under the SCUAA but is inconspicuously embedded in the fourth paragraph with no distinguishing characteristics. *See* S.C. Code § 15-48-10(a).

44. Although the Real Estate Consulting Fee Agreement is confined to one page, notice of the arbitration provision is not prominently displayed “on the first page of the contract.” *See* S.C. Code § 15-48-10(a).

45. Plaintiffs are entitled to an order declaring that the transaction contemplated in the Real Estate Consulting Fee Agreement has no substantial or direct connection to interstate commerce to trigger the application of the FAA but rather involves an inherently intrastate transaction relating to real property firmly planted within the boundaries of the State of South Carolina.

46. In addition, Plaintiffs are entitled to a judgment declaring the arbitration provision invalid under South Carolina law, as the arbitration provision fails to meet the notice requirements under the SCUAA, and a further declaration that the Real Estate Consulting Fee Agreement is not subject to arbitration.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment as to No Entitlement to Commission)

47. Plaintiffs restate and reallege each and every allegation above as if fully set forth herein.

48. Plaintiffs seek a declaration from the Court that Woodlock Capital is not entitled to compensation purportedly due under the Real Estate Consulting Fee Agreement at the time of closing on the Property where Woodlock Capital has failed to comply with applicable statutory requirements, including, but not limited to, the requirement that a licensee first obtain a written listing agreement with specific provision in place to establish the parameters, duties, and responsibilities for agency relationships in real estate transactions.

49. As alleged above, the arbitration provision in the Real Estate Consulting Fee Agreement is invalid and unenforceable under South Carolina law.

50. Because the arbitration provision is invalid as to any claim, this Court has jurisdiction to decide legal issues arising out of or relating to the Real Estate Consulting Fee Agreement.

51. The Real Estate Consulting Fee Agreement is entered by “Woodlock Capital LLC,” as the “Broker.” However, Woodlock Capital is not licensed with the South Carolina Real Estate Commission.

52. In South Carolina, an unlicensed entity cannot charge a consulting fee relating to a real estate transaction. According to South Carolina law, engaging in activities that require a real estate license without being licensed is prohibited.

53. Furthermore, a licensed person may not act as a broker in a real estate transaction without first obtaining a written listing agreement that complies with applicable law, which the Real Estate Consulting Fee Agreement fails to do in numerous respects.

54. South Carolina law imposes duties and obligations upon the broker-in-charge of a brokerage firm, who takes responsibility over the actions of all supervised licensees, including the statutory requirement that the broker-in-charge review and approve all forms of agreements used by the brokerage firm. *See, e.g.*, S.C. Code §§ 40-57-30 and -135.

55. As written, the Real Estate Consulting Fee Agreement states that the “consulting fee” is due to “Woodlock Capital LLC (Broker)” at the closing of the Property. However, based on the amount, timing, and triggering event for payment, the amount being charged is in fact a purported commission for acting as a licensed broker in connection with a real estate transaction.

56. It was unlawful for Woodlock Capital to advertise, market or offer to conduct the real estate transaction at issue, as this entity is not registered as a real estate office, did not obtain a written listing agreement, and did not actually act as the broker in connection with the sale to Southern Waters Capital.

57. Under South Carolina law, “[a] **licensee may not advertise, market, or offer to conduct a real estate transaction** involving real estate owned, in whole or in part, by another person **without first obtaining a written listing agreement** between the property owner and the real estate brokerage firm with whom the licensee is associated.” *See* S.C. Code § 40-57-135(E)(1) (emphasis added).

58. No written listing agreement relating to the Property was presented to Plaintiffs much less entered between the parties.

59. The Real Estate Consulting Fee Agreement is not a written listing agreement because it does not satisfy the requirements of Section 40-57-135(I)(2), as there is no description of the agent’s duties or services to be performed for the client, including an explanation of the transaction brokerage, no explanation of how compensation is earned, has no term, fails to clearly

state that it terminates on a definite expiration date, and fails to state whether it is an “exclusive agency” listing. *See* S.C. Code § 40-57-135(I)(2) (providing specific provisions that must be included in a listing agreement).

60. In addition, as stated above and as will be demonstrated by affidavit, evidence and testimony, Woodlock Capital did not perform the services with respect to the sale to Southern Waters Capital that would be necessary in order for a commission (or even a “consulting fee”) to have been earned. In fact, Woodlock Capital’s actions likely violate the South Carolina Unfair Trade Practices Act and absolutely violate numerous state laws governing the real estate profession.

61. For these reasons, Plaintiffs seek a declaration that: (i) Woodlock Capital is precluded from bringing any action against Plaintiffs to recover a fee as the “Broker” under the Real Estate Consulting Fee Agreement because Woodlock Capital does not hold a license with the South Carolina Real Estate Commission; (ii) Woodlock Capital is not entitled to receive payment for a “consulting fee” that is tied to the closing of the Property for which it has not obtained a written listing agreement as required under South Carolina law; and (iii) Woodlock Capital did not act as the broker for the transaction.

WHEREFORE, having stated their Complaint for relief against Defendant Woodlock Capital LLC, Plaintiffs Boris Van Dyck and Boris Van Dyck, LLC respectfully request that the Court grant Plaintiffs the following relief:

- i. An order declaring the arbitration provision in the Real Estate Consulting Fee Agreement invalid and unenforceable under South Carolina law;
- ii. An order declaring that Woodlock Capital is not entitled to any commission, consulting fee, or payment of any kind from Plaintiffs under the Real Estate Consulting Fee Agreement; and
- iii. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

By: s/ Ellis R. Lesemann

Ellis R. Lesemann (S.C. Bar No. 15315)

erl@lalawsc.com

S. Grace Heaton Benko (S.C. Bar No. 106331)

ghb@lalawsc.com

LESEMANN & ASSOCIATES LLC

418 King Street, Suite 301

Charleston, SC 29403

(843) 724-5155

***Attorneys for Plaintiffs Boris Van Dyck and Boris
Van Dyck, LLC***

April 17, 2025
Charleston, South Carolina

Exhibit A

Real Estate Consulting Fee Agreement

WOODLOCK CAPITAL

Real Estate Consulting Fee Agreement

This AGREEMENT, made on January 17th 2022 between Boris Van Dyck (Principal) and Woodlock Capital LLC (Broker) pertains to the sale of property located at the intersection of Windsor Mill Rd. and N. Goose Creek Blvd. Goose Creek, SC 29445, TMS #s 234-00-00-044 and 234-00-00-021 (Property).

Whereas, both parties acknowledge that the Broker is performing a real estate consulting service for Principal with regards to the Property, Principal agrees to pay a real estate consulting fee (Consulting Fee) equivalent to Two Hundred Thousand Dollars (\$200,000.00).

Fee due to Broker under the terms and conditions of this Agreement will be paid by Principal, at the time of closing, unless otherwise agreed in writing. No modification of any of the terms of this Agreement shall be valid or binding upon the parties unless modifications are made in writing and signed by both parties.

Unless otherwise agreed upon by both parties, any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof and both parties agree to be bound by any such decision rendered.

Principal Signature: _____

Principal Name: _____

Principal Company: _____

Its: _____

Broker Signature: _____

Broker Name: _____

Broker Company: _____

Its: _____

EXHIBIT

tabbles

1
19



Exhibit B

Letter of Intent from Southern Waters Capital



June 12, 2023

Delivered via email only to wayne@woodlockcapital.com.

Boris Van Dyck, LLC

Attn: Boris Van Dyck

Registered Agent Mailing Address:

1816 Success Street, Building C

North Charleston, South Carolina 29405

RE: Letter of Intent to Purchase 29.38 acres located along Highway 52 in the City of Goose Creek, SC and is bisected by Windsor Mill Road.

I am submitting this Letter of Intent Offer on behalf of SWC Management, LLC, establishing its interest in purchasing the parcels referenced below. The terms of the proposal are as follows:

PURCHASER: SWC Management, LLC or as it assigns.

SELLER: Boris Van Dyck, LLC

SITE INFORMATION: See subsections immediately below, Exhibit A, and Exhibit B.

- I. **NORTH SIDE PARCELS:** 234-00-00-001 (14.53 AC), 234-00-00-046 (2.65 AC) for a subtotal of 17.18 AC.
- II. **SOUTH SIDE PARCELS:** 234-00-00-044 (7.99 AC.), 234-00-00-021 (1.84 AC), 234-16-02-040 (0.26 AC), 234-16-02-041 (0.31 AC), 234-16-02-042 (0.35 AC); 234-16-02-043 (0.27 AC), 234-16-02-044 (0.32 AC), 234-00-00-074 (0.32 AC), and the unimproved Right of Way for Stonewall Court (0.54 AC) for a subtotal of 12.20 AC. This is subject to transfer of parcels from the City of Goose Creek.

PURCHASE PRICE: Three Million Six Hundred Thousand Dollars (\$3,600,000.00)

ESCROW DEPOSIT: Purchaser shall deposit with Escrow Agent the sum of Twenty-Five Thousand Dollars (\$25,000.00) within 7 business days of full execution of a Purchase and Sale Contract. Such deposits shall be applied to the purchase price and shall become non-refundable at the conclusion of the Inspection Period.

INSPECTION PERIOD: Purchaser shall have Forty-Five (45) days from the Contract effective date to complete a due diligence inspection. Due Diligence Documents (Documents) shall be forwarded by Seller within three days from the Effective Date and shall include (if available): Land Survey, As-Built Survey, Site Plans, Environmental Reports, current Title Policies, current contracts for purchase of parcels owned by the City of Goose Creek that are contemplated in the conceptual PD, and the current contract between the Seller and current landowner. Seller shall (and shall cause any manager, operator, and other similar parties to) reasonably cooperate with Purchaser to, but not limited to, the following:

- To determine the physical condition of the Property and compliance with all laws including zoning, building, and land use.
- To perform a physical inspection of the Property including, without limitation, any desired environmental audit and testing by Purchaser's engineers or consultants. Purchaser or its agents shall be granted access to the Property with reasonable notice and shall perform such tests with as little disruption as possible and leave the premises in the same condition as it was found, or repair or pay

- for repairs of damage caused by such inspections.
- To perform a review of all records and files which may pertain to the Property which Seller shall make available to Purchaser shall include, but not limited to, leases, service and other contracts, maintenance files, certificates of occupancy, the plans and other construction records for the improvements and completed structures on the Property, any prior environmental reports, and such other documents and agreements which may affect or relate to the condition, operation or management of the Property.
- To perform a survey.
- To perform any such other inspections and request such other information as Purchaser may deem reasonable or necessary in its diligence with respect to the Property. Purchaser shall have the sole and absolute right to terminate the Contract for any reason by giving notice to Seller within the Inspection Period if Purchaser determines that the Property is not satisfactory for its project. Purchaser shall be entitled to a full refund of all deposits if Contract is terminated during the Inspection Period.
- Purchaser shall be responsible to obtain all permits necessary to construct the project. All such costs including, but not limited to, permit fees and impact fees shall be at Purchaser's sole cost and expense.

CLOSING DATE: 30 days after Inspection Period ends.

TITLE COMPANY / CLOSING AGENT/ ESCROW AGENT: Dennison & Matthews, PLLC, 3300 S. Hiawassee Rd., Unit 106, Orlando, Florida 32835

CONTRACT: Upon full execution of the Letter of Intent, a formal Purchase and Sale Agreement will be prepared within the following Ten (10) days. No binding Agreement will arise between the parties until the Purchase and Sale Agreement is fully executed. Seller will negotiate exclusively and in good faith with Purchaser with respect to the acquisition/sale of the Property during such 10-day period prior to signing the Purchase Agreement.

BROKER COMMISSION: 2% to Andrew Sinclair of Current Real Estate, LLC (License No.: CQ1067025)

CLOSING COSTS: Purchaser and Seller shall be responsible for their own attorney's fees.

<i>Item</i>	Purchaser	Seller
Transfer Tax (Doc. Stamps)		X
Escrow/Closing Fee	X	X
Deed Recording	X	
Title Search/Owners Premium		X
Lender Title Premium	X	
New Survey	X	
State Doc Stamps on Note(s)	X	
Intangible Tax on Note(s)	X	
Attorney Fees	X	X
Real Estate Commission		X

1031 EXCHANGE: Either Seller or Purchaser shall have the right to treat this Property as part of a tax-deferred like-kind exchange under Section 1031 of the Internal Revenue Code and, to that end, shall have the right to assign or otherwise alter this Agreement in order to accomplish that objective, provided the net economic effect (including exposure to liability) shall be essentially the same as under this original Agreement.

EXCLUSIVITY: In consideration of the time and effort which the Purchaser will be committing to this undertaking, and in recognition of the time necessary to successfully consummate any or all of the proposed transaction, the Seller agrees that upon execution of this Letter of Intent, the Seller will not permit any agent, partner, or affiliate to accept or entertain offers, negotiate, solicit interest or otherwise enter into discussions involving the sale, financing or disposition of all or any part of the Property. This period of Exclusivity, which will remain in place until Closing or termination of the Purchase Agreement, shall keep confidential its contents and the fact that it has been transmitted.

TIME FOR RESPONSE: After Monday June 19th, 2023 at 5pm, this letter of intent will no longer be valid.

This Letter of Intent does not constitute a binding contract and shall not be binding unless and until the final Contract is approved and fully executed by all parties. Seller and Purchaser make no representation or warranty that acceptance or delivery of this Letter of Intent will result in the mutual execution or delivery of a Purchase and Sale Agreement for the Property. If Purchaser and Seller are unable, for any reason, to reach and execute a full and final sale agreement for the Property, neither party will have any claim against the other or any other cause of action arising out of this Letter of Intent, however, both parties agree to negotiate for a contract in good faith. If these terms are acceptable, please acknowledge below and return the original to the undersigned so that a Contract can be prepared.

Sincerely,



Raymond Mazzie

Managing Partner
Southern Waters Capital
831 NE 20th Ave
Fort Lauderdale, FL 33304

Agreed to this _____ day of _____,

Seller: _____

Exhibit A - Location Map

Parcel Location Map
Hwy 52 & Windsor Mill Rd | Goose Creek, SC

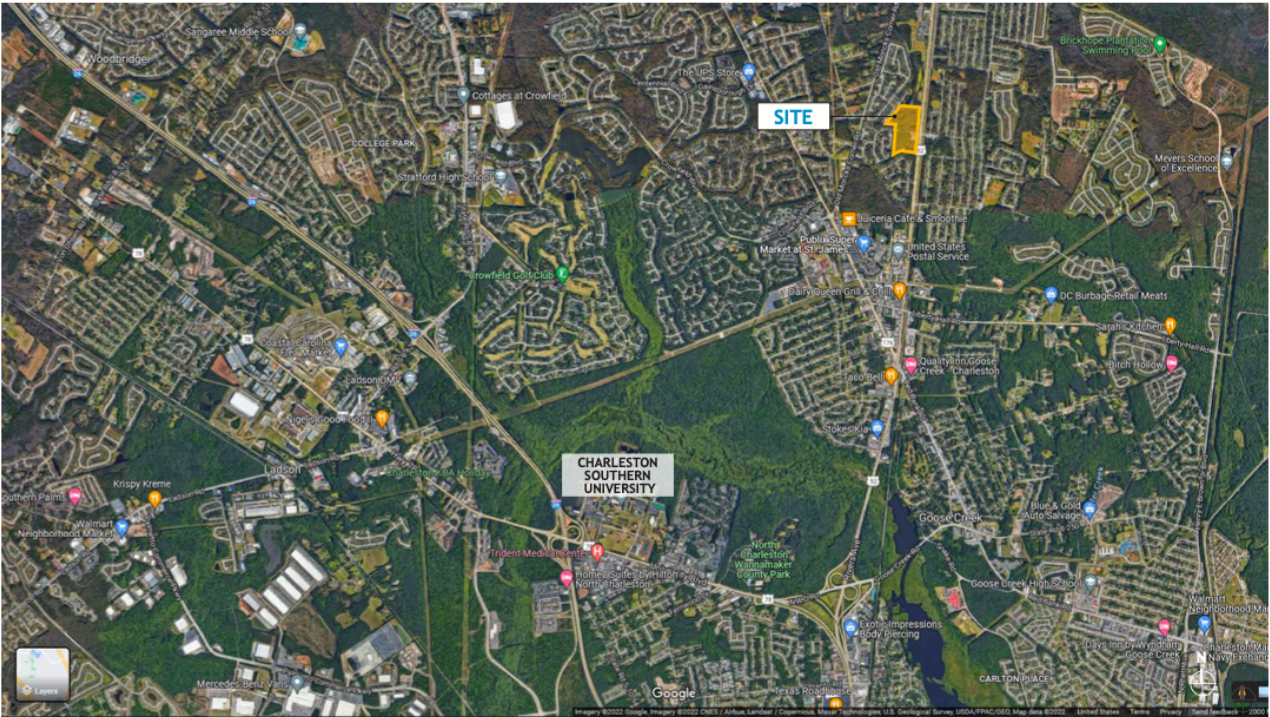


Exhibit B - Site Location

Existing Zoning Map
Hwy 52 & Windsor Mill Rd | Goose Creek, SC



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2025-CP-10-02139
Boris Van Dyck and Boris Van Dyck, LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANT’S MOTION TO DISMISS
	)	
Woodlock Capital, LLC,	)	
	)	
Defendant.	)	

Defendant Woodlock Capital, LLC hereby moves pursuant to Rule 12(b)(1) SCRCPP for an order dismissing claims brought against it by Boris Van Dyck and Boris Van Dyck, LLC for lack of subject matter jurisdiction, or in the alternative, Defendant moves before this Court to stay case number 2025-CP-10-2139 and compel arbitration.

On January 17, 2022, Plaintiffs and Defendant entered into a Real Estate Consulting Fee Agreement (“Agreement”) whereby Defendant agreed to provide real estate consulting services to Plaintiff for the sale of Plaintiffs’ property in Goose Creek, SC. (Agreement attached hereto as Exhibit A). Plaintiffs agreed to pay Defendant \$200,000.00 upon the sale of the property. The Agreement contains a binding arbitration provision to deal with any dispute.

Defendant provided extensive real estate consulting services to Plaintiffs. As a direct result of these efforts, several Letters of Intent were submitted on the Property, including one by the eventual purchaser. Despite the Agreement and Defendant’s compliance with the terms of the Agreement, Plaintiffs have refused to pay the \$200,000.00 consulting fee. As a result of Plaintiffs’ breach of contract, Defendant served a notice and demand for arbitration on Plaintiffs on March 20, 2025. (Demand for arbitration attached hereto as Exhibit B.) Plaintiffs refused to arbitration and instead filed this lawsuit.

The Court lacks subject matter jurisdiction to adjudicate this matter, and it should be dismissed and arbitrated pursuant to the Agreement. In the alternative, Defendant hereby demands Plaintiffs arbitrate this dispute and move this Court for an Order staying this matter and compelling arbitration.

ANALYSIS

Plaintiffs' Complaint correctly stated that the arbitration provision fails to meet the requirements of S.C. Code Ann. §15-48-10. Instead, Defendant asserts that the arbitration provision is enforceable under the Federal Arbitration Act, 9 U.S.C.S. § 1 et seq. (FAA), because the contract involves interstate commerce. Therefore, in this instance, the federal substantive law supplants state law regarding arbitration. *Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422, 434 S.E.2d 281, 1993 S.C. LEXIS 146 (S.C. 1993).

The Federal Arbitration Act supplants state arbitration laws when the contract at issue involves interstate commerce. In *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580 (2001), the South Carolina Supreme Court stated that, “[w]hile the parties may agree to enforce arbitration agreements under state rules rather than FAA rules, the FAA will preempt any state law that completely invalidates the parties’ agreement to arbitrate.”

Although the arbitration provision contained in the Agreement does not meet the notice requirements contained in S.C. Code Ann. §15-48-10, the arbitration provision is enforceable under the FAA, because the contract involves interstate commerce.

The phrase “involving commerce” is the same as “affecting commerce,” which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 115 S. Ct. 834, 130 L. Ed. 2d 753 (1995). In *Blanton v. Stathos*, 351 S.C. 534, 570 S.E.2d 565, 2002 S.C. App. LEXIS 148

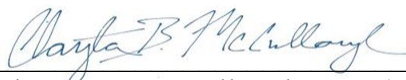
(S.C. Ct. App. 2002), the FAA applied to mandate arbitration of a dispute over a contract between an architect and a client, which violated the notice provision of S.C. Code Ann. § 15-48-10(a), where the architect submitted an undisputed affidavit demonstrating that the transaction involved interstate commerce in the nature of the project.

“Our courts consistently look to the essential character of the contract when applying the FAA.” *Thornton v. Trident Med. Ctr., LLC*, 357 S.C. 91, 96, 592 S.E.2d 50, 52 (Ct. App. 2003) (finding it was proper to “focus upon what the terms of the contract specifically require for performance in determining whether interstate commerce [was] involved”). “There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration.” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999). To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999).

Turning to the facts of this matter, the Agreement at issue relates to Plaintiffs hiring Defendant to perform real estate consulting services for the sale of Plaintiffs’ property. Attached hereto as Exhibit C and incorporated herein is the Affidavit of Andrew Batkins, an owner of Woodlock. The Affidavit clearly establishes the fact that the Agreement impacted interstate commerce in multiple ways. The property was being permitted for multi-family units, which would be marketed and sold / rented to people from beyond South Carolina’s borders. The marketing / consulting efforts would be focused on buyers outside of the South Carolina borders. Multiple Letters of Intent were received by buyers from outside of South Carolina. Financing efforts were being negotiated by entities outside of South Carolina. The ultimate purchaser of the property is a business located outside of South Carolina. In summary, individuals and companies

from multiple States other than South Carolina were directly involved / impacted by Defendant's work arising out of the Agreement. As such, the Agreement involves interstate commerce, meaning the Agreement is governed by the FAA.

McCULLOUGH KHAN, LLC



Clayton B. McCullough, Esq. (SC Bar No. 13722)
2036 eWall Street
Mount Pleasant, SC 29464
(843) 937-0400
(843) 937-0706 (fax)
clay@mklawsc.com

Counsel for Defendant

April 28, 2025
Mount Pleasant, South Carolina

Exhibit A

WOODLOCK CAPITAL

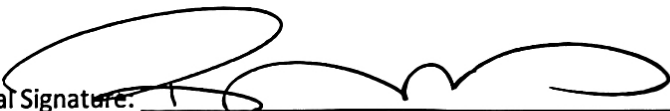
Real Estate Consulting Fee Agreement

This AGREEMENT, made on January 17th 2022 between Boris Van Dyck (Principal) and Woodlock Capital LLC (Broker) pertains to the sale of property located at the intersection of Windsor Mill Rd. and N. Goose Creek Blvd. Goose Creek, SC 29445, TMS #s 234-00-00-044 and 234-00-00-021 (Property).

Whereas, both parties acknowledge that the Broker is performing a real estate consulting service for Principal with regards to the Property, Principal agrees to pay a real estate consulting fee (Consulting Fee) equivalent to **Two Hundred Thousand Dollars (\$200,000.00)**.

Fee due to Broker under the terms and conditions of this Agreement will be paid by Principal, at the time of closing, unless otherwise agreed in writing. No modification of any of the terms of this Agreement shall be valid or binding upon the parties unless modifications are made in writing and signed by both parties.

Unless otherwise agreed upon by both parties, any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof and both parties agree to be bound by any such decision rendered.

Principal Signature: 
Principal Name: Boris Van Dyck
Principal Company: Boris Van Dyck LLC
Its: Principal

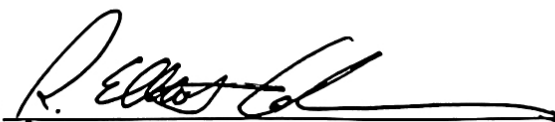
Broker Signature: 
Broker Name: R. Elliot Calhoun
Broker Company: Woodlock Capital LLC
Its: Member



Exhibit B

STATE OF SOUTH CAROLINA	)	BEFORE THE ARBITRATOR
	)	
COUNTY OF CHARLESTON	)	
	)	
Woodlock Capital, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	SUMMONS
	)	
Boris Van Dyck and Boris Van Dyck, LLC,	)	
	)	
Respondents.	)	

TO: THE ABOVE-NAMED RESPONDENTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 2036 eWall Street, Mount Pleasant, South Carolina 29464, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, Petitioner will apply to the Arbitrator for judgment by default for the relief demanded in the Complaint.

Respectfully submitted,

McCULLOUGH KHAN, LLC

s/Clayton B. McCullough

Clayton B. McCullough, Esq. (SC Bar No.: 13722)

2036 eWall Street

Mount Pleasant, SC 29464

(843) 937-0400

(843) 937-0706 (fax)

clay@mklawsc.com

Counsel for Petitioner

March 21, 2025

Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	BEFORE THE ARBITRATOR
	)	
COUNTY OF CHARLESTON	)	
	)	
Woodlock Capital, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	COMPLAINT
	)	
Boris Van Dyck and Boris Van Dyck, LLC,	)	
	)	
Respondents.	)	

Petitioner, complaining of the above-named Respondents, hereby alleges and would show as follows:

PARTIES

1. Petitioner Woodlock Capital, LLC (“Woodlock”) is a limited liability company organized and existing pursuant to the laws of South Carolina.
2. Upon information and belief, Respondent Boris Van Dyck is a citizen and resident of Charleston County, South Carolina.
3. Respondent Boris Van Dyck, LLC is a limited liability company organized and existing pursuant to the laws of South Carolina.

JURISDICTION AND VENUE

4. This matter is subject to jurisdiction by arbitration subject to a contract between the parties.
5. Jurisdiction and venue are proper in Charleston County, South Carolina pursuant to South Carolina law and contract.

FACTUAL ALLEGATIONS

6. Woodlock is a real estate brokerage, investment, and capital firm.

7. Respondents reached out to Woodlock seeking support to find a buyer for Respondents' property located at the intersection of Windsor Mill Road and N. Goose Creek Blvd., Goose Creek, South Carolina, 29445 (TMS #234-00-00-044 and #234-00-00-021) ("Property").

8. In furtherance of this, the parties entered into a Real Estate Consulting Fee Agreement whereby Respondents agreed to pay Woodlock \$200,000.00 for performance of real estate consulting services. The \$200,000.00 was to be paid if and when the Property listed above was sold. The Agreement is attached hereto as **Exhibit 1**.

9. Woodlock immediately began performing its real estate consulting services. These included working with Respondents through the entitlement process, reaching out to potential buyers, putting Respondents in touch with lenders, and providing Respondents with advice on every step of this process.

10. As a direct result of Woodlock's efforts, Respondents were introduced to Southern Waters Capital regarding its purchase of the Property. Southern Waters Capital subsequently submitted a letter of intent for the purchase of the Property on June 12, 2023.

11. Respondents rejected the letter of intent stating that the sale price was too low. Woodlock requested that the Respondents conduct a conference call with Southern Waters Capital to discuss further negotiations; however, Respondents rejected this recommendation.

12. Shortly thereafter, Respondents began negotiations with Southern Waters Capital directly without notifying or including Woodlock and subsequently received another letter of intent. Respondents and Southern Waters Capital closed on the Property in September 2024.

13. There is no dispute that without Woodlock's direct involvement, Respondents would have had no communication, contact, or possibility of negotiating the purchase of this Property with Southern Waters Capital.

14. Respondents failed to pay the consulting fee of \$200,000.

15. On September 9, 2024, Woodlock sent Respondents an invoice further documenting the \$200,000.00 owed based on the Real Estate Consulting Fee Agreement.

16. Upon receipt of Woodlock's invoice, Respondent Boris Van Dyck called Woodlock and left a voicemail agreeing that the bill was owed and he needed time to come up with the money to pay the \$200,000.00.

17. Shortly thereafter, Respondent Van Dyck met with Woodlock and again agreed that the money was owed but that he needed time to gather the necessary funds to pay the outstanding invoice.

18. Instead of paying the owed, Van Dyck retained counsel and has refused to pay the fee.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

19. Petitioner repeats and realleges all of the allegations contained in the previous paragraphs as if they were repeated verbatim herein.

20. The parties entered into the Real Estate Consulting Fee Agreement, which is a binding contract.

21. There was a clear and express understanding between the parties as to the terms of the contract.

22. Woodlock performed under the terms of the contract and provided extensive services to Respondents, which directly led to the introduction of and negotiations with the eventual buyer/purchaser of the Property.

23. Despite Woodlock fulfilling its obligations under the contract, the Respondents have breached and have refused to pay the amount owed pursuant to the contract.

24. As a direct and proximate result of Respondents' breach, Woodlock has been damaged by not receiving the \$200,000.00 fee, the time, energy and effort expended in handling this contract on Respondents' behalf (including all efforts to support seeking the necessary entitlements on the Property), lost revenue associated with the time, energy and expense of dealing with this matter, and pre-judgment interest on the unpaid liquidated damage owed since September 9, 2024.

25. The Real Estate Consulting Fee Agreement is not subject to the terms of SC Code Section 40-57-135.

26. The Real Estate Consulting Fee Agreement has a clear and binding arbitration provision; therefore, this matter is subject to binding arbitration. This Agreement relates to activities effecting interstate commerce. The eventual purchaser is a Florida entity. As such, the matter is governed by the Federal Arbitration Act.

FOR A SECOND CAUSE OF ACTION
(Equitable Claims)

27. Petitioner repeats and realleges all of the allegations contained in the previous paragraphs as if they were repeated verbatim herein.

28. Petitioner asserts all available equitable remedies including, but not limited to, unjust enrichment and quantum meruit.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Arbitrator enter judgment against Respondents, jointly and severally, and in favor of Petitioner and award the following relief: actual damages, consequential damages, statutory damages, special damages, pre-judgement interest and punitive damages, and for such other and further relief as this Panel may deem just and proper.

Respectfully submitted,

McCULLOUGH KHAN, LLC

s/Clayton B. McCullough

Clayton B. McCullough, Esq. (SC Bar No.: 13722)

2036 eWall Street

Mount Pleasant, SC 29464

(843) 937-0400

(843) 937-0706 (fax)

clay@mklawsc.com

Counsel for Petitioner

March 21, 2025

Mount Pleasant, South Carolina

WOODLOCK CAPITAL

Real Estate Consulting Fee Agreement

This AGREEMENT, made on January 17th 2022 between Boris Van Dyck (Principal) and Woodlock Capital LLC (Broker) pertains to the sale of property located at the intersection of Windsor Mill Rd. and N. Goose Creek Blvd. Goose Creek, SC 29445, TMS #s 234-00-00-044 and 234-00-00-021 (Property).

Whereas, both parties acknowledge that the Broker is performing a real estate consulting service for Principal with regards to the Property, Principal agrees to pay a real estate consulting fee (Consulting Fee) equivalent to Two Hundred Thousand Dollars (\$200,000.00).

Fee due to Broker under the terms and conditions of this Agreement will be paid by Principal, at the time of closing, unless otherwise agreed in writing. No modification of any of the terms of this Agreement shall be valid or binding upon the parties unless modifications are made in writing and signed by both parties.

Unless otherwise agreed upon by both parties, any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof and both parties agree to be bound by any such decision rendered.

Principal Signature: _____

Principal Name: _____

Principal Company: _____

Its: _____

Broker Signature: _____

Broker Name: _____

Broker Company: _____

Its: _____

EXHIBIT

tabbles

1
39



Exhibit C

AFFIDAVIT OF ANDREW BATKINS

PERSONALLY APPEARED BEFORE ME the undersigned, Andrew Batkins, who, upon being duly sworn, deposes and says:

1. I am over the age of eighteen years of age.
2. I am a partner of Woodlock Capital. Elliot Calhoun, is Woodlock Capital's other partner.
3. On January 10, 2022, I received an email from Boris Van Dyck requesting that Woodlock Capital assist with evaluating the Goose Creek multifamily site. Mr. Van Dyck asked me for a high-level evaluation of pricing, zoning, and entitlement strategy. The fact that the property is multifamily would almost certainly mean purchasers / tenants would be from locations other than South Carolina. See Exhibit A.
4. On January 13, 2022, I received a Letter of Intent from Vista Realty regarding the Goose Creek land. Vista Realty Partners is an out-of-state company located in Atlanta, GA. See Exhibit B.
5. After receiving the LOI from Vista Realty, I engaged in numerous communications (telephone and email) with the members of Vista – all located in Georgia.
6. On January 17, 2022, Mr. Van Dyck and I executed a Real Estate Consulting Fee Agreement outlining our cooperation on the Goose Creek land opportunity. It was understood that we would be helping to market this property on a nationwide basis – which we subsequently did. Our efforts were largely focused on purchasers out of State. See Exhibit C.
7. On January 20, 2022, I received a revised Letter of Intent from Vista Realty regarding Goose Creek land. Again, Vista Realty is a Georgia entity located in Atlanta, GA. See Exhibit D.

8. On January 20, 2022, I received a Letter of Intent from LIV Development, LLC. LIV Development is an Alabama entity located in Birmingham, AL.

9. On January 27, 2022, I received a revised Letter of Intent from Mr. Van Dyck, along with a request that I help deliver it to buyers' counsel. He expressed urgency to execute the PSA within ten (10) days. See **Exhibit E**.

10. In June 2022 Woodlock assisted Van Dyck and Van Dyck's attorney in ongoing negotiations and revisions to the purchase documents for the property. This included numerous communications (telephone and email) with the purchaser's attorney, Krevolin Horst – located in Atlanta, GA.

11. On June 13, 2022, Mr. Van Dyck copied me on an email sending the signed PSA to Vista. On the same day, he and Vista Acquisitions (GA Entity) signed a Purchase and Sale Agreement. See **Exhibit F**.

12. On January 17, 2023, I advised Mr. Van Dyck to accept Vista's revised \$5.1 million purchase price offer, to which he replied that he will not offer seller financing. See **Exhibit G**.

13. On January 30, 2023, Mr. Van Dyck emailed Vista Acquisitions comments on the second amended Purchase and Sale Agreement. See **Exhibit H**.

14. On March 20, 2023, I received an email from Mr. Van Dyck stating that he intended to close on the Goose Creek land himself and would consider finding buyers or selling off portions of the land post-closing. See **Exhibit I**.

15. On April 13, 2023, Mr. Van Dyck requested my input on revised language and buyer communication regarding LOI edits with LIV Development (AL entity). See **Exhibit J**.

16. On April 24, 2023, MCZ Capital Fund I, LLC (an Illinois entity located in Northbrook, IL) sent Mr. Van Dyck a letter discussing proposed financing terms for the project. See Exhibit K.

17. On April 26, 2023, Mr. Van Dyck emailed MCZ Capital the details on the land costs, escrow payments, and term sheet details. See Exhibit L.

18. On May 4, 2023, Mr. Van Dyck copied me on an email to Gene Bernshteyn with Orange Properteis (a privately held real estate investment firm located in Chicago, Illinois) regarding an option loan. See Exhibit M.

19. On June 12, 2023, Southern Waters Capital, managed by Raymond Mazzi, sent an LOI to Mr. Van Dyck to pursue the Goose Creek transaction. Southern Waters is a Florida company located in Fort Lauderdale, FL. See Exhibit N.

20. In July 2024, Mr. Van Dyck closed on the Goose Creek land with Southern Waters Capital (Florida company) without notifying or compensating Woodlock Capital.

21. On September 9, 2024, Woodlock Capital sent an invoice to Mr. Van Dyck requesting payment for the commission earned related to the Goose Creek deal. See Exhibit O.

22. On September 11, 2024, I received a voicemail from Mr. Van Dyck acknowledging that he owed the debt and referred to it as commission due.


Andrew Batkins

SWORN TO BEFORE ME THIS 26th

DAY OF April, 2025.

Alicia Terwilliger
NOTARY PUBLIC FOR THE STATE OF
SOUTH CAROLINA

MY COMMISSION EXPIRES: 1/1/2032

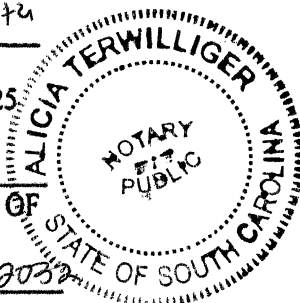


Exhibit A

BV

From: Boris Van Dyck boris@borisvandyck.com
Subject: Re: Multi Family Deal
Date: January 13, 2022 at 10:40 AM
To: Andy Batkins andy@woodlockcapital.com
Cc: Wayne Simon wayne@woodlockcapital.com

Great, look forward to the call!

Warm Regards,

Boris Van Dyck
M 843.437.6720

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

From: Andy Batkins <andy@woodlockcapital.com>
Date: Thursday, January 13, 2022 at 10:39 AM
To: Boris Van Dyck <boris@borisvandyck.com>
Cc: Wayne Simon <wayne@woodlockcapital.com>
Subject: Re: Multi Family Deal

Call in info below.

[Join by phone](#)

(US) +1 978-400-0141 PIN: 231 092 370#

Andrew Batkins
Woodlock Capital
Partner
678-595-6254 (m)
andy@woodlockcapital.com

On Jan 13, 2022, at 10:28 AM, Andy Batkins <andy@woodlockcapital.com> wrote:

Boris, please see attached LOI. I will get on the some times for a call today.

Andrew Batkins
Woodlock Capital
—

Partner
678-595-6254 (m)
andy@woodlockcapital.com

On Jan 10, 2022, at 5:52 AM, Boris Van Dyck
<boris@borisvandyck.com> wrote:

Hey Andy, Do you have time for a call today? I have a question for you on a piece of land we are entitling for Multi Family. I have attached the master Plan above. I have had several people approach me about buying the Multifamily Piece or to JV the project we are getting entitled and master planned. Trying to get a feeling of what the pricing on this should be per key or per acre fully entitled. Should I take it through civil design permitting? You are the multi guy so thought I could get some insight from you.

This was initially a senior housing play for me but not sure what direction I am going to take this yet.

Warm Regards,

Boris Van Dyck
M 843.437.6720

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

<2021-12-16_Goose Creek BVD_Concept Site Plan.pdf>

Exhibit B



2964 Peachtree Road, Suite 585
Atlanta, Georgia 30305

January 13, 2022

Woodlock Capital
Attn: Mr. Andy Batkins
239 Ashley Ave Unit A
Charleston, SC 29403

Re: Letter of Intent regarding +/- 7.99 acres of property located on Windsor Mill Road, and US Highway 52 in Goose Creek, SC (Berkely County Parcel ID # 234-00-00-044, Refer to Exhibit A for Property description)

Dear Andy,

This letter sets forth the basic economic terms and conditions under which **Vista Acquisitions, LLC** or its affiliate designees (the “**Purchaser**”) would be willing to acquire from **GPH Properties LP** (the “**Seller**”) the Property as more particularly described herein.

1. **Property:** Approximately +/- 7.99 acres of property located on Windsor Mill Road, and US Highway 52 in Goose Creek, SC (Berkely County Parcel ID # 234-00-00-044, Refer to Exhibit A for Property description) (the “**Property**”).
2. **Purchase Price:** The Purchase Price shall be **Four Million Four Hundred and Eighty Thousand Dollars (\$ 4,480,000)**, which amount shall be payable in good bank funds delivered by wire transfer or bank check satisfactory to the Seller at Closing.
3. **Earnest Money:** Purchaser shall deposit the sum of **Two Hundred Thousand Dollars (\$100,000)** as an “**Initial Deposit**” with a title company (the “**Escrow Agent**”) upon execution of a formal contract. Upon expiration of the Inspection Period, Purchaser shall deposit an **additional Fifty Thousand Dollars (\$50,000)** as “**Second Deposit**” (the “**Initial Deposit**” and the “**Second Deposit**” shall collectively be referred to as the “**Earnest Money**”). The Earnest Money shall be applicable to the Purchase Price at Closing and be refundable to Purchaser during the Inspection Period (as defined below) and as further described in the Agreement, such as upon a Seller default, failure to achieve zoning and site plan approval or the Property otherwise being un-useable for the Contemplated Improvements for reasons outside of the reasonable control of Purchaser.
4. **Inspection Period:** Purchaser will be granted ninety (90) days from the execution of the Agreement (the “**Inspection Period**”) in which to conduct its due diligence inspection with

respect to the physical and environmental condition of the Property. The Initial Deposit will be returned to Purchaser if Purchaser fails to deliver an acceptance notice to Seller or otherwise elects not to proceed with the Agreement during the Inspection Period.

5. **Contract:** Within ten (10) business days after the acceptance of this letter agreement is countersigned by Seller; the parties shall enter into a Purchase Agreement consistent with this letter (the “Contract”). In the event the Contract is not executed by both Purchaser and Seller within said time this letter agreement shall become null and void and of no further force and effect and neither party shall have any further rights or obligations to the other party. The initial draft of the Contract shall be prepared by the Purchaser.

6. **Closing:** The Closing Date for the Property shall occur seven (7) months from the end of the Inspection Period (the “**Closing Date**”). Purchaser shall have the right to extend the Closing Date for the Property with up to three (3) 30-day extensions by placing an additional deposit of \$25,000 in escrow for each 30-day extension required by Purchaser. The extension deposits shall be non-refundable except in the case of a Seller default or the Property otherwise being un-useable for the Contemplated Improvements for reasons outside of the reasonable control of Purchaser and shall be applicable to the Purchase Price.

7. **Expenses:** Seller shall be responsible for all customary Seller’s expenses due, payable, or incurred in connection with the transaction, if any. Purchaser shall be responsible for all survey expenses and all engineers, accountants’, the title insurance premium and other pre-closing Inspections, and one-half of all escrow fees. Purchaser and Seller shall each pay the fees and expenses of their respective legal counsel incurred in connection with the transaction.

8. **Contingency:** Final zoning and site plan approval allowing the development of a minimum 224 multifamily units (the “**Contemplated Improvements**”). If applicable, Purchaser and Seller shall use reasonable best efforts to apply for rezoning and site plan approval within 30 days after the end of the Inspection Period.

9. **Broker Commission:** Buyer and Seller each represent and warrant to the other that no real estate broker was used by Buyer and/or Seller in connection with the purchase of the Property except for Woodlock Capital. Seller shall be responsible for paying any broker’s commission at Closing per separate agreements.

10. **Exclusivity:** During the term of this Agreement, Seller will not (i) solicit, initiate, or encourage the submission of any proposal or offer to acquire the Property or (ii) participate in any discussions or negotiations regarding a sale to a different Purchaser, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt to sell the property.

11. **Acceptance:** This letter constitutes an offer by the Purchaser open for acceptance by the Seller until 5:00 p.m. on January 20th, 2022. If a copy of this letter is not executed and returned to the undersigned on or before that date and time, the undersigned Purchaser reserves the right to withdraw this letter.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

Sincerely,



Alex Barroso
President of Development – Mid-Atlantic

AGREED TO AND ATTESTED BY:

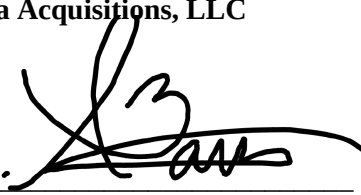
SELLER:
GPH Properties LP

By: _____

Its: _____

Date: _____

PURCHASER:
Vista Acquisitions, LLC

By: 

Alex Barroso
President of Development, Mid-Atlantic

Date: 1-13-22

Exhibit A

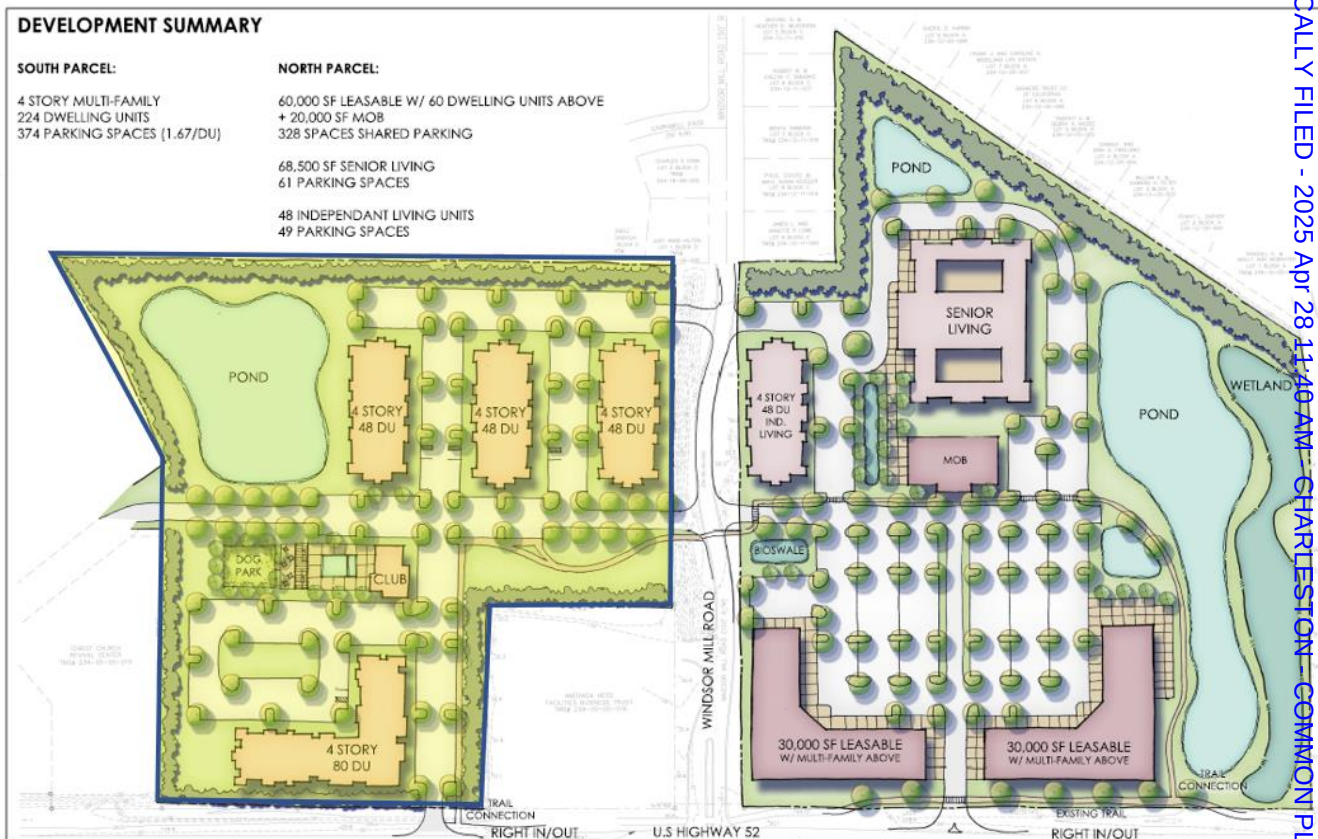


Exhibit C

WOODLOCK CAPITAL

Real Estate Consulting Fee Agreement

This AGREEMENT, made on January 17th 2022 between Boris Van Dyck (Principal) and Woodlock Capital LLC (Broker) pertains to the sale of property located at the intersection of Windsor Mill Rd. and N. Goose Creek Blvd. Goose Creek, SC 29445, TMS #s 234-00-00-044 and 234-00-00-021 (Property).

Whereas, both parties acknowledge that the Broker is performing a real estate consulting service for Principal with regards to the Property, Principal agrees to pay a real estate consulting fee (Consulting Fee) equivalent to **Two Hundred Thousand Dollars (\$200,000.00)**.

Fee due to Broker under the terms and conditions of this Agreement will be paid by Principal, at the time of closing, unless otherwise agreed in writing. No modification of any of the terms of this Agreement shall be valid or binding upon the parties unless modifications are made in writing and signed by both parties.

Unless otherwise agreed upon by both parties, any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof and both parties agree to be bound by any such decision rendered.

Principal Signature: 
Principal Name: Boris Van Dyck
Principal Company: Boris Van Dyck LLC
Its: Principal

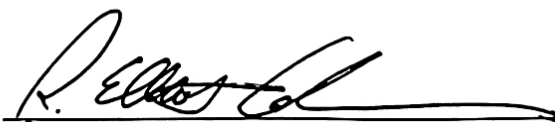
Broker Signature: 
Broker Name: R. Elliot Calhoun
Broker Company: Woodlock Capital LLC
Its: Member



Exhibit D



2964 Peachtree Road, Suite 585
Atlanta, Georgia 30305

January 20, 2022

Woodlock Capital
Attn: Mr. Andy Batkins
239 Ashley Ave Unit A
Charleston, SC 29403

Re: Letter of Intent regarding +/- 9.83 acres of property located on Windsor Mill Road, and US Highway 52 in Goose Creek, SC (Berkely County Parcel ID #'s 234-00-00-044 and 234-00-00-021, Refer to Exhibit A for Property description)

Dear Andy,

This letter sets forth the basic economic terms and conditions under which **Vista Acquisitions, LLC** or its affiliate designees (the “**Purchaser**”) would be willing to acquire from **GPH Properties LP** (the “**Seller**”) the Property as more particularly described herein.

1. **Property:** Approximately +/- 9.83 acres of property located on Windsor Mill Road, and US Highway 52 in Goose Creek, SC (Berkely County Parcel ID #'s 234-00-00-044 and 234-00-00-021, Refer to Exhibit A for Property description) (the “**Property**”).
2. **Purchase Price:** The Purchase Price shall be Four Million Seven Hundred and Fifty Thousand Dollars (\$4,750,000) up to 224 units approved for the Property. Provided the Property is approved for more than 224 units, the Purchase Price shall be increased by Thirteen Thousand One Hundred and Fifty Eight Dollars (\$13,158) for each residential unit approved for the Property above 224 units up to a maximum Purchase Price of **Five Million Seven Hundred and Fifty Thousand and Eight Dollars (\$ 5,750,008)**, which amount shall be payable in good bank funds delivered by wire transfer or bank check satisfactory to the Seller at Closing.
3. **Earnest Money:** Purchaser shall deposit the sum of **One Hundred Thousand Dollars (\$100,000)** as a deposit with a title company (the “**Escrow Agent**”) upon execution of a formal contract (the “**Earnest Money**”). The Earnest Money shall be applicable to the Purchase Price at Closing and be refundable to Purchaser during the Inspection Period (as defined below) and as further described in the Agreement, such as upon a Seller default, failure to achieve zoning and site plan approval or the Property otherwise being un-useable for the Contemplated Improvements for reasons outside of the reasonable control of Purchaser.

4. **Inspection Period:** Purchaser will be granted sixty (60) days from the execution of the Agreement (the “**Inspection Period**”) in which to conduct its due diligence inspection with respect to the physical and environmental condition of the Property. The Initial Deposit will be returned to Purchaser if Purchaser fails to deliver an acceptance notice to Seller or otherwise elects not to proceed with the Agreement during the Inspection Period.

5. **Contract:** Within ten (10) business days after the acceptance of this letter agreement is countersigned by Seller; the parties shall enter into a Purchase Agreement consistent with this letter (the “**Contract**”). In the event the Contract is not executed by both Purchaser and Seller within said time this letter agreement shall become null and void and of no further force and effect and neither party shall have any further rights or obligations to the other party. The initial draft of the Contract shall be prepared by the Purchaser.

6. **Closing:** The Closing Date for the Property shall occur one hundred and twenty (120) days from the end of the Inspection Period (the “**Closing Date**”). Purchaser shall have the right to extend the Closing Date for the Property with up to three (3) 30-day extensions by placing an additional deposit of \$10,000 in escrow for each 30-day extension required by Purchaser. In no event shall the Closing occur later than October 3, 2022 (the “**Outside Closing Date**”). The extension deposits shall be non-refundable except in the case of a Seller default or the Property otherwise being un-useable for the Contemplated Improvements for reasons outside of the reasonable control of Purchaser and shall be applicable to the Purchase Price.

7. **Expenses:** Seller shall be responsible for all customary Seller’s expenses due, payable, or incurred in connection with the transaction, if any. Purchaser shall be responsible for all survey expenses and all engineers, accountants’, the title insurance premium and other pre-closing Inspections, and one-half of all escrow fees. Purchaser and Seller shall each pay the fees and expenses of their respective legal counsel incurred in connection with the transaction.

8. **Contingency:** Final zoning and site plan approval allowing the development of a minimum 224 multifamily units (the “**Contemplated Improvements**”). If applicable, Purchaser and Seller shall use reasonable best efforts to apply for rezoning and site plan approval within 30 days after the end of the Inspection Period.

9. **Broker Commission:** Buyer and Seller each represent and warrant to the other that no real estate broker was used by Buyer and/or Seller in connection with the purchase of the Property except for Woodlock Capital. Seller shall be responsible for paying any broker’s commission at Closing per separate agreements.

10. **Exclusivity:** During the term of this Agreement, Seller will not (i) solicit, initiate, or encourage the submission of any proposal or offer to acquire the Property or (ii) participate in any discussions or negotiations regarding a sale to a different Purchaser, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt to sell the property.

11. **Acceptance:** This letter constitutes an offer by the Purchaser open for acceptance by the Seller until 5:00 p.m. on January 24th, 2022. If a copy of this letter is not executed and returned to the undersigned on or before that date and time, the undersigned Purchaser reserves the right to withdraw this letter.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

Sincerely,



Alex Barroso
President of Development – Mid-Atlantic

AGREED TO AND ATTESTED BY:

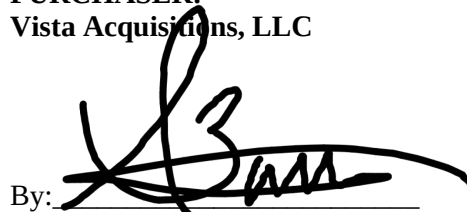
SELLER:
GPH Properties LP

By: _____

Its: _____

Date: _____

PURCHASER:
Vista Acquisitions, LLC



By: _____
Alex Barroso
President of Development, Mid-Atlantic

Date: 1-20-22

Exhibit A



Exhibit E

From: Boris Van Dyck boris@borisvandyck.com 
Subject: FW: Goose Creek South Parcel
Date: January 27, 2022 at 6:30 PM
To: Andy Batkins andy@woodlockcapital.com, Michael Allen mallen@buxtonandcollie.com

Hey Andy, Attached is the revised LOI from our attorneys. The goal is to make it easy and flexible for the buyer to draft the PSA and we are happy to coordinate with them during the process to make this as fluid as possible. As you know there are some other parcels involved in the MF piece that need to be consolidated and we do not foresee any issues currently, but do not have everything under contract as we are waiting on the City of Goose Creek's appraisal. Of course, all this is contingent on getting the new PD approved with all the necessary entitlements. I am flexible here if there is any wording they have issues with. My goal is to work with them through this process so we can all win. I have cc'd Michael who drafted the original PSA and can loop him in with their council to make things more fluid. Let me know. The only thing I would like is to get the PSA done quickly and in this LOI Michael extended it to 15 days but would prefer to keep it 10 if you want to edit before sending back.

I fell through some open floor joists this afternoon and bruised some ribs so not in the best place to try and do any editing lol. Call me if you have any questions. Just wanted to get this back to them quickly..... Thanks again for all your help.

Warm Regards,

Boris Van Dyck
M 843.437.6720

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

**VGC - LOI - Goose Creek (v
012722).docx**
2 MB



**VGC - LOI - Goose Creek (v
REDLINE 012722).docx**





2964 Peachtree Road, Suite 585
Atlanta, Georgia 30305

January 27, 2022

Boris Van Dyck, LLC
Attn: Boris Van Dyck
245 Marsh Oak Drive
Charleston, South Carolina 29407

Re: Letter of Intent regarding +/- 9.83 (and possibly more) acres of property located on Windsor Mill Road, and US Highway 52 in Goose Creek, SC (Berkely County Parcel ID #'s 234-00-00-044 and 234-00-00-021, Refer to Exhibit A for Property description)

Dear Boris,

This letter sets forth the basic economic terms and conditions under which **Vista Acquisitions, LLC** or its affiliate designees (the “**Purchaser**”) would be willing to acquire from **Boris Van Dyck, LLC** (the “**Seller**”) the Property as more particularly described herein.

1. **Property:** Approximately +/- 9.83 acres of property located on Windsor Mill Road, and US Highway 52 in Goose Creek, SC (Berkely County Parcel ID #'s 234-00-00-044 and 234-00-00-021, Refer to Exhibit A for Property description) (the “**Property**”). Furthermore, the parties understand that Seller in the pursuing the acquisition of the adjacent parcels (Berkeley County Parcel ID #'s 234-16-02-040, 234-16-02-041, 234-16-02-042, 234-16-02-043, 234-16-02-044, and 234-00-00-074) and to the extent Seller obtains rights to the adjacent parcels, they shall be included as party the “Property”.

2. **Seller Acquisition:** Purchaser and Seller understand and acknowledge that Seller is currently under contract to purchase the Property from the current owner and is pursuing the aforementioned adjacent parcels. Accordingly, the conveyance contemplated by this Letter of Intent (and subsequent Purchase and Sale Agreement or other agreement) is conditioned on the Seller acquiring all rights title and interests to the Property so entitled as necessary to thereafter convey the same to the Purchaser for the Contemplated Improvements as hereinafter defined. The parties agree that the Purchaser and Seller shall endeavor to facilitate the intent of the transaction – conveyance of entitled property to Purchaser for the collective Purchase Price hereinafter stated – and such may be carried out via traditional sale and purchase, via assignment under the contract(s) between Seller and current owner(s), via joint venture, or any other methods which may cause the transaction to be consummated.

3. **Purchase Price:** The Purchase Price shall be Four Million Seven Hundred and Fifty Thousand Dollars (\$4,750,000) up to 224 units approved for the Property. Provided the Property is approved for more than 224 units, the Purchase Price shall be increased by Thirteen Thousand One Hundred and Fifty Eight Dollars (\$13,158) for each residential unit approved for the Property above 224 units up to a maximum Purchase Price of **Five Million Seven Hundred and Fifty Thousand and Eight Dollars (\$ 5,750,008)**, which amount shall be payable in good bank funds delivered by wire transfer or bank check satisfactory to the Seller at Closing. Notwithstanding the foregoing, additional terms and conditions pertaining to the transfer and timing of Purchase Price funds shall be described in the Contract, as hereafter defined, that will afford the Seller the ability to utilize Purchase Price monies to close on the acquisition of the Property from the current owner(s) immediately prior to a subsequent transfer from Seller to Purchaser.

4. **Earnest Money:** Purchaser shall deposit the sum of **One Hundred Thousand Dollars (\$100,000)** (the “**Earnest Money**”) with _____ (the “**Escrow Agent**”) upon execution of the formal Contract. The Earnest Money shall be applicable to the Purchase Price at Closing and be refundable to Purchaser during the Feasibility Period (as defined below) subject to such certain terms and conditions further described in the Contract, including, but not limited to a Seller default, failure to achieve zoning and site plan approval or the Property otherwise being un-useable for the Contemplated Improvements for reasons outside of the reasonable control of Purchaser. Notwithstanding the foregoing, Purchaser’s Earnest Money refundability shall be subject to certain “go-hard” time periods and provisions, which mirror those involved in the Seller’s acquisition contract(s) with the current owner(s).

5. **Inspection Period:** Purchaser will be granted sixty (60) days from the execution of the Contract (the “**Feasibility Period**”) in which to conduct its due diligence inspection with respect to the physical and environmental condition of the Property. Notwithstanding the foregoing, to the extent the Property is still under contract between the Seller and current owner(s), the Purchaser agrees to not perform any act or action which may jeopardize said contract(s) and if Purchaser requires certain due diligence items be performed, Purchaser shall coordinate such items with Seller. Subject to terms and conditions of the Contract, the Initial Deposit will be returned to Purchaser if, before the expiration of the Feasibility Period, Purchaser notifies Seller that Purchaser elects not to proceed with the Contract. Additional terms and conditions shall be included in the Feasibility Period section of the Contract so as to not create a conflict between the time periods and provisions regarding the Feasibility Period involved with Seller’s contact with the current owner(s) of the Property. Further, the ability to extend the Feasibility Period shall be more fully described in the Contract, with the expected provisions to include, amongst others, the ability to extend the Feasibility Period by providing additional \$10,000.00 Earnest Money which shall be non-refundable.

6. **Contract:** Within fifteen (15) business days after the complete execution of this letter; the parties shall enter into a Purchase and Sale Agreement or other appropriate agreement (any agreement being referred to herein throughout as Contract) which is consistent with this letter. In the event the Contract is not executed by both Purchaser and Seller within said time this letter agreement shall become null and void and of no further force and effect and neither party shall have any further rights or obligations to the other party. The initial draft of the Contract shall be prepared by the Purchaser and delivered to Seller no later than five (5) business days from date of complete execution of this letter.

7. **Closing:** The Closing Date is to be contemporaneous with the closing(s) for all the involved parcels of the Property. It is anticipated that the Closing Date shall be within thirty (30) days from the end of the Feasibility Period (the “**Closing Date**”), provided, however, the parties understand that there may be multiple tractions necessary to consummate the acquisition of all the parcels that make up the Property, and to the extent the Closings happen at various stages,

the Purchase Price shall be due at the first closing, with the balance being held in trust and to be used for the remainder of the acquisitions.

8. **Expenses:** Seller shall be responsible for the transfer tax (aka deed stamps), deed preparation, and seller's attorneys' fees. Purchaser shall be responsible for all survey expenses regarding the Property, all engineers, accountants', the title insurance premium and other pre-closing Inspection related charges, one-half of all escrow agent fees, deed recording fees, purchaser's attorneys' fees, and all other transaction fees that are not specifically acknowledged as being the responsibility of the Seller.

Notwithstanding the foregoing, the parties agree that Seller is performing due diligence as part of the anticipated acquisition of the Property from the current owner(s), and when a due diligence item (surveys, field studies, plan preparations, etc.) being performed is exclusively related to the parcels which make up the Property, Purchaser shall reimburse Seller for the full amount of such expense (if not paid directly by Purchaser to service provider, which shall be done whenever possible), and if the due diligence item being performed relates to all of the parcels Seller is currently pursuing in the immediate area (the Property plus additional parcels to the north of the Property), Purchaser shall reimburse Seller for 50% of such expense. To the extent Purchaser requires additional due diligence, Purchaser shall request that Seller facilitate the same and Purchaser shall immediately reimburse Seller (if not paid to the provider directly) for the full amount of such expense.

9. **Contingency:** The parties are endeavoring to entitle the Property such that the development of a minimum 224 multifamily units is allowed on the Property (the "**Contemplated Improvements**"). Purchaser and Seller shall use reasonable best efforts to apply for rezoning but the Contract is not conditioned on the final approval of the site plan as that may occur after Closing Date.

10. **Broker Commission:** Purchaser and Seller each represent and warrant to the other that no real estate broker was used by Purchaser and/or Seller in connection with the purchase of the Property except for Woodlock Capital. Seller shall be responsible for paying any broker's commission at Closing per separate agreements.

11. **Exclusivity:** During the term of this Letter of Intent, Seller will not (i) solicit, initiate, or encourage the submission of any proposal or offer to acquire the Property or (ii) participate in any discussions or negotiations regarding a sale to a different Purchaser, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt to sell the property.

12. **Acceptance:** This letter constitutes an offer by the Purchaser open for acceptance by the Seller until 5:00 p.m. on January 31st, 2022. If a copy of this letter is not executed and returned to the undersigned on or before that date and time, the undersigned Purchaser reserves the right to withdraw this letter.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

Sincerely,

Alex Barroso
President of Development – Mid-Atlantic

AGREED TO AND ATTESTED BY:

SELLER:
Boris Van Dyck, LLC

PURCHASER:
Vista Acquisitions, LLC

By: _____
Boris Van Dyck
Managing Member

By: _____
Alex Barroso
President of Development, Mid-Atlantic

Date: _____

Date: _____



2964 Peachtree Road, Suite 585
Atlanta, Georgia 30305

January ~~2027~~, 2022

~~Woodlock Capital~~
~~Boris Van Dyck, LLC~~
Attn: ~~Mr. Andy Watkins~~ Boris Van Dyck
239 Ashley Ave Unit A
245 Marsh Oak Drive
Charleston, ~~SC 29403~~ South Carolina 29407

Re: Letter of Intent regarding +/- 9.83 (and possibly more) acres of property located on Windsor Mill Road, and US Highway 52 in Goose Creek, SC (Berkely County Parcel ID #'s 234-00-00-044 and 234-00-00-021, Refer to Exhibit A for Property description)

Dear ~~Andy~~ Boris,

This letter sets forth the basic economic terms and conditions under which **Vista Acquisitions, LLC** or its affiliate designees (the “**Purchaser**”) would be willing to acquire from ~~GPH Properties LP~~ Boris Van Dyck, LLC (the “**Seller**”) the Property as more particularly described herein.

1. **Property:** Approximately +/- 9.83 acres of property located on Windsor Mill Road, and US Highway 52 in Goose Creek, SC (Berkely County Parcel ID #'s 234-00-00-044 and 234-00-00-021, Refer to Exhibit A for Property description) (the “**Property**”). Furthermore, the parties understand that Seller in the pursuing the acquisition of the adjacent parcels (Berkeley County Parcel ID #'s 234-16-02-040, 234-16-02-041, 234-16-02-042, 234-16-02-043, 234-16-02-044, and 234-00-00-074) and to the extent Seller obtains rights to the adjacent parcels, they shall be included as party the “Property”.

22. **Seller Acquisition:** Purchaser and Seller understand and acknowledge that Seller is currently under contract to purchase the Property from the current owner and is pursuing the aforementioned adjacent parcels. Accordingly, the conveyance contemplated by this Letter of Intent (and subsequent Purchase and Sale Agreement or other agreement) is conditioned on the Seller acquiring all rights title and interests to the Property so entitled as necessary to thereafter convey the same to the Purchaser for the Contemplated Improvements as hereinafter defined. The parties agree that the Purchaser and Seller shall endeavor to facilitate the intent of the transaction – conveyance of entitled property to Purchaser for the collective Purchase Price hereinafter stated – and such may be carried out via traditional sale and purchase, via assignment under the contract(s)

Formatted: Justified

between Seller and current owner(s), via joint venture, or any other methods which may cause the transaction to be consummated.

3. Purchase Price: The Purchase Price shall be Four Million Seven Hundred and Fifty Thousand Dollars (\$4,750,000) up to 224 units approved for the Property. Provided the Property is approved for more than 224 units, the Purchase Price shall be increased by Thirteen Thousand One Hundred and Fifty Eight Dollars (\$13,158) for each residential unit approved for the Property above 224 units up to a maximum Purchase Price of **Five Million Seven Hundred and Fifty Thousand and Eight Dollars (\$ 5,750,008)**, which amount shall be payable in good bank funds delivered by wire transfer or bank check satisfactory to the Seller at Closing. Notwithstanding the foregoing, additional terms and conditions pertaining to the transfer and timing of Purchase Price funds shall be described in the Contract, as hereafter defined, that will afford the Seller the ability to utilize Purchase Price monies to close on the acquisition of the Property from the current owner(s) immediately prior to a subsequent transfer from Seller to Purchaser.

34. Earnest Money: Purchaser shall deposit the sum of **One Hundred Thousand Dollars (\$100,000)** as ~~a~~ a deposit (the **"Earnest Money"**) with ~~a title company~~ (the "Escrow Agent") upon execution of ~~the~~ a formal contract (the **"Earnest Money"-Contract**). The Earnest Money shall be applicable to the Purchase Price at Closing and be refundable to Purchaser during the ~~Inspection~~ Feasibility Period (as defined below) subject to such certain terms and as conditions further described in the Agreement, such as upon Contract, including, but not limited to a Seller default, failure to achieve zoning and site plan approval or the Property otherwise being un-useable for the Contemplated Improvements for reasons outside of the reasonable control of Purchaser. Notwithstanding the foregoing, Purchaser's Earnest Money refundability shall be subject to certain "go-hard" time periods and provisions, which mirror those involved in the Seller's acquisition contract(s) with the current owner(s).

Formatted: Font: Bold

Formatted: Font: Not Bold

45. Inspection Period: Purchaser will be granted sixty (60) days from the execution of the ~~Agreement~~ Contract (the **"Inspection Feasibility Period"**) in which to conduct its due diligence inspection with respect to the physical and environmental condition of the Property. ~~The~~ Notwithstanding the foregoing, to the extent the Property is still under contract between the Seller and current owner(s), the Purchaser agrees to not perform any act or action which may jeopardize said contract(s) and if Purchaser requires certain due diligence items be performed, Purchaser shall coordinate such items with Seller. Subject to terms and conditions of the Contract, the Initial Deposit will be returned to Purchaser if, before the expiration of the Feasibility Period, Purchaser fails to deliver an acceptance notice to notifies Seller or otherwise that Purchaser elects not to proceed with the Agreement during the Inspection Period. Contract. Additional terms and conditions shall be included in the Feasibility Period section of the Contract so as to not create a conflict between the time periods and provisions regarding the Feasibility Period involved with Seller's contact with the current owner(s) of the Property. Further, the ability to extend the Feasibility Period shall be more fully described in the Contract, with the expected provisions to include, amongst others, the ability to extend the Feasibility Period by providing additional \$10,000.00 Earnest Money which shall be non-refundable.

56. Contract: Within ~~ten~~ (15) business days after the ~~acceptance~~ complete execution of this letter agreement is countersigned by Seller; the parties shall enter into a Purchase ~~Agreement and Sale Agreement or other appropriate agreement (any agreement being referred to herein throughout as Contract) which is consistent with this letter (the "Contract").~~ Agreement and Sale Agreement or other appropriate agreement (any agreement being referred to herein throughout as Contract) which is consistent with this letter (the "Contract"). In the event the Contract is not executed by both Purchaser and Seller within said time this letter agreement shall become null and void and of no further force and effect and neither party shall have any further rights or obligations to the other party. The initial draft of the Contract shall be prepared by the Purchaser and delivered to Seller no later than five (5) business days from date of complete execution of this letter.

~~67.~~ **Closing:** The Closing Date ~~is to be contemporaneous with the closing(s) for all the involved parcels of the Property. It is anticipated that the Closing Date shall occur one hundred and twenty (120) days within thirty (30) days from the end of the Inspection Feasibility Period (the "Closing Date").~~ Purchaser shall have the right to extend the Closing Date for the Property with up to three (3) 30-day extensions by placing an additional deposit of \$10,000 in escrow for each 30-day extension required by Purchaser. ~~In no event shall~~ provided, however, the Closing occur later than October 3, 2022 (parties understand that there may be multiple tractions necessary to consummate the "Outside Closing Date"). ~~The extension deposits shall be non-refundable except in the case of acquisition of a Seller default or the Property otherwise being un-useable for the Contemplated Improvements for reasons outside of the reasonable control of Purchaser and shall be applicable all the parcels that make up the Property, and to the extent the Closings happen at various stages, the Purchase Price shall be due at the first closing, with the balance being held in trust and to be used for the remainder of the acquisitions.~~

~~78.~~ **Expenses:** Seller shall be responsible for all customary Seller's expenses due, payable, or incurred in connection with the transaction, if any, ~~transfer tax (aka deed stamps), deed preparation, and seller's attorneys' fees.~~ Purchaser shall be responsible for all survey expenses ~~and regarding the Property, all engineers, accountants', the title insurance premium and other pre-closing inspections, and inspection related charges, one-half of all escrow fees.~~ Purchaser and agent fees, deed recording fees, purchaser's attorneys' fees, and all other transaction fees that are not specifically acknowledged as being the responsibility of the Seller.

~~Notwithstanding the foregoing, the parties agree that Seller shall each pay the fees and expenses performing due diligence as part of their respective legal counsel incurred in connection with the transaction the anticipated acquisition of the Property from the current owner(s), and when a due diligence item (surveys, field studies, plan preparations, etc.) being performed is exclusively related to the parcels which make up the Property, Purchaser shall reimburse Seller for the full amount of such expense (if not paid directly by Purchaser to service provider, which shall done whenever possible), and if the due diligence item being performed relates the all of the parcels Seller is currently pursuing in the immediate area (the Property plus additional parcels to the north of the Property), Purchaser shall reimburse Seller for 50% of such expense. To the extent Purchaser requires additional due diligence, Purchaser shall request that Seller facilitate the same and Purchaser shall immediately reimburse Seller (if not paid to the provider directly) for the full amount of such expense.~~

~~8.~~
~~9.~~ **Contingency:** ~~Final zoning and site plan approval allowing~~ The parties are endeavoring to entitle the Property such that the development of a minimum 224 multifamily units is allowed on the Property (the "Contemplated Improvements"). ~~If applicable, Purchaser and Seller shall use reasonable best efforts to apply for rezoning and site plan approval within 30 days but the Contract is not conditioned on the final approval of the site plan as that may occur after the end of the Inspection Period Closing Date.~~

~~10.~~
~~9.~~ **Broker Commission:** ~~Buyer~~ Purchaser and Seller each represent and warrant to the other that no real estate broker was used by ~~Buyer~~ Purchaser and/or Seller in connection with the purchase of the Property except for Woodlock Capital. Seller shall be responsible for paying any broker's commission at Closing per separate agreements.

~~1011.~~ **Exclusivity:** During the term of this ~~Agreement~~ Letter of Intent, Seller will not (i) solicit, initiate, or encourage the submission of any proposal or offer to acquire the Property or (ii) participate in any discussions or negotiations regarding a sale to a different Purchaser, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt to sell the property.

~~11~~12. **Acceptance:** This letter constitutes an offer by the Purchaser open for acceptance by the Seller until 5:00 p.m. on January ~~24th~~31th, 2022. If a copy of this letter is not executed and returned to the undersigned on or before that date and time, the undersigned Purchaser reserves the right to withdraw this letter.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

Sincerely,

Alex Barroso
President of Development – Mid-Atlantic

AGREED TO AND ATTESTED BY:

SELLER:
~~GPH Properties LP~~ Boris Van Dyck, LLC
LLC

PURCHASER: Vista Acquisitions,

By: _____
Boris Van Dyck
Its: _____
President of Development, Mid-Atlantic

By: _____
Alex Barroso
Managing Member

Date: _____

Date: _____

Formatted: Centered

Formatted: Indent: First line: 0.5"

*To the extent Berkeley County Parcel ID #'s 234-16-02-040, 234-16-02-041, 234-16-02-042, 234-16-02-043, 234-16-02-044, and 234-00-00-074 are hereafter acquired by the Seller in furtherance of the Contemplated Improvements, they shall be included as part of the Property which is being conveyed in this transaction.

Formatted: Left

Exhibit F

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into this 13th day of June, 2022 (the “**Effective Date**”), by and between BORIS VAN DYCK, LLC, a South Carolina limited liability company (“**Seller**”), and VISTA ACQUISITIONS, LLC, a Georgia limited liability company (“**Buyer**”).

BACKGROUND

A. Seller has entered into that certain Purchase and Sale Agreement dated January 11, 2022, as amended on June 13th, 2022 (as amended, the “**Underlying Contract**”) with GPH Properties, LLC, a South Carolina limited liability company (the “**Underlying Seller**”) for the purchase and sale of approximately 29 acres of real property located in Berkeley County, South Carolina as more particularly described on Exhibit “A-1” attached hereto, together with all rights, privileges and appurtenances thereto (the “**Overall Property**”). Seller desires to sell and convey to Buyer a portion of the Overall Property, as more particularly described below.

B. Seller is pursuing the acquisition of and intends to enter into a definitive agreement with the City of Goose Creek for the purchase and sale of approximately ___ acres of real property located in Berkeley County, South Carolina as more particularly described on Exhibit “A-2” attached hereto, together with all rights, privileges and appurtenances thereto (the “**Additional Property**”). If Seller is able to obtain rights to acquire the Additional Property, Seller desires to convey to Buyer easement rights in and to the Additional Property, as more particularly described below.

C. Buyer desires to acquire the Property (as defined below) from Seller and to develop thereon a multifamily residential project consisting of not less than two hundred twenty-four (224) apartment units and related facilities and amenities (collectively, “**Buyer’s Proposed Project**”).

WITNESSETH

1. Agreement to Sell and Purchase. For and in consideration of the Initial Earnest Money, hereinafter defined, payable by Buyer to Stewart Title Guaranty Company (“**Escrow Agent**”) within three (3) Business Days following the Effective Date, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Buyer, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and take from Seller, subject to and in accordance with all of the terms and conditions of this Agreement, approximately 20.0 acres of land located on Windsor Mill Road and US Highway 52 in Goose Creek, Berkeley County, South Carolina, as shown on Exhibit “A-3” attached hereto, together with all plants, shrubs and trees located thereon, and together with all rights, ways and easements appurtenant thereto, including, without limitation, all of Seller’s right, title and interest in and to the land underlying and the air space overlying any public or private ways or streets crossing or abutting said real estate (the “**Land**”); and all certificates, licenses, permits or similar documents relating to the Land (collectively, the “**Property**”). The Property will be described in Seller’s limited warranty deed in accordance with the legal description taken from the Final Plat (as hereinafter defined). Upon either party’s request, the parties shall enter into an amendment hereto to incorporate such legal description of the Property into Exhibit A-3 of this Agreement.

2. Purchase Price; Method of Payment. The purchase price (the “**Purchase Price**”) for the Property shall be Four Million Seven Hundred Fifty Thousand and No/100 Dollars (\$4,750,000.00), provided, however if the Property is approved for more than 224 multi-family units, the Purchase Price will be increased by Thirteen Thousand One Hundred Fifty-Eight and No/100 Dollars (\$13,158.00) for each

residential unit approved above 224 units up to a maximum Purchase Price of Five Million Seven Hundred Fifty Thousand and Eight and No/100 Dollars (\$5,750,008.00). The Purchase Price, after crediting the Earnest Money, and subject to the prorations and adjustments hereinafter described, shall be paid by Buyer to Seller on the Closing Date by wire delivery of funds through the Federal Reserve System to an account designated in writing by Seller or bank check.

3. Earnest Money. Within three (3) Business Days following execution of this Agreement, Buyer shall deliver to Escrow Agent the sum of One Hundred Thousand Dollars (\$100,000.00) (together with all interest earned thereon, if any, collectively referred to as the “**Initial Deposit**”) which shall be held in trust by the Escrow Agent on the terms herein set forth. The Initial Deposit, the Extension Deposits (as defined below), and all interest earned thereon, if any, are hereinafter collectively referred to as the “**Earnest Money**”. Unless Buyer shall instruct the Escrow Agent otherwise, the Escrow Agent shall hold the Earnest Money in a non-interest-bearing account. On the Closing Date, the Earnest Money shall be applied as part payment of the Purchase Price. After the end of the Inspection Period (as defined below), if Buyer has delivered its Notice of Continuation, the Earnest Money shall be non-refundable to Buyer except in the event of a default by Seller, failure of any of the conditions to Closing, or as otherwise provided in this Agreement.

4. Closing. The consummation of the purchase and sale of the Property contemplated under this Agreement (the “**Closing**”) shall occur on or before the date (the “**Closing Date**”) that is thirty (30) days after the later of (i) final vote by the City Council of Goose Creek, South Carolina approving an ordinance rezoning the Property to accommodate Buyer’s Proposed Project and the expiration of the 30-day period in which a party can appeal such rezoning without any appeal having been filed (“**Rezoning**”), or (ii) the expiration of the Inspection Period. If Rezoning shall not have occurred on or before December 12, 2022, Buyer shall have the right thereafter to terminate this Agreement at any time upon notice to Seller and upon such termination, the Escrow Agent shall deliver One Hundred and No/100 Dollars (\$100.00) of the Earnest Money to Seller as consideration for Seller’s execution of and entry into this Agreement and the balance of the Earnest Money shall be immediately refunded to Buyer and, thereafter, the parties shall have no further rights or obligations under this Agreement, except those that expressly survive the termination hereof. The Closing shall be an escrow-style closing, such that each party may deliver to Escrow Agent in advance of Closing all documents and funds to be delivered by it to the other party at Closing in accordance with this Agreement, and neither Buyer nor Seller is required to personally attend such Closing. Seller shall deliver to Escrow Agent, in escrow, all of Seller’s Closing documents by no later than 10:00 a.m. on the Closing Date, and Escrow Agent shall, upon Buyer’s request, allow Buyer to review and approve same in advance of Closing. It is the intent of the parties hereto that the Closing of the purchase and sale of the Property contemplated by this Agreement shall occur simultaneously with the Closing of Seller’s purchase of the Overall Property and the Additional Property. Subject to the approval of Buyer, not to be unreasonably withheld, the Closing Date may be extended as necessary to accommodate Seller’s simultaneous closing of the Overall Property and the Additional Property. Seller shall promptly notify Buyer and shall keep Buyer informed as to its timing of the closing of the purchase of the Overall Property and the Additional Property.

5. Access and Inspection; Delivery of Documents and Information by Seller; Examination by Buyer.

(a) Between the date of this Agreement and the Closing Date, Buyer and Buyer’s agents and designees shall have the right to enter upon the Property for the purposes of inspecting the Property, conducting soil tests, and making surveys, engineering studies, and any other investigations and inspections as Buyer may reasonably require to assess the condition of the Property; provided, however, that such activities by or on behalf of Buyer on the Property shall not materially damage the Property, or unreasonably interfere with the use and occupancy of the Property. Buyer hereby agrees to indemnify and hold Seller

BM
6/13/22

harmless from and against any and all costs, liabilities, losses, judgments, fees and expenses (including, without limitation, reasonable attorneys' fees actually incurred) (collectively, "**Costs**") suffered by Seller and arising out of Buyer's, or its agents', contractors', consultants', or employees' entry on and inspection of the Property pursuant to this Agreement, excluding, however, Costs incurred by Seller and caused by (i) Seller's negligence or intentional misconduct, or (ii) the condition of the Property prior to Buyer's inspection thereof, or (iii) the reporting by Buyer of any existing condition of the Property. The indemnity provisions of this section 5(a) shall survive the termination of this Agreement.

(b) Within three (3) Business Days following the Effective Date, Seller shall deliver to Buyer, if not previously delivered, any and all of the following documents and information with respect to the Property to the extent the same are in Seller's possession:

(i) all surveys, plans, specifications, engineering and other data, reports and assessments relating to the Property which are in Seller's possession or which Seller can obtain with reasonable effort;

(ii) the Underlying Seller's most recent owner's title insurance policy relating to the Property, Seller's title abstracts and title commitment with respect to the Overall Property;

(iii) all soil studies, investigations, reports and assessments relating to the Property including, but not limited to environmental reports (Phase I and, if applicable, Phase II reports) and boring tests;

(iv) copies of all easements, declarations and/or covenants which affect the Property and all zoning materials which affect the Property (including copies of all zoning conditions, permits, and minutes);

(v) all leases affecting the Property, if any;

(vi) all licenses, permits and approvals which affect the Property;

(vii) A copy of the Underlying Contract with redactions as to purchase price; and

(viii) such other items in Seller's possession that Buyer may reasonably request in connection with its inspection of the Property.

(c) Buyer shall have until October 12, 2022 (the "**Inspection Period**") in which to examine the Property and investigate the Property, and to determine whether the Property is suitable and satisfactory to Buyer. If Buyer determines prior to the expiration of the Inspection Period that the Property is suitable to Buyer, Buyer may send written notice of its approval (the "**Notice of Continuation**") to Seller on or before the expiration of the Inspection Period, in which case this Agreement shall continue in full force and effect and the Inspection Period shall expire as of the date of the Notice of Continuation. If, on or before the expiration of the Inspection Period, Buyer in its sole and absolute, subjective judgment and discretion, determines that the Property is not suitable to Buyer, may terminate this Agreement by written notice to Seller (the "**Termination Notice**") delivered prior to the expiration of the Inspection Period, and this Agreement shall terminate on the date of the Termination Notice and upon such termination, the Escrow Agent shall deliver One Hundred and No/100 Dollars (\$100.00) of the Earnest Money to Seller as consideration for Seller's execution of and entry into this Agreement and the balance of the Earnest Money shall be immediately refunded to Buyer and, thereafter, the parties shall have no further rights or obligations under this Agreement, except those that expressly survive the termination hereof. Seller acknowledges that Buyer will expend time, money and other resources in connection with the examination and investigation

6/13/22
B

of the Property hereinabove described, and that, notwithstanding the fact that Buyer may terminate this Agreement pursuant to this paragraph, such time, money and other resources expended, together with the payment of the portion of the Earnest Money hereinabove described to be paid to Seller in the event of a termination of this Agreement, constitutes good, valuable, sufficient and adequate consideration for Seller's execution of and entry into this Agreement.

(d) Notwithstanding the foregoing, Buyer shall have the right, at Buyer's option, to extend the Inspection Period for up to two (2) additional periods of thirty (30) days each (each such thirty (30) day period hereinafter called an "**Extension Period**"). Buyer's right to extend the Inspection Period for each Extension Period shall be exercised by (i) Buyer giving written notice to Seller of such extension of the Inspection Period on or before the expiration of the then-existing Inspection Period, and (ii) Buyer's delivery to Escrow Agent of an additional earnest money deposit (each such additional deposit hereinafter called an "**Extension Deposit**" and together collectively referred to as the "**Extension Deposits**") of Ten Thousand and No/100 Dollars (\$10,000.00). The Extension Deposits shall each be non-refundable other than a default by Seller or as otherwise provided in this Agreement and shall each be applied as part payments of the Purchase Price.

6. Covenants relating to the Underlying Contract and Joint Development of the Overall Property.

(a) Seller shall provide Buyer with copies of all notices sent or received with respect to the Underlying Contract. Seller shall provide Buyer with not less than seven (7) days' prior written notice if Buyer elects to terminate the Underlying Contract and if Buyer so elects within such seven (7) day period, Seller shall assign the Underlying Contract to Buyer.

(b) Within thirty (30) days of the Effective Date, Seller shall enter into an amendment of the Underlying Contract with the Underlying Seller, in a form approved by Buyer, to accommodate the transaction contemplated by this Agreement including, but not limited to (i) requiring the Underlying Seller to send copies of all notices to Buyer simultaneously with any notices to Seller, (ii) Buyer having the right to cure any alleged breaches or defaults under the Underlying Contract, (iii) the Underlying Seller will cooperate with both Buyer and Seller in connection with the re-zoning of the Property including signing any re-zoning applications or other similar documents which Buyer may reasonably require, and (iv) if requested, for the Underlying Seller to deliver closing documents or other documents directly to Buyer. Buyer approves the amendment attached hereto as Exhibit "B".

(c) Seller shall at all times comply with the Underlying Contract. Any default by Seller of the Underlying Contract shall constitute a default under this Agreement. Upon a default by Seller under the Underlying Contract, to the extent permitted by the terms of the Underlying Contract, Buyer shall have the right to cure any breaches or defaults under the Underlying Contract or failure to perform under the Underlying Contract and to deduct from the Purchase Price any costs incurred in curing such breaches or defaults or to require that Seller assign the Underlying Contract to Buyer.

(d) Buyer and Seller recognize that there may be opportunities to reduce the cost of infrastructure including utilities and grading by coordination between the development of the Property and the development of the remainder of the Overall Property. Buyer and Seller shall use reasonable efforts to identify, quantify and agree upon any cost sharing and savings during the Inspection Period. Before the expiration of the Inspection Period, Seller and Buyer shall negotiate in good faith in an effort to mutually agree upon a form of joint development and cost sharing agreement and declaration of easements, restrictions and covenants (collectively, the "**JDA**") which shall encumber the Additional Property and Overall Property and which may include, without limitation, the following: (a) cross-easements for access, utilities and the detention of storm water on the Additional Property, if acquired, or alternatively, on the

6/13/22
BM

Overall Property if the Additional Property is not acquired; (b) signage easements; (c) reciprocal use restrictions ("Use Restriction") prohibiting the development or use of the Overall Property for certain obnoxious uses, (d) an agreement regarding the clearing, grading and development of the Overall Property and Additional Property to specifications agreed to during the Inspection Period and in a good and workmanlike manner; (e) the sharing of joint work and costs as agreed upon by Seller and Buyer between Buyer and Seller for Phase 1 environmental, geotechnical testing, wetlands delineation, zoning, common engineering, and common sewer facilities and outfall; and (f) such other matters as may be necessary to implement the orderly development of the Additional Property and Overall Property. Each of Seller and Buyer shall obtain any appropriate joinders and subordinations from their respective lenders, if any, to the JDA. In the event the parties are unable to agree upon the form of the JDA prior to the expiration of the Inspection Period, Buyer or Seller may terminate this Agreement whereupon such termination shall be treated in the same manner as set forth in Section 5(c) hereinabove. To the extent that Buyer agrees to use the third party materials obtained by Seller, the parties shall equally share in the costs, fifty percent (50%) to each.

(e) Seller acknowledges that the purpose of Buyer's acquisition of the Property is for the development of a multi-family housing project. As part of Seller's efforts to re-zone the Overall Property and for Seller to obtain all entitlements necessary for the development of Buyer's Proposed Project on the Property and for Seller's intended development of Senior Living and mixed use or any other use which may ultimately be pursued by Seller on the remainder of the Overall Property ("Seller's Proposed Project"). Buyer shall fully cooperate and assist Seller in its efforts to pursue the Rezoning of the Property.

(f) Seller shall obtain a preliminary subdivision plat of the Property illustrating subdivision of the Property from the Overall Property (the "Preliminary Plat"), prepared by a land surveyor licensed in South Carolina. Seller shall provide a copy of the Preliminary Plat to Buyer as soon as possible after Effective Date. Prior to the conclusion of the Inspection Period, Buyer and Seller will agree upon the boundary lines for the Property based on the Preliminary Plat. Thereafter, Seller shall cause the preparation of a final subdivision plat of the Property consistent with the approved Preliminary Plat (the "Final Plat") no later than thirty (30) days before the Closing Date. The Final Plat will be recorded prior to the Closing. The costs of the Preliminary Plat and Final Plat shall be shared equally by Buyer and Seller.

7. Prorations and Adjustments to Purchase Price. The following prorations and adjustments shall be made between Buyer and Seller at Closing, or thereafter if Buyer and Seller shall agree:

(a) All city, state and county ad valorem taxes and similar impositions levied or imposed upon or assessed against the Property (the "Taxes"), for the year in which Closing occurs shall be prorated as of the Closing Date. In the event the Taxes for such year are not determinable at the time of Closing, said taxes shall be prorated on the basis of the best available information, and the parties shall re-prorate the Taxes for such year promptly upon the receipt of the tax bills for such year and shall make between themselves any equitable adjustment required by reason of any difference between the estimated amount of the Taxes used as a basis for the proration at Closing and the actual amount of the Taxes for such year. In the event any of the Taxes are due and payable at the time of Closing, the same shall be paid at Closing. If the Taxes are not paid at Closing, Seller shall deliver to Buyer the bills for the Taxes promptly upon receipt thereof and Buyer shall thereupon be responsible for the payment in full of the Taxes within the time fixed for payment thereof and before the same shall become delinquent. Notwithstanding the foregoing, all special assessments affecting the portion of the Overall Property to be retained by Seller for Seller's Proposed Project, if any, due and payable on or before the Closing Date, shall be paid by Seller at Closing.

(b) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing Date.

6/13/22
BM

In making the prorations required by this paragraph, the economic burdens and benefits of ownership of the Property for the Closing Date shall be allocated to Buyer.

8. Title.

(a) Seller covenants to convey to Buyer at Closing good and marketable fee simple title in and to the Property. For the purposes of this Agreement, "good and marketable fee simple title" shall mean fee simple ownership which is: (i) free of all defects, claims, liens and encumbrances of any kind or nature whatsoever other than the Permitted Exceptions, hereinafter defined; and (ii) insurable by a title insurance company reasonably acceptable to Buyer, at then current standard rates under the standard form of ALTA owner's policy of title insurance with the standard printed exceptions therein deleted and without exception other than for the Permitted Exceptions. For the purposes of this Agreement, the term "**Permitted Exceptions**" shall mean: (i) current city, state and county ad valorem taxes not yet due and payable; (ii) easements for the installation or maintenance of public utilities serving only the Property; and (iii) such other matters, if any, as may be approved by Buyer as set forth below. In no event shall any mortgage, deed of trust, deed to secure debt, lien or other matters which can be satisfied by the payment of money be a Permitted Exception.

(b) Buyer shall have until the expiration of the Inspection Period in which to examine title and survey (as obtained pursuant to Section 9 below) to the Property and in which to give Seller written notice of objections which render Seller's title to the Property less than good and marketable fee simple (the "**Initial Title Objection Notice**"). Thereafter, Buyer shall have until the Closing Date in which to reexamine title and survey to the Property and in which to give Seller written notice of any additional objections disclosed by such reexamination so long as such matter was not disclosed by the initial title examination of Buyer or initial survey received by Buyer (the "**Subsequent Title Objection Notices**" and collectively with the Initial Title Objection Notice, the "**Title Objection Notices**"). Seller shall, within fifteen (15) days after receipt of any Title Objection Notice, give Buyer written notice of the title objections, if any, that Seller will not satisfy; provided, however, Seller shall be obligated to cure or resolve all liens, mortgages, deeds of trust, security deeds, and other monetary encumbrances, which can be cured by the payment of money. Failure of Seller to respond to a Title Objection Notice shall be deemed to be Seller's election to not cure any of the objections in such Title Objection Notice. Upon Seller's notification to Buyer of its refusal or inability to cure any exception to title, then within five (5) Business Days following Buyer's receipt of such notice from Seller, Buyer may either: (x) terminate this Agreement upon written notice to Seller, in which event, upon delivery of copies of the Buyer's Information to Seller, the Earnest Money shall be refunded to Buyer immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void; or (y) elect to purchase the Property without offset against the Purchase Price for any such exception. If Buyer does not deliver written notice of its election within five (5) Business Days of receipt of Seller's notice, Buyer shall be deemed to have elected to purchase the Property subject to any objections in which Seller has elected not to cure. Seller shall have until the Closing Date in which to satisfy all valid objections specified in the Title Objection Notices that Seller has elected to cure. If Seller fails to satisfy any such valid objections on or before the Closing Date, then, at the option of Buyer, Buyer may: (i) terminate this Agreement, in which event, the Earnest Money shall be refunded to Buyer immediately upon request and Buyer shall have the right to exercise such rights or remedies set forth in Section 16(b) of this Agreement; or (ii) enforce specific performance of the obligations of Seller to cure or remove such valid objections; (iii) waive such satisfaction and performance and consummate the purchase and sale of the Property; or (iv) extend the Closing Date for a period of up to thirty (30) days, during which time Seller shall cure such title and survey objections. In the event of an extension of the Closing Date by Buyer under clause (iv) above, and a subsequent failure of Seller to cure any valid title and survey objection, Buyer may then elect between the alternatives specified in clauses (i), (ii) and (iii) above.

6/13/22
BWM

9. Survey. Buyer may cause an ALTA survey of the Property to be prepared by a surveyor registered and licensed in the State where the Property is located and designated by Buyer (the "**Survey**"). Upon completion of the Survey, Buyer shall furnish Seller with a copy thereof for approval by Seller, not to be unreasonably withheld, conditioned or delayed. Such Survey shall depict such information as Buyer shall require and shall indicate the number of acres comprising the Property to the nearest one-hundredth of an acre. The Survey shall be certified to the Title Company, Buyer, its lender and assignee, if any, and Seller.

10. Proceedings at Closing. On the Closing Date, the Closing shall take place as follows:

(a) Seller shall deliver to Buyer the following documents and instruments, duly executed by Seller, in form and substance satisfactory to Buyer:

(i) a limited warranty deed (the "**Deed**") in recordable form conveying and demising the Property as described on the Final Plat;

(ii) a seller's affidavit with respect to the Property in a form acceptable to Buyer and Buyer's title insurer;

(iii) if Seller is not a Foreign Person, a certificate and affidavit of non-foreign status;

(iv) a withholding tax affidavit in the form required by the South Carolina Department of Revenue;

(v) a certificate that the representations and warranties of Seller in this Agreement are true and correct on and as of the Closing Date;

(vi) evidence in form and substance reasonably satisfactory to Buyer that Seller has the power and authority to execute and enter into this Agreement and to consummate the purchase and sale of the Property, and that any and all actions required to authorize and approve the execution of and entry into this Agreement by Seller, the performance by Seller of all of Seller's duties and obligations under this agreement, and the execution and delivery by Seller of all documents and other items to be executed and delivered to Buyer at Closing have been accomplished;

(vii) A certificate of tax compliance from the South Carolina Department of Revenue dated no more than thirty (30) days prior to the Closing or, alternatively, an affidavit stating that the sale of the Property does not constitute the transfer of a majority of the assets of Seller;

(viii) the JDA; and

(ix) a closing statement.

(b) Buyer shall pay the Purchase Price to Seller in accordance with the provisions of this Agreement and shall deliver to Seller a closing statement and the JDA duly executed by Buyer.

11. Costs of Closing. Seller shall pay: (a) all state, county and local transfer taxes, state county and local deed fees, recording fees and documentary fees; (b) Seller's attorneys' fees; (c) the commissions and other fees of the Broker and (d) one-half of all escrow fees. Buyer shall pay: (a) the cost and expense of the Survey; (b) the premium for any owner's policy of title insurance issued in favor of Buyer insuring Buyer's title to the Property (and any endorsements thereof); (c) all engineers, accountants and other pre-

6/13/22
BMS

Closing investigation costs; (d) one-half of all escrow fees; and (e) Buyer's attorneys' fees. All other costs and expenses of the transaction contemplated hereby shall be borne by the party incurring the same.

12. Warranties, Representations and Additional Covenants of Seller. Seller represents, warrants and covenants to and with Buyer, knowing that Buyer is relying on each such representation, warranty and covenant, that:

(a) Seller is a limited liability company duly organized and validly existing under the laws of the State of South Carolina; Seller has the right, power and authority to enter into this Agreement and to sell the Property to Buyer in accordance with the terms and conditions hereof; this Agreement and all other agreements to be executed by Seller in connection herewith have been (or upon execution will have been) duly executed and delivered by Seller, have been effectively authorized by all necessary action, and constitute (or upon execution will constitute) legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms;

(b) Seller is a party to and has the right to acquire the Property pursuant to the Underlying Contract. To Seller's knowledge, there are no breaches under the Underlying Contract, nor has any event occurred that, with the giving of notice or the passage of time, or both, would constitute a breach under the Underlying Contract. The Underlying Contract is in full force and effect. Seller has not made any assignment of its rights under the Underlying Contract to any other person or entity. To Seller's actual knowledge, the Underlying Seller has not made any assignment of its rights under the Underlying Contract to any other person or entity;

(c) Other than as set forth in the Permitted Exceptions and Seller's knowledge, the Property is not subject to any use or occupancy restrictions (except those imposed by applicable zoning laws and regulations), special taxes and assessments or utility "tap-in" fees (except those generally applicable throughout the tax district in which the Property is located), or restrictions, whether existing of record or arising by operation of law, unrecorded agreements, the passage of time or otherwise;

(d) Seller has received no written notice of a violation of any zoning, building, health, environmental or other laws, codes, ordinances, regulations, orders or requirements of any city, county, state or other governmental authority having jurisdiction thereof;

(e) There are no actions, suits or proceedings pending or to Seller's knowledge threatened against, by or affecting Seller which affect title to the Property, or which question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign; and there are no pending, or to Seller's knowledge threatened or contemplated condemnation actions involving all or any portion of the Property; there are no judgments outstanding against Seller which relate to or which would hinder or prohibit consummation of the transactions contemplated by this Agreement;

(f) To Seller's knowledge, there are no management, maintenance, service or other contracts with respect to the Property;

(g) On the Closing Date, except for monies owed which will be paid at Closing in exchange for lien waivers, Seller will not be indebted to any contractor, laborer, mechanic, materialperson, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any such person could claim a lien against the Property;

(h) Seller will cause the Underlying Seller to pay or cause to be paid all city, state and county ad valorem taxes and similar taxes and assessments, all sewer and water charges and all other governmental

6/13/22
BRO

charges levied or imposed upon or assessed against the Property on or before the Closing Date, and will pay or cause to be paid all expenses incurred by Seller with respect to the Property between the date hereof and the Closing Date;

(i) The execution of and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller or, to Seller's knowledge, the Underlying Seller on the Closing Date, and the performance by Seller or, to Seller's knowledge, the Underlying Seller of their respective duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement and the Underlying Contract, are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which Seller is a party, or any judicial order or judgment of any nature by which Seller is bound;

(j) Between the date hereof and the Closing Date, Seller shall, and until it purchases the Overall Property, cause the Underlying Seller to: operate the Property in the ordinary course of business; continue to carry and maintain in force all existing policies of casualty and public liability insurance with respect to the Overall Property; not make or enter into any lease or other agreement for the use, occupancy or possession of all or any part of the Property without the prior written approval of Buyer;

(k) To Seller's knowledge, there are no leases, licenses, or, other than as set forth in the Permitted Exceptions, other agreements for use, occupancy or possession presently in force with respect to all or any portion of the Property;

(l) To Seller's knowledge and except as may be disclosed in any materials delivered to Buyer by Seller as provided in Section 5(b) of the Agreement, there are no violations of any local, state or federal pollution control laws as the Property is presently being used and occupied;

(m) To Seller's knowledge and except as may be disclosed in any materials delivered to Buyer by Seller as provided in Section 5(b) of the Agreement, the Property has never been used as a landfill to receive solid waste, whether or not hazardous, and specifically has never been used for the disposal, storage or treatment of "hazardous substance" as such term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Property does not contain asbestos insulation or electrical transformers cooled by phenyl chlorobenzene (PCB's);

(n) Seller shall fully perform its obligations under the Underlying Contract and will not, without the express written consent of Buyer, modify or amend the Underlying Contract in any way that would affect the Property or Buyer's rights relating to the Property;

(o) All written information and data furnished by Seller to Buyer with respect to the Property will be true, correct, complete and not misleading;

(p) Seller will not directly cause, by act or omission, any of the foregoing representations, warranties or covenants to be untrue or not to be performed on the Closing Date; and

(q) Seller will deliver on the Closing Date all documents and instruments required by this Agreement and perform all acts necessary or appropriate for the consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement.

13. Warranties, Representations and Covenants of Buyer. Buyer represents, warrants and covenants to and with Seller, knowing that Seller is relying on each representation, warranty and covenant, that:

6/13/22
BOD

(a) Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia;

(b) There are no actions, suits or proceedings pending or threatened against, by or affecting Buyer which question the validity or enforceability of this Agreement or of any action taken by Buyer under this Agreement, in any court or before any governmental authority, domestic or foreign;

(c) The execution of and entry into this Agreement and the performance by Buyer of Buyer's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Property as contemplated by and provided for in this Agreement, are consistent with and not in violation of any contract, agreement or other instrument to which Buyer is a party, or any judicial order or judgment of any nature by which Buyer, or any officer of Buyer, is bound; and this Agreement, and the covenants and agreements of Buyer under this Agreement, are the valid and binding obligations of Buyer, enforceable in accordance with their terms; and

(d) Buyer will deliver on the Closing Date all documents and instruments required by this Agreement for the consummation of the purchase and sale of the Property.

14. Conditions of Buyer's Obligations. Buyer's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to the satisfaction or performance of the following terms and conditions, any one or more of which may be waived by Buyer, in whole or in part, on or as of the Closing Date:

(a) Seller shall have fully and completely in all material respects kept, observed, performed, satisfied and complied with all terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by Seller before, on or as of the Closing Date;

(b) The representations and warranties of Seller in this Agreement shall be true and correct, and certified by Seller to Buyer as such in all materials respects, on and as of the Closing Date, in the same manner and with the same effect as though such representations and warranties had been made on and as of the Closing Date; and, notwithstanding the fact that such representations and warranties may be limited to Seller's knowledge and belief of the truth of the facts, assertions and matters contained therein, the facts, assertions and matters contained in each of such representations and warranties shall be true and correct on and as of the Closing Date;

(c) Buyer shall not have terminated this Agreement pursuant to an express right so to terminate set forth in this Agreement;

(d) Seller shall have acquired the Property from the Underlying Seller and Seller shall have delivered good and marketable title to the Property, subject to the Permitted Exceptions and other matters specifically set forth herein;;

(e) Seller shall have acquired the Additional Property simultaneously with the purchase of the Land;

(f) Rezoning of the Property shall have occurred; and

(g) No material changes in the physical condition of the Property shall have occurred since the Effective Date.

6/13/22
Bm

If any of the foregoing conditions have not been satisfied or performed on or as of the Closing Date, Buyer shall have the right, at Buyer's option, either (i) to terminate this Agreement by giving written notice to Seller on or before the Closing Date, in which event all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void, or (ii) if such failure of condition constitutes a default by Seller under this Agreement, to exercise such rights and remedies as may be provided for in Section 16 of this Agreement. In either of such events, the Earnest Money shall be refunded to Buyer immediately upon request, but, unless such failure of condition constitutes a default by Seller, the Extension Deposits shall be delivered to Seller.

Seller's obligation to consummate the purchase and sale of the Property on the Closing Date shall be subject to Seller's having acquired the Property from the Underlying Seller so long as Seller at all times complies with its obligations hereunder with respect to the Underlying Contract. If Seller is not able to acquire the Property from the Underlying Seller by reason of a default by the Underlying Seller, and not due to any default or failure to act by Seller, Seller shall not be liable for failure to perform under this Agreement.

15. Possession at Closing. Seller shall surrender possession of the Property to Buyer on the Closing Date.

16. Remedies. (a) If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Buyer under this Agreement, the Earnest Money shall be delivered to Seller, and such amount shall constitute the full liquidated damages for such default. The parties acknowledge that Seller's actual damages in the event of a default by Buyer under this Agreement will be difficult to ascertain, and that such liquidated damages represent the parties' best estimate of such damages. The parties expressly acknowledge that the foregoing are liquidated damages, in the event of Buyer's default and as compensation for Seller's taking the Property off the market during the term of this Agreement. Such liquidated damages shall be the sole and exclusive remedy of Seller by reason of a default by Buyer under this Agreement, and Seller hereby waives and releases any right to sue Buyer, and hereby covenants not to sue Buyer, for specific performance of this Agreement or to prove that Seller's actual damages exceed the amount which is herein provided Seller as full liquidated damages.

(b) If the purchase and sale of the Property is not consummated in accordance with the terms and conditions of this Agreement due to circumstances or conditions which constitute a default by Seller under this Agreement, Buyer may, as its sole remedy, either (i) terminate this Agreement and the Earnest Money shall be refunded to Buyer immediately upon request and Seller shall be obligated to reimburse Buyer for its actual, documented, third-party, out-of-pocket costs and expenses related to the transaction contemplated herein up to a maximum of \$300,000, or (ii) to the extent available, Buyer may file suit for specific performance within ninety (90) days after the scheduled Closing Date to specifically enforce the terms and conditions of this Agreement. Failure to file a suit for specific performance within ninety (90) days after the scheduled Closing Date shall be deemed a waiver of such remedy. Anything contained herein to the contrary, if specific performance is not available to Buyer due to an intentional act of Seller, Buyer may recover actual damages incurred by Buyer, including attorney's fees and court costs incurred in connection with bringing such action. Actual damages shall include the excess of the gross sales price of the Property as sold by Seller and the Purchase Price set forth in this Agreement. Buyer and Seller further agree that in no event shall either party be liable nor shall any action be brought for consequential, incidental, exemplary or punitive damages.

17. Indemnification. Seller shall, and does hereby agree to, indemnify, defend and hold Buyer harmless from, against and in respect of: (i) any matter arising out of, by reason of or with respect to the ownership of the Property prior to and including the Closing Date; (ii) any and all actions, causes of action,

6/13/22
BM

suits, claims, demands, judgments, liens, proceedings and investigations (or any appeal thereof or relative thereto or other review thereof), of any kind or nature whatsoever, arising out of, by reason of, as a result of or in connection with any of the matters covered by the immediately preceding clause (i); and (iii) any and all liabilities, damages, losses, costs, expenses (including counsel fees and expenses and disbursements of counsel), amounts of judgment, assessments, fines or penalties, and amounts paid in compromise or settlement, suffered, incurred or sustained by Buyer on account of, by reason of, as a result of or in connection with any of the matters covered by the immediately preceding clauses (i) and (ii).

18. Risk of Loss. Between the date of this Agreement and Closing, the risks and obligations of ownership and loss of the Property and the correlative rights against insurance carriers and third parties shall belong to Seller. In the event of the damage or destruction of any material portion of the Property prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller prior to Closing, in which event, the Earnest Money shall be refunded to Buyer, immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void.

19. Condemnation. In the event of the taking of all or any part of the Property by eminent domain proceedings, or the commencement of any such proceedings, prior to Closing, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice thereof to Seller prior to Closing, in which event, the Earnest Money shall be refunded to Buyer immediately upon request, all rights and obligations of the parties under this Agreement shall expire, and this Agreement shall become null and void. If Buyer does not so terminate this Agreement, the Purchase Price shall be reduced by the total of any awards or other proceeds received by Seller prior to Closing with respect to any taking, and, at Closing, Seller shall assign to Buyer all rights of Seller in and to any awards or other proceeds paid or payable thereafter by reason of any taking. Seller shall notify Buyer of eminent domain proceedings within five (5) days after Seller learns thereof.

20. Assignment. Buyer may assign this Agreement to an entity affiliated with Buyer. Except as otherwise permitted herein, this Agreement may not be assigned by Buyer, in whole or in part without the prior written consent of Seller, which shall not be unreasonably withheld, delayed or conditioned. For purposes of this Agreement, the term "Buyer" shall include any assignee of the interest of Buyer under this Agreement.

21. Parties. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, Buyer and Seller and their respective heirs, legal representatives, successors and assigns.

22. Broker and Commission. All negotiations relative to this Agreement and the purchase and sale of the Property as contemplated by and provided for in this Agreement have been conducted by and between Seller and Buyer without the intervention of any person or other party as agent or broker other than Woodlock Capital (the "Broker"). Seller shall pay the commissions of the Broker at the Closing pursuant to a separate agreement between Seller and Broker and shall cause Broker to execute and deliver a broker lien waiver in a form reasonably acceptable to Buyer and its title insurer. Seller and Buyer warrant and represent to each other that, other than the commission or fee payable to the Broker by Seller pursuant to the terms of a separate agreement between Seller and the Broker, there are and will be no broker's commissions or fees payable in connection with this Agreement or the purchase and sale of the Property by reason of their respective dealings, negotiations or communications. Seller and Buyer shall and do each hereby indemnify, defend and hold harmless each other from and against the claims, demands, actions and judgments of any other brokers, agents and other intermediaries alleging a commission, fee or other payment to be owing, by reason of their respective dealings, negotiations or communications in connection with this Agreement or the purchase and sale of the Property.

6/13/22
BM

23. Escrow Agent. Escrow Agent shall hold the Earnest Money and shall perform the duties of Escrow Agent hereunder. At such time as Escrow Agent receives written notice from either Buyer or Seller or both setting forth the identity of the party to whom the Earnest Money is to be delivered, Escrow Agent shall deliver the Earnest Money to the party identified. However, if such notice is given by either Buyer or Seller but not by both, Escrow Agent shall (i) promptly notify the other that Escrow Agent has received a request for delivery and (ii) withhold delivery for a period of five (5) calendar days after so notifying the other party. If Escrow Agent receives a written notice by Buyer or Seller within said five (5) day period objecting to the earlier notice of delivery, then Escrow Agent shall withhold such delivery until Buyer or Seller agree upon a delivery of the Earnest Money. Buyer and Seller agree to send to the other a duplicate copy of any written notice sent to the Escrow Agent requesting delivery or objecting to a request for disbursement. In the event of dispute between Buyer and Seller sufficient in the sole discretion of Escrow Agent to justify its doing so or in the event Escrow Agent has not delivered the Earnest Money on or before the Closing Date and unless Escrow Agent receives notice from both Buyer and Seller that the date of Closing has been postponed, the Escrow Agent shall be entitled to tender into the registry or custody of any court which has or would have jurisdiction the Earnest Money together with such other legal pleading as it may deem appropriate, and thereupon shall be discharged from all duties and liabilities under this Agreement. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses except for willful default or breach of trust; and it shall accordingly, not incur any liability with respect to (i) any action taken or omitted in good faith upon advice of its legal counsel or (ii) any action taken or omitted in reliance upon the instrument, including written notice or instruction provided for in this Agreement not only as to its due execution and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein which Buyer's Escrow Agent shall in good faith believe to be genuine and to have been signed and presented by a proper person or persons in conformance with the provisions of this Agreement. In the event Escrow Agent is required to deliver Earnest Money into the registry of the court and/or file pleadings in association therewith, Buyer shall be liable for all costs incurred by such agent and his reasonable prevailing hourly rate for the preparation, filing and defense of such action or pleadings.

24. Further Assurances; Survival. At Closing, Buyer and Seller shall do all such additional and further acts, and shall execute and deliver all such additional and further deeds, affidavits, instruments, certificates and documents, as Buyer, Buyer's counsel or Buyer's title insurer may reasonably require fully to vest in and assure to Buyer full right, title and interest in and to the Property to the full extent contemplated by this Agreement and otherwise to effectuate the purchase and sale of the Property as contemplated by and provided for in this Agreement. All the provisions of this Agreement (including, without limitation, the representations, covenants and warranties of Seller and Buyer as set forth in this Agreement), shall survive the consummation of the purchase and sale of the Property on the Closing Date, the delivery of the deed and the payment of the Purchase Price for a period of one year.

25. Modification. This Agreement supersedes all prior discussions and agreements between Seller and Buyer with respect to the purchase and sale of the Property and other matters contained herein, and this Agreement contains the sole and entire understanding between Seller and Buyer with respect thereto. This Agreement shall not be modified or amended except by an instrument in writing executed by or on behalf of Seller and Buyer.

26. Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of South Carolina.

27. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument. Facsimile or electronic signatures shall constitute original signatures.

6/13/22
BM

28. Time of Essence. Time is and shall be of the essence of this Agreement. provided, however, that if the time within which any action, consent, approval or other activity contemplated, expires on a Saturday, Sunday or a national bank holiday, such time period shall automatically be deemed extended to the first day after the scheduled termination of such time period which is not a Saturday, Sunday or national bank holiday. A “**Business Day**” means any day Monday through Friday that is not a national bank holiday.

29. Captions. The captions and headings used in this Agreement are for convenience only and do not in any way restrict, modify or amplify the terms of this Agreement.

30. Exhibits. Each and every Exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement by such reference or other mention occurs, in the same manner and with the same effect as if each Exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

31. Notices. All notices, requests, demands, tenders and other communications under this Agreement shall be in writing. Any such notice, request, demand, tender or other communication shall be deemed to have been duly given if personally delivered, sent via overnight courier service, deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below, or sent via electronic mail. Any party, by written notice to the others in the manner herein provided, may designate an address different from that stated above. Notices to Buyer, Seller and Escrow Agent shall be addressed as follows:

If to Buyer:	Vista Acquisitions, LLC 2964 Peachtree Road Suite 585 Atlanta, Georgia 30305 Attention: Alex Barroso, Sr. Email: ab@vistarp.com
with a copy to:	Douglas P. Krevolin, Esq. Krevolin & Horst, LLC 1201 W. Peachtree Street, NW Suite 3250 Atlanta, Georgia 30309 Email: krevolin@khlawfirm.com
If to Seller:	Boris Van Dyck, LLC Attn: Boris Van Dyck 245 Marsh Oak Drive Charleston, South Carolina 29407 Email: Boris@borisvandyck.com
With a copy to:	Buxton & Collie, LLC Attn: Michael W. Allen, Jr. 940 Johnnie Dodds Blvd. Suite 100 Mount Pleasant, SC 29464 mallen@buxtonandcollie.com

6/13/22
BVM

If to Escrow Agent:

Stewart Title Guaranty Company
5901 Peachtree Dunwoody Road
Suite B-540
Atlanta, Georgia 30328
Attention: Regina Yoho and Will Lovell
Email: ryoho@stewart.com; and will.lovell@stewart.com

32. Attorneys' Fees and Costs. In the event either party to this Agreement commences a legal proceeding to enforce any of the terms of this Agreement or any rights under this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and costs from the other party.

33. 1031 Exchange. Each party acknowledges and agrees that the other party may choose to treat this transaction as part of a like-kind exchange of properties as contemplated by Section 1031 of the Internal Revenue Code (an "**Exchange**"). Should a party elect to engage in an Exchange, the other party agrees to cooperate reasonably with the party engaging in the Exchange to enable the Exchange to be consummated, provided, however, that the cooperating party shall not be obligated to accept title to any real estate (other than Buyer's acceptance of title to the Property); to incur any actual or potential liability or expense in connection with the Exchange, or to delay the Closing. The party engaging in the Exchange shall not be released from any of its duties, obligations, or liabilities hereunder, and the party engaging in the Exchange hereby acknowledges and agrees that the cooperating party does not represent or warranty the effectiveness of the Exchange.

6/13/22
RBM

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal all as of the day and year first written above.

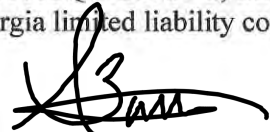
SELLER:

BORIS VAN DYCK, LLC.
a South Carolina limited liability company

By: 
Boris Van Dyck, Managing Member

BUYER:

VISTA ACQUISITIONS, LLC,
a Georgia limited liability company

By:  6-13-22
Alex Barroso
President of Development, Mid-Atlantic

ESCROW AGENT:

STEWART TITLE GUARNTY COMPANY

By: _____
Name: _____
Title: _____

EXHIBIT "A-1"

DESCRIPTION OF THE OVERALL PROPERTY

Parcel 1
 14.527 Acres
 TMS #234-00-00-001

All that certain piece, parcel or tract of land situate, lying and being in the Town of Goose Creek, Berkeley County, State of South Carolina, containing 14.527 acres, more or less, and shown and designated as "Charles R. Hipp 14.527 AC." on a plat prepared by George A.Z. Johnson, Jr., Inc., entitled "PLAT OF THE SUBDIVISION OF A 161.587 AC. TRACT LOCATED ON THE SW CORNER OF U.S. HIGHWAY 52 AND OLD MT. HOLLY ROAD TOWN OF GOOSE CREEK, BERKELEY COUNTY, S.C. OWNER: LELO, A PARTNERSHIP" dated March 19, 1985, and recorded April 3, 1985, in Plat Cabinet F, at page 57, in the R.M.C. Office for Berkeley County, S.C., said property having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BUTTING AND BOUNDING to the north on a right-of-way known generally as Woodland Lakes Blvd.; to the east on U.S. Highway 52 North; to the South on Parcel 3, a 2.65 acre tract described below; and to the west on a portion of a 39.932 acre tract now or formerly owned by Woodland Lakes, a partnership.

This is a portion of the property conveyed to Charles R. Hipp by deed of C.R. Hipp, Inc., dated July 15, 1974, and recorded in Book A276, page 45, in the R.M.C. Office for Berkeley County, S.C., and the same property conveyed to Charles R. Hipp by confirmatory deed of Woodland Lakes, a partnership dated March 29, 1985, and recorded April 3, 1985, in Book A596, page 19, in said R.M.C. Office, the said Charles R. Hipp having conveyed an undivided one (1%) percent interest in said property to the said G. Preston Hipp by deed of conveyance dated the 9th day of OCTOBER, 1996, and recorded in Book 952, page 41, in the R.M.C. Office for Berkeley County, S.C.

ALSO

Parcel 2
 Tract "C" - 9.89 Acres
 TMS Number: 234-00-00-044

All that certain piece, parcel or tract of land situate, lying and being in the Town of Goose Creek, Berkeley County, State of South Carolina, on the west side of U.S. Highway 52, containing 9.89 acres, more or less, and shown and designated as Tract "C" 9.89 AC." on a plat prepared by Cleatwood E. Droze entitled "PLAT OF TRACTS 'A', 'B' & 'C' OWNED BY MILLWRIGHT SERV. INC. 2nd GOOSE CREEK PARISH BERKELEY COUNTY SOUTH CAROLINA" dated June 29, 1987, last revised on July 9, 1987, and recorded in Plat Cabinet G at page 237, in R.M.C. Office for Berkeley County, S.C., said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

6/13/22
 RM

Parcel 3
Tract "A" - 2.65 Acres
TMS Number: 234-00-00-046

BOOK 988 PAGE 252

All that certain piece, parcel or tract of land situate, lying and being in the Town of Goose Creek, Berkeley County, State of South Carolina, on the west side of U.S. Highway 52, containing 2.65 acres, more or less, and shown and designated as Tract "A" 2.65 AC." on a plat prepared by Cleatwood E. Droze entitled "PLAT OF TRACTS 'A', 'B' & 'C' OWNED BY MILLWRIGHT SERV. INC. 2nd GOOSE CREEK PARISH BERKELEY COUNTY SOUTH CAROLINA" dated June 29, 1987, last revised on July 9, 1987, and recorded in Plat Cabinet G at page 237, in R.M.C. Office for Berkeley County, S.C., said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Parcels 2 and 3 having been conveyed to Charles R. Hipp by deed of conveyance of Fifty-Two Associates, a South Carolina General Partnership, dated August 4, 1987, and recorded August 5, 1987, in Book A715, page 221, in the R.M.C. Office for Berkeley County, S.C., the said Charles R. Hipp having conveyed an undivided one (1%) percent interest in said property to the said G. Preston Hipp by deed of conveyance dated the 9th day of OCTOBER, 1996, and recorded in Book 952, page 41, in the R.M.C. Office for Berkeley County, S.C..

ALSO

All that piece, parcel or tract of land, situate, lying and being on the West side of U.S. Highway 52, Berkeley County, South Carolina, measuring and containing 1.836 Acres and measuring and containing and butting and bounding as follows: to the East on U.S. Highway 52 Two Hundred (200') feet; to the South on other lands of Forest Lawn Company Four Hundred (400') feet; to the West on other lands of Forest Lawn Company Two Hundred (200') feet and to the North on other lands of Forest Lawn Company Four Hundred (400') feet. Said tract being more fully delineated on a plat made by Thomas E. Youngblood, Surveyor, dated January 23, 1981, and recorded in the RMC Office for Berkeley County in Plat Cabinet D, Page 238. Said tract having such sizes, shapes, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

Being the same property conveyed to Hipp Brothers Investments, LLC by deed of Provident Finance and Investment Company, a South Carolina Corporation a/k/a Provident Finance and Investment Corporation dated May 12, 2000 and recorded May 12, 2000 in the Office of the Berkeley County register of Deeds in Deed Book 1928 Page 0118

TMS No: 234-00-00-021

6/13/22
Bom

EXHIBIT "A-2"

DESCRIPTION OF THE ADDITIONAL PROPERTY

Berkeley County TMS#'s	234-16-02-040
	234-16-02-041
	234-16-02-042
	234-16-02-043
	234-16-02-044
	234-00-00-074

6/13/22
CJG
BJS

EXHIBIT "A-3"

DEPICTION OF THE PROPERTY

6/13/22
BM

EXHIBIT "B"

UNDERLYING PSA AMENDMENT

6/13/22

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

This **FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT** (this “First Amendment”) is made and entered into this 13th day of June, 2022 by and between **GPH Properties, LLC**, a South Carolina limited liability company (“Seller”), **Boris Van Dyck, LLC**, a South Carolina limited liability company, or its assigns (“Buyer”) and, with respect to Sections 3, 5 and 6 of this Amendment only, **Vista Acquisitions, LLC**, a Georgia limited liability company (together with its successors and assigns referred to as “Vista”).

WHEREAS, Buyer and Seller are parties to that certain Purchase and Sale Agreement dated January 11, 2022 (the “Agreement”) with respect to the acquisition by Buyer of approximately 27+/- acres located in close proximity to the intersection of Windsor Mill Road and Hwy 52 and being more particularly described in the Agreement (the “Property”);

WHEREAS, Buyer intends to develop the Property for (i) a multi-family project of at least 300 units, (ii) a senior living project, and (iii) retail and/or commercial uses (collectively Buyer’s “Intended Purpose”) and Buyer has contracted with Vista for Vista to acquire a portion of the Property for development of the contemplated multi-family project;

WHEREAS, Vista has requested notices, rights to cure and certain other rights under the Agreement to protect its ability to complete the project; and

WHEREAS, Seller is willing to provide notices and certain other rights to Vista and to otherwise amend the Agreement on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions hereof, the Parties, intending to be legally bound, hereby amend the Agreement as follows:

- 1. Defined Terms. Capitalized terms not otherwise defined in this First Amendment shall have the meanings ascribed to them in the Agreement.
- 2. Closing. Subsection 3(a) of the Agreement is hereby amended by deleting the Subsection in its entirety and inserting in lieu thereof the following:

“(a) The closing of this transaction (the “**Closing**”) shall occur on or before the date (the “**Closing Date**”) that is thirty (30) days after the later of (i) the end of the Feasibility Period, or (ii) final, non-appealable, re-zoning of the Property for Buyer’s Intended Purpose. Buyer may extend the Closing Date for up to thirty days by notice to Seller no later than three (3) business days prior to the then existing Closing Date and payment to Escrow Agent of an extension fee (the “**Extension Fee**”) of ten thousand dollars (\$10,000.00). The Extension Fee shall be non-refundable, except in the event of a Seller default, but shall be applicable to the Purchase Price. The Closing shall be an escrow-style closing, such that each party may deliver to the closing attorney in advance of Closing all documents and funds to be delivered by it to the other party at Closing in accordance with this Agreement, and neither Buyer nor Seller is required to personally attend such Closing.”

- 3. Feasibility Period. Subsection 3(b) of the Agreement is hereby amended by deleting the subsection in its entirety and inserting in lieu thereof the following:

 6/10/2022  6/10/22

“(b) Buyer shall have until October 12, 2022 (the “**Feasibility Period**”) in which to examine the Property and investigate the Property, and to determine whether the Property is suitable and satisfactory to Buyer. If, on or before the expiration of the Feasibility Period, Buyer in its sole and absolute, subjective judgment and discretion, determines that the Property is not suitable to Buyer, may terminate this Agreement by written notice to Seller and Vista (the “**Termination Notice**”) delivered prior to the expiration of the Feasibility Period. Upon receipt of the Termination Notice, Vista shall have ten (10) days in which to elect to revoke the Termination Notice by notice to Buyer and Seller (the “**Revocation Notice**”) in which event this Agreement as amended hereby shall remain in full force and effect and shall be deemed to have been assigned to Vista. If Vista does not timely issue its Revocation Notice, this Agreement shall terminate as of the date of the Termination Notice and Escrow Agent shall disburse the Deposit as set forth in Subsection 3(d) of this Agreement, and, thereafter, the parties shall have no further rights or obligations under this Agreement, except those that expressly survive the termination hereof. If Buyer shall not have delivered the Termination Notice prior to August 10, 2022, Twenty Five Thousand and No/100 (\$25,000.00) Dollars of the Deposit shall be non-refundable except in the case of Seller default or as may otherwise be provided under the terms of this Agreement. Upon the expiration of the Feasibility Period without Buyer terminating as hereinabove provided, all Deposits (as hereafter defined) shall be non-refundable, except in the case of Seller default or as may otherwise be provided under the terms of this Agreement.”

4. Extension of Feasibility Period. Subsection 3(d) of the Agreement is hereby amended by deleting Subparagraph 3(d)(iii) in its entirety.

5. Title. The following provision is added to the end of Section 7 of the Agreement. “Notwithstanding anything contained herein to the contrary, Seller shall be obligated to cure or resolve all liens, mortgages, deeds of trust, security deeds, and other monetary encumbrances, which can be cured by the payment of money. Between the date hereof and the Closing Date, Seller shall operate the Property in the ordinary course of business, continue to carry and maintain in force all existing policies of casualty and public liability insurance with respect to the Property, and not make or enter into any lease or other agreement for the use, occupancy or possession of all or any part of the Property without the prior written approval of Buyer”

6. Notices. Section 18 of the Agreement is hereby amended by adding the following at the end of the section:

“Any notices to Buyer or Seller shall also simultaneously be delivered to Vista as follows:

- If to Vista:

Vista Acquisitions, LLC
2964 Peachtree Road
Suite 585
Atlanta, Georgia 30305
Attention: Alex Barroso, Sr.
Email: ab@vistarp.com
- With a copy to:

Douglas P. Krevolin, Esq.
Krevolin & Horst, LLC
1201 W. Peachtree Street, NW
Suite 3250

DS
JD

6/10/2022  6/10/22

Atlanta, Georgia 30309
Email: krevolin@khlawfirm.com”

7. Vista Rights Under the Agreement. Anything contained in the Agreement to the contrary notwithstanding:

(i) Vista shall have not less than ten (10) days after notice from Seller in which to cure any default under the Agreement, but if the default cannot be cured by Vista within such ten (10) day period, Vista shall have such additional time as may be necessary to cure, so long as Vista is taking reasonable steps to attempt to cure such default, but in no event longer than twenty (20) days unless otherwise negotiated between Buyer and Seller at that time;

(ii) Vista shall have the right to issue the Revocation Notice and have the Agreement assigned to Vista as set forth in Section 3(b) of the Agreement as amended by this Amendment;

(iii) Seller shall cooperate with Vista and Buyer in connection with the re-zoning of the Property including signing any re-zoning applications or other similar documents which Vista may reasonably require; and

(iv) if requested by Buyer and/or Vista, Seller shall deliver closing documents or other documents directly to Vista so that Vista may purchase the Property directly from Seller.

8. Ratification; Conflict. Except as amended by this First Amendment, all of the terms and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms and conditions of the Agreement and the terms and conditions of this First Amendment, the terms of this First Amendment shall control.

9. Counterparts. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same document. Delivery of executed counterparts of this First Amendment by the parties to each other may be made via e-mail of a “pdf” copy of same.

[Signatures on next page]

DS
JD

6/10/2022

[Handwritten Signature]
6/10/22

IN WITNESS WHEREOF, this First Amendment has been duly executed and delivered by the parties as of the date first set forth above.

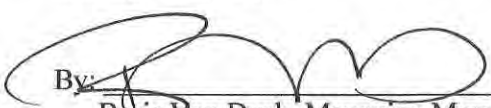
SELLER:

GPH Properties, LLC, a South Carolina limited liability company

By:  DocuSigned by:
Jan Dorn
DD7C0810B2F3493...
Title: Managing Partner
6/10/2022

BUYER:

Boris Van Dyck, LLC, a South Carolina limited liability company

By:  6/10/22
Boris Van Dyck, Managing Member

As to Sections 3, 5 and 6 of this Amendment only:

VISTA:

VISTA ACQUISITIONS, LLC, a Georgia limited liability company

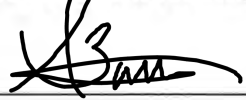
By: 
Title: President of Development, Mid-Atlantic
Date: 6-13-22

Exhibit G

BV

From: Boris Van Dyck boris@borisvandyck.com
Subject: Re: Goose Creek Update
Date: January 17, 2023 at 5:19 PM
To: Andy Batkins andy@woodlockcapital.com

Got ya. At that price I'm not offering any seller financing.

Warm Regards,

Boris Van Dyck
 843.437.6720
boris@borisvandyck.com

From: Andy Batkins [<andy@woodlockcapital.com>](mailto:andy@woodlockcapital.com)
Sent: Tuesday, January 17, 2023 4:18:38 PM
To: Boris Van Dyck [<boris@borisvandyck.com>](mailto:boris@borisvandyck.com)
Subject: Re: Goose Creek Update

Boris, I would take that deal and run!

Andrew Batkins
 Woodlock Capital
 Partner
 678-595-6254 (m)
andy@woodlockcapital.com

On Jan 17, 2023, at 4:15 PM, Boris Van Dyck [<boris@borisvandyck.com>](mailto:boris@borisvandyck.com) wrote:

His response.....

Warm Regards,

Boris Van Dyck
 M 843.437.6720

NEW OFFICE ADDRESS:
1816 Success Street
Building C
North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

From: Alex Barroso [<ab@vistarp.com>](mailto:ab@vistarp.com)
Date: Tuesday, January 17, 2023 at 4:01 PM
To: Boris Van Dyck [<boris@borisvandyck.com>](mailto:boris@borisvandyck.com)
Subject: RE: Goose Creek Update

Then I think it would be better for us if you simply keep the senior site (and the retail) with some form of a break on the PP on the rest. I do like the idea of some form of seller financing as a hedge if you can't get the time we need. Can we simply apply the 50% of the \$1.3MM (\$650,000) of value to the residential piece then? Basically, an amended Purchase Price of \$5.1MM (\$5.75MM less \$650,000). Does that work?

Alex Barroso
 President of Development, Mid-Atlantic
Vista Residential Partners
 4000 Westchase Blvd., Suite 310
 Raleigh, NC 27607
 off: 919.782.6652
 fax: 919.977.0153
 cell: 919.698.3175

<image001.png>

From: Boris Van Dyck <boris@borisvandyck.com>
Sent: Tuesday, January 17, 2023 3:41 PM
To: Alex Barroso <ab@vistarp.com>
Subject: Re: Goose Creek Update

Alex, I have reached out to the broker on Friday and this morning. Have not heard back from him yet. I hope to be in touch with him by the end of the day today or tomorrow morning and will update you when I hear back. I received the draft JDA and easement agreements and will be reviewing tomorrow and will forward as soon as I can get them back from Jay.

I took the weekend to think through our conversation. This is what I am thinking.

On the senior site we can split the baby on the 1.3 M value (it would be much higher on non-ALF use, but this is what I am currently negotiating) and I am willing to carry back a note for a period of time. We can talk through details on what that would look like from term, rate and principal amount. I am willing to get creative to make it work for both of us. Basically 6.4 M with a portion of that seller financed. Let me know your thoughts.

I am available to chat after 5 today, 930 am or after 2 pm tomorrow. Let me know what works for you.

Warm Regards,

Boris Van Dyck
 M 843.437.6720

NEW OFFICE ADDRESS:
 1816 Success Street
 Building C
 North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

From: Alex Barroso <ab@vistarp.com>
Date: Tuesday, January 17, 2023 at 2:55 PM
To: Boris Van Dyck <boris@borisvandyck.com>
Subject: Goose Creek Update

Boris,
Did you get a chance to speak with the underlying seller? Let me know if you have time to discuss.

Thanks,

Alex Barroso
President of Development, Mid-Atlantic
Vista Residential Partners
4000 Westchase Blvd., Suite 310
Raleigh, NC 27607
off: 919.782.6652
fax: 919.977.0153
cell: 919.698.3175

<image001.png>

From: Boris Van Dyck boris@borisvandyck.com
Subject: FOR YOUR EYES ONLY LOL
Date: January 17, 2023 at 3:54 PM
To: Andy Batkins andy@woodlockcapital.com

This is what I sent Alex earlier today.

Warm Regards,

Boris Van Dyck
M 843.437.6720

NEW OFFICE ADDRESS:
1816 Success Street
Building C
North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

From: Boris Van Dyck <boris@borisvandyck.com>
Date: Tuesday, January 17, 2023 at 3:41 PM
To: Alex Barroso <ab@vistarp.com>
Subject: Re: Goose Creek Update

Alex, I have reached out to the broker on Friday and this morning. Have not heard back from him yet. I hope to be in touch with him by the end of the day today or tomorrow morning and will update you when I hear back. I received the draft JDA and easement agreements and will be reviewing tomorrow and will forward as soon as I can get them back from Jay.

I took the weekend to think through our conversation. This is what I am thinking.

On the senior site we can split the baby on the 1.3 M value (it would be much higher on non-ALF use, but this is what I am currently negotiating) and I am willing to carry back a note for a period of time. We can talk through details on what that would look like from term, rate and principal amount. I am willing to get creative to make it work for both of us. Basically 6.4 M with a portion of that seller financed. Let me know your thoughts.

I am available to chat after 5 today, 930 am or after 2 pm tomorrow. Let me know what works for you.

Warm Regards,

Boris Van Dyck
M 843.437.6720

NEW OFFICE ADDRESS:
1816 Success Street
Building C
North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

From: Alex Barroso <ab@vistarp.com>
Date: Tuesday, January 17, 2023 at 2:55 PM
To: Boris Van Dyck <boris@borisvandyck.com>
Subject: Goose Creek Update

Boris,
Did you get a chance to speak with the underlying seller? Let me know if you have time to discuss.

Thanks,

Alex Barroso
President of Development, Mid-Atlantic
Vista Residential Partners
4000 Westchase Blvd., Suite 310
Raleigh, NC 27607
off: 919.782.6652
fax: 919.977.0153
cell: 919.698.3175



VISTA RESIDENTIAL
PARTNERS

Exhibit H

BV

From: Boris Van Dyck boris@borisvandyck.com 
Subject: FW: GCV - 2nd Amendment to PSA (JSC comments)
Date: January 30, 2023 at 4:54 PM
To: Alex Barroso ab@vistarp.com
Cc: Jay Claypoole jay.claypoole@nelsonmullins.com

Hey Alex, In order to bring everything in line with the closings I have attached a comment to the 2nd Amendment to the contract. This will give you the price concession and align the closing timelines which got out of sync with our GPH amendment. Please give me a call if you want to discuss further and we can get this finalized in the morning.

Warm Regards,

Boris Van Dyck
M 843.437.6720

NEW OFFICE ADDRESS:
1816 Success Street
Building C
North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

**GCV - 2nd Amendment to PSA
(002).pdf**
124 KB



Exhibit I

From: Boris Van Dyck boris@borisvandyck.com
Subject: GC
Date: March 20, 2023 at 8:20 AM
To: Andy Batkins andy@woodlockcapital.com

I am working on closing on this project myself so that we can be in a better position to get the maximum potential out of the project. At this point it is unrealistic to have someone close on this by mid may so lets do it right and get the right partners in place and get this tee'd up. Here are my thoughts on what I would prefer:

1. Someone that can take the whole thing down
2. Someone that would take the senior and MF site as a package and a retail buyer that would work together to get to LDP and closing.
3. Selling the 3 parcels Separately as we were doing previously.

The goal is to have contracts on one or multiple prior to my closing (or at least LOI's)

I am scheduling a meeting with the mayor to see if we can do Age restricted instead of senior. Will give us better flexibility on the buyer pool for that site.

Call me when you have a second.

Warm Regards,

Boris Van Dyck
M 843.437.6720

NEW OFFICE ADDRESS:
1816 Success Street
Building C
North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

Exhibit J

BV

From: Boris Van Dyck boris@borisvandyck.com
Subject: Re: Surveys
Date: March 28, 2023 at 2:53 PM
To: Andy Batkins andy@woodlockcapital.com

There were 5 parcels owned by the city that we have under contract in the south parcel. They are located at the top left where the storm water is going.

Warm Regards,

Boris Van Dyck
M 843.437.6720

NEW OFFICE ADDRESS:
1816 Success Street
Building C
North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

From: Andy Batkins <andy@woodlockcapital.com>
Date: Tuesday, March 28, 2023 at 2:31 PM
To: Boris Van Dyck <boris@borisvandyck.com>
Subject: Re: Surveys

Okay you purchase the storm water site from the city?

Andrew Batkins
Woodlock Capital
Partner
678-595-6254 (m)
andy@woodlockcapital.com

On Mar 28, 2023, at 2:23 PM, Boris Van Dyck <boris@borisvandyck.com> wrote:

No, Just a small 2 acre portion where the stormwater is on the southern parcel.

Warm Regards,

Boris Van Dyck
M 843.437.6720

NEW OFFICE ADDRESS:
1816 Success Street
Building C
North Charleston SC 29405

North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

From: Andy Batkins <andy@woodlockcapital.com>
Date: Tuesday, March 28, 2023 at 1:57 PM
To: Boris Van Dyck <boris@borisvandyck.com>
Subject: Re: Surveys

Did you purchase the site from the City?

Andrew Batkins
 Woodlock Capital
 Partner
[678-595-6254](tel:678-595-6254) (m)
andy@woodlockcapital.com

On Mar 28, 2023, at 1:25 PM, Boris Van Dyck
 <boris@borisvandyck.com> wrote:

Thomas, Can you send Andy all the surveys on the entire site, the proposed subdivision of the parcels (MF, Retail, Senior), the proposed site plan (central access with parking etc).

Andy, we are cleaning up some small stuff on the surveys around the city parcels but everything else is pretty much set. Let me know if the retail guys need anything else to further the conversation.

Warm Regards,

Boris Van Dyck
 M 843.437.6720

NEW OFFICE ADDRESS:
 1816 Success Street
 Building C
 North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not

the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

Exhibit K

MCZ Capital Fund I, LLC

April 24, 2023

Boris Van Dyck
1816 Success Street
Building C
North Charleston SC 29405

Mr. Van Dyck,

Thank you for giving MCZ Capital Fund I, LLC the opportunity to work on providing you financing on the purchase of land (approximately 29.38 AC) located along Highway 52 and Windsor Mill Road in the City of Goose Creek, SC, known as “Windsor Mill Village”. Below is a summary of the terms under which we are willing to fund this financing request. Please note this letter is not a commitment to extend financing and is subject to final underwriting, a property inspection, and any required third-party reports. The terms are as follows:

Lender: MCZ Capital Fund I, LLC

Borrower (Optionee): Boris Van Dyck or nominee

Option Term: Optionee will be granted a one-time right to purchase the property from the Lender during the first 12 months following the closing

Loan Amount: \$2,630,000

Interest Rate: 14% per annum; 50% of interest paid current, while the other 50% of interest will be accrued and added to the principal

Lender Fee: \$52,600.00 earned at time of funding

Exit Fee: \$52,600.00 earned at time of repayment

Broker Fee: \$26,300.00 paid to Woodlock Capital at closing

Lender Deposit: \$50,000 will be deposited with Lender upon execution of this Term Sheet. The deposit will be applied for all Due Diligence

related costs incurred by Lender as it pertains to the transaction.
The remaining balance will be credited to Borrower at closing.

- Initial Term: 12 Months
- Renewal Options: Two 60-day renewal options will be available for a fee of 1% of the outstanding loan amount each.
- Collateral: Title to property will be in the name of the Lender
- Costs: All closing related costs will be the responsibility of Borrower
- Conditions to Close: 1) Title company closing with Lender's policy provided
2) All documentation prepared by Lender's legal counsel
3) Property inspection to take place after acceptance of the term sheet
4) Verification that all outstanding real estate taxes have been paid at time of closing and are brought current
5) Phase I and Phase (if necessary) environmental report
6) Zoning opinion letter from City of Goose Creek for the intended development
- Future Draws: Not Applicable
- Other Conditions: 1) Escrow established for future real estate tax payments that the Borrower will be required to put money into monthly with failure to do so an event of default
2) Borrower to keep the property insured at all times with evidence of insurance provided to the Lender with the Lender listed as Mortgagee

The above represents the material terms by which we are willing to provide the Borrower with financing. Should you be in agreement with the above terms please indicate your acceptance of these terms by signing the term sheet below. Upon acceptance we require a deposit payment of a \$50,000, which will be used to cover initial legal costs and due diligence. Should the Borrower cancel this transaction prior to closing the deposit will be refundable to the Borrower minus any third-party costs incurred for legal, title or other expenses. We anticipate being able to close this loan by May 31st should the Borrower cooperate with the conditions contained in this letter and all third party reports come back as expected.

Should you have any questions regarding anything contained in this letter, please do not hesitate to contact me at anytime at 847-722-4055. Thank you again for this opportunity and have a great day!

Very Truly Yours,

Gene Bernshteyn
Managing Partner

By signing below I agree to accept the terms contained in this proposal letter:

Boris Van Dyck

Exhibit L

BV

From: Boris Van Dyck boris@borisvandyck.com
Subject: Re: Charleston Loan
Date: April 26, 2023 at 2:02 PM
To: Mike Lerner mnlerner@mczdevelopment.com, Andy Batkins andy@woodlockcapital.com

Mike, Thanks for your patience this morning as I know time is of the essence to get this done.

I have attached the details on the costs for land, escrow payments, DD paid and outstanding and assumptions based on your term sheet. Can you review the numbers and let me know if your available for a call at 3:30 to discuss and finalize?

Here is a [link to our drop box](#) which includes many of the documents you have requested for your DD.

Draft Title Work (Buxton and Collie is finalizing for the closing)
 Environmental report (Phase I & II)
 Approved PD document (Zoning Verification)
 Also included: All Surveys, Site plans, Geotech, Traffic Study, Wetlands Letters and NWP application, etc.

Warm Regards,

Boris Van Dyck
 M 843.437.6720

NEW OFFICE ADDRESS:
 1816 Success Street
 Building C
 North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

From: Andy Batkins <andy@woodlockcapital.com>
Date: Tuesday, April 25, 2023 at 1:53 PM
To: Boris Van Dyck <boris@borisvandyck.com>
Cc: Mike Lerner <mnlerner@mczdevelopment.com>
Subject: Re: Charleston Loan

Boris, please see attached term sheet.

Andrew Batkins
 Woodlock Capital
 Partner
 678.505.6254 (m)

070-090-0204 (111)
andy@woodlockcapital.com

On Apr 21, 2023, at 7:08 AM, Boris Van Dyck <boris@borisvandyck.com> wrote:

Mike, It was a pleasure speaking with you yesterday. Attached is the development overview. I have also included a link to our dropbox with the PD and the DD files.

[DATA ROOM LINK](#)

Let me know what else you need and look forward to catching up.

Warm Regards,

Boris Van Dyck
 M 843.437.6720

NEW OFFICE ADDRESS:
 1816 Success Street
 Building C
 North Charleston SC 29405

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender.

From: Andy Batkins <andy@woodlockcapital.com>
Date: Thursday, April 20, 2023 at 5:38 PM
To: Boris Van Dyck <boris@borisvandyck.com>
Cc: Mike Lerner <mnlerner@mczdevelopment.com>
Subject: Charleston Loan

Guys, thank you for your time today.

Boris, can you please provide Mike with the Dropbox and additional information about the site.

Best,

Andrew Ratkins

ANDREW DANNING
Woodlock Capital
Partner
[678-595-6254](tel:678-595-6254) (m)
andy@woodlockcapital.com

<Windsor Mill Village Presentation 4.1.23.pdf>

Windsor Mill Dev \$ Chart.xlsx



Exhibit M

BV

From: Boris Van Dyck boris@borisvandyck.com
Subject: Option
Date: May 4, 2023 at 6:26 AM
To: Gene Bernshteyn (Gene@oplcity.com) gene@oplcity.com
Cc: Andy Batkins andy@woodlockcapital.com

Gene , after our conversation yesterday I was on the phone for several hours with my attorney and brokers/sellers of the properties. I was able to secure an additional two and a half weeks. This will give us some additional time to flush out some of the issues my attorney had with the proposal. Sorry for the fire drill at the end of the day yesterday.

Warm Regards,

Boris Van Dyck
843.437.6720
Boris@borisvandyck.com

Exhibit N



June 12, 2023

Delivered via email only to wayne@woodlockcapital.com.

Boris Van Dyck, LLC

Attn: Boris Van Dyck

Registered Agent Mailing Address:

1816 Success Street, Building C

North Charleston, South Carolina 29405

RE: Letter of Intent to Purchase 29.38 acres located along Highway 52 in the City of Goose Creek, SC and is bisected by Windsor Mill Road.

I am submitting this Letter of Intent Offer on behalf of SWC Management, LLC, establishing its interest in purchasing the parcels referenced below. The terms of the proposal are as follows:

PURCHASER: SWC Management, LLC or as it assigns.

SELLER: Boris Van Dyck, LLC

SITE INFORMATION: See subsections immediately below, Exhibit A, and Exhibit B.

- I. **NORTH SIDE PARCELS:** 234-00-00-001 (14.53 AC), 234-00-00-046 (2.65 AC) for a subtotal of 17.18 AC.
- II. **SOUTH SIDE PARCELS:** 234-00-00-044 (7.99 AC.), 234-00-00-021 (1.84 AC), 234-16-02-040 (0.26 AC), 234-16-02-041 (0.31 AC), 234-16-02-042 (0.35 AC); 234-16-02-043 (0.27 AC), 234-16-02-044 (0.32 AC), 234-00-00-074 (0.32 AC), and the unimproved Right of Way for Stonewall Court (0.54 AC) for a subtotal of 12.20 AC. This is subject to transfer of parcels from the City of Goose Creek.

PURCHASE PRICE: Three Million Six Hundred Thousand Dollars (\$3,600,000.00)

ESCROW DEPOSIT: Purchaser shall deposit with Escrow Agent the sum of Twenty-Five Thousand Dollars (\$25,000.00) within 7 business days of full execution of a Purchase and Sale Contract. Such deposits shall be applied to the purchase price and shall become non-refundable at the conclusion of the Inspection Period.

INSPECTION PERIOD: Purchaser shall have Forty-Five (45) days from the Contract effective date to complete a due diligence inspection. Due Diligence Documents (Documents) shall be forwarded by Seller within three days from the Effective Date and shall include (if available): Land Survey, As-Built Survey, Site Plans, Environmental Reports, current Title Policies, current contracts for purchase of parcels owned by the City of Goose Creek that are contemplated in the conceptual PD, and the current contract between the Seller and current landowner. Seller shall (and shall cause any manager, operator, and other similar parties to) reasonably cooperate with Purchaser to, but not limited to, the following:

- To determine the physical condition of the Property and compliance with all laws including zoning, building, and land use.
- To perform a physical inspection of the Property including, without limitation, any desired environmental audit and testing by Purchaser's engineers or consultants. Purchaser or its agents shall be granted access to the Property with reasonable notice and shall perform such tests with as little disruption as possible and leave the premises in the same condition as it was found, or repair or pay

- for repairs of damage caused by such inspections.
- To perform a review of all records and files which may pertain to the Property which Seller shall make available to Purchaser shall include, but not limited to, leases, service and other contracts, maintenance files, certificates of occupancy, the plans and other construction records for the improvements and completed structures on the Property, any prior environmental reports, and such other documents and agreements which may affect or relate to the condition, operation or management of the Property.
- To perform a survey.
- To perform any such other inspections and request such other information as Purchaser may deem reasonable or necessary in its diligence with respect to the Property. Purchaser shall have the sole and absolute right to terminate the Contract for any reason by giving notice to Seller within the Inspection Period if Purchaser determines that the Property is not satisfactory for its project. Purchaser shall be entitled to a full refund of all deposits if Contract is terminated during the Inspection Period.
- Purchaser shall be responsible to obtain all permits necessary to construct the project. All such costs including, but not limited to, permit fees and impact fees shall be at Purchaser's sole cost and expense.

CLOSING DATE: 30 days after Inspection Period ends.

TITLE COMPANY / CLOSING AGENT/ ESCROW AGENT: Dennison & Matthews, PLLC, 3300 S. Hiawassee Rd., Unit 106, Orlando, Florida 32835

CONTRACT: Upon full execution of the Letter of Intent, a formal Purchase and Sale Agreement will be prepared within the following Ten (10) days. No binding Agreement will arise between the parties until the Purchase and Sale Agreement is fully executed. Seller will negotiate exclusively and in good faith with Purchaser with respect to the acquisition/sale of the Property during such 10-day period prior to signing the Purchase Agreement.

BROKER COMMISSION: 2% to Andrew Sinclair of Current Real Estate, LLC (License No.: CQ1067025)

CLOSING COSTS: Purchaser and Seller shall be responsible for their own attorney's fees.

<i>Item</i>	Purchaser	Seller
Transfer Tax (Doc. Stamps)		X
Escrow/Closing Fee	X	X
Deed Recording	X	
Title Search/Owners Premium		X
Lender Title Premium	X	
New Survey	X	
State Doc Stamps on Note(s)	X	
Intangible Tax on Note(s)	X	
Attorney Fees	X	X
Real Estate Commission		X

1031 EXCHANGE: Either Seller or Purchaser shall have the right to treat this Property as part of a tax-deferred like-kind exchange under Section 1031 of the Internal Revenue Code and, to that end, shall have the right to assign or otherwise alter this Agreement in order to accomplish that objective, provided the net economic effect (including exposure to liability) shall be essentially the same as under this original Agreement.

EXCLUSIVITY: In consideration of the time and effort which the Purchaser will be committing to this undertaking, and in recognition of the time necessary to successfully consummate any or all of the proposed transaction, the Seller agrees that upon execution of this Letter of Intent, the Seller will not permit any agent, partner, or affiliate to accept or entertain offers, negotiate, solicit interest or otherwise enter into discussions involving the sale, financing or disposition of all or any part of the Property. This period of Exclusivity, which will remain in place until Closing or termination of the Purchase Agreement, shall keep confidential its contents and the fact that it has been transmitted.

TIME FOR RESPONSE: After Monday June 19th, 2023 at 5pm, this letter of intent will no longer be valid.

This Letter of Intent does not constitute a binding contract and shall not be binding unless and until the final Contract is approved and fully executed by all parties. Seller and Purchaser make no representation or warranty that acceptance or delivery of this Letter of Intent will result in the mutual execution or delivery of a Purchase and Sale Agreement for the Property. If Purchaser and Seller are unable, for any reason, to reach and execute a full and final sale agreement for the Property, neither party will have any claim against the other or any other cause of action arising out of this Letter of Intent, however, both parties agree to negotiate for a contract in good faith. If these terms are acceptable, please acknowledge below and return the original to the undersigned so that a Contract can be prepared.

Sincerely,



Raymond Mazzie

Managing Partner
Southern Waters Capital
831 NE 20th Ave
Fort Lauderdale, FL 33304

Agreed to this _____ day of _____,

Seller: _____

Exhibit A - Location Map

Parcel Location Map
Hwy 52 & Windsor Mill Rd | Goose Creek, SC

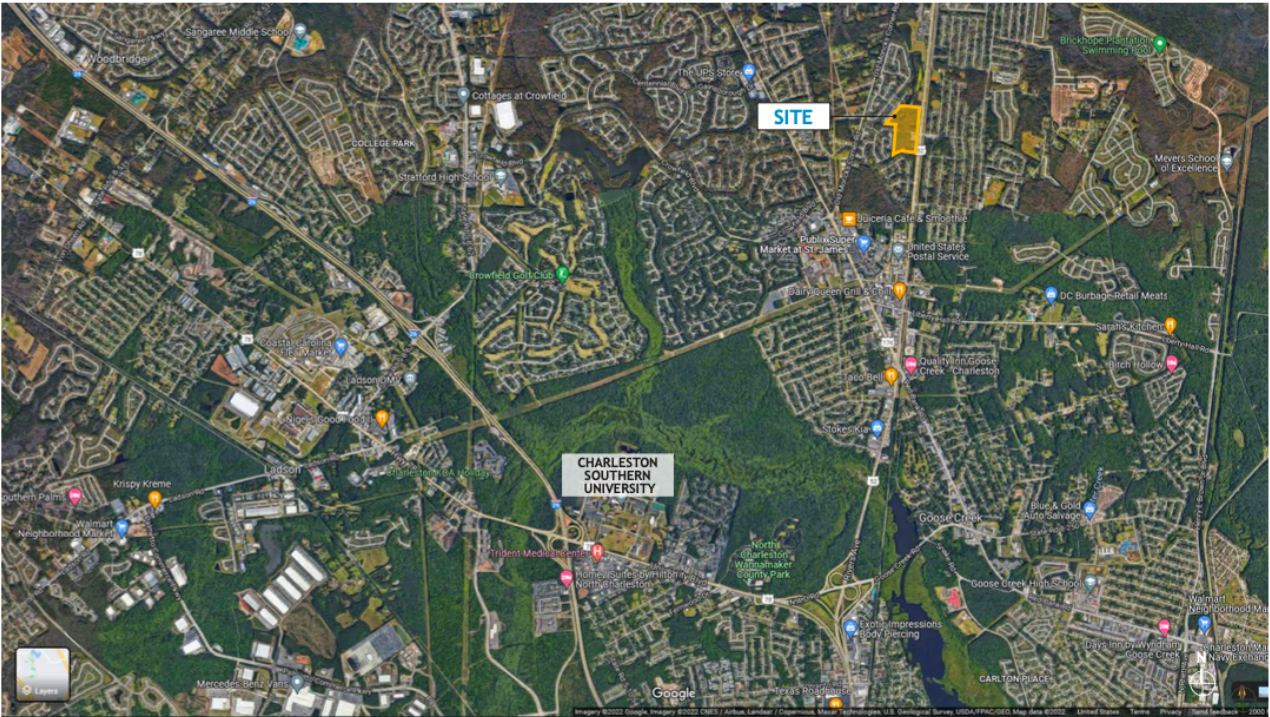


Exhibit B - Site Location

Existing Zoning Map
Hwy 52 & Windsor Mill Rd | Goose Creek, SC

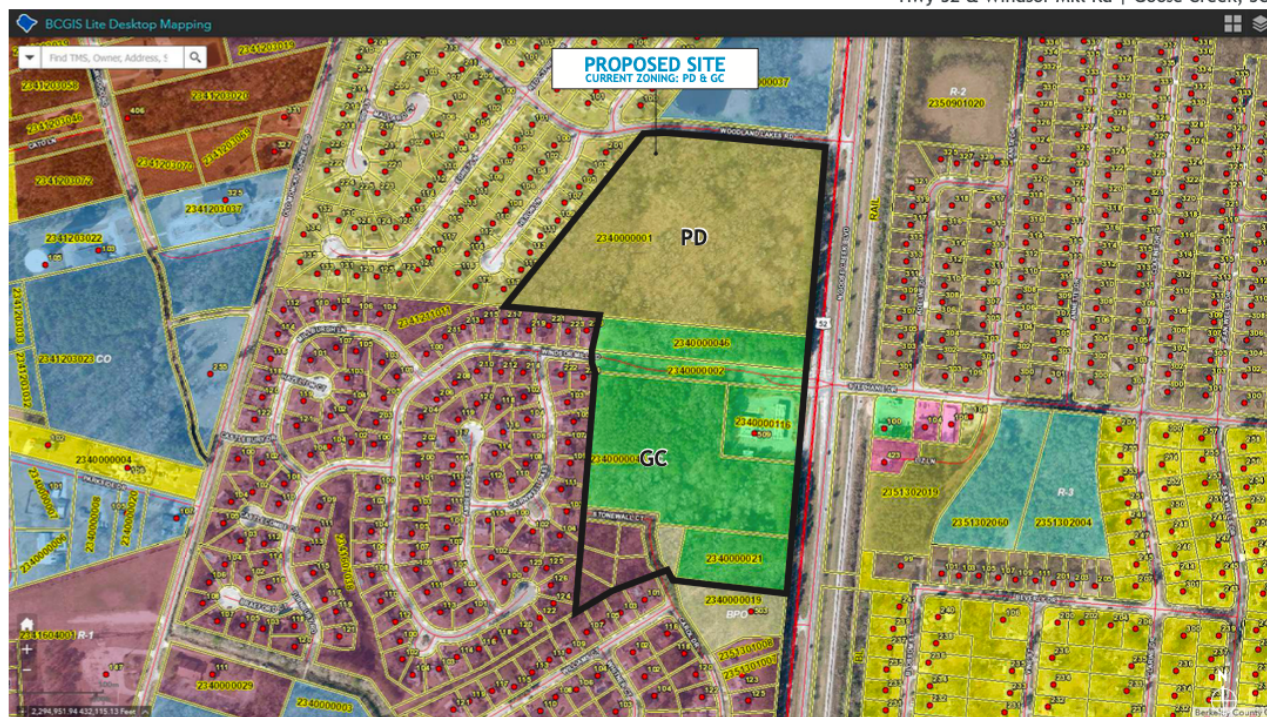


Exhibit O

Bill To
Boris Van Dyck

Date	Invoice No.		
09/09/24	304		
Service	Property	Amount	
Commission for Sale	Windsor Mill Road, Goose Creek, SC NORTH SIDE PARCELS: 234-00-00-001 (14.53 AC), 234-00-00-046 (2.65 AC) SOUTH SIDE PARCELS: 234-00-00-044 (7.99 AC.), 234-00-00-021 (1.84 AC), 234-16-02-040 (0.26 AC), 234-16-02-041 (0.31 AC), 234-16-02-042 (0.35 AC); 234-16-02-043 (0.27 AC), 234-16- 02-044 (0.32 AC), 234-00-00-074 (0.32 AC)	200,000.00	
		Total	\$200,000.00

DIRECT ALL INQUIRIES TO:

Elliot Calhoun

301-312-5960

elliot@woodlockcapital.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
BORIS VAN DYCK, and BORIS VAN DYCK, LLC	)	Case No.: 2025-CP-10-02139
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' OPPOSITION TO
	)	DEFENDANT'S MOTION TO
WOODLOCK CAPITAL LLC,	)	DISMISS
	)	
Defendant.	)	
	)	
	)	

An invalid arbitration clause does not effectively create and confer jurisdiction upon an arbitrator because the clause is void *ab initio* and has no effect. To confirm this, Plaintiffs Boris Van Dyck and Boris Van Dyck, LLC ("Plaintiffs") filed this action to confirm that the arbitration provision in the "Consulting Fee Agreement" drafted by Defendant Woodlock Capital, LLC ("Woodlock") is invalid. The two primary reasons why the provision is invalid are: (i) local real estate transactions of undeveloped land do not involve interstate commerce and therefore do not implicate the Federal Arbitration Act; and (ii) the provision at issue unmistakably violates the statutory requirements of the South Carolina Uniform Arbitration Act. Nevertheless, Woodlock has moved to dismiss the Complaint under Rule 12(b)(1) of the South Carolina Rules of Civil Procedure, claiming that an arbitrator must be allowed to rule on the issue. Woodlock's assertion is illogical. Only a court can determine whether an arbitration clause is valid because an invalid clause is ineffective to confer any power upon an arbitrator to determine anything.

LEGAL STANDARD

A review of applicable law confirms that determinations regarding the validity of an arbitration clause are "a matter for the courts" and the question of the arbitrability of a claim is for

“judicial determination.” *See Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 609, 879 S.E.2d 746, 753 (2022) (“The validity of the arbitration clause is a matter for the courts, whereas the validity of the contract as a whole is a matter for the arbitrator”); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (recognizing that “[t]he question of the arbitrability of a claim is an issue for judicial determination”). Both the South Carolina Supreme Court and the United States Supreme Court have issued decisions that leave no uncertainty on the issue: **“The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.”** *See Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (emphasis added), *citing AT & T Techs., Inc. v. Communications Workers of America*, 475 U.S. 643 (1986) (citations omitted); 4 Am.Jur.2d *Alternative Dispute Resolution* § 123 (1995). This principle has been reaffirmed in subsequent cases. *See, e.g., Chassereau v. Glob. Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007) (“Unless the parties provide otherwise, the question of the arbitrability of a claim is an issue for judicial determination.”); *see also Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 645, 885 S.E.2d 144, 147 (Ct. App. 2023), *reh’g denied* (Apr. 14, 2023), *cert. denied* (Apr. 16, 2024) (“The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise.”)

ARGUMENT

The determination of whether Plaintiffs can be compelled to arbitration based on an invalid and unenforceable arbitration provision falls squarely within the circuit court’s subject matter jurisdiction. Woodlock’s request that the Court dismiss or, in the alternative, stay this case should be rejected, as the very question of arbitrability raised in the Complaint must be decided by this Court, not an arbitrator. Woodlock is asking the Court to send the parties on a wasteful arbitration

exercise where either party will be able to avoid and vacate the award because the arbitration proceeding will be void due to lack of subject matter jurisdiction.

Neither side disputes the fact that the arbitration provision is invalid under the South Carolina Uniform Arbitration Act (the “SCUAA”). However, in order to activate federal preemption by the Federal Arbitration Act (the “FAA”), the commerce involved in the Real Estate Consulting Fee Agreement must be interstate or foreign. *See Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 454, 730 S.E.2d 312, 315–16 (2012) (“Therefore, in order to activate the application of the FAA, the commerce involved in the contract must be interstate or foreign.”). As indicated by the allegations set forth in the Complaint, the Real Estate Consulting Fee Agreement, and the surrounding circumstances, the proposed transaction at issue here involves the sale of real property within this State, not interstate commerce.

I. TAKING THE ALLEGATIONS OF THE COMPLAINT AS TRUE, THE ARBITRATION PROVISION IS INVALID AND UNENFORCEABLE

As alleged in the Complaint, Plaintiff cannot be compelled to arbitrate a dispute based upon an arbitration provision that is invalid under South Carolina law. *See Compl.*, ¶¶ 42 – 46. Woodlock concedes that the arbitration provision in the Real Estate Consulting Fee Agreement fails to satisfy the notice requirements of the SCUAA. *See S.C. Code § 15-48-10(a)* (“Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration”); *see also Def.’s Mot. to Dismiss*, p. 2; *Compl.*, ¶¶ 42 – 44. Woodlock cannot compel arbitration pursuant to the SCUAA where the arbitration provision does not meet the technical requirements of the SCUAA.

In this case, the FAA is not available to preempt the notice requirements of the SCUAA. *See Compl.*, ¶¶ 37 – 41. The enforcement and preemption power of the FAA may only be called

upon when the dispute arises against the backdrop of a written provision in a contract evidencing a transaction involving interstate commerce. *See Hicks Unlimited, Inc. v. UniFirst Corp.*, 439 S.C. 623, 630, 889 S.E.2d 564, 567 (2023) (*citing* 9 U.S.C. § 2.) South Carolina courts have recognized that where a proposed transaction is focused entirely on the sale of real property, which is firmly planted in one particular state, the transaction does not involve interstate commerce. *See Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 457, 730 S.E.2d 312, 317 (2012) (finding Home Purchase Agreement was not subject to the FAA and that the intrastate nature of the sale and purchase of residential real estate was not negated by the inclusion of the national warranty nor the purchaser's use of out-of-state financing). The *Bradley* court clarified that "had the [Home Purchase Agreement] actually encompassed the **construction** of the residence, it would have been subject to the FAA as our appellate courts have consistently recognized that contracts for construction are governed by the FAA." *Id.*, 398 S.C. at 458 n.8, 730 S.E.2d at 318 n.8. However, this transaction did not involve construction; it was a "consulting fee" agreement relating solely to the sale of a local property.

The transaction contemplated in the Real Estate Consulting Fee Agreement has no substantial or direct connection to interstate commerce to trigger the application of the FAA but rather involves an inherently intrastate transaction relating to real property firmly planted within the boundaries of the State of South Carolina. *See Compl.*, ¶ 45. The arbitration provision of the Real Estate Consulting Fee Agreement does not mention or reference the FAA:

Unless otherwise agreed upon by both parties, any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof and both parties agree to be bound by any such decision rendered.

Therefore, the FAA would only apply to the extent that the Real Estate Consulting Fee Agreement implicated interstate commerce, which it does not. *See Hicks*, 439 S.C. at 632, 889 S.E.2d at 568 (holding that “parties may not avail themselves of FAA preemption without satisfying 9 U.S.C. § 2’s commerce requirement”). The proposed transaction at issue in the Real Estate Consulting Fee Agreement involves only *intrastate commerce*, rather than interstate commerce. Therefore, the FAA cannot and does not apply. The contract was entered between South Carolina limited liability companies each having a principal place of business located in Charleston County. *See Compl.*, ¶¶ 2 – 3; 40. The potential real estate transaction involved two parcels of real property that are permanently and physically planted in Goose Creek, South Carolina. *See Compl.*, ¶¶ 8; 40.

The Affidavit of Andrew Batkins submitted in conjunction with Woodlock’s Motion to Dismiss does not convert the intrastate nature of the transaction into one involving interstate commerce. Whether Woodlock’s consulting efforts under the Real Estate Consulting Fee Agreement involved marketing the property to out-of-state buyers is insufficient to convert the intrastate transaction into one involving interstate commerce. Likewise, the mere fact that the property could, in Woodlock’s estimation, be marketed, sold, or rented to “people from beyond South Carolina’s borders” is insufficient to divest this Court of subject matter jurisdiction to hear and determine Plaintiffs’ declaratory judgment claims. *See Bradley*, 398 S.C. at 459, 730 S.E.2d at 318 (finding that a contract involving the sale of real property, not construction, is intrastate in nature notwithstanding the use of out-of-state financing).

It is always possible that a buyer could be from out-of-state or that website ads can be viewed out-of-state. This is immaterial. The relevant issue, as repeatedly confirmed in binding precedent, is that the property is local and that South Carolina law is clear that sales of local property do not involve interstate commerce.

Because the question of the arbitrability of a claim is for judicial determination by the court, this Court is empowered to grant the declaratory relief sought in the Complaint. *See Compl.*, ¶ 34. The allegations set forth in the Complaint demonstrate the existence of an actual, justiciable controversy between Plaintiffs and Woodlock relating to the invalidity of the arbitration provision of the Real Estate Consulting Fee Agreement, which fails to satisfy the technical requirements under SCUAA and does not implicate interstate commerce as required to trigger the federal preemption by the FAA. Accordingly, Woodlock's Motion to Dismiss for lack of subject matter jurisdiction should be denied.

II. WOODLOCK'S MOTION TO STAY SHOULD BE DENIED

As discussed above, the question of whether the arbitration provision in the Real Estate Fee Consulting Fee Agreement is invalid and unenforceable against Plaintiffs must be determined by this Court, not an arbitrator. The South Carolina Supreme Court has explicitly held that "[t]he question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise." *See Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118. Plaintiffs did not agree to confer subject matter jurisdiction upon an arbitrator to decide an issue reserved for "judicial determination" and "a matter for the courts." *See Damico*, 437 S.C. at 609, 879 S.E.2d at 753; *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118. The Motion requesting to stay this case must necessarily be denied.

CONCLUSION

For these reasons, Defendant Woodlock Capital, LLC's Motion to Dismiss should be denied, as the Court must determine the legal validity of the arbitration provision at issue.

Respectfully submitted,

By: *s/ Ellis R. Lesemann*

Ellis R. Lesemann (S.C. Bar No. 15315)

erl@lalawsc.com

S. Grace Heaton Benko (S.C. Bar No. 106331)

ghb@lalawsc.com

LESEMANN & ASSOCIATES LLC

418 King Street, Suite 301

Charleston, SC 29403

(843) 724-5155

***Attorneys for Plaintiffs Boris Van Dyck and
Boris Van Dyck, LLC***

June 25, 2025

Charleston, South Carolina

BORIS VAN DYCK,) MOTION VIA WEBEX
)
)
 Plaintiff,)
)
 -VS-) TRANSCRIPT OF RECORD
)
)
)
 WOODLOCK CAPITAL, LLC,)
)
)
 Defendant.)

June 27, 2025
Charleston, South Carolina

B E F O R E:

THE HONORABLE MARVIN H. DUKES, III, Presiding Judge

A P P E A R A N C E S:

GRACE HEATON BENKO, ESQ.,
ATTORNEY FOR THE PLAINTIFF

CLAYTON B. MCCULLOUGH, ESQ.,
ATTORNEY FOR THE DEFENDANT

LaToya Camack Perry
Official Court Reporter

1 THE COURT: Good morning. Let's see. We got
2 everybody that we need for this one? I've got 2025-CP-
3 10-02139. This is Boris Van Dyck versus Woodlock. And
4 this is Woodlock's motion to dismiss and compel
5 arbitration, I think; right?

6 MR. MCCULOUGH: Yes, Your Honor. And I don't --

7 CLERK: There's one in attendees waiting to be let
8 in.

9 THE COURT: Oh, okay. Hold on. All right.

10 MR. MCLEOD: I may not need to be here. I'm
11 actually supposed to -- I'm with the Human Affairs
12 Commission and I believe there was something scheduled
13 that may have rescheduled or -- Sorry.

14 THE COURT: Let's see. 10:30s. Yeah, we had a lot
15 of 10:30s that -- We had Tannehill, Young, Baily Island,
16 Lane and Sesnick (phonetic) that all have gone away.
17 Were you on one of those?

18 MR. MCLEOD: No. I had one. It's Anchorage
19 Plantation. It's CP-10-1702.

20 THE COURT: I don't think that one was me. Briana,
21 you see anything like that?

22 CLERK: No, Your Honor, I don't have that on my
23 roster.

24 THE COURT: Was anybody else doing --

25 CLERK: I think Judge Murphy just finished up. But

1 her roster is available online if you want to check that.

2 MR. MCLEOD: I will. I'll do that. I apologize.

3 CLERK: No worries.

4 THE COURT: No problem. Have a good weekend. Okay.

5 So we got everybody we need, then, for Van Dyck and
6 Woodlock, right?

7 MR. MCCULLOUGH: Yes, Your Honor.

8 THE COURT: And this is, Mr. McCullough, your
9 motion, I guess, right?

10 MR. MCCULLOUGH: Yes, Your Honor. May it please the
11 court? Very quickly and, Your Honor, I don't know -- We
12 submitted with your motion a number of materials. Our
13 motion basically was also a memo and then we had an
14 affidavit, the contract and then probably a hundred pages
15 of material associated with that. And I'm certainly not
16 going to go through all that. But I just want to give
17 you a brief summary of kind of our position and what this
18 case is about with Your Honor's indulgence.

19 In January of 2022, the parties entered into a real
20 estate consulting agreement. Mr. Van Dyck owned two
21 commercial properties in Goose Creek that he was seeking
22 assistance to market and sell. And Woodlock is in the
23 business of developing, selling, marketing and financing
24 and, otherwise, every facet of multiuse properties. They
25 market nationally and internationally, help folks get

1 through the entitlement process, find sellers, find
2 financing. And so the plaintiff in this instance needed
3 support to help facilitate the sale of the two commercial
4 properties. And those two commercial properties had not
5 yet gotten their entitlements. And really, no efforts
6 had been made to market those properties. So these
7 facts, I think, are undisputed.

8 There is a one-page real estate consulting fee
9 agreement between Mr. Van Dyck and Woodlock Capital.
10 Within that, there's an agreement where, upon the closing
11 of those commercial properties, Woodlock Capital was to
12 receive a consulting fee of \$200,000. There's a binding
13 arbitration provision within the consulting fee agreement
14 that says any dispute would be submitted to binding
15 arbitration. And we freely admit it does not comply with
16 the South Carolina Arbitration Act because it does not
17 have the bold language at the top. So I think we all
18 agree there's really only one question for Your Honor
19 today which is whether the agreement, the consulting fee
20 agreement for the consulting to market, finance, get the
21 entitlements and sell these two commercial properties
22 impacts interstate commerce. And if it impacts
23 interstate commerce, the federal arbitration act
24 controls. We don't need the bold language at the top of
25 the agreement.

1 And so I'm going to read just a couple of quotes
2 from my memorandum that basically outlines the law. We
3 assert that the arbitration provision is enforceable
4 under the Federal Arbitration Act; Section 9 US Code
5 Section 1, because it involves interstate commerce. And
6 that's described as, and I'm citing from the United
7 States Supreme Court, a phrase involving commerce is the
8 same as affecting commerce which has been broadly
9 interpreted to mean Congress intended to utilize its
10 powers to regulate interstate commerce to its full
11 extent.

12 Now quoting the South Carolina court, our courts
13 consistently looked to the essential character of the
14 contract when applying the FAA. There's a strong
15 presumption in favor of the validity of arbitration
16 agreements because strong policy favoring arbitration.
17 Your Honor, I learned this firsthand because when I was
18 coming along, the Supreme Court routinely struck down
19 arbitration agreements and kept things in circuit court.
20 And Justice Toal was a hard advocate for keeping things
21 in circuit court. The United States Supreme Court
22 changed basically South Carolina law by saying
23 nationwide, the FAA should control. And I have one of
24 the cases that everybody cites because I lost in the
25 Supreme Court. Judge Nicholson had allowed me to

1 continue in circuit court. It was appealed and I
2 remember Justice Toal saying to the other lawyer, you
3 know, I like keeping things in circuit court. And the
4 other lawyer saying quite bluntly, It doesn't matter
5 because United States Supreme Court has said that the
6 Federal Arbitration Act controls.

7 So in this instance, we have to look at what this
8 consulting fee agreement was about. And more
9 importantly, what actual conduct was performed. So it's
10 undisputed we got two separate commercial parcels in
11 Goose Creek. It's undisputed that the plan, and which is
12 why Woodlock was hired, was it was going to be a multiuse
13 project to involve multifamily, commercial, things of
14 that nature. Woodlock was specifically retained because
15 of their ability to market nationally, to get nationally
16 group folks to come in and help fund and that's exactly
17 what they did here. They facilitated the entitlements.
18 They brought financing to the table. They marketed this
19 and subsequently, as I read from the affidavit, were able
20 to procure multiple letters of intent, got entitlements,
21 got financing and ultimately brought the purchaser to the
22 table that subsequently sold this parcel.

23 So I'm going to read from an affidavit that, again,
24 was filed with the motion. And the affidavit is Andrew
25 Batkins who is one of the owners and principals of

1 Woodlock and was actually one of the point persons on
2 this project. And again, I'm going to be brief. From
3 the affidavit: On January 10, 2022, I received an e-mail
4 from Boris Van Dyck requesting that Woodlock Capital
5 assist when evaluating the Goose Creek multifamily site.
6 Mr. Van Dyck asked me for high-level evaluation of
7 pricing, zoning and entitlement strategy. The fact that
8 the property's multifamily would almost certainly mean
9 purchasers, tenants would be from locations other than
10 South Carolina.

11 January 2022, I received a letter of intent from
12 Vista Realty which is an out-of-state company located in
13 Atlanta, Georgia. After receiving the LOI from Vista, I
14 engaged in numerous communications, telephone and e-mail,
15 with the members of Vista all located in Georgia.

16 Again, skipping down, January 2022, I received a
17 revised letter of intent from Vista Realty regarding
18 Goose Creek land. Again, Vista Realty is a Georgia
19 entity located in Atlanta, Georgia.

20 January 2022, I received a letter of intent from LIV
21 Development, LLC. LIV Development is in Alabama entity
22 located in Birmingham, Alabama.

23 June 2022, Woodlock assisted Van Dyck and Van Dyck's
24 attorney in ongoing negotiations and revisions to the
25 purchase documents for the property. This included

1 numerous communications, telephone and e-mail, with the
2 purchaser's attorney Krevolin and Horst located in
3 Atlanta, Georgia.

4 April 2023, Mr. Van Dyck requested my input on
5 revised language and buyer communications regarding LOI
6 edits from LIV Developments in Alabama entity.

7 April 24, 2023, MCZ Capital Fund One, LLC, an
8 Illinois entity located in Northbrook, Illinois, sent Mr.
9 Van Dyck a letter discussing proposed financing terms for
10 the project. And they subsequently worked through the
11 details for the land cost, escrow payments, and term
12 sheet details, again, all with an Illinois entity.

13 In May 2023, Mr. Van Dyck sent me an e-mail with
14 Orange Properties, a privately held real estate
15 investment firm located in Chicago, Illinois, regarding
16 an option loan.

17 In June of 2023, Southern Waters Capital sent an LOI
18 to Van Dyck to purchase the Goose Creek transaction.
19 Southern Waters is a Florida company located in Ft
20 Lauderdale, Florida. And ultimately, Your Honor,
21 Southern Waters Capital closed on the Goose Creek
22 property, again, that's a Florida company in July of
23 2024.

24 Your Honor, this impacts certainly interstate
25 commerce. We've got entities from Chicago, Georgia,

1 Florida, South Carolina, probably missed some there. The
2 entire argument and basis, legal basis, for the
3 plaintiffs is one case, Bradley versus Brentwood Homes, a
4 2012 case. And I'll say two things about this case.
5 First, if you look at the Supreme Court and Court of
6 Appeals arguments that, or opinions, that have come out
7 since 2012, the vast majority have found in favor of
8 arbitration. The overwhelming majority. And if you look
9 at this particular case, what you will see is, this is
10 one of the very narrow instances when the Court of
11 Appeals did uphold an, or excuse me, struck down and kept
12 something in state court. And it relied upon law and
13 it's very narrow. And it says in here three times and
14 it's referencing an out-of-state decision which says, A
15 residential real estate sales contract does not evidence
16 or involve interstate commerce. And that's a residential
17 real estate sales contract.

18 And so the conclusion of this case, again, it's
19 Bradley versus Brentwood Homes is as follows, I'm reading
20 from the opinion, Because the essential character of the
21 agreement was strictly for the purchase of a completed
22 residential dwelling and not the construction, we find
23 the FAA does not apply as these types of transactions
24 have historically been deemed to involve intrastate
25 commerce, not interstate commerce. Your Honor, we have

1 raw land, in this instance, that was being marketed
2 nationwide, if not internationally, for seeking
3 entitlements, funding, sale and everything associated in
4 that process with a multifamily development which
5 absolutely involves interstate commerce at every phase.

6 And so Your Honor, while I recognize there is one
7 isolated case that they rely upon, I would suggest it has
8 nothing to do with our circumstances here. We have
9 submitted into the record voluminous evidence of
10 interstate commerce, interstate transactions, interstate
11 communications. And for that, I would suggest that this
12 case belongs in arbitration and we would ask that you
13 dismiss their lawsuit and push us towards what they've
14 contractually obligated themselves to do which is to
15 arbitrate this dispute. Unless you have any questions,
16 that's all I've got. Thank you.

17 THE COURT: Not right now; no questions. Thank you.
18 Yes, ma'am, happy to hear from you.

19 MS. BENKO: So I'll just start from the beginning.

20 THE COURT: I need you to get a little closer to the
21 microphone.

22 MS. BENKO: Sorry. I have to use these danky things
23 because my AirPods do not work today. Is this better?

24 THE COURT: Yeah, that's a little too much. But
25 somewhere in between is perfect.

1 MS. BENKO: How about this?

2 THE COURT: Yeah, anywhere in there is good.

3 MS. BENKO: All right. So obviously this is defense
4 counsel's motion and it is a 12(b)(1) motion for lack of
5 subject matter jurisdiction. And I think that we agree
6 and in our memo in opposition, we are arguing that
7 everything defense counsel is saying is contradictory to
8 the standards established by South Carolina courts. The
9 rules are clear that plaintiff's claims must be taken as
10 true in considering Woodlock's motion. They have the
11 burden of proof here. They must show that the issue of
12 validity of the arbitration clause is not an issue for
13 the court to decide which is not true.

14 Your Honor, our position is that you are the
15 gatekeeper here. The court is the gatekeeper. This is
16 an issue for a judicial determination, not arbitration.
17 Forcing the plaintiffs into binding arbitration
18 concerning an issue on whether the arbitration itself is
19 even valid is illogical. Only the court can determine
20 that whether it's valid or not because in our invalid
21 arbitration clause cannot confer any power upon an
22 arbitrator to determine anything at all. There are cases
23 upon cases in South Carolina confirming this that the
24 question of arbitrability is an issue for a judicial
25 determination. If the parties were compelled to

1 arbitration, then either party would be able to vacate
2 that award due to arbitrator's lack of subject matter
3 jurisdiction. And then the entire process would be
4 illogical and wasteful as well. As Mr. McCullough said,
5 they have conceded that the arbitration clause in the
6 agreement does not meet South Carolina Uniform
7 Arbitration Act and their whole argument is that
8 interstate commerce is shown and the FAA applies.

9 He also brought up our use of Bradley versus
10 Brentwood Homes and we do rely on that case and many
11 others. We would go as far to say as Bradley versus
12 Brentwood is a very simple case. The court considered a
13 home that was already constructed. It had nothing to do
14 with constructing, in choosing what timber to buy or
15 choosing what dishwasher to put in the home or anything
16 like that. It was about a completed home, the sale of
17 the home on a piece of property. Our case is even more
18 simple. It's dirt in Goose Creek. That's it. There's
19 nothing built on it. It was for the sale for a plot of
20 land; had nothing to do with construction.

21 And their case, the defense's case that they rely on
22 which is Blanton v. Stathos had to do with construction
23 and design services. It had an affidavit in it which is
24 why I think that the defense is using an affidavit from
25 one of their owners. It goes into what the designer and

1 architect was contemplating or who they thought they
2 would buy materials from in constructing the home.
3 That's something that the courts has considered multiple
4 times, these constructions of homes, contracts and those
5 being indicative of interstate commerce. Bradley v.
6 Brentwood, like I said before, was a constructed home and
7 for the sale of it.

8 This real estate consulting agreement concerns the
9 sale of property which is firmly planted in South
10 Carolina. It does not involve interstate commerce. The
11 whole essence and character of the agreement concerns
12 transactions for the sale of this dirt in Goose Creek.
13 It truly contemplates the transaction only for sell of
14 real property which is undeveloped in South Carolina. It
15 has no connection to interstate commerce. It's
16 inherently local.

17 You know, Woodlock's trying to argue through their
18 affidavit and their motion that their consulting effort
19 under the agreement involves marketing to out-of-state
20 buyers. And that the mere fact the property could be
21 marketed or sold to someone from Ohio or wherever else is
22 insufficient and can't take way this court's subject
23 matter jurisdiction, to hear plaintiff's claims and
24 potentially grant our request for declaratory relief.
25 This property's local. South Carolina law is very clear

1 that sales of local property do not involve interstate
2 commerce. And, you know, I just -- I think that this is
3 very clear that this is an issue for a judicial
4 determination and that their 12(b)(1) motion should
5 certainly be denied.

6 THE COURT: All right. Thank you so much. Anything
7 else Mr. McCullough? You're muted. Sorry. You're
8 muted.

9 MR. MCCULLOUGH: We've only been doing virtual
10 hearings for five years, so -- Figure it out. We agree
11 that it's up to the court to decide this and so that's
12 not in dispute. We're not selling a piece of raw land.
13 We're selling and the affidavit makes clear as to the
14 hundred and some odd pages that we got, nobody bought raw
15 land. Nobody was interested in raw land. This was an
16 entitled, meaning, going through Goose Creek, going
17 through city, county, state, getting all of the
18 entitlements, marketing to people for the construction
19 and development and financing of a multiuse property that
20 would necessitate being marketed, you know, nationally
21 and ultimately, it was. So we have Chicago financing.
22 We have LOIs coming in from multiple states. And the
23 ultimate sale was to a Florida entity, again, to
24 construct a multiuse apartment complex commercial
25 properties and any number of things and they bought it

1 with entitlements. This is not a piece of dirt that's
2 being sold in Goose Creek. It's far more complicated
3 than that which is the very reason Mr. Van Dyck needed
4 Woodlock Capital because he didn't have the resources to
5 handle those.

6 THE COURT: All right. Well, anything else? And
7 I'll ponder this and try to get back with you as soon as
8 I can. I mean, I saw a few things in here that in fact
9 Woodlock Capital LLC is not a broker. Is that a --

10 MR. MCCULLOUGH: In this instance, that is correct.
11 They were not hired to provide their brokerage services.
12 They were not handling this as a licensed commercial
13 broker. That is true. If you look at their website --

14 THE COURT: How do you describe their role?

15 MR. MCCULLOUGH: They were an -- I think the
16 document does it as consulting when contracts come in,
17 when letter of intent come in, with questions about
18 financing come in, when questions about entitlements come
19 in. They absolutely could have been hired to serve as a
20 broker. They could have put it on their website. They
21 could have put it on MLS. They could have done any
22 number of things. They weren't hired to do that. And
23 they have different silos within their organization where
24 they provide different services. In this instance, that
25 service Woodlock Capital handles this type of transaction

1 on a regular basis. Mr. Van Dyck does not. He does not
2 know about the financing, the entitlements and the
3 marketing of a multiuse commercial property. So he
4 needed somebody that had done it before to come in and
5 advise him on how to get it sold which is exactly what
6 they did.

7 THE COURT: I may have misunderstood the pleadings.
8 I thought that Woodlock Capital, LLC which is defined as
9 broker was not a licensed brokerage --

10 MR. MCULLOUGH: They are a licensed brokerage. They
11 just did not provide brokerage services pursuant to this
12 agreement. Otherwise, it would have been a straight, you
13 know, five or six percent or whatever you negotiate at
14 closing. They have another facet of their business with
15 which they were providing these services. That's why
16 it's not a buy and sell question. This is a true, like,
17 step back, how do I get this project completed, entitled,
18 financed and sold.

19 THE COURT: All right. Anything else?

20 MS. BENKO: Your Honor, I'll be completely honest
21 with you. I think that's another issue that's not in the
22 current pleadings is the issue of whether this was a
23 brokerage agreement or not which we have a lot of
24 thoughts on and, obviously, I don't think are necessary
25 to go through in terms of this motion. But I will just

1 say is that looking at an agreement, determining whether
2 it implicates interstate commerce or not, has to do with
3 the essence and character of the agreement itself. And
4 the essence and character of the agreement was this piece
5 of land in Goose Creek and the sell of it. It's a South
6 Carolina piece of land. Two South Carolina entities are
7 involved. Mr. Van Dyck's LLC and Woodlock. The whole
8 essence of the agreement was inherently local and truly
9 did not implicate interstate commerce to implicate the
10 FAA.

11 THE COURT: So your belief is this require a further
12 hearing to determine facts with regard to this agreement?
13 Is that the argument?

14 MS. BENKO: Yes, Your Honor.

15 MR. MCCULLOUGH: Well, Your Honor, now is the time.
16 We submitted an affidavit with lots and lots of
17 materials. And we don't need another hearing. It's --

18 THE COURT: -- to dismiss, though, I mean, yeah.

19 MR. MCCULLOUGH: It's based purely on the question of
20 whether this impacts interstate commerce. I mean,
21 otherwise, you start down the discovery path which is we
22 should never be in state court. We should be in the
23 arbitration.

24 THE COURT: Well, let me take a look at it. And,
25 again, I'll -- I'm on vacation next week. If y'all don't

1 hear from me in a couple of weeks, please -- We're
2 getting it the time of year where my clerk is going to
3 transition out and I'll have a new clerk in. So I'm
4 worried about things falling between the cracks. So if
5 you don't hear from me in a couple of weeks, please
6 remind me that I have this under advisement and I will
7 put it, of course, on the list of things. I just -- I
8 worry about that. And I will read everything. I don't
9 think I need to read the hundreds of pages of the
10 agreement. But I see it all here and we'll try to figure
11 it out. Y'all have a great day and a wonderful weekend.

12 MR. MCCULLOUGH: Thank you, Your Honor.

13 MS. BENKO: Thanks, Your Honor.

14 THE COURT: Thank you.

15

16

17 END OF TRANSCRIPT

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FAIFIELD)

I, LaToya C. Perry, Official Court Reporter for
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas of Charleston County, South
Carolina, on the 27th day of June, 2025.

I do further certify that I am neither of kin
nor counsel nor interest to any party hereto.

January 8, 2026

LaToya C. Perry

LaToya C. Perry, Court Reporter

My Commission Expires: 06-29-2027