2025-04

AUTHORIZING THE OPTION TO TRANSFER, AND APPROVAL TO TRANSFER, OF APPROXIMATELY 1.78 ACRES OF REAL PROPERTY WITH IMPROVEMENTS, IF ANY, LOCATED AT 351 LANGSTON STREET, WITH COUNTY TMS #0173-17-31-006.000; AND PROVIDING FOR OTHER RELATED MATTERS.

WHEREAS, the City Council ("Council") of the City of Orangeburg ("City") finds:

(a) the City previously acquired real property located at 351 Langston Street, Orangeburg, South Carolina, with a preliminary property description as provided on the attached Exhibit A ("Property");

(b) South Carolina law, specifically South Carolina Code Annotated section 5-7-40, authorizes municipalities to sell, alienate, convey, and otherwise dispose of real property and personal property to third parties; and

(c) the City desires to provide for the potential conveyance of Property to Project Riverview, according to an option agreement, the substantially final form of which is attached as Exhibit B ("Option Agreement") and, if such option (as described in the Option Agreement) is exercised, then the final transfer may be accomplished, if and to the extent necessary, by subsequent purchase and sale agreement ("PSA");

NOW, THEREFORE, by a majority vote of the Council members present, the City **ORDAINS** that Property be optioned and ultimately transferred, as and to the extent so transferred, in accordance with the Option Agreement and/or the PSA, if any;

BE IT FURTHER ORDAINED that the Mayor and/or the City Administrator are hereby authorized, empowered and directed to execute, acknowledge, and deliver the Option Agreement and/or the PSA, if any, in the name of and on behalf of the City, and the Municipal Clerk is hereby authorized and directed to attest the same, and thereupon to cause the Option Agreement and/or PSA, if any, to be delivered to the purchaser. (A) The Option Agreement is to be in substantially the form now before this meeting and hereby approved, with such minor changes therein as shall be approved by the officials of the City executing the same, upon advice of City Attorney, and as are not materially adverse to the City, and (B) the PSA, if any, is to be in substantially the form as described in the Option Agreement, as may be approved by the officials of the City executing the same, upon advice of City Attorney, and as are not materially adverse to the City, in each such case, with such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form the Option Agreement now before this meeting.

BE IT FURTHER ORDAINED that, without the necessity of any further action(s) on the part of the Council, the City Administrator, and/or his designee (each, an "Authorized Official"), in consultation with the City Attorney, is authorized to prepare, or have prepared, the form of the transfer documents that are customarily used for similar transactions in this State; (c) authorizes the Authorized Official to provide information to the purchaser as is necessary and prudent to consummate Property's transfer; and (d) authorizes the Authorized Official, the Mayor, and in the Mayor's absence, the Mayor Pro Tem, and the Municipal Clerk, as appropriate, to execute, attest, and deliver those documents that may be reasonably necessary to consummate Property's transfer (the execution of those documents by the City's representatives acting as conclusive evidence that the documents are approved by the City).

BE IT FURTHER ORDAINED that any ordinance, resolution, or order of City Council, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

ENACTED BY the City Council on May 20, 2025, and effective immediately.

Mayor

Members of Council

Attest: Linda McDaniel
City Clerk

First Reading:	April 15, 2025
Second Reading:	May 6, 2025
Third Reading:	May 20, 2025

EXHIBIT A

INITIAL PROPERTY DESCRIPTION

Parcel No:	0173-17-31-006.000
Address:	351 Langston Street, Orangeburg, South Carolina 29115

EXHIBIT B

SUBSTANTIALLY FINAL FORM OF OPTION AGREEMENT

OPTION AGREEMENT FOR PURCHASE OF LAND

This Option Agreement for Purchase of Land ("Agreement") is made and entered into as of June 1, 2025 ("Effective Date"), by and between the **City of Orangeburg**, a municipal corporation organized under the laws of the State of South Carolina ("Seller"), and [Project Riverview] ("Buyer").

1. **Property.**

   Upon payment of the Option Fee, as described herein, the Seller hereby grants the Buyer an option to purchase the parcel of land located at 351 Langston Street in the County of Orangeburg, South Carolina, described as follows: +/- 1.78 acres Orangeburg County Tax Map # 0173-17-31-006.000, and with a further, preliminary property description as provided on the attached Exhibit A ("Property") during the Option Period, as described herein.

2. **Purchase Price.**

   The total purchase price for the Property shall be One Hundred Thousand and 00/100 Dollars ($100,000.00) ("Purchase Price").

3. **Option Fee.**

   The Buyer shall deposit an initial, non-refundable option fee with King Kozlarek Root Law LLC ("Escrow Agent") in the amount of Ten Thousand Dollars ($10,000) ("Initial Option Fee") upon execution of this Agreement, which shall be applied to the Purchase Price if the Option is exercised. Buyer shall have the right to continue to make two (2) additional non-refundable deposits each in the amount of $5,000 (each, "Additional Option Fee"; and the Initial Option Fee and any Additional Option Fee, collectively, "Option Fee") with Escrow Agent every six (6) months between the first day of the month and the fifth day of the month beginning with June 1, 2026, which payment(s) of each additional Option Fee shall renew the Option Term, as described herein. Except as specifically authorized by this Agreement, Escrow Agent will not disburse the Option Fee until both parties have executed an agreement authorizing the disbursement. If the Option is exercised by Buyer, all Option Fee deposits made by Buyer shall be applied to the Purchase Price.

4. **Option Term.**

   This Option shall be effective for a period of twelve (12) from the Effective Date, ending May 30, 2026 ("Initial Option Period"). The Initial Option Period may be renewed by the Buyer upon payment of an Additional Option Fee for an additional six-month period (each, an "Option Extension Period"; and, the Initial Option Period as extended by any Option Extension Period, collectively, "Option Period") no more than two (2) times, for a total maximum period of two (2) years from the beginning of the Initial Option Period, expiring no later than May 30, 2027. The Buyer may exercise this Option within the then-current Option Period by providing written notice to the Seller as described herein. During an Option Period Seller shall not (i) solicit or accept any offers or expressions of interest to purchase the Property from any party other than Buyer or (ii) without the prior written consent of Buyer (which consent shall not be unreasonably withheld), grant any encumbrances (including entering into or extending or amending any leases or other occupancy agreements) affecting the Property.

5. **Exercise of Option.**

   The Buyer may exercise this Option to purchase the Property during the Option Period only by providing written notice thereof to Seller, which notice shall be accompanied by evidence reasonably satisfactory to Seller that Buyer is prepared to proceed with the development project (which evidence may consist of an executed lease (or a executed memorandum of understanding for said lease) for all or substantially all of the residential portions of the development project (which lease or memorandum may have certain economic terms redacted if so requested by "tenant" party thereunder)). Upon exercise of the Option during an Option Period, the parties shall execute a mutually agreeable purchase and sale agreement ("PSA") consistent with the terms of this Agreement, with closing to occur within forty-five (45) days of the date as of which the parties have both executed and delivered the PSA.

6. **Purchase and Sale Agreement.**

Upon Buyer's written notification to Seller of Buyer's intention to exercise the Option during an Option Period ("Option Notice"), the parties shall negotiate in good faith a PSA consistent with the terms outlined in this Agreement with execution of the PSA to occur within thirty (30) days of Seller's receipt of the Option Notice ("PSA Period"). If the parties are unable to agree on the terms and execute a PSA during the PSA period, this Agreement shall terminate and be of no further force and effect. The PSA shall contain a provision (which shall be (a) part of the deed transferring the Property and/or (b) part of a separate, recordable instrument), which shall restrict the use of the Property to a parking lot servicing only a student housing development, which is located at 776 Russell Street and 812 Russell Street, also known, respectively as TMS Nos. 0152-20-08-001.000 and 0152-20-07-002.000.

7. **Escrow Agent.**

Buyer, Seller, and Escrow Agent hereby covenant and agree as follows:

(a) The Option Fee shall be held by Escrow Agent in Escrow Agent's non-interest bearing trust account until such time as the Option Fee is distributed in accordance with this Agreement or a PSA, if any.

(b) Escrow Agent acts hereunder as a depository only and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness, or validity of this Agreement, any other agreement between the parties or with respect to the form, the substance, or execution of the same; or the identity, authority, or rights of any person executing the same.

(c) Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which Escrow Agent may do or refrain from doing in connection herewith, except its own gross negligence or willful misconduct, and Escrow Agent shall have no duties to anyone except those parties executing this Agreement, and only to such parties, to the extent Escrow Agent is clearly, specifically, and unequivocally required to take such action under this Agreement.

(d) Escrow Agent may consult with legal counsel in the event of any dispute or questions as to the construction of the foregoing instruments, or Escrow Agent's duties hereunder, and Escrow Agent shall incur no liability and shall be protected in acting in accordance with the opinion and instructions of such counsel.

(e) Upon receipt of notification from either party of the termination of this Agreement, Escrow Agent shall notify the other party of such notification in writing, and if Escrow Agent does not receive any written objection to such notification of termination within 10 business days then Escrow Agent is authorized to disburse the Option Fee to Seller without further action or authorization by either party.

(f) By executing below, Escrow Agent is agreeing to be bound by the terms of this Section 7, and is not bound by any other portion of this Agreement.

<u>**Escrow Agent**</u>:
King Kozlarek Root Law LLC

____

By: Michael E. Kozlarek, Esq.
Its: Managing Member

8. **Closing Costs and Adjustments.**

(a) **Closing Costs:** The parties shall each bear their respective and customary costs at closing, including legal and transaction fees, as shall be more fully described in the PSA, except that the Buyer shall be responsible for any recording fees or transfer taxes.

(b) **Prorations and Adjustments:** Taxes, utilities, and other assessments will be prorated as of the date of closing.

9. Non-Assignability.

The rights under this Agreement are personal to Buyer and may not be assigned without the prior written consent of the Seller, which consent Seller may refuse to give for any reason or no reason; provided, however, that Buyer shall have the right to assign this Agreement to an affiliate of Buyer without the consent of Seller, provided Buyer gives Seller prompt written notice thereof. For purposes of this paragraph 9, "affiliate" means "any entity that directly or indirectly controls [Project Riverview]."

10. Default and Remedies.

In the event of any default by Buyer in the performance of Buyer's obligations hereunder, subject to Seller providing Buyer with written notice of any such default and a reasonable opportunity to cure the same, Seller may elect (by giving written notice thereof to Buyer) that this Agreement shall terminate, whereupon Seller shall retain the Option Fee as liquidated damages. If Buyer fails to timely pay any installment of the Option Fee or fails to timely exercise the Option within the Option Period, this Agreement shall terminate, whereupon Seller shall retain the Option Fee.

11. Representations.

Each of the parties hereto represents, as of the date hereof, to the other that: (i) it has the power and authority to enter into this Agreement, (ii) this Agreement has been duly executed and delivered by it, (iii) no authorizations are needed by it to enter into (and perform its obligations under) this Agreement that have not be obtained on or prior to the date hereof, and (iv) this Agreement is enforceable against it in accordance with its terms. In addition, Seller represents, as of the date hereof, to Buyer that the Property is not subject to any liens or the like securing any obligation for the payment of a sum of money (except to the extent that any such lien shall be released on or prior to the consummation of the sale of the Property to Buyer (assuming the Option is exercises in accordance with the terms hereof).

12. Inspection Right.

During the Option Term, subject to the rights of tenants and reasonable notice to Seller, Buyer shall have the right to inspect the Property for due diligence purposes and, if Buyer elects to do so, perform any reasonable tests thereon, provided, however, Buyer shall be responsible for any claim, liability, and/or damage arising out of or relating to such such inspection(s); and, provided, further, however, Buyer, following each such inspection, shall return the Property to its pre-inspection condition.

13. Calculation of Time.

In the event the final date of any time period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday, in such event, such time period shall be extended to the next, regular business day.

14. Time is of the Essence.

Time is of the essence of each parties' respective obligations hereunder.

15. Governing Law.

This Agreement shall be governed by the laws of the State of South Carolina.

16. Entire Agreement.

This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements, whether oral or written.

17. Counterparts and Signatures.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

The parties may execute this Agreement in the form of an electronic record utilizing electronic signatures, as such terms are defined in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, *et seq.*). Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Seller:
City of Orangeburg

By: ______________________________

Name: ______________________________

Title: ______________________________

Date: ______________________________

Buyer:
[Project Riverview]

By: ______________________________

Name: ______________________________

Title: ______________________________

Date: ______________________________