

MEMORANDUM OF UNDERSTANDING

February
26, 2021

This MEMORANDUM OF UNDERSTANDING (this "MOU") is made and entered into as of ~~XXXX~~, 2020 (the "Effective Date") by and among Beemok Capital, LLC, a South Carolina limited liability company ("Beemok"), and the Town of Sullivan's Island (the "Town"). Beemok and the Town may at times be referred to individually herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the Sand Dunes Club (the "Club") is a historical feature of the Town, used initially as a military officer's club and later as a membership-based club for SCE&G's and its successors' respective employees and retirees;

WHEREAS, the Club property comprises TMS 5231200019, 5231200020, 5231200021, 5231200022, and 5231200023 (each, a "Lot" and collectively, the "Property") and each such Lot is situated in the Town's RS - Single Family Residential District;

WHEREAS, the clubhouse located upon the Property (the "Clubhouse") is of historical significance to the Town and has been designated an Island Landmark;

WHEREAS, the operation of the Club is a Nonconforming Use (as such term is defined in the Ordinances of the Town of Sullivan's Island, as amended, the "Ordinances") and is permitted through the Ordinances and a club may continue to be operated upon the Property under new ownership subject to the restrictions of the Ordinances;

WHEREAS, the intensity of use of the Club has generally not resulted in traffic issues, parking issues or noise complaints in the residential neighborhood in which it is located, and the Town finds value in maintaining Club use intensity at a level that does not generally disturb or place further burden on the Town, its residents and property owners near the Property;

WHEREAS, the Town believes a club with membership limited to Town residents and property owners is an effective way to manage the future intensity of Club use;

WHEREAS, the Lots may be developed as single family residential, subject to the restrictions of the Ordinances;

WHEREAS, the Design Review Board of the Town has the authority to remove the historic property designation status of the Clubhouse, which would allow for its demolition and redevelopment;

WHEREAS, the Town finds value in (x) retaining the Clubhouse structure and wishes to protect it from possible demolition and (y) the establishment of a club that will serve as a community gathering space and will enhance the recreational activities available to its residents and property owners;

WHEREAS, Beemok (or an affiliate of Beemok) (the "Purchaser") desires to purchase the Property from its current owner, to renovate the Clubhouse and to operate the Club as a Nonconforming Use of the Property under the Ordinances; and

WHEREAS, in furtherance of Beemok's and the Town's mutual desires with respect to the Property and the Club, the Parties seek herein to agree upon the rights and responsibilities of Beemok and the Town with respect to the use of the Property following a potential acquisition of the Property by the Purchaser.

NOW THEREFORE, in consideration of the premises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is understood and agreed to by the Parties as follows:

1. **Mutual Understandings.** Upon the closing of a purchase of the Property by Purchaser:
 - a. *Sale of Lots.* Purchaser shall be entitled to sell three of the following four Lots: 5231200019, 5231200021, 5231200022 and 5231200023, for single family residential development subject to the Ordinances. Purchaser shall officially abandon the nonconforming use of any Purchaser-sold Lots concurrently with the closing of such sale.
 - b. *Retained Lots.* The Purchaser-retained Lots, including but not limited to Lot 5231200020 and at least one additional Lot, shall be used for parking and the operation of a membership-based club for the benefit of Town residents and Town property owners. In the event that Lot 5231200019 is sold pursuant to subsection (a) above, Purchaser shall provide for substantially similar overflow parking on one or more of the other retained Lots.
 - c. *Club Footprint; Renovations.* Purchaser intends to renovate and improve the Clubhouse and the outdoor recreational facilities subject to, and in a manner consistent with, the Ordinances.
 - d. *Food and Beverage Operations; Hours.* Purchaser intends to operate a snack bar and kitchen for members of the Club. Purchaser agrees to abide by all applicable laws related to the sale and consumption of alcohol on the Club premises. The Club will not sell food or beverage to non-members. Such operations shall conclude no later than 15 minutes prior to the imposition of the noise Ordinance, providing for a 15 minute buffer period to allow Club members and their guests to vacate Club premises prior to 10 pm and 11 pm, respectively.
 - e. *Pool Operations and Outdoor Facilities.* In order to ensure neighborhood compatibility, the daily Club pool hours shall commence no earlier than 8 am and end by the earlier of 8 pm and sunset (for each day that the pool facility is open, between [April/May] and the end of September). Reasonable lap swimming may be a permitted exception to the pool hours. Outdoor gathering facilities at the Property shall close daily in accordance with the Town's noise Ordinance.
 - f. *Club Operations Generally; Financials.* The Purchaser's intent is to operate the Club in such a way that membership costs shall not exceed an amount reasonably sufficient to fund the ongoing operations of the Club and its capital requirements. In furtherance of the foregoing, the Purchaser agrees to share, on a confidential basis, the annual financial statements relating to the operation of the Club.
 - g. *Membership.* Consistent with the Town's expectations for a Club with a wide community membership base, Purchaser shall price memberships on a reasonable basis to promote broad participation. Membership in the Club shall be limited to verified full-time Town residents and other Town property owners (with non-resident property owners limited to one family membership per tax lot), with Purchaser's initial goal to retain as members 500

Town families, with membership being generally non-exclusive but subject to limited exceptions (e.g., capacity; registered offenders). Consistent with past practices, the Club shall endeavor to offer non-member residents of the Town access to the pool facilities on select days for a fee. The Club shall, in its sole discretion, revoke or suspend membership for violations of published rules.

h. *Use of Club Facilities.*

- i. *Members.* Members shall be entitled to utilize the Club facilities in a manner consistent with reasonable policies of the Club which will be consistent in all respects with the Ordinances.
- ii. *Town Resident Non-Members.* The Club shall be entitled to offer use of its facilities to Town resident non-members for purposes of youth and children's recreational activities on either a free or fee basis (in the event of a fee, any such fee to be reasonably commensurate with those charged by Isle of Palms and Mt. Pleasant recreational departments). During daytime hours, the Club shall also be entitled to offer facility rental on a fee or free basis for adult recreational activities and fitness classes for non-Club member Town residents.
- iii. *Special Events.* Subject in all cases to availability in the Club's sole discretion, the Club members shall be entitled to pay the Club to rent the facilities of the Club for special events subject, in all respect, to the requirements of the Ordinances. Weddings and other social gatherings with greater than 50 attendees will conclude in accordance with the hours set forth in subsection (i) below. All special events shall be conducted in accordance with the Town's noise Ordinance.

i. *Club Hours.*

- i. The indoors areas of the Club shall close by 10 pm (Sunday-Thursday) and midnight (Friday-Saturday).
- ii. Outdoor facilities of the Club shall close by 10 pm (Sunday-Thursday) and 11 pm (Friday-Saturday), and all outdoor Club activities shall be conducted in accordance with the Town's noise Ordinance.
- iii. Live music on the Property comprising the Club, shall be prohibited after 10 pm (Sunday – Thursday) and 11 pm (Friday-Saturday).
- iv. Pool hours will be as set forth in subsection (e) above.

j. *Deed Restrictions.* The Town and Purchaser shall, substantially simultaneously with the closing of an acquisition of the Property by the Purchaser, apply mutually agreeable deed restrictions to the Property reflecting the provisions of this MOU. Such restrictions shall include, without limitation, (x) that at least one retained Lot (but other than Lot 5231200020) shall be used for parking, (y) that membership shall be restricted to Town Residents and non-resident property owners as set forth in subsection (g) above and (z) that in the event of a bona fide sale of the Property by the Purchaser to any entity that will not operate the Club subject to the requirements of Section 501(c)(7) of the Internal Revenue Code, such successor entity shall be deemed to have abandoned the non-conforming use of the Property and the Property shall revert to RS - Single Family Residential District zoning (or such other comparable Town zoning rule as may be in effect at the time of such sale).

Notwithstanding the foregoing clause (z), a donation by the Purchaser of the Club and the Property to the Town shall not be considered an abandonment of the non-conforming use of the Property as set forth in this MOU.

2. **Covenants of Beemok.** Beemok, for itself and on behalf of the Purchaser, hereby agrees that:

- a. By its purchase of the Property, Purchaser voluntarily abandons the use of the Property which allows for operation of a club for those who are not residents of the Town or its property owners. For the avoidance of doubt, Purchaser does not, in any respect, abandon the nonconforming use of the Property allowing for the operation of the Club as set forth in Section I above or the conforming use for which the Property is zoned.
- b. Purchaser shall not request, and understands that the Town shall not grant, the removal of the historic property designation status for the Clubhouse.

3. **Covenants of the Town.** The Town hereby agrees to support the position that:

- a. The nonconforming use of the Property for a club has not been previously abandoned under Section 21-150(E) of the Ordinances.
- b. The nonconforming use of the Property for a club will not be considered "abandoned" under Section 21-150-E-(1)(b) of the Ordinances following the purchase by Purchaser, whether during the renovation process or prior to the formal opening of the Club. Notwithstanding the foregoing, if progress towards the opening of the Club shall halt for a 12 month period it shall constitute an abandonment of the nonconforming use of the Property for a Club.
- c. The operation of the Club under the terms of this MOU shall not constitute an "Expansion" of the nonconforming use of the Property under Section 21-150(B) of the Ordinances.

4. **Term.** In the event that a purchase of the Property by Purchaser is not consummated within one year of the date of the execution of this MOU, this MOU shall be of no further force and effect; provided, however, that the term of this MOU may be extended in a writing signed by both Parties.

5. **Confidentiality.** Each Party shall keep confidential any non-public information obtained from the other party. In the event of termination of negotiations, each Party will return or cause to be returned to the other all documents and other material obtained from the other party and will use all reasonable efforts to keep confidential any such information, unless such information is ascertainable from public or published information or already known by the receiving Party. In addition, each party agrees not to use the other Party's confidential information in any way if the donation does not occur. Notwithstanding these confidentiality provisions, the Parties acknowledge that this MOU and any agreements contemplated herein will be subject to the S.C. Freedom of Information Act.

6. **Notices.** All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given

when delivered personally or when deposited in the United States mail, postage prepaid, or deposited with the overnight courier, addressed as the following:

Town: :

Town of Sullivan's Island
2056 Middle Street
Sullivan's Island, SC 29482
Attention: Andy Benke

Beemok:

Beemok Capital, LLC
200 Meeting Street, Suite 206
Charleston, SC 29401
Attention: General Counsel

7. **Entire Agreement.** This MOU contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter.
8. **Assignment.** Nothing in this MOU shall be construed to permit the assignment by a Party hereto of its rights or obligations set forth herein and such assignment is expressly prohibited without the prior written consent of the other Party. Notwithstanding the foregoing, Beemok may assign its rights and obligations under the Agreement to an affiliate of Beemok.
9. **Amendments/Modifications.** This MOU may not be amended or modified except by mutual written agreement of both Parties.
10. **Survival.** Except as otherwise provided in this MOU, the terms and provisions contained in this MOU which by their nature, sense and context survive or are expressly intended to survive the expiration or termination of this MOU will so survive and continue in full force and effect until they are satisfied or by their nature expire.
11. **Severability.** Nothing in this MOU is intended to conflict with current law or regulation. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.
12. **Governing Law.** This MOU shall be construed in accordance with the laws of the State of South Carolina.
13. **Exclusivity.** This MOU is not an exclusive agreement between the Town and Beemok. The Town specifically retains the right to enter into similar agreements with other counter-parties relating to the Property or Club.
14. **Counterparts and Electronic Signatures.** This MOU may be executed in one or more counterparts, all of which together shall constitute only one agreement. Signatures transmitted in electronic format via electronic delivery (portable document format or .pdf) shall be accepted as original signatures.

Signature page follows

IN WITNESS WHEREOF, the undersigned Parties hereto have executed this MOU as of the Effective Date.

Beemok Capital, LLC

By: I. J. C.

Name: Isaac Cutler

Title: General Counsel

Town of Sullivan's Island

By: Pat M. O'Neill

Name: PATRICK M. O'NEILL

Title: MAYOR