

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “Agreement”) is entered into as of the Effective Date set forth below by and among the **WALKER COUNTY DEVELOPMENT AUTHORITY** (the “Authority”), a development authority and public body corporate and politic duly created and existing under the Constitution and laws of the State of Georgia (the “Act”), **WALKER COUNTY, GEORGIA** (the “County”), a county and political subdivision of the State of Georgia (the “State”), and **SCENIC LAND COMPANY, LLC**, a Tennessee limited liability company (the “Company”), each a “Party” and collectively the “Parties.” The **WALKER COUNTY BOARD OF TAX ASSESSORS** (the “Board of Assessors”), and the **TAX COMMISSIONER OF WALKER COUNTY** (the “Tax Commissioner”) are each executing an Acknowledgment hereof attached to this Agreement in order to enter into their respective agreements to the provisions hereof which are applicable to them, but they are not considered to be Parties.

1. THE PROJECT.

1.1 The Project. As used herein, references to the “Project” include the Premises, the Improvements and the Equipment (all defined below), as the same may exist from time to time. The Project consists of the acquisition, construction and equipping of a 178-room hotel and destination resort, including a conference center, golf course and other amenities located on approximately 207 acres of land in the County for lease to and operation by the Company.

1.1.1 Premises. The “Premises” consist of approximately 207 acres of land in the County which is each described in Schedule 1.1.1 attached hereto (and by reference made a part hereof). The Premises shall be owned by the Authority and leased to the Company under the terms of a separate Lease Agreement (the “Bond Lease”) to be entered into between the Authority and the Company. The estimated aggregate cost of the Premises is \$6,000,000.

1.1.2 Improvements. The “Improvements” are to consist of the acquisition, construction and development by the Company of certain improvements to the Premises including, without limitation, an approximately 200,000 square foot hotel, spa and conference center and golf course, which Improvements are intended to be financed with the proceeds of the Bonds and leased to the Company under the Bond Lease. The Company shall be responsible for the design of the Improvements. The Bond Lease shall provide that the Company, as principal and not as agent of the Authority, shall construct the Improvements and that title to the Improvements shall vest in the Authority as the same are constructed. The Improvements shall be constructed in compliance with applicable laws, including applicable zoning laws, building codes, environmental laws and other restrictions. The parties understand that this Agreement is not subject to the Georgia Local Government Public Works Construction Law (the “Construction Law”), and do not intend for it to be subject thereto. Instead, the parties have agreed that the Company shall provide, or shall have its general contractor (the “Contractor”) provide, performance and payment bonds protecting the Authority in connection with the construction of the Improvements similar to

those that would be required if the Construction Law did apply, provided, that the Authority shall waive such requirement upon the determination by the Authority (such determination not to be unreasonably withheld) that the financial capability of the Company is sufficient for purposes of the indemnification provisions of this Agreement and of the hereinafter described Definitive Documents in favor of the Authority. The Authority shall not unreasonably withhold such determination, but shall be entitled to receive such information as it may reasonably request for such purposes including, without limitation, financial statements of the Company. The estimated cost of the Improvements is \$90,000,000.

1.1.3 Equipment. The “Equipment” consists of items of trade fixtures, machinery, equipment, furniture and furnishings proposed herein to be financed with the Bonds and to be owned by the Authority and leased to the Company under the Bond Lease. The Bond Lease will provide that the Company shall be responsible for the acquisition and installation of the Equipment and for conveying the same to the Authority from time to time by one or more bills of sale. The estimated cost of the Equipment is \$10,000,000.

1.2 Total Project Costs. “**Total Project Costs**” include all reasonable costs, fees and expenses incurred by the Company in connection with the Project and the issuance of the Project Bonds (defined below). The Company will be responsible for any costs of or related to the Project (including, without limitation, those related to any change orders or cost overruns) to the extent that proceeds of the Project Bonds are not available or are not sufficient to pay such costs.

1.3 Closing. As used herein, the “**Closing**” is the event at which the Project Bonds are issued and the other transactions contemplated herein are consummated. References herein to a “**Closing Condition**” are to the optional right of a Party hereto, based on a Closing Condition, to exercise a right provided herein in its favor and to avoid the Closing and terminate this Agreement as provided in Sections 5.4, 5.5 and 5.6, respectively, below. In connection with the issuance of the Project Bonds, the signatories hereto will also enter into an Economic Development Agreement (the “**EDA**”) to reflect any amendments hereto agreed to prior to Closing (or to reflect that there are no such amendments).

1.4 Indemnity by the Company. The Company shall indemnify, hold harmless and defend the Authority, the other Parties, and their respective officials, members, officers, employees and representatives from and against any and all loss, liabilities and claims (including, without limitation, liens and encumbrances resulting from construction and installation activities) that may arise out of or relate to: (a) any act or omission by or attributable to the Company or its vendors, contractors or subcontractors, agents, employees or representatives, related to the Project; or (b) this transaction, including the Project Bonds or the issuance thereof, or the ownership or operation of the Project. The indemnity contained in this Section 1.4 shall not apply in the case of any particular indemnitee to any claim, loss or liability which is the result of the gross negligence or willful misconduct of such indemnitee. Said indemnity shall survive the expiration or earlier termination of this Agreement, but at Closing shall be superseded (provided, such supersession shall not affect any accrued liability hereunder) by the indemnities in the Definitive Documents.

2. FINANCING OF THE PROJECT.

2.1 Project Bonds. In order to establish the bond-financed sale-leaseback structure that is necessary for the provision of certain of the incentives contemplated herein, including, without limitation, *ad valorem* property tax savings for the Project, the Authority will issue the Authority's revenue bonds (the "**Project Bonds**") to the Company. The Authority will hold legal title to the Project. The Bond Lease and related purchase option will evidence the Company's beneficial ownership of the Project. The Company will acquire legal title to the Project as provided herein.

2.2 Maximum Principal Amount of Project Bonds. Without limitation, the principal amount of the Project Bonds shall in the aggregate accommodate Total Project Costs for the Project. Such accommodation shall be made through structuring the Project Bonds as draw-down bonds in an appropriate maximum principal amount.

2.3 Transaction Costs. The Company shall be responsible for all transactional costs of the issuance of the Project Bonds, and other matters related hereto, provided that such costs shall be subject to the Company's approval, which shall not be unreasonably withheld. Subject to any applicable limits of the federal tax law, cash proceeds of the Project Bonds, if any are available for such purpose, may be used to pay such costs or to reimburse the Company for transaction costs previously paid by it. Such transaction costs include, without limitation: (i) the court costs relating to validation of the Project Bonds and recording and filing fees; (ii) the Authority's financing fee equal to 1/8 of 1% of the maximum principal amount of the Project Bonds, payable one time at Closing; and (iii) the legal fees and expenses of counsel to the Authority and the County in an amount equal to \$_____.

2.4 Tax Status of the Project Bonds. The interest on Project Bonds issued to the Company will not be exempt from federal income taxation. Whether or not the interest on any other series of the Project Bonds will be exempt from federal income taxation shall be as determined by the federal income tax law.

2.5 Roles of Counsel. The law firm of Gray Pannell & Woodward LLP shall serve as the Authority's Bond Counsel in connection with the issuance of the Project Bonds and this Agreement, and its fees and expenses will be paid by the Company. Miller & Martin PLLC shall serve as counsel to the Company, and its fees and expenses will be paid by the Company. Robin Rogers, Esq. shall serve as counsel to the Authority and to Walker County, Georgia, and his fees and expenses will be paid by the Company.

2.6 Repayment of the Project Bonds. The Company shall be responsible for the repayment of the Project Bonds. Without limitation, the Project Bonds shall not be a general obligation of the Authority, but shall be a special and limited obligation payable solely from the payments received under the Bond Lease and other pledged security. No public body, including the Authority or the County, shall have any obligation or liability for repayment of the Project Bonds.

2.7 The Bond Lease. The Authority and the Company shall enter into a lease (the "**Bond Lease**") at the Closing. Pursuant to the Bond Lease, the Authority will lease the Project to the Company. The Bond Lease shall contain terms and provisions substantially of the type normally included in bond leases between governmental "conduit" bond issuers and users of bond-

financed property. The Bond Lease will be a triple net type lease. The Bond Lease shall permit subleases to Affiliates. In no event shall the Bond Lease permit the Company to transfer, assign or share, in whole or in part, the property tax savings under the Savings Schedule (defined below) with any non-Affiliate (defined below).

2.8 Purchase Option. Subject to the bond purchase agreement related to the Project Bonds, the Authority, in the Bond Lease or by separate instrument, shall grant the Company the option to purchase the Project (the “Purchase Option”) to the extent that the Authority holds title thereto at the time, exercisable for (i) an option exercise price of \$100; (ii) plus any other amounts due to the Authority that must be paid at such time, including, without limitation, Community Recovery Payments (defined below) then due and payable; and (iii) if all of the Bonds have not theretofore been retired, the Company shall cause all of the Bonds to be retired or cancelled. Payment of the amounts so required is a condition to the closing under such purchase option. In the event the Company exercises the purchase option, this Agreement shall remain in effect. This purchase option shall be evidenced by a recorded memorandum of lease or option agreement.

2.9 Definitive Documents. The term “**Definitive Documents**” means and includes the Project Bonds, the Bond Lease and related purchase option, the EDA, the above-mentioned bond purchase agreement, a trust indenture and any other related documents necessary to implement the transaction described herein. The Definitive Documents shall be prepared by Company’s Counsel and shall be subject to the approval of the Authority, the Company and the purchaser of the Project Bonds, and the legal counsel thereof. The Parties agree to negotiate in good faith to establish the terms and conditions to be included in the Definitive Documents. It shall be a Closing Condition in favor of each of the Company and the Authority that they reach an agreement on such terms and conditions.

2.10 Transfers of this Agreement by Company. All rights and benefits of the Company under this Agreement and under the Authority’s and the County’s resolutions authorizing this Agreement may be transferred and assigned by the Company, in whole or in part, to: (a) any Affiliate of the Company or (b) with the written approval of the Authority (but subject to the last sentence of this Section) to anyone or more persons or entities which propose to acquire the Project, or a portion thereof, in either case with the same effect as if such Affiliate or such persons or entities were named as the “Company” in this Agreement and in the Authority’s resolution authorizing this Agreement. Unless otherwise agreed in writing by the Authority, the assignment of the Company’s rights shall not release the Company from its obligations for costs and indemnification and following any such assignment, the Company and such assignee shall be jointly and severally liable for costs and indemnification hereunder. As used herein, “**Affiliate**” means any person or entity (as used herein “entity” includes, without limitation, any public body) that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, a specified person or entity. As used herein, the term “control” of a person or entity means the possession, directly or indirectly, of the power: (A) to vote 10% or more of the voting securities of such person or entity (on a fully diluted basis) having ordinary power to vote in the election of the governing body of such person or entity, or (B) to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise. The foregoing and any other provision hereof to the contrary notwithstanding, in no event shall this Agreement be construed to permit the Company to transfer,

assign or share, in whole or in part, the property tax savings under the Savings Schedule with any non-Affiliate.

3. INCENTIVES TO BE PROVIDED.

3.1 Purpose of Incentives. In order to induce the Company to locate the Project in the County, the following economic inducements will be provided for the Project by the Authority and other entities, as applicable.

3.2 Ad Valorem Tax Savings.

3.2.1 Basis for Savings. Under the Constitution and laws of the State under which the Authority was created and exists, the Authority pays no tax on its interest in the property comprising the Project. The Parties acknowledge that under present law, because the Project will be owned by the Authority, the Project, including the Company's leasehold interest in the Project, will not be subject to ad valorem taxation by the State or by any political or taxing subdivision thereof. Thus, while the Bond Lease is in effect, the Company shall pay no actual taxes on its leasehold interest in the Project. However, the Company agrees that in consideration of the Bond Lease structure and other benefits, it shall make payments in lieu of taxes to the Authority, as provided on Schedule 3.2.1 attached hereto and incorporated herein by reference (the "**Savings Schedule**"). The Company shall pay normal *ad valorem* property taxes with respect to property it owns which is not titled to the Authority in connection with the issuance of the Project Bonds.

3.2.2 Reversion to Normal Taxability. If the option to purchase the Project to the extent it is owned by the Authority is exercised upon termination of the Bond Lease or earlier, in whole or in part, or if the Bond Lease is otherwise terminated or expires, the Project as depreciated will be taxable according to normal *ad valorem* property taxation rules that are applicable to privately-owned property.

3.2.3 Procedures.

(a) In order to determine the amount of payments in lieu of taxes, or payments in equivalent amounts, payable pursuant to this Agreement, at the time property tax returns are due in the County, the Company shall file a report with the Authority as to the property comprising the Project and its value, in the same format and in the same manner as a property tax return. The Company shall indicate on its report those items that have been conveyed to the Authority and are part of the Project and subject to the provisions of this Agreement. Based on such report, the Board of Assessors shall determine the assessed value of the Project as though legal title to it were held by the Company and shall notify the Company and the Tax Commissioner thereof, who shall determine what taxes would be payable if the Company held legal title to such property and shall notify the Authority of such amount. The Authority shall then calculate the amount of payments in lieu of taxes payable by the Company with respect thereto pursuant to this Agreement, and shall invoice the Company therefor, with a copy to the Tax Commissioner.

(b) Such public bodies shall coordinate such procedures with general procedures applicable to the normal assessment, appeal and payment of property taxes, such that, for

example, the Authority shall mail such invoice at the time tax bills are mailed for the relevant tax year. The Company shall make such payments to the Authority by separate check, on or before the date set for the payment of *ad valorem* property taxes in the County generally. Each such payment shall be in an amount equal to the payment in lieu of taxes due for such year as so calculated. The Authority will disburse all payments in lieu of taxes received by it to the appropriate taxing authorities pro rata in proportion to their respective millage rates.

(c) Should the Company fail to make payments in lieu of taxes required by this Agreement at the times and in the manner provided for in this Agreement, the Company shall be obligated to pay to the Authority, for the benefit of the public officer or public body entitled to the payment that was not made, in addition to such payment in lieu of taxes an amount that shall be equal to the penalties and interest that would be assessed against the Company if such payment in lieu of taxes were delinquent *ad valorem* taxes. The Authority shall notify the Company of any such penalties and interest.

(d) The Authority shall have all of the rights and remedies related to payments in lieu of taxes, interest and penalties, as the Tax Commissioner would have in the case of delinquent *ad valorem* taxes, and the Company agrees upon request of the Authority to grant any security lien or security interest necessary such that the Authority and the taxing authorities have the equivalent of tax liens for such purposes, subordinate to any prior security titles or security interests permitted elsewhere herein, provided that such subordinate lien or security interest is allowed by the terms of the instruments governing such prior security titles or security interests. Likewise, the Company shall have all of the same rights and remedies as it would have in the case of a dispute over *ad valorem* property taxes, including, without limitation, the right to dispute the valuation used by the Board of Assessors. Without limitation, the Company shall have the right of arbitration provided in O.C.G.A. Sec. 48-5-311(f) and the right of appeal to the Superior Court provided in O.C.G.A. Sec. 48-5-311(g).

3.2.4 Boards of Assessors and the Tax Commissioners. The provisions of this Agreement relative to the assessment and taxability of the Project for *ad valorem* property tax purposes shall be the obligation and responsibility of the Board of Assessors (and not of the Authority). It shall be a Closing Condition in favor of the Company that (i) the Board of Assessors, by signing an Acknowledgment of this Agreement, acknowledge its agreement with the provisions hereof applicable to it and acknowledge that this Agreement is consistent with applicable legal requirements, and that the Board of Assessors intend and agree to classify, for taxation purposes, the Company's interests in the Project under the Bond Lease as contemplated in this Agreement; and (ii) the Tax Commissioner acknowledge her/his agreement with the provisions hereof applicable to her/him, by signing an Acknowledgment of this Agreement. The County agrees to such provisions.

3.3 Reduction of Payments in Lieu of Taxes. In the event that any property interest of the Company in the Project becomes subject to *ad valorem* taxation in an amount greater than the amount determined under the terms of this Agreement, the amounts to be paid hereunder as payments in lieu of taxes shall be reduced (but not below zero) by the actual payments paid as such taxes to any of the relevant taxing authorities.

3.4 Special Tax District. On or before December 31, 2017, the County shall create a special tax district as described in Schedule 3.4.1 hereof, and levy a tax within such special district in an amount not to exceed 25 mills to provide certain governmental facilities and services, as generally described in Schedule 3.4.2 hereof.

3.5 Hotel/Motel Tax. The County will adopt a resolution requesting the local delegation of the Georgia General Assembly to introduce and adopt local legislation during the 2018 Session authorizing the County to levy an excise tax on rooms, lodgings, and accommodations, located within the special district of the County created pursuant to O.C.G.A. §48-13-50.1, at a rate not to exceed eight percent (8%) pursuant to O.C.G.A. §48-13-51(b). The County intends to use the proceeds of such excise tax for any lawful purposes, to include specifically but without limitation promoting tourism, conventions, and trade shows by a destination marketing organization designated by the County, and for tourism product development. This excise tax shall be expended as authorized and provided in Sections 48-13-51(b)(5) and (b)(6), which will, to the extent permitted by such statute, include capital costs and operating expenses related to the Project.

3.6 Tax Allocation District. If requested by the Company, the County will use reasonable best efforts to establish a tax-allocation district, in accordance with O.C.G.A. §36-44-1 *et seq.* (the “Redevelopment Powers Law”), containing the Premises and additional surrounding areas as determined by the County, in order to provide financing (through tax increment revenues and/or tax allocation district bonds) for certain authorized redevelopment costs (as described in the Redevelopment Powers Law) located within such tax allocation district. The costs of creating such tax allocation district shall be paid by the Company.

3.7 Tourism Attraction Project Approval. The Parties hereto hereby acknowledge that it is the intention of the Company to apply to qualify for the incentives provided by O.C.G.A. §44-8-270 *et seq.* (the “Georgia Tourism Development Act”). If the Project meets the requirements pursuant to the Georgia Tourism Development Act to receive the incentives provided by such Act, the County hereby agrees to support the Company’s application to obtain the approval from the State. It is hereby acknowledged, however, that such refund does not apply to the County’s local option sales tax or any educational local option sales tax collected at the Project.

3.8 Cooperation Regarding Future Financing. The Authority acknowledges that the Company may obtain initial financing or investment for all or portions of the Project from third party sources. The Company may request that the Authority provide refinancing alternatives involving the issuance of conduit revenue bonds. Except as provided in Section 3.5 hereof, such bonds shall be limited obligations of the Authority and shall have no recourse to the Authority or the County. The Authority agrees to consult with the Company and use reasonable best efforts to assist the County with respect to the foregoing for a period of six (6) years from the Effective Date hereof.

3.9 Acknowledgments; Intergovernmental Agreement. By execution of their respective Acknowledgments hereto, the officials or public bodies executing same agree to the provisions hereof applicable to them respectively. This Agreement and the Acknowledgments hereof shall collectively constitute an intergovernmental agreement under the Georgia Constitution Art. IX, Sec. III, Para. I among the public bodies and public officials executing the same. Such

intergovernmental agreement is subject to the 50-year term limit contained in such provision of the Georgia Constitution, but shall expire earlier upon its complete performance.

3.10 No Other Incentives. The preceding provisions of this Section 3 of this Agreement are a complete and exhaustive list of all incentives that the County and the Authority, and all other local governments and local authorities, respectively, have agreed to provide. There are no other County or the Authority, or other local government or local authority, incentives for the Project. It is hereby acknowledged that the Authority and the County will have no financial liability associated with the Project and will not be providing any financing or financial guarantees related to the Project, except as provided in Section 3.5 hereof.

4. **JOBS AND INVESTMENT GOALS.**

4.1 Inducement. The Company agrees to locate the Project in the County, provided, that nothing herein contained shall obligate the Company to make any particular level of investment or create any particular level of jobs. Rather, the Company's responsibilities regarding such matters shall be governed exclusively by the provisions hereof relating to Community Recovery Payments (provided for in Section 4.7 below). The Company's agreement to locate the Project in the County is based, in part, on the incentives being provided by the Authority in connection with the Bond Lease and the EDA. Such incentives are being provided to induce the Company to locate the Project in the County, with attendant job creation and investment on the part of the Company, all of which constitutes valuable, non-cash consideration to the Authority and the citizens of the County and of the State. The Parties acknowledge that the incentives provided for in this Agreement serve a public purpose through the job creation and investment generation represented by the Project. The Parties further acknowledge that the cost/benefit requirements applicable to the Authority in the course of providing such incentives dictate that some measure of recovery must be applied in the event that the anticipated jobs and investment do not for any reason fully materialize.

4.2 Community Jobs Goal. For the period prescribed as the Performance Period on the Community Goals Table ("**Community Goals Table**") included on the "**Incentives Schedule**" attached as Schedule 4 hereto and incorporated herein by reference (such period, the "**Performance Period**"), the Company shall have the goal of providing not fewer than the number of new full-time jobs at the Project specified on the Community Goals Table as the applicable Community Jobs Goal (the goal applicable in any particular year being the "**Community Jobs Goal**" for such year). For purposes of this Agreement, the number of new "full-time jobs" shall be defined and determined, from time to time, as provided on Schedule 4.2 attached hereto and incorporated herein by reference. Schedule 4.2 also determines how the number of full-time jobs shall be calculated.

4.3 Community Jobs Percentage. For every year in the Performance Period, the number of full-time jobs at the Project shall be determined (the "**Community Jobs**"). The number of jobs constituting the Community Jobs shall be divided by the applicable Community Jobs Goal and converted to a percentage to determine the "**Community Jobs Percentage**" for such year.

4.4 Community Investment Goal. For purposes of this Agreement, the Company shall have a "**Community Investment Goal**" of its having invested, in the aggregate, in the Project in each year of the Performance Period the amount for such year specified on the Community Goals

Table as the applicable Community Investment Goal (the goal applicable in any particular year, the “**Community Investment Goal**”). For purposes of the Community Investment Goal the investment at the Project shall be calculated on a cumulative basis from the date hereof to the end of each year of the Performance Period. Schedule 4.4 attached hereto and incorporated herein by reference provides rules that shall apply to satisfying the Community Investment Goal.

4.5 Community Investment Percentage. For every year in the Performance Period, the cumulative amount of capital investment by the Company in the Project shall be determined (the “**Community Investment**”). The amount of investment constituting the Community Investment shall be divided by the applicable Community Investment Goal and converted to a percentage to determine the “**Community Investment Percentage**” for such year.

4.6 Annual Report. On or before February 1 of each year following a year that is in the Performance Period, the Company shall provide to the Authority an annual report, which shall include a Community Jobs Report and a Community Investment Report, as described below. Each annual report shall be in substantially the form of Schedule 4.6 attached hereto and incorporated herein by reference, as revised for the matters being reported (each, an “**Annual Report**”).

4.6.1 Community Jobs Report. The Community Jobs Report shall contain a statement as to the full-time jobs at the Project for the immediately preceding year (each, an “**Annual Report Year**”) using the methodology provided above, and shall provide such supporting extracts from the Company’s employment records (consistent with the privacy rights of its employees) as the Authority shall reasonably request.

4.6.2 Community Investment Report. The Community Investment Report shall contain a statement as to the Company’s investment in the Project for the subject Annual Report Year, using the methodology prescribed herein.

4.6.3 Inspection Rights. No more often than once per year, the Authority and its agents shall be permitted to inspect employment and investment records of the Company, specifically related to the Project, to verify such information during normal business hours and upon reasonable notice. The Company may reasonably redact such records to protect the confidentiality of the Company and its employees or its customers.

4.6.4 Project Percentages. The Annual Report shall calculate the Community Jobs Percentage and the Community Investment Percentage. The average of the Community Jobs Percentage and the Community Investment Percentage shall be the “**Project Percentage**,” which shall also be calculated and stated in the Annual Report. An illustration of the calculation of the Project Percentage is attached hereto on Schedule 4.6.4.

4.6.5 Project Shortfall Percentage. If the Project Percentage is 100% or more, the “**Project Shortfall Percentage**” shall be 0%. If the Project Percentage is less than 100%, then the Project Percentage shall be subtracted from 100% and the remainder shall be the Project Shortfall Percentage. An illustration of the calculation of the Project Shortfall Percentage is attached hereto on Schedule 4.6.5. The Project Shortfall Percentage shall be stated in the Annual Report.

4.7 Community Recovery Payments. If an Annual Report shows that, for the immediately preceding Annual Report Year, there is a Project Shortfall Percentage, then, the Company, in such Annual Report, shall calculate the amount of the “**Community Recovery Payments**,” and shall pay the same, all pursuant to and as defined in the Incentives Schedule. If the Project Shortfall Percentage is 20% or less, there shall be no Community Recovery Payment due.

4.8 Failure to File Report and Make Required Payments. If the Company fails to pay any Community Recovery Payment when due, interest shall be paid by the Company thereon at the rate of 1% per month (or such lesser rate as may be allowed by law) until paid. If there has been a failure which is not cured within 30 days following a written notice from the Authority that it be cured, the Authority shall be entitled to enforce its rights under this Section 4.8 and the Company shall indemnify the Authority for all costs of enforcement, including any court costs and reasonable and actual attorneys’ fees and court costs. The Company shall be liable for the payment of any such interest, fees and costs.

5. TERMINATION OF AGREEMENT.

5.1 Delay. If, despite the good faith efforts of the Parties, the Closing has not occurred by December 31, 2020, then the Authority or the Company may terminate this Agreement by written notice to the other Party, without any further liability except as otherwise expressly provided in this Agreement.

5.2 Approval by Governing Bodies. Upon its execution of this Agreement, each Party hereto represents and warrants that its governing body or other authorized committee or official thereof has approved and authorized its entry into such Agreement or Acknowledgment.

5.3 Closing Conditions. Any Party shall have the right to terminate this Agreement prior to the Closing, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice to the other Parties, if:

5.3.1 Any other Party is in material breach of this Agreement.

5.3.2 There has been commenced or threatened against the Authority, the Company, or any Affiliate of the Company, any proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the matters that are the subjects of this Agreement, or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on, or otherwise interfering with, any of such matters. An uncontested validation proceeding for the Project Bonds shall not be considered a proceeding within the meaning of this Section.

5.3.3 The Authority does not have good and marketable fee simple title to the Premises at Closing pursuant to Section 1.4, above.

5.4 The Authority’s Termination Rights. The Authority shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the other Parties, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Authority shall have the right to terminate this Agreement, effective immediately upon giving

written notice to the other Parties if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Authority has not been satisfied. If the Authority does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

5.5 The Company's Termination Rights. The Company shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the other Parties, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the Company shall have the right to terminate this Agreement, effective immediately upon giving written notice to the other Parties if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the Company has not been satisfied. If the Company does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

5.6 The County's Termination Rights. The County shall have the right to terminate this Agreement, without any further liability except as otherwise expressly provided in this Agreement, effective immediately upon giving written notice thereof to the other Parties, pursuant to any provision allowing it to do so contained elsewhere in this Agreement. Without limitation, the County shall have the right to terminate this Agreement, effective immediately upon giving written notice to the other Parties if, by the Closing (or if this Agreement specifies another time therefor, then by such time) each Closing Condition set forth herein in favor of the County has not been satisfied. If the County does not exercise any such right to terminate by Closing (or by such other time specified), then, as of the Closing, such right shall be deemed waived with respect to the subject thereof.

5.7 Effect of Termination. If any Party terminates this Agreement pursuant to a right provided herein or if this Agreement expires, this Agreement shall terminate or expire as to all Parties without any further liability on the part of any Party, except as may theretofore have accrued, or except as otherwise expressly provided in this Agreement, or shall exist as a result of any prior breach hereof.

6. MISCELLANEOUS.

6.1 Notices. Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, the Authority, the County or the Company as set forth below shall be sufficient for every purpose hereunder if in writing and (except as otherwise provided in this Agreement) either (i) delivered personally to the Party or, if such Party is not an individual, to an officer or other legal representative of the Party to whom the same is directed, or (ii) mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) sent via nationally recognized overnight courier for next business day delivery, as follows:

If to the Authority: Walker County Development Authority
101 South Duke Street

LaFayette, Georgia 30728
Attn: Chairman

with a copy to: Law Office of J. Robin Rogers, LLC
P.O. Box 1769
12362 Main Street, Ste. B
Trenton, Georgia 30752
Attn: Robin Rogers

If to the County: Walker County, Georgia
101 South Duke Street
LaFayette, Georgia 30728
Attn: Commissioner

with a copy to Law Office of J. Robin Rogers, LLC
P.O. Box 1769
12362 Main Street, Ste. B
Trenton, Georgia 30752
Attn: Robin Rogers

If to the Company: Scenic Land Company, LLC
820 Broad Street, Suite 200
Chattanooga, TN 37402
Attn: Duane Horton

with a copy to: Miller & Martin PLLC
1180 W. Peachtree Street, Suite 2100
Atlanta, GA 30309
Attn: Thomas J. Harrold

6.2 Confidential Information. All confidential information acquired by the Authority and the County, respectively, relating to the Company shall be held in confidence by it, subject to its legal obligations as a public body, including, without limitation O.C.G.A. § 15-18-70, *et seq.* and § 50-14-1, *et seq.* The Company and its advisors shall, prior to the execution and delivery hereof, treat the contents of this Agreement as confidential, and, without limitation, shall not disclose such contents to competing communities or states.

6.3 No Partnership or Agency. No partnership or agency relationship between or among the Parties shall be created as a result of this Agreement.

6.4 Survival of MOU. This Agreement shall survive Closing and the expiration or termination of the Bond Lease, but may be superseded in whole or in part by the EDA to the extent that the EDA expressly so provides.

6.5 Governing Law: Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively

construed and enforced in accordance with, the laws of the State, except for the state's conflicts of law rules. The Company consents to jurisdiction over it and to venue in Walker County, Georgia.

6.6 Amendments. Any amendments, deletions, additions, changes or corrections hereto must be in writing executed by the Parties hereto.

6.7 Entire Agreement. This Agreement, together with the Definitive Documents (when executed), constitutes the entire agreement between the Parties with respect to the subject matter hereof.

6.8 Counterparts. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

6.9 No Personal Liability of Representatives of Public Bodies. No official, member, director, officer, agent, or employee of the Authority, the County (including the members and staff of the Board of Assessors and the Tax Commissioner) shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such public bodies. Without limitation, and without implication to the contrary, all parties hereto waive and release any and all claims against each such official, member, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such public bodies into this Agreement.

6.10 No Personal Liability of Representatives of Company. No official, member, manager, director, officer, agent, or employee of the Company shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such entity. Without limitation, and without implication to the contrary, all Parties hereto waive and release any and all claims against each such official, member, manager, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such entity into this Agreement.

6.11 Execution of Agreement. This Agreement shall not be effective until it has been fully executed by all Parties hereto.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding and caused it to be delivered as of the following “**Effective Date**”: May ____, 2017.

The “AUTHORITY”:

**WALKER COUNTY DEVELOPMENT
AUTHORITY**

By: _____
Chairman

ATTEST:

Secretary

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

the "COUNTY":

WALKER COUNTY, GEORGIA

By: _____
Commissioner

ATTEST:

Clerk

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

The “COMPANY”:

SCENIC LAND COMPANY, LLC

By: _____

Name: _____

Title: _____

ATTEST:

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ACKNOWLEDGED

The Walker County Board of Tax Assessors acknowledges this Agreement and agrees to the provisions hereof that are applicable to it.

**WALKER COUNTY BOARD OF TAX
ASSESSORS**

By: _____
Chairman

ATTEST:

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ACKNOWLEDGED

The Tax Commissioner of Walker County, Georgia acknowledges this Agreement and agrees to the provisions hereof that are applicable to him/her.

**TAX COMMISSIONER OF
WALKER COUNTY, GEORGIA**

By: _____
Print Name: _____

ATTEST:

[SEAL]

SCHEDULE 1.1.1

DESCRIPTION OF THE PREMISES

SCHEDULE 3.2.1

SAVINGS SCHEDULE

1. Construction and equipping of the Improvements will commence no later than 20[17]. For investments made in the period of 2018 through 2020, there is a 30-year payment percentage and correlative savings percentage schedule for all of the investments made in the Project during each calendar year. For such purposes, the calendar year following the calendar year in which the investment with respect to an asset is made is deemed to be Year 1 for that asset. That is to say, every new investment will receive a separate 30-year savings schedule for the sum that was invested during the calendar year preceding Year 1 for that asset. The 30-year savings schedule for each of such investments by year are as stated below. There shall be no property taxes or payments in lieu of taxes for tax years after the Closing but prior to the first Year 1.
2. For each year in the table below, the Company will pay amounts equal to the corresponding payment percentage, set forth below, of the normal *ad valorem* property taxes that would be payable if legal title to the Project were vested in the Company instead of the Authority on January 1 of such year. The corresponding savings percentage is 100% less the payment percentage. Such payments shall constitute payments in lieu of taxes.
3. The applicable payment percentages and savings percentages are as follows:

YEAR	SAVINGS PERCENTAGE	PAYMENT PERCENTAGE
1	100%	0%
2	100%	0%
3	100%	0%
4	100%	0%
5	100%	0%
6	90%	10%
7	90%	10%
8	90%	10%
9	90%	10%
10	90%	10%
11	90%	10%
12	90%	10%
13	90%	10%
14	90%	10%
15	90%	10%
16	90%	10%
17	90%	10%
18	90%	10%
19	90%	10%

20	90%	10%
21	90%	10%
22	90%	10%
23	90%	10%
24	90%	10%
25	90%	10%
26	90%	10%
27	90%	10%
28	90%	10%
29	90%	10%
30	90%	10%
31 and thereafter	0%	100%

4. The savings applies to all *ad valorem* property taxes (school, city, county, state and other) with respect to property comprising part of the Project titled to the Authority in connection with the issuance of the Project Bonds. The Company shall pay normal property taxes with respect to property not so titled to the Authority.

SCHEDULE 3.4.1

SPECIAL TAX DISTRICT

[Attach map of Special Tax District.]

SCHEDULE 3.4.2

SPECIAL TAX DISTRICT PROJECTS

1. Public roads, streetscaping, landscaping and lighting.
2. Fire and EMS facilities and equipment.
3. Public recreations facilities and parks, including public walking trails.
4. Water, sewer and other County owned utilities.

SCHEDULE 4

COMMUNITY INCENTIVES SCHEDULE

1. The recovery value (“**Recovery Value**”) of each of the Community Incentives provided pursuant to the Sections of this Agreement identified below shall be as specified in the rows of the table set forth below (the “**Incentives Table**”), with any payments to be made as provided in this Incentives Schedule to the Parties indicated as follows:

INCENTIVES TABLE

SECTION	INCENTIVE	RECOVERY VALUE	RECOVERY FACTOR	RECOVERY PAID TO
3.3	Property Tax Savings on Project	Actual amount of <i>ad valorem</i> property taxes on Project saved each year	100%	Appropriate Taxing Authorities, Pro Rata in Proportion to Applicable Mileage Rates

2. The Performance Period shall begin in 2018, subject to paragraph 4, below. The recovery provisions of the Incentives Table shall apply to each year in the Performance Period. On or before February 1, 2019, the Company shall submit its Annual Report as required by Section 4.6 of this Agreement. If a Project Shortfall Percentage greater than 20% is determined as provided in this Agreement, the Company shall make a payment with respect to each incentive listed in the Incentives Table above (each payment, a “**Community Recovery Payment**,” and collectively, the “**Community Recovery Payments**”) to the respective payees so specified, based on the applicable Recovery Value, simultaneously with the delivery of the Annual Report. In no event shall the Company’s total Community Recovery Payments for the Premises and the Premises Work exceed the amount of the Recovery Value for that incentive.
3. The jobs and investment goals applicable to the Company are set forth in the table (“**Community Goals Table**”) below:

COMMUNITY GOALS TABLE

PERFORMANCE PERIOD (includes all calendar years scheduled below, and any year through which the Performance Period is extended)	COMMUNITY JOBS GOAL (cumulative)	COMMUNITY INVESTMENT GOAL (cumulative)
Years 1 through 30	180	\$100,000,000

4. The Community Jobs Goal and the Community Investment Goal in any year are each subject to the effect of *force majeure* as provided below, if the Company certifies to the Authority in writing in the applicable Annual Report of the dates of the commencement and, if the event of *force majeure* has abated, the date of the abatement, of such event of *force majeure*. The effect of *force majeure* for such purposes shall be that for any year in which the Company is entitled to claim, and does claim, the benefit of such provision, the Company shall be considered in compliance with its Community Jobs Goal and Community Investment Goal, but the Performance Period shall be extended by another year, which shall immediately follow the *force majeure* year. The Company's Community Jobs Goal and Community Investment Goal requirements shall resume as scheduled beginning with the extension year, and shall continue as scheduled through the same number of remaining year's as would have applied if there had been no event of *force majeure*. Without limitation, if the application of the recovery provisions of paragraph 2 or 3, above, is postponed because of the foregoing, the same shall be applied in the next year that is not affected by *force majeure*. For purposes of Section 4 of this Agreement and this Schedule 4, "*force majeure*" means any unexpected event (including, without limitation, terrorist acts and the unavailability of qualified labor) which prevents or hinders a Party from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control, and not arising out of the fault, of such Party, and (ii) such Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, other than through unbudgeted expenditures of money. The foregoing notwithstanding, the Company may not claim the benefit of *force majeure* more than twice.

SCHEDULE 4.2

RULES FOR SATISFYING THE COMMUNITY JOBS GOAL

1. For purposes of this Agreement, the number of new “full-time jobs” shall be defined and determined, from time to time, as provided follows:
 - a) Only direct employees of the Company shall be counted.
 - b) In determining the number of full time jobs, “full-time job” means the following:

“Full-time employee job” and “full-time job” means employment of an individual which:

 - (a) Is located at the Premises;
 - (b) Involves a regular work week of 35 hours or more;
 - (c) Has no predetermined end date;
 - (d) Pays at or above the average wage of the county with the lowest average wage in the state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor; and
 - (e) Is covered by employer provided health insurance coverage, unless such employer does not pay for all or any part of health insurance coverage for other employees.

For purposes of this Agreement, leased employees will be considered employees of the Company using their services and such persons may be counted in determining the number of full-time jobs if their employment otherwise meets the definition of full-time job contained herein. In addition, an individual’s employment shall not be deemed to have a predetermined end date solely by virtue of a mandatory retirement age set forth in a company policy of general application. The employment of any individual in a bona fide executive, administrative, or professional capacity, within the meaning of Section 13 of the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Section 213(a)(1), as such act existed on January 1, 2002, shall not be deemed to have a predetermined end date solely by virtue of the fact that such employment is pursuant to a fixed-term contract, provided that such contract is for a term of not less than one year.

The Parties acknowledge the nature of the Company’s business and its desire to be able to count leased employees for purposes of this Agreement. At the same time, the Parties acknowledge the Authority’s interest in establishing permanent jobs in the community. To accommodate the interests of both Parties, the Parties agree as follows: The Company represents that its target for utilization of leased employees is that such workers not exceed on average in any year 10% of its workforce at the Premises. The Parties agree, however, that if at any time the number of leased employees at the Premises amounts to more than

20% of the Company's workforce at the Premises, then any leased employees in excess of 20% of the Company's workforce at the Premises shall not be counted as occupying full-time jobs for purposes of this Agreement.

2. The number of full-time jobs shall be calculated as provided below.
 - a) The number of jobs shall be determined based on the monthly average number of full-time employees and leased employees that are employed at the Project and are subject to Georgia income tax withholding for the taxable year.
 - b) The monthly average number of full-time employees in a taxable year shall be determined by the following method:
 - (i) for each month of the taxable year, count the total number of full-time employees (including, to the extent eligible to be counted, leased employees) of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;
 - (ii) add the monthly totals of full-time employees (and including, to the extent eligible to be counted, leased employees); and
 - (iii) divide the result by the number of full calendar months the business enterprise was in operation during the taxable year. Transferred jobs (within the meaning of the Georgia job tax credit program), except for jobs transferred to the Project from outside the State of Georgia, and replacement jobs (including, to the extent eligible to be counted, leased employees) may not be included in the monthly totals.

SCHEDULE 4.4

RULES FOR SATISFYING THE COMMUNITY INVESTMENT GOAL

1. Only capital investments in the Project by the Company shall be counted, except as provided in 4 below.
2. Original cost, without regard to depreciation, shall be used in calculating whether the Community Investment Goal is met, except as provided in 3, below.
3. Transferred equipment relocated by the Company to the Project to be used as part of the Project may be counted at net book value, or, if requested and substantiated by the Company to the Authority's satisfaction, and approved by the Authority, its fair market value.
4. Machinery and equipment leased to the Company under an operating lease (even though such property is not titled to the Authority and is not leased to the Company under the Bond Lease) and other machinery and equipment owned or beneficially owned by the Company but not leased to it under the Bond Lease, shall be counted.

SCHEDULE 4.6

FORM OF ANNUAL REPORT

[AUTHORITY]

[DATE]

Re: Memorandum of Understanding (“MOU”) and Economic Development Agreement (“EDA”) between the [AUTHORITY] (“Authority”), Walker County, Georgia (“County”), [COMPANY] (“Company”) regarding the capital project located in Walker County, Georgia, Georgia (the “Project”) – 20__ Annual Report

Dear _____

This letter shall serve as the 20__ Annual Report, as required under the MOU and EDA.

COMMUNITY JOBS REPORT

As of December 31, 20__, the total number of full-time jobs located at the Project was _____. We have enclosed _____, as evidence of such job creation.

The Community Jobs Goal for ____ was ____ jobs. The Community Jobs for the year ____ is ____ jobs. The Community Jobs Percentage is ____% ($\frac{\text{___}}{\text{___}}$).

7. COMMUNITY INVESTMENT REPORT

As of December 31, 20__, the Company has invested \$_____ in the Project.

The Community Investment Goal for 20__ was \$_____. Therefore, the Community Investment Percentage is ____% ($\frac{\text{___}}{\text{___}}$).

8. PROJECT PERCENTAGE AND PROJECT SHORTFALL PERCENTAGE

The Project Percentage for 20__ is ____% ($(\frac{\text{___}}{\text{___}} + \frac{\text{___}}{\text{___}}) \div 2$). The Project Shortfall Percentage for 20__ is ____%.

9. COMMUNITY RECOVERY PAYMENTS

[IF A RECOVERY PAYMENT IS DUE, THAT PAYMENT SHOULD BE CALCULATED HERE BASED ON THE RECOVERY SCHEDULE IN THE MOU]

Please do not hesitate to let us know if you require any additional information.

Sincerely,

Enclosures

SCHEDULE 4.6.4

ILLUSTRATION OF CALCULATION OF PROJECT PERCENTAGE

The Project Percentage shall be determined by the following formula:

STEP 1

$$\begin{array}{r} \text{Community Jobs} \\ \div \quad \text{Community Jobs Goal} \\ \hline = \quad \text{Community Jobs Percentage} \end{array}$$

$$\begin{array}{r} \text{Community Investment} \\ \div \quad \text{Community Investment Goal} \\ \hline = \quad \text{Community Investment Percentage} \end{array}$$

STEP 2

$$\begin{array}{r} \text{Community Jobs Percentage} \\ + \quad \text{Community Investment Percentage} \\ \hline = \quad \text{Total Percentage} \end{array}$$

STEP 3

$$\frac{\text{Total Percentage}}{2} = \text{Project Percentage}$$

SCHEDULE 4.6.5

ILLUSTRATION OF CALCULATION OF PROJECT SHORTFALL PERCENTAGE

The Project Shortfall Percentage shall be determined by the following formula:

STEP 1

If the Project Percentage is 100% or more, the Project Shortfall Percentage is 0%

STEP 2

If the Project Percentage is less than 100%, $100\% - \text{Project Percentage} = \text{Project Shortfall Percentage}$.