

MEMORANDUM OF UNDERSTANDING

Among

The Economic Development Authority of Carroll County, Virginia and Carroll County, Virginia

This Memorandum of Understanding ("MOU") is made and entered into on the ____ day of August, 2021 (the "Effective Date") by and among the Economic Development Authority of Carroll County, Virginia ("EDA"), and Carroll County, Virginia ("Carroll County") both political subdivisions of the Commonwealth of Virginia. The EDA and Carroll County are referred to collectively herein as "Parties" and each individually as a "Party".

RECITALS

WHEREAS, on or about November 24, 2020 the EDA conveyed to Woodlawn School Apartments, LLC (the "Developer") a portion of that real property located in Carroll County and commonly known as the Woodlawn School, with the EDA retaining ownership of a portion of the surrounding grounds for continued use by the public for recreational purposes; and

WHEREAS, concurrently with the conveyance of the Woodlawn School building to the Developer, the EDA and the Developer executed that certain Deed of Lease dated November 24, 2020 (the "Lease Agreement") whereby the Developer leased to the EDA the gymnasium of the Woodlawn School and attendant facilities for public recreation use; and,

WHEREAS, the Lease Agreement provides that the Developer would serve as the landlord to the EDA for a term of thirty (30) years for the use of the gymnasium of the Woodlawn School, (the "Gym"), as more particularly described on Exhibit A, attached hereto, along with the entryway counter, locker rooms, and wrestling room with rights to use the adjacent parking and excluding any and all outbuildings on the Property (the "Premises");

WHEREAS, as intended under the Lease Agreement, Carroll County desires to use the Gym and Premises for certain recreational, theatrical, musical, and athletic programming or other related athletic, recreational, or cultural events ("Permitted Use");

WHEREAS, the EDA and Carroll County desire to set forth the terms of the use of the Gym and Premises by Carroll County so that they are clear and explicit and in keeping with the thirty-year lease entered into with the Developer.

NOW THEREFORE, based on the above recitals and in consideration of the mutual promises and agreements set forth below, the Parties hereby agree as follows:

I. Purpose

The purpose of this MOU is (a) to define the permitted uses by Carroll County of the Gym and Premises; (b) to establish a formal understanding among the Parties regarding such uses; and (c) to define the relationship amongst the Parties.

II. Objectives

The Parties have the objective to establish a mutually supportive relationship that will benefit both the EDA, Carroll County, and the community as a whole with activities, recreational opportunities, athletics, community image development, and improved economic vitality which align with the mission and vision of the Parties. The objective of this MOU is to codify the relationship among the Parties so that future interactions are enabled successfully.

III. Contribution of Funds

a. Obligations of the EDA.

1. The EDA will be responsible to remit the annual rent of one dollar (\$1) to the Developer.
2. The EDA shall not be required to compensate or provide any kind of remuneration to Carroll County, nor shall the EDA be expected to cover the cost of insurance premiums and/or deductibles.
3. The EDA shall not be responsible for paying for any damages and/or repairs needed at the Gym and/or Premises whether those repairs and/or damages be the result of normal wear and tear, due to some sort of accident or natural disaster, or due to any other reason.
4. The EDA shall not be responsible for any liability claims associated with the use of the Gym and/or Premises.

b. Obligations of Carroll County.

1. Carroll County, at its sole cost, shall maintain and keep in good repair and condition (including replacement of any broken or damaged items) all of the Gym/ Premises. Carroll County shall be responsible for all repairs required to the Gym/ Premises excepting any repairs needed to the roof, exterior walls below-grade/underground utilities and structural foundations, which shall be the responsibility of the Developer.
2. Carroll County will be responsible for the normal and customary maintenance and repairs on the interior of the Gym/ Premises. Carroll County shall provide and pay for cleaning and janitorial service to the Gym/ Premises.
3. Carroll County shall procure and maintain general liability insurance applying to the use and occupancy of the Gym/ Premises and the business operated by Carroll County, naming the Developer as an additional insured. Such insurance shall have a minimum combined single limit of liability of at least One Million Dollars (\$1,000,000). All such policies shall be written to apply to all bodily injury, property damage, and personal injury losses.
4. Carroll County shall pay when due all costs for work performed and materials supplied to the Gym and the Premises contracted for by Carroll County. Carroll County shall keep the Premises and Gym free from all liens, stop notices, and violation notices relating to

any work performed for, materials furnished to, or obligations incurred by or for, Carroll County.

5. Carroll County shall, upon reasonable notice provided by EDA, reimburse to EDA the cost of the building permit fees of the Developer for Developer's renovation and redevelopment of the Woodlawn School into residential apartments, and reimburse to the EDA an amount equal to the Developer's real estate taxes for the Woodlawn School property in each of the tax years 2021, 2022 and 2023. Such funds shall be used exclusively by the EDA as an additional incentive to the Developer. Carroll County shall have no further obligation to make payments to EDA for future tax years or additional renovations of the Developer beyond the current redevelopment project described herein.

IV. In-Kind Contribution of Services, Capabilities, or Facilities

- a. Obligations of the EDA. During the Term, the EDA intends to provide the following services, capabilities, and facilities at no cost to Carroll County:
 1. Use and occupancy of the Gym and Premises for the term of thirty (30) years to coincide with the terms of the Lease Agreements entered into and between the EDA and the Developer.
- b. Obligations of Carroll County. During the Term, Carroll County intends to provide the following services, capabilities, and facilities at no cost to the EDA:
 1. Trash, water, sewer service, HVAC systems, and any other utilities needed for the Permitted Use of the Gym and Premises by Carroll County;
 2. Grass cutting for any areas adjacent to the Premises, but only to the extent that such services are not provided by the Developer and would otherwise be the obligation of the EDA.

V. Additional Obligations of Carroll County

- a. During the Term:
 1. Carroll County shall use the Gym and Premises only for the Permitted Use and shall not use or permit the Gym and Premises to be used for any other purpose except as provided herein, including for any illegal purposes or in any manner to create any nuisance or trespass, or in any manner vitiate the insurance or increase the rate of insurance on the Gym and Premises. Carroll County shall, at its sole cost and expense, obtain all governmental licenses and permits required to allow Carroll County to conduct its Permitted Use. Carroll County shall schedule events which are open to the public to conclude at reasonable times compatible with the residential use of the Developer's adjacent property. Carroll County's employees shall have access to the Gym and Premises at all times as Carroll County may require to prepare for or clean up from events, however, repairs, maintenance or other activities which are noise-generating in nature shall not be scheduled at times which are likely to disturb the Developer's residential

tenants. Except for special events, such as elections, Carroll County shall schedule events open to the public only between the following hours: Sunday to Wednesday 8:00 a.m.-10:00 p.m., and Thursday to Saturday 8:00 a.m. – 11:00 p.m.

2. Carroll County shall not use the Gym or Premises or permit them to be used in any manner which violates any applicable laws, ordinances, or regulations.
3. The term “Hazardous Substances” shall mean pollutants, contaminants, toxic or hazardous wastes, or any other substances, the removal of which is required or the use or storage of which is restricted, prohibited, regulated or penalized by any law relating to pollution or protection of the environment (collectively “Environmental Laws”). Carroll County and the EDA agree not to use, store, release or dispose of any Hazardous Substance in the Premises, the Gym, or the surrounding property of which the Gym and Premises are a part in violation of applicable Environmental Laws. Should either party violate this requirement, such party shall promptly remediate any such violation thereof in strict accordance with all applicable Environmental Laws at the violating party’s sole expense. Nothing herein shall prohibit either party’s incidental storage or use of Hazardous Substances in incidental quantities as customarily found in commonly used cleaning products so long as the same is in strict accordance with all Environmental Laws.
4. Carroll County shall be entitled at its expense to install and maintain exterior and interior signage in size and location reasonably acceptable to the Developer. All signage shall be consistent with the requirements of the Virginia Department of Historic Resources (“VHDR”), the United States National Park Service (“NPS”), and any other applicable regulatory entity for the purposes of qualifying for rehabilitation and historic tax credits.
5. Carroll County shall have reasonable use of existing parking facilities for its events at the Gym or Premises or for its use for activities on its property located adjacent to the Gym; provided, however, the Developer may designate reasonable reserved parking for residents of its renovated facilities in its sole discretion.

VI. Miscellaneous

- a. Definitions. The terms defined in this section, whenever used in this MOU, shall have the respective meanings indicated below for all purposes of this MOU:
 1. "Business Day" and "Business Days" mean any day except Saturday, Sunday, or any other day on which the EDA or Carroll County offices are authorized or required by law to be closed for business.
 2. "Term" means the period from the Effective Date through November 23, 2050.
- b. Renewal. This MOU shall be effective during the Term. This MOU can be extended in the event that the lease with the Developer is extended.
- c. Termination. This MOU may be terminated by any Party at any time upon twelve (12) months written notice provided to the other Parties.

- d. Notices. All notices and other communications required or permitted to be given under this MOU shall be in writing and shall be deemed to have been duly given and received if (a) delivered personally (with written confirmation of receipt), (b) on the third day after the date mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, (c) when received by the addressee when sent by next-day or overnight mail or delivery (receipt requested), or (d) when sent by facsimile or e-mail (with confirmation of transmission from the receiving Party or from the receiving Party's system) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient, and shall be given:

1. If to Carroll County:

Michael Watson, County Administrator
Carroll County, Virginia
605-1 Pine Street
Hillsville, VA 24343
michael.watson@carrollcountyva.gov
276-730-3001

2. If to the EDA:

Donald Bryant, Executive Director
Carroll County Economic Development Authority
605-1 Pine Street
Hillsville, VA 24343
Donald.bryant@carrollcountyva.gov
276-730-3001

The individuals provided above shall be the point of contact for all communications related to or arising from this MOU for said individual's respective Party. The notice addresses and point of contact may be updated by a Party providing written notice of the change to all of the other Parties.

- e. Amendment. This MOU may be amended at any time by a writing executed by all of the Parties. This MOU may not be modified, amended, waived, or supplemented except by a written document duly executed by the Parties. A waiver by any party of an obligation at any time does not constitute a waiver of that obligation in the future.
- f. Recitals, Headings, Interpretation, Assignment, Choice-of-Law. The recitals of this MOU are incorporated herein. All headings are for convenience of reference only and shall not affect the interpretation of this MOU. The invalidity of any portion of this MOU shall not invalidate the remainder of this MOU. This MOU may not be assigned by any Party without written agreement by all of the Parties. This MOU shall be binding on either party's successors. This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to that jurisdiction's choice-of-law jurisprudence.

- g. Entire Agreement. Except as specifically stated otherwise herein, this MOU contains all of the terms and conditions relating to its subject matter to which the parties have agreed. All prior understandings of any kind are superseded by this MOU.
- h. Counterparts. This MOU may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument, without necessity of production of the others. An executed signature page delivered via facsimile transmission or e-mail in .pdf form or electronic signature shall be deemed as effective as an original executed signature page.

IN WITNESS WHEREOF, the Parties to this MOU have mutually acknowledged and agreed to the objectives and obligations above effective as of the Effective Date and have executed this MOU on the date set forth opposite his or her signature with the intent that this MOU shall be effective as of the Effective Date.

Economic Development Authority of Carroll County, Virginia:

By: _____ Date: _____

Name: _____

Title: _____

Carroll County, Virginia.:

By: _____ Date: _____

Name: _____

Title: _____

Approved as to Form :

By: _____ Date: _____

Stephen V. Durbin, Esq.
County Attorney