

A RESOLUTION

Whereas the Town of Summerville published a request for proposals from developers to propose a boutique hotel project to include a possible conference center to be operated in a public-private partnership;

Whereas this was understood by the Town to principally be a contract for professional services which included planning, design and management of a boutique hotel facility on Town Property;

Whereas the Town did not and does not believe such a project could or should have been done on a sealed bid basis as it was a professional service;

Whereas Applegate and Co. was not only the sole entity responding to the request for proposal, Applegate and Co. also owned or has under contract certain adjacent properties that make the Town's land and the overall project more valuable and viable;

Whereas the addition of land under the control of Applegate and Co. to the project further justifies the Town having entered into the prior contract and this First Amendment on the basis of a "sole source" exception;

Now, therefore, the duly elected Town Council of the Town of Summerville authorizes the Mayor to sign the attached First Amendment to the Public-Private Partnership Agreement on behalf of the Town of Summerville;

Done in meeting duly assembled this 12th day of August, 2015

TOWN OF SUMMERVILLE, SOUTH CAROLINA

By: William C. Collins
Mayor, Town of Summerville, South Carolina

ATTEST:

By: Jim L. Walker
Clerk, Town of Summerville, South Carolina

FIRST AMENDMENT TO PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

THIS FIRST AMENDMENT TO THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT BETWEEN TOWN OF SUMMERVILLE, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION AND APPLGATE AND CO. (the "FIRST AMENDMENT") is entered into as of *August 12*, 2015 by and between the Town of Summerville, a body corporate and a municipal corporation of the State of South Carolina (the "TOWN"), the Town of Summerville Redevelopment Corporation ("RDC"), a 501(c)(4) nonprofit organization, and Applegate & Co., a corporation incorporated under the laws of the State of South Carolina ("DEVELOPER," and together with the TOWN and RDC, "PARTIES").

PREAMBLES

PARTIES have previously entered into a PUBLIC-PRIVATE PARTNERSHIP AGREEMENT BETWEEN TOWN OF SUMMERVILLE, TOWN OF SUMMERVILLE REDEVELOPMENT CORPORATION AND APPLGATE AND CO. (the "PPP AGREEMENT") dated as of July 9, 2014, to provide for the development, construction, and operation of the PROJECT (as defined therein).

The PPP AGREEMENT sets forth certain timeframes by which development activities are expected by the PARTIES to occur and other details with respect to the PROJECT.

The PPP AGREEMENT provides for other development activities to occur without providing timeframes by which they are expected to occur.

Since the date of the PPP AGREEMENT, the PARTIES have engaged in the development activities as provided in the PPP AGREEMENT and are now in the position to set forth with more certainty the timeframes of various development activities provided under the PPP AGREEMENT and other details with respect to the PROJECT.

For good and valuable consideration and the mutual covenants and agreements set forth herein, the PARTIES now agree to modify the PPP AGREEMENT to properly reflect the timeframes and other details as set forth below.

AGREEMENT

1. Section 1(a)i is amended as follows:
 - i. DEVELOPER will procure all necessary easements or property rights and construct a new mixed-use project on the PROJECT SITE along West Richardson Avenue, South Cedar Street and West 2nd South Street, that will include both private and public improvements as defined in Sections 1(b) and 1(c) (together referred to as "PROJECT"). The project will represent an expected total private capital investment of approximately Twenty Million and No/100 Dollars (\$20,000,000.00), and the DEVELOPER will use its best effort to complete the Project within twenty four (24) months from the

date of funding of the grant by the TOWN to the RDC as provided in Section 2(b), but in no event later than thirty (30) months from such date.

2. Section 1(b)(ii) is amended as follows:
 - i. Approximately 27 residential condominium units and associated shared common space.

3. Sections 2(a)-(b) are amended as follows:
 - a. TOWN will convey to RDC the TOWN PROPERTY by deed within one hundred twenty (120) days of Board of Architectural Review (“BAR”) final approval of the PROJECT. The TOWN PROPERTY shall be used solely for the development of the PROJECT. Any other use of the TOWN PROPERTY shall require approval by the TOWN.
 - b. TOWN will gift to the RDC a grant in the amount of Five Million Two Hundred Thousand and No/100 Dollars (\$5,200,000) for purposes of participation in the PROJECT, per the terms of the Grant Agreement attached as Exhibit C, within Ninety (90) days of the issuance of the Town’s hospitality fee revenue bonds.

4. Section 3(a) is amended by adding the following sentence thereto:

The GAP LOAN in the amount of \$3,750,000 will be funded from existing Hospitality Tax fund balance. Upon commencement of construction of the PROJECT, Fifty percent (50%) of the GAP LOAN will be deposited into the RDC account. Any additional amounts necessary to fund the GAP LOAN will be deposited into the RDC account as the gap occurs.

5. Section 4(a) is amended as follows:
 - a. **PROPERTY LINE ADJUSTMENT PLAT AND SITE PLAN.** Within sixty (60) days after the funding of the initial draw request of the DEVELOPER for costs associated with the PUBLIC IMPROVEMENTS set forth under Section 3(b) of this PARTICIPATION AGREEMENT (the “FIRST PUBLIC IMPROVEMENT REIMBURSEMENT”), DEVELOPER will (i) instruct its surveyor to prepare and submit for review by, and approval from, the RDC a plat necessary to adjust and relocate the property lines within the PROJECT SITE (“PROPERTY LINE ADJUSTMENT PLAT”), and (ii) using the PROPERTY LINE ADJUSTMENT PLAT, instruct its architect and/or engineer to prepare a drawing showing the proposed improvements to be constructed on the PROJECT SITE (“SITE PLAN”). The SITE PLAN will show the parking garage and the conference center located on separate subdivided parcels, each with a separate tax map identification number. Upon approval by the RDC of the PROPERTY LINE ADJUSTMENT PLAT, DEVELOPER will submit the PROPERTY LINE ADJUSTMENT PLAT to the appropriate governmental authority for approval to prepare for closing of the construction loan and the property swap as outlined in Section 6 of this Agreement.

6. Section 10(a) is amended as follows:
 - a. DEVELOPER will, no later than one hundred eighty (180) days following the final Board of Architectural Review (“BAR”) approval of the PROJECT, provide the RDC with (i) a final construction cost breakdown for the PUBLIC IMPROVEMENTS and the PRIVATE IMPROVEMENTS and (ii) evidence acceptable to the RDC of a loan commitment from a financial institution acceptable to the RDC (in the RDC’s reasonable discretion) (the “Construction Lender”) for construction financing (the “Construction Loan”) and any required equity from investors (the “Equity Investors”) sufficient to complete construction of the PROJECT.
7. Attachment A to the Parking Garage/Conference Center Operation Agreement, is hereby amended to delete paragraphs 13 & 14 in their entirety.
8. Any orders issued by courts regarding any litigation with respect to the PROJECT shall toll the applicable timeframe or timeframes set forth in the PPP AGREEMENT as amended.
9. Except as amended herein, the PPP AGREEMENT shall continue in full force and effect.
10. All capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the PPP AGREEMENT.
11. This First Amendment shall inure to the benefit of and shall be binding upon the PARTIES, and their respective successors and assigns.
12. This First Amendment may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.
13. This First Amendment shall be deemed to be contracts made under the laws of the State of South Carolina and for all purposes shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

**TOWN OF SUMMERVILLE, SOUTH
CAROLINA**

William C. Cole
Mayor, Town of Summerville, South Carolina

ATTEST:

Sam S. Waller
Clerk, Town Council of the
Town of Summerville, South Carolina

**TOWN OF SUMMERVILLE
REDEVELOPMENT CORPORATION**

By: *William C. Cole*
Its: Chairman

APPLEGATE & CO.
a South Carolina Corporation

By: *A. Applegate*
Its: *President*