

City Hall  
80 Broad Street  
January 14, 2020  
5:00 p.m.

## CITY COUNCIL

### A. Roll Call

### B. Invocation – Councilmember Shealy

### C. Pledge of Allegiance

### D. Presentations and Recognitions

1. Proclamation recognizing Joe Engel Day

### E. Public Hearings

### F. Act on Public Hearing Matters

### G. Approval of City Council Minutes:

1. December 3, 2019
2. December 17, 2019

### H. Citizens Participation Period

### I. Petitions and Communications:

### J. Council Communications:

### K. Council Committee Reports:

1. **Committee on Public Works and Utilities: (Meeting was held Tuesday, January 14, 2020 at 3:30 p.m.)**

#### a. **Stormwater Management Department Update:**

- (i) Award of Construction Contract for Rivers Point Row Storm Drain Rehabilitation Project to B&C Land Development, Inc. for \$43,220.00
- (ii) Resolution to Adopt the recommendations of the Dutch Dialogues Charleston Final Report
- (iii) Approval to apply for a FEMA FMA grant that requires a City match of \$30,754.50. If awarded, this grant would cover \$510,336 of the total costs to: acquire two (2) parcels of

land and demolish the existing flood-prone structures. The City match of \$30,754.50 is available through the Stormwater Operations account.

- (iv) Approval of an application for a Federal Emergency Management Flood Mitigation Assistance Grant of \$845,879.33 for the elevation of 5 homes. The grant requires no City match with the property owners providing the matching funds directly.
- (v) Stormwater Project Updates
- (vi) Floodplain Management Updates

b. Discussion regarding Construction Noise Ordinance

**2. Committee on Public Safety: (Meeting was held on Tuesday, January 14, 2020 at 3:00 p.m.)**

(i) Fire Station #11 Update

(ii) Executive Session in accordance with Section 30-4-70(a)(2) of the South Carolina Code to receive legal advice relating to Fire Station #11 if necessary

**3. Committee on Ways and Means:**

(Bids and Purchases

(Stormwater Management: Approval to apply for a FEMA FMA grant that requires a City match of \$30,754.50. If awarded, this grant would cover \$510,336 of the total costs to: acquire two (2) parcels of land and demolish the existing flood-prone structures. The application is due to FEMA on January 31, 2020. The City match of \$30,754.50 is available through the Stormwater Operations account.

(Stormwater Management: Approval to apply for a FEMA FMA grant requiring no City match. If awarded, this grant would provide \$845,879.33 for the elevation of five (5) existing structures on individual parcels. The applicant homeowners have agreed to provide the non-federal cost share for each elevation project at their own expense. The application is due to FEMA on January 31, 2020. There is no City match.

**L. Bills up for Third Reading:**

- 1. *An ordinance amending Chapter 27 of the Code of the City of Charleston, by amending Flood Hazard Prevention and Control Requirements in Section 27-117 to increase the Freeboard Requirement from one foot to two feet, effective August 1, 2019 (AS AMENDED)(DEFERRED)*

**M. Bills up for Second Reading:**

***(City Council may give second reading, order to third reading, give third reading, and order engrossed for ratification any bill listed on the agenda as a second reading.)***

- 1. *An ordinance to amend the Zoning ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 52 Kennedy Street (Peninsula) (0.08 acre) (TMS #460-07-04-106) (Council District 3), be rezoned from Height District 2.5 (2.5) classification to Height District 3 (3.0) classification. The property is owned by Martay, LLC.*
- 2. *An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone*

- Map, which is a part thereof, so that 80 Alexander Street (Peninsula) (0.17 acre) (TMS #459-13-04-045) (Council District 4), be rezoned from General Business (GB) classification to Diverse Residential (DR-2F) classification. The property is owned by 1776 Development, LLC.*
- 3. An ordinance to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) by amending Section 54-263, and the Daniel Island Master Plan Zoning Text, to add provisions that allow communications towers and indoor athletic facilities and to revise the impervious surface lot coverage percentage for the Daniel Island Business Park District.*
  - 4. An ordinance to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) to clarify the types of dwellings defined in Sec. 54-120 by including definitions for "Single-Family Detached Dwelling" and "Single-Family Attached Dwelling."*
  - 5. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 320 Woodland Shores Road (James Island) (1.0 acre) (TMS #343-11-00-117) (Council District 11), annexed into the City of Charleston November 12, 2019 (#2019-112), be zoned Single-Family Residential (SR-1) classification. The property is owned by Cecil K. and Janice M. Cargile.*
  - 6. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that property located on Brickyard Road (Johns Island) (2.0 acre) (TMS #311-00-00-090) (Council District 5), annexed into the City of Charleston November 12, 2019 (#2019-113), be zoned Rural Residential (RR-1) classification. The property is owned by Worldwide Investments, LLC.*
  - 7. An ordinance authorizing the Mayor to execute on behalf of the City of Charleston ("City") all necessary documents to amend or rescind a portion of that certain Transfer Agreement between the City of Charleston and PASTORS, a South Carolina non-profit corporation, adopted by Ordinance no. 2006-364, as such portion relates to certain property located at 67 America Street and currently designated as Charleston County TMS No. 459-09-02-132, as more particularly described herein (the "property"), and to execute a Transfer Agreement and other necessary documents to convey the property to JJR Development, LLC, for \$30,000 for the development of between four and ten affordable housing units, subject to the City's Homeownership Initiative Guidelines.*
  - 8. An ordinance authorizing the Mayor to execute the necessary documents and take related actions pertinent to the consent to the Assignment of the Lease between the City of Charleston and the International African American Museum ("IAAM") for 14 Wharfside Street, City of Charleston, marked as Exhibit A, to the IAAM support organization. **(AS AMENDED)***
  - 9. An ordinance authorizing the Mayor to execute the necessary documents to enter into that certain 10<sup>th</sup> Amendment to the Purchase Agreement and Transfer Fee Declaration, Second Amended Statement of parking provisions in Purchase Agreement for Concord Park Site, First Amendment to Declaration of Transfer Fee Covenants as to tract A2-2, and Construction Option and Lease Agreement between the City of Charleston and RB Charleston, LLC, a Delaware Limited Liability Company for the Concord Park Site, said property being located in the City and County of Charleston, South Carolina; said 10<sup>th</sup> Amendment to the Purchase Agreement and Transfer Fee Declaration attached hereto and incorporated by reference herein, and Second Amended Statement of Parking Provisions in Purchase Agreement for Concord Park Site, First Amendment to Declaration of Transfer Fee Covenants as to Tract*

A2-2, and Construction Option and Lease Agreement being marked and attached hereto as Exhibits A, B, and C, respectively, and incorporated by reference herein.

10. An ordinance to provide for the annexation of property known as 114 Tall Oak Avenue (0.24 acre) (TMS# 418-13-00-092), West Ashley, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 9. The property is owned by Myrtle Graves Rahn Mixson.
11. An ordinance to amend Chapter 21, Article II of the Code of the City of Charleston by adding a new Section 21-17 that prohibits certain building construction operations during stated hours. **(AS AMENDED)** (DEFERRED)
12. An ordinance to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) by amending Section 54-220 Accommodations Overlay Zone to correct a scrivener's error. (DEFERRED FOR PUBLIC HEARING)
13. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 7 Calhoun Street (Peninsula) (approximately 1.798 acres) (TMS #458-01-02-064 and 458-01-02-067) (Council District 1), be rezoned from Mixed Use (MU-2) classification to Planned Unit Development (Gadsdenboro Park PUD) classification. The property is owned by RB Charleston LLC. (DEFERRED FOR PUBLIC HEARING)
14. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 7 Calhoun Street (Peninsula) (approximately 1.798 acres) (TMS #458-01-02-064 and 458-01-02-067) (Council District 1), be rezoned from 30/56V Old City Height District Classification to 6 Story Old City Height District Classification. The property is owned by RB Charleston LLC. (DEFERRED FOR PUBLIC HEARING)
15. An ordinance to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) to add to Sec. 54-299.4.b of the Zoning Ordinance a requirement for the installation of a twelve foot (12') wide multi-use path along the frontage of parcels within the Folly Road, FR, Overlay Zone; to authorize the Zoning Administrator to reduce the minimum required buffer plantings adjacent to a right-of-way and/or reduce the minimum required width of the multi-use path in certain circumstances, with appeal to the Board of Zoning Appeals-Site Design; and to amend Sec. 54-120 of the Zoning Ordinance to add definitions for the terms "bikeway" and "multi-use path." **(AS AMENDED)** (DEFERRED)
16. An ordinance to amend Chapter 27, Stormwater Management and Flood Control, of the Code of the City of Charleston, to add a new Article IV to provide fill requirements for all new construction, developments, and redevelopments within the City. (DEFERRED)
17. An ordinance to amend Article 3, Part 2, Sec. 54-306 through 54-306.V, Old City Height Districts, of Chapter 54 of the Code of the City of Charleston (Zoning Ordinance), for corrections and clarifications. (DEFERRED FOR PUBLIC HEARING)
18. An ordinance to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) by amending applicable sections related to the Design Review Board in order to

*establish board member alternates, prioritize placement of affordable/workforce housing projects on agendas, and limit the number of agenda items. (DEFERRED)*

19. *An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 403 Fleming Road (James Island) (0.96) (TMS #343-07-00-067) (Council District 11), to be annexed into the City of Charleston December 3, 2019, be zoned Light Industrial (LI) classification. The property is owned by 403 Fleming, LLC. (DEFERRED FOR PUBLIC HEARING)*
20. *An ordinance to amend Chapter 29, Article V1, Sec. 29-240 of the Code of the City of Charleston pertaining to the procedure of accident reporting. (DEFERRED)*
21. *An ordinance to provide for the annexation of property known as 3894 Savannah Highway, and 711 & 715 Hughes Road (28.85 acres) (TMS# 287-00-00-139; and 287-00-00-140, 142, 178), West Ashley, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 5. The property is owned by Colson Jean R Saltwater Breeze LLC. (DEFERRED)*
22. *An ordinance to amend Article III (Stormwater Management Utility) of Chapter 27 (Stormwater Management and Flood Control) of the Code of the City of Charleston, South Carolina, by eliminating the "Homestead Exemption" in Sec. 27-140(a), applicable to the payment of Stormwater Utility Fees; by deleting Sec. 27-132(j), (k), and (l), which contain certain findings associated with the adoption of the "Homestead Exemption" with respect to Stormwater Utility Fees; and to provide that the elimination of the "Homestead Exemption" in Sec. 27-140(a) shall not apply until January 1, 2020. (DEFERRED FOR PUBLIC HEARING)*
23. *An ordinance to provide for the annexation of property known as 1415 S Edgewater Drive (0.72 acre) (TMS# 349-13-00-095), West Ashley, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 11. The property is owned by Robert F. Kauffmann.(DEFERRED)*
24. *An ordinance to provide for the annexation of property known as 1389 River Road (10.94 acres) (TMS# 311-00-00-025), Johns Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 5. The property is owned by Knapp A Partnership. (DEFERRED)*
25. *An ordinance to provide for the annexation of property known as 1381 River Road (1.28 acres) (TMS# 311-00-00-097), Johns Island, Charleston County, to the City of Charleston, shown within the area annexed upon a map attached hereto and make it part of District 5. The property is owned by Knapp A Partnership. (DEFERRED)*

#### **N. Bills up for First Reading**

1. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that previously Unzoned Rail Right-of-Way located at 1320 King Street Extension (Peninsula) (approximately 1.50 acres) (TMS #464-14-00-191) (Council District 4), be zoned Upper Peninsula District (UP) classification. The property is owned by the BCDCOG.

2. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that a portion of 1320 King Street Extension (Peninsula) (approximately 0.94 acre) (a portion of TMS# 464-14-00-191) (Council District 4), be rezoned from 8 and 2.5 Old City Height District classifications to 4-12 Old City Height District classification. The property is owned by the BCDCOG.
3. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 1815 Beechwood Road (West Ashley) (0.65 acre) (TMS #354-07-00-101) (Council District 2), be rezoned from Single-Family Residential (SR-6) classification to Diverse Residential (DR-6) classification. The property is owned by Matt and Angela Chambers. (*DEFERRED*)
4. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is part thereof, so that property located on River Road, Summerland Drive, and Oakville Plantation Road (Johns Island) (126.95 acre) (TMS #317-00-00-007, 317-00-00-011, 317-00-00-012, 317-00-00-075, 317-00-00-076, and 317-00-00-089) (Council District 5), be zoned, and existing Light Industrial (LI) classification be rezoned to Planned Unit Development (PUD) classification. The property is owned by Keith W . Lackey, Gail Grimbball, and Gary S. Worth. (*DEFERRED*)
5. An ordinance to amend Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) to make rooftop eating and drinking places subject to the approval of a special exception in the GB, UC, MU-2, MU-2/WH, and UP base zoning districts, adopt regulations for rooftop eating and drinking places in the GB, UC, MU-2, MU-2/WH, and UP base zoning districts, and prohibit rooftop eating and drinking places in all other base zoning districts. (*DEFERRED*)
6. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that a portion of former Summerville Avenue right-of-way (Peninsula Neck) (approximately 1.4 acres) (Unzoned Right-of-Way) (Council District 4), be zoned General Business (GB) classification. The property is former right-of-way deeded to adjacent property owners. (*DEFERRED*)
7. An ordinance to amend the Zoning Ordinance of the City of Charleston by changing the Zone Map, which is a part thereof, so that 217 Ashley Avenue (Peninsula) (0.33 acre) (TMS #460-11-04-080) (Council District 6), be rezoned from Diverse Residential (DR-2F) classification to Limited Business (LB) classification. The property is owned by Trust of Robert J. Lowe, Jr. & Trust of Gwendolyn M. Lowe. (*TO BE WITHDRAWN*)

**O. Miscellaneous Business:**

1. Executive session in accordance with section 30-4-70(a)(2) of the South Carolina Code to receive legal advice relating to matters covered by the attorney-client privilege regarding a proposed settlement agreement between the City and Albert Tyler Nance, arising out of Case No. 2019-CP-10-3121, Nance v. City of Charleston, et al., relating to the use of an accessory structure on Nance's property located at 8 Elmwood Avenue (Charleston County TMS No. 460-02-04-132) for a short-term rental.

Upon returning to open session, City Council may or may not take action to approve the settlement agreement, a copy of which is attached to this agenda.

2. Executive session in accordance with section 30-4-70(a)(2) of the South Carolina Code to receive legal advice relating to matters covered by the attorney-client privilege regarding a proposed settlement agreement between the City and Carmella's, LLC, arising out of Case No. 2019-CP-10-4217, Carmella's, LLC v. City of Charleston, et al., relating to a request for a special exception for a late night use at 198 East Bay Street, Suite 100 (Charleston County TMS No. 458-05-04-003).

Upon returning to open session, City Council may or may not take action to approve the settlement agreement, a copy of which is attached to this agenda.

3. Executive Session in accordance with Section 30-4-70(a)(2) of the South Carolina Code to receive legal advice relating to Fire Station #11 if necessary.
4. Executive session in accordance with S.C. Code Section 30-4-70(a)(2) to receive legal advice on pending Gaillard litigation.
5. The next regular meeting of City Council will be Tuesday, January 28, 2020 at 5:00 p.m. at City Hall, 80 Broad Street.

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) Interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to [schumacherj@charleston-sc.gov](mailto:schumacherj@charleston-sc.gov) three business days prior to the meeting.



PROCLAMATION

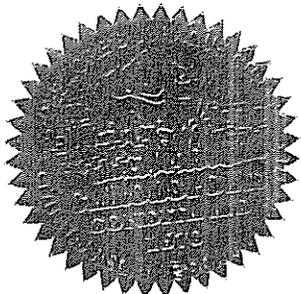
- WHEREAS, Joe Engel was just 13 or 14 years old when the Nazis invaded Poland in September 1939 and, soon after, entered his home town of Zakroczym, near Warsaw; and
- WHEREAS, Joe watched helplessly as the Nazis forced all of the town's Jews to assemble in the town square and shot dead 150 young men; and
- WHEREAS, Joe was eventually sent to the Auschwitz-Birkenau Death Camp, where the infamous Dr. Mengele selected him for slave labor instead of the gas chamber, and where the number 84009 was tattooed on his arm, making him a person without a name; and
- WHEREAS, at Auschwitz, Joe witnessed and suffered bitter cold, hunger, starvation, disease, beatings, and other forms of inhumane and cruel torture perpetrated by the Nazis; and
- WHEREAS, Joe was among some 66,000 prisoners who were forced on the Death March in the bitter cold in January 1945, as the Nazis tried to hide their evil crimes from the approaching Red Army; it was a march of 35 miles with little food, water, or clothing, during which as many as 15,000 died, many of whom were shot because they couldn't keep up or sat down to rest; and
- WHEREAS, after being put on a cattle train to another concentration camp, Joe escaped from the train and, hunted by the Nazis, buried himself in the snow until they moved on, surviving the remainder of the war with partisans in the forest; and
- WHEREAS, Joe lost approximately 150 relatives in the Holocaust; and
- WHEREAS, Joe came to Charleston in 1949 and eventually opened a successful business, Glamour Cleaners on King Street; and
- WHEREAS, Joe has dedicated his life to sharing his experience with tens of thousands of people, young and old, making sure the horrors of the Holocaust are not forgotten, teaching us all the very important lesson that prejudice can lead to genocide, and serving as a shining example of how to transcend the past and overcome tragedy in our own lives; and
- WHEREAS, January 27, 2020 marks the 75th anniversary of Joe's escape from the Death March, and the liberation of Auschwitz; and
- WHEREAS, the City of Charleston is honored recognize Joe Engel and thank him for his bravery, kindness, generosity, and many achievements. I urge all of our citizens to join me in honoring Joe Engel, a survivor of Auschwitz, the Death March, and the Holocaust, and a beloved member of our community.

NOW, THEREFORE, I, John J. Tecklenburg, Mayor of the City of Charleston, do hereby proclaim Monday, January 27, 2020 as:

JOE ENGEL DAY

IN WITNESS WHEREOF, I do hereby set my hand and cause the seal of Charleston to be affixed, this 14<sup>th</sup> day of January in the year of 2020.

\_\_\_\_\_  
John J. Tecklenburg, Mayor





RESOLUTION  
TO ADOPT THE RECOMMENDATIONS OF THE  
DUTCH DIALOGUES CHARLESTON FINAL REPORT

WHEREAS, the residents and business owners of the City of Charleston have experienced worsening flooding events in recent years; and

WHEREAS, historical and recent flooding events indicate that the City will continue to be impacted by severe flooding in the foreseeable future; and

WHEREAS, the Mayor and City Council desire to reduce flood losses, protect investments made by citizens and business owners in real property within the City, and reduce the danger to human life; and

WHEREAS, the Mayor and City Council have resolved to make the City more resilient to flooding events in the future; and

WHEREAS, the City has recently engaged in a series of public meetings, focus groups and consulting sessions with civic leaders, stakeholders and flooding experts, known as the "Dutch Dialogues Charleston," to research, explore, design and propose integrated ways to mitigate and adapt to flood conditions affecting the City; and

WHEREAS, the Dutch Dialogues Charleston sessions included significant study and discussion on four distinct areas of the City, including the Lockwood Corridor/Medical District area, New Market & Vardell's Creek area at the footprint of the old Cooper River bridge, Johns Island, and the Church Creek basin area; and

WHEREAS, the Dutch Dialogues Charleston's Final Report, dated September 2019, outlined specific recommendations for each of the four study areas, as well as overall recommendations for City-wide strategies to address flooding mitigation and water management programs; and

WHEREAS, the Mayor and City Council approve of the recommendations contained in the Final Report and wish to formally adopt them to serve as an overarching guide and framework, in conjunction with the City's existing Stormwater Ordinance, Stormwater Manual, and Comprehensive Plan, for the City's long-term resiliency planning and design; and

WHEREAS, the Mayor and City Council find that adopting the recommendations will serve to inform City staff, property owners, developers, and the public of the City's resiliency goals; and

WHEREAS, the Mayor and City Council find that adopting such recommendations will serve the interest of the public health, safety and welfare of the residents and business owners of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CHARLESTON, SOUTH CAROLINA, IN CITY COUNCIL ASSEMBLED, THAT THE CITY HEREBY ADOPTS THE RECOMMENDATIONS OF THE DUTCH DIALOGUES CHARLESTON FINAL REPORT, DATED SEPTEMBER 2019, AS SET FORTH IN EXHIBIT "A," ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

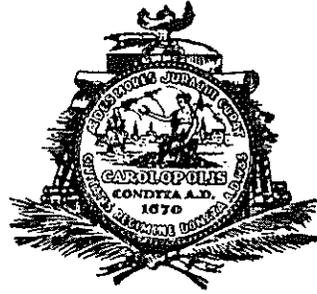
RESOLVED this \_\_\_ day of January, 2020, in City Council Chambers.

\_\_\_\_\_  
John J. Tecklenburg, Mayor  
City of Charleston

ATTEST:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

EXHIBIT A  
(Attach Dutch Dialogues Final Report, dated September 2019)



Ratification  
Number \_\_\_\_\_

# AN ORDINANCE

**AUTHORIZING THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS AND TAKE RELATED ACTIONS PERTINENT TO THE CONSENT TO THE ASSIGNMENT OF THE LEASE BETWEEN THE CITY OF CHARLESTON AND THE INTERNATIONAL AFRICAN AMERICAN MUSEUM ("IAAM") FOR 14 WHARFSIDE STREET, CITY OF CHARLESTON, MARKED AS EXHIBIT A, TO THE IAAM SUPPORT ORGANIZATION. (AS AMENDED)**

**BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS IN CITY COUNCIL ASSEMBLED:**

**Section 1.** The Mayor is hereby authorized to execute the necessary documents to consent and otherwise provide for to the assignment of in consultation with appropriate City staff and legal counsel, to execute the necessary documents, amendments and provisions to accommodate the International African American Museum ("IAAM") closing a New Market Tax Credit transaction to facilitate its portion of the costs of construction, upfitting and operation of the museum, including, without limitation consenting to and otherwise providing for:

**1) IAAM assigning its rights and obligations under** that certain Lease **dated December 15, 2015 (the "Lease")** between the City of Charleston and the International African American Museum ("IAAM") **IAAM** for 14 Wharfside Street in the City and County of Charleston, State of South Carolina, said Lease being marked as Exhibit A, attached and incorporated herein, ~~such necessary documents and provisions (together with any necessary amendments) to include but are not limited to and all to the extent requested:~~ 1) the IAAM assigning its rights and obligations under the Lease to a special purpose, nonprofit support organization set up by the IAAM ("IAAM Support Organization"); 2) the City not releasing the IAAM from its obligations to the City as a result of the assignment to **such that** the IAAM Support Organization; 3) the IAAM Support Organization assuming the obligations of the IAAM under the Lease; 4) the IAAM Support Organization subleasing the property back to the IAAM; (5) the City consenting to the Leasehold mortgaging by the IAAM Support Organization in connection with the foregoing, and the granting by the City of certain "step in" rights and notice and cure rights for the holder of said mortgage in the event of a default; (6) the addition of the IAAM Support Organization as a party to any appropriate contracts relative to the IAAM project; and **(7, rather than IAAM will be the tenant under the Lease and itself contribute to certain museum project costs;**

- 2) in exchange for the City consenting to said assignment of the Lease, accepting from IAAM the full and unconditional guaranty of payment and performance of the IAAM Support Organization's obligations as Tenant under the Lease;
- 3) IAAM Support Organization assuming the obligations of IAAM under the Lease;
- 4) IAAM Support Organization subleasing the Leased Property to IAAM to facilitate and enable IAAM's operation of the museum;
- 5) the City consenting to the granting by IAAM Support Organization of a leasehold mortgage and/or negative pledge for the benefit of any lender to IAAM Support Organization in connection with the foregoing;
- 6) the granting by the City of certain "step in" rights and notice and cure rights for any lender to IAAM Support Organization in the event of a default;
- 7) the addition of IAAM Support Organization as a party to any appropriate contracts relative to the IAAM project such as, without limitation, the Agreement between IAAM and the City dated July 16, 2019 regarding the IAAM project;
- 8) the restructuring of certain agreements and arrangements as necessary, *inter alia*, to allow for funds delivered previously from IAAM to the City on account of IAAM's financial contribution to the project to be returned to IAAM, and instead funded to the City by the IAAM Support Organization, and introducing protocols for the sequencing of sourcing of funds to be deployed in construction and undertaking of the project; and
- 9) any other matters deemed necessary or appropriate by the Mayor (with the advice of legal counsel as to legal matters) relative to the foregoing.

Section 2. This ordinance shall become effective upon ratification.

Ratified in City Council Chambers this \_\_\_\_\_  
Day of \_\_\_\_\_, 2020, in the \_\_\_\_\_  
year of The Independence of the United States of  
America.

\_\_\_\_\_  
John J. Tecklenburg, Mayor

(ATTEST)

\_\_\_\_\_  
Vanessa Turner Maybank,  
Clerk of Court



WHEREAS, IAAM, as the fiduciary of the private funds which are being used to operate and maintain the Museum and which may, in the future, be used to improve or expand the Premises as hereinafter described, seeks assurances on behalf of the donors of the funds that the Premises shall be managed and operated by IAAM as a world-class African-American cultural center by executing this Lease of the Premises; and

WHEREAS, the City desires to enter into this long-term Lease in order to insure the development and management of the Museum, utilizing properly the assets of the City for an appropriate public purpose and to promote the general welfare by utilizing public property for the benefit of the citizens of the community,

NOW, THEREFORE, in consideration of the mutual promises and undertakings of the City and IAAM hereinafter set forth, and intending to be legally bound, the City and IAAM hereby agree as follows:

1. LEASED PROPERTY; CONFIRMATORY LOAN

(a) The City does hereby lease, demise and let unto IAAM for the purpose of operating the Museum, subject to all matters of record in the RMC Office for Charleston County and to the remaining terms hereof, and IAAM does hereby rent, lease and accept from the City the building to be constructed on the Property by the City ("Premises") for the purpose of operating the Museum.

(b) The parties acknowledge that the City may now or in the future loan certain historic artifacts and other property to IAAM for use in the Museum pursuant to a separate agreement to be entered into between the City and IAAM.

(c) IAAM shall be the solely responsible for all maintenance, repairs and replacements to the Premises and all expenses associated with the promotion, furnishing, equipping, operation

and maintenance of the Museum including, but not limited to, the acquisition, maintenance, repair and replacement of all Museum exhibits. IAAM shall have absolute authority over the use, acquisition and disposition of its personal property and the exhibits collection acquired by it.

(d) IAAM, to the extent assignable, shall have the exclusive right to use the name "International African American Museum" and its logo.

(e) Notwithstanding the fact that the Premises have been leased by the City to IAAM pursuant to the terms of this Lease, the area outside the Premises shall remain open to pedestrian use, subject to the right of IAAM to restrict pedestrian use (i) for operational or public safety reasons and (ii) with the consent of the City or its designated representative or agent.

## 2. TERM

The term of this Lease shall commence on the date a final Certificate of Occupancy for the Premises is issued by the appropriate governmental authority and shall terminate fifty (50) years thereafter (the "Term"), unless extended or sooner terminated as hereinafter provided. IAAM shall have the option to extend the term of this Lease for an additional fifty (50) years provided IAAM notifies the City one (1) year in advance of the expiration of the Term of its election to extend the Term and provided IAAM is in compliance with all terms and conditions of this Lease at that time and at the expiration of the Term. The City agrees to deliver possession of the Premises to IAAM on the commencement date.

## 3. RENT

As consideration for this Lease, IAAM shall operate and manage the Museum and shall pay to the City a base rent of One Dollar (\$1.00) per year for the Term as herein provided, receipt of which is hereby acknowledged by the City.

**4. UTILITIES AND OTHER SERVICES.**

IAAM shall make arrangements directly with each utility company or provider for the provision of any other utility services required by IAAM including installation of any meters or upgrades, at its own expense. IAAM shall pay each utility company or provider directly for all utility services required by or used by IAAM on the Premises. IAAM shall also pay, when and as the same become due and payable, the solid waste disposal fees, storm water fees and similar governmental charges levied respect to the Premises or any property of IAAM affixed to the Premises,

**5. PERMITTED USES**

IAAM shall hold and use the Premises to operate and manage the Museum, for purposes related to or incidental to such use including, but not limited to, the promotion, advancement, improvement and encouragement of the study of African American history and culture and related subjects, and to promote the knowledge and the understanding thereof; the education, instruction and recreation of the public; the conduct of research of African American history and culture and related subjects; the exhibition, protection, management, care, propagation and conservation of the Museum collection; and, except as expressly otherwise provided in Section 6 of this Lease, for no other purposes and uses that are inconsistent with the terms of this Lease.

**6. PUBLIC PROGRAMS AND ACTIVITIES**

(a) Educational Programs. IAAM agrees that as part of its educational activities and programs, it shall cooperate with educational agencies and departments, including, but not limited to, the Charleston County School System, to develop educational programs for elementary and secondary schools at the Museum. IAAM agrees that it shall advise educational institutions of its programs and develop and publicize a special admission fee for all students

attending elementary and secondary schools in the State of South Carolina and to arrange for free admission for all South Carolina school groups who attend the Museum.

(b) Admission Charges. Except as provided in Section 6(a) above, IAAM shall have the right to determine the amount of any and all fees, charges or contributions to be charged by IAAM for admission to the Museum. All admission charges received by IAAM shall be retained by IAAM to meet its obligations as set forth in this Lease.

(c) Public Access. The Museum shall be open to the public during reasonable times, as determined by IAAM; subject, however to IAAM's right to restrict public visitation through or during certain periods, as IAAM, in its reasonable discretion, may deem necessary or appropriate for the safety of the Premises, exhibits or any part thereof, or may deem to be in the best interests of the Museum. Notwithstanding the foregoing, any closure of the Museum to the public for a period in excess of twenty-four (24) hours shall be subject to the following provisions:

(1) IAAM may close the Museum up to four (4) times per year on any legal holiday observed by the City, the federal government or the State of South Carolina. Closures shall not exceed four (4) days per year without the consent of the City or its designated representative or agent.

(2) IAAM may close the Museum for operational reasons for up to fourteen (14) consecutive days with the concurrence of the City.

(3) With the consent of the City or its designated representative or agent, such consent not to be unreasonably withheld, IAAM may close the Museum for operational reasons for a period in excess of fourteen (14) consecutive days; provided IAAM provides written notice to the City which shall state the reasons for the closure, the expected date the Museum shall be reopened for public visitation and the action IAAM intends to take to rectify the problem

requiring closure. Such notice shall be delivered to the City as soon as practical after the decision to close the Museum is made by IAAM. If IAAM contemplates that a closure shall be fourteen (14) consecutive days or less and it subsequently appears that such closure shall exceed fourteen (14) consecutive days, IAAM shall so notify the City and the closure beyond fourteen (14) consecutive days shall become subject to the provisions of subsection (c)(3) hereof at that time.

(d) Concessions. IAAM may maintain and operate in or on the Premises a gift shop and food services open to the public during Museum operating hours. Any contracts evidencing such arrangements entered into after the effective date hereof shall contain an express clause by which IAAM or its concessionaire shall indemnify and hold the City harmless against any claim for damage, loss or liability arising out of any act or failure to act by IAAM or its concessionaire and its agents and employees. IAAM shall have the right to host or permit the use of events in all or a part of the Museum and to sublet all or a part of the Museum for all appropriate types of events, some of which may be catered, pursuant to a fee schedule set by IAAM, and all such payments shall accrue to IAAM as gross revenue of the Museum; provided, however, exercise of such right shall not unreasonably interfere with the public's access to or enjoyment of the Museum. Any outside concessions which are conducted by IAAM or any outside vendor who contracts with IAAM shall require such licenses and/or permits as are required and customarily issued by the City.

(e) Fundraising. IAAM may hold general fundraising events for the benefit of IAAM as a use incidental to the purposes herein contemplated; provided, however, that the exercise of such right shall not unreasonably interfere with the public's access to or enjoyment of the Museum.

(f) Compliance with laws. IAAM shall, in its operation of the Museum, comply with all public laws, ordinances and regulations; provided, however, IAAM may, after notice to the City, by appropriate proceedings conducted promptly at IAAM's own expense in IAAM's name, contest in good faith the validity, enforcement or assertion of a violation of any such statute, ordinance, law, rule, order, regulation or requirement and may similarly contest any assertion of violation of any certificate of occupancy, permit or any consent issued for the Museum.

**7. USE OF THE MUSEUM BY THE CITY**

IAAM shall permit the City to use the Museum four (4) times per year after regular business hours during the term of this Lease or any renewal thereof after the opening date of the Museum. IAAM shall not charge the City for the use of the Museum; however, catering expenses associated with the City's use of the Museum as provided herein shall be the responsibility of the City.

**8. MANAGEMENT AND ADMINISTRATION OF THE MUSEUM**

(a) Employees. The parties hereto acknowledge that the successful and proper operation of the Museum requires the use of sophisticated and historical exhibits; therefore, IAAM shall have the sole and exclusive right and power to select, hire, appoint, employ, direct, supervise, control, remove, discipline and discharge any and all personnel employed at the Museum. IAAM's right as set forth herein shall include, but not be limited to, the right to establish all terms and conditions of employment, to fix compensation, and to make promotions; provided IAAM shall comply with all applicable laws and regulations regarding equal opportunity in employment. IAAM shall use reasonable efforts to hire the most qualified personnel available to operate and maintain the Museum and will make reasonable efforts to recruit employees who

reside in the Charleston area. All employees of IAAM shall be its employees only and shall not be deemed to be employees of the City.

(b) Financing of Operations. IAAM shall use all reasonable efforts to operate the Museum on a self-sustaining basis. IAAM shall continue to solicit private and public financial support for the Museum. IAAM shall set up and maintain a reserve account to cover the estimated cost of future repairs, replacements and capital improvements to the Premises and the Museum exhibits and collections.

(c) Audit. Records of IAAM's expenses pertaining to the operation of the Museum shall be kept in accordance with GAAP and shall be available for inspection or audit by the City or its authorized representatives at all reasonable times during normal business hours. IAAM shall, at its sole cost and expense, have prepared in accordance with GAAP an annual certified audit by an independent accounting firm within 120 days after the end of each fiscal year of IAAM whereupon IAAM shall submit to the City copies of such annual certified audits, together with all notes and exhibits thereto. IAAM shall also cooperate with and furnish to the City such additional financial information, data and estimates of future expenditures as the City may reasonably request.

(d) Governance. Throughout the term of this Lease and any extension thereof, the Mayor or his designee, a member of City Council as appointed by the Mayor and a member of Charleston County Council as appointed by the Chairman of Charleston County Council shall be ex officio (voting) members of IAAM's Board of Trustees.

#### 9. SERVICES, MAINTENANCE, AND REPAIR OF THE MUSEUM

(a) IAAM shall, at its own cost and expense, throughout the term of this Lease and any renewal thereof, keep and maintain the Premises in good repair and in a clean condition in

accordance with customary standards for other museums of equal size and quality that are open to the public, ordinary wear and tear and damages by casualty excepted, and shall make all repairs, replacements and improvements as reasonably necessary to maintain the Premises, including, but not limited to, the roof, foundation, exterior walls, floors, structural components and exterior window systems together with all electrical, plumbing, heating, ventilating, air-conditioning, and other mechanical installations therein. The City agrees to cooperate with and assist IAAM, upon reasonable request, in the enforcement of the City's rights under any warranties or other contracts concerning the construction or condition of any portion of the Premises. IAAM shall be solely responsible for the care, maintenance and upkeep of the Museum's collection, including all displays and exhibits, and all changes thereto and shall take all reasonable steps necessary for their care, maintenance and preservation. The City shall have no responsibility for the routine maintenance and repair of the Museum and its contents, including the personal property therein or any capital improvements thereto.

(b) IAAM shall, at its sole cost and expense, provide reasonable security for the Premises and the personal property in the Museum.

(c) The City shall supervise and maintain all roads, paths, sidewalks, and walkways required for access to the Premises, including the service road, if applicable, and shall be responsible for grounds maintenance and removal of debris and similar activities. IAAM agrees to reimburse the City for its expenses associated therewith on an annual basis within thirty (30) days after the close of each fiscal year of IAAM.

#### 10. RIGHT TO INSPECT

The City, or its designated representatives or agents, shall have the right, upon reasonable prior notice (except in the event of emergency), to inspect the Premises for any purpose at any

time and from time to time during the term of the Lease or any renewal thereof. Any such inspection shall be subject to the conditions of quarantine or similar such circumstances imposed by law and other requirements which IAAM deems necessary for the preservation of the Museum collection; provided, however, in the event of quarantine or other similar circumstances, IAAM shall not restrict access to public health officials investigating the conditions which resulted in the quarantine. Provided further, nothing in this Lease shall be deemed or construed as a waiver by the City of the exercise of any police powers. Upon the City's request, IAAM shall make a staff member available to the City or its designated representative or agent during such inspection.

#### 11. ALTERATIONS

IAAM shall make no substantial alterations, additions or improvements on, to or about the exterior of the Museum ("*Exterior Alterations*") without the prior written consent of the City, which said consent shall not be unreasonably withheld or delayed. IAAM shall bear all costs and expenses of the design, construction and completion of such Exterior Alterations. IAAM shall procure or cause to be procured all permits, approvals, consents, licenses and authorizations of any kind required by any entity or agency of government having jurisdiction over the Exterior Alterations. IAAM shall be solely responsible that all such actions shall be done in compliance with all applicable laws, rules and regulations, including the Lease.

IAAM may, at its sole cost and expense (unless otherwise agreed to in writing) and in its sole discretion, perform any cosmetic upkeep and make any non-structural alterations, additions and improvements to the interior of the Museum ("*Interior Alterations*") as IAAM deems necessary or desirable; provided, however, if a proposed Interior Alteration (1) involves an alteration which affects the structural integrity of the Premises or (2) is not related to the display,

care or maintenance of the exhibits, IAAM shall first obtain the consent of the City or its designated representative or agent which shall not be unreasonably withheld or delayed. IAAM agrees that all such actions undertaken pursuant hereto shall be done in compliance with all applicable laws, rules and regulations.

**12. INSURANCE AND INDEMNIFICATION.**

(a) IAAM shall, at its sole cost and expense, secure and maintain, throughout the term of this Lease and any renewal thereof, public liability and property damage insurance (also known as a commercial general liability insurance), issued by a commercial insurance company that has a Best's rating of "A" or better, which shall protect all parties to this Lease against any claims for personal injuries, including death, and against claims for property damage which may arise out of, or in connection with, the use of the Museum and any operations or activities of IAAM in its exercise of any of the privileges or duties granted herein. The amount of such insurance shall be as follows: Insurance with a combined aggregate limit of not less than \$5,000,000 and an individual limit of not less than \$3,000,000 for injuries, including death, to any one person, \$5,000,000 for injuries, including death, of more than one person on account of any one accident, and property damage insurance in the amount of not less than \$1,000,000 for each accident; provided, however, if such coverage limits become clearly inadequate for any reason in the opinion of the City, IAAM shall increase the coverage limits to a reasonable level. IAAM shall be also responsible for the payment of any deductible under any such policy in the event of a claim for loss or damage as provided herein.

(b) Throughout the term of this Lease and any renewal thereof, the City shall secure and maintain "Special Cause of Loss" or "All Risk Property Insurance" coverage, including flood, wind and earthquake damage coverage, on the Premises written with a replacement cost

valuation (as required by the City's insurer and the City) without deduction for depreciation of the building and its fixtures. IAAM shall not be named as an additional insured on said policy however the policy shall contain a waiver of subrogation rights against IAAM. IAAM agrees to reimburse the City for all actual costs associated with said insurance coverage, including all premiums and deductible(s) under such policy in the event of claim(s) for loss or damage to the Premises, within thirty (30) days from its receipt of invoices for same from the City. IAAM shall notify the City in advance of making any alterations or improvements to the Premises that would cause the value of the Premises to increase or decrease so that the City is able to have such policy amended before the changes are completed.

(c) IAAM further agrees to secure and maintain throughout the term of this Lease and any renewal thereof, at its own cost and expense, insurance coverage against any loss or damage to its contents within the Museum, including all personal property owned by IAAM, the exhibits and their contents, historical artifacts and art work, from an insurance company that has a Best's rating of "A" or better. Such policy shall be in such amount and with such deductibles as IAAM deems prudent in the reasonable exercise of its judgment. IAAM shall be responsible for the payment of any deductible under such policy in the event of a claim for loss or damage to its insured property.

(d) IAAM shall also secure and maintain at its own cost and expense and as items of additional rent hereunder including the payment of any deductible associated therewith: Worker's Compensation Insurance, as required by law, products and completed operations liability insurance; automobile insurance in such minimum amounts as required by law; and a fidelity bond of not less than \$1,000,000 which shall cover all agents and employees of IAAM who handle IAAM funds in excess of \$25,000.

(e) Each of the policies enumerated above shall name the City as an additional insured; provided, however, all such insurance coverage is primary insurance as to any other insurance or self-insurance which may be available to or carried by the City.

(f) For each of the above enumerated policies, there shall be an endorsement stating that the policies shall not be terminated for any cause without at least thirty (30) days' prior written notice to all insured parties.

(g) IAAM shall provide to the City certificates of insurance of each of the above enumerated policies. At the request of the City, IAAM shall provide actual copies of the policies to the City.

(h) All of the policies described in this Section 12 shall be kept in force at all times during the term of this Lease and any renewal thereof. The minimum amounts of insurance coverage described in subsections (a) and (b) hereof shall be reviewed by IAAM and the City at least every five (5) years and may, at such times and upon the parties' mutual and reasonable agreement, be reasonably adjusted.

(j) The City or its agents, servants and employees shall not be liable for any injury or damage to IAAM's servants, agents or employees or to property on or at the leased premises resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow or leaks from any portion of the building or from the roof, street, sub-surface or from any other place, by dampness or by any other cause of whatsoever nature unless caused by or due to the negligence of the City or its agents, servants, and employees or as a result of a breach of any of the City's obligations under this Lease.

(k) Notwithstanding any policy or policies of insurance, IAAM shall indemnify and save the City harmless from and against any and all claims or demands at law, in equity or before

administrative tribunals for injury or death to persons and damage to property caused by any act or omission of IAAM relating to its use and occupation of the Premises. The words City and IAAM for this paragraph include, without limitation, their agents, servants, employees, contractors, and business invitees.

**13. DAMAGE OR DESTRUCTION.**

(a) IAAM shall notify the City promptly of any fire or other material damage to the Premises, including the accidental loss of any significant portion of the historical artifacts and exhibits.

(b) With respect to any damage or destruction to the Premises by fire or other cause, at any time during the term, the City shall promptly restore the damaged or destroyed portion or portions of the Premises at the City's sole expense and in a good and workmanlike manner. Anything in the preceding sentence or this Lease to the contrary notwithstanding, the City shall not be obligated to expend more than amounts actually received pursuant to claims made under any insurance policy insuring against any loss or damage to the Premises and other insured properties. Within forty-five (45) days of the occurrence, the City shall give IAAM a schedule of completion for such restoration. If such schedule contemplates a period in excess of one hundred eighty (180) days from the date of the occurrence or such longer period as may be directed by the Board of Trustees, IAAM shall have the following rights, subject to the approval of the City: (i) to restore the damaged or destroyed portions of the Premises at a cost not greater than the replacement cost of the destroyed or damaged portions of the Premises provided such contracts for reconstruction or repair are let by IAAM in accordance with applicable law and, to the full extent of insurance proceeds received (but not in excess thereof), to be reimbursed by the City for the cost incurred by IAAM for such restoration; or (ii) to terminate this Lease and

any renewal thereof by notice given to the City in the same manner as is set forth in Section 17 (a)(i) and subject to the conditions of Section 18; provided, however, if such damage occurs within the last five (5) years of the Lease term or its renewal, the City has the option not to restore the damaged or destroyed portion(s) of the Premises and terminate this Lease in the City's sole discretion at no cost to the City.

#### 14. ASSIGNMENT

IAAM shall not, without the prior written approval of the City, in the City's sole discretion, assign or transfer this Lease whether by merger, consolidation or otherwise. Subject to the foregoing, all provisions of this Lease, whether so expressed or not, shall be binding upon the respective successors, assigns and legal representatives of the parties hereto and shall inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns and legal representatives.

#### 15. EVENTS OF DEFAULT

Any one or more of the following shall be an "Event of Default" or "Events of Default" under this Lease:

(a) With respect to IAAM: (i) IAAM shall fail to perform or observe any obligation of IAAM under any provision of this Lease, and such failure shall continue and shall not be remedied within thirty (30) days after written notice from the City specifying the same, unless for causes beyond the reasonable control of IAAM such failure cannot be cured within thirty (30) days, and IAAM timely advises the City in writing that IAAM intends to take all steps necessary to remedy such default with due diligence, duly institutes and diligently prosecutes to completion the steps necessary to remedy the same, and remedies the same within a reasonable time; or (ii) IAAM abandons the Premises or ceases to operate the Museum on the Premises for a period in

excess of sixty (60) days; or (iii) this Lease or the Premises, any part thereof or estate therein, shall be taken upon execution or by other process of law directed against IAAM or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against IAAM and said attachment shall not be discharged or disposed of within one hundred eighty (180) days after levy thereof; or (iv) an order, judgment, or decree shall be entered by any court of competent jurisdiction appointing a receiver, trustee, or liquidator for IAAM or of all or substantially all of its assets.

(b) With respect to the City, if the City shall fail to perform or observe any obligation of the City under any provision of this Lease and such failure shall continue and shall not be remedied within thirty (30) days after notice from IAAM specifying the same, unless for causes beyond the reasonable control of the City, such failure cannot be cured within thirty (30) days, and the City timely advises IAAM that the City intends to take all steps necessary to remedy such default with due diligence, duly institutes and diligently prosecutes to completion the steps necessary to remedy the same and remedies the same within a reasonable time.

#### 16. REMEDIES FOR DEFAULT

(a) If any Event of Default shall occur, the non-defaulting party, to the fullest extent permitted by law, shall have the right to pursue any or all of the following remedies: (i) if the Event of Default constitutes a material breach of this Lease, the right and option to terminate this Lease and all of its obligations hereunder by giving notice of such election to the defaulting party, whereupon this Lease shall terminate as of the date of such notice; (ii) the right to cure any such default, at the defaulting party's cost and expense, including reasonable attorney's fees; or (iii) the right to maintain any and all actions at law or suits in equity or other proper proceedings to enforce the curing or remedying of such default or for damages resulting from such default.

In addition, if any Event of Default shall occur, the non-defaulting party to the fullest extent permitted by law shall have the right to an injunction, including a writ of mandamus, or a decree of specific performance or other comparable relief against the defaulting party (including any or all members of its governing body, and its officers, agents or representatives) in the Circuit Court for Charleston County.

(b) Each right, remedy, and privilege in this Lease shall be cumulative and shall be in addition to every other right, remedy or privilege in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. All such rights, remedies or privileges are cumulative and nonexclusive.

(c) Neither failure to insist on compliance with the terms, covenants or conditions of this Lease nor any waiver of any right, remedy or privilege hereunder, at any one or more times, shall be deemed a waiver or relinquishment of such rights, remedies or privileges at any other time or times or under any other circumstances.

#### 17. SURRENDER OF THE PREMISES.

IAAM shall keep the Premises in good order and repair, and upon the expiration or other termination of this Lease, quit and surrender the Premises to the City in the same condition as at the commencement of the term, normal wear and tear and loss due to casualty or condemnation excepted. IAAM shall have the right to remove all personal property, equipment and trade fixtures placed in the Premises by IAAM, provided IAAM repairs all damage to the Premises and the Property caused by such removal. IAAM shall reassign, to the extent necessary, the right to use the name "International African American Museum" and its logo to the City which shall automatically become the property of the City at the time of the expiration or termination of this Lease and the surrender of the Premises.

18. NOTICES. All notices, requests, demands, elections, consents, approvals, designations, and other communications of any kind hereunder ("Notices") shall be in writing and addressed to the parties as follows:

If to the City:

Mayor, City of Charleston  
City Hall  
80 Broad Street  
Charleston, SC 29401

If to IAAM:

Executive Director  
International African American Museum  
14 Wharfside Street  
Charleston, SC 29401

In order to be effective, any Notice required by this Lease to be given or made within a specified period of time, on or before a date certain, shall be deemed given or made only if hand delivered or sent by certified mail, return receipt requested, postage prepaid. A Notice so sent by certified mail shall be deemed given on the third day following the date of mailing.

19 MISCELLANEOUS.

(a) This Lease shall be construed and enforced in accordance with and governed by the laws of the State of South Carolina without regard to principles of conflicts of laws.

(b) The City represents and warrants to IAAM that the City holds fee simple title to the Property and has the full right, power and authority to enter into this Lease, and that for so long as IAAM performs all of the obligations of IAAM set forth in this Lease, IAAM shall peacefully and quietly enjoy and use the Premises throughout the term of this Lease free from any hindrance or molestation by the City or anyone claiming by, through or under the City.

(c) Nothing herein shall be deemed to create any joint venture or principal-agent relationship between the parties and neither party is authorized to and neither party shall act

toward third parties or the public in any manner which would indicate any such relationship with the other. IAAM is an independent contractor in terms of managing and operating the Museum.

(d) If any subsection, sentence, clause, phrase or portion of this Lease is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Lease.

(e) IAAM, for itself and its successors and assigns, agrees that in the performance of its obligations hereunder, it shall fully comply with the applicable provisions of all Ordinances, Executive Orders, laws of the City of Charleston, State of South Carolina and United States of America relating to non-discrimination and equal opportunity.

(f) No member of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibility in connection with the services to be performed under this Lease shall have any personal financial interest, direct or indirect, in this Lease, the Museum or in IAAM.

(g) Anything in this Lease contained to the contrary notwithstanding, neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by a fire earthquake, flood, Act of God, riot, civil commotion, or other matter or condition of nature, including the unavailability of sufficient fuel or energy to operate the Museum or of any law, ordinance, rules, regulation or order of any public or military authority stemming from the existence of economic controls, riots, hostilities, war or governmental law and regulation. In the event of a labor dispute which results in a strike, picket or boycott affecting the Museum's operation or any services described in this Lease, IAAM shall

not be deemed to be in default or breach of any part of this Lease, and IAAM shall continue to be entitled to the use and the quiet enjoyment of the Premises.

(h) The City and IAAM each agree to cooperate in the preparation of and to execute such further documents, confirmations and assurances as the other may deem necessary or desirable in order to carry out the intent and purposes of this Lease.

(i) This Lease embodies the entire agreement and understanding between the parties. This Lease shall not be modified or amended or any provision hereof waived or discharged except in writing signed by the parties hereto.

(j) Headings of this Lease are for purposes of convenience only and shall not limit or otherwise affect the meaning of any provision of this Lease.

(k) This Lease may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(l) The City hereby represents that the terms hereof and the execution and delivery of this Lease have been duly authorized by all necessary actions required by the Charter and any other laws, ordinances, regulations, or requirements and is valid, binding and enforceable against the City in accordance with its terms.

(m) Promptly after execution of this Lease, the City shall provide IAAM with a written list of all of its designated representatives or agents for purposes of this Lease. Such list shall delineate the authority of each such representative or agent to act on behalf of the City under this Lease. Unless it has received actual written notification to the contrary, IAAM may assume that the most recent written designation of the City is complete and accurate, and IAAM shall be entitled to rely conclusively on such designation without any duty to make any investigation or inquiry.

(n) The parties agree to execute, acknowledge and deliver a short form or memorandum of this Lease in recordable form setting forth the names of the parties, identifying the Property, the term of this Lease and any renewal options, and such other terms as the parties may mutually agree. Recording fees shall be paid by the party requesting recording. Upon expiration or earlier termination of this Lease, each party shall execute, acknowledge and deliver an instrument terminating and removing such short form of Lease from record within ten (10) days after written request from the other party.

IN WITNESS WHEREOF, this Lease has been duly executed by the parties hereto as of the date first written above.

WITNESS:

*Kenneth M. ...*  
*Harold Russell*

INTERNATIONAL AFRICAN AMERICAN MUSEUM

By: *Arthur E. Johnson*  
Its: *Chairman*

WITNESS:

*Mary Lynn ...*  
*Navarro ...*

THE CITY OF CHARLESTON

*Joseph P. Riley, Jr.*  
Its: *Mayor*

**New Markets Tax Credit Background  
and  
Financing Opportunity for the International African American Museum**

December 9, 2019



What follows is a brief background of the New Markets Tax Credit ("NMTC") Program, along with a summary of benefits available to the International African American Museum ("IAAM") through the program. Also discussed below is the rationale for IAAM to reconfigure the leasing structure for the IAAM museum in order for it to benefit from this opportunity.

The NMTC program originated in 2000 as a result of the Community Renewal Tax Relief Act of 2000. The program incentivizes investments and economic growth in low-income communities. Investments are made specifically into qualifying projects, which receive upfront cash (not tax credits) in the form of low-rate loans that are interest only for seven years and then typically unwound at the end of such seven years as described below. Under market practice, the principal of a material portion of the loan is entirely forgiven (i.e., handed back to the project sponsor for a nominal amount such as \$1,000) at the end of the seven years as more fully described below. Qualifying projects can use the loan proceeds towards expenditures such as real estate development, furniture, fixtures and equipment, working capital and other expenditures.

As a basis for the NMTC program under federal law, the Community Development Financial Institutions Fund (or the "CDFI Fund", a department of the U.S. Treasury Department) provides NMTC allocation authority to federally-approved Community Development Entities ("CDE Lenders") through a competitive application process. Measurable structure and oversight is maintained over CDE Lenders through the federal tax laws as well as detailed written "allocation agreements" that CDE Lenders are required to enter with the CDFI Fund. In addition, CDE Lenders are highly incentivized to act in accordance with the program, and to utilize their resources to provide substantial subsidy to qualifying projects, in order to be best positioned to receive NMTC lending capacity in subsequent annual applications to the CDFI Fund.

CDE Lenders fortunate to be awarded allocation authority look to private NMTC investors (typically banks such as Capital One, JPMorgan Chase, TD Bank, US Bank and Wells Fargo Bank, to name just a few) to monetize the NMTC allocation by providing investment capital to the CDE Lenders, which enables the CDE Lenders to lend into qualifying projects such as the IAAM project. In exchange, the NMTC investors receive a credit, equal to 39% of their investment, which they can use as a dollar-for-dollar offset against their federal income tax liability. An example in the form of a diagram is provided as Appendix A and walked through later in this memorandum.

The resulting tax equity is used along with cash from other sources (typically obtained by a loan, known as the "Leverage Loan", from an affiliate of the entity receiving the subsidy) to fund loans made to qualifying businesses or organizations in low-income communities based upon census tract data (referred to in federal tax laws as "Qualified Active Low-Income Community Businesses" or "QALICBs"). The tax credit equity portion of the loans is routinely partially or entirely forgiven at the end of seven years, providing real economic value to the project.

With regards to the leveraged cash, the entity providing the Leverage Loan must be separately regarded from the QALICB for tax purposes. Commonly, the project sponsor will serve as the Leverage Lender and set up such a separately-regarded entity for purposes of serving as the borrower of the CDE Lender loans.

As to the NMTC opportunity presented for IAAM, it is proposed that IAAM serve as the Leverage Lender and that the ultimate borrower of the NMTC loans be a special purpose, nonprofit support organization set up by IAAM (the "IAAM Support Organization"). IAAM will assign its rights and obligations under the existing property lease with the City of Charleston (the "City Lease" and the "City", respectively), with the requested consent of the City and along with any appropriate related agreements, to the IAAM Support Organization. In turn, the IAAM Support Organization will sublease the property back to IAAM to operate the museum just as contemplated at present.

The IAAM Support Organization will assume the obligations of IAAM with respect to IAAM's share of completing the museum project using, in addition to the resources contributed by IAAM to the IAAM Support Organization, the subsidized CDE Lender loans. This structure is one that is commonly employed in NMTC project finance for non-profit enterprises and is known in the industry as the "affiliate leverage lender model".

To provide some additional context on the structuring of NMTC transactions, before leveraged structures were the norm, the default was an unleveraged model. In the unleveraged structure, the NMTC investor would be the sole source of capital for a CDE Lender (i.e., there would be no Leverage Loan). The CDE Lender would then use the proceeds from such investment to make a loan to a borrower (typically at or below 50% of prevailing market rates). The investor would receive the benefit of the 39% NMTCs, and the CDE Lender would extend its loan to the borrower with favorable rates but no loan forgiveness.

The unleveraged structure was favorable to borrowers when interest rates were high. However, the model was not attractive to investors because they had to invest the full amount of capital for the CDE Lender and, under the federal tax laws governing the structure, the investors could not receive any distributions from principal repayments for seven years.

In 2003, the IRS authorized a "leveraged model" structure where the investor only needs to provide a portion of the investment to the CDE Lender instead of the full amount.<sup>1</sup> In the leveraged model, the credit investor receives NMTCs similar to as in the simple model, but with a lower upfront capital requirement. Due to this and the additional credit via NMTC they receive for meeting Community Reinvestment Act (CRA) requirements (banks are required to provide loans in low-income communities in which they operate), NMTC investors are generally willing to walk away from the tax credit equity investment, which results in a forgivable loan benefit to the borrower as more fully discussed below. The leveraged model has now become the full norm in NMTC program transactions.

Importantly to IAAM and as introduced above is that, under tax rules and industry practice, the Leverage Lender and the borrower of the CDE Lender loans (the QALICB) need to be separately regarded for federal tax purposes because the IRS could otherwise determine that the loans are in substance "from the Leverage Lender to itself" and submit that they not be considered true indebtedness for federal tax purposes (and thus not eligible for NMTC). A possible result would be a loss to the NMTC investor of the benefits of its NMTCs. A solution commonly implemented in these situations would be for IAAM as the Leveraged Lender to set up a special purpose entity, the IAAM Support Organization, to serve as the borrower of the CDE Lender loans.

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<sup>1</sup> See IRS Rev. Rul. 2003-20 as amplified in 2010 by Rev. Rul. 2010-17.

With the museum being a qualifying project located in a federally-designated low income community for purposes of the NMTC program, a standard financing structure, consistent with the description above, is as shown in the diagram attached as Appendix A. Such Appendix A assumes a NMTC award of \$7 million and a reasonable view of today's market terms.

Although Appendix A may appear complex in nature, it is the standard for NMTC transactions consistent with market practice and tax rules, and may be logically grasped through a step-by-step summary description provided as follows.

The City will lease the property directly to the IAAM Support Organization after consenting to an assignment of the lease from IAAM to the IAAM Support Organization. The Support Organization will sublease the property back to IAAM which will operate the museum. Insofar as the operation of the museum is concerned, the ultimate result is the same as presently contemplated but for the IAAM Support Organization sitting between City and IAAM itself for the sole purpose of serving in such capacity to enable the NMTC.

With the City having consented to this step, a typical financing model for a \$7 million transaction under today's market terms will be as follows (which tracks the diagram of Appendix A):

Step 1: First, a special purpose "Investment Fund" will be established for the sole purposes of (a) receiving \$2,238,600 in capital from the NMTC equity investor (in exchange for \$2,730,000 of NMTCs to the investor); (b) receiving a \$4,761,400 Leverage Loan from IAAM as the Leverage Lender; and (c) using the sum of such amounts ( $\$2,238,600 + \$4,761,400 = \$7,000,000$ ) to provide \$7,000,000 in capital to the federally sanctioned CDE Lender.<sup>2</sup>

Step 2: The CDE Lender will make two loans to the IAAM Support Organization:

A loan pursuant to the "A Note" in an amount equal to the \$4,761,400 amount of the Leverage Loan.

A loan pursuant to a "B Note" in an amount equal to the \$2,238,600 amount of the *forgivable* NMTC investment (subject to any fees that might be payable, often known as "allocation fees", earned by the CDE Lender and netted off the amount of the B Note).

Step 3: The Support Organization will use the proceeds from these CDE loans, along with the resources available from IAAM, to complete its share of the development of the museum.

Step 4: IAAM will operate the museum under the sublease and pay rent to the Support Organization in amounts sufficient to enable the IAAM Support Organization to repay the A Note and the B Note to the CDE Lender (on an interest only basis for the first 7 years).

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<sup>2</sup> Although a NMTC transaction may involve multiple CDE Lenders, which is an opportunity potentially available to IAAM, a single-CDE Lender transaction is described here for purposes of simplicity. Having multiple CDE Lenders would not change the fundamental nature of the transactions apart from bringing added NMTC subsidy to the project.

Step 5: The CDE Lender will make distributions to the Investment Fund which will be the Investment Fund's resource for repaying the Leverage Loan back to IAAM (also on an interest only basis for the first 7 years).<sup>2</sup>

*Note that as shown on Appendix A and as described above, the City's capacity would remain that of landlord to the museum project in a manner remote to the financing. The City would have no responsibility, of any form or nature either direct or indirect, for the repayment of the CDE Lender loans. Nor would the City have any nexus to the NMTCs applicable to the transaction (and, for that matter, governmental entities themselves are actually ineligible to participate as NMTC borrowers under the NMTC tax rules). The City's role would be no different than it would be in any project where serving as a landlord to a borrower that requires one or more loans, conventional or otherwise.*

What are the key benefits to IAAM in implementing this structure? First, the IAAM Support Organization will receive below-market rate loans as described above, by the fact that the proceeds provided by the NMTC investor are received on an interest-free basis. Second, and as a key benefit of the leveraged model introduced above, the financing will be subject to a standard "put and call" feature under which the NMTC investor will have the "put" right to require the parties to unwind the financing, at the end of the 7-year program period, for a nominal payment by IAAM (typically \$1,000). Upon this unwind, IAAM will have the ability to cause the B Note to be cancelled and *fully forgiven*. Of course, this brings substantial economic benefit to the project and is a key to the popularity, and competitiveness, of the NMTC program.

Under standard practice, NMTC investors routinely exercise this put right. They do this for multiple reasons, including the fact that the NMTC investor's profit from the transaction is in acquiring the benefit of the 39% NMTCs for a purchase price that is a discount off of the full amount of the credits. In the example described in this memorandum, a discount of \$0.82 on the dollar is reasonably assumed. The NMTC investor is also highly motivated to exercise this put right due to market reputational risk. Any NMTC investor that does not elect to unwind a transaction at the end of year seven, resulting in the forgiveness of the B Note, will subject itself to tremendous industry reputational risk in the market (greatly lessening, if not eliminating, the investor's ability to participate in any NMTC transactions in the future).

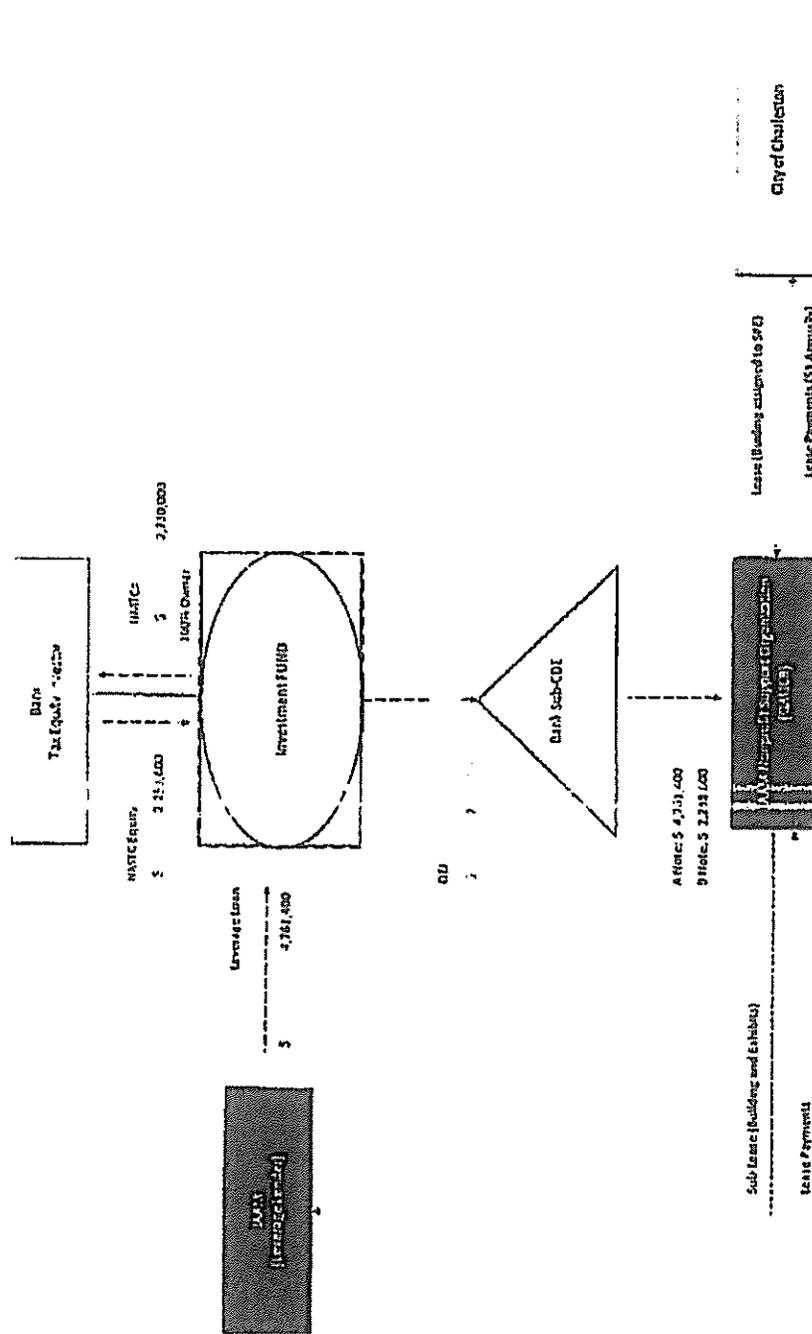
What if the NMTC investor, notwithstanding the above considerations, does not exercise this "put right" to unwind the structure? To provide a backstop to project sponsors against this scenario, the market has evolved where the NMTC investor will agree, if it does not exercise the put right, that the project sponsor nonetheless has the option to *require* the NMTC investor to unwind the NMTC structure at a purchase price equal to its fair market value (essentially meaning at a price equal to a discount on the par value of the B Note).

The NMTC program is a competitive and specialized opportunity that yields significant cash benefits to businesses and organizations operating in low-income communities. IAAM deems itself privileged to be in a position to benefit from the program, thanks the reader for the opportunity to provide this information and looks forward to any discussions that may be of assistance.

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<sup>2</sup> The Leverage Loan from IAAM to the Investment Fund will be pursuant to a standard form of loan agreement containing various undertakings on the part of the Investment Fund to act in its intended capacities and to repay the Leverage Loan via a promissory note. Thus providing assurance to IAAM that this part of the transaction will succeed as intended.

**Appendix A**





Ratification Number \_\_\_\_\_

# A N O R D I N A N C E

TO AMEND THE ZONING ORDINANCE OF THE CITY OF CHARLESTON BY CHANGING THE ZONE MAP, WHICH IS A PART THEREOF, SO THAT PREVIOUSLY UNZONED RAIL RIGHT-OF-WAY LOCATED AT 1320 KING STREET EXTENSION (PENINSULA) (APPROXIMATELY 1.50 ACRES) (TMS #464-14-00-191) (COUNCIL DISTRICT 4), BE ZONED UPPER PENINSULA DISTRICT (UP) CLASSIFICATION. THE PROPERTY IS OWNED BY THE BCDCOG.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That the Zoning Ordinance of the City of Charleston be, and the same hereby is amended, by changing the zone map thereof so that the below described property shall become a part thereof:

1320 King Street Extension (Peninsula) (approximately 1.50 acres) (TMS #464-14-00-191)

Section 2. That the said parcel of land described above shall be zoned Upper Peninsula District (UP) classification.

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_ in the Year of Our Lord \_\_\_\_\_, in the \_\_\_\_\_ Year of Independence of the United States of America.

By:

\_\_\_\_\_  
John J. Tecklenburg  
Mayor, City of Charleston

Attest:

\_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

## Zoning

1320 King Street Ext (Peninsula)

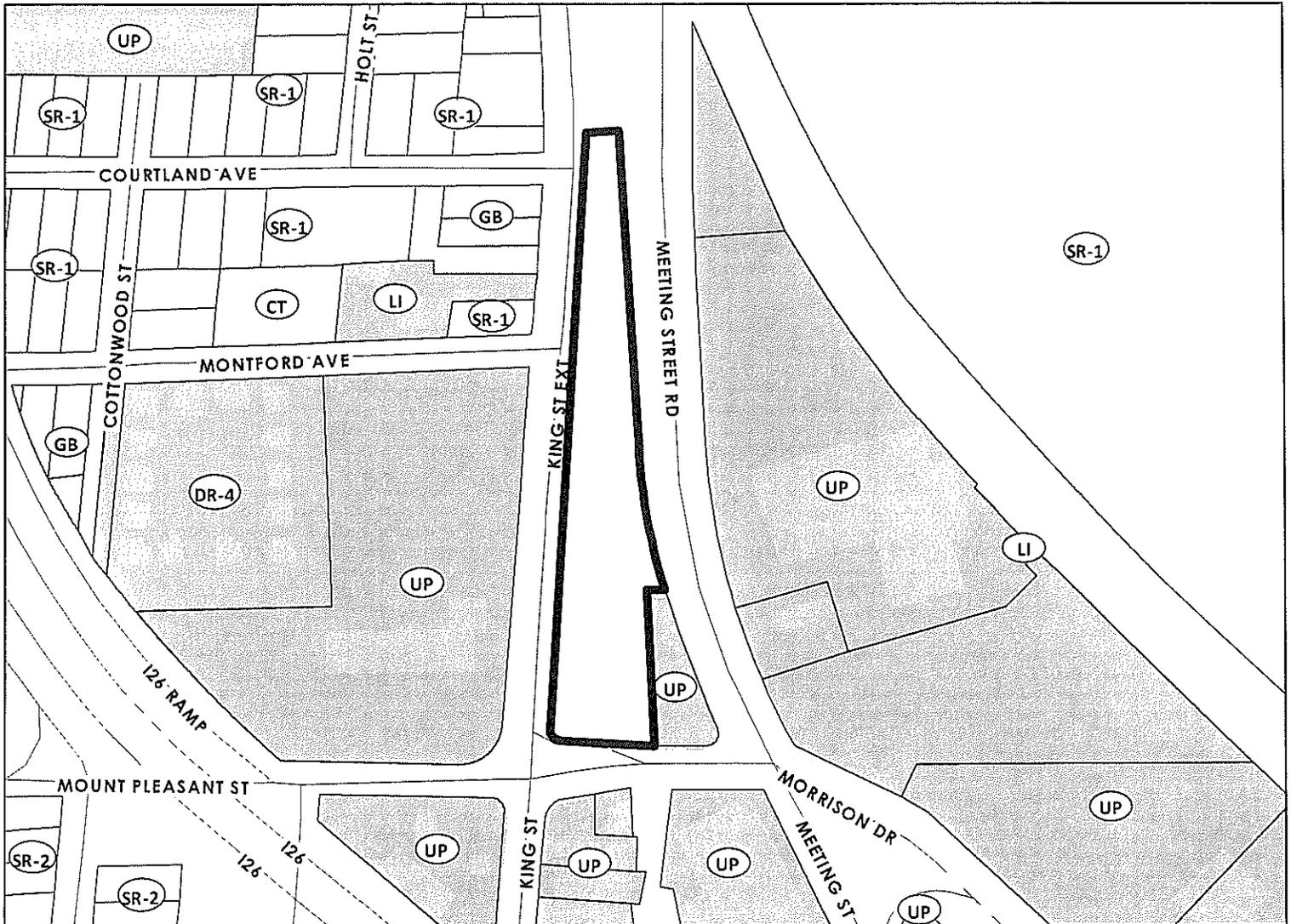
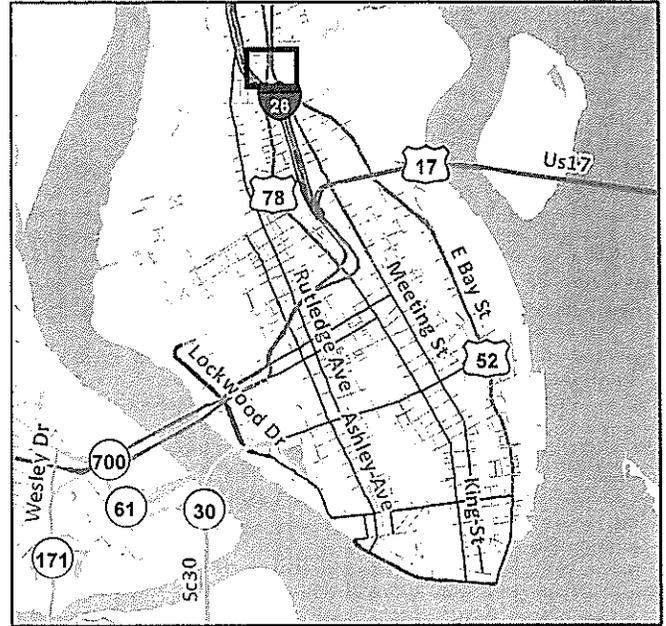
TMS # 4641400191

approx. 1.50 ac.

Request zoning of previously unzoned  
rail right-of-way to Upper Peninsula (UP) District

Owner: BCDCOG

Applicant: City of Charleston





Ratification  
Number \_\_\_\_\_

# A N O R D I N A N C E

TO AMEND THE ZONING ORDINANCE OF THE CITY OF CHARLESTON BY CHANGING THE ZONE MAP, WHICH IS A PART THEREOF, SO THAT A PORTION OF 1320 KING STREET EXTENSION (PENINSULA) (APPROXIMATELY 0.94 ACRE) (A PORTION OF TMS# 464-14-00-191) (COUNCIL DISTRICT 4), BE REZONED FROM 8 AND 2.5 OLD CITY HEIGHT DISTRICT CLASSIFICATIONS TO 4-12 OLD CITY HEIGHT DISTRICT CLASSIFICATION. THE PROPERTY IS OWNED BY THE BCDCOG.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That the Zoning Ordinance of the City of Charleston be, and the same hereby is amended, by changing the zone map thereof so as to rezone the property described in Section 2 hereof by changing the zoning designation from 8 and 2.5 Old City Height District classifications to 4-12 Old City Height District classification.

Section 2. The property to be rezoned is described as follows:  
A portion of 1320 King Street Extension (Peninsula) (approximately 0.94 acre) (a portion of TMS# 464-14-00-191)

Section 3. This ordinance shall become effective upon ratification.

Ratified in City Council this \_\_\_\_\_ day of \_\_\_\_\_ in the Year of Our Lord \_\_\_\_\_, in the \_\_\_\_\_ Year of Independence of the United States of America.

By: \_\_\_\_\_  
John J. Tecklenburg  
Mayor, City of Charleston

Attest: \_\_\_\_\_  
Vanessa Turner Maybank  
Clerk of Council

## Rezoning

1320 King Street Ext (Peninsula)

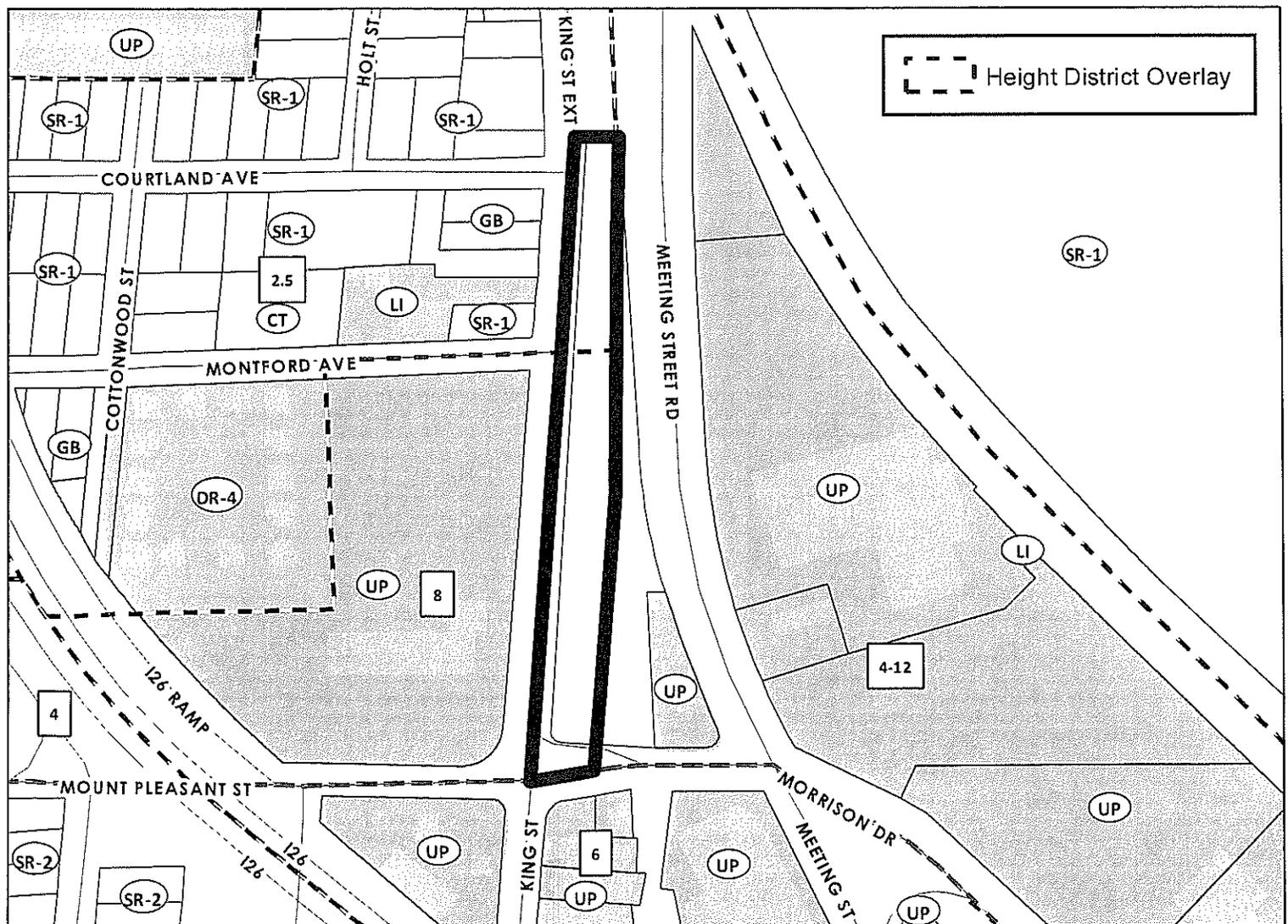
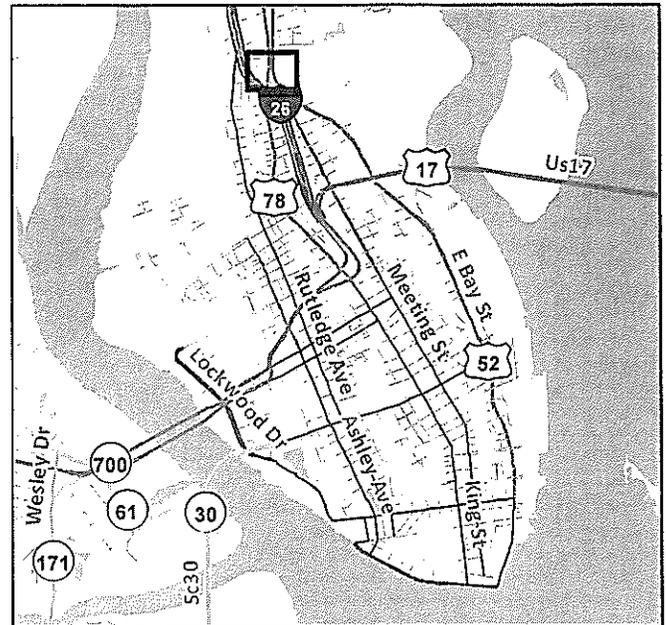
TMS # 4641400191 (a portion)

approx. 0.94 ac.

Request rezoning of a portion of previous rail  
right-of-way from 8 and 2.5 Old City Height Districts  
to 4-12 Old City Height District

Owner: BCDCOG

Applicant: City of Charleston



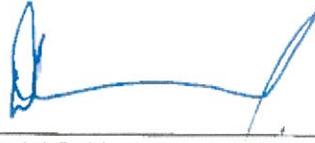


approval. Until the form of the release and settlement agreement are approved by the undersigned parties, this settlement agreement and the results of this mediation shall remain confidential. Nothing herein shall preclude Albert Tyler Nance from applying with the City for approval to use the building which is the subject to this settlement agreement as a dwelling unit while approval of this settlement agreement by all necessary entities is pending.

Dated October 7, 2019.



Samuel R. Clawson, Jr.  
Christy Fagnoli  
Clawson Fagnoli, LLC  
474 King Street, Suite D  
Charleston, SC 29403  
Attorneys for Plaintiff



Daniel S. McQueeney, Jr.  
Susan J. Herdina  
City of Charleston  
50 Broad Street  
Charleston, SC 29401  
Attorneys for Defendant



Albert Tyler Nance



6. Carmella's shall take reasonable steps to prevent persons seeking entry from gathering outside after midnight.
7. Carmella's will close at midnight from Sunday through Wednesday nights.
8. This settlement agreement shall inure only to the benefit of Carmella's, LLC. Without limiting the foregoing, it shall not run with title to the property or in favor of any other lessee of the property.
9. In accordance with section 6-29-825(D) of the South Carolina Code, this settlement agreement shall not be effective until approved by the City Council of Charleston and the circuit court.
10. To the extent this settlement agreement is not approved by the City Council of Charleston or the circuit court, such disapproval shall not be permitted to be used as evidence in any subsequent proceedings; the parties jointly agree not to raise the issue of the settlement agreement or disapproval thereof in any subsequent proceedings; and Carmella's shall be entitled to proceed with any subsequent proceedings permitted by law. Neither party waives any claims, defenses, or rights in any subsequent proceedings by agreeing to this conditional settlement agreement.
11. Upon approved by the City Council of Charleston and the circuit court in accordance with section 6-29-825(D), Carmella's shall provide the City's Corporation Counsel with a signed Stipulation of Dismissal with prejudice. The City shall then provide Carmella's with the special exception permit described in Paragraph 1 of this settlement agreement, as well as a final, signed copy of the settlement agreement. No further signature from Carmella's shall be required to the settlement agreement, it being understood that this settlement agreement shall be binding on the parties when signed, subject only to approval by the City Council of Charleston and the circuit court. Upon delivery of the special exception permit described in Paragraph 1 to Carmella's, the City's Corporation Counsel shall execute and file the stipulation of dismissal with prejudice.

Dated this \_\_\_\_ day of January 2020

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Steven R. Kropski  
Earhart Overstreet LLC  
P.O. Box 22528  
Charleston, SC 29413  
Attorney for Plaintiff

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Daniel S. ("Chip") McQueeney, Jr.  
City of Charleston  
50 Broad Street  
Charleston, SC 29401  
Attorney for Defendants

Carmella's, LLC

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By:  
Its:

Approved by the City Council of Charleston this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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By: John J. Tecklenburg  
Its: Mayor