

WHEREAS, the Sending Property is now improved with _____
(list improvements); and

WHEREAS, the Sending Area Property Owner desires to sever _____ remaining development rights from the Sending Property and to establish TDRs in the manner provided by the Beaufort County Community Development Code in order to support county efforts to reduce development potential near the Marine Corps Air Station Beaufort (MCAS—Beaufort); and

WHEREAS, the County and the Sending Area Property Owner have agreed hereby to restrict the uses on the Sending Property to those set forth in this Easement, consistent with the Beaufort County TDR program.

WHEREAS, the County has agreed to recognize and register _____TDRs in exchange for the limitation of residential development rights attributable to the Sending Property; and

WHEREAS, the TDR program requires the written consent of all lien holders and other parties with an interest of record in the Sending Property; and

WHEREAS, this Easement is made pursuant to, and in full compliance with the TDR program established in the Beaufort County Community Development Code to enable the transfer of the TDRs to other lands and to impose limitations upon development rights attributable to the Property.

TERMS, CONDITIONS, AND RESTRICTIONS

The terms, conditions and restrictions, of this Easement are these:

In consideration of the mutual covenants, terms, conditions and restrictions contained and imposed by this Easement including, but not limited to, the severance of development rights from the Property and the creation of transferable development rights (TDRs), the parties agree to the following terms and conditions:

1. **Recitals.** The parties acknowledge that the foregoing recitals are true and correct.
2. **Limitation of Development Rights.** The Sending Area Property Owner agrees to limit the development rights over and across the Sending Property forever, as follows:
_____.
3. **Purpose.** The purpose of this Easement is to restrict the development and use of the Sending Property, from which TDRs have been severed, in order to support county efforts to reduce incompatible residential development near the Marine Corps Air Station Beaufort (MCAS—Beaufort).
4. **Reserved Right of Possession.** The Sending Area Property Owner shall have the right to sell, give, or otherwise convey the Sending Property, or any portion of the Sending Property, subject to the terms of this Easement; provided, however, the instrument of any such conveyance shall specifically set forth that the interest thereby conveyed is subject to all of the terms and conditions of this Easement, and the instrument of conveyance shall incorporate this Easement by reference, specifically setting forth the date and page of its recording; provided, however, that the failure of any such instrument to comply with the provisions of this Paragraph shall not affect the County's rights pursuant to this Easement.
5. **Prohibited and Allowed Uses.** The Sending Area Property Owner, and its successors and assigns, are hereby prohibited from developing or establishing residential units on the Sending Property, as provided in paragraph 2. Except for these restrictions on residential units, the Sending Area Property Owner, and its successors and assigns, may use the Sending Property only in a manner otherwise consistent with the Beaufort County Community Development Code.
6. **Effective Date.** This Easement shall be deemed effective upon the date of its recordation in the Office of the Register of Deeds for Beaufort County, South Carolina. Prior to this Easement being effective, the Sending Area Property Owner hereby agrees that it shall

not allow any activities on the Sending Property that are contrary to the terms and conditions contained in this Easement.

7. **Warranty of title.** The Sending Area Property Owner fully warrants the fee title to the Sending Property and shall bind itself, its successors and assigns to warrant and defend the same against the lawful claims of all persons whomsoever.
8. **Subordination.** If at the time of conveyance of this Easement, the Sending Property is subject to a mortgage or deed of trust, the Sending Area Property Owner shall provide notice to said mortgagee or beneficiary of any deed of trust and obtain the consent (indicated in Exhibit B) and a subordination agreement from same. The subordination agreement, which shall be attached hereto as Exhibit C, shall serve to subordinate the mortgagee or any trust beneficiary's rights in the Sending Property to this Easement. The purpose of the subordination shall be to allow the County to freely enforce the purpose of the Easement and to prevent any modification or extinguishment of the Easement.
9. **Enforcement & Monitoring.** Pursuant to the Beaufort County Community Development Code, the terms and conditions of this Easement may be enforced by the County, or its respective successors and assigns. This Easement may be enforced by injunction or proceeding in equity or at law. The enforcement, or attempted enforcement, of rights held by the County pursuant to this Easement shall not subject the County to any liability for any damage or injury that may be suffered by any person on the Sending Property, or as a result of the condition of the Sending Property.
10. **Entry onto Sending Property with Reasonable Notice.** If the County has reason to believe that a violation of the terms of this Easement has occurred or is occurring, the County shall have the right to enter the Sending Property, provided that reasonable advance notice is given to the Sending Area Property Owners, for the purpose of inspecting it for violations of any requirement set forth in this Easement. Additionally, the County shall have the right to enter the Sending Property, at least once a year, at a mutually agreed upon time and upon notice, for purposes of inspection and compliance monitoring regardless of whether the County has reason to believe a violation of this Easement exists.
11. **General.** This Easement is entered into pursuant to the Beaufort County Community Development Code, and shall be interpreted in accordance with the laws of the State of South Carolina. All headings contained herein are for informational purposes only and shall not be construed as defining or limiting the terms of this Easement.
12. **County's Discretion.** The County may enforce the terms of this Easement at its discretion, but if the Sending Area Property Owner breaches any term of this Easement and the County does not exercise its rights under this Easement, the County's forbearance shall not be construed to be a waiver by the County of such term, or of any subsequent breach of the same, or any other term of this Easement, or of any of the County's rights under this Easement. No delay or omission by the County in the exercise of any right or remedy upon any breach by the Property Owner shall impair such right or remedy or be construed as a waiver. The County shall not be obligated to the Sending Area Property Owner, or to any other person or entity, to enforce the provisions of this Easement.
13. **Rights of the Public.** Nothing contained in this Easement shall give or grant to the public a right to enter upon, or to use the Sending Property, or any portion thereof where no such right existed in the public immediately prior to the execution of this Easement, except as may be granted or expressly authorized by Sending Area Property Owner.
14. **Limitation or Severance of Invalid Provisions.** If any provision of this Easement restricting Sending Area Property Owner's activities is determined to be invalid or unenforceable by a court, such provision shall not be rendered a nullity if the provision can be reduced or limited to the extent that the court determines will make it enforceable

and effective. If any provision of this Easement is determined to be completely invalid or unenforceable by a court, such provision shall be severed from the other provisions, and the remaining provisions shall remain enforceable and effective.

15. **Modifications.** This Easement may be modified only upon the written consent of both the Sending Area Property Owner and the County, or their respective heirs, representatives, successors or assigns; provided, however, no modification of this Easement may be made that would result in this Easement failing to qualify as a TDR Easement pursuant to the Beaufort County Community Development Code.
16. **Reversibility.** Within _____ months of the execution of this Easement, if the Sending Area Property decides to not participate in the TDR program, he/she may return all TDR certificates issued pursuant to this Easement to Beaufort County. Once deemed by the planning director to be to be extinguished, the County and Sending Area Property Owner may terminate this Easement. All TDR certificates issued to a property only partially within a TDR sending area, as allowed by § 2.10.100, of the Community Development Code, may only be reversed together at the same time and shall not be unbundled.
17. **Recording.** The Sending Area Property Owner shall record this Easement in timely fashion in the Office of the Register of Deed for Beaufort County, South Carolina. The Sending Area Property Owner, or such person to whom the Sending Area Property Owner conveys the TDRs severed from the Property, shall pay all recording costs and taxes necessary to record this Easement for the first time in the public records.
18. **TDR Certificate.** Upon the Sending Area Property Owner providing to the County Community Development department sufficient proof that this Easement has been recorded, the planning director will issue a TDR certificate to the Sending Area Property Owner, or his or her third-party designee, indicating the establishment of _____ TDRs with the following TDR serial numbers:

19. **Costs and Liabilities.** The Sending Area Property Owners retain all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Sending Property.
20. **Taxes.** The Sending Area Property Owners shall continue to be solely responsible for payment of all taxes and assessments levied against the Sending Property.
21. **Hold Harmless.** This Easement does not alter the Sending Area Property Owner's liability arising out of tort actions, including but not limited to actions brought for personal injury or property damage, that occur on or about the Sending Property. The Sending Area Property Owners shall hold harmless, indemnify, and defend the County from and against all liabilities, penalties, costs, losses, damages, claims or judgments in any way connected to injury or the death of any person, or damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Sending Property, unless due to the negligence of the County. This subsection shall not be construed to relieve the County from any liability for which it would otherwise be responsible for injuries to its employees occurring on the Sending Property in the course and scope of their duties.
22. **Successors.** The covenants, terms, conditions and restrictions of this Easement shall run with the title to the Sending Property and shall be binding upon, and inure to the benefit of, the respective parties hereto and their respective personal representatives, heirs, successors and assigns and shall constitute as a servitude running in perpetuity with the title to the Property.

23. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party under the terms of this Easement shall be in writing and either served at or mailed to:

SENDING PROPERTY OWNER(S): _____

BEAUFORT COUNTY: Beaufort County Community Development Dept.
Attn: Eric Greenway
P.O. Box 1228
Beaufort, SC 29901

and also to: Beaufort County Administration
Attn: Joshua Gruber, Esq.
P.O. Box 1228
Beaufort, SC 29901

or to such other address as any party from time to time shall designate by written notice to others.

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Sending Area Property Owner Date

Chair, Beaufort County Council Date

Clerk to County Council Date

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

I, the undersigned Notary Public for South Carolina do hereby certify that _____ (Sending Area Property Owner) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn/affirmed to and subscribed before me on this ____ day of _____, 20____.

Personally known [] or Produced identification [] Type of Identification produced_____

Signature of Notary Public

Printed name and commission number

My commission expires _____

(Notary Seal)

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

I, the undersigned Notary Public for South Carolina do hereby certify that _____ (Chair, Beaufort County Council) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn/affirmed to and subscribed before me on this ____ day of _____, 20____.

Personally known [] or Produced identification [] Type of Identification produced _____

Signature of Notary Public

Printed name and commission number

My commission expires _____

(Notary Seal)

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

I, the undersigned Notary Public for South Carolina do hereby certify that _____ (Clerk to County Council) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn/affirmed to and subscribed before me on this ____ day of _____, 20____.

Personally known [] or Produced identification [] Type of Identification produced _____

Signature of Notary Public

Printed name and commission number

My commission expires _____

(Notary Seal)

Exhibit A.

<insert legal description of sending area parcels>

Exhibit B.

CONSENT OF ALL LIEN HOLDERS AND
OTHER PARTIES WITH AN INTEREST IN RECORD IN THE SENDING PROPERTY

Name: _____

Type of interest in property: _____

Address:

Phone: _____

E-mail: _____

I hereby give my consent for the Sending Area Property Owner to sever development rights from the Sending Property described in Exhibit A.

Signature

Date

Name: _____

Type of interest in property: _____

Address:

Phone: _____

E-mail: _____

I hereby give my consent for the Sending Area Property Owner to sever development rights from the Sending Property described in Exhibit A.

Signature

Date

Name: _____

Type of interest in property: _____

Address:

Phone: _____

E-mail: _____

I hereby give my consent for the Sending Area Property Owner to sever development rights from the Sending Property described in Exhibit A.

Signature

Date