

CITY OF MULLINS

151 E. Front Street
P. O. Drawer 408
Mullins, South Carolina 29574



PHONE: (843) 464-9583
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Special City Council Meeting Telephone Friday, October 27, 2023 1:00 P.M.

AGENDA

1. **Call Meeting to Order & Welcome:** Mayor Woodbury
2. **Disclosure that local media has been informed of meeting pursuant to South Carolina Freedom of Information Act:**
3. **Approval of Agenda:**
4. **Old Business:**
 - (a) Hampton Circle Development Agreement
5. **New Business:**

1st Reading of Ordinance # 2023-015, "AN ORDINANCE TO SELL PROPERTY LOCATED AT HAMPTON CIRCLE (T# 406-072-7000000) MULLINS, SOUTH CAROLINA 29574."
6. **Adjournment:**

Dial in Number 720-843-2663
Access Code 601-918-7
On-line Meeting ID cityofmullins4

ORDINANCE #2023-015

**“AN ORDINANCE TO SELL PROPERTY LOCATED AT HAMPTON CIRCLE T#406-072-7000000
MULLINS, SOUTH CAROLINA 29574**

WHEREAS, the City of Mullins owns real estate located on Hampton Circle, in Mullins, South Carolina 29574; and

WHEREAS, the City of Mullins desires to sell the said real estate to Quality Corporate Management, LLC & Elm Construction, LLC for the sale price of Five No/5 (\$5.00) Dollars. The said property will be divided in to five (5) parcels with each having a separate Land Transfer Agreement. In the event the five (5) homes are not constructed pursuant to the terms of the agreement, the Developer, or its successor shall deed the property back to the City of Mullins; and

NOW, THEREFORE, BE IT ORDAINED that the City of Mullins be and is hereby authorized to sell said real estate to Quality Corporate Management, LLC & Elm Construction, LLC for the sum of Five No/5 (\$5.00) Dollars.

AND IT IS SO ORDAINED

Robert L. Woodbury
Mayor

City Council

ATTEST:

Felicia Sawyer-Norton, Clerk

APPROVED AS TO FORM:

Introduced: 10-26-2023
Final Reading: 11-14-2023

Robert Corley, City Attorney

HAMPTON CIRCLE DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is made this 27th day of October 2023, by and between the CITY OF MULLINS, a South Carolina municipal corporation (the “City”), and Quality Corporate Management, LLC and Elm Construction LLC, South Carolina limited liability companies (collectively, the “Developer”).

THE PARTIES RECITE THAT:

WHEREAS, the City is a municipal corporation organized and existing under and pursuant to all applicable South Carolina State law; and

WHEREAS, the Developer comprises two limited liability companies organized and existing in good standing, and authorized to do business in South Carolina; and

WHEREAS, the City owns certain parcels of real property in Mullins, listed and legally described on Exhibit A (the “City Property”), on which the Developer wishes to develop, build, market, and sale Five (5) 1,200+ square feet, Single Family New Construction Affordable Homes; and

WHEREAS, the City has determined that the Project will improve Mullins’s housing shortage, and increase home ownership; and

WHEREAS, the City, and the Developer, to best serve the public interest, wish to set forth their respective public and private commitments and understandings with regard to the Project.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the City, and the Developer agree as follows:

I. THE DEVELOPMENT PROJECT

a) **Project Definition.**

“Hampton Circle Development”

1) **Deliverables.**

Five (5) 1,200+ square feet, Single Family New Construction Homes: To be located at the parcel in the middle of Hampton Circle. These homes will be constructed by the Developer on a parcel owned by the City, this parcel shall be transferred to the Developer by the City in accordance with the terms of this Agreement and a Land Transfer Agreement attached hereto.

2) **Infrastructure Improvements.**

N/A

3) **Financing and Incentives.**

The Developers are responsible for all financing of the five (5) houses associated with the “Hampton Circle Development”. The City will bequeath and transfer the land associated with the “Hampton Circle Development”.

4) **Inspections.**

During construction the City shall have the right, but not the obligation, to conduct inspections, upon reasonable prior notice to Developer.

II. PROPERTY TO BE TRANSFERRED

a) Land Transfer Agreement. The Developer, and the City shall enter into a written agreement, the "Land Transfer Agreement", which describes the transfer of, property located on Hampton Circle T# 406-072-7000000 a City owned the Property to Developer for the development of "Hampton Circle Development" (The property is to be subdivided into five (5) parcels, each parcel will have a separate Land Transfer Agreement.) The Land Transfer Agreement sets forth the, terms and other consideration for the exchange, method, and timing for transfers for the City Property. Provided that, should Developer be unable to obtain all of its required approvals, and permits, the Land Transfer Agreement shall terminate with no further obligation of either party except those that are specified in the Land Transfer Agreement. The closing of the transfer shall occur, respectively for each house, with the building plans and permits being obtained by the Developer. In the event any of the respective home, for any reason whatsoever, any of the five (5) respective homes is not completely constructed pursuant to the terms of this Agreement, the Developer, or its successor, shall deed the respective Lot/Property back to the City of Mullins, in fee, free of any liens or encumbrances, except those in existence at the time of its transfer to the Developer, or, if construction of the building has started but has not been completed

b) Property Reversion. In the event "Hampton Circle Development", for any reason whatsoever, is not completely constructed pursuant to the terms of this Agreement, the Developer, or its successor, shall deed the Hampton Circle Property back to the City of Mullins, in fee, free of any liens or encumbrances, except those in existence at the time of its transfer to the Developer, or, if construction of the building has started but has not been completed. The parties agree that the parties shall be entitled to specific performance of these contractual obligations and that this is a material provision of the Agreement.

III. CONDITIONS

The obligations of the Developer under this Agreement are conditioned upon the following:

a) Approval by the City of the Land Transfer Agreement on terms acceptable to the Developer in its sole discretion;

b) Transfer to the Developer of the Hampton Circle T#406-072-7000000 Parcel (as defined in the Land Transfer Agreement) free and clear of all liens and encumbrances, and subject only to those exceptions acceptable to the Developer in its reasonable discretion.

IV. TIMING

The City and the Developer agree that they will complete each of the following activities in a reasonable time, in accordance with the following schedules, but with outside dates for completion as follows:

a) Construction

1) The Developer shall pay the required fees and submit the applications for building permits and plans for the 1st home within fourteen (14) days of the execution of this agreement. The Developer shall begin construction on the 1st home within thirty (30) days of approved building permits.

b) Delays, Extensions and City Approval

In the event of an unavoidable delay ("Enforced Delay") in the performance by the Developer of its obligations under this agreement, due to unforeseeable causes beyond its control and without fault or negligence, including, but not restricted to, acts of God or acts of war or terrorism; acts of the federal, state, county or city government that directly impact the Project; acts of the judiciary not resulting from

the Developer's breach of this Agreement or fault of the Developer, including injunctions, temporary restraining orders and decrees; acts of the other party in breach of this agreement; fires; floods; epidemics; unanticipated environmental contamination; strikes, lock-outs, labor trouble; inability to procure materials; failure of power; riots, insurrection, war, acts or negligence of the other party or their agents or other reason of like nature not the fault of the party delayed, the time for performance of such obligations shall be extended for the period of the Enforced Delays; provided, however, the party seeking the benefit of the provisions of this section shall, within twenty one (21) days after the beginning of such Enforced Delay, have first notified the other party in writing of the causes thereof and requested an extension for the period of the Enforced Delay.

With respect to any matters that are within the discretion or approval of the City, the City shall: (i) act reasonably in all dealings with the Developer, (ii) not unreasonably withhold, condition, or delay any approvals within its discretion, and (iii) act reasonably to assist the Developer in completion of the Project.

V. PERFORMANCE

a) Developer Performance.

In the event that the Developer fails to obtain the necessary building permits in accordance with the timelines set forth herein (except if same are unreasonably withheld, unreasonably conditioned or unreasonably delayed by the City, or any other governmental unit, in contravention of this Agreement, or Enforced Delays), the City may, at its option and within its sole discretion, terminate this Agreement and terminate the related, respective, Land Transfer Agreement, either immediately or prospectively; provided that, prior to any such termination, the Developer shall have ninety (90) business days to cure any default after written notice of the same.

b) Failure to Complete.

In the event the Developer fails to complete the construction of the "Hampton Circle Development", within twelve (12) months following issuance of the building permits for the 1st of the five (5) homes in the "Hampton Circle Development", except for any Enforced Delays, the City may, at its option and within its discretion,

(i) cooperate with Developer to complete the Project; provided, however, such cooperation shall not be interpreted to require the City to contribute any financial assistance to the Project. Developer shall have forty five (45) business days to cure any default after notice of the same. If the delay is caused by causes beyond the reasonable control of the Developer, and the Developer has started actions to cure such delay, the time to cure shall be extended to the time reasonably needed to complete the "Hampton Circle Development".

c) Modification or Termination.

The City and Developer may mutually agree to modify or terminate this Agreement.

d) City Performance.

In the event that the City fails to comply with or perform any of the warranties, representations, covenants, or agreements of the City contained herein, such a failure shall constitute a default by the City under this Agreement, and upon the failure of the City to cure any default within forty five (45) days after written notice of the same, the Developer, at its option and within its sole discretion may (i) terminate this Agreement, either immediately or prospectively; or (ii) proceed and bring an action for specific performance of the City's obligations.

VI. INDEMNIFICATION

a) General Indemnification.

To the extent, and only to the extent, not covered by the proceeds from the insurance policies required to be carried hereunder or under any other agreements between the parties hereto, the Developer agrees that it shall indemnify and hold harmless the City from against and from any loss, damage, claim of damage, liability or expense to or for any person or property, whether based on contract, tort, negligence or otherwise, arising directly or indirectly out of or in connection with its acts or omissions in conjunction with the performance of this Agreement so indemnifying, its agents, servants, employees or contractors; provided, however, that nothing herein shall be construed to require a party to indemnify the other against such party's own acts, omissions, or neglect.

VII. MISCELLANEOUS PROVISIONS

a) Anti-Merger.

The parties agree and acknowledge that delivery and recording of the deeds contemplated in this Agreement shall not merge the provisions or obligations of this Agreement. All other obligations contained herein shall remain in full force and effect.

b) Relationship of the Parties.

The relationship of the City, and the Developer shall be defined solely by the expressed terms of this Agreement, including the implementing documents described or contemplated herein, and neither the cooperation of the parties hereunder nor anything expressly or implicitly contained herein shall be deemed or construed to create a partnership, limited or general, or joint venture between the City and the Developer, nor shall any party or their agent be deemed to be the agent or employee of any other party to this Agreement.

c) Modification.

This Agreement can be modified or amended only by a written instrument expressly referring hereto and executed by the City, and the Developer.

d) Cooperation.

The Parties shall take such further actions and deliver and execute such additional documents as are reasonably necessary to effectuate the terms and intent of this Agreement, including any necessary easements to accomplish the intent of the Project. The Parties shall work cooperatively to obtain any and all permits, approvals, waivers, and any other approval required to effectuate the Parties intent contemplated under the terms of this Agreement.

e) Third Parties.

The Parties acknowledge and agree that this Agreement is made and entered into for the sole benefit of the Parties hereto and their successors and assigns including any lender participating in the financing of the Project, and in no event shall any other person, entity or agency be considered a party to this

Agreement or a beneficiary under this Agreement. Accordingly, there are no third party beneficiaries under this Agreement.

f) South Carolina Law to Control and Severability.

This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with South Carolina law. If any part, term, or provision of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining portions and provisions will not be affected and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid unless it is a material term or provision of the agreement that would significantly alter the nature of the Agreement. All terms, conditions, responsibilities, duties, promises and obligations of the parties are binding upon the parties, their successors and assigns.

g) Due Authorization.

The City, and the Developer each warrant and represent to the others that this Agreement and the terms and condition thereof have been duly authorized and approved by, in the case of the City, its City Council and all other governmental agencies whose approval may be required as a precaution to the effectiveness hereof, and as to the Developer, by the members thereof, and that the persons who have executed this Agreement below have been duly authorized to do so. The parties hereto agree to provide such opinions of counsel as to the due authorization and binding effect of this Agreement and the collateral documents contemplated hereby as the other party shall reasonably request.

h) Notice.

Any notice required or intended to be given under the terms of this Agreement shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given, delivered or served upon the earliest of (i) upon deposit in the U.S. Mail, for delivery by certified or registered mail, with proper postage prepaid and return receipt requested, or (ii) upon deposit with an overnight delivery carrier for next day delivery, or (iii) the date of personal delivery:

If to the City:

With a copy to:

If to Developer:
Quality Corporate Management and Administration
712 W Evans St
Suite 2
Florence, SC 29501

With a copy to:

Elm Construction
1203 Sopkin Avenue
Florence, SC 29506

i) Drafting and Construction.

All parties to this Agreement have participated fully and equally in the negotiation and preparation hereof; therefore, this Agreement shall not be more strictly construed or any ambiguities within this Agreement resolved against any party hereto.

j) Assignability.

This Agreement is not assignable without the express written agreement of the parties which shall not be unreasonably conditioned, delayed, or denied. The City agrees to take reasonable steps necessary to promptly approve the assignment provided that any assignee agrees to be bound by the terms and conditions herein and either the performance bonds issued pursuant to the terms of this Agreement remain in full force and effect after and through the duration of the assignment or new performance bonds are issued on behalf of the assignee that meet the requirements of this agreement and are otherwise satisfactory to the City. Nothing in this Agreement beyond that stated herein shall be construed to hinder, delay, or prohibit the assignment of this Agreement or prohibit the City's use of reasonable criteria to ensure that the City is not subjected to additional material risk related to the Development.

If an assignment of this Agreement, including any and all ancillary agreements (to a party other than a state or federally regulated lender or financial services firm with assets in excess of \$1,000,000,000) is requested by Developer prior to the completion of the "Hampton Circle Development", reasonable criteria shall be considered by the City in order to insure that the proposed assignee has adequate financial strength and capabilities, reputation, experience and expertise and the proposed assignment does not subject the City to additional material risk related to the Development. City agrees to perform such review within 30 business days of receiving that information reasonably necessary for such review.

If the City properly declines to approve an assignment in accord with the provisions of this section, Developer shall remain obligated to complete its obligations under the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first set forth above.

CITY OF MULLINS, SC

By: _____

Date: _____

Its: _____

By: _____

Date: _____

Its: _____

DEVELOPER

Quality Corporate Management and Administration, LLC,
a South Carolina limited liability company

By: _____

Date: _____

Its: _____

Elm Construction, LLC
a South Carolina limited liability company

By: _____

Date: _____

Its: _____