

STATE OF SOUTH CAROLINA) DEVELOPMENT AGREEMENT BETWEEN
) THE CITY OF SPARTANBURG AND BOTTLE
) WORKS SOUTH, LLC FOR A PROJECT
) LOCATED AT 729 SOUTH CHURCH STREET
COUNTY OF SPARTANBURG) EXTENSION

This Agreement (the “*Agreement*”) by and between Bottle Works South, LLC, a South Carolina limited liability company (the “*Project Developer*”) and the City of Spartanburg, a municipal corporation under the laws of South Carolina (the “*City*”), is entered into this ____ day of June, 2023.

In consideration of and for the mutual exchange of promises set forth in the Agreement, the parties covenant with one another to perform as follows:

1. Project Developer Commitments.

Subject to the condition precedents set forth below in Section 3, the Project Developer makes the following commitments:

- a. Development Size and Purpose. The Project Developer, its agents or assigns, shall be responsible for (i) the demolition of the existing bottling plant located at 729 South Church Extension (TMS No. 7-16-06-222.00) (the “*Property*”); (ii) the design and construction of an approximately 100,000 square foot building suitable for manufacturing, industrial, or distribution center uses; and (iii) the construction of certain public infrastructure improvements described below in Section 1(d) (collectively, the “*Project*”).
- b. Investment Required. The Project Developer covenants that it shall make an investment through equity, loans, and other sources of approximately Twenty Million and 00/100 Dollars (\$20,000,000) in the design, development, construction (including demolition costs) and other hard and soft costs of the Project (the “*Project Developer Investment*”) as evidenced by documentation which is reasonably acceptable to the City.
- c. Implementation of Investment. Subject to any delays caused by City or by force majeure, Project Developer covenants that it shall use best efforts to have a substantially complete Project not later than one (1) year after receipt of all building permits.
- d. Public Infrastructure Improvements. The Project Developer intends to construct the following infrastructure serving the Project: (i) stormwater improvements; (ii) road and related improvements; (iii) utility and telecommunications infrastructure; (iv) construction of road and parking improvements; and (v) any similar public infrastructure (collectively, the “*Public Infrastructure Improvements*”). The Public Infrastructure Improvements shall be based on plans approved by the City, in accordance with this Agreement and in accordance with all applicable laws and regulations. The aforementioned Public Infrastructure Improvements, upon completion, shall be dedicated to City, who shall then maintain said Public Infrastructure Improvements in perpetuity. The City shall reimburse the Project Developer for the reasonably documented costs of the Public Infrastructure

Improvements to the extent of available funding from the Grants (as that term is defined below).

- e. Developer will use its best efforts to secure a light manufacturing tenant for the Project (the “**Tenant**”) with projected employment of approximately 100 jobs paying competitive wages. Developer recognizes that the City’s primary motivation for participating in this agreement is to provide employment opportunities to the residents of the Southside community neighboring the Property (the “**Residents**”).
- f. Developer will use its best efforts to encourage the Tenant to cooperate with City and community partners in collaborative efforts to provide workforce training to the Residents the successful completion of which would enable the Residents to meet job qualifications and be given priority for new positions with the Tenant.
- g. Compliance with Law. Construction of the Public Infrastructure Improvements shall be performed in a good, safe and workmanlike manner and in accordance with all applicable laws, rules, orders, ordinances, regulations and legal requirements of all governmental entities, agencies or instrumentalities relating to the Public Infrastructure Improvements including, without limitation, the Americans with Disabilities Act and all building code requirements then in effect.
- h. Insurance Requirements. Until such time as the Public Infrastructure Improvements are dedicated and accepted by the City, the Project Developer shall procure and maintain insurance coverage for any claim for injuries to persons or damages to property which may arise from, or in connection with, the construction of the Public Infrastructure Improvements by the Project Developer, its employees, agents, contractors, or representatives. Such insurance shall be in the following minimum amounts:

A. Commercial General Liability	\$1,000,000 per occurrence
B. Comprehensive Motor Vehicle Liability	\$1,000,000 per occurrence
C. Workers Compensation	Statutory limits
D. Employers Liability	\$500,000/\$500,000/\$500,000

The Project Developer shall deliver certificates of insurance to establish proof of current and ongoing coverage to the City’s Risk Manager via email at cwright@cityofspartanburg.org.

The City must be shown as the certificate holder. Further, in the event the Project Developer receives notice of insurance cancellation in any form from an insurance provider or its agent, then the Project Developer must assure receipt of written notice within two (2) days of the Project Developer’s receipt of notice by delivery in one of the above referenced means of contact.

The General Liability Coverage must list the City, its officers, officials, and employees as additional insured’s for activities arising under the Project Developer performance under the Agreement. The coverage shall be primary as to the Project Developer’s negligent acts and omissions or willful misconduct. It shall apply separately to each insured against whom

a claim is made or suit is brought, except with respect to the limits of the insurer's liability coverage.

The Workers' Compensation Coverage shall apply to all of the Project Developer's employees who are in any way connected with the Project Developer's performance under the Agreement. The coverage shall comply with all applicable state laws and provide a waiver of subrogation from the Project Developer against the City, its officers, officials, agents and employees, unless otherwise approved by the City.

The Project Developer must obtain insurance coverage from insurers with a current A. M. Best's rating of net less than A: VII. The insurers must be licensed to do insurance business in the State of South Carolina, unless otherwise approved by the City. The Project Developer cannot be a self-insured in order to meet these requirements, unless the City in writing consents for the particular named Project Developer for the specific Agreement.

The Project Developer shall be solely liable and the City in no way shall be responsible for any coverage deductible, co-insurance penalty, or self-insured retention (if applicable), including any loss sustained because of the operation of the deductible, penalty, or retention.

Further, the Project Developer has an affirmative duty, and shall carry out that duty, to cause the contract with its general contractor on the Project to contain a provision requiring the general contractor and all subcontractors performing on the Project Developer's behalf shall also have the same insurance obligations as are borne by the Project Developer under these general terms and conditions.

- i. **Damage to City Property.** Project Developer shall be responsible for the repair and/or replacement, within a reasonable time, of any real or personal property owned by City damaged by Project Developer, or any of its agents or assigns, during the construction and occupancy of Project.

2. City Commitments.

- a. Maintenance of the Public Infrastructure Improvements. The City shall maintain the Public Infrastructure Improvements in perpetuity upon completion, dedication and acceptance by the City.
- b. Fees-in-lieu of Taxes. The Project Developer will request that the County of Spartanburg (the "**County**") enter into a fee-in-lieu of taxes ("**FILOT**") agreement under Chapter 44 of Title 12 of the South Carolina Code, as amended (the "**Act**"), the terms of which agreement shall be mutually agreeable to the Project Developer and the County (the "**FILOT Agreement**"). The Project Developer will request the County execute the FILOT Agreement to provide the Project Developer with benefits specified in the FILOT Agreement for thirty (30) years for each component of the Project placed in service during the "Investment Period" (as defined in the Act). The Project Developer will request the FILOT Agreement provide the annual FILOT

payment shall be calculated based on an assessment ratio of six percent (6%) and the lowest millage rate available under applicable law. The City shall (i) consent to the inclusion of the Property, as well as the additional real property described below in Section 2(f), in a Multicounty Industrial Park as part of the FILOT and (ii) use its best efforts, acting in good faith, to secure the County's approval of the FILOT Agreement.

- c. Special Source Revenue Credit. The Project Developer will request that the County agree to provide a Special Source Revenue Credit ("**SSRC**") to help offset the cost to the Project Developer of certain Project-related expenditures. The SSRC shall be applied for the first ten (10) years that the Project Developer is obligated to pay FILOT payments on the Project under the FILOT Agreement referenced above in Section 2(c) and shall be in amount sufficient to cap such FILOT payments at \$68,000 per year for each of the 10 years. The City shall use its best efforts, acting in good faith, to secure the County's approval of an Infrastructure Credit Agreement, which such agreement shall contain such terms as are mutually-agreeable to the Project Developer and the County, providing the SSRC.
- d. Infrastructure Grants. The City shall use best efforts to obtain grants to assist the Project Developer in funding the design, permitting, and construction of the following: (i) stormwater improvements, (ii) road and related improvements, (iii) utility and telecommunications infrastructure (iv) construction of road and parking improvements and (v) any similar public infrastructure (collectively, (i) – (v) are "**Grants**"). The Project Developer will support and assist the City in obtaining the Grants for which the City determines the Project qualifies. The City shall request the County similarly cooperate in obtaining the Grants.
- e. Additional Parcels. The City will use its best efforts to support the Project Developer in acquiring additional adjacent parcels for the Project.

3. Condition Precedents to the Project Developer's Obligations and Commitments.

The Project Developer plans to proceed with the Project upon the fulfillment of all the commitments of the City referenced herein and the County's approval of the FILOT Agreement and the Infrastructure Credit Agreement providing the SSRC. The Project Developer's commitment to proceed with the Project is also contingent upon Project Developer's decision that the Project is in the best interest of the Project Developer, such determination to be made in its the sole discretion.

4. No Assignment Without Consent.

Prior to completion of the duties set forth herein, neither the City nor the Project Developer are authorized to assign its respective duties under the Agreement to third parties without first having received from the other party a written consent, which consent shall not be unreasonably withheld, executed with the same formality of the Agreement. Notwithstanding the foregoing, City does acknowledge and agree that

Project Developer will be utilizing a general contractor to perform the work on the Project.

5. Modification.

No modification of the Agreement shall be binding upon the parties unless the same is first reduced to writing in a document having the same formality as the Agreement and executed by the duly authorized officer for each party. However, minor changes and modifications to the Agreement are authorized as may be necessary or appropriate to allow for a final version mutually acceptable to the parties, with said minor changes and modification being approved by the City Manager and the City Attorney. Should the City Manager or City Attorney, or both, determine that any modification of previously negotiated terms is significant and warrants further action by Council, then the matter shall be presented to and reviewed by City Council before the final execution.

6. Merger of Negotiations.

All prior negotiations and representations of both parties are merged into the Agreement, and no prior statement, whether written or oral, shall be binding upon either party unless reduced to writing and contained in the Agreement.

7. Applicable Law.

The Agreement is entered into under the laws of South Carolina, the City is a political subdivision of South Carolina, and the subject real property and improvements are located in South Carolina. The Agreement shall be construed in accordance with the laws of South Carolina.

8. No Joint Venture.

The parties acknowledge the City is acting solely in a governmental capacity in expanding/enhancing the City's public infrastructure and spaces, in approving the Agreement and in providing any other approvals related to the Project. Accordingly, the parties further acknowledge that no joint venture is intended or created between the Project Developer (or its affiliates or principals) and the City, and the parties expressly disclaim the same.

9. Indemnification.

The Project Developer shall indemnify, defend and hold harmless the City, as well as its officers, officials and employees, from and against all claims of any nature whatsoever, at law or in equity, arising out of, or related in any manner to the Agreement, the design and construction of the Public Improvements, excluding only those claims resulting from the breach of this Agreement by the City or the gross

negligence or willful misconduct of the City, its officers, contractors, agents, officials and/or employees. This provision shall survive termination of the Agreement.

10. Notice.

All notices and communications hereunder shall be in writing and shall be delivered personally, by email (only as indicated below) or sent by certified mail, return receipt requested, addressed to the parties as follows:

CITY:
City of Spartanburg
Attention: City Manager
P.O. Box 1749
Spartanburg, SC 29304

PROJECT DEVELOPER:
M Peters Group
Attention: Mark Peters
507 North Main Street
Fountain Inn, SC 29654

With a copy to:
Parker Poe Adams & Bernstein LLP
Attn: Columbia Bond Team
1221 Main Street, Suite 1100
Columbia, SC 29201
ColumbiaBondTeam@parkerpoe.com

11. Miscellaneous.

If any part or provision of this Agreement is held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining parts and provisions of this Agreement. The waiver of a breach of this Agreement by either party shall not operate as a waiver of any subsequent breach, and no delay in acting with regard to any breach of this Agreement shall be construed to be a waiver of the breach. Headings are inserted for convenience only and shall not be considered for any other purpose. All exhibits referenced above (including all attachments thereto) are attached hereto and incorporated herein as part of the Agreement. This Agreement may be signed in multiple counterparts, each of which taken together shall constitute a single instrument.

[Signatures to Follow]

WHEREFORE, in consideration of the foregoing, the parties do bind themselves by terms and conditions of the agreement by providing below the signature of their authorized officers.

WITNESSES:

PROJECT DEVELOPER

By: _____

Name: _____

Its: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this _____ day of _____, 2023

by _____.

Notary Public for South Carolina
My Commission Expires: _____

WITNESSES:

CITY OF SPARTANBURG, SOUTH CAROLINA

By: _____

Name: Chris Story
Its: City Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this _____ day of _____, 2023
by the duly authorized officer for the City of Spartanburg, South Carolina.

Notary Public for South Carolina
My Commission Expires: _____

Draft of 6.7.23

CITY OF SPARTANBURG AND PROJECT OPPORTUNITY DEVELOPMENT AGREEMENT
FOR A PROJECT LOCATED AT 729 SOUTH CHURCH STREET EXTENSION

APPROVED AS TO FORM:

City Attorney

Exhibit A
Land Description