

STATE OF SOUTH CAROLINA)
) **MEMORANDUM OF**
COUNTY OF BEAUFORT) **UNDERSTANDING**

This Memorandum of Understanding (“Agreement”) is entered into by and between the University of South Carolina Board of Trustees on behalf of the University of South Carolina Beaufort (“USCB”), and the Town of Hilton Head Island, South Carolina (“Town”), and shall be effective upon its execution.

WHEREAS, the University of South Carolina Beaufort is an institution of the University of South Carolina (“USC”) system, which is governed by the USC Board of Trustees; and

WHEREAS, any collaborative business or academic relationship entered into by any institution within the USC system must be approved and attested by the USC Board of Trustees and, as such, this Memorandum of Understanding shall be between the USC Board of Trustees and the Town of Hilton Head Island, South Carolina; and

WHEREAS, USCB is an educational institution serving the residents of Hilton Head Island and the greater South Carolina lowcountry area; and

WHEREAS, USCB currently operates the Event Management & Hospitality Promotion Program on behalf of the Town, and seeks to further its cooperative efforts with and for the Town; and

WHEREAS, the Town is a municipality whose residents attend and are enrolled in educational and related services provided by USCB, has existing cooperative efforts with USCB, and desires to build upon those efforts for the benefit of the Town, its residents, guests and businesses; and

WHEREAS, the Town and USCB desire for USCB to operate an educational facility in the Town of Hilton Head Island intending to provide, among other things, a Hospitality Management Program, the Osher Lifelong Learning Institute (OLLI), the Event Management & Hospitality Promotion Program, and other higher education and

adult education programs, as well as other programs or services benefitting the parties hereto; and

WHEREAS, this Agreement is entered into by and between the Town and USCB for the purpose of providing assurances to each other so that each may proceed with actions furthering the agreements and understandings as contemplated in this Agreement; and

WHEREAS, it is anticipated that an additional agreement or agreements may be necessary to further clarify and memorialize the details with respect to the future development and operation of an educational facility in the Town of Hilton Head Island, and the parties hereto will clarify and memorialize such details as it may become necessary.

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, including economic and other benefits inuring to both the Town and USCB as a result of this Agreement with regard to the future development and operation of an educational facility by USCB, the receipt and sufficiency of such consideration being hereby mutually acknowledged, the Town and USCB hereby agree as follows:

I. RECITALS

- A. The above WHEREAS clauses are hereby incorporated into this Agreement as if fully set forth herein.
- B. All exhibits attached hereto and/or referred to in this Agreement are hereby incorporated into this Agreement as if fully set forth herein.
- C. This Agreement is predicated upon Resolutions duly-adopted by both parties hereto.

II. PHASED MASTER PLAN

- A. The Town, at its cost and in close cooperation with USCB, shall develop a conceptual master plan (hereinafter, "Master Plan").

- B. The Town and USCB acknowledge that the Master Plan shall be implemented in phases, and such phases shall be sufficiently described in the Master Plan.
- C. It is anticipated that Phase I of the Master Plan will be comprised of necessary site improvements and construction of the Hospitality Management Building.
- D. It is acknowledged and agreed between the Parties that the Town is only obligated to provide funds for capital contributions as to Phase I of the Master Plan, and the Town will not be responsible for the ongoing cost of the operation or maintenance of any improvements implemented pursuant to the Master Plan and/or this Agreement.
- E. USCB shall use its best efforts in subsequent years to raise the funds necessary to implement additional phases of the Master Plan.

III. EFFORTS TO DATE

- A. A preliminary Master Plan has been developed and is attached hereto as Exhibit "A". The Town and USCB acknowledge that this Master Plan will be refined, but shall remain at all times in substantial conformance with the attached Exhibit "A".
- B. The Town has acquired two (2) parcels of property, and has contracted to acquire an additional two (2) parcels of property, upon which portions of the improvements contemplated by this Agreement will be located.
- C. USCB, through the Beaufort-Jasper Higher Education Commission, has raised One Million Five Hundred Thousand Dollars (\$1,500,000.00), and has available through the University of South Carolina Development Foundation an additional One Million Dollars (\$1,000,000.00). These funds are in suitable interest-bearing accounts and shall be used to implement Phase I of the Master Plan in accordance with Article V(A) below.

- D. The Town has secured a Tax Increment Financing (TIF) extension with its partners to allow the Town to meet its financial obligations described in Article IV(E) herein below.
- E. The Town has completed a Traffic Study for the Master Plan, which calls for a number of off-site improvements.

IV. OBLIGATIONS OF THE TOWN

- A. The Town, in cooperation with USCB, shall refine the Master Plan and pursue Public Project Review in accordance with the Town's Land Management Ordinance.
- B. The Town shall purchase or otherwise acquire (if not already acquired) title to the parcels necessary for the implementation of the Master Plan.
- C. The Town shall cause all site clearing of the parcels so acquired, including but not limited to the removal of any buildings, parking areas or other structures. For purposes of this Agreement, site clearing shall not include removal/clearing of trees or other such site preparation.
- D. The Town shall convey to USCB the land necessary to implement the Master Plan, excluding such lands as may be necessary to construct any off-site traffic and roadway improvements. Prior to this conveyance, the Town shall complete and deliver to USCB an Environmental Level 1 Study concerning the property to be conveyed, which shall show the property as sound and suitable for the immediate implementation of the Master Plan. At any such Closing of the conveyance of the property, the Town shall execute and deliver to USCB a General Warranty Deed (in substantial conformance with the attached Exhibit "B"), which shall contain a reverter clause in favor of the Town, providing that, absent mutual written consent as evidenced by a written document executed by the Town and USCB, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, title of the property so conveyed shall revert to the Town if any of the following events occur:

- (1) The property so conveyed ceases to be utilized for the purposes of higher education and adult education services consistent with the educational mission and/or purpose of an educational institution such as USCB;
- (2) The date of commencement of construction (breaking ground) of Phase I of the Master Plan does not occur within five (5) years after the Closing Date;
- (3) The date of completion of Phase I of the Master Plan does not occur within two (2) years after the date of commencement of construction (breaking ground) of Phase I of the Master Plan; or
- (4) Abandonment of the educational facility project contemplated by this Agreement, or abandonment of the performance of this Agreement, by USCB at any time after the Closing Date.

E. The Town shall commit to providing funding not to exceed Twenty-Two Million Dollars (\$22,000,000.00) towards necessary land acquisition and site clearing, as well as for the development, approval and implementation of the Master Plan. The Town acknowledges that USCB will not be able to proceed with construction until sufficient funding is in hand. Subject to Article V(A) below, it is acknowledged between the Parties that expected approximate costs to be withdrawn and applied solely from the above-referenced \$22 Million are as follows: (1) Three Million Five Hundred Sixty-Five Thousand Dollars (\$3,565,000.00) for land acquisition costs; (2) approximately Five Hundred Thousand Dollars (\$500,000.00) for site clearing costs; (3) approximately One Hundred Thirty Thousand Dollars (\$130,000.00) for preliminary planning and design costs in preparation for and in connection with Town Public Project Review; and (4) the remaining balance of Seventeen Million Eight Hundred Five Thousand Dollars (\$17,805,000.00) to be applied as capital contributions for implementation of Phase I of the Master Plan as well as various other costs (legal costs, "soft" costs, etc.). It is acknowledged and agreed between the parties that the Town's total monetary obligation/contribution

pursuant to this Agreement shall not exceed Twenty-Two Million Dollars (\$22,000,000.00). It is also acknowledged and agreed between the parties that, pursuant to the immediate application of USCB's funds as described in Article V(A) below, in the event the actual total Phase I project costs are less than the \$24.5 Million budget as contemplated in this Agreement, the Town shall be entitled to receive one hundred percent (100%) of the difference between the \$24.5 Million budget and the actual total Phase I project costs.

- F. After USCB has received Town development plan approval for Phase I of the Master Plan, the Town will deposit the amount reflected in Article IV(E)(4) above into a separate interest-bearing account, which account will be controlled by the Town. The parties acknowledge that the amount reflected in Article IV(E)(4) is approximate and the actual amount deposited into the separate interest-bearing account may vary from the projected amount. The Town will pay (out of the separate interest-bearing account) costs of implementation of Phase I of the Master Plan as well as various other costs (legal costs, "soft" costs, etc.), not to exceed the original amount placed into the separate interest-bearing account, upon submission of invoices.
- G. The Town shall install, at its cost, any necessary off-site traffic and roadway improvements as called for in the Traffic Study referred to in Article III(E) above. Current estimates are that these improvements will cost in excess of One Million Dollars (\$1,000,000.00).
- H. The Town shall not take any actions in connection with Town-owned property conveyed in accordance with Article IV(D) above, which in any manner would affect the performance of the terms of this Agreement (including but not limited to granting easements, selling or otherwise disposing of the property, or causing liens or other encumbrances to attach to the property), without the approval of USCB, which approval shall not be unreasonably withheld. Further, the Town shall act so as to preserve and hold Town-owned property which is not conveyed in accordance with

Article IV(D) above, but which is adjacent to such property, for the purpose of advancing future cooperative efforts with USCB.

- I. The Town shall use its best efforts to cooperate with USCB in effectuating the terms of this Agreement.

V. OBLIGATIONS OF USCB

- A. USCB shall apply the Two Million Five Hundred Thousand Dollars (\$2,500,000.00) of funds provided by the Beaufort-Jasper Higher Education Commission and the University of South Carolina Development Foundation (as described in Article III(C) to the implementation of Phase I of the Master Plan. It is agreed between the parties that the funds referred to in this Article V(A) shall be the first funds applied to the implementation of Phase I of the Master Plan (excluding land acquisition costs and initial concept design costs) after the execution of this Agreement.
- B. Subject to and in accordance with Article IV(D) and Article VI(N) herein, USCB shall accept the land and any documents or approvals necessary for the implementation of the Master Plan, with the exception of the land and documents/approvals necessary for the implementation of off-site road improvements.
- C. USCB shall be responsible for final design and permitting of the improvements necessary for the implementation of Phase I of the Master Plan.
- D. USCB shall cause the construction, installation, and implementation of the improvements in accordance with Phase I of the Master Plan.
- E. USCB shall operate and maintain all facilities constructed under Phase I of the Master Plan, as well as any additional phases, for higher education and adult education services to a standard consistent with the educational mission and/or purpose of an educational institution such as USCB.
- F. USCB shall use its best efforts to cooperate with the Town in effectuating the terms of this Agreement.

VI. GENERAL

- A. Amendment, Changes and Modifications. Except as otherwise provided herein, this Agreement may not be amended, changed, modified or altered without the written consent of both parties hereto.
- B. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.
- C. Assignability. This Agreement may not be assigned by either party without the express written consent of both parties.
- D. Construction. The parties agree that each party and its counsel have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.
- E. Eminent Domain. Nothing contained in this Agreement shall limit, impair or restrict the Town's right and power of eminent domain under the laws of the State of South Carolina.
- F. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- G. Further Assurances and Corrective Documents. The parties hereto agree to do, execute, acknowledge, deliver or cause to be done all such further acts as may be reasonably determined to be necessary to carry out this Agreement and give effect hereto.
- H. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right as it may have hereunder.
- I. Notices. Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such

other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile, or if by mail, on the fifth (5th) business day after deposit thereof in the United States Mail, postage pre-paid, registered or certified, addressed as hereinafter provided. All notices, demands, requests, consents, approvals, or communications shall be addressed:

to the Town at:

Stephen G. Riley, ICMA-CM
Town Manager, Town of Hilton Head Island
One Town Center Court
Hilton Head Island, South Carolina 29928

With a copy to:

Gregory M. Alford, Esquire
Alford & Thoreson, LLC
P.O. Drawer 8008
Hilton Head Island, South Carolina 29938

and to USCB at:

Chancellor
University of South Carolina Beaufort
One University Blvd
Bluffton, South Carolina 29909

With a copy to:

General Counsel
University of South Carolina
109 Osborne
Columbia, South Carolina 29208

- J. Recording. The parties hereto may not record this Agreement in the Office of the Register of Deeds for Beaufort County, South Carolina.
- K. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

- L. Termination If either the Town or USCB is unable to raise its portion of the necessary funds, or otherwise fulfill its obligations, under or pursuant to this Agreement within five (5) years of the execution of this Agreement, then this Agreement shall automatically be terminated and any land conveyed to USCB pursuant to this Agreement shall be returned to the Town (by reverter or otherwise). The Parties agree that in such event, the remedy of Specific Performance is, among other remedies, appropriate to be utilized by a court of competent jurisdiction.
- M. This Agreement reflects the intent of the parties to proceed in good faith to execute definitive written agreements and/or take further action(s) with respect to the terms and conditions contained herein. Notwithstanding anything herein to the contrary, (i) if the Town determines that it is not feasible to proceed with the improvements detailed herein or any matters in connection therewith, the Town shall have no liability under this Agreement; and (ii) if USCB determines that it is not feasible to proceed with the improvements detailed herein or any matters in connection therewith, USCB shall have no liability under this Agreement.
- N. This Agreement assigns certain financial responsibilities, including operating and maintenance costs of the parcel(s) and improvements to the University of South Carolina and thereby the State of South Carolina. The University of South Carolina is not authorized to accept those financial responsibilities without approvals from the South Carolina Commission on Higher Education (CHE), South Carolina Joint Bond Review Committee (JBRC), and the South Carolina Budget and Control Board. Similarly, all proposed acquisitions of real property must first be reviewed by the JBRC and then approved by the Budget and Control Board. All proposed purchases of real property require that both an appraisal and a Phase I Environmental Study be conducted on the subject property prior to review by JBRC and the Budget and Control Board. If the environmental firm that conducts the Phase I Environmental Study recommends a Phase II Environmental Study, then the Phase II Environmental Study must also be

conducted. The University of South Carolina Board of Trustees' signature herein below, and the commitment of the University of South Carolina to bind itself to meet its obligations under this Agreement, are contingent on any and all permanent improvement project approvals from CHE, JBRC, and the Budget and Control Board. Should any of those bodies withhold approval of the permanent improvement project, then this Agreement is null and void.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, USCB has caused this Agreement to be signed and sealed
this 31st day of MARCH, 2015.

SIGNED, SEALED AND
DELIVERED IN THE PRESENCE
OF:

[Signature]

[Signature]

UNIVERSITY OF SOUTH CAROLINA
BOARD OF TRUSTEES

By: [Signature]

Amy E. Stone
Secretary, USC Board of Trustees

Attest: [Signature]

Print Name: LEAH S. KOSOSKI

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGEMENT

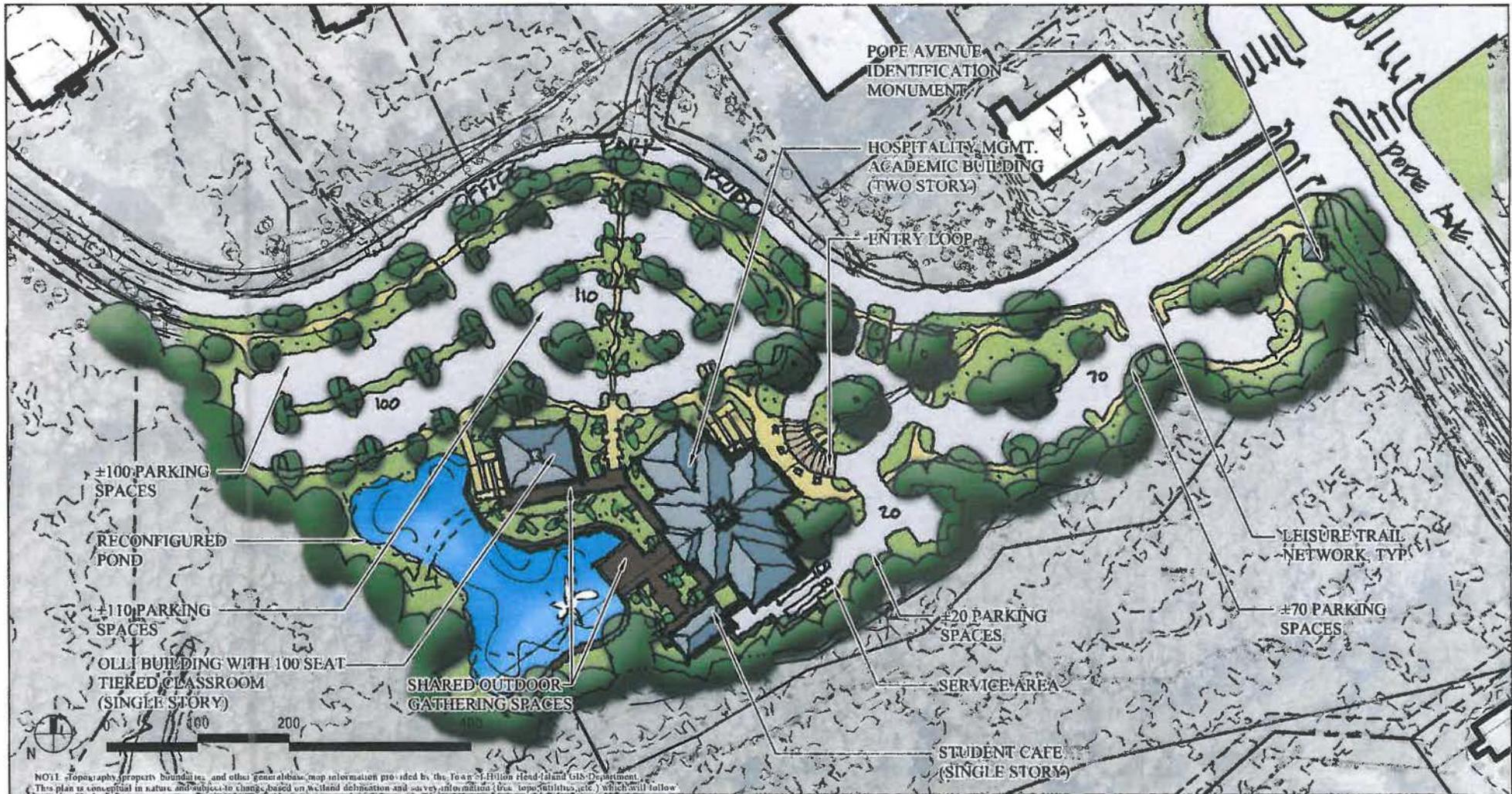
I, the undersigned Notary Public, do hereby certify that Amy E. Stone and
LEAH S. KOSOSKI personally appeared before me this day and
acknowledged the due execution of the foregoing instrument on behalf of the University
of South Carolina Board of Trustees.

Witness my hand and seal this 31st day of MARCH, 2015.

[Signature]

Notary Public for South Carolina
My Commission Expires: 2-28-2023

EXHIBIT "A"
MASTER PLAN



NOTE: Topography, property boundaries, and other general base map information provided by the Town of Hilton Head Island GIS Department. This plan is conceptual in nature, and subject to change based on wetland delineation and survey information (i.e., topography, etc.) which will follow.

PROJECT No 01-14005

DATE 04-04-14

Scale: 1" = 100'

PRELIMINARY MASTER PLAN



WATSON TATE SAVORY

USCB OFFICE PARK ROAD
Hilton Head Island, South Carolina



EXHIBIT "B"

DEED

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) **GENERAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that **THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA** ("Grantor") in the State aforesaid and in consideration of the sum of **TEN AND 00/100 DOLLARS (\$10.00)** and other valuable consideration to it in hand paid at and before the sealing of these presents by _____ ("Grantee"), having an address of _____, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns forever, in the following described property:

ALL that certain piece, parcel or tract of land situate, lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, consisting of ____ acres, more or less, and shown and described as " _____ " on a survey entitled " _____ ", dated _____, prepared by _____, certified by _____ S.C.R.L.S. No. _____, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book ____ at Page _____.

Beaufort County TMS#: _____

SUBJECT, however, to the following restrictions:

Absent mutual consent as evidenced by a written document executed by Grantor, its successors or assigns, and Grantee, its successors or assigns, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, the above-described property ("Property") shall automatically revert to Grantor, its successors or assigns, if any of the following events occur: (1) the Property

ceases to be utilized for the purposes of higher education and adult education services consistent with the educational mission and/or purpose of an educational institution such as Grantee; (2) the date of commencement of construction (breaking ground) of the initial phase of the improvements to be built on the Property does not occur within five years after (CLOSING DATE); (3) the date of completion of the initial phase of the improvements to be built on the Property does not occur within two years after the date of commencement of construction (breaking ground) of the improvements to be built on the Property; or (4) abandonment of the improvements to be built on the Property (or actually built on the Property) or abandonment of the associated higher education and adult education facility project by Grantee, its successors or assigns, at any time after (CLOSING DATE). The Property shall be held, sold and transferred subject to these restrictive covenants, which shall run with the land and be binding on Grantee and its successors and assigns, and any future owner of all or any part of the Property.

This Deed was prepared in the law offices of Alford & Thoreson, LLC, Post Office Drawer 8008, Hilton Head Island, South Carolina, 29938-8008, by Mitchell J. Thoreson, Esq.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, its successors and assigns forever.

AND the said Grantor does hereby bind Grantor and Grantor's successors, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, the Grantee's successors and assigns, against Grantor and Grantor's successors and assigns and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

(SIGNATURES ON FOLLOWING PAGE)

