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STAMPED IN RED

RESOLUTION NO.: R-2020-103

Authorizing the City Manager to execute a Parking Facility Development Agreement between the City of Columbia and BullStreet Development, LLC

BE IT RESOLVED by the Mayor and City Council this 17th day of November, 2020, that the City Manager is hereby authorized to execute the attached Parking Facility Development Agreement, or in a form to be approved by the City Attorney, between the City of Columbia and BullStreet Development, LLC, for the terms and conditions therein contained.

Requested by:

Assistant City Manager Gentry

Approved by:

City Manager

Mayor

Approved as to form:

T. A. Knox

City Attorney

ATTEST:

City Clerk

Introduced: 11/17/2020
Final Reading: 11/17/2020

Last revised: 11/10/2020
20007243

PARKING FACILITY 1 DEVELOPMENT AGREEMENT

This **Parking Facility 1 Development Agreement** (this "PF-1 Development Agreement") is made and entered into as of the date of the last signature hereinbelow ("Effective Date") by and between the **City of Columbia, South Carolina** (the "City") and **BullStreet Development, LLC** ("Developer") (Developer and the City are occasionally herein referred to individually as a "Party" and collectively as the "Parties").

WHEREAS, the City is a body corporate and politic and a municipal corporation of the State of South Carolina and has the requisite power and authority to enter into and perform its obligations under this PF-1 Development Agreement and;

WHEREAS, Developer is a limited liability company organized under the laws of the State of South Carolina and has the requisite power and authority to enter into and perform its obligations under this PF-1 Development Agreement and;

WHEREAS, the City and Developer (as successor in interest to Hughes Development Corporation) are parties to that certain Development Agreement Bull Street Neighborhood dated July 31, 2013 (as extended, assigned, and amended, the "Bull Street Development Agreement") pursuant to which the parties memorialized their respective contributions and commitments to the phased development and necessary public improvements for the mixed use development on approximately 181 acres located in the City (the "BullStreet Project") and;

WHEREAS, parking is an essential public service provided by the City serving a valid and valuable public purpose and is a benefit to the City and the BullStreet Project which is located in the City and;

WHEREAS, pursuant to the Bull Street Development Agreement, upon the achievement of certain milestones by Developer, the City is obligated to construct or cause to be constructed structured parking facilities designated by Developer as required to achieve the desired urban scale and character of the BullStreet Project which facilities are to include parking garages which shall contain a total of no more than 1,600 parking spaces (with such permissible additional parking facilities as contemplated in the Bull Street Development Agreement) (the "Parking Facilities") and;

WHEREAS, Developer has achieved and surpassed the milestones required by the Bull Street Development Agreement for the construction of the Parking Facilities and;

WHEREAS, the City desires to cause the first of the Parking Facilities together with equipment necessary for the operation thereof which shall contain in the aggregate approximately eight hundred (800) parking spaces ("Project" or "Parking Facility 1") to be constructed in order to fulfill its obligations under the Bull Street Development Agreement and;

WHEREAS, pursuant to the Bull Street Development Agreement, Developer is to convey sufficient real property free of monetary liens and with marketable title, consisting of one or more parcels, to the City (collectively, the "City Parcels") for the City or Developer to construct the Project and;

WHEREAS, pursuant to the Bull Street Development Agreement, Developer has elected for the Project to consist of two multi-story parking facilities (each a "Project Component") that collectively total no less than eight hundred (800) parking spaces; provided that, if the first Project Component will have less than seven hundred (700) parking spaces, the second Project Component will be considered a "First Additional Parking Facility" (as defined in the Bull Street Development Agreement) and;

WHEREAS, pursuant to the Bull Street Development Agreement, the Parties have agreed that the design, construction and development of the Project shall be managed by Developer with related costs reimbursed by the City in fulfillment of the City's obligations under the Bull Street Development Agreement with respect to the first of the Parking Facilities and;

WHEREAS, the Parties now desire to enter into this PF-1 Development Agreement to set forth the Parties' respective rights and obligations with respect to the design, construction and development of the Project and;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the Parties as follows:

1. **Design Phase.**

a. The Parties have agreed on preliminary plans and a firm budget, which budget includes construction costs (including soft costs), real estate-related costs, title insurance, legal expenses, the Developer's fee and other costs to be incurred by the City in connection with the Project and is attached as Exhibit A hereto (the "Budget"). As soon as practical, Developer in collaboration with the City, shall complete and submit to the City's Designee (as defined herein) final plans and specifications for the construction of the Project and acquisition of the necessary equipment for the operation thereof (the "Construction Plans"), within the parameters of the Budget. Notwithstanding anything to the contrary contained herein, the City shall not object to any components of or modifications to the Construction Plans which are necessitated by governmental laws and regulations affecting the Project, the actions of the City, or as a result of a drafting, coordination, mechanical or technical error in the Construction Plans. For purposes of this PF-1 Development Agreement, (1) the "City's Designee" shall mean Gregory Tucker or such other person designated by the City in writing to Developer as the City's representative to receive notices or other information under this PF-1 Development Agreement, and (2) a "Business Day" shall mean a day other than a Saturday, Sunday, holiday or other day on which the City is closed when authorized or permitted by law or ordinance to be closed, upon which City operations are conducted on a regular basis.

Notwithstanding the foregoing, Developer, with the consent of the City and such consent shall not be unreasonably withheld, conditioned or delayed, may modify the Construction Plans to the extent (i) the modification does not increase the allocation of the approved Budget applicable to the City or reduce the number of available parking spaces beyond five (5) and (ii) no substantial change in the exterior architectural appearance of the Project is affected. Any such modifications are herein referred to as a "Permitted Change" and shall be deemed to be part of the approved Construction Plans.

b. All references to the Project shall apply independently to the design and construction of each Project Component. The Parties respective rights and obligations regarding the inspection and operation of the Project as set forth in Sections 4 and 5 shall also apply independently to each Project Component.

2. **Conveyance of the City Parcels.** Prior to the Commencement Start Date, Developer shall, by limited warranty deed ("Deed"), convey or cause to be conveyed fee simple title to the City Parcels to the City subject only to such easements, liens, encumbrances, restrictions, or other matters as may be set forth in the title insurance policy procured by or for the benefit of the City, including a Building Site Declaration (the "Building Site Declaration") to be recorded prior to the Deed which, in addition to other covenants, conditions, and restrictions, will reserve for Developer the option for an air rights easement or air rights deed sufficient to provide a title insurable and financeable legal structure for development, at the sole expense of the Developer, of the air rights above the City Parcels and the Project (the "Additional Development") together with any easements necessary to provide access and support to such Additional

Development; provided, that the Additional Development shall not reduce the number of parking spaces or in any way impair or prevent the City's operation of the Project (or any portion thereof) for its intended purposes or the tax exempt nature of the Project from *ad valorem* property taxes.

The Parties will use their reasonable good faith efforts to cooperate with one another and provide documents reasonably requested in connection with such structuring and any filings with taxing authorities related thereto. The Parties agree that during or after construction of either Project Component, Developer at its expense may adjust the size or location of the City Parcels (provided, that the City Parcels as modified in size or re-located shall remain sufficient for the construction and operation of the Project as originally intended hereby and satisfy the conditions set forth in the foregoing paragraph) and the Parties will execute, deliver and record such documents or instruments as may be necessary to reflect such adjustments to size or location.

3. **Construction of the Project**.

a. Within one hundred fifty (150) days of the Effective Date ("Commencement Start Date"), Developer shall commence construction of the first Project Component substantially in accordance with the Budget, the Construction Plans, and applicable laws. Within one hundred twenty (120) days after the start of construction of the first Project Component ("Second Commencement Start Date"), Developer shall commence construction on the second Project Component. Notwithstanding the foregoing, the Commencement Start Date and/or the Second Commencement Start Date will be deferred one (1) day for each day that delivery of permits or approvals required hereunder to Developer is delayed where such delay is not the result of unreasonable actions or inactions of Developer. Developer may contract with a project management company of their choice with the prior written consent of the City's Designee (which shall not be unreasonably withheld, conditioned, or delayed) to perform Developer's obligations under this PF-1 Development Agreement.

b. Developer shall construct on the City Parcels each Project Component and related improvements concurrently, in accordance with the Construction Plans approved by Developer and the City pursuant to Section 1 above. During the construction of the Project, Developer shall be responsible for and shall pay all charges incurred for the connection to and use of any and all utility services at the City Parcels for the Project and for any permits, approvals or consents necessary to construct the Project and other improvements contemplated hereby on the City Parcels. The City shall cooperate in connection with the efforts of Developer to obtain any such permits, approvals or consents.

c. Developer shall make such payments and take such actions as shall be necessary or appropriate to prevent or remove any claims or liens filed by any contractors, subcontractors, agents, employees or other representatives engaged by Developer (the "Developer Representatives"), except for such claims or liens that arise as a result of the City wrongfully not performing its payment obligations under Section 3(d) with respect to the work performed by or services provided by such Developer Representatives, such as, but not limited to, mechanic's lien claims, and reasonable attorney's fees and costs of defending and removing any such claim or lien, whether by bonding, payment or otherwise). Developer shall (i) obtain (and assign to the City to the extent in effect and assignable at Completion (as defined in Section 4(a)) all commercially customary express warranties from such third parties relating to the Project, and (ii) neither waive or disclaim any such express warranties or warranties arising from applicable common law or statutory laws, rules or regulations. The Project includes all improvements located on the City Parcels from time to time including but not limited to all permanent attachments thereto, buildings, excavations, grading, utility installations, foundations, footings, paving, trees, bushes, vines, plantings, machinery, engines, motors, fittings, piping, connections, conduits, ducts, electrical wiring and outlets, equipment of every kind and description now or hereafter used or procured for use in connection with such improvements and all replacements and substitutions for any and all of the foregoing and each Project Component includes such

portions of the foregoing as may be used in connection with such Project Component and all replacements and substitutions thereof.

d. It shall be the duty of Developer to secure from the design professionals, contractors, and any other vendors performing work on the Project invoices for service rendered during the development of each Project Component. Developer shall then submit to the City requests for payment for materials and services which apply to the Project; provided, that the Parties acknowledge that the City may pay directly its advisors, attorneys and other costs it directly incurs (including title insurance premium and real-estate services) in connection with the Project which are included in the Budget, rather than paying Developer for such expenses. To the extent such amounts will reduce the amount available in the Budget to pay for other Project Costs, the City shall first obtain Developer's approval for such costs being paid directly by the City, such approval not to be unreasonably withheld, conditioned or delayed. All requests for payment which Developer submits to the City for design and construction of the Project shall be accompanied by (i) a schedule of values showing that the costs incurred are supported by the Budget, and (ii) original invoices and/or requests for payment submitted by the vendors. The City shall then have twenty (20) days within which to review and submit payment, or in the alternative to submit in writing any objection to all or a portion of the request for payment, or to specify what additional information is needed on particular items in order to make a determination of the cost allocation. If the City makes an objection or request for additional information in lieu of payment, Developer shall have five (5) days from receipt of the City's notice to withdraw any portion of the payment request, modify the payment request, or substantiate the questioned expense(s). Once any questioned expense is reasonably substantiated, the City shall five (5) days within which to submit payment. The aggregate amount of the City's payments to the Developer for each Project Component shall not exceed the City's total payment amount identified in the Budget, plus any additional amounts the City has specifically agreed to pay for changes as provided in Section 3(e) below. Developer agrees that all costs not covered by the Budget shall be paid solely by Developer unless such costs were approved in advance by the City pursuant to this PF-1 Development Agreement or otherwise caused by the City. Notwithstanding the foregoing, Developer will be entitled to apply any previously achieved savings in any completed category of the Budget to pay for any such cost over runs. In addition, Developer may from time to time may reallocate the contingency fund line item in the Budget to pay necessary costs of the Project to the extent not covered by a line item in the Budget.

e. If the parties encounter unexpected circumstances during construction of the Project, they shall confer without delay. Except for Permitted Changes, no material change to plans and specifications for either Project Component or approval of any change order to the primary construction contract may be made unless approved in writing by and through the City's Designee (for purposes of this subsection, email can be written approval). Change directives which Developer makes to the contractors or design professionals regarding the Project are made at Developer's own risk if such instructions are issued without the prior approval of the City. The City shall not give instructions or directives to the contractors or design professionals; the City shall instead submit any proposed instructions or directives to Developer for consideration. Developer will use reasonable efforts to implement any instructions or directives desired by the City, so long as the City pays any additional cost and the work is not delayed. However, this restriction on the City making directives shall not apply to those instructions issued in the administration of state and local laws or in assuring public safety, regardless of expense to Developer or to the City.

4. **Inspection**.

a. The City shall have the continuing right through completion of each Project Component, as evidenced by the issuance of a certificate of substantial completion by Developer and a certificate of occupancy by the applicable authority or jurisdiction ("Completion"), to enter on and inspect each Project Component for the purpose of verifying, inspecting, investigating, and reviewing the physical condition of such Project Component (an "Inspection" or the "Inspections").

b. Developer shall notify the City's Designee of the anticipated date of completion of each Project Component and delivery thereof to the City at least thirty (30) days in advance of such date. Developer shall provide subsequent written notice to the City confirming the Completion of each Project Component. Within thirty (30) days of Developer's written notice of Completion of each Project Component, the City shall conduct an Inspection of said Project Component in order to identify any defects in construction of said Project Component and the City's Designee shall notify Developer, in writing, within thirty (30) days of Developer's notice of Completion, of its approval or disapproval of said Project Component. If the City disapproves, then the City's Designee's notice of disapproval must describe, with reasonable specificity, the basis for such disapproval, including a list of "Punch-List Items" which detail the construction, mechanical, or electrical adjustments to be completed or repaired in order to bring the construction into conformity with the approved Construction Plans. Notwithstanding the foregoing, provided Developer, in accordance with the disapproval notice from the City, has used commercially reasonable efforts in addressing the City's Punch List Items in order to bring the construction into conformity with the approved Construction Plans, the City may not further disapprove the Project Component, subject to latent defects. If either Party shall continue to dispute a Punch List item or the manner in which the Punch List Item was addressed, such Party shall provide written notice to the other Party and the dispute shall be resolved in the manner set forth in Section 7(b) below.

c. Developer shall reasonably cooperate with the City in connection with the Inspections, including, without limitation, the prompt provision of responses and reasonable documentation to the City so long as such requests would not result in (1) a delay to the commencement of construction of each Project Component, or (2) delay to the Completion of construction of the applicable Project Component if construction has already commenced. The City agrees to conduct all Inspections in a manner that will not cause any lien or claim of lien to exist as against any part of the BullStreet Project and agrees to repair any damage to BullStreet Project to its condition prior to any such Inspections, but only to the extent any such damage was caused by the City or its agents, employees, consultants, contractors or other service providers ("Representatives"). Copies of all final reports, data and studies collected or prepared by third party agents, consultants, contractors or other service providers engaged by the City (the "City Consultants") in connection with any such Inspections shall be promptly provided to Developer by the City at no cost to Developer. To the extent the City engages any City Consultants to perform any Inspections the City shall cause such City Consultants to maintain commercial general liability and property damage insurance in reasonable forms and amounts to insure against all liability of any City Consultants arising out of their entry or inspections pursuant to the provisions hereof. The City shall provide Developer with evidence of all City Consultants' insurance coverage prior to any Inspections or entry by such City Consultants. Developer may also impose upon the City and its Representatives such reasonable rules and regulations as Developer may elect to implement in light of the development and construction activities in progress due to safety issues and concerns or otherwise. The City shall not have the right to conduct any tests on materials or equipment used in the construction of the Project in any manner that could reasonably be expected to damage or injure any component of the Project or delay construction of the Project. Notwithstanding any other provision set forth in this PF-1 Development Agreement, the Inspections shall not include any invasive environmental testing, survey or investigation of the Project or the City Parcels without the prior written approval of Developer (which shall not be unreasonably withheld, conditioned, or delayed).

5. **Hazardous Materials.**

a. Neither Developer nor any of its officers, directors, employees, representatives, agents, contractors, subcontractors, successors or assigns (collectively, the "Developer Parties") shall use, generate, manufacture, refine, produce, process, store or dispose of any Hazardous Materials (as defined herein) in, on, under or about the City Parcels or the Project (collectively, the "Property") or transport any Hazardous Materials to or from the Property, except for the storage and use of any Hazardous Materials that is consistent with the construction of the Project and only in material compliance with all applicable

Hazardous Materials Laws (as defined herein). If any of the Developer Parties cause (whether by affirmative act or failure to act) any contamination of the Property by Hazardous Materials (collectively, "Responsible Party Contamination"), Developer, at its sole cost and expense, shall promptly and diligently remove such Hazardous Materials from the Property or the water underlying the Property in accordance with applicable Hazardous Materials Laws and industry standards then prevailing in the State. Notwithstanding the foregoing, prior to taking any required remedial action in response to any Responsible Party Contamination in or about the Property, or entering into any settlement agreement, consent, decree or other compromise in respect to any claims relating to any Responsible Party Contamination, Developer shall first notify the City of its intention to do so and afford the City the opportunity to appear, intervene or otherwise appropriately assert and protect its interest with respect thereto.

b. To the extent Developer has knowledge of the following, it shall notify the City in writing of (i) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated or threatened concerning the Property pursuant to any Hazardous Materials Laws; (ii) any claim made or threatened by any Person against the Party or the Property relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials on or about the Property; and (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Property.

c. For purposes of this PF-1 Development Agreement, "Hazardous Materials" means any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive or corrosive, including petroleum, PCBs, asbestos, materials known to cause cancer or reproductive problems and all other materials, substances and/or wastes (including infectious, medical, and potentially infectious biomedical waste), which are or later become regulated by any local governmental authority with jurisdiction over the Property, the State or the United States, including substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in any Hazardous Materials Laws and "Hazardous Materials Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; all corresponding and related State and local statutes, ordinances and regulations, including any dealing with underground storage tanks; and any other environmental law, regulation, or ordinance (federal, state or local) now existing or later enacted which governs the Property.

6. **Insurance; Indemnification**.

a. From the Commencement Start Date through the Completion of the Project, Developer shall maintain the following insurance coverages, and the City shall be entitled to receive annually (or reasonably upon written request) a certificate or other evidence of such insurance and not less than thirty (30) days prior written notice of termination or expiration (if not renewed) of such insurance:

i. Builder's Risk Insurance. "Special Form Cause of Loss" insurance policies insuring the improvements on the City Parcels against, including, but not limited to, fire, wind, rain, flood, earthquake, damage from civil unrest, extended coverage, vandalism, and malicious mischief insurance on the Property and any additions or modifications thereto. Such insurance shall be maintained for the Term and each policy shall be in an amount equal to the full replacement value of the Project.

ii. Liability Insurance. For the benefit of Developer and the City, occurrence based general liability insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from the death or bodily injury of persons or damage to the property of others caused by accident or occurrence (including contractual liability

endorsement), with limits of not less than with limits of not less than $5,000,000 for a loss arising from a single occurrence and not less than $10,000,000 in the aggregate per occurrence regardless of the number of claims made, and $2,000,000 for property damage per occurrence, excluding liability imposed upon Developer by any applicable worker's compensation law.

iii. Failure to Maintain Insurance. If Developer fails to procure or maintain any insurance required hereunder, the City has the right, but in no event shall be obligated, at the City's election, upon at least ten (10) days prior written notice to Developer, to procure and maintain such insurance on Developer's account and, upon written demand, Developer shall reimburse the City for such cost.

b. Developer shall indemnify the City for any claims made against the City as a result of the construction of the Project during the term of this PF-1 Development Agreement, except for claims resulting from the negligence or willful misconduct of the City or its employees or City Consultants.

7. **Default**.

a. Event of Default; Notice and Cure. The failure of Developer or the City to comply with the terms of this PF-1 Development Agreement not cured within sixty (60) days after written notice from the non-defaulting Party to the defaulting Party (as such time period may be extended with regard to non-monetary breaches for a reasonable period of time based on the circumstances, provided such defaulting Party commences to cure such breach within such sixty (60) day period and is proceeding diligently and expeditiously to complete such cure) shall constitute a default, entitling the non-defaulting Party to pursue such remedies provided at law or in equity, including specific performance; provided however no termination of this PF-1 Development Agreement may be declared by either Party absent its according the other Party notice and opportunity to cure as set forth above and the Parties engaging in the Dispute Resolution process outlined in 7(b) below. The parties recognize that actions taken by a Party which prevent performance by the other Party in whole or in part, may excuse such non-performance.

b. Dispute Resolution. In the event of a material claim, disagreement, dispute, problem or other matter in controversy hereunder or if a default by either Party has been noticed by the non-defaulting party and remains uncured beyond any applicable cure period prior to either Party bringing or filing any action at law or in equity (hereinafter each shall be referred to individually or collectively as a "Dispute"), which Dispute shall be described in writing by at least one Party (a "Statement of Dispute"), the Parties shall first attempt to resolve the Dispute using a process of informal communication between the City's Designee and the President of Developer. The Parties shall make reasonable, good faith efforts to reach a mutually acceptable resolution of the Dispute within a timely manner using this informal process, but in no event shall this process take more than thirty (30) days from the date the Statement of Dispute is received by all Parties. If the Parties are unable to resolve a Dispute within the thirty (30) days following the date of receipt of a Statement of Dispute, it will be referred to mediation per rules to be established by mutual agreement, or if the Parties are unable to agree upon the rules of mediation, the mediation shall be conducted pursuant to the Commercial Mediation Rules of the American Arbitration Association. If mediation fails, enforcement may be sought by an appropriate action at law or in equity for damages or the specific performance of the covenants, agreements, conditions and obligations contained herein.

c. City Regulatory Oversight. Nothing herein shall be deemed or construed to preclude the City or its designee from issuing stop work orders or voiding permits issued for any Project Component when such construction contravenes the provisions of the zoning regulations or other City or State building codes.

8. **City Authority; Satisfaction of Obligations Under Bull Street Development Agreement; Good Faith Performance**. The City represents to Developer that this PF-1 Development Agreement has been fully authorized and approved by the City Council in accordance with all lawful requirements for approving agreements of this nature and that the City has full power and authority to perform its obligations under, as and when required by this PF-1 Development Agreement. The Parties acknowledge that the Project contemplated under this PF-1 Development Agreement is in partial fulfillment of obligations agreed to by the City in the Bull Street Development Agreement, and therefore the City's obligations thereunder with respect to the construction of the first of the Parking Facilities shall be satisfied by the execution, delivery and performance of this PF-1 Development Agreement. Each Party represents to the other that it will use reasonable efforts and act in good faith in the performance of its obligations under this PF-1 Development Agreement.

9. **Successors and Assigns.** This PF-1 Development Agreement shall be enforceable by any Party, including successors and assigns, in any court of competent jurisdiction located in Richland County, South Carolina. Subject to the Dispute Resolution provisions set forth herein, enforcement may be sought by an appropriate action at law or in equity for damages or the specific performance of the covenants, agreements, conditions and obligations contained herein. The prevailing Party in such action shall have the right to recover reasonable attorney's fees and costs associated with such enforcement.

10. **Modification**. This PF-1 Development Agreement may be modified or amended only by the written agreement of the Parties. No statement, action or agreement hereafter made shall be effective to change, amend, waive, modify, discharge, terminate or effect an abandonment of this PF-1 Development Agreement in whole or in part unless such statement, action or agreement is in writing and signed by the Party against whom such change, amendment, waiver, modification, discharge, termination or abandonment is sought to be enforced.

11. **Notice**. Any notice, demand, request, consent, approval or communication which a Party is required to or may give to the other 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 if by mail on the fifth (5th) business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided. Until different addresses are provided, all notices, demands, requests, consents, approvals or communications to the City shall be addressed to the City at

City Manager
P.O. Box 147
Columbia, SC 29217
(Hand Delivery to 1737 Main Street)

With a copy to:
City Attorney
P.O. Box 667
Columbia, SC 29202
(Hand Delivery to 1401 Main St., Suite 1000)

And to Developer:

BullStreet Development, LLC
PO Box 2567
Greenville, SC 29602
Attn: Robert E. Hughes, III
(Hand Delivery to ONE North Main, Suite 902,
Greenville SC 29601)

12. **Construction. Termination**. The Parties agree that each Party and its counsel have reviewed and revised this PF-1 Development 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 PF-1 Development Agreement or any amendments or exhibits hereto. Except as may be expressly set forth herein, upon Completion of the Project this PF-1 Development Agreement shall terminate.

13. **Severability**. The invalidity or unenforceability of any provision of this PF-1 Development Agreement shall not affect the other provisions hereof and this PF-1 Development Agreement shall be construed in all respects as if such invalid and unenforceable provision were omitted.

14. **Governing Law**. This PF-1 Development Agreement shall be governed by the laws of the State of South Carolina, and venue shall be in Richland County.

15. **Counterparts**. This PF-1 Development Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts together shall constitute but one and the same instrument.

16. **Agreement to Cooperate**. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this PF-1 Development Agreement, the Parties hereby agree to cooperate in defending such action; provided, however, each Party shall retain the right to pursue its own independent legal defense.

17. **No Third-Party Beneficiaries**. The provisions of this PF-1 Development Agreement may be enforced only by the Parties hereto. No other persons shall have any rights hereunder.

18. **No Waiver**. The failure by any Party to exercise any power given to such Party under this PF-1 Development Agreement, or the failure to insist upon strict compliance by the other Party with the terms hereof, shall not be interpreted as a waiver of the right of the objecting Party subsequently to exercise such power or to insist upon the other Party's compliance.

19. **No Partnership; Further Acts**. The Parties hereby acknowledge that it is not their intention to create by this PF-1 Development Agreement a state law partnership, joint venture, tenancy-in-common, joint tenancy or agency relationship for the purpose of developing the Project or the Bull Street Project. The provisions of this Section shall survive expiration of this PF-1 Development Agreement. Each Party agrees to do such things, perform such acts and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to carry out the intent and purposes of this PF-1 Development Agreement, so long as any of the foregoing do not materially increase any Party's obligations hereunder or materially decrease any Party's rights hereunder.

[Signature Page and Exhibit(s) Follow]

The parties have set their hands and seals effective as of the date of the last signature hereinbelow.

CITY OF COLUMBIA, SOUTH CAROLINA

By: Teresa B. Wilson
Teresa B. Wilson, City Manager

Date: 11/24/2020

BULLSTREET DEVELOPMENT, LLC

By: Pres.
Robert E. Hughes III, President

Date: 12/17/2020

APPROVED AS TO FORM

Legal Department City of Columbia, SC

EXHIBIT A

BUDGET FOR CITY PARKING GARAGES			
LAND	$	-	$1,000,000+ donation
SURVEY	$	10,000	
GEO-TECH	$	-	incl in E/A
DESIGN E/A	$	900,000	
GENERAL CONSTRUCTION	$	13,250,000	
BOND?	$	-	
INSURANCE	$	25,000	
THIRD PARTY INSPECTIONS	$	132,500	
DEVELOPER FEE (incl CM)	$	660,000	
REAL ESTATE-RELATED FEES	$	22,500	
LEGAL, TITLE & TRANSACTION COSTS	$	800,000	
CONTINGENCY	$	700,000	
CONSTRUCTION INTEREST	$	-	
	$	16,500,000	